

**DOCUMENTS NUMBERED 09075-11984**





"Beverly, Pamela L."  
<Pamela\_L.\_Beverly@omb.eop.gov>

09/19/2006 03:00 PM

To adwitt@tva.gov, angela.arrington@ed.gov, bjs1@nrc.gov, callen@peacecorps.gov, charles.mierzwa@rrb.gov, ctrowbridge@ustda.gov, cunninghamcs@state.gov,  
cc "Zeiber, Jacqueline A." <Jacqueline\_A.\_Zeiber@omb.eop.gov>, "Bushi, Nancy S." <Nancy\_S.\_Bushi@omb.eop.gov>, "Ware, LaTonya R."  
bcc

Subject Notice of Actions Update

This is to inform you that as of today you will no longer be receiving Notice of Actions or Reports from our former system.

ROCIS is to be used for all types of Notice of Actions and Reports.

Our former system will be totally stopped at the end of October, so please check your agency systems to make sure that all the information for your files are up to date. I will not be able to send you any materials from our former system after October.

However, all of OIRA's data from the former system has been migrated to ROCIS and is available there.

Also, those on your staff who do not have access to ROCIS, can always check our web site for information regarding a submission's status. The web site is [www.RegInfo.gov](http://www.RegInfo.gov) and information from production is moved there nightly.

Remember, ROCIS is interactive, and you can verify the status of your submissions at anytime by checking your submitted and concluded boxes.

Thank you and have a good afternoon.

009075



"Zeiber, Jacqueline A."  
<Jacqueline\_A\_Zeiber@omb  
.eop.gov>

01/12/2007 11:03 AM

To adwitt@tva.gov, angela.arrington@ed.gov,  
callen@peacecorps.gov, charles.mierzwa@rrb.gov,  
ctrowbridge@ustda.gov, cunninghamcs2@state.gov,  
cc "Echols, Mabel E." <Mabel\_E\_Echols@omb.eop.gov>,  
"Gayle, Darcel D." <Darcel\_D\_Gayle@omb.eop.gov>,  
"Johnson, Kim I." <Kim\_I\_Johnson@omb.eop.gov>, "Jones,  
bcc

Subject ROCIS Data Base being updated over long wkend!!--please  
note unavailable after 9 pm tonight. Thanks.

History:

✉ This message has been replied to.

When you log in to ROCIS today, you will see the following note.

"The ROCIS system will be down for routine maintenance from Friday, January 12, 2007 at 9:00 PM until 6:00 AM, Tuesday, January 16, 2007. If you have any questions regarding this matter, please contact Mike Johnson (202) 208-7659."

Just so you know why, we are "migrating" ALL of the historical records from our former system, RMS, into ROCIS over the weekend. You may have noticed that they are already in the practice site at <http://192.136.12.204/rocis/>

We have been testing them there for the last week and are pretty close to being able to put them into ROCIS so that every OMB Control Number will have a complete OMB Control Number History all the way back to 1974. Important to note that the farther back we go, the fewer data fields are completed, but I think you will be very impressed with what is there and what you are able to do with the records; i.e., searching back to the 1970's and even creating an ICR from one that has been historically active a long long time.

Nancy Bushi is the STAR of this production along with her sidekick, Brenda Raj, who you don't see often but is very there into the wee hours of the morning sometimes. They have worked closely with our application contractor, CyberData, to make sure the records don't break the system and the system doesn't break the records. We owe them all a great big THANK YOU.

So wish us luck today as we complete our testing and fixing and over the weekend as we load these records into the production application. We will also load them into the website in a week or so, which will enable the public to see our history as well.

So all of this to THANK YOU AGAIN for your patience and please get all your work done by 9:00 p.m. tonight or it will have to wait until Tuesday morning after our celebration of Martin Luther King holiday on Monday.

Jacke Zeiber

OMB OIRA ROCIS Project Leader

202-395-4638

009076



"Zeiber, Jacqueline A."  
<Jacqueline\_A\_Zeiber@omb  
.eop.gov>

09/28/2006 05:35 PM

To adwitt@tva.gov, angela.arrington@ed.gov, bjs1@nrc.gov,  
callen@peacecorps.gov, charles.mierzwa@rrb.gov,  
ctrowbridge@ustda.gov, cunninghamcs2@state.gov,  
cc "Aguilar, Brenda" <Brenda\_Aguilar@omb.eop.gov>, "Astrich,  
Katherine T." <Katherine\_T\_Astrich@omb.eop.gov>,  
"Champagne, Maurice B."

bcc

Subject Important Msg--ROCIS ICR Module Certification Page

### Agency Clearance Officers:

It has come to my attention that there is a misunderstanding as to how to use the certification page when submitting ICRs to OIRA.

Check mark the box for each and every provision in order to CERTIFY that your Agency has complied with the PRA provisions.

Leave blank only those check boxes for provisions for which you CANNOT CERTIFY your Agency's compliance and discuss why you did NOT or were NOT able to certify compliance of the un-check-marked PRA provision in the supporting statement.

OIRA Desk Officers will review the certification pages and will look for the statement of noncompliance in the supporting statement for those provisions that WERE NOT check-marked.

Thank you.

Jacke Zeiber

OMB OIRA ROCIS Project Leader

202-395-4638

009077



"Zeiber, Jacqueline A."  
 <Jacqueline\_A\_Zeiber@omb.eop.gov>

09/26/2006 02:32 PM

To lotero@eac.gov  
 cc  
 bcc

Subject RE: ROCIS ICR Module Workshop October 3!!

History: This message has been replied to.

I have booked a space for you in the 10 – 12:30 a.m. class, Tuesday, October 3, Room 5031, GSA Building, 1800 F Street, NW.

Please confirm plan to attend.

Thanks.

Jacke Z

---

**From:** lotero@eac.gov [mailto:lotero@eac.gov]  
**Sent:** Monday, September 18, 2006 11:46 AM  
**To:** Zeiber, Jacqueline A.  
**Subject:** Re: ROCIS ICR Module Workshop October 3!!

Hello,

I am submitting an ICR (and possibly two), or at least hoping to on the week of October 2nd. If this training will assist in learning how to submit the ICRs via the ROCIS, I will be more than happy to attend. Also, I have played around with the sample ROCIS and gotten familiar with it. When would you like me to call you to discuss how it went? Overall, it went well; my questions are more about the information/documents we need to attach when it's an emergency review and when it's a normal review - I need to know the exact information these documents need to have so the ICR review process goes smoothly. Thank you!

Laiza N. Otero  
 Research Associate  
 U.S. Election Assistance Commission  
 1225 New York Avenue, Suite 1100  
 Washington, DC 20005  
 Tel. (202) 566-3100 (main office)  
 Tel. (202) 566-2209 (direct)  
 Fax (202) 566-3128

"Zeiber, Jacqueline A."  
 <Jacqueline\_A\_Zeiber@omb.eop.gov>

09/15/2006 05:53 PM

Toadwitt@tva.gov, angela.arrington@ed.gov, bjs1@nrc.gov, callen@peacecorps.gov, charles.mierzwa@rrb.gov, ctrowbridge@ustda.gov, cunninghamcs@state.gov, cyberdata@fakegsa.gov, denise.mclamb@mail.va.gov, dhynek@doc.gov, donald\_bieniewicz@ios.doi.gov, ebrya@opic.gov, germaine.white@eeoc.gov, grace.sutherland@eia.doe.gov, gscott@cftc.gov, jacqueline.white@sba.gov, jeffrey.martus@hg.doe.gov, jgmancus@ibb.gov, jgregory@fmc.gov, judith-b.herman@fcc.gov, jyandik@jwod.gov, kayej@fhfb.gov, kcook@presidiotrust.gov, kcramer@cns.gov, klion.catherine@pbgc.gov, laurieann.duarte@gsa.gov, lglatz@cpsc.gov, lgravely@oshrc.gov, lillian.deitzer@hud.gov, liz.davidson@ssa.gov, llarsen@jamesmadison.com, lotero@eac.gov, lpankey@ftc.gov, "Wright, Lauren E." <Lauren\_E\_Wright@omb.eop.gov>, lynn.bryant@usdoj.gov, marc@asc.gov, marilyn.levitt@stb.dot.gov,

009078

martinsons@sec.gov, mbtoomey@opm.gov, michael.miller@ferc.gov, michael.robinson@treas.gov,  
michelle.e.long@frb.gov, mills.ira@dol.gov, murdock@nmb.gov, paula.sweeney@sss.gov,  
pledvina@oge.gov, rbaker@fmshrc.gov, rdanvers@imls.gov, rdecker@arc.gov, ruth.brown@usda.gov,  
sabrina.nelson@associates.dhs.gov, sdaisey@neh.gov, seleda.perryman@hhs.gov, shanft@fdic.gov,  
smclaughlin@itc.gov, solomon.bush@exim.gov, splimpto@nsf.gov, tamee.fechhelm@nara.gov,  
tcrews@ncua.gov, thahn@nclis.gov, timothy.korb@mspb.gov, twilson@adf.gov, tyglesias@truman.gov,  
walter.kit-1@nasa.gov, welshm@arts.endow.gov, westlund.rick@epa.gov, wheeler@udall.gov,

Patricia.Lawton@dot.gov

CC:john.thomas@gsa.gov, carolyn.newsome@gsa.gov

SuROCIS ICR Module Workshop October 3!!

bje  
ct

Great news!! Carolyn at RISC has been able to get the GSA training room again for two workshops on October 3, 2006.

I'll hold the workshops at 10 to 12:30 and 1:30 to 4:00 at the main GSA building, 1800 F Street NW, in room 5031.

I still have a waiting list but willing to consider folks that need to prepare submissions for October, November and December.

Please send me list of those that you wish me to consider by next Friday, 22 September.

Thanks for your patience.

We are trying now for room in November.

Jacke Zeiher

OMB OIRA ROCIS Project Leader

202-395-4368

009079




"Zeiher, Jacqueline A."  
<Jacqueline\_A\_Zeiher@omb  
.eop.gov>

09/15/2006 05:53 PM

To adwitt@tva.gov, angela.arrington@ed.gov, bjs1@nrc.gov,  
callen@peacecorps.gov, charles.mierzwa@rrb.gov,  
ctrowbridge@ustda.gov, cunninghamcs@state.gov,  
cc john.thomas@gsa.gov, carolyn.newsome@gsa.gov  
bcc

Subject ROCIS ICR Module Workshop October 3!!

History:

 This message has been replied to.

Great news!! Carolyn at RISC has been able to get the GSA training room again for two workshops on October 3, 2006.

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Please send me list of those that you wish me to consider by next Friday, 22 September.

Thanks for your patience.

We are trying now for room in November.

Jacke Zeiher

OMB OIRA ROCIS Project Leader

202-395-4368

009080



"Zeiher, Jacqueline A." <Jacqueline\_A\_Zeiher@omb.eop.gov>

09/08/2006 05:12 PM

To lotero@eac.gov

cc "Hunt, Alexander T." <Alexander\_T\_Hunt@omb.eop.gov>

bcc

Subject RE:

History: This message has been replied to

Per our telecon, you don't have PRA staff users. As long as you put Juliet's name as CIO and place an A for her privileges and your name as clearance officer with an A, you are all set. Thanks. JackeZ

From: lotero@eac.gov [mailto:lotero@eac.gov]
Sent: Friday, September 08, 2006 5:10 PM
To: Zeiher, Jacqueline A.
Cc: Hunt, Alexander T.
Subject: Re:

Hello,

Thank you very much for the documents and the access to the test website. For the spreadsheet, I have a question on whose names go on the following:

Table with 2 columns: Clearance Officer/POC for ROCIS Implementation, III. PRA Staff Users, ICR Reviewing Officials

I have printed out the agreements and completed the spreadsheet (except for the above), and should be ready to send it back on Monday. Thank you and I look forward to speaking with you next week.

Laiza N. Otero
Research Associate
U.S. Election Assistance Commission
1225 New York Avenue, Suite 1100
Washington, DC 20005
Tel. (202) 566-3100 (main office)
Tel. (202) 566-2209 (direct)
Fax (202) 566-3128

"Zeiher, Jacqueline A." <Jacqueline\_A\_Zeiher@omb.eop.gov>

09/08/2006 04:26 PM

To lotero@eac.gov
cc "Hunt, Alexander T."
<Alexander\_T\_Hunt@omb.eop.gov>

Subject

Per our telecon today, you have been set up in a practice site (first e-mail). In order to be granted privileges in the production ROCIS, I need a signed security agreement from you and Juliet and I need you to complete the ROCIS ICR Module Access Privileges Spreadsheet as we discussed and either scan and e-mail the spreadsheet and 2 agreements back to me or fax them to me [REDACTED]

I look forward to our followup conversation next week after you have had a chance to familiarize yourself with ROCIS and have discussed how to proceed with Alex as to revise one of the three past OMB Control Numbers or to start anew.

Jacke Zeiher

202-395-4638[attachment "ROCIS ICR Module Access Privileges Spreadsheet.xls" deleted by Laiza N. Otero/EAC/GOV] [attachment "ROCIS Security Requirements-Revised 6-06.doc" deleted by Laiza N. Otero/EAC/GOV]

009082



**Juliet E.  
Thompson-Hodgkins/EAC/G  
OV**


07/20/2006 06:28 PM

To Laiza N. Otero/EAC/GOV@EAC

cc

bcc

Subject OMB - OIRA -- that's the office that handles paperwork  
reduction act stuff

History:  This message has been replied to.

Alex Hunt is the name of our desk officer. I would suggest calling him and telling him what we have planned and that you wanted to walk through the process with him to assure that we are not leaving anything out.

His number is 

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

009083



**Laiza N. Otero/EAC/GOV**  
09/11/2006 09:48 AM

To Juliet E. Thompson-Hodgkins/EAC/GOV@EAC  
cc  
bcc  
Subject OMB new ROCIS system

Julie,

OMB has a new online system for submitting information collections for review and approval (ROCIS). In order to be granted full access to it, we need you, as the CIO, to sign the attached document (I will also give you a print out of it). I will then forward it to Ms. Zeiher at OMB. Thank you; let me know if you have any questions.

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)  
Fax (202) 566-3128

— Forwarded by Laiza N. Otero/EAC/GOV on 09/11/2006 09:45 AM —



**"Zeiher, Jacqueline A."**  
**<Jacqueline\_A\_Zeiher@omb**  
**.eop.gov>**  
09/08/2006 04:26 PM

To lotero@eac.gov  
cc "Hunt, Alexander T." <Alexander\_T\_Hunt@omb.eop.gov>  
Subject

Per our telecon today, you have been set up in a practice site (first e-mail). In order to be granted privileges in the production ROCIS, I need a signed security agreement from you and Juliet and I need you to complete the ROCIS ICR Module Access Privileges Spreadsheet as we discussed and either scan and e-mail the spreadsheet and 2 agreements back to me or fax them to me at 202-395-7245.

I look forward to our followup conversation next week after you have had a chance to familiarize yourself with ROCIS and have discussed how to proceed with Alex as to revise one of the three past OMB Control Numbers or to start anew.

Jacke Zeiher



202-395-4638 ROCIS ICR Module Access Privileges Spreadsheet.xls ROCIS Security Requirements-Revised 6-06.doc

009084

## **ROCIS Security Requirements for System Users**

The RISC/OIRA Consolidated Information System (ROCIS) supports the following informational and review functions:

- Preparation by GSA's Regulatory Information Service Center (RISC) of the semiannual "Unified Agenda of Federal Regulatory and Deregulatory Actions" and the annual "Regulatory Plan," in accordance with Executive Order 12866 and the Regulatory Flexibility Act;
- Review by OMB's Office of Information and Regulatory Affairs (OIRA) of regulatory actions under Executive Order 12866; and
- Review by OIRA of information collections under the Paperwork Reduction Act.

Each of these functions requires entry and updating of information by authorized users acting on behalf of their respective Federal agencies. This document contains the principal security requirements that all users of ROCIS must observe in connection with their use of the system.

### **Access to ROCIS**

Users gain access to ROCIS via an Internet browser. To enter the system, a user must indicate acceptance of the terms of the following warning notice:

"You are about to access a U.S. Government computer system. Access to this system is restricted to authorized users only. Anyone who accesses the system without authorization or in excess of their authorization could be subject to a fine or imprisonment, or both, under Public-Law 98-473. By entering this system, you consent to having your activities and or accesses recorded by the system software and periodically monitored. If this record reveals suspected unauthorized use or criminal activity, the evidence may be provided to supervisory personnel and law enforcement officials. Do NOT process classified information on this system."

Other applicable laws include the Federal Information Security Management Act of 2002 (FISMA), P.L. 107-347, Title III; the Computer Security Act of 1987, P.L. 100-235; OMB Circular A-130, Management of Federal Resources, Appendix III; and the Privacy Act, 5 U.S.C. 552a.

User access will be controlled in accordance with the GSA IT Security Procedural Guide: Access Control CIO-IT Security-01-07. Access will be limited to authorized users as follows:

- All users must receive instruction in the proper use of ROCIS, including ROCIS security instruction, prior to being given access to the system.
- Access to ROCIS will be controlled through the use of user names and passwords and based on privileges granted by the ROCIS System Administrator.
- Each user will be granted access only to the extent needed to support the individual's specified role in relation to the agency's business functions.

- Accounts will be locked after three unsuccessful login attempts. Users will need to contact the help desk to get their accounts unlocked.
- Individuals who no longer have a need for access to ROCIS related to agency business functions, because of termination of employment, reassignment, or any other reason, are prohibited from logging into ROCIS. The individual or the agency should notify the ROCIS System Administrator of any such change in status.
- The ROCIS System Administrator will revoke access privileges for users who intentionally violate ROCIS security policies.
- All users must sign the "Acknowledgment of ROCIS Security Requirements" form attached to this document.

### **Sensitivity and Confidentiality of Information in the System**

ROCIS must not be used to process classified data. However, the data ROCIS will handle are considered sensitive and proprietary because the information relates to decisions and actions that take place during the life cycle of regulations development and information collections approvals. Much of this information is predecisional, and there could be significant ramifications to the missions of RISC, OIRA, and other Federal agencies if the information is disclosed, altered, or misused prior to approved release. Users therefore are prohibited from unauthorized disclosure of predecisional or other deliberative information.

In addition, ROCIS maintains user data containing information about agencies and employees, mailing lists, access privileges, user names and passwords, and user level access assignments, which must be protected.

Some of the information within ROCIS will be published and made available directly to the general public through the Internet. The public will not have access to sensitive or proprietary information in the system.

### **Rules for Behavior**

All authorized governmental and contractor users of ROCIS will be responsible for data protection, including maintaining the confidentiality and integrity of sensitive data from unauthorized or accidental disclosure, misuse, or alteration. Users will be held accountable for their interactions with ROCIS and its data. Compliance with these rules will be enforced through sanctions commensurate with the level of infraction. Actions may include a verbal or written warning, removal of system access for a specific period of time, reassignment to other duties, or termination, depending on the severity of the violation.

#### *General Requirements:*

- Users must be familiar with ROCIS security and operational policies and practices and with any corresponding requirements of their agency.
- Users must promptly notify RISC, OIRA and, if appropriate, other Federal agency security personnel of any security incident related to ROCIS.
- Users must attend ROCIS and their agency's security instruction as required.

- Users must maintain an awareness of threats to the ROCIS application, server hardware, or data.
- Users must maintain familiarity with the functionality and proper use of ROCIS.
- ROCIS will track actions of users through audit trails. Individuals will be held accountable for their actions on the system and for any accesses made with their user names and passwords.
- Users must not import data into ROCIS from disks or files created on other systems unless they have first been scanned by an antivirus protection system.

*Password Protection:*

- Users must not share or otherwise disclose their passwords to other persons.
- Users must change their passwords upon initial access to ROCIS and thereafter every 90 days, or as prompted by the system, in accordance with the specifications for a mix of letters, numbers and special characters.
- Users should select passwords that avoid family names, sports team names, and other predictable keyboard patterns that may easily be guessed.
- Passwords should be memorized. Do not write, display, or store passwords where other persons may access or view them.
- Users should report to the ROCIS System Administrator any requests by others to reveal their passwords.

*Use and Protection of Data:*

- Users must access ROCIS only through authorized interfaces.
- Users must not attempt to view, change, or delete data, or to perform any other actions in ROCIS, unless authorized to do so.
- Users must control access to their personal computers whenever they are logged into ROCIS. Users should terminate their connections to ROCIS immediately upon completion of their work in the system and whenever their personal computers will be unattended.

**Acknowledgment of ROCIS Security Requirements**

Please complete this form, sign and date it, and return the form to the ROCIS Security Officer (System Administrator Mike Johnson), acknowledging that you have read the "ROCIS Security Requirements for System Users" and have understood its content.

Name: (Please print) \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_ Agency: \_\_\_\_\_

Telephone: \_\_\_\_\_ E-mail Address: \_\_\_\_\_

If you have any questions about IT security, or about the content of this document, please contact the ROCIS Security Officer at [mike.Johnson@gsa.gov](mailto:mike.Johnson@gsa.gov) or on 202-208-7659. Fax: 202-482-7360.

009089

AGENCY REQUEST FOR ACCESS PRIVILEGES TO ROCIS ICR MODULE					
	Name	e-mail Address	Office Phone Number	IV. Privileges A, B, C in accordance with table below	Agency Code(s) for which privileges apply
I. Agency Name:					
II. PRA Roles:					
Alternate Rep for ICR Module Access Privileges					
Certifying Official Designee(s)					
Clearance Officer/POC for ROCIS Implementation					
III. PRA Staff Users:					
ICR Reviewing Officials:					
	Directions for completing this spreadsheet:				
	I. Please enter Agency name.				
	II. Please identify the individuals who fill the following roles for your Agency:				
	Alternate responsible for representing and coordinating additions and deletions to Agency ICR Module Access List as personnel changes dictate.				
	Certifying Official certifies that the Agency's information collections comply with 5 CFR 1320.9. Please note that the Clinger-Cohen Act specifies the "senior official" responsible for compliance and certification required by OMB's regulations implementing the Paperwork Reduction Act (5 CFR Part 1320) to be the agency's chief information officer." (See 44 USC 3506.)				
	Designee(s) delegated authority to certify on behalf of the CIO.				
	Clearance Officer in charge of day-to-day Agency PRA process and POC for ROCIS implementation.				
	III. Please list the PRA staff and ICR reviewing officials you wish to have ROCIS ICR Module access.				
	IV. Identify requested privileges A, B, and C below in Column E for each person named in II and III. List all that apply.				
	A. Authority to certify that the ICR complies with 5 CFR 1320.9 and to submit an ICR to OIRA.				
	B. Authority to create and edit (prepare) (but not certify and submit) a PRA Information Collection Request (ICR).				
	C. Authority to view-only the Agency's ICRs and to write short intra-agency review/routing notes to ICRs prior to submission of requests to OIRA. (This authority does not include authority to prepare or submit an ICR.)				
	Some considerations for assigning privileges:				
	Certifying Official and Designee(s) will be granted Privilege A, authority to certify that the ICR complies with 5 CFR 1320.9 and submit an ICR to OIRA. Unless otherwise noted by you, if one is granted Privilege A, the lesser Privileges B and C apply as well.				
	All three of the above privileges include rights to view and download Notices of Action, run reports, and perform searches.				
	ICR preparation privileges (Privilege B) should be limited to your agency's PRA professionals rather than program subject matter content contacts.				
	Privilege C is intended for those individuals who are part of your agency's ICR review process prior to submission to OIRA. Pending and concluded actions will be viewable by program subject matter content contacts at the public website, RegInfo.gov.				
	V. Please E-mail the spreadsheet to Jacqueline A. Zeiher@omb.eop.gov by 12/16/2005. Address questions to Jacke Zeiher at 202-395-4638.				



"Hunt, Alexander T."  
<Alexander\_T.\_Hunt@omb.eop.gov>  
09/08/2006 12:45 PM

To lotero@eac.gov  
cc  
bcc  
Subject RE: OMB clearance package

History:  This message has been replied to.

Someone from our ROCIS team will be in touch with you.

---

**From:** lotero@eac.gov [mailto:lotero@eac.gov]  
**Sent:** Thursday, September 07, 2006 5:37 PM  
**To:** Hunt, Alexander T.  
**Subject:** RE: OMB clearance package

Dear Mr. Hunt,

I am writing to follow up on our last e-mail exchange (see below). The EAC currently has a (60 day) notice in the Federal Register for public comment to end on Sept. 29th regarding its 2006 Election Day survey. I would like more information about the documentation we have to provide to request OMB clearance; you had mentioned there would be an online method for submitting the clearance package.

Also, my colleague Gavin Gilmour, our Deputy General Counsel, mentioned that he spoke to you about emergency processing for an information collection he is working on related to the EAC's Certification Program for election systems. We would like more information about that process as well. We are looking at submitting the document for OMB review and/or Federal Register publication on October 1st for 30 days.

I greatly appreciate your time and assistance, and I look forward to your response. Thank you and have a great day!

Sincerely,

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)  
Fax (202) 566-3128

"Hunt, Alexander T." <Alexander\_T.\_Hunt@omb.eop.gov>

07/24/2006 07:11 PM

To lotero@eac.gov  
cc  
Subject RE: OMB clearance package

009090



We are busy with the ROCIS start-up, but will get back to you with instructions later this week.

Thanks.

**From:** lotero@eac.gov [mailto:lotero@eac.gov]

**Sent:** Monday, July 24, 2006 5:24 PM

**To:** Hunt, Alexander T.

**Subject:** OMB clearance package

Dear Mr. Hunt,

Per our phone conversation earlier today, I would like to have more information about submitting an information collection request for OMB clearance. The U.S. Election Assistance Commission (EAC) intends to administer a survey later on this year to all 50 States, the District of Columbia, and the U.S. territories to collect election administration and voting data. We are in the process of preparing the document for publication in the Federal Register for the initial 60-day public comment period. Once we do this, it is my understanding that we then submit to OMB the clearance package. I would like to request information as to what exactly is the process, what documents we need to submit, time frames, document formats, etc. Any help or information you can provide on the matter will be greatly appreciated. If you have any questions or need more information, please, do not hesitate to contact me at this address or by phone at the number listed below. Thank you and have a great week!

Sincerely,

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-1707  
Fax (202) 566-3128

009091



Laiza N. Otero/EAC/GOV  
09/21/2006 01:03 PM

To Gavin S. Gilmour/EAC/GOV@EAC, Brian  
Hancock/EAC/GOV@EAC  
cc  
bcc  
Subject ROCIS

I have called Jacke Zeiher to request privileges in the production ROCIS (as opposed to the practice site we have access to currently). I will give you all of the necessary information once I receive it from her.  
Thank you!

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)  
Fax (202) 566-3128

009092



Laiza N. Otero/EAC/GOV  
09/21/2006 02:20 PM

To Gavin S. Gilmour/EAC/GOV@EAC, Brian  
Hancock/EAC/GOV@EAC

cc

bcc

Subject Fw: Intro to ROCIS for Small Agency

the new password for the practice site is: Ninotchka2/

----- Forwarded by Laiza N. Otero/EAC/GOV on 09/21/2006 02:19 PM -----



"Zeiber, Jacqueline A."  
<Jacqueline\_A.\_Zeiber@omb  
.eop.gov>  
09/08/2006 04:12 PM

To lotero@eac.gov

cc "Hunt, Alexander T." <Alexander\_T.\_Hunt@omb.eop.gov>

Subject RE: Intro to ROCIS for Small Agency

<http://192.136.12.204/rocis/>

user id is lotero  
password is rocis123

Then change password and familiarize yourself with the site at your convenience.

Call me when you want to attempt to input the emergency and I'll walk you through.

Jacke Z

**From:** Hunt, Alexander T.  
**Sent:** Thursday, September 07, 2006 6:04 PM  
**To:** Bushi, Nancy S.; Zeiber, Jacqueline A.  
**Subject:** Intro to ROCIS for Small Agency

This is a small agency with very few collections, and they need help with their first ROCIS submission. Can I give her (?) one of your numbers to help them get started?

Thanks.

**From:** lotero@eac.gov [mailto:lotero@eac.gov]  
**Sent:** Thursday, September 07, 2006 5:37 PM  
**To:** Hunt, Alexander T.  
**Subject:** RE: OMB clearance package

Dear Mr. Hunt,

I am writing to follow up on our last e-mail exchange (see below). The EAC currently has a (60 day) notice in the Federal Register for public comment to end on Sept. 29th regarding its 2006 Election Day survey. I would like more information about the documentation we have to provide to request OMB

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clearance; you had mentioned there would be an online method for submitting the clearance package.

Also, my colleague Gavin Gilmour, our Deputy General Counsel, mentioned that he spoke to you about emergency processing for an information collection he is working on related to the EAC's Certification Program for election systems. We would like more information about that process as well. We are looking at submitting the document for OMB review and/or Federal Register publication on October 1st for 30 days.

I greatly appreciate your time and assistance, and I look forward to your response. Thank you and have a great day!

Sincerely,

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
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Fax (202) 566-3128

"Hunt, Alexander T." <Alexander\_T.\_Hunt@omb.eop.gov>

07/24/2006 07:11 PM

To: lotero@eac.gov  
cc

Subject: RE: OMB clearance package

We are busy with the ROCIS start-up, but will get back to you with instructions later this week.

Thanks.

---

**From:** lotero@eac.gov [mailto:lotero@eac.gov]  
**Sent:** Monday, July 24, 2006 5:24 PM  
**To:** Hunt, Alexander T.  
**Subject:** OMB clearance package

Dear Mr. Hunt,

Per our phone conversation earlier today, I would like to have more information about submitting an

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information collection request for OMB clearance. The U.S. Election Assistance Commission (EAC) intends to administer a survey later on this year to all 50 States, the District of Columbia, and the U.S. territories to collect election administration and voting data. We are in the process of preparing the document for publication in the Federal Register for the initial 60-day public comment period. Once we do this, it is my understanding that we then submit to OMB the clearance package. I would like to request information as to what exactly is the process, what documents we need to submit, time frames, document formats, etc. Any help or information you can provide on the matter will be greatly appreciated. If you have any questions or need more information, please, do not hesitate to contact me at this address or by phone at the number listed below. Thank you and have a great week!

Sincerely,

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-1707  
Fax (202) 566-3128

009095

Karen Lynn-Dyson/EAC/GOV  
09/27/2006 04:51 PM


To Laiza N. Otero/EAC/GOV@EAC  
cc Brian Hancock/EAC/GOV@EAC, Juliet E.  
Hodgkins/EAC/GOV@EAC, twilkey@eac.gov  
bcc  
Subject Re: OMB training

I think this is an excellent idea.

Most especially in light of the fact that we may have to go through this process at least SIX times in the next year!

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

Laiza N. Otero/EAC/GOV

 Laiza N. Otero/EAC/GOV  
09/27/2006 04:23 PM

To Karen Lynn-Dyson/EAC/GOV@EAC, Brian  
Hancock/EAC/GOV@EAC  
cc  
Subject OMB training

Hello,

OMB has booked a space for me to attend a training next Tuesday, October 3rd from 10am-12:30pm @ GSA. It's a workshop designed to teach us about their new ROCIS system for submitting information collection requests. There's no cost involved. Is it ok with both of you that I attend? I think the training would be quite useful to say the least --- I am planning on learning that system and the whole clearance process inside/out. Thank you!

Laiza N. Otero  
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Karen Lynn-Dyson/EAC/GOV

10/05/2006 01:48 PM

To Peter Schulleri/EAC/GOV@EAC, Laiza N.  
Otero/EAC/GOV@EAC

cc Juliet E. Hodgkins/EAC/GOV@EAC

bcc

Subject OMB Clearance Conference call Friday 13th at 2:00 PM

Peter-

Assuming Laiza gives you the OK ( since she is the primary presenter) for a Friday, October 13th 2:00 conference call, please send out to our four new contractors the following:

"On Friday, October 13 at 2:00 PM EAC staff will conduct a 45-60 minute call on various details and processes related to the Paperwork Reduction Act and the OMB Clearance process. If the EAC research project you are currently operating requires surveying 10 or more persons, you are subject to the rules and regulations of the Paperwork Reduction Act. Most of the EAC 's research contractors will involve surveying more than 10 voters and/or election officials.

We look forward to your participation in this call:

(..... Call-in information ) "

Thanks

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

009097



Laiza N. Otero/EAC/GOV

10/06/2006 11:28 AM

To Karen Lynn-Dyson/EAC/GOV@EAC

cc

bcc

Subject PRA

Thought this might be helpful in helping you determine if you need PRA clearance for your focus groups :

In accordance with the PRA, OMB approval must be obtained prior to collecting information in any situation where 10 or more individuals are involved and the questions are standardized in nature.

**Do focus groups need Paperwork Reduction Act clearance?**

Yes -- assuming that the focus groups are working from predetermined scripts that are being asked each group

Compliance with the PRA is required whenever a federal agency sponsors a data collection by using identical questions, using identical reporting or record-keeping requirements, or asking respondents to provide the same level of information on the same subject involving 10 or more respondents in a 12-month period (7,10). The law applies to all federal employees, contractors, people in cooperative agreements, and anyone else who asks the public for information for the purpose of research, public health practice, program evaluation, or any other reason. The PRA also addresses customer satisfaction inventories, focus group inquiries, all types of surveys, telephone interviews, and electronic environments.

**What Doesn't Need PRA Clearance?**

Open-ended questions to the public, e.g. "What do you think about this?" in a focus group do not require OMB approval.

**Does the PRA affect questions at public meetings ?**

Not usually. No clearance is needed if the attendees are just asked to comment or give suggestions on the program or subject in question. If, however, the group is gathered for the purpose of having attendees respond to a specific set of formatted questions, then the PRA does apply

\*\*\*\*\*

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Laiza N. Otero/EAC/GOV  
10/12/2006 02:45 PM

To Karen Lynn-Dyson/EAC/GOV@EAC, Peter  
Schulleri/EAC/GOV@EAC

cc

bcc

Subject Materials for tomorrow's conference call

I have provided Karen a copy of the agenda for her to review and provide comments. I am attaching here the other documents that need to be forwarded to the Contractors.



OMB 83-I form.pdf



OMB guidance Sept 2006.pdf



Template for Supporting Statements A and B.doc



OMB Survey Design Guidance 1.2006.pdf

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# PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the Supporting Statement, and any additional documentation to: **Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.**

<p>1. Agency/Subagency originating request</p>	<p>2. OMB control number <span style="float: right;">b. <input type="checkbox"/> None</span></p> <p>a. _____</p>
<p>3. Type of information collection (<i>check one</i>)</p> <p>a. <input type="checkbox"/> New collection</p> <p>b. <input type="checkbox"/> Revision of a currently approved collection</p> <p>c. <input type="checkbox"/> Extension, without change, of a currently approved collection</p> <p>d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired</p> <p>e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired</p> <p>f. <input type="checkbox"/> Existing collection in use without an OMB control number</p>	<p>4. Type of review requested (<i>check one</i>)</p> <p>a. <input type="checkbox"/> Regular</p> <p>b. <input type="checkbox"/> Emergency - Approval requested by: ____/____/____</p> <p>c. <input type="checkbox"/> Delegated</p>
<p>3a. Public Comments</p> <p>Has the agency received public comments on this information collection?</p> <p style="text-align: center;"><input type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>5. Small entities</p> <p>Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>6. Requested expiration date</p> <p>a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: ____/____/____</p>	
<p>7. Title</p>	
<p>8. Agency form number(s) (<i>if applicable</i>)</p>	
<p>9. Keywords</p>	
<p>10. Abstract</p>	
<p>11. Affected public (<i>Mark primary with "P" and all others that apply with "X"</i>)</p> <p>a. <input type="checkbox"/> Individuals or households <span style="margin-left: 100px;">d. <input type="checkbox"/> Farms</span></p> <p>b. <input type="checkbox"/> Business or other for-profit <span style="margin-left: 100px;">e. <input type="checkbox"/> Federal Government</span></p> <p>c. <input type="checkbox"/> Not-for-profit institutions <span style="margin-left: 100px;">f. <input type="checkbox"/> State, Local or Tribal Government</span></p>	<p>12. Obligation to respond (<i>Mark primary with "P" and all others that apply with "X"</i>)</p> <p>a. <input type="checkbox"/> Voluntary</p> <p>b. <input type="checkbox"/> Required to obtain or retain benefits</p> <p>c. <input type="checkbox"/> Mandatory</p>
<p>13. Annual reporting and recordkeeping hour burden</p> <p>a. Number of respondents _____</p> <p>b. Total annual responses _____</p> <p>1. Percentage of these responses collected electronically _____ %</p> <p>c. Total annual hours requested _____</p> <p>d. Current OMB inventory _____</p> <p>e. Difference _____</p> <p>f. Explanation of difference</p> <p>1. Program change _____</p> <p>2. Adjustment _____</p>	<p>14. Annual reporting and recordkeeping cost burden (<i>in thousands of dollars</i>)</p> <p>a. Total annualized capital/startup costs _____</p> <p>b. Total annual costs (O&amp;M) _____</p> <p>c. Total annualized cost requested _____</p> <p>d. Current OMB inventory _____</p> <p>e. Difference _____</p> <p>f. Explanation of difference</p> <p>1. Program change _____</p> <p>2. Adjustment _____</p>
<p>15. Purpose of information collection (<i>Mark primary with "P" and all others that apply with "X"</i>)</p> <p>a. <input type="checkbox"/> Application for benefits <span style="margin-left: 100px;">e. <input type="checkbox"/> Program planning or management</span></p> <p>b. <input type="checkbox"/> Program evaluation <span style="margin-left: 100px;">f. <input type="checkbox"/> Research</span></p> <p>c. <input type="checkbox"/> General purpose statistics <span style="margin-left: 100px;">g. <input type="checkbox"/> Regulatory or compliance</span></p> <p>d. <input type="checkbox"/> Audit</p>	<p>16. Frequency of recordkeeping or reporting (<i>check all that apply</i>)</p> <p>a. <input type="checkbox"/> Recordkeeping <span style="margin-left: 100px;">b. <input type="checkbox"/> Third party disclosure</span></p> <p>c. <input type="checkbox"/> Reporting</p> <p>1. <input type="checkbox"/> On occasion <span style="margin-left: 20px;">2. <input type="checkbox"/> Weekly</span> <span style="margin-left: 20px;">3. <input type="checkbox"/> Monthly</span></p> <p>4. <input type="checkbox"/> Quarterly <span style="margin-left: 20px;">5. <input type="checkbox"/> Semi-annually</span> <span style="margin-left: 20px;">6. <input type="checkbox"/> Annually</span></p> <p>7. <input type="checkbox"/> Biennially <span style="margin-left: 20px;">8. <input type="checkbox"/> Other (describe) _____</span></p>
<p>17. Statistical methods</p> <p>Does this information collection employ statistical methods?</p> <p style="text-align: center;"><input type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>18. Agency contact (<i>person who can best answer questions regarding the content of this submission</i>)</p> <p>Name: _____</p> <p>Phone: _____</p>

## 19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9.

**Note:** The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It uses plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
  - (i) Why the information is being collected;
  - (ii) Use of information;
  - (iii) Burden estimate;
  - (iv) Nature of response (voluntary, required for a benefit, or mandatory);
  - (v) Nature and extent of confidentiality; and
  - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of the instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of these provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

# Instructions For Completing OMB Form 83-I

Please answer all questions and have the Senior Official or designee sign the form. These instructions should be used in conjunction with 5 CFR 1320, which provides information on coverage, definitions, and other matters of procedure and interpretation under the Paperwork Reduction Act of 1995.

## 1. Agency/Subagency originating request

Provide the name of the agency or subagency originating the request. For most cabinet-level agencies, a subagency designation is also necessary. For non-cabinet agencies, the subagency designation is generally unnecessary.

## 2. OMB control number

- If the information collection in this request has previously received or now has an OMB control or comment number, enter the number.
- Check "None" if the information collection in this request has not previously received an OMB control number. Enter the four digit agency code for your agency.

## 3. Type of information collection (check one)

- Check "New collection" when the collection has not previously been used or sponsored by the agency.
- Check "Revision" when the collection is currently approved by OMB, and the agency request includes a material change to the collection instrument, instructions, its frequency of collection, or the use to which the information is to be put.
- Check "Extension" when the collection is currently approved by OMB, and the agency wishes only to extend the approval past the current expiration date without making any material change in the collection instrument, instructions, frequency of collection, or the use to which the information is to be put.
- Check "Reinstatement without change" when the collection previously had OMB approval, but the approval has expired or was withdrawn before this submission was made, and there is no change to the collection.
- Check "Reinstatement with change" when the collection previously had OMB approval, but the approval has expired or was withdrawn before this submission was made, and there is change to the collection.
- Check "Existing collection in use without OMB control number" when the collection is currently in use but does not have a currently valid OMB control number.

## 4. Type of review requested (check one)

- Check "Regular" when the collection is submitted under 5 CFR 1320.10, 1320.11, or 1320.12 with a standard 60 day review schedule.
- Check "Emergency" when the agency is submitting the request under 5 CFR 1320.13 for emergency processing and provides the required supporting material. Provide the date by which the agency requests approval.
- Check "Delegated" when the agency is submitting the collection under the conditions OMB has granted the agency delegated authority.

## 5. Small entities

Indicate whether this information collection will have a significant impact on a substantial number of small entities. A small entity may be (1) a small business which is deemed to be one that is independently owned and operated and that is not dominant in its field of operation; (2) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field; or (3) a small government jurisdiction which is a government of a city, county, town, township, school district, or special district with a population of less than 50,000.

## 6. Requested expiration date

- Check "Three years" if the agency requests a three year approval for the collection.
- Check "Other" if the agency requests approval for less than three years: Specify the month and year of the requested expiration date.

## 7. Title

Provide the official title of the information collection. If an official title does not exist, provide a description which will distinguish this collection from others.

## 8. Agency form number(s) (if applicable)

Provide any form number the agency has assigned to this collection of information. Separate each form number with a comma.

## 9. Keywords

Select and list at least two keywords (descriptors) from the "Federal Register Thesaurus of Indexing Terms" that describe the subject area(s) of the information collection. Other terms may be used but should be listed after those selected from the thesaurus. Separate keywords with commas. Keywords should not exceed two lines of text.

## 10. Abstract

Provide a statement, limited to five lines of text, covering the agency's need for the information, uses to which it will be put, and a brief description of the respondents.

## 11. Affected public

Mark all categories that apply, denoting the primary public with a "P" and all others that apply with "X."

## 12. Obligation to respond

Mark all categories that apply, denoting the primary obligation with a "P" and all others that apply with "X."

- Mark "Voluntary" when the response is entirely discretionary and has no direct effect on any benefit or privilege for the respondent.
- Mark "Required to obtain or retain benefits" when the response is elective, but is required to obtain or retain a benefit.
- Mark "Mandatory" when the respondent must reply or face civil or criminal sanctions.

## 13. Annual reporting and recordkeeping hour burden

- Enter the number of respondents and/or recordkeepers. If a respondent is also a recordkeeper, report the respondent only once.
- Enter the number of responses provided annually. For recordkeeping as compared to reporting activity, the number of responses equals the number of recordkeepers.
- Enter the estimated percentage of responses that will be submitted/collected electronically using magnetic media (i.e., diskette), electronic mail, or electronic data interchange. Facsimile is **not** considered an electronic submission.
- Enter the total annual recordkeeping and reporting hour burden.
- Enter the burden hours currently approved by OMB for this collection of information. Enter zero (0) for any new submission or for any collection whose OMB approval has expired.
- Enter the difference by subtracting line d from line c. Record a negative number (d larger than c) within parentheses.
- Explain the difference. The difference in line e must be accounted for in lines f.1. and f.2.
- "Program change" is the result of deliberate Federal government action. All new collections and any subsequent revision of existing collections (e.g., the addition or deletion of questions) are recorded as program changes.

- "Adjustment" is a change that is not the result of a deliberate Federal government action. Changes resulting from new estimates or action not controllable by the Federal government are recorded as adjustments.

## 14. Annual reporting and recordkeeping cost burden (in thousands of dollars)

The costs identified in this item must exclude the cost of hour burden identified in Item 13.

- Enter the total dollar amount of annualized cost for all respondents of any associated capital or start-up costs.
- Enter recurring annual dollar amount of cost for all respondents associated with operating or maintaining systems or purchasing services.
- Enter total (14.a. + 14.b.) annual reporting and recordkeeping cost burden.
- Enter any cost burden currently approved by OMB for this collection of information. Enter zero (0) if this is the first submission after October 1, 1995.
- Enter the difference by subtracting line d from line c. Record a negative number (d larger than c) within parenthesis.
- Explain the difference. The difference in line e must be accounted for in lines f.1. and f.2.
- "Program change" is the result of deliberate Federal government action. All new collections and any subsequent revisions or changes resulting in cost changes are recorded as program changes.

f.2. "Adjustment" is a change that is not the result of a deliberate Federal government action. Changes resulting from new estimations or actions not controllable by the Federal government are recorded as adjustments.

#### 15. Purpose of information collection

Mark all categories that apply, denoting the primary purpose with a "P" and all others that apply with "X."

a. Mark "Application for benefits" when the purpose is to participate in, receive, or qualify for a grant, financial assistance, etc., from a Federal agency or program.

b. Mark "Program evaluation" when the purpose is a formal assessment, through objective measures and systematic analysis, of the manner and extent to which Federal programs achieve their objectives or produce other significant effects.

c. Mark "General purpose statistics" when the data is collected chiefly for use by the public or for general government use without primary reference to the policy or program operations of the agency collecting the data.

d. Mark "Audit" when the purpose is to verify the accuracy of accounts and records.

e. Mark "Program planning or management" when the purpose relates to progress reporting, financial reporting and grants management, procurement and quality control, or other administrative information that does not fit into any other category.

f. Mark "Research" when the purpose is to further the course of research, rather than for a specific program purpose.

g. Mark "Regulatory or compliance" when the purpose is to measure compliance with laws or regulations.

#### 16. Frequency of recordkeeping or reporting

Check "Recordkeeping" if the collection of information explicitly includes a recordkeeping requirement.

Check "Third party disclosure" if a collection of information includes third-party disclosure requirements as defined by 1320.3(c).

Check "Reporting" for information collections that involve reporting and check the frequency of reporting that is requested or required of a respondent. If the reporting is on "an event" basis, check "On occasion."

#### 17. Statistical methods

Check "Yes" if the information collection uses statistical methods such as sampling or imputation. Generally, check "No" for applications and audits (unless a random auditing scheme is used). Check "Yes" for statistical collections, most research collections, and program evaluations using scientific methods. For other types of data collection, the use of sampling, imputation, or other statistical estimation techniques should dictate the response for this item. Ensure that supporting documentation is provided in accordance with Section B of the Supporting Statement.

#### 18. Agency contact

Provide the name and telephone number of the agency person best able to answer questions regarding the content of this submission.

#### 19. Certification for Paperwork Reduction Act Submissions

The Senior Official or designee signing this statement certifies that the collection of information encompassed by the request complies with 5 CFR 1320.9. Provisions of this certification that the agency cannot comply with should be identified here and fully explained in item 18 of the attached Supporting Statement. NOTE: The Office that "develops" and "uses" the information to be collected is the office that "conducts or sponsors" the collection of information. (See 5 CFR 1320.3(d)).

009103

## Certification Requirement for Paperwork Reduction Act Submissions

5 CFR 1320.9 reads "As part of the agency submission to OMB of a proposed collection of information, the agency (through the head of the agency, the Senior Official, or their designee) shall certify (and provide a record supporting such certification) that the proposed collection of information—

"(a) is necessary for the proper performance of the functions of the agency, including that the information to be collected will have practical utility;

"(b) is not unnecessarily duplicative of information otherwise reasonably accessible to the agency;

"(c) reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency, including with respect to small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. § 601(6)), the use of such techniques as:

"(1) establishing differing compliance or reporting requirements or timetables that take into account the resources available to those who are to respond;

"(2) the clarification, consolidation, or simplification of compliance and reporting requirements; or collections of information, or any part thereof;

"(3) an exemption from coverage of the collection of information, or any part thereof;

"(d) is written using plain, coherent, and unambiguous terminology and is understandable to those who are to respond;

"(e) is to be implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond;

"(f) indicates for each recordkeeping requirement the length of time persons are required to maintain the records specified;

"(g) informs potential respondents of the information called for under §1320.8(b)(3); [see below]

"(h) has been developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected, including the processing of the information in a manner which shall enhance, where appropriate, the utility of the information to agencies and the public;

"(i) uses effective and efficient statistical survey methodology appropriate to the purpose for which the information is to be collected; and

"(j) to the maximum extent practicable, uses appropriate information technology to reduce burden and improve data quality, agency efficiency and responsiveness to the public."

NOTE: 5 CFR 1320.8(b)(3) requires that each collection of information:

"(3) informs and provides reasonable notice to the potential persons to whom the collection of information is addressed of:

"(i) the reasons the information is planned to be and/or has been collected;

"(ii) the way such information is planned to be and/or has been used to further the proper performance of the functions of the agency;

"(iii) an estimate, to the extent practicable, of the average burden of the collection (together with a request that the public direct to the agency any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden);

"(iv) whether responses to the collection of information are voluntary, require to obtain or retain a benefit (citing authority) or mandatory (citing authority);

"(v) the nature and extent of confidentiality to be provided, if any (citing authority); and

"(vi) the fact that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number."

# Supporting Statement for Paperwork Reduction Act Submissions

## General Instructions

A Supporting Statement, including the text of the notice to the public required by 5 CFR 1320.5(a)(i)(iv) and its actual or estimated date of publication in the Federal Register, must accompany each request for approval of a collection of information. The Supporting Statement must be prepared in the format described below, and must contain the information specified in Section A below. If an item is not applicable, provide a brief explanation. When Item 17 of the OMB Form 83-I is checked "Yes", Section B of the Supporting Statement must be completed. OMB reserves the right to require the submission of additional information with respect to any request for approval.

## Specific Instructions

### A. Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.
2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.
3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.
4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.
5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.
6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.
7. Explain any special circumstances that would cause an information collection to be conducted in a manner:
  - \* requiring respondents to report information to the agency more often than quarterly;
  - \* requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;
  - \* requiring respondents to submit more than an original and two copies of any document;

- \* requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;
- \* in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;
- \* requiring the use of a statistical data classification that has not been reviewed and approved by OMB;
- \* that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or
- \* requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.  
Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.  
Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years - even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

9. Explain any decision to provide any payment or gift to respondents, other than reenumeration of contractors or grantees.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information

is requested, and any steps to be taken to obtain their consent.

12. Provide estimates of the hour burden of the collection of information. The statement should:
  - \* Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.
  - \* If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.

- \* Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 13.

13. Provide an estimate for the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).

- \* The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.

- \* If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collections services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use

existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.

\* Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

14. Provide estimates of annualized costs to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.

#### **B. Collections of Information Employing Statistical Methods**

The agency should be prepared to justify its decision not to use statistical methods in any case where such methods might reduce burden or improve accuracy of results. When Item 17 on the Form OMB 83-I is checked, "Yes," the following documentation should be included in the Supporting Statement to the extent that it applies to the methods proposed:

1. Describe (including a numerical estimate) the potential respondent universe and any sampling or other respondent selection methods to be used. Data on the number of entities (e.g., establishments, State and local government units, households, or persons) in the universe covered by the collection and in the corresponding sample are to be provided in tabular form for the universe as a whole and for each of the strata in the proposed sample. Indicate expected response rates for the collection as a whole. If the collection had been conducted previously, include the actual response rate achieved during the last collection.

2. Describe the procedures for the collection of information including:

- \* Statistical methodology for stratification and sample selection,
- \* Estimation procedure,
- \* Degree of accuracy needed for the purpose described in the justification,
- \* Unusual problems requiring specialized sampling procedures, and
- \* Any use of periodic (less frequent than annual) data collection cycles to reduce burden.

3. Describe methods to maximize response rates and to deal with issues of non-response. The accuracy and reliability of information collected must be shown to be adequate for intended uses. For collections based on sampling, a special justification must be provided for any collection that will not yield "reliable" data that can be generalized to the universe studied.

4. Describe any tests of procedures or methods to be undertaken. Testing is encouraged as an effective means of refining collections of information to minimize burden and improve utility. Tests must be approved if they call for answers to identical questions from 10 or more respondents. A proposed test or set of test may be submitted for approval separately or in combination with the main collection of information.

5. Provide the name and telephone number of individuals consulted on statistical aspects of the design and the name of the agency unit, contractor(s), grantee(s), or other person(s) who will actually collect and/or analyze the information for the agency.



**OFFICE OF MANAGEMENT AND BUDGET  
STANDARDS AND GUIDELINES FOR STATISTICAL SURVEYS**

**September 2006**

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## LIST OF STANDARDS FOR STATISTICAL SURVEYS

### SECTION 1 DEVELOPMENT OF CONCEPTS, METHODS, AND DESIGN

#### Survey Planning

**Standard 1.1:** Agencies initiating a new survey or major revision of an existing survey must develop a written plan that sets forth a justification, including: goals and objectives; potential users; the decisions the survey is designed to inform; key survey estimates; the precision required of the estimates (e.g., the size of differences that need to be detected); the tabulations and analytic results that will inform decisions and other uses; related and previous surveys; steps taken to prevent unnecessary duplication with other sources of information; when and how frequently users need the data; and the level of detail needed in tabulations, confidential microdata, and public-use data files.

#### Survey Design

**Standard 1.2:** Agencies must develop a survey design, including defining the target population, designing the sampling plan, specifying the data collection instrument and methods, developing a realistic timetable and cost estimate, and selecting samples using generally accepted statistical methods (e.g., probabilistic methods that can provide estimates of sampling error). Any use of nonprobability sampling methods (e.g., cut-off or model-based samples) must be justified statistically and be able to measure estimation error. The size and design of the sample must reflect the level of detail needed in tabulations and other data products, and the precision required of key estimates. Documentation of each of these activities and resulting decisions must be maintained in the project files for use in documentation (see Standards 7.3 and 7.4).

#### Survey Response Rates

**Standard 1.3:** Agencies must design the survey to achieve the highest practical rates of response, commensurate with the importance of survey uses, respondent burden, and data collection costs, to ensure that survey results are representative of the target population so that they can be used with confidence to inform decisions. Nonresponse bias analyses must be conducted when unit or item response rates or other factors suggest the potential for bias to occur.

#### Pretesting Survey Systems

**Standard 1.4:** Agencies must ensure that all components of a survey function as intended when implemented in the full-scale survey and that measurement error is controlled by conducting a pretest of the survey components or by having successfully fielded the survey components on a previous occasion.

### SECTION 2 COLLECTION OF DATA

#### Developing Sampling Frames

**Standard 2.1:** Agencies must ensure that the frames for the planned sample survey or census are appropriate for the study design and are evaluated against the target population for quality.

### **Required Notifications to Potential Survey Respondents**

**Standard 2.2:** Agencies must ensure that each collection of information instrument clearly states the reasons the information is planned to be collected; the way such information is planned to be used to further the proper performance of the functions of the agency; whether responses to the collection of information are voluntary or mandatory (citing authority); the nature and extent of confidentiality to be provided, if any, citing authority; an estimate of the average respondent burden together with a request that the public direct to the agency any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden; the OMB control number; and a statement that an agency may not conduct and a person is not required to respond to an information collection request unless it displays a currently valid OMB control number.

### **Data Collection Methodology**

**Standard 2.3:** Agencies must design and administer their data collection instruments and methods in a manner that achieves the best balance between maximizing data quality and controlling measurement error while minimizing respondent burden and cost.

## **SECTION 3 PROCESSING AND EDITING OF DATA**

### **Data Editing**

**Standard 3.1:** Agencies must edit data appropriately, based on available information, to mitigate or correct detectable errors.

### **Nonresponse Analysis and Response Rate Calculation**

**Standard 3.2:** Agencies must appropriately measure, adjust for, report, and analyze unit and item nonresponse to assess their effects on data quality and to inform users. Response rates must be computed using standard formulas to measure the proportion of the eligible sample that is represented by the responding units in each study, as an indicator of potential nonresponse bias.

### **Coding**

**Standard 3.3:** Agencies must add codes to collected data to identify aspects of data quality from the collection (e.g., missing data) in order to allow users to appropriately analyze the data. Codes added to convert information collected as text into a form that permits immediate analysis must use standardized codes, when available, to enhance comparability.

### **Data Protection**

**Standard 3.4:** Agencies must implement safeguards throughout the production process to ensure that survey data are handled to avoid disclosure.

### **Evaluation**

**Standard 3.5:** Agencies must evaluate the quality of the data and make the evaluation public (through technical notes and documentation included in reports of results or through a separate report) to allow users to interpret results of analyses, and to help designers of recurring surveys focus improvement efforts.

## **SECTION 4 PRODUCTION OF ESTIMATES AND PROJECTIONS**

### **Developing Estimates and Projections**

**Standard 4.1:** Agencies must use accepted theory and methods when deriving direct survey-based estimates, as well as model-based estimates and projections that use survey data. Error estimates must be calculated and disseminated to support assessment of the appropriateness of the uses of the estimates or projections. Agencies must plan and implement evaluations to assess the quality of the estimates and projections.

## **SECTION 5 DATA ANALYSIS**

### **Analysis and Report Planning**

**Standard 5.1:** Agencies must develop a plan for the analysis of survey data prior to the start of a specific analysis to ensure that statistical tests are used appropriately and that adequate resources are available to complete the analysis.

### **Inference and Comparisons**

**Standard 5.2:** Agencies must base statements of comparisons and other statistical conclusions derived from survey data on acceptable statistical practice.

## **SECTION 6 REVIEW PROCEDURES**

### **Review of Information Products**

**Standard 6.1:** Agencies are responsible for the quality of information that they disseminate and must institute appropriate content/subject matter, statistical, and methodological review procedures to comply with OMB and agency Information Quality Guidelines.

## **SECTION 7 DISSEMINATION OF INFORMATION PRODUCTS**

### **Releasing Information**

**Standard 7.1:** Agencies must release information intended for the general public according to a dissemination plan that provides for equivalent, timely access to all users and provides information to the public about the agencies' dissemination policies and procedures including those related to any planned or unanticipated data revisions.

### **Data Protection and Disclosure Avoidance for Dissemination**

**Standard 7.2:** When releasing information products, agencies must ensure strict compliance with any confidentiality pledge to the respondents and all applicable Federal legislation and regulations.

### **Survey Documentation**

**Standard 7.3:** Agencies must produce survey documentation that includes those materials necessary to understand how to properly analyze data from each survey, as well as the information necessary to replicate and evaluate each survey's results (See also Standard 1.2). Survey documentation must be readily accessible to users, unless it is necessary to restrict access to protect confidentiality.

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**Documentation and Release of Public-Use Microdata**

**Standard 7.4:** Agencies that release microdata to the public must include documentation clearly describing how the information is constructed and provide the metadata necessary for users to access and manipulate the data (See also Standard 1.2). Public-use microdata documentation and metadata must be readily accessible to users.

## INTRODUCTION

This document provides 20 standards that apply to Federal censuses and surveys whose statistical purposes include the description, estimation, or analysis of the characteristics of groups, segments, activities, or geographic areas in any biological, demographic, economic, environmental, natural resource, physical, social, or other sphere of interest. The development, implementation, or maintenance of methods, technical or administrative procedures, or information resources that support such purposes are also covered by these standards. In addition, these standards apply to censuses and surveys that are used in research studies or program evaluations if the purpose of the survey meets any of the statistical purposes noted above. To the extent they are applicable, these standards also cover the compilation of statistics based on information collected from individuals or firms (such as tax returns or the financial and operating reports required by regulatory commissions), applications/registrations, or other administrative records.

## Background

Standards for Federal statistical programs serve both the interests of the public and the needs of the government. These standards document the professional principles and practices that Federal agencies are required to adhere to and the level of quality and effort expected in all statistical activities. Each standard has accompanying guidelines that present recommended best practices to fulfill the goals of the standards. Taken together, these standards and guidelines provide a means to ensure consistency among and within statistical activities conducted across the Federal Government. Agency implementation of standards and guidelines ensures that users of Federal statistical information products are provided with details on the principles and methods employed in the development, collection, processing, analysis, dissemination, and preservation of Federal statistical information.

In 2002, the U.S. Office of Management and Budget (OMB), in response to Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106-554), popularly known as the Information Quality Act, issued government-wide guidelines that “provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies” (67 FR 8452-8460; February 22, 2002). Federal statistical agencies worked together to draft a common framework to use in developing their individual Information Quality Guidelines. That framework, published in the June 4, 2002, *Federal Register* Notice, “Federal Statistical Organizations’ Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Disseminated Information” (67 FR 38467-38470), serves as the organizing framework for the standards and guidelines presented here.<sup>1</sup> The framework for these standards and guidelines includes:

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<sup>1</sup> The *Federal Register* notice included eight areas where statistical organizations set standards for performance. The framework utilized here combines “Development of concepts and methods” with “Planning and design of surveys and other means of collecting data” into the single section on “Development of concepts, methods, and design.” The standards for these activities were closely linked and attempting to separate them into two distinct sections would have resulted in some duplication of standards between sections. The only other change is the title of Section 7, which was shortened to “Dissemination of Information Products” for convenience rather than “Dissemination of data by published reports, electronic files, and other media requested by users” as it originally appeared in the *Federal Register* notice.

- Development of concepts, methods, and design
- Collection of data
- Processing and editing of data
- Production of estimates and projections
- Data analysis
- Review procedures
- Dissemination of Information Products.

Within this framework, the 20 standards and their related guidelines for Federal statistical surveys focus on ensuring high quality statistical surveys that result in information products satisfying an agency's and OMB's Information Quality Guidelines' requirements for ensuring and maximizing the quality, objectivity, utility, and integrity of information disseminated by the Federal Government.

The standards and guidelines are not intended to substitute for the extensive existing literature on statistical and survey theory, methods, and operations. When undertaking a survey, an agency should engage knowledgeable and experienced survey practitioners to effectively achieve the goals of the standards. Persons involved should have knowledge and experience in survey sampling theory, survey design and methodology, field operations, data analysis, and dissemination as well as technological aspects of surveys.

Under the OMB Information Quality Guidelines, quality is an encompassing term comprising objectivity, utility, and integrity.

Objectivity refers to whether information is accurate, reliable, and unbiased, and is presented in an accurate, clear, and unbiased manner. It involves both the content of the information and the presentation of the information. This includes complete, accurate, and easily understood documentation of the sources of the information, with a description of the sources of any errors that may affect the quality of the data, when appropriate. Objectivity is achieved by using reliable information sources and appropriate techniques to prepare information products.

Standards related to the production of accurate, reliable, and unbiased information include Survey Response Rates (1.3), Developing Sampling Frames (2.1), Required Notifications to Potential Survey Respondents (2.2), Data Collection Methodology (2.3), Data Editing (3.1), Nonresponse Analysis and Response Rate Calculation (3.2), Coding (3.3), Evaluation (3.5), Developing Estimates and Projections (4.1), Analysis and Report Planning (5.1), and Inference and Comparisons (5.2).

Standards related to presenting results in an accurate, clear, and unbiased manner include: Review of Information Products (6.1), Survey Documentation (7.3), and Documentation and Release of Public-Use Microdata (7.4).

Utility refers to the usefulness of the information that is disseminated to its intended users. The usefulness of information disseminated by Federal agencies should be considered from the perspective of specific subject matter users, researchers, policymakers, and the public. Utility is

achieved by continual assessment of information needs, anticipating emerging requirements, and developing new products and services.

To ensure that information disseminated by Federal agencies meets the needs of the intended users, agencies rely upon internal reviews, analyses, and evaluations along with feedback from advisory committees, researchers, policymakers, and the public. In addition, agencies should clearly and correctly present all information products in plain language geared to their intended audiences. The target audience for each product should be clearly identified, and the product's contents should be readily accessible to that audience.

In all cases, the goal is to maximize the usefulness of information and minimize the costs to the government and the public. When disseminating their information products, Federal agencies should utilize a variety of efficient dissemination channels so that the public, researchers, and policymakers can locate and use information in an equitable, timely, and cost-effective fashion.

The specific standards that contribute directly to the utility and the dissemination of information include: Survey Planning (1.1), Survey Design (1.2), Pretesting Survey Systems (1.4), Review of Information Products (6.1), Releasing Information (7.1), Survey Documentation (7.3), and Documentation and Release of Public-Use Microdata (7.4).

Integrity refers to the security or protection of information from unauthorized access or revision. Integrity ensures that the information is not compromised through corruption or falsification.

Federal agencies have a number of statutory and administrative provisions governing the protection of information. Examples that may affect all Federal agencies include the Privacy Act; the Freedom of Information Act; the Confidential Information Protection and Statistical Efficiency Act of 2002; the Federal Information Security Management Act of 2002; the Health Insurance Portability and Accountability Act of 1996; OMB Circular Nos. A-123, A-127, and A-130; and the Federal Policy for the Protection of Human Subjects. The standards on Required Notifications to Potential Survey Respondents (2.2), Data Protection (3.4), and Data Protection and Disclosure Avoidance for Dissemination (7.2) directly address statistical issues concerning the integrity of data.

### **Requirements for Agencies**

The application of standards to the wide range of Federal statistical activities and uses requires judgment that balances such factors as the uses of the resulting information and the efficient allocation of resources; this should not be a mechanical process. Some surveys are extremely large undertakings requiring millions of dollars, and the resulting general-purpose statistics have significant, far-reaching effects. (Examples of major Federal information programs, many based on statistical surveys, are the Principal Federal Economic Indicators.<sup>2</sup>) Other statistical activities may be more limited and focused on specific program areas (e.g., customer satisfaction surveys, program evaluations, or research).

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<sup>2</sup> For the list of principal economic indicators and their release dates see <http://www.whitehouse.gov/omb/infereg/statpolicy.html#sr>



For each statistical survey in existence when these standards are issued and for each new survey, the sponsoring and/or releasing agency should evaluate compliance with applicable standards. The agency should establish compliance goals for applicable standards if a survey is not in compliance. An agency should use major survey revisions or other significant survey events as opportunities to address areas in which a survey is not in compliance with applicable standards.

Federal agencies are required to adhere to all standards for every statistical survey, even those that have already received OMB approval. Agencies should provide sufficient information in their Information Collection Requests (ICR) to OMB under the Paperwork Reduction Act (PRA) to demonstrate whether they are meeting the standards. OMB recognizes that these standards cannot be applied uniformly or precisely in every situation. Consideration will be given to the importance of the uses of the information as well as the quality required to support those uses. If funding or other contingencies make it infeasible for all standards to be met, agencies should discuss in their ICR submissions the options that were considered and why the final design was selected.

The agency should also include in the standard documentation for the survey, or in an easily accessible public venue, such as on its web site, the reasons why the standard could not be met and what actions the agency has taken or will take to address any resulting issues.<sup>3</sup>

The following standards and guidelines are not designed to be completely exhaustive of all efforts that an agency may undertake to ensure the quality of its statistical information. Agencies are encouraged to develop additional, more detailed standards focused on their specific statistical activities.

The standards are presented in seven sections. For each standard, there is a list of key terms that are used in the standard or accompanying guidelines, and these terms are defined in the appendix to provide clarification on their use in this document. The guidelines for each standard represent best practices that may be useful in fulfilling the goals of the standard and provide greater specificity and detail than the standards. However, as noted earlier, these standards and guidelines are not intended to substitute for the extensive existing literature on statistical and survey theory, methods, and operations. Additional information relevant to the standards can be found in other more specialized publications, and references to other Federal guidance documents or resources and the work of the Federal Committee on Statistical Methodology are provided in this document.

Agencies conducting surveys should also consult guidance issued by OMB entitled *Questions and Answers When Designing Surveys for Information Collections*. That document was developed by OMB to assist agencies in preparing their Information Collection Requests for OMB review under the Paperwork Reduction Act (PRA). The PRA requires that all Federal agencies obtain approval from OMB prior to collecting information from ten or more persons.<sup>4</sup>

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<sup>3</sup> In cases where the agency determines that ongoing surveys are not in compliance with the standards, the documentation should be updated at the earliest possible time.

<sup>4</sup> Under the PRA, "Person means an individual, partnership, association, corporation (including operations of government-owned contractor-operated facilities), business trust, or legal representative, an organized group of

## SECTION 1 DEVELOPMENT OF CONCEPTS, METHODS, AND DESIGN

### Section 1.1 Survey Planning

**Standard 1.1:** Agencies initiating a new survey or major revision of an existing survey must develop a written plan that sets forth a justification, including: goals and objectives; potential users; the decisions the survey is designed to inform; key survey estimates; the precision required of the estimates (e.g., the size of differences that need to be detected); the tabulations and analytic results that will inform decisions and other uses; related and previous surveys; steps taken to prevent unnecessary duplication with other sources of information; when and how frequently users need the data; and the level of detail needed in tabulations, confidential microdata, and public-use data files.

**Key Terms:** bridge study, confidentiality, consistent data series, crosswalk study, data series, effect size, individually-identifiable data, key variables, measurement error, microdata, minimum substantively significant effect (MSSE), pretest, public-use data file, respondent burden, survey system

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The following guidelines represent best practices that may be useful in fulfilling the goals of the standard:

**Guideline 1.1.1:** Surveys (and related activities such as focus groups, cognitive interviews, pilot studies, field tests, etc.) are collections of information subject to the requirements of the Paperwork Reduction Act of 1995 (Pub.L. No. 104-13, 44 U.S.C. § 3501 et seq.) and OMB's implementing regulations (5 C.F.R. § 1320, Controlling Paperwork Burdens on the Public). An initial step in planning a new survey or a revision of an existing survey should be to contact the sponsoring agency's Chief Information Officer or other designated official to ensure the survey work is done in compliance with the law and regulations. OMB approval will be required before the agency may collect information from 10 or more members of the public in a 12-month period. A useful reference document regarding the approval process is OMB's *Questions and Answers When Designing Surveys for Information Collections*.

**Guideline 1.1.2:** Planning is an important prerequisite when designing a new survey or survey system, or implementing a major revision of an ongoing survey. Key planning and project management activities include the following:

1. A justification for the survey, including the rationale for the survey, relationship to prior surveys, survey goals and objectives (including priorities within these goals and objectives), hypotheses to be tested, and definitions of key variables. Consultations with potential users to identify their requirements and expectations are also important at this stage of the planning process.
2. A review of related studies, surveys, and reports of Federal and non-Federal sources to ensure that part or all of the survey would not unnecessarily duplicate available data from an existing

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individuals, a State, territorial, tribal, or local government or branch thereof, or a political subdivision of a State, territory, tribal, or local government or a branch of a political subdivision" (5 C.F.R. § 1320.3(k)).

source, or could not be more appropriately obtained by adding questions to existing Federal statistical surveys. The goal here is to spend Federal funds effectively and minimize respondent burden. If a new survey is needed, efforts to minimize the burden on individual respondents are important in the development and selection of items.

3. A review of the confidentiality and privacy provisions of the Privacy Act, the Confidential Information Protection and Statistical Efficiency Act of 2002, and the privacy provisions of the E-Government Act of 2002, and all other relevant laws, regulations, and guidance, when planning any surveys that will collect individually-identifiable data from any survey participant.
4. A review of all survey data items, the justification for each item, and how each item can best be measured (e.g., through questionnaires, tests, or administrative records). Agencies should assemble reasonable evidence that these items are valid and can be measured both accurately and reliably, or develop a plan for testing these items to assess their accuracy and reliability.
5. A plan for pretesting the survey or survey system, if applicable (see Section 1.4).
6. A plan for quality assurance during each phase of the survey process to permit monitoring and assessing performance during implementation. The plan should include contingencies to modify the survey procedures if design parameters appear unlikely to meet expectations (for example, if low response rates are likely). The plan should also contain general specifications for an internal project management system that identifies critical activities and key milestones of the survey that will be monitored, and the time relationships among them.
7. A plan for evaluating survey procedures, results, and measurement error (see Section 3.5).
8. An analysis plan that identifies analysis issues, objectives, key variables, minimum substantively significant effect sizes, and proposed statistical tests (see Section 5.1).
9. An estimate of resources and target completion dates needed for the survey cycle.
10. A dissemination plan that identifies target audiences, proposed major information products, and the timing of their release.
11. A data management plan for the preservation of survey data, documentation, and information products as well as the authorized disposition of survey records.

**Guideline 1.1.3:** To maintain a consistent data series over time, use consistent data collection procedures for ongoing data collections. Continuous improvement efforts sometimes result in a trade-off between the desire for consistency and a need to improve a data collection. If changes are needed in key variables or survey procedures for a data series, consider the justification or rationale for the changes in terms of their usefulness for policymakers, conducting analyses, and addressing information needs. Develop adjustment methods, such as crosswalks and bridge studies that will be used to preserve trend analyses and inform users about the effects of changes.

## Section 1.2 Survey Design

**Standard 1.2:** Agencies must develop a survey design, including defining the target population, designing the sampling plan, specifying the data collection instrument and methods, developing a realistic timetable and cost estimate, and selecting samples using generally accepted statistical methods (e.g., probabilistic methods that can provide estimates of sampling error). Any use of nonprobability sampling methods (e.g., cut-off or model-based samples) must be justified statistically and be able to measure estimation error. The size and design of the sample must reflect the level of detail needed in tabulations and other data products, and the precision required of key estimates. Documentation of each of these activities and resulting decisions must be maintained in the project files for use in documentation (see Standards 7.3 and 7.4).

**Key Terms:** bias, confidentiality, cut-off sample, domain, effective sample size, estimation error, frame, imputation, key variables, model-based sample, nonprobabilistic methods, nonsampling error, power, precision, probabilistic methods, probability of selection, response rate, sampling error, sampling unit, strata, target population, total mean square error, variance

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The following guidelines represent best practices that may be useful in fulfilling the goals of the standard:

**Guideline 1.2.1:** Include the following in the survey design: the proposed target population, response rate goals, frequency and timing of collection, data collection methods, sample design, sample size, precision requirements, and, where applicable, an effective sample size determination based on power analyses for key variables.

**Guideline 1.2.2:** Ensure the sample design will yield the data required to meet the objectives of the survey. Include the following in the sample design: identification of the sampling frame and the adequacy of the frame; the sampling unit used (at each stage if a multistage design); sampling strata; power analyses to determine sample sizes and effective sample sizes for key variables by reporting domains (where appropriate); criteria for stratifying or clustering, sample size by stratum, and the known probabilities of selection; response rate goals (see Standard 1.3); estimation and weighting plan; variance estimation techniques appropriate to the survey design; and expected precision of estimates for key variables.

**Guideline 1.2.3:** When a nonprobabilistic sampling method is employed, include the following in the survey design documentation: a discussion of what options were considered and why the final design was selected, an estimate of the potential bias in the estimates, and the methodology to be used to measure estimation error. In addition, detail the selection process and demonstrate that units not in the sample are impartially excluded on objective grounds in the survey design documentation.

**Guideline 1.2.4:** Include a pledge of confidentiality (if applicable), along with instructions required to complete the survey. A clear, logical, and easy-to-follow flow of questions from a respondents point of view is a key element of a successful survey.

**Guideline 1.2.5:** Include the following in the data collection plans: frequency and timing of

data collections; methods of collection for achieving acceptable response rates; training of enumerators and persons coding and editing the data; and cost estimates, including the costs of pretests, nonresponse follow-up, and evaluation studies.

**Guideline 1.2.6:** Whenever possible, construct an estimate of total mean square error in approximate terms, and evaluate accuracy of survey estimates by comparing with other information sources. If probability sampling is used, estimate sampling error; if nonprobability sampling is used, calculate the estimation error.

**Guideline 1.2.7:** When possible, estimate the effects of potential nonsampling errors including measurement errors due to interviewers, respondents, instruments, and mode; nonresponse error; coverage error; and processing error.

### **Section 1.3 Survey Response Rates**

**Standard 1.3:** Agencies must design the survey to achieve the highest practical rates of response, commensurate with the importance of survey uses, respondent burden, and data collection costs, to ensure that survey results are representative of the target population so that they can be used with confidence to inform decisions. Nonresponse bias analyses must be conducted when unit or item response rates or other factors suggest the potential for bias to occur.

**Key Terms:** cross-sectional, key variables, longitudinal, nonresponse bias, response rates, stage of data collection, substitution, target population, universe

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The following guidelines represent best practices that may be useful in fulfilling the goals of the standard:

**Guideline 1.3.1:** Calculate sample survey unit response rates without substitutions.

**Guideline 1.3.2:** Design data collections that will be used for sample frames for other surveys (e.g., the Decennial Census, and the Common Core of Data collection by the National Center for Education Statistics) to meet a target unit response rate of at least 95 percent, or provide a justification for a lower anticipated rate (See Section 2.1.3).

**Guideline 1.3.3:** Prior to data collection, identify expected unit response rates at each stage of data collection, based on content, use, mode, and type of survey.

**Guideline 1.3.4:** Plan for a nonresponse bias analysis if the expected unit response rate is below 80 percent (see Section 3.2.9).

**Guideline 1.3.5:** Plan for a nonresponse bias analysis if the expected item response rate is below 70 percent for any items used in a report (see Section 3.2.9).

## Section 1.4 Pretesting Survey Systems

**Standard 1.4:** Agencies must ensure that all components of a survey function as intended when implemented in the full-scale survey and that measurement error is controlled by conducting a pretest of the survey components or by having successfully fielded the survey components on a previous occasion.

**Key Terms:** cognitive interview, edit, estimation, field test, focus group, frame, pretest, survey system, usability testing

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The following guidelines represent best practices that may be useful in fulfilling the goals of the standard:

**Guideline 1.4.1:** Test new components of a survey using methods such as cognitive testing, focus groups, and usability testing, prior to a field test of the survey system and incorporate the results from these tests into the final design.

**Guideline 1.4.2:** Use field tests prior to implementation of the full-scale survey when some or all components of a survey system cannot be successfully demonstrated through previous work. The design of a field test should reflect realistic conditions, including those likely to pose difficulties for the survey. Elements to be tested include, for example, frame development, sample selection, questionnaire design, data collection, item feasibility, electronic data collection capabilities, edit specifications, data processing, estimation, file creation, and tabulations. A complete test of all components (sometimes referred to as a dress rehearsal) may be desirable for highly influential surveys.

## SECTION 2 COLLECTION OF DATA

### Section 2.1 Developing Sampling Frames

**Standard 2.1:** Agencies must ensure that the frames for the planned sample survey or census are appropriate for the study design and are evaluated against the target population for quality.

**Key Terms:** bias, coverage, estimation, frame, frame populations, target populations

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The following guidelines represent best practices that may be useful in fulfilling the goals of the standard:

**Guideline 2.1.1:** Describe target populations and associated survey or sampling frames. Include the following items in this description:

1. The manner in which the frame was constructed and the maintenance procedures;
2. Any exclusions that have been applied to target and frame populations;
3. Coverage issues such as alternative frames that were considered, coverage rates (an estimation of the missing units on the frame (undercoverage), and duplicates on the frame (overcoverage)), multiple coverage rates if some addresses target multiple populations (such

as schools and children or households and individuals), what was done to improve the coverage of the frame, and how data quality and item nonresponse on the frame may have affected the coverage of the frame;

4. Any estimation techniques used to improve the coverage of estimates such as post-stratification procedures; and
5. Other limitations of the frame including the timeliness and accuracy of the frame (e.g., misclassification, eligibility, etc.).

**Guideline 2.1.2:** Conduct periodic evaluations of coverage rates and coverage of the target population in survey frames that are used for recurring surveys, for example, at least every 5 years.

**Guideline 2.1.3:** Coverage rates in excess of 95 percent overall and for each major stratum are desirable. If coverage rates fall below 85 percent, conduct an evaluation of the potential bias.

**Guideline 2.1.4:** Consider using frame enhancements, such as frame supplementation or dual-frame estimation, to increase coverage.

For more information on developing survey frames, see *Federal Committee on Statistical Methodology (FCSM) Statistical Policy Working Paper 17, Survey Coverage*.

## **Section 2.2 Required Notifications to Potential Survey Respondents**

**Standard 2.2:** Agencies must ensure that each collection of information instrument clearly states the reasons the information is planned to be collected; the way such information is planned to be used to further the proper performance of the functions of the agency; whether responses to the collection of information are voluntary or mandatory (citing authority); the nature and extent of confidentiality to be provided, if any, citing authority; an estimate of the average respondent burden together with a request that the public direct to the agency any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden; the OMB control number; and a statement that an agency may not conduct and a person is not required to respond to an information collection request unless it displays a currently valid OMB control number.

**Key Terms:** confidentiality, mandatory, respondent burden, voluntary

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The following guideline represents best practices that may be useful in fulfilling the goals of the standard:

**Guideline 2.2.1:** Provide appropriate informational materials to respondents, addressing respondent burden as well as the scope and nature of the questions to be asked. The materials may include a pre-notification letter, brochure, set of questions and answers, or an 800 number to call that does the following:

1. Informs potential respondents that they have been selected to participate in a survey;
2. Informs potential respondents about the name and nature of the survey; and

3. Provides any additional information to potential respondents that the agency is required to supply (e.g., see further requirements in the regulations implementing the Paperwork Reduction Act, 5 C.F.R. § 1320.8(b)(3)).

### **Section 2.3 Data Collection Methodology**

**Standard 2.3:** Agencies must design and administer their data collection instruments and methods in a manner that achieves the best balance between maximizing data quality and controlling measurement error while minimizing respondent burden and cost.

**Key Terms:** imputation, item nonresponse, nonresponse bias, required response item, respondent burden, response analysis survey, response rates, target population, validation studies

The following guidelines represent best practices that may be useful in fulfilling the goals of the standard:

**Guideline 2.3.1:** Design the data collection instrument in a manner that minimizes respondent burden, while maximizing data quality. The following strategies may be used to achieve these goals:

1. Questions are clearly written and skip patterns easily followed;
2. The questionnaire is of reasonable length;
3. The questionnaire includes only items that have been shown to be successful in previous administrations or the questionnaire is pretested to identify problems with interpretability and ease in navigation.
4. Methods to reduce item nonresponse are adopted.

**Guideline 2.3.2:** Encourage respondents to participate to maximize response rates and improve data quality. The following data collection strategies can also be used to achieve high response rates:

1. Ensure that the data collection period is of adequate and reasonable length;
2. Send materials describing the data collection to respondents in advance, when possible;
3. Plan an adequate number of contact attempts; and
4. If applicable, train interviewers and other staff who may have contact with respondents in techniques for obtaining respondent cooperation and building rapport with respondents. Techniques for building rapport include respect for respondents' rights, follow-up skills, knowledge of the goals and objectives of the data collection, and knowledge of the uses of the data.
5. Although incentives are not typically used in Federal surveys, agencies may consider use of respondent incentives if they believe incentives would be necessary to use for a particular survey in order to achieve data of sufficient quality for their intended use(s).

**Guideline 2.3.3:** The way a data collection is designed and administered also contributes to data quality. The following issues are important to consider:



1. Given the characteristics of the target population, the objectives of the data collection, the resources available, and time constraints, determine the appropriateness of the method of data collection (e.g., mail, telephone, personal interview, Internet);
2. Collect data at the most appropriate time of year, when relevant;
3. Establish the data collection protocol to be followed by the field staff;
4. Provide training for field staff on new protocols, with refresher training on a routine, recurring cycle;
5. Establish best practice mechanisms to minimize interviewer falsification, such as protocols for monitoring interviewers and reinterviewing respondents;
6. Conduct response analysis surveys or other validation studies for new data collection efforts that have not been validated;
7. Establish protocols that minimize measurement error, such as conducting response analysis surveys to ensure records exist for data elements requested for business surveys, establishing recall periods that are reasonable for demographic surveys, and developing computer systems to ensure Internet data collections function properly; and
8. Quantify nonsampling errors to the extent possible.

**Guideline 2.3.4:** Develop protocols to monitor data collection activities, with strategies to correct identified problems. The following issues are important to consider:

1. Implement quality and performance measurement and process control systems to monitor data collection activities and integrate them into the data collection process. These processes, systems, and tools will provide timely measurement and reporting of all critical components of the data collection process, on the dimensions of progress, response, quality, and cost. Thus, managers will be able to identify and resolve problems and ensure that the data collection is completed successfully. Additionally, these measurements will provide survey designers and data users with indicators of survey performance and resultant data quality.
2. Use internal reporting systems that provide timely reporting of response rates and the reasons for nonresponse throughout the data collection. These systems should be flexible enough to identify important subgroups with low response rates for more intensive follow-ups.
3. If response rates are low and it is impossible to conduct more extensive procedures for the full sample, select a probabilistic subsample of nonrespondents for the more intensive data collection method. This subsample permits a description of nonrespondents' characteristics, provides data needed for nonresponse bias analysis, and allows for possible weight adjustments or for imputation of missing characteristics.
4. Determine a set of required response items to obtain when a respondent is unwilling to cooperate fully. These items may then be targeted in the nonresponse follow-up in order to meet the minimum standard for unit response. These items may also be used in a nonresponse bias analysis that compares characteristics of respondents and nonrespondents using the sample data for those items. These required response items may also be used for item nonresponse imputation systems.

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## SECTION 3 PROCESSING AND EDITING OF DATA

### Section 3.1 Data Editing

**Standard 3.1:** Agencies must edit data appropriately, based on available information, to mitigate or correct detectable errors.

#### **Key Terms:** editing

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The following guidelines represent best practices that may be useful in fulfilling the goals of the standard:

**Guideline 3.1.1:** Check and edit data to mitigate errors. Data editing is an iterative and interactive process that includes procedures for detecting and correcting errors in the data. Editing uses available information and some assumptions to derive substitute values for inconsistent values in a data file. When electronic data collection methods are used, data are usually edited both during and after data collection. Include results from analysis of data and input from subject matter specialists in the development of edit rules and edit parameters. As appropriate, check data for the following and edit if errors are detected:

1. Responses that fall outside a prespecified range (e.g., based on expert judgment or previous responses) or, for categorical responses, are not equal to specified categories;
2. Consistency, such as the sum of categories matches the reported total, or responses to different questions are logical;
3. Contradictory responses and incorrect flow through prescribed skip patterns;
4. Missing data that can be directly filled from other portions of the same record (including the sample frame);
5. The omission and duplication of records; and
6. Inconsistency between estimates and outside sources.

**Guideline 3.1.2:** Possible actions for failed edits include the following:

1. Automated correction within specified criteria;
2. Data verified by respondent, and edit overridden;
3. Corrected data provided by respondent;
4. Corrected data available from other sources;
5. If unable to contact respondent, and after review by survey staff, an imputed value may be substituted for a failed edit; and
6. Data edit failure overridden after review by survey staff.

**Guideline 3.1.3:** Code the data set to indicate any actions taken during editing, and/or retain the unedited data along with the edited data.

For more information on data editing, see *FCSM Statistical Policy Working Paper 18, Data Editing in Federal Statistical Agencies*, and *FCSM Statistical Policy Working Paper 25, Data Editing Workshop and Exposition*.

## Section 3.2 Nonresponse Analysis and Response Rate Calculation

**Standard 3.2:** Agencies must appropriately measure, adjust for, report, and analyze unit and item nonresponse to assess their effects on data quality and to inform users. Response rates must be computed using standard formulas to measure the proportion of the eligible sample that is represented by the responding units in each study, as an indicator of potential nonresponse bias.

**Key Terms:** bias, cross-wave imputation, cross-sectional, eligible sample unit, frame, imputation, item nonresponse, key variables, longitudinal, longitudinal analysis, missing at random, missing completely at random, multivariate analysis, multivariate modeling, nonresponse bias, overall unit nonresponse, probability of selection, response rates, stages of data collection, unit nonresponse, wave, weights

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The following guidelines represent best practices that may be useful in fulfilling the goals of the standard:

**Guideline 3.2.1:** Calculate all response rates unweighted and weighted. Calculate weighted response rates based on the probability of selection or, in the case of establishment surveys, on the proportion of key characteristics that is represented by the responding units. Agencies may report other response rates in addition to those given below (e.g., to show the range of response rates given different assumptions about eligibility) as long as the rates below are reported and any additional rates are clearly defined.

**Guideline 3.2.2:** Calculate unweighted unit response rates (RRU) as the ratio of the number of completed cases (or sufficient partials) ( $C$ ) to the number of in-scope sample cases (AAPOR, 2004). There are a number of different categories of cases that comprise the total number of in-scope cases:

- $C$  = number of completed cases or sufficient partials;
- $R$  = number of refused cases;
- $NC$  = number of noncontacted sample units known to be eligible;
- $O$  = number of eligible sample units not responding for reasons other than refusal;
- $U$  = number of sample units of unknown eligibility, not completed; and
- $e$  = estimated proportion of sample units of unknown eligibility that are eligible.

The unweighted unit response rate represents a composite of these components:

$$RRU = \frac{C}{C + R + NC + O + e(U)}$$

**Guideline 3.2.3:** Calculate weighted unit response rates (RRW) to take into account the different probabilities of selection of sample units, or for economic surveys, the different proportions of key characteristics that are represented by the responding units. For each observation  $i$ :

- $C_i = 1$  if the  $i$ th case is completed (or is a sufficient partial), and  $C_i = 0$  if the  $i$ th case is not completed;
- $R_i = 1$  if the  $i$ th case is a refusal and  $R_i = 0$  if the  $i$ th case is not a refusal;
- $NC_i = 1$  if the  $i$ th case is a noncontacted sample unit known to be eligible and  $NC_i = 0$  if

the *ith* case is not a noncontacted sample unit known to be eligible;  
 $O_i = 1$  if the *ith* case is a eligible sample units not responding for reasons other than refusal and  $O_i = 0$  if the *ith* case is not a eligible sample unit not responding for reasons other than refusal;  
 $U_i = 1$  if the *ith* case is a sample units of unknown eligibility and  $U_i = 0$  if the *ith* case is not a sample unit of unknown eligibility;  
 $e$  = estimated proportion of sample units of unknown eligibility that are eligible; and  
 $w_i$  = the inverse probability of selection for the *ith* sample unit.

The weighted unit response rate can be given by summing over all sample units selected to be in the sample, as shown below:

$$RRW = \frac{\sum w_i C_i}{\sum w_i (C_i + R_i + NC_i + O_i + e(U_i))}$$

Many economic surveys use weighted response rates that reflect the proportion of a key characteristic,  $y$ , such as “total assets,” “total revenues,” or “total amount of coal produced.” Though it may be referred to as a coverage rate, it is, in fact, a weighted item response rate where the item of interest is a quantity of primary interest for the survey. If we let  $y_i$  be the value of the characteristic  $y$  for the *ith* sample unit and sum over the entire sample, then the weighted response rate can be given by:

$$RRW = \frac{\sum w_i y_i C_i}{\sum w_i y_i (C_i + R_i + NC_i + O_i + e(U_i))}$$

Alternatively, the denominator can be based on the population total from a previous period or from administrative records.

**Guideline 3.2.4:** Calculate the overall unit response rates for cross-sectional sample surveys ( $RRO^C$ ) as the product of two or more unit-level response rates when a survey has multiple stages:

$$RRO^C = \prod_{i=1}^K RRU_i$$

Where:

$RRU_i$  = the unit level response rate for the *ith* stage;  
 $C$  denotes cross-sectional; and  
 $K$  = the number of stages.

When a sample is drawn with probability proportionate to size (PPS), then the interpretation of  $RRO^C$  can be improved by using size weighted response rates for the  $K$  stages. This is especially helpful if nonresponse is related to the size of the sample units.

**Guideline 3.2.5:** Calculate longitudinal response rates for each wave. Use special procedures for longitudinal surveys where previous nonrespondents are eligible for inclusion in subsequent waves. The overall unit response rate used in longitudinal analysis ( $RRO^L$ ) reflects the proportion of all eligible respondents in the sample who participated in all waves in the analysis, and includes the response rates from all stages of data collection used in the analysis:

$$RRO^L = \prod_{k=1}^K \frac{I_k^L}{I_k^1 + R_k^1 + O_k^1 + NC_k^1 + e_k(U_k^1)}$$

where:

$K$  = the last stage of data collection used in the analysis;  
 $I^L$  = the number of responding cases common to all waves in the analysis  
 $R^1_k$  = Refusals at wave 1 at stage  $k$   
 so that  $I^1_k + R^1_k + O^1_k + NC^1_k + e_k(U^1_k)$  is the entire sample entered at wave 1

**Guideline 3.2.6:** Calculate item response rates (RRI) as the ratio of the number of respondents for whom an in-scope response was obtained ( $I^x$  for item  $x$ ) to the number of respondents who were asked to answer that item. The number asked to answer an item is the number of unit-level respondents ( $I$ ) minus the number of respondents with a valid skip for item  $x$  ( $V^x$ ). When an abbreviated questionnaire is used to convert refusals, the eliminated questions are treated as item nonresponse:

$$RRI^x = \frac{I^x}{I - V^x}$$

**Guideline 3.2.7:** Calculate the total item response rates ( $RRT^x$ ) for specific items as the product of the overall unit response rate (RRO) and the item response rate for item  $x$  ( $RRI^x$ ):

$$RRT^x = RRO * RRI^x$$

**Guideline 3.2.8:** When calculating a response rate with supplemented samples, base the reported response rates on the original and the added sample cases. However, when calculating response rates where the sample was supplemented during the initial sample selection (e.g., using matched pairs), calculate unit response rates without the substituted cases included (i.e., only the original cases are used).

**Guideline 3.2.9:** Given a survey with an overall unit response rate of less than 80 percent, conduct an analysis of nonresponse bias using unit response rates as defined above, with an assessment of whether the data are missing completely at random. As noted above, the degree of nonresponse bias is a function of not only the response rate but also how much the respondents and nonrespondents differ on the survey variables of interest. For a sample mean, an estimate of the bias of the sample respondent mean is given by:

$$B(\bar{y}_r) = \bar{y}_r - \bar{y}_t = \left( \frac{n_{nr}}{n} \right) (\bar{y}_r - \bar{y}_{nr})$$

Where:

- $\bar{y}_t$  = the mean based on all sample cases;
- $\bar{y}_r$  = the mean based only on respondent cases;
- $\bar{y}_{nr}$  = the mean based only on the nonrespondent cases;
- $n$  = the number of cases in the sample; and
- $n_{nr}$  = the number of nonrespondent cases.

For a multistage (or wave) survey, focus the nonresponse bias analysis on each stage, with particular attention to the “problem” stages. A variety of methods can be used to examine nonresponse bias, for example, make comparisons between respondents and nonrespondents across subgroups using available sample frame variables. In the analysis of unit nonresponse, consider a multivariate modeling of response using respondent and nonrespondent frame

variables to determine if nonresponse bias exists. Comparison of the respondents to known characteristics of the population from an external source can provide an indication of possible bias, especially if the characteristics in question are related to the survey's key variables.

**Guideline 3.2.10:** If the item response rate is less than 70 percent, conduct an item nonresponse analysis to determine if the data are missing at random at the item level for at least the items in question, in a manner similar to that discussed in Guideline 3.2.9.

**Guideline 3.2.11:** In those cases where the analysis indicates that the data are not missing at random, the amount of potential bias should inform the decision to publish individual items.

**Guideline 3.2.12:** For data collections involving sampling, adjust weights for unit nonresponse, unless unit imputation is done. The unit nonresponse adjustment should be internally consistent, based on theoretical and empirical considerations, appropriate for the analysis, and make use of the most relevant data available.

**Guideline 3.2.13:** Base decisions regarding whether or not to adjust or impute data for item nonresponse on how the data will be used, the assessment of nonresponse bias that is likely to be encountered in the review of collections, prior experience with this collection, and the nonresponse analysis discussed in this section. When used, imputation and adjustment procedures should be internally consistent, based on theoretical and empirical considerations, appropriate for the analysis, and make use of the most relevant data available. If multivariate analysis is anticipated, care should be taken to use imputations that minimize the attenuation of underlying relationships.

**Guideline 3.2.14:** In the case of imputing longitudinal data sets, use cross-wave imputations or cross-sectional imputations.

**Guideline 3.2.15:** Clearly identify all imputed values on a data file (e.g., code them).

For more information on calculating response rates and conducting nonresponse bias analyses, see *FCSM Statistical Policy Working Paper 31, Measuring and Reporting Sources of Error in Surveys*.

### **Section 3.3 Coding**

**Standard 3.3:** Agencies must add codes to collected data to identify aspects of data quality from the collection (e.g., missing data) in order to allow users to appropriately analyze the data. Codes added to convert information collected as text into a form that permits immediate analysis must use standardized codes, when available, to enhance comparability.

**Key Terms:** coding, quality assurance process

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The following guidelines represent best practices that may be useful in fulfilling the goals of the standard:

**Guideline 3.3.1:** Insert codes into the data set that clearly identify missing data and cases where an entry is not expected (e.g., skipped over by skip pattern). Do not use blanks and zeros as codes to identify missing data, as they tend to be confused with actual data.

**Guideline 3.3.2:** When converting text data to codes to facilitate easier analysis, use standardized codes, if they exist. Use the Federal coding standards listed below, if applicable. Provide cross-referencing tables to the Federal standard codes for any legacy coding that does not meet the Federal standards. Develop other types of codes using existing Federal agency practice or standard codes from industry or international organizations, when they exist. Current Federal standard codes include the following:

1. FIPS Codes. The National Institute of Standards and Technology maintains Federal Information Processing Standards (FIPS) required for use in Federal information processing in accordance with OMB Circular No. A-130. Use the following FIPS for coding (see [www.itl.nist.gov/fipspubs/index.htm](http://www.itl.nist.gov/fipspubs/index.htm) for the most recent versions of these standards):
  - 5-2 Codes for the Identification of the States, the District of Columbia and the Outlying Areas of the United States, and Associated Areas
  - 6-4 Counties and Equivalent Entities of the United States, Its Possessions, and Associated Areas
  - 9-1 Congressional Districts of the United States
  - 10-4 Countries, Dependencies, Areas of Special Sovereignty and Their Principal Administrative Divisions
2. NAICS Codes. Use the North American Industry Classification System (NAICS) to classify establishments. NAICS was developed jointly by Canada, Mexico, and the United States to provide new comparability in statistics about business activity across North America. NAICS coding has replaced the U.S. Standard Industrial Classification (SIC) system (for more information, see [www.census.gov/epcd/www/naics.html](http://www.census.gov/epcd/www/naics.html)).
3. SOC Codes. Use the Standard Occupational Classification (SOC) system to classify workers into occupational categories for the purpose of collecting, calculating, or disseminating data (for more information, see [www.bls.gov/soc](http://www.bls.gov/soc)).
4. Race and Ethnicity. Follow OMB's Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity when collecting data on race and ethnicity (for more information, see [www.whitehouse.gov/omb/inforeg/statpolicy.html](http://www.whitehouse.gov/omb/inforeg/statpolicy.html)).
5. Statistical Areas. Use the Standards for Defining Metropolitan and Micropolitan Statistical Areas for collecting, tabulating, and publishing Federal statistics for geographic areas (for more information, see [www.whitehouse.gov/omb/inforeg/statpolicy.html](http://www.whitehouse.gov/omb/inforeg/statpolicy.html)).

**Guideline 3.3.3:** When setting up a manual coding process to convert text to codes, create a quality assurance process that verifies at least a sample of the coding to determine if a specific level of coding accuracy is being maintained.

### Section 3.4 Data Protection

**Standard 3.4:** Agencies must implement safeguards throughout the production process to ensure that survey data are handled to avoid disclosure.

**Key Terms:** confidential, individually-identifiable data

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The following guidelines represent best practices that may be useful in fulfilling the goals of the standard:

**Guideline 3.4.1:** For surveys that include confidential data, establish procedures and mechanisms to ensure the information's protection during the production, use, storage, transmittal, and disposition of the survey data in any format (e.g., completed survey forms, electronic files, and printouts).

**Guideline 3.4.2:** Ensure that

1. Individually-identifiable survey data are protected;
2. Data systems and electronic products are protected from unauthorized intervention; and
3. Data files, network segments, servers, and desktop PCs are electronically secure from malicious software and intrusion using best available information resource security practices that are periodically monitored and updated.

**Guideline 3.4.3:** Ensure controlled access to data sets so that only specific, named individuals working on a particular data set can have read only, or write only, or both read and write access to that data set. Data set access rights are to be periodically reviewed by the project manager responsible for that data set in order to guard against unauthorized release or alteration.

For more information on data protection, see *FCSM Statistical Policy Working Paper 22, Report on Statistical Disclosure Limitation Methodology*, and forthcoming OMB guidance on implementation of the Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA).

### Section 3.5 Evaluation

**Standard 3.5:** Agencies must evaluate the quality of the data and make the evaluation public (through technical notes and documentation included in reports of results or through a separate report) to allow users to interpret results of analyses, and to help designers of recurring surveys focus improvement efforts.

**Key Terms:** coverage error, instrument, item nonresponse, measurement error, nonresponse error, nonsampling error, sampling error, weights

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The following guideline represents best practices that may be useful in fulfilling the goals of the standard:

**Guideline 3.5.1:** Include an evaluation component in the survey plan that evaluates survey procedures, results, and measurement error (see Section 1.1). Review past surveys similar to the one being planned to determine likely sources of error, appropriate evaluation methods, and problems that are likely to be encountered. Address the following areas:



1. Potential sources of error, including
  - Coverage error (including frame errors);
  - Nonresponse error;
  - Measurement error, including sources from the instrument, interviewers, and collection process; and
  - Data processing error (e.g., keying, coding, editing, and imputation error);
2. How sampling and nonsampling error will be measured, including variance estimation and studies to isolate error components;
3. How total mean square error will be assessed;
4. Methods used to reduce nonsampling error in the collected data;
5. Methods used to mitigate nonsampling error after collection;
6. Post-collection analyses of the quality of final estimates (include a comparison of the data and estimates derived from the survey to other independent collections of similar data, if available); and
7. Make evaluation studies public to inform data users.

**Guideline 3.5.2:** Where appropriate, develop and implement methods for bounding or estimating the nonsampling error from each source identified in the evaluation plan.

For more information on evaluations, see *FCSM Statistical Policy Working Paper 15, Measurement of Quality in Establishment Surveys*, and *FCSM Statistical Policy Working Paper 31, Measuring and Reporting Sources of Error in Surveys*.

## SECTION 4 PRODUCTION OF ESTIMATES AND PROJECTIONS

### Section 4.1 Developing Estimates and Projections

**Standard 4.1:** Agencies must use accepted theory and methods when deriving direct survey-based estimates, as well as model-based estimates and projections that use survey data. Error estimates must be calculated and disseminated to support assessment of the appropriateness of the uses of the estimates or projections. Agencies must plan and implement evaluations to assess the quality of the estimates and projections.

**Key Terms:** design effect, direct survey-based estimates, estimation, model, model-based estimate, model validation, population, post-stratification, projection, raking, ratio estimation, sensitivity analysis, strata, variance, weights

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The following guidelines represent best practices that may be useful in fulfilling the goals of the standard:

**Guideline 4.1.1:** Develop direct survey estimates according to the following practices:

1. Employ weights appropriate for the sample design to calculate population estimates. However, an agency may employ an alternative method (e.g., ratio estimators) to calculate population estimates if the agency has evaluated the alternative method and determined that it leads to acceptable results.

2. Use auxiliary data to improve precision and/or reduce the error associated with direct survey estimates.
3. Calculate variance estimates by a method appropriate to a survey's sample design taking into account probabilities of selection, stratification, clustering, and the effects of nonresponse, post-stratification, and raking. The estimates must reflect any design effect resulting from a complex design.

**Guideline 4.1.2:** Develop model-based estimates according to accepted theory and practices (e.g., assumptions, mathematical specifications).

**Guideline 4.1.3:** Develop projections in accordance with accepted theory and practices (e.g., assumptions, mathematical specifications).

**Guideline 4.1.4:** Subject any model used for developing estimates or projections to the following:

1. Sensitivity analysis to determine if changes in key model inputs cause key model outputs to respond in a sensible fashion;
2. Model validation to analyze a model's performance by comparing the results to available independent information sources; and
3. Demonstration of reproducibility to show that, given the same inputs, the model produces similar results.

**Guideline 4.1.5:** Prior to producing estimates, establish criteria for determining when the error (both sampling and nonsampling) associated with a direct survey estimate, model-based estimate, or projection is too large to publicly release the estimate/projection.

**Guideline 4.1.6:** Document methods and models used to generate estimates and projections to help ensure objectivity, utility, transparency, and reproducibility of the estimates and projections. (For details on documentation, see Section 7.3). Also, archive data and models so the estimates/projections can be reproduced.

For more information on developing model-based estimates, see *FCSM Statistical Policy Working Paper 21, Indirect Estimators in Federal Programs*.

## SECTION 5 DATA ANALYSIS

### Section 5.1 Analysis and Report Planning

**Standard 5.1:** Agencies must develop a plan for the analysis of survey data prior to the start of a specific analysis to ensure that statistical tests are used appropriately and that adequate resources are available to complete the analysis.

**Key Terms:** key variables, response rates

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The following guidelines represent best practices that may be useful in fulfilling the goals of the

standard:

**Guideline 5.1.1:** Include the following in the analysis plan:

1. An introduction that describes the purpose, the research question, relevant literature, data sources (including a brief description of the survey data and any limitations of the data), key variables to be used in the analysis, type of analysis, and significance level to be used;
2. Table and figure shells that support the analysis; and
3. A framework for technical notes including, as appropriate, the history of the survey program, data collection methods and procedures, sample design, response rates and the treatment of missing data, weighting methods, computation of standard errors, instructions for constructed variables, limitations of the data, and sources of error in the data.

**Guideline 5.1.2:** Include standard elements of project management in the plan, including target completion dates, the resources needed to complete each activity, and risk planning.

## **Section 5.2 Inference and Comparisons**

**Standard 5.2:** Agencies must base statements of comparisons and other statistical conclusions derived from survey data on acceptable statistical practice.

**Key Terms:** Bonferroni adjustment, covariance, estimates, hypothesis test, multiple comparisons,  $p$  value, standard error, statistical significance, Type I error

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The following guidelines represent best practices that may be useful in fulfilling the goals of the standard:

**Guideline 5.2.1:** Specify the criterion for judging statistical significance for tests of hypotheses (Type I error) before conducting the testing.

**Guideline 5.2.2:** Before including statements in information products that two characteristics being estimated differ in the actual population, make comparison tests between the two estimates, if either is constructed from a sample. Use methods for comparisons appropriate for the nature of the estimates. In most cases, this requires estimates of the standard error of the estimates and, if the estimates are not independent, an estimate of the covariance between the two estimates.

**Guideline 5.2.3:** When performing multiple comparisons with the same data between subgroups, include a note with the test results indicating whether or not the significance criterion (Type I error) was adjusted and, if adjusted, by what method (e.g., Bonferroni, modified Bonferroni, Tukey).

**Guideline 5.2.4:** When performing comparison tests, test and report only the differences that are substantively meaningful (i.e., don't necessarily run a comparison between every pair of estimates; run only those that are meaningful within the context of the data, and report only

differences that are large enough to be substantively meaningful, even if other differences are also statistically significant).

**Guideline 5.2.5:** Given a comparison that does not have a statistically significant difference, conclude that the data do not support a statement that they are different. If the estimates have apparent differences, but have large standard errors making the difference statistically insignificant, note this in the text or as a note with tables or graphs.

**Guideline 5.2.6:** Support statements about monotonic trends (strictly increasing or decreasing) in time series using appropriate tests. If extensive seasonality, irregularities, known special causes, or variation in trends are present in the data, take those into account in the trend analysis.

**Guideline 5.2.7:** If part of an historical series is revised, data for both the old and the new series should be published for a suitable overlap period for the use of analysts.

## **SECTION 6 REVIEW PROCEDURES**

### **Section 6.1 Review of Information Products**

**Standard 6.1:** Agencies are responsible for the quality of information that they disseminate and must institute appropriate content/subject matter, statistical, and methodological review procedures to comply with OMB and agency Information Quality Guidelines.

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The following guidelines represent best practices that may be useful in fulfilling the goals of the standard:

**Guideline 6.1.1:** Conduct a content/subject-matter review of all information products that present a description or interpretation of results from the survey, such as analytic reports or “briefs.” Select reviewers with appropriate expertise in the subject matter, operation, or statistical program discussed in the document. Among the areas that reviewers should consider are the following:

1. Subject-matter literature is referenced in the document if appropriate;
2. Information is factually correct; and
3. Information is presented clearly and logically, conclusions follow from analysis, and no anomalous findings are ignored.

**Guideline 6.1.2:** Conduct a statistical and methodological review of all information products. Select reviewers with appropriate expertise in the methodology described in the document. Among the tasks that reviewers should consider are the following:

1. Review assumptions and limitations for accuracy and appropriateness;
2. Ensure that appropriate statistical methods are used and reported;
3. Review calculations and formulas for accuracy and statistical soundness;
4. Review data and presentations of data (e.g., tables) for disclosure risk, as necessary;

5. Review contents, conclusions, and technical (statistical and operational areas) recommendations to ensure that they are supported by the methodology used; and
6. Ensure that data sources and technical documentation, including data limitations, are included or referenced.

**Guideline 6.1.3:** Review all information products that will be disseminated electronically for compliance with Section 508 of the U.S. Rehabilitation Act (29 U.S.C. § 794d ) for accessibility by persons with disabilities. Ensure that any product that is disseminated via special software is tested for accessibility and interpretability prior to dissemination.

## **SECTION 7 DISSEMINATION OF INFORMATION PRODUCTS**

### **Section 7.1 Releasing Information**

**Standard 7.1:** Agencies must release information intended for the general public according to a dissemination plan that provides for equivalent, timely access to all users and provides information to the public about the agencies' dissemination policies and procedures including those related to any planned or unanticipated data revisions.

**Key Terms:** estimate, forecast, key variables, model, nonsampling error, variance

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The following guidelines represent best practices that may be useful in fulfilling the goals of the standard:

**Guideline 7.1.1:** Dissemination procedures for major information products include the following:

1. Develop schedule and mode for the release of information products;
2. Inform targeted audiences; and
3. Ensure equivalent, timely access to all users.

**Guideline 7.1.2:** Protect information against any unauthorized prerelease, and release information only according to established release procedures.

**Guideline 7.1.3:** If revisions to estimates are planned, establish a schedule for anticipated revisions, make it available to users, and identify initial releases as preliminary.

**Guideline 7.1.4:** Establish a policy for handling unscheduled corrections due to previously unrecognized errors. The policy may include threshold criteria (e.g., the correction will change a national level total value by more than one percent or a regional value by more than five percent) identifying conditions under which data will be corrected and redisseminated.

**Guideline 7.1.5:** When information products are disseminated, provide users access to the following information:

1. Definitions of key variables;

2. Source information, such as a survey form number and description of methodology used to produce the information or links to the methodology;
3. Quality-related documentation such as conceptual limitations and nonsampling error;
4. Variance estimation documentation;
5. Time period covered by the information and units of measure;
6. Data taken from alternative sources;
7. Point of contact to whom further questions can be directed;
8. Software or links to software needed to read/access the information and installation/operating instructions, if applicable;
9. Date the product was last updated; and
10. Standard dissemination policies and procedures.

**Guideline 7.1.6:** For information products derived using models, adhere to the following:

1. Clearly identify forecasts and derived estimates ; and
2. Make descriptions of forecasting models or derivation procedures accessible from the product along with any available evaluation of its accuracy.

**Guideline 7.1.7:** Include criteria for instances when information will not be publicly disseminated (e.g., underlying data are of insufficient quality) in the agency's standard dissemination policies and procedures.

For more information on electronic dissemination of statistical data, see *FCSM Statistical Policy Working Paper 24, Electronic Dissemination of Statistical Data*.

## **Section 7.2 Data Protection and Disclosure Avoidance for Dissemination**

**Standard 7.2:** When releasing information products, agencies must ensure strict compliance with any confidentiality pledge to the respondents and all applicable Federal legislation and regulations.

**Key Terms:** confidentiality, data protection, disclosure

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The following guidelines represent best practices that may be useful in fulfilling the goals of the standard:

**Guideline 7.2.1:** For survey information collected under a pledge of confidentiality, employ sufficient procedures and mechanisms to protect any individually-identifiable data from unauthorized disclosure.

**Guideline 7.2.2:** Do not publicly reveal parameters associated with disclosure limitation rules.

For more information, see *FCSM Statistical Policy Working Paper 22, Report on Statistical Disclosure Limitation Methodology*, and forthcoming OMB guidance on the Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA).

### Section 7.3 Survey Documentation

**Standard 7.3:** Agencies must produce survey documentation that includes those materials necessary to understand how to properly analyze data from each survey, as well as the information necessary to replicate and evaluate each survey's results (See also Standard 1.2). Survey documentation must be readily accessible to users, unless it is necessary to restrict access to protect confidentiality.

**Key Terms:** coverage, editing, imputation, instrument, nonsampling error, response rates, sampling error, sampling unit, strata, variance

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The following guidelines represent best practices that may be useful in fulfilling the goals of the standard:

**Guideline 7.3.1:** Survey system documentation includes all information necessary to analyze the data properly. Along with the final data set, documentation, at a minimum, includes the following:

1. OMB Information Collection Request package;
2. Description of variables used to uniquely identify records in the data file;
3. Description of the sample design, including strata and sampling unit identifiers to be used for analysis;
4. Final instrument(s) or a facsimile thereof for surveys conducted through a computer-assisted telephone interview (CATI) or computer-assisted personal interview (CAPI) or Web instrument that includes the following:
  - All items in the instrument (e.g., questions, check items, and help screens);
  - Items extracted from other data files to prefill the instrument (e.g., dependent data from a prior round of interviewing); and
  - Items that are input to the post data collection processing steps (e.g., output of an automated instrument);
5. Definitions of all variables, including all modifications;
6. Data file layout;
7. Descriptions of constructed variables on the data file that are computed from responses to other variables on the file;
8. Unweighted frequency counts;
9. Description of sample weights, including adjustments for nonresponse and benchmarking and how to apply them;
10. Description of how to calculate variance estimates appropriate for the survey design;
11. Description of all editing and imputation methods applied to the data (including evaluations of the methods) and how to remove imputed values from the data;
12. Descriptions of known data anomalies and corrective actions;
13. Description of the magnitude of sampling error associated with the survey;
14. Description of the sources of nonsampling error associated with the survey (e.g., coverage, measurement) and evaluations of these errors;
15. Comparisons with independent sources, if available;

16. Overall unit response rates (weighted and unweighted) and nonresponse bias analyses (if applicable); and
17. Item response rates and nonresponse bias analyses, (if applicable).

**Guideline 7.3.2:** To ensure that a survey can be replicated and evaluated, the agency's internal archived portion of the survey system documentation, at a minimum, must include the following:

1. Survey planning and design decisions, including the OMB Information Collection Request package;
2. Field test design and results;
3. Selected sample;
4. Sampling frame;
5. Justifications for the items on the survey instrument, including why the final items were selected;
6. All instructions to respondents and/or interviewers either about how to properly respond to a survey item or how to properly present a survey item;
7. Description of the data collection methodology;
8. Sampling plan and justifications, including any deviations from the plan;
9. Data processing plan specifications and justifications;
10. Final weighting plan specifications, including calculations for how the final weights were derived, and justifications;
11. Final imputation plan specifications and justifications;
12. Data editing plan specifications and justifications;
13. Evaluation reports;
14. Descriptions of models used for indirect estimates and projections;
15. Analysis plans;
16. Time schedule for revised data; and
17. Documentation made publicly available in conjunction with the release of data.

**Guideline 7.3.3:** For recurring surveys, produce a periodic evaluation report, such as a methodology report, that itemizes all sources of identified error. Where possible, provide estimates or bounds on the magnitudes of these errors; discuss the total error model for the survey; and assess the survey in terms of this model.

**Guideline 7.3.4:** Retain all survey documentation according to appropriate Federal records disposition and archival policy.

For more information on measuring and reporting sources of errors in surveys, see *FCSM Statistical Policy Working Paper 31, Measuring and Reporting Sources of Error in Surveys*.

#### **Section 7.4 Documentation and Release of Public-Use Microdata**

**Standard 7.4:** Agencies that release microdata to the public must include documentation clearly describing how the information is constructed and provide the metadata necessary for users to access and manipulate the data (See also Standard 1.2). Public-use microdata documentation and metadata must be readily accessible to users.



**Key Terms:** microdata, public-use microdata, record layout, stage of the data collection

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The following guidelines represent best practices that may be useful in fulfilling the goals of the standard:

**Guideline 7.4.1:** Provide complete documentation for all data files. See Section 7.3 for additional information on file documentation.

**Guideline 7.4.2:** Provide a file description and record layout for each file. All variables must be clearly identified and described.

**Guideline 7.4.3:** Make all microdata products and documentation accessible by users with generally available software.

**Guideline 7.4.4:** Clearly identify all imputed values on the data file.

**Guideline 7.4.5:** Release public-use microdata as soon as practicable to ensure timely availability for data users.

**Guideline 7.4.6:** Retain all microdata products and documentation according to appropriate Federal records disposition and archival policy. Archive data with the National Archives and Records Administration and other data archives, as appropriate, so that data are available for historical research in future years.

## APPENDIX DEFINITIONS OF KEY TERMS

### -B-

**Bias** is the systematic deviation of the survey estimated value from the true population value. Bias refers to systematic errors that can occur with any sample under a specific design.

**Bonferroni adjustment** is a procedure for guarding against an increase in the probability of a Type I error when performing multiple significance tests. To maintain the probability of a Type I error at some selected value alpha, each of the m tests to be performed is judged against a significance level, alpha/m.

A **bridge study** continues an existing methodology concurrent with a new methodology for the purpose of examining the relationship between the new and old estimates.

### -C-

**Coding** involves converting information into numbers or other symbols that can be more easily counted and tabulated.

**Cognitive interviews** are used to develop and refine questionnaires. In a typical cognitive interview, respondents report aloud everything they are thinking as they attempt to answer a survey question.

A **collection of information** is defined in the Paperwork Reduction Act as the obtaining, causing to be obtained, soliciting, or requiring the disclosure to an agency, third parties or the public of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, ten or more persons, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit.

**Confidentiality** involves the protection of individually-identifiable data from unauthorized disclosures.

A **consistent data series** maintains comparability over time by keeping an item fixed, or by incorporating appropriate adjustment methods in the event an item is changed.

**Covariance** is a characteristic that indicates the strength of relationship between two variables. It is the expected value of the product of the deviations of two random variables,  $x$  and  $y$  from their respective means.

**Coverage** refers to the extent to which all elements on a frame list are members of the population, and to which every element in a population appears on the frame list once and only once.

**Coverage error** refers to the discrepancy between statistics calculated on the frame population and the same statistics calculated on the target population. Undercoverage errors occur when target population units are missed during frame construction, and overcoverage errors occur when units are duplicated or enumerated in error.

A **crosswalk study** delineates how categories from one classification system are related to categories in a second classification system.

A **cross-sectional** sample survey is based on a representative sample of respondents drawn from a population at one point in time.

**Cross-sectional imputations** are based on data from a single time period.

**Cross-wave imputations** are imputations based on data from multiple time periods. For

example, a **cross-sectional imputation** for a time 2 salary could simply be a donor's time 2 salary. Alternatively, a cross-wave imputation could be the change in a donor's salary from time 1 to time 2 multiplied by the time 1 nonrespondent's salary.

A **cut-off sample** is a nonprobability sample that consists of the units in the population that have the largest values of a key variable (frequently the variable of interest from a previous time period). For example, a 90% cut-off sample consists of the largest units accounting for at least 90% of the population total of the key variable. Sample selection is usually done by sorting the population in decreasing order by size, and including units in the sample until the percent coverage exceeds the established cut-off.

**-D-**

**Data protection** involves techniques that are used to insure that confidential individually-identifiable data are not disclosed.

**Data series** are repeated collections of sequential cross-sectional or longitudinal data characteristics of the target population over time.

The **design effect (DEFF)** is the ratio of the true variance of a statistic (taking the complex sample design into account) to the variance of the statistic for a simple random sample with the same number of cases. Design effects differ for different subgroups and different statistics; no single design effect is universally applicable to any given survey or analysis.

**Direct survey-based estimates** are intended to achieve efficient and robust estimates of the true values of the target populations, based on the sample design and resulting survey data.

**Disclosure** means the public release of individually-identifiable data.

**Dissemination** is any agency initiated or sponsored distribution of information to the public.

**Domain** refers to a defined universe or a subset of the universe with specific attributes, e.g., knowledge, skills, abilities, attitudes, interests, lines of business, size of operations, etc.

**-E-**

**Editing** is the data-processing activity aimed at detecting and correcting errors.

**Effect size** refers to the standardized magnitude of the effect or the departure from the null hypothesis. For example, the effect size may be the amount of change over time, or the difference between two population means, divided by the appropriate population standard deviation. Multiple measures of effect size can be generated (e.g., standardized differences between means, correlations, and proportions).

The **effective sample size**, as used in the design phase, is the sample size under a simple random sample design that is equivalent to the actual sample under the complex sample design. In the case of complex sample designs, the actual sample size is determined by multiplying the effective sample size by the anticipated design effect.

An **eligible sample unit** is a unit selected for a sample that is confirmed to be a member of the target population.

**Estimates** result from the process of providing a numerical value for a population parameter on the basis of information collected from a survey and/or other sources.

**Estimation** is the process of using data from a survey and/or other sources to provide a value for an unknown population parameter (such as a mean, proportion, correlation, or effect size), or to provide a range of values in the form of a confidence interval.

**Estimation error** is the difference between a survey estimate and the true value of the parameter in the target population.

**-F-**

In a **field test**, all or some of the survey procedures are tested on a small scale that mirrors the planned full-scale implementation.

A **focus group** involves a semi structured group discussion of a topic.

**Forecasts** involve the specific projection that an investigator believes is most likely to provide an accurate prediction of a future value of some process.

A **frame** is a mapping of the universe elements (i.e., sampling units) onto a finite list (e.g., the population of schools on the day of the survey).

The **frame population** is the set of elements that can be enumerated prior to the selection of a survey sample.

**-H-**

**Hypothesis testing** draws a conclusion about the tenability of a stated value for a parameter. For example, sample data may be used to test whether an estimated value of a parameter (such as the difference between two population means) is sufficiently different from zero that the null hypothesis, designated  $H_0$  (no difference in the population means), can be rejected in favor of the alternative hypothesis,  $H_1$  (a difference between the two population means).

**-I-**

**Imputation** is the procedure for entering a value for a specific data item where the response is missing or unusable.

**Individually-identifiable data** refers specifically to data from any list, record, response form, completed survey, or aggregation from which information about particular individuals or their organizations may be revealed by either direct or indirect means.

**Instrument** refers to an evaluative device that includes tests, scales, and inventories to measure a domain using standardized procedures. It is commonly used when conducting surveys to refer to the device used to collect data, such as a questionnaire or data entry software.

**Item nonresponse** occurs when a respondent fails to respond to one or more relevant item(s) on a survey.

**-K-**

**Key variables** include survey-specific items for which aggregate estimates are commonly published from a study. They include, but are not restricted to, variables most commonly used in table row stubs. Key variables also include important analytic composites and other policy-relevant variables that are essential elements of the data collection. They are first defined in the initial planning stage of a survey, but may be added to as the survey and resulting analyses develop. For example, a study of student achievement might use gender, race-ethnicity, urbanicity, region, and school type (public/private) as key reporting variables.

**-L-**

A **longitudinal** sample survey follows the experiences and outcomes over time of a representative sample of respondents (i.e., a cohort).

**Longitudinal analysis** involves the analysis of data from a study in which subjects are measured repeatedly over time.

**-M-**

Response to a **mandatory survey** is required by law.

**Measurement error** is the difference between observed values of a variable recorded under similar conditions and some fixed true value (e.g., errors in reporting, reading, calculating, or recording a numerical value). Response bias is the deviation of the survey estimate from the true population value that is due to measurement error from the data collection. Potential sources of response bias include the respondent, the instrument, and the interviewer.

A **microdata** file includes the detailed responses for individual respondents.

The **minimum substantively significant effect (MSSE)** is the smallest effect, that is, the smallest departure from the null hypothesis, considered to be important for the analysis of key variables. The minimum substantively significant effect is determined during the design phase. For example, the planning document should provide the minimum change in key variables or perhaps, the minimum correlation,  $r$ , between two variables that the survey should be able to detect for a specified population domain or subdomain of analytic interest. The MSSE should be based on a broad knowledge of the field, related theories, and supporting literature.

**Missing at random**, for a given survey variable, refers to a situation in which the probability that a unit is missing that variable is independent of its value, but may not be independent of another variable being measured.

**Missing completely at random** occurs when values are missing because individuals drop out of a study in a process that is independent of both the observed measurements and those that would have been available had they not been missing.

A **model** is a formalized set of mathematical expressions quantifying the process assumed to have generated a set of observations.

A **model-based estimate** is produced by a model.

**Model-based samples** are selected to achieve efficient and robust estimates of the true values of the target populations under a chosen working model.

**Model validation** involves testing a model's predictive capabilities by comparing the model results to "known" sources of empirical data.

**Multiple comparisons** involve a detailed examination of the differences among a set of means.

**Multivariate analysis** is a generic term for many methods of analysis that are used to investigate multivariate data.

**Multivariate data** include data for which each observation consists of values for more than one random variable.

**Multivariate modeling** provides a formalized mathematical expression of the process assumed to have generated the observed multivariate data.

-N-

**Nonprobabilistic methods**—see “probabilistic methods.”

**Nonresponse bias** occurs when the observed value deviates from the population parameter due to differences between respondents and nonrespondents. Nonresponse bias may occur as a result of not obtaining 100 percent response from the selected cases.

**Nonresponse error** is the overall error observed in estimates caused by differences between respondents and nonrespondents. It consists of a variance component and nonresponse bias.

**Nonsampling error** includes measurement errors due to interviewers, respondents, instruments, and mode; nonresponse error; coverage error; and processing error.

-O-

**Overall unit nonresponse** reflects a combination of unit nonresponse across two or more levels of data collection, where participation at the second stage of data collection is conditional upon participation in the first stage of data collection.

-P-

The ***p* value** is the probability of the observed data's showing a more extreme value than the result, when there is no effect in the population.

In a **pilot test**, a laboratory or a very small-scale test of a questionnaire or procedure is conducted.

**Population**—see “target population.”

**Post-stratification** is applied to survey data, in which sample units are stratified after data collection using information collected in the survey and auxiliary information to adjust weights to population control totals.

The **power** ( $1 - b$ ) of a test is defined as the probability of rejecting the null hypothesis when a specific alternative hypothesis is assumed. For example, with  $b = 0.20$  for a particular alternative hypothesis, the power is 0.80, which means that 80 percent of the time the test statistic will fall in the rejection region if the parameter has the value specified by the alternative hypothesis.

**Precision** of survey results refers to how closely the results from a sample can reproduce the results that would be obtained from a complete count (i.e., census) conducted using the same techniques. The difference between a sample result and the result from a complete census taken under the same conditions is an indication of the precision of the sample result.

A survey **pretest** involves experimenting with different components of the questionnaire or survey design or operationalization prior to full-scale implementation. This may involve **pilot testing**, that is a laboratory or a very small-scale test of a questionnaire or procedure, or a **field test** in which all or some of the survey procedures are tested on a small scale that mirrors the planned full-scale implementation.

**Probabilistic methods** for survey sampling are any of a variety of methods for sampling that give a known, non-zero, probability of selection to each member of the target population. The advantage of probabilistic sampling methods is that sampling error can be calculated. Such methods include: random sampling, systematic sampling, and stratified sampling. They do not include: convenience sampling, judgment sampling, quota sampling, and snowball sampling.

**Probability of selection** in a survey is the probability that a given sampling unit will be selected, based on the probabilistic methods used in sampling.

A **projection** is an estimate of a future value of a characteristic based on current trends.

A **public-use data file or public-use microdata file** includes a subset of data that have been coded, aggregated, or otherwise altered to mask individually-identifiable information, and thus is available to all external users. Unique identifiers, geographic detail, and other variables that cannot be suitably altered are not included in public-use data files.

**-Q-**

**Quality assurance processing** includes any procedure or method that is aimed at maintaining or improving the reliability or validity of the data.

**-R-**

**Raking** is a multiplicative weighting technique that uses iterative proportional fitting. That is, weights are obtained as the product of a number of factors contributed by auxiliary variables. In **ratio estimation**, an auxiliary variate  $x_i$ , correlated with  $y_i$ , is obtained for each unit in the sample. The population total  $X$  of the  $x_i$  must be known. In practice,  $x_i$  is often the value of  $y_i$  at some previous time when a complete census was taken. The goal is to obtain increased precision by taking advantage of the correlation between  $y_i$  and  $x_i$ . The ratio estimate of  $Y$ , the population total of  $y_i$ , is  $YR = (y/x)$ , where  $y$  and  $x$  are the sample totals of  $y_i$  and  $x_i$ , respectively.

A **record layout** is a description of the data elements on the file (variable names, data types, and length of space on the file) and their physical locations.

**Required response items** include the minimum set of items required for a case to be considered a respondent.

**Respondent burden** is the estimated total time and financial resources expended by the survey respondent to generate, maintain, retain, and provide survey information.

A **response analysis survey** is a study of the capability of respondents to accurately provide the data requested for a survey.

**Response bias** is the deviation of the survey estimate from the true population value that is due to measurement error from the data collection. Potential sources of response bias include the respondent, the instrument, and the interviewer.

**Response rates** calculated using base weights measure the proportion of the sample frame that is represented by the responding units in each study.

**-S-**

**Sampling error** is the error associated with nonobservation, that is, the error that occurs because all members of the frame population are not measured. It is the error associated with the variation in samples drawn from the same frame population. The sampling error equals the square root of the variance.

**Sampling units** are the basic components of a sample frame. Everything covered by a sample frame must belong to one definite sampling unit, or have a measurable probability of belonging to a specific unit. The sampling unit may contain, for example, defined areas, houses, people, or businesses.

**Sensitivity analysis** is designed to determine how the variation in the output of a model (numerical or otherwise) can be apportioned, qualitatively or quantitatively, to changes in input parameter values and assumptions. This type of analysis is useful in ascertaining the capability of a given model, as well its robustness and reliability.

**Stage of data collection** includes any stage or step in the sample identification and data collection process in which data are collected from the identified sample unit. This includes information obtained that is required to proceed to the next stage of sample selection or data collection (e.g., school district permission for schools to participate or schools providing lists of teachers for sample selection of teachers).

**Standard error** is the standard deviation of the sampling distribution of a statistic. Although the standard error is used to estimate sampling error, it includes some nonsampling error.

**Strata** are created by partitioning the frame and are generally defined to include relatively homogeneous units within strata.

**Statistical significance** is attained when a statistical procedure applied to a set of observations yields a  $p$  value that exceeds the level of probability at which it is agreed that the null hypothesis will be rejected.

A **statistical survey** is a data collection whose purposes include the description, estimation, or analysis of the characteristics of groups, organizations, segments, activities, or geographic areas. A statistical survey may be a census or may collect information from a sample of the target population.

**Substitution** is the process of supplementing the sample in an unbiased manner in order to ensure it continues to be representative of the population.

A **survey system** is a set of individual surveys that are interrelated components of a data collection.

**-T-**

The **target population** is any group of potential sample units or persons, businesses, or other entities of interest.

The **total mean square error** is a measure of the combined overall effect of sampling and nonsampling error on the estimate.

**Type I error** is made when the tested hypothesis,  $H_0$ , is falsely rejected when in fact it is true. The probability of making a Type I error is denoted by alpha ( $\alpha$ ). For example, with an alpha level of 0.05, the analyst will conclude that a difference is present in 5 percent of tests where the null hypothesis is true.

**-U-**

**Unit nonresponse** occurs when a respondent fails to respond to all required response items (i.e., fails to fill out or return a data collection instrument).

A **universe survey** involves the collection of data covering all known units in a population (i.e., a census).

**Usability testing** in surveys is the process whereby a group of representative users are asked to interact and perform tasks with survey materials, e.g., computer-assisted forms, to determine if the intended users can carry out planned tasks efficiently, effectively, and satisfactorily.



-V-

**Validation studies** are conducted to independently verify that the data collection methodology employed will obtain accurate data for the concept studied.

**Validity** is the degree to which an estimate is likely to be true and free of bias (systematic errors).

**Variance or variance estimates**— The variance is a measure based on the deviations of individual scores from the mean. However, simply summing the deviations will result in a value of 0. To get around this problem the variance is based on squared deviations of scores about the mean. When the deviations are squared, the rank order and relative distance of scores in the distribution is preserved while negative values are eliminated. Then to control for the number of subjects in the distribution, the sum of the squared deviations,  $\sum(X - \bar{X})^2$ , is divided by  $N$  (population) or by  $N - 1$  (sample). The result is the average of the sum of the squared deviations. Response to a **voluntary** survey is not required by law.

-W-

A **wave** is a round of data collection in a longitudinal survey (e.g., the base year and each successive followup are each waves of data collection).

**Weights** are the inverse of the probability of selection in most probabilistic surveys. However, in the case of establishment surveys, the weights most frequently represent the estimated proportion that the responding establishments represent of the total industry. Weights may be adjusted for nonresponse.

**SUPPORTING STATEMENTS**  
(Name)

**A. JUSTIFICATION**

1. Explain the circumstances that make the collection of information necessary.
  
2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.
  
3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.
  
4. Describe efforts to identify duplication.
  
5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.
  
6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.
  
7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

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**8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.**

**9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.**

**10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.**

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.**

**12. Provide an estimate in hours of the burden of the collection of information.**

**13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in #12 above).**

**14. Provide estimates of annualized cost to the Federal government.**

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**15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.**

**16. For collections whose results will be published, outline the plans for tabulation and publication.**

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.**

**18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.**

## **B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

*(If your collection does not employ statistical methods, just say that and delete the following five questions from the format.)*

**1. Describe (including a numerical estimate) the potential respondent universe and any sampling or other respondent selection method to be used. Data on the number of entities (e.g. establishments, State and local governmental units, households, or persons) in the universe and the corresponding sample are to be provided in tabular form. The tabulation must also include expected response rates for the collection as a whole. If the collection has been conducted before, provide the actual response rate achieved.**

**2. Describe the procedures for the collection, including: the statistical methodology for stratification and sample selection; the estimation procedure; the degree of accuracy needed for the purpose described in the justification; any unusual problems requiring specialized sampling procedures; and any use of periodic (less frequent than annual) data collection cycles to reduce burden.**

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**3. Describe the methods used to maximize response rates and to deal with nonresponse. The accuracy and reliability of the information collected must be shown to be adequate for the intended uses. For collections based on sampling, a special justification must be provided if they will not yield "reliable" data that can be generalized to the universe studied.**

**4. Describe any tests of procedures or methods to be undertaken. Tests are encouraged as effective means to refine collections, but if ten or more test respondents are involved OMB must give prior approval.**

**5. Provide the name and telephone number of individuals consulted on the statistical aspects of the design, and the name of the agency unit, contractor(s), grantee(s), or other person(s) who will actually collect and/or analyze the information for the agency.**

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EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

ADMINISTRATOR  
OFFICE OF  
INFORMATION AND  
REGULATORY AFFAIR

January 20, 2006

MEMORANDUM FOR THE PRESIDENT'S MANAGEMENT COUNCIL

FROM: John D. Graham, Ph.D. *Jm*  
Administrator

SUBJECT: Guidance on Agency Survey and Statistical Information Collections

The Paperwork Reduction Act of 1995 requires that Federal agency information collections employ effective and efficient survey and statistical methodologies appropriate to the purpose for which the information is to be collected. It further directs the Office of Management and Budget (OMB) to develop and oversee the implementation of Government-wide policies, principles, standards, and guidelines concerning statistical collection procedures and methods.

The attached guidance document, entitled "Questions and Answers When Designing Surveys for Information Collections" (Q&A), provides details about the OMB review process, assistance in strengthening supporting statements for information collection requests, and, most importantly, advice for improving information collection designs. The document was circulated for agency comment on December 14, 2004, and has been revised in response to comments from agencies and external peer reviewers.

The content of this document is focused on what agencies need to consider when designing information collections and preparing requests for OMB approval. The guidance addresses issues that frequently arise in OMB reviews, including topics ranging from basic procedural requirements to best practices for technical documentation of surveys. It has been written for a wide audience. We anticipate that the document will be updated and revised as developments warrant so that the guidance will remain current with professional practice and useful to the agencies. Ultimately, we hope the Q&A's will serve to improve the quality of Federal surveys and statistical information.

Please share the attached Q&A document with appropriate program managers and paperwork clearance officers in your agency.

Attachment

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**QUESTIONS AND ANSWERS**  
**WHEN DESIGNING SURVEYS**  
**FOR INFORMATION COLLECTIONS**

Office of Information and Regulatory Affairs  
Office of Management and Budget  
January 2006

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## **PURPOSE OF THIS GUIDANCE**

Federal agencies conduct or sponsor a wide variety of information collections to gather data from businesses, individuals, schools, hospitals, and State, local, and tribal governments. Information collections employing surveys are frequently used for general purpose statistics, as well as for program evaluations or research studies that answer more specific research questions. Data collected by Federal agencies are widely used to make informed decisions and to provide necessary information for policy makers and planners. The collection of this information can take many forms and is accomplished in a variety of ways.

The Paperwork Reduction Act of 1995 (PRA) requires agencies to submit requests to collect information from the public to the Office of Management and Budget (OMB) for approval. This guidance is designed to assist agencies and their contractors in preparing Information Collection Requests (ICRs), which may be commonly known as PRA submissions or “OMB clearance packages,” for surveys used for general purpose statistics or as part of program evaluations or research studies.

### **1. What is the purpose of this guidance?**

OMB is often asked about the ICR review process and what its expectations are, especially for collections involving surveys. These Q&As are designed to answer many of the frequently asked questions to help agencies better understand OMB’s expectations for survey information collection requests. This improved understanding should assist agencies in identifying and documenting information for inclusion in their ICRs, and should facilitate the review process.

This guidance seeks to highlight a wide range of issues that agencies need to consider when designing their surveys. Different sections of this guidance provide a very brief overview of the literature on statistical sampling and different survey methodology topics; each section provides some useful references for more information on these issues. The goal of this guidance is to help agencies to better plan and document their information collections that use surveys.

Conducting a high quality survey is a complex undertaking, and this guidance cannot (and is not intended to) take the place of professional survey methodologists and statisticians that agencies will need to consult in designing, executing, and documenting their surveys. For agencies that do not have these professionals on staff or involved in a particular collection, this guidance points out some key areas where professional consultation will be needed.

### **2. Does this guidance apply to all ICRs submitted to OMB?**

The next two sections of this guidance (on submission of ICRs to OMB and scope of the information collection) cover some general requirements under the PRA that can generally be applied to any information collection request an agency makes. However, the focus of this guidance is on conducting surveys for general purpose statistics or as part of program evaluations or research studies:

## Purpose

Surveys represent only a small percentage of all ICRs that OMB reviews. Most ICRs submitted to OMB are mandatory recordkeeping requirements, applications, or audits that are not used for statistical purposes. Because surveys require that careful attention be paid to a variety of methodological and statistical issues, agencies are required to complete Part B of the ICR supporting statement to more fully document how the survey will be conducted and analyzed (see question #10). The focus of this guidance is to assist agencies in planning surveys and documenting their proposed surveys in their ICRs.

## SUBMISSION OF ICRs TO OMB

This section covers some basic questions related to the Paperwork Reduction Act (PRA) submissions that agencies prepare and submit to OMB including process issues, what is and is not covered by the PRA, and when agencies need to complete Part B of the Information Collection Request (ICR) supporting statement. Agencies should consult the OMB regulations implementing the PRA (5 C.F.R. § 1320) for more detailed and complete information.

### 3. When should an agency begin the PRA process?

The PRA requires that the agency publish a 60-day notice in the *Federal Register* to obtain public comment on the proposed collection, prior to submitting the information collection to OMB.<sup>1</sup> At the time this notice is published, agencies must have at least a draft survey instrument available for the public to review. Agencies should state in their ICRs whether any comments were received from the public, and the comments should be addressed in the ICR that is submitted to OMB.

When submitting the ICR to OMB, agencies are required to place a second notice in the *Federal Register*, allowing a 30-day public comment period and notifying the public that OMB approval is being sought and that comments may be submitted to OMB. This notice runs concurrent with the first 30 days of OMB review, and OMB has a total of 60 days after receipt of the ICR to make its decision.<sup>2</sup> Thus, agencies need to allow at least 120 days for consideration of initial public comments, the second public comment period and OMB review, plus additional time for preparation of the ICR, as well as time lags for publication of *Federal Register* notices.

Agencies may also have requirements for internal review or higher level reviews (e.g., departmental) that need to be factored into the schedule for planning a survey. A six month period, from the time the agency completes the ICR to OMB approval, is fairly common for planning purposes but varies considerably across agencies depending on internal review procedures. Thus, starting the process early can be very important to ensure timely data collection. Survey managers should consult with their agency paperwork clearance officers to ascertain what they need to do and the time required to meet agency and OMB requirements. In rare instances, the PRA does provide for expedited processing if an agency can justify an Emergency Collection (see question #9).

### 4. When should agencies talk to OMB about plans for a study?

The PRA and its implementing regulations provide a formal basis for OMB review of agency information collection requests. However, they do not preclude informal consultation with OMB desk officers prior to the submission of an ICR. Consultation with OMB prior to submission of an ICR is not required as part of the PRA and typically does not occur. However, if an agency is proposing a significant new collection about which it expects OMB may have questions or concerns, the agency is encouraged to consult with its OMB desk officer about the particular

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<sup>1</sup> 5 C.F.R. § 1320.8(d)(1)

<sup>2</sup> 5 C.F.R. § 1320.10(a)

## Submission of ICRs

collection in advance of submitting the ICR to OMB. When an agency is planning a new, large survey data collection, a major revision to an ongoing survey, or large-scale experiments or tests, agencies and OMB frequently find it helpful for the agency to brief OMB on the nature of the planned collection and the proposed methodology. In this less formal context, OMB and agency staff can discuss potential areas of concern, including the need for further detail and justification. This kind of early consultation can considerably reduce the likelihood that major unexpected concerns about survey methodology or statistical sample design will arise during OMB review, and it allows more time for the agency to consider alternatives if necessary. Agencies can then address any issues identified by OMB in their ICRs. While this informal consultation does not affect the timing of the formal OMB review process under the PRA, it can be of benefit in identifying some issues much earlier and may avoid delays that could otherwise occur.

### **5. What does it mean for an agency to conduct or sponsor an information collection?**

An agency conducts or sponsors an information collection if the agency collects the information using its own staff and resources, or causes another agency or entity to collect the information, or enters into a contract or cooperative agreement with another person or contractor to obtain the information.<sup>3</sup> If the agency requests the collection directly or indirectly through another entity or contractor or exercises control over those collecting the information, the agency is conducting or sponsoring the collection (see also question #6).

### **6. When are studies involving third party or investigator-initiated grants subject to PRA review?**

Collections of information conducted through investigator-initiated grants (e.g., in response to a Request for Applications (RFA)) are generally not subject to OMB review under the PRA. However, information collections by a Federal grant recipient are subject to PRA review if (1) the grant recipient is conducting the collection at the specific request of the agency, or (2) the terms and conditions of the grant require specific approval by the agency for the collection or collection procedures.<sup>4</sup> If either of these conditions is met, the sponsoring agency needs to seek and obtain OMB approval, and the grantee needs to display the OMB control number on the collection instrument.

For example, the National Science Foundation has many program areas that support basic research on a wide variety of topics. Proposals are reviewed by scientific panels and funding may be provided to a university researcher to study some topic, which may include a survey. Although the National Science Foundation funded the research, it did not specifically request the survey, nor does the agency approve the collection or the collection procedures. However, if another agency gives the same researcher a grant to design and conduct a survey that the agency reviews and approves, then this collection would be covered by the PRA. Agencies are encouraged to discuss specific cases with their OMB desk officers prior to collecting the information to determine whether the collection is subject to OMB review under the PRA.

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<sup>3</sup> 5 C.F.R. § 1320.3(d)

<sup>4</sup> 5 C.F.R. § 1320.3(d)

**7. Are focus groups subject to PRA review?**

There is no exemption for focus groups in the PRA. Agencies conducting focus groups must comply with the requirements detailed in 5 C.F.R. § 1320.3(c): “Collection of information means...the obtaining...of information by or for an agency by means of identical questions posed to, or identical reporting, record-keeping, or disclosure requirements imposed on, ten or more persons...” It then goes on to clarify “ten or more persons refers to the persons to whom a collection of information is addressed by the agency within any 12 month period.” Thus, focus groups are covered unless the total number of persons participating within a 12-month period is fewer than ten. For example, an agency conducting three focus groups of nine persons would be subject to the PRA because the total number of participants is greater than 10.

Although each focus group may not be asked the exact same questions in the same order, focus groups should be treated as information collections under the PRA if the same information is being sought from the groups. For example, an agency that is developing questions for a survey may convene a few focus groups in different areas of the country (or composed of people with different characteristics) and may have fairly wide ranging discussions on the topic of the survey in order to hear how the participants think about that topic and the vocabulary they use. Because the flow of discussion in the different groups may lead to different areas in more depth or at different points in the discussion, some parts of the protocol may not have been necessarily followed verbatim or may have occurred at a different point in one focus group than another. However, the same information was still being sought by the agency and the collection is subject to the PRA, regardless of whether the exact questions or probes were used or used in the exact same order with each group.

When agencies submit their ICRs for focus groups to OMB, they should include the protocols or scripts for the discussion. Agencies that routinely conduct focus groups as part of their development of questionnaires (e.g., pretesting) may find it useful to obtain a generic clearance for focus groups (see questions #8, #50, #51).

In addition to using focus groups for pretesting, an agency may conduct focus groups as part of its collection of other information and in conjunction with other methods of data collection as part of an overall research study. For example, some program participants may participate in a focus group as part of a program evaluation that also includes other collections, such as surveys of program administrators and staff. In these cases, it is important that the focus groups are included and described in the ICR in the context of the collection the agency is conducting so that OMB can appropriately evaluate the entire scope of the study and the practical utility of the information the agency will obtain. Thus, agencies should include the respondent burden associated with the focus groups in the ICR along with the protocols or script for the focus groups.

## Submission of ICRs

### 8. What are generic clearances and when are these useful for agencies?

A generic clearance is a plan for conducting more than one collection of information using very similar methods. The review of this plan occurs in two stages: (1) a full PRA review of the generic clearance ICR, which includes the general approach and methodology, at least once every three years, and (2) an expedited review of the individual collections that fall within the scope of the generic clearance. A generic clearance is considered only when the agency is able to demonstrate that there is a need for multiple, similar collections, but that the specifics of each collection cannot be determined until shortly before the data are to be collected.

Collections that are appropriate for consideration as generic include methodological tests, focus groups, or other pretesting activities (see question #51), as well as many customer satisfaction surveys. For example, an agency may want to use a "core" satisfaction survey with its many customer groups, but may want to customize the questionnaire for different groups by including some specific questions related to a particular service or publication they use.

Each collection under the generic clearance must be well defined in the overarching ICR approved by OMB in terms of its sample or respondent pool and research methodology, and each individual collection should clearly fit within the overall plan. Individual collections should not raise any substantive or policy issues or go beyond the methods specified in the generic ICR. Any individual collection that would require policy or methodological review is inappropriate for expedited review under the generic clearance and must go through the full PRA process. For example, a generic clearance is not appropriate for the collection of influential information (see question #18) and is probably not appropriate for large collections involving many respondents and high respondent burden. Agencies are encouraged to consult with their OMB desk officers before developing a generic clearance to determine whether their plans are appropriate for this type of clearance.

### 9. What needs to be done for an emergency clearance?

Agencies may submit an emergency ICR if the collection is both needed sooner than would be possible using normal procedures and is essential for the agency's mission. In addition, the agency must demonstrate that the time to comply with the public comment provisions of the PRA would do any of the following: (1) result in public harm; (2) prevent the agency from responding to an unanticipated event; (3) prevent or disrupt the collection; or (4) cause the agency to miss a statutory or court-ordered deadline. This type of clearance should only be sought if the agency could not have reasonably foreseen the circumstances requiring collection; it is not a substitute for inadequate planning.

Agencies submitting an emergency ICR must publish a *Federal Register* notice stating the collection is being reviewed under emergency processing procedures unless OMB waives this publication requirement. The emergency ICR must contain all of the information that would be submitted with a normal ICR. Agencies must also specify the date by which they would like OMB to act on the ICR. Approval for an emergency collection is valid for a maximum of six months. If longer approval is needed, the agency must also initiate the normal PRA approval



## Submission of ICRs

process to take effect when the emergency clearance expires. Agencies are strongly encouraged to consult with their OMB desk officers prior to submitting a request for emergency clearance.

### **10. When do agencies need to complete Part B of the ICR Supporting Statement?**

Agencies are instructed to complete Part B if they are using statistical methods, such as sampling, imputation, or other statistical estimation techniques; most research collections or program evaluations should also complete Part B.<sup>5</sup> If an agency is planning to conduct a sample survey as part of its information collection, Part B of the ICR supporting statement must be completed, and an agency should also complete relevant portions of Part B when conducting a census survey (collections that are sent to the entire universe or population under study). For example, an agency doing a census of a small, well-defined population may not need to describe sampling procedures requested in Part B, but it should address what pretesting has taken place, what its data collection procedures are, how it will maximize response rates, and how it will deal with missing unit and item data.

Agencies conducting qualitative research studies or program evaluations, including case studies or focus groups, should also complete the relevant sections of Part B to provide a more complete description of the use of the information and the methods for collecting the information (see question #11).

### **11. Why do agencies need to complete some of Part B if they are conducting qualitative research studies or program evaluations?**

Agencies need to specify how they plan to use the information they are collecting and how they will collect the information in order for OMB to properly evaluate an ICR that uses qualitative methods. There are elements of Part B that are not covered elsewhere in the justification that agencies should answer to appropriately describe the information collection. For example, an agency conducting case studies should specify in Part B:

- how the different sites and/or respondents will be selected,
- whether the agency intends to generalize beyond the specific sites and/or respondents selected,
- what pretesting has been done, and
- what different methods will be used to collect the information, e.g., in-person interviews, focus groups, observations, etc. and the protocols that will be followed to ensure high quality data are obtained.

In addition, as noted in questions #21 and #24, agencies will need to justify why they are not using statistical methods if their research questions are most appropriately addressed by a survey or other quantitative study.

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<sup>5</sup> See the instructions for supporting statements in Appendix A.

*Useful Resources*

Office of Management and Budget (August 1995). 5 C.F.R. § 1320 Controlling Paperwork Burdens on the Public; Regulatory Changes Reflecting Recodification of the Paperwork Reduction Act. *Federal Register*, 60, No. 167, 44978-44996.

## SCOPE OF THE INFORMATION COLLECTION

This section addresses questions related to the content of the Information Collection Requests (ICRs) submitted to OMB. The Paperwork Reduction Act (PRA) requires agencies to demonstrate the practical utility of the information that they propose to collect and to balance this against the burden imposed on the public. Thus, it is critical that agencies describe the need for the information and how it will be used. Without a clear justification, OMB cannot approve the collection. The burden on the public must also be completely accounted for and minimized to the extent practicable while still yielding useful information. Again, agencies should consult the OMB regulations implementing the PRA (5 C.F.R. § 1320) for more detailed and complete information.

### **12. Why is this data collection necessary and how will the information be used?**

The PRA requires that agencies address how the information the agency is proposing to collect is necessary for the performance of the functions of the agency. First, agencies should identify legal or administrative requirements that authorize the collection and should include copies of the authorizing statute and regulations in their ICRs. Second, agencies must also justify why the information is needed and how it furthers the agency's goals.

When appropriate, agencies should also highlight the knowledge gaps that the information collection is designed to address, including a brief review of existing information and the relevant scientific literature. If an agency proposes a research study or program evaluation that is designed to address specific research questions, it must demonstrate a direct connection between the information needs and the specific research questions. Thus, agencies should provide sufficient background information to support the need for the research questions (including a brief review of the relevant scientific literature) and how the study will meet that need. Agencies must also ensure that the collection does not duplicate other information accessible to the agency (but see question #47). If the information is a continuation of a prior collection, agencies should document how the information has been used and the continuing need for the collection.

The PRA also requires that the agency demonstrate the practical utility of the collection and the use the agency will make of the information. The supporting statement should always include a careful discussion of what the agency hopes to achieve by collecting the information and the quality of information that will be obtained employing the proposed design.

Agencies must also evaluate their intended use of information from the proposed collection in light of the OMB's information quality guidelines for utility, integrity, and objectivity<sup>6</sup> as well as the agency's information quality guidelines. Based on that evaluation, agencies should be able to state in their ICRs that the proposed collection of information will result in information that will be collected, maintained, and used in a way consistent with the OMB and agency information quality guidelines (also see question #18).

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<sup>6</sup> Guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of information disseminated by Federal agencies, 67 FR 8452-8460

### 13. How often should data be collected?

When submitting an information collection request (ICR) to OMB, agencies are required to describe the consequences of collecting data less frequently than proposed. While less frequent data collection reduces burden on the public, more frequent data collection can provide more current and useful information. For example, in longitudinal and panel surveys, more frequent collections allow for shorter reference periods between reports, which may reduce bias. The goal is to strike a balance between the need for current information and the need to reduce public reporting burden.

Most Federal data collections fall into one of two categories: continuing or one-time. Continuing data collections have an established frequency of collection (monthly, quarterly, annually, biannually, etc.). A one-time collection is conducted without the intention of collecting the same information again, or without an established collection pattern. The frequency of data collection is an issue when establishing a new continuing data collection, when renewing a continuing data collection, or when repeating a prior one-time survey.

When determining the frequency of data collection, the agency should consider the following:

- *The timeliness of estimates requires high frequency collections.* For example, the monthly unemployment rate is a key economic indicator, and the data must be collected monthly. Some collections are required by law to be collected at specific frequencies, e.g., the Decennial Census occurs every 10 years, and the Economic Censuses are conducted every 5 years (for years ending in 2 and 7).
- *There is a reasonable expectation of significant change in key statistics between collections.* For example, an agency may wish to conduct a customer satisfaction survey every year; however, if the agency has not made any changes in its programs, there would be no expectation for change. If the agency has started a new customer relations program, then a repeat of the customer satisfaction survey could be used to measure the effectiveness of that change. Another consideration in evaluating the frequency of a collection is the potential for seasonal variation. The need to capture cyclical patterns might justify either monthly or quarterly collection.
- *The frequency of collection has an effect on data quality.* For example, the Survey of Income and Program Participation (SIPP) is a longitudinal survey that captures a month-by-month accounting of income and governmental transfers such as Social Security, welfare, food stamps, etc. Pretesting of two different collection periods showed significant differences in the data quality between the three-month and six-month time frames, requiring the use of a shorter period. SIPP adopted a four-month time frame for data collection and reference period, which provided nearly the same quality of data as the three-month time frame with a 25 percent reduction in respondent burden.
- *Reduced frequency would have an adverse impact on agency programs.* If an agency program requires data with a specified frequency, the agency needs to detail how the data will be used and how the agency would be hindered by less frequent information.

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**14. What is included in the calculation of burden hours?**

Burden hours are a measure of the time it takes respondents to review instructions, search data sources, complete and review their responses, and transmit or disclose information. Estimating burden for household surveys is typically done by timing the completion of interviews done in previous administrations of the survey or in pretests (using 9 or fewer persons) and developing an average time.

Estimating burden for establishment surveys is more complicated because respondents often have to search for information before answering the survey questions. Agencies must first identify all the steps a respondent takes in order to comply with the survey request, and then estimate the time for each step to arrive at a total burden per respondent. The aggregate burden of an ICR is the average burden per respondent multiplied by the number of expected respondents and should be reported in section A.12 of the ICR.

**15. For establishment surveys or panel surveys, should burden hours include the original collection of administrative records that may have taken place months or years before?**

Generally, surveys of business establishments ask a respondent to aggregate and report data that the establishment already has somewhere in files or databases. Burden hours for these surveys should include only the time it takes to locate the source data and aggregate them. The estimate should not include the time originally taken to collect information in administrative records that were compiled by the establishment for its own purposes, such as accounting records. For example, there are a variety of reporting and recordkeeping requirements in the equal employment opportunity arena. These reports usually ask for summary demographic and job data on employees, and respondents often obtain the data needed from existing personnel files, records, or databases. Agencies SHOULD NOT count the time involved in the original collection of the demographic data from the employees but SHOULD count the time it takes to access the personnel files, aggregate the requested data, and report the data on the agency form.

For panel or longitudinal surveys, agencies SHOULD count the time it takes respondents to begin their participation in a panel in the initial ICR for the recruitment and baseline collection. However, this time SHOULD NOT be counted in subsequent ICRs that concern later collections. Agencies SHOULD count only the hours associated with the collection of information described in the current ICR. For example, the Survey of Income and Program Participation selects respondents to participate in interviews every four months (called waves) for the duration of a panel—usually 3 or 4 years. Each wave has a set of core questions used in all waves and a topical module that differs from one wave to the next. In essence, each wave is treated as a unique survey and the burden associated with answering all the questions in a wave is reported. In this case, the agency SHOULD count the burden of recruitment and the initial collection in the ICR for wave 1; however, the agency SHOULD NOT count the original recruitment of the individual into the survey panel in the ICRs for later waves.

009165

**16. Why are agencies required to estimate the burden in terms of both time and costs?**

The term "burden" means the "time, effort, or financial resources" the public expends to provide information to or for a Federal agency, or otherwise fulfill statutory or regulatory requirements.<sup>7</sup> Currently, agencies separately estimate the "hour burden" and "cost burden" of each particular information collection in their supporting statements in A.12 and A.13, respectively. This ensures that both types of burden are taken into account.

Thus, for establishment surveys, in addition to the hour burden for reviewing instructions, searching data sources, completing and reviewing responses, and transmitting or disclosing information, there may also be capital, operation, and maintenance costs associated with generating and maintaining the information. Agencies should include costs that respondents incur for developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing, and providing information, as well as costs incurred by respondents adjusting to changes from previous instructions, and training personnel to be able to respond to a collection. These costs may be borne directly by the respondent or indirectly by their subordinates, agents, or contractors.

The PRA requires that the agency demonstrate the practical utility of the collection and demonstrate that the burden of the collection both in terms of hours and other costs is justified given the agency's need for the information and the use the agency will make of the information.

***Useful Resources***

Office of Management and Budget (August 1995). 5 C.F.R. § 1320 Controlling Paperwork Burdens on the Public; Regulatory Changes Reflecting Recodification of the Paperwork Reduction Act. *Federal Register*, 60, No. 167, 44978-44996.

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<sup>7</sup> 44 U.S.C. § 3502(2); 5 C.F.R. 1320.3(b).

## CHOICE OF METHODS

This section is intended as a broad overview of many specialized methodologies. One can often find entire textbooks devoted to one or more methods; thus, the purpose of this section is simply to call attention to some basic considerations agencies should explain and justify in their ICRs when proposing to conduct studies that use these methods. The method selected must also be appropriate for the intended use of the information. Agencies should consult with experts in the particular methods to design and implement their studies.

### **17. How does the choice of methods for the study relate to the research questions or purpose of the collection?**

The methodology for the study should be driven by the kinds of questions the agency needs to answer or the general purpose of the collection. Sometimes agencies collect information for general statistical purposes that may be used by a wide variety of different parties to address many different questions. In this case, the design of the survey or study should reflect these multiple uses and be clear about its strengths and limitations for different purposes, and agencies should consult with appropriate stakeholders and experts when designing their studies to ensure the relevant questions are addressed. In other cases, agencies need to answer very specific questions, and the design needs to be appropriately focused to answer those questions well.

Agencies should carefully consider the kinds of questions the information collection needs to answer and the strengths and limitations of different methods to answer those questions. For example, if an agency wishes to know whether a program caused some change to occur in those served by the program, appropriate methods, such as an experimental design, will need to be employed. In this case, agencies will need to do considerable advance planning to randomly assign participants to experimental or control conditions to evaluate the program. If an experimental design is not possible or practical, then a quasi-experimental design or other design may be used by the agency. Agencies need to justify how their choice of methodology will be able to provide the information needed to address the research question and discuss the limitations as well as the strengths of the methodology for the particular purpose (see question #26).

In order to address complex and multi-faceted research questions, an agency may need to plan a program of research and use multi-method approaches to obtain all the information needed. When more than a single study is planned to address the research questions, the agency should include a brief description of the complete research program (including studies not yet approved) in its ICRs and refer to previously approved collections (by their OMB number) to explain how the study fits into the larger program and support how the complete program will provide the agency with the information it needs. If the agency is supplementing its survey collection with administrative or other available data, this should also be described. In addition, the general timeframe for the other components should be included.

### **18. How do the use of the information and choice of methods for the study relate to the agency's information quality guidelines?**

A primary consideration for an agency in designing its information collections should be how the agency intends to use the information it is gathering. Agencies use information collected through surveys for a variety of purposes. Some information is intended to be "influential information." As defined in OMB and agency Information Quality Guidelines, "influential" means that "an agency can reasonably determine that dissemination of the information will have or does have a clear and substantial impact on important public policies or important private sector decisions." The Information Quality Guidelines require that agencies hold the information they designate as "influential" to a higher standard of reproducibility and transparency than information that is not defined as influential. For example, some survey results directly or indirectly feed into Principal Federal Economic Indicators that are widely watched and have broad impact on government, business, and individual decisions. In other situations, one agency may use the information collected by another agency to support health and safety assessments that in turn affect both public and private sector decisions.

As part of their ICRs, agencies report how they intend to use the information they are proposing to gather. Agencies should explain how the methods they have chosen to employ will yield information of sufficient quality for its intended purpose. For example, if an agency wishes to generalize the results of a survey beyond the particular cases sampled, it must utilize appropriate statistical sampling methods (see question #30) to yield information that has sufficient precision and accuracy (see question #33). Because more rigorous methods often entail higher cost, agencies need to carefully consider the resources that will be required to obtain information of sufficient quality for the intended uses. Agencies should be able to certify explicitly in their ICRs that the proposed collection of information will result in information that will be collected, maintained, and used in a way consistent with the OMB and agency information quality guidelines, or they should not propose to collect the information.

### **19. When should agencies consider conducting a survey?**

When the research question or purpose of the study is to produce descriptive information about a population, agencies should consider conducting a survey. Surveys may be conducted to provide general purpose statistics on the national (or some target) population, or they may be used as part of a research study, experiment, or program evaluation. For example, an evaluation of a federally funded school program may be done by conducting surveys of school principals, teachers, and district administrators to obtain information from each about the implementation or results of the program. However, surveys are often only one source of information that an agency may need, especially when conducting program evaluations. Agencies should also examine how they can obtain other appropriate outcome measures, including the use of administrative records.

When properly done with an appropriate sample design, a survey can provide broad descriptive information about a population and subgroups, as well as information about relationships among variables or constructs that are being measured. Generally, the results from surveys are only



## Choice of Methods

descriptive or correlational. When surveys are used in the context of an experimental design, quasi-experimental design, or longitudinal study, stronger causal inferences may be warranted; however, agencies will need to carefully consider the limitations of the study and other potential explanations when drawing causal conclusions.

Because they are designed to gather standardized information from an often relatively large number of persons or entities, surveys may not be able to provide the degree of detail that can be obtained through qualitative or case study methods. Furthermore, the standardization of questions requires that the concepts that are being measured be well known and understood, and shown to be reliable and valid. Thus, it may be premature to conduct a survey when an agency is in a more exploratory mode, trying to develop research questions, or understand the characteristics that need to be measured. It is not appropriate for agencies to conduct developmental activities to define a concept and then attempt to use those same findings to test hypotheses (see question #21). A separate survey is needed to test the hypothesis.

### **20. What should agencies consider when designing and conducting a survey?**

The quality of a survey design can be judged by the strategies that are taken to prevent, adjust for, and measure potential problems and sources of error in surveys. How well a survey is designed and conducted can lead to either more or less variance (or noise) or bias (or systematic errors) in results. Well-designed and conducted surveys anticipate potential problems and try to prevent or minimize the impact of different sources of error as much as possible. Additionally, good surveys make efforts to measure and adjust for errors that are not controlled. The best surveys are those that check and verify each step of the research process. Common sources of error in surveys include sampling (due to measuring only a subset of the population), coverage (due to mismatches between the population and the lists used to draw the sample), nonresponse (due to failure to measure some sampled units), measurement (due to mismatches between data sought and data provided), and processing (due to editing or imputation). These topics are dealt with in greater detail in the following sections of this guidance.

For example, measurement errors can be reduced through careful questionnaire design and pretesting (see Questionnaire Design and Development). A field test comparing alternative versions (or revised versions) of key questions may provide insights into sensitivity of answers to alternative wording (see questions #22, #23, and #49). Agencies can also reinterview a subsample of respondents to measure instability in responses. Sometimes, survey results can also be checked against administrative records; however, there may be differences in definition and coverage between the information available from records and the survey that need to be carefully considered when assessing the results of the comparison. Similarly, potential nonresponse bias can be reduced by following a variety of strategies to maximize response rates or repair imbalances in the respondent pool (see questions #69 and #70). Bias can be measured in special nonresponse bias studies (see question #71) and adjustments can be made to weights to attempt to reduce bias.

Agencies designing and conducting surveys need to consider all of the potential sources of errors and plan to adequately prevent, measure, and adjust for them. Conducting a high quality survey

requires careful planning and sufficient resources to yield quality data that have practical utility for the agency. Agencies should carefully document and justify the adequacy of their survey methods in their ICRs. Specifically, agencies should provide information about the target population, the sampling frame used and its coverage of the target population, the design of the sample (including any stratification or clustering), the size of the sample and the precision needed for key estimates, the expected response rate (see question #63), the expected item non-response rate for critical questions, the exact wording and sequence of questions and other information provided to respondents, data collection methods and procedures, and the training of interviewers (if applicable). In addition, agencies need to take into account what is known about the different sources of error in their analysis and interpretation of the results from the survey. Experts in survey methodology within and outside the agencies can be helpful to inform this process. Agencies should be transparent and report in their ICRs the methods they plan to use, what is known about the different sources of error, and the impact of the errors on the analytic results.<sup>8</sup>

### **21. When should agencies consider conducting a qualitative study?**

An agency may want to consider a qualitative study under a variety of circumstances. In contrast to gathering numerical information or data that can be quantified, a qualitative study uses unstructured interviews, notes, or observations that are typically difficult to quantify. Qualitative studies can be useful for exploratory investigations such as when very little is known about a problem or the implementation of a program. A qualitative study in this case may be a good first step to understanding the scope of a problem or identifying the key issues for more systematic study. A variety of methods may be used in a qualitative study, including focus groups, unstructured interviews, or semi-structured interviews with “experts,” stakeholders, or other participants. Case studies may also be conducted (see question #24). Typically, these methods attempt to obtain insights through the intensive study of a relatively small number of people, institutions, or establishments. Respondents are usually purposively chosen because of their knowledge, experience, or status.

In a qualitative study, typically, different persons or entities may be chosen because they “represent” a particular kind of person or entity, but the sample is usually not representative—in a statistical sense—of any larger population. However, the obtained information may be very useful in generating hypotheses that can be tested more systematically with other methods such as quantitative surveys. Sometimes qualitative studies are done in conjunction with or as a component of a larger quantitative study to obtain further insights or context for the results; however, these qualitative interpretations can be prone to misinterpretation and over-generalization. Although qualitative studies can also be done using statistical sampling (see question #30) and rigorous designs to generalize results, this is rarely done.

Agencies should demonstrate how a qualitative study will meet their information needs. Agencies need to acknowledge the limitations of data gathered using these methods and not generalize the data beyond those persons or entities that were interviewed. These studies should

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<sup>8</sup> For further information see *Statistical Policy Working Paper #31, Measuring and Reporting Sources of Error in Surveys* available at [www.fcsn.gov/reports/](http://www.fcsn.gov/reports/).

usually be considered preliminary, and will often need to be followed with a larger-scale, representative study.

### **22. When should agencies conduct a pilot study, pretest, or field test?**

Agencies should always consider conducting pretests (small trials of the measurement process) or pilot studies (larger trials yielding statistical information) when planning for a new information collection or changing methods and procedures for an ongoing survey. These kinds of tests may provide critical information necessary to ensure the quality of the data and smoothness of operations needed in the full-scale information collection. They can provide essential information to the agency and result in higher data quality than would have been achieved without them and may be the only vehicle for measuring the effects of different changes an agency is considering implementing. Thus, agencies will need to weigh the importance and use of pretests against the time and resources needed to conduct them.

Pilot studies can be useful when there are a number of issues the agency needs more information about before a full-scale study can be reasonably implemented. A pilot study may help an agency narrow down the research questions or provide rough estimates (and variances) that can be used to guide sample size determinations. An agency may also use a pilot study to examine potential methodological issues and decide upon a strategy for the main study. A pilot test may also be conducted before a large-scale study in order to test and refine the implementation procedures for the full-scale study.

Agencies may want to conduct pretests when developing new questionnaires to see how respondents actually answer questions and identify potential data quality problems, such as high item nonresponse rates. Agencies may also conduct pretests to gather data to refine questionnaire items and scales and assess reliability or validity. Sometimes agencies may also use a field test or experiment (a study to compare the effects of two or more procedures or questionnaires) when planning a change in methodology or questions in an ongoing survey. This enables comparisons and often provides quantifiable data to decide among the different methods or questions to use. An agency may further want to consider conducting a field test experiment on a representative sample to measure the effect of the change in methods or questions on resulting estimates.

Agencies can request clearance for pretests, pilot studies, or field tests separately or as part of their ICR for the full-scale collection (also see questions #50 and #51). However, in many cases it makes more sense for these to be separate requests, especially when conducting pilot studies for new collections. Agencies are encouraged to discuss whether it is appropriate to submit these studies separately or in combination with the full-scale study with their OMB desk officers prior to submitting the ICR to OMB.

**23. When should agencies consider conducting focus groups or cognitive interviews?**

Agencies should consider using focus groups or cognitive interviews when planning for a new information collection or when altering questions on an ongoing survey. Developing effective new questions or revising existing questions can be more difficult than most people anticipate, and questions need to be constructed so that respondents can answer them and provide useful data for the agency.

Focus groups (groups of 8-12 persons engaged in a semi-structured conversation led by a moderator) can be a useful first step in questionnaire development that can allow an agency to better understand what respondents think about a topic and what terms they use. Agencies can learn the language that respondents use when discussing the topic and as a result integrate more common terms and phrases into the design of survey questions.

Focus groups are also often used as part of a case study or in conjunction with a sample survey or program evaluation to gain insights and perspectives on the operation of a program or to provide more detailed information to help illustrate the results from the survey (see question #24).

In a cognitive interview, respondents are asked to think aloud as they answer questions and to identify anything that confuses them. Cognitive interviews can be a valuable tool when an agency has developed proposed questions and needs to understand better how respondents interpret them. Respondents are often asked to paraphrase a question so that researchers learn whether a respondent understands the question and interprets it as intended. Good questionnaire development is aided by survey methodologists who are trained in these methods. Further information on methods for developing questionnaires is provided in the section on Questionnaire Design and Development (questions #45 to #51).

**24. When should agencies consider using case study methods?**

A case study is a research methodology that is widely used in a variety of contexts. One good definition of a case study is:

a method for learning about a complex instance, based on a comprehensive understanding of that instance obtained by extensive description and analysis of that instance taken as a whole and in its context. (GAO 1990, p. 14)

Case studies can be useful when one is dealing with a complex program about which relatively little is known or understood. A case study can thus serve a useful purpose as a preliminary study for the agency to learn some of the characteristics of how the program is implemented or operating or what its possible effects might be. This can be a useful *first step* in evaluating a program because it leads to the generation of hypotheses about the program and its implementation, as well as a preliminary assessment of how more systematic research can be designed and implemented to evaluate the program.

Case studies can also provide important insights when used in conjunction with other research methods such as sample surveys. For example, an agency may conduct a large representative sample survey of program sites to gain knowledge about their characteristics. A number of sites may also be selected for case studies to help provide additional understanding about the way the program functions or is implemented, and thus illuminate the quantitative results from the survey. These case studies may, for example, include direct observational components that are not feasible in a large scale national study.

More specifically, case studies can provide vital insights about how programs are implemented in different local areas. For programs that deliver their services through State and local agencies, the Federal Government often sets general standards regarding administration, evaluation, and funding. Developing a comprehensive picture of how a federally-regulated program is administered, for example, may require site-specific observation and investigation. Data from specific sites can serve several purposes depending on the study design including:

- developing explanatory hypotheses on program characteristics and outcomes, which can be tested in future statistical studies;
- preparing guidance for field offices on how services may be delivered more effectively;
- providing qualitative explanatory information on the range of program characteristics and outcomes, which complement quantitative results obtained through a statistically valid, generalizable study; and
- illustrating findings of the main study through real-world examples.

### **25. What should agencies consider when designing and conducting a case study?**

There are a number of limitations of the case study method that agencies should consider. In some situations, these limitations can make it difficult to conduct the research. In others, they can make it difficult to generalize the results. Limitations include:

- the case study sites are typically not selected in a manner that allows one to generalize to the population under study;
- too few sites are typically visited to get a comprehensive or generalizable picture;
- results observed at a site may be due to other factors besides the program being studied, and there is often no control group or randomized assignment to the program;
- site visits are expensive; they require significant travel and preparation costs; and
- data from site visits are often qualitative and anecdotal in nature.

When designing or evaluating a case study, the following questions should be considered:

- *Who is conducting the case study?* The role of the investigator is very prominent in case study methods and the training, experience, and thoroughness of the investigators visiting a site can have a large impact on the quality of the data that are gathered.
- *How are the sites selected?* How sites are chosen will have direct implications for the kinds of conclusions that can be drawn from the research. Although probability methods are essential for generalizable survey samples (see question #30), the small samples that are typically used in case studies cannot usually be meaningfully generalized to any population. However, the results from case studies are typically not intended to describe

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the population in the same way as those from sample surveys. It may be useful to select cases to represent the diversity and important variations of programs that exist.

- *How well do the protocols or questionnaires elicit the desired information?* As much thought and effort should go into the design of questionnaires and protocols for case studies as goes into these instruments when administered to a national sample. Careful attention also needs to be paid to who will be interviewed as part of the case study. Similarly, other sources of information such as observations by researchers, examination of administrative records, and other documentation are often important components of the case study.
- *Is interviewer bias and interpretation being minimized?* If the data are only qualitative, they may be subject to interviewer interpretation and bias. To the greatest extent possible, guides for onsite visits and data collection as well as instructions for coding and analyzing the data should be developed beforehand. Visiting one or two sites for a pretest is also highly recommended because the actual site visits can reveal the complexity and difficulty of analyzing case study data.
- *How will the data be analyzed?* Some analysis usually needs to take place in real time at the site to resolve discrepancies or take advantage of the multiple perspectives offered by the different investigators on site. Objective data that have been gathered should be quantified and displayed with basic descriptive statistics. It is unlikely that inferential statistics or hypothesis testing could be used unless sample sizes are adequate and sites were selected appropriately to generalize.
- *What is the relevant comparison group?* Case study research may include comparisons between a program site and a “comparable” site that did not have the program. Unless very strict controls are in place, it is difficult to have a true comparison site for most case studies due to the unknown influences of other factors that could affect observed differences between the sites. The differences between sites that cannot be controlled can, however, often be articulated in advance and need to be carefully considered as limitations to comparisons; nonetheless, having a comparison group may provide more information than if there is no comparison group. Alternatively, case study designs may include baseline pre-program measurements of persons and post-program measurements of the same individuals.

### 26. When should agencies consider using experimental and quasi-experimental designs?

When agency research questions involve trying to determine whether there is a causal relationship between two variables or whether a program caused a change for participants, then agencies will need to employ an experimental or quasi-experimental design or demonstrate how their study design will allow them to determine causality. Even well conducted experimental and quasi-experimental designs may have limitations or alternative explanations for the results that the agency will need to carefully consider in designing the study and drawing conclusions from the results.

For example, it can often be difficult to identify appropriate comparison groups to evaluate the impact of Federal programs or interventions. If an agency wishes to evaluate a new education program that provided some districts or schools with competitive grants to implement the

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program, it can be difficult to identify similar districts that are an appropriate comparison to gauge the effects of the program on student outcomes. If the comparison schools or districts differed systematically from those that received program funding then it is not clear whether any differences in student outcomes are due to the program or to the preexisting differences such as urbanicity or poverty level. In addition, sometimes, schools or districts that win (or even apply for) competitive grants may be more interested, motivated, or have greater capabilities for improving student outcomes than schools or districts that don't win (or apply) for the program grants, and the student outcomes may reflect the underlying motivation or capabilities rather than anything about the program itself. Thus, the agency needs to consider appropriate methods to select comparison schools or districts that will rule out or minimize alternative explanations for differences in student outcomes in order to maximize the value of the program evaluation.

One of the key characteristics of experimental designs is random assignment of persons or entities to treatment (or experimental) and control (or comparison) conditions. For example, participants in the treatment condition may receive benefits or services from a Federal program, while participants in the control condition do not. This random assignment of persons to conditions acts to equalize preexisting differences between the two groups so that differences observed between the groups can be attributed to the differences in the Federal program. If random assignment is not strictly possible, then quasi-experimental designs can be employed. These designs rely on identifying appropriate comparison groups and frequently take measurements at two or more points in time in order to rule out or reduce threats to the validity of the conclusions or alternative explanations for differences between the experimental and comparison groups.

Different kinds of experimental designs may be used by an agency depending on the research questions or the types of decisions the agency intends to make based on the results. Sometimes the goal may be simply to assess whether a new demonstration program is having the intended effect, before investing additional resources to expand the program and study it further. In this case, it may be possible for an agency to justify using a sample that is not nationally representative or even representative of potential program members. In other cases, the agency may want to estimate the size of the effect a specific intervention would have if implemented throughout the country or evaluate the effectiveness of an ongoing program. In these circumstances, the agency would need a representative sample of program participants in order to accurately describe the population and generalize the results to the rest of the country or to all program sites (see section on Sampling).

Agencies need to consider the difficulties of implementing experimental designs and guard against potential threats to the internal validity of the design through choice of appropriate comparison groups and/or conducting multiple measurements over time. It is key that agencies design and implement programs in ways that they can be meaningfully evaluated. For example, conducting an experimental study requires advance planning so that participants can be assigned to conditions. Agencies should justify that the design they have chosen is practical to conduct and will provide the information they need to answer the agency's research questions. Agencies also need to acknowledge the limitations of their design and to identify clearly how they intend to generalize the results of experimental studies, especially if a representative sample is not proposed.

*Useful Resources*

Experimental and Quasi-Experimental Designs

Cook, T. D. & Campbell, D. T. (1979). *Quasi-Experimentation: Design and Analysis Issues for Field Settings*. Boston: Houghton Mifflin.

Hedrick, T. E., Bickman, L. & Rog, D. J. (1993). *Applied Research Design: A Practical Guide*. Newbury Park, CA: Sage.

Program Evaluation Designs

Rossi, P.H. & Freeman, H.E (1993). *Evaluation: A Systematic Approach*. Newbury Park, CA: Sage.

U.S. General Accounting Office (March, 1991). *Designing Evaluations*. GAO/PEMD-10.1.4. Washington, DC: Government Printing Office.

U.S. Office of Management and Budget (2004). What constitutes strong evidence of program effectiveness? ([http://www.whitehouse.gov/omb/part/2004\\_program\\_eval.pdf](http://www.whitehouse.gov/omb/part/2004_program_eval.pdf))

Qualitative and Case Studies

U.S. General Accounting Office (November, 1990). *Case Study Evaluations*. GAO/PEMD-10.1.9. Washington, DC: Government Printing Office.

Yin, Robert K. (1989). *Case Study Research: Design and Methods*. Beverly Hills, CA: Sage.

Surveys

Biemer, P. P. and Lyberg, L. E. (2003). *Introduction to Survey Quality*. New York: Wiley.

Fowler, F. J. (1988). *Survey Research Methods*. Newbury Park, CA: Sage.

Groves, R. M., Fowler, F.J., Couper, M.P., Lepkowski, J.M., Singer, E., & Tourangeau, R. (2004). *Survey Methodology*. Hoboken, NJ:Wiley.



### SAMPLING

This section is intended as a broad overview of some key issues in survey sampling. Designing an appropriate sample for a given purpose and target population requires considerable technical expertise, and agencies will need to consult with statisticians and experts in survey sampling in designing their studies. The purpose of this section is to provide a general non-technical introduction to some of the concepts of survey sampling that agencies will need to describe and justify in their Information Collection Requests (ICRs) when proposing to do studies whose purpose is statistical in nature.

#### **27. What is the difference between a census and a sample survey and when is each appropriate?**

A study where all target population members are asked to participate is often called a universe survey or a census. In contrast, a *sample survey* is a survey where only a portion of the population of interest is included in the study; that is, only a selected number of households (or businesses) are asked to participate rather than including all members of the population. Furthermore, the members of the target population must be selected with a known probability of selection from a sampling frame that contains all (or nearly all) of the members of the target population.

When the target population is small and each unit is unique, a census is likely to be preferred over a sample survey. For example, when an agency evaluates a Federal program that is implemented by the states (each one perhaps somewhat differently), a census of state program directors may provide higher quality information with little cost difference from a sample survey of a slightly smaller number of states. In this case, there may also be concerns about missing practices of some states that were not included in the sample if a census were not conducted.

Sample surveys are useful when it is not possible or desirable to collect data from every single member of the population of interest due to reasons such as respondent burden, cost, and operational feasibility. Often it would be simply too burdensome, expensive, or logistically impractical to collect data from every single unit of the target population. Agencies should consider collecting data from a sample and trying to ensure a high response rate from the sampled units. For a given budget, an agency can devote more resources to quality control activities such as callbacks to nonrespondents and data editing for a sample survey than would be possible with a census, and the results from the sample survey should be more representative and provide less biased estimates of the population than a poorly conducted census.

Agencies should carefully consider the benefits and costs of conducting a sample survey versus a census. When the data must be representative of the target population, carefully designed samples can be used to ensure data quality in a way that is often more economical and efficient than a census. Agencies need to justify in Part B of their ICRs their decision to conduct a census instead of a sample survey.

### **28. What is a sampling frame and what is the coverage of the sampling frame?**

A sampling frame is a list or set of procedures for identifying all elements of a target population. In theory, the sampling frame should include everyone in the target population as well as other information that will be used in the sampling process or can be used to assess the representativeness of the sample. There are different types of sampling frames, e.g., area and list frames. In an area frame, geographic areas are defined, listed, and then sampled. Often, lists of elements (e.g., housing units) are constructed within the sampled areas and then elements are selected from the lists. In a list frame, a list of all the population elements is used to select the sample directly. Sampling frames also may include information on characteristics of the elements, such as employment levels for a business or enrollment for schools.

Sampling frames should be up to date and accurate. The coverage of the sampling frame refers to how well the frame matches the target population. For example, approximately 97 percent of U.S. households have land-based telephone lines; therefore, a frame of all residential telephone numbers would have a national coverage rate of 97 percent.<sup>9</sup> However, there are systematic differences between households with and without telephones, so that telephone coverage rates for some target populations such as the poor, young adults, and racial or ethnic minorities are often much lower and may not be adequate for some purposes. When those subgroups differ from others on key survey variables, coverage error in the survey estimates can result.

The coverage of a sampling frame can change over time and, therefore, it needs to be kept current and accurate. A list of business establishments that is two or three years old will not include any new businesses formed in the past two to three years but will include establishments that have gone out of business, and also may have incorrect contact information for those that have relocated. The availability and accuracy of contact information for sample units within the frame may affect the agency's choice of mode of data collection. In addition, the availability and accuracy of information for stratification is also an important consideration for choosing a frame.

Agencies need to consider the adequacy of potential sampling frames for their target population and should justify in Part B of their ICRs the frame they have chosen for their collection, its coverage, the mechanism for updating, how recently it has been updated, and what is done to assess or adjust for potential coverage errors.

### **29. Is a list of Internet subscribers available and acceptable for use as a sampling frame?**

There currently are no unduplicated lists of Internet users from which to draw a probability sample (see question #30). In other words, there is no sampling frame available for Internet users or those with Internet access. Furthermore, unlike telephone numbers, there is no set format for e-mail addresses that could be used to generate meaningful addresses to construct a sampling frame for those addresses. Currently, lists of e-mail addresses that are commercially available tend to have unknown coverage for most target populations or consist of persons who

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<sup>9</sup> Blumberg, S., Cynamon, M, Lake, J., & Frankel, M. (2006). Recent trends in household telephone coverage in the United States. Paper presented at the Second International Conference on Telephone Survey Methodology, Miami, Florida.

## Sampling

have self-selected or volunteered to participate in studies; thus, these lists represent convenience samples (see question #35).

Recent estimates are that more than 50 percent of households have Internet access at home.<sup>10</sup> Despite the increasing rate of Internet access in the U.S., there remain systematic differences in socio-demographic characteristics between those who have access to the Internet at home and those who do not. Thus, there are significant coverage errors in any sampling frame composed only of those who have access to the Internet, which could lead to biased estimates when generalizing to the national population.<sup>11</sup>

In some cases, an agency may have e-mail addresses from its list frame for the target population that could be used for a census or sample survey. For example, administrative records of program participants may include a variety of means of contacting participants including their e-mail addresses. In this case, the coverage of the sampling frame is based on the characteristics of the frame the agency has and the specific target population; it does not use or require an Internet sampling frame.

The limitations for coverage and sampling of current lists of Internet users means that agencies should consider using any Internet sampling frame only for exploratory purposes, such as part of a pretest (if the main study will have a response option via the Internet), or in other instances where a convenience sample would be appropriate (see question #35). However, these limitations of the Internet for sampling do not imply that the Internet cannot be used as one mode of collecting survey data in a mixed-mode collection (see Modes of Collection), but rather that it is not suitable for drawing a probability sample that can be generalized to a target population. When used simply as a mode of collection, Internet surveys can provide a convenient means for respondents with Internet access to respond to a survey. Using the Internet simply as a mode of data collection, rather than as a sampling frame, is further addressed in question #43.

### **30. What is an appropriate sample design to ensure the sample drawn represents the population of interest?**

When a subset of the population is chosen randomly such that each unit has a known nonzero probability of selection, the sample is called a probability sample. For the purpose of making estimates with measurable sampling error that represent a population, the sample must be selected using probability methods (however, also see question #31 for a discussion of cut-off samples that are able to measure estimation error). These methods require that each case in the population has some known nonzero probability of being included in the sample. For example, an agency can randomly select a sample of 500 customers from a complete list of 10,000 customers by drawing their names out of a hat. This is commonly referred to as a simple random sample (SRS). In a simple random sample, every case in the population (i.e., each of the 10,000

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10 National Telecommunications and Information Administration (NTIA) (2004). *A Nation Online: Entering the Broadband Age*. Washington, DC. This and earlier reports available online at [www.ntia.doc.gov/reports/anol/index.html](http://www.ntia.doc.gov/reports/anol/index.html).

11 These coverage problems do not necessarily apply to panels or other studies that use some other sampling frame (such as RDD) to recruit panel members and then provide them with Internet access, see question #34.

## Sampling

customers) has the same probability of being selected. Although SRS is rarely used in practice, there are other probability methods that may involve stratifying and/or clustering the sample or involve unequal probabilities of selection (e.g., a design that intentionally oversamples minorities or includes with certainty large businesses that account for a high volume) that are often used in the design of Federal surveys (see question #32). As long as there is a probability mechanism used in selecting the cases (and every unit is given a nonzero chance of selection), samples constructed in this manner can allow the agency to estimate the characteristics of the population from which they were drawn with a known level of sampling error. Non-probability samples do not have this property.

When selecting a sample design, agencies need to consider how the information will be used and what generalizations are intended, and agencies need to explain in their ICRs how they will generalize the results of a survey. Agencies must have a statistical basis for generalizing the results beyond the particular sample selected and need to consult a sampling statistician in designing their sample for their survey. Agencies conducting surveys that are intended to produce valid and reliable results that can be generalized to the universe of study, but are not based on probability methods, must clearly justify the statistical methodology (e.g., see question #31) in Part B of the ICR. Otherwise, OMB cannot approve the collection.<sup>12</sup>

### 31. Are probability samples always the best for surveys of establishments?

Although a probability sample drawn from the general population is the best way to represent a population of individuals or households, it can be more efficacious to employ other sampling methods, such as cut-off samples, when the target population is businesses or other highly skewed populations. *Cut-off samples* are selected by ordering the universe of potential respondents by some important characteristic and selecting the units with the greatest amount of the characteristic until some specified percentage of the universe is included in the sample. A rule of thumb often used for cut-off samples is that the sample should cover 80 percent of the population total. This method gives an achieved sample that provides the minimum mean square error estimate for the total value of the variable used to specify the coverage. For highly skewed populations, such as those found in some establishment surveys, this method also provides the smallest possible sample. For example, an agency conducting a study of capital expenditures of manufacturers may “cut off” when the survey has received data from establishments with more than 80 percent of the revenues of the universe. Since the cutoff rule is based generally on estimates from a prior time period, the success of the cutoff rule is dependent on the level of stability in the estimates over time. In conjunction with a ratio based on a recent census survey of the population, this method is efficient, reduces respondent burden, and works well for estimating totals. However, it can be misleading if detail is needed on the smaller units, because they are more likely to be excluded from the sample.

Cut-off or other model-based samples are used for some economic surveys conducted by Federal agencies. Designing and using these samples requires that agencies have considerable information about the target population and statistical expertise in order to achieve estimates with smaller errors and biases than would be possible with a probability sample of the same size.

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<sup>12</sup> 5 C.F.R. § 1320.5(d)(2)(v).

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When the goal of the collection is to make an estimate for a target population, agencies need to provide a statistical justification in the ICR for using cut-off or other model-based samples that demonstrates that estimates of precision can be calculated and that the error of the estimates and potential biases are acceptably small.

### **32. What information should agencies provide about their complex sample designs?**

Simple random samples (where all units and all equal-numbered combinations of units have the same probabilities of selection) are rare in practice for a number of reasons. Often they are not practical for many information collections because the sheer size of a universe listing and subsequent random sampling may be cost prohibitive. For example, it may be impractical for an agency wishing to survey and administer tests to high school students to select a simple random sample of students because there is not a comprehensive listing of all students in the United States, and even if there were, the costs of administering tests across the many sites where students were sampled could be prohibitive. Thus, other probability-based methods that employ multiple stages of selection, and/or stratification, and/or clustering are used to draw more practical samples that can be generalized with known degrees of sampling error. These samples are referred to as complex sample designs. To properly design and analyze data from these kinds of samples, agencies will need to consult with trained survey statisticians to accurately reflect the statistical effects of the design on the survey estimates.

Agencies need to consider tradeoffs between the cost and efficiency of different sample designs for their purpose, and should demonstrate why the particular design they have chosen is appropriate for their research questions and planned uses of the information. In their ICRs agencies should provide a complete description of the proposed sample design including a description of each stage of selection, a description and definition of the strata, including estimates of the size of the universe and the proposed sample by strata. Any clustering in the sample should also be described.

### **33. How large should a sample be for a statistical survey?**

There are a variety of factors that will affect the size of the probability sample that an agency will need for a particular collection in order to obtain the quality of information that is needed. The size of a sample needed for an information collection is affected by a number of different factors including:

- degree of precision required--the significance level and confidence levels required for the estimates, and the acceptable margin of error;
- variability of the overall population on the key variables being measured;
- approximate values of the statistics that will be estimated, especially for proportions;
- type of estimate;
- sample design, e.g., the stratification and clustering of the sample;
- whether overall national estimates are the primary focus or whether estimates will also be made for subgroups—each subgroup must have adequate sample sizes; and

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- size of the overall population that estimates will describe.

Agencies will need to consult with trained survey statisticians to ensure that the sample size is adequate for its intended purposes. In Part B, agencies need to provide their precision requirements for the estimates they intend to produce from the survey to justify the sample size and the resulting respondent burden. Although overall national estimates are often the focus of Federal surveys, in many cases what is of greater analytic interest to the agency is either sub-national estimates or estimates for subgroups, e.g., different industries in an establishment survey or different income or education groups for a demographic survey. The precision requirements for estimates of these subgroups often drive the overall sample size that is needed, and therefore should be clearly documented in Part B of the ICR.

For illustrative purposes, Table 1 below provides a very general guide on sample sizes in the special case of a simple random sample and a survey variable that can be expressed as a percentage of the sample. The table provides 95 percent confidence intervals for different estimated percentages from the survey (shown in the first column) with different sample sizes of a simple random sample (shown on the second row across the columns). The size of the 95 percent confidence interval for each combination of survey estimates and sample sizes is shown in the body of the table. For example, if an item on a survey is selected by 50 percent of the respondents and the sample size is 400 respondents, the 95 percent confidence interval for this estimate would be 50 percent plus or minus 5.0 percent, or 45 percent to 55 percent. Values in this table are based on a simple random sample; many complex sample designs (see question #32), especially those using natural clusters, will typically require larger overall sample sizes to achieve the same level of precision.

**Table 1. Half-Width 95 percent Confidence Intervals for Estimated Values of Percentages as a Function of Sample Size (for simple random samples)**

Survey Estimate	Sample Size								
	50	100	200	300	400	500	700	1000	2000
50	14.1	10.0	7.1	5.8	5.0	4.5	3.8	3.2	2.2
60	13.9	9.8	7.0	5.7	4.9	4.4	3.7	3.1	2.2
70	13.0	9.2	6.5	5.3	4.6	4.1	3.5	2.9	2.0
80	11.3	8.0	5.7	4.6	4.0	3.6	3.0	2.5	1.8
90	8.5	6.0	4.2	3.5	3.0	2.7	2.3	1.9	1.3
92	7.7	5.4	3.8	3.1	2.7	2.4	2.0	1.7	1.2
95	6.2	4.4	3.1	2.5	2.2	1.9	1.6	1.4	1.0
98	4.0	2.8	2.0	1.6	1.4	1.3	1.1	0.9	0.6

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### **34. Can pre-existing survey panels, such as Internet panels, be used to obtain representative samples?**

Recently, some private sector firms have developed pre-recruited panels of respondents who respond to surveys on the Internet. These pre-existing panels consist of lists of potential respondents that were recruited from a variety of sources and are maintained for additional survey use. For market research, these panels have become an easy, quick, and inexpensive way to assess consumer preferences. However, use of these panels for Federal surveys that are seeking to generalize to a target population can be problematic. Often, respondents in these panels are not recruited using probability methods (see question #30), and the panels are typically simply convenience samples of persons interested in taking part in surveys on the Internet (see question #35). Because the sample is not a probability sample where each member of the target population had a known nonzero chance of selection, the results cannot be generalized to any target population using traditional statistical criteria.

Some Internet panels have been recruited from a probability-based sampling frame such as a Random Digit Dialing (RDD) sample of telephone numbers, and panel members are given Internet access as part of their participation. In this case, the Internet simply serves as the mode of data collection, not the sampling frame (see question #43). The issues of coverage and quality of the frame apply to whatever frame was used (e.g., RDD), not the Internet. However, there are also concerns about potential self-selection of respondents and low response rates in these panels (see question #72). These panels work well when samples of persons interested in taking part in surveys are needed, and the objective is not to generalize to a specific target population (e.g., pilot studies).

Agencies planning to use a pre-existing panel or Internet-based sampling frame need to justify its appropriateness for the intended use of the data in the ICR (see question #72).

### **35. What are some common nonprobability samples, and why are they used?**

Under some circumstances, agencies may consider using nonprobability or purposive samples. It is not possible to calculate a probability of selection for these kinds of samples; therefore, their use is typically limited to research or exploratory purposes. Agencies need to understand the limitations of these samples and how those limitations will affect the use of data resulting from these samples. Agencies should justify in their ICRs the rationale for choosing a particular nonprobability sample and state how they will use the data. Agencies conducting surveys that were not designed to produce valid and reliable results that can be generalized to the universe of study must clearly explain how the collection is necessary to satisfy a statutory requirement or other substantial need. Otherwise, OMB cannot approve the collection.<sup>13</sup>

*Convenience samples* are mostly drawn from units of the population of interest that are close at hand or willing to participate. In convenience samples, there is little to no effort made to ensure that the samples are representative of the population. Consequently, they are relatively inexpensive, easy to plan, and take a minimal amount of time to draw. Though results cannot be

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<sup>13</sup> 5 C.F.R. § 1320.5(d)(2)(v).

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generalized to a target population, convenience samples can be useful for pilot research studies, testing of questionnaires, and some customer satisfaction surveys. Examples of convenience samples include shoppers at a mall, truck drivers visiting a weigh station, attendees at a conference, or visitors at a web site.

*Quota samples* are samples where units are selected nonrandomly based on a quota. The quota may be defined such that the final numbers of participating units with given characteristics have the same proportion as corresponding units have in the population. While the resulting quota sample may appear to be representative of the population for a set of characteristics, there is still an element of convenience—only those units that were the most ‘available’ become part of the sample. Also, there is no controlling for additional nonrepresentativeness that may exist in the sample for variables not used to define the quotas.

*Expert choice samples* are purposive samples in which an “expert” specifically chooses sample elements with certain characteristics to mimic ‘typical’ or ‘representative’ members of the population. In addition to the inability to determine the probability of selection associated with the sampled cases, this method can also produce entirely different types of samples depending on the opinions of the experts used.

*Snowball* samples are traditionally used to sample rare populations or populations that are hard to locate. A frame or sample for the rare population is created or identified by beginning with a set of units belonging to the target population, and asking this initial set to provide information on other members of this population. These units are then contacted for information that they may have on others in the population. This method of sampling is excellent for building a frame or creating a sample based on informal social networks and is often used for research or investigative purposes. For example, testing new questions on race with individuals of a particular background (e.g., Hmong) might be accomplished by finding some initial participants at a community center providing services to Hmong patrons and then asking them to refer others with the same background. However, there is no good way to evaluate the coverage of the frame constructed in this manner, and duplications in the frame are not always evident.

*Cut-off samples* are selected by ordering the universe of potential respondents by some important characteristic and selecting the units with the greatest amount of the characteristics until some specified percentage of the universe is included in the sample. Cut-off samples are used for some economic surveys conducted by Federal agencies. See question #31 for further information about justifying the use of cutoff samples.

### *Useful Resources*

Best, S.J., Krueger, B.S. (2004). *Internet Data Collection*. Sage University Series on Quantitative Applications in the Social Sciences, 07-141. Thousand Oaks, CA: Sage.

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- Cochran, W. G. (1963). *Sampling Techniques*. New York: Wiley. (more technical)
- Cohen, J. (1988). *Statistical Power Analysis of the Behavioral Sciences*. Hillsdale, NJ: Lawrence Erlbaum.
- Hansen, M.H., Hurwitz, W. N., & Madow, W. G. (1953). *Sample Survey Methods and Theory*. New York: Wiley. (more technical)
- Kalton, G. (1976). *Introduction to Survey Sampling*. Sage University Series on Quantitative Applications in the Social Sciences, 07-035. London: Sage.
- Lee, E. S., Forthofer, R. N., and Lorimor, R.J. (1989). *Analyzing Complex Survey Data*. Sage University Series on Quantitative Applications in the Social Sciences, 07-071. London: Sage.
- Levy, P. S. and Lemeshow, S. (1999). *Sampling of Populations: Methods and Applications*. New York: Wiley.
- United States General Accounting Office (1992). *Using Statistical Sampling*, GAO/PEMD-10.1.6. Washington, DC.

## MODES OF DATA COLLECTION

The purpose of this section is to provide an overview of the different modes for survey data collection and some of the strengths and limitations of each mode. Because the choice of mode affects and is affected by many other aspects of the survey design, the choice of mode or modes should be carefully considered by agencies, and they should consult with trained survey methodologists in selecting the appropriate data collection mode or modes given the survey's purpose.

### 36. What are the different modes of survey data collection?

The mode of data collection includes the way in which respondents are contacted and how their responses are obtained. The most commonly used data collection modes are in-person (or face-to-face), telephone, mail, and web (including e-mail). In-person and telephone surveys are typically interviewer-administered, while mail and web surveys are self-administered, though technology is creating new hybrids, such as self-administered telephone surveys using touchtone data entry (TDE) or interactive voice response (IVR). Although mail, telephone, and in-person surveys were traditionally conducted with a paper and pencil questionnaire, many Federal surveys now use some form of computer-assisted interviewing (CAI). Each mode of administration may be computer assisted: Computer-Assisted Telephone Interviewing (CATI), Computer-Assisted Personal Interviewing (CAPI), and Computer-Assisted Self-Interviewing (CASI).

There are a number of advantages of CAI. It allows for more complex questionnaire designs because CAI instruments can use answers from several questions to direct the interview through different series of questions, skip particular questions, and change question wording based on previous responses. Data quality may also be improved by including range and consistency checks into the instrument to help ensure that the correct information is being entered by the respondent or the interviewer. Furthermore, for longitudinal surveys, information provided previously by the respondent may be available to reduce respondent burden and/or improve data quality. Finally, data are usually available quickly and with fewer data entry errors than data from paper instruments that require clerical check-in and keying.

There are also disadvantages associated with CAI. CAI instruments often take longer to develop and program than paper instruments and may be costly to pretest and revise. Agencies need to schedule lead time to draft specifications and author the instrument, as well as test and debug the instrument. The time and costs involved in these efforts can be considerable for complex instruments. In addition, interviewers will need training in using the instrument. Data quality may also be affected by the usability and design of the instrument, so agencies are encouraged to include usability testing as part of their pretesting (see question #22 and #49).

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### 37. What mode of data collection is appropriate for a given survey?

Each mode of data collection has inherent advantages and disadvantages, and there is no one best data collection mode for all situations. Selection of the mode requires consideration of many factors.

Specifically, agencies should consider the following statistical and nonstatistical issues when selecting a mode of collection:

#### Statistical issues in mode selection

- *Coverage*: Who in the target population may be missed in the sampling frame used for the mode? Because the mode of data collection is often intertwined with the selection or availability of a sampling frame, it has implications for how well the target population will be covered (see question #28). For example, a telephone survey would be inappropriate in terms of coverage for a study of poverty or means-tested programs where a significant portion of the target population does not have a phone or often has phone service interruptions due to nonpayment of bills.
- *Nonresponse bias*: How different are respondents expected to be from nonrespondents? Data collection modes can also affect response rates and nonresponse bias. For example, in-person surveys on average show the highest response rates, and for household surveys, telephone survey response rates have tended to be higher than mail surveys, although recent declines in telephone response rates may remove this advantage. There is also evidence that mail surveys yield higher response rates than web or e-mail surveys. Different data collection modes also have different implications for investigating potential nonresponse bias. For example, the interviewers for in-person surveys can record characteristics of the neighborhood for respondents and nonrespondents allowing a comparison of differences between these groups.
- *Measurement error*: What factors may affect the quality and completeness of responses? The choice of mode can affect the completeness of data that are collected and the extent to which there are other response effects such as social desirability bias, and response order effects. For example, the presence of an interviewer has been shown to affect reporting of sensitive behaviors such as illicit drug use.

#### Nonstatistical issues in mode selection

- *Timeliness*
- *Cost*

The following questions and answers on each mode provide some advantages and disadvantages for each mode of collection in terms of both statistical and nonstatistical issues. For clarity and simplicity, the information in the following questions and answers describes the advantages of each mode when it is the only one used. In practice, multiple modes are frequently used by agencies to overcome specific disadvantages associated with a single mode of collection (see question #38).

In considering which mode (or modes) of survey data collection is appropriate for their information collection, agencies will need to balance the advantages and disadvantages of each

## Modes of Data Collection

mode for the given purpose of the survey, the use of the data, the characteristics of the respondent population, and available resources. Agencies must justify their choice of mode of data collection in their ICRs and provide details of their data collection methods in Part B of their supporting statements.

### **38. When should agencies consider a mixed-mode approach?**

The two main reasons to consider using more than one mode of collection simultaneously are cost and response rates. The typical mixed mode approach is to use a less costly method for initial contact and a more costly mode for follow-up with nonrespondents, such as using a mail survey with telephone nonresponse follow-up or a telephone survey with an in-person nonresponse follow-up.

Using multiple modes often yields a higher response rate by offering alternative means to respond, so respondents may choose the mode that is most convenient for them; for example, some businesses may prefer to respond via the Internet rather than complete a paper questionnaire. A multimode survey can often be conducted at a lower cost than doing the entire survey using the more expensive mode. However, switching modes for a nonrandom subset of the sample (those who initially did not respond) may also introduce additional variability or bias due to mode effects. Using a mixed mode approach is best applied in situations where the trade-off in the reduction of nonresponse error compensates for any increase in response error related to mode effects. Agencies planning mixed mode collections should carefully design their survey questionnaires to minimize potential mode effects or they should consider conducting experimental studies to assess potential mode effects.

### **39. How does GPEA affect choice of modes for survey data collection?**

The Government Paperwork Elimination Act (GPEA) required agencies by October 21, 2003 to provide for the option of electronic reporting when practicable, and OMB has issued implementation guidance on this law.<sup>14</sup> Agencies are increasingly offering either computer-assisted interviewing, fax reporting, or options for filling out a survey on the web. Because many households do not have access to the Internet or computers, electronic reporting options for many household survey information collections will likely lead to more multi-mode surveys rather than replacing telephone or mail surveys completely with electronic collections; however, many business establishments may prefer an electronic option.

An electronic option should be considered for every data collection, and if electronic reporting is not offered for a survey, agencies should explain why it is not practicable for them to offer an electronic response option.

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<sup>14</sup> <http://www.whitehouse.gov/omb/fedreg/gpea2.html>.

### **40. What are the advantages and disadvantages of mail surveys?**

Mail surveys have been particularly useful for mandatory household and establishment surveys. They are most appropriate when there is a good address list for a sampling frame. For example, both the Census Bureau and the Bureau of Labor Statistics have list frames of business establishments (the Census Bureau also has the master address file for households). Other Federal agencies may have administrative records of their program participants that serve as their sampling frames. Mail surveys have relatively low cost, and self-administration of the questionnaire improves response to sensitive questions, minimizing social desirability and interviewer biases. There is also evidence that question order effects are reduced in mail survey questionnaires. In addition, visual aids can be used with this mode.

There are a number of disadvantages of mail surveys. Mail surveys frequently can suffer from low response rates, especially for household surveys; therefore, they are often used in mixed mode surveys (see question #38) with follow-ups done via telephone or in-person. Furthermore, there may be more nonresponse bias in mail surveys because the respondent can look over the entire questionnaire before deciding whether to respond or not, increasing the likelihood that the decision to respond is based on his or her values on the key variables of the survey. Mail surveys require accurate mailing addresses, a longer data collection phase than other modes (usually eight weeks or more are required from the initial mailing), and greater literacy skills on the part of respondents. Household mail surveys should generally have short, less complex questions; however, more complex questions are frequently used in mail surveys of business establishments. It is important that mail questionnaires have clear instructions, easy to follow layouts, and clear question wording because there is no interviewer present to clarify the agency's intent. The items on mail survey questionnaires are more likely to be incomplete than those on surveys that employ other modes (higher item nonresponse). Mail surveys may be completed by someone other than the sampled person, which can be problematic for household surveys that seek to randomly select one adult from among the household members. In mail surveys of business establishments, gatekeepers can prevent respondents from receiving questionnaires. For example, a secretary or administrative assistant may open all the mail for an office and may routinely throw away voluntary surveys rather than passing them on to the appropriate respondent.

### **41. What are the advantages and disadvantages of telephone interviewing?**

Telephone interviewing can provide lower costs and shorter data collection times compared to in-person interviews. Telephone coverage rates in the United States have been over 90 percent for several decades, and random-digit dialing (RDD) surveys have become very popular for a wide range of social, political, and marketing research. RDD telephone surveys have been very useful for screening large numbers of households to find rare populations. Often telephone surveys are conducted using computer assisted telephone interviewing (CATI) in large, centralized facilities that include careful supervision and monitoring of interviewers. Thus, in CATI calling centers, interviewer variance is likely to be less than for in-person interviews. Social desirability concerns may also be less than is the case for in-person surveys. Some

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technology is also being used to reduce further the role of the interviewer and allow self-administered telephone surveys using touchtone data entry (TDE) or interactive voice response (IVR). For example, short, simple surveys that require numeric responses that can be entered on the telephone key pad may be done through touch-tone data entry (TDE), and may not require an interviewer at all. TDE has worked well with ongoing, simple establishment surveys when respondents have been trained to answer this way.

There are also disadvantages to telephone interviewing. Although telephone coverage in the United States is very high, some groups, such as those with low incomes, are more likely to be excluded from the sampling frame, thereby introducing bias. Cell phones currently are not covered by existing frames, and there are some legal restrictions on calling these phones (i.e., automated dialers cannot be used). Current estimates of households with only cell phones are still small; for example, a 2004 supplement to the Current Population Survey showed that approximately 6 percent of households had cell phones but no landline phone.<sup>15</sup> However, the number of households with only mobile phones is growing and may present further coverage problems for telephone surveys. Increasing use of technologies including answering machines, voice-mail, and caller ID is making it harder to reach households, and RDD telephone survey response rates have been decreasing more rapidly than those of other modes in recent years (see question #70). RDD sampling frames have no information other than the phone number, so vendors are often used to match phone numbers to addresses and other area-level information to make it possible to mail advance letters, do in-person follow-up, or conduct non-response bias analyses (see questions #38, #70, and #71). However, match rates for phone numbers to addresses are frequently 50 percent or less when using a single vendor.

Conducting an interview over the telephone also imposes more constraints on the length of the questionnaire and complexity of the questions compared to some other modes. For example, the design of telephone surveys usually includes short questions, with a minimum number of response categories, and a relatively short interview length. Some response effects, such as question order and response order, are more likely to occur in telephone surveys than self-administered surveys. For example, respondents are more likely to select the last response option (recency effect) in a telephone survey than a mail survey. There is no ability to use a visual communication medium in telephone surveys (unless materials are mailed in advance), and it is difficult to search records or look up information during a telephone interview. In business establishments and some households, gatekeepers can prevent the interviewer from reaching the desired respondent. For example, a secretary or administrative assistant may screen all calls and not allow access to the appropriate respondent. Similarly, a spouse or parent may prevent direct access to the sample person.

Recent changes in the law related to the portability of telephone numbers are likely to have an increasing impact on telephone surveys and make it more difficult and expensive to conduct them in the short term. The longer term implications are not yet clear.

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15 Tucker, N. C., Brick, J. M., & Meekins, B. (2005). Household telephone service and usage patterns in the U.S. in 2004: Implications for telephone samples. Paper presented at the 98<sup>th</sup> Meeting of the Committee on National Statistics, National Academy of Sciences, Washington, DC.

### 42. What are the advantages and disadvantages of in-person interviewing?

Area probability sampling and in-person interviewing provide the best coverage for household surveys, and are often considered the gold standard. Given adequate time and numbers of contact attempts, in-person interviews typically have the highest response rates. In-person interviews also allow the use of visual tools such as flash cards and calendars, and permit longer, more complex interviews to take place. In addition, the interviewer can make observations about the neighborhood of the household, or in establishment surveys, facility characteristics can be documented.

The primary disadvantage of in-person interviews is the high cost associated with sending an interviewer to households or business establishments to collect the data. Also, the data collection phase of the survey may take longer (or require a larger interviewing force) compared to other modes of collection. In-person interviewers may also face barriers in completing their assignments because some sampled addresses may be less accessible to interviewers, e.g., high rise buildings and gated communities, or be in high crime areas with greater risk to interviewer safety. Because in-person interviewers typically operate alone with much less supervision and control than is possible in more centralized telephone facilities, there may be greater interviewer variance in in-person surveys, and there are also greater opportunities for interviewer falsification of some survey items or entire interviews. Survey organizations typically conduct some reinterviews or independent verification of interviewers' work to detect and minimize falsification.

In-person interviews may not be the best mode of data collection when respondents in a business must refer to detailed records that take time to find, or when there are concerns about potential interviewer or social desirability bias. However, technology has been used to address concerns about social desirability with surveys on sensitive topics, such as illicit drug use. Portions of the in-person interview can be completed privately by respondents using an audio computer assisted self-interview (ACASI) instrument that "reads" the question to the respondent through headphones to increase privacy as well as reduce bias due to literacy or English proficiency problems. Respondents can listen to questions and look at the instrument on a computer screen at the same time and respond in private. Research has demonstrated that respondents report more incidents of drug use, sexual activities, and other sensitive behaviors using this mode of collection, which is presumed to reflect more accurate reporting.<sup>16</sup>

### 43. What are the advantages and disadvantages of using Internet surveys?

To comply with the Government Paperwork Elimination Act (GPEA), agencies are increasingly offering the opportunity to respond to surveys, especially surveys of business establishments, via electronic means, including the Internet (see question #39). When e-mail addresses are

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<sup>16</sup> See Turner, C., Forsyth, B., O'Reilly, J., Cooley, P., Smith, T., Rogers, S., and Miller, H. (1998). "Automated self-interviewing and the survey measurement of sensitive behaviors," in Couper, M., Baker, R., Bethlehem, J., Clark, C., Martin, J., Nicholls II, W., and O'Reilly, J. (eds.), *Computer assisted survey information collection*, pp. 455-473, New York: Wiley.

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available, using the Internet can be a very inexpensive way to contact and remind respondents about completing the survey.

Similar to mail surveys, simple Internet surveys can be low cost, but data collection can be faster since reminders and responses can be sent and received without delay. The Internet offers the potential for presenting visual aids or even multi-media presentations of information to respondents, and self-administration of the questionnaire increases response to sensitive questions, while minimizing social desirability and interviewer biases. Like other modes that use computer administration, data processing time and cost may be reduced compared to paper and pencil surveys because data can be uploaded or captured directly into databases without additional keying. Data quality may also be higher because the instrument can contain built-in edits and prompts. However, more complex instruments may be costly to pretest and revise.

There are a number of disadvantages to Internet surveys. As noted in question #29, a key problem is that there is no sampling frame of persons or establishments with Internet access or means of randomly generating e-mail addresses to obtain a random sample of users. Low household coverage rates for Internet access as well as systematic differences between households with access and those without access means that using the Internet as the sole mode for population surveys is problematic. If an agency has a high quality sampling frame for its target population and knows the members of the target population have Internet access, then the agency could consider an Internet-only collection.

There are other disadvantages or limitations to Internet surveys. Mail surveys (on paper) typically achieve higher response rates than web surveys or e-mail surveys. Respondents need to be "computer literate" and have access to the Internet. Respondents may also have a variety of hardware and software configurations that may cause differences in how they see and interact with the survey. Therefore, usability testing should be an important part of the agency's development and testing of the questionnaire. Respondents may have concerns about confidentiality and, therefore, be reluctant to provide some information over the Internet. Finally, there is little control or knowledge about whether the selected respondent is the actual survey respondent.

#### **44. How does the data collection mode affect questionnaire design?**

Each mode of data collection has implications for different issues in questionnaire design, including skip patterns, response options, and question wording. Studies that use multiple modes of collection also need to ensure that the questionnaire can be effectively administered in each mode and any response effects due to the mode of administration are minimized.

For example, skip patterns can be programmed easily into a computer assisted interview (CAI) instrument, but only limited skip patterns should be used in paper instruments because errors are more likely to occur when respondents or interviewers are asked to follow skip patterns. Self-administered interviews can have more response options than interviewer-administered interviews (especially telephone surveys) because the respondent can easily go back over the list before selecting a response and can more easily change a response if an inaccurate response has



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been entered. Also, visual aids cannot be used to help the respondent understand the question or the response options in a telephone interview. Complex and long sentences should generally be avoided in survey questions, but they are particularly difficult to understand over the telephone.

It is important that agencies test their survey questionnaires in all modes that they plan to use to collect information for the full-scale survey (see section on Questionnaire Design). Usability testing of computer survey instruments should also be included as part of questionnaire pretesting to identify problems either interviewers or respondents may have with the instrument (see question #48).

### *Useful Resources*

Couper, M. P., Baker, R., Bethlehem, J., Clark, C. Z. F., Martin, J., Nicholls, W. L., and O'Reilly, J. M. (1998). *Computer Assisted Survey Information Collection*. New York: Wiley.

Dillman, D. A. (2000). *Mail and Internet Surveys: The Tailored Design Method (2<sup>nd</sup> edition)*. New York: Wiley.

Groves, R. M. (1989). *Survey Errors and Survey Costs*. New York: Wiley.

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## QUESTIONNAIRE DESIGN AND DEVELOPMENT

The focus of this section is to provide a brief overview of the methods for developing and testing questionnaire items and clarify the requirements for conducting these activities and obtaining OMB approval under the PRA. Agencies should consult with survey methodologists and cognitive psychologists trained in these methods to help design and test questionnaires prior to survey administration.

### **45. What should agencies do when developing new questionnaires or questionnaire items?**

Agencies need to use questions that will elicit the appropriate information from respondents to fill the agencies' data needs. Agencies should determine the different topics, estimated survey length, and mode of survey administration prior to drafting the actual survey questions. Questionnaire designers should inspect other instruments that have collected data on similar topics and must also adhere to OMB classifications and standards for particular data elements, such as data on race and ethnicity, and industry and occupation (see question #47, #52, and #55). If new questions are needed, agencies should use techniques to test the questions that will ensure that the questions they develop provide the information they need and have adequate statistical reliability (see question #48).

Agencies should clearly document in their ICRs the source for questions that were taken from other surveys and identify new questions the agency has developed and tested on its own. For ongoing surveys, any changes to the questionnaire should be clearly noted and described. The plan for testing or the results from the testing should also be described in Part B of the ICR.

### **46. Why should agencies consider using questions previously used by other agencies or researchers?**

There are many surveys conducted by government agencies or private sector entities that may include questions that will effectively capture some of the data needed by an agency. Questions used in other major surveys are more likely to have known characteristics of reliability and validity, allowing the agency to take advantage of research data collected and analyzed by other agencies. However, the questions may have been asked in a different context or be more detailed than needed. Agencies will need to consider these factors when looking at other agencies' questions.

Agencies with data needs outside their particular subject matter specialty should consult with the statistical agencies that are most likely to collect the type of data needed as well as with agencies with expertise in the area. For example, if a health survey needs employment data, the agency should collaborate with the Bureau of Labor Statistics or the Census Bureau, or if an education survey needs disability questions, the agency should consult with the National Center for Health Statistics, the Census Bureau, and the Social Security Administration. Many Federal agencies currently post survey questionnaires on their web sites, which facilitates the sharing of questions.

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## Questionnaire Design

Interagency groups are occasionally formed to develop standardized questions on subjects that cut across many agencies. For example, an Interagency Committee on Measures of Educational Attainment has reviewed and recommended a set of standard categories for educational attainment.<sup>17</sup> More recently, an interagency committee on the American Community Survey has coordinated across agencies to share needs for information and to test alternative questions.<sup>18</sup>

On the other hand, asking previously used questions does not mean that the survey requires no pretesting. There is substantial evidence that the context of the question affects its performance; hence, pretesting is always needed.

### **47. When is it acceptable to duplicate questions used on other surveys?**

In designing their information collections, agencies are expected to review existing studies to determine whether the information the agency needs exists elsewhere. Agencies are to describe the existing information in their ICRs and show specifically why the information already available cannot be used or modified for use. If the existing information will not fulfill the agency's needs, the agency should take advantage of the developmental work from existing collections to inform the design of its information collection.

Using questions from well-established national data collections such as the Current Population Survey, the Decennial Census, the Medical Expenditure Panel Survey, the National Crime Victimization Survey, or the National Health Interview Survey helps assure comparability of results. Reasons for using the same questions include benchmarking the responses of one survey to another, or obtaining comparable information from a different population or from the same population at a different time period. In their ICRs, agencies should clearly document the source for questions that were taken from other surveys.

### **48. What techniques can be used to develop new questions?<sup>19</sup>**

Developing effective new questions is often more difficult than most people anticipate, especially if the questionnaire designer is not experienced with survey measurement. Agencies immersed in a topic are often surprised how little respondents know and care about the topic. Agencies may assume knowledge and points of view that respondents may not have. For example, respondents need to know what the intention of the question is so that they can answer it appropriately, and they may have difficulty understanding questions that use technical or unfamiliar terminology. Questions need to be developed so that respondents can answer the question and provide useful data for the agency. The following survey research methods can be used to develop and pretest new survey questions:

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<sup>17</sup> Federal Interagency Committee on Measures of Educational Attainment (2000). Federal measures of educational attainment: Report and Recommendations.

<sup>18</sup> See *Statistical Programs of the U.S. Government FY 2005* at [www.whitehouse.gov/omb](http://www.whitehouse.gov/omb); Go to Statistical Programs and Standards.

<sup>19</sup> This section is based on *Census Bureau Standards: Pretesting Questionnaires and Related Materials for Surveys and Censuses*, U.S Bureau of the Census, July 25, 2003.

## Questionnaire Design

### *Focus Groups*

Focus groups are often a useful first step in questionnaire development. Typically, a moderator will guide participants in a focus group discussion on the topics related to the subject area of the survey. Participants are encouraged to talk using their own terms and experiences and react to what others have said. In fact, it is often the interaction among participants that provides the most useful insights. Agencies can learn the language that respondents use when discussing the topic and integrate more common terms and phrases into the design of survey questions.

Focus groups often serve as a way to test the ease of completing a self-administered questionnaire. After completing the questionnaire individually, the group discusses the experience with overall direction from the moderator. This provides information about the appearance and formatting of the questionnaire in addition to content problems.

Finally, focus groups can be very effective in the ultimate design of surveys that ask about sensitive topics. Asking sensitive questions in a survey environment can be especially awkward, and discussions among focus group participants can provide useful information on appropriate wording, terms, and phrases that respondents will not find offensive.

### *Pre-Survey Design Visits for Establishment Surveys*

Visiting a respondent's place of business to review plans for a new survey or major changes in an existing survey can be very useful in improving the final design of a questionnaire. These visits generally involve discussions with a potential respondent on the following topics:

- Does the respondent keep the data that the agency wants?
- How closely does the establishment's record keeping correspond to the required survey data?
- How compatible are these record keeping systems with the agency's collection instruments?
- How difficult will it be to provide the data in the time period needed by the agency?

These visits can help in the preliminary stages of survey development to ensure that the data collectors will design a survey that respondents can complete and that will obtain useful and usable information that corresponds to the agency's data needs.

### *Cognitive Interviews*

The goal of cognitive interviews is to gain insight into how respondents think about and interpret the survey questions. In classical cognitive interviews, this is done by asking respondents to think aloud as they answer questions (concurrent think aloud) and to identify anything that confuses them. Respondents are often asked to paraphrase a question so that researchers learn whether a respondent understands the question and interprets it as intended. If the same paraphrased wording is used by several respondents, it might suggest a better wording of the question. Cognitive interviews can also include in-depth retrospective debriefings during which the interviewer asks a series of probes after the completion of the survey.

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A key benefit of using cognitive interview methods is that researchers can quickly diagnose problems, revise question wording to solve problems and conduct additional interviews to see if the new questions are less problematic. The most effective process is to plan iterative rounds, first identifying problems, then making changes to items, and then trying out those changes in successive rounds of cognitive interviews.

### **49. What role does pretesting play in questionnaire development?**

When an agency has developed new survey questions or is pulling questions from different sources into a new questionnaire, it is important to test how respondents will react to the individual items and the questionnaire as a whole, so a variety of methods are often used to test the questionnaire. In a pilot test, the survey (or some portion of the survey) is administered to a sample of respondents similar to those in the main study using procedures planned for the full survey. Although this is often the only type of testing done prior to data collection, this type of pretest is not beneficial for question development unless there is a respondent and/or interviewer debriefing as part of the process or the data from the pretest are reviewed for questions with high item nonresponse.

Pretests may aid in question development by using one or more of the following methods:

- respondent debriefing
- interviewer debriefing
- split panel designs
- behavior coding
- data reviews

#### *Respondent Debriefing*

Respondent debriefing typically consists of follow-up questions at the end of an interview that are designed to obtain quantitative information about respondents' interpretations of survey questions. These questions help researchers determine whether concepts and questions were understood by respondents in the same way that the survey designers intended. In an interviewer-administered survey, the debriefing questions may be followed by a discussion between respondent and interviewer, to further probe the respondent's reaction to and comprehension of the questions in the survey instrument.

#### *Interviewer Debriefing*

Evaluating pilot tests of demographic surveys conducted by personal interview has often centered on structured debriefing of field interviewers at the end of the test. Interviewers are trained prior to the survey and are asked to carefully record problems they encounter during the interview. Typically, interviewers know in advance that they will be participating in debriefing discussions at the end of the pilot test.

Although some valuable insights can be obtained from interviewers, it is important to recognize that they may not always be accurate reporters of certain types of questionnaire problems or may be conveying their opinions more than respondents' problems. For example, when interviewers report a problem, researchers cannot assess whether it was troublesome for one respondent or for

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many, or whether the problem reflects the interviewer's own preference or understanding of the question rather than respondent confusion. In addition, experienced interviewers sometimes change the wording of problem questions as a matter of course to make them work, and may not even realize they have done so.

### *Split Panel Designs*

In a split panel field test, respondents are randomly assigned into different groups to receive different versions of the questions. This is a very useful method for comparing two (or more) different versions of the same question or testing question-order effects because the responses can be compared between the different panels to examine the potential impact of the change on survey estimates.

### *Behavior Coding*

Behavior coding focuses on the overt behavior of interviewers and respondents as they interact during the survey interview. Although behavior coding can be done by an evaluator in real time during the interaction between the interviewer and respondent, frequently the interaction is recorded and then coded by one or more evaluators. There are a variety of coding systems that reflect errors made by the interviewer and difficulties the respondent has with the questions. Because it is a quantitative method, a relatively large number of interviews need to be coded and statistical summaries created to identify problematic questions.

### *Data Review*

A data review of the pilot test results is conducted to identify questions that have higher than expected or desired levels of non-response (either don't know or refusals). High item nonresponse in a pilot test could indicate poor question wording, generally unavailable data, or non-applicability of the question to a significant subset of respondents. Because data review involves examination of quantitative results from the pilot test, larger numbers of respondents may be needed with more complex instruments to ensure that an adequate number of respondents are asked each question.

## **50. What do agencies need to do to obtain clearance for pretesting activities?**

Pretesting activities, including cognitive interviews and focus groups, must comply with requirements of the PRA, which are detailed in 5 C.F.R. § 1320. Although agencies do not need OMB approval to test draft questionnaires when they are administered to fewer than 10 persons, agencies must obtain approval to conduct iterative testing of the same questions even with minor modifications, on a total of 10 or more persons.<sup>20</sup> Thus, it is not acceptable for an agency to test a questionnaire on seven individuals, make minor format and grammar changes, and test those revised questions on another seven people without OMB approval. Focus groups are also subject to the PRA (see question #7). Because most meaningful pretesting, especially iterative rounds of testing on different versions of questions, will require more than nine persons, agencies will need to seek clearance to conduct their pretesting.

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<sup>20</sup> Note, however, that if fewer than 10 persons or entities make up a substantial proportion of the entire population, e.g., car manufacturers, the collection may also be subject to the PRA.

Agencies that plan to do pretesting activities, including cognitive interviews and focus groups, can obtain OMB approval in one of two ways. First, the pretesting activities can be described and submitted as part of the ICR for the final survey. When this approach is used, OMB approval usually includes a term of clearance that the agency must report to OMB the results of the pretesting and any changes to the survey instrument that were made based on the findings. Alternatively, the agency can submit a separate ICR just for the pretesting activities, and later submit an ICR for the final survey that reflects the results of the pretest. Agencies usually do the latter when the pretest involves a design that is complex, includes large numbers of respondents, or has a relatively high response burden. Agencies also should submit the pretest separately from the full-scale collection when little has been decided about the design of the final survey when the pretesting is planned.

### 51. What is a generic clearance for pretesting activities?

Agencies that regularly do pretesting and development work for multiple surveys have found it beneficial to obtain a generic clearance specifically for these kinds of studies. Once the overall generic clearance is obtained on the pretesting activities and methods that will be used (e.g., cognitive interviews, focus groups, respondent debriefings, etc.) through the normal clearance process, agencies can submit abbreviated collection requests on the specific questions to be tested and obtain expedited OMB review (often within 10 working days) of the specific study, which can greatly facilitate ongoing and iterative rounds of testing. For example, cognitive laboratories at the Bureau of Labor Statistics, the Bureau of the Census, and the National Center for Health Statistics have these clearances.

The primary justification for having a generic clearance for pretesting is that agencies know in advance that methodological research is needed, but they cannot anticipate the specific kinds of tests or methods that will be used. Generic clearances provide a mechanism for agencies to quickly test and implement new survey questions that often arise to address policy issues or emerging programmatic needs. The generic clearance should only be used in a well-defined and structured context, such as methodological testing. It is not appropriate for an agency to use a generic clearance as a means to bypass the requirements of the PRA to conduct a variety of information collections. Agencies are encouraged to consult with their OMB desk officers before submitting a generic clearance to determine whether their plans are appropriate for this type of clearance (see also question #8).

### *Useful Resources*

Bradburn, N.M., Sudman, S., & Wansink, B. (2004). *Asking Questions: The Definitive Guide to Questionnaire Design -- For Market Research, Political Polls, and Social and Health Questionnaires*, Revised Edition. San Francisco: Jossey-Bass.

Converse, J. & Presser, S. (1986). *Survey Questions: Handcrafting the Standardized Questionnaire*. Thousand Oaks, CA: Sage.

## Questionnaire Design

- Presser, S., Rothgeb, J., Couper, M.P., Lessler, J.T., Martin, E., Martin, J., & Singer, E. (2004). *Methods for Testing and Evaluating Survey Questionnaires*. Hoboken, NJ: Wiley.
- Sirken, M. G., Herrmann, D. J., Schechter, S., Schwarz, N., Tanur, J. M., and Tourangeau, R. (1999). *Cognition and Survey Research*. New York: Wiley.
- U.S. Bureau of the Census (July 25, 2003). *Census Bureau Standards: Pretesting Questionnaires and Related Materials for Surveys and Censuses*. Washington, DC: U.S. Bureau of the Census.
- Willis, G. B. (2005). *Cognitive Interviewing: A Tool for Improving Questionnaire Design*. Thousand Oaks, CA: Sage.



## STATISTICAL STANDARDS

The purpose of this section is to provide an introduction to the statistical standards that OMB has issued and that agencies must utilize if the standards apply to the information the agency is collecting. In section A.7 of the supporting statement, agencies certify in their ICRs that they are not using a statistical classification not approved by OMB, or they must request a waiver of the applicable OMB standard with a justification for not using the approved classification.

### 52. What are OMB statistical classifications, definitions, and data sources?

Under the PRA, OMB is charged with developing and overseeing the implementation of government-wide policies, principles, standards, and guidelines concerning statistical collection procedures and methods. Statistical classifications, definitions, and data sources encourage uniformity in data collection, analysis, and dissemination. They are designed and managed to support the full range of research and analytical objectives in a specific subject matter area rather than the needs of a specific program or a specific study. The general criteria OMB has for evaluating the standards have been relevancy, accuracy, currency, efficiency, minimization of burden, and stability ("continuity" and/or "comparability"). There is a clear trade-off between currency and stability; typically, revisions to these standards have been no more frequent than once every five years or longer. However, annual updates of statistical areas are issued based on Census Bureau population estimates.

OMB currently has a number of different statistical classifications for demographic, economic, and geographic data, including data on race and ethnicity, industries, occupations, and statistical areas described in more detail in the following questions. In addition, there are some standard definitions of economic concepts for statistical purposes, and standard sources for Federal data for some demographic and economic statistics.

### 53. What statistical classifications have been adopted by OMB?

Standard reporting categories are necessary to ensure comparability across Federal Government statistical data. The statistical classifications are issued pursuant to OMB's authority to promulgate standards and guidelines for Federal statistics. These standards apply to all data collected for statistical use by Federal agencies and their contractors. Some standards also apply to data collected for administrative use.

There are currently six statistical classifications adopted by OMB:

- Federal Administrative Regions
- Metropolitan and Micropolitan Statistical Areas
- North American Industry Classification System (formerly the Standard Industrial Classification of Establishments)
- Standard Occupational Classification
- Data on Race and Ethnicity
- Fields of Science and Engineering (R&D)

## Statistical Standards

Classifications that have been updated after 1980 are available at [www.whitehouse.gov/omb](http://www.whitehouse.gov/omb) (Go to Statistical Programs and Standards). Tables 5 and 6 provide a brief summary of the statistical and administrative uses of these standards, and conditions under which there may be exceptions to their use. Agencies must justify in their ICRs the use of statistical classifications that differ from those approved by OMB.<sup>21</sup>

**Table 5. Brief Summary of Statistical Classifications' Required Uses and Exceptions**

Classification	Required for Statistical Use	Required for Administrative Use	Exceptions	Last Updated <sup>6</sup>
Federal Administrative Regions	Recommended	Yes	1,2	1978
Metropolitan and Micropolitan areas	Yes	No	3,2	December 27, 2000 <sup>22</sup>
North American Industry Classification System	Yes	No	3	April 20, 2000 <sup>23</sup>
Standard Occupational Classification	Yes	No	3	September 30, 1999 <sup>24</sup>
Data on Race and Ethnicity	Yes	Yes, 4		October 30, 1997 <sup>25</sup>
Fields of Science and Engineering	Yes	No	5	1978

**Notes:**

1. Exceptions have been recognized for regions defined and widely used prior to the standard, such as Census regions.
2. There are other stable, widely-used geographic classifications such as Census regions and districts, USPS ZIP code areas, and political (state and county) boundaries.
3. A notice and comment process consistent with the Administrative Procedure Act is usually required if an agency proposes using or modifying the statistical definitions for program administrative purposes.
4. Required for administrative reporting and record keeping.
5. Compatible classifications of educational curricula are permitted.
6. Standards that have not been updated were last issued in the U.S. Department of Commerce *Statistical Policy Handbook* (1978), when the statistical policy authority was the responsibility of that Department (1977-1981).

<sup>21</sup> 5 C.F.R. § 1320.5(d)(2)(vi).

<sup>22</sup> *Federal Register* 65:82228-82238.

<sup>23</sup> *Federal Register* 65:21242-21282.

<sup>24</sup> *Federal Register* 64:53135-53163.

<sup>25</sup> *Federal Register* 62:58781-58790.

**54. What standard definitions and data sources have been adopted by OMB?**

Statistical definitions are provided for two economic concepts:

- Poverty (used to monitor changes in the number of persons and families in poverty and their characteristics over time), and
- Payroll Periods for Employment Reports (used to standardize reference periods).

Standard sources for Federal data are provided for some economic and demographic statistics. There are currently standard statistical data sources for:

- Labor Force and Unemployment Data, (Bureau of Labor Statistics), and
- Population Data (the Decennial Censuses and the Census Bureau’s intercensal estimates)

**Table 6. Brief Summary of Standard Definitions and Data Sources’ Required Uses and Exceptions.**

Standard	Required for Statistical Use	Required for Administrative Use	Last Updated <sup>1</sup>
Definition of Poverty	Yes	No	1978 <sup>2</sup>
Definition of Payroll Periods for Employment Reports	Yes	No	1978
Labor Force and Unemployment Data	Yes	No	1978
Population Data	Yes	Yes <sup>3</sup>	1978

Notes:

1. Standards that have not been updated were last issued in the U.S. Department of Commerce *Statistical Policy Handbook* (1978), when the statistical policy authority was the responsibility of that Department (1977-1981).
2. Although the official definition has not been changed, several experimental measures are being developed and tracked over time.
3. This standard has been incorporated into several statutes.

**55. What are the requirements for collecting individual data on race and ethnicity?**

The most commonly used OMB statistical classification for population-based surveys concerns data on race and ethnicity. The OMB standards provide *how* agencies must collect data on race and ethnicity if they are collecting this information—the standards do not require agencies to gather data on race and ethnicity. Most, if not all, of the population-based surveys or censuses have now implemented the 1997 standards for data on race and ethnicity.

The OMB standards for data on race and ethnicity provide a minimum set of two categories for data on ethnicity:

- Hispanic or Latino and
- Not Hispanic or Latino,

## Statistical Standards

and five categories for data on race collected from individuals:

- American Indian or Alaska Native,
- Asian,
- Black or African American,
- Native Hawaiian or Other Pacific Islander, and
- White.

Note: “other race” is not a response category.

Respondents are to be offered the option of selecting one or more racial designations. Based on research findings, the recommended forms for the instruction are *Mark one or more*, *Select one or more*, or *Choose one or more* (not check all that apply).

The mode of administration should be taken into account when designing the exact wording of the question. For example, face-to-face surveys permit the use of flashcards with a listing of the racial categories, whereas a telephone administration must rely on the interviewer reading each of the categories. Examples of questions for different modes are provided in the *Provisional Guidance on the Implementation of the 1997 Standards for Federal Data on Race and Ethnicity*.<sup>26</sup>

The standards permit the collection of greater detail; however, the additional categories must be organized in such a way that they can be aggregated into these minimum categories for data on race and ethnicity.

Self-reporting or self-identification using separate questions (the two-question format) for race and ethnicity is the preferred method for collecting the data; note that the question on ethnicity should precede the question on race.

If self-reporting is not practicable or feasible, for example, when identification is done by funeral personnel, observer identification may be used. The use of the two-question format is strongly encouraged even when observer identification is used.

All information collections that include data on race and ethnicity were to be in compliance with the 1997 standards by no later than January 1, 2003. If an agency believes the standard categories are inappropriate, the agency must request a specific variance from OMB. Further information is available on the OMB web site, [www.whitehouse.gov/omb/](http://www.whitehouse.gov/omb/) under “Statistical Programs and Standards.”

### ***Useful Resources***

Links to copies of the *Federal Register* notices for the updated standards are available on the OMB web site, [www.whitehouse.gov/omb/](http://www.whitehouse.gov/omb/), Go to Statistical Programs and Standards.

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<sup>26</sup> Available on the OMB website, [www.whitehouse.gov/omb/](http://www.whitehouse.gov/omb/); Go to “Statistical Programs and Standards”

## INFORMING RESPONDENTS ABOUT THEIR PARTICIPATION AND THE CONFIDENTIALITY OF THEIR DATA

The purpose of this section is to provide a brief overview of the requirements for informing respondents about their participation in Federal surveys. One piece of information that can be very important to respondents is whether the Federal agency will keep their information confidential and use it only for statistical purposes. The statutory authority for such promises is also covered, as well as the requirements for documenting this authority in agency ICRs.

### 56. What should respondents be told about their participation in an information collection?

The Paperwork Reduction Act (PRA) requires that agencies provide certain information to respondents to help them understand why they are being asked to respond, how they are supposed to respond, and the effects the collection of information may have on them.<sup>27</sup> Within an agency, the Chief Information Officer or other designated official is responsible for ensuring that each collection of information informs and provides reasonable notice to respondents about the purpose of the study. Assuming that the basic information called for is provided, an agency can adjust the amount of detail provided depending on the scope, importance, and nature of the collection of information. For example, a brief telephone survey may call for less detail than a highly burdensome or personally intrusive written questionnaire. The following basic information must be provided to respondents:<sup>28</sup>

- The reasons the information is to be collected;<sup>29</sup>
- The way the information will be used to further agency purposes and serve agency needs;<sup>30</sup>
- An estimate of the average burden of the collection and whom to contact about the estimate;<sup>31</sup>
- Whether responses to the collection of information are voluntary or mandatory, or required to obtain a benefit;<sup>32</sup>
- The nature and extent of confidentiality to be provided, if any;<sup>33</sup>
- The duration of respondents' expected involvement (e.g., if this is a longitudinal survey, they should be informed that they will be contacted in the future); and
- If the agency is collecting "sensitive information," respondents should be informed about what type(s) of sensitive information will be requested.

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27 44 U.S.C. § 3506(c)(1)(B)(iii).

28 5 C.F.R. § 1320.8(b)(3).

29 44 U.S.C. § 3506(c)(1)(B)(iii)(I); 5 C.F.R. § 1320.8(b)(3)(i).

30 44 U.S.C. § 3506(c)(1)(B)(iii)(II); 5 C.F.R. § 1320.8(b)(3)(ii).

31 44 U.S.C. § 3506(c)(1)(B)(iii)(III); 5 C.F.R. § 1320.8(b)(3)(iii).

32 44 U.S.C. § 3506(c)(1)(B)(iii)(IV); 5 C.F.R. § 1320.8(b)(3)(iv).

33 5 C.F.R. § 1320.8(b)(3)(v). This provision was included in the regulation as a necessary component of telling the respondent of "the way such information is to be used" (44 U.S.C. § 3506(c)(1)(B)(iii)(II); see 5 C.F.R. § 1320.8(b)(3)(ii)).

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Agencies that conduct research studies involving human subjects may also be required by Institutional Review Boards (IRBs) to provide additional information such as informed consent statements that are signed by the respondent. Typically, statistical surveys do not require formal consent forms.

### **57. What is a pledge of confidentiality and how should a pledge of confidentiality be made to respondents?**

In the context of collecting data for statistical and research purposes,<sup>34</sup> an agency pledge of confidentiality "refers broadly to a quality or condition accorded to information as an obligation not to transmit that information to an unauthorized party."<sup>35</sup> Most important is that the identity of respondents not be revealed, either deliberately or inadvertently, as part of data processing and dissemination. Respondents are more likely to provide information (and in the case of "sensitive topics," the correct information) when they know the data that they provide will be kept confidential by the collecting agency. However, confidentiality is only meaningful when the agency is able to deliver the promised protection to the respondent, that is, "the data gatherer must have the will, technical ability, and moral and legal authority to protect the data."<sup>36</sup>

Respondents may be given information on confidentiality in a number of different formats, depending on the mode of data collection. For a mail survey, the information is provided either in a cover letter or in a statement printed on the questionnaire. In telephone surveys, interviewers typically include a few summary sentences to potential respondents, and may refer to an advance letter that was sent. For surveys conducted by in-person interviewers, an introductory letter is usually mailed in advance or presented to the respondent. Also, an agency might provide its interviewers with a fact sheet containing answers to "frequently asked questions" or a reference to a web site or toll free number. In short, the mode of data collection determines how best to communicate the pledge of confidentiality.

Informed consent and pledges of confidentiality should be accurate and use words that are easy for the respondents to understand, taking into account their level of education. For example, a consent form for a survey of adults who have not completed high school should be composed at a basic reading level. To help ensure that respondents will understand a consent statement or confidentiality pledge, agencies should take several steps before sending a survey into the field. For example, an agency should pretest its forms, cover letters, consent statements, etc. using methods similar to those for developing and testing the survey questionnaire (see question #48).

All information collection materials such as consent forms, brochures explaining the purpose of the study and the use of the data, and so forth must be included in the ICR package submitted to

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34 Confidentiality means different things and depends on the context. For example, in the classification of national security information, "confidential" is one of three classification levels, the other two being "secret" and "top secret". In such a context, "confidential" is applied to information, the unauthorized disclosure of which reasonably could be expected to cause damage to the national security that the original classification authority is able to identify or describe" (White House: Executive Order 12958, Part 1, Section 1.3(3); April 17, 1995). The discussion in this document relates to confidential *statistical* information.

35 *Private Lives and Public Policies*, p. 22.

36 *Private Lives and Public Policies*, p. 23.

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OMB. If an agency pledges confidentiality to respondents, it must also cite the statutory authority it has to protect the confidentiality of the information in its ICR (see question #58).

**58. What legal authority does an agency have to protect the confidentiality of information it is collecting?**

Before making a pledge of confidentiality, an agency must know whether or not it can protect the information. Some statistical agencies have specific legal authority to protect the confidentiality of the data they collect (e.g., the Bureau of the Census, the Bureau of Economic Analysis, the National Center for Health Statistics, and the Science Resources Statistics Division of the National Science Foundation). When agencies with statutory protection pledge confidentiality, the data cannot be used for nonstatistical "administrative purposes." For example, data collected by the Bureau of the Census are immune from legal process and cannot be admitted as evidence or used for any purpose in any action, suit, or other judicial or administrative proceeding.<sup>37</sup>

For surveys conducted by contractors, agencies may also be able to protect the confidentiality of responses by including such protection in the terms of the contract signed by the vendor (see question #60).

Agencies need to include in their ICRs all statements and pledges of confidentiality they are making to respondents, and they need to cite the statutory authority they have for those pledges and statements. Agencies cannot make a promise of confidentiality that they do not have statutory authority to make.

**59. What is the Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA)?**

Recent legislation has provided broad protection to information gathered solely for statistical purposes under a pledge of confidentiality. The Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA)<sup>38</sup> provides uniform protection to data gathered under a pledge of confidentiality that will be used exclusively for statistical purposes. A statistical purpose is defined as the description, estimation, or analysis of the characteristics of groups, without identifying the individuals or organizations that comprise such groups.<sup>39</sup> Provided that the requirements for CIPSEA are met, this law can be used by any Federal agency to protect the statistical data it collects under a pledge of confidentiality alone or in addition to the agency's existing statutory authority. This law prohibits disclosure of confidential statistical data and any nonstatistical uses of the data. Penalties for violations are a class E felony, punishable by up to five years in prison or a fine of \$250,000 or both.

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37 13 U.S.C. § 9(a)(3).

38 Pub. L. No. 107-347, title V.

39 Pub. L. No. 107-347, Section 502(9)(A).

CIPSEA imposes strict requirements on agencies to fulfill the pledge of confidentiality. Agencies planning to use CIPSEA should consult with OMB to obtain guidance on all of the requirements, including the CIPSEA pledge, data security, use of agents, etc.<sup>40</sup>

**60. If an agency does not collect data under CIPSEA, how can it protect the confidentiality of the data?**

CIPSEA cannot be used to protect data if an agency plans to use the data for nonstatistical purposes, which include the use of information in identifiable form for anything other than a statistical purpose, such as any administrative, regulatory, law enforcement, adjudicative, or other purpose that affects the rights, privileges, or benefits of a particular identifiable respondent.<sup>41</sup> However, the agency may be able to use other legal authority to protect the confidentiality of the data it has gathered. Other general Federal Government statutes that affect the confidentiality of information include the Privacy Act of 1974 and the Freedom of Information Act (FOIA). The Privacy Act can be useful in helping to ensure the confidentiality of information collected about private individuals.

The Freedom of Information Act establishes the public's right of access to Federal records. However, FOIA does have nine exemptions allowing agencies to withhold certain types of information from release. A key FOIA exemption (b)(4)<sup>42</sup> allows an agency to withhold information when public release would cause substantial competitive harm. This exemption is useful when collecting proprietary information from businesses or other organizations that might be harmed if the information were publicly released. Agencies have also relied upon the Privacy Act and FOIA in some circumstances to prevent the release of information that was collected primarily for statistical and research purposes.

Agencies have also used contracts with data collection contractors to protect the confidentiality of their data. Agencies can specify in contracts that only aggregate results from the survey can be given to the sponsoring agency, and that the agency does not own and cannot receive identifiable microdata. This kind of third-party collection may also increase participation from respondents who might be hesitant to provide some kinds of information directly to an agency. For example, prior to CIPSEA, the Energy Information Administration used this kind of arrangement for the household survey on Residential Energy Consumption because the agency had no statutory authority to protect this information from release. This kind of arrangement can limit the kinds of analyses the agency can do, but may be necessary to protect the confidentiality of respondent data.

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40 Please contact the Statistical and Science Policy Branch at 202-395-3093.

41 Pub. L. No. 107-347, Section 502(5).

42 5 U.S.C. § 552 (b)(4).

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### 61. What must be done to protect data that are gathered under a pledge of confidentiality?

Agencies need to employ administrative, operational, and technical procedures to protect any data collected under a pledge of confidentiality. Administrative procedures include keeping the data in a secure environment with access limited to approved individuals. Operational procedures may include the administration of a survey in a secluded area, protection of survey forms in the possession of an interviewer, and so forth. Technical procedures are also required to ensure that data or results released do not reveal individually identifiable data.

These technical procedures are often referred to as statistical disclosure limitation (SDL) methods. SDL methods are applied to tables or microdata prior to release and include withholding release of selected data items as well as various manipulations to make data less identifiable. Data protection methods are described in Statistical Policy Working Paper #22, *Report on Statistical Disclosure Limitation Methodology* published by the Federal Committee on Statistical Methodology (FCSM). Many agencies have also found a checklist developed by the FCSM's Confidentiality and Data Access Committee (CDAC) to be very useful in assessing disclosure risks in their tables and microdata.<sup>43</sup>

Although agencies must take reasonable steps to protect the confidentiality of the data they collect under a pledge of confidentiality, it is impossible to guarantee that there will be no breach of confidentiality or zero risk of disclosure.

### *Useful Resources*

Duncan, G. T., Jabine, T. B. and de Wolf, V. A. (Eds.) (1993). *Private Lives and Public Policies*. Washington, DC: National Academy Press.

Federal Committee on Statistical Methodology (1995). *Statistical Policy Working Paper 22, Report on Statistical Disclosure Limitation Methodology*. Washington, DC: Statistical Policy Office, U.S. Office of Management and Budget. Available at <http://www.fcsm.gov/reports/>.

Interagency Confidentiality and Data Access Group (1999). "Checklist on Disclosure Potential of Proposed Data Releases." Washington, DC: Statistical Policy Office, U.S. Office of Management and Budget. Available at <http://www.fcsm.gov/committees/cdac/cdac.html>.

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<sup>43</sup> These are available online at [www.fcsm.gov](http://www.fcsm.gov). Go to Methodology Reports for SPWP#22, and go to Committees and then to CDAC for the Checklist.

## RESPONSE RATES AND INCENTIVES

The focus in this section is on unit nonresponse or the failure to obtain any information from a selected sample member. Item nonresponse, or the failure of a respondent to respond to a specific survey item, is also discussed briefly. Nonresponse affects all surveys to varying degrees, and agencies need to consider the potential impact of nonresponse on the quality of information obtained from the survey. This section provides guidance on improving response rates and assessing potential nonresponse bias. Agencies should consult with trained survey methodologists in designing their surveys to minimize nonresponse bias.

### 62. Why are response rates important?

A survey's response rate is a valuable data quality and field performance indicator, and is probably the most widely cited single number associated with the generalizability of a survey's results. A high response rate increases the likelihood that the survey results reflect the views and characteristics of the target population. Conversely, a low response rate can be an indicator of potential nonresponse bias, which would be detrimental to the accuracy of the results of a study in a variety of ways, including:

- Survey estimates may be biased if those who choose to participate (respondents) differ substantially and systematically in some way from those who choose not to participate (nonrespondents). If these differences are related to critical information from the survey or the census, the results may be misleading or even erroneous.
- The standard errors of the survey estimates may also be biased because an incomplete sample may fail to capture the true variability that would be observed in a complete sample.

Nonresponse can occur for a variety of reasons, such as refusals, failure to contact the respondent, or the respondent's inability to respond due to language barriers, illness, etc. Often these different reasons for nonresponse reflect different causes, and thus, have different implications for reducing nonresponse and the potential for nonresponse bias. For example, in a household survey, noncontact may be due to respondents spending less time at home and may require more attempts by interviewers to reach them. Noncontacts may spend their time quite differently from people who are at home more, and therefore, their absence may lead to bias in survey estimates related to activities away from home. In contrast, a respondent who refuses may not be interested in the topic of the survey and may need greater persuasion as to the importance of the survey or an incentive to participate. The absence of data from the cohort of refusals may lead to bias in survey estimates of the prevalence or attitudes in the population about the main survey topic.

Agencies need to carefully consider the intended uses of the survey results and the potential impact of nonresponse bias on their data (see questions #18, #19, and #20). Agencies need to provide their best estimate for expected response rates in their ICRs and the basis for those estimates, e.g., prior surveys conducted by the agency, or similar survey methods used on similar populations by other organizations. Although response rates do not provide a clear indication of

nonresponse bias (because such bias is also a function of the differences between respondents and nonrespondents on specific survey estimates), response rates can be a useful indicator of the *risk* of nonresponse bias and should be computed and used by agencies to inform decisions on making efforts to improve cooperation and assessing potential nonresponse bias.

### 63. How should response rates be calculated?

Response rates have been calculated in a wide variety of ways, making comparisons across different surveys difficult. Recently, there have been attempts to standardize the calculation of response rates to provide a common basis for comparison. For example, the American Association for Public Opinion Research (AAPOR) has provided a set of six *standard definitions* of response rates as well as other formulas for calculating cooperation rates, refusal rates, and contact rates.<sup>44</sup> The variations in response rate calculations depend on how partial responses are considered and how cases of unknown eligibility are handled. Agencies are encouraged to use the AAPOR standard formulas in calculating and reporting response rates in their ICRs; however, agencies may use other formulas as long as the method used to calculate response rates is documented in the ICR.

At their most basic level, response rates can be viewed simply as the result of dividing the number of completed interviews/questionnaires by the number of eligible respondents who were selected to participate. Potential respondents may be split into the following categories:

1. Eligible and interview completed (c).
2. Eligible and not interviewed (e).
3. Ineligible (e.g., out of scope) (i).
4. Unable to determine eligibility (u).

Potential respondents that are eligible and not interviewed (e) may include refusals, non-contacts, non-interview due to incapacity, language difficulties, or other reasons for nonresponse. The response rate formula discussed below includes in the denominator an estimate for the proportion of cases of unknown eligibility that are actually eligible, which can be an important component for some surveys, like Random Digit Dialing (RDD) surveys, that often have many phone numbers that are never answered.

Sometimes only partial interviews are obtained due to a respondent's breaking off an interview or completing only part of a mailed questionnaire. For these cases, agencies need to set thresholds for completion of a proportion of the questionnaire or certain key items in order for the case to be counted as a completed interview. Thus, these cases would be treated either as eligible and interview completed (c) if all required items are completed or as eligible and not interviewed (e) if any required items are missing.

The total number of participants selected to be in the survey (n) is the sum of eligible and completed (c), eligible and not interviewed (e), ineligible (i), and unable to determine eligibility (u). That is  $n = c + e + i + u$ . Among those with unknown eligibility (u), there is a proportion (x)

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<sup>44</sup> See [www.aapor.org](http://www.aapor.org); Go to Standards.

## Response Rates

that is eligible. This proportion may be estimated as part of the collection process, with the most common estimate of  $x$  being  $(c + e) / (c + e + i)$ . The response rate is defined as

$$\text{Response rate} = c / (c + e + x u).$$

In the above formula,

- the denominator includes all original survey units that were identified as being eligible, including units with pending responses with no data received, post office returns because of “undeliverable as addressed,” and new eligible units added to the survey. The denominator does not include units deemed out-of-business, out-of-scope, or duplicates.
- the numerator includes all survey units that have submitted all the required items for the report period.

The response rate formula above is unweighted because every case is treated equally. An unweighted response rate is used to measure the proportion of the sample that resulted in useable information for analysis, and it is a useful indicator of field performance. A weighted response rate can be defined as the proportion of the survey population for which useable information is available. In some instances, the two response rates may result in identical values (if a census is taken or if a sample is selected with equal probability (see question #64).

### 64. When should weighted response rates be reported?

As noted in question #63, unweighted and weighted response rates may result in different values if a sample is selected with different probabilities of selection as the result of oversampling or undersampling specific subpopulations. Oversampling or undersampling of specific subpopulations occurs when the sample size for a specific subpopulation is increased (relative to the remainder of the population) to support analytic objectives and goals. For example, the analytic objectives for a study may require a sampling design with oversampling of persons in minority subpopulations or in rural areas to permit sufficiently precise estimates for these subpopulations. The oversampling of specific subpopulations will assign a higher probability of selection for units in the oversampled subpopulation than for units in the undersampled subpopulations or in the remainder of the full population. Many Federal studies use oversampling of specific subpopulations to support analyses in a cost and statistically efficient fashion.

The weighted response rate takes into account the oversampling and undersampling of the subpopulation by using the sampling weights (which are computed from the inverse of the selection probabilities). By using the sampling weight, this weighted response rate is an unbiased estimate of the proportion of the target population for which useable data are available.

Weighted response rates are often used differently in establishment surveys to take into account the relative importance assigned to different reporting units (rather than probability of selection as is done in household surveys). For example, it is common that a few very large businesses dominate an industry in terms of their production or sales with many smaller firms accounting for only a small percentage of the total production or sales within the United States. Thus, nonresponse by one or two very large businesses could jeopardize a survey estimate whereas

## Response Rates

nonresponse by dozens of small firms may have almost no impact. In this case, weighted response rates may be constructed as the ratio of the total weighted quantity for responding units to the total weighted quantity for all eligible units to obtain a rate that reflects the proportion of the quantity being estimated that is being covered by the survey respondents.

Because unweighted and weighted response rates can provide different and useful information, agencies should generally report both in their ICRs. Whenever there are complex sample designs or the probability of selection is not equal for all cases, it is essential that weighted response rates be reported. Similarly, agencies should always report weighted response rates for establishment surveys in their ICRs and describe what is used for the weight.

### 65. What are typical response rates for Federal Government statistical surveys?

National surveys conducted by and for Federal statistical agencies to provide official Federal statistics generally have much larger samples, invest more resources, and achieve higher response rates than surveys sponsored by academic or commercial organizations. While some Federal surveys are mandatory, the vast majority are voluntary. For example, the Current Population Survey that provides the monthly unemployment rate is a voluntary monthly survey of over 50,000 households and has a response rate of 93 percent at the household level

The Paperwork Reduction Act does not specify a minimum response rate. In the 1980's and 1990's, many Federal surveys achieved response rates above 90 percent. Such high performance levels were well known in major household surveys, and OMB research in the 1980's showed equally high performance in many important business surveys, with a median response rate of about 90 percent across all business surveys conducted as "small censuses" or "probability samples" by major statistical agencies. In the 1990's, due to changing social and business environments, many business and household surveys saw a slippage in their response rates.

In 2001, OMB examined 199 general statistical survey information collections that were approved in 1998. OMB requested detailed information from agencies on the actual response rates achieved. These collections included mandatory and voluntary surveys, household and establishment surveys, and surveys conducted by both statistical and non-statistical agencies using a variety of data collection modes. The mean response rate was 82.2 percent (unweighted) and the median response rate was 84.7 percent. The distribution of response rates showed that about two-thirds of surveys achieved response rates above 80 percent and eighty percent of surveys achieved response rates above 70 percent. Although one might expect there to be large differences between household and establishment surveys or voluntary versus mandatory surveys, average response rates for these different types of surveys were in fact very similar. There were also small overall differences in survey response rates by mode, though it should be noted that most of the surveys were multi-mode (further information about the methods and results of this study can be found in Lu (2002)).<sup>45</sup>

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45 Lu, R. (2002). Response Rates Achieved in Government Surveys: Results from an OMB Study. *Federal Committee on Statistical Methodology Working Paper #35*. (Available at [www.fcsm.gov/reports/](http://www.fcsm.gov/reports/))

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The studies noted above reflect a snapshot of response rates at a particular point in time. More recent, but less systematic observations suggest that response rates have been decreasing in many ongoing surveys in the past few years. Some evidence suggests these declines have occurred more rapidly for some data collection modes (such as RDD telephone surveys) and are more pronounced for non-government surveys than Federal Government surveys. Generally, these declines have occurred despite increasing efforts and resources that have been expended to maintain or bolster response rates. It is likely that agencies will need to increase attention to their survey methods and expand innovations to continue to ensure that information gathered through Federal statistical surveys yields high quality, useful information.

The next few questions and answers are intended to help agencies evaluate their response rates, improve survey methods through the sharing of best practices, and assess potential nonresponse bias using a variety of methodologies.

### **66. What are acceptable response rates for different kinds of survey collections?**

The 2001 OMB study of information collections described in question #65 clearly shows that the majority of Federal statistical surveys achieve good response rates. Response rates are an important indicator of the potential for non-response bias (see question #62). Clearly, the lower the response rate, the greater the caution or risk that bias can occur. Therefore, agencies should strive to obtain the highest practical rates of response, commensurate with the importance of survey uses, respondent burden, and data collection costs. Agencies should also plan additional efforts to study non-response bias if projected response rates suggest the potential for bias to occur.

An agency's justification for a survey response rate should reflect, at least in part, the intended use of the data. For example, surveys collecting influential information or information that will otherwise have a substantial impact on an agency's programs or policies should be designed to minimize all sources of survey error (see question #20), including nonresponse bias. As defined in OMB and agency Information Quality Guidelines, "influential" means that "an agency can reasonably determine that dissemination of the information will have or does have a clear and substantial impact on important public policies or important private sector decisions." The Information Quality Guidelines require that agencies hold the information they designate as "influential" to a higher standard of reproducibility and transparency than information that is not defined as influential under the Information Quality Guidelines (see also question #18). Agencies need to document in their ICRs the importance and use of the information and the methods they will use to achieve acceptable response rates for their collections.

In their ICRs, agencies need to report expected response rates for their surveys, which should reflect the overall unit response rate as calculated in questions #63 and #64. For ongoing surveys, the most recent actual achieved response rates should also be reported. As noted in question #62, agencies should use expected response rates as an indicator of potential risk for nonresponse bias. Agencies are encouraged to carefully consider how they can use current and new methodological tools to maximize data quality and minimize nonresponse bias. ICRs for surveys with expected response rates of 80 percent or higher need complete descriptions of the

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basis of the estimated response rate and a detailed description of steps that will be taken to achieve the expected response rate (see question #69). ICRs for surveys with expected response rates lower than 80 percent need complete descriptions of how the expected response rate was determined, a detailed description of steps that will be taken to maximize the response rate (see question #69), and a description of plans to evaluate nonresponse bias (see question #71). Agencies also need a clear justification as to why the expected response rate is adequate based on the purpose of the study and the type of information that will be collected (whether influential or not). This discussion may include past experience with response rates when studying this population, prior investigations of nonresponse bias, plans to evaluate nonresponse bias, and plans to use survey methods that follow best practices that are demonstrated to achieve good response rates (see question #69). The ICR should also include a discussion of the selection of the mode of data collection and its impact on the expected response rate. ICRs with lower response rates are often justified by agencies in cases when they are seeking to gather information that is planned for internal use only, is exploratory, or is not intended to be generalized to a target population. Examples for these kinds of collections may include some customer satisfaction and web site user surveys and other qualitative or anecdotal collections.

While the focus is often on the overall unit response rate, agencies should also pay attention to response rates for specific subgroups or levels (e.g., regions or states) for which the agency produces estimates. For example, if each state collects data from establishments within the state or if the agency produces estimates for each state, then response rates for each state should be examined. In this case, an agency may achieve an acceptable response rate at the national level, but could have substantial problems in some states that should not be overlooked.

Oftentimes, OMB may require in the terms of clearance that the agency report to OMB the actual response rate achieved at the completion of the data collection and the results of any nonresponse bias analyses or investigations. Even after the approval and fielding of an information collection, agencies should be prepared to provide detailed response rate information to OMB upon request.

### **67. Do longitudinal and multi-stage surveys need to achieve the same levels of response rates as other surveys?**

In multi-stage and longitudinal surveys, the response rate for the last stage or latest wave is only one component of the overall response rate. While each stage or wave may have a high response rate, it is the overall unit response rate that is the most comprehensive indicator of potential nonresponse bias. Agencies that submit ICRs with multi-stage sampling plans should provide expected response rates for each stage of the sampling process, and the total response rate, taking into account all stages or prior waves. The final (or cumulative) response rate should be calculated by multiplying each stage's response rate together and should be considered an indicator for the risk of nonresponse bias and used accordingly, as noted in question #66. For these types of surveys, agencies may choose to focus their nonresponse bias analyses on a particular stage or wave that appears to be the greatest contributor towards nonresponse or take into account all stages/waves. For example, in longitudinal surveys, the response rate for each wave after the initial wave is often high, and the major contributor to the response rate may be the initial recruitment into the study. In such a case an agency may want to compare respondents

and nonrespondents to the first wave but wait to examine bias due to attrition until later waves when response rates have dropped to 80 percent or less from the first wave (see question #71).

### **68. Are different response rates acceptable for different modes of data collection?**

Different modes of data collection typically yield differences in response rates, depending on the target population and specific methods used. For example, while a 60 percent response rate to a mail survey or RDD telephone survey may be considered quite good for some populations, such a response rate would not be considered as good for a personal visit survey. However, there are not established differences in risk for nonresponse bias by mode that would suggest that a 60 percent response rate in one mode carries a higher risk of nonresponse bias than another mode. Therefore, OMB has not set different thresholds in question #66 for different data collection modes.

Agencies need to consider how the choice of data collection mode will affect their response rates, potential for nonresponse bias, and the information that will be available to assess potential nonresponse bias (see question #71) and weigh these factors along with the other advantages and disadvantages of the modes or modes of collection they are considering. Agencies need to justify in their ICRs their choice of mode given the advantages and disadvantages of that mode (see question #37).

### **69. How can response rates be improved?**

Regardless of the type of information collection, widely-acknowledged procedures can have a major effect on the number of respondents who complete the information request. Agencies should consult with professional survey methodologists in designing their information collections and consider answers to the following questions to maximize response rates:

- Is the agency sending an advance letter to respondents? Even for RDD surveys, agencies can obtain addresses for a large proportion of the phone numbers they have in their sample through vendors that offer reverse matching. Sending a letter in advance to inform respondents about the survey can lead to improved response rates. The letter should:
  - be signed by a senior agency official;
  - be personally addressed to the respondent if possible;
  - provide meaningful motivation for the respondent to participate;
  - answer questions of who, what, when, why, and how;
  - address how long the survey will take and whether participation is voluntary, mandatory, or required to obtain benefits (if the survey is mandatory some agencies opt to state this on the outside envelope rather than in the letter);
  - contain a contact number (toll-free phone if possible) for respondents to verify the legitimacy of the survey or ask questions; and
  - include any confidentiality pledge or assurance of anonymity (which should also be provided with the questionnaire if it is a mail survey).



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- Has the agency considered ways to promote awareness of the survey? Agencies should utilize their websites and consider obtaining the endorsement of stakeholders, interest groups, and community leaders. The agency may want to conduct outreach sessions with presentations in several cities or provide news releases to trade journals, state associations, and other interested parties. It may also be possible to engage the local media for localized surveys.
- What mode of administration is being used? Has the agency carefully considered the use of more than one collection mode, e.g., following up nonrespondents to a mail survey with telephone calls, to improve response rates?
- Is the questionnaire well-designed with user-friendly formatting? Is it as brief as possible? Are the questions, instructions, and definitions easy to understand? Is the content of the survey relevant to the respondent?
- Has the agency identified strategies for contacting hard-to-reach populations?
- Does the survey allow for proxy responses? Some household surveys allow one household member to report for another member; however, whether this is practical or would have larger implications for data quality depends on the kind of information the agency is gathering.
- Has the agency investigated various survey introductions to minimize break-offs and maximize participation?
- For longitudinal surveys, has the agency considered creative ways to maintain contact with respondents between waves? For example, some agencies send newsletters or birthday cards to respondents or provide postcards that respondents can use to notify agencies of address changes. Is information from prior waves used to determine the best time to call? Are records kept of concerns respondents raise that can be addressed in future contacts?
- For longitudinal or panel surveys, does the agency go back to nonrespondents from prior waves? Some prior nonrespondents can be reached and brought back into the study in later panels or waves. Sometimes data from the missing wave can also be “filled in” based on subsequent interviews with the respondent. For example, some longitudinal studies will ask respondents about life events such as marriages, births of children, jobs, etc., that occurred since the last interview, and this information may be used to fill in questions asked in a prior missed wave.
- For personal visit and telephone surveys, has the agency clearly described the number and timing of contact attempts? More contact attempts spaced across days and times of the day offer greater potential for reaching respondents at home.
- For mail surveys, has the agency planned to conduct a follow-up contact after the first mailout with a second mailing, phone call, or a fax (if surveying businesses)? Is the agency planning to mail the survey using priority mail or a courier delivery service to distinguish it from regular mail? Is there a plan to send reminder/thank you cards and replacement questionnaires as part of nonresponse follow-up? Are there plans to allow respondents to complete the survey on the web or via phone?
- For Internet surveys, does the agency plan to use e-mail for advance notification, reminders, and follow-ups? Are respondents allowed to complete the survey on a hardcopy (to mail in) or via phone? Do nonresponse follow-up efforts include phone contact (or fax, if a business)?

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- Are respondents hesitant to provide this kind of information directly to the government or the particular agency? Agencies should ensure that they can adequately protect the confidentiality of the information and communicate this to respondents (see questions #56 to #61). To provide a clearer barrier between the agency and the respondent, agencies can also consider using another agency or an external contractor to collect the data and specify in the contract that only aggregate results from the survey and no individually identifiable data can be given to the sponsoring agency.
- Does the survey allow for an increase in the length of the field period to improve low response rates?
- Have interviewers received adequate training about the survey and about interacting with respondents? Does the interviewer training include “refusal conversion” and other techniques to maximize response rates?
- For RDD surveys, has the agency purchased a higher “grade” RDD sample that removes out-of-scope numbers to minimize interviewer time spent on non-productive cases, so more time is available to spend on potential respondents?
- If the above efforts have been attempted, and there are still problems with the response rate, have incentives been tried in experiments to improve response rates (see questions #74-76 below)?

### **70. Given that Random Digit Dialing (RDD) telephone survey response rates have been declining, will OMB approve ICRs with this methodology?**

Some recent evidence suggests that response rates to RDD surveys have been declining more rapidly than those for other modes of data collection in the past few years. RDD surveys do have some advantages for certain types of studies (see question #41); however, agencies need to carefully consider their total survey design, weighing the expected response rates they are likely to achieve using RDD methodology against its other advantages for their particular survey.

OMB has approved ICRs for RDD studies when agencies provide a clear justification in their ICRs that this is the most appropriate methodology for their study, and agencies are using appropriate methods to maximize the response rate and assess and adjust for potential nonresponse bias and coverage error.

### **71. How can agencies examine potential nonresponse bias?**

Nonresponse bias associated with a survey statistic may be considered to have two components: the nonresponse rate and differences between respondents and nonrespondents. The lower the response rates are and the greater the differences between respondents and nonrespondents, the greater the nonresponse bias. Another way of looking at nonresponse bias is that it occurs when there is a correlation between the likelihood of participation in the survey and the survey variable(s) being measured. This view highlights the fact that some survey estimates may have nonresponse bias (because they are correlated with the likelihood of participation) while others do not.

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Agencies should plan to evaluate potential nonresponse bias if they expect response rates may fall below the levels noted in question #66; these plans should be described in their ICRs. When agencies are gathering influential information (under OMB information quality guidelines) or other information with a substantial impact on programs and policies that requires high precision, agencies should consider examining potential nonresponse bias even when normally acceptable response rates are achieved.

Because nonresponse bias is particular to each survey estimate, it is possible that some survey estimates are unbiased while others have a great deal of bias. Therefore, it is important that agencies attempt to assess nonresponse bias on key survey estimates. For example, a survey on willingness to pay for some environmental improvements should assess bias on the key estimate of willingness to pay (or something highly related to it); it is not sufficient for an agency to simply look at the demographic composition of the sample compared to, for example, the latest official Census figures and, if similar, conclude there is no nonresponse bias. Similarly, agencies cannot simply assume that because the demographic composition of their achieved sample was close to the composition of the decennial census before adjustment, that there is no bias on the other substantive survey variables or that making the weighting adjustments to the demographic composition of the sample will eliminate nonresponse bias in the other variables.

Agencies should consult with professional statisticians and survey methodologists to ensure that potential nonresponse bias is addressed in the design of the study as options are far more limited after the collection has occurred. Although assessing bias and potentially adjusting the data to account for nonresponse can be complicated and time-consuming, there are a number of methods that can be used. These methods vary in the amount and kind of information that is available on respondents and nonrespondents.

At a minimum, agencies should plan to compare respondents and nonrespondents on information available from the sampling frame. Sampling frames that include data on various attributes of the population unit are helpful in examining whether response rates vary on those attributes or whether the characteristics of respondents and nonrespondents differ on these characteristics. For example, response rates from large companies versus small can be compared for establishment surveys.

In addition, agencies should seek out other available external information that they may be able to match to their sampling frame that would provide some insights into nonresponse bias. For example, agencies that survey their program participants may have other administrative data that can be matched at the individual level to compare respondents and nonrespondents more directly. If this kind of information is not available, there are other possibilities to consider, such as mapping telephone exchanges in an RDD survey to census tracts or zip codes, and then matching with aggregated data from the Census long form, permitting comparison of respondents and nonrespondents at an area level (as opposed to the specific household).

Another source of information in longitudinal surveys is to compare respondents and nonrespondents on characteristics gathered at prior waves. For some multi-stage surveys, agencies should consider including items at a screener stage that may be useful in comparing respondents and nonrespondents to the later extended interview.

When there are no good sources of information about respondents and nonrespondents on the substantive variables of interest, agencies can also use additional follow-up procedures with an abbreviated questionnaire to estimate the characteristics of nonrespondents on some key variables of interest. Sometimes these follow-up studies are done by selecting a probability sample of nonrespondents for extensive and more expensive efforts on a smaller sample that are then used to estimate the characteristics of all nonrespondents and compare to respondents.

Agencies can also assess potential nonresponse bias by analyzing differences between respondents and initial refusals (who were later "converted") or conduct analyses of key estimates by levels of effort to obtain the response (e.g., the number of reminders sent for a mail survey or the number of calls made in a telephone survey).

Finally, agencies can also evaluate and compare different methods of nonresponse weighting adjustments using additional variables and information noted above to see what impact these have on the key survey estimates.

All of the above methods have varying strengths and weaknesses in providing useful information on nonresponse bias. Thus, agencies should attempt to use a variety of methods whenever possible.

### **72. What response rate issues are involved with using samples derived from pre-existing multipurpose panels, such as Internet or consumer panels?**

Multi-purpose consumer and Internet survey panels are similar to multi-stage surveys or longitudinal studies in that there are several stages of agreement and participation by respondents over some period of time before they become members of the panel (see question #67). Panel members are also typically expected to participate in the panel for some fixed period of time and complete some number of surveys during that time. Often the only response rate reported for studies using these panels is based on the number of panel members who completed the specific survey and those who did not; however, this provides a very incomplete picture, because each prior stage of selection or participation, including dropping out of the panel before a respondent's scheduled time was completed, potentially affects the representativeness of the panel, may introduce nonresponse bias, and must be taken into account in calculating the overall response rate.

For example, one vendor who conducts Internet panel surveys has documented that in 2002, a 36 percent response rate for households agreeing to join the panel was achieved. However, this was only the first stage; of those households who agreed, only 67 percent actually installed the equipment for Internet access, and only 47 percent of installed households had an adult who completed the profile and was an active panel participant available to complete a survey. Although individual survey response rates averaged 75 to 80 percent of these active members, the cumulative response rate taking into account all stages ( $.36 \times .67 \times .47 \times .80$ ) was about 9 percent.

Because of the multiple stages of initiation of a prospective panel member and the resulting opportunities for nonresponse, different biases due to nonresponse may enter into the panel at different stages. For example, those who agree to become part of the panel may be systematically different from those who do not agree to join the panel, and those who do not install the equipment or complete the profile may be different from those who remain in the panel. Panel members also often depart from the panel before their “term” is completed, introducing further potential nonresponse bias due to attrition.

In their ICRs, agencies proposing to use multipurpose survey panels should provide a justification for their use, provide expected response rates in detail, and devote careful attention to potential nonresponse bias as warranted (see questions #66, #67, and #71). Although these panels have been used as a convenience sample and/or for pilot studies, there is some recent research that examines the quality of estimates from these panels.<sup>46</sup> OMB will continue to monitor this research area and evaluate results from agency studies on nonresponse bias.

Agencies should carefully consider the response rates that they are likely to achieve and the quality of the information that they will be able to obtain from pre-existing multi-purpose survey panels, taking into account the utility of the data for its intended use. While there may appear to be cost and time advantages to using a pre-existing panel, the quality of estimates obtained using this method will require careful scrutiny to ensure it is sufficient to meet its intended purposes. In their ICRs, agencies need to justify use of a multipurpose survey panel and describe how they will attempt to assess and address the potential nonresponse bias and other limitations of these panels (see question #71).

### **73. What should agencies do to assess and deal with nonresponse bias due to item nonresponse?**

The focus of this section has been on unit nonresponse, the failure to obtain any participation from the respondent. However, even when respondents agree to participate in a survey, they do not necessarily provide all of the information that the agency requests. Thus, agencies also need to examine nonresponse to questionnaire items to see what impact this has on their results.

Agencies should note in their ICRs if substantial item nonresponse is expected for any key or sensitive items, and how this will be handled. Similar to unit nonresponse, agencies need to consider the risk of nonresponse bias at the item level. At a minimum, agencies should plan to conduct nonresponse bias analyses (see question #71) if an item missing rate exceeds 30 percent, but agencies should consider lower thresholds for key variables. Because respondents have provided information to other items on the questionnaire, there is generally a great deal of

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<sup>46</sup> For example, see Cameron, T.A. & DeShazo, J.R. (November, 2005). Comprehensive selectivity assessment for a major consumer panel: Attitudes toward government regulation of environment, health, and safety risks. Unpublished manuscript. Krosnick et al. (May, 2005). Comparing the results of probability and nonprobability sample surveys. Paper presented at the Annual Conference of the American Association for Public Opinion Research, Miami, Florida. Viscusi, W. K., Huber, J., & Bell, J. (2004). The value of regional water quality improvements. Available at [www.law.harvard.edu/programs/olin\\_center/](http://www.law.harvard.edu/programs/olin_center/).

information from the survey itself that can be used to assess potential bias due to item nonresponse.

For key survey estimates, many large statistical surveys use a variety of statistical methods to impute values for the missing items. These imputation methods include identifying "donor" records that are similar to the case with the missing item on a variety of other variables and replacing the missing value with the value from the donor case. Other methods use regression or other statistical models to predict values for the missing variable based on complete cases and then generate a value for the missing case from this model.

Agencies should consult with trained survey statisticians on the appropriate ways to handle missing item data in their surveys. Agencies need to specify how they will handle missing item data and assess or control potential nonresponse bias, including whether the information will be imputed. If an agency uses imputation, the method that will be used should be described in the ICR.

### **74. What are incentives?**

An incentive is defined as a positive motivational influence; something that induces action or motivates effort. Incentives are often used in market research, and sometimes used in survey research, to encourage participation. They may be monetary or non-monetary, such as phone cards, books, calculators, etc. Incentives are often unconditional; that is, they are paid prior to and regardless of a respondent's decision to participate in the study. Research has consistently shown that giving an unconditional incentive when first contacting the respondent is more effective in obtaining cooperation than the promise of an incentive after completion of the survey.

Incentives are most appropriately used in Federal statistical surveys with hard-to-find populations or respondents whose failure to participate would jeopardize the quality of the survey data (e.g., in panel surveys experiencing high attrition), or in studies that impose exceptional burden on respondents, such as those asking highly sensitive questions, or requiring medical examinations (see question # 76).

Incentives are also often used in studies used to develop surveys. For example, research subjects who participate in cognitive research protocols and focus groups are typically paid an incentive for their participation.

Distinctions are sometimes made between an honorarium and an incentive. An honorarium is a payment given to professional individuals or institutions for services for which fees are not legally or traditionally required in order to secure their participation. Thus, this term is more appropriately used for payments to physicians, accountants, school administrators, teachers, and so forth. An honorarium is usually paid on the condition of a respondent's participation as a token of appreciation.

**75. Why must agencies provide a justification to give incentives to respondents?**

While incentives have been used in the private sector without much controversy, most Federal Government surveys do not provide incentives to respondents, and the use of incentives by Federal agencies has raised a variety of concerns about their cost, the use of taxpayer funds, impact on survey responses, and implications for the “social contract” between the Federal Government and citizens. The regulations implementing the Paperwork Reduction Act (PRA) of 1980 prohibited the use of incentives for respondents to Federal surveys unless agencies could demonstrate a substantial need. The regulations implementing the 1995 reauthorization of the PRA require agencies to justify any payments to respondents.

In keeping with these concerns, OMB’s guidelines on providing incentives to respondents follow a general conceptual framework that seeks to avoid the use of incentives except when the agency has clearly justified the need for the incentive and has demonstrated positive impacts on response and data quality by using an incentive (see question #76).

**76. What factors should agencies address in their justification to give incentives to respondents?**

Research has consistently shown that monetary incentives are more effective in increasing survey response than nonmonetary incentives. However, agencies should still consider appropriate nonmonetary incentives, especially if they are related to the survey (or the agency more generally) and are likely to be of interest to respondents. For example, respondents to a business survey on wages may be very interested in the results to see how they compare to the industry average, and schools may find curriculum materials or books for the library an effective incentive. Other examples of nonmonetary incentives that agencies sometimes use include items directly related to the data collection, such as a folder for receipts or a calculator for respondents in a survey on expenditures. In lieu of a relevant nonmonetary incentive, agencies should consider appropriate monetary incentives (or debit cards with a PIN provided) instead of phone cards or gift certificates, as research has generally shown cash to be more effective.

In justifying their proposed use of incentives, agencies should consider the following principles, many of which overlap:

- *Data quality:* One possible justification for requesting use of an incentive is improvement in data quality. For example, agencies may be able to provide evidence that, because of an increase in response rates, an incentive will significantly improve validity and reliability to an extent beyond that possible through other means.
- *Burden on the respondent:* An agency can justify an incentive if it can demonstrate that there is a need to pay a respondent for exerting unusual effort or having an unusual reporting burden in responding to a collection of information. This type of effort can be seen in data collections that require respondents to keep daily logs for an extended period of time, participate in a medical examination, abstract information from a significant number of records, coordinate study team visits, and so forth.

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- *Complex study design:* Some studies require ongoing participation of various respondents, each of whom is important to the achievement of study goals. For example, there may be a panel study over multiple years that requires participation by the same schools, teachers, parents, and students.
- *Past experience:* Agencies may be able to justify the use of incentives by relating past survey experience, results from pretests or pilot tests, or findings from similar studies. This is especially true where there is evidence of attrition and/or poor prior response rates.
- *Improved coverage of specialized respondents, rare groups, or minority populations:* A survey may have as its target population a highly selective group. Offering incentives to this population can be justified by describing the importance and difficulty of obtaining their participation in the study. For example, a study on the health of the hearing-impaired may propose providing an incentive to obtain enough respondents with particular impairments to participate. Similarly, a justification to pay an incentive for a study that involves recruiting highly specialized physicians may be considered.
- *Reduced survey costs:* If prior or similar surveys have devoted considerable resources to nonresponse follow-up, it may be possible to demonstrate that the cost of incentives will be less than the costs of extensive follow-up. While some personal visit surveys have found that the cost of incentives has been made up in reduced field interviewer time and travel costs, this is rarely true for other data collection modes. Thus, agencies should not assume that incentives will pay for themselves.
- *Equity:* Agencies should treat all respondents equally with regard to incentives. OMB generally does not approve agency plans to give incentives solely to convert refusals, or treat specific subgroups differently, unless the plan is part of an experimental design for further investigation into the effects of incentives.
- *Research into the effects of incentives:* Because OMB has expressed interest over the years in encouraging research into the effects of incentives, proposals that include experimental designs that provide insight into incentive effects are often approved. Agencies should plan to examine not only the impact on overall response rates by the use of an incentive, but also the effects on key estimates (with a similar purpose to that addressed in question #71).

OMB desk officers carefully review the justification of incentives. Agencies should cite the research literature and demonstrate how their study particularly merits use of an incentive by its similarity to specific studies on similar populations using similar methods that exist in the literature, or propose a field test or experiment to evaluate the effects of the incentive.

Agencies should either propose, or OMB may request in the terms of clearance, that results of the use of incentives will be reported to OMB.

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***Useful Resources***

- American Association for Public Opinion Research (2004). *Standard Definitions: Final Dispositions of Case Codes and Outcome Rates for Surveys* (available at [www.aapor.org](http://www.aapor.org)).
- Groves, R.M. and Brick, J. M. (2005). Practical Tools for Nonresponse Bias Studies. *Joint Program in Survey Methodology Short Course* (see [www.jpsm.umd.edu](http://www.jpsm.umd.edu)).
- Groves, R.M., Dillman, D. A., Eltinge, J. L. and Little, R. J. A. (2002). *Survey Nonresponse*. New York: Wiley.
- Singer, E. (2002). The Use of Incentives to Reduce Nonresponse in Household Surveys. In R. M. Groves, D. A. Dillman, J. L. Eltinge, and R. J. A. Little (Eds.) *Survey Nonresponse*. New York: Wiley.

## ANALYSIS AND REPORTING

The focus of this section is on the documentation that agencies need to provide in their ICRs on their plans for analyzing and reporting the information they will collect in their survey.

### **77. What information should agencies include in their analysis plans?**

In their ICRs agencies need to provide information on their plans for analyzing and publishing the information they are collecting. The analysis plans should include a description of the statistical methods as well as any other relevant model or analytic plan that will be used to address the research questions or purposes for which the information was collected.

With respect to statistical methods, agencies should specify the estimation methods they will use, including any use of weighting. Agencies should clearly describe how weights will be derived and any adjustments that will be made to the weights to minimize potential nonresponse or coverage errors. When analyzing data from a complex survey design, agencies must ensure that appropriate statistical methods and software are used so that accurate estimates and associated variances or standard errors of those estimates are reported. For complex sample designs, specialized software is necessary that takes into account the sample design in estimating the variances. The statistical methods and software should be clearly identified in the ICR.

Often, research questions involve comparisons between groups or subgroups. Agencies should specify what statistical tests will be used to assess potential differences between the groups. The information collection should be designed with an appropriate sample size so that planned comparisons between groups or subgroups have adequate statistical power to statistically detect the differences between the groups or subgroups that are likely to exist (see question #33). Agencies should provide a power analysis in their ICRs to justify the sample size when key analyses involve comparisons among groups or subgroups (this may be included in Part B of the ICR in the justification for sample size).

When possible, agencies should include table shells or actual results from prior collections to show how the information will be presented. If detailed estimates by subgroups are planned, agencies should also describe criteria that are used to determine the amount of detail that is published in a table or figure. For example, agencies should consider criteria such as a minimum sample size, precision of the estimate, or potential disclosure risk (see question #61) in publishing estimates in tables.

Sometimes, agencies use the data gathered from a survey as inputs to models (e.g., economic forecasting models, biomechanical models) to conduct analyses. For recurring collections, agencies should submit information on the relevant models with sufficient details to allow OMB to assess the practical utility of the data being collected. For one-time collections, agencies should submit as much information as possible on the tentative models and analytic plans.

### 78. What predissemination review do agencies need to do for reports based on surveys or statistical collections?

Agencies are responsible for the quality of the information that they disseminate and must institute appropriate review procedures to comply with OMB and agency Information Quality Guidelines. Agencies proposing information products that involve reporting results from surveys or other statistical collections should include as part of their review process a statistical and methodological review to ensure that appropriate statistical methods are used and reported. The reviewer should have appropriate expertise in the methodology that is used, and should be provided with sufficient technical documentation to evaluate the information in the report (See OMB Peer Review Bulletin).<sup>47</sup>

The statistical and methodological review should include an evaluation of the suitability of the statistical methods used, the accuracy of the assumptions and limitations of the data, and the appropriateness of the conclusions and technical recommendations (from a statistical perspective). The statistical and methodological review should also include examination of presentations of data in tables or figures as well as examination of any public use datasets that are released. Agencies must ensure that appropriate statistical disclosure limitation methods and procedures have been followed in keeping with the confidentiality pledge made to the respondents (see questions #57 and #61).

#### *Useful Resources*

Groves, R.M., Dillman, D. A., Eltinge, J. L. and Little, R. J. A. (2002). *Survey Nonresponse*. New York: Wiley.

Kalton, G. (1981). *Compensating for Missing Survey Data*. Ann Arbor: Institute for Social Research.

U.S. Office of Management and Budget (2005). Final Information Quality Bulletin on Peer Review. *Federal Register* 70: 2664-2677. (available at [http://www.whitehouse.gov/omb/fedreg/2005/011405\\_peer.pdf](http://www.whitehouse.gov/omb/fedreg/2005/011405_peer.pdf))

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<sup>47</sup> See [www.whitehouse.gov/omb/fedreg/2005/011405\\_peer.pdf](http://www.whitehouse.gov/omb/fedreg/2005/011405_peer.pdf).

## STUDIES USING STATED PREFERENCE METHODS

The focus of this section is on surveys that use stated preference methods, which are frequently used in regulatory analyses by Federal agencies. Generally, the same requirements described throughout this guidance for surveys collecting influential information apply to these surveys; however, some of these considerations are highlighted in this section with particular illustrations for this type of survey.

### 79. What are stated preference methods?

Stated Preference Methods (SPM) have been developed and used in the peer-reviewed literature to estimate both "use" and "non-use" values of goods and services. They have also been widely used in regulatory analyses by Federal agencies, in part because these methods can be creatively employed to address a wide variety of goods and services that are not easy to study through revealed preference methods.

The distinguishing feature of these methods is that questions about the use or non-use value of a good are posed to survey respondents in order to obtain willingness-to-pay estimates relevant to benefit or cost estimation. Some examples of SPM include contingent valuation, conjoint analysis, and risk-tradeoff analysis. The surveys used to obtain the health-utility values used in cost effectiveness analysis are similar to stated preference surveys but do not entail monetary measurement of value. Nevertheless, the principles governing quality stated preference research, with some obvious exceptions involving monetization, are also relevant in designing quality health-utility research.

### 80. What should agencies consider when designing questions for stated preference studies?

Stated Preference Methods have been developed and used to estimate both "use" and "non-use" values of goods and services. Because these methods pose hypothetical questions about use or non-use values to survey respondents in order to obtain willingness-to-pay estimates relevant to benefit or cost estimation, the following principles should be considered when designing these questions:

- the good or service being evaluated should be explained to the respondent in a clear, complete and objective fashion, and the survey instrument should be pre-tested;
- willingness-to-pay questions should be designed to focus the respondent on the reality of budgetary limitations and on the availability of substitute goods and alternative expenditure options; and
- the survey instrument should be designed to probe beyond general attitudes (e.g., a "warm glow" effect for a particular use or non-use value) and focus on the magnitude of the respondent's economic valuation.

In addition, the results from the questions should be consistent with economic theory using both "internal" (within respondent) and "external" (between respondent) scope tests such as the willingness to pay is larger (smaller) when more (less) of a good is provided.

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The challenge in designing quality stated preference studies is arguably greater for non-use values and unfamiliar use values than for familiar goods or services that are traded (directly or indirectly) in market transactions. The good being valued may have little meaning to respondents, and respondents may be forming their valuations for the first time in response to the questions posed. Since these values are effectively constructed by the respondent during the elicitation, the instrument and mode of administration should be rigorously pre-tested to make sure that responses are not simply an artifact of specific features of instrument design and/or mode of administration.

### **81. What factors should be considered when designing or evaluating studies using stated preference methods?**

When designing or evaluating a stated preference study, agencies need to consider all aspects of the survey design, including coverage of the target population, mode of data collection, sampling, questionnaire design, and response rates that are covered in more detail in the preceding sections (also see question #20).

Since stated preference methods generate data from respondents in a hypothetical setting, often on complex and unfamiliar goods, special care is demanded in the design and execution of surveys, analysis of the results, and characterization of the uncertainties. A stated preference study may be the only way to obtain quantitative information about non-use values, though a number based on a poor quality study is not necessarily superior to no number at all.

There is no simple formula that can be used to determine whether a particular study is of sufficient quality to justify its use in regulatory analysis. However, OMB and agency Information Quality Guidelines require that agencies hold the information they designate as "influential" to a higher standard of reproducibility and transparency than information that is not defined as influential under the Information Quality Guidelines. As defined in OMB and agency Information Quality Guidelines, "influential" means that "an agency can reasonably determine that dissemination of the information will have or does have a clear and substantial impact on important public policies or important private sector decisions." If SPM are used to support a Regulatory Impact Analysis (RIA), weaknesses in the study design should be acknowledged, including any resulting biases or uncertainties that are suspected. If a study has too many weaknesses with unknown consequences for the quality of the data, the study should not be used for an RIA. In employing SPM for regulatory analyses agencies should consider the following:

- documentation should be provided about the target population, the sampling frame used and its coverage of the target population, the design of the sample including any stratification or clustering, the cumulative response rate (including response rate at each stage of selection if applicable), the item non-response rate for critical questions, the exact wording and sequence of questions and other information provided to respondents, and the training of interviewers and techniques they employed (as appropriate);
- the analytic results should be consistent with economic theory using both "internal" (within respondent) and "external" (between respondents) scope tests, such as the willingness to pay is larger (smaller) when more (less) of a good is provided; and

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- the statistical and econometric methods used to analyze the collected data should be transparent, well suited for the analysis, and applied with rigor and care.

More detailed guidance on regulatory analysis is provided in OMB Circular No. A-4.<sup>48</sup>

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<sup>48</sup> See [www.whitehouse.gov/omb/circulars/a004/a-4.pdf](http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf).

### Glossary of Abbreviations

ACASI	audio computer assisted self interview
AAPOR	American Association for Public Opinion Research
CAI	computer assisted interview
CAPI	computer assisted personal interview
CASI	computer assisted self interview
CATI	computer assisted telephone interview
CDAC	Confidentiality and Data Access Committee
CFR	Code of Federal Regulations
CIPSEA	Confidential Information Protection and Statistical Efficiency Act
CPS	Current Population Survey
FCSM	Federal Committee on Statistical Methodology
FOIA	Freedom of Information Act
GPEA	Government Paperwork Elimination Act
ICR	Information Collection Request
IQG	Information Quality Guidelines
IVR	interactive voice response
MSA	Metropolitan Statistical Area
NAICS	North American Industry Classification System
PRA	Paperwork Reduction Act
OMB	Office of Management and Budget
RDD	random digit dialing
RIA	regulatory impact analysis
SDL	statistical disclosure limitation
SIC	Standard Industrial Classification
SIPP	Survey of Income and Program Participation
SOC	Standard Occupational Classification
SPM	stated preference method
SRS	simple random sample
TDE	touchtone data entry
USC	United States Code

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## Glossary of Terms

**-A-**

**Administrative records** are information kept by business establishments, institutions, and governments primarily for their own purposes in running their business or program. Respondents may need to refer to these records in order to answer questions on Federal surveys.

**-B-**

**Behavior coding** is a technique used for pretesting that involves monitoring the interaction between interviewers and respondents (often through reviewing tape recordings) and coding certain behaviors, such as the interviewer misreading the question or a respondent asking for clarification, in order to identify problem questions.

**Bias** is the deviation of the average survey value from the true population value. Bias refers to systematic errors that affect any sample taken under a specific design with the same constant error.

**-C-**

A **case study** is a method for learning about a complex instance, based on a comprehensive understanding of that instance obtained by extensive description and analysis of that instance taken as a whole and in its context.

A **census** survey is a survey of the entire universe or target population that is of interest.

**Clustering** refers to a sample design in which geographic groups are formed (clusters) for purposes of sampling in order to reduce the costs of interviewer travel.

**Coding** involves converting information into numbers or other symbols that can be more easily counted and tabulated.

**Cognitive interviews** are used to test and refine questionnaires. In a cognitive interview, respondents are required to report aloud everything they are thinking as they attempt to answer a survey question.

A **complex sample design** is one that involves multiple stages, stratification, unequal probabilities of selection or clustering.

**Confidentiality** involves the protection of individually identifiable data from unauthorized disclosures.

A **convenience sample** is a nonprobability sample that is drawn from units of the population of interest that are close at hand or willing to participate.

**Coverage** refers to the extent to which all elements on a frame list are members of the population, and to which every element in a population appears on the frame list once and only once.

**Coverage error** refers to the discrepancy between statistics calculated on the frame population and the same statistics calculated on the target population. Undercoverage errors occur when target population units are missed during frame construction, and overcoverage errors occur when units are duplicated or enumerated in error.



A **cut-off sample** is a nonprobability sample that consists of the units in the population that have the largest values of a key variable (frequently the variable of interest from a previous time period). For example, a 90 percent cut-off sample consists of the largest units accounting for at least 90 percent of the population total of the key variable. Sample selection is usually done by sorting the population in decreasing order by size, and including units in the sample until the percent coverage exceeds the established cut-off.

### -D-

**Data protection** involves techniques that are used to insure that confidential individually identifiable data are not disclosed.

The **design effect (DEFF)** is the ratio of the true variance of a statistic (taking the complex sample design into account) to the variance of the statistic for a simple random sample with the same number of cases. Design effects differ for different subgroups and different statistics; no single design effect is universally applicable to any given survey or analysis.

**Disclosure** means the public release of individually identifiable data that were obtained under a pledge of confidentiality.

### -E-

**Editing** is a procedure that uses available information and some assumptions to derive substitute values for inconsistent values in a data file.

An **eligible sample unit** is a unit selected for a sample that is confirmed to be a member of the target population.

An **establishment survey** is a survey of a business establishment.

**Estimates** result from the process of providing a numerical value for a population parameter on the basis of information collected from a survey and/or other sources.

**Estimation** is the process of using data from a survey and/or other sources to provide a value for an unknown population parameter (such as a mean, proportion, correlation, or effect size), or to provide a range of values in the form of a confidence interval.

**Estimation error** is the difference between a survey estimate and the true value of the target population.

An **experimental design** is a type of research design in which the researcher controls and manipulates conditions in order to assess the effect on some outcome of interest. Experiments are conducted when researchers want to be able to infer causality.

An **expert choice sample** is a nonprobability sample in which an "expert" specifically chooses sample elements with certain characteristics to mimic 'typical' or 'representative' members of the population.

### -F-

In a **field test**, all or some of the survey procedures are tested on a small scale that mirrors the planned full-scale implementation.

A **focus group** involves a semi-structured group discussion of a topic.

**Forecasting** involves the specific projection that an investigator believes is most likely to provide an accurate prediction of a future value of some process.

A **frame** is a mapping of the universe elements (i.e., sampling units) onto a finite list (e.g., the population of schools on the day of the survey).

The **frame population** is the set of elements that can be enumerated prior to the selection of a survey sample.

### -G-

A **gatekeeper** is a person who is between the interviewer and the respondent and may prevent the interviewer from gaining access to the respondent. In an establishment survey, secretaries or administrative assistants may control what mail and telephone calls reach a respondent and, thus, act as gatekeepers.

### -H-

**Honoraria** are payments given to professional individuals or institutions for services for which fees are not legally or traditionally required in order to secure their participation. Thus, this term is more appropriately used for payments to physicians, CPAs, schools, administrators, teachers, and so forth. An honorarium is usually paid on the condition of a respondent's participation as a token of appreciation.

**Hypothesis testing** draws a conclusion about the tenability of a stated value for a parameter. For example, sample data may be used to test whether an estimated value of a parameter (such as the difference between two population means) is sufficiently different from zero that the null hypothesis, designated  $H_0$  (no difference in the population means), can be rejected in favor of the alternative hypothesis,  $H_1$  (a difference between the two population means).

### -I-

**Imputation** is a procedure that uses available information and some assumptions to derive substitute values for missing values in a data file.

An **incentive** is a positive motivational influence; something that induces action or motivates effort. Incentives are sometimes used in surveys to increase cooperation.

**Individually identifiable data** refers specifically to data from any list, record, response form, completed survey, or aggregation about an individual or individuals from which information about particular individuals or their schools/education institutions may be revealed by either direct or indirect means.

**Instrument** refers to an evaluative device that includes tests, scales, and inventories to measure a domain using standardized procedures. It is commonly used in surveys to refer to the device used to collect data, such as a questionnaire or data entry software.

**Interactive voice response** refers to a method for data collection in which a computer "reads" the question to respondents over the phone, and respondents reply by using the keypad or saying their answers aloud.

**Internal validity** refers to the soundness of an experimental design so that the results reflect only the differences the researcher intended by manipulating the conditions, and the absence of alternative explanations for the results from the experiment.

An **Internet panel** consists of a large sample of respondents who have volunteered or been recruited to participate in many surveys on the Internet over some period of time.

**Interviewer bias** refers to effects that interviewers may have that bias the survey results. One bias that may occur is that respondents will report fewer socially undesirable attitudes or behaviors to an interviewer.

**Interviewer debriefing** is a method used in pretesting in which interviewers are asked to report any problems that they perceived that respondents had with the questions in the survey instrument.

**Item nonresponse** occurs when a respondent fails to respond to one or more relevant item(s) on a survey.

### -K-

**Key variables** include survey-specific items for which aggregate estimates are commonly published from a study. They include, but are not restricted to, variables most commonly used in table row stubs. Key variables also include important analytic composites and other policy-relevant variables that are essential elements of the data collection. They are first defined in the initial planning stage of a survey, but may be added to as the survey and resulting analyses develop. For example, a study of student achievement might use gender, race-ethnicity, urbanicity, region, and school type (public/private) as key reporting variables.

### -L-

A **longitudinal** sample survey follows the experiences and outcomes over time of a representative sample of respondents (i.e., a cohort) who are defined based on a shared experience (e.g., shared birth year or grade in school).

### -M-

Response to a **mandatory survey** is required by law.

**Measurement error** is the difference between observed values of a variable recorded under similar conditions and some fixed true value (e.g., errors in reporting, reading, calculating, or recording a numerical value). Response bias is the deviation of the survey estimate from the true population value that is due to measurement error from the data collection. Potential sources of response bias include the respondent, the instrument, and the interviewer.

A **microdata** file includes the detailed responses for individual respondents.

A **mixed mode** survey is one that uses more than one mode for data collection, for example, a mail survey is initially sent to respondents, but nonrespondents are called on the telephone to complete the survey.

**Mode of data collection** refers to whether the information is gathered from respondents in a face-to-face interview, over the telephone, from a mail survey, or via a web survey.

A **model** is a formalized set of mathematical expressions quantifying the process assumed to have generated a set of observations.

**Model-based samples** are selected to achieve efficient and robust estimates of the true values of the target populations under a chosen working model.

A **multi-stage design** for a sample is a complex design in which the sample is selected in stages because a comprehensive listing of sample elements is not available. One example of a multi-stage sample design for an area sample is first states may be selected, then counties, then a

census tract or block group within the county. The sample elements are then listed and finally selected for inclusion into the sample.

### -N-

**Nonprobabilistic methods** are methods for selecting a sample that do not select sample elements such that each one has some known nonzero probability of being selected into the sample.

A **nonprobability sample** is a sample in which sample elements are not chosen so that each one has some known nonzero probability of being selected into the sample. Common examples of nonprobability samples are convenience sample, quota samples, and expert choice samples.

**Nonresponse bias** occurs when the observed value deviates from the population parameter due to differences between respondents and nonrespondents. Nonresponse bias is likely to occur as a result of not obtaining 100 percent response from the selected cases.

**Nonresponse error** is the overall error observed in estimates caused by differences between respondents and nonrespondents. It consists of a variance component and nonresponse bias.

**Nonsampling error** includes measurement errors due to interviewers, respondents, instruments, and mode; nonresponse error; coverage error; and processing error.

### -O-

**Overall unit nonresponse** reflects a combination of unit nonresponse across two or more levels of data collection, where participation at the second stage of data collection is conditional upon participation in the first stage of data collection.

An **oversample** refers to selecting some sample elements with probabilities greater than their proportion in the population usually in order to have a large enough sample to make separate estimates for a subgroup with greater precision than would be possible if the group was selected in proportion to its representation in the population.

### -P-

A **panel survey** is a survey that is repeated with the same respondents over some period of time. The **p value** is the probability of the observed data, or data showing a more extreme departure from the null hypothesis, occurring when the null hypothesis is true.

In a **pilot test**, a laboratory or a very small-scale test of a questionnaire or procedure is conducted.

**Population**—see “target population.”

The **power** ( $1 - b$ ) of a test is defined as the probability of rejecting the null hypothesis when a specific alternative hypothesis is assumed. For example, with  $b = 0.20$  for a particular alternative hypothesis, the power is 0.80, which means that 80 percent of the time the test statistic will fall in the rejection region if the parameter has the value specified by the alternative hypothesis.

**Precision** of survey results refers to how closely the results from a sample can reproduce the results that would be obtained from a complete count (i.e., census) conducted using the same techniques. The difference between a sample result and the result from a complete census taken under the same conditions is known as the precision of the sample result.

A survey **pretest** involves experimenting with different components of the questionnaire or survey design or operationalization prior to full-scale implementation. This may involve **pilot**

**testing**, that is a laboratory or a very small-scale test of a questionnaire or procedure, or a **field test** in which all or some of the survey procedures are tested on a small scale that mirrors the planned full-scale implementation.

**Probabilistic methods** for survey sampling are any of a variety of methods for sampling that give a known, non-zero, probability of selection to each member of the target population. The advantage of probabilistic sampling methods is that sampling error can be calculated. Such methods include: random sampling, systematic sampling, and stratified sampling. They do not include: convenience sampling, judgment sampling, quota sampling, and snowball sampling.

A **probability sample** is a sample that is selected so that each sample member has some known nonzero probability of being selected into the sample.

**Probability of selection** in a survey is the probability that a given sampling unit will be selected, based on the probabilistic methods used in sampling.

**Proxy responses** are responses provided by anyone other than the respondent who is reporting for the respondent or providing information about the respondent. For example, parents often report for young children in surveys.

A **public-use data file** or **public-use microdata file** includes a subset of data that have been coded, aggregated, or otherwise altered to mask individually identifiable information, and thus is available to all external users. Unique identifiers, geographic detail, and other variables that cannot be suitably altered are not included in public-use data files.

#### **-Q-**

A **qualitative study** is one done with the goal of obtaining rich information and insight to describe or explore a phenomena through a variety of methods such as focus groups, case studies, in-depth interviews, and observations.

A **quasi-experimental design** is one in which the researcher is unable to assign persons randomly to conditions but is still able to have some control over the conditions.

A **quota sample** samples are samples where units are selected nonrandomly based on a quota. The quota may be defined such that the final numbers of participating units with given characteristics have the same proportion as corresponding units have in the population.

#### **-R-**

A **RDD survey** refers to Random Digit Dialing, which is a means of generating telephone numbers to select a random sample.

**Refusal conversion** refers to the practice of having interviewers call back (either on the telephone or in-person) a respondent who has refused and attempt to gain his or her cooperation in the survey. Often the most effective interviewers in an organization are selected to do refusal conversions.

**Reinterview** refers to asking usually only a small subset of respondents to take the survey again or answer a subset of the survey questions again. Reinterviews may be conducted to assess interviewers or statistical properties of questions in the survey.

**Required response items** include the minimum set of items required for a case to be considered a respondent.

**Respondent burden** is the estimated total time and financial resources expended by the survey respondent to generate, maintain, retain, and provide survey information.

**Respondent debriefing** is a pretesting method in which respondents are asked questions about the survey questions after they have completed the survey. Respondents may be asked to report if they had any trouble understanding any of the questions or found any questions unclear or confusing.

A **response analysis survey** is a study of the capability of respondents to accurately provide the data requested for a survey.

**Response rates:** see weighted response rate and unweighted response rate.

### -S-

A **sample survey** selects respondents from only a portion of the total target population using probability methods in order to make an inference about the target population.

**Sampling error** is the error associated with nonobservation, that is, the error that occurs because all members of the frame population are not measured. It is the error associated with the variation in samples drawn from the same frame population. The variance equals the square of the sampling error.

A **sampling frame** is a list or set of procedures for identifying all elements of a target population from which one can draw a sample.

**Sampling units** are the basic components of a sample frame. Everything covered by a sample frame must belong to one definite sampling unit, or have a measurable probability of belonging to a specific unit. The sampling unit may contain, for example, houses, people, or businesses.

**Sampling weights** are the inverse of the probability of selection for a sample element.

A **simple random sample** is one in which every member of the population has an equal probability of being selected, and all samples of a given size have the same probability of being selected.

**Skip patterns** are used in questionnaires to indicate when the next question should be skipped because of the respondent's answer to the current question. On paper questionnaires, skip patterns may be indicated by arrows or instructions to go to a specific item. Computer-assisted interviews have the skip patterns programmed into the instrument.

A **snowball sample** is a sample that is built by asking a respondent to provide the name of someone that he or she knows for the researcher to contact. It can be a useful technique to build a sample of individuals who have a rare condition and know one another.

**Social desirability** is a bias that occurs when respondents answer questions in a manner designed to present themselves favorably.

In a **split panel design**, respondents are randomly assigned into different groups to receive different versions of the questions to measure any differences between the different question wordings.

**Stage of data collection** includes any stage or step in the sample identification and data collection process in which data are collected from the identified sample unit. This includes information obtained that is required to proceed to the next stage of sample selection or data collection (e.g., school district permission for schools to participate or schools providing lists of teachers for sample selection of teachers).

**Standard error** is the standard deviation of the sampling distribution of a statistic. Although the standard error is used to estimate sampling error, it includes some nonsampling error.

**Statistical disclosure limitation methods** refer to a variety of techniques and rules for reducing the amount of information that is presented that could be used to identify a respondent from data in tables or in microdata files.

**Statistical methods** include the use of sampling, estimation, imputation, or techniques for modeling or data analysis.

**Strata** are created by partitioning the frame and are generally defined to include relatively homogeneous units within strata.

A **statistical survey** is a data collection whose purposes include the description, estimation, or analysis of the characteristics of groups, organizations, segments, activities, or geographic areas. A statistical survey may be a census or may collect information from a sample of the target population.

**Survey panel:** see panel survey.

### -T-

The **target population** is any group of potential sample units or persons, businesses, or other entities of interest.

**Touchtone data entry** refers to using the touchtone key pad to enter numeric information in response to a survey question.

### -U-

**Unit nonresponse** occurs when a respondent fails to respond to all required response items (i.e., fails to fill out or return a data collection instrument).

A **universe** survey involves the collection of data covering all known units in a population (i.e., a census).

The **unweighted response rate** is the response rate calculated using the direct counts of the number of completed interviews, noncontacts, refusals, etc. not taking into account any differential probabilities of selection.

**Usability testing** involves some assessment of how well a survey instrument can be used in practice by an interviewer or a respondent. Some Federal agencies have usability laboratories where they can observe and record respondent's behavior interacting with a computerized survey instrument.

### -V-

**Variance estimates**—see “sampling error.”

Response to a **voluntary** survey is not required by law.

### -W-

A **wave** is a round of data collection in a longitudinal survey (e.g., the base year and each successive followup are each waves of data collection).

**Weights** are relative values associated with each sample unit that are intended to correct for unequal probabilities of selection for each unit due to sample design. Weights most frequently

## Glossary

represent the relative portion of the population that the unit represents. Weights may be adjusted for nonresponse.

A **weighted response rate** is the response rate calculated using the counts of the number of completed interviews, noncontacts, refusals, etc. taking into account the probabilities of selection for each case to measure the proportion of the sampling frame that is represented by the responding units.

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## Appendices

# PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the Supporting Statement, and any additional documentation to: **Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.**

1. Agency/Subagency originating request	2. OMB control number <span style="float: right;">b. <input type="checkbox"/> None</span> a. _____ - _____
3. Type of information collection ( <i>check one</i> ) a. <input type="checkbox"/> New Collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension of a currently approved collection d. <input type="checkbox"/> Reinstatement, <b>without change</b> , of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, <b>with change</b> , of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number <i>For b-f, note Item A2 of Supporting Statement instructions</i>	4. Type of review requested ( <i>check one</i> ) a. <input type="checkbox"/> Regular b. <input type="checkbox"/> Emergency - Approval requested by: ___/___/___ c. <input type="checkbox"/> Delegated 5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input type="checkbox"/> No 6. Requested expiration date a. <input type="checkbox"/> Three years from the approval date <span style="float: right;">b. <input type="checkbox"/> Other: ___/___</span>
7. Title	
8. Agency form number(s) ( <i>if applicable</i> )	
9. Keywords	
10. Abstract	
11. Affected public ( <i>Mark primary with "P" and all others with "X"</i> ) a. <input type="checkbox"/> Individuals or households <span style="margin-left: 100px;">d. <input type="checkbox"/> Farms</span> b. <input type="checkbox"/> Business or other for-profit <span style="margin-left: 100px;">e. <input type="checkbox"/> Federal Government</span> c. <input type="checkbox"/> Not-for-profit institutions <span style="margin-left: 100px;">f. <input type="checkbox"/> State, Local, or Tribal Government</span>	12. Obligation to respond ( <i>Mark primary with "P" and all others that apply with "X"</i> ) a. <input type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory
13. Annual reporting and recordkeeping hour burden a. Number of respondents _____ b. Total annual responses _____ 1. Percentage of these responses collected electronically _____ % c. Total annual hours requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____	14. Annual reporting and recordkeeping cost burden ( <i>in thousands of dollars</i> ) a. Total annualized capital/startup costs _____ b. Total annual costs (O&M) _____ c. Total annualized cost requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____
15. Purpose of information collection ( <i>Mark primary with "P" and all others that apply with "X"</i> ) a. <input type="checkbox"/> Application for benefits <span style="margin-left: 100px;">e. <input type="checkbox"/> Program planning or management</span> b. <input type="checkbox"/> Program evaluation <span style="margin-left: 100px;">f. <input type="checkbox"/> Research</span> c. <input type="checkbox"/> General purpose statistics <span style="margin-left: 100px;">g. <input type="checkbox"/> Regulatory or compliance</span> d. <input type="checkbox"/> Audit	16. Frequency of recordkeeping or reporting ( <i>check all that apply</i> ) a. <input type="checkbox"/> Recordkeeping <span style="margin-left: 100px;">b. <input type="checkbox"/> Third party disclosure</span> c. <input type="checkbox"/> Reporting: 1. <input type="checkbox"/> On occasion <span style="margin-left: 50px;">2. <input type="checkbox"/> Weekly</span> <span style="margin-left: 50px;">3. <input type="checkbox"/> Monthly</span> 4. <input type="checkbox"/> Quarterly <span style="margin-left: 50px;">5. <input type="checkbox"/> Semi-annually</span> <span style="margin-left: 50px;">6. <input type="checkbox"/> Annually</span> 7. <input type="checkbox"/> Biennially <span style="margin-left: 50px;">8. <input type="checkbox"/> Other (describe) _____</span>
17. Statistical methods Does this information collection employ statistical methods? <input type="checkbox"/> Yes <input type="checkbox"/> No	18. Agency contact ( <i>person who can best answer questions regarding the content of this submission</i> ) Name: _____ Phone: _____

## 19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9.

**NOTE:** The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It uses plain, coherent, and unambiguous language that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention periods for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8 (b)(3) about:
  - (i) Why the information is being collected;
  - (ii) Use of information;
  - (iii) Burden estimate;
  - (iv) Nature of response (voluntary, required for a benefit, or mandatory);
  - (v) Nature and extent of confidentiality; and
  - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of the instructions);
- (i) It uses effective and efficient statistical survey methodology (if applicable); and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of these provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

# Instructions For Completing OMB Form 83-I

Please answer all questions and have the Senior Official or designee sign the form. These instructions should be used in conjunction with 5 CFR 1320, which provides information on coverage, definitions, and other matters of procedure and interpretation under the Paperwork Reduction Act of 1995.

## 1. Agency/Subagency originating request

Provide the name of the agency or subagency originating the request. For most cabinet-level agencies, a subagency designation is also necessary. For non-cabinet agencies, the subagency designation is generally unnecessary.

## 2. OMB control number

- If the information collection in this request has previously received or now has an OMB control or comment number, enter the number.
- Check "None" if the information collection in this request has not previously received an OMB control number. Enter the four digit agency code for your agency.

## 3. Type of information collection (check one)

- Check "New collection" when the collection has not previously been used or sponsored by the agency.
- Check "Revision" when the collection is currently approved by OMB, and the agency request includes a material change to the collection instrument, instructions, its frequency of collection, or the use to which the information is to be put.
- Check "Extension" when the collection is currently approved by OMB, and the agency wishes only to extend the approval past the current expiration date without making any material change in the collection instrument, instructions, frequency of collection, or the use to which the information is to be put.
- Check "Reinstatement without change" when the collection previously had OMB approval, but the approval has expired or was withdrawn before this submission was made, and there is no change to the collection.
- Check "Reinstatement with change" when the collection previously had OMB approval, but the approval has expired or was withdrawn before this submission was made, and there is change to the collection.
- Check "Existing collection in use without OMB control number" when the collection is currently in use but does not have a currently valid OMB control number.

## 4. Type of review requested (check one)

- Check "Regular" when the collection is submitted under 5 CFR 1320.10, 1320.11, or 1320.12 with a standard 60 day review schedule.
- Check "Emergency" when the agency is submitting the request under 5 CFR 1320.13 for emergency processing and provides the required supporting material. Provide the date by which the agency requests approval.
- Check "Delegated" when the agency is submitting the collection under the conditions OMB has granted the agency delegated authority.

## 5. Small entities

Indicate whether this information collection will have a significant impact on a substantial number of small entities. A small entity may be (1) a small business which is deemed to be one that is independently owned and operated and that is not dominant in its field of operation; (2) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field; or (3) a small government jurisdiction which is a government of a city, county, town, township, school district, or special district with a population of less than 50,000.

## 6. Requested expiration date

- Check "Three years" if the agency requests a three year approval for the collection.
- Check "Other" if the agency requests approval for less than three years. Specify the month and year of the requested expiration date.

## 7. Title

Provide the official title of the information collection. If an official title does not exist, provide a description which will distinguish this collection from others.

## 8. Agency form number(s) (if applicable)

Provide any form number the agency has assigned to this collection of information. Separate each form number with a comma.

## 9. Keywords

Select and list at least two keywords (descriptors) from the "Federal Register Thesaurus of Indexing Terms" that describe the subject area(s) of the information collection. Other terms may be used but should be listed after those selected from the thesaurus. Separate keywords with commas. Keywords should not exceed two lines of text.

## 10. Abstract

Provide a statement, limited to five lines of text, covering the agency's need for the information, uses to which it will be put, and a brief description of the respondents.

## 11. Affected public

Mark all categories that apply, denoting the primary public with a "P" and all others that apply with "X."

## 12. Obligation to respond

Mark all categories that apply, denoting the primary obligation with a "P" and all others that apply with "X."

- Mark "Voluntary" when the response is entirely discretionary and has no direct effect on any benefit or privilege for the respondent.
- Mark "Required to obtain or retain benefits" when the response is elective, but is required to obtain or retain a benefit.
- Mark "Mandatory" when the respondent must reply or face civil or criminal sanctions.

## 13. Annual reporting and recordkeeping hour burden

- Enter the number of respondents and/or recordkeepers. If a respondent is also a recordkeeper, report the respondent only once.
- Enter the number of responses provided annually. For recordkeeping as compared to reporting activity, the number of responses equals the number of recordkeepers.
  - Enter the estimated percentage of responses that will be submitted/collected electronically using magnetic media (i.e., diskette), electronic mail, or electronic data interchange. Facsimile is **not** considered an electronic submission.
  - Enter the total annual recordkeeping and reporting hour burden.
  - Enter the burden hours currently approved by OMB for this collection of information. Enter zero (0) for any new submission or for any collection whose OMB approval has expired.
  - Enter the difference by subtracting line d from line c. Record a negative number (d larger than c) within parentheses.
  - Explain the difference. The difference in line e must be accounted for in lines f.1. and f.2.
    - "Program change" is the result of deliberate Federal government action. All new collections and any subsequent revision of existing collections (e.g., the addition or deletion of questions) are recorded as program changes.
    - "Adjustment" is a change that is not the result of a deliberate Federal government action. Changes resulting from new estimates or action not controllable by the Federal government are recorded as adjustments.

## 14. Annual reporting and recordkeeping cost burden (in thousands of dollars)

The costs identified in this item must exclude the cost of hour burden identified in Item 13.

- Enter the total dollar amount of annualized cost for all respondents of any associated capital or start-up costs.
- Enter recurring annual dollar amount of cost for all respondents associated with operating or maintaining systems or purchasing services.
- Enter total (14.a. + 14.b.) annual reporting and recordkeeping cost burden.
- Enter any cost burden currently approved by OMB for this collection of information. Enter zero (0) if this is the first submission after October 1, 1995.
- Enter the difference by subtracting line d from line c. Record a negative number (d larger than c) within parenthesis.
- Explain the difference. The difference in line e must be accounted for in lines f.1. and f.2.
  - "Program change" is the result of deliberate Federal government action. All new collections and any subsequent revisions or changes resulting in cost changes are recorded as program changes.

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f.2. "Adjustment" is a change that is not the result of a deliberate Federal government action. Changes resulting from new estimations or actions not controllable by the Federal government are recorded as adjustments.

#### 15. Purpose of information collection

Mark all categories that apply, denoting the primary purpose with a "P" and all others that apply with "X."

a. Mark "Application for benefits" when the purpose is to participate in, receive, or qualify for a grant, financial assistance, etc., from a Federal agency or program.

b. Mark "Program evaluation" when the purpose is a formal assessment, through objective measures and systematic analysis, of the manner and extent to which Federal programs achieve their objectives or produce other significant effects.

c. Mark "General purpose statistics" when the data is collected chiefly for use by the public or for general government use without primary reference to the policy or program operations of the agency collecting the data.

d. Mark "Audit" when the purpose is to verify the accuracy of accounts and records.

e. Mark "Program planning or management" when the purpose relates to progress reporting, financial reporting and grants management, procurement and quality control, or other administrative information that does not fit into any other category.

f. Mark "Research" when the purpose is to further the course of research, rather than for a specific program purpose.

g. Mark "Regulatory or compliance" when the purpose is to measure compliance with laws or regulations.

#### 16. Frequency of recordkeeping or reporting

Check "Recordkeeping" if the collection of information explicitly includes a recordkeeping requirement.

Check "Third party disclosure" if a collection of information includes third-party disclosure requirements as defined by 1320.3(c).

Check "Reporting" for information collections that involve reporting and check the frequency of reporting that is requested or required of a respondent. If the reporting is on "an event" basis, check "On occasion."

#### 17. Statistical methods

Check "Yes" if the information collection uses statistical methods such as sampling or imputation. Generally, check "No" for applications and audits (unless a random auditing scheme is used). Check "Yes" for statistical collections, most research collections, and program evaluations using scientific methods. For other types of data collection, the use of sampling, imputation, or other statistical estimation techniques should dictate the response for this item. Ensure that supporting documentation is provided in accordance with Section B of the Supporting Statement.

#### 18. Agency contact

Provide the name and telephone number of the agency person best able to answer questions regarding the content of this submission.

#### 19. Certification for Paperwork Reduction Act Submissions

The Senior Official or designee signing this statement certifies that the collection of information encompassed by the request complies with 5 CFR 1320.9. Provisions of this certification that the agency cannot comply with should be identified here and fully explained in item 18 of the attached Supporting Statement. NOTE: The Office that "develops" and "uses" the information to be collected is the office that "conducts or sponsors" the collection of information. (See 5 CFR 1320.3(d)).

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## Certification Requirement for Paperwork Reduction Act Submissions

5 CFR 1320.9 reads "As part of the agency submission to OMB of a proposed collection of information, the agency (through the head of the agency, the Senior Official, or their designee) shall certify (and provide a record supporting such certification) that the proposed collection of information--

"(a) is necessary for the proper performance of the functions of the agency, including that the information to be collected will have practical utility;

"(b) is not unnecessarily duplicative of information otherwise reasonably accessible to the agency;

"(c) reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency, including with respect to small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. § 601(6)), the use of such techniques as:

"(1) establishing differing compliance or reporting requirements or timetables that take into account the resources available to those who are to respond;

"(2) the clarification, consolidation, or simplification of compliance and reporting requirements; or collections of information, or any part thereof;

"(3) an exemption from coverage of the collection of information, or any part thereof;

"(d) is written using plain, coherent, and unambiguous terminology and is understandable to those who are to respond;

"(e) is to be implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond;

"(f) indicates for each recordkeeping requirement the length of time persons are required to maintain the records specified;

"(g) informs potential respondents of the information called for under §1320.8(b)(3); [see below]

"(h) has been developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected, including the processing of the information in a manner which shall enhance, where appropriate, the utility of the information to agencies and the public;

"(i) uses effective and efficient statistical survey methodology appropriate to the purpose for which the information is to be collected; and

"(j) to the maximum extent practicable, uses appropriate information technology to reduce burden and improve data quality, agency efficiency and responsiveness to the public."

NOTE: 5 CFR 1320.8(b)(3) requires that each collection of information:

"(3) informs and provides reasonable notice to the potential persons to whom the collection of information is addressed of:

"(i) the reasons the information is planned to be and/or has been collected;

"(ii) the way such information is planned to be and/or has been used to further the proper performance of the functions of the agency;

"(iii) an estimate, to the extent practicable, of the average burden of the collection (together with a request that the public direct to the agency any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden);

"(iv) whether responses to the collection of information are voluntary, require to obtain or retain a benefit (citing authority) or mandatory (citing authority);

"(v) the nature and extent of confidentiality to be provided, if any (citing authority); and

"(vi) the fact that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number."

009245

# Supporting Statement for Paperwork Reduction Act Submissions

## General Instructions

A Supporting Statement, including the text of the notice to the public required by 5 CFR 1320.5(a)(i)(iv) and its actual or estimated date of publication in the Federal Register, must accompany each request for approval of a collection of information. The Supporting Statement must be prepared in the format described below, and must contain the information specified in Section A below. If an item is not applicable, provide a brief explanation. When Item 17 of the OMB Form 83-1 is checked "Yes", Section B of the Supporting Statement must be completed. OMB reserves the right to require the submission of additional information with respect to any request for approval.

## Specific Instructions

### A. Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-1), describe any methods used to minimize burden.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- \* requiring respondents to report information to the agency more often than quarterly;
- \* requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;
- \* requiring respondents to submit more than an original and two copies of any document;

- \* requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;
- \* in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;
- \* requiring the use of a statistical data classification that has not been reviewed and approved by OMB;
- \* that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or
- \* requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years - even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

9. Explain any decision to provide any payment or gift to respondents, other than reenumeration of contractors or grantees.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information

is requested, and any steps to be taken to obtain their consent.

12. Provide estimates of the hour burden of the collection of information. The statement should:

- \* Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.
- \* If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-1.

- \* Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 13.

13. Provide an estimate for the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).

- \* The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.

- \* If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collections services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use

existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.

\* Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

14. Provide estimates of annualized costs to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.

#### **B. Collections of Information Employing Statistical Methods**

The agency should be prepared to justify its decision not to use statistical methods in any case where such methods might reduce burden or improve accuracy of results. When Item 17 on the Form OMB 83-I is checked, "Yes," the following documentation should be included in the Supporting Statement to the extent that it applies to the methods proposed:

1. Describe (including a numerical estimate) the potential respondent universe and any sampling or other respondent selection methods to be used. Data on the number of entities (e.g., establishments, State and local government units, households, or persons) in the universe covered by the collection and in the corresponding sample are to be provided in tabular form for the universe as a whole and for each of the strata in the proposed sample. Indicate expected response rates for the collection as a whole. If the collection had been conducted previously, include the actual response rate achieved during the last collection.

2. Describe the procedures for the collection of information including:

- \* Statistical methodology for stratification and sample selection,
- \* Estimation procedure,
- \* Degree of accuracy needed for the purpose described in the justification,
- \* Unusual problems requiring specialized sampling procedures, and
- \* Any use of periodic (less frequent than annual) data collection cycles to reduce burden.

3. Describe methods to maximize response rates and to deal with issues of non-response. The accuracy and reliability of information collected must be shown to be adequate for intended uses. For collections based on sampling, a special justification must be provided for any collection that will not yield "reliable" data that can be generalized to the universe studied.

4. Describe any tests of procedures or methods to be undertaken. Testing is encouraged as an effective means of refining collections of information to minimize burden and improve utility. Tests must be approved if they call for answers to identical questions from 10 or more respondents. A proposed test or set of test may be submitted for approval separately or in combination with the main collection of information.

5. Provide the name and telephone number of individuals consulted on statistical aspects of the design and the name of the agency unit, contractor(s), grantee(s), or other person(s) who will actually collect and/or analyze the information for the agency.

009247





"Hunt, Alexander T."  
<Alexander\_T.\_Hunt@omb.e  
op.gov>  
10/17/2006 06:07 PM

To lotero@eac.gov  
cc  
bcc  
Subject RE: Emergency Review

The hour burden calculation would be correct, but you shouldn't monetize the hour burden (we account for out-of-pocket costs separately). In your emergency request, you will need to explain what emergency or unforeseen event made the normal PRA approval process impractical or contrary to the public interest.

Thanks.

---

**From:** lotero@eac.gov [mailto:lotero@eac.gov]  
**Sent:** Tuesday, October 17, 2006 1:51 PM  
**To:** Hunt, Alexander T.  
**Subject:** Emergency Review

Dear Mr. Hunt,

We are preparing two ICR submission packages for emergency review for two separate studies we are required under the Help America Vote Act of 2002 regarding uniformed and overseas voters (42 U.S. C. 15385) and voters who register by mail and use of social security information (42 U.S.C. 15384). These projects require information from voters on or very soon after Election Day (11/7/2006) in the forms of surveys and focus groups so we may better capture data relevant to the studies and report to Congress our findings as required.

I have a question regarding the requirement to provide an estimate in hours of the burden of the collection informations, in particular the estimates of annualized cost to respondents for the hour burdens for these collection of informations - for example, if we are aiming for a sample of 1,200 voters and it takes approximately 15 minutes to complete the survey and we are only collecting this information once =  $1200 \times .25 \times 1 = 300$  total annual hourly burden?. Then to figure out the total cost - do we use (.25 hours x minimum wage rate) x 300 = \$386.25 total cost to the public?

Thank you very much as always for your time and patience.

Sincerely,

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)  
Fax (202) 566-3128

009248



"Hunt, Alexander T."  
<Alexander\_T.\_Hunt@omb.e  
op.gov>  
11/14/2006 06:54 PM

To lotero@eac.gov  
cc  
bcc  
Subject RE: Privacy Impact Assessments

You can address the PIA requirement in the supporting statement. Please indicate that you are doing so on the ICR page (see below at bottom).

009249

# ROCIS PRA

OIRAInbox OIRA Worksheet ICR Pack

ICR Package

## Edit ICR

Agency: 1545 IRS

OMB Control Number: 1545-0028

Agency ICR Tracking Number:

ah-0028-043

ICR Reference Number:

200610-1545-043

Previous ICR

200511-15

Title:

Employer's Annual Federal Unemployment (FUTA) Tax Return (Form 940); Planilla Para La I

Type of Information Collection (check one):

Revision of a currently approved collection

Type of Review Requested (check one):

Regular

Requested Expiration Date (check one):

Three years from approval date

Does this ICR contain surveys, censuses, or employ statistical methods?  Yes  No

Does the Supporting Statement serve as a Joint ICR and Privacy Impact Assessment per OMB Memorandum



start

5 Microsoft Office

8 Microsoft Office

3 Internet Explorer

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

Sent: Tuesday, November 14, 2006 2:44 PM

To: Hunt, Alexander T.

Subject: Privacy Impact Assessments

009250

Dear Mr. Hunt,

Question: When submitting an ICR for review that will collect information in identifiable form - do we have to submit a separate "Privacy Impact Assessment" document or isn't this requirement already addressed within the structure of the Supporting Statements? I believe it's the latter but I want to make sure I have the correct information (based on the following from OMB's Guidance for Implementing the Privacy Provisions of the E-Government Act of 2002 - M-03-22):


- D. *Relationship to requirements under the Paperwork Reduction Act (PRA)* <sup>10</sup>.
1. Joint Information Collection Request (ICR) and PIA. Agencies undertaking new electronic information collections may conduct and submit the PIA to OMB, and make it publicly available, as part of the SF83 Supporting Statement (the request to OMB to approve a new agency information collection).
  2. If Agencies submit a Joint ICR and PIA:
    - a. All elements of the PIA must be addressed and identifiable within the structure of the Supporting Statement to the ICR, including:
      - i. a description of the information to be collected in the response to Item 1 of the Supporting Statement<sup>11</sup>;
      - ii. a description of how the information will be shared and for what purpose in Item 2 of the Supporting Statement<sup>12</sup>;
      - iii. a statement detailing the impact the proposed collection will have on privacy in Item 2 of the Supporting Statement<sup>13</sup>;
      - iv. a discussion in item 10 of the Supporting Statement of:
        1. whether individuals are informed that providing the information is mandatory or voluntary
        2. opportunities to consent, if any, to sharing and submission of information;
        3. how the information will be secured; and
        4. whether a system of records is being created under the Privacy Act<sup>14</sup>.

Thank you for your time and assistance in this matter.


Respectfully yours,

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)  
Fax (202) 566-3128

009251

 Laiza N. Otero/EAC/GOV  
11/28/2006 03:02 PM

To Thomas R. Wilkey/EAC/GOV@EAC  
cc Bert A. Benavides/EAC/GOV@EAC, Karen  
Lynn-Dyson/EAC/GOV@EAC, Paul  
DeGregorio/EAC/GOV@EAC, Donetta L.  
bcc

Subject Re: Thursday's Commissioner briefing 

Here is the chart Karen requested I prepare for her regarding the PRA/OMB clearance status of the research projects, which will be used during Thursday's Commissioners' meeting. Thank you!



EAC Research Contracts - PRA Status.xls

Laiza N. Otero  
Research Associate  
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Washington, DC 20005  
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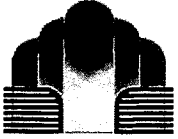
009252

EAC Research Projects - Paperwork Reduction Act

Project Title	Contractor	Task(s)	Subject to PRA	Regular / Emergency	60-Day FR Notice		Public Comment Received
					date pub.	period end	
Social Security	Winbourne & Costas, Inc.	1) State Gov't Survey	Yes - 51 respondents	Regular			
		2) Federal Agency Survey	No - 3 respondents	N/A			
		3) Private Sector Survey	No - 6 respondents	N/A			
Internet Voting and UOCAVA Voters	Q2Data & Research	1) Case Studies	No				
		2) UOCAVA Voters Survey	Yes - target sample of 10,000	Emergency Requested	waived	n/a	n/a
Free Absentee Postage	The Election Center	1) Focus Groups	Yes - 10 or more rule	Regular	14-Nov-06	13-Jan-07	
		2) Voter Survey	Yes - sample to be determined	to be determined			
1st Time Voters	Winner's Circle Communications	1) Case Studies	No	N/A			
		2) Focus Groups	Yes - 10 or more rule	Emergency	waived	n/a	n/a
Alternate Voting	The Election Center	1) Case Studies	No	N/A			
		2) Voter Survey	Yes - sample of 3,500	to be determined			
Voter Hotlines	The Pollworker Institute	1) Survey of each State, territory, and county election officials	Yes	to be determined			

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\*estimate based on 30-60 day approval period (45 days average)



Laiza N. Otero/EAC/GOV  
04/03/2007 04:43 PM

To Karen Lynn-Dyson/EAC/GOV@EAC  
cc  
bcc  
Subject PRA worksheet



Commissioners PRA worksheet.doc



PRA Information for Contractors.doc

009254



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

**Topic:** Procedures for Paperwork Reduction Act Submissions

**1. Definition of a collection of information - PRA regulations at 5 C.F.R. 1320**

- (c) *Collection of information* means, except as provided in § 1320.4, the obtaining, causing to be obtained, soliciting, or requiring the disclosure to an agency, third parties or the public of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, ten or more persons, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. “Collection of information” includes any requirement or request for persons to obtain, maintain, retain, report, or publicly disclose information. As used in this Part, “collection of information” refers to the act of collecting or disclosing information, to the information to be collected or disclosed, to a plan and/or an instrument calling for the collection or disclosure of information, or any of these, as appropriate.

(1) A “collection of information” may be in any form or format, including the use of report forms; application forms; schedules; questionnaires; surveys; reporting or recordkeeping requirements; contracts; agreements; policy statements; plans; rules or regulations; planning requirements; circulars; directives; instructions; bulletins; requests for proposal or other procurement requirements; interview guides; oral communications; posting, notification, labeling, or similar disclosure requirements; telegraphic or telephonic requests; automated, electronic, mechanical, or other technological collection techniques; standard questionnaires used to monitor compliance with agency requirements; or any other techniques or technological methods used to monitor compliance with agency requirements. A “collection of information” may implicitly or explicitly include related collection of information requirements.

**2. Steps for submitting an Information Collection Request (ICR) to OMB (Regular Process)**

- **60-day Federal Register Notice:** A 60-day notice must be published on the Federal Register before the information collection package can be forwarded to OMB for review and approval.
  - Include in this Federal Register notice the proposed information collection document(s), such as a questionnaire or form, or tell the public how they can obtain the proposed documents without charge from the EAC. Direct the public to send comments to the EAC Project Manager/CIO. You must ask for specific public comments on:
    - Whether or not the collection of information is necessary for the proper performance of the functions of the Service, including whether or not the information will have practical utility;
    - The accuracy of the estimate of the burden of the collection of information, including the validity of the methodology and assumptions used.
    - The quality, utility, and clarity of the information to be collected; and

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- Preparing all information and supporting documents required for the submission package on Item 2 above (Prepare an Information Collection Request (ICR) submission package)
- Review and summarize all comments received to notices in the Federal Register. Incorporate public comments/recommendations as appropriate and approved by EAC staff. Maintain record of changes done to the information collection due to the comments received and prepare a brief report of these changes, which will be submitted to OMB.
- Include the PRA and the Privacy Act Statements on the approved forms.

**6. EAC Responsibilities:**

- Review, approve, and publish all Federal Register notices
- Review, approve, and submit the ICR submission package to OMB for approval
- Receive public comments and forward to Contractor.



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

November 30, 2006

## **Paperwork Reduction Act – Information Collection Clearance Process – Regular Clearance Process**

### **Step 1: 60-Day Federal Register Notice**

- Contractor Responsibilities:
  - Draft FR Notice
  - Provide information collection (IC) instrument(s)
  - Review public comments – provide summary of comments received and changes made to the IC
- EAC Responsibilities:
  - Review, approve, and publish FR Notice
  - Post information on website
  - Receive and forward all public comments to Contractor

### **Step 2: 30-Day Federal Register Notice**

- Contractor Responsibilities:
  - Draft FR Notice
  - Provide revised and final information collection (IC) instrument(s)
- EAC Responsibilities:
  - Review, approve, and publish FR Notice
  - Post information on website
- OMB is recipient of public comments during this period

### **Step 3: Submit Information Collection Request (ICR) to the Office of Management and Budget (OMB)**

- Contractor Responsibilities - prepare all information and supporting documents required for the submission package
  - Provide IC instrument in its final form
  - Information on OMB Form 83-I
  - Supporting Statement A – joint Privacy Impact Assessment (PIA)
  - Supporting Statement B (if using statistical methods)
  - Copy of 60-day Federal Register Notice
  - Copy of 30-day Federal Register Notice
  - Summary of public comments received, including actions in response to the comments.
  - Copy of public comments received
  - Copies of pertinent statutory authority and regulation
- EAC Responsibilities:
  - Review and approve documents prepared by Contractor
  - Submit ICR package to OMB via their online ROCIS system

### **Step 4: ICR approval**

- Contractor Responsibilities:
  - Upon approval, insert OMB Control Number, expiration date, burden information, and IC requirements on the information collection instrument(s)
- EAC Responsibilities:
  - Receive OMB approval notification and notify Contractor
  - Make IC materials available on website

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- How to minimize the burden of collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.
- **Prepare an Information Collection Request (ICR) submission package:**
  - Information on OMB Form 83-1 (*template attached*)
  - Supporting Statement A (*template attached*)
  - Supporting Statement B (if using statistical methods) (*template attached*)
  - Copy of 60-day Federal Register Notice
  - Copy of draft of 30-day Federal Register Notice
  - Summary of public comments received, including actions in response to the comments.
  - Copies of pertinent statutory authority and regulations.
- **30-day Federal Register Notice** (occurs at the same time the ICR package is submitted to OMB)
  - Notice will inform the public that OMB has up to 60 days to approve or disapprove the proposed information collection, but may respond after 30 days. To ensure consideration, public comments should be submitted to OMB within 30 days. Include the following:
    - Title for the collection of information
    - Summary of the collection of information;
    - Brief description of the need for the information and proposed use;
    - Description of likely respondents, including estimated number, and proposed frequency of response;
    - Estimate of the total annual reporting and recordkeeping burden that will result from the collection of information.
    - Statement that directs public comments to the Desk Officer for the U.S. Election Assistance Commission at the Office of Information and Regulatory Affairs, Office of Management and Budget.
    - If the EAC has requested approval on an emergency basis, indicate time period within which the Service has requested OMB to approve or disapprove.
    - You must solicit public comments on:
      - (1) Whether or not the collection of information is necessary for the proper performance of the functions of the Service, including whether or not the information will have practical utility;
      - (2) The accuracy of the estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
      - (3) The quality, utility, and clarity of the information to be collected; and
      - (4) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.
- **Upon approval:**

- All information collections must have a Paperwork Reduction Act statement and, if required, a Privacy Act Statement<sup>1</sup>. This information must be on the form or its accompanying instructions.
- The form or collection instrument must contain the OMB number, expiration date, and estimated public burden. This includes the time and cost amounts for completing one form or the instrument, time required for recordkeeping and/or obtaining any necessary documentation, and the time necessary for storing the form and its attendant documentation.

### 3. Emergency Process:

- Agencies may submit an emergency ICR if the collection is both needed sooner than would be possible using normal procedures and is essential for the agency's mission. In addition, the agency must provide a brief, written justification demonstrating that the time to comply with the public comment provisions of the PRA would do any of the following: (1) result in public harm; (2) prevent the agency from responding to an unanticipated event; (3) prevent or disrupt the collection; or (4) cause the agency to miss a statutory or court-ordered deadline. This type of clearance should only be sought if the agency could not have reasonably foreseen the circumstances requiring collection; it is not a substitute for inadequate planning.
- **The emergency ICR must contain all of the information that would be submitted with a normal ICR. Agencies must also specify the date by which they would like OMB to act on the ICR. Approval for an emergency collection is valid for a maximum of six months.** If longer approval is needed, the agency must also initiate the normal PRA approval process to take effect when the emergency clearance expires. Agencies are strongly encouraged to consult with their OMB desk officers prior to submitting a request for emergency clearance.
- **The 60 and 30 Days FR Notices are waived under the emergency process.** However, it is recommend that one publish a notice stating that one is seeking emergency clearance (and to direct comments to our OMB Desk Officer).

### 4. Focus Groups:

- Focus groups are covered under the PRA unless the total number of persons participating within a 12-month period is fewer than ten. For example, an agency conducting three focus groups of nine persons would be subject to the PRA because the total number of participants is greater than 10. Although each focus group may not be asked the exact same questions in the same order, focus groups should be treated as information collections under the PRA if the same information is being sought from the groups.
- Open-ended questions to the public (i.e. What do you think?) in a focus group do not require OMB approval.
- When submitting the ICR package to OMB, the following needs to be included: script, moderator questions, general plan of how the focus groups will be carried out, and the plan for ensuring it is a representative sample of the larger group we wish to gather data from.

### 5. Contractor Responsibilities:

- Drafting of all Federal Register Notices

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<sup>1</sup> Privacy Impact Assessments (PIAs) are required by Section 208 of the E-Government Act for all Federal government agencies that develop or procure new technology (e.g. an electronic database) involving the collection, maintenance or dissemination of personally identifiable information or that make substantial changes to existing technology for managing information in identifiable form. The Office of Management and Budget (OMB) ensures that PIAs necessitated under the E-Government Act are completed by requiring them as part of the annual budget process. *Some information collections under the PRA involve new or upgraded databases and thus would require PIAs.*

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 11/30/2006

U.S. Election Assistance Commission

FOR CERTIFYING OFFICIAL: Juliet Thompson-Hodgkins  
FOR CLEARANCE OFFICER: Laiza Otero

In accordance with the Paperwork Reduction Act, OMB has taken action on your request received 10/31/2006

ACTION REQUESTED: New collection (Request for a new OMB Control Number)  
TYPE OF REVIEW REQUESTED: Regular  
ICR REFERENCE NUMBER: 200610-3265-001  
TITLE: 2006 Election Administration and Voting Survey  
LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved without change  
OMB CONTROL NUMBER: 3265-0006

The agency is required to display the OMB Control Number and inform respondents of its legal significance in accordance with 5 CFR 1320.5(b).

EXPIRATION DATE: 11/30/2009

DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	0	0	0
New	55	6,329	147,930
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	55	6,329	147,930
Change due to Agency Adjustment	0	0	0
Change Due to Potential Violation of the PRA	0	0	0

TERMS OF CLEARANCE:

OMB Authorizing Official: John F. Morrall III  
Acting Deputy Administrator,  
Office Of Information And Regulatory Affairs

009260

List of ICs

IC Title	Form No.	Form Name	CFR Citation
2006 Election Administration and Voting Survey	EAC-RS01	2006 Election Administration and Voting Survey	



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 Abstract/Justification  Legal Statutes  Rulemaking  FR Notices/Comments  IC List  Burden  Misc.  Certification  
[View Information Collection \(IC\) List](#) [View Supporting Statement and Other Documents](#)

Please note that the OMB number and expiration date may not have been determined when this Information Collection Request and associated Information Collection forms were submitted to OMB. The approved OMB number and expiration date may be found by clicking on the Notice of Action link below.

## View ICR - OIRA Conclusion

OMB Control No: 3265-0006

ICR Reference No: 200610-3265-001

Status: Active

Previous ICR Reference No:

Agency/Subagency:

Agency Tracking No:

Title: 2006 Election Administration and Voting Survey

Type of Information Collection: New collection (Request for a new OMB Control Number)

Type of Review Request: Regular

OIRA Conclusion Action: Approved without change

Conclusion Date: 11/30/2006

[Retrieve Notice of Action \(NOA\)](#)

Date Received in OIRA: 10/31/2006

Terms of Clearance:

	Inventory as of this Action	Requested	Previously Approved
Expiration Date	11/30/2009	36 Months From Approved	
Responses	55	55	0
Time Burden (Hours)	6,329	6,329	0
Cost Burden (Dollars)	147,930	147,930	0

**Abstract:** The proposed information collection is necessary to meet requirements of the Help America Vote Act (HAVA) of 2002 (42 U.S.C. 15301). HAVA §241 requires the U.S. Election Assistance Commission (EAC) to study and report on election activities, practices, policies, and procedures, including methods of voter registration, methods of conducting provisional voting, poll worker recruitment and training, and such other matters as the Commission determines are appropriate. In addition, HAVA §802 transferred to the EAC the Federal Election Commission's responsibility of biennially administering a survey on the impact of the National Voter Registration Act (NVRA) (42 U.S.C. 1973gg-1 et seq.). The information the States are required to submit to the EAC for purposes of the NVRA report are found under Title 11 of the Code of Federal Regulations (11 CFR 8.7). HAVA §703(a) also amended §102 the Uniformed and Overseas Citizens Absentee Voters Act (UOCAVA) (42 U.S.C. 1973ff-1) by requiring that "not later than 90 days after the date of each regularly scheduled general election for Federal office, each State and unit of local government which administered the election shall (through the State, in the case of a unit of local government) submit a report to the Election Assistance Commission (established under the Help America Vote Act of 2002) on the combined number of absentee ballots transmitted to absent uniformed services voters and overseas voters for the election and the combined number of such ballots which were returned by such voters and cast in the election, and shall make such a report available to the general public."

**Authorizing Statute(s):** US Code: 42 USC 1973gg-1 et seq. Name of Law: National Voter Registration Act

US Code: 42 USC 1973ff-1 Name of Law: Uniformed and Overseas Citizen Absentee Voters Act

US Code: 42 USC 15301 Name of Law: Help America Vote Act of 2002

**Citations for New Statutory Requirements:** None

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- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention periods for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8 (b)(3) about:
  - (i) Why the information is being collected;
  - (ii) Use of information;
  - (iii) Burden estimate;
  - (iv) Nature of response (voluntary, required for a benefit, or mandatory);
  - (v) Nature and extent of confidentiality; and
  - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected.
- (i) It uses effective and efficient statistical survey methodology (if applicable); and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of these provisions, identify the item by leaving the box unchecked and explain the reason in the Supporting Statement.

**Certification Date:** 10/31/2006

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## ICR Documents

### Supporting Statement A

Document	Date Uploaded
<a href="#">2006 EAC Survey - Supporting Statement A.doc</a>	10/25/2006

### Supporting Statement B

Document	Date Uploaded
<a href="#">2006 EAC Survey - Supporting Statement B.doc</a>	10/25/2006

### Supplementary Documents

Title	Document	Document Type	Date Uploaded
Summary of and Response to Public Comments	<a href="#">2006 EAC Survey - Summary of and Response to Comments.doc</a>	Supplementary Document	10/25/2006
Copy of Public Comments Received	<a href="#">2006 EAC Survey - Copy of Public Comments.pdf</a>	Supplementary Document	10/25/2006
30-Day Federal Register Notice	<a href="#">30-day Federal Register Notice.pdf</a>	Draft Federal Register Notice	10/31/2006
60-Day Federal Register Notice	<a href="#">60-Day Federal Register Notice.pdf</a>	Draft Federal Register Notice	10/31/2006

### Public Comments

Author Name	Comment Document	Author Affiliation	Sponsoring Org.	Type	Category	Date of Comment	Date Comment Received
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Blank fields in records indicate information that was not collected or not collected electronically prior to July 2006.

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**Supporting Statement A:**

**OMB Control Number: xxxx-xxxx**

**U.S. Election Assistance Commission**

**2006 Election Administration and Voting Survey**

**A. Justification**

**1. Explain the circumstances that make the collection of information necessary.**

The proposed information collection is necessary to meet requirements of the Help America Vote Act (HAVA) of 2002 (42 U.S.C. 15301). HAVA §241 requires the U.S. Election Assistance Commission (EAC) to study and report on election activities, practices, policies, and procedures, including methods of voter registration, methods of conducting provisional voting, poll worker recruitment and training, and such other matters as the Commission determines are appropriate. In addition, HAVA §802 transferred to the EAC the Federal Election Commission's responsibility of biennially administering a survey on the impact of the National Voter Registration Act (NVRA) (42 U.S.C. 1973gg-1 et seq.). The information the States are required to submit to the EAC for purposes of the NVRA report are found under Title 11 of the Code of Federal Regulations (11 CFR 8.7).

HAVA §703(a) also amended §102 the Uniformed and Overseas Citizens Absentee Voters Act (UOCAVA) (42 U.S.C. 1973ff-1) by requiring that "not later than 90 days after the date of each regularly scheduled general election for Federal office, each State and unit of local government which administered the election shall (through the State, in the case of a unit of local government) submit a report to the Election Assistance Commission (established under the Help America Vote Act of 2002) on the combined number of absentee ballots transmitted to absent uniformed services voters and overseas voters for the election and the combined number of such ballots which were returned by such voters and cast in the election, and shall make such a report available to the general public."

**2. Indicate how, by whom, and for what purpose the information is to be used.**

The information collected in the 2006 EAC Administration and Voting Survey will be used by the EAC to report to Congress on the impact of the NVRA (42 U.S.C. 1973gg-1 et seq.) on the administration of elections for Federal office for the period from the close of registration for the November 2, 2004, Federal general elections until the close of registration for the November 7, 2006, Federal general elections. In addition, the EAC shall make available to the public the information collected on the combined number of absentee ballots transmitted to absent uniformed services voters and overseas voters for the election and the combined number of such ballots which were returned by such voters and cast in the election as required by UOCAVA §102(c). Further, this collection will standardize the format for the reports submitted by States under UOCAVA §102(c) as required by HAVA §703(b).

**3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.**

The EAC will provide for the secure collection of information via its website. Submission will be accepted using a secure, automated, form-fillable web application. Information will also be accepted via e-mail, fax, and regular mail to accommodate respondents that prefer alternate methods for submitting information. The EAC is committed to making the submission of information to the agency as secure,

efficient, and easy as possible through the use of technology and the ongoing support of survey respondents during the information collection process.

**4. Describe efforts to identify duplication.**

Currently, the U.S Census Bureau's Current Population Survey (CPS) contains a bi-annual supplement that collects information about the voting characteristics of their households. However, the EAC Survey is a census of election administration practices and voter turnout as reported by the chief election officials for the states, the District of Columbia, and the U.S. territories; it does not collect information from voters or regarding characteristics of the voters. The EAC has included the U.S. Department of Defense's Federal Voting Assistance Program in the development of this information collection to minimize duplication efforts regarding UOCAVA voters.

**5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.**

This information collection does not have a significant impact on small businesses or other small entities. The chief election officials for the states, the District of Columbia, and the U.S. territories may have to request information from their local election jurisdictions, but most of this information is already routinely collected from the local election officials to certify election results and report voter turnout. The EAC has made efforts to limit the information requested and burden on all participants. The information sought is limited to that information necessary to meet the requirements listed in response to Question 1 above.

**6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.**

If the EAC does not collect this information it may be unable to comply with its statutory requirements under HAVA (42 U.S.C. 15301), NVRA (42 U.S.C. 1973gg-1 et seq.), and UOCAVA (42 U.S.C. 1973ff-1). This collection of information must be carried out every two years after each Federal general election as stipulated by NVRA and UOCAVA. The EAC has reduced the burden of responding to the information collection by developing a single instrument to collect the information. Prior to this effort, the EAC administered three separate surveys to collect the information, and respondents were burdened by the different deadlines for submitting information and the lack of uniform definitions to describe the data requested. This new collection has clarified questions and election terms to alleviate some of the problems encountered in the previous surveys and increase the response rate.

**7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.**

There are no special circumstances applicable to this information collection.

**8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5CFR 320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken in response to the comments. Specifically address comments received on cost and hour burden. Describe efforts to consult with persons outside DOE.**

The EAC published a notice in the Federal Register on August 1, 2006, at 71 FR 43477.

009267

9. **Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.**

The EAC does not provide any payment or gift to respondents.

10. **Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.**

There is no assurance of confidentiality.

11. **Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.**

There are no questions of a sensitive nature.

12. **Provide estimates of the hour burden of the collection of information. The statement should indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated.**

- a. Number of respondents = 55
- b. Number of responses per each respondent = 1
- c. Total annual responses = 1
- d. Hours per response = 115.07 hours
  - i. Reviewing instructions: 2.13 hours
  - ii. Adjusting to comply with any previously applicable requirements: 10.75 hours
  - iii. Training personnel to respond to a collection of information: 5 hours
  - iv. Searching data sources: 47.20 hours
  - v. Completing and reviewing the collection of information: 47.63 hours
  - vi. Transmitting or otherwise disclosing the information: 2.36
- e. Total annual reporting burden = 6,328.85 hours (*# of respondents x frequency of response x hours of response*)
- f. Estimated total annual cost burden = \$147,905.22 (*# of total annual reporting hours (6,328.85) x estimated hourly cost for responding to this information collection (\$23.37)*)
  - i. The hourly cost factor was derived from dividing the estimated annual cost factor per respondent (\$2,689.63) by the estimated hours per response (115.07) = \$23.37

13. **Provide an estimate for the total annual cost burden to respondents or recordkeepers resulting from the collection of information.**

There are no capital or start-up costs associated with this information collection.

14. **Provide estimates of annualized cost to the Federal government.**

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The estimated annual cost to the Federal Government is \$272,007.20. This estimate includes: \$82,007.20 for website management and programming services for a web-based survey response application; \$180,000 for personnel to administer and manage collections, and \$10,000 for equipment and overhead.

- We estimate \$82,007.20 for website management and programming services for a web-based survey response application.
- We estimate \$180,000 for personnel to administer and manage the collections. Two full time personnel will be assigned to this program. With an average cost (pay and benefits) of approximately \$90,000 a year.
- We estimate \$10,000 for equipment costs and overhead.

**15. Explain the reasons for any program changes or adjustments reported in Items 13 (or 14) of OMB Form 83-I.**

Not applicable. This is a new information collection.

**16. For collections whose results will be published, outline the plans for tabulation and publication.**

The EAC is required by NVRA (42 U.S.C. 1973gg-7) to no later than June 30th of each odd-numbered year submit to Congress a report assessing the impact of this Act on the administration of elections for Federal office during the preceding 2-year period, including recommendations or improvements in Federal and State procedures, forms, and other matters affected by this Act. In addition, the EAC will make available to the public the information collected on the combined number of absentee ballots transmitted to absent uniformed services voters and overseas voters for the election and the combined number of such ballots which were returned by such voters and cast in the election as required by UOCAVA §102(c). Since the data required by these two Acts is being collected as part of this information collection, the EAC expects to release all of its findings as one publication no later than the date required by NVRA (42 U.S.C. 1973gg-7). The EAC is also in process of developing a process for using a geographic information system (GIS) to display the collected data and allow the public to conduct queries.

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.**

Not applicable to this collection.

**18. Explain each exception to the certification statement identified in Item 19 of OMB Form 83-I.**

The EAC does not request an exception to the certification of this information collection.

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**Supporting Statement B:**

**OMB Control Number: xxxx-xxxx**

**U.S. Election Assistance Commission**

**2006 Election Administration and Voting Survey**

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

**1. Describe (including a numerical estimate) the potential respondent universe and any sampling or other respondent selection method to be used. Data on the number of entities (e.g. establishments, State and local governmental units, households, or persons) in the universe and the corresponding sample are to be provided in tabular form. Indicate expected response rates for the collection as a whole. If the collection had been conducted previously, include the actual response rate achieved during the last collection.**

This information collection does not use sampling. The respondent universe for the 2006 includes all 50 states, the District of Columbia, and the four U.S. territories; the total universe is 55 respondents. The EAC expects all of the identified respondents (100%) to provide responses to the collection as a whole; however, some of the respondents are exempt from the NVRA and as such are not required to provide certain answers. In addition, since the manner in which elections are administered may vary by jurisdiction, there are some questions that may not apply to all respondents.

**2. Describe the procedures for the collection, including: the statistical methodology for stratification and sample selection; the estimation procedure; the degree of accuracy needed for the purpose described in the justification; any unusual problems requiring specialized sampling procedures; and any use of periodic (less frequent than annual) data collection cycles to reduce burden.**

Not applicable to this collection.

**3. Describe the methods used to maximize response rates and to deal with non-response. The accuracy and reliability of the information collected must be shown to be adequate for the intended uses.**

The EAC has worked closely with all survey respondents since early in 2005 to clarify survey questions and terms, and encourage full participation. For example, in May 2005, the EAC met with a small group of election officials to solicit their feedback regarding the 2004 Election Day Survey, which is now part of this new information collection. The group discussed the challenges faced by election officials when collecting this data, including the interpretation of the survey questions and terms and the methods for assembling the data. In April 2006, the EAC convened a second group, this time consisting of election officials, social scientists, and voter interest groups, to improve the new information collection based on their experiences with previous collections. In addition, the EAC has vetted the document with its Advisory and Standards Boards, which are comprised of 110 state and election officials and another 37 are drawn from various national associations and government agencies that play a role in the

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implementation of the Help America Vote Act and science and technology-related professionals appointed by Congressional members. Furthermore, the EAC met with the state members of the National Association of State Election Directors (NASSED) in July to review the proposed information collection. The EAC will carefully review the information submitted by survey respondents to ensure completeness and accuracy; respondents will be contacted by phone, e-mail, and/or mail to request information regarding missing and/or erroneous data.

**4. Describe any tests of procedures or methods to be undertaken. Tests are encouraged as effective means to refine collections, but if ten or more test respondents are involved OMB must give prior approval.**

Not applicable to this collection.

**5. Provide the name and telephone number of individuals consulted on the statistical aspects of the design, and the name of the agency unit, contractor(s), grantee(s), or other person(s) who will actually collect and/or analyze the information for the agency.**

The EAC staff members responsible for conducting this information collection are:

1. Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
(202) 566-3100
  
2. Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
(202) 566-3100



## Summary of and Response to Comments on the U.S. Election Assistance Commission's 2006 Election Administration and Voting Survey

The U.S. Election Assistance Commission (EAC) issued its 2006 Election Administration and Voting Survey for public comments on August 1, 2006 (71 FR 43477). Fourteen public comments were received in response to the EAC's request. The EAC made modifications in response to the comments to improve the clarity and consistency of the information collection. Not all comments were appropriate to accommodate at this time due to the short notice election officials would have to organize and collect the new data or they were outside the scope of the information collection. However, the EAC will consider those comments for incorporation into the 2008 version of the EAC's Election Administration and Voting Survey. It should be noted that the long-term goals of the EAC Survey includes refining the information collection to gather as much data as possible at the lowest level of analysis (precinct) regarding the administration of election, but this process will require careful planning and implementation so as to maintain the lowest burden possible on respondents. A copy of the comments received is being provided as part of this ICR.

The following changes were made to the information collection as a result of the public comments received.

- The definition for "duplicate registration application" now reads: "refers to an application to register by a person already registered to vote at the same address, under the same name and personal information (i.e. date of birth, social security number, driver's license, etc.), and the same political party (where applicable)."
- The following question was inserted and is now the first question on the survey:

Please, check if your State is exempt from NVRA:

- Yes; exempt from NVRA.  
 No; not exempt from NVRA.

- Respondents now have the choice to mark either a "Don't Know" or "Check if your office does not collect this data" for questions requiring a numeric answer. In addition, a "Comment" box has been included after each question for respondents to address any concerns or provide additional information relating to that particular question.
- For question 3 (previously #2), the State of Montana was included in the list of states that allow registration on Election Day.
- Question 9 (previously #8) was rephrased as follows: "Total number statewide and by county/local jurisdiction of new, valid registrations verified and processed between the close of registration for the November 2, 2004, Federal general elections until the close of registration for the November 7, 2006, Federal general elections. *\*\*This includes all registrations that are new to the local jurisdiction and re-registrations due to a change of address across jurisdictional lines but within the state. This does not include applications that are duplicates, rejected,*

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or report only a change of name, address, or (where applicable) party preference within the local jurisdiction.”

- In Question 11 (previously #10), “Tax Assessors” and “Tax Collectors” are now listed separately.
- Question 12 (previously #11) now reads as follows:

Identify each and every other state and local government office or agency designated as a voter registration agency (*provides voter registration opportunities/services*):

- Motor vehicle offices
- All offices that provide public assistance that are mandated as registration sites by NVRA
- All offices that provide state-funded programs primarily serving persons with disabilities that are mandated as registration sites by NVRA
- All Armed Forces recruitment offices that are mandated as registration sites by NVRA
- Other agencies designated by the State as registration sites, and which are not mandated as registration sites by NVRA.

► Please, provide the names of the agencies designated by the State as registration sites, and which are not mandated as registration sites by NVRA.

- Question 13 (previously #12) now reads as follows:

Does your office provide training on the voter registration process to employees of Federal, State, and local government offices or agencies designated as voter registration agencies?

Yes, our office provides training on the voter registration process to ALL Federal, State, and local government offices or agencies designated as voter registration agencies.

► If yes, how frequently does your office provide training the above training?

Monthly     Quarterly     Biannual     Annual     Biennial

Other (*please, specify*) \_\_\_\_\_

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2

Yes, our office provides training on the voter registration process to SOME, BUT NOT ALL, Federal, State, and local government offices or agencies designated as voter registration agencies.

▶ If yes, how frequently does your office provide training the above training?

Monthly     Quarterly     Biannual     Annual     Biennial

Other (please, specify) \_\_\_\_\_

No, our office provides no such training.

- Question 14 (previously #13) now reads as follows:

How are voter registration applications transferred from the other voter registration agencies listed in response to Question 12 to the official responsible for voter registration (see Question 11)? Please, select all that apply.

Courier

Fax

Hand-delivered

Inter-office mail

U.S. mail

Electronic (If electronic, then select the appropriate media below.)

Power Profile System     Tape     Disk, CD, or other portable storage media

VPN     Other electronic media (please, specify) \_\_\_\_\_

Other (please, specify) \_\_\_\_\_

- Question 17 (previously #16) now reads as follows:

How do the voter registration officials identified in Question 11 verify voter registration applications? (This refers to the process of verifying the applications used to register to vote. This does not refer to the process of verifying voter identity when they go to vote.) Please, select all that apply.

Check jury lists

Verify through the department of motor vehicles

Verify through the Social Security Administration's records

Verify through the State's vital statistics records

Verify through other state agency (please, specify agency)

Matched against the voter registration database

Tracking of returned voter identification cards

Tracking the return of disposition notices

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Other (please, specify)

- Question 18 (previously #17) now reads as follows:

What data fields are compared (used as matching criteria) to identify duplicate registrations? Please, select all that apply.

- Address
- Date of birth
- Driver's license number
- Names provided by registrant
- Social Security number
- Other (please, specify)

- Question 21 (previously #20) now reads as follows:

How does the statewide voter registration database link to the State's department of motor vehicles?

- Real-time
- Specific time intervals (please, specify)
- Other (please, specify)

- Question 30 (previously #29) now includes "Tax offices."
- The definition for "At the polls" was clarified to read as follows: "'refers to ballots issued, cast, or counted on a jurisdiction's voting system on Election Day at a polling place (separate from early and in-person absentee voting at the polls prior to Election Day)."
- The definition for "Ballots Cast" was clarified to read as follows: "refers to ballots that have been submitted manually or electronically by a voter regardless of whether they are ultimately counted. *Note:* For jurisdictions that provide voters with more than one ballot card to vote for different contests or measures should only report one ballot cast per voter."
- The definition for "Domestic civilian absentee ballot" was clarified to read as follows: "refers to a ballot available to a non-military citizen living in the United States who is registered to vote and meets the State's requirement for voting absentee, and is not considered early voting by state definitions. Generally, a voter must request an absentee ballot from their local election office, and the completed ballot may be sent back by mail or dropped off in person (in-person absentee) depending on the laws and regulations of the voter's State of residence."
- The definition for "Domestic military citizen" now reads: "Domestic military citizen is statutorily defined as..."
- The definition for "Early voting" was clarified to read as follows: "refers generally to any in-person voting that occurred prior to November 7, 2006, at specific polling locations for which there were no special eligibility requirements,

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and is not considered absentee voting under the State's definitions/requirements for absentee voting."

- The definition for "Federal Write-In Absentee Ballot (FWAB)" was clarified to read as follows: "...is an emergency ballot available to military and overseas citizens (including APO and FPO addresses) when they have properly requested but have not received a regular absentee ballot from their local jurisdiction in time to return it before the deadline."
- The definition for "Overseas military citizen" now reads: "Overseas military citizen is statutorily defined as ..."
- The definition for "Provisional Ballot" was clarified to read as follows: "...refers to a ballot issued to a voter at the polling place when their eligibility to vote has not been determined."
- Question 32 (previously 31) was rephrased as: "Did your State conduct early voting for the November 7, 2006, Federal general elections?"
- Questions 33 and 34 were originally asked as part of the same question, but to avoid confusion the data is being requested separately. In addition, the following item was added to both questions (and later on in questions 38-40):
  - UOCAVA voters: If you are not able to separate ballots cast/counted for UOCAVA voters into the categories above, please, provide the combined total statewide and by county/local jurisdiction:
- For question 37 (previously #35), the category of "Administrative error" was removed."
- Question 38 (previously #36) no longer asks for the number of absentee ballots "not counted," it only asks for the number of absentee ballots that were requested.
- Question 39 (previously #37) was clarified to read as follows: "Total number statewide and by county/local jurisdiction of advanced ballots TRANSMITTED to military and overseas citizens for the November 7, 2006 Federal general elections: (*Advanced ballot means any special Write-In Absentee Ballot, State Write-In Absentee Ballot, Special Write-In Early Ballot, or Blank Absentee Ballot that is distributed by a state in advance of the publication of an official ballot for a federal election on which military and overseas citizens are allowed to write in the name of the candidate in each contest for whom they choose to vote.*)"
- For question 41, the categories of "Elector deceased" and "Elector voted early at the polls" were rephrased as "Voter deceased" and "Already voted in person."
- Question 50 (previously 48) was rephrased as: "Total number statewide and by county/local jurisdiction of precincts for the November 7, 2006, Federal general elections."
- Question 53 (previously 51) was rephrased as: "Total number statewide and by county/local jurisdiction of polling places where voters with disabilities can cast a private ballot for the November 7, 2006, Federal general elections: (*Identify the total number of polling places where voting equipment is used such that a visually disabled voter can cast a private ballot (e.g., a DRE with audio ballot capability or paper ballots in Braille).*)"
- Question 55 was inserted to capture information regarding voting equipment in use during the November 7, 2006, Federal general elections. This question was previously asked by the EAC in their 2004 Election Day Survey, and initially

removed for purposes of this survey. However, in light of the public comments and the current attention on voting equipment/systems the EAC felt it was necessary to include it in the final information collection. The question reads as follows:

- Please, provide a list of the types of voting equipment used in each county during the November 7, 2006, Federal general elections. Please, provide the following for each county:
  - a. Name of county
  - b. Type of voting system(s)
  - c. Manufacturer
  - d. Software version (if applicable)
- Question 56 (previously 52) was rephrased to read as follows:
  - Please, provide the following for each local election jurisdiction official that provided information for purposes of responding to this survey:
    - a. Name
    - b. Title
    - c. Agency/Office
    - d. Street address
    - e. P.O. Box number
    - f. City
    - g. State
    - h. Zip code
    - i. Telephone number
    - j. General e-mail address (if available)
- Question 57 (previously 53) was rephrased to read as follows:
  - Identify any other sources of information used to respond to this survey other than those provided in response to the two previous questions. (All other sources of data shall include information obtained from a statewide voter registration database or any other public or non-public source). For individuals and agencies, please, include the following:
    - Statewide voter registration database
    - Other public and non-public sources – please, include the following:
      - a. Name of contact person
      - b. Title
      - c. Agency/Office
      - d. Street address
      - e. P.O. Box number
      - f. City
      - g. State
      - h. Zip code
      - i. Telephone number
      - j. General e-mail address (if available)
- Question 58 (previously 54) was rephrased to read as follows:

- Please, provide a list of the local individuals/entities responsible for registering voters (see Question 11) and those administering elections; include their name/entity, title, complete mailing address, telephone number, and general e-mail address (if available). In some cases, these two activities are carried out by one individual/entity and in others they are divided between two or more; please, identify which individual is responsible for each of the activities.
  - a. Name
  - b. Title
  - c. Agency/Office
  - d. Role (voter registration, election administration, or both)
  - e. Street address
  - f. P.O. Box number
  - g. City
  - h. State
  - i. Zip code
  - j. Telephone number
  - k. General e-mail address (if available)



"Sue Sautermeister"  
<sue\_sautermeister@yahoo.com>

08/06/2006 12:03 PM

To Lotero@eac.gov

cc

bcc

Subject response to voter questionnaire

Ms Latero

Bryan Whitener sent out the draft of the survey for the 2006 election to the members of the EAC advisory board

my comments

1. easy to read
2. don't split sections or questions between two pages (it occurs a few times only)
3. page 14, #43, in our situation the numbers of poll workers varies depending upon the number of registered voters in a precinct, but this question doesn't allow for a response where the numbers of poll workers vary among the precincts
4. page 14, #46, do you want multiple responses here? we have several who are involved
5. page 16, #53, not enough room to respond if you want everyone who had input to list name & info since not just one person will necessarily be completing the form
6. lastly, i hope this goes out early enough so that those who will be completing the form know what will be asked of them so they can compile the info as they go along

Sue

009279





"Melanie Abplanalp "  
<melaniea@washco.state.ut.us>  
s>

08/07/2006 09:59 AM

To lotero@eac.gov

cc

bcc

Subject washington county survey request

Laiza,

Thanks for letting us get a heads up on the new stats that we should be tracking.

I noticed that as I was doing this, most of the questions were fairly relevant. I know that some states are a little ahead of us, but I think the information can be useful in the future.

I did have some concerns about the time it would take, unless we could get Vista to track this info for us. I had to gather the info from many sources, and it took longer than I expected.

Here are some specifics,

We do not have information to track yet by Mail, or in Clerk's office, DMV, or other registrations with dates.

We cannot identify dupilcates, address changes or rejected registrations.

I thought tracking the deleted list was interesting, but I can see why they would like to have that info.

Tracking the amounts of confirmation cards would be a great help to me, it would be good to see how many

go out, and how many come back! Track expenses better.

Election totals seemed to be over kill, but if we could track the info in 1 or 2 places I would be willing to do the in depth detail that they would like.

If you have questions call me!

Melanie Abplanalp

435-652-5891

melaniea@washco.state.ut.us

009280



"Jim Harmening"  
<jim@bitsmail.com>

08/07/2006 10:09 PM

Please respond to  
jim@bitsmail.com

To lotero@eac.gov

cc

bcc

Subject Public Comments on Election Administration Proposed  
Survey

Dear Ms. Otero,

I hope this helps, it is a great Survey and I hope the Election Jurisdictions actually collect the data you are asking for!

Thanks

Jim Harmening  
7805 Palm Drive  
Orland Park, IL 60462

708-288-3314



public comments EAC Survey.doc

009281

**Election Administration Voting Survey Draft**

Q10. I would suggest splitting up the Tax Assessor and the Tax Collector. In Illinois and many other jurisdictions throughout the country, they are two different offices.

Q11. In Illinois there are so many townships, cities and villages, that you may get a list several thousand. Likewise there are many public service agency locations.

I am not sure what the goal is for Q11 or what information is to be collected? Name, address, city, state, zipcode, person in charge, phone number? It doesn't appear that the question is detailed enough about what information is to be collected and that it tries to collect too much information (at least for a large state with many local offices.)

Q13 – there are kind of redundant answers e-mail/electronic and VPN are similar. Is Disk / tape the same? How about CD? Some people may use a USB drive? Either have a category of

Electronic with sub sections under it

Electronic

Tape

Diskette

E-mail

USB

Website Form

Website File Upload

FTP

VPN

Under Other you may want to put a line for them to write it in.

Great survey and good luck with the responses!

Jim Harmening

009282



"Silrum, Jim"  
<jsilrum@nd.gov>  
08/09/2006 05:28 PM

To lotero@eac.gov  
cc "Jaeger, Al A." <ajaeger@nd.gov>, "Oliver, Lee Ann M."  
<loliver@nd.gov>, "Odenbach, Danette"  
<dodenbac@ndaco.org>  
bcc  
Subject 2006 Election Administration and Voting Survey

Dear Laiza,

Today as I was preparing a note to send to North Dakota's county election officials to encourage them to review the survey that is under review prior to the General Election in November, I noticed something in the Absentee Ballots section that made me think I should send a comment upon which I hope you too will ponder before the survey is finalized. I don't think we talked about this when we were together in April for the preliminary survey meeting, but if we did I apologize for not paying attention.

Question 36 asks for the number of absentee ballots (excluding FWABs) requested and the number not counted.

1. FWAB is spelled out in question 38, but since this is the first place it is used, this is the place it should be spelled out.
2. I understand the need for collecting both of these items of information, but the two numbers are quite disjointed from each other unless another number is asked for between these two.
3. The number would be the number of ballots returned.

I would suggest the following order and wording of the questions if I may be so bold:

36. Total number of statewide and by county/local jurisdiction of **advanced ballots** transmitted to military and overseas citizens for the November 7, 2006, Federal General Election: [keep the three subcategories with the total line]
37. Total number of statewide and by county/local jurisdiction of **absentee ballots** requested and returned (do not include FWAB) for the November 7, 2006, Federal General Election: [keep the four subcategories with the totals line – one column for requested and one column for returned]
38. This one could stay just as it is
39. If you added a total line to this question, you would know the number of absentee ballots not counted or rejected that were received from domestic civilians
40. If you added a total line to this question, you would know the number of absentee ballots not counted or rejected that were received from military and overseas citizens

The survey asks for the number of advanced ballots transmitted, but it doesn't ask how many of those were returned; rejected or not counted and why unless we are supposed to assume that these ballots should be tabulated with all the other absentee ballots based on the definition of "**Absentee voting**" at the beginning of this section. Perhaps this could be explained with the questions relating to the return of absentee ballots or these numbers could be separated as you have separated them for the two questions differentiating their delivery to the voter.

Please feel free to call me if you have any questions for me. Maybe I have been as clear as mud to you or maybe I have missed the obvious that would make the current order clearer to me.

009283

Thanks for letting me comment,

P.S. I know you have talked in the past that the 2006 survey would be one in which the numbers would be entered by each state through a web application. Do you know whether this will be a manual data entry method by those of us in the state election offices? If it is, I am concerned that there will be a high potential for "fat finger" errors to the submitted data. Or, can you describe the survey tool that is being planned for use?

Thanks,

*Jim Silrum*

Deputy Secretary of State  
State of North Dakota  
600 East Boulevard Avenue  
Bismarck ND 58505-0500  
701-328-3660 - Voice  
701-328-2992 - Fax  
[www.nd.gov/sos](http://www.nd.gov/sos)  
[jsilrum@nd.gov](mailto:jsilrum@nd.gov)

009284



"Pat Hollarn"  
<phollarn@co.okaloosa.fl.us>  
08/25/2006 05:44 PM

To: lotero@eac.gov  
cc  
bcc  
Subject: DRAFT 2006 Election Administration and Voting Survey

Laiza,

I found the Draft 2006 Survey to be comprehensive and well done, and just have one subject to be addressed, if deemed warranted.

After Question #40, before ending the section on UOCAVA absentee ballots, would it be possible to add a question, or questions, concerning the absentee requests that were honored based on the UOCAVA voters' 2004 requests (per HAVA's mandated two-general-election-cycle requests)? It might be a multi-part question, to include these issues:

- How many absentee ballots were issued in 2006 to UOCAVA voters who requested a ballot in 2004, but from whom the election official had no contact since the 2004 request?
- Was any additional contact made to those voters prior to the 2006 elections?
- How many of those 2006 absentee ballots (from the 2004 request) came back "Return as Undeliverable" from the Postal Service?
- How many came back voted?
- How many never came back?

I am planning on including this subject in my presentation on Sept 21 in St. Louis, which is before the close of the Public Comment period, so I will be able to further explain the value of this information.

***Pat Hollarn, Supervisor of Elections***  
1804 Lewis Turner Blvd, Ste 404  
Fort Walton Beach FL 32547-1285  
Tel: 850-651-7272 Fax: 850-651-7275  
Email: [phollarn@co.okaloosa.fl.us](mailto:phollarn@co.okaloosa.fl.us)  
Web site: [www.govote-okaloosa.com](http://www.govote-okaloosa.com)

009285



"Jo-Anne Chasnow"

09/28/2006 12:50 PM

To [lotero@eac.gov](mailto:lotero@eac.gov)

cc

bcc

Subject Comments on Draft Voting Survey

U.S. Election Assistance Commission  
1225 New York Avenue, NW., Suite 1100  
Washington, DC 20005.  
ATTN: Ms. Laiza N. Otero  
([lotero@eac.gov](mailto:lotero@eac.gov))

Dear Ms. Otero,

Attached please find comments submitted by Project Vote responding to the "Draft 2006 Election Administration & Voting Survey" of the U.S. Election Assistance Commission.

Please confirm receipt, and please be certain to notify me if you have any problems opening up the attachment.

Many thanks.  
Sincerely,

Jo-Anne Chasnow  
Policy Director, Election Administration Program  
Project Vote



[www.projectvote.org](http://www.projectvote.org) Project Vote Comments on EAC 2006 Survey.doc

009286



**Project Vote**  
2101 S. Main Street  
Little Rock, Arkansas 72206  
501.376.6451 phone 501.376.3952 fax

September 27, 2006

U.S. Election Assistance Commission,  
1225 New York Avenue, NW., Suite 1100  
Washington, DC 20005.  
ATTN: Ms. Laiza N. Otero  
([lotero@eac.gov](mailto:lotero@eac.gov))

Dear Ms. Otero:

We are writing today to provide comments on the "Draft 2006 Election Administration & Voting Survey". Thank you for this opportunity.

- I. On Page 1, the survey provides a "definition" of a duplicate registration. However, a vital piece of the definition is missing: same birth date. Without matching birth date, it is impossible to definitively identify duplicate registrations. We encourage you to add the words "same birth date".
- II. We believe additional questions should be included as a subset of question #12 if the respondent answers "yes" in either of the two "yes" boxes. The first question we recommend that you include is "If yes, how often?" and the second is "When was the last training offered?" It is vitally important to know some details about training of public employees who are offering voter registration.
- III. We believe you should insert a question following question #16. Our recommended language is: "If the voter registration application is not successfully matched against any existing record, is the next step to assign the registrant with a unique identifying number? If not, what IS the next step?"
- IV. In question #18, there is a "yes" box, followed by "(If yes, please identify which states)." Please consider adding to the words within the parenthesis the following phrase: "and the elements that must 'match' to establish a duplicate". We further recommend a follow-up question: "If duplicates are found, how are those duplicates handled?"

009287



- V. In question #19, please add the word "all" between the word "Are" and the word "applicants", so that it reads "Are all applicants whose applications are rejected notified of the rejection and the reason for the rejection?"
- VI. We encourage you to reinsert a question that was asked in the prior survey, to be added after question #21: "Identify any restrictions on the acceptance of voter registration applications such as paper weight, fax, electronic, mail (for non-NVRA states), batch, third-party handling (changed from delivery to handling), etc." These sorts of restrictions have placed significant burden on many of the civic organizations engaged in voter registration across the country. A question soliciting information from the states would be very informative and encourage transparency.
- VII. We also encourage you to add another additional question here, related to acceptance of the national application: "Do all election jurisdictions in your state accept a completed National Mail-In application as a complete voter registration application?"
- VIII. It would appear that two sections of the previous survey have been entirely eliminated. One section is "Voter Registration Drives". Voter registration drives are a centerpiece of participatory democracy. But little by little the ability for these drives to function is being eroded. Specifically, we encourage including the following questions:
- a. "Does your State manage the number of applications given to the outside groups and the number and timing of the return of those forms by these non-governmental registration organizations. If so, how?"
  - b. "Does your State allow organizations to print additional copies of the state voter registration applications by photocopying a blank application?"
  - c. "Does your State use serial numbers or other identifying codes on voter registration applications given to non-governmental organizations or individuals in order to be able to identify who handled completed applications that are received by State and local officials?"
- IX. The other section that has been entirely eliminated is "Public Information". Confirmation of whether applicants have actually been placed onto the voter rolls, especially when a state does not have a public access portal, is critical, especially for voter registration organizations. It is vitally important to know if voter registration cards are available for public inspection; and with newly created statewide databases, to know if voter registration files are available for sale – and if so how much they cost.

Project Vote  
Comments on Draft Election Administration & Voting Survey  
September 29, 2006

We then recommend the following questions, included in the previous version of the survey, be included here as well:

- a. "Are voter registration records public information?"
  - b. "Are voter registration files available for sale to the public? If so, how much do they cost?"
- X. Finally, we encourage you to add a section specifically for the states to report the breadth of voting machine problems experienced in 2006. This will respond to the rash of problems that jurisdictions around the country have experienced with elections in the 2006 primaries and most likely will experience in the 2006 general elections.

Thank you for the opportunity to share these comments.

Sincerely,

Jo-Anne Chasnow  
Policy Director, Election Administration Program  
Project Vote

009289



"Michael Cragun"  
<mcragun@utah.gov>  
09/28/2006 10:53 PM

To lotero@eac.gov  
cc  
bcc

Subject DRAFT 2006 Election Administration and Voting Survey

Laiza,

The one thing I have worried about since you shared this draft with us at the Standards Board Meeting in May is that election officials may not have adequate data to answer many of the questions that ask for information between Election Day 2004 through Election Day 2006. It seems to me that if you want data collected for a two year period, you need to tell the election officials about the expectation before the two year period begins.

Thanks,  
Michael

Michael Cragun, Deputy Director  
Office of the Lieutenant Governor  
State of Utah  
PO Box 142325  
Salt Lake City, Utah 84114-2325  
(801) 538-1041  
(801) 538-1133 fax  
mcragun@utah.gov

009290



"Carol Paquette"  
[REDACTED]

09/29/2006 03:03 AM

Please respond to  
[REDACTED]

To lotero@eac.gov

cc

bcc

Subject comments on 2006 election administration survey

Laiza -

This survey has really improved. Someone has been working hard on this. I hope the attached comments are understandable and helpful. I was sorry to see that there are no questions on types of voting systems in use and identification of any problems, but maybe EAC is collecting that data from some other source. You can reach me at 703.532.0524 if you have questions. Good luck with the survey! There are many of us eagerly awaiting the results!

Carol Paquette

[REDACTED]  
EarthLink Revolves Around You.



2006 Election Survey comments.doc

009291

9/28/2006

COMMENTS ON DRAFT OF 2006 ELECTION  
ADMINISTRATION AND VOTING SURVEY

1. Recommend that "Voter Registration Applications" heading be changed to "Registered Voters", and that new heading "Voter Registration Application Processing" be inserted after question 2. Rationale: 1st 2 questions only refer to numbers of voters; other questions deal with application processing. Adjusting the headers helps the respondent navigate the instrument.
2. Recommend to move "Duplicate registration application ..." description to question 7 where it is referred to. Rationale: Use of ease for respondent by providing explanatory material where it is referenced.
3. In question 1, would it be clearer to use "at the conclusion of registration processing" or similar wording in place of "close of registration?" Rationale: Not all registrations are processed by the close of the registration period. I assume that the information sought is the final number of registered voters. This revised wording would also encompass Election Day registrations.
4. In question 2, should November 2, 2004 be added to get comparative data?
5. In question 6, what about applications generated by voter registration drives run by civic organizations and political parties? These constituted a big processing issue in 2004.
6. In question 7, it would be interesting to know the reason, for applications being rejected (in addition to being a duplicate, as noted).
7. In question 8, does "new, valid registrations *processed*" mean entered in to the voter database? Also, what is meant by "re-registrations across jurisdictional lines"? Is this a change of address?
8. Recommend that the words "conducting voter registration" in question 9 be replaced with "responsible for registering voters," as used in question 10. Rationale: This just makes clear that both questions are talking about the same function.
9. Capitalize Armed Forces in question 11 to be consistent with usage in question 6 (or vice versa!).
10. In question 12, it would be interesting to know which agencies are provided training for the "SOME, BUT NOT ALL" response.
11. In question 13, recommend that "official responsible for voter registration" be reworded to something like "election official responsible for approving voter registration applications." Rationale: This more clearly differentiates the election folks and their role from the other agencies involved. Also recommend that responses be divided into two categories: how delivered and what media used. For example, a tape could be delivered by courier, by hand (what's the difference between these two?), U.S. mail, inter-office mail, etc. Electronic delivery could be by fax, email, VPN. Ftp is missing as an important electronic means. Power Profile System needs to be explained. What are you trying to find out by this question? How quickly updates can be processed or how efficiently the process takes place? Not clear what one would learn from this set of responses. For

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example, a tape delivered manually that is compatibly formatted to run directly against the voter database would be much more efficient to process than an automated ftp that requires data format conversion.

12. In question 14, recommend that "forms" be replaced with "applications."  
Rationale: Consistent terminology. What is meant by "verifies"? Does it mean the official with authority to approve application? What is meant by "processes"? Is this merely data entry; does it include validation of any sort? Some local election offices have administrative personnel enter applications into electronic pending file via keystroking the data or scanning the form, and then a senior official reviews and approves for upload to voter registration file.
13. In question 15, recommend that "processed voter registration form" be replaced with "accepted (or approved) voter registration application." Rationale: Keeps terminology consistent and clear.
14. In question 16, recommend that parenthetical explanation be reworded to read: This refers to the process of verifying the information provided in the voter registration application. It does not refer to the process of verifying voter eligibility at the polling place. Rationale: Clarifies the language. Also, what does "Link" mean in the responses? The word "records" should be added to the end of the second and fifth responses. Social Security Administration should be capitalized. What is a "disposition notice"?
15. Recommend that wording in question 17 be changed to read: "What data fields are compared to identify duplicate registrations?" Rationale: This wording better suits the response choices given.
16. In questions 20 and 21, suggest that questions be further refined to identify nature of linkage, e.g., periodic batch ftp uploads, real-time transaction-based data transfer, etc. This begins to provide some interesting data.
17. Don't understand what is meant by the terms "electronically" and "manually" in the responses. Can you clarify?
18. In question 23, would be interesting to know if there are differences in what the state and local officials can do for the "Both" response.
19. Recommend that a heading such as REMOVING (OR PURGING) VOTERS FROM VOTER REGISTRATION DATABASE be inserted after question 23.  
Rationale: Ease of use for the respondent. This is the topic that the next several questions deal with.
20. Questions 24 and 28 seem to be asking for the same information with slightly different wording.
21. In question 25, need a citation for parenthetical [Section 8(d)(2) confirmation]. Is this NVRA?
22. In question 28, suggest you clarify what "moved outside of jurisdiction" means in first response. I assume it means left the state? Recommend that the word "registrations" be replaced with "voters" in the last response.
23. In question 29, aren't "car registrations" and "lists of automobile registrations" the same thing?
24. Recommend that next section heading be revised to "2006 ELECTION RESULTS". Rationale: I assume that the data sought is the official certified

- election results, not the preliminary election returns. Certified results are not available until 30 or so days after the election, as defined by state law.
25. In first line, change "Ballots" to "Ballot" for grammatical consistency with rest of sentence. Under Note:, delete "For" for grammatical correctness.
  26. Is "Ballots Counted" going to be a problem for election officials? As I understand it, normally ballots don't get counted, only votes get counted. Is EAC asking election officials to collect new data ? (There's nothing wrong with this, in my view) But if so, do election officials understand what's being asked for? (And maybe I'm just wrong in my understanding.)
  27. Description of "At the polls" is a bit confusing when the counting activity is included. Some jurisdictions have central count systems for voting machine results, so no ballots are counted at the polling place. Some jurisdictions send absentee ballots to the polling place to be counted, so all ballots are counted there. If you are trying to distinguish between polling place and absentee, maybe that can be accomplished by just saying where the ballot is voted and cast.
  28. Recommend that description of "Domestic civilian absentee ballot" be revised to something like the following. "Domestic civilian absentee voter refers to a non-military citizen who is otherwise eligible to vote, but is temporarily absent from their place of residence on election day, and meets their State's requirements to vote absentee."
  29. Recommend that "Domestic military citizen" be revised to something like: "Domestic military absentee voter is statutorily defined as: etc.,etc."
  30. Recommend that "Overseas military citizen" be revised to "Overseas military absentee voter is statutorily defined as: etc.", and that "Overseas civilians" be revised to "Overseas civilian absentee voter etc." These two descriptions should be moved to immediately follow the Domestic military absentee voter, so all descriptions of different categories of absentee voters are together.
  31. What about the category of permanent absentee voters? Many states have this designation for voters with medical conditions or disabilities that make it difficult for them to get to the polls, residents of nursing homes, etc. Since they are not absent from their place of residence they don't quite fit into the domestic civilian absentee category above. This is also a category where voting fraud is often an issue.
  32. Under "Early voting" description I would add the word "special" in the second line: "were no special eligibility requirements." Probably a nitpick, but avoids possible (but somewhat silly) interpretation that normal eligibility requirements don't apply.
  33. Recommend that FWAB description be revised to something like: Federal Write-In Absentee Ballot (FWAB) is an emergency absentee ballot available for use by military and overseas citizens when they have properly requested but have not received a regular absentee ballot from their local jurisdiction in time to return it before the deadline. I would move this description to follow provisional ballot.
  34. Would revise provisional ballot to something like: "Provisional ballot refers to a ballot issued to a voter at the polling place when their eligibility to vote has not been determined. Provisional ballots are prescribed by Section 302(a) of the Help America Vote Act."

35. Would it be possible to add further sub-questions to question 31? For those who answer yes, suggest you ask what is the time period, Also, what is the process, i.e., do voters have to go to clerk's office or are satellite locations provided, etc.? Since this is defined by state law it shouldn't be too hard to answer.
36. In question 32, I would split the responses as follows: (A) Ballots cast in person – at the polls, early voting, provisional ballots; and (B) Ballots cast absentee – domestic civilian absentee, domestic military absentee, overseas military absentee, overseas civilian absentee, FWAB
37. In question 35, I don't understand how "Ballot not timely received (absentee)" would be a reason to reject a provisional ballot? Similarly "Incomplete ballot form"? First of all, I don't really know what this means. If it means a ballot in which no votes have been cast for some of the races, that's not a reason to reject, because voters are not required to cast votes in all races for their ballot to be accepted.
38. Suggest that description of absentee voting is not needed if previous suggestions on rewording absentee voter categories are used. I think this description sort of misses the point of this voting option, which is not voting before Election Day (although true), but not being able to vote on Election Day due to inability to get to the polls – either through physical absence or for other state-defined reasons.
39. I think the correct term is "advance ballot" rather than "advanced ballot." Also appears in question 37.
40. In question 36, would add a column for Number Received and change Not Counted heading to Number Rejected. Would also ask for how many of each of these 4 categories of ballots were delivered to the voter and how many returned to the election office by mail, fax, email or courier.
41. In question 37, column heading for responses should be Number Received and Number Rejected.
42. Would use the same column headings for question 38.
43. In question 39, would change "Elector deceased" to "Voter deceased". Why introduce a new term? Would change "Elector voted early at the polls" to something like "Voter voted in person (either early voting or on election day)". Would add the word request to "No ballot request application on record". What does "Spoiled ballot" mean?

009295





"Bonnie Glaser"

09/29/2006 02:24 PM

To lotero@eac.gov

cc

bcc

Subject Comments on the 2006 Election Administration and Voting Survey

Dear Ms. Laiza N. Otero:

Please find attached a letter to you with our comments on the 2006 Election Administration and Voting Survey, sent at 2:30 EDT on September 29, 2006.

Sincerely,

Bonnie Glaser, Ph.D., Senior Researcher  
Election Administration Research Center  
University of California, Berkeley  
510-642-8506



Comments on EAC 2006 survey.pdf

009296

September 28, 2006

ATTN: Ms. Laiza N. Otero  
US Election Assistance Commission  
1225 New York Avenue, NW., Suite 1100  
Washington, DC. 2005

Dear Ms. Laiza N. Otero:

We submit the following comments about the 2006 Election Administration and Voting Survey, pertaining to “c) ways to enhance the quality, utility, and clarity of the information to be collected.”

These comments are based on our experience conducting research with state and local election officials and in local election jurisdictions, both in terms of what data is possible to collect and what would be useful for research. Questions are referred to as ‘Q#’ in comments below.

#### Voter Registration Applications

Q4-Q6: It is likely that local election officials do not record if registrations come in by mail or in person, so it might be easier to make Q4 and Q5 optional. The same idea applies to Q6, that is, it is unlikely that the local election officials record where these additional registration forms come from; even if they do record which ones come from an outside agency, they will not necessarily specify the agency in all cases.

Q10. In the case of California, each county has either a County Clerk who is the Registrar or a Registrar, rather than two titles that “share responsibility for registering voters” the responsible party is called by different titles in different jurisdictions. The question could be worded more clearly along these lines “mark all possible titles of the individual in each jurisdiction that is responsible for registering voters.”

Q11. The usefulness and purpose of this question is not clear. The choices provided are a mix of what is required by law and what is a state option, which could lead to confusion in completing this and responses that do not reflect what the question is meant to measure.

#### Election Day Results

Q31. Early voting will likely vary across local jurisdictions and over time. For this question to illicit a more clear response, we recommend “Did any local jurisdiction in your state conduct early voting for the November 7, 2006 Election.” It also might help to ask the number of local jurisdiction that did conduct early voting.

Q32. This break down of ballots cast and of ballots counted by different methods, especially the five different forms of absentee ballots, will provide extremely useful information for understanding the different voting programs and their prevalence in each

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state. However, states that have a large number of jurisdictions may have difficulty getting this level of breakdown from each jurisdiction. While states should be encouraged to collect this, perhaps they should have instructions for compiling the results from less than all the jurisdictions (perhaps adding to their counts something like: "this is the number of ballots cast and counted in 40 out of 58 counties that provided this information").

Q35. This question will produce valuable information. However, it will be difficult for states to collect the number for each reason for each jurisdiction. We see that in the previous survey the question was simply "Identify the five most common reasons that provisional ballots were rejected," which did not require explicit counting of the reasons. We suggest offering an alternative way to report these reasons if the state is not able to count the incidence of each one. Also, "administrative error" could mean different things to different survey respondents. For that choice, we recommend something a little more specific about the kind of administrative error, such as "poll worker error," or a space to list the type of administrative error.

#### Absentee Ballots

We are confused by the definition of "absentee ballots," because in California any registered voter can request an absentee ballot without a reason or special qualification.

Q40. This data is only useful in the context of each state's laws. For example, do all states require that the ballot be notarized? Some require the registration form for military and overseas (FPCA) is notarized, but do they require that for the voted ballot as well?

#### Poll Workers

Q43-Q45. Collecting information on poll workers is very important; however, these three questions are too general to provide useful data. The previous survey asked for the required number of poll workers per precinct as established by law, and this question should be asked again, but with an option to give more than one answer. For example, in California the law is 3 workers per precinct, but for various reasons, such as language needs, voting technology, size of polling place, and precincts per polling place, the required number is more than 3 for certain precincts.

Also the counties in California have their own preferred level of staffing (often 4 or more) based on various needs at different polling places. In many cases, the legal minimum is not considered adequate staffing. For practical purposes, the success in staffing polling places is better reflected by evaluating how well they met their own perceived needs. The states could ask local jurisdictions to report some numbers on that question. For example, "how many precincts in your jurisdiction should have 3, 4, 5, and 6 workers at all times, and how many precincts did have that number."

If there are "split shifts" where two poll workers are hired for one day, then the number in Q44 will not be useful compared to the number in Q43. Q44 could read the number of "poll worker days served" so that two workers who split the day are counted as one.

Q45 will not necessarily produce useful answers because states will try to minimize this number; poll worker staffing is an extremely sensitive topic. Asking about actual staffing relative to preferred staffing (as suggested above) might be more productive than asking about compliance with the laws, and will still reflect difficulties with recruitment.

It would also be beneficial to ask more from states about poll workers than their total number hired and the adequacy of staffing levels. Some other important topics could be

- the five most common methods of recruitment,
- the five most common barriers to recruitment,
- the extent of problems with last minute dropouts and no-shows (such as the number per jurisdiction of individuals who were signed up but declined to work in the last week before the election or failed to show on Election Day), and
- whether any jurisdiction allows half day or multiple shifts.

#### Voting Jurisdictions and Polling Places

Q50. This question will be very difficult to answer, as it requires a "yes accessible" or "no not accessible" evaluation of thousands of polling places, rather than a degree of accessibility. Many polling places may be substantially more accessible than other polling places, but not completely ADA compliant on every measure. Also, many polling places are not accessible on their own, but are adapted by the elections office just for Election Day, and its unclear how to tease those out from others in this number. Q50 needs to be broken down into several questions or needs to include a more explicit definition of "accessibility" for the purposes of the question.

Q51. It is unclear why there is this question on visual impairment and not any other type of disability. It seems as though there should be a question on each major disability category or none at all. It is also unclear why any questions about voting equipment were dropped from this version of the survey. Asking about the number of "accessible voting machines" per polling place would be a better measure of accessibility to independent voting for voters with various disabilities. A measure of the prevalence of non-electronic accessibility devices must also be collected, in order to account for those jurisdictions which meet this requirement without "machines." Note that all states should answer in Q51 that all their polling places have the capacity for a visually impaired voter to cast a private ballot, as required by law. Because some jurisdictions use the "accessible" machines for all voters, the average number of accessible machines per polling place (for those jurisdictions which use machines for accessibility) should be more than one. That average would be an interesting number to compare across states, capturing both the uptake of accessible voting machines as well as the extent of accessibility. While we understand that the "accessibility" of different machine types is not absolutely confirmed, especially for all disabilities on all machines, collecting this data may still give a fairly good indication of the intent of jurisdictions to provide accessibility.

009299

Thank you for the opportunity to share our thoughts about this important survey of election administration. Please contact us if you have any questions about these remarks.

Sincerely,

Bonnie Glaser and Karin Mac Donald  
Election Administration Research Center  
UC Berkeley  
111 Moses Hall  
Berkeley, CA 94720  
510-642-8506

009300



"Wittman, Bradley S"  
<WittmanB@michigan.gov>  
09/29/2006 02:36 PM

To lotero@eac.gov  
cc "Thomas, Christopher M" <ChristopherT@michigan.gov>,  
"Anastor, Rayan" <AnastorR@michigan.gov>  
bcc

Subject Comments: DRAFT 2006 Election Administration & Voting  
Survey ( Michigan)

Greetings Ms. Otero: The following comments are offered with respect to the proposed 2006 Election Administration and Voting Survey released by the U.S. Election Assistance Commission (EAC) in August. We are directing our comments to your attention pursuant to the instructions published in the Federal Register on August 1, 2006.

In general terms, we find the data requests provided under the section of the survey entitled "2006 Election Day Results" overly detailed and ambiguous in places -- a problem noted in the 2004 Election Day Data Survey released by the EAC and the subject of much discussion at the meeting convened by the EAC on April 4, 2006 to review and critique the survey tool.

It bears note that despite the fact that Michigan's Qualified Voter File (QVF) system has been programmed to capture many of the data elements requested in the proposed EAC survey, it will still be necessary for this office to contact every local clerk in the state (i.e., Michigan's 1,516 city and township clerks) to collect key portions of the requested information.

This task will entail the analysis of the final version of the EAC survey to identify the data elements which must be collected from the city and township clerks, the development and design of our own survey tool, the distribution of the reformatted survey tool to the state's 1,516 local clerks, the compilation of the responses we receive, and the correction of any errors that we are able to identify in the compiled data. This is essentially the same procedure we followed when preparing our responses to the EAC's 2004 post-election surveys.

As you may be aware, we aggregated the data we collected after the 2004 general election by county given the complexity and burden such data collection exercises pose for Michigan. It is our intent to aggregate the data collected after the 2006 general election in the same manner when responding to the EAC's 2006 post-election survey.

In view of the above concerns, we strongly urge the simplification of the EAC's proposed 2006 post-election survey. As stands to reason, the more complex and ambiguous the data requests, the greater the chance for errors, confusion and unreliable results. Specific observations and recommendations are outlined below:

ITEM 32

1) Item 32 asks for the number of ballots "cast" at the polls and the number of ballots "counted" at the polls. Under the definitions, "ballots cast" means those ballots that have been submitted but not "verified and/or counted." Aside from the fact that a unique -- and therefore confusing -- definition has been given to the term "ballots cast," what would be an example of a ballot that has been "cast" at the polls but not "counted"? Would provisional ballots held for later evaluation fall into this category? (We note that there are separate data entry lines for "provisional ballots" later in the survey.)

2) In many cases, it is impossible for election officials to distinguish those

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ballots mailed to "domestic civilian" absentee voters from those ballots mailed to "domestic military" absentee voters. Consequently, any data that relies on the accuracy of this distinction would be highly unreliable.

3) Similarly, it is often impossible for election officials to distinguish those ballots mailed to "overseas military" absentee voters from those ballots mailed to "overseas civilian" absentee voters. Again, any data that relies on the accuracy of this distinction would be highly unreliable.

4) As you are aware, a Federal Write-In Absentee Ballot (FWAB) can be rejected for a variety of reasons -- including the fact that the voter returned the absentee ballot issued by his/her voting jurisdiction in time to be counted. Given the definition given to "ballots cast" (i.e., submitted but not counted), it would appear that the number of FWAB's that will fall under the "ballots cast" category will be alarmingly high and very misleading.

5) Again, given the definition of "ballots cast," would the "ballots cast" entry for provisional ballots under Item 32 be the same as the entry for the number of provisional ballots "rejected" under item 34?

ITEMS 36 and 38 (ITEM 37 does not apply in Michigan)

See comments above regarding the difficulty of accurately distinguishing ballots sent to "domestic civilian" absentee voters verses "domestic military" absentee voters and "overseas military" absentee voters verses "overseas civilian" absentee voters.

ITEMS 39 and 40

Requesting breakdowns of the specific reasons why absentee ballots mailed to "domestic civilian" absentee voters and "military and overseas" absentee voters were rejected would be tedious and burdensome data to document. Consequently, the accuracy of any data collected would be questionable.

Recommendation

Given the issues identified above, the simplification of the data requested under the "2006 Election Day Results" portion of the survey is strongly recommended. The following is suggested:

A) Number of voters who participated in the election (include all voters who attended the polls including those voters who were issued a provisional ballot; all voters who returned an absentee ballot which was counted; and all voters who submitted a FWAB which was counted).

B) Number of absentee ballots distributed to all voters.

C) Of the absentee ballots distributed to all voters, the number distributed to 1) voters within the territorial limits of the United States and 2) voters outside of the territorial limits of the United States.

D) Number of absentee ballots returned in time to be counted.

E) Of the absentee ballots returned in time to be counted, the number returned by 1) voters within the territorial limits of the United States and 2) voters outside of the territorial limits of the United States.

F) Number of absentee ballots which were rejected and not counted including those that were returned late.

G) Of the absentee ballots which were rejected and not counted, the number

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returned by 1) voters within the territorial limits of the United States and  
2) voters outside of the territorial limits of the United States.

H) Number of provisional ballots issued to voters.

I) Of the number of provisional ballots which were issued to voters, the  
number which were counted and the number which were rejected and not counted.

J) Number of Federal Write-In Absentee Ballots (FWAB's) submitted by 1)  
domestic military voters and 2) overseas military and civilian voters.

K) Of the number of Federal Write-In Absentee Ballots (FWAB's) which were  
submitted, the number which were counted and the number which were not  
counted.

Thank you for extending the opportunity to comment on the proposed survey.  
Please do not hesitate to contact this office if you have any questions  
regarding our comments.

Best Regards,  
Bradley S. Wittman  
Director, Elections Liaison Division  
Michigan Department of State  
Bureau of Elections  
P.O. Box 20126  
Lansing, MI 48901-0726  
Phone: (517) 373-2540  
Fax: (517) 241-4785

009303





"Nicole Trella"  
<ntrella@elections.state.md.us>  
09/29/2006 04:06 PM

To: lotero@eac.gov  
cc  
bcc  
Subject: FW: Comments on 2006 Draft Survey

---

**From:** Nicole Trella  
**Sent:** Friday, September 29, 2006 1:09 PM  
**To:** 'lotero@eac.gov'  
**Subject:** Comments on 2006 Draft Survey

Please see attached comments.

Thanks,  
Nikki Trella  
Maryland State Board of Elections  
410-269-2843

<<Comments to Proposed 2006 Elec Admin & Voting Survey.pdf>>



Comments to Proposed 2006 Elec Admin & Voting Survey.pdf

009304

MARYLAND

STATE BOARD OF ELECTIONS

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Linda H. Lamone  
Administrator  
  
Ross Goldstein  
Deputy Administrator

September 29, 2006

**Via Electronic Mail Only**

Laiza N. Otero  
U.S. Election Assistance Commission  
1225 New York Avenue, N.W. Suite 1100  
Washington DC 20005

Dear Ms. Otero:

Thank you for the opportunity to provide comment on the proposed 2006 Election Administration and Voting Survey. My comments relate only to the "2006 Election Day Results" portion of the draft survey.

Applying the proposed definitions of "early voting" and "absentee voting" to Maryland's absentee voting laws<sup>1</sup>, the State has "early voting" and does not have "absentee voting." As a result, we would not be required to submit the information requested under the "Absentee Ballots" section of the survey (i.e., the number of requested and not counted absentee ballots, the number of rejected absentee ballots and the reasons for the rejections, etc.). I assume that this is an unintended consequence of the definitions.

If early voting is generally considered "in person" voting and absentee voting is typically conducted "by mail," perhaps the distinction between the two terms could be based on those criteria, instead of whether eligibility requirements exist. Alternatively, a footnote or parenthetical comment could be added under the "Absentee Ballots" section that requires states with "early voting" that is conducted generally by mail to complete this section, even though the definition is not technically met.

Question 32 asks for a breakdown of the ballots cast and ballots counted for domestic military citizens, overseas military citizens, and overseas citizens. It is important to note that statistics for these categories of voters can only be provided if the voters voted by absentee ballot. A voter who falls into one of these categories, is in Maryland on Election Day, and wishes to vote in person at the polling place will be counted as "at the polls." To clarify that these voters voted by absentee ballot, the report could refer to these categories as "Domestic military citizen absentee ballots," "Overseas military citizen absentee ballots," and "Overseas civilian absentee ballots." These descriptions would be similar to the description of "Domestic civilian absentee ballots."

<sup>1</sup> During the 2005 Legislative Session, the Maryland General Assembly passed legislation repealing the eligibility requirements for a voter who wishes to vote by absentee ballot. Under the new law, *any* voter may request an absentee ballot.

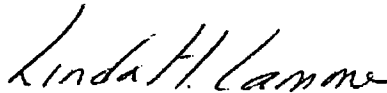
Letter to Ms. Otero  
Page 2  
September 29, 2006

Question 38 requests information about the number of Federal Write-In Absentee Ballots (FWABs) received. Question 36 requests the number of requested and rejected ("not counted") absentee ballots but specifically excludes FWABs. Question 40 is silent as to whether the reasons why any FWABs were rejected should be included, although the lack of responses specific to FWABs suggests that these ballots are not to be included. If Question 40 is **not** intended to report the rejection reasons for FWABs, there is no place to report the number of FWABs either counted or rejected. This will likely result in misleading absentee ballot statistics.<sup>2</sup>

To avoid this result, I suggest either: (1) including a separate question requesting the number of FWABs received, the number of FWABs rejected, and the reasons for the rejections; or (2) specifically including FWABs in Question 40. If the Election Assistance Commission includes a request for the number of rejected FWABs and the reasons why the ballots were rejected, rejection reasons specific to FWABs (i.e., "not registered" and "no ballot application on record") need to be included.<sup>3</sup>

Thank you again for the opportunity to comment on the proposed 2006 Election Administration and Voting Survey. If you have any questions about these comments, please contact Nikki Baines Trella at 410-269-2843.

Sincerely yours,



Linda H. Lamone  
State Administrator

<sup>2</sup> In responding to the 2004 Military and Overseas Absentee Ballot Survey, Maryland reported that the total number of absentee ballot returned was 9,538. As requested, this number did not include 1,768 FWABs received by local election officials in Maryland. We also reported that the total number of absentee ballots counted (including FWABs) was 10,205. By not including FWABs in the number of received absentee ballots, it looks like more absentee ballots were counted than were received.

<sup>3</sup> The Federal Voting Assistance Program's 2004 Post-Election Voting Survey of Local Election Officials included a specific question about the number of FWABs that were rejected and the reasons why the ballots were rejected. (See Question 8 of the survey.) Another rejection reason would be that the voter's State absentee ballot was voted and timely received.

009306



"Mike McCarthy"  
<Mike.Mccarthy@state.mn.us  
>  
09/29/2006 04:28 PM

To "Iotero@eac.gov" <Iotero@eac.gov>  
cc "Jim Hansen" <Jim.Hansen@state.mn.us>, "Alberto  
Quintela" <Alberto.Quintela@state.mn.us>  
bcc  
Subject 2006 Election Administration and Voting Survey

Ms. Otero,

Please find enclosed the comments of Secretary Kiffmeyer regarding the 2006 Election Administration and Voting Survey.

Mike McCarthy  
Minnesota Secretary of State's Office

<<EAC Comment 09.29.06.doc>>

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EAC Comment 09.29.06.doc

009307



MINNESOTA SECRETARY OF STATE OFFICE

Mary Kiffmeyer, Secretary of State

MEMORANDUM

Date: September 29, 2006

To: United States Elections Administration

From: Mary Kiffmeyer  
Minnesota Secretary of State

Re: Comments on Draft 2006 Election Administration and Voting Survey

First, as Minnesota Secretary of State, and on behalf of the State of Minnesota, I wish to commend the hard work of everyone who has contributed to developing the proposed Information Collection Activity.

I have provided comments on areas of the collection activity that I believe could benefit from revision. My hope is that you will find my commentary helpful, and that it will serve to enhance this activity. In response to the four questions presented, I make the following comments.

**(a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;**

- Much of the information requested may have relevance for election administration. However, even though Minnesota has a well developed Statewide Voter Registration System, having had no notice that some of this information would be collected this election cycle means that some of this information has not been tracked in the past in a form which would provide an answer to the question.
- As examples, question (32) asks for a separate count of "Domestic Military Citizens," and "Overseas Military Citizens." Because the information requested on the Federal Post Card Application permits sending voting materials to a forwarding address, it is not always clear if a service member is overseas or not. In addition, question (36) asks for number of ballots "Not

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Counted.” Ballots “Not Counted” is not defined. Does it include ballots mailed out, but returned as undeliverable or not returned at all, along with rejected ballots? The answer to this question, as it is written, may give a misleading result.

- Question (39) requests information as to the reasons for the rejection of domestic civilian absentee ballots which is beyond the specific information maintained by the local election official. The reasons for rejection are noted by this state but placed into fewer categories in the state registration system than the expectation of this question. With notice, this information can be categorized as requested, but it cannot be done after the fact.
- Although question (45) asks the number of polling places “that did not have the required number of poll workers” for the election, it seems implausible that answers to a question of this type, i.e., asking a local election jurisdiction to admit it did not comply with state law, will result in an accurate answer.
- Questions (41) and (42) are to the number of undervotes and overvotes reported. However, currently, this information is not tracked in the system and cannot be tracked without redoing part of the system. With notice, this can be done, but it will require a substantial systemic change in the state which cannot be accomplished on such short notice, and so close to the 2006 election.

**(b) the accuracy of the agency’s estimate of the burden of the proposed information collection;**

- I believe this estimate underestimates the cumulative burden of the proposed information collection on all levels of election officials. Some of the information proposed to be collected has not been required to be tracked in the past so it may be unavailable. In addition, NVRA reporting requirements are now being placed upon all states as required reporting with this proposal, with no notice being given so states and local jurisdictions could begin collecting this information in a timely manner. In fact, as some of these requirements may increase election administration costs or conflict with current state statutory requirements; it may be necessary to amend current statutes to become consistent with these revised reporting requirements.
- In particular, proposed questions (25), (26), and (28) are not consistent with current state statutes and would place a heavy burden upon local election officials to research the answer.
- In addition, this state permits precincts to have combined polling places which would not readily appear in the Statewide Voter Registration System; so this total would have to be manually prepared this election cycle. If we had notice

that this information would be requested; the data could be entered into the system as part of routine data entry in the future.

**(c) ways to enhance the quality, utility, and clarity of the information to be collected; and**

- Provide longer notice of information which is to be sought so that systemic changes can be made prior to the request for the information.
- Permit states that do not come under the NVRA the option to respond to a question that information only required under the NVRA was not collected in that state, if that was the case, and waive the reporting requirement for that question at least until the succeeding election cycle. Those states can then begin collecting that information for the next reporting cycle.

**(d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.**

- Due to the close proximity of the 2006 election to the time when the proposed information collection activity was released for comment, the burden on respondents is significantly increased because not all of the information has been previously sought, nor collected. Consequently, when this collection activity is finalized, it will be too late for some of the information to be collected from voters by local election officials, placing an undue burden upon them for providing this information. This will be particularly burdensome on local offices with smaller staffs.
- Automated collection techniques, when coordinated with the information maintained in state registration systems, will enhance this process, and will relieve the burden on all officials affected.

**CONCLUSION**

On behalf of the State of Minnesota, as well as the citizens of the United States of America, I would like to thank the Elections Assistance Commission for allowing me to comment on the proposed Information Collection Activity. Your assistance in this process is to be commended. The integrity of not only our elections process, but that of our democracy is contingent upon setting forth standards that are based upon reliable information. This should be taken as an opportunity to bolster a system that will stand strong for generations to come. With that said, thank you for putting this process into motion, and I wish the Election Assistance Commission much success in these, and all future efforts.



"Scott Novakowski"  
<snovakowski@demos.org>  
09/29/2006 04:20 PM

To: lotero@eac.gov  
cc:  
bcc:  
Subject: Comments on Notice of Information Collection Activity;  
Proposed Information Collection; Comment Request

Dear Ms. Otero,

I attach a cover letter and comments regarding Notice of Information Collection Activity; Proposed Information Collection; Comment Request published at 71 *Fed. Reg.* 43477 (August 1, 2006). Do not hesitate to contact me with any questions.

Sincerely,

Scott Novakowski

**Scott Novakowski**

Policy Analyst

Demos: A Network for Ideas and Action

220 5th Avenue, 5th Floor

New York, NY 10001

Phone: 212-389-1415

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Visit Demos' redesigned, web-based e-journal *Democracy Dispatches* for a daily news-feed on democracy-related issues, a blog analyzing current trends, and in-depth commentary.



EAC Cover Letter.pdf



EAC Survey Comments - FINAL.pdf

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# Dēmos

A NETWORK FOR IDEAS & ACTION

September 29, 2006

*VIA E-MAIL*

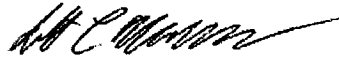
Ms. Laiza N. Otero  
U.S. Election Assistance Commission  
1225 New York Avenue NW, Suite 1100  
Washington, DC 20005

Re: Notice of Information Collection Activity; Proposed Information Collection;  
Comment Request

Dear Ms. Otero:

Demos welcomes the opportunity to submit comments in response to the Notice of Information Collection Activity; Proposed Information Collection; Comment Request. The notice was published at 71 *Fed. Reg.* 43477 (August 1, 2006).

Respectfully Submitted,



Scott C. Novakowski  
Policy Analyst  
Demos: A Network for Ideas & Action  
220 5<sup>th</sup> Avenue, 5<sup>th</sup> Floor  
New York, NY 10001

Attachment

## Before the U.S. Election Assistance Commission

### Notice of Information Collection Activity; Proposed Information Collection; Comment Request

#### Comments provided by Demos: A Network for Ideas & Action

##### I. Introduction

Demos: A Network for Ideas & Action submits these comments in response to the Election Assistance Commission's Notice of Information Collection Activity; Proposed Information Collection; Comment Request published at 71 *Fed. Reg.* 43477 (August 1, 2006). Demos is a non-profit, non-partisan think tank and advocacy center dedicated to helping America achieve its highest democratic ideals. Demos' primary interest in the EAC's Election Administration and Voting Survey is to create a survey instrument that accurately collects much-needed and usable data on elections.

Demos has a strong record of producing high quality research and conducting advocacy campaigns around several of the topics covered on the proposed survey. Through the NVRA Implementation Project, a collaboration to improve states' compliance with the public assistance provisions of the National Voter Registration Act, Demos has made extensive use of the EAC's (previously the Federal Election Commission's) biennial report on the impact of the NVRA. Demos also has assumed leadership in the national debate on Election Day registration, published several reports and mounted advocacy campaigns on felony disenfranchisement and published *Placebo Ballots: Will "Fail-safe" Voting Fail?*, one of the first reports to address HAVA's provisional ballot requirement. Additionally, Demos staff members have had significant graduate-level instruction and experience in survey construction. This work puts Demos in a unique position to speak to the types of data needed for the understanding of the electoral issues sought by the survey.

We offer the following recommendations with the hope that the EAC can further develop its role as a centralized clearinghouse for election-related data.

##### II. Data Gathered with Respect to the National Voter Registration Act

###### A. Additional Information Required

The EAC has the responsibility to administer a survey on the impact of the National Voter Registration Act. With respect to public assistance agencies, the current survey gathers the basic information, i.e. the number of registrations received from public assistance offices. However, additional information is necessary for more than a surface understanding of this voter registration activity. Collection of this additional information would greatly advance the survey's purpose to ascertain the impact of the law.

009313

Specifically, we encourage the EAC to request the following additional information:

- The number of applications, recertifications, and changes of address processed by public assistance agencies;
- How often a recipient of public assistance is required to recertify or renew her benefits;
- The percentage (or raw number) of agency interactions that are conducted via telephone, mail, or internet;
- The individual public assistance programs (e.g. Food Stamps, Medicaid, TANF) administered by each office designated as a public assistance agency; and
- The number of completed voter registration applications submitted by *each* public assistance office or agency.

The current survey does not provide us with the information necessary to contextualize the raw number of applications. We recommend that the survey ask for the number of applications, recertifications, and changes of address processed by each public assistance agency – a figure that represents the total number of transactions in which voter registration should have been offered under the NVRA.<sup>1</sup>

Raw numbers can be misleading without this information. For example, assume that a state registered 10 individuals in its public assistance offices. If that office only had 11 client interactions requiring an offer of voter registration services, it did a fantastic job. However, if 100,000 individuals completed NVRA-covered transactions, registering only 10 of these individuals may be indicative of a serious failure to implement the law. Furthermore, it is wholly possible that as office traffic rises faster than the number of applications completed, an increase in the raw number of applications is actually accompanied by a decrease in the percentage of clients completing voter registration applications.

In order to most accurately gauge an agency's NVRA-covered traffic flow, two additional pieces of information would be quite helpful. It is important to know what percentage (or the raw number) of an agency's interactions are conducted via telephone, mail, or Internet. While some states require voter registration to be offered to clients interacting remotely, many do not. Additionally, information on how often a recipient is required to renew or recertify benefits will be useful in understanding how many times a single recipient is offered the opportunity to register.

Collecting the above information relating to office traffic is not likely to place an undue burden on public assistance agencies. We know that the federal government already requires agencies to track much of this information for the Food Stamp program and we suspect that it may be tracked for Medicaid and WIC as well. Even if Food Stamps was the only program for which this data were available, its traffic flow could serve as a proxy measurement for general public assistance use.

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<sup>1</sup> This information is different than agency caseload, a number that does not capture recertifications, changes of address or initial applicants who were denied benefits but who are still required to be offered the opportunity for voter registration upon application. Nevertheless, caseload data would be preferable (as an indicator of covered transactions) to nothing.

Finally, we urge the EAC to seek two additional pieces of information to ensure that voter registration services are being offered at public assistance agencies: (1) identification of individual programs (e.g. Food Stamps, Medicaid, TANF) administered by each office designated as a voter registration agency; and (2) the number of completed voter registration forms submitted by *each* public assistance agency or office. Collecting such information would help ensure that all covered programs are offering voter registration and facilitate identifying offices that may be having difficulties or are especially successful in implementing the law.

B. Existing Questions

Drawing on our knowledge of effective surveying, we offer the following additional comments about the survey's format and language used in questions relating to the National Voter Registration Act.

**Question 6** asks for the number of registration applications received from or generated by several categories of designated voter registration agencies including "All public assistance agencies that are mandated as registration sites under the NVRA." **Question 11** asks elections officials to identify "each and every" state "office or agency" that is designated as a voter registration agency.

We recommend moving Question 11 toward the beginning of the survey so that it appears before Question 6, as it did in the survey instrument used in the previous EAC report. This proposed ordering will require officials to list relevant NVRA agencies *before* tallying the total number of applications received from such agencies.

In addition, the format of the list of categories that follows Question 11 looks more like a multiple-choice check-off than a template for a listing of designated agencies. The current placement of the question next to others in which similarly formatted answer templates actually *are* multiple choice check-offs adds to the assumption that Question 11 should be answered similarly. We suggest that the answer to this question be reformatted to make clear to respondents that they need to list all agencies for each category listed.

Finally, the request for a listing of "each and every state and local government *office or agency* designated as a voter registration agency" in **Question 11** is vague and subject to multiple interpretations. For example, a respondent could list the name and address of each *office* (meaning the physical building) that is designated as a voter registration agency. Alternately, a respondent could simply list "Department of Social Services," meaning the abstract *agency* with multiple physical *office* locations that administer assistance. In order to maximize the usefulness of the survey, we recommend that respondents list the overarching agencies designated as providing public assistance (i.e. Department of Social Services) as well as the address of each physical office building at which registration is conducted.

**Question 7** asks for the "Total number statewide and by county/local jurisdiction of registration applications identified in response to Question 6 [regarding different designated

voter registration agencies] that were: Duplicates of other valid voter registrations; Changes of address, name, or party; or Invalid or rejected (other than duplicates).”

From the wording and context of Question 7, it is not clear if the category for “Changes of address, name, or party” is meant to include all such changes or only those making these changes within their local jurisdiction. Since Question 8 (asking for the number of new, valid registrations) specifies that name, address changes, and changes of party within the local jurisdiction are *not* to be counted as “new, valid registrations,” it seems that a voter changing an address *outside* of their jurisdiction would be counted as “new” under Question 8 rather than a change of address under Question 7. If this is the case, Question 7 of the survey should clarify that respondents should report only the number of address, name, or party changes within the local jurisdiction.

Without this clarification, it is entirely possible that the same application might be counted in more than one category, e.g. a change of address outside the local jurisdiction might be counted as both a new registration and also a name, address, and party change. The possibility of this double-counting will reduce the value of the data collected. Furthermore, this ambiguity may lead to different interpretations in different states, hindering meaningful cross-state comparisons.

**Question 12** inquires about the voter registration training provided to employees of designated voter registration agencies. The proposed multiple choice answers are helpful in that respondents must clearly state the level of training that is provided. For the second answer listed (stating that the office conducts training for “some, but not all” agencies), we recommend inserting a follow-up question asking for which agencies training is provided. A common theme in the NVRA Implementation Project’s work in public assistance agencies is that front line agency workers are not provided adequate training on voter registration procedures. A question asking to whom training is provided would be helpful in understanding why a state may or may not be successful in implementing the NVRA.

### **III. Data Gathered with Respect to Election Day Registration**

As registration deadlines may pose a barrier to a significant number of citizens who wish to cast a ballot, it is important for policy reasons that we have an accurate count of the number of citizens who utilize policies allowing them to register and cast a ballot on the same day.

**Question 2** asks for the total number of persons in each county/jurisdiction who registered to vote on Election Day. The survey states this question is “Only applicable to states with Election Day registration (Idaho, Maine, Minnesota, New Hampshire, Wisconsin, and Wyoming).” We suggest that Montana be included among the list of states to answer this question. In 2005, Montana passed a law allowing its citizens to register and vote on Election Day at the county election administrator’s office. *See* Mont. Code Ann. § 13-2-304 (effective July 1, 2006). This law will be fully implemented in the November 7, 2006 General Election. A comprehensive count of the number of citizens who utilize Election Day registration should include the number of voters in Montana who register and vote on Election Day.

In addition, several states, including five states that have Election Day registration, also allow what we have termed “same day registration.” Under this system a citizen may register to vote and cast a ballot on the same day during periods of early voting. To further gain an understanding of how many voters register and vote in the same day, it would be helpful to add the following question:

“If your state allows early voting, how many citizens registered to vote and cast a ballot on the same day during the period of early voting?”

#### **IV. Data Gathered with Respect to Felon Disfranchisement**

Felon disfranchisement laws are often complicated and a recent study<sup>2</sup> indicates many elections officials themselves do not completely understand the laws. We are concerned that the wording of the series of questions relating to felon disfranchisement will cause more confusion among those completing the survey and those utilizing its results. Our comments and recommendations to avoid such confusion follow below.

**Are the following classes of persons eligible to vote?**

**A1) Those who have been convicted of a felony?**

- Yes
- No

A simple “yes” or “no” response to this question cannot accurately capture most states’ laws. “Those . . . convicted of a felony” is a “class of persons” that may include both those able and unable to vote within a single state.

In New York, for example, only those incarcerated or on parole for a felony conviction are barred from voting. Those on probation, even if for a felony conviction, remain eligible to vote. Those “convicted of a felony” who have completed their sentence of incarceration also *can* vote. So how should a New York official answer this question? Answering “yes” (as would seem to be required since a certain number of those convicted of a felony can vote) would void Question A2, which we do not believe is the intention of the Commission nor the best way to ascertain information about a state’s felon disfranchisement practices.

A recent study<sup>3</sup> has documented a widespread belief in affected communities in several states (including New York) that a felony conviction permanently bars an individual from voting even when that is not the case. We fear that the inclusion of this question will further perpetuate

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<sup>2</sup> See “Boards of Elections Continue Illegally to Disfranchise Voters with Felony Convictions” (2006) by the Brennan Center for Justice at the NYU School of Law and Demos: A Network for Ideas & Action, available at <http://www.demos.org/pubs/NYSurveyReport031506.pdf>.

<sup>3</sup> See “Studies of Voting Behavior and Felony Disenfranchisement Among Individuals in the Criminal Justice System in New York, Connecticut, and Ohio” (2005) by Ernest Drucker and Ricardo Barreras, available at <http://www.sentencingproject.org/pdfs/drucker.barreras.pdf>.

misinformation about felon voting laws. We recommend alternative language for the question, which we have provided at the end of this section.

**A2) If “No”, are they eligible to register or re-register upon pardon, issuance of certificate of eligibility, or restoration of their Civil Rights?**

As with A1, the phrasing of this question does not capture the nuances of state felon disfranchisement laws. As a result, different respondents are likely to interpret questions differently, thereby reducing meaningful use of the survey results.

First, the question refers to the “restoration of Civil Rights” but, in many states, restoration of *civil* rights is much different than, and not necessarily connected to, restoration of *voting* rights. In New York, for example, a felon’s voting rights are automatically restored upon completion of the sentence of incarceration or discharge from parole, whereas restoration of civil rights would be applied for at a later time. At least in the case of New York, asking about restoration of civil rights does not seem to make much sense.

Similarly, there is a good deal of variation among state laws on certificates of eligibility and other similar certificates that the survey’s language does not capture. Using New York as an example once more, those on parole can apply for a Certificate of Relief from Disabilities, which would allow them to vote while still on parole. This is much different than a policy that requires application for a certificate of relief after completion of the individual’s entire sentence.

Finally, the inclusion of pardon, issuance of certificate of eligibility, and restoration of Civil Rights together does not provide any valuable information when presented as a “yes” or “no” question. A pardon, which is generally granted by a governor, is much different from a certificate of eligibility in which an individual must often navigate a complex set of bureaucratic procedures to obtain. Finally, in a state like New York, asking about restoration of civil rights is largely meaningless, as a felon would likely have finished serving her sentence (and thus have had her voting rights automatically restored) prior to applying for restoration of civil rights.

The remainder of the questions regarding felony disfranchisement laws is also confusing. We propose the following clearer and more user-friendly set of questions:

- Does your state currently disfranchise:
  - Individuals who are currently incarcerated for a felony conviction? Yes No
  - Those currently on parole for a felony conviction? Yes No
  - Those currently on probation for a felony conviction? Yes No
- Can an individual disfranchised for a felony conviction ever regain the right to vote? Yes No
  - If yes, what are the requirements for voting rights restoration?
    - Completion of sentence of incarceration
    - Discharge from parole and/or probation
    - A pardon
    - Other \_\_\_\_\_

- Does an individual disfranchised due to a felony conviction have to pay all fines, fees, and/or child support prior to having her or his voting rights restored?
- Does an individual whose voting rights have been restored have to produce documentation of her status when registering to vote?
- Who notifies elections officials to remove an individual from the voting rolls due to a felony conviction?
- If applicable, are elections officials notified when an individual convicted of a felony is once again eligible to vote?
  - If yes, how are elections officials notified of this change in eligibility?

## V. Data Gathered With Respect to Provisional Ballots

According to the EAC, in the 2004 election, elections officials ultimately rejected over half a million provisional ballots. To date, we know very little about why so many provisional ballots were rejected. There has been no systematic analysis of the specific reasons why provisional ballots were not counted. It is essential that this information be compiled to allow clear insight into the effectiveness of provisional ballots.

While it is a significant improvement to ask respondents for the number of rejected ballots categorized by the reason for rejection, rather than asking for the five most frequent reasons why a ballot was rejected (as was done on the previous survey), the response categories proposed under **Question 35** are not mutually exclusive. A fundamental principle in creating survey questions of this sort is that each response should fit into one, and only one, category. Here it is possible for the same provisional ballot to be accurately counted in multiple categories. For example, it is not clear what the difference is between the categories labeled “Name missing from voter list” and “Not registered.” If a person’s name were missing from the voter list, it would also follow that the same person could also be considered to be “not registered.” In another case, if someone does not produce ID at the polls and fails to return with ID within 24 hours, do they belong in the category of “No identification provided” or “Non-appearance within 24 hours”? Also, some states may allow a voter longer than 24 hours to appear with ID. Such ambiguity will make it difficult to create meaningful cross-state comparisons.

Finally, we are doubtful that some of the categories listed are indeed reasons to lawfully reject a provisional ballot. For example, can a provisional ballot be rejected because the voter is a “First time voter registration on Election Day”? In such an instance, the ballot would likely be rejected because the registrant did not have the proper ID to register at the polls on Election Day and was not able to subsequently provide adequate ID, rather than simply because the voter registered for the first time on Election Day. Another suspect category is that of “Elector challenged.” An elector being challenged would be a reason to cast a provisional ballot, not to have that ballot rejected.

## VI. Conclusion

Demos is encouraged by the EAC’s dedication to becoming a national clearinghouse on election data. We applaud the Commission’s efforts in combining and revising its various



survey instruments in a manner that captures accurate information. We urge the EAC to adopt our suggestions to clarify the questions asked of elections officials and to provide the data necessary to accurately evaluate and improve our electoral system.



"Neal McBurnett"  
<neal@bcn.boulder.co.us>  
09/30/2006 01:30 AM

To "Laiza Otero" <lotoero@eac.gov>  
cc  
bcc  
Subject Comment on EAC's 2006 Election Information and Voting  
survey

This comment is submitted in response to the request in the Federal Register, Document 06-6602

[http://eac.gov/eav\\_survey.asp](http://eac.gov/eav_survey.asp)

Questions about audits are completely missing from the proposed 2006 Election Information and Voting survey. Audits are critical to the security of elections and voter confidence, and insights and feedback on current audit practice is sorely needed so they can be improved.

The following information, at a minimum, should be provided for each county or other voting jurisdiction.

- 1) Was a post-election audit of election results performed?
- 2) How many electronic voting devices were used in the election?
- 3) How many electronic voting devices were audited?
- 4) Were all contests per device audited, or just some of them? How many?
- 5) How many problems or issues arose during the audits?
- 6) How were the issues resolved?
- 7) Was your audit designed to help also detect problems with your central tally equipment?

More information on problems with current audit procedures is available at

<http://www.coloradovoter.net/moin.cgi/ManualCountAudit>

Thank you,

Neal McBurnett

<http://mcburnett.org/neal/>

009321

**Abstract:** This is the third of three clearance packages for the NAEP 2007 assessment activities. This package covers two studies intended to study measures of student background characteristics. These are a new set of questions for students to respond to and a study looking at a potential link to census block level information.

Requests for copies of the information collection submission for OMB review may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 3163. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202-4700. Requests may also be electronically mailed to [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov) or faxed to 202-245-6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. E6-12311 Filed 7-31-06; 8:45 am]  
BILLING CODE 4000-01-P

## ELECTION ASSISTANCE COMMISSION

### Information Collection Activity; Proposed Information Collection; Comment Request

**AGENCY:** U.S. Election Assistance Commission (EAC).

**ACTION:** Notice.

**SUMMARY:** In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, EAC announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use

of automated collection techniques or other forms of information technology.

**DATES:** Written comments must be submitted on or before Friday, September 29, 2006.

**ADDRESSES:** Written comments and recommendations on the proposed information collection should be sent to the U.S. Election Assistance Commission, 1225 New York Avenue, NW., Suite 1100, Washington, DC 20005. ATTN: Ms. Laiza N. Otero (or via the Internet at [lotero@eac.gov](mailto:lotero@eac.gov)).

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call Mrs. Juliet Thompson-Hodgkins or Ms. Laiza N. Otero at (202) 556-3100. You may also view the proposed collection instrument by visiting our Web site at <http://www.eac.gov>.

#### SUPPLEMENTARY INFORMATION:

**Title and OMB Number:** 2006 Election Administration and Voting Survey; OMB Number Pending.

**Needs and Uses:** This proposed information collection activity is necessary to meet requirements of the Help America Vote Act (HAVA) of 2002 (42 U.S.C. 15301). Section 241 of HAVA requires the EAC to study and report on election activities, practices, policies, and procedures, including methods of voter registration, methods of conducting provisional voting, poll worker recruitment and training, and such other matters as the Commission determines are appropriate. In addition, HAVA transferred to the EAC the Federal Election Commission's responsibility of biennially administering a survey on the impact of the National Voter Registration Act (NVRA). The information the States are required to submit to the EAC for purposes of the NVRA report are found under Title 11 of the Code of Federal Regulations (Chapter 1, Part 8, Subchapter C). HAVA 703(a) also amended the Uniformed and Overseas Citizens Absentee Voters Act by requiring that "not later than 90 days after the date of each regularly scheduled general election for Federal office, each State and unit and local government which administered the election shall (through the State, in the case of a unit of local government) submit a report to the Election Assistance Commission (established under the Help America Vote Act of 2002) on the combined number of absentee ballots transmitted to absent uniformed services voters and overseas voters for the election and the combined

number of such ballots which were returned by such votes and cast in the election, and shall make such a report available to the general public." In order to fulfill these requirements and to provide a complete report to Congress, the EAC is seeking information relating to the period from the close of registration for the November 2, 2004, Federal general election until the close of registration for the November 7, 2006, Federal general election, and information from the November 7, 2006, Federal general election.

**Affected Public:** State government.

**Number of Respondents:** 55.

**Responses per Respondent:** 1.

**Estimated Burden per Response:** 91 hours.

**Estimated Total Annual Burden**

**Hours:** 728.50 hours.

**Frequency:** Biennially.

To improve and facilitate the collection and analysis of the survey data, the EAC anticipates developing and implementing an Internet-based platform to administer the survey. This method will allow respondents to enter, save, and edit data prior to submitting their final survey response. The following categories of information are requested on a state level and/or county/local election jurisdiction:

#### Voter Registration Applications

(a) Number of active and inactive registered voters at the time of the close of registration for the November 2, 2004, and the November 7, 2006, Federal general elections; (b) Number of persons who registered to vote on Election Day (November 7, 2006)—only applicable to States with Election Day registration; (c) Number of voter registration applications received from all sources during the period between the close of registration for the November 2, 2004, Federal general elections until close of registration for the November 7, 2006, Federal general elections; (d) Number of voter registration applications received by mail during the period between the close of registration for the November 2, 2004, Federal general elections until close of registration for the November 7, 2006, Federal general elections; (e) Number of voter registration applications received in person at the clerk or registrar's office during the period between the close of registration for the November 2, 2004, Federal general elections until close of registration for the November 7, 2006, Federal general elections; (f) Number of voter registration applications received or generated by each voter registration agency during the period between the close of registration for the November 2, 2004, Federal general elections until

close of registration for the November 7, 2006, Federal general elections; (g) Number of voter registration applications that were duplicates of other valid voter registrations, changes of name, changes of address, changes of party, and invalid or rejected (other than duplicates); (h) Number of new, valid voter registration applications processed between the close of registration for the November 2, 2004, Federal general elections until close of registration for the November 7, 2006, Federal general elections; Number of election jurisdictions conducting voter registration; (i) The local entity primarily responsible for registering voters; State and local government offices or agencies designated as voter registration agencies; (j) Training provided to employees of Federal, State, and local government offices or agencies designated as voter registration agencies on the voter registration process; (k) Manner in which voter registration applications are transferred from voter registration agencies to the official responsible for voter registration; Official responsible for verifying and processing voter registration forms; (1) Number used as the voter identification number on the processed voter registration form; Manner in which voter registration applications are verified; (m) Manner in which voter registration officials check for duplicate registrations; Notification to applicants of rejection of their application and reason for the rejection; and (n) Manner in which the statewide voter registration database links to a State's department of motor vehicles and disability and social services agencies.

#### List Maintenance

(a) Manner in which list maintenance is performed; Number of registrations deleted from the registration list for whatever reason between the close of registration for the November 2, 2004, Federal general elections until close of registration for the November 7, 2006, Federal general elections; (b) Number of removal notices [Section 8, (d)(2) confirmation] mailed out between the close of registration for the November 2, 2004, Federal general elections until close of registration for the November 7, 2006, Federal general elections; (c) Number of responses received to the confirmation notices mailed out between the close of registration for the November 2, 2004, Federal general elections until close of registration for the November 7, 2006, Federal general elections; (d) Number of voters moved to the inactive list between the close of registration for the November 2, 2004, Federal general elections until close of

registration for the November 7, 2006, Federal general elections; (e) Number of voters (active and inactive) removed from the voter rolls between the close of registration for the November 2, 2004, Federal general elections until close of registration for the November 7, 2006, Federal general election; (f) Sources considered in performing list maintenance; and (g) Manner in which voters convicted of a felony, voters serving a sentence of incarceration for conviction of a felony, and voters serving a term of probation following being convicted of a felony are treated.

#### 2006 Election Day Results

(a) Identification of States that conduct early voting; (b) Statistics on ballots cast and ballots counted by mode of voting; (c) Statistics on ballots counted for each candidate on a Federal race; and (d) Statistics on provisional ballots.

#### Absentee Ballots (for the November 7, 2006, Federal General Election Only)

(a) Statistics on absentee ballots requested and not counted by type of absentee voter; (b) Statistics on advanced ballots; (c) Statistics on the number of Federal Write-In Absentee Ballots (FWAB) received; and (d) Statistics on absentee ballot rejections.

#### Undervotes and Overvotes (for the November 7, 2006, Federal General Election Only)

(a) Statistics on the number of undervotes reported in each Federal contest; and (b) Statistics on the number of overvotes reported in each Federal contest.

#### Poll Workers (for the November 7, 2006, Federal General Election Only)

(a) Information on the number of poll workers required by State law or regulation to be present at each polling place; (b) Statistics on the number of poll workers that served on Election Day; and (c) Number of polling places that did not have the required number of poll workers.

#### Voting Jurisdictions and Polling Places (for the November 7, 2006, Federal General Election Only)

(a) Information on what constitutes a local election jurisdiction in the State; (b) Number of local election jurisdictions in the State; Statistics on the number of precincts; (c) Statistics on the number of polling places; (d) Number of polling places that are accessible to voters with disabilities; and (e) Number of polling places where a visually impaired voter can cast a private ballot.

#### Sources of Information

(a) Number of jurisdictions that provided information to the State for purposes of responding to the survey; (b) Contact information for each local election official that provided information to the State for purposes of responding to the survey; and (c) Other sources of information used to respond to the survey other than those already provided.

**Thomas R. Wilkey,**

*Executive Director, U.S. Election Assistance Commission.*

[FR Doc. 06-6602 Filed 7-31-06; 8:45 am]

BILLING CODE 6820-KF-M

#### DEPARTMENT OF ENERGY

[OE Docket No. EA-267-A]

#### Application To Amend Authority To Export Electric Energy; Conectiv Energy Supply, Inc.

**AGENCY:** Office of Electricity Delivery and Energy Reliability, DOE.

**ACTION:** Notice of application.

**SUMMARY:** Conectiv Energy Supply, Inc. (CESI) has applied to amend its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

**DATES:** Comments, protests, or requests to intervene must be submitted on or before August 16, 2006.

**ADDRESSES:** Comments, protests or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability, Mail Code: OE-20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585-0350 (FAX 202-586-5860).

**FOR FURTHER INFORMATION CONTACT:** Ellen Russell (Program Office) 202-586-9624 or Michael Skinker (Program Attorney) 202-586-2793.

**SUPPLEMENTARY INFORMATION:** Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On July 18, 2002, the Department of Energy (DOE) issued Order No. EA-267 authorizing CESI to transmit electric energy from the United States to Canada as a power marketer using international transmission facilities located at the United States border with Canada. That authorization expired on July 18, 2004.

On July 7, 2006, CESI filed an application with DOE to renew the

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Impact Statement (DEIS) that evaluates the potential environmental effects of the land use agreement between the DON and the VA National Cemetery Administration (NCA) for the proposed annex to the existing Fort Rosecrans National Cemetery at Point Loma in San Diego, CA. The DEIS also evaluates the potential effects of construction and operation of the proposed cemetery annex. The annex would be located at MCAS Miramar, in San Diego, CA.

The purpose of the proposed action is to provide needed burial space on federal land for military veterans in the San Diego area. The DEIS addresses the proposed site (Site 2), one on-site development alternative (Site 4), and the No Action Alternative.

The DEIS evaluates the potential environmental effects associated with each of the alternatives. Issues addressed in the DEIS include land use, socioeconomic/environmental justice, utilities, public services, visual resources, cultural resources, biological resources, soils and geology, water resources, public health and safety, traffic/circulation, air quality, and noise. Impact analyses include an evaluation of direct, indirect, short-term, and cumulative impacts.

**DATES:** All written comments must be received on or before December 11, 2006. A public meeting will be held on Thursday, November 16, 2006, from 6 p.m. to 8 p.m. at the Holiday Inn Select Miramar, 9335 Kearny Mesa Road, San Diego, CA.

**ADDRESSES:** Written comments should be directed to: Ms. Hiphil S. Clemente (Code OPCE.HC), Naval Facilities Engineering Command, Southwest, 1220 Pacific Highway, San Diego, CA 92132.

**FOR FURTHER INFORMATION CONTACT:** Ms. Hiphil S. Clemente, Naval Facilities Engineering Command, Southwest at telephone 619-532-3781, fax 619-532-4160, or e-mail: [hiphil.clemente@navy.mil](mailto:hiphil.clemente@navy.mil).

**SUPPLEMENTARY INFORMATION:** The VA operates the Fort Rosecrans National Cemetery, located on the Point Loma Submarine Base. It is the only national cemetery in San Diego County and has been closed to casketed burials since 1966. It is scheduled to be closed to cremated remains burials by 2008 and has no additional land available for expansion. The NCA has identified a need for additional burial space option for 253,000 San Diego-area eligible military veterans for the next 20 to 30 years.

A Notice of Intent to prepare the DEIS was published in the **Federal Register** on October 4, 2005. A public scoping meeting was held on November 2, 2005,

at the Holiday Inn Select located at 9335 Kearny Villa Road in San Diego, CA.

The DEIS addresses the proposed site (Site 2), one on-site development alternative (Site 4), and the No Action Alternative. The Site 2 Alternative is located in the northwestern corner of MCAS Miramar. This site is approximately 323 acres and has access to Miramar Road to the north and Nobel Drive to the northwest. The site is bounded by Miramar Road to the north, the commuter/freight railway to the south and east, and the western boundary of MCAS Miramar to the west. The Site 4 Alternative is located in the south-central portion of MCAS Miramar in the former Camp Elliott area and is approximately 175 acres. The site is completely surrounded by freeways with State Route 163 to the west, State Route 52 to the south, and Interstate 15 to the east. Kearny Villa Road traverses the site in a north-south direction. The DEIS identifies the Site 2 Alternative as the Preferred Alternative.

The DEIS has been distributed to various federal, state, and local agencies, elected officials, special interest groups, and interested parties. The DEIS is also available for public review at the following local libraries:

Scripps Miramar Ranch Library, 10301 Scripps Lake Drive, San Diego, CA.

Mira Mesa Branch Library, 8405 New Salem Drive, San Diego, CA.

San Diego Central Library, 820 E Street, San Diego, CA.

The public review period begins with the publication of this Notice of Availability and ends 45 days after. All comments must be received on or before December 11, 2006. A public meeting will be held on Thursday, November 16, 2006, from 6 p.m. to 8 p.m. at the Holiday Inn Select Miramar, 9335 Kearny Mesa Road, San Diego, California. The public meeting will follow an informal open house format. The public is invited to attend the meeting at their convenience during the meeting hours and can view project-related displays and speak with DON and VA representatives. A court reporter will be available at the meeting to accept oral comments.

Dated: October 26, 2006.

**Lynette M. Breutzman,**

*Paralegal Specialist, Judge Advocate General's Office, Alternate Federal Register Liaison Officer.*

[FR Doc. E6-18248 Filed 10-30-06; 8:45 am]

**BILLING CODE 3810-FF-P**

## ELECTION ASSISTANCE COMMISSION

### Information Collection Activity; Proposed Information Collection; Comment Request

**AGENCY:** U.S. Election Assistance Commission (EAC).

**ACTION:** 30-Day Notice of Information Collection Under Review.

**SUMMARY:** The U.S. Election Assistance Commission has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 1, 2006, at 71 FR 43457. The notice allowed for a 60-day public comment period. Fourteen comments were received on this information collection, and modifications were made to improve and clarify the information collection based on those comments. The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 27, 2006. This process is conducted in accordance with 5 CFR 1320.10. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments must be submitted on or before November 27, 2006.

**ADDRESSES:** Written comments and recommendations on the proposed information collection should be sent to: OMB Reviewer: Alexander T. Hunt, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395-7316.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please, write to the above address or call Mrs. Juliet Thompson-Hodgkins or Ms. Laiza N. Otero at (202) 566-3100.

**SUPPLEMENTARY INFORMATION:**

009324

*Title and OMB Number:* 2006 Election Administration and Voting Survey; OMB Number Pending.

*Needs and Uses:* This proposed information collection activity is necessary to meet requirements of the Help America Vote Act (HAVA) of 2002 (42 U.S.C. 15301). Section 241 of HAVA requires the EAC to study and report on election activities, practices, policies, and procedures, including methods of voter registration, methods of conducting provisional voting, poll worker recruitment and training, and such other matters as the Commission determines are appropriate. In addition, HAVA transferred to the EAC the Federal Election Commission's responsibility of biennially administering a survey on the impact of the National Voter Registration Act (NVRA). The information the States are required to submit to the EAC for purposes of the NVRA report are found under Title 11 of the Code of Federal Regulations (Chapter 1, Part 8, Subchapter C). HAVA § 703(a) also amended the Uniformed and Overseas Citizens Absentee Voters Act by requiring that "not later than 90 days after the date of each regularly scheduled general election of Federal office, each State and unit of local government which administered the election shall (through the State, in the case of a unit of local government) submit a report to the Election Assistance Commission (established under the Help American Vote Act of 2002) on the combined number of absentee ballots transmitted to absent uniformed services voters and overseas for the election and the combined number of such ballots which were returned by such voters and cast in the election, and shall make such a report available to the general public." In order to fulfill these requirements and to provide a complete report to Congress, the EAC is seeking information relating to the period from the close of registration for the November 2, 2004, Federal general election until the close of registration for the November 7, 2006, Federal general election, and information from the November 7, 2006, Federal general election.

*Affected Public:* State government.

*Number of Respondents:* 55.

*Responses per Respondent:* 1.

*Estimated Burden Per Response:* 115.07 hours.

*Estimated Total Annual Burden Hours:* 6,328.85 hours.

*Frequency:* Biennially.

**Thomas R. Wilkes,**

*Executive Director, U.S. Election Assistance Commission.*

[FR Doc. 06-8967 Filed 10-30-06; 8:45 am]

**BILLING CODE 6820-KF-M**

## DEPARTMENT OF ENERGY

### Office of Science; Climate Change Science Program Product Development Advisory Committee

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Climate Change Science Program Product Development Advisory Committee. Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Wednesday, November 15, 2006, 1 p.m. to 4 p.m.

**ADDRESSES:** Room 109, Keck Center of the National Academies, 500 Fifth St., NW., Washington, DC 20001.

**FOR FURTHER INFORMATION CONTACT:** Dr. Anjali S. Bamzai (301-903-0294; [anjali.bamzai@science.doe.gov](mailto:anjali.bamzai@science.doe.gov)) Designated Federal Officer, Climate Change Science Program Product Development Advisory Committee, U.S. Department of Energy, Office of Science, Office of Biological and Environmental Research, Climate Change Research Division, SC-23.3/Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585-1290. The most current information concerning this meeting can be found on the Web site: <http://www.science.doe.gov/ober/cpdac/announcement.html>.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Meeting:* To continue discussions on drafting the Climate Change Science Program (CCSP) Synthesis and Assessment Product related to scenarios of greenhouse gas emissions and concentrations, and development and application of integrated scenarios of greenhouse gas emissions. This activity is being conducted at the request of the Department of Energy, in accordance with the CCSP Guidelines for Producing the CCSP Synthesis and Assessment Products.

*Tentative Agenda Items:*

Wednesday, November 15, 1 p.m.-4 p.m.

- Presentation on 2.1a and 2.1b to resolve issues raised by both the public review and the CPDAC committee at the August 17-18 CPDAC meeting.

- Response that the 2.1a and 2.1b author team has made to address these items.

- Discussion by the CPDAC to decide whether the revisions on 2.1a and 2.1b are adequate and meet their approval.

- List of changes for 2.1a and 2.1b, if any, for final concurrence by CPDAC.

- Public comment (10 minute rule).

*Public Participation:* The half day meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Anjali Bamzai at the address or telephone number listed above. You must make your request for an oral statement at least five business days before the meeting. Reasonable provisions will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

*Minutes:* The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, IE-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on October 26, 2006.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. E6-18267 Filed 10-30-06; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Idaho National Laboratory

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho National Laboratory. The Federal Advisory Committee Act (Pub. L. No. 92-463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Tuesday, November 14, 2006—8 a.m.-5 p.m. Wednesday, November 15, 2006—8 a.m.-2 p.m.

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# U.S. ELECTION ASSISTANCE COMMISSION

## 2006 ELECTION ADMINISTRATION AND VOTING SURVEY

### SECTION ONE: VOTER REGISTRATION

**Note:** Questions 1-31 refer to the period from the close of registration for the November 2, 2004, Federal general elections to the close of registration for the November 7, 2006, Federal general elections.

#### DEFINITIONS:

- **Active voters:** refers to all registered voters **except** those who have been sent but have not responded to a confirmation mailing sent in accordance with NVRA (42 U.S.C. 1973gg-6(d)) and have not since offered to vote.
- **Inactive voters:** refers to registrants who **have been sent but have not responded** to a confirmation mailing sent in accordance with NVRA (42 U.S.C. 1973gg-6(d)) and have not since offered to vote.
- **List maintenance:** refers to the specific process and procedures by which State and/or local election officials update and preserve information contained on the official list of registered voters.
- **Duplicate registration application:** refers to an application to register by a person already registered to vote at the same address, under the same name and personal information (i.e. date of birth, social security number, driver's license, etc.), and the same political party (where applicable).

#### QUESTIONS:

1. Please, check if your State is exempt from NVRA:

- Yes; exempt from NVRA.  
 No; not exempt from NVRA.

2. Total number of **registered voters** statewide and by county/local jurisdiction at the time of the close of registration for the past two Federal general elections (*including Election Day registrations where applicable - see Question 3*):

#### November 2, 2004:

Active Voters: \_\_\_\_\_  Don't know  Check if your office does not collect this data  
 Inactive Voters: \_\_\_\_\_  Don't know  Check if your office does not collect this data

#### November 7, 2006:

Active Voters: \_\_\_\_\_  Don't know  Check if your office does not collect this data  
 Inactive Voters: \_\_\_\_\_  Don't know  Check if your office does not collect this data

**Comments:**

3. Total number of persons statewide and by county/local jurisdiction who registered to vote on **Election Day [November 7, 2006]** - *\*\*Only applicable to states with Election Day registration (i.e. Idaho, Maine, Minnesota, Montana, New Hampshire, Wisconsin, and Wyoming):*

**Total:** \_\_\_\_\_  Don't know  Check if your office does not collect this data

**Comments:**

4. Total number statewide and by county/local jurisdiction of **voter registration applications received from all sources** during the period from the close of registration for the November 2, 2004, Federal general elections until the close of registration for the November 7, 2006, Federal general elections:

**Total:** \_\_\_\_\_  Don't know  Check if your office does not collect this data

**Comments:**

5. Total number statewide and by county/local jurisdiction of **voter registration applications received by mail** during the period from the close of registration for the November 2, 2004, Federal general elections until the close of registration for the November 7, 2006, Federal general elections:

**Total:** \_\_\_\_\_  Don't know  Check if your office does not collect this data

**Comments:**

6. Total number statewide and by county/local jurisdiction of **voter registration applications received in person at the clerk or registrar's office** during the period from the close of registration for the November 2, 2004, Federal general elections until the close of registration for the November 7, 2006, Federal general elections:

**Total:** \_\_\_\_\_  Don't know  Check if your office does not collect this data

**Comments:**



7. Total number statewide and by county/local jurisdiction of **voter registration applications that were received from or generated by** each of the following categories between the close of registration for the November 2, 2004, Federal general elections until the close of registration for the November 7, 2006, Federal general elections:

a) All motor vehicle offices: \_\_\_\_\_

Don't know       Check if your office does not collect this data

b) All public assistance agencies mandated as registration sites under NVRA: \_\_\_\_\_

Don't know       Check if your office does not collect this data

c) All state-funded agencies primarily serving persons with disabilities: \_\_\_\_\_

Don't know       Check if your office does not collect this data

d) All Armed Forces recruitment offices: \_\_\_\_\_

Don't know       Check if your office does not collect this data

e) All other agencies designated by the State and not required under NVRA: \_\_\_\_\_

Don't know       Check if your office does not collect this data

**Comments:**

8. Total number statewide and by county/local jurisdiction of voter registration applications identified in response to Question 7 that were:

a) Duplicates of other valid voter registrations: \_\_\_\_\_

Don't know       Check if your office does not collect this data

b) Changes of address, name, or party: \_\_\_\_\_

Don't know       Check if your office does not collect this data

c) Invalid or rejected (other than duplicates): \_\_\_\_\_

Don't know       Check if your office does not collect this data

**Comments:**

9. Total number statewide and by county/local jurisdiction of **new, valid registrations** verified and processed between the close of registration for the November 2, 2004, Federal general elections until the close of registration for the November 7, 2006, Federal general elections. **\*\*This includes all registrations that are new to the local jurisdiction and re-registrations due to a change of address across jurisdictional lines but within the state. This does not include applications that are duplicates, rejected, or report only a change of name, address, or (where applicable) party preference within the local jurisdiction.**

**Total:** \_\_\_\_\_  Don't know  Check if your office does not collect this data

**Comments:**

10. Total number of election jurisdictions conducting voter registration:

**Total:** \_\_\_\_\_  Don't know  Check if your office does not collect this data

**Comments:**

11. Identify the **local entity** primarily responsible for registering voters: *(In some cases, more than one choice may apply. If so, mark all of the appropriate local entities that share primary responsibility for registering voters)*

- |  |   |
|--|---|
| <input type="checkbox"/> Circuit Clerk                   | <input type="checkbox"/> Election Commissioner            |
| <input type="checkbox"/> City Clerk                      | <input type="checkbox"/> Local General Registrar          |
| <input type="checkbox"/> County Auditor                  | <input type="checkbox"/> Municipal Clerk                  |
| <input type="checkbox"/> County Board of Elections       | <input type="checkbox"/> Recorder                         |
| <input type="checkbox"/> County Clerk                    | <input type="checkbox"/> Registrar                        |
| <input type="checkbox"/> County Commissioner             | <input type="checkbox"/> Supervisor/Director of Elections |
| <input type="checkbox"/> County Election Board Secretary | <input type="checkbox"/> Tax Assessor                     |
| <input type="checkbox"/> County Voter Registration Board | <input type="checkbox"/> Tax Collector                    |
| <input type="checkbox"/> Director of Voter Registration  | <input type="checkbox"/> Town Clerk                       |

Other *(please, specify)* \_\_\_\_\_

**Comments:**

12. Identify each and every other state and local government office or agency designated as a voter registration agency (*provides voter registration opportunities/services*):

- Motor vehicle offices
- All offices that provide public assistance that are mandated as registration sites by NVRA
- All offices that provide state-funded programs primarily serving persons with disabilities that are mandated as registration sites by NVRA
- All Armed Forces recruitment offices that are mandated as registration sites by NVRA
- Other agencies designated by the State as registration sites, and which are not mandated as registration sites by NVRA.

▶ Please, provide the names of the agencies designated by the State as registration sites, and which are not mandated as registration sites by NVRA.

**Comments:**

13. Does your office provide training on the voter registration process to employees of Federal, State, and local government offices or agencies designated as voter registration agencies?

Yes, our office provides training on the voter registration process to ALL Federal, State, and local government offices or agencies designated as voter registration agencies.

▶ If yes, how frequently does your office provide training the above training?

Monthly     Quarterly     Biannual     Annual     Biennial

Other (*please, specify*) \_\_\_\_\_

Yes, our office provides training on the voter registration process to SOME, BUT NOT ALL, Federal, State, and local government offices or agencies designated as voter registration agencies.

▶ If yes, how frequently does your office provide training the above training?

Monthly     Quarterly     Biannual     Annual     Biennial

Other (*please, specify*) \_\_\_\_\_

No, our office provides no such training.

**Comments:**

14. How are voter registration applications transferred from the other voter registration agencies listed in response to Question 12 to the official responsible for voter registration (see Question 11)? Please, select all that apply.

- Courier
- Fax
- Hand-delivered
- Inter-office mail
- U.S. mail
- Electronic (If electronic, then select the appropriate media below.)
  - Power Profile System       Tape       Disk, CD, or other portable storage media
  - VPN       Other electronic media (*please, specify*) \_\_\_\_\_
- Other (*please, specify*) \_\_\_\_\_

**Comments:**

15. Who verifies and processes voter registration forms?

- Only State officials
- Only local officials
- Both State and local officials

**Comments:**

16. Which number is used as the voter identification number on the processed voter registration form? (This does not refer to the number used to verify the application. This refers to the number given to the voter once they have been verified and entered into the voter database.) Please, select all that apply.

- Last 4-digits of the Social Security number
- Full Social Security number
- Driver's license number
- Unique identifier (*please, identify what method is used for assigning the unique identifier*)
- Other (*please, specify*) \_\_\_\_\_

**Comments:**

17. How do the voter registration officials identified in Question 11 verify voter registration applications? (This refers to the process of verifying the applications used to register to vote. This does not refer to the process of verifying voter identity when they go to vote.) Please, select all that apply.

- Check jury lists
- Verify through the department of motor vehicles
- Verify through the Social Security Administration's records
- Verify through the State's vital statistics records
- Verify through other state agency (please, specify agency)
- Matched against the voter registration database
- Tracking of returned voter identification cards
- Tracking the return of disposition notices
- Other (please, specify)

**Comments:**

18. What data fields are compared (used as matching criteria) to identify duplicate registrations? Please, select all that apply.

- Address
- Date of birth
- Driver's license number
- Names provided by registrant
- Social Security number
- Other (please, specify)

**Comments:**

19. Does your State electronically check for duplicate voter registrations across state lines?

- Yes (If "yes," please, identify which states)
- No

**Comments:**

20. Are all applicants whose applications are rejected notified of the rejection and the reason for the rejection?

- Yes
- No

**Comments:**

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21. How does the statewide voter registration database link to the State's department of motor vehicles?

- Real-time
- Specific time intervals (*please, specify*)
- Other (*please, specify*)

**Comments:**

22. Does the statewide voter registration database link to disability and social services agencies in a similar manner to the State's department of motor vehicles?

- Yes
- No (*If "no," please, specify other method*)

**Comments:**

23. What process is used to perform list maintenance?

- Only electronically
- Only manually
- Both electronically and manually

**Comments:**

24. Who is responsible for conducting list maintenance?

- Only State officials
- Only local officials
- Both State and local officials (*If "both," please, specify the roles and responsibilities of each*)

**Comments:**

25. Total number of registrations statewide and by county/local jurisdiction that were, for whatever reason, **deleted from the registration list**, including both active and inactive voters if such a distinction is made in your state, between the close of registration for the November 2, 2004, Federal general elections until the close of registration for the November 7, 2006, Federal general elections:

**Total:** \_\_\_\_\_  Don't know  Check if your office does not collect this data

**Comments:**

009338

26. Total number statewide and by county/local jurisdiction of **removal notices [NVRA Section 8 (d)(2) confirmation] mailed** to voters between the close of registration for the November 2, 2004, Federal general elections until the close of registration for the November 7, 2006, Federal general elections:

**Total:** \_\_\_\_\_  Don't know  Check if your office does not collect this data

**Comments:**

27. Total number statewide and by county/local jurisdiction of **responses received** to the confirmation notices mailed out between the close of registration for the November 2, 2004, Federal general elections until the close of registration for the November 7, 2006, Federal general elections:

**Total:** \_\_\_\_\_  Don't know  Check if your office does not collect this data

**Comments:**

28. Total number statewide and by county/local jurisdiction of voters **moved** to the inactive list between the close of registration for the November 2, 2004, Federal general elections until the close of registration for the November 7, 2006, Federal general elections:

**Total:** \_\_\_\_\_  Don't know  Check if your office does not collect this data

**Comments:**

29. Total number statewide and by county/local jurisdiction of **voters (active AND inactive voters) removed** from the voter rolls between the close of registration for the November 2, 2004, Federal general elections until the close of registration for the November 7, 2006, Federal general elections for the following reasons:

- a) Change of address (moved outside jurisdiction): \_\_\_\_\_  
 Don't know     Check if your office does not collect this data
  
- b) Death: \_\_\_\_\_  
 Don't know     Check if your office does not collect this data
  
- c) Disqualifying felony convictions: \_\_\_\_\_  
 Don't know     Check if your office does not collect this data
  
- d) Failure to vote in two consecutive Federal general elections: \_\_\_\_\_  
 Don't know     Check if your office does not collect this data
  
- e) Voter requested to be removed: \_\_\_\_\_  
 Don't know     Check if your office does not collect this data
  
- f) Other reasons (*please, specify*): \_\_\_\_\_  
 Don't know     Check if your office does not collect this data

**Comments:**

30. Identify all of the sources considered in performing list maintenance:

- Applications for absentee ballots
- Ballots returned as undeliverable
- Canvasses, house-to-house
- Canvasses, political parties
- Car registrations
- Contact by phone
- Contact in person
- Jury questionnaires
- List of address changes, Emergency 911 (E-911) system
- List of deceased persons, Social Security Administration
- Lists of felony convictions, Federal and state courts
- Lists of persons licensed in other states, Department of Motor Vehicles
- Lists of property ownership
- Newspaper death notices/obituaries
- Notices of address confirmations
- Notices of deceased persons (Department of Health/Bureau of Vital Statistics)
- Notices of persons adjudicated mentally incapacitated
- Petition checks
- Reports/Notices from other States that a former resident has registered to vote
- Reports of address changes U.S. Postal Service National Change of Address

009338



U.S. Election Assistance Commission

- Reports of surrendered driver's licenses - other states' motor vehicles offices
- Returned election notices
- Returned jury summons
- Returned mail from county agencies using official voter file for mailings
- Requests from voters for removal
- Targeted mailings
- Tax offices
- Utility changes, municipal
- Voter registration applications
- Voter registration system - duplicate checks
- Other (*please, specify*)

**Comments:**

31. Are the following classes of persons eligible to vote?

a) Those who have been convicted of a felony

- Yes
- No

If "no," are they eligible to register or reregister upon pardon, issuance of certificate of eligibility, or restoration of their Civil Rights?

- Yes
- No

b) Those who are serving a sentence of incarceration for conviction of a felony

- Yes
- No

If "no," are they eligible to register or reregister upon completion of their sentence of incarceration for conviction of a felony?

- Yes
- No

c) Those who are serving a term of probation following being convicted of a felony

- Yes
- No

If "no," are they eligible to register or reregister upon completion of their term of probation following being convicted of a felony?

- Yes
- No

**Comments:**

## SECTION TWO: NOVEMBER 7, 2006, ELECTION RESULTS

### DEFINITIONS for Questions 32-42:

- **"At the polls:"** refers to ballots issued, cast, or counted on a jurisdiction's voting system on Election Day at a polling place (separate from early and in-person absentee voting at the polls prior to Election Day).
- **Ballots cast:** refers to ballots that have been submitted manually or electronically by a voter regardless of whether they are ultimately counted. *Note:* For jurisdictions that provide voters with more than one ballot card to vote for different contests or measures should only report one ballot cast per voter.
- **Ballots counted:** refers to all ballots that have been cast, processed, and counted.
- **Domestic civilian absentee ballot:** refers to a ballot available to a non-military citizen living in the United States who is registered to vote and meets the State's requirement for voting absentee, and is not considered early voting by state definitions. Generally, a voter must request an absentee ballot from their local election office, and the completed ballot may be sent back by mail or dropped off in person (in-person absentee) depending on the laws and regulations of the voter's State of residence.
- **Domestic military citizen** is statutorily defined as:
  - A. A member of a uniformed service on active duty who, by reason of such active duty, is stationed or positioned within the United States or its territories, and who is absent from the place of residence where the member is otherwise qualified to vote;
  - B. A member of the merchant marine who, by reason of service in the merchant marine, is serving within the United States and its territories, and who is absent from the place of residence where the member is otherwise qualified to vote; and
  - C. A spouse or dependent of a member referred to in subparagraph (A) or (B) who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote.
- **Early voting** refers generally to any in-person voting that occurred prior to November 7, 2006, at specific polling locations for which there were no special eligibility requirements, and is not considered absentee voting under the State's definitions/requirements for absentee voting.
- **Federal Write-In Absentee Ballot (FWAB)** is an emergency ballot available to military and overseas citizens (including APO and FPO addresses) when they have properly requested but have not received a regular absentee ballot from their local jurisdiction in time to return it before the deadline.
- **Overseas military citizen** is statutorily defined as:
  - A. A member of a uniformed service on active duty who, by reason of such active duty, is stationed or positioned outside of the United States and its territories, and who is thus absent from the place of residence where the member is otherwise qualified to vote;
  - B. A member of the merchant marine who, by reason of service in the merchant marine, is serving outside of the United States and its territories, and who is thus absent from the place of residence where the member is otherwise qualified to vote; and
  - C. A spouse or dependent of a member referred to in subparagraph (A) or (B) who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote.
- **Overseas citizens** refers to persons who are citizens of the United States who are living, working or stationed outside of the United States and its territories and who are not members of a uniformed service.

- **Provisional ballot** refers to a ballot issued to a voter at the polling place when their eligibility to vote has not been determined.

**QUESTIONS:**

32. Did your State conduct early voting for the November 7, 2006, Federal general elections?

- Yes
- No

**Comments:**

33. Total number statewide and by county/local jurisdiction, for the November 7, 2006, Federal general elections of **BALLOTS CAST**:

- At the polls: \_\_\_\_\_  Don't know  Check if your office does not collect this data
- Early voting: \_\_\_\_\_  Don't know  Check if your office does not collect this data
- Domestic civilian absentee ballot: \_\_\_\_\_  Don't know  Check if your office does not collect this data
- Domestic military:♦ \_\_\_\_\_  Don't know  Check if your office does not collect this data
- Overseas military:♦ \_\_\_\_\_  Don't know  Check if your office does not collect this data
- Overseas citizens:♦ \_\_\_\_\_  Don't know  Check if your office does not collect this data
- FWAB: \_\_\_\_\_  Don't know  Check if your office does not collect this data
- Provisional ballots:\* \_\_\_\_\_  Don't know  Check if your office does not collect this data

\*The number provided in response to this question should include the total number of ballots cast in the State's program for contingent or provisional ballots that comply with Section 302(a) of the Help America Vote Act of 2002 (HAVA).

♦**UOCAVA voters:** If you are not able to separate ballots cast for UOCAVA voters into the categories above, please, provide the combined total statewide and by county/local jurisdiction:

**Total:** \_\_\_\_\_  Don't know  Check if your office does not collect this data

**Comments:**

**34. Total number statewide and by county/local jurisdiction, for the November 7, 2006, Federal general elections of **BALLOTS COUNTED**:**

- At the polls: \_\_\_\_\_  Don't know  Check if your office does not collect this data
- Early voting: \_\_\_\_\_  Don't know  Check if your office does not collect this data
- Domestic civilian absentee ballot: \_\_\_\_\_  Don't know  Check if your office does not collect this data
- Domestic military: ♦ \_\_\_\_\_  Don't know  Check if your office does not collect this data
- Overseas military: ♦ \_\_\_\_\_  Don't know  Check if your office does not collect this data
- Overseas citizens: ♦ \_\_\_\_\_  Don't know  Check if your office does not collect this data
- FWAB: \_\_\_\_\_  Don't know  Check if your office does not collect this data
- Provisional ballots: \_\_\_\_\_  Don't know  Check if your office does not collect this data

♦**UOCAVA voters:** If you are not able to separate ballots counted for UOCAVA voters into the categories above, please, provide the combined total statewide and by county/local jurisdiction:

**Total:** \_\_\_\_\_  Don't know  Check if your office does not collect this data

**Comments:**

**35. Total number statewide and by county/local jurisdiction of votes counted for **each** candidate in a Federal contest for the November 7, 2006, Federal general elections:**

**Total:** \_\_\_\_\_  Don't know  Check if your office does not collect this data

**Comments:**

**36. Total number statewide and by county/local jurisdiction of **provisional ballots REJECTED** for the November 7, 2006, Federal general elections:**

**Total:** \_\_\_\_\_  Don't know  Check if your office does not collect this data

**Comments:**

37. Total number statewide and by county/local jurisdiction of **provisional ballots REJECTED** for each of the following reasons for the November 7, 2006, Federal general elections:

Already voted:	_____	<input type="checkbox"/> Don't know	<input type="checkbox"/> Check if your office does not collect this data
Ballot not timely received (absentee):	_____	<input type="checkbox"/> Don't know	<input type="checkbox"/> Check if your office does not collect this data
Deceased:	_____	<input type="checkbox"/> Don't know	<input type="checkbox"/> Check if your office does not collect this data
Elector challenged:	_____	<input type="checkbox"/> Don't know	<input type="checkbox"/> Check if your office does not collect this data
Incomplete ballot form:	_____	<input type="checkbox"/> Don't know	<input type="checkbox"/> Check if your office does not collect this data
Ineligible to vote:	_____	<input type="checkbox"/> Don't know	<input type="checkbox"/> Check if your office does not collect this data
Missing ballot:	_____	<input type="checkbox"/> Don't know	<input type="checkbox"/> Check if your office does not collect this data
Multiple ballots in one envelope:	_____	<input type="checkbox"/> Don't know	<input type="checkbox"/> Check if your office does not collect this data
No identification provided:	_____	<input type="checkbox"/> Don't know	<input type="checkbox"/> Check if your office does not collect this data
No signature:	_____	<input type="checkbox"/> Don't know	<input type="checkbox"/> Check if your office does not collect this data
Non-matching signature:	_____	<input type="checkbox"/> Don't know	<input type="checkbox"/> Check if your office does not collect this data
Not registered:	_____	<input type="checkbox"/> Don't know	<input type="checkbox"/> Check if your office does not collect this data
Registration purged:	_____	<input type="checkbox"/> Don't know	<input type="checkbox"/> Check if your office does not collect this data
Wrong jurisdiction:	_____	<input type="checkbox"/> Don't know	<input type="checkbox"/> Check if your office does not collect this data
Wrong precinct:	_____	<input type="checkbox"/> Don't know	<input type="checkbox"/> Check if your office does not collect this data
Other (please, specify):	_____	<input type="checkbox"/> Don't know	<input type="checkbox"/> Check if your office does not collect this data

**Comments:**

**38. Total number statewide and by county/local jurisdiction of **absentee ballots REQUESTED (do not include FWAB)** for the November 7, 2006, Federal general elections (*includes ballots transmitted by mail, fax, e-mail, or courier*):**

- Domestic civilian absentee ballot: \_\_\_\_\_  Don't know  Check if your office does not collect this data
- Domestic military: \* \_\_\_\_\_  Don't know  Check if your office does not collect this data
- Overseas military: \* \_\_\_\_\_  Don't know  Check if your office does not collect this data
- Overseas citizens: \* \_\_\_\_\_  Don't know  Check if your office does not collect this data

**\*UOCAVA voters:** If you are not able to separate absentee ballots requested for UOCAVA voters into the categories above, please, provide the combined total statewide and by county/local jurisdiction:

**Total:** \_\_\_\_\_  Don't know  Check if your office does not collect this data

**Comments:**

**39. Total number statewide and by county/local jurisdiction of **advanced ballots TRANSMITTED** to military and overseas citizens for the November 7, 2006 Federal general elections: (*Advanced ballot means any special Write-In Absentee Ballot, State Write-In Absentee Ballot, Special Write-In Early Ballot, or Blank Absentee Ballot that is distributed by a state in advance of the publication of an official ballot for a federal election on which military and overseas citizens are allowed to write in the name of the candidate in each contest for whom they choose to vote.*)**

- Domestic military: \* \_\_\_\_\_  Don't know  Check if your office does not collect this data
- Overseas military: \* \_\_\_\_\_  Don't know  Check if your office does not collect this data
- Overseas citizens: \* \_\_\_\_\_  Don't know  Check if your office does not collect this data

**\*UOCAVA voters:** If you are not able to separate advance ballots transmitted for UOCAVA voters into the categories above, please, provide the combined total statewide and by county/local jurisdiction:

**Total:** \_\_\_\_\_  Don't know  Check if your office does not collect this data

**Comments:**

**40. Total number statewide and by county/local jurisdiction of **Federal Write-In Absentee Ballots (FWAB) RECEIVED** from each of the following categories of voters for the November 7, 2006, Federal general elections:**

- Domestic military: ♦ \_\_\_\_\_  Don't know  Check if your office does not collect this data
- Overseas military: ♦ \_\_\_\_\_  Don't know  Check if your office does not collect this data
- Overseas citizens: ♦ \_\_\_\_\_  Don't know  Check if your office does not collect this data

♦**UOCAVA voters:** If you are not able to separate the FWAB received for UOCAVA voters into the categories above, please, provide the combined total statewide and by county/local jurisdiction:

**Total:** \_\_\_\_\_  Don't know  Check if your office does not collect this data

**Comments:**

**41. Total number statewide and by county/local jurisdiction of **domestic civilian absentee ballots REJECTED** for each of the following reasons for the November 7, 2006, Federal general elections:**

- Ballot missing from envelope: \_\_\_\_\_  Don't know  Check if your office does not collect this data
- Ballot not timely received: \_\_\_\_\_  Don't know  Check if your office does not collect this data
- Ballot replaced: \_\_\_\_\_  Don't know  Check if your office does not collect this data
- Ballot returned as undeliverable : \_\_\_\_\_  Don't know  Check if your office does not collect this data
- Ballot returned in unofficial envelope: \_\_\_\_\_  Don't know  Check if your office does not collect this data
- Voter deceased: \_\_\_\_\_  Don't know  Check if your office does not collect this data
- Already voted in person: \_\_\_\_\_  Don't know  Check if your office does not collect this data
- Envelope not sealed: \_\_\_\_\_  Don't know  Check if your office does not collect this data
- First time voter without proper identification: \_\_\_\_\_  Don't know  Check if your office does not collect this data
- Ineligible to vote: \_\_\_\_\_  Don't know  Check if your office does not collect this data

Multiple ballots returned in one envelope: _____	<input type="checkbox"/> Don't know	<input type="checkbox"/> Check if your office does not collect this data
No ballot application on record: _____	<input type="checkbox"/> Don't know	<input type="checkbox"/> Check if your office does not collect this data
No election official's signature on ballot: _____	<input type="checkbox"/> Don't know	<input type="checkbox"/> Check if your office does not collect this data
No residence address on envelope: _____	<input type="checkbox"/> Don't know	<input type="checkbox"/> Check if your office does not collect this data
No voter signature: _____	<input type="checkbox"/> Don't know	<input type="checkbox"/> Check if your office does not collect this data
No witness signature: _____	<input type="checkbox"/> Don't know	<input type="checkbox"/> Check if your office does not collect this data
Non-matching signature: _____	<input type="checkbox"/> Don't know	<input type="checkbox"/> Check if your office does not collect this data
Spoiled ballot: _____	<input type="checkbox"/> Don't know	<input type="checkbox"/> Check if your office does not collect this data
Other (please, specify): _____	<input type="checkbox"/> Don't know	<input type="checkbox"/> Check if your office does not collect this data
<b>Comments:</b>		

42. Total number statewide and by county/local jurisdiction of **military and overseas absentee ballots REJECTED** for each of the following reasons for the November 7, 2006, Federal general elections:

Had no date of notary/ witness signature: _____	<input type="checkbox"/> Don't know	<input type="checkbox"/> Check if your office does not collect this data
Had no date of voter signature: _____	<input type="checkbox"/> Don't know	<input type="checkbox"/> Check if your office does not collect this data
Lacked a postmark: _____	<input type="checkbox"/> Don't know	<input type="checkbox"/> Check if your office does not collect this data
No voter signature: _____	<input type="checkbox"/> Don't know	<input type="checkbox"/> Check if your office does not collect this data
Returned as undeliverable: _____	<input type="checkbox"/> Don't know	<input type="checkbox"/> Check if your office does not collect this data
Voter signature not verifiable: _____	<input type="checkbox"/> Don't know	<input type="checkbox"/> Check if your office does not collect this data



U.S. Election Assistance Commission

Was received after the state deadline: \_\_\_\_\_  Don't know  Check if your office does not collect this data

Other (please, specify): \_\_\_\_\_  Don't know  Check if your office does not collect this data

**Comments:**

**DEFINITIONS FOR Questions 43-44:**

- **An UNDERVOTE** occurs at any time when a voter makes less than that allowed number of selections in a single race/contest or when a voter votes on less than all of the races/contests for which he/she is eligible to vote.
- **An OVERVOTE** occurs when a voter makes more than the permitted number of selections in a single race/contest or when a voter makes a selection in a race/contest on which he/she was not eligible to vote.

**QUESTIONS:**

**43.** Total number statewide and by county/local jurisdiction of **undervotes** reported in each Federal contest for the November 7, 2006, Federal general elections:

**Total:** \_\_\_\_\_  Don't know  Check if your office does not collect this data

**Comments:**

**44.** Total number statewide and by county/local jurisdiction of **overvotes** reported in each Federal contest for the November 7, 2006, Federal general elections:

**Total:** \_\_\_\_\_  Don't know  Check if your office does not collect this data

**Comments:**

**DEFINITIONS FOR Questions 45-58:**

- **Precinct** means the geographic area to which voters are assigned.
- **Polling place** means the physical structure where residents of a precinct go to cast their votes on Election Day. A polling place includes any structure that houses one or more precincts.

**Note:** *The answer to questions regarding poll workers should include the number of persons who served in all polling places in the State as poll workers, election judges, wardens, commissioners, or other similar term that refers to the person or persons who verify the identity of a voter; assist the voter with signing the register, affidavits or other documents required to cast a ballot; assist the voter by providing the voter with a ballot or setting up the voting machine for the voter; and serving other functions as dictated by state law. The answers to these questions should not include observers stationed at the polling place.*

**QUESTIONS:**

**45.** Total number of **poll workers required** by law or regulation to be present at each polling place/precinct:

**Total:** \_\_\_\_\_  Don't know  Check if your office does not collect this data

**Comments:**

**46.** Total number statewide and by county/local jurisdiction of **poll workers that served** in the November 7, 2006, Federal general elections:

**Total:** \_\_\_\_\_  Don't know  Check if your office does not collect this data

**Comments:**

**47.** Total number statewide and by county/local jurisdiction of precincts that **did not have the required number of poll workers** in the November 7, 2006, Federal general elections:

**Total:** \_\_\_\_\_  Don't know  Check if your office does not collect this data

**Comments:**

**48. Identify what constitutes a local election jurisdiction in your State (select all that apply):**

- Borough
- City
- County
- Parish
- Township
- Village
- Other (please, specify)

**Comments:**

**49. Total number of local election jurisdictions in your State:**

**Total:** \_\_\_\_\_  Don't know  Check if your office does not collect this data

**Comments:**

**50. Total number statewide and by county/local jurisdiction of precincts for the November 7, 2006, Federal general elections:**

**Total:** \_\_\_\_\_  Don't know  Check if your office does not collect this data

**Comments:**

**51. Total number statewide and by county/local jurisdiction of polling places for the November 7, 2006, Federal general elections:**

**Total:** \_\_\_\_\_  Don't know  Check if your office does not collect this data

**Comments:**

**52. Total number statewide and by county/local jurisdiction of polling places that are accessible to voters with disabilities for the November 7, 2006, Federal general elections: (For purposes of this question only, accessibility refers to the physical structure of the polling place, not the voting system.)**

**Total:** \_\_\_\_\_  Don't know  Check if your office does not collect this data

**Comments:**

**53.** Total number statewide and by county/local jurisdiction of polling places where voters with disabilities can **cast a private ballot** for the November 7, 2006, Federal general elections: *(Identify the total number of polling places where voting equipment is used such that a visually disabled voter can cast a private ballot (e.g., a DRE with audio ballot capability or paper ballots in Braille)*

**Total:** \_\_\_\_\_  Don't know  Check if your office does not collect this data

**Comments:**

**54.** Total number of local election jurisdictions that provided information for purposes of responding to this survey:

**Total:** \_\_\_\_\_  Don't know  Check if your office does not collect this data

**Comments:**

**55.** Please, provide a list of the types of voting equipment used in each county during the November 7, 2006, Federal general elections. Please, provide the following for each county:

- a) Name of county
- b) Type of voting system(s)
- c) Manufacturer
- d) Software version (if applicable)

**Comments:**

**56.** Please, provide the following for each local election jurisdiction official that provided information for purposes of responding to this survey:

- a) Name
- b) Title
- c) Agency/Office
- d) Street address
- e) P.O. Box number
- f) City
- g) State
- h) Zip code
- i) Telephone number
- j) General e-mail address (if available)

**Comments:**

009347

57. Identify any other sources of information used to respond to this survey other than those provided in response to the two previous questions. (All other sources of data shall include information obtained from a statewide voter registration database or any other public or non-public source). For individuals and agencies, please, include the following:

- Statewide voter registration database
- Other public and non-public sources – please, include the following:
  - a) Name of contact person
  - b) Title
  - c) Agency/Office
  - d) Street address
  - e) P.O. Box number
  - f) City
  - g) State
  - h) Zip code
  - i) Telephone number
  - j) General e-mail address (if available)

**Comments:**

58. Please, provide a list of the local individuals/entities responsible for registering voters (see Question 11) and those administering elections; include their name/entity, title, complete mailing address, telephone number, and general e-mail address (if available). In some cases, these two activities are carried out by one individual/entity and in others they are divided between two or more; please, identify which individual is responsible for each of the activities.

- a) Name
- b) Title
- c) Agency/Office
- d) Role ( voter registration,  election administration, or  both)
- e) Street address
- f) P.O. Box number
- g) City
- h) State
- i) Zip code
- j) Telephone number
- k) General e-mail address (if available)

**Comments:**

**END OF SURVEY**

**THANK YOU FOR RESPONDING TO THIS SURVEY.**

**Juliet E.  
Thompson-Hodgkins/EAC/G  
OV**

02/16/2006 09:32 AM

To Laiza N. Otero/EAC/GOV@EAC

cc

bcc

Subject Re: OMB submission deadline

History:  This message has been forwarded.

Approximately 120 days

-----  
Sent from my BlackBerry Wireless Handheld  
Laiza N. Otero

**From:** Laiza N. Otero  
**Sent:** 02/16/2006 09:23 AM  
**To:** Juliet Thompson-Hodgkins; Gavin Gilmour  
**Cc:** Karen Lynn-Dyson  
**Subject:** OMB submission deadline

Re: Improving Election Data Collection Project

Good morning Julie and Gavin,

I am trying to establish a date for convening a working group for the project named above. What is the latest date for us to submit the revised Election Day Survey to OMB for approval as required by the Paperwork Reduction Act so that we can disseminate it to election officials with ample time before elections? How long is the OMB approval process?

Thank you!

Laiza N. Otero  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005

009350



Laiza N. Otero/EAC/GOV  
02/16/2006 02:50 PM

To Gavin S. Gilmour/EAC/GOV@EAC  
cc  
bcc  
Subject Election Day Survey

Gavin,

Per our conversation, here are the questions I put forward regarding the Election Day Survey:

- What was the process used in 2004 to approve the survey tool back then?
  - If it was approved for use in 2004 and there are no changes done to the survey per the working group, can we go ahead without OMB publication?
  - If the changes are only minor, can the process be expedited and what would the process be?
- If it has to go through the entire process again:
  - Can we forward a notice (or the survey itself) to the state election directors (and maybe local jurisdictions as well) during the feedback period so they can begin to review the survey tool to familiarize themselves with the data they will need to collect in November. ----- One of the areas of concern in 2004 was the short length of time between the receipt of the survey tool and the deadline for returning the results.
- What is the cost involved in the OMB process?

Thank you!!

Laiza N. Otero  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
(202)566-1707

009351



**Juliet E.  
Thompson-Hodgkins/EAC/G  
OV**

03/07/2006 01:08 PM

To Laiza N. Otero/EAC/GOV@EAC

cc

bcc

Subject Re: Election Day Survey 

History:

 This message has been replied to and forwarded.

Yes, we have to go back through OMB because the emergency approval that we got was only for 6 months.

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

 **Laiza N. Otero/EAC/GOV**

03/07/2006 12:26 PM

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

cc

Subject Election Day Survey

Julie,

Brian Hancock just told me that Wyoming called him this morning and informed him that they are working with their voting system provider to include data collection capabilities relating to the questions in the election day survey - - - another reason to not make radical changes to the survey, at least for this year. In our conversation, the following question came up: If no changes are done to the survey beyond those related to the look of it (placement of instructions, wording, etc.) - - - still collecting the same, exact data - - - do we need to go through the OMB approval process since OMB usually approves a collection for a maximum of 3 years. From what I have been reading and comprehending about the process, OMB approval is needed to continue a collection for which OMB's approval and the validity of the OMB Control Number are about to expire. When does our expire? Thank you and sorry for any inconvenience.

Laiza N. Otero  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
(202)566-1707

009352



**Laiza N. Otero/EAC/GOV**

05/01/2006 05:49 PM

To Juliet E. Thompson-Hodgkins/EAC/GOV@EAC, Brian  
Hancock/EAC/GOV@EAC, Karen  
Lynn-Dyson/EAC/GOV@EAC, Thomas R.

cc

bcc

Subject Election Administration Survey

Greetings,

Here is my final draft of the Election Administration Survey for your review. Please, let me know what else you need from me in order to assist in the submission of the document for OMB approval process. Thank you very much for your time and patience!



Draft Survey.doc

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009353

**IMPORTANT:** Please, **DO NOT USE** "N/A" as an equivalent to "0," or vice versa. Only use "N/A" (not applicable) if the answer is not available or not allowable by state law or not collected by your jurisdiction. The number "0" ("zero") should only be used to indicate that there are "zero" number of the data being requested.

**Voter Registration**

**Note:** Questions under this section refer at times to the period between the past two federal general elections. This period is from the close of registration for the November 2, 2004, Federal general elections and the close of registration for the November 7, 2006, Federal general elections.

**Active voters** means all registered voters except those who have been sent but have not responded to a confirmation mailing sent in accordance with NVRA (42 U.S.C. 1973gg-6(d)) and have not since offered to vote.

**Inactive voters** means registrants who have been sent but have not responded to a confirmation mailing sent in accordance with NVRA (42 U.S.C. 1973gg-6(d)) and have not since offered to vote.

**Duplicate registration application** means an offer to register by a person already registered to vote at the same address, under the same name, and (where applicable) in the same political party.

**1. Total number of registered voters at the time of the close of registration** for the past two Federal general elections:

	November 2, 2004	November 7, 2006
<b>Active voters:</b>	_____	_____
<b>Inactive voters (if applicable):</b>	_____	_____
<b>Total:</b>	_____	_____

**2. Total number of persons who registered to vote during Election Day** [November 7, 2006] – only applicable to states with Election Day registration (Idaho, Maine, Minnesota, New Hampshire, Wisconsin, and Wyoming):

November 2, 2004	November 7, 2006
_____	_____

3. Total number of registration applications that were **received from or generated by** each of the following categories between the past two federal general elections:

**Mail:**

**All motor vehicle offices:**

**All public assistance agencies that are mandated as registration sites under NVRA:**

**All state-funded agencies primarily serving persons with disabilities:**

**All Armed Forces recruitment offices:**

**All other agencies designated by the state:**

**All other means (including but not limited to, in person, deputy registrars, and organized drives delivering forms directly to registrars):**

**Total from all sources:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Total number of registration applications identified in response to the previous question that were:

**Duplicates of other valid voter registrations:**

**Changes of address, name, or party:**

**Invalid or rejected (other than duplicates):**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Total number of **new, valid registrations accepted** between the past two federal general elections, including all registrations that are new to the local jurisdiction and re-registrations across jurisdictional lines, but excluding all applications that are duplicates, rejected, or report only a change of name, address, or (where applicable) party preference within the local jurisdiction.

**Total:**

\_\_\_\_\_

**Registration process**

6. Total number of election jurisdictions conducting voter registration.

**Total:**

\_\_\_\_\_

7. Identify the local election official primarily responsible for registering voters.

8. Identify each and every other state and local government office or agency, aside from those designated by NVRA, that conduct voter registration.

9. What, if any, training is provided to employees of voter registration agencies on the voter registration process?

10. How are voter registration applications transferred from the other voter registration agencies listed in response to the question above to the official responsible for voter registration (ex. e-mail, VPN, tape, disk, mail, fax, etc.)?

11. Who processes voter registration forms?

- State officials
- Local officials
- Both

12. Which number is used as the voter identification number on the processed voter registration form?

- Last 4-digits of the Social Security number
- Full Social Security number
- Driver's license number
- Unique identifier *(please, identify what method is used for assigning the unique identifier)*
- Other *(please, specify)*

13. How do registration officials check for duplicate registrations?

14. Does your State check for duplicate voter registrations across state lines?

<input type="checkbox"/>	Yes
<input type="checkbox"/>	No

15. How does your State verify voter registration applications (e.g., tracking the return of disposition notices, checks against driver's license and social security administration records, etc)?

16. Are applicants whose applications are rejected notified of the rejection and the reason for the rejection?

<input type="checkbox"/>	Yes
<input type="checkbox"/>	No

17. Does the statewide voter registration database link to disability and social services agencies in a similar manner to the state department of motor vehicles?

<input type="checkbox"/>	Yes
<input type="checkbox"/>	No

**List Maintenance**

18. What process is used to perform list maintenance?

<input checked="" type="checkbox"/>	Electronic
<input type="checkbox"/>	Manual
<input type="checkbox"/>	Both

19. Who is responsible for conducting list maintenance?

<input type="checkbox"/>	State officials
<input type="checkbox"/>	Local officials
<input type="checkbox"/>	Both

20. Total number of registrations that were, for whatever reason, **deleted from the registration list**, including both active and inactive voters if such a distinction is made in your state, between the past two federal elections.

**Total:** \_\_\_\_\_

21. Total number of **removal notices [Section 8(d)(2) confirmation] mailed** out between the past two federal general elections.

**Total:** \_\_\_\_\_

22. Total number of **responses received** to the confirmation notices during the same period.

**Total:** \_\_\_\_\_

23. Total number of voters **moved to the inactive list**:

**Total:** \_\_\_\_\_

24. Total number of **voters removed** from the voter rolls between the past two Federal elections for the following reasons:

- Death:** \_\_\_\_\_
- Failure to vote in two consecutive federal general elections:** \_\_\_\_\_
- Voter requested to be removed:** \_\_\_\_\_
- Disqualifying felony convictions:** \_\_\_\_\_
- Other reasons: (please, specify)** \_\_\_\_\_
- Total number of registrations removed:** \_\_\_\_\_

25. List all of the sources considered in performing list maintenance (ex: returned election notices, Postal Service NCOA information, returned jury summons, etc.).

26. How does your State treat voters who:

- a) Have been convicted of a felony

- b) Are serving a sentence of incarceration for conviction of a felony
- c) Are serving a term of probation following being convicted of a felony

### Election Day Administration and Results

*Ballots cast means a ballot that has been submitted manually or electronically by a voter but has not been verified and/or counted.*

**Note:** *For jurisdictions that provide voters with more than one ballot card to vote for different contests or measures should only report one ballot cast per voter.*

*Ballots counted means all ballots that have been cast, processed, and counted.*

*“At the polls” refers to ballots issued, cast, or counted on a jurisdiction’s voting system on Election Day at a polling place.*

*Early voting means any voting that occurred prior to November 7, 2006, for which there were no eligibility requirements. For example, the voter did not have to attest that he/she would be absent from the voting jurisdiction on the day of the election.*

*Federal Write-In Absentee Ballot (FWAB) is a ballot available to military and overseas citizens (including APO and FPO addresses) when they have not received their regular absentee ballot from their state.*

27. Does your State conduct early voting?

<input checked="" type="checkbox"/>	Yes
<input type="checkbox"/>	No

28. Total number statewide and by county/local jurisdiction of:

	Ballots Cast	Ballots Counted
At the polls	_____	_____
Early voting	_____	_____
Domestic civilian absentee ballots	_____	_____
Domestic military citizens	_____	_____



<b>Overseas military citizens</b>	_____	_____
<b>Overseas civilians</b>	_____	_____
<b>Federal Write-In Absentee Ballot (FWAB)</b>	_____	_____
<b>Provisional ballots</b>	_____*	_____
<b>Total</b>	_____	_____

\* The number provided in response to this question should include the total number of ballots cast in the State's program for contingent or provisional ballots that complies with section 302(a) of the Help America Vote Act.

29. Total number of votes counted by county/local election jurisdiction for **each candidate** in a Federal contest.

30. Identify the five most common reasons that **provisional ballots** were rejected:

- 1.
- 2.
- 3.
- 4.
- 5.

**Absentee Ballots**

*Absentee voting is defined as voting prior to Election Day which requires that the voter meet qualifications other than those generally required to register to vote.*

*Advanced ballot means any special Write-In Absentee Ballot, State Write-In Absentee Ballot, Special Write-In Early Ballot, or Blank Absentee Ballot that is distributed by a state in advance of the publication of an official ballot for a federal election on which military and overseas citizens are allowed to write in the name of the candidate in each contest for whom they choose to vote.*

31. Total number of **absentee ballots** state-wide and by county/local jurisdiction (do not include FWAB):

	<b>Requested</b>	<b>Not Counted</b>
<b>Domestic civilian absentee ballots</b>	_____	_____

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<b>Domestic military citizens</b>	*	_____	_____
<b>Overseas military citizens</b>	*	_____	_____
<b>Overseas civilians</b>	*	_____	_____
<b>Total</b>		_____	_____

*\*Includes ballots transmitted by mail, fax, e-mail, or courier.*

32. Total number of **advanced ballots** transmitted to military and overseas citizens:

<b>Domestic military citizens</b>	_____
<b>Overseas military citizens</b>	_____
<b>Overseas civilians</b>	_____
<b>Total</b>	_____

33. Total number of **Federal Write-In Absentee Ballots (FWAB)** received for each of the following voters for the November 7, 2006, election:

<b>Domestic military citizens</b>	_____
<b>Overseas military citizens</b>	_____
<b>Overseas civilians</b>	_____
<b>Total</b>	_____

34. Identify the five most common reasons that **domestic civilian** absentee ballots were rejected:

- 1.
- 2.
- 3.
- 4.
- 5.

35. Provide the number of **military and overseas** absentee ballots rejected for each of the following reasons:

- Lacked a postmark \_\_\_\_\_
- No voter signature \_\_\_\_\_
- Voter signature not verifiable \_\_\_\_\_
- Had no date of voter signature \_\_\_\_\_
- Had no notary/witness signature \_\_\_\_\_
- Had no date of notary/witness signature \_\_\_\_\_
- Was received after the state deadline \_\_\_\_\_
- Returned as undeliverable \_\_\_\_\_
- Other reason (please, specify "other" reason) \_\_\_\_\_

**Undervotes and Overvotes**

*An undervote occurs at any time when a voter makes less than that allowed number of selections in a single race/contest or when a voter votes on less than all of the races/contests for which he/she is eligible to vote.*

*An overvote occurs when a voter makes more than the permitted number of selections in a single race/contest or when a voter makes a selection in a race/contest on which he/she was not eligible to vote.*

36. Total number of **undervotes** reported in each federal contest by county/local election jurisdiction:

**Total:** \_\_\_\_\_

37. Total number of **overvotes** reported in each federal contest by county/local election jurisdiction:

**Total:** \_\_\_\_\_

**Poll Workers**

**Note:** *The answer to these questions should include the number of persons who served in all polling places in the State as poll workers, election judges, wardens, commissioners, or other similar term that refers to the person or persons who verify the identity of a voter; assist the voter with signing the register, affidavits or other documents required to cast a ballot; assist the voter by providing the voter with a ballot or setting up the voting machine for the voter; and serving other functions as dictated by state law. The answers to these questions should not include observers stationed at the polling place.*

**38.** Has there been a change in the number of poll workers per precinct/polling place required by law or regulation since November 2004?

<input type="checkbox"/>	Yes
<input type="checkbox"/>	No

► If “yes,” please, provide the new number of poll workers required by law or regulation to be present at each precinct/polling place.

**39.** Total number of poll workers who served in the November 7, 2006, Federal general elections statewide and by county/local jurisdiction.

**Total:** \_\_\_\_\_

**40.** Total number of polling places and precincts that did not have the required number of poll workers statewide and by county/local jurisdiction.

**Total:** \_\_\_\_\_

**Voting Jurisdictions and Polling Places**

*Precinct means the geographic area to which voters are assigned.*

*Polling place means the physical structure where residents of a precinct go to cast their votes on Election Day. A polling place includes any structure that houses one or more precincts.*

**41.** Identify what constitutes a local election jurisdiction in your State (e.g. county, parish, township, and city).

42. Total number of precincts statewide and by county/local election jurisdiction.

**Total:** \_\_\_\_\_

43. Total number of polling places statewide and by county/local election jurisdiction.

**Total:** \_\_\_\_\_

44. Total number of polling places statewide and by county/local election jurisdiction that are accessible to voters with disabilities.

**Total:** \_\_\_\_\_

*Note: For purposes of this question only, accessibility refers to the physical structure of the polling place, not the voting system.*

- a) Voters who use wheelchairs, scooters, or other mobility devices:
- b) Voters who are blind or have low vision:

45. Total number of polling places by county/local election jurisdiction where a visually impaired voter can cast a private ballot:

**Total:** \_\_\_\_\_

*Note: Identify the total number of polling places where voting equipment is used such that a visually disabled voter can cast a private ballot (e.g., a DRE with audio ballot capability or paper ballots printed in Braille).*

**Sources of Information**

46. Total number of local election jurisdictions that provided information for purposes of responding to this survey:

**Total:** \_\_\_\_\_

47. Provide the name and contact information for each local election jurisdiction official that provided information for purposes of responding to this survey:

**48.** Identify any other sources of information used to respond to this survey other than those provided in response to the two previous questions. (*All other sources of data shall include information obtained from a state-wide voter registration database or any other public or non-public source.*)

**THANK YOU FOR RESPONDING TO THE SURVEY. PLEASE, FOLLOW THE ENCLOSED INSTRUCTIONS FOR SUBMITTING YOUR COMPLETED SURVEY.**

**DRAFT**

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**Laiza N. Otero/EAC/GOV**

05/08/2006 10:39 AM

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

cc

bcc

Subject revised survey

Julie,

Is this better? I closed every question, except numbers 51 and 52 (under "sources of information). I have not come up with a good definition for "list maintenance," and the previous surveys did not provide one. Any suggestions? I have also asked Brian for a definition.

Jeannie and I are speaking with Humanitas at 1:00pm - - - if you're available, please, stop by. THANK YOU!!



Revised Survey.doc

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009366

**IMPORTANT:** Please, **DO NOT USE** "N/A" as an equivalent to "0." Only use "N/A" (not applicable) if the answer is not available or not allowable by state law or not collected by your jurisdiction. The number "0" ("zero") should only be used to indicate that the answers is "zero" or "none."

### VOTER REGISTRATION

**Note:** Questions 1-26 refer to the period from the close of registration for the **November 2, 2004**, Federal general elections to the close of registration for the **November 7, 2006**, Federal general elections.

**Active voters** refers to all registered voters except those who have been sent but have not responded to a confirmation mailing sent in accordance with NVRA (42 U.S.C. 1973gg-6(d)) and have not since offered to vote.

**Inactive voters** refers to registrants who have been sent but have not responded to a confirmation mailing sent in accordance with NVRA (42 U.S.C. 1973gg-6(d)) and have not since offered to vote.

**Duplicate registration application** refers to an application to register by a person already registered to vote at the same address, under the same name, and (where applicable) the same political party.

**1. Total number of registered voters at the time of the close of registration** for the past two Federal general elections (including Election Day registrations where applicable – see Question 2):

	November 2, 2004	November 7, 2006
<b>Active voters:</b>	_____	_____
<b>Inactive voters (if applicable):</b>	_____	_____
<b>Total:</b>	_____	_____

**2. Total number of persons who registered to vote on Election Day** [November 7, 2006] – **\*\*Only applicable to states with Election Day registration (Idaho, Maine, Minnesota, New Hampshire, Wisconsin, and Wyoming):**

November 2, 2004	November 7, 2006
_____	_____

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3. Total number of voter registration applications received **from all sources** during the period from the close of registration for the November 2, 2004, Federal general elections until the close of registration for the November 7, 2006, Federal general elections:

**Total:** \_\_\_\_\_

4. Total number of voter registration applications received **by mail** during the period from the close of registration for the November 2, 2004, Federal general elections until the close of registration for the November 7, 2006, Federal general elections:

**Total:** \_\_\_\_\_

5. Total number of voter registration applications received **in person at the clerk or registrar's office** during the period from the close of registration for the November 2, 2004, Federal general elections until the close of registration for the November 7, 2006, Federal general elections:

**Total:** \_\_\_\_\_

6. Total number of registration applications that were **received from or generated by** each of the following categories between the close of registration for the November 2, 2004, Federal general elections until the close of registration for the November 7, 2006, Federal general elections:

**All motor vehicle offices:** \_\_\_\_\_

**All public assistance agencies that are mandated as registration sites under NVRA:** \_\_\_\_\_

**All state-funded agencies primarily serving persons with disabilities:** \_\_\_\_\_

**All Armed Forces recruitment offices:** \_\_\_\_\_

**All other agencies designated by the state:** \_\_\_\_\_

7. Total number of registration applications identified in response to **Question 3** that were:

**Duplicates of other valid voter registrations:** \_\_\_\_\_

**Changes of address, name, or party:** \_\_\_\_\_

**Invalid or rejected (other than duplicates):** \_\_\_\_\_

8. Total number of **new, valid registrations** processed between the close of registration for the November 2, 2004, Federal general elections until the close of registration for the November 7, 2006, Federal general elections. ***\*\*This includes all registrations that are new to the local jurisdiction and re-registrations across jurisdictional lines. This does not include applications that are duplicates, rejected, or report only a change of name, address, or (where applicable) party preference within the local jurisdiction.***

**Total:** \_\_\_\_\_

**Registration process**

9. Total number of election jurisdictions conducting voter registration.

**Total:** \_\_\_\_\_

10. Identify the local entity primarily responsible for registering voters:

- Circuit Clerk
- City Clerk
- County Auditor
- County Board of Elections
- County Clerk
- County Commissioner
- County Election Board Secretary
- County Voter Registration Board
- Director of Voter Registration

- Election Commissioner
- Local General Registrar
- Municipal Clerk
- Recorder
- Registrar
- Supervisor/Director of Elections
- Tax Assessor Collector
- Town Clerk
- Other (please, specify)

11. Identify each and every other state and local government office or agency designated as a voter registration agency (provides voter registration opportunities/services):

- Motor vehicle offices**
- All offices that provide public assistance that are mandated as registration sites by NVRA**
- All offices that provide state-funded programs primarily serving persons with disabilities**
- All armed forces recruitment offices**
- Other agencies designated by the State (please, specify)**

12. Does your office provide training on the voter registration process to employees of Federal, State, and local government offices or agencies designated as voter registration agencies?

- Yes**
- No**

13. How are voter registration applications transferred from the other voter registration agencies listed in response to Question 11 to the official responsible for voter registration?

- |                          |                          |                          |                                |
|--------------------------|--------------------------|--------------------------|--------------------------------|
| <input type="checkbox"/> | <b>Courier</b>           | <input type="checkbox"/> | <b>Power Profile System</b>    |
| <input type="checkbox"/> | <b>Disk</b>              | <input type="checkbox"/> | <b>Tape</b>                    |
| <input type="checkbox"/> | <b>E-mail/Electronic</b> | <input type="checkbox"/> | <b>U.S. Mail</b>               |
| <input type="checkbox"/> | <b>Fax</b>               | <input type="checkbox"/> | <b>VPN</b>                     |
| <input type="checkbox"/> | <b>Hand delivered</b>    | <input type="checkbox"/> | <b>Other (please, specify)</b> |
| <input type="checkbox"/> | <b>Inter-office mail</b> |                          |                                |

14. Who verifies and processes voter registration forms?

- State officials**
- Local officials**
- Both**

15. Which number is used as the voter identification number on the processed voter registration form? (This does not refer to the number used to verify the application. This refers to the number given to the voter once they have been verified and entered into the voter database.)

- Last 4-digits of the Social Security number
- Full Social Security number
- Driver's license number
- Unique identifier (please, identify what method is used for assigning the unique identifier)
- Other (please, specify)

16. How do voter registration officials **verify voter registration applications**? (This refers to the process of verifying the applications used to register to vote. This does not refer to the process of verifying voters when they go to vote.)

- Check jury lists
- Link and verify through other state agency (please, specify agency)
- Link and verify through the department of motor vehicles
- Link and verify through the social security administration records
- Link and verify through the State's vital statistics records
- Matched against the voter registration database
- Tracking of returned voter identification cards
- Tracking the return of disposition notices
- Other (please, specify)

17. How do voter registration officials check for duplicate registrations?

- Address
- Date of birth
- Driver's license number
- Names provided by registrant
- Social security number
- Other (please, specify)

18. Does your State check for duplicate voter registrations across state lines?

- Yes (If "yes", please, identify which states.)
- No

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19. Are applicants whose applications are rejected notified of the rejection and the reason for the rejection?

<input type="checkbox"/>	Yes
<input type="checkbox"/>	No

20. Does the statewide voter registration database link to the State's department of motor vehicles?

<input type="checkbox"/>	Yes
<input type="checkbox"/>	No

20. Does the statewide voter registration database link to disability and social services agencies in a similar manner to the State's department of motor vehicles?

<input type="checkbox"/>	Yes
<input type="checkbox"/>	No

**List Maintenance**

21. What process is used to perform list maintenance?

<input type="checkbox"/>	Electronic
<input type="checkbox"/>	Manual
<input type="checkbox"/>	Both

22. Who is responsible for conducting list maintenance?

<input type="checkbox"/>	State officials
<input type="checkbox"/>	Local officials
<input type="checkbox"/>	Both

23. Total number of registrations that were, for whatever reason, **deleted from the registration list**, including both active and inactive voters if such a distinction is made in your state, between the close of registration for the November 2, 2004, Federal general elections until the close of registration for the November 7, 2006, Federal general elections:

**Total:** \_\_\_\_\_ 009372

24. Total number of **removal notices [Section 8(d)(2) confirmation] mailed** out between the close of registration for the November 2, 2004, Federal general elections until the close of registration for the November 7, 2006, Federal general elections:

**Total:** \_\_\_\_\_

25. Total number of **responses received** to the confirmation notices mailed out between the close of registration for the November 2, 2004, Federal general elections until the close of registration for the November 7, 2006, Federal general elections:

**Total:** \_\_\_\_\_

26. Total number of voters **moved to the inactive list** between the close of registration for the November 2, 2004, Federal general elections until the close of registration for the November 7, 2006, Federal general elections:

**Total:** \_\_\_\_\_

27. Total number of voters (**active AND inactive voters**) removed from the voter rolls between the close of registration for the November 2, 2004, Federal general elections until the close of registration for the November 7, 2006, Federal general elections for the following reasons:

**Death:** \_\_\_\_\_

**Disqualifying felony convictions:** \_\_\_\_\_

**Failure to vote in two consecutive federal general elections:** \_\_\_\_\_

**Voter requested to be removed:** \_\_\_\_\_

**Other reasons: (please, specify)** \_\_\_\_\_

**Total number of registrations removed:** \_\_\_\_\_

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**28. Identify all of the sources considered in performing list maintenance:**

<input type="checkbox"/>	<b>Applications for absentee ballots</b>	<input type="checkbox"/>	<b>Notices of deceased persons (Department of Health/Bureau of Vital Statistics)</b>
<input type="checkbox"/>	<b>Ballots returned as undeliverable</b>	<input type="checkbox"/>	<b>Notices of persons adjudicated mentally incapacitated</b>
<input type="checkbox"/>	<b>Canvasses, house-to-house</b>	<input type="checkbox"/>	<b>Petition checks</b>
<input type="checkbox"/>	<b>Canvasses, political parties</b>	<input type="checkbox"/>	<b>Reports/Notices from other States that a former resident has registered to vote</b>
<input type="checkbox"/>	<b>Car registrations</b>	<input type="checkbox"/>	<b>Reports of address changes – U.S. Postal Service National Change of Address</b>
<input type="checkbox"/>	<b>Contact by phone</b>	<input type="checkbox"/>	<b>Reports of surrendered driver's licenses – other states' motor vehicles offices</b>
<input type="checkbox"/>	<b>Contact in person</b>	<input type="checkbox"/>	<b>Returned election notices</b>
<input type="checkbox"/>	<b>Jury questionnaires</b>	<input type="checkbox"/>	<b>Returned jury summons</b>
<input type="checkbox"/>	<b>List of address changes, Emergency 911 (E-911) system</b>	<input type="checkbox"/>	<b>Returned mail from county agencies using official voter file for mailings</b>
<input type="checkbox"/>	<b>Lists of automobile registrations</b>	<input type="checkbox"/>	<b>Requests from voters for removal</b>
<input type="checkbox"/>	<b>List of deceased persons, Social Security Administration</b>	<input type="checkbox"/>	<b>Targeted mailings</b>
<input type="checkbox"/>	<b>Lists of felony convictions, Federal and state courts</b>	<input type="checkbox"/>	<b>Utility changes, municipal</b>
<input type="checkbox"/>	<b>Lists of persons licensed in other states, Department of Motor Vehicles</b>	<input type="checkbox"/>	<b>Voter registration applications</b>
<input type="checkbox"/>	<b>Lists of property ownership</b>	<input type="checkbox"/>	<b>Voter registration system – duplicate checks</b>
<input type="checkbox"/>	<b>Newspaper death notices/obituaries</b>	<input type="checkbox"/>	<b>Other (<i>please, specify</i>)</b>
<input type="checkbox"/>	<b>Notices of address confirmations</b>		

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**29. How does your State treat voters who:**

- a) Have been convicted of a felony
- b) Are serving a sentence of incarceration for conviction of a felony
- c) Are serving a term of probation following being convicted of a felony

**2006 Election Day Results**

**Ballots cast** means a ballot that has been submitted manually or electronically by a voter but has not been verified and/or counted.

**Note:** For jurisdictions that provide voters with more than one ballot card to vote for different contests or measures should only report one ballot cast per voter.

**Ballots counted** means all ballots that have been cast, processed, and counted.

**“At the polls”** refers to ballots issued, cast, or counted on a jurisdiction’s voting system on Election Day at a polling place.

**Domestic civilian absentee ballot** refers to a ballot available to a non-military citizen living in the United States who is registered to vote and meets the State’s requirement for voting absentee.

**Domestic military citizen** refers to:

- (A) a member of a uniformed service on active duty who, by reason of such active duty, is stationed or positioned within the United States or its territories, and who is absent from the place of residence where the member is otherwise qualified to vote;
- (B) a member of the merchant marine who, by reason of service in the merchant marine, is serving within the United States and its territories, and who is absent from the place of residence where the member is otherwise qualified to vote; and
- (C) a spouse or dependent of a member referred to in subparagraph (A) or (B) who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote.

**Early voting** refers to any voting that occurred prior to November 7, 2006, for which there were no eligibility requirements. For example, the voter did not have to attest that he/she would be absent from the voting jurisdiction on the day of the election.

**Federal Write-In Absentee Ballot (FWAB)** is a ballot available to military and overseas citizens (including APO and FPO addresses) when they have not received their regular absentee ballot from their state.

**Overseas military citizen** refers to:

009375



- (A) a member of a uniformed service on active duty who, by reason of such active duty, is stationed or positioned outside of the United States and its territories, and who is thus absent from the place of residence where the member is otherwise qualified to vote;
- (B) a member of the merchant marine who, by reason of service in the merchant marine, is serving outside of the United States and its territories, and who is thus absent from the place of residence where the member is otherwise qualified to vote; and
- (C) a spouse or dependent of a member referred to in subparagraph (A) or (B) who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote.

**Overseas civilians** refers to persons who are citizens of the United States who are living, working or stationed outside of the United States and its territories and who are not members of a uniformed service.

**Provisional ballot** refers to a ballot issued when a voter's eligibility has not been determined.

30. Does your State conduct early voting?

	Yes
	No

31. Total number statewide and by county/local jurisdiction of:

	Ballots Cast	Ballots Counted
<b>At the polls</b>	_____	_____
<b>Early voting</b>	_____	_____
<b>Domestic civilian absentee ballots</b>	_____	_____
<b>Domestic military citizens</b>	_____	_____
<b>Overseas military citizens</b>	_____	_____
<b>Overseas civilians</b>	_____	_____
<b>Federal Write-In Absentee Ballot (FWAB)</b>	_____	_____
<b>Provisional ballots</b>	*	_____
<b>Total</b>	_____	_____

\* The number provided in response to this question should include the total number of ballots cast in the State's program for contingent or provisional ballots that complies with section 302(a) of the Help America Vote Act.

009376

32. Total number of votes counted by county/local election jurisdiction for **each candidate** in a Federal contest.

33. Total number of **provisional ballots** rejected:

**Total:** \_\_\_\_\_

34. Provide the number of **provisional ballots** rejected for each of the following reasons:

<b>Administrative error</b>	_____	<b>No signature</b>	_____
<b>Already voted</b>	_____	<b>Non-appearance within 24 hours</b>	_____
<b>Ballot not timely received (absentee)</b>	_____	<b>Non-matching signature</b>	_____
<b>Deceased</b>	_____	<b>Non-verifiable signature</b>	_____
<b>Elector challenged</b>	_____	<b>Not registered</b>	_____
<b>First time voter registering on Election Day</b>	_____	<b>Registration purged</b>	_____
<b>Improper ID</b>	_____	<b>Wrong jurisdiction</b>	_____
<b>Incomplete ballot form</b>	_____	<b>Wrong precinct</b>	_____
<b>Ineligible to vote</b>	_____	<b>Other (please, specify)</b>	_____
<b>Missing ballot</b>	_____	<b>Other (please, specify)</b>	_____
<b>Multiple ballots in one envelope</b>	_____		
<b>Name missing from voter listed</b>	_____		

009377

**Absentee Ballots**

*Absentee voting is defined as voting prior to Election Day which requires that the voter meet qualifications other than those generally required to register to vote.*

*Advanced ballot means any special Write-In Absentee Ballot, State Write-In Absentee Ballot, Special Write-In Early Ballot, or Blank Absentee Ballot that is distributed by a state in advance of the publication of an official ballot for a federal election on which military and overseas citizens are allowed to write in the name of the candidate in each contest for whom they choose to vote.*

**35. Total number of absentee ballots state-wide and by county/local jurisdiction (do not include FWAB):**

	<b>Requested</b>	<b>Not Counted</b>
<b>Domestic civilian absentee ballots</b>	_____	_____
<b>Domestic military citizens</b>	*	_____
<b>Overseas military citizens</b>	*	_____
<b>Overseas civilians</b>	*	_____
<b>Total</b>	_____	_____

*\*Includes ballots transmitted by mail, fax, e-mail, or courier.*

**36. Total number of advanced ballots transmitted to military and overseas citizens:**

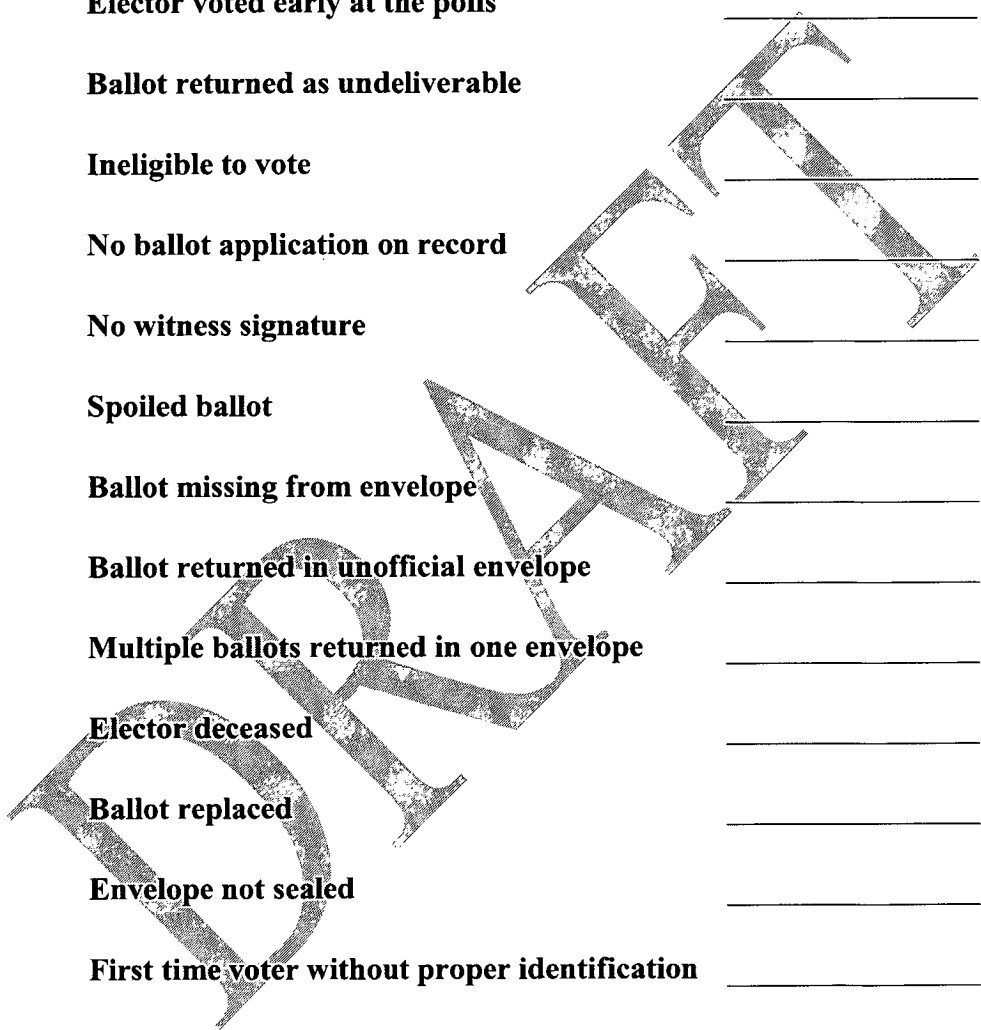
<b>Domestic military citizens</b>	_____
<b>Overseas military citizens</b>	_____
<b>Overseas civilians</b>	_____
<b>Total</b>	_____

**37. Total number of Federal Write-In Absentee Ballots (FWAB) received for each of the following voters for the November 7, 2006, election:**

<b>Domestic military citizens</b>	_____
<b>Overseas military citizens</b>	_____
<b>Overseas civilians</b>	_____009378
<b>Total</b>	_____

38. Identify the five most common reasons that **domestic civilian** absentee ballots were rejected:

- No voter signature \_\_\_\_\_
- Ballot not timely received \_\_\_\_\_
- Non-matching signature \_\_\_\_\_
- Elector voted early at the polls \_\_\_\_\_
- Ballot returned as undeliverable \_\_\_\_\_
- Ineligible to vote \_\_\_\_\_
- No ballot application on record \_\_\_\_\_
- No witness signature \_\_\_\_\_
- Spoiled ballot \_\_\_\_\_
- Ballot missing from envelope \_\_\_\_\_
- Ballot returned in unofficial envelope \_\_\_\_\_
- Multiple ballots returned in one envelope \_\_\_\_\_
- Elector deceased \_\_\_\_\_
- Ballot replaced \_\_\_\_\_
- Envelope not sealed \_\_\_\_\_
- First time voter without proper identification \_\_\_\_\_
- No election official's signature on ballot \_\_\_\_\_
- No residence address on envelope \_\_\_\_\_
- Other (*please, specify*) \_\_\_\_\_



009379

39. Provide the number of **military and overseas** absentee ballots rejected for each of the following reasons:

- Lacked a postmark** \_\_\_\_\_
- No voter signature** \_\_\_\_\_
- Voter signature not verifiable** \_\_\_\_\_
- Had no date of voter signature** \_\_\_\_\_
- Had no notary/witness signature** \_\_\_\_\_
- Had no date of notary/witness signature** \_\_\_\_\_
- Was received after the state deadline** \_\_\_\_\_
- Returned as undeliverable** \_\_\_\_\_
- Other reason (please, specify "other" reason)** \_\_\_\_\_

**Undervotes and Overvotes**

*An **undervote** occurs at any time when a voter makes less than that allowed number of selections in a single race/contest or when a voter votes on less than all of the races/contests for which he/she is eligible to vote.*

*An **overvote** occurs when a voter makes more than the permitted number of selections in a single race/contest or when a voter makes a selection in a race/contest on which he/she was not eligible to vote.*

40. Total number of **undervotes** reported in each federal contest by county/local election jurisdiction:

**Total:** \_\_\_\_\_

41. Total number of **overvotes** reported in each federal contest by county/local election jurisdiction:

**Total:** \_\_\_\_\_

009380

**Poll Workers**

**Note:** *The answer to these questions should include the number of persons who served in all polling places in the State as poll workers, election judges, wardens, commissioners, or other similar term that refers to the person or persons who verify the identity of a voter; assist the voter with signing the register, affidavits or other documents required to cast a ballot; assist the voter by providing the voter with a ballot or setting up the voting machine for the voter; and serving other functions as dictated by state law. The answers to these questions should not include observers stationed at the polling place.*

**42a.** Has there been a change in the number of poll workers per precinct/polling place required by law or regulation since November 2004?

<input type="checkbox"/>	Yes
<input type="checkbox"/>	No

**42b.** If "yes," please, provide the new number of poll workers required by law or regulation to be present at each precinct/polling place.

**Total:** \_\_\_\_\_

**43.** Total number of poll workers who served in the November 7, 2006, Federal general elections statewide and by county/local jurisdiction:

**Total:** \_\_\_\_\_

**44.** Total number of polling places and precincts that did not have the required number of poll workers statewide and by county/local jurisdiction:

**Total:** \_\_\_\_\_

**Voting Jurisdictions and Polling Places**

*Precinct means the geographic area to which voters are assigned.*

*Polling place means the physical structure where residents of a precinct go to cast their votes on Election Day. A polling place includes any structure that houses one or more precincts.*

009381

45. Identify what constitutes a local election jurisdiction in your State:

<input type="checkbox"/>	County
<input type="checkbox"/>	Parish
<input type="checkbox"/>	Township
<input type="checkbox"/>	City
<input type="checkbox"/>	Borough
<input type="checkbox"/>	Village
<input type="checkbox"/>	Other (please, specify)

46. Total number of precincts statewide and by county/local election jurisdiction:

Total: \_\_\_\_\_

47. Total number of polling places statewide and by county/local election jurisdiction:

Total: \_\_\_\_\_

48. Total number of polling places statewide and by county/local election jurisdiction that are accessible to voters with disabilities:

Total: \_\_\_\_\_

*Note: For purposes of this question only, accessibility refers to the physical structure of the polling place, not the voting system.*

49. Total number of polling places by county/local election jurisdiction where a visually impaired voter can cast a private ballot:

Total: \_\_\_\_\_

*Note: Identify the total number of polling places where voting equipment is used such that a visually disabled voter can cast a private ballot (e.g., a DRE with audio ballot capability or paper ballots printed in Braille).*

009382

### Sources of Information

50. Total number of local election jurisdictions that provided information for purposes of responding to this survey:

**Total:** \_\_\_\_\_

51. Provide the name and contact information for each local election jurisdiction official that provided information for purposes of responding to this survey.

52. Identify any other sources of information used to respond to this survey other than those provided in response to the two previous questions. *(All other sources of data shall include information obtained from a state-wide voter registration database or any other public or non-public source.)*

**THANK YOU FOR RESPONDING TO THE SURVEY. PLEASE, FOLLOW THE ENCLOSED INSTRUCTIONS FOR SUBMITTING YOUR COMPLETED SURVEY.**

009383



 **Laiza N. Otero/EAC/GOV**

05/08/2006 03:17 PM

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

cc

bcc

Subject Latest draft of survey

Hi Julie,

I left a copy of the latest draft of the survey on your chair. I'm also attaching a copy, and this one has a slight numbering correction that is not on the hard copy I left you. Please, review and comment. I also added a Glossary at the end of the survey for those people that may not see the definitions within the survey. I included a definition for List Maintenance that Brian provided me; let me know your thoughts on it. Thank you.



Revised Survey.doc

Laiza N. Otero  
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U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-1707  
Fax (202) 566-3128

009384

**IMPORTANT:** Please, **DO NOT USE** "N/A" as an equivalent to "0." Only use "N/A" (not applicable) if the answer is not available or not allowable by state law or not collected by your jurisdiction. The number "0" ("zero") should only be used to indicate that the answers is "zero" or "none."

**VOTER REGISTRATION**

**Note:** Questions 1-29 refer to the period from the close of registration for the **November 2, 2004**, Federal general elections to the close of registration for the **November 7, 2006**, Federal general elections.

*Active voters* refers to all registered voters **except** those who have been sent but have not responded to a confirmation mailing sent in accordance with NVRA (42 U.S.C. 1973gg-6(d)) and have not since offered to vote.

*Inactive voters* refers to registrants who **have been sent but have not responded** to a confirmation mailing sent in accordance with NVRA (42 U.S.C. 1973gg-6(d)) and have not since offered to vote.

*Duplicate registration application* refers to an application to register by a person already registered to vote at the same address, under the same name, and (where applicable) the same political party.

**1. Total number of registered voters statewide and by county/local jurisdiction at the time of the close of registration** for the past two Federal general elections (including Election Day registrations where applicable – see Question 2):

	November 2, 2004	November 7, 2006
<b>Active voters:</b>	_____	_____
<b>Inactive voters (if applicable):</b>	_____	_____
<b>Total:</b>	_____	_____

**2. Total number of persons statewide and by county/local jurisdiction who registered to vote on Election Day [November 7, 2006] – \*\*Only applicable to states with Election Day registration (Idaho, Maine, Minnesota, New Hampshire, Wisconsin, and Wyoming):**

November 2, 2004	November 7, 2006
_____	_____

009385

3. Total number statewide and by county/local jurisdiction of voter registration applications received **from all sources** during the period from the close of registration for the November 2, 2004, Federal general elections until the close of registration for the November 7, 2006, Federal general elections:

**Total:** \_\_\_\_\_

4. Total number statewide and by county/local jurisdiction of voter registration applications received **by mail** during the period from the close of registration for the November 2, 2004, Federal general elections until the close of registration for the November 7, 2006, Federal general elections:

**Total:** \_\_\_\_\_

5. Total number statewide and by county/local jurisdiction of voter registration applications received **in person at the clerk or registrar's office** during the period from the close of registration for the November 2, 2004, Federal general elections until the close of registration for the November 7, 2006, Federal general elections:

**Total:** \_\_\_\_\_

6. Total number statewide and by county/local jurisdiction of registration applications that were **received from or generated by** each of the following categories between the close of registration for the November 2, 2004, Federal general elections until the close of registration for the November 7, 2006, Federal general elections:

**All motor vehicle offices:** \_\_\_\_\_

**All public assistance agencies that are mandated as registration sites under NVRA:** \_\_\_\_\_

**All state-funded agencies primarily serving persons with disabilities:** \_\_\_\_\_

**All Armed Forces recruitment offices:** \_\_\_\_\_

**All other agencies designated by the state:** \_\_\_\_\_

009386

7. Total number statewide and by county/local jurisdiction of registration applications identified in response to **Question 3** that were:

**Duplicates of other valid voter registrations:** \_\_\_\_\_

**Changes of address, name, or party:** \_\_\_\_\_

**Invalid or rejected (other than duplicates):** \_\_\_\_\_

8. Total number statewide and by county/local jurisdiction of **new, valid registrations** processed between the close of registration for the November 2, 2004, Federal general elections until the close of registration for the November 7, 2006, Federal general elections. **\*\*This includes all registrations that are new to the local jurisdiction and re-registrations across jurisdictional lines. This does not include applications that are duplicates, rejected, or report only a change of name, address, or (where applicable) party preference within the local jurisdiction.**

**Total:** \_\_\_\_\_

**Registration process**

9. Total number of election jurisdictions conducting voter registration.

**Total:** \_\_\_\_\_

10. Identify the local entity primarily responsible for registering voters:

- Circuit Clerk
- City Clerk
- County Auditor
- County Board of Elections
- County Clerk
- County Commissioner
- County Election Board Secretary
- County Voter Registration Board
- Director of Voter Registration

- Election Commissioner
- Local General Registrar
- Municipal Clerk
- Recorder
- Registrar
- Supervisor/Director of Elections
- Tax Assessor Collector
- Town Clerk
- Other (please, specify)

009387

11. Identify each and every other state and local government office or agency designated as a voter registration agency (provides voter registration opportunities/services):

<input type="checkbox"/>	<b>Motor vehicle offices</b>
<input type="checkbox"/>	<b>All offices that provide public assistance that are mandated as registration sites by NVRA</b>
<input type="checkbox"/>	<b>All offices that provide state-funded programs primarily serving persons with disabilities</b>
<input type="checkbox"/>	<b>All armed forces recruitment offices</b>
<input type="checkbox"/>	<b>Other agencies designated by the State (please, specify)</b>

12. Does your office provide training on the voter registration process to employees of Federal, State, and local government offices or agencies designated as voter registration agencies?

<input type="checkbox"/>	<b>Yes</b>
<input type="checkbox"/>	<b>No</b>

13. How are voter registration applications transferred from the other voter registration agencies listed in response to **Question 11** to the official responsible for voter registration?

<input type="checkbox"/>	<b>Courier</b>	<input type="checkbox"/>	<b>Power Profile System</b>
<input type="checkbox"/>	<b>Disk</b>	<input type="checkbox"/>	<b>Tape</b>
<input type="checkbox"/>	<b>E-mail/Electronic</b>	<input type="checkbox"/>	<b>U.S. Mail</b>
<input type="checkbox"/>	<b>Fax</b>	<input type="checkbox"/>	<b>VPN</b>
<input type="checkbox"/>	<b>Hand delivered</b>	<input type="checkbox"/>	<b>Other (please, specify)</b>
<input type="checkbox"/>	<b>Inter-office mail</b>		

14. Who verifies and processes voter registration forms?

<input type="checkbox"/>	<b>State officials</b>
<input type="checkbox"/>	<b>Local officials</b>
<input type="checkbox"/>	<b>Both</b>

009388

15. Which number is used as the voter identification number on the processed voter registration form? (This does not refer to the number used to verify the application. This refers to the number given to the voter once they have been verified and entered into the voter database.)

- Last 4-digits of the Social Security number
- Full Social Security number
- Driver's license number
- Unique identifier (please, identify what method is used for assigning the unique identifier)
- Other (please, specify)

16. How do voter registration officials verify voter registration applications? (This refers to the process of verifying the applications used to register to vote. This does not refer to the process of verifying voters when they go to vote.)

- Check jury lists
- Link and verify through other state agency (please, specify agency)
- Link and verify through the department of motor vehicles
- Link and verify through the social security administration records
- Link and verify through the State's vital statistics records
- Matched against the voter registration database
- Tracking of returned voter identification cards
- Tracking the return of disposition notices
- Other (please, specify)

17. How do voter registration officials check for duplicate registrations?

- Address
- Date of birth
- Driver's license number
- Names provided by registrant
- Social security number
- Other (please, specify)

18. Does your State check for duplicate voter registrations across state lines?

- Yes (If "yes", please, identify which states.)
- No

009389

19. Are applicants whose applications are rejected notified of the rejection and the reason for the rejection?

<input type="checkbox"/>	Yes
<input type="checkbox"/>	No

20. Does the statewide voter registration database link to the State's department of motor vehicles?

<input type="checkbox"/>	Yes
<input type="checkbox"/>	No

21. Does the statewide voter registration database link to disability and social services agencies in a similar manner to the State's department of motor vehicles?

<input type="checkbox"/>	Yes
<input type="checkbox"/>	No

**List Maintenance**

*List maintenance refers to the specific process and procedures by which State and/or local election officials update and preserve information contained on the official list of registered voters.*

22. What process is used to perform list maintenance?

<input type="checkbox"/>	Electronic
<input type="checkbox"/>	Manual
<input type="checkbox"/>	Both

23. Who is responsible for conducting list maintenance?

<input type="checkbox"/>	State officials
<input type="checkbox"/>	Local officials
<input type="checkbox"/>	Both

24. Total number of registrations statewide and by county/local jurisdiction that were, for whatever reason, **deleted from the registration list**, including both active and inactive voters if such a distinction is made in your state, between the close of registration for the November 2, 2004, Federal general elections until the close of registration for the November 7, 2006, Federal general elections:

**Total:**

\_\_\_\_\_

009390

25. Total number statewide and by county/local jurisdiction of **removal notices [Section 8(d)(2) confirmation] mailed** out between the close of registration for the November 2, 2004, Federal general elections until the close of registration for the November 7, 2006, Federal general elections:

**Total:** \_\_\_\_\_

26. Total number statewide and by county/local jurisdiction of **responses received** to the confirmation notices mailed out between the close of registration for the November 2, 2004, Federal general elections until the close of registration for the November 7, 2006, Federal general elections:

**Total:** \_\_\_\_\_

27. Total number statewide and by county/local jurisdiction of voters **moved to the inactive list** between the close of registration for the November 2, 2004, Federal general elections until the close of registration for the November 7, 2006, Federal general elections:

**Total:** \_\_\_\_\_

28. Total number statewide and by county/local jurisdiction of **voters (active AND inactive voters) removed** from the voter rolls between the close of registration for the November 2, 2004, Federal general elections until the close of registration for the November 7, 2006, Federal general elections for the following reasons:

**Death:** \_\_\_\_\_

**Disqualifying felony convictions:** \_\_\_\_\_

**Failure to vote in two consecutive federal general elections:** \_\_\_\_\_

**Voter requested to be removed:** \_\_\_\_\_

**Other reasons: (please, specify)** \_\_\_\_\_

**Total number of registrations removed:** \_\_\_\_\_

009391



**29. Identify all of the sources considered in performing list maintenance:**

<input type="checkbox"/>	<b>Applications for absentee ballots</b>	<input type="checkbox"/>	<b>Notices of deceased persons (Department of Health/Bureau of Vital Statistics)</b>
<input type="checkbox"/>	<b>Ballots returned as undeliverable</b>	<input type="checkbox"/>	<b>Notices of persons adjudicated mentally incapacitated</b>
<input type="checkbox"/>	<b>Canvasses, house-to-house</b>	<input type="checkbox"/>	<b>Petition checks</b>
<input type="checkbox"/>	<b>Canvasses, political parties</b>	<input type="checkbox"/>	<b>Reports/Notices from other States that a former resident has registered to vote</b>
<input type="checkbox"/>	<b>Car registrations</b>	<input type="checkbox"/>	<b>Reports of address changes – U.S. Postal Service National Change of Address</b>
<input type="checkbox"/>	<b>Contact by phone</b>	<input type="checkbox"/>	<b>Reports of surrendered driver’s licenses – other states’ motor vehicles offices</b>
<input type="checkbox"/>	<b>Contact in person</b>	<input type="checkbox"/>	<b>Returned election notices</b>
<input type="checkbox"/>	<b>Jury questionnaires</b>	<input type="checkbox"/>	<b>Returned jury summons</b>
<input type="checkbox"/>	<b>List of address changes, Emergency 911 (E-911) system</b>	<input type="checkbox"/>	<b>Returned mail from county agencies using official voter file for mailings</b>
<input type="checkbox"/>	<b>Lists of automobile registrations</b>	<input type="checkbox"/>	<b>Requests from voters for removal</b>
<input type="checkbox"/>	<b>List of deceased persons, Social Security Administration</b>	<input type="checkbox"/>	<b>Targeted mailings</b>
<input type="checkbox"/>	<b>Lists of felony convictions, Federal and state courts</b>	<input type="checkbox"/>	<b>Utility changes, municipal</b>
<input type="checkbox"/>	<b>Lists of persons licensed in other states, Department of Motor Vehicles</b>	<input type="checkbox"/>	<b>Voter registration applications</b>
<input type="checkbox"/>	<b>Lists of property ownership</b>	<input type="checkbox"/>	<b>Voter registration system – duplicate checks</b>
<input type="checkbox"/>	<b>Newspaper death notices/obituaries</b>	<input type="checkbox"/>	<b>Other (please, specify)</b>
<input type="checkbox"/>	<b>Notices of address confirmations</b>		

009392

30. How does your State treat voters who:

- a) Have been convicted of a felony
- b) Are serving a sentence of incarceration for conviction of a felony
- c) Are serving a term of probation following being convicted of a felony

## 2006 ELECTION DAY RESULTS

**Ballots cast** means a ballot that has been submitted manually or electronically by a voter but has not been verified and/or counted.

**Note:** For jurisdictions that provide voters with more than one ballot card to vote for different contests or measures should only report one ballot cast per voter.

**Ballots counted** means all ballots that have been cast, processed, and counted.

**“At the polls”** refers to ballots issued, cast, or counted on a jurisdiction’s voting system on Election Day at a polling place.

**Domestic civilian absentee ballot** refers to a ballot available to a non-military citizen living in the United States who is registered to vote and meets the State’s requirement for voting absentee.

**Domestic military citizen** refers to:

- (A) a member of a uniformed service on active duty who, by reason of such active duty, is stationed or positioned within the United States or its territories, and who is absent from the place of residence where the member is otherwise qualified to vote;
- (B) a member of the merchant marine who, by reason of service in the merchant marine, is serving within the United States and its territories, and who is absent from the place of residence where the member is otherwise qualified to vote; and
- (C) a spouse or dependent of a member referred to in subparagraph (A) or (B) who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote.

**Early voting** refers to any voting that occurred prior to November 7, 2006, for which there were no eligibility requirements. For example, the voter did not have to attest that he/she would be absent from the voting jurisdiction on the day of the election.

**Federal Write-In Absentee Ballot (FWAB)** is a ballot available to military and overseas citizens (including APO and FPO addresses) when they have not received their regular absentee ballot from their state.

**Overseas military citizen** refers to:

009393

- (A) a member of a uniformed service on active duty who, by reason of such active duty, is stationed or positioned outside of the United States and its territories, and who is thus absent from the place of residence where the member is otherwise qualified to vote;
- (B) a member of the merchant marine who, by reason of service in the merchant marine, is serving outside of the United States and its territories, and who is thus absent from the place of residence where the member is otherwise qualified to vote; and
- (C) a spouse or dependent of a member referred to in subparagraph (A) or (B) who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote.

**Overseas civilians** refers to persons who are citizens of the United States who are living, working or stationed outside of the United States and its territories and who are not members of a uniformed service.

**Provisional ballot** refers to a ballot issued when a voter's eligibility has not been determined.

31. Does your State conduct early voting?

	Yes
	No

32. Total number statewide and by county/local jurisdiction of:

	Ballots Cast	Ballots Counted
<b>At the polls</b>	_____	_____
<b>Early voting</b>	_____	_____
<b>Domestic civilian absentee ballots</b>	_____	_____
<b>Domestic military citizens</b>	_____	_____
<b>Overseas military citizens</b>	_____	_____
<b>Overseas civilians</b>	_____	_____
<b>Federal Write-In Absentee Ballot (FWAB)</b>	_____	_____
<b>Provisional ballots</b>	*	_____
<b>Total</b>	_____	_____

\* The number provided in response to this question should include the total number of ballots cast in the State's program for contingent or provisional ballots that complies with section 302(a) of the Help America Vote Act.

009394

33. Total number statewide and by county/local jurisdiction of votes counted for **each candidate** in a Federal contest.

34. Total number statewide and by county/local jurisdiction of **provisional ballots** rejected:

**Total:** \_\_\_\_\_

35. Total number statewide and by county/local jurisdiction of **provisional ballots** rejected for each of the following reasons:

- Administrative error \_\_\_\_\_
- Already voted \_\_\_\_\_
- Ballot not timely received (absentee) \_\_\_\_\_
- Deceased \_\_\_\_\_
- Elector challenged \_\_\_\_\_
- First time voter registering on Election Day \_\_\_\_\_
- Improper ID \_\_\_\_\_
- Incomplete ballot form \_\_\_\_\_
- Ineligible to vote \_\_\_\_\_
- Missing ballot \_\_\_\_\_
- Multiple ballots in one envelope \_\_\_\_\_
- Name missing from voter listed \_\_\_\_\_

- No signature \_\_\_\_\_
- Non-appearance within 24 hours \_\_\_\_\_
- Non-matching signature \_\_\_\_\_
- Non-verifiable signature \_\_\_\_\_
- Not registered \_\_\_\_\_
- Registration purged \_\_\_\_\_
- Wrong jurisdiction \_\_\_\_\_
- Wrong precinct \_\_\_\_\_
- Other (please, specify) \_\_\_\_\_

009395

**Absentee Ballots**

*Absentee voting is defined as voting prior to Election Day which requires that the voter meet qualifications other than those generally required to register to vote.*

*Advanced ballot means any special Write-In Absentee Ballot, State Write-In Absentee Ballot, Special Write-In Early Ballot, or Blank Absentee Ballot that is distributed by a state in advance of the publication of an official ballot for a federal election on which military and overseas citizens are allowed to write in the name of the candidate in each contest for whom they choose to vote.*

**36. Total number state-wide and by county/local jurisdiction of absentee ballots (do not include FWAB):**

	<b>Requested</b>	<b>Not Counted</b>
<b>Domestic civilian absentee ballots</b>	_____	_____
<b>Domestic military citizens</b>	* _____	_____
<b>Overseas military citizens</b>	* _____	_____
<b>Overseas civilians</b>	* _____	_____
<b>Total</b>	_____	_____

*\*Includes ballots transmitted by mail, fax, e-mail, or courier.*

**37. Total number statewide and by county/local jurisdiction of advanced ballots transmitted to military and overseas citizens:**

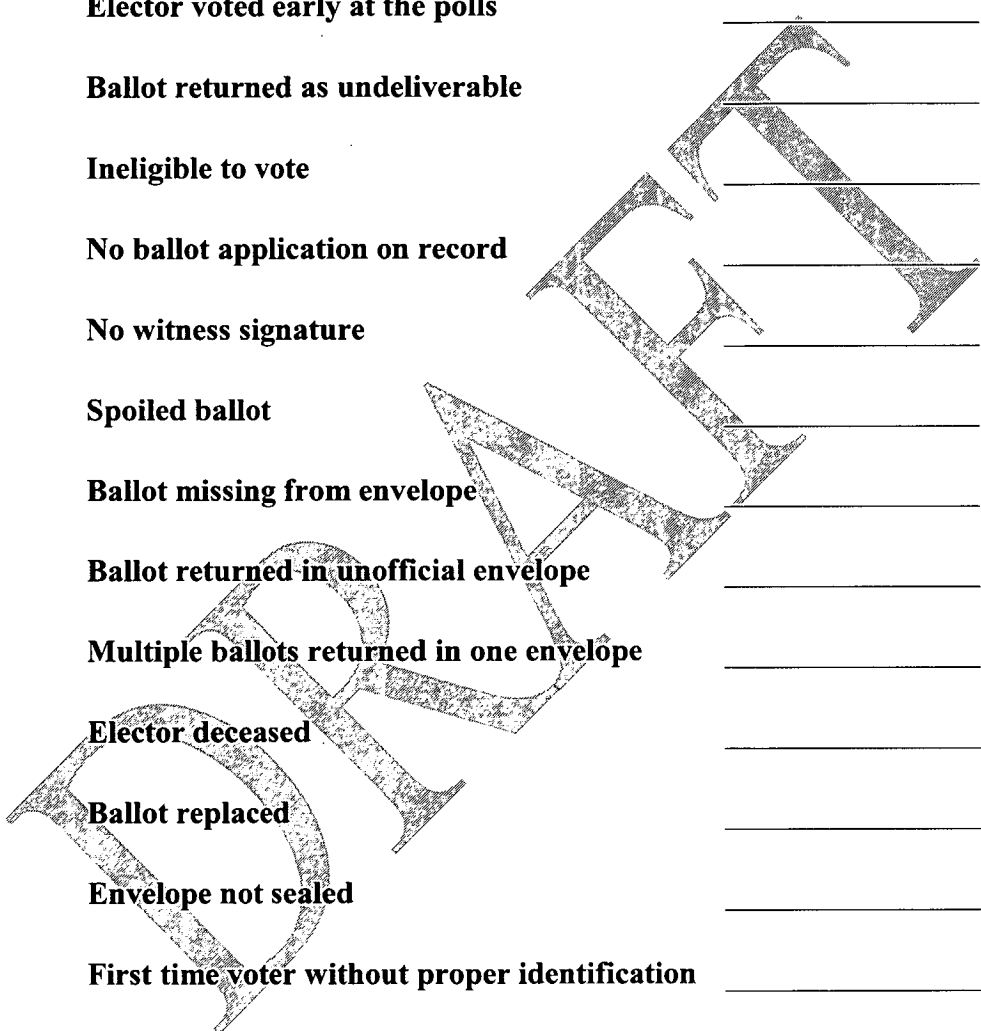
<b>Domestic military citizens</b>	_____
<b>Overseas military citizens</b>	_____
<b>Overseas civilians</b>	_____
<b>Total</b>	_____

**38. Total number statewide and by county/local jurisdiction of Federal Write-In Absentee Ballots (FWAB) received for each of the following voters for the November 7, 2006, election:**

<b>Domestic military citizens</b>	_____
<b>Overseas military citizens</b>	_____
<b>Overseas civilians</b>	_____
<b>Total</b>	_____

39. Identify the five most common reasons that **domestic civilian** absentee ballots were rejected:

- No voter signature \_\_\_\_\_
- Ballot not timely received \_\_\_\_\_
- Non-matching signature \_\_\_\_\_
- Elector voted early at the polls \_\_\_\_\_
- Ballot returned as undeliverable \_\_\_\_\_
- Ineligible to vote \_\_\_\_\_
- No ballot application on record \_\_\_\_\_
- No witness signature \_\_\_\_\_
- Spoiled ballot \_\_\_\_\_
- Ballot missing from envelope \_\_\_\_\_
- Ballot returned in unofficial envelope \_\_\_\_\_
- Multiple ballots returned in one envelope \_\_\_\_\_
- Elector deceased \_\_\_\_\_
- Ballot replaced \_\_\_\_\_
- Envelope not sealed \_\_\_\_\_
- First time voter without proper identification \_\_\_\_\_
- No election official's signature on ballot \_\_\_\_\_
- No residence address on envelope \_\_\_\_\_
- Other (please, specify) \_\_\_\_\_



009397

40. Total number statewide and by county/local jurisdiction of **military and overseas** absentee ballots rejected for each of the following reasons:

- Lacked a postmark** \_\_\_\_\_
- No voter signature** \_\_\_\_\_
- Voter signature not verifiable** \_\_\_\_\_
- Had no date of voter signature** \_\_\_\_\_
- Had no notary/witness signature** \_\_\_\_\_
- Had no date of notary/witness signature** \_\_\_\_\_
- Was received after the state deadline** \_\_\_\_\_
- Returned as undeliverable** \_\_\_\_\_
- Other reason (please, specify)** \_\_\_\_\_

**Undervotes and Overvotes**

*An undervote occurs at any time when a voter makes less than that allowed number of selections in a single race/contest or when a voter votes on less than all of the races/contests for which he/she is eligible to vote.*

*An overvote occurs when a voter makes more than the permitted number of selections in a single race/contest or when a voter makes a selection in a race/contest on which he/she was not eligible to vote.*

41. Total number statewide and by county/local jurisdiction of **undervotes** reported in each federal contest:

**Total:** \_\_\_\_\_

42. Total number statewide and by county/local jurisdiction of **overvotes** reported in each federal contest:

**Total:** \_\_\_\_\_

009398

**Poll Workers**

**Note:** *The answer to these questions should include the number of persons who served in all polling places in the State as poll workers, election judges, wardens, commissioners, or other similar term that refers to the person or persons who verify the identity of a voter; assist the voter with signing the register, affidavits or other documents required to cast a ballot; assist the voter by providing the voter with a ballot or setting up the voting machine for the voter; and serving other functions as dictated by state law. The answers to these questions should not include observers stationed at the polling place.*

**43a.** Has there been a change in the number of poll workers per precinct/polling place required by law or regulation since November 2004?

<input type="checkbox"/>	Yes
<input type="checkbox"/>	No

**43b.** If “yes,” please, provide the new number of poll workers required by law or regulation to be present at each precinct/polling place.

**Total:** \_\_\_\_\_

**44.** Total number statewide and by county/local jurisdiction of poll workers that served in the November 7, 2006, Federal general elections:

**Total:** \_\_\_\_\_

**45.** Total number statewide and by county/local jurisdiction of polling places and precincts that did not have the required number of poll workers:

**Total:** \_\_\_\_\_

**Voting Jurisdictions and Polling Places**

*Precinct means the geographic area to which voters are assigned.*

*Polling place means the physical structure where residents of a precinct go to cast their votes on Election Day. A polling place includes any structure that houses one or more precincts.*

009399



46. Identify what constitutes a local election jurisdiction in your State:

- County
- Parish
- Township
- City
- Borough
- Village
- Other (please, specify)

47. Total number statewide and by county/local election jurisdiction of **precincts**:

**Total:** \_\_\_\_\_

48. Total number statewide and by county/local election jurisdiction of **polling places**:

**Total:** \_\_\_\_\_

49. Total number statewide and by county/local election jurisdiction of polling places that are accessible to voters with disabilities:

**Total:** \_\_\_\_\_

*Note: For purposes of this question only, accessibility refers to the physical structure of the polling place, not the voting system.*

50. Total number by county/local election jurisdiction of polling places where a visually impaired voter can cast a private ballot:

**Total:** \_\_\_\_\_

*Note: Identify the total number of polling places where voting equipment is used such that a visually disabled voter can cast a private ballot (e.g., a DRE with audio ballot capability or paper ballots printed in Braille).*

009400

**Sources of Information**

**51.** Total number of local election jurisdictions that provided information for purposes of responding to this survey:

**Total:** \_\_\_\_\_

**52.** Provide the name and contact information for each local election jurisdiction official that provided information for purposes of responding to this survey.

**53.** Identify any other sources of information used to respond to this survey other than those provided in response to the two previous questions. *(All other sources of data shall include information obtained from a state-wide voter registration database or any other public or non-public source.)*

**DRAFT**

THANK YOU FOR RESPONDING TO THE SURVEY. PLEASE, FOLLOW THE ENCLOSED INSTRUCTIONS FOR SUBMITTING YOUR COMPLETED SURVEY.

## GLOSSARY

**Absentee voting** is defined as voting prior to Election Day which requires that the voter meet qualifications other than those generally required to register to vote.

**Active voters** refers to all registered voters except those who have been sent but have not responded to a confirmation mailing sent in accordance with NVRA (42 U.S.C. 1973gg-6(d)) and have not since offered to vote.

**Advanced ballot** means any special Write-In Absentee Ballot, State Write-In Absentee Ballot, Special Write-In Early Ballot, or Blank Absentee Ballot that is distributed by a state in advance of the publication of an official ballot for a federal election on which military and overseas citizens are allowed to write in the name of the candidate in each contest for whom they choose to vote.

**“At the polls”** refers to ballots issued, cast, or counted on a jurisdiction’s voting system on Election Day at a polling place.

**Ballots cast** means a ballot that has been submitted manually or electronically by a voter but has not been verified and/or counted.

**Ballots counted** means all ballots that have been cast, processed, and counted.

**Domestic civilian absentee ballot** refers to a ballot available to a non-military citizen living in the United States who is registered to vote and meets the State’s requirement for voting absentee.

**Domestic military citizen** refers to:

- (A) a member of a uniformed service on active duty who, by reason of such active duty, is stationed or positioned within the United States or its territories, and who is absent from the place of residence where the member is otherwise qualified to vote;
- (B) a member of the merchant marine who, by reason of service in the merchant marine, is serving within the United States and its territories, and who is absent from the place of residence where the member is otherwise qualified to vote; and

(C) a spouse or dependent of a member referred to in subparagraph (A) or (B) who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote.

**Duplicate registration application** refers to an application to register by a person already registered to vote at the same address, under the same name, and (where applicable) the same political party.

**Early voting** refers to any voting that occurred prior to November 7, 2006, for which there were no eligibility requirements. For example, the voter did not have to attest that he/she would be absent from the voting jurisdiction on the day of the election.

**Federal Write-In Absentee Ballot (FWAB)** is a ballot available to military and overseas citizens (including APO and FPO addresses) when they have not received their regular absentee ballot from their state.

**Inactive voters** refers to registrants who have been sent but have not responded to a confirmation mailing sent in accordance with NVRA (42 U.S.C. 1973gg-6(d)) and have not since offered to vote.

**List maintenance** refers to the specific process and procedures by which State and/or local election officials update and preserve information contained on the official list of registered voters.

**New, valid registrations** include all registrations that are new to the local jurisdiction and re-registrations across jurisdictional lines. This does not include applications that are duplicates, rejected, or report only a change of name, address, or (where applicable) party preference within the local jurisdiction.

**Overseas civilians** refers to persons who are citizens of the United States who are living, working or stationed outside of the United States and its territories and who are not members of a uniformed service.

**Overseas military citizen** refers to:

- (A) a member of a uniformed service on active duty who, by reason of such active duty, is stationed or positioned outside of the United States and its territories, and who is thus absent from the place of residence where the member is otherwise qualified to vote;
- (B) a member of the merchant marine who, by reason of service in the merchant marine, is serving outside of the United States and its territories, and who is thus absent from the place of residence where the member is otherwise qualified to vote; and
- (C) a spouse or dependent of a member referred to in subparagraph (A) or (B) who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote.

**Overvote** occurs when a voter makes more than the permitted number of selections in a single race/contest or when a voter makes a selection in a race/contest on which he/she was not eligible to vote.

**Precinct** means the geographic area to which voters are assigned.

**Polling place** means the physical structure where residents of a precinct go to cast their votes on Election Day. A polling place includes any structure that houses one or more precincts.

**Provisional ballot** refers to a ballot issued when a voter's eligibility has not been determined.

**Undervote** occurs at any time when a voter makes less than that allowed number of selections in a single race/contest or when a voter votes on less than all of the races/contests for which he/she is eligible to vote.



**Laiza N. Otero/EAC/GOV**  
05/30/2006 01:36 PM

To Juliet E. Thompson-Hodgkins/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Federal Register

I have forwarded DeAnna a copy of the e-mail with a request for the information you suggested. In the meantime, who conducts the analysis - you or I, or both? Can we go ahead with it or do we need something else from Tom or the Commissioners?

Juliet E. Thompson-Hodgkins/EAC/GOV

**Juliet E.  
Thompson-Hodgkins/EAC/G  
OV**  
05/30/2006 12:34 PM

To Laiza N. Otero/EAC/GOV@EAC  
cc  
Subject Re: Federal Register

We need a burden analysis first. Ask DeAnna for some previous burden analyses that we have done. This involves getting several (up to 9) states that will be responding to estimate the time and money that will be needed to complete the survey. That information must be included in the FR publication. Ask DeAnna to give you some sample FR publications as well and you will see what I am talking about.

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



**Laiza N. Otero/EAC/GOV**  
05/30/2006 11:51 AM

To Juliet E. Thompson-Hodgkins/EAC/GOV@EAC  
cc  
Subject Federal Register

Julie,

Can we go ahead and publish the required 60-day notice in the Federal Register to obtain public comment on the 2006 Survey? This needs to be done prior to submitting the Information Collection Request to OMB, and June will be here this week. The responses we receive from the Boards, if any, could be part of this period. How can we move ahead? How can I assist? Thank you!

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100

009427

Washington, DC 20005  
Tel. (202) 566-1707  
Fax (202) 566-3128



Laiza N. Otero/EAC/GOV  
10/12/2006 11:02 AM

To Juliet E. Thompson-Hodgkins/EAC/GOV@EAC  
cc Karen Lynn-Dyson/EAC/GOV@EAC  
bcc  
Subject PRA and focus groups

Hello,

Karen told me to check with you about focus groups and PRA in preparation for her conference call with the Contractors regarding their information collection activities. I am putting together some materials for the participants and wanted to make sure I have the correct information. From what I have found out (and from my understanding of her projects as they are written on the SOW):

In accordance with the PRA, OMB approval must be obtained prior to collecting information in any situation where 10 or more individuals are involved and the questions are standardized in nature. A project could have a series of focus groups of 3-5 people each, but if the total number of participants from all sessions amounts to 10 or more then they fall under PRA.

**Do focus groups need Paperwork Reduction Act clearance?**

Yes -- assuming that the focus groups are working from predetermined scripts that are being asked each group

Compliance with the PRA is required whenever a federal agency sponsors a data collection by using identical questions, using identical reporting or record-keeping requirements, or asking respondents to provide the same level of information on the same subject involving 10 or more respondents in a 12-month period. The law applies to all federal employees, contractors, people in cooperative agreements, and anyone else who asks the public for information for the purpose of research, public health practice, program evaluation, or any other reason. The PRA also addresses customer satisfaction inventories, focus group inquiries, all types of surveys, telephone interviews, and electronic environments.

**What Doesn't Need PRA Clearance?**

Open-ended questions to the public, e.g. "What do you think about this?" in a focus group do not require OMB approval.


**Does the PRA affect questions at public meetings?**

Not usually. No clearance is needed if the attendees are just asked to comment or give suggestions on the program or subject in question. If, however, the group is gathered for the purpose of having attendees respond to a specific set of formatted questions, then the PRA does apply

I have placed a call to Alex at OMB asking him to assist us in understanding this point for us.

Laiza N. Otero





Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)  
Fax (202) 566-3128

009430



Laiza N. Otero/EAC/GOV  
10/31/2006 10:08 AM

To Alexander\_T.\_Hunt@omb.eop.gov  
cc  
bcc  
Subject ICR Submission

Dear Mr. Hunt,

I am writing to notify you of our ICR submission via ROCIS of our 2006 Election Administration and Voting Survey. The form has been completed to the best of our knowledge and all supporting documents have been included in the package. This information collection is being submitted under the regular review process. However, we would greatly appreciate an estimate of when we could expect approval since the information collection focuses on election related data. If you have any questions or need more information, please, do not hesitate to contact me at your earliest convenience. Thank you very much for your time and invaluable assistance in this matter.

Sincerely,

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)  
Fax (202) 566-3128

009431



"Hunt, Alexander T."  
<Alexander\_T.\_Hunt@omb.eop.gov>  
11/30/2006 07:12 PM

To: lotero@eac.gov  
cc  
bcc  
Subject: RE: ICR Submission

History:  This message has been replied to.

I approved all three pending ICRs today. Thanks.

---

**From:** lotero@eac.gov [mailto:lotero@eac.gov]  
**Sent:** Monday, November 27, 2006 1:22 PM  
**To:** Hunt, Alexander T.  
**Subject:** RE: ICR Submission  
**Importance:** High

Good afternoon Mr. Hunt,

I am following up to our conversation below regarding the 2006 Election Administration and Voting Survey ICR - the final day for comments to the 30-day FR notice is today.

In addition, is there more information we should provide regarding the other two recent emergency ICRs? Thank you once again for your time and assistance. I hope you had a nice Thanksgiving!

Sincerely,

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)  
Fax (202) 566-3128

-----"Hunt, Alexander T." <Alexander\_T.\_Hunt@omb.eop.gov> wrote: -----

To: lotero@eac.gov  
From: "Hunt, Alexander T." <Alexander\_T.\_Hunt@omb.eop.gov>  
Date: 10/31/2006 11:06AM  
Subject: RE: ICR Submission

You can send a reminder e-mail in 3-4 weeks and I can try to take action around day 30.

**From:** lotero@eac.gov [mailto:lotero@eac.gov]  
**Sent:** Tuesday, October 31, 2006 9:09 AM  
**To:** Hunt, Alexander T.  
**Subject:** ICR Submission

Dear Mr. Hunt,

009432

I am writing to notify you of our ICR submission via ROCIS of our 2006 Election Administration and Voting Survey. The form has been completed to the best of our knowledge and all supporting documents have been included in the package. This information collection is being submitted under the regular review process. However, we would greatly appreciate an estimate of when we could expect approval since the information collection focuses on election related data. If you have any questions or need more information, please, do not hesitate to contact me at your earliest convenience. Thank you very much for your time and invaluable assistance in this matter.

Sincerely,

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)  
Fax (202) 566-3128

009433



Laiza N. Otero/EAC/GOV

04/13/2007 01:18 PM

To Karen Lynn-Dyson/EAC/GOV@EAC

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

bcc

Subject EAC Election Administration and Voting Survey

[http://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=200610-3265-001](http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200610-3265-001)



30-day Federal Register Notice.pdf



2006 EAC Survey - Copy of Public Comments.pdf



2006 EAC Survey - Summary of and Response to Comments.doc



2006 EAC Survey - Supporting Statement A.doc



2006 EAC Survey - Supporting Statement B.doc



2006 Election Administration and Voting Survey.OMB No 3265-0006.pdf



60-Day Federal Register Notice.pdf

Laiza N. Otero  
Election Research Specialist  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)  
Fax (202) 566-3128

009434

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 12/11/2006

U.S. Election Assistance Commission

FOR CERTIFYING OFFICIAL: Juliet Thompson-Hodgkins

FOR CLEARANCE OFFICER: Laiza Otero

In accordance with the Paperwork Reduction Act, OMB has taken action on your request received 12/06/2006

ACTION REQUESTED: No material or nonsubstantive change to a currently approved collection

TYPE OF REVIEW REQUESTED: Emergency

ICR REFERENCE NUMBER: 200612-3265-002

TITLE: U.S. Election Assistance Commission Survey of UOCAVA Voters

LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved without change

OMB CONTROL NUMBER: 3265-0005

The agency is required to display the OMB Control Number and inform respondents of its legal significance in accordance with 5 CFR 1320.5(b).

EXPIRATION DATE: 05/31/2007

DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	10,000	2,500	0
New	10,000	2,500	0
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	0	0	0
Change due to Agency Adjustment	0	0	0
Change Due to Potential Violation of the PRA	0	0	0

TERMS OF CLEARANCE: Terms of the previous clearance remain in effect.

OMB Authorizing Official:

John F. Morrall III  
Acting Deputy Administrator,  
Office Of Information And Regulatory Affairs

009435



# RegInfo.gov

Where to find Federal Regulatory Information



- Home
- Unified Agenda and Regulatory Plan
- EO 12866 Regulatory Review
- Information Collection Review
- Information Collection Review
- Advanced Search
- XML Reports

Display additional information by clicking on the following:  All  Brief and OIRA conclusion

Abstract/Justification  Legal Statutes  Rulemaking  FR Notices/Comments  IC List  Burden  Misc.  Certification

[View Information Collection \(IC\) List](#) [View Supporting Statement and Other Documents](#)

Please note that the OMB number and expiration date may not have been determined when this Information Collection Request and associated Information Collection forms were submitted to OMB. The approved OMB number and expiration date may be found by clicking on the Notice of Action link below.

## View ICR - OIRA Conclusion

OMB Control No: 3265-0005      ICR Reference No: 200612-3265-002  
 Status: Active      Previous ICR Reference No: 200611-3265-001  
 Agency/Subagency:      Agency Tracking No:  
 Title: U.S. Election Assistance Commission Survey of UOCAVA Voters  
 Type of Information Collection: No material or nonsubstantive change to a currently approved collection  
 Type of Review Request: Emergency      Approval Requested By: 11/23/2006  
 OIRA Conclusion Action: Approved without change      Conclusion Date: 12/11/2006  
[Retrieve Notice of Action \(NOA\)](#)      Date Received in OIRA: 12/06/2006  
 Terms of Clearance:

	Inventory as of this Action	Requested	Previously Approved
Expiration Date	05/31/2007	05/31/2007	05/31/2007
Responses	10,000	10,000	10,000
Time Burden (Hours)	2,500	2,500	2,500
Cost Burden (Dollars)	0	0	0

[Disclosure](#) | [Accessibility](#) | [Privacy Policy](#) | [Contact Us](#)

009436

List of ICs

IC Title	Form No.	Form Name	CFR Citation
EAC Survey of UOCAVA Voters	EAC-RS02, EAC-RS02	EAC Survey of UOCAVA Voters, Revised EAC Survey of UOCAVA Voters	





10/17/2006 12:02 AM

To lotero@eac.gov

cc

bcc

Subject omb submission

History: This message has been replied to.

hello ms otero,

i am emailing two documents of the three you are probably expecting: one is form 83-I. i have filled it out as much as possible: i was trying to contact you today to ask for assistance, but unfortunately did not reach you. rather than delaying this matter longer, i am sending an incomplete document. what i am stuck on is question 14 - the record keeping and cost item. the other problem on the form is a formatting issue i am having with question 12. for some reason, if i fill in the P for voluntary, it overwrites the agency line in item 1 and vice versa. i can not figure out if this is a bug in the form or if there is something wrong with my version of adobe!

the second document is the supporting documentation for omb. that document is ready to go, but please let me know if you would like me to make changes.

finally, the time and cost burden document i have not filled out. can you please help me with this? as i interpret it, there are no costs associated other than faxing the survey back for some respondents. i am not sure how to budget for this so it would leave most of the form blank. is this your understanding of the process?

thank you in advance for your assistance.

if you need to contact me tomorrow by phone, please try my cell at 510.367.7527. otherwise, i should be on email for most of the day.

regards,

karin mac donald



Supporting Documentation for OMB.doc 2006-10-16 - OMB 83-I form.pdf

009438

**SUPPORTING STATEMENTS**  
**United States Election Assistance Commission - Survey of UOCAVA Voters**

**A. JUSTIFICATION**

**1. Explain the circumstances that make the collection of information necessary.**

Section 245 of the Help America Vote Act (HAVA) requires the United States Election Assistance Commission (EAC) to conduct a study of issues and challenges, specifically including the potential for election fraud, that are presented by the incorporation of communications and internet technologies in the Federal, State, and local electoral process. Previously, in 2001, operating under the National Defense Authorization Act on behalf of the Secretary of Defense, the Director of the Federal Voting Assistance Program (FVAP) began work to fulfill a congressional directive to conduct an electronic voting demonstration for the 2002 general election. Building upon the technical foundation of the first national electronic voting pilot (the 2000 Voting Over the Internet project), FVAP designed the Secure Electronic Registration and Voting Experiment (SERVE). SERVE was designed to assess whether electronic voting technology could be used to improve the voting participation of uniformed services members and overseas citizens, whose rights are protected by the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). Currently, UOCAVA voters are most likely to utilize communications and internet technologies in the electoral process, thus, they must be studied to fulfill the requirements of Sec. 245 or HAVA.

**2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.**

The data will be collected, coded, summarized and analyzed by an EAC contractor. Summary data from the survey will be contextualized with qualitative data collected in case studies and presented in a report to the EAC. At the conclusion of the study, the EAC will transmit a report on the results of the study to Congress. The study, or subsections thereof, will also be publicly available upon release by the EAC.

The collection of data complies with the applicable Information Quality Guidelines in the following ways: One, the survey is timed to be conducted shortly after the General Election of 2006, when respondents' recollection of their interaction with the voting process is still at its best. Two, statistical sampling techniques will be employed to select a sample that is representative of the population being studied. Three, the survey instrument, a description of the sample, and the summary data will be made available to the public, thus replication of results within the statistical error margin will be possible. Four, the data collection, analysis and resulting reports will be completed within an eleven month time-frame, which allows for a timely distribution of results to Congress, election officials, data users, researchers and other interested parties. Five, the survey instrument is being developed by a group of highly qualified researchers, and is being beta tested after each change with a different group of volunteers. The instrument will then be sent to interested groups that have experience with the subject topic, for comments. As appropriate, these comments will be incorporated prior to a final pre-test of the

009439

survey. Six, coding documentation will be developed, and coders will be trained to ensure uniform interpretation of data during the coding process of the results. Seven, statistical analysis will include modern methods that are commonly used in social science research, including cross-tabs, frequencies and regression analysis. Eight, ongoing quality control programs are in place to assure the highest possible validity and reliability of the data.

**3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.**

The potential respondents to the survey will be contacted in the same way in which they have asked for their ballot to be transmitted to them. This means that those that ask for their ballot to be faxed, will receive a faxed copy of the survey, and those that use email, will receive an email invitation to complete the survey over the internet. Respondents have the option to ask for the survey in a different medium, i.e. a fax respondent has the option to use the internet to complete the survey, and vice versa.

**4. Describe efforts to identify duplication.**

Each respondent will be assigned a unique code that will prevent duplication. Internet invitations to respond to the survey will also include a unique link that can only be used once. Each respondent will only have one opportunity to fill out a survey, and only originals will be accepted back, not copies of the survey instrument.

**5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.**

The collection of information does not involve small businesses or other small entities.

**6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.**

The EAC is asking for a one-time collection of survey responses. If these data are not collected, the mandate of Sec. 245 of HAVA can not be met.

**7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.**

OMB guidelines provide for the submission of an emergency ICR if the collection is needed sooner than would be possible using normal procedures and is essential for the agency's mission. The collection of the survey data will be consistent with the OMB guidelines under the emergency ICR. Following the regular procedures would prevent the collection of data.

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**8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.**

A PRA Federal Register notice is not available. This agency is asking for emergency review and for a waiver of the Federal Register publication requirement from OMB.

**9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.**

No payments or gifts will be provided to respondents.

**10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.**

In accordance with generally used Human Subjects protocols, survey respondents will be informed that the information they provide will not be attributed to them personally, and will be compiled with the data from other respondents to construct summary data. Survey forms will not request identifying information from respondents, such as their name or address.

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.**

No questions of a sensitive nature will be asked.

**12. Provide an estimate in hours of the burden of the collection of information.**

Responding to the survey will take approximately ten minutes if the internet is used. If respondents chose to use the hard-copy survey form, we estimate an additional five minutes for faxing of the survey.

**13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in #12 above).**

Most respondents who utilize the internet to respond to the survey should not incur any cost. Respondents that have to pay for the use of a computer at an internet café may incur a cost of no

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more than \$1 each to respond to the survey. Respondents that chose to fax the responses may incur a cost of up to \$3.

**14. Provide estimates of annualized cost to the Federal government.**

There is no cost to the Federal government. Responses to the survey are strictly voluntary and respondents will not be reimbursed for their incurred costs to answer the survey.

**15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.**

This is a new collection – there are no program changes or adjustments.

**16. For collections whose results will be published, outline the plans for tabulation and publication.**

The collected survey responses will only be published in summary data format, as part of a report. The survey data will be contextualized with data from case studies. The report will be published by the EAC on its website, and results will also be presented to Congress in a report.

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.**

N/A

**18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.**

There are no exceptions to the certification statement identified in Item 19 of the OMB 83-I.

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

*(If your collection does not employ statistical methods, just say that and delete the following five questions from the format.)*

**1. Describe (including a numerical estimate) the potential respondent universe and any sampling or other respondent selection method to be used. Data on the number of entities (e.g. establishments, State and local governmental units, households, or persons) in the universe and the corresponding sample are to be provided in tabular form. The tabulation must also include expected response rates for the collection as a whole. If the collection has been conducted before, provide the actual response rate achieved.**

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The sample will target a sample of the 2006 UOCAVA registered voters in the four jurisdictions identified in our case studies. We expect the sample to be at least 10,000 registered voters, and we hope to get response rate of 20%. Previous on-line surveys of UOCAVA voters by the Overseas Vote Foundation had response rates of approximately 17%.

**2. Describe the procedures for the collection, including: the statistical methodology for stratification and sample selection; the estimation procedure; the degree of accuracy needed for the purpose described in the justification; any unusual problems requiring specialized sampling procedures; and any use of periodic (less frequent than annual) data collection cycles to reduce burden.**

The sample will be chosen from UOCAVA registered voter lists in four states that vary by the size of the UOCAVA pool and the method by which overseas ballots can be obtained or cast. Montana is a small state (4,721 UOCAVA votes cast) that has a wide variety of electronic transmission methods with differences between local jurisdictions. South Carolina has the largest number of UOCAVA voters (168,814) and allows for emailing of blank and voted ballots and faxing of ballots and registration forms. Florida allows some emailing and faxing of blank ballots and is considering the possibility of internet voting. Most likely, the fourth state will be either Vermont (1,733 UOCAVA voters) or Illinois (30,556 UOCAVA voters) which have smaller numbers of UOCAVA voters but allow faxing for registration, ballot requests and blank ballots, and also have variations between local jurisdiction that can be studied. Working from the registration lists, we will invite the respondents to complete the survey in the form they received their ballot (i.e. mail, fax or email). Those that check email will get an email invitation with a link to the on-line survey. Others will get a paper version by fax or mail. Our intention is to contact all the registered UOCAVA voters in a given jurisdiction or where necessary to draw a random sample.

**3. Describe the methods used to maximize response rates and to deal with nonresponse. The accuracy and reliability of the information collected must be shown to be adequate for the intended uses. For collections based on sampling, a special justification must be provided if they will not yield "reliable" data that can be generalized to the universe studied.**

Follow-up emails will be sent after 5 days to those who have not responded by email, and follow-up faxes and postcards to those who did not respond from those categories. Aside from these multiple contacts, we will monitor for any potential biases in the responses we get by comparing attributes in the registration file with those who respond to the survey. If necessary, we will consider weighting the responses to test whether there is a measurable difference in the results as a result of any skew in the respondents' characteristics.

**4. Describe any tests of procedures or methods to be undertaken. Tests are encouraged as effective means to refine collections, but if ten or more test respondents are involved OMB must give prior approval.**

The questionnaire will be pre-tested with a small sample of Overseas Vote Foundation

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volunteers and associates to refine the wording of questions and ensure that the questions are well understood, as well as members of the research team.

**5. Provide the name and telephone number of individuals consulted on the statistical aspects of the design, and the name of the agency unit, contractor(s), grantee(s), or other person(s) who will actually collect and/or analyze the information for the agency.**

Contractor contact: Prof. Bruce E. Cain, 1.415.336.0570

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# PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the Supporting Statement, and any additional documentation to: **Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.**

<p>1. Agency/Subagency originating request</p> <p>United States Election Assistance Commission</p>	<p>2. OMB control number <span style="float: right;">b. <input checked="" type="checkbox"/> None</span></p> <p>a. _____</p>
<p>3. Type of information collection (check one)</p> <p>a. <input checked="" type="checkbox"/> New collection</p> <p>b. <input type="checkbox"/> Revision of a currently approved collection</p> <p>c. <input type="checkbox"/> Extension, without change, of a currently approved collection</p> <p>d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired</p> <p>e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired</p> <p>f. <input type="checkbox"/> Existing collection in use without an OMB control number</p>	<p>4. Type of review requested (check one)</p> <p>a. <input type="checkbox"/> Regular</p> <p>b. <input checked="" type="checkbox"/> Emergency - Approval requested by: <u>11</u> / <u>01</u> / <u>2006</u></p> <p>c. <input type="checkbox"/> Delegated</p>
<p>3a. Public Comments</p> <p>Has the agency received public comments on this information collection?</p> <p style="text-align: center;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	<p>5. Small entities</p> <p>Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
<p>6. Requested expiration date</p> <p>a. <input type="checkbox"/> Three years from approval date b. <input checked="" type="checkbox"/> Other Specify: <u>04</u> / <u>2007</u></p>	
<p>7. Title</p> <p>United States Election Assistance Commission Survey of UOCAVA (Uniformed and Overseas Citizen Absentee Voters Act) voters</p>	
<p>8. Agency form number(s) (if applicable)</p>	
<p>9. Keywords</p> <p>Research, Elections</p>	
<p>10. Abstract</p> <p>Section 245 of the Help America Vote Act (HAVA) requires the United States Election Assistance Commission (EAC) to conduct a study of issues and challenges, that are presented by the incorporation of communications and internet technologies in the electoral process. This survey of UOCAVA voters is part of a larger study, the results of which will be presented in form of a report to Congress. UOCAVA voters consist of civilian citizens living overseas, and military personnel and their families.</p>	
<p>11. Affected public (Mark primary with "P" and all others that apply with "X")</p> <p>a. <u>P</u> Individuals or households      d. <input type="checkbox"/> Farms</p> <p>b. <input type="checkbox"/> Business or other for-profit      e. <input type="checkbox"/> Federal Government</p> <p>c. <input type="checkbox"/> Not-for-profit institutions      f. <input type="checkbox"/> State, Local or Tribal Government</p>	<p>12. Obligation to respond (Mark primary with "P" and all others that apply with "X")</p> <p>a. <u>U</u> Voluntary</p> <p>b. <input type="checkbox"/> Required to obtain or retain benefits</p> <p>c. <input type="checkbox"/> Mandatory</p>
<p>13. Annual reporting and recordkeeping hour burden</p> <p>a. Number of respondents <u>approximately 10,000</u></p> <p>b. Total annual responses <u>approximately 10,000</u></p> <p>1. Percentage of these responses collected electronically <u>approximately 90</u> %</p> <p>c. Total annual hours requested <u>0.2</u></p> <p>d. Current OMB inventory <u>0</u></p> <p>e. Difference <u>0.2</u></p> <p>f. Explanation of difference</p> <p>1. Program change <u>new collection</u></p> <p>2. Adjustment _____</p>	<p>14. Annual reporting and recordkeeping cost burden (in thousands of dollars)</p> <p>a. Total annualized capital/startup costs <u>?</u></p> <p>b. Total annual costs (O&amp;M) _____</p> <p>c. Total annualized cost requested _____</p> <p>d. Current OMB inventory <u>0</u></p> <p>e. Difference _____</p> <p>f. Explanation of difference</p> <p>1. Program change <u>new collection</u></p> <p>2. Adjustment _____</p>
<p>15. Purpose of information collection (Mark primary with "P" and all others that apply with "X")</p> <p>a. <input type="checkbox"/> Application for benefits      e. <input type="checkbox"/> Program planning or management</p> <p>b. <input type="checkbox"/> Program evaluation      f. <u>P</u> Research</p> <p>c. <input type="checkbox"/> General purpose statistics      g. <input type="checkbox"/> Regulatory or compliance</p> <p>d. <input type="checkbox"/> Audit</p>	<p>16. Frequency of recordkeeping or reporting (check all that apply)</p> <p>a. <input type="checkbox"/> Recordkeeping      b. <input checked="" type="checkbox"/> Third party disclosure</p> <p>c. <input type="checkbox"/> Reporting</p> <p>1. <input type="checkbox"/> On occasion      2. <input type="checkbox"/> Weekly      3. <input type="checkbox"/> Monthly</p> <p>4. <input type="checkbox"/> Quarterly      5. <input type="checkbox"/> Semi-annually      6. <input type="checkbox"/> Annually</p> <p>7. <input type="checkbox"/> Biennially      8. <input checked="" type="checkbox"/> Other (describe) <u>one time only survey</u></p>
<p>17. Statistical methods</p> <p>Does this information collection employ statistical methods?</p> <p style="text-align: center;"><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>18. Agency contact (person who can best answer questions regarding the content of this submission)</p> <p>Name: <u>Karen Lynn-Dyson</u></p> <p>Phone: _____</p>



## 19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9.

**Note:** The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It uses plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
  - (i) Why the information is being collected;
  - (ii) Use of information;
  - (iii) Burden estimate;
  - (iv) Nature of response (voluntary, required for a benefit, or mandatory);
  - (v) Nature and extent of confidentiality; and
  - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of the instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of these provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

# Instructions For Completing OMB Form 83-I

Please answer all questions and have the Senior Official or designee sign the form. These instructions should be used in conjunction with 5 CFR 1320, which provides information on coverage, definitions, and other matters of procedure and interpretation under the Paperwork Reduction Act of 1995.

## 1. Agency/Subagency originating request

Provide the name of the agency or subagency originating the request. For most cabinet-level agencies, a subagency designation is also necessary. For non-cabinet agencies, the subagency designation is generally unnecessary.

## 2. OMB control number

- If the information collection in this request has previously received or now has an OMB control or comment number, enter the number.
- Check "None" if the information collection in this request has not previously received an OMB control number. Enter the four digit agency code for your agency.

## 3. Type of information collection (check one)

- Check "New collection" when the collection has not previously been used or sponsored by the agency.
- Check "Revision" when the collection is currently approved by OMB, and the agency request includes a material change to the collection instrument, instructions, its frequency of collection, or the use to which the information is to be put.
- Check "Extension" when the collection is currently approved by OMB, and the agency wishes only to extend the approval past the current expiration date without making any material change in the collection instrument, instructions, frequency of collection, or the use to which the information is to be put.
- Check "Reinstatement without change" when the collection previously had OMB approval, but the approval has expired or was withdrawn before this submission was made, and there is no change to the collection.
- Check "Reinstatement with change" when the collection previously had OMB approval, but the approval has expired or was withdrawn before this submission was made, and there is change to the collection.
- Check "Existing collection in use without OMB control number" when the collection is currently in use but does not have a currently valid OMB control number.

## 4. Type of review requested (check one)

- Check "Regular" when the collection is submitted under 5 CFR 1320.10, 1320.11, or 1320.12 with a standard 60 day review schedule.
- Check "Emergency" when the agency is submitting the request under 5 CFR 1320.13 for emergency processing and provides the required supporting material. Provide the date by which the agency requests approval.
- Check "Delegated" when the agency is submitting the collection under the conditions OMB has granted the agency delegated authority.

## 5. Small entities

Indicate whether this information collection will have a significant impact on a substantial number of small entities. A small entity may be (1) a small business which is deemed to be one that is independently owned and operated and that is not dominant in its field of operation; (2) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field; or (3) a small government jurisdiction which is a government of a city, county, town, township, school district, or special district with a population of less than 50,000.

## 6. Requested expiration date

- Check "Three years" if the agency requests a three year approval for the collection.
- Check "Other" if the agency requests approval for less than three years. Specify the month and year of the requested expiration date.

## 7. Title

Provide the official title of the information collection. If an official title does not exist, provide a description which will distinguish this collection from others.

## 8. Agency form number(s) (if applicable)

Provide any form number the agency has assigned to this collection of information. Separate each form number with a comma.

## 9. Keywords

Select and list at least two keywords (descriptors) from the "Federal Register Thesaurus of Indexing Terms" that describe the subject area(s) of the information collection. Other terms may be used but should be listed after those selected from the thesaurus. Separate keywords with commas. Keywords should not exceed two lines of text.

## 10. Abstract

Provide a statement, limited to five lines of text, covering the agency's need for the information, uses to which it will be put, and a brief description of the respondents.

## 11. Affected public

Mark all categories that apply, denoting the primary public with a "P" and all others that apply with "X."

## 12. Obligation to respond

Mark all categories that apply, denoting the primary obligation with a "P" and all others that apply with "X."

- Mark "Voluntary" when the response is entirely discretionary and has no direct effect on any benefit or privilege for the respondent.
- Mark "Required to obtain or retain benefits" when the response is elective, but is required to obtain or retain a benefit.
- Mark "Mandatory" when the respondent must reply or face civil or criminal sanctions.

## 13. Annual reporting and recordkeeping hour burden

- Enter the number of respondents and/or recordkeepers. If a respondent is also a recordkeeper, report the respondent only once.
- Enter the number of responses provided annually. For recordkeeping as compared to reporting activity, the number of responses equals the number of recordkeepers.
  - Enter the estimated percentage of responses that will be submitted/collected electronically using magnetic media (i.e., diskette), electronic mail, or electronic data interchange. Facsimile is **not** considered an electronic submission.
- Enter the total annual recordkeeping and reporting hour burden.
- Enter the burden hours currently approved by OMB for this collection of information. Enter zero (0) for any new submission or for any collection whose OMB approval has expired.
- Enter the difference by subtracting line d from line c. Record a negative number (d larger than c) within parentheses.
- Explain the difference. The difference in line e must be accounted for in lines f.1. and f.2.
  - "Program change" is the result of deliberate Federal government action. All new collections and any subsequent revision of existing collections (e.g., the addition or deletion of questions) are recorded as program changes.
  - "Adjustment" is a change that is not the result of a deliberate Federal government action. Changes resulting from new estimates or action not controllable by the Federal government are recorded as adjustments.

## 14. Annual reporting and recordkeeping cost burden (in thousands of dollars)

The costs identified in this item must exclude the cost of hour burden identified in Item 13.

- Enter the total dollar amount of annualized cost for all respondents of any associated capital or start-up costs.
- Enter recurring annual dollar amount of cost for all respondents associated with operating or maintaining systems or purchasing services.
- Enter total (14.a. + 14.b.) annual reporting and recordkeeping cost burden.
- Enter any cost burden currently approved by OMB for this collection of information. Enter zero (0) if this is the first submission after October 1, 1995.
- Enter the difference by subtracting line d from line c. Record a negative number (d larger than c) within parenthesis.
- Explain the difference. The difference in line e must be accounted for in lines f.1. and f.2.
  - "Program change" is the result of deliberate Federal government action. All new collections and any subsequent revisions or changes resulting in cost changes are recorded as program changes.

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f.2. "Adjustment" is a change that is not the result of a deliberate Federal government action. Changes resulting from new estimations or actions not controllable by the Federal government are recorded as adjustments.

#### 15. Purpose of information collection

Mark all categories that apply, denoting the primary purpose with a "P" and all others that apply with "X."

a. Mark "Application for benefits" when the purpose is to participate in, receive, or qualify for a grant, financial assistance, etc., from a Federal agency or program.

b. Mark "Program evaluation" when the purpose is a formal assessment, through objective measures and systematic analysis, of the manner and extent to which Federal programs achieve their objectives or produce other significant effects.

c. Mark "General purpose statistics" when the data is collected chiefly for use by the public or for general government use without primary reference to the policy or program operations of the agency collecting the data.

d. Mark "Audit" when the purpose is to verify the accuracy of accounts and records.

e. Mark "Program planning or management" when the purpose relates to progress reporting, financial reporting and grants management, procurement and quality control, or other administrative information that does not fit into any other category.

f. Mark "Research" when the purpose is to further the course of research, rather than for a specific program purpose.

g. Mark "Regulatory or compliance" when the purpose is to measure compliance with laws or regulations.

#### 16. Frequency of recordkeeping or reporting

Check "Recordkeeping" if the collection of information explicitly includes a recordkeeping requirement.

Check "Third party disclosure" if a collection of information includes third-party disclosure requirements as defined by 1320.3(c).

Check "Reporting" for information collections that involve reporting and check the frequency of reporting that is requested or required of a respondent. If the reporting is on "an event" basis, check "On occasion."

#### 17. Statistical methods

Check "Yes" if the information collection uses statistical methods such as sampling or imputation. Generally, check "No" for applications and audits (unless a random auditing scheme is used). Check "Yes" for statistical collections, most research collections, and program evaluations using scientific methods. For other types of data collection, the use of sampling, imputation, or other statistical estimation techniques should dictate the response for this item. Ensure that supporting documentation is provided in accordance with Section B of the Supporting Statement.

#### 18. Agency contact

Provide the name and telephone number of the agency person best able to answer questions regarding the content of this submission.

#### 19. Certification for Paperwork Reduction Act Submissions

The Senior Official or designee signing this statement certifies that the collection of information encompassed by the request complies with 5 CFR 1320.9. Provisions of this certification that the agency cannot comply with should be identified here and fully explained in item 18 of the attached Supporting Statement. NOTE: The Office that "develops" and "uses" the information to be collected is the office that "conducts or sponsors" the collection of information. (See 5 CFR 1320.3(d)).

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## Certification Requirement for Paperwork Reduction Act Submissions

5 CFR 1320.9 reads "As part of the agency submission to OMB of a proposed collection of information, the agency (through the head of the agency, the Senior Official, or their designee) shall certify (and provide a record supporting such certification) that the proposed collection of information--

"(a) is necessary for the proper performance of the functions of the agency, including that the information to be collected will have practical utility;

"(b) is not unnecessarily duplicative of information otherwise reasonably accessible to the agency;

"(c) reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency, including with respect to small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. § 601(6)), the use of such techniques as:

"(1) establishing differing compliance or reporting requirements or timetables that take into account the resources available to those who are to respond;

"(2) the clarification, consolidation, or simplification of compliance and reporting requirements; or collections of information, or any part thereof;

"(3) an exemption from coverage of the collection of information, or any part thereof;

"(d) is written using plain, coherent, and unambiguous terminology and is understandable to those who are to respond;

"(e) is to be implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond;

"(f) indicates for each recordkeeping requirement the length of time persons are required to maintain the records specified;

"(g) informs potential respondents of the information called for under §1320.8(b)(3); [see below]

"(h) has been developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected, including the processing of the information in a manner which shall enhance, where appropriate, the utility of the information to agencies and the public;

"(i) uses effective and efficient statistical survey methodology appropriate to the purpose for which the information is to be collected; and

"(j) to the maximum extent practicable, uses appropriate information technology to reduce burden and improve data quality, agency efficiency and responsiveness to the public."

NOTE: 5 CFR 1320.8(b)(3) requires that each collection of information:

"(3) informs and provides reasonable notice to the potential persons to whom the collection of information is addressed of:

"(i) the reasons the information is planned to be and/or has been collected;

"(ii) the way such information is planned to be and/or has been used to further the proper performance of the functions of the agency;

"(iii) an estimate, to the extent practicable, of the average burden of the collection (together with a request that the public direct to the agency any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden);

"(iv) whether responses to the collection of information are voluntary, require to obtain or retain a benefit (citing authority) or mandatory (citing authority);

"(v) the nature and extent of confidentiality to be provided, if any (citing authority); and

"(vi) the fact that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number."

# Supporting Statement for Paperwork Reduction Act Submissions

## General Instructions

A Supporting Statement, including the text of the notice to the public required by 5 CFR 1320.5(a)(i)(iv) and its actual or estimated date of publication in the Federal Register, must accompany each request for approval of a collection of information. The Supporting Statement must be prepared in the format described below, and must contain the information specified in Section A below. If an item is not applicable, provide a brief explanation. When Item 17 of the OMB Form 83-I is checked "Yes", Section B of the Supporting Statement must be completed. OMB reserves the right to require the submission of additional information with respect to any request for approval.

## Specific Instructions

### A. Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.
2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.
3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.
4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.
5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.
6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.
7. Explain any special circumstances that would cause an information collection to be conducted in a manner:
  - \* requiring respondents to report information to the agency more often than quarterly;
  - \* requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;
  - \* requiring respondents to submit more than an original and two copies of any document;

- \* requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;
- \* in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;
- \* requiring the use of a statistical data classification that has not been reviewed and approved by OMB;
- \* that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or
- \* requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years - even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

9. Explain any decision to provide any payment or gift to respondents, other than reenumeration of contractors or grantees.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information

is requested, and any steps to be taken to obtain their consent.

12. Provide estimates of the hour burden of the collection of information. The statement should:
  - \* Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.
  - \* If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.

\* Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 13.

13. Provide an estimate for the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).

\* The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.

\* If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collections services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use

009450

existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.

\* Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

14. Provide estimates of annualized costs to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.

#### **B. Collections of Information Employing Statistical Methods**

The agency should be prepared to justify its decision not to use statistical methods in any case where such methods might reduce burden or improve accuracy of results. When Item 17 on the Form OMB 83-I is checked, "Yes," the following documentation should be included in the Supporting Statement to the extent that it applies to the methods proposed:

1. Describe (including a numerical estimate) the potential respondent universe and any sampling or other respondent selection methods to be used. Data on the number of entities (e.g., establishments, State and local government units, households, or persons) in the universe covered by the collection and in the corresponding sample are to be provided in tabular form for the universe as a whole and for each of the strata in the proposed sample. Indicate expected response rates for the collection as a whole. If the collection had been conducted previously, include the actual response rate achieved during the last collection.

2. Describe the procedures for the collection of information including:

- \* Statistical methodology for stratification and sample selection,
- \* Estimation procedure,
- \* Degree of accuracy needed for the purpose described in the justification,
- \* Unusual problems requiring specialized sampling procedures, and
- \* Any use of periodic (less frequent than annual) data collection cycles to reduce burden.

3. Describe methods to maximize response rates and to deal with issues of non-response. The accuracy and reliability of information collected must be shown to be adequate for intended uses. For collections based on sampling, a special justification must be provided for any collection that will not yield "reliable" data that can be generalized to the universe studied.

4. Describe any tests of procedures or methods to be undertaken. Testing is encouraged as an effective means of refining collections of information to minimize burden and improve utility. Tests must be approved if they call for answers to identical questions from 10 or more respondents. A proposed test or set of test may be submitted for approval separately or in combination with the main collection of information.

5. Provide the name and telephone number of individuals consulted on statistical aspects of the design and the name of the agency unit, contractor(s), grantee(s), or other person(s) who will actually collect and/or analyze the information for the agency.

009451

Laiza N. Otero/EAC/GOV  
10/17/2006 11:23 AM

To kmd@q2dataresearch.com@GSAEXTERNAL  
cc  
bcc  
Subject Re: omb submission 

Hello,



Sample for Burden.doc



Sample ROCIS Emergency ICR highlights.pdf

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)  
Fax (202) 566-3128

009452

## Sample

### 12. Annual Reporting Burden:

- a. Number of Respondents 8,397
- b. Number of Responses per Respondent 1
- c. Total Annual Responses 8,397
- d. Hours per Response 2
- e. Total Annual Reporting Burden 16,794
- f. Total Public Cost \$ 1,091,610

The projected hours per response for this collection of information were derived by dividing the process into three actions:

- Learning about the law and the form: 15 minutes
- Completion of the form: 20 minutes
- Assembling and filing the form: 85 minutes
- Total Hours 120 minutes (2 hours)

For the first two actions, tests were used to determine completion times. Persons who were not conversant with immigration processes were used to determine the average completion time. The third action of the form, assembling and filing the form, was broken down into subtasks. For example, an application for a reentry permit or refugee travel document is mailed directly to the USCIS Nebraska Service Center. Meanwhile, an application for advance parole is filed at the local USCIS office if the applicant is in the United States. If, however, the applicant seeking advance parole is outside the United States, he or she would mail the form to USCIS Headquarters in Washington, DC. Consequently, the time necessary to actually file the form can vary widely, depending on the circumstances of the applicant.

### **Annual Reporting Burden**

**The annual reporting burden is 16,794.** This figure was derived by multiplying the number of respondents (8,397) x frequency of response (1) x (2) hours per response. This estimation is based on prior USCIS experience with the program.

### **Public Cost**

**The estimated annual public cost is \$ 1,091,610.** This estimate is based on the number of respondents 8,397 x (2) hours per response x \$10 (average hourly rate) plus the number of respondents (8,397 x fee charge of \$190).

- 13. There are no capital or start-up costs associated with this information collection. Any cost burdens to respondents as a result of this information collection are identified in Item 14.
- 14. There is a \$190 fee charge associated with the collection of this information.

14. Annualized Cost Analysis:



- a. Printing Cost \$ 5,290
- b. Collection and Processing Cost \$ 918,380
- c. Total Cost to Program \$ 923,670
- d. Fee Charge \$ 923,670
- e. Total Cost to Government \$ 0

**Government Cost**

The estimated cost of the program to the Government is calculated by using the estimated number of respondents (8,397) multiplied (x) by the suggested \$110 fee charge (which includes the suggested average hourly rate for clerical, officer, and managerial time with benefits, plus a percent for the estimated overhead cost for printing, stocking, distributing and processing of this form).

• Save ICR successfully.

### Edit ICR

Agency: 3265 EAC

OMB Control Number:

Agency ICR Tracking Number:

ICR Reference Number:  
200610-3265-002

Previous ICR Reference Number:

Title:

U.S. Election Assistance Commission's Survey of Uniformed and Overseas Citizen Absentee Vote

Type of Information Collection (check one):

New collection (Request for a new OMB Control Number)

Type of Review Requested (check one):

Emergency

Request Approval Date:

10/26/2006

Emergency Justification:

Provide justification for Emergency Approval

Requested Expiration Date (check one):

Six months from approval date

Does this ICR contain surveys, censuses, or employ statistical methods?  Yes  No

(Attach Part B of Supporting Statement)

Does the Supporting Statement serve as a Joint ICR and Privacy Impact Assessment per OMB Memorandum 03-22, Section II.D.?  Yes  No

Agency Contact: Otero, Laiza

Add New Contact

Abstract (4000 characters maximum):

Section 245 of the Help America Vote Act (HAVA) requires the United States Election Assistance Commission (EAC) to conduct a study of issues and challenges, specifically including the potential for election fraud, that are presented by the incorporations of communications and internet technologies in the Federal, State, and local electoral process

009455

**Authorizing Statute(s):**

USC Pub.L.  -  Sec

Stat

Name of Statute:

EO  Name/ Subject of EO:

Name of Law:

**Associated Rulemaking Information**

RIN:

Stage of Rulemaking (check one):

- Proposed Rule
- Interim Final or Final Rule
- Not associated with rulemaking

Federal Register Citation:  FR

Citation Date:

*For a Proposed Rule, OMB will not consider an ICR complete until the Notice of Proposed Rulemaking has been published.*

*For a Final Rule, please put the ICR reference number for the ICR reviewed at the proposed rule stage.*

*For ICRs associated with Interim Final rules that are not significant under EO, please upload a draft of the Federal Register notice as a Supplementary Document in Manage ICR Documents.*

**Federal Register Notices & Comments**

60-day Notice: Federal Register Citation:  FR

Citation Date:

Did the Agency receive public comments on this ICR?  
 Yes  No

30-day Notice: Federal Register Citation:  FR

Citation Date:

*Unless submitted as an Emergency or Associated with Rulemaking, OMB will not consider an ICR complete until the 30-day notice has been published.*

Annual Cost to Federal Government: \$

**Add/Edit Information Collections**

**ICR Summary of Burden:**

	Requested	Program Change Due to New Statute	Program Change Due to Agency Discretion	Change Due to Adjustment in Agency Estimate	Change Due to Potential Violation of the PRA	Previously Approved
Annual Number of Responses	0	0	0	0	0	0
Annual Time Burden (Hr)	0	0	0	0	0	0
Annual Cost Burden (\$)	0	0	0	0	0	0

Citations for New Statutory Requirements: (Required if any change in burden is a Program Change Due to New Statute.)

USC Pub.L.  -  Sec   Stat  Name of Law:  Name of Statute: EO  Name/ Subject of EO:

009456

Burden increases because of Program Change due to Agency Discretion

Burden decreases because of Program Change due to Agency Discretion

Add/Edit Supporting Statement and Other Documents

Check Spelling	IC List	Agency Review	Save	Check For Completeness	Submit	Delete	Cancel
----------------	---------	---------------	------	------------------------	--------	--------	--------

Login: lotero

009457

Inbox > Request > ICR Package > History > Search > Report

ICR Package->Current ICR Package->IC List

OMB Control No.: IGR Ref No.: 200610-3265-002 IGR Expiration Date: IGR Status:

Agency/Sub-Agency: Agency Tracking No.: Title: U.S. Election Assistance Commission's  
EAC Survey of Uniformed and Overseas Citizen  
Absentee Voters

Request Status: Created Last Event: Created Last Event User: Otero, Last Event Date:  
Laiza 10/17/2006

● You have saved the IC.

### Add New IC

IC Title:

Survey of UOCAVA Voters

Agency IC Tracking Number:

IC Status: New

Is this a Common Form? Yes :  No :

Obligation to Respond: Voluntary

CFR Citation:

Title	Part	Operation
<input type="checkbox"/> CFR		Remove
<input type="checkbox"/> CFR		Remove
<input type="checkbox"/> CFR		Remove
<input type="checkbox"/> CFR		Remove
<input type="checkbox"/> CFR		Remove
<input type="checkbox"/> CFR		Remove
<input type="checkbox"/> CFR		Remove
<input type="checkbox"/> CFR		Remove
<input type="checkbox"/> CFR		Remove
<input type="checkbox"/> CFR		Remove

Add Another CFR Citation

**Information Collection Instruments:**

Remove	Instrument File	Form No.	Form Name	Document Type	URL	Available Electronically?	Can Be Submitted Electronically?	Electronic Capability
--------	-----------------	----------	-----------	---------------	-----	---------------------------	----------------------------------	-----------------------

Remove

Add Instrument

**Federal Enterprise Architecture Business Reference Module**

Line of Business:

General Government

Subfunction:

Executive Functions

Privacy Act System of Records

Title:

FR Citation:

FR

Number of Respondents:

10000

Number of Respondents for Small Entity:

0

Affected Public:

Individuals or Households

Percentage of Respondents Reporting Electronically: (%)

90

Annual IC Burden: (Select appropriate IC Burden Worksheet)

This ICR Requests Change in Net Burden

	Requested	Program Change Due to New Statute	Program Change Due to Agency Discretion	Change Due to Adjustment in Agency Estimate	Change Due to Potential Violation of the PRA	Previously Approved
Annual Number of Responses for this IC	0	0	0	0	0	0
Annual IC Time Burden (Hours)	0	0	0	0	0	0
Annual IC Cost Burden (Dollars)	0	0	0	0	0	0

**Documents for IC**

Remove	Title	Document	Date Uploaded	Uploaded By
--------	-------	----------	---------------	-------------

009459

Add New IC

Remove	Upload Supplementary	Add Non-Electronic		
ICR Data	Save	Check IC Completeness	Delete	Cancel

Login: lotero

009460

## Add/Edit IC Instrument

Instrument Filename: Supporting Documentation for OMB.doc

Document Type:

Form Number:

Form Name:

Form File Size: 49664 bytes

Is this collection available electronically?  Yes  No

If yes, can this collection be submitted electronically?  Yes  No

Electronic Capability:

URL:

009461



# IC Burden Worksheet

Number of Respondents: 10000

Number of Responses per Respondent:

per Time Period:

Annual Frequency: 1

Annual Number of Responses: 10000

## Type of Collection and Burden

Burden per Response:

	Time Per Response	Hours	Cost Per Response
Reporting	<input type="text" value="1.25"/> Hours	1.25	<input type="text" value="0.00000000"/>
Record Keeping	<input type="text" value="0"/>	0	<input type="text" value="0.00000000"/>
Third Party Disclosure	<input type="text" value="0"/>	0	<input type="text" value="0.00000000"/>
Total		1.25	0.0000000000

Frequency of Reporting:

- Biennially
- Decade
- Monthly
- Once
- Semi-annually
- Annually
- Daily
- Hourly
- On occasion
- Quarterly
- Weekly

Annual Burden:

	Annual Time Burden (Hours)	Annual Cost Burden (Dollars)
Reporting	<input type="text" value="12500.00"/>	0
Record Keeping	<input type="text" value="0.00"/>	0
Third Party Disclosure	<input type="text" value="0.00"/>	0
Total	12500	0

**Annual Responses and Burden with Changes:**

	Requested	Program Change Due to New Statute	Program Change Due to Agency Discretion	Change Due to Adjustment in Agency Estimate	Change Due to Potential Violation of the PRA	Previously Approved
Annual Number of Responses for this IC	10000	0	10000	0	0	0
Annual IC Time Burden (Hour)	12500	0	12500	0	0	0
Annual IC Cost Burden (Dollars)	0	0	0	0	0	0

Save Close Window

009463

OMB Control No.:	ICR Ref No.: 200610-3265-002	ICR Expiration Date:	ICR Status:
Agency/Sub-Agency: EAC	Agency Tracking No.:	Title: U.S. Election Assistance Commission's Survey of Uniformed and Overseas Citizen Absentee Voters	
Request Status: Created	Last Event: Created	Last Event User: Otero, Laiza	Last Event Date: 10/17/2006

### Manage ICR Documents

#### Supporting Statement A

Remove	Document	Date Uploaded	Uploaded By
	<input type="text" value=""/> 		
	<input type="button" value="Remove"/>	<input type="button" value="Upload Document"/>	

#### Supporting Statement B

Remove	Document	Date Uploaded	Uploaded By
	<input type="text" value=""/> 		
	<input type="button" value="Remove"/>	<input type="button" value="Upload Document"/>	

#### Supplementary Documents


Remove	Title	Document	Document Type	Date Uploaded	Uploaded By
		<input type="button" value="Remove"/>	<input type="button" value="Upload Supplementary"/>	<input type="button" value="Add Non-Electronic"/>	

#### Public Comments

Remove	Author Name	Comment Document	Author Affiliation	Sponsoring Org.	Type	Category	Date of Comment	Date Comment Received
		<input type="button" value="Remove"/>	<input type="button" value="Upload Public Comment"/>					

Login: lotero

009464

 Laiza N. Otero/EAC/GOV  
10/17/2006 11:30 AM

To kmd@q2dataresearch.com@GSAEXTERNAL  
cc  
bcc  
Subject Re: omb submission 



Sample Notice Cert Program Emergency.doc

We just did this one for our testing and certification program.

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)  
Fax (202) 566-3128

009465

## U.S. ELECTION ASSISTANCE COMMISSION

### **Request For Substantive Comments on Procedural Manual For The Election Assistance Commission's Voting System Testing and Certification Program; Proposed Information Collection: Request for Comments on Information Collection Burden; U.S. EAC Voting System Testing and Certification Program.**

**AGENCY:** United States Election Assistance Commission (EAC).

**ACTION:** NOTICE.

---

**SUMMARY:** The EAC has drafted a procedural manual for its Voting System Testing and Certification Program. This program sets administrative procedures for obtaining an EAC Certification for voting systems. Participation in the program is strictly voluntary. The program is mandated by 42 U.S.C. §15371. The purpose of this notice is twofold: (1) to request public comment on the substantive aspects of the program and (2) to request public comment on the proposed collection of information pursuant to the emergency processing provisions of the Paperwork Reduction Act as submitted to the Office of Management and Budget (OMB).

**(1) SUBSTANTIVE COMMENTS:** The EAC seeks substantive comments from the public on its proposed procedural manual. Please submit comments consistent with the information below. Comments should identify and cite the section of the manual at issue. Where a substantive issue is raised, please propose a recommended change or alternative policy. This publication and request for comment is not required under the rulemaking, adjudicative or licensing provisions of the Administrative Procedures Act (APA). It is a voluntary effort by the EAC to gather input from the public on the EAC's administrative procedures for certifying or decertifying voting systems. Furthermore, this request by the

009466

EAC for public comment is not intended to make any of the APA's rulemaking provisions applicable to development of this or future EAC procedural programs.

DATES (Comments): Submit written or electronic comments on this draft procedural manual on or before 5:00 p.m. EDT on October 31, 2006.

ADDRESSES: Submit comments on-line on EAC's website: <http://www.eac.gov>; via mail to Brian Hancock, Director of Voting System Certification, U.S. Election Assistance Commission, 1225 New York Avenue, Suite 1100, Washington, D.C. 20005; or via fax to 202-566-1392. An electronic copy of the proposed guidance may be found on the EAC's web cite <http://www.eac.gov>.

FOR FURTHER INFORMATION CONTACT: Brian Hancock, Director of Voting System Certification, 1225 New York Avenue, Suite 1100, Washington, D.C., (202)566-3100, Fax: (202)566-1392.

**(2) COMMENTS ON THE PROPOSED COLLECTION OF INFORMATION:** In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the EAC is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be

collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

The EAC is requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. The EAC is requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR Part 1320(a)(2)(ii). The information collection at issue is necessary in order to provide for the certification of voting systems as mandated by the Help America Vote Act of 2002 (42 U.S.C. §15371). The EAC cannot reasonably comply with the normal clearance procedures because failure to implement this program in an expedited fashion is reasonably likely to result in a public harm, as stated in 5 CFR 1320.13(a)(2)(i).

Approval of this emergency collection is essential in order to comply with Help America Vote Act of 2002 (42 U.S.C. §15371). HAVA requires that the EAC certify and decertify voting systems. Section 231(a)(1) of HAVA specifically requires the EAC to "... provide for the certification, de-certification and re-certification of voting system hardware and software...." This mandate represents the first time the Federal government will provide for the voluntary testing and certification of voting systems, nationwide. In response to this HAVA requirement, the EAC is developing the Voting System Testing and Certification Program. This program requires the submission and retention of information related to voting systems and voting system manufacturers.

009468

Until recently, national voting system certification was conducted by a private membership organization, the National Association of State Election Directors (NASED). NASED certified voting systems for over a decade, using standards issued by the Federal government. The organization terminated its certification efforts on July 10, 2006. While the EAC and NASED have worked together to provide for the certification of emergency modifications necessary to properly field voting systems for the 2006 General Election, there is presently no mechanism in place to test and certify new systems or to process modifications for the 2008 Federal elections. Given the fact that (1) it can take years to develop, test, certify, sell and field a new or modified voting system, and (2) a large volume of voting systems (new, existing and modified) are expected to be submitted to the EAC upon initiation of the new Certification Program, it is imperative that the EAC's Voting System Testing and Certification Program begin on the earliest possible date. The 2008 Federal elections are less than 2 years away. Ensuring that certified voting systems are available for the 2008 Election Cycle is essential to the public welfare.

1. Type of Information Collection Request: New collection;
2. Title of Information Collection: EAC Voting System Testing and Certification Program Manual;
3. Use: HAVA requires that the EAC certify and decertify voting systems (42 U.S.C. §15371). Section 231(a)(1) of HAVA specifically requires the EAC to "... provide for the certification, de-certification and re-certification of voting system hardware and software by accredited laboratories." The EAC will perform this mandated function through the use of its Voting System Testing



and Certification Program. Voting systems certified by the EAC will be used by citizens to cast votes in Federal Elections. Therefore, it is paramount that the program operates in a reliable and effective manner. In order to certify a voting system, it is necessary for the EAC to (1) require voting system manufacturers to submit information about their organization and the voting systems they submit for testing and certification; (2) require voting system manufacturers to retain voting system technical and test records; and (3) to provide a mechanism for election officials to report events which may effect a voting system's certification.

4. Form Numbers: EAC-001C, 002C and 003C.
5. Frequency: Voluntary Reporting – (1) *Manufacturer Registration Form*: one time when a manufacturer registers for the program, (2) *Voting System Certification Application Form*: as needed, when a manufacturer submits a voting system for testing and certification, and (3) *Field Anomaly Reporting Form*: as needed, when an election official voluntarily notifies the EAC of a witnessed voting system anomaly.
6. Affected Public: Business or other for-profit institutions and state and local election officials;
7. Number of Respondents: 94 annually;
8. Total Annual Responses: 99 annually;
9. Total Annual Hours: 119 hours, annually.

EAC is requesting OMB review and approval of this collection by

009470

November 30, 2006, with a 180-day approval period. Written comments and recommendations will be considered from the public if received by the individuals designated below by October 31, 2006.

To obtain copies of the supporting statement, the Voting System Testing and Certification Program Manual or EAC forms referenced above, access the EAC Web Site at [www.eac.gov](http://www.eac.gov) or mail your request, including your address, phone number, to Director of Voting System Certification, U.S. Election Assistance Commission, 1225 New York Avenue, Suite 1100, Washington, D.C. 20005; or fax the EAC Director of Voting System Certification at 202-566-1392.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below by October 31, 2006:

*OMB Reviewer: Alexander T. Hunt*

Office of Management and Budget, Room 10235

New Executive Office Building

Washington, DC 20503, (202) 395-7316.

009471



[Redacted]

10/17/2006 12:19 PM

To lotero@eac.gov

cc

bcc

Subject cost document attached

hi laiza  
survey cost burden document attached. hope it makes sense. let me know  
if you want me to make changes.

karin



survey Burden.doc

009472

## USEAC Survey of UOCAVA voters, Burden and Cost estimate

### **12. Annual Reporting Burden:**

- a. Number of Respondents: approximately 10,000
- b. Number of Responses per Respondent: 1
- c. Total Annual Responses: 10,000
- d. Hours per Response: 0.25
- e. Total Annual Reporting Burden: 2,500
- f. Total Public Cost: 0

The projected hours per response for this collection of information were derived by dividing the process into two actions:

- Reading the introduction: 2 minutes
- Completion of the survey: 13 minutes
- Total hours: 15 minutes

For both actions, tests were used to determine completion times. UOCAVA voters were used to determine the average completion time. The time to actually complete the survey will vary somewhat, depending on the experiences and circumstances of the respondent.

### **Annual Reporting Burden**

**The annual reporting burden is 2,500.** This figure was derived by multiplying the approximate number of respondents (10,000) x frequency of response (1) x (0.25) hours per response. This estimation is based on the tests that were conducted with UOCAVA voters.

### **Public Cost**

**The estimated annual public cost is \$ 0.** This is a voluntary on-line survey and respondents will not be compensated for their time.

- 13. There are no capital or start-up costs associated with this information collection.
- 14. There are no fees or charges associated with this collection

14. Annualized Cost Analysis: 0

### **Government Cost**

There are no costs to the government.



kmd@q2dataresearch.com  
10/17/2006 03:36 PM

To lotero@eac.gov  
cc  
bcc

Subject justification attached

History:  This message has been replied to.

hello laiza  
i am attaching a document with the justification for emergency  
processing. i worked off the notice you sent (thank you SO MUCH!!! it  
made it so much easier!!!!!!)  
so i hope that this will double up for the section in the federal  
register as well. please take a look at it and use the sections you  
believe to be most appropriate. i assume that the first paragraph is  
more appropriate for the federal register than for omb review...  
please let me know what you need next. i will try to reach you by phone  
in a while to touch base!

thanks!

karin



reasons for emergency review.doc

009474

The EAC is requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. The EAC is requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR Part 1320(a)(2)(ii). The information collection at issue is necessary in order to conduct a study of issues and challenges, specifically including the potential for election fraud, that are presented by the incorporation of communications and internet technologies in the Federal, State, and local electoral process, as mandated by the Help America Vote Act of 2002 (42 U.S.C. §15371). The EAC cannot reasonably comply with the normal clearance procedures because failure to implement this study in an expedited fashion is reasonably likely to prevent or disrupt the collection; as stated in 5 CFR 1320.13(a)(2)(i).

Approval of this emergency collection is essential in order to comply with Help America Vote Act of 2002 (42 U.S.C. §15371). Section 245 of the Help America Vote Act (HAVA) requires the United States Election Assistance Commission (EAC) to conduct a study of issues and challenges, specifically including the potential for election fraud, that are presented by the incorporation of communications and internet technologies in the Federal, State, and local electoral process. In delineating nine possible research topics, Congress specifically identified the need for further research in determining the requirements for authorization, collection, storing, and processing electronically generated messages permitting eligible voters to apply for an absentee ballot.

In response to this HAVA requirement, the EAC is developing a Survey of voters that are protected by the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). UOCAVA voters are most likely to utilize communications and internet technologies in the Federal, State and local electoral process. The upcoming General Election of 2006 is the only Federal Election that will be conducted until 2008. This is the only election that will include Federal, State and local candidates and issues on one ballot until 2008, thus this election presents the only opportunity to collect the necessary data to comply with the HAVA requirement within the mandated time frame.

Statistical analyses on respondent behavior to voluntary surveys have shown that the interest level of potential respondents, and thus the response rate, drops dramatically as time passes after the event in question, which in this case, is the respondents' interaction and experience with the electoral system during the General Election of 2006. Furthermore, UOCAVA voters are a highly mobile group of voters. Their contact information will be gathered from local election officials, based on what the voter supplied as their contact preference for this election. As time passes from the date of the election, we will lose more potential respondents because we will not have current contact information. Members of the military, for example, are often reassigned on short notice and their contact information for election purposes will not have to be updated until the next election in 2008. Both reasons will dramatically disrupt, or in fact prevent, the collection of a sufficient number of responses to constitute a large enough sample to provide statistically significant data that are representative of the population being studied. The quality of the data collected from respondents will also suffer if the

collection is not undertaken close to election time. It is a well documented fact that respondents tend to forget or don't adequately recollect processes as time passes. The validity of the data will greatly suffer if the collection commences much after election day.

009476



kmd@q2dataresearch.com  
10/17/2006 07:18 PM

To klyndyson@eac.gov  
cc lotero@eac.gov  
bcc  
Subject draft survey attached

hello karen

attached, please find a draft of our survey in pdf format. when you open the document, you will find an introductory letter to voters, and below it instructions on how to navigate the paper version of the survey. those are for you and will not be included for voters. there is also a link to the online version of the survey.

please let us know if you have questions about the document. we look forward to your comments.

thank you.

regards,

karin mac donald

009477





kmd@q2dataresearch.com

10/17/2006 07:22 PM

To klyndyson@eac.gov

cc lotero@eac.gov

bcc

Subject sorry: now the survey really IS attached!



Draft 1.0 UOCAVA Voter Survey for EAC Review.pdf

009478

## Review Draft 1.0 2006 EAC – UOCAVA Voter Survey

Dear Voter,

Your local election official is collaborating with the United States Election Assistance Commission (USEAC) on this survey of overseas and uniformed services absentee (UOCAVA) voters. You are invited to participate in this voluntary survey, which will take an estimated maximum of 8 - 10 minutes to complete, and we greatly appreciate your response.

The objective of the survey is to better understand the usability aspects of Internet and electronic transmission methods for voting materials in use by election jurisdictions today. The responses will be summarized and result in a report and recommendations to Congress, election administrators, and the general public.

This survey is an opportunity to tell us about your voting experience in November 2006. Your participation is essential to help us to learn about the unique challenges that UOCAVA voters face in the electoral process, and to develop suggestions for improvement.

Your response is confidential and can not be attributed to you, and no data that can identify you as the respondent will be maintained. This survey project is funded by the USEAC, and administered by the Overseas Vote Foundation.

Thank you for taking the time to participate in this important research project!

Sincerely

(If you are not an overseas civilian or uniformed services voter, spouse or dependent, please excuse this message, as you have received this survey in error.)

---

Please note with the hard copy survey that the page changes are listed at the *end* of the pages - and they are not aligned with the pages of the paper document. Unfortunately, the online program is not well-designed for hardcopy or survey document extraction. It will be best to test the survey online.

To take the survey online, use this URL:

<http://www.zoomerang.com/survey.zgi?p=WEB225RPY7TAGA>

009479

The paper version of the survey can be studied more easily, and for that, the following explanations may be of assistance:

1. The survey has two primary lines with an extra page of questions for voters who used a form of ETS in their ballot transmission/s.
  - Main Line (with Extra Page: ETS voters)
  - Did Not Vote Line
2. All survey takers get the first question #1 and then the last 2 pages of questions.
3. The "Did Not Vote" line starts of Page 2 of the Survey and continues through to the end of Page 4, then jumps to Page 10 to the end.
4. The "Yes - I Voted" line is called the "Main Line", and it starts on Page 5 and continues through to the the end.
5. The Main Line bifurcates at one point where the ETS voters must go through a page of additional questions and then the re-unite with the Main Line of voters.

All sections are labeled where the **Survey Pages** change.

## Review Draft 2006 EAC UOCAVA Voter Survey

ALL SURVEY TAKERS ANSWER THIS QUESTION

"Yes" answers take the Main Line of questions

"No" answers take the Did Not Vote Line of questions

1

Did you vote as an overseas citizen or active-duty military absentee voter in 2006?

- Yes
- No
- I tried but was unable to complete the process

End of Survey Page 1

---

009481

## "Did Not Vote" line of questions

DID NOT VOTE LINE

2

Why didn't you vote? (check all that apply)

- My ballot did not arrive
- My ballot was late
- Forgot to send my ballot
- Registration/ballot request FPCA form was denied
- Missed the registration deadline
- Intended to vote but found out too late I wasn't registered
- My address changed
- Couldn't fulfill the notarization requirements
- Witness requirements unclear
- Didn't think my vote would matter
- The process was too complicated
- Had no candidate preference
- No interest
- Other, please specify

End of Survey Page 2

009482

**“Did Not Vote” line of questions, continued**

DID NOT VOTE LINE

3

In which state would you have voted?

4

On November 7th, in which country were you residing or serving?

5

What filing status did you use? (Please check the same status as you indicated on your voter registration/ballot request FPCA form)

- U.S. citizen residing outside the U.S. temporarily
- U.S. citizen resident outside the U.S. indefinitely
- Uniformed Services, spouse or dependent

6

What is your voting history?

- I would have been a first time voter this year
- Voted before as overseas civilian
- Voted before in the US
- Voted both in the US, and as an overseas civilian

009483

- Voted before as absentee military/spouse/dependent
- Voted in US, and as absentee military/spouse/dependent

7

Did you try to register/request an absentee ballot for November 2006?

- Yes, I tried to register/request my ballot
- No, I didn't even try
- No, I thought I was registered
- No, I had confirmed that I was registered

End of Survey Page 3

---

**“Did Not Vote” line of questions, continued**

DID NOT VOTE LINE

8

By what means did you REQUEST your FPCA form to register to vote and/or request an absentee ballot? [Note: this form is traditionally called an FPCA form] (check all that apply)

- Electronically/online from a website
- In person from my Voting Assistance Officer (VAO)
- In person from the Consulate/Embassy
- Contacted my local election office by email

009484

- Contacted my local election office by telephone
- Contacted my local election office by FAX
- In person from local election office
- Used IVAS service from DOD
- In person from political party representative
- In person at a voter registration event
- In person from my employer
- In person from a friend
- Other, please specify

\_\_\_\_\_

9

By which means were you PROVIDED a registration/ballot request FPCA form?

- Downloaded from a website
- Generated completed form through a website
- In the mail
- By FAX
- Via Email
- In person, I received a hardcopy paper form
- Accessed through automated IVAS system
- Other, please specify

\_\_\_\_\_

009485



10

When did you send in your registration/ballot request FPCA form?

- June 2006 or earlier
- July
- August
- First half of September
- Second half of September
- First half of October
- Second half of October
- November

11

What method did you use to SEND IN your registration/ballot request FPCA form?

- FAX
- FAX + original FPCA by mail
- Email
- Email + original FPCA by mail
- Used IVAS service for DOD
- Regular Mail
- Certified or Express Mail / Courier
- Military Postal Service (APO/FPO)
- Sent through Consulate/Embassy mail pouch
- In person visit to election office

009486

Other, please specify

\_\_\_\_\_

End of Survey Page 4

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### “Voted” Main Line of Questions

MAIN LINE OF QUESTIONS

12

How satisfied were you with the process of obtaining and casting a ballot in 2006?

Satisfied	Somewhat satisfied	Neutral	Somewhat dissatisfied	Dissatisfied
<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5

13

What filing status did you use? (Please check the same status as you indicated on your voter registration/ballot request FPCA form)

- U.S. citizen residing outside the U.S. temporarily
- U.S. citizen resident outside the U.S. indefinitely
- Uniformed Services, spouse or dependent

14

In which state did you vote by absentee ballot in 2006?

009487

15

On November 7th, in which country were you residing or serving?

16

What is your previous voting history?

- I would have been a first time voter this year
- Voted before as overseas civilian
- Voted before in the US
- Voted both in the US, and as an overseas civilian
- Voted before as absentee military/spouse/dependent
- Voted in US, and as absentee military/spouse/dependent.

17

Through which means/entity did you OBTAIN your voter registration/ballot request FPCA form? [Note: this form is traditionally called an FPCA form]

- My ballot arrived without filing a request
- Used online IVAS service from DOD
- Downloaded from a website
- Generated completed form through a website
- From my Voting Assistance Officer (VAO)
- From the Consulate/Embassy
- Election office sent it by email

009488

- Election office sent it by FAX
- Personally obtained it from local election office
- From political party representative
- At a voter registration event
- From my employer
- From a friend
- Other, please specify

End of Survey Page 5

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### **“Voted” Main Line of Questions continued**



MAIN LINE



18

When did you send in your registration/ballot request FPCA form?

- June 2006 or earlier
- July
- August
- First half of September
- Second half of September
- First half of October
- Second half of October

009489

November

19

What method did you use to SEND IN your registration/ballot request FPCA form?

- FAX
- FAX + original FPCA by mail
- Email
- Email + original FPCA by mail
- Used IVAS service for DOD
- Regular Mail
- Certified or Express Mail / Courier
- Military Postal Service (APO/FPO)
- Sent through Consulate/Embassy mail pouch
- In person visit to election office
- Other, please specify

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End of Survey Page 6

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**“Voted” Main Line of Questions, continued**

009490

20

When did you receive/obtain your blank ballot?

- Early to mid September
- Mid to end of September
- Early to mid October
- One to two weeks before the election
- Less than a week before the election
- Election day
- After election day

21

Through what method was your blank ballot delivered?

- FAX
- Email
- Downloaded through DOD IVAS service
- Regular Mail
- Certified or Express Mail/courier
- Military Postal Service (APO/FPO)
- Other, please specify

---

22

How would you characterize the logistical aspects of this method of blank ballot delivery? (check all that apply)

**Main Line Questions for ETS Voters Only**

MAIN LINE ETS SPECIFIC QUESTIONS

28

Did you ever use this method of electronic transmission to send a voted ballot in a previous election?

YES  NO

29

Did you consider the method of electronic transmission you used to send your voted ballot to be any of the following: (check all that apply)

- Practical
- User-friendly
- Logical
- Well-defined
- Tedious
- Confusing
- Complex
- Incomprehensible
- Other, please specify

\_\_\_\_\_

30

How satisfied were you with the electronic transmission process you used to send your voted ballot?

_____	_____	_____	_____	_____
Satisfied	Somewhat satisfied	Neutral	Somewhat dissatisfied	Dissatisfied
<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5
_____				

009493



---

## Main Line of Questions for ETS and Non ETS Voters

### MAIN LINE - ETS AND NON ETS

37

If given a choice would you utilize the same system for ballot transmission again in the future?

YES  NO

38

How did you find out about the voting method you used? (check all that apply)

- Internet Search
- Received Email Notification
- Local Election Official
- Consulate/Embassy
- Voting Assistance Officer
- Federal Voter Assistance Program
- IVAS Website from DOD
- Newspaper
- Newsletter

State Election Office web site

Local Election Office web site

Can't remember

Other, please specify

\_\_\_\_\_

39

How would you characterize your feelings about the security of your actual VOTE?

Concerned	Somewhat concerned	Neutral	Somewhat unconcerned	Unconcerned	Don't know
<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5	<input type="checkbox"/> 6

40

What type of security concerns, if any, do you have in regards to your vote? (check all that apply)

Not sure my voted ballot actually arrived

Whether my voted ballot could go astray

Whether someone sees or discovers how I voted

Vote tampering / someone could change my vote

None, I am not concerned

Other, please specify

\_\_\_\_\_

41

Did you confirm, or try to confirm, that your ballot arrived?

009495

- Yes, checked through state or county online tracking tool
- Yes, contacted my election office
- No, I did not confirm my ballot arrival
- Other, please specify

42

What was the TOTAL cost to you to return your registration AND ballot materials? (in \$USD)

- None
- Under \$5
- \$ 5 - \$10
- \$10 - \$25
- \$25 - \$50
- \$50 - \$100+
- Other, please specify

End of Survey Page 9

---

**All Survey Takers through to end**

ALL SURVEY TAKERS RECEIVE THESE FINAL QUESTIONS

009496

43

Please indicate which FAX services you have access to: (check all that apply)

- FAX machine regularly available
- Pay-per-use FAX services available
- Internet FAX program
- No FAX services available
- Other, please specify

44

How often do you access the Internet?

- Daily
- 2-3 times a week
- Once a week
- Occasionally
- Almost Never
- Never

45

From what type of location do you access the Internet? (check all that apply)

- Home
- Work

Internet Cafe

Library

Other

46

Qualify the Internet access location that you use: (check all that apply)

Public

Private

Business

47

In the future, would you feel comfortable submitting a completed ballot by email or interactively voting over the Internet?

Yes

No

Not sure

Other, please specify

\_\_\_\_\_

48

Please define any concerns you might have in regards to submitting a completed ballot or voting interactively online? (check all that apply)

I do not have any concerns about online voting

009498

- Privacy concerns
- Security concerns
- I don't trust the Internet
- I don't plan on voting again
- Other, please specify

End of Survey Page 10

---

## All Survey Takers

### ALL SURVEY TAKERS

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49

When did you last live in the US?

- Less than 1 year ago
- 1 - 2 years ago
- 2 - 5 years ago
- 5 - 10 years ago
- More than 10 years ago
- Does not apply - I am active duty within the US

---

50

How old were you on November 7, 2006?

009499

- 18 to 24 years
- 25 to 34 years
- 35 to 44 years
- 45 to 54 years
- 55 years and older
- 65 to 74 years
- 75 years and older

---

51

What is the highest level of formal education you have completed?

- Less than high school graduate
- High school graduate or GED
- College or associate's degree
- Bachelor's degree
- Advanced degree
- Other, please specify

---

52

How long would it take to travel to the closest US Consulate/Embassy?

- Less than 1 hour
- 2-3 hours
- 4 or more hours

009500

53

Would a Consulate/Embassy visit require time off work?

YES  NO

54

Please indicate your gender:

Male

Female

55

Please provide other comments or suggestions that you may have here:

End of Survey Page 11

009501





kmd@q2dataresearch.com  
10/18/2006 02:46 AM

To lotero@eac.gov  
cc  
bcc

Subject draft federal register notice attached

History:

✉ This message has been replied to.

good morning, laiza

attached, please find my first attempt to write the federal register notice. please let me know what, if anything, i should change. i assume that you received the survey document that i emailed to you and karen this afternoon - let me know if you have any questions about it, or problems with the formatting etc.  
thank you again for all of your help!

regards,

karin



draftFRnotice.doc

009502

## U.S. ELECTION ASSISTANCE COMMISSION

### **Request For Substantive Comments on the Survey Instrument for Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) Voters.**

**AGENCY:** United States Election Assistance Commission (EAC).

**ACTION:** NOTICE.

---

**SUMMARY:** The EAC has drafted a survey to collect information from UOCAVA voters about their interaction and experiences with the electoral system, specifically about their use of information technology and the internet in the registration and balloting process. Participation in the survey is strictly voluntary. The project is mandated by 42 U.S.C. §15371. The purpose of this notice is twofold: (1) to request public comment on the substantive aspects of the survey instrument and (2) to request public comment on the proposed collection of information pursuant to the emergency processing provisions of the Paperwork Reduction Act as submitted to the Office of Management and Budget (OMB).

**(1) SUBSTANTIVE COMMENTS:** The EAC seeks substantive comments from the public on the UOCAVA survey instrument. Please submit comments consistent with the information below. Comments should identify and cite the question and location of the survey question at issue. Where a substantive issue is raised, please propose a recommended change or alternative wording. This publication and request for comment is a voluntary effort by the EAC to gather input from the public on this EAC survey instrument.

**DATES (Comments):** Submit written or electronic comments on this draft procedural manual on or before 5:00 p.m. EDT on October 31, 2006.

009503

ADDRESSES: Submit comments on-line on EAC's website: <http://www.eac.gov>; via mail to Karen Lynn-Dyson, Research Director, U.S. Election Assistance Commission, 1225 New York Avenue, Suite 1100, Washington, D.C. 20005; or via fax to 202-566-1392. An electronic copy of the survey may be found on the EAC's web cite <http://www.eac.gov>.

FOR FURTHER INFORMATION CONTACT: Karen Lynn-Dyson, Research Director, 1225 New York Avenue, Suite 1100, Washington, D.C., (202)566-3100, Fax: (202)566-1392.

**(2) COMMENTS ON THE PROPOSED COLLECTION OF INFORMATION**: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the EAC is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's requirement to conduct this study; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

The EAC is requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. The EAC is requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR Part 1320(a)(2)(ii). The information collection at issue is necessary in order to conduct a study of issues and challenges, specifically including the potential for election fraud, that are presented by the incorporation of communications and internet technologies in the

Federal, State, and local electoral process, as mandated by the Help America Vote Act of 2002 (42 U.S.C. §15371). The EAC cannot reasonably comply with the normal clearance procedures because failure to implement this study in an expedited fashion is reasonably likely to prevent or disrupt the collection; as stated in 5 CFR 1320.13(a)(2)(i).

Approval of this emergency collection is essential in order to comply with Help America Vote Act of 2002 (42 U.S.C. §15371). Section 245 of the Help America Vote Act (HAVA) requires the United States Election Assistance Commission (EAC) to conduct a study of issues and challenges, specifically including the potential for election fraud, that are presented by the incorporation of communications and internet technologies in the Federal, State, and local electoral process. In delineating nine possible research topics, Congress specifically identified the need for further research in determining the requirements for authorization, collection, storing, and processing electronically generated messages permitting eligible voters to apply for an absentee ballot.

In response to this HAVA requirement, the EAC is developing a Survey of voters that are protected by the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). UOCAVA voters are most likely to utilize communications and internet technologies in the Federal, State and local electoral process. The upcoming General Election of 2006 is the only Federal Election that will be conducted until 2008. This is the only election that will include Federal, State and local candidates and issues on one ballot until 2008, thus this election presents the only opportunity to collect the necessary data to comply with the HAVA requirement within the mandated time frame.

Statistical analyses on respondent behavior to voluntary surveys have shown that the interest level of potential respondents, and thus the response rate, drops dramatically as time passes after the event in question, which in this case, is the respondents' interaction and experience with the electoral system during the General Election of 2006. Furthermore, UOCAVA voters are a highly mobile group of voters. Their contact information will be gathered from local election officials, based on what the voter supplied as their contact preference for this election. As time passes from the date of the election, we will lose more potential respondents because we will not have current

009505

contact information. Members of the military, for example, are often reassigned on short notice and their contact information for election purposes will not have to be updated until the next election in 2008. Both reasons will dramatically disrupt, or in fact prevent, the collection of a sufficient number of responses to constitute a large enough sample to provide statistically significant data that are representative of the population being studied. The quality of the data collected from respondents will also suffer if the collection is not undertaken close to election time. It is a well documented fact that respondents tend to forget or don't adequately recollect processes as time passes. The validity of the data will greatly suffer if the collection commences much after election day.

1. Type of Information Collection Request: New collection;
2. Title of Information Collection: USEAC Survey of UOCAVA Voters
3. Use: The data will be collected, coded, summarized and analyzed by an EAC contractor. Summary data from the survey will be contextualized with qualitative data collected in case studies and presented in a report to the EAC. At the conclusion of the study, the EAC will transmit a report on the results of the study to Congress. The study, or subsections thereof, will also be publicly available upon release by the EAC.
4. Form Numbers: ?
5. Frequency: One-Time Voluntary Response
6. Affected Public: UOCAVA voters
7. Number of Respondents: 10,000;
8. Total Annual Responses: 10,000;
9. Total Annual Hours: 2,500 hours.

EAC is requesting OMB review and approval of this collection by

009506

October 31, 2006, with a 180-day approval period. Written comments and recommendations will be considered from the public if received by the individuals designated below by October 31, 2006.

To obtain copies of the supporting statement, access the EAC Web Site at [www.eac.gov](http://www.eac.gov) or mail your request, including your address, phone number, to Research Director, U.S. Election Assistance Commission, 1225 New York Avenue, Suite 1100, Washington, D.C. 20005; or fax the EAC Research Director at 202-566-1392.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below by October 31, 2006:

*OMB Reviewer: Alexander T. Hunt*

Office of Management and Budget, Room 10235

New Executive Office Building

Washington, DC 20503, (202) 395-7316.

009507



bg@q2dataresearch.com

11/06/2006 03:08 PM

To lotero@eac.gov, klynndyson@eac.gov

cc kmd@q2dataresearch.com, [REDACTED]

bcc

Subject

Dear Laiza and Karen:

Karin asked me to forward the pdf of the survey to you to include with the OMB application. It is attached here. Please let me know if you have any questions or need anything else.

Thanks,

Bonnie Glaser



Q2 Data & Research, LLC Review Draft 2006 EAC UOCAVA Voter Survey Nov6\_06.pdf

009508

## Review Draft 2006 EAC UOCAVA Voter Survey

Dear Voter,

We are conducting a survey of overseas and uniformed services absentee voters and are inviting you to tell us about your experiences with the election process. The United States Congress has asked for this study because of the reports that uniformed services and overseas voters often have problems when trying to vote. We are working with the United States Election Assistance Commission to make sure that your experiences and suggestions are being collected and forwarded to Congress.

Your responses are confidential so please take 8-10 minutes to fill out this survey, and tell us about your voting experience in November of 2006. This is a great opportunity to help improve the system and your participation matters: we can not do a good job without your help!

Thank you so much!

[Start Survey!](#)

## Review Draft 2006 EAC UOCAVA Voter Survey

ALL SURVEY TAKERS ANSWER THIS QUESTION  
"Yes" answers take the Main Line of questions  
"No" answers take the Did Not Vote Line of questions

1

Were you an overseas citizen or a member of the Uniformed Services, spouse or dependent on November 7, 2006?

- Overseas Citizen
- Uniformed Services member
- Spouse or dependent of Uniformed Services member

2

Did you vote on November 7, 2006?

009509



- Yes, I voted
- No, I did not try to vote
- No, I tried but was unable to complete the process

Survey Page 1

---

## Review Draft 2006 EAC UOCAVA Voter Survey

### DID NOT VOTE LINE

Please note: The Federal Post Card Application (FPCA) is the federal form for both voter registration and absentee ballot request for overseas citizens, active duty military within and outside of the U.S., and their spouses and dependents.

3

Why didn't you vote? (check all that apply)

- My ballot did not arrive
- My ballot was late
- Forgot to send my ballot
- Registration/ballot request FPCA form was denied
- Missed the registration deadline
- I thought I was registered, but wasn't

009510

- My address changed
- Could not meet my state's notarization requirements
- Could not meet my state's witness requirements
- I did not know what I needed to do to register and vote
- Didn't think my vote would matter
- The process was too complicated
- Lacked candidate information
- No interest
- Other, please specify

---

Survey Page 2

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### Review Draft 2006 EAC UOCAVA Voter Survey



DID NOT VOTE LINE



4

If you had been in the U.S. on November 7, 2006, Election Day,  
how likely is it that you would have voted?

Very likely	Somewhat likely	Neither likely or unlikely	Somewhat unlikely	Very unlikely
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>

009511

5

In which U.S. state or territory would you have voted had you been in the U.S.?

6

On November 7th, in which country were you living or serving?

7

What filing status did you use, or would you have used, on the registration/ballot request FPCA form?

- U.S. citizen living outside the U.S. temporarily
- U.S. citizen living outside the U.S. indefinitely
- Uniformed Services, spouse or dependent

8

Describe your voting history: (check all that apply)

- This would have been my first time voting in my life
- This would have been my first time voting as an overseas citizen
- This would have been my first time voting as an absentee military service member
- This would have been my first time voting as an absentee military spouse
- This would have been my first time voting as an absentee military dependent
- Voted before as an overseas citizen

009512

- Voted before as an absentee military services member
- Voted before as a military absentee spouse
- Voted before as a military absentee dependent
- Voted before locally in the US
- Voted before as a domestic absentee in the US

9

Did you try to register to vote and/or request an absentee ballot for the November 7, 2006 election?

- Yes, I tried to request my ballot with the FPCA form
- Yes, I used a state absentee ballot request form
- Yes, but I am not sure which form I used
- No, I didn't even try
- No, I thought I was registered
- No, I had confirmed that I was registered

Survey Page 3

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### **Review Draft 2006 EAC UOCAVA Voter Survey**

DID NOT VOTE LINE

009513

10

Who did you go to for your FPCA form to register to vote and/or request an absentee ballot? (check all that apply)

- Looked in the Internet
- Federal Voting Assistance Program
- Voting Assistance Officer (VAO)
- Consulate/Embassy
- Local election office
- IVAS service from DOD
- Political party
- Nonpartisan voter organization
- Voter registration event
- Employer
- Friend
- I did not request or look for an FPCA form
- Other, please specify \_\_\_\_\_

11

How did you get your registration/ballot request FPCA form?

- Downloaded the blank FPCA form from a website
- Filled-out the FPCA form online and printed it
- Used the online IVAS system

009514

- In person, I received a hardcopy paper form
- Received it in the mail
- It was FAXed to me
- Received it as an email attachment
- I did not receive the form
- Other, please specify

---

12

When, in 2006, did you send in your registration/ballot request FPCA form?

- From January through June 2006
- July
- August
- First half of September
- Second half of September
- First half of October
- Second half of October
- November
- I was already registered from a previous year
- I never sent it in

13

009515

How did you SEND IN your registration/ballot request FPCA form?

- FAX
- FAX + original FPCA by mail
- Email
- Email + original FPCA by mail
- Used IVAS service for DOD
- Regular Mail
- Certified or Express Mail / Courier
- Military Postal Service (APO/FPO)
- Sent through Consulate/Embassy mail pouch
- In person visit to election office
- Other, please specify

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Survey Page 4

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## Review Draft 2006 EAC UOCAVA Voter Survey

### MAIN LINE OF QUESTIONS

Please note: The Federal Post Card Application (FPCA) is the federal form for both voter registration and absentee ballot request for overseas citizens, active duty military within and outside of the U.S., and their spouses and

009516

dependents.

14

How satisfied were you with the process of obtaining and casting a ballot in 2006?

Satisfied	Somewhat satisfied	Neutral	Somewhat dissatisfied	Dissatisfied
<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5

15

What filing status did you use on the FPCA form? (Please check the same status as you indicated on your voter registration/ballot request FPCA form)

- U.S. citizen living outside the U.S. temporarily
- U.S. citizen living outside the U.S. indefinitely
- Uniformed Services, spouse or dependent

16

In which U.S. state or territory did you vote by absentee ballot on November 7, 2006?

17

In which country were you residing or serving on November 7, 2006?

009517



18

Describe your voting history: (check all that apply)

- This was my first time voting in my life
- This was my first time voting as an overseas citizen
- This was my first time voting as an absentee military service member
- This was my first time voting as an absentee military spouse
- This was my first time voting as an absentee military dependent
- Voted before as an overseas absentee citizen
- Voted before as an absentee military services member
- Voted before as a military absentee spouse
- Voted before as a military absentee dependent
- Voted before locally in the US
- Voted before as a domestic absentee in the US

19

Who did you go to for your FPCA form to register to vote and/or request an absentee ballot? (check all that apply)

- Looked in the Internet
- Federal Voting Assistance Program
- Voting Assistance Officer (VAO)
- Consulate/Embassy
- Local election office
- IVAS service from DOD

009518

- Political party
- Nonpartisan voter organization
- Voter registration event
- Employer
- Friend
- I did not request or look for an FPCA form
- Other, please specify

---

20

How did you get your registration/ballot request FPCA form?

- Downloaded the blank FPCA form from a website
- Filled-out the FPCA form online and printed it
- Used the online IVAS system
- In person, I received a hardcopy paper form
- Received it in the mail
- It was FAXed to me
- Received it as an email attachment
- I did not receive the form
- Other, please specify

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009519

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## Review Draft 2006 EAC UOCAVA Voter Survey

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MAIN LINE

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21

When, in 2006, did you send in your registration/ballot request FPCA form?

- From January through June 2006
  - July
  - August
  - First half of September
  - Second half of September
  - First half of October
  - Second half of October
  - November
  - I was already registered from a previous year
  - I never sent it in
- 

22

How did you send in your registration/ballot request FPCA form?

- FAX

009520

- FAX + original FPCA by mail
- Email
- Email + original FPCA by mail
- Used IVAS service for DOD
- Regular Mail
- Certified or Express Mail / Courier
- Military Postal Service (APO/FPO)
- Sent through Consulate/Embassy mail pouch
- In person visit to election office
- Other, please specify

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Survey Page 6

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### Review Draft 2006 EAC UOCAVA Voter Survey



MAIN LINE



23

When did you receive your blank ballot for the November 7, 2006 election?

- Early to mid September
- Mid to end of September

009521

- Early to mid October
- One to two weeks before the election
- Less than a week before the election
- Election Day
- After Election Day

24

How was your blank ballot delivered?

- FAX
- Email
- Downloaded through DOD IVAS service
- Regular Mail
- Certified or Express Mail/courier
- Military Postal Service (APO/FPO)
- Other, please specify

25

Had you ever received a blank ballot in this way before?

YES NO

26

009522

Please rate this method of receiving your blank ballot:

Easy	Somewhat easy	Neutral	Somewhat difficult	Difficult
<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5

27

How would you describe the way you received your blank ballot?  
(check all that apply)

- Practical
- Fast
- Easy
- Slow
- Difficult
- Other, please describe: \_\_\_\_\_

28

Did you feel it was a secure way to receive your blank ballot?

Very secure	Secure	Neutral	Insecure	Very insecure
<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5

29

Was the ballot easy to complete?

009523

Easy	Somewhat easy	Neither	Somewhat difficult	Difficult	Don't know
1	2	3	4	5	6

30

What method did you use to SEND IN your VOTED ballot?

- Email
- Email + original ballot in mail
- FAX machine
- FAX machine + original ballot in mail
- Internet FAX transmission
- Internet FAX transmission + original ballot in mail
- Regular Mail
- Certified or Express Mail/courier
- Military Postal Service (APO/FPO)
- Sent through Consulate/Embassy mail pouch
- Other, please specify

---

31

How would you rate the ease-of-use of this way of sending in your voted ballot?

Easy	Somewhat easy	Neutral	Somewhat difficult	Difficult
------	---------------	---------	--------------------	-----------

009524

1

2

3

4

5

32

When did you send in your voted ballot for the November 7, 2006 election?

- First half of September
- Second half of September
- First half of October
- Second half of October
- First week of November
- Election Day
- After Election Day
- I never sent it

Survey Page 7

## Review Draft 2006 EAC UOCAVA Voter Survey

### ETS USER SPECIFIC QUESTIONS

#### PLEASE NOTE:

The term "electronic transmission method" includes Email, FAX, Internet and online systems.

009525



**33**

How would you describe the electronic transmission method you used for returning your voted ballot? (check all that apply)

- Practical
- User-friendly
- Logical
- Well-defined
- Fast
- Easy
- Slow
- Difficult
- Hard to understand
- Other, please describe:  
\_\_\_\_\_

**34**

Did you ever use this electronic transmission method to send a voted ballot in any other election?

YES  NO

**35**

satisfied

dissatisfied

1     2     3     4     5

36

Please rate the ease-of-use of the electronic transmission method you used to send your voted ballot?

Easy    Somewhat Easy    Neutral    Somewhat difficult    Difficult

1     2     3     4     5

37

What made this electronic transmission method to return your voted ballot easy for you to use? (check all that apply)

- Clear instructions
- Easy to understand
- Fast
- Handy
- Good format - easy to see
- Low cost or no cost
- Could use it from my location
- No travel required
- Other, please specify \_\_\_\_\_

38

Did you have any problems with the electronic transmission method of sending your voted ballot? (check all that apply)

- Too many steps
- Didn't understand the instructions
- Wasn't sure if I needed a witness
- I didn't understand what to do
- No, I did not have any problems
- Other, please specify

---

39

Why did you decide to send your ballot in this way? (check all that apply)

- It was easy
- It saved me time
- I didn't need to travel
- I thought it was required
- It was offered
- To get my ballot back faster
- It was suggested that I use this method
- I received an email telling me about it
- I thought it was safer than regular mail
- My blank ballot arrived late

009528

Other, please specify  
\_\_\_\_\_

40

How would you describe your feelings about vote privacy?

Concerned	Somewhat concerned	Neutral	Somewhat unconcerned	Unconcerned	Don't know
1	2	3	4	5	6

41

Were you asked to waive (give up) the right to privacy of your vote?

YES  NO

Additional Comment

\_\_\_\_\_  
▲  
▼

42

How would you describe your feelings about waiving your right to a private vote?

Concerned	Somewhat concerned	Neutral	Somewhat unconcerned	Unconcerned	Don't know
1	2	3	4	5	6

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## Review Draft 2006 EAC UOCAVA Voter Survey

43

Would you send your voted ballot in the same way again in the future?

YES  NO

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MAIN LINE - ETS AND NON ETS

44

How did you find out about the voting method you used? (check all that apply)

- Internet Search
- Got an Email
- Local Election Official
- Consulate/Embassy
- Voting Assistance Officer
- Federal Voter Assistance Program
- IVAS Website from DOD
- Newspaper
- Newsletter
- State Election Office web site

009530

Local Election Office web site

Political party

Voter organization

Can't remember

Other, please specify

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**45**

How did you feel about the security of your actual VOTE?

Concerned      Somewhat concerned      Neutral      Somewhat unconcerned      Unconcerned      Don't know

1

2

3

4

5

6

---

**46**

What security concerns did you have in regards to your vote?  
(check all that apply)

Not sure my voted ballot actually arrived

Concerned that my voted ballot could get lost

Concerned that someone saw how I voted

Concerned someone could change my vote

None, no concerns

Other, please specify

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009531

47

Did you confirm that your ballot arrived?

- Yes, checked through state or county online tracking tool
- Yes, contacted my election office
- No, I did not confirm my ballot arrival
- Other, please specify

48

How much time would you estimate the entire process of voting took you from the time you started till the time you sent your voted ballot? Include registration/ballot request, paperwork processing, phone calls or visits to official offices, as applicable to you.

- Less than 2 weeks
- 2 - 4 weeks
- 5 - 6 weeks
- 7 - 8 weeks
- More than 8 weeks

49

What was the TOTAL cost to you to return your registration AND ballot materials? (in \$USD)

- None
- Under \$5

009532

- \$ 5 - \$10
- \$10 - \$25
- \$25 - \$50
- \$50 - \$100+
- Other, please specify

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### Review Draft 2006 EAC UOCAVA Voter Survey



ALL SURVEY TAKERS RECEIVE THESE FINAL QUESTIONS



50

Which FAX services do you use: (check all that apply)

- FAX machine always available
- Pay-per-use FAX services
- Internet FAX program
- No FAX services
- Other, please specify





51

How often do you access the Internet?

- Daily
- 2-3 times a week
- Once a week
- Sometimes
- Almost Never
- Never

52

Where do you access the Internet? (check all that apply)

- Home
  - Work
  - Internet Cafe
  - Library
  - Other, please specify
- 

53

What kind of Internet access location do you use: (check all that apply)

- Public
- Private

009534

Business

Other, please specify

\_\_\_\_\_

---

**54**

In a future election, would you be comfortable sending in a voted ballot electronically by email, FAX or voting online?

Yes

No

Not sure

Other, please specify

\_\_\_\_\_

---

**55**

What concerns would you have about sending in a voted ballot electronically by email, FAX or voting online? (check all that apply)

I do not have any concerns about voting online

I do not have any concerns about voting by FAX

I do not have any concerns about voting by email

Privacy concerns

Security concerns

I don't trust the Internet

I don't want to share personal information on the Internet

I'm concerned that my election official will see how I voted

009535

I'm afraid that people could see how I voted

Other, please specify

Survey Page 10

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## Review Draft 2006 EAC UOCAVA Voter Survey

ALL SURVEY TAKERS

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56

When did you last live in the US?

- Less than 1 year ago
- At least 1 year but less than 2 years ago
- At least 2 years but less than 5 years ago
- At least 5 year but less than 10 years ago
- 10 or more years ago
- Does not apply - I am active duty within the US

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57

How old were you on November 7, 2006?

- 18 to 24 years

009536

- 25 to 34 years
- 35 to 44 years
- 45 to 54 years
- 55 to 64 years
- 65 to 74 years
- 75 years and older

---

58

What is the highest level of formal education you have completed?

- Less than high school graduate
- High school graduate or GED
- Trade school
- College or associate's degree
- Bachelor's degree
- Advanced degree
- Other, please specify

\_\_\_\_\_

---

59

Did you need to go to the US Embassy or Consulate at any time in the voting process?

YES  NO

009537

60

How often do you go to the US Embassy or Consulate during an average election year?

- Never
- Once
- Twice
- Three times or more
- Other, please specify

\_\_\_\_\_

61

How long would it take to travel to the closest US Consulate/Embassy from where you live right now?

- Less than 1 hour
- 2-3 hours
- 4 or more hours

62

Would a Consulate/Embassy visit require time off work?

- Yes
- No
- Not applicable

009538

63

Please indicate your gender:

Male

Female

64

Please provide other comments or suggestions that you may have here:


**Juliet E. Hodgkins/EAC/GOV**

11/09/2006 10:08 AM

To Laiza N. Otero/EAC/GOV@EAC

cc

bcc

Subject Re: Survey of UOCAVA Voters 

Looks good to me.

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



**Laiza N. Otero/EAC/GOV**

11/09/2006 10:00 AM

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

cc

Subject Survey of UOCAVA Voters

Hello,

Could you look over and approve the following Supporting Statements for the Survey of UOCAVA Voters? I would like to submit them today since they will be an emergency review --- since it's emergency we do not need the FR Notices, nor does this one require the PIA - I have included the Justification Statement below (this will be copied and pasted in the required text box allotted for it in ROCIS). Alex was made aware of this possible submission a couple of weeks ago. Thank you!



Emergency Justification.doc



UOCAVA Supporting Statement A.doc



UOCAVA Supporting Statement B.doc

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)  
Fax (202) 566-3128

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## **Emergency Justification**

### **U.S. Election Assistance Commission**

The EAC is requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. The EAC is requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR Part 1320(a)(2)(ii). The information collection at issue is necessary in order to conduct a study of issues and challenges, specifically including the potential for election fraud, that are presented by the incorporation of communications and internet technologies in the Federal, State, and local electoral process, as mandated by the Help America Vote Act of 2002 (42 U.S.C. §15371). The EAC cannot reasonably comply with the normal clearance procedures because failure to implement this study in an expedited fashion is reasonably likely to prevent or disrupt the collection; as stated in 5 CFR 1320.13(a)(2)(i).

Approval of this emergency collection is essential in order to comply with Help America Vote Act of 2002 (42 U.S.C. §15371). Section 245 of the Help America Vote Act (HAVA) requires the United States Election Assistance Commission (EAC) to conduct a study of issues and challenges, specifically including the potential for election fraud, that are presented by the incorporation of communications and internet technologies in the Federal, State, and local electoral process. In delineating nine possible research topics, Congress specifically identified the need for further research in determining the requirements for authorization, collection, storing, and processing electronically generated messages permitting eligible voters to apply for an absentee ballot.

In response to this HAVA requirement, the EAC is developing a Survey of voters that are protected by the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). UOCAVA voters are most likely to utilize communications and internet technologies in the Federal, State and local electoral process. The upcoming General Election of 2006 is the only Federal Election that will be conducted until 2008. This is the only election that will include Federal, State and local candidates and issues on one ballot until 2008, thus this election presents the only opportunity to collect the necessary data to comply with the HAVA requirement within the mandated time frame.

Statistical analyses on respondent behavior to voluntary surveys have shown that the interest level of potential respondents, and thus the response rate, drops dramatically as time passes after the event in question, which in this case, is the respondents' interaction and experience with the electoral system during the General Election of 2006. Furthermore, UOCAVA voters are a highly mobile group of voters. Their contact information will be gathered from local election officials, based on what the voter supplied as their contact preference for this election. As time passes from the date of the election, we will lose more potential respondents because we will not have current



contact information. Members of the military, for example, are often reassigned on short notice and their contact information for election purposes will not have to be updated until the next election in 2008. Both reasons will dramatically disrupt, or in fact prevent, the collection of a sufficient number of responses to constitute a large enough sample to provide statistically significant data that are representative of the population being studied. The quality of the data collected from respondents will also suffer if the collection is not undertaken close to election time. It is a well documented fact that respondents tend to forget or don't adequately recollect processes as time passes. The validity of the data will greatly suffer if the collection commences much after Election Day.

## Supporting Statement A

OMB Control Number: xxxx-xxxx

U.S. Election Assistance Commission

Survey of UOCAVA Voters

### A. JUSTIFICATION

#### 1. Explain the circumstances that make the collection of information necessary.

In 2001, operating under the National Defense Authorization Act on behalf of the Secretary of Defense, the Director of the Federal Voting Assistance Program (FVAP) began work to fulfill a congressional directive to conduct an electronic voting demonstration for the 2002 general election. Building upon the technical foundation of the first national electronic voting pilot (the 2000 Voting Over the Internet project), FVAP designed the Secure Electronic Registration and Voting Experiment (SERVE). SERVE was designed to assess whether electronic voting technology could be used to improve the voting participation of uniformed services members and overseas citizens, whose rights are protected by the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA).

Section 245 of the Help America Vote Act (HAVA) of 2002 (42 U.S.C. 15301) requires the U.S. Election Assistance Commission (EAC) to conduct a study of issues and challenges, including the potential for election fraud, that are presented by the incorporation of communications and Internet technologies in the Federal, State, and local electoral process. In delineating nine possible research topics, Congress specifically identified the need for further research in determining the requirements for authorization, collection, storing, and processing electronically generated messages permitting eligible voters to apply for an absentee ballot. At the conclusion of the study, the EAC is required to submit a report on the results of the study to Congress.

#### 2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.

The data will be collected, coded, summarized and analyzed by an EAC Contractor. Summary data from the survey will be contextualized with qualitative data collected in case studies and presented in a report to the EAC. At the conclusion of the study, the EAC will transmit a report on the results of the study to Congress. The study, or subsections thereof, will also be publicly available upon release by the EAC.

The collection of data complies with the applicable Information Quality Guidelines in the following ways: One, the survey is timed to be conducted shortly after the General Election of 2006, when respondents' recollection of their interaction with the voting process is still at its best. Two, statistical sampling techniques will be employed to select a sample that is representative of the population being studied. Three, the survey instrument, a description of the sample, and the summary data will be made available to the public, thus replication of results

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within the statistical error margin will be possible. Four, the data collection, analysis and resulting reports will be completed within an eleven month time-frame, which allows for a timely distribution of results to Congress, election officials, data users, researchers and other interested parties. Five, the survey instrument is being developed by a group of highly qualified researchers, and is being beta tested after each change with a different group of volunteers. The instrument will then be sent to interested groups that have experience with the subject topic, for comments. As appropriate, these comments will be incorporated prior to a final pre-test of the survey. Six, coding documentation will be developed, and coders will be trained to ensure uniform interpretation of data during the coding process of the results. Seven, statistical analysis will include modern methods that are commonly used in social science research, including cross-tabs, frequencies and regression analysis. Eight, ongoing quality control programs are in place to assure the highest possible validity and reliability of the data.

**3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.**

The potential respondents to the survey will be contacted in the same way in which they have asked for their ballot to be transmitted to them. This means that those that ask for their ballot to be faxed will receive a faxed copy of the survey, and those that use email will receive an email invitation to complete the survey over the Internet. Respondents have the option to ask for the survey in a different medium, i.e. a fax respondent has the option to use the Internet to complete the survey, and vice versa.

**4. Describe efforts to identify duplication.**

There are currently no other efforts to gather the information requested in this information collection. This information collection is unique and required by Section 245 of HAVA (42 U.S.C. 15301).

**5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.**

The collection of information does not involve small businesses or other small entities.

**6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.**

The EAC is asking for a one-time collection of survey responses. If the EAC does not collect this information it may be unable to comply with its statutory requirements under Section 245 of HAVA (42 U.S.C. 15301).

**7. Explain any special circumstances that require the collection to be conducted in a**

009544

**manner inconsistent with OMB guidelines.**

There are no special circumstances applicable to this information collection.

**8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.**

The EAC is requesting an emergency approval to collect this information. We are requesting a waiver of the 60-day and 30-day *Federal Register* notices required in 5 CFR 1320.13(d) in order to ensure that we comply with the Help America Vote Act.

**9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.**

No payments or gifts will be provided to respondents.

**10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.**

In accordance with generally used Human Subjects protocols, survey respondents will be informed that the information they provide will not be attributed to them personally, and will be compiled with the data from other respondents to construct summary data. Survey forms will not request identifying information from respondents, such as their name or address.

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.**

No questions of a sensitive nature will be asked.

**12. Provide an estimate in hours of the burden of the collection of information.**

- a. Estimated number of respondents = 10,000
- b. Number of responses per each respondent = 1
- c. Total annual responses = 1
- d. Estimated hours per response = .25 hours
- e. Total annual reporting burden = 2,500 hours (# of respondents x frequency of

009545

*response x hours of response)*

**13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in #12 above).**

Most respondents who utilize their personal computers to respond to the survey should not incur any costs additional to the monthly/yearly fees they already pay for connecting to the Internet. If respondents do not use their own personal computers but have free access to another one, there should be no cost associated with this collection. However, respondents may choose to respond to the survey from a location where they have to pay an hourly fee for use of a computer with access to the Internet; this cost will vary by location but it is estimated the time required for responding to the survey will only be a small part of the hourly fee (based on the estimated hours per response above). Respondents that chose to fax the responses may incur a cost of up to \$3.

**14. Provide estimates of annualized cost to the Federal government.**

The estimated annual cost to the Federal Government is \$99,176. This includes the fees associated with the development, testing, administration, analysis, and reporting of the survey and its results. This figure also includes the costs associated with printing and mailing of hard copies of the survey, and the costs for administering the survey online.

**15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.**

Not applicable. This is a new information collection.

**16. For collections whose results will be published, outline the plans for tabulation and publication.**

The collected survey responses will only be published in summary data format, as part of a report. The survey data will be contextualized with data from case studies. The report will be published by the EAC on its website, and results will also be presented to Congress in a report.

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.**

Not applicable to this collection.

**18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.**

There are no exceptions to the certification statement identified in Item 19 of the OMB 83-I.

009546

## Supporting Statement B

OMB Control Number: xxxx-xxxx

U.S. Election Assistance Commission

Survey of UOCAVA Voters

### B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

**1. Describe (including a numerical estimate) the potential respondent universe and any sampling or other respondent selection method to be used. Data on the number of entities (e.g. establishments, State and local governmental units, households, or persons) in the universe and the corresponding sample are to be provided in tabular form. The tabulation must also include expected response rates for the collection as a whole. If the collection has been conducted before, provide the actual response rate achieved.**

The sample will target a sample of the 2006 UOCAVA registered voters in the four jurisdictions identified in our case studies. We expect the sample to be at least 10,000 registered voters, and we hope to get response rate of 20%. Previous on-line surveys of UOCAVA voters by the Overseas Vote Foundation had response rates of approximately 17%.

**2. Describe the procedures for the collection, including: the statistical methodology for stratification and sample selection; the estimation procedure; the degree of accuracy needed for the purpose described in the justification; any unusual problems requiring specialized sampling procedures; and any use of periodic (less frequent than annual) data collection cycles to reduce burden.**

The sample will be chosen from UOCAVA registered voter lists in four states that vary by the size of the UOCAVA pool and the method by which overseas ballots can be obtained or cast. Montana is a small state (4,721 UOCAVA votes cast) that has a wide variety of electronic transmission methods with differences between local jurisdictions. South Carolina has the largest number of UOCAVA voters (168,814) and allows for emailing of blank and voted ballots and faxing of ballots and registration forms. Florida allows some emailing and faxing of blank ballots and is considering the possibility of internet voting. Most likely, the fourth state will be either Vermont (1,733 UOCAVA voters) or Illinois (30,556 UOCAVA voters) which have smaller numbers of UOCAVA voters but allow faxing for registration, ballot requests and blank ballots, and also have variations between local jurisdiction that can be studied. Working from the registration lists, we will invite the respondents to complete the survey in the form they received their ballot (i.e. mail, fax or email). Those that check email will get an email invitation with a link to the on-line survey. Others will get a paper version by fax or mail. Our intention is to contact all the registered UOCAVA voters in a given jurisdiction or where necessary to draw a random sample.

**3. Describe the methods used to maximize response rates and to deal with nonresponse. The accuracy and reliability of the information collected must be shown to be adequate for**

009547

**the intended uses. For collections based on sampling, a special justification must be provided if they will not yield "reliable" data that can be generalized to the universe studied.**

Follow-up emails will be sent after 5 days to those who have not responded by email, and follow-up faxes and postcards to those who did not respond from those categories.

Aside from these multiple contacts, we will monitor for any potential biases in the responses we get by comparing attributes in the registration file with those who respond to the survey. If necessary, we will consider weighting the responses to test whether there is a measurable difference in the results as a result of any skew in the respondents' characteristics.

**4. Describe any tests of procedures or methods to be undertaken. Tests are encouraged as effective means to refine collections, but if ten or more test respondents are involved OMB must give prior approval.**

The questionnaire will be pre-tested with a small sample of Overseas Vote Foundation volunteers and associates to refine the wording of questions and ensure that the questions are well understood, as well as members of the research team.

**5. Provide the name and telephone number of individuals consulted on the statistical aspects of the design, and the name of the agency unit, contractor(s), grantee(s), or other person(s) who will actually collect and/or analyze the information for the agency.**

Contractor contact: Prof. Bruce E. Cain, 1.415.336.0570

009548



Laiza N. Otero/EAC/GOV  
11/09/2006 12:01 PM

To: Alexander\_T.\_Hunt@omb.eop.gov  
cc  
bcc: Karen Lynn-Dyson/EAC/GOV@EAC; Juliet E.  
Thompson-Hodgkins/EAC/GOV@EAC  
Subject: Emergency Clearance

Dear Mr. Hunt,

This e-mail is to notify you that the EAC has submitted its 2006 Survey of UOCAVA Voters for emergency clearance as we had communicated previously we would do. If you have any questions or need more information, please, do not hesitate to contact me at this e-mail address or at the number listed below. Thank you very much for your time and assistance in this matter.

Sincerely,

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)  
Fax (202) 566-3128

009549





kmd@q2dataresearch.com

To lotero@eac.gov

11/16/2006 04:42 PM

cc

bcc

Subject RE: Fw: RE: Emergency Clearance

hi laiza

my apologies for the late reply: somehow your email got stuck in my spam folder! yikes. here is the email i sent to karen a couple of hours ago. i hope this makes sense. please don't hesitate to call me if you need answers quickly and don't hear from me. my cell phone number is 510.367.7527. i'm in my uc berkeley office right now at 510.642.9086.

thanks!

karin

hi karen

here are our thoughts on the questions below:

1. The data that are collected through the survey are quantitative, not qualitative! The case studies will result in qualitative data. We are hoping that the response rate will be above 20%, but can currently only base our estimate on the only survey of UOCAVA voters that has been conducted to date. That survey, by the Overseas Vote Foundation, only contacted voters via email - we will contact voters via mail, fax and email. We hope that this will result in a higher response rate! While a 20% response rate would have a higher error rate than a larger response rate, we will be able to correct for this statistically. Recent survey research response rates have not been much higher than 20%.

2. The sample is a stratified one, due to the nature of the research. The EAC is interested in the experiences of UOCAVA voters and the sample is selected to reach such voters from an environment that stratifies them by the communication choices they are allowed to make by the local and state jurisdictions that governs them. Thus, we are currently in the process of collecting voter files from jurisdictions that fall into the various communication categories to draw a sample that is large enough to result in a generalizable sample. The qualitative data from the case studies will document the current processes of the local jurisdictions in the various strata, in the areas of collection, storing and processing of electronically generated messages etc.

3. The EAC's report to Congress will most certainly outline any limitations to the generalizability of these data. The qualitative data will provide context to understand the quantitative results.

please let me know if you have further questions. i can be reached today at 510.642.9086.

thanks

karin

> ----- Original Message -----  
> Subject: Fw: RE: Emergency Clearance  
> From: lotero@eac.gov  
> Date: Wed, November 15, 2006 2:57 pm  
> To: klynndyson@eac.gov, kmd@q2dataresearch.com

009550

>  
>  
>  
> Hello,  
>  
> I got a question from our desk officer at OMB and I think I provided an  
> OK response - however, please, let me know your thoughts or other  
> information I should send to him. Thank you!  
>  
> Laiza  
>  
>  
>  
> -----Forwarded by Laiza N. Otero/EAC/GOV on 11/15/2006 04:53PM -----  
>  
> To: "Hunt, Alexander T." <Alexander\_T.\_Hunt@omb.eop.gov>@GSAEXTERNAL  
> From: Laiza N. Otero/EAC/GOV  
> Date: 11/15/2006 04:43PM  
> Subject: RE: Emergency Clearance  
>  
>  
> Thank you very much for your feedback. I don't know if the following  
> fully answers your question; please, let me know:  
>  
> This survey of UOCAVA voters is being done in conjunction with case  
> studies of at least 5 states detailing their experiences with developing  
> and implementing a system for transmitting and/or receiving ballots from  
> UOCAVA voters. In addition, we are also in process of planning a  
> conference with state and local election officials on internet voting and  
> the electronic transmission of and receipt of ballots. The conference  
> agenda includes: 1) the technical (software and hardware) issues related  
> to implementing the transmission and receipt of ballots and for internet  
> voting; 2) issues related to the overall security of the voting system  
> and the individual ballots; 3) processes used to verify the voters's  
> identities; 4) the policy impediments to implementation of internet  
> voting mechanisms; and 5) best practices in e-mail ballot and website  
> designs. The findings of all of these three activities - survey, case  
> studies, and conference - will be used to prepare the report to Congress.  
>  
>  
> The data we collect on UOCAVA voters via the 2006 Election Administration  
> and Voting Survey (currently under review), which is quantitative in  
> nature, will also complement the results of the UOCAVA study. We will  
> certainly make it clear on our reports that that these survey results are  
> qualitative and therefore not necessarily representative of all overseas  
> voters.  
>  
>  
> On a side note: have you received any comments on the 2006 Election  
> Administration and Voting Survey? Thank you!  
>  
>  
>  
> Laiza N. Otero  
> Research Associate  
> U.S. Election Assistance Commission  
> 1225 New York Avenue, Suite 1100  
> Washington, DC 20005  
> Tel. (202) 566-3100 (main office)  
> Tel. (202) 566-2209 (direct)  
> Fax (202) 566-3128

009551

>  
>  
> -----"Hunt, Alexander T." <Alexander\_T.\_Hunt@omb.eop.gov> wrote: -----  
>  
> To: lotero@eac.gov  
> From: "Hunt, Alexander T." <Alexander\_T.\_Hunt@omb.eop.gov>  
> Date: 11/14/2006 06:31PM  
> Subject: RE: Emergency Clearance  
>  
>  
> I have reviewed the submission and have one general concern regarding  
> EAC's use of the survey results.  
>  
> In Q.2 of the supporting statement, EAC acknowledges that the data  
> collected will be qualitative, which is reasonable given the expected 20  
> percent response rate. However, is EAC confident that qualitative data  
> (versus quantitative data that is generalizable to the population) is  
> sufficient, given the statutory mandate to produce a study of the  
> challenges of internet voting (e.g., potential for fraud ) and determine  
> requirements for authorization, collection, storing, and processing of  
> electronically generated messages permitting eligible voters to apply for  
> an absentee ballot ? Will EAC's report to Congress make it clear that  
> these survey results are qualitative and therefore not necessarily  
> representative of all overseas voters?  
>  
> If you would prefer to discuss this, please let me know.  
>  
> Thanks.  
>  
> From: lotero@eac.gov [mailto:lotero@eac.gov]  
> Sent: Thursday, November 09, 2006 12:02 PM  
> To: Hunt, Alexander T.  
> Subject: Emergency Clearance  
>  
>  
>  
> Dear Mr. Hunt,  
>  
> This e-mail is to notify you that the EAC has submitted its 2006 Survey  
> of UOCAVA Voters for emergency clearance as we had communicated  
> previously we would do. If you have any questions or need more  
> information, please, do not hesitate to contact me at this e-mail address  
> or at the number listed below. Thank you very much for your time and  
> assistance in this matter.  
>  
> Sincerely,  
>  
> Laiza N. Otero  
> Research Associate  
> U.S. Election Assistance Commission  
> 1225 New York Avenue, Suite 1100  
> Washington, DC 20005  
> Tel. (202) 566-3100 (main office)  
> Tel. (202) 566-2209 (direct)  
> Fax (202) 566-3128  
>  
>  
>

009552



kmd@q2dataresearch .com  
11/28/2006 03:58 PM

To lotero@eac.gov  
cc klynndyson@eac.gov  
bcc

Subject cleaned up survey instrument

History:

 This message has been replied to.

hi laiza

attached, please find the new, improved, spelled, cleaned-up and FINAL version of the survey instrument, along with a document that outlines the changes. we tried to make it easy to work with but as i said: its a difficult medium to improve upon unfortunately.

please let me know if i can help you get through it!

thank you for dealing with omb on this. we appreciate it!

regards,

karin mac donald  
510.642.9086 today



or cell 510.367.7527 Revised 3.0 EAC UOCAVA Survey 28\_Nov\_2006\_1.pdf



EAC UOCAVA Survey Revisions Report.112806.doc

009553



**28 November 2006**

**Proposed Revisions to EAC UOCAVA Survey**

In light of the results and feedback we have received from the OVF 2006 Post Election Survey, we propose the following refinements to be made to the *EAC Post Election Survey for UOCAVA Voters*.

Please refer to the new version: Revised 3.0 EAC UOCAVA Survey 28\_Nov\_2006 when reviewing this document. The comparison of question numbers is against the first submitted version titled: Review Draft 2006 EAC UOCAVA Voter Survey Nov6\_06

**Notes to survey reviewers:**

1. Page headers in the review version of the survey will be removed prior to survey launch.
2. Please note that depending on answers some questions will be skipped; and these skips are noted in the new version (in yellow boxes) for the reviewers benefit.
3. Question numbers have necessarily changed, as the order of questions has been improved and a few deletions/additions made, however – the basic questions, the meaning and purpose of the survey remain consistent with the earlier version.

**The three main, inter-related issues that drove revisions:**

1. Time needed to take the survey
2. Number of questions
3. Redundancy of questions

In other words, this is a shorter survey with less redundancy and takes less time to complete.

**Summary of Changes:**

- Questions Added (refer to '28\_Nov\_2006' version): Q7, Q9, Q10, Q14, Q18, Q49
- Questions Moved (from 'Nov6\_06' version) : Q14, Q15-Q18, Q53
- Questions Deleted (from 'Nov6\_06' version) : Q10, Q15, Q16, Q17, Q19, Q26, Q40, Q59, Q61
- Reorganized the early flow of voter profile questions to eliminate redundancy (from 'Nov6\_06' version) : Q 5-8, Q15-18
- Revised wording to eliminate technical term, "FPCA," and its associated definition statement; this makes the survey easier to understand and complete.
- Other minor modifications included: spelling; general clean-up; making answers and questions more concise and more personal; adding answer options to be more complete; and improving general readability.

009554

## **Review Draft 2006 EAC UOCAVA Voter Survey**

Dear Voter,

We are conducting a survey of overseas and uniformed services absentee voters and are inviting you to tell us about your experiences with the election process. The United States Congress has asked for this study because of the reports that uniformed services and overseas voters often have problems when trying to vote. We are working with the United States Election Assistance Commission to make sure that your experiences and suggestions are being collected and forwarded to Congress.

Your responses are confidential so please take 8-10 minutes to fill out this survey, and tell us about your voting experience in November of 2006. This is a great opportunity to help improve the system and your participation matters: we can not do a good job without your help!

Thank you so much!

[Start Survey!](#)

009555

## Review Draft 2006 EAC UOCAVA Voter Survey

Note to survey reviewers: This and other page headers in this review version of the survey will be removed prior to survey launch.

ALL SURVEY TAKERS ANSWER THIS PAGE OF QUESTIONS

Q5 will divide respondents:

"Yes" respondents skip to Main Line of questions

"No" respondents continue on Did Not Vote Line of questions

Welcome! This survey will take approximately 7 minutes to complete. You may use your browser "back" button if you need to return to a previous page. The questions will first cover your registration and ballot request experience and then your voting experience before asking a few general questions. Thank you for your participation!

If you encounter a technical problem in the survey, please 'Reply' to your survey invitation email to report it. The Zoomerang survey tool uses browser cookies (a small text file stored on your computer) to track your progress during a survey. If cookies are blocked by your web browser or another program on your PC, the survey will repeat the questions from the first page while numbering the questions as if they were new. Let us know if you encounter that problem and we will send you some simple instructions for what to do. Thank you!

- 1** Were you an overseas citizen or a member of the Uniformed Services, a spouse or dependent of a uniformed service member on November 7, 2006?

- U.S. citizen living outside the U.S. temporarily
- U.S. citizen living outside the U.S. indefinitely/permanently
- Uniformed service member
- Spouse or dependent of a uniformed service member

- 2** On November 7th, in which country were you living or serving?

- 3** In which U.S. state or territory did you vote, or would you have voted, had you been in the U.S. on November 7, 2006?

- 4** Describe your voting history: (check all that apply)

009556

- This was or would have been my first time voting in my life as an overseas citizen
- This was or would have been my first time voting as an absentee military service member, spouse or dependent
- Voted before as an overseas citizen
- Voted before as an absentee military services member, spouse or dependent
- Voted before locally in the US
- Voted before as a domestic absentee in the US
- I don't remember

**5** Did you vote on November 7, 2006?

- Yes, I voted
- No, I did not vote or try to vote
- No, I tried but was unable to complete the process

Continue

Survey Page 1

## Review Draft 2006 EAC UOCAVA Voter Survey

DID NOT VOTE LINE

**6** Why didn't you vote? (check all that apply)

- My ballot did not arrive
- My ballot was late
- My ballot arrived while I was traveling
- My ballot arrived while I was on duty somewhere else
- I moved and my ballot was sent to my old address
- I forgot to send my ballot
- My voter registration/ballot request was denied
- I missed the registration deadline
- I thought I was registered, but wasn't
- My address changed
- I could not meet my state's notarization requirements
- I could not meet my state's witness requirements

009557



- I did not know what I needed to do to register and vote
- I didn't think my vote would matter
- I found the process too complicated
- I lacked candidate information
- I had no interest in voting
- Other, please specify

\_\_\_\_\_

**7** Did any of the following problems arise when identifying your last residence in the US? (check all that apply)

- My former address in the US no longer exists
- I couldn't remember the street or county where I lived
- I couldn't prove where I used to live in the US
- I never lived in the US so I didn't know where to register
- I did not know which parent's US address to use
- I was born in the US but did not live there long-term
- No, I had no problems
- Other

**8** If you had been in the U.S. on November 7, 2006, Election Day, how likely is it that you would have voted?

Very likely	Somewhat likely	Neither likely or unlikely	Somewhat unlikely	Very unlikely
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>

**9** Would you have voted if you had been given electronic options to transmit your voting materials (telephone, FAX, email, Internet)?

**YES**    **NO**

**10** Did you complete a form to register to vote and/or request an absentee ballot for the November 7, 2006 election?

- Yes
- No
- I don't remember

Continue

**009558**

## Review Draft 2006 EAC UOCAVA Voter Survey

### DID NOT VOTE LINE

#### 11 How did you get your voter registration/ballot request form?

- I downloaded the blank form from a website
- I filled-out the form online and printed it
- I received it from my state/local election office
- I picked it up at the US Embassy/Consulate
- I used the online IVAS system
- I registered and/or received a form in person
- I received it in the mail
- It was faxed to me
- I received it as an email attachment
- Other, please specify

#### 12 When, in 2006, did you send in your voter registration/ballot request form?

- Between January and July 2006
- August
- September
- First half of October
- Second half of October
- November
- I never sent the form
- I don't remember

#### 13 How did you SEND IN your voter registration/ballot request form?

- FAX
- FAX + original form by mail
- Email
- Email + original form by mail
- I used the IVAS service for the DOD
- Regular Mail
- Courier/Certified or Express Mail

009559

- Military Postal Service (APO/FPO)
- Sent through Consulate/Embassy mail pouch
- In person at my election office
- I never sent the form
- Other, please specify

Continue

Survey Page 3

## Review Draft 2006 EAC UOCAVA Voter Survey

### MAIN LINE OF QUESTIONS - VOTERS

**14** Did you complete a form to register to vote and/or request an absentee ballot for the November 7, 2006 election?

- Yes
- No
- I don't remember

Continue

Survey Page 4

## Review Draft 2006 EAC UOCAVA Voter Survey

### MAIN LINE OF QUESTIONS

**15** How did you get your voter registration/ballot request form?

- I downloaded the blank form from a website
- I filled-out the form online and printed it
- I received it from my state/local election office
- I picked it up at the US Embassy/Consulate
- I used the online IVAS system
- I registered and/or received a form in person
- I received it in the mail
- It was faxed to me
- I received it as an email attachment

009560

Other, please specify

---

**16** When, in 2006, did you send in your voter registration/ballot request form?

- Between January and July 2006
- August
- September
- First half of October
- Second half of October
- November
- I never sent the form
- I don't remember

**17** How did you send in your voter registration/ballot request form?

- FAX
- FAX + original form by mail
- Email
- Email + original form by mail
- I used the IVAS service for the DOD
- Regular Mail
- Courier / Certified or Express Mail
- Military Postal Service (APO/FPO)
- Sent through Consulate/Embassy mail pouch
- In person at my election office
- I never sent the form
- Other, please specify

---

**18** Did you receive a confirmation that your voter registration and/or ballot request was accepted?

- Yes, by postcard/letter
- Yes, by FAX
- Yes, by email
- Yes, by telephone
- Yes, through an online tracking tool
- No, it was denied
- No, I never received a confirmation
- Other

009561

Continue

Survey Page 5

## Review Draft 2006 EAC UOCAVA Voter Survey

### MAIN LINE

**19** When did you receive your blank ballot for the November 7, 2006 election?

- August
- September
- First half of October
- Second half of October
- The week before the election
- Election Day
- After Election Day
- I don't remember

**20** How was your blank ballot delivered to you?

- FAX
  - Email
  - Downloaded through DOD IVAS service
  - Regular Mail
  - Courier / Certified or Express Mail
  - Military Postal Service (APO/FPO)
  - Other, please specify
- 

**21** Had you ever received a blank ballot in this way before?

YES  NO

**22** How would you describe the way you received your blank ballot?  
(check all that apply)

- Fast
- Easy

009562

- Practical
- Slow
- Difficult
- Impractical
- No opinion
- Other, please describe:  
\_\_\_\_\_



23 Did you feel it was a secure way to receive your blank ballot?

- |                            |                            |                            |                            |                            |
|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|
| Very secure                | Secure                     | Neutral                    | Insecure                   | Very insecure              |
| <input type="checkbox"/> 1 | <input type="checkbox"/> 2 | <input type="checkbox"/> 3 | <input type="checkbox"/> 4 | <input type="checkbox"/> 5 |



24 Was the ballot easy to complete?

- |                            |                            |                            |                            |                            |                            |
|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|
| Easy                       | Somewhat easy              | Neither                    | Somewhat difficult         | Difficult                  | Don't know                 |
| <input type="checkbox"/> 1 | <input type="checkbox"/> 2 | <input type="checkbox"/> 3 | <input type="checkbox"/> 4 | <input type="checkbox"/> 5 | <input type="checkbox"/> 6 |

Continue

Survey Page 6

## Review Draft 2006 EAC UOCAVA Voter Survey



### MAIN LINE



25 What method did you use to SEND IN your VOTED ballot?

- Email
- Email + original ballot in mail
- FAX machine
- FAX machine + original ballot in mail
- Internet FAX transmission
- Internet FAX transmission + original ballot in mail
- Regular Mail
- Courier / Certified or Express Mail
- Military Postal Service (APO/FPO)
- Sent through Consulate/Embassy mail pouch
- I dropped it off or voted at my local election office in the US

009563

Other, please specify

\_\_\_\_\_

**26** How would you rate the ease-of-use of this way of sending in your voted ballot?

- |                            |                            |                            |                            |                            |
|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|
| Easy                       | Somewhat easy              | Neutral                    | Somewhat difficult         | Difficult                  |
| <input type="checkbox"/> 1 | <input type="checkbox"/> 2 | <input type="checkbox"/> 3 | <input type="checkbox"/> 4 | <input type="checkbox"/> 5 |

**27** When did you send in your voted ballot for the November 7, 2006 election?

- September
- First half of October
- Second half of October
- First week of November
- Election Day
- After Election Day
- I can't remember

**28** How satisfied were you with the process of obtaining and casting a ballot in 2006?

- |                            |                            |                            |                            |                            |
|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|
| Satisfied                  | Somewhat satisfied         | Neutral                    | Somewhat dissatisfied      | Dissatisfied               |
| <input type="checkbox"/> 1 | <input type="checkbox"/> 2 | <input type="checkbox"/> 3 | <input type="checkbox"/> 4 | <input type="checkbox"/> 5 |

Continue

Survey Page 7

### Review Draft 2006 EAC UOCAVA Voter Survey

#### ETS USER SPECIFIC QUESTIONS

**PLEASE NOTE:**

The term "electronic transmission method" includes Email, FAX, Internet and online systems.

009564

29 How would you describe the electronic transmission method you used to RETURN your voted ballot? (check all that apply)

- Practical
- User-friendly
- Logical
- Well-defined
- Fast
- Easy
- Slow
- Difficult
- Hard to understand
- Other, please describe:  
\_\_\_\_\_



30 Did you ever use this electronic transmission method to send a voted ballot in any other election?

YES  NO



31 Please rate the ease-of-use of the electronic transmission method you used to send your voted ballot?

Easy	Somewhat Easy	Neutral	Somewhat difficult	Difficult
<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5



32 If you found this method easy to use, please tell us what contributed to that ease-of-use. (check all that apply)

- Clear instructions
- Easy to understand
- Fast
- Handy
- Good format - easy to see
- Could use it from my location
- No travel required
- Not applicable; I found it difficult to use
- Other, please specify  
\_\_\_\_\_

009565



**33** Why did you decide to send your ballot in this way? (check all that apply)

- It was easy
- It saved me time
- I didn't need to travel
- I thought it was required
- It was offered
- It was less expensive
- To get my ballot back faster
- It was suggested that I use this method
- I received an email telling me about it
- I thought it was safer than regular mail
- My blank ballot arrived late
- Other, please specify
- 

**34** Did you have any problems with the electronic transmission method of sending your voted ballot? (check all that apply)

- There were too many steps
- I didn't understand the instructions
- I wasn't sure if I needed a witness
- I didn't understand what to do
- No, I did not have any problems
- Other, please specify
- 

**35** How satisfied were you with the electronic transmission method you used to send in your voted ballot?

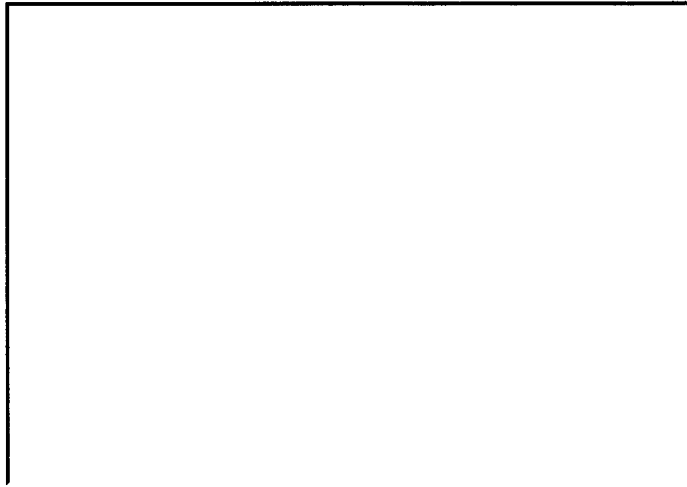
Satisfied	Somewhat satisfied	Neutral	Somewhat dissatisfied	Dissatisfied
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>

**36** Were you asked to waive (give up) the right to a private vote?

YES  NO

Additional Comment

009566



**37** If you did waive your right to a private vote, how would you describe your feelings about that?

- |           |                    |          |                      |             |            |                |
|-----------|--------------------|----------|----------------------|-------------|------------|----------------|
| Concerned | Somewhat concerned | Neutral  | Somewhat unconcerned | Unconcerned | Don't know | Not Applicable |
| <b>1</b>  | <b>2</b>           | <b>3</b> | <b>4</b>             | <b>5</b>    | <b>6</b>   | <b>7</b>       |

[Continue](#)

Survey Page 8

### Review Draft 2006 EAC UOCAVA Voter Survey

#### MAIN LINE - ETS AND NON ETS

**38** Would you send in your voted ballot again in the future using the same method as you did in the election of November 7, 2006?

- YES  NO

**39** How did you find out about the voting method you used? (check all that apply)

- Internet Search
- Got an Email
- Local Election Official
- Consulate/Embassy
- Voting Assistance Officer

009567

- Federal Voter Assistance Program
  - IVAS Website from DOD
  - Newspaper
  - Newsletter
  - State Election Office web site
  - Local Election Office web site
  - Political party
  - Voter organization
  - Can't remember
  - Other, please specify
- 

**40** How did you feel about the security of your actual VOTE?

- |                            |                            |                            |                            |                            |                            |
|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|
| Concerned                  | Somewhat<br>concerned      | Neutral                    | Somewhat<br>unconcerned    | Unconcerned                | Don't know                 |
| <input type="checkbox"/> 1 | <input type="checkbox"/> 2 | <input type="checkbox"/> 3 | <input type="checkbox"/> 4 | <input type="checkbox"/> 5 | <input type="checkbox"/> 6 |

**41** What security concerns did you have in regard to your vote? (check all that apply)

- I was not sure my voted ballot actually arrived
  - I was concerned that my voted ballot could get lost
  - I was concerned that someone saw how I voted
  - I was concerned someone could change my vote
  - I had no concerns
  - Other, please specify
- 

**42** Did you confirm that your ballot arrived?

- Yes, I checked through state or county online tracking tool
  - Yes, I contacted my election office
  - No, I did not confirm my ballot arrival
  - Other, please specify
- 

**43** How much time would you estimate the entire process of voting took you from the time you started till the time you sent your voted ballot for November 7, 2006? Include registration/ballot request,

009568

paperwork processing, phone calls or visits to official offices, as applicable to you.

- Less than 2 weeks
- 2 - 4 weeks
- 5 - 6 weeks
- 7 - 8 weeks
- More than 8 weeks
- I don't know



**44** What was the TOTAL cost to you to return your registration AND ballot materials, including postage and any other costs? (in \$USD)

- None
- Under \$5
- \$ 5 - \$10
- \$10 - \$25
- \$25 - \$50
- \$50 - \$100+
- Other, please specify

\_\_\_\_\_

Continue

Survey Page 9

### Review Draft 2006 EAC UOCAVA Voter Survey



ALL SURVEY TAKERS RECEIVE THESE FINAL QUESTIONS



**45** If you were to send a FAX, what type of FAX service would you use: (check all that apply)

- FAX machine always available
- Pay-per-use FAX services
- Internet FAX program
- No FAX services available
- I don't use FAX services
- Other, please specify

\_\_\_\_\_



009569

**46** How often do you access the Internet?

- Daily
- 2-3 times a week
- Once a week
- Sometimes
- Almost Never
- Never

**47** Where do you access the Internet? (check all that apply)

- Home
  - Work
  - Internet Cafe
  - Library
  - Other, please specify
- 

**48** What kind of Internet access location do you use: (check all that apply)

- Public
  - Private
  - Business
  - Other, please specify
- 

**49** Would you use an online service that allows you to download a blank ballot?

- Yes
- No
- Maybe

**50** In a future election, would you be comfortable sending in a voted ballot electronically by email, FAX or voting online?

- Yes
- No
- Not sure
- Other, please specify

009570

51 What concerns would you have about sending in a voted ballot electronically by email, FAX or voting online? (check all that apply)

- I do not have any concerns about voting online
- I do not have any concerns about voting by FAX
- I do not have any concerns about voting by email
- I have privacy concerns
- I have security concerns
- I don't trust the Internet
- I don't want to share personal information on the Internet
- I'm concerned that my election official will see how I voted
- I'm afraid that people could see how I voted
- Other, please specify

[Continue](#)

Survey Page 10

## Review Draft 2006 EAC UOCAVA Voter Survey

ALL SURVEY TAKERS

52 How old were you on November 7, 2006?

- 18 to 24 years
- 25 to 34 years
- 35 to 44 years
- 45 to 54 years
- 55 to 64 years
- 65 to 74 years
- 75 years and older

53 Please indicate your gender:

- Male
- Female

009571

54 When did you last live in the US?

- Less than 1 year ago
- At least 1 year but less than 2 years ago
- At least 2 years but less than 5 years ago
- At least 5 year but less than 10 years ago
- 10 or more years ago
- Does not apply - I am active duty / active duty family member in the US

55 What is the highest level of formal education you have completed?

- Some high school
  - High school graduate or GED
  - Trade school
  - College or associate's degree
  - Bachelor's degree
  - Advanced degree
  - Other, please specify
- 

56 Did you have to go to the US Embassy or Consulate at any time in the voting process?

- YES  NO

57 How often do you go to the US Embassy or Consulate related to the voting process during an average election year?

- Never
  - Once
  - Twice
  - Three times or more
  - Other, please specify
- 

58 How long does it take to travel to the closest US Consulate/Embassy from where you live right now?

- Less than 1 hour
- 2-3 hours
- 4 or more hours

009572



**59** Please provide other comments or suggestions that you may have here:

Continue

Survey Page 11

---

009573



Thank you for participating in this EAC voter survey. Your feedback will contribute to the further development and improvement of voter services to overseas citizens and military absentee voters.

009574



"Hunt, Alexander T."  
<Alexander\_T.\_Hunt@omb.eop.gov>

11/29/2006 07:41 PM

To lotero@eac.gov

cc

bcc

Subject RE: Emergency Clearance

History:

This message has been replied to.

Sorry for the delay in responding on this and other pending requests. I will get to them tomorrow. Thanks.

---

**From:** lotero@eac.gov [mailto:lotero@eac.gov]

**Sent:** Friday, November 17, 2006 7:32 AM

**To:** Hunt, Alexander T.

**Subject:** RE: Emergency Clearance

Dear Mr. Hunt,

As a follow-up to the information I provided two days ago, our Contractor provided the following insight - please, let me know if you have any other questions regarding this project - Thank you!

1. The data that are collected through the survey are quantitative, not qualitative. The case studies will result in qualitative data. We are hoping that the response rate will be above 20%, but can currently only base our estimate on the only survey of UOCAVA voters that has been conducted to date. That survey, by the Overseas Vote Foundation, only contacted voters via email - we will contact voters via mail, fax and email. We hope that this will result in a higher response rate! While a 20% response rate would have a higher error rate than a larger response rate, we will be able to correct for this statistically. Recent survey research response rates have not been much higher than 20%.
2. The sample is a stratified one, due to the nature of the research. The EAC is interested in the experiences of UOCAVA voters and the sample is selected to reach such voters from an environment that stratifies them by the communication choices they are allowed to make by the local and state jurisdictions that governs them. Thus, we are currently in the process of collecting voter files from jurisdictions that fall into the various communication categories to draw a sample that is large enough to result in a generalizable sample. The qualitative data from the case studies will document the current processes of the local jurisdictions in the various strata, in the areas of collection, storing and processing of electronically generated messages etc.
3. The EAC's report to Congress will most certainly outline any limitations to the generalizability of these data. The qualitative data will provide context to understand the quantitative results.

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)  
Fax (202) 566-3128

-----"Hunt, Alexander T." <Alexander\_T.\_Hunt@omb.eop.gov> wrote: -----

To: lotero@eac.gov  
From: "Hunt, Alexander T." <Alexander\_T.\_Hunt@omb.eop.gov>  
Date: 11/14/2006 07:31PM

009575

Subject: RE: Emergency Clearance

I have reviewed the submission and have one general concern regarding EAC's use of the survey results.

In Q.2 of the supporting statement, EAC acknowledges that the data collected will be qualitative, which is reasonable given the expected 20 percent response rate. However, is EAC confident that qualitative data (versus quantitative data that is generalizable to the population) is sufficient, given the statutory mandate to produce a study of the challenges of internet voting (e.g., potential for fraud ) and determine requirements for authorization, collection, storing, and processing of electronically generated messages permitting eligible voters to apply for an absentee ballot ? Will EAC's report to Congress make it clear that these survey results are qualitative and therefore not necessarily representative of all overseas voters?

If you would prefer to discuss this, please let me know.

Thanks.

---

**From:** lotero@eac.gov [mailto:lotero@eac.gov]  
**Sent:** Thursday, November 09, 2006 12:02 PM  
**To:** Hunt, Alexander T.  
**Subject:** Emergency Clearance

Dear Mr. Hunt,

This e-mail is to notify you that the EAC has submitted its 2006 Survey of UOCAVA Voters for emergency clearance as we had communicated previously we would do. If you have any questions or need more information, please, do not hesitate to contact me at this e-mail address or at the number listed below. Thank you very much for your time and assistance in this matter.

Sincerely,

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)  
Fax (202) 566-3128

009576



Laiza N. Otero/EAC/GOV

12/04/2006 11:40 AM

To [REDACTED]@GSAEXTERNAL

cc klynndyson@eac.gov

bcc

Subject RE: ICR approved!!!!!!!!!!!!

The OMB Control number for the focus groups collection is: 3265-0005. The expiration date is 5/31/2007. Both these pieces of information need to appear everywhere on the collection instrument - my suggestion is to make them part of the heading or footer of the pages. In addition, there is boiler plate information I am working on today with our general counsel's office that needs to be included as well - the latter is info on the time and cost burden on respondents, the response requirements (voluntary/mandatory), and compliance with the PRA process - I should have that information by the end of today.

Also, for your records the ICR Reference Number is: 200611-3265-001. This is an internal OMB number given to the request we made. This may or may not have to be included - waiting to hear on that.

If you have any questions or need more information, please, do not hesitate to contact me at your earliest convenience. Have a great day!

Sincerely,

Laiza

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)  
Fax (202) 566-3128

009577



Laiza N. Otero/EAC/GOV

12/06/2006 02:11 PM

To bg@q2dataresearch.com@GSAEXTERNAL

cc kmd@q2dataresearch.com

bcc

Subject RE: EAC logo on survey 

Is this ok with you? If it is, I'll put at the end of the pdf file - you can insert it then as a footnote on the actual survey.

Section 245 of the Help America Vote Act (HAVA) of 2002 (42 U.S.C. 15301) requires the U.S. Election Assistance Commission (EAC) to conduct a study of issues and challenges, including the potential for election fraud, that are presented by the incorporation of communications and Internet technologies in the Federal, State, and local electoral process. The EAC is required to submit a report on the results of the study to Congress. In addition, this information will be made publicly available on the EAC website at [www.eac.gov](http://www.eac.gov). Respondents to this survey are registered uniformed and overseas voters. According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB Control No. 3265-0005 (expires 5/31/2007). The time required to complete this information collection is estimated to average .25 hours per response. This estimate includes the time for reviewing the instructions, gathering information, and completing the form. Comments regarding this burden estimate should be sent to the Program Manager - 2006 Election Administration and Voting Survey, U.S. Election Assistance Commission, 1225 New York Ave, NW, Suite 1100, Washington, DC 20005.

009578



Laiza N. Otero/EAC/GOV  
12/06/2006 02:24 PM

To Alexander\_T.\_Hunt@omb.eop.gov  
cc  
bcc  
Subject Revised UOCAVA Survey Instrument

Alex,

Per our conversation yesterday, here are the updated documents regarding the EAC's Survey of UOCAVA voters (OMB Control No. 3265-0005). I tried to upload the documents into ROCIS but was not successful - I accidentally created an ICR Revision for this information collection. How should I proceed in this case? Thank you for your time and patience in this matter.

Sincerely,

Laiza

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)  
Fax (202) 566-3128



Revised UOCAVA Survey.12.6.2006.pdf Summary of UOCAVA Survey Revisions.12.6.2006.doc

009579



"Hunt, Alexander T."  
 <Alexander\_T.\_Hunt@omb.eop.gov>  
 12/06/2006 04:59 PM

To: lotero@eac.gov  
 cc  
 bcc  
 Subject: RE: Revised UOCAVA Survey Instrument

History: This message has been replied to.

I'm not sure, but I don't have access to that screen. I would just delete and resubmit as a non-substantive change, but you may need to call the help desk for instructions.

**From:** lotero@eac.gov [mailto:lotero@eac.gov]  
**Sent:** Wednesday, December 06, 2006 4:58 PM  
**To:** Hunt, Alexander T.  
**Subject:** RE: Revised UOCAVA Survey Instrument

It appears on the "created request list" - I did not enter new data or attach documents nor submit it, which you can do if I hit the tab under "Request Type" and "ICR Ref. No." However, there is a "Delete" option once you open the edit screen - will it delete just the new "ICR Rev." or both of them? Thank you.

## Created Request List

[Filter List](#) [View All](#)

Criteria: **Status**=(Created);

<u>OMB</u> <u>Contr</u> <u>ol No</u>	<u>ICR</u> <u>Ref.No</u>	<u>Cre</u> <u>ated</u> <u>By</u>	<u>C</u> <u>re</u> <u>at</u> <u>e</u> <u>d</u> <u>D</u> <u>at</u> <u>e</u>	<u>Agen</u> <u>cy/Su</u> <u>b</u>	<u>Agency</u> <u>ICR</u> <u>Trackin</u> <u>g</u> <u>Number</u>	<u>Title</u>	<u>Cur</u> <u>rent</u> <u>Exp</u> <u>irati</u> <u>on</u> <u>Dat</u> <u>e</u>	<u>Last</u> <u>Revie</u> <u>wed</u> <u>By</u>	<u>Req</u> <u>uest</u> <u>Type</u>	<u>Stat</u> <u>Met</u> <u>hods</u>
3265- 0005	200612- 3265-00 1	Oter o, Laiz a	1 2/ 0 6/ 2 0	EAC		U.S. Election Assistance Commission Survey of UOCAVA Voters	05/3 1/20 07		ICR Rev	Yes

009580

			0						
			6						
	200609- 3265-00 <u>1</u>	Otero, Laiza	0 9/ 2 2/ 2 0 0 6	EAC		U.S Election Assistance Commission Voluntary Voting System Testing and Certification Program Manual		<u>ICR</u> <u>New</u>	No

List shows all requests for ICR review (No Time Limit).

Login: lotero

"Hunt, Alexander T." <Alexander\_T.\_Hunt@omb.eop.gov>

12/06/2006 04:44 PM

To lotero@eac.gov

cc

Subject RE: Revised UOCAVA Survey Instrument

I don't see it pending in ROCIS. Can you pull it back?

**From:** lotero@eac.gov [mailto:lotero@eac.gov]  
**Sent:** Wednesday, December 06, 2006 2:25 PM  
**To:** Hunt, Alexander T.  
**Subject:** Revised UOCAVA Survey Instrument

Alex,

Per our conversation yesterday, here are the updated documents regarding the EAC's Survey of UOCAVA voters (OMB Control No. 3265-0005). I tried to upload the documents into ROCIS but was not successful

009581



- I accidentally created an ICR Revision for this information collection. How should I proceed in this case?  
Thank you for your time and patience in this matter.

Sincerely,

Laiza

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)  
Fax (202) 566-3128

009582



**Laiza N. Otero/EAC/GOV**

12/08/2006 09:43 AM

To [bg@q2dataresearch.com](mailto:bg@q2dataresearch.com)@GSAEXTERNAL

cc [kmd@q2dataresearch.com](mailto:kmd@q2dataresearch.com)

bcc

Subject RE: EAC logo on survey 

Thank you for the correction; will make the change.

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)  
Fax (202) 566-3128  
[bg@q2dataresearch.com](mailto:bg@q2dataresearch.com)



**[bg@q2dataresearch.com](mailto:bg@q2dataresearch.com)**

12/07/2006 09:53 PM

To [lotero@eac.gov](mailto:lotero@eac.gov)

cc [kmd@q2dataresearch.com](mailto:kmd@q2dataresearch.com)

Subject RE: EAC logo on survey

Laiza:

Yes, its fine except that not all respondents are necessarily "registered" at the moment they get the survey, so can it read "respondents to the survey are uniformed and overseas voters"?

Thanks,

Bonnie Glaser

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

Subject: RE: EAC logo on survey

From: [lotero@eac.gov](mailto:lotero@eac.gov)

Date: Wed, December 06, 2006 12:11 pm

To: [bg@q2dataresearch.com](mailto:bg@q2dataresearch.com)

Cc: [kmd@q2dataresearch.com](mailto:kmd@q2dataresearch.com)

Is this ok with you? If it is, I'll put at the end of the pdf file - you can insert it then as a footnote on the actual survey.

Section 245 of the Help America Vote Act (HAVA) of 2002 (42 U.S.C. 15301) requires the U.S. Election Assistance Commission (EAC) to conduct

009583

a study of issues and challenges, including the potential for election fraud, that are presented by the incorporation of communications and Internet technologies in the Federal, State, and local electoral process. The EAC is required to submit a report on the results of the study to Congress. In addition, this information will be made publicly available on the EAC website at [www.eac.gov](http://www.eac.gov). Respondents to this survey are registered uniformed and overseas voters. According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB Control No. 3265-0005 (expires 5/31/2007). The time required to complete this information collection is estimated to average .25 hours per response. This estimate includes the time for reviewing the instructions, gathering information, and completing the form. Comments regarding this burden estimate should be sent to the Program Manager - 2006 Election Administration and Voting Survey, U.S. Election Assistance Commission, 1225 New York Ave, NW, Suite 1100, Washington, DC 20005.

009584



"Hunt, Alexander T."  
 <Alexander\_T.\_Hunt@omb.  
 eop.gov>  
 12/11/2006 01:58 PM

To lotero@eac.gov  
 cc  
 bcc  
 Subject RE: Revised UOCAVA Survey Instrument

History: This message has been replied to.

I approved the non-substantive change today. In the future, I think it would be better to not include documents from the previous approval. It's pretty easy for me to look at those if I want to.

Thanks.

**From:** lotero@eac.gov [mailto:lotero@eac.gov]  
**Sent:** Wednesday, December 06, 2006 5:52 PM  
**To:** Hunt, Alexander T.  
**Subject:** RE: Revised UOCAVA Survey Instrument

I uploaded the survey under the IC section and the summary of changes is on that same page and also under the supplementary documents section. I also selected the "No material or nonsubstantive change to a currently approved collection" for Type of information collection. When you create a new ICR based on an existing collection it migrates all of the information and documents of the previous one - should I delete the previous survey and select "agency discretion"? Should I delete any other information/documents?

I'm still here for a bit at the office, in case it may easier to go over it on the phone.

Instrument File	Form No.	Form Name	Document Type	U Available Electronically?	Can Be Submitted Electronically?	Electronic Capability
<a href="#">EAC Survey of UOCAVA Voters.pdf</a>	EA C-R S02	EAC Survey of UOCAVA Voters	Form and Instruction	Yes	Yes	Fillable Fileable Signable
<a href="#">Revised UOCAVA Survey.12.6.2006.pdf</a>	EA C-R S02	Revised EAC Survey of UOCAVA Voters	Form and Instruction	Yes	Yes	Fillable Fileable Signable

Documents for IC

<b>Title</b>	<b>Document</b>	<b>Date Uploaded</b>	<b>Uploaded By</b>
<u>Summary of Revisions to Survey of UOCAVA Voters</u>	<u>Summary of UOCAVA Survey Revisions.12.6.2006.doc</u>	12/06/2006	Otero, Laiza

"Hunt, Alexander T." <Alexander\_T.\_Hunt@omb.eop.gov>

12/06/2006 05:21 PM

To lotero@eac.gov

cc

Subject RE: Revised UOCAVA Survey Instrument

I can access it but it looks like the previous request. For this request, you should just upload the revised form and a supplemental document summarizing the changes.

---

**From:** lotero@eac.gov [mailto:lotero@eac.gov]  
**Sent:** Wednesday, December 06, 2006 5:17 PM  
**To:** Hunt, Alexander T.  
**Subject:** RE: Revised UOCAVA Survey Instrument

I think I got it. Let me know if you can access it now and if there is any information missing. Thank you again for your help on this.

Laiza

## Submitted Request List

[Filter List](#) [View All](#)

Criteria: **Status**=(Received in OIRA, Open for Amendment, Closed for Amendment);

009586

<u>OMB Contr ol No</u>	<u>ICR Ref.No</u>	<u>Subm itted Date</u>	<u>Agen cy/Su b</u>	<u>Agency ICR Tracking Number</u>	<u>Title</u>	<u>Current Expirati on Date</u>	<u>Last Revie wed By</u>	<u>Statu s</u>	<u>Requ est Type</u>
3265- 0005	200612- 3265-00 2	12/06/ 2006	EAC		U.S. Election Assistance Commission Survey of UOCAVA Voters	05/31/20 07		Recei ved in OIRA	<u>ICR Chg</u>

List shows all requests for ICR review (No Time Limit).

Login: lotero

009587



**Laiza N. Otero/EAC/GOV**

12/11/2006 05:30 PM

To [bg@q2dataresearch.com](mailto:bg@q2dataresearch.com)@GSAEXTERNAL

cc [lotero@eac.gov](mailto:lotero@eac.gov)

bcc

Subject RE: EAC logo on survey

You are correct about the formatting and the numbers (you are 3265-0005). Our OMB desk officer approved three collections at the same time (the first time voters focus groups - emergenc, my survey - regular, and yours - emergency) and randomly assigned numbers :-)

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)  
Fax (202) 566-3128

-----bg@q2dataresearch.com wrote: -----

To: [lotero@eac.gov](mailto:lotero@eac.gov)  
From: [bg@q2dataresearch.com](mailto:bg@q2dataresearch.com)  
Date: 12/11/2006 04:13PM  
Subject: RE: EAC logo on survey

Laiza:

Yes, we will try to do that. Do I understand correctly that either first page or last page is ok, in case we run into formatting issues in any version?

Also, I just want to confirm that our OMB Control No. 3265-0005, and the EAC Election Day survey is OMB Control No. 3265-0006...which is just one number different?? Were they approved sequentially or is that just a coincidence?

Thanks,

Bonnie Glaser

009588

**Laiza N. Otero/EAC/GOV**

12/11/2006 03:00 PM

To Karen Lynn-Dyson/EAC/GOV@EAC

cc

bcc

Subject UOCAVA survey

Hello,

I've prepared the following for the UOCAVA survey to post it on our website - thoughts? I feel the second paragraph needs more meat - suggestions? Gracias!



Web Summary Text.doc

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
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Fax (202) 566-3128

009589



## **U.S. Election Assistance Commission (EAC)**

### **Research in Progress: Survey of Uniformed and Overseas Voters (OMB Control No. 3265-0005 – ICR Ref. No. 200612-3265-002)**

#### **Background:**

Section 245 of the Help America Vote Act (HAVA) of 2002 (42 U.S.C. 15301) requires the EAC to conduct a study of issues and challenges, including the potential for election fraud, that are presented by the incorporation of communications and Internet technologies in the Federal, State, and local electoral process. In delineating nine possible research topics, Congress specifically identified the need for further research in determining the requirements for authorization, collection, storing, and processing electronically generated messages permitting eligible voters to apply for an absentee ballot. At the conclusion of the study, the EAC is required to submit a report to both the Committee on House Administration of the House of Representatives and the Committee on Rules and Administration of the Senate on the results of the study, including such legislative recommendations or model State laws as are required to address the findings of the Commission. In addition, the report will be made available on the EAC website at [www.eac.gov](http://www.eac.gov).

To meet its requirements under HAVA §245, the EAC awarded a contract in November 2006 to Q2 Data & Research, LLC to: 1) conduct case studies to examine in depth the experiences of four to five state and/or local election jurisdictions with developing and implementing a system for transmitting and/or receiving absentee ballots from uniformed and overseas voters; 2) administer a survey of overseas and uniformed voters regarding their experiences with electronic voting; and 3) conduct a conference on internet voting and the transmission and receipt of absentee ballots for UOCAVA voters.

In accordance with the information clearance process under the Paperwork Reduction Act (PRA) of 1995, the EAC received approval from the Office of Management and Budget (OMB) to carry out the survey of uniformed and overseas voters; a copy of the survey and OMB documentation are available below.

VIEW Survey of UOCAVA Voters (OMB Control No. 3265-0005) (PDF)

VIEW Information Collection Request (ICR) submitted to the Office of Management and Budget (OMB) – [http://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=200612-3265-002](http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200612-3265-002)

#### **Information:**

For more information or questions regarding this collection, please, contact the U.S. Election Assistance Commission at 1-866-747-1471 or by e-mail at [lotero@eac.gov](mailto:lotero@eac.gov).

009596



bg@q2dataresearch .com  
12/13/2006 04:18 PM

To lotero@eac.gov  
cc  
bcc

Subject RE: EAC logo on survey

History:

 This message has been replied to.

Laiza,

Here is the survey to post to the EAC website. Please let me know how to find it once it is up...as I couldn't find anything about our project on the EAC site last time I looked.

Thanks!

Bonnie Glaser

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

Subject: RE: EAC logo on survey

From: lotero@eac.gov

Date: Tue, December 12, 2006 6:16 am

To: bg@q2dataresearch.com

I'll wait for the final one :-) I like the hard copy best for general viewing purposes - it looks really nice, great work!

For the link to the actual web survey - do we need some explanation - ex. is it for viewing only or for a UOCAVA voter to go and take it.

L.

bg@q2dataresearch  
.com

12/11/2006 06:12  
PM

To  
lotero@eac.gov  
cc

Subject  
RE: EAC logo on survey

009591

Laiza, I am sorry...I sent this too soon...there will be a few small changes. Can you replace it with another one tomorrow or the next day or do you just want to wait for the final one before uploading?

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

Subject: RE: EAC logo on survey  
From: bg@q2dataresearch.com  
Date: Mon, December 11, 2006 4:05 pm  
To: lotero@eac.gov

Laiza, attached is the survey with the necessary information added. Please note that this is the hard copy version, rather than the on-line version. If you need the on-line version too (much longer) please let me know. Also, please send the link to get to it on the EAC website once it is there.

Thanks,

Bonnie Glaser

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

Subject: RE: EAC logo on survey  
From: lotero@eac.gov  
Date: Mon, December 11, 2006 3:30 pm  
To: bg@q2dataresearch.com  
Cc: lotero@eac.gov

You are correct about the formatting and the numbers (you are 3265-0005). Our OMB desk officer approved three collections at the same time (the first time voters focus groups - emergenc, my survey - regular, and yours - emergency) and randomly assigned numbers :-)

009592

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)  
Fax (202) 566-3128

-----bg@q2dataresearch.com wrote: -----

To: lotero@eac.gov  
From: bg@q2dataresearch.com  
Date: 12/11/2006 04:13PM  
Subject: RE: EAC logo on survey

Laiza:

Yes, we will try to do that. Do I understand correctly that either first page or last page is ok, in case we run into formatting issues in any version?

Also, I just want to confirm that our OMB Control No. 3265-0005, and the EAC Election Day survey is OMB Control No. 3265-0006...which is just one number different?? Were they approved sequentially or is that just a coincidence?

Thanks,



Bonnie Glaser 2006 EAC UOCAVA Voter Survey - for EAC Website Posting.pdf

009593

# U.S. Election Assistance Commission



## 2006 Overseas and Military Voter Survey

Dear Voter,

We are conducting a survey of overseas and uniformed services absentee voters and are inviting you to tell us about your experiences with the election process.

The United States Congress has asked for this study because of the reports that uniformed services and overseas voters often have problems when trying to vote. We are working to make sure that your experiences and suggestions are being collected and forwarded to Congress.

Your responses are confidential so please take 8-10 minutes to fill out this survey, and tell us about your voting experience in November of 2006. This is a great opportunity to help improve the system and your participation matters: we can not do a good job without your help!

Thank you so much!

**Please send your completed replies to:**

Q<sup>2</sup> Data & Research, LLC  
Mail Services Office  
217 Bayview Street  
San Rafael, CA 94901 USA

**Please Note:**

You are invited to take this same survey online.

It's fast and there's no postage!

[Click here](#) to take the 2006 EAC UOCAVA Voter Survey online!

Section 245 of the Help America Vote Act (HAVA) of 2002 (42 U.S.C. 15301) requires the U.S. Election Assistance Commission (EAC) to conduct a study of issues and challenges, including the potential for election fraud, that are presented by the incorporation of communications and Internet technologies in the Federal, State, and local electoral process. The EAC is required to submit a report on the results of the study to Congress. In addition, this information will be made publicly available on the EAC website at [www.eac.gov](http://www.eac.gov). Respondents to this survey are uniformed and overseas voters. According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB Control No. 3265-0005 (expires 5/31/2007). The time required to complete this information collection is estimated to average .25 hours per response. This estimate includes the time for reviewing the instructions, gathering information, and completing the form. Comments regarding this burden estimate should be sent to the Program Manager - 2006 Election Administration and Voting Survey, U.S. Election Assistance Commission, 1225 New York Ave, NW, Suite 1100, Washington, DC 20005.

OMB Control No. 3265-0005 Expiration Date: 5/31/2007

009594

# 2006 EAC UOCAVA Voter Survey

## Survey Instructions:

Work your way through the survey following the numbered questions in order. Several of the questions instruct you to skip ahead to a specific question depending on how you answered the question. Please follow these skip instructions carefully.

Make a heavy mark in the box next to your chosen answer or answers. Many of the questions allow for more than one response.

Thanks again for your help with this important project.

### 1. Were you an overseas citizen or a member of the Uniformed Services, a spouse or dependent of a uniformed service member on November 7, 2006?

- U.S. citizen living outside the U.S. temporarily
- U.S. citizen living outside the U.S. indefinitely/permanently
- Uniformed service member
- Spouse or dependent of a uniformed service member

### 2. On November 7th in which country were you living or serving?

### 3. In which U.S. state or territory did you vote, or would you have voted, had you been in the U.S. on November 7, 2006.

### 4. Describe your voting history: (check all that apply)

- This was or would have been my first time voting in my life as an overseas citizen
- This was or would have been my first time voting as an absentee military service member, spouse or dependent
- Voted before as an overseas citizen
- Voted before as an absentee military services member spouse or dependent.
- Voted before locally in the US
- Voted before as a domestic absentee in the US
- I don't remember

### 5. Did you vote in the November 7, 2006 election?

- Yes, I voted **Skip to Q12!**
- No, I did not vote or try to vote
- No, I tried but was unable to complete the process

### 6. Why didn't you vote? (check all that apply)

- My ballot did not arrive
- My ballot was late
- My ballot arrived while I was traveling
- My ballot arrived while I was on duty somewhere else
- I moved and my ballot was sent to my old address
- I forgot to send my ballot
- My voter registration/ballot request was denied
- I missed the registration deadline
- I thought I was registered, but wasn't
- My address changed
- I could not meet my state's notarization requirements
- I could not meet my state's witness requirements
- I did not know what I needed to do to register to vote
- I didn't think my vote would matter
- I found the process to complicated
- I had no interest in voting
- Other, please specify:

### 7. If you had been in the U.S. on November 7, 2006, Election Day, how likely is it that you would have voted?

- Very likely
- Somewhat likely
- Neither likely or unlikely
- Somewhat unlikely
- Very unlikely

### 8. Did you complete a form to register to vote and/or request an absentee ballot for the November 7, 2006 election?

- Yes
- No
- I don't remember } **Skip to Q42!**

### 9. How did you get your voter registration/ballot request form?

- I downloaded the blank form from a website
- I filled-out the form online and printed it
- I received it from my state/local election office
- I picked it up at the US Embassy/Consulate
- I used the online IVAS system
- I registered and/or received a form in person
- I received it in the mail
- It was faxed to me
- I received it as an email attachment
- Other, please specify:

### 10. When, in 2006, did you send in your voter registration/ballot request form?

- Between January and July 2006
- August
- September
- First half of October
- Second half of October
- November
- I never sent the form
- I don't remember

### 11. How did you SEND IN your voter registration/ballot request form?

- FAX
- FAX + original form by mail
- Email
- Email + original form by mail
- I used the IVAS service for the DOD
- Regular Mail
- Courier/Certified or Express Mail
- Military Postal Service (APO/FPO)
- Sent through Consulate/Embassy mail pouch
- In person at my election office
- I never sent the form
- Other, please specify:

**Skip to Q42!**

# 2006 EAC UOCAVA Voter Survey

**12. Did you complete a form to register to vote and/or request an absentee ballot for the November 7, 2006 election?**

Yes

\_\_\_\_\_

No  
 I don't remember. } **Go to Q16!**

**13. How did you get your voter registration/ballot request form?**

I downloaded the blank form from a website

I filled-out the form online and printed it

I received it from my state/local election office

I picked it up at the US Embassy/Consulate

I used the online IVAS system

I registered and/or received a form in person

I received it in the mail

It was faxed to me

I received it as an email attachment

Other, please specify:

\_\_\_\_\_

**14. When, in 2006, did you send in your voter registration/ballot request form?**

Between January and July 2006

August

September

First half of October

Second half of October

November

I never sent the form

I don't remember

**15. How did you send in your voter registration/ballot request form?**

FAX

FAX + original form by mail

Email

Email + original form by mail

I used the IVAS service for the DOD

Regular Mail

Courier / Certified or Express Mail

Military Postal Service (APO/FPO)

Sent through Consulate/Embassy mail pouch

In person at my election office

I never sent the form

Other, please specify:

\_\_\_\_\_

**16. When did you receive your blank ballot for the November 7, 2006 election?**

August

September

First half of October

Second half of October

The week before the election

Election Day

After Election Day

I don't remember

**17. How was your blank ballot delivered to you?**

FAX

Email

Downloaded through DOD IVAS service

Regular Mail

Courier / Certified or Express Mail

Military Postal Service (APO/FPO)

Other, please specify:

\_\_\_\_\_

**18. Had you ever received a blank ballot in this way before?**

Yes

No

**19. How would you describe the way you received your blank ballot? (check all that apply)**

Fast

Easy

Practical

Slow

Difficult

Impractical

No opinion

Other, please describe:

\_\_\_\_\_

**20. Did you feel it was a secure way to receive your blank ballot?**

Very secure

Secure

Neutral

Insecure

Very insecure

**21. Was the ballot easy to complete?**

Easy

Somewhat easy

Neither

Somewhat difficult

Difficult

Don't know

**22. What method did you use to SEND IN your VOTED ballot?**

Email

Email + original ballot in mail

FAX machine

FAX machine + original ballot in mail

Internet FAX transmission

Internet FAX transmission + original ballot in mail

**If you chose any of the top six answers to this question, please continue through the survey with no skips.**

\_\_\_\_\_

Regular Mail

Courier / Certified or Express Mail

Military Postal Service (APO/FPO)

Sent through Consulate/Embassy mail pouch

I dropped it off or voted at my local election office in the US

Other, please specify:

\_\_\_\_\_

**If you chose any of the final six answers to this question, please complete Q23 - Q25 and then skip to Q35.**

# 2006 EAC UOCAVA Voter Survey

**23. How would you rate the ease-of-use of this way of sending in your voted ballot?**

Easy  
 Somewhat easy  
 Neutral  
 Somewhat difficult  
 Difficult

**24. When did you send in your voted ballot for the November 7, 2006 election?**

September  
 First half of October  
 Second half of October  
 First week of November  
 Election Day  
 After Election Day  
 I can't remember

**25. How satisfied were you with the process of obtaining and casting a ballot in 2006?**

Satisfied  
 Somewhat satisfied  
 Neutral  
 Somewhat dissatisfied  
 Dissatisfied

**After completing the above questions 23-25, please return to Q22 to determine where to move to next.**

**If you chose any of the top 6 answers to Q22, please continue through all questions in the survey to the end.**

**If you chose any of the bottom 6 answers to Q22, please skip to Q35 and complete the survey from that point.**

**26. How would you describe the electronic transmission method you used to RETURN your voted ballot? (check all that apply)**

Practical  
 User-friendly  
 Logical  
 Well-defined  
 Fast  
 Easy  
 Slow  
 Difficult  
 Hard to understand  
 Other, please describe:

**27. Did you ever use this electronic transmission method to send a voted ballot in any other election?**

Yes  
 No

**28. Please rate the ease-of-use of the electronic transmission method you used to send your voted ballot?**

Easy  
 Somewhat easy  
 Neutral  
 Somewhat difficult  
 Difficult

**29. If you found this method easy to use, please tell us what contributed to that ease-of-use. (check all that apply)**

Clear instructions  
 Easy to understand  
 Fast  
 Handy  
 Good format - easy to see  
 Could use it from my location  
 No travel required  
 Not applicable; I found it difficult to use  
 Other, please specify

**30. Why did you decide to send your ballot in this way? (check all that apply)**

It was easy  
 It saved me time  
 I didn't need to travel  
 I thought it was required  
 It was offered  
 It was less expensive  
 To get my ballot back faster  
 It was suggested that I use this method  
 I received an email telling me about it  
 I thought it was safer than regular mail  
 My blank ballot arrived late  
 Other, please specify:

**31. Did you have any problems with the electronic transmission method of sending your voted ballot? (check all that apply)**

There were too many steps  
 I didn't understand the instructions  
 I wasn't sure if I needed a witness  
 I didn't understand what to do  
 No, I did not have any problems  
 Other, please specify

**32. How satisfied were you with the electronic method used to send in your voted ballot?**

Satisfied  
 Somewhat satisfied  
 Neutral  
 Somewhat dissatisfied  
 Dissatisfied

**33. Were you asked to waive (give up) the right to a private vote?**

Yes  
 No

Additional Comment:

**34. If you did waive your right to a private vote, how would you describe your feelings about that?**

Concerned  
 Somewhat concerned  
 Neutral  
 Somewhat unconcerned  
 Unconcerned  
 Don't know  
 Not Applicable

**35. Would you send in your voted ballot again in the future using the same method as you did in the election of November 7, 2006?**

Yes  
 No



# 2006 EAC UOCAVA Voter Survey

**36. How did you find out about the voting method you used? (check all that apply)**

- Internet Search
- Got an Email
- Local Election Official
- Consulate/Embassy
- Voting Assistance Officer  
Federal Voter Assistance Program
- IVAS Website from DOD
- Newspaper
- Newsletter
- State Election Office web site
- Local Election Office web site
- Political party
- Voter organization
- Can't remember
- Other, please specify

**37. How did you feel about the security of your actual VOTE?**

- Concerned
- Somewhat concerned
- Neutral
- Somewhat unconcerned
- Unconcerned
- Don't know
- Not Applicable

**38. What security concerns did you have in regard to your vote? (check all that apply)**

- I was not sure my voted ballot actually arrived
- I was concerned that my voted ballot could get lost
- I was concerned that someone saw how I voted
- I was concerned someone could change my vote
- I had no concerns
- Other, please specify

**39. Did you confirm that your ballot arrived?**

- Yes, I checked through state or county online tracking tool
- Yes, I contacted my election office
- No, I did not confirm my ballot arrival
- Other, please specify

**40. How much time would you estimate the entire process of voting took you from the time you started till the time you sent your voted ballot for November 7, 2006?**

**Include registration/ballot request, paperwork processing, phone calls or visits to official offices, as applicable to you.**

- Less than 2 weeks
- 2 - 4 weeks
- 5 - 6 weeks
- 7 - 8 weeks
- More than 8 weeks
- I don't know

**41. What was the TOTAL cost to you to return your registration AND ballot materials, including postage and any other costs? (in \$USD)**

- None
- Under \$5
- \$ 5 - \$10
- \$10 - \$25
- \$25 - \$50
- \$50 - \$100+
- Other, please specify

**42. If you were to send a FAX, what type of FAX service would you use: (check all that apply)**

- FAX machine always available
- Pay-per-use FAX services
- Internet FAX program
- No FAX services available
- I don't use FAX services
- Other, please specify

**43. How often do you access the Internet?**

- Daily
- 2-3 times a week
- Once a week
- Sometimes
- Almost Never
- Never

**44. Where do you access the Internet? (check all that apply)**

- Home
- Work
- Internet Cafe
- Library
- Other, please specify

**45. What kind of Internet access location do you use: (check all that apply)**

- Public
- Private
- Business
- Other, please specify

**46. In a future election, would you be comfortable sending in a voted ballot electronically by email, FAX or voting online?**

- Yes
- No
- Not sure
- Other, please specify:

# 2006 EAC UOCAVA Voter Survey

## 47. What concerns would you have about sending in a voted ballot electronically by email, FAX or voting online? (check all that apply)

- I do not have any concerns about voting online
- I do not have any concerns about voting by FAX
- I do not have any concerns about voting by email
- I have privacy concerns
- I have security concerns
- I don't trust the Internet
- I don't want to share personal information on the Internet
- I'm concerned that my election official will see how I voted
- I'm afraid that people could see how I voted
- Other, please specify

## 48. How old were you on November 7, 2006?

- 18 to 24 years
- 25 to 34 years
- 35 to 44 years
- 45 to 54 years
- 55 to 64 years
- 65 to 74 years
- 75 years and older

## 49. Please indicate your gender.

- Male
- Female

## 50. When did you last live in the US?

- Less than 1 year ago
- At least 1 year but less than 2 years ago
- At least 2 years but less than 5 years ago
- At least 5 year but less than 10 years ago
- 10 or more years ago
- Does not apply - I am active duty / active duty family member in the US

## 51. What is the highest level of formal education you have completed?

- Some high school
- High school graduate or GED
- Trade school
- College or associate's degree
- Bachelor's degree
- Advanced degree
- Other, please specify

## 52. Did you have to go to the US Embassy or Consulate at any time in the voting process?

- Yes
- No

## 53. How often do you go to the US Embassy or Consulate related to the voting process during an average election year?

- Never
- Once
- Twice
- Three times or more
- Other, please specify

## 54. How long does it take to travel to the closest US Consulate/Embassy from where you live right now?

- Less than 1 hour
- 2-3 hours
- 4 or more hours

## 55. Please provide other comments or suggestions that you may have here:

Thank you for participating in this EAC voter survey.

Your feedback will contribute to the further development and improvement of voter services to overseas citizens and military absentee voters.

**Please send your completed replies to:**

Q<sup>2</sup> Data & Research, LLC  
Mail Services Office  
217 Bayview Street  
San Rafael, CA 94901 USA


Juliet E.  
Thompson-Hodgkins/EAC/G  
OV

05/11/2006 06:25 PM

To Laiza N. Otero/EAC/GOV@EAC

cc

bcc

Subject Re: Survey 

do you have time on Friday (5/12) to go over these items?

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

 Laiza N. Otero/EAC/GOV

05/09/2006 05:39 PM

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

cc

Subject Survey

Julie,

- I have revised the survey to reflect your changes/recommendations. See attached.
- For Question 29 (regarding felons), I have included a yes/no check box under each category. However, do we need/want more information beyond the eligibility of the persons? For example, when are their rights restored, if at all, if they are not allowed to vote while in one of the categories mentioned.
- I have to present the draft document to the Commissioners and the Boards in the next couple of weeks. In your most honest and brutal opinion, what could I do the document (short of a puppet skit) to make it more clear, readable, and usable? Is it ready to be presented to the Commissioners and the Board? I would like to have the official draft by the end of this week so Adam can distribute it to the Boards and I can distribute it to the Commissioners and Tom in time for the meetings. I will be out of the office this coming Monday thru Wednesday (I'll be in Kennesaw, GA).
- Humanitas: Their price quote is \$82,007.20. This price is within the project's budget; especially since the money for analysis would come out of the '07 budget. I have looked at other vendors on the GSA Schedule to compare the Direct Labor Costs, and the Humanitas quote seems to be in tandem with the other ones I looked at; the difficulty is assessing the estimated amount of hours they claim it will take. However, is this task within the original scope of work of our contract with Humanitas? Is it as simple as modifying their contract? Or do we want to consider bidding it? I have spoken with both Karen and Gaylin about this. My concern is that I want to make sure we get the best possible candidate for the job (not that I think Humanitas would do a poor job) and at the best value for us. We really need to make sure we do an outstanding job collecting the survey data this time around. With GovWorks, the bidding process should be much simpler than before, and we have some time before the online instrument would need to go "live" since a lot of the information we need becomes available after November 7th. By writing a SOW we can also be very clear as to what it is we want and how we want it done, and it's best in my opinion for accountability purposes. What are your thoughts on this?



Revised Survey.doc

009405

THANK YOU!

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-1707  
Fax (202) 566-3128

009406

**IMPORTANT:** Please, **DO NOT USE** "N/A" as an equivalent to "0." Only use "N/A" (not applicable) if the answer is not available or not allowable by state law or not collected by your jurisdiction. The number "0" ("zero") should only be used to indicate that the answers is "zero" or "none."

**VOTER REGISTRATION**

**Note:** Questions 1-29 refer to the period from the close of registration for the **November 2, 2004**, Federal general elections to the close of registration for the **November 7, 2006**, Federal general elections.

*Active voters* refers to all registered voters **except** those who have been sent but have not responded to a confirmation mailing sent in accordance with NVRA (42 U.S.C. 1973gg-6(d)) and have not since offered to vote.

*Inactive voters* refers to registrants who **have been sent but have not responded** to a confirmation mailing sent in accordance with NVRA (42 U.S.C. 1973gg-6(d)) and have not since offered to vote.

*Duplicate registration application* refers to an application to register by a person already registered to vote at the same address, under the same name, and (where applicable) the same political party.

**1. Total number of registered voters statewide and by county/local jurisdiction at the time of the close of registration for the past two Federal general elections (including Election Day registrations where applicable – see Question 2):**

	November 2, 2004	November 7, 2006
<b>Active voters:</b>	_____	_____
<b>Inactive voters (if applicable):</b>	_____	_____
<b>Total:</b>	_____	_____

**2. Total number of persons statewide and by county/local jurisdiction who registered to vote on Election Day [November 7, 2006] – \*\*Only applicable to states with Election Day registration (Idaho, Maine, Minnesota, New Hampshire, Wisconsin, and Wyoming):**

**Total:** \_\_\_\_\_

3. Total number statewide and by county/local jurisdiction of voter registration applications received from all sources during the period from the close of registration for the November 2, 2004, Federal general elections until the close of registration for the November 7, 2006, Federal general elections:

Total: \_\_\_\_\_

4. Total number statewide and by county/local jurisdiction of voter registration applications received by mail during the period from the close of registration for the November 2, 2004, Federal general elections until the close of registration for the November 7, 2006, Federal general elections:

Total: \_\_\_\_\_

5. Total number statewide and by county/local jurisdiction of voter registration applications received in person at the clerk or registrar's office during the period from the close of registration for the November 2, 2004, Federal general elections until the close of registration for the November 7, 2006, Federal general elections:

Total: \_\_\_\_\_

6. Total number statewide and by county/local jurisdiction of registration applications that were received from or generated by each of the following categories between the close of registration for the November 2, 2004, Federal general elections until the close of registration for the November 7, 2006, Federal general elections:

All motor vehicle offices: \_\_\_\_\_

All public assistance agencies that are mandated as registration sites under NVRA: \_\_\_\_\_

All state-funded agencies primarily serving persons with disabilities: \_\_\_\_\_

All Armed Forces recruitment offices: \_\_\_\_\_

All other agencies designated by the state: \_\_\_\_\_

7. Total number statewide and by county/local jurisdiction of registration applications identified in response to **Question 3** that were:

**Duplicates of other valid voter registrations:** \_\_\_\_\_

**Changes of address, name, or party:** \_\_\_\_\_

**Invalid or rejected (other than duplicates):** \_\_\_\_\_

8. Total number statewide and by county/local jurisdiction of **new, valid registrations** processed between the close of registration for the November 2, 2004, Federal general elections until the close of registration for the November 7, 2006, Federal general elections. **\*\*This includes all registrations that are new to the local jurisdiction and re-registrations across jurisdictional lines. This does not include applications that are duplicates, rejected, or report only a change of name, address, or (where applicable) party preference within the local jurisdiction.**

**Total:** \_\_\_\_\_

**Registration process**

9. Total number of election jurisdictions conducting voter registration.

**Total:** \_\_\_\_\_

10. Identify the local entity primarily responsible for registering voters:

- Circuit Clerk
- City Clerk
- County Auditor
- County Board of Elections
- County Clerk
- County Commissioner
- County Election Board Secretary
- County Voter Registration Board
- Director of Voter Registration

- Election Commissioner
- Local General Registrar
- Municipal Clerk
- Recorder
- Registrar
- Supervisor/Director of Elections
- Tax Assessor Collector
- Town Clerk
- Other (please, specify)

11. Identify each and every other state and local government office or agency designated as a voter registration agency (provides voter registration opportunities/services):

- Motor vehicle offices
- All offices that provide public assistance that are mandated as registration sites by NVRA
- All offices that provide state-funded programs primarily serving persons with disabilities
- All armed forces recruitment offices
- Other agencies designated by the State (*please, specify*)

12. Does your office provide training on the voter registration process to employees of Federal, State, and local government offices or agencies designated as voter registration agencies?

- Yes
- No

13. How are voter registration applications transferred from the other voter registration agencies listed in response to Question 11 to the official responsible for voter registration?

- |                          |                   |                          |                                  |
|--------------------------|-------------------|--------------------------|----------------------------------|
| <input type="checkbox"/> | Courier           | <input type="checkbox"/> | Power Profile System             |
| <input type="checkbox"/> | Disk              | <input type="checkbox"/> | Tape                             |
| <input type="checkbox"/> | E-mail/Electronic | <input type="checkbox"/> | U.S. Mail                        |
| <input type="checkbox"/> | Fax               | <input type="checkbox"/> | VPN                              |
| <input type="checkbox"/> | Hand delivered    | <input type="checkbox"/> | Other ( <i>please, specify</i> ) |
| <input type="checkbox"/> | Inter-office mail |                          |                                  |

14. Who verifies and processes voter registration forms?

- State officials
- Local officials
- Both



15. Which number is used as the voter identification number on the processed voter registration form? (This does not refer to the number used to verify the application. This refers to the number given to the voter once they have been verified and entered into the voter database.)

- Last 4-digits of the Social Security number
- Full Social Security number
- Driver's license number
- Unique identifier (please, identify what method is used for assigning the unique identifier)
- Other (please, specify)

16. How do voter registration officials verify voter registration applications? (This refers to the process of verifying the applications used to register to vote. This does not refer to the process of verifying voters when they go to vote.)

- Check jury lists
- Link and verify through the department of motor vehicles
- Link and verify through the social security administration records
- Link and verify through the State's vital statistics records
- Link and verify through other state agency (please, specify agency)
- Matched against the voter registration database
- Tracking of returned voter identification cards
- Tracking the return of disposition notices
- Other (please, specify)

17. How do voter registration officials check (use as matching criteria) for duplicate registrations?

- Address
- Date of birth
- Driver's license number
- Names provided by registrant
- Social security number
- Other (please, specify)

18. Does your State check for duplicate voter registrations across state lines?

- Yes (If "yes", please, identify which states.)
- No

19. Are applicants whose applications are rejected notified of the rejection and the reason for the rejection?

<input type="checkbox"/>	Yes
<input type="checkbox"/>	No

20. Does the statewide voter registration database link to the State's department of motor vehicles?

<input type="checkbox"/>	Yes
<input type="checkbox"/>	No

21. Does the statewide voter registration database link to disability and social services agencies in a similar manner to the State's department of motor vehicles?

<input type="checkbox"/>	Yes
<input type="checkbox"/>	No

**List Maintenance**

*List maintenance refers to the specific process and procedures by which State and/or local election officials update and preserve information contained on the official list of registered voters.*

22. What process is used to perform list maintenance?

<input type="checkbox"/>	Electronic
<input type="checkbox"/>	Manual
<input type="checkbox"/>	Both

23. Who is responsible for conducting list maintenance?

<input type="checkbox"/>	State officials
<input type="checkbox"/>	Local officials
<input type="checkbox"/>	Both

24. Total number of registrations statewide and by county/local jurisdiction that were, for whatever reason, **deleted from the registration list**, including both active and inactive voters if such a distinction is made in your state, between the close of registration for the November 2, 2004, Federal general elections until the close of registration for the November 7, 2006, Federal general elections:

**Total:**

25. Total number statewide and by county/local jurisdiction of **removal notices [Section 8(d)(2) confirmation] mailed** out between the close of registration for the November 2, 2004, Federal general elections until the close of registration for the November 7, 2006, Federal general elections:

**Total:** \_\_\_\_\_

26. Total number statewide and by county/local jurisdiction of **responses received** to the confirmation notices mailed out between the close of registration for the November 2, 2004, Federal general elections until the close of registration for the November 7, 2006, Federal general elections:

**Total:** \_\_\_\_\_

27. Total number statewide and by county/local jurisdiction of voters **moved to the inactive list** between the close of registration for the November 2, 2004, Federal general elections until the close of registration for the November 7, 2006, Federal general elections:

**Total:** \_\_\_\_\_

28. Total number statewide and by county/local jurisdiction of voters (**active AND inactive voters**) **removed** from the voter rolls between the close of registration for the November 2, 2004, Federal general elections until the close of registration for the November 7, 2006, Federal general elections for the following reasons:

**Change of address (moved outside of jurisdiction)** \_\_\_\_\_

**Death:** \_\_\_\_\_

**Disqualifying felony convictions:** \_\_\_\_\_

**Failure to vote in two consecutive federal general elections:** \_\_\_\_\_

**Voter requested to be removed:** \_\_\_\_\_

**Other reasons: (please, specify)** \_\_\_\_\_

**Total number of registrations removed:** \_\_\_\_\_

009413

**29. Identify all of the sources considered in performing list maintenance:**

	<b>Applications for absentee ballots</b>		<b>Notices of deceased persons (Department of Health/Bureau of Vital Statistics)</b>
	<b>Ballots returned as undeliverable</b>		<b>Notices of persons adjudicated mentally incapacitated</b>
	<b>Canvasses, house-to-house</b>		<b>Petition checks</b>
	<b>Canvasses, political parties</b>		<b>Reports/Notices from other States that a former resident has registered to vote</b>
	<b>Car registrations</b>		<b>Reports of address changes – U.S. Postal Service National Change of Address</b>
	<b>Contact by phone</b>		<b>Reports of surrendered driver's licenses – other states' motor vehicles offices</b>
	<b>Contact in person</b>		<b>Returned election notices</b>
	<b>Jury questionnaires</b>		<b>Returned jury summons</b>
	<b>List of address changes, Emergency 911 (E-911) system</b>		<b>Returned mail from county agencies using official voter file for mailings</b>
	<b>Lists of automobile registrations</b>		<b>Requests from voters for removal</b>
	<b>List of deceased persons, Social Security Administration</b>		<b>Targeted mailings</b>
	<b>Lists of felony convictions, Federal and state courts</b>		<b>Utility changes, municipal</b>
	<b>Lists of persons licensed in other states, Department of Motor Vehicles</b>		<b>Voter registration applications</b>
	<b>Lists of property ownership</b>		<b>Voter registration system – duplicate checks</b>
	<b>Newspaper death notices/obituaries</b>		<b>Other (please, specify)</b>
	<b>Notices of address confirmations</b>		

30. Are the following classes of persons eligible to vote?

a) Those who have been convicted of a felony

<input type="checkbox"/>	Yes
<input type="checkbox"/>	No

b) Those who are serving a sentence of incarceration for conviction of a felony

<input type="checkbox"/>	Yes
<input type="checkbox"/>	No

c) Those who are serving a term of probation following being convicted of a felony

<input type="checkbox"/>	Yes
<input type="checkbox"/>	No

2006 ELECTION DAY RESULTS

*Ballots cast means a ballot that has been submitted manually or electronically by a voter but has not been verified and/or counted.*

**Note:** *For jurisdictions that provide voters with more than one ballot card to vote for different contests or measures should only report one ballot cast per voter.*

*Ballots counted means all ballots that have been cast, processed, and counted.*

*“At the polls” refers to ballots issued, cast, or counted on a jurisdiction’s voting system on Election Day at a polling place.*

*Domestic civilian absentee ballot refers to a ballot available to a non-military citizen living in the United States who is registered to vote and meets the State’s requirement for voting absentee.*

*Domestic military citizen refers to:*

- (A) *a member of a uniformed service on active duty who, by reason of such active duty, is stationed or positioned within the United States or its territories, and who is absent from the place of residence where the member is otherwise qualified to vote;*
- (B) *a member of the merchant marine who, by reason of service in the merchant marine, is serving within the United States and its territories, and who is absent from the place of residence where the member is otherwise qualified to vote; and*
- (C) *a spouse or dependent of a member referred to in subparagraph (A) or (B) who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote.*

**Early voting** refers to any voting that occurred prior to November 7, 2006, for which there were no eligibility requirements. For example, the voter did not have to attest that he/she would be absent from the voting jurisdiction on the day of the election.

**Federal Write-In Absentee Ballot (FWAB)** is a ballot available to military and overseas citizens (including APO and FPO addresses) when they have not received their regular absentee ballot from their state.

**Overseas military citizen** refers to:

- (A) a member of a uniformed service on active duty who, by reason of such active duty, is stationed or positioned outside of the United States and its territories, and who is thus absent from the place of residence where the member is otherwise qualified to vote;
- (B) a member of the merchant marine who, by reason of service in the merchant marine, is serving outside of the United States and its territories, and who is thus absent from the place of residence where the member is otherwise qualified to vote; and
- (C) a spouse or dependent of a member referred to in subparagraph (A) or (B) who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote.

**Overseas civilians** refers to persons who are citizens of the United States who are living, working or stationed outside of the United States and its territories and who are not members of a uniformed service.

**Provisional ballot** refers to a ballot issued when a voter's eligibility has not been determined.

31. Does your State conduct early voting?

Yes  
 No

32. Total number statewide and by county/local jurisdiction of:

	Ballots Cast	Ballots Counted
At the polls	_____	_____
Early voting	_____	_____
Domestic civilian absentee ballots	_____	_____
Domestic military citizens	_____	_____
Overseas military citizens	_____	_____
Overseas civilians	_____	_____
Federal Write-In Absentee Ballot (FWAB)	_____	_____

**Provisional ballots**

\* \_\_\_\_\_

**Total**

\_\_\_\_\_

*\* The number provided in response to this question should include the total number of ballots cast in the State's program for contingent or provisional ballots that complies with section 302(a) of the Help America Vote Act.*

**33.** Total number statewide and by county/local jurisdiction of votes counted for **each candidate** in a Federal contest.

**34.** Total number statewide and by county/local jurisdiction of **provisional ballots** rejected:

**Total:**

\_\_\_\_\_

**35.** Total number statewide and by county/local jurisdiction of **provisional ballots** rejected for each of the following reasons:

**Administrative error**

**No signature**

**Already voted**

**Non-appearance within 24 hours**

**Ballot not timely received (absentee)**

**Non-matching signature**

**Deceased**

**Non-verifiable signature**

**Elector challenged**

**Not registered**

**First time voter registering on Election Day**

**Registration purged**

**Improper ID**

**Wrong jurisdiction**

**Incomplete ballot form**

**Wrong precinct**

**Ineligible to vote**

**Other (please, specify)**

**Missing ballot**

**Multiple ballots in one envelope**

**Name missing from voter listed**

**Absentee Ballots**

*Absentee voting is defined as voting prior to Election Day which requires that the voter meet qualifications other than those generally required to register to vote.*

*Advanced ballot means any special Write-In Absentee Ballot, State Write-In Absentee Ballot, Special Write-In Early Ballot, or Blank Absentee Ballot that is distributed by a state in advance of the publication of an official ballot for a federal election on which military and overseas citizens are allowed to write in the name of the candidate in each contest for whom they choose to vote.*

**36.** Total number state-wide and by county/local jurisdiction of **absentee ballots** (do not include FWAB):

	Requested	Not Counted
<b>Domestic civilian absentee ballots</b>	_____	_____
<b>Domestic military citizens</b>	*	_____
<b>Overseas military citizens</b>	*	_____
<b>Overseas civilians</b>	*	_____
<b>Total</b>	_____	_____

*\*Includes ballots transmitted by mail, fax, e-mail, or courier.*

**37.** Total number statewide and by county/local jurisdiction of **advanced ballots** transmitted to military and overseas citizens:

<b>Domestic military citizens</b>	_____
<b>Overseas military citizens</b>	_____
<b>Overseas civilians</b>	_____
<b>Total</b>	_____

**38.** Total number statewide and by county/local jurisdiction of **Federal Write-In Absentee Ballots (FWAB) received** for each of the following voters for the November 7, 2006, election:

<b>Domestic military citizens</b>	_____
<b>Overseas military citizens</b>	_____
<b>Overseas civilians</b>	_____
<b>Total</b>	_____



39. Identify the **five (5)** most common reasons that **domestic civilian** absentee ballots were rejected:

No voter signature \_\_\_\_\_

Ballot not timely received \_\_\_\_\_

Non-matching signature \_\_\_\_\_

Elector voted early at the polls \_\_\_\_\_

Ballot returned as undeliverable \_\_\_\_\_

Ineligible to vote \_\_\_\_\_

No ballot application on record \_\_\_\_\_

No witness signature \_\_\_\_\_

Spoiled ballot \_\_\_\_\_

Ballot missing from envelope \_\_\_\_\_

Ballot returned in unofficial envelope \_\_\_\_\_

Multiple ballots returned in one envelope \_\_\_\_\_

Elector deceased \_\_\_\_\_

Ballot replaced \_\_\_\_\_

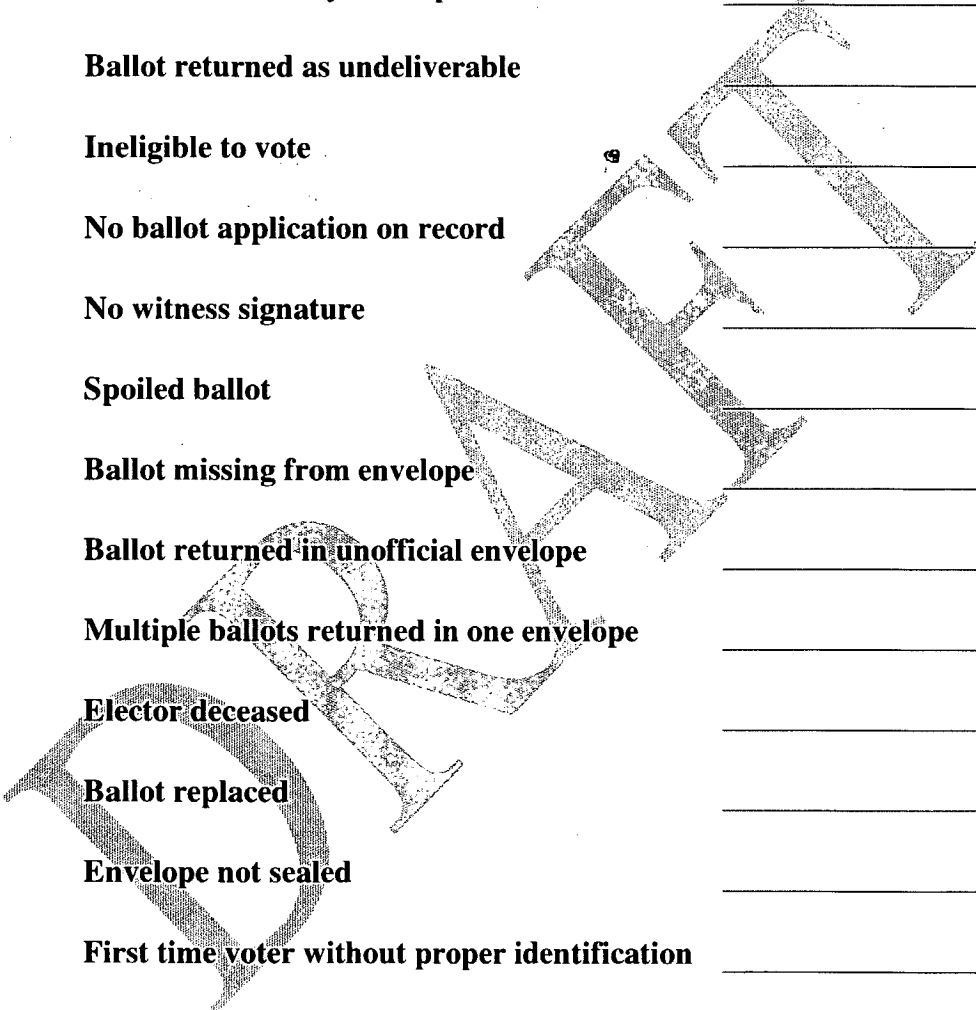
Envelope not sealed \_\_\_\_\_

First time voter without proper identification \_\_\_\_\_

No election official's signature on ballot \_\_\_\_\_

No residence address on envelope \_\_\_\_\_

Other (*please, specify*) \_\_\_\_\_



40. Total number statewide and by county/local jurisdiction of **military and overseas** absentee ballots rejected for each of the following reasons:

- Lacked a postmark \_\_\_\_\_
- No voter signature \_\_\_\_\_
- Voter signature not verifiable \_\_\_\_\_
- Had no date of voter signature \_\_\_\_\_
- Had no notary/witness signature \_\_\_\_\_
- Had no date of notary/witness signature \_\_\_\_\_
- Was received after the state deadline \_\_\_\_\_
- Returned as undeliverable \_\_\_\_\_
- Other reason (*please, specify*) \_\_\_\_\_

**Undervotes and Overvotes**

*An undervote occurs at any time when a voter makes less than that allowed number of selections in a single race/contest or when a voter votes on less than all of the races/contests for which he/she is eligible to vote.*

*An overvote occurs when a voter makes more than the permitted number of selections in a single race/contest or when a voter makes a selection in a race/contest on which he/she was not eligible to vote.*

41. Total number statewide and by county/local jurisdiction of **undervotes** reported in each federal contest:

**Total:** \_\_\_\_\_

42. Total number statewide and by county/local jurisdiction of **overvotes** reported in each federal contest:

**Total:** \_\_\_\_\_

**Poll Workers**

**Note:** *The answer to these questions should include the number of persons who served in all polling places in the State as poll workers, election judges, wardens, commissioners, or other similar term that refers to the person or persons who verify the identity of a voter; assist the voter with signing the register, affidavits or other documents required to cast a ballot; assist the voter by providing the voter with a ballot or setting up the voting machine for the voter; and serving other functions as dictated by state law. The answers to these questions should not include observers stationed at the polling place.*

**43a.** Has there been a change in the number of poll workers per precinct/polling place required by law or regulation since November 2004?

<input type="checkbox"/>	Yes
<input type="checkbox"/>	No

**43b.** If "yes," please, provide the new number of poll workers required by law or regulation to be present at each precinct/polling place.

**Total:** \_\_\_\_\_

**44.** Total number statewide and by county/local jurisdiction of poll workers that served in the November 7, 2006, Federal general elections:

**Total:** \_\_\_\_\_

**45.** Total number statewide and by county/local jurisdiction of polling places and precincts that did not have the required number of poll workers:

**Total:** \_\_\_\_\_

**Voting Jurisdictions and Polling Places**

***Precinct** means the geographic area to which voters are assigned.*

***Polling place** means the physical structure where residents of a precinct go to cast their votes on Election Day. A polling place includes any structure that houses one or more precincts.*

46. Identify what constitutes a local election jurisdiction in your State:

- County
- Parish
- Township
- City
- Borough
- Village
- Other (please, specify)

47. Total number statewide and by county/local election jurisdiction of **precincts**:

**Total:** \_\_\_\_\_

48. Total number statewide and by county/local election jurisdiction of **polling places**:

**Total:** \_\_\_\_\_

49. Total number statewide and by county/local election jurisdiction of polling places that are accessible to voters with disabilities:

**Total:** \_\_\_\_\_

*Note: For purposes of this question only, accessibility refers to the physical structure of the polling place, not the voting system.*

50. Total number by county/local election jurisdiction of polling places where a visually impaired voter can cast a private ballot:

**Total:** \_\_\_\_\_

*Note: Identify the total number of polling places where voting equipment is used such that a visually disabled voter can cast a private ballot (e.g., a DRE with audio ballot capability or paper ballots printed in Braille).*

**Sources of Information**

51. Total number of local election jurisdictions that provided information for purposes of responding to this survey:

**Total:** \_\_\_\_\_

52. Provide the name and contact information for each local election jurisdiction official that provided information for purposes of responding to this survey.

53. Identify any other sources of information used to respond to this survey other than those provided in response to the two previous questions. *(All other sources of data shall include information obtained from a state-wide voter registration database or any other public or non-public source.)*

**DRAFT**

**THANK YOU FOR RESPONDING TO THE SURVEY. PLEASE, FOLLOW THE ENCLOSED INSTRUCTIONS FOR SUBMITTING YOUR COMPLETED SURVEY.**

## GLOSSARY

**Absentee voting** is defined as voting prior to Election Day which requires that the voter meet qualifications other than those generally required to register to vote.

**Active voters** refers to all registered voters **except** those who have been sent but have not responded to a confirmation mailing sent in accordance with NVRA (42 U.S.C. 1973gg-6(d)) and have not since offered to vote.

**Advanced ballot** means any special Write-In Absentee Ballot, State Write-In Absentee Ballot, Special Write-In Early Ballot, or Blank Absentee Ballot that is distributed by a state in advance of the publication of an official ballot for a federal election on which military and overseas citizens are allowed to write in the name of the candidate in each contest for whom they choose to vote.

**“At the polls”** refers to ballots issued, cast, or counted on a jurisdiction’s voting system on Election Day at a polling place.

**Ballots cast** means a ballot that has been submitted manually or electronically by a voter but has not been verified and/or counted.

**Ballots counted** means all ballots that have been cast, processed, and counted.

**Domestic civilian absentee ballot** refers to a ballot available to a non-military citizen living in the United States who is registered to vote and meets the State’s requirement for voting absentee.

**Domestic military citizen** refers to:

- (A) a member of a uniformed service on active duty who, by reason of such active duty, is stationed or positioned within the United States or its territories, and who is absent from the place of residence where the member is otherwise qualified to vote;
- (B) a member of the merchant marine who, by reason of service in the merchant marine, is serving within the United States and its territories, and who is absent from the place of residence where the member is otherwise qualified to vote; and

(C) a spouse or dependent of a member referred to in subparagraph (A) or (B) who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote.

**Duplicate registration application** refers to an application to register by a person already registered to vote at the same address, under the same name, and (where applicable) the same political party.

**Early voting** refers to any voting that occurred prior to November 7, 2006, for which there were no eligibility requirements. For example, the voter did not have to attest that he/she would be absent from the voting jurisdiction on the day of the election.

**Federal Write-In Absentee Ballot (FWAB)** is a ballot available to military and overseas citizens (including APO and FPO addresses) when they have not received their regular absentee ballot from their state.

**Inactive voters** refers to registrants who have been sent but have not responded to a confirmation mailing sent in accordance with NVRA (42 U.S.C. 1973gg-6(d)) and have not since offered to vote.

**List maintenance** refers to the specific process and procedures by which State and/or local election officials update and preserve information contained on the official list of registered voters.

**New, valid registrations** include all registrations that are new to the local jurisdiction and re-registrations across jurisdictional lines. This does not include applications that are duplicates, rejected, or report only a change of name, address, or (where applicable) party preference within the local jurisdiction.

**Overseas civilians** refers to persons who are citizens of the United States who are living, working or stationed outside of the United States and its territories and who are not members of a uniformed service.

**Overseas military citizen** refers to:

- (A) a member of a uniformed service on active duty who, by reason of such active duty, is stationed or positioned outside of the United States and its territories, and who is thus absent from the place of residence where the member is otherwise qualified to vote;
- (B) a member of the merchant marine who, by reason of service in the merchant marine, is serving outside of the United States and its territories, and who is thus absent from the place of residence where the member is otherwise qualified to vote; and
- (C) a spouse or dependent of a member referred to in subparagraph (A) or (B) who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote.

**Overvote** occurs when a voter makes more than the permitted number of selections in a single race/contest or when a voter makes a selection in a race/contest on which he/she was not eligible to vote.

**Precinct** means the geographic area to which voters are assigned.

**Polling place** means the physical structure where residents of a precinct go to cast their votes on Election Day. A polling place includes any structure that houses one or more precincts.

**Provisional ballot** refers to a ballot issued when a voter's eligibility has not been determined.

**Undervote** occurs at any time when a voter makes less than that allowed number of selections in a single race/contest or when a voter votes on less than all of the races/contests for which he/she is eligible to vote.





Laiza N. Otero/EAC/GOV

04/13/2007 12:54 PM

To Karen Lynn-Dyson/EAC/GOV@EAC

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

bcc

Subject UOCAVA - Q2Data Study

All of the OMB documentation for this project is available at <http://www.reginfo.gov/public/do/PRASearch>. On that site one can also find information one enters directly into OMB's ROCIS system (such as the Certification, Abstract, and ICR Summary of Burden). Since this was an emergency clearance, the 60-day and 30-day FR notices requirement was waived.



UOCAVA.Emergency Justification.doc



UOCAVA Supporting Statement A.doc



UOCAVA Supporting Statement B.doc



Summary of UOCAVA Survey Revisions[1].12.6.2006.doc



EAC Survey of UOCAVA Voters.pdf



Revised UOCAVA Survey[1].12.6.2006.pdf



UOCAVA.Notice of OMB Action.11.30.2006.pdf



UOCAVA.Notice of OMB Action.12.11.2006.pdf

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009600

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 11/30/2006

U.S. Election Assistance Commission

FOR CERTIFYING OFFICIAL: Juliet Thompson-Hodgkins

FOR CLEARANCE OFFICER: Laiza Otero

In accordance with the Paperwork Reduction Act, OMB has taken action on your request received 11/15/2006

ACTION REQUESTED: New collection (Request for a new OMB Control Number)

TYPE OF REVIEW REQUESTED: Emergency

ICR REFERENCE NUMBER: 200611-3265-002

TITLE: EAC Study on First-Time Voters Who Register to Vote by Mail

LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved without change

OMB CONTROL NUMBER: 3265-0007

The agency is required to display the OMB Control Number and inform respondents of its legal significance in accordance with 5 CFR 1320.5(b).

EXPIRATION DATE: 05/31/2007

DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	0	0	0
New	30	68	0
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	30	68	0
Change due to Agency Adjustment	0	0	0
Change Due to Potential Violation of the PRA	0	0	0

TERMS OF CLEARANCE:

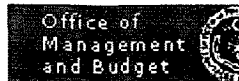
OMB Authorizing Official:

John F. Morrall III  
Acting Deputy Administrator,  
Office Of Information And Regulatory Affairs

009601

List of ICs

IC Title	Form No.	Form Name	CFR Citation
EAC First-Time Voters Who Register to Vote by Mail - Focus Groups	EAC-RS03, EAC-RS04	First-Time Voters - Focus Group Quiz, First-Time Voters - Focus Group Script	



# RegInfo.gov

Where to find Federal Regulatory Information

- Home
- Unified Agenda and Regulatory Plan
- EO 12866 Regulatory Review
- Information Collection Review
- Information Collection Review
- Advanced Search
- XML Reports

Display additional information by clicking on the following:  All  Brief and OIRA conclusion

Abstract/Justification  
  Legal Statutes  
  Rulemaking  
  FR Notices/Comments  
  IC List  
  Burden  
  Misc.  
  Certification

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[View Supporting Statement and Other Documents](#)

Please note that the OMB number and expiration date may not have been determined when this Information Collection Request and associated Information Collection forms were submitted to OMB. The approved OMB number and expiration date may be found by clicking on the Notice of Action link below.

## View ICR - OIRA Conclusion

<p><b>OMB Control No:</b> 3265-0007</p> <p><b>Status:</b> Active</p> <p><b>Agency/Subagency:</b></p> <p><b>Title:</b> EAC Study on First-Time Voters Who Register to Vote by Mail</p> <p><b>Type of Information Collection:</b> New collection (Request for a new OMB Control Number)</p> <p><b>Type of Review Request:</b> Emergency</p> <p><b>OIRA Conclusion Action:</b> Approved without change</p> <p><a href="#">Retrieve Notice of Action (NOA)</a></p> <p><b>Terms of Clearance:</b></p>	<p><b>ICR Reference No:</b> 200611-3265-002</p> <p><b>Previous ICR Reference No:</b></p> <p><b>Agency Tracking No:</b></p> <p><b>Approval Requested By:</b> 11/29/2006</p> <p><b>Conclusion Date:</b> 11/30/2006</p> <p><b>Date Received in OIRA:</b> 11/15/2006</p>
--	--

	Inventory as of this Action	Requested	Previously Approved
<b>Expiration Date</b>	05/31/2007	6 Months From Approved	
<b>Responses</b>	30	30	0
<b>Time Burden (Hours)</b>	68	68	0
<b>Cost Burden (Dollars)</b>	0	0	0

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009603



Laiza N. Otero/EAC/GOV

10/17/2006 05:23 PM

To "Meredith"

<mimwalle@winnerscirclecomm.com>@GSAEXTERNAL

cc Karen Lynn-Dyson/EAC/GOV@EAC

bcc

Subject Re: Paperwork Reduction Act/OMB Clearance needs

Hello Meredith,

Here are some documents that may help you along in completing the information requested on the 83-I form and the supporting documents. I have attached a file illustrating screenshots of the online system OMB has developed so you may have a better feel for how the information you provide is entered into the system. I look forward to working with you to get this process started. Thank you!



Sample Notice Cert Program Emergency.doc



Sample ROCIS Emergency ICR highlights.pdf



Sample for Burden.doc



Template for Supporting Statements A and B.doc

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)  
Fax (202) 566-3128

"Meredith" <mimwalle@winnerscirclecomm.com>



"Meredith"  
<mimwalle@winnerscirclecomm.com>

10/17/2006 05:02 PM

To lotero@eac.gov

cc

Subject Re: Paperwork Reduction Act/OMB Clearance needs

Laiza:

Just a quick question. I believe you mentioned this on the call, but I neglected to write it down as I didn't think we'd need to take advantage of emergency approval. Once the required paperwork is submitted, how quickly does OMB typically turn around an emergency ICR?

Thanks,

*Meredith Battle Imwalle*

009604

Meredith Battle Imwalle  
President  
Winner's Circle Communications, LLC  
703.786.1823 cell  
<http://www.winnerscirclecomm.com>

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

**From:** [lotero@eac.gov](mailto:lotero@eac.gov)  
**To:** [mimwalle@winnerscirclecomm.com](mailto:mimwalle@winnerscirclecomm.com)  
**Cc:** [klynndyson@eac.gov](mailto:klynndyson@eac.gov)  
**Sent:** Tuesday, October 17, 2006 12:09 PM  
**Subject:** Re: Paperwork Reduction Act/OMB Clearance needs

Sounds fine with me. I can be reached at the number below.

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)  
Fax (202) 566-3128

"Meredith" <[mimwalle@winnerscirclecomm.com](mailto:mimwalle@winnerscirclecomm.com)>

10/17/2006 01:01 PM

To [klynndyson@eac.gov](mailto:klynndyson@eac.gov)  
cc [lotero@eac.gov](mailto:lotero@eac.gov)  
Subject Re: Paperwork Reduction Act/OMB Clearance needs

The more I think about it, the more I think the expedited process is the way for us to go. Laiza -- my colleague Adam Bourne is going to get started on the paperwork. May I have him call you with questions?

--Meredith

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

**From:** Meredith  
**To:** [klynndyson@eac.gov](mailto:klynndyson@eac.gov)

009605

Cc: [lotero@eac.gov](mailto:lotero@eac.gov)

Sent: Tuesday, October 17, 2006 11:57 AM

Subject: Re: Paperwork Reduction Act/OMB Clearance needs

Thanks for your email, Karen. During our phone interviews with the states, we learned that we can identify first-time voters and potential focus group participants after the November election by using their statewide voter registration database records. My plan was to submit the OMB paperwork within the next 2 or 3 weeks and to pursue a standard, not expedited, clearance. That said, we'll need to begin contacting focus group participants on February 19, 2007. Should we change our plans and pursue an expedited clearance instead? Laiza, any thoughts?

Regards,

*Meredith Battle Imwalle*

Meredith Battle Imwalle

President

Winner's Circle Communications, LLC

703.786.1823 cell

<http://www.winnerscirclecomm.com>

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

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

To: [mimwalle@winnerscirclecomm.com](mailto:mimwalle@winnerscirclecomm.com)

Cc: [lotero@eac.gov](mailto:lotero@eac.gov)

Sent: Tuesday, October 17, 2006 11:06 AM

Subject: Re: Paperwork Reduction Act/OMB Clearance needs

Meredith-

I wanted to be certain to follow-up on last week's call on the PRA/OMB clearance process to determine if you will need Laiza to work with you on an expedited/emergency clearance process.

I know that you will be surveying first-time voters and, perhaps, will need to identify them at the November election.

Karin McDonald has been working with Laiza to get her survey process expedited and I wanted to be certain that if you need the same, that you are working with Laiza to process the paperwork now.

Thanks

Karen Lynn-Dyson

009606

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

009607



**U.S. ELECTION ASSISTANCE COMMISSION**

**Request For Substantive Comments on Procedural Manual For The Election Assistance Commission's Voting System Testing and Certification Program; Proposed Information Collection: Request for Comments on Information Collection Burden; U.S. EAC Voting System Testing and Certification Program.**

**AGENCY:** United States Election Assistance Commission (EAC).

**ACTION:** NOTICE.

---

**SUMMARY:** The EAC has drafted a procedural manual for its Voting System Testing and Certification Program. This program sets administrative procedures for obtaining an EAC Certification for voting systems. Participation in the program is strictly voluntary. The program is mandated by 42 U.S.C. §15371. The purpose of this notice is twofold: (1) to request public comment on the substantive aspects of the program and (2) to request public comment on the proposed collection of information pursuant to the emergency processing provisions of the Paperwork Reduction Act as submitted to the Office of Management and Budget (OMB).

**(1) SUBSTANTIVE COMMENTS:** The EAC seeks substantive comments from the public on its proposed procedural manual. Please submit comments consistent with the information below. Comments should identify and cite the section of the manual at issue. Where a substantive issue is raised, please propose a recommended change or alternative policy. This publication and request for comment is not required under the rulemaking, adjudicative or licensing provisions of the Administrative Procedures Act (APA). It is a voluntary effort by the EAC to gather input from the public on the EAC's administrative procedures for certifying or decertifying voting systems. Furthermore, this request by the

EAC for public comment is not intended to make any of the APA's rulemaking provisions applicable to development of this or future EAC procedural programs.

DATES (Comments): Submit written or electronic comments on this draft procedural manual on or before 5:00 p.m. EDT on October 31, 2006.

ADDRESSES: Submit comments on-line on EAC's website: <http://www.eac.gov>; via mail to Brian Hancock, Director of Voting System Certification, U.S. Election Assistance Commission, 1225 New York Avenue, Suite 1100, Washington, D.C. 20005; or via fax to 202-566-1392. An electronic copy of the proposed guidance may be found on the EAC's web site <http://www.eac.gov>.

FOR FURTHER INFORMATION CONTACT: Brian Hancock, Director of Voting System Certification, 1225 New York Avenue, Suite 1100, Washington, D.C., (202)566-3100, Fax: (202)566-1392.

**(2) COMMENTS ON THE PROPOSED COLLECTION OF INFORMATION:** In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the EAC is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be

collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

The EAC is requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. The EAC is requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR Part 1320(a)(2)(ii). The information collection at issue is necessary in order to provide for the certification of voting systems as mandated by the Help America Vote Act of 2002 (42 U.S.C. §15371). The EAC cannot reasonably comply with the normal clearance procedures because failure to implement this program in an expedited fashion is reasonably likely to result in a public harm, as stated in 5 CFR 1320.13(a)(2)(i).

Approval of this emergency collection is essential in order to comply with Help America Vote Act of 2002 (42 U.S.C. §15371). HAVA requires that the EAC certify and decertify voting systems. Section 231(a)(1) of HAVA specifically requires the EAC to "... provide for the certification, de-certification and re-certification of voting system hardware and software...." This mandate represents the first time the Federal government will provide for the voluntary testing and certification of voting systems, nationwide. In response to this HAVA requirement, the EAC is developing the Voting System Testing and Certification Program. This program requires the submission and retention of information related to voting systems and voting system manufacturers.

009610

Until recently, national voting system certification was conducted by a private membership organization, the National Association of State Election Directors (NASED). NASED certified voting systems for over a decade, using standards issued by the Federal government. The organization terminated its certification efforts on July 10, 2006. While the EAC and NASED have worked together to provide for the certification of emergency modifications necessary to properly field voting systems for the 2006 General Election, there is presently no mechanism in place to test and certify new systems or to process modifications for the 2008 Federal elections. Given the fact that (1) it can take years to develop, test, certify, sell and field a new or modified voting system, and (2) a large volume of voting systems (new, existing and modified) are expected to be submitted to the EAC upon initiation of the new Certification Program, it is imperative that the EAC's Voting System Testing and Certification Program begin on the earliest possible date. The 2008 Federal elections are less than 2 years away. Ensuring that certified voting systems are available for the 2008 Election Cycle is essential to the public welfare.

1. Type of Information Collection Request: New collection;
2. Title of Information Collection: EAC Voting System Testing and Certification Program Manual;
3. Use: HAVA requires that the EAC certify and decertify voting systems (42 U.S.C. §15371). Section 231(a)(1) of HAVA specifically requires the EAC to "... provide for the certification, de-certification and re-certification of voting system hardware and software by accredited laboratories." The EAC will perform this mandated function through the use of its Voting System Testing

and Certification Program. Voting systems certified by the EAC will be used by citizens to cast votes in Federal Elections. Therefore, it is paramount that the program operates in a reliable and effective manner. In order to certify a voting system, it is necessary for the EAC to (1) require voting system manufacturers to submit information about their organization and the voting systems they submit for testing and certification; (2) require voting system manufacturers to retain voting system technical and test records; and (3) to provide a mechanism for election officials to report events which may effect a voting system's certification.

4. Form Numbers: EAC-001C, 002C and 003C.
5. Frequency: Voluntary Reporting – (1) *Manufacturer Registration Form*: one time when a manufacturer registers for the program, (2) *Voting System Certification Application Form*: as needed, when a manufacturer submits a voting system for testing and certification, and (3) *Field Anomaly Reporting Form*: as needed, when an election official voluntarily notifies the EAC of a witnessed voting system anomaly.
6. Affected Public: Business or other for-profit institutions and state and local election officials;
7. Number of Respondents: 94 annually;
8. Total Annual Responses: 99 annually;
9. Total Annual Hours: 119 hours, annually.

EAC is requesting OMB review and approval of this collection by

009612

November 30, 2006, with a 180-day approval period. Written comments and recommendations will be considered from the public if received by the individuals designated below by October 31, 2006.

To obtain copies of the supporting statement, the Voting System Testing and Certification Program Manual or EAC forms referenced above, access the EAC Web Site at [www.eac.gov](http://www.eac.gov) or mail your request, including your address, phone number, to Director of Voting System Certification, U.S. Election Assistance Commission, 1225 New York Avenue, Suite 1100, Washington, D.C. 20005; or fax the EAC Director of Voting System Certification at 202-566-1392.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below by October 31, 2006:

*OMB Reviewer:* Alexander T. Hunt

Office of Management and Budget, Room 10235

New Executive Office Building

Washington, DC 20503, (202) 395-7316.

009613

- Save ICR successfully.

### Edit ICR

Agency: 3265 EAC

OMB Control Number:

Agency ICR Tracking Number:

ICR Reference Number:  
200610-3265-002

Previous ICR Reference Number:

Title:

U.S. Election Assistance Commission's Survey of Uniformed and Overseas Citizen Absentee Voting

Type of Information Collection (check one):

New collection (Request for a new OMB Control Number)

Type of Review Requested (check one):

Emergency

Request Approval Date:

10/26/2006

Emergency Justification:

Provide justification for Emergency Approval

Requested Expiration Date (check one):

Six months from approval date

Does this ICR contain surveys, censuses, or employ statistical methods?  Yes  No

(Attach Part B of Supporting Statement)

Does the Supporting Statement serve as a Joint ICR and Privacy Impact Assessment per OMB Memorandum 03-22, Section II.D.?  Yes  No

Agency Contact

Otero, Laiza

Add New Contact

Abstract (4000 characters maximum):

Section 245 of the Help America Vote Act (HAVA) requires the United States Election Assistance Commission (EAC) to conduct a study of issues and challenges, specifically including the potential for election fraud, that are presented by the incorporation of communications and internet technologies in the Federal, State, and local electoral process.

009914

Authorizing Statute(s):

42 USC Pub.L. - Sec

Stat

Name of Statute:

EO

Name/ Subject of EO:

US Code

15385

Name of Law:

Help America Vote Act of 2002

Remove

Add another Authorizing Statute

Associated Rulemaking Information

RIN:

Stage of Rulemaking (check one):

Federal Register Citation:

Citation Date:

- Proposed Rule
- Interim Final or Final Rule
- Not associated with rulemaking

FR

For a Proposed Rule, OMB will not consider an ICR complete until the Notice of Proposed Rulemaking has been published.

For a Final Rule, please put the ICR reference number for the ICR reviewed at the proposed rule stage.

For ICRs associated with Interim Final rules that are not significant under EO, please upload a draft of the Federal Register notice as a Supplementary Document in Manage ICR Documents.

Federal Register Notices & Comments

60-day Notice:

Federal Register Citation:

Citation Date:

Did the Agency receive public comments on this ICR?

FR

- Yes
- No

30-day Notice:

Federal Register Citation:

Citation Date:

FR

Unless submitted as an Emergency or Associated with Rulemaking, OMB will not consider an ICR complete until the 30-day notice has been published.

Annual Cost to Federal Government: \$

Add/Edit Information Collections

ICR Summary of Burden:

	Requested	Program Change Due to New Statute	Program Change Due to Agency Discretion	Change Due to Adjustment in Agency Estimate	Change Due to Potential Violation of the PRA	Previously Approved
Annual Number of Responses	0	0	0	0	0	0
Annual Time Burden (Hr)	0	0	0	0	0	0
Annual Cost Burden (\$)	0	0	0	0	0	0

Citations for New Statutory Requirements: (Required if any change in burden is a Program Change Due to New Statute.)

USC Pub.L. - Sec

Stat

Name of Law:

Name of Statute:

EO

Name/ Subject of EO:

Remove

Add Another Statutory Requirement

009615



Burden increases because of Program Change due to Agency Discretion

Burden decreases because of Program Change due to Agency Discretion

Add/Edit Supporting Statement and Other Documents

Check Spelling   IC List   Agency Review   Save   Check For Completeness   Submit   Delete   Cancel

Login: lotero

009616

<b>OMB Control No.:</b>	<b>ICR Ref No.:</b> 200610-3265-002	<b>ICR Expiration Date:</b>	<b>ICR Status:</b>
<b>Agency/Sub-Agency:</b> EAC	<b>Agency Tracking No.:</b>	<b>Title:</b> U.S. Election Assistance Commission's Survey of Uniformed and Overseas Citizen Absentee Voters	
<b>Request Status:</b> Created	<b>Last Event:</b> Created	<b>Last Event User:</b> Otero, Laiza	<b>Last Event Date:</b> 10/17/2006

● You have saved the IC.

### Add New IC

IC Title:

Agency IC Tracking Number:

Survey of UOCAVA Voters

Is this a Common Form? Yes :  No :

IC Status: New

Obligation to Respond: Voluntary

CFR Citation:

Title	Part	Operation
<input type="checkbox"/> CFR		<b>Remove</b>
<input type="checkbox"/> CFR		<b>Remove</b>
<input type="checkbox"/> CFR		<b>Remove</b>
<input type="checkbox"/> CFR		<b>Remove</b>
<input type="checkbox"/> CFR		<b>Remove</b>
<input type="checkbox"/> CFR		<b>Remove</b>
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<input type="checkbox"/> CFR		<b>Remove</b>
<input type="checkbox"/> CFR		<b>Remove</b>

009617

Add Another CFR Citation

**Information Collection Instruments:**

Remove	Instrument File	Form No.	Form Name	Document Type	URL	Available Electronically?	Can Be Submitted Electronically?	Electronic Capability
--------	-----------------	----------	-----------	---------------	-----	---------------------------	----------------------------------	-----------------------

Remove Add Instrument

**Federal Enterprise Architecture Business Reference Module**

Line of Business:

General Government

Subfunction:

Executive Functions

Privacy Act System of Records

Title:

FR Citation:

FR

Number of Respondents:

10000

Number of Respondents for Small Entity:

0

Affected Public:

Individuals or Households

Percentage of Respondents Reporting Electronically: (%)

90

Annual IC Burden: (Select appropriate IC Burden Worksheet)

This ICR Requests Change in Net Burden

	Requested	Program Change Due to New Statute	Program Change Due to Agency Discretion	Change Due to Adjustment in Agency Estimate	Change Due to Potential Violation of the PRA	Previously Approved
Annual Number of Responses for this IC	0	0	0	0	0	0
Annual IC Time Burden (Hours)	0	0	0	0	0	0
Annual IC Cost Burden (Dollars)	0	0	0	0	0	0

**Documents for IC**

Remove	Title	Document	Date Uploaded	Uploaded By
--------	-------	----------	---------------	-------------

Add New IC

Remove	Upload Supplementary	Add Non-Electronic		
ICR Data	Save	Check IC Completeness	Delete	Cancel

Login: lotero

009619

## Add/Edit IC Instrument

Instrument Filename: Supporting Documentation for OMB.doc

Document Type:

Form Number:

Form Name:

Form File Size: 49664 bytes

Is this collection available electronically?  Yes  No

If yes, can this collection be submitted electronically?  Yes  No

Electronic Capability:

URL:

009620

# IC Burden Worksheet

**Number of Respondents:** 10000

**Number of Responses per Respondent:**

**per Time Period:**

**Annual Frequency:** 1

**Annual Number of Responses:** 10000

**Type of Collection and Burden**

**Burden per Response:**

	Time Per Response	Hours	Cost Per Response
Reporting	1.25	1.25	0.00000000
	Hours		
Record Keeping	0	0	0.00000000
Third Party Disclosure	0	0	0.00000000
<b>Total</b>		1.25	0.0000000000

**Frequency of Reporting:**

- Biennially
- Decade
- Monthly
- Once
- Semi-annually
- Annually
- Daily
- Hourly
- On occasion
- Quarterly
- Weekly

**Annual Burden:**

	Annual Time Burden (Hours)	Annual Cost Burden (Dollars)
Reporting	12500.00	0
Record Keeping	0.00	0
Third Party Disclosure	0.00	0
<b>Total</b>	12500	0

009621

**Annual Responses and Burden with Changes:**

	Requested	Program Change Due to New Statute	Program Change Due to Agency Discretion	Change Due to Adjustment in Agency Estimate	Change Due to Potential Violation of the PRA	Previously Approved
Annual Number of Responses for this IC	10000	0	10000	0	0	0
Annual IC Time Burden (Hour)	12500	0	12500	0	0	0
Annual IC Cost Burden (Dollars)	0	0	0	0	0	0

Save Close Window

009622

OMB Control No.: Agency/Sub-Agency: EAC Request Status: Created	ICR Ref No.: 200610-3265-002 Agency Tracking No.: Last Event: Created	ICR Expiration Date: Title: U.S. Election Assistance Commission's Survey of Uniformed and Overseas Citizen Absentee Voters Last Event User: Otero, Laiza	ICR Status: Last Event Date: 10/17/2006
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### Manage ICR Documents

#### Supporting Statement A

Remove	Document	Date Uploaded	Uploaded By
	<input type="text" value="OWSE"/>		
	<input type="button" value="Remove"/>	<input type="button" value="Upload Document"/>	

#### Supporting Statement B

Remove	Document	Date Uploaded	Uploaded By
	<input type="text" value="OWSE"/>		
	<input type="button" value="Remove"/>	<input type="button" value="Upload Document"/>	

#### Supplementary Documents

Remove	Title	Document	Document Type	Date Uploaded	Uploaded By
		<input type="button" value="Remove"/>	<input type="button" value="Upload Supplementary"/>	<input type="button" value="Add Non-Electronic"/>	

#### Public Comments

Remove	Author Name	Comment Document	Author Affiliation	Sponsoring Org.	Type	Category	Date of Comment	Date Comment Received
		<input type="button" value="Remove"/>	<input type="button" value="Upload Public Comment"/>					

Login: lotero

009623



## Sample

### **12. Annual Reporting Burden:**

- a. Number of Respondents 8,397
- b. Number of Responses per Respondent 1
- c. Total Annual Responses 8,397
- d. Hours per Response 2
- e. Total Annual Reporting Burden 16,794
- f. Total Public Cost \$ 1,091,610

The projected hours per response for this collection of information were derived by dividing the process into three actions:

- Learning about the law and the form: 15 minutes
- Completion of the form: 20 minutes
- Assembling and filing the form: 85 minutes
- Total Hours 120 minutes (2 hours)

For the first two actions, tests were used to determine completion times. Persons who were not conversant with immigration processes were used to determine the average completion time. The third action of the form, assembling and filing the form, was broken down into subtasks. For example, an application for a reentry permit or refugee travel document is mailed directly to the USCIS Nebraska Service Center. Meanwhile, an application for advance parole is filed at the local USCIS office if the applicant is in the United States. If, however, the applicant seeking advance parole is outside the United States, he or she would mail the form to USCIS Headquarters in Washington, DC. Consequently, the time necessary to actually file the form can vary widely, depending on the circumstances of the applicant.

### **Annual Reporting Burden**

**The annual reporting burden is 16,794.** This figure was derived by multiplying the number of respondents (8,397) x frequency of response (1) x (2) hours per response. This estimation is based on prior USCIS experience with the program.

### **Public Cost**

**The estimated annual public cost is \$ 1,091,610.** This estimate is based on the number of respondents 8,397 x (2) hours per response x \$10 (average hourly rate) plus the number of respondents (8,397 x fee charge of \$190).

13. There are no capital or start-up costs associated with this information collection. Any cost burdens to respondents as a result of this information collection are identified in Item 14. There is a \$190 fee charge associated with the collection of this information.

14. Annualized Cost Analysis:

- a. Printing Cost \$ 5,290
- b. Collection and Processing Cost \$ 918,380
- c. Total Cost to Program \$ 923,670
- d. Fee Charge \$ 923,670
- e. Total Cost to Government \$ 0

**Government Cost**

The estimated cost of the program to the Government is calculated by using the estimated number of respondents (8,397) multiplied (x) by the suggested \$110 fee charge (which includes the suggested average hourly rate for clerical, officer, and managerial time with benefits, plus a percent for the estimated overhead cost for printing, stocking, distributing and processing of this form).

009625

**SUPPORTING STATEMENTS**  
(Name)

**A. JUSTIFICATION**

1. Explain the circumstances that make the collection of information necessary.
  
2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.
  
3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.
  
4. Describe efforts to identify duplication.
  
5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.
  
6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.
  
7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

009626

**8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.**

**9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.**

**10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.**

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.**

**12. Provide an estimate in hours of the burden of the collection of information.**

**13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in #12 above).**

**14. Provide estimates of annualized cost to the Federal government.**

009627

**15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.**

**16. For collections whose results will be published, outline the plans for tabulation and publication.**

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.**

**18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.**

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

*(If your collection does not employ statistical methods, just say that and delete the following five questions from the format.)*

**1. Describe (including a numerical estimate) the potential respondent universe and any sampling or other respondent selection method to be used. Data on the number of entities (e.g. establishments, State and local governmental units, households, or persons) in the universe and the corresponding sample are to be provided in tabular form. The tabulation must also include expected response rates for the collection as a whole. If the collection has been conducted before, provide the actual response rate achieved.**

**2. Describe the procedures for the collection, including: the statistical methodology for stratification and sample selection; the estimation procedure; the degree of accuracy needed for the purpose described in the justification; any unusual problems requiring specialized sampling procedures; and any use of periodic (less frequent than annual) data collection cycles to reduce burden.**

009628

**3. Describe the methods used to maximize response rates and to deal with nonresponse. The accuracy and reliability of the information collected must be shown to be adequate for the intended uses. For collections based on sampling, a special justification must be provided if they will not yield "reliable" data that can be generalized to the universe studied.**

**4. Describe any tests of procedures or methods to be undertaken. Tests are encouraged as effective means to refine collections, but if ten or more test respondents are involved OMB must give prior approval.**

**5. Provide the name and telephone number of individuals consulted on the statistical aspects of the design, and the name of the agency unit, contractor(s), grantee(s), or other person(s) who will actually collect and/or analyze the information for the agency.**

009629



Laiza N. Otero/EAC/GOV

11/02/2006 02:49 PM

To "Adam L. Bourne"

cc

bcc Karen Lynn-Dyson/EAC/GOV@EAC

Subject Re: EAC Project and Paperwork Reduction Act 

Dear Mr. Bourne,

Per our conversation, here are the forms/information that need to be completed. I am also including a handbook of OMB's online submission system, ROCIS, so you get a feel for how the information you provide on the 83-I is presented to them. Since this will be an emergency review, there also needs to be justification included as to why it's going through the emergency process. In addition, we need to submit the survey instrument itself and a draft of the 30-day Federal Register notice (I can provide you a template as well for that if you need one). Please, let me know if you have any questions or need more information. Thank you!



Template for Supporting Statements A and B.doc



OMB 83-I form.pdf



ROCIS\_HOW\_TO\_Guide\_for\_AGENCY\_Users\_of\_ICR\_Module-7-12-2006.doc

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**SUPPORTING STATEMENTS**  
**(Name)**

**A. JUSTIFICATION**

1. Explain the circumstances that make the collection of information necessary.
  
2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.
  
3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.
  
4. Describe efforts to identify duplication.
  
5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.
  
6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.
  
7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

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**8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.**

**9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.**

**10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.**

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.**

**12. Provide an estimate in hours of the burden of the collection of information.**

**13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in #12 above).**

**14. Provide estimates of annualized cost to the Federal government.**

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**15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.**

**16. For collections whose results will be published, outline the plans for tabulation and publication.**

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.**

**18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.**

## **B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

*(If your collection does not employ statistical methods, just say that and delete the following five questions from the format.)*

**1. Describe (including a numerical estimate) the potential respondent universe and any sampling or other respondent selection method to be used. Data on the number of entities (e.g. establishments, State and local governmental units, households, or persons) in the universe and the corresponding sample are to be provided in tabular form. The tabulation must also include expected response rates for the collection as a whole. If the collection has been conducted before, provide the actual response rate achieved.**

**2. Describe the procedures for the collection, including: the statistical methodology for stratification and sample selection; the estimation procedure; the degree of accuracy needed for the purpose described in the justification; any unusual problems requiring specialized sampling procedures; and any use of periodic (less frequent than annual) data collection cycles to reduce burden.**

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**3. Describe the methods used to maximize response rates and to deal with nonresponse. The accuracy and reliability of the information collected must be shown to be adequate for the intended uses. For collections based on sampling, a special justification must be provided if they will not yield "reliable" data that can be generalized to the universe studied.**

**4. Describe any tests of procedures or methods to be undertaken. Tests are encouraged as effective means to refine collections, but if ten or more test respondents are involved OMB must give prior approval.**

**5. Provide the name and telephone number of individuals consulted on the statistical aspects of the design, and the name of the agency unit, contractor(s), grantee(s), or other person(s) who will actually collect and/or analyze the information for the agency.**

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# PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the Supporting Statement, and any additional documentation to: **Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.**

1. Agency/Subagency originating request	2. OMB control number <span style="float: right;">b. <input type="checkbox"/> None</span> a. _____
3. Type of information collection <i>(check one)</i> a. <input type="checkbox"/> New collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension, without change, of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number	4. Type of review requested <i>(check one)</i> a. <input type="checkbox"/> Regular b. <input type="checkbox"/> Emergency - Approval requested by: ____/____/____ c. <input type="checkbox"/> Delegated
3a. Public Comments Has the agency received public comments on this information collection?  <input type="checkbox"/> Yes <input type="checkbox"/> No	5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input type="checkbox"/> No
7. Title	6. Requested expiration date a. <input type="checkbox"/> Three years from approval date    b. <input type="checkbox"/> Other Specify: ____/____/____
8. Agency form number(s) <i>(if applicable)</i>	
9. Keywords	
10. Abstract	
11. Affected public <i>(Mark primary with "P" and all others that apply with "X")</i> a. <input type="checkbox"/> Individuals or households                      d. <input type="checkbox"/> Farms b. <input type="checkbox"/> Business or other for-profit                      e. <input type="checkbox"/> Federal Government c. <input type="checkbox"/> Not-for-profit institutions                      f. <input type="checkbox"/> State, Local or Tribal Government	12. Obligation to respond <i>(Mark primary with "P" and all others that apply with "X")</i> a. <input type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory
13. Annual reporting and recordkeeping hour burden a. Number of respondents _____ b. Total annual responses _____ 1. Percentage of these responses collected electronically _____ % c. Total annual hours requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____	14. Annual reporting and recordkeeping cost burden <i>(in thousands of dollars)</i> a. Total annualized capital/startup costs _____ b. Total annual costs (O&M) _____ c. Total annualized cost requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____
15. Purpose of information collection <i>(Mark primary with "P" and all others that apply with "X")</i> a. <input type="checkbox"/> Application for benefits                      e. <input type="checkbox"/> Program planning or management b. <input type="checkbox"/> Program evaluation                              f. <input type="checkbox"/> Research c. <input type="checkbox"/> General purpose statistics                      g. <input type="checkbox"/> Regulatory or compliance d. <input type="checkbox"/> Audit	16. Frequency of recordkeeping or reporting <i>(check all that apply)</i> a. <input type="checkbox"/> Recordkeeping                                      b. <input type="checkbox"/> Third party disclosure c. <input type="checkbox"/> Reporting 1. <input type="checkbox"/> On occasion    2. <input type="checkbox"/> Weekly                      3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly       5. <input type="checkbox"/> Semi-annually              6. <input type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially       8. <input type="checkbox"/> Other (describe) _____
17. Statistical methods Does this information collection employ statistical methods?  <input type="checkbox"/> Yes <input type="checkbox"/> No	18. Agency contact <i>(person who can best answer questions regarding the content of this submission)</i>  Name: _____  Phone: _____

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## 19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9.

**Note:** The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It uses plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
  - (i) Why the information is being collected;
  - (ii) Use of information;
  - (iii) Burden estimate;
  - (iv) Nature of response (voluntary, required for a benefit, or mandatory);
  - (v) Nature and extent of confidentiality; and
  - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of the instructions);
  - (i) It uses effective and efficient statistical survey methodology; and
  - (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of these provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

# Instructions For Completing OMB Form 83-I

Please answer all questions and have the Senior Official or designee sign the form. These instructions should be used in conjunction with 5 CFR 1320, which provides information on coverage, definitions, and other matters of procedure and interpretation under the Paperwork Reduction Act of 1995.

## 1. Agency/Subagency originating request

Provide the name of the agency or subagency originating the request. For most cabinet-level agencies, a subagency designation is also necessary. For non-cabinet agencies, the subagency designation is generally unnecessary.

## 2. OMB control number

- If the information collection in this request has previously received or now has an OMB control or comment number, enter the number.
- Check "None" if the information collection in this request has not previously received an OMB control number. Enter the four digit agency code for your agency.

## 3. Type of information collection (check one)

- Check "New collection" when the collection has not previously been used or sponsored by the agency.
- Check "Revision" when the collection is currently approved by OMB, and the agency request includes a material change to the collection instrument, instructions, its frequency of collection, or the use to which the information is to be put.
- Check "Extension" when the collection is currently approved by OMB, and the agency wishes only to extend the approval past the current expiration date without making any material change in the collection instrument, instructions, frequency of collection, or the use to which the information is to be put.
- Check "Reinstatement without change" when the collection previously had OMB approval, but the approval has expired or was withdrawn before this submission was made, and there is no change to the collection.
- Check "Reinstatement with change" when the collection previously had OMB approval, but the approval has expired or was withdrawn before this submission was made, and there is change to the collection.
- Check "Existing collection in use without OMB control number" when the collection is currently in use but does not have a currently valid OMB control number.

## 4. Type of review requested (check one)

- Check "Regular" when the collection is submitted under 5 CFR 1320.10, 1320.11, or 1320.12 with a standard 60 day review schedule.
- Check "Emergency" when the agency is submitting the request under 5 CFR 1320.13 for emergency processing and provides the required supporting material. Provide the date by which the agency requests approval.
- Check "Delegated" when the agency is submitting the collection under the conditions OMB has granted the agency delegated authority.

## 5. Small entities

Indicate whether this information collection will have a significant impact on a substantial number of small entities. A small entity may be (1) a small business which is deemed to be one that is independently owned and operated and that is not dominant in its field of operation; (2) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field; or (3) a small government jurisdiction which is a government of a city, county, town, township, school district, or special district with a population of less than 50,000.

## 6. Requested expiration date

- Check "Three years" if the agency requests a three year approval for the collection.
- Check "Other" if the agency requests approval for less than three years. Specify the month and year of the requested expiration date.

## 7. Title

Provide the official title of the information collection. If an official title does not exist, provide a description which will distinguish this collection from others.

## 8. Agency form number(s) (if applicable)

Provide any form number the agency has assigned to this collection of information. Separate each form number with a comma.

## 9. Keywords

Select and list at least two keywords (descriptors) from the "Federal Register Thesaurus of Indexing Terms" that describe the subject area(s) of the information collection. Other terms may be used but should be listed after those selected from the thesaurus. Separate keywords with commas. Keywords should not exceed two lines of text.

## 10. Abstract

Provide a statement, limited to five lines of text, covering the agency's need for the information, uses to which it will be put, and a brief description of the respondents.

## 11. Affected public

Mark all categories that apply, denoting the primary public with a "P" and all others that apply with "X."

## 12. Obligation to respond

Mark all categories that apply, denoting the primary obligation with a "P" and all others that apply with "X."

- Mark "Voluntary" when the response is entirely discretionary and has no direct effect on any benefit or privilege for the respondent.
- Mark "Required to obtain or retain benefits" when the response is elective, but is required to obtain or retain a benefit.
- Mark "Mandatory" when the respondent must reply or face civil or criminal sanctions.

## 13. Annual reporting and recordkeeping hour burden

- Enter the number of respondents and/or recordkeepers. If a respondent is also a recordkeeper, report the respondent only once.
- Enter the number of responses provided annually. For recordkeeping as compared to reporting activity, the number of responses equals the number of recordkeepers.
  - Enter the estimated percentage of responses that will be submitted/collected electronically using magnetic media (i.e., diskette), electronic mail, or electronic data interchange. Facsimile is not considered an electronic submission.
  - Enter the total annual recordkeeping and reporting hour burden.
  - Enter the burden hours currently approved by OMB for this collection of information. Enter zero (0) for any new submission or for any collection whose OMB approval has expired.
  - Enter the difference by subtracting line d from line c. Record a negative number (d larger than c) within parentheses.
  - Explain the difference. The difference in line e must be accounted for in lines f.1. and f.2.

f.1. "Program change" is the result of deliberate Federal government action. All new collections and any subsequent revision of existing collections (e.g., the addition or deletion of questions) are recorded as program changes.

f.2. "Adjustment" is a change that is not the result of a deliberate Federal government action. Changes resulting from new estimates or action not controllable by the Federal government are recorded as adjustments.

## 14. Annual reporting and recordkeeping cost burden (in thousands of dollars)

The costs identified in this item must exclude the cost of hour burden identified in Item 13.

- Enter the total dollar amount of annualized cost for all respondents of any associated capital or start-up costs.
  - Enter recurring annual dollar amount of cost for all respondents associated with operating or maintaining systems or purchasing services.
  - Enter total (14.a. + 14.b.) annual reporting and recordkeeping cost burden.
  - Enter any cost burden currently approved by OMB for this collection of information. Enter zero (0) if this is the first submission after October 1, 1995.
  - Enter the difference by subtracting line d from line c. Record a negative number (d larger than c) within parenthesis.
  - Explain the difference. The difference in line e must be accounted for in lines f.1. and f.2.
- f.1. "Program change" is the result of deliberate Federal government action. All new collections and any subsequent revisions or changes resulting in cost changes are recorded as program changes.

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f.2. "Adjustment" is a change that is not the result of a deliberate Federal government action. Changes resulting from new estimations or actions not controllable by the Federal government are recorded as adjustments.

#### 15. Purpose of information collection

Mark all categories that apply, denoting the primary purpose with a "P" and all others that apply with "X."

a. Mark "Application for benefits" when the purpose is to participate in, receive, or qualify for a grant, financial assistance, etc., from a Federal agency or program.

b. Mark "Program evaluation" when the purpose is a formal assessment, through objective measures and systematic analysis, of the manner and extent to which Federal programs achieve their objectives or produce other significant effects.

c. Mark "General purpose statistics" when the data is collected chiefly for use by the public or for general government use without primary reference to the policy or program operations of the agency collecting the data.

d. Mark "Audit" when the purpose is to verify the accuracy of accounts and records.

e. Mark "Program planning or management" when the purpose relates to progress reporting, financial reporting and grants management, procurement and quality control, or other administrative information that does not fit into any other category.

f. Mark "Research" when the purpose is to further the course of research, rather than for a specific program purpose.

g. Mark "Regulatory or compliance" when the purpose is to measure compliance with laws or regulations.

#### 16. Frequency of recordkeeping or reporting

Check "Recordkeeping" if the collection of information explicitly includes a recordkeeping requirement.

Check "Third party disclosure" if a collection of information includes third-party disclosure requirements as defined by 1320.3(c).

Check "Reporting" for information collections that involve reporting and check the frequency of reporting that is requested or required of a respondent. If the reporting is on "an event" basis, check "On occasion."

#### 17. Statistical methods

Check "Yes" if the information collection uses statistical methods such as sampling or imputation. Generally, check "No" for applications and audits (unless a random auditing scheme is used). Check "Yes" for statistical collections, most research collections, and program evaluations using scientific methods. For other types of data collection, the use of sampling, imputation, or other statistical estimation techniques should dictate the response for this item. Ensure that supporting documentation is provided in accordance with Section B of the Supporting Statement.

#### 18. Agency contact

Provide the name and telephone number of the agency person best able to answer questions regarding the content of this submission.

#### 19. Certification for Paperwork Reduction Act Submissions

The Senior Official or designee signing this statement certifies that the collection of information encompassed by the request complies with 5 CFR 1320.9. Provisions of this certification that the agency cannot comply with should be identified here and fully explained in item 18 of the attached Supporting Statement. NOTE: The Office that "develops" and "uses" the information to be collected is the office that "conducts or sponsors" the collection of information. (See 5 CFR 1320.3(d)).

## Certification Requirement for Paperwork Reduction Act Submissions

5 CFR 1320.9 reads "As part of the agency submission to OMB of a proposed collection of information, the agency (through the head of the agency, the Senior Official, or their designee) shall certify (and provide a record supporting such certification) that the proposed collection of information--

"(a) is necessary for the proper performance of the functions of the agency, including that the information to be collected will have practical utility;

"(b) is not unnecessarily duplicative of information otherwise reasonably accessible to the agency;

"(c) reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency, including with respect to small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. § 601(6)), the use of such techniques as:

"(1) establishing differing compliance or reporting requirements or timetables that take into account the resources available to those who are to respond;

"(2) the clarification, consolidation, or simplification of compliance and reporting requirements; or collections of information, or any part thereof;

"(3) an exemption from coverage of the collection of information, or any part thereof;

"(d) is written using plain, coherent, and unambiguous terminology and is understandable to those who are to respond;

"(e) is to be implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond;

"(f) indicates for each recordkeeping requirement the length of time persons are required to maintain the records specified;

"(g) informs potential respondents of the information called for under §1320.8(b)(3); [see below]

"(h) has been developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected, including the processing of the information in a manner which shall enhance, where appropriate, the utility of the information to agencies and the public;

"(i) uses effective and efficient statistical survey methodology appropriate to the purpose for which the information is to be collected; and

"(j) to the maximum extent practicable, uses appropriate information technology to reduce burden and improve data quality, agency efficiency and responsiveness to the public."

NOTE: 5 CFR 1320.8(b)(3) requires that each collection of information:

"(3) informs and provides reasonable notice to the potential persons to whom the collection of information is addressed of:

"(i) the reasons the information is planned to be and/or has been collected;

"(ii) the way such information is planned to be and/or has been used to further the proper performance of the functions of the agency;

"(iii) an estimate, to the extent practicable, of the average burden of the collection (together with a request that the public direct to the agency any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden);

"(iv) whether responses to the collection of information are voluntary, require to obtain or retain a benefit (citing authority) or mandatory (citing authority);

"(v) the nature and extent of confidentiality to be provided, if any (citing authority); and

"(vi) the fact that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number."

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# Supporting Statement for Paperwork Reduction Act Submissions

## General Instructions

A Supporting Statement, including the text of the notice to the public required by 5 CFR 1320.5(a)(i)(iv) and its actual or estimated date of publication in the Federal Register, must accompany each request for approval of a collection of information. The Supporting Statement must be prepared in the format described below, and must contain the information specified in Section A below. If an item is not applicable, provide a brief explanation. When Item 17 of the OMB Form 83-I is checked "Yes", Section B of the Supporting Statement must be completed. OMB reserves the right to require the submission of additional information with respect to any request for approval.

## Specific Instructions

### A. Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.
2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.
3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.
4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.
5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.
6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.
7. Explain any special circumstances that would cause an information collection to be conducted in a manner:
  - \* requiring respondents to report information to the agency more often than quarterly;
  - \* requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;
  - \* requiring respondents to submit more than an original and two copies of any document;

- \* requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;
- \* in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;
- \* requiring the use of a statistical data classification that has not been reviewed and approved by OMB;
- \* that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or
- \* requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years - even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

9. Explain any decision to provide any payment or gift to respondents, other than reenumeration of contractors or grantees.
10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information

is requested, and any steps to be taken to obtain their consent.

12. Provide estimates of the hour burden of the collection of information. The statement should:
  - \* Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.
  - \* If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.

\* Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 13.

13. Provide an estimate for the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).

\* The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.

\* If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collections services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use

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existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.

\* Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

14. Provide estimates of annualized costs to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-1.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-1.

#### **B. Collections of Information Employing Statistical Methods**

The agency should be prepared to justify its decision not to use statistical methods in any case where such methods might reduce burden or improve accuracy of results. When Item 17 on the Form OMB 83-1 is checked, "Yes," the following documentation should be included in the Supporting Statement to the extent that it applies to the methods proposed:

1. Describe (including a numerical estimate) the potential respondent universe and any sampling or other respondent selection methods to be used. Data on the number of entities (e.g., establishments, State and local government units, households, or persons) in the universe covered by the collection and in the corresponding sample are to be provided in tabular form for the universe as a whole and for each of the strata in the proposed sample. Indicate expected response rates for the collection as a whole. If the collection had been conducted previously, include the actual response rate achieved during the last collection.

2. Describe the procedures for the collection of information including:

- \* Statistical methodology for stratification and sample selection,
- \* Estimation procedure,
- \* Degree of accuracy needed for the purpose described in the justification,
- \* Unusual problems requiring specialized sampling procedures, and
- \* Any use of periodic (less frequent than annual) data collection cycles to reduce burden.

3. Describe methods to maximize response rates and to deal with issues of non-response. The accuracy and reliability of information collected must be shown to be adequate for intended uses. For collections based on sampling, a special justification must be provided for any collection that will not yield "reliable" data that can be generalized to the universe studied.

4. Describe any tests of procedures or methods to be undertaken. Testing is encouraged as an effective means of refining collections of information to minimize burden and improve utility. Tests must be approved if they call for answers to identical questions from 10 or more respondents. A proposed test or set of test may be submitted for approval separately or in combination with the main collection of information.

5. Provide the name and telephone number of individuals consulted on statistical aspects of the design and the name of the agency unit, contractor(s), grantee(s), or other person(s) who will actually collect and/or analyze the information for the agency.

## ***ROCIS HOW TO Guide for Agency Users of ICR Module***

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# ROCIS HOW TO Guide for Agency Users of ICR Module

## HOW TO Log Into ROCIS

If you are logging onto the system, please point your browser to [www.rocis.gov](http://www.rocis.gov) to enter real data or to the Practice Site provided to you by OIRA, <http://192.136.12.204/rocis/>.

Read and select the Accept Terms on the Warning Screen.

Enter your User ID (first initial and last name) and Password (initially rocis123 until you change it to your personal password as directed by the system). Select the Done button on the Notification screen.

- You may land directly into your ICR Module inbox or at a screen requesting you to choose the Agenda/Reg module or the PRA module. Please select PRA to conduct business in the ICR Module or Agenda/Reg to change passwords or to review and modify your user information.

## HOW TO Change Your Password

If this is the first time you have logged in, the system will ask you to change your password. On the Change Password screen, enter your old password, enter your new password (must be at least 8 characters, must have one number and one special character—like oira@1234) in both boxes as indicated and click Change Password button. When you get the Confirmation screen, click ok. Please do not share your password with any other authorized or unauthorized user.

ROCIS - Change Password - Microsoft Internet Explorer

File Edit View Favorites Tools Help

Back Forward Stop Search Favorites

Address <http://192.136.12.204/rods/do/ChangePassword>

ROCIS Agenda/Regs

Admin Agenda/Regs PRA Logout

User Profile Change Password Employee Admin

### Change Password

Old Password

New Password

Confirm New Password

\*Password length should be between 8 and 14. Password must contain at least one alphabetic, one numeric and one special character.

start [taskbar icons] 5:16 PM

## HOW TO Review and Change Your User Profile

Upon successful login, you should arrive at your Inbox. If you are an Agency user, you will arrive in your Created Request List. If you are an OIRA user, you will arrive in your Pending List of reviews that are assigned to you. Take a moment to look at your tabs and sub tabs at the top of the screen. Select the Agenda/Regs tab. Click on the Admin tab on the top line. The User Profile tab provides you a place to view and update your user information.

Upon initial entry, please verify and make appropriate changes to name, agency, telephone number and e-mail. Please do not enter address information and disregard the information about your role in ROCIS, which is for System Administrative Use. Then, be sure to save your information. The Save button is all the way at the bottom of the screen.

Please be sure to return to the User Profile to modify your personal information whenever changes occur, such as your phone number or e-mail address.

ROCIS - Employee Detail - Microsoft Internet Explorer

File Edit View Favorites Tools Help

Back Forward Stop Search Favorites

Address: http://192.136.12.204/rocs/do/Redirector?RedirectorMenu=default\_eo

ROCIS Agenda/Regs

Admin

User Profile Change Password Employee Admin

### User Detail

Prefix  \* First Name  Middle Name  \* Last Name  Suffix

Title  Agency / Sub Agency  \* Agency  Sub Agency

\* User Login

User Encrypted Password

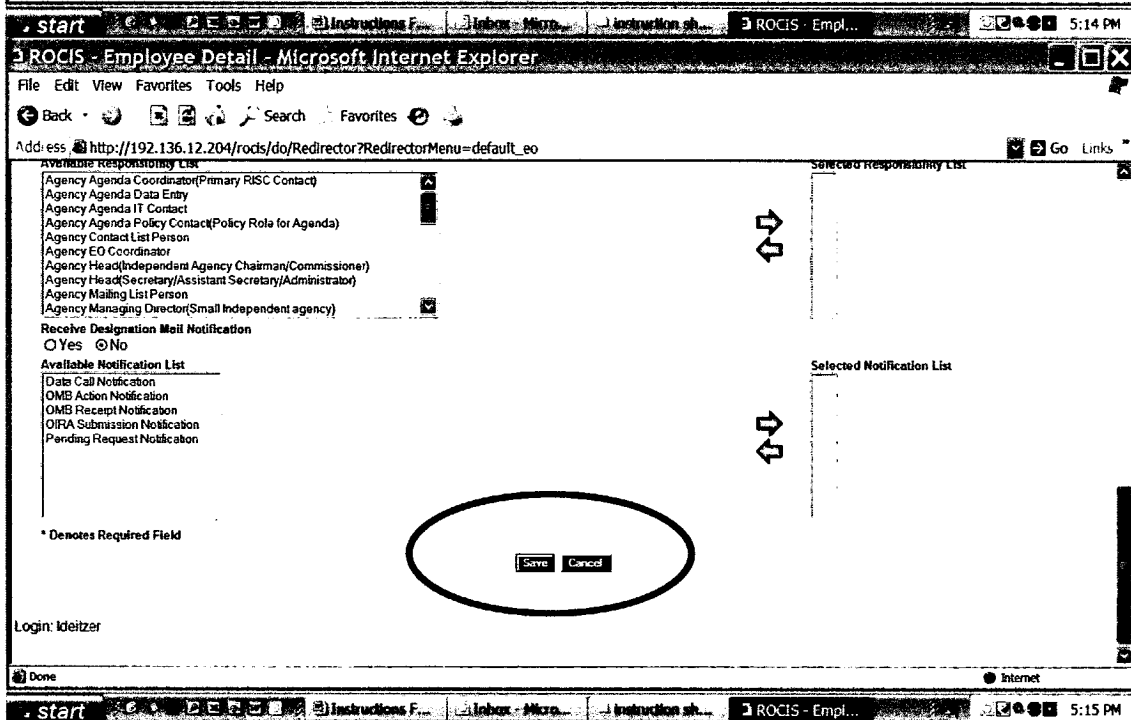
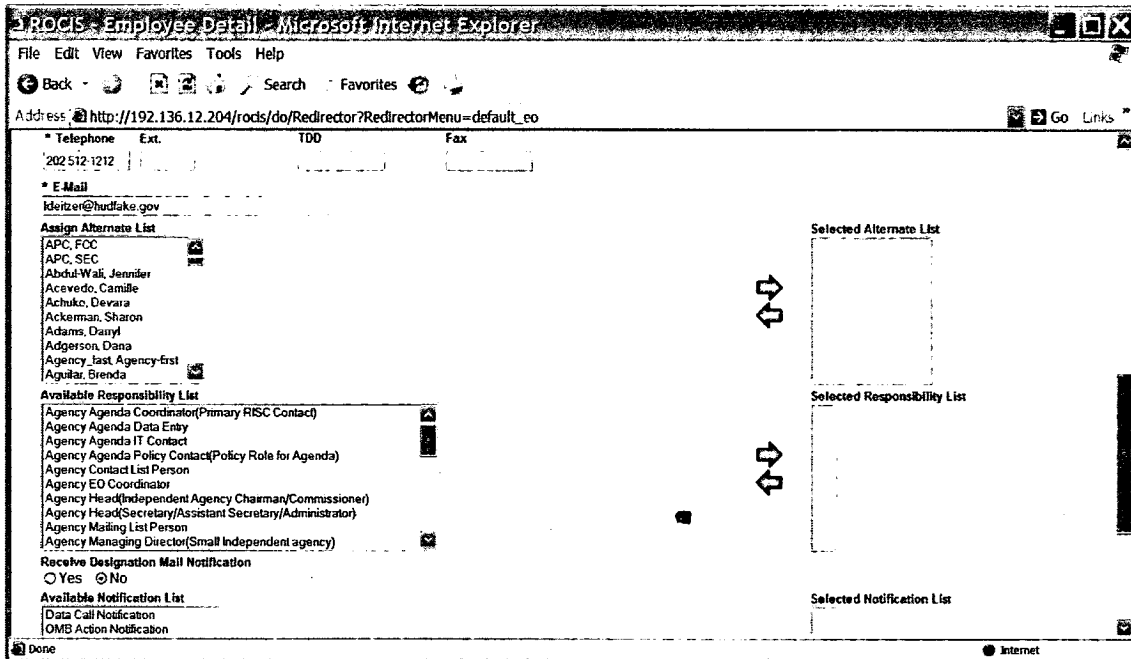
\* Selected Roles

- AUTHORIZED PAPERWORK CONTACT (APC) - 2500 HUD
- AUTHORIZED PAPERWORK CONTACT (APC) - 2501 HUDSEC
- AUTHORIZED PAPERWORK CONTACT (APC) - 2502 OH
- AUTHORIZED PAPERWORK CONTACT (APC) - 2503 GNMA
- AUTHORIZED PAPERWORK CONTACT (APC) - 2504 SEECB
- AUTHORIZED PAPERWORK CONTACT (APC) - 2505 OMAR
- AUTHORIZED PAPERWORK CONTACT (APC) - 2506 CPD
- AUTHORIZED PAPERWORK CONTACT (APC) - 2507 REAC
- AUTHORIZED PAPERWORK CONTACT (APC) - 2508 HUDIG
- AUTHORIZED PAPERWORK CONTACT (APC) - 2509 EC

Done

start Instructions F... Inbox Micro... Instruction sh... ROCIS - Empl... 5:12 PM

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To leave the User Profile page, scroll to the bottom and click Save (if you changed anything) or Cancel. This will take you back to the ROCIS Employee Administration screen.

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## HOW TO Use the ROCIS Employee Administration Search

The purpose of the Employee Administration Screen is to allow ROCIS users to find other ROCIS users via the search capability. For instance, if you would like to send another agency's Authorized Paperwork Contact (Submitter) an e-mail regarding a potential transfer of an OMB Control Number, you are able to search on the APC "role" for the agency and receive a list of contact information. If a clearance officer wants to identify for management the list of preparers (PDECs) for his/her agency, this is the screen from which to search and gain the information.

The screenshot shows a web browser window titled "ROCIS - Employee Administration - Microsoft Internet Explorer". The address bar shows "http://192.136.12.204/rocs/do/ListUser". The page content includes a navigation bar with "Admin" and "Help" tabs, and a sub-navigation bar with "User Profile", "Change Password", and "Employee Admin". The main heading is "ROCIS Employee Administration". Below this is a search form with the following fields: "User ID", "Last Name", "First Name", "Agency" (dropdown), "Sub Agency" (dropdown), and "Role" (dropdown). There are radio buttons for "Users" and "Contacts", and a "Search" button. Below the form is a table header with columns: "Agency", "Name", "User ID", "Phone Number", "Email", "Inactivate", and "Locked". The page footer shows "Login: Ideltzer" and the browser's taskbar with the time "5:10 PM".

When you have satisfied your ROCIS administrative functions, click on the PRA tab to return to the Created Request List Inbox for Agency users or to the Pending Inbox for OIRA users.

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ROCIS - Created Request List - Microsoft Internet Explorer provided by General Services Administration

Address: http://192.138.12.204/rocis/do/Redirector

ROCIS PRA

Agenda Regs PRA Logout

Inbox Request ICR Package History Search Report

Created Request List Submitted Request List Concluded Request List

Filter List View All

Criteria: Status=(Created);

OMB Control No.	ICR Package No.	Created By	Created Date	Agency Sub	Agency ICR Number	Title	Current Expiration Date	Last Reviewed By	Request Type	Status/Methods
2577-0232	200605-2577-002	Deitzer, Lillian	05/22/2006	HUD/PIH		Screening and Eviction for Drug Abuse and other Criminal Activity-Final Rule	05/31/2006	Deitzer, Lillian on 05/22/2006	ICR Rev	No
2528-0228	200311-2528-004	Deitzer, Lillian	05/22/2006	HUD/PD&R		Research Studies on Homeownership and Affordable Lending (NOFA)	01/31/2007	Deitzer, Lillian on 05/22/2006	EE	No
2503-0002	200605-2503-004	Deitzer, Lillian	05/22/2006	HUD/IGNMA		Create New ICR Package 521 1030PM	05/31/2008		I	Yes
	200605-2503-005	Deitzer, Lillian	05/22/2006	HUD/IGNMA		New ICR Package 1159PM			ICR New	No
	200605-2509-001	Deitzer, Lillian	05/22/2006	HUD/EC		Title for OIRA Brown Bag		Deitzer, Lillian on 05/22/2006	ICR New	No

List shows all requests for ICR review (No Time Limit).

Login: ldeitzer

When you arrive in ROCIS ICR Module after successfully logging in, you'll be in the Created Request List Inbox. Think of this as the top of the desk in your office where you are working to create and prepare ICRs and other requests to OIRA, such as, emergency extensions, discontinuations, or transfer OMB Control Numbers.

You may sort on each of the column headings to organize your work space and you may filter and/or view all the contents of the inbox.

## HOW TO Use the Home Row of Tabs

At the top of the screen is a set of tabs that enable you to perform any and all functions within ROCIS and within the ICR Module. This set of tabs is referred to as the Home Row. You can move from the Created Request List to the Submitted (to OIRA) Request List and to the (OIRA) Concluded Request List. You can also select from a drop down of Request types, use the Simple and Advanced Search tools or run Reports.

When you are working on or viewing an OMB Control Number or ICR Package, you can use the Home Row to view the ICR Package and the History of the ICR package or the History of the OMB Control Number.

009647



# HOW TO Create an ICR Package

There are three ways to create an ICR Package—

1. By using the Request drop down box to select the type of request you desire;
2. By finding an action in the Concluded Request List to view and from which to view and begin a new ICR, or
3. By searching for an OMB Control Number or ICR Reference Number of an existing ICR to view and from which to begin a new ICR.

## 1. Create an ICR by selecting from the Request drop down box.

**ROCIS PRA**

Agenda/Regs PRA Logout

Inbox > Request > **Information Collection Request (ICR)** > History > Search > Report

Information Collection Request (ICR) Inboxes->Created Request List

Created Request

New IC to Generic ICR (Gen ICR)  
 Discontinue OMB Control Number (D)  
 Emergency Extension (EE)  
 Transfer OMB Control Number (T)

Filter List View All  
 Criteria: Status=(Created);

OMB Control No	ICR Ref. No	Created By	Created Date	Agency/Sub	Agency ICR Tracking Number	Title	Current Expiration Date	Last Reviewed By	Request Type	Stat Methods
2577-0232	200605-2577-002	Deitzer, Lillian	05/22/2006	HUD/PIH		Screening and Eviction for Drug Abuse and other Criminal Activity-Final Rule	05/31/2006	Deitzer, Lillian on 05/22/2006	ICR Rev	No
2528-0228	200311-2528-004	Deitzer, Lillian	05/22/2006	HUD/PD&R		Research Studies on Homeownership and Affordable Lending (NOFA)	01/31/2007	Deitzer, Lillian on 05/22/2006	EE	No
2503-0002	200605-2503-004	Deitzer, Lillian	05/22/2006	HUD/IGNMA		Create New ICR Package 521 1030PM	05/31/2008		I	Yes
	200605-2503-005	Deitzer, Lillian	05/22/2006	HUD/IGNMA		New ICR Package 1159PM			ICR New	No
	200605-2509-001	Deitzer, Lillian	05/22/2006	HUD/EC		Title for OIRA Brown Bag		Deitzer, Lillian on 05/22/2006	ICR New	No

List shows all requests for ICR review (No Time Limit).

Login: ldeitzer

Select and click on Information Collection Request (ICR).

The screen below will appear.

009648

ROCIS - Create New ICR Package - Microsoft Internet Explorer provided by General Services Administration

http://192.136.12.204/roos/ho/NewICR

**ROCIS PRA**      Agenda Regs    PRA    Logout

Inbox    Request    ICR Package    History    Search    Report

Request->Information Collection Request (ICR)

### Create New ICR Package

Create a New ICR from Scratch

Sub Agency

Will be generic ?

Title

Abstract

Check Spelling    Create    Cancel

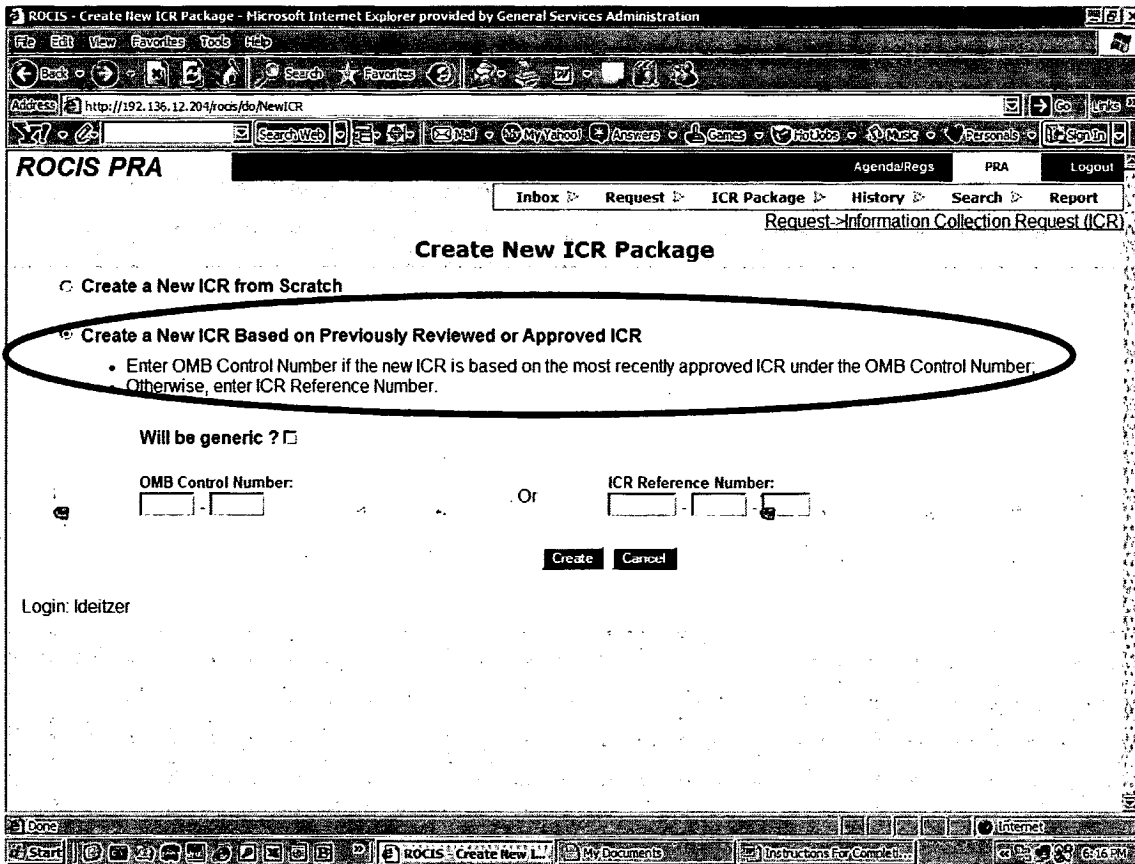
Create a New ICR Based on Previously Reviewed or Approved ICR

- Enter OMB Control Number if the new ICR is based on the most recently approved ICR under the OMB Control Number;
- Otherwise, enter ICR Reference Number.

Use this screen to identify the Agency, Sub Agency, Title and Abstract of a new ICR that has no existing OMB Control Number (or previously begun ICR Package).

Select Create a New ICR from Scratch.

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If an OMB Control Number exists, use this screen to identify the OMB Control Number or most recently approved ICR under the OMB Control Number to create an ICR. Both of these lead to the Edit ICR screen. Select Create a New ICR Based on Previously Reviewed or Approved ICR.

If the Create a New ICR from Scratch was selected, the Edit ICR screen will be blank except the agency, sub agency, title and abstract you created. An ICR Reference Number is assigned by the system upon creation to track the ICR throughout its history.

If the second screen is used, ROCIS will assign an ICR Reference Number and populate the screen from the last previously approved ICR under the OMB Control Number. Records from the legacy OIRA data base are migrated to the ROCIS ICR Module data base. When viewing ICRs that are created from migrated data, keep in mind that some data was not collected electronically in the legacy system, in which case, the field will appear blank.

009650



ROCCS - Concluded Request List - Microsoft Internet Explorer

File Edit View Favorites Tools Help

Address: http://192.136.12.204/roccs/do/AgencyConcludedPRAList?doFilter=y

**ROCCS PRA**

Inbox Request ICR Package History Search Report

**Concluded Request List**

Filter List View All

Criteria: Status=(Approved, Disapproved); Current Expiration Date=06/30/2006; Agency=2500 HUD

OMB Control No.	ICR Ref. No.	Agency/Sub	Agency ICR Tracking Number	Title	Current Expiration Date	Request Type	Conclusion Action	Concluded Date
2502-0117	200304-2502-002	HUD/OH		Request for Acceptance of Changes in Approved Drawings and Specifications	06/30/2006	ICR Rein w/ Chg	Approved without change	06/13/2003
2502-0328	200304-2502-004	HUD/OH		Title I Property Improvement and Manufactured Home Loan Programs	06/30/2006	ICR Ed	Approved without change	06/16/2003
2502-0484	200304-2502-001	HUD/OH		Pre-Foreclosure Sales Program	06/30/2006	ICR Rein w Chg	Approved without change	06/13/2003
2502-0495	200304-2502-003	HUD/OH		Builder's Certification of Plans, Specifications, and Site	06/30/2006	ICR Ed	Approved without change	06/16/2003
2502-0538	200509-2502-005	HUD/OH		Fee or Roster Designation and HUD Conditions and Appraisal Report	06/30/2006	ICR Rev	Approved with change	06/27/2003
2502-0538	200509-2502-007	HUD/OH		Fee or Roster Designation and HUD Conditions and Appraisal Report	06/30/2006	ICR Chg	Approved with Change	09/01/2005

start | ROGISHOW | Inbox-Micro... | Instruction sh... | ROGIS - Conc... | 5:51 PM

Select an ICR by clicking either on the ICR Ref No. or on the Request Type to View the ICR—OIRA Conclusion screen. Choose the action you wish to pursue; e.g., “Create ICR Package” from the choices in blue boxes at the bottom of the screen.

Note also the many ways you can view the ICR—from a very brief summary to the entire record—based on selection of choices in the Display Box.

View ICR - Microsoft Internet Explorer

File Edit View Favorites Tools Help

Address: http://192.136.12.205/roccs/do/ViewICR?from=CONCLUDED\_LIST&ICRRefNbr=200509-2502-007

Inbox Request ICR Package History Search Report

ICR Package > Concluded ICR Package > ICR Data

Display additional information by clicking on the following:  All  Brief and OIRA conclusion  Abstract/Justification  Legal Statutes  Rulemaking  FR Notices/Comments  Burden  Misc.  Certification  View Information Collection (IC) List  View Supporting Statement and Other Documents

Blank fields in records indicate information that was not collected or not collected electronically prior to July 2005.

**View ICR - OIRA Conclusion**

OMB Control No: 2502-0538 ICR Reference No: 200509-2502-007  
 Status: Active Previous ICR Reference No: 200304-2502-005  
 Agency/Subagency: HUD/OH Agency Tracking No:  
 Title: Fee or Roster Designation and HUD Conditions and Appraisal Report  
 Type of Information Collection: No material or nonsubstantive change to a currently approved collection  
 Type of Review Request: Regular  
 OIRA Conclusion Action: Approved with change Conclusion Date: 09/01/2005  
 Retire Notice of Action (NOA) Date Received in OIRA: 09/01/2005

Terms of Clearance:	Inventory as of this action	Requested	Previously Approved
Expiration Date	07/31/2006	07/2006	07/31/2006
Responses	1,203,240	1,203,240	1,203,240
Time Burden (Hours)	577,620	577,620	577,620
Cost Burden (Dollars)	180,000	180,000	180,000

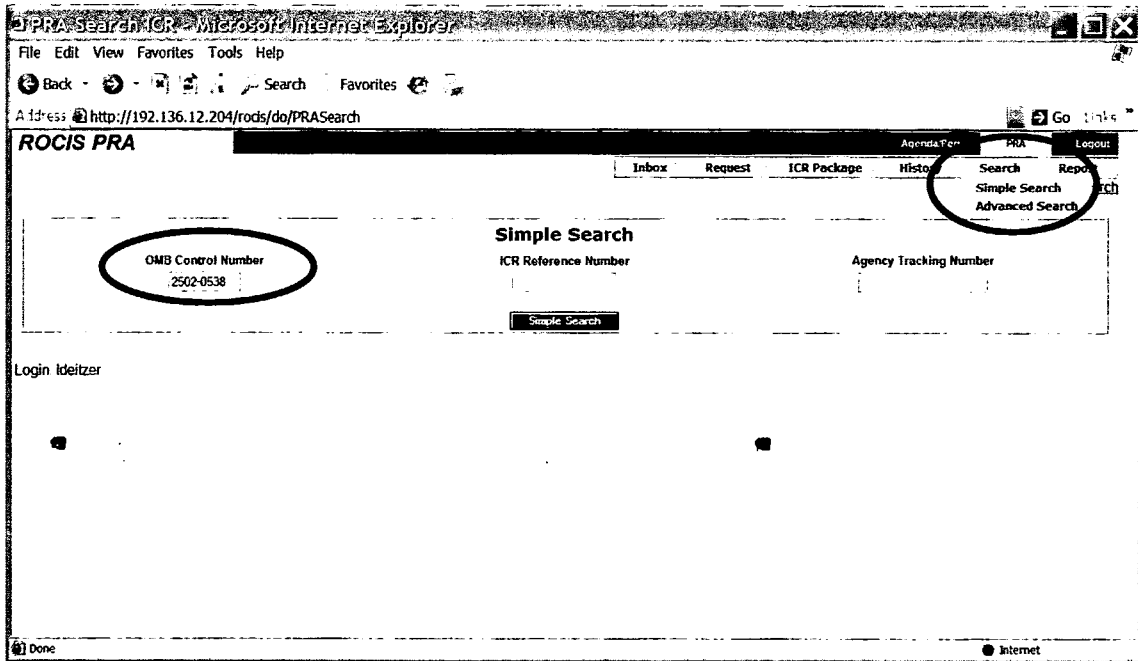
Discontinue (D) Emergency Extension (EE) Inactive (I) **Create ICR Package**

start | Microsoft | View ICR - Mi... | ROGISHOW | 1:21 PM

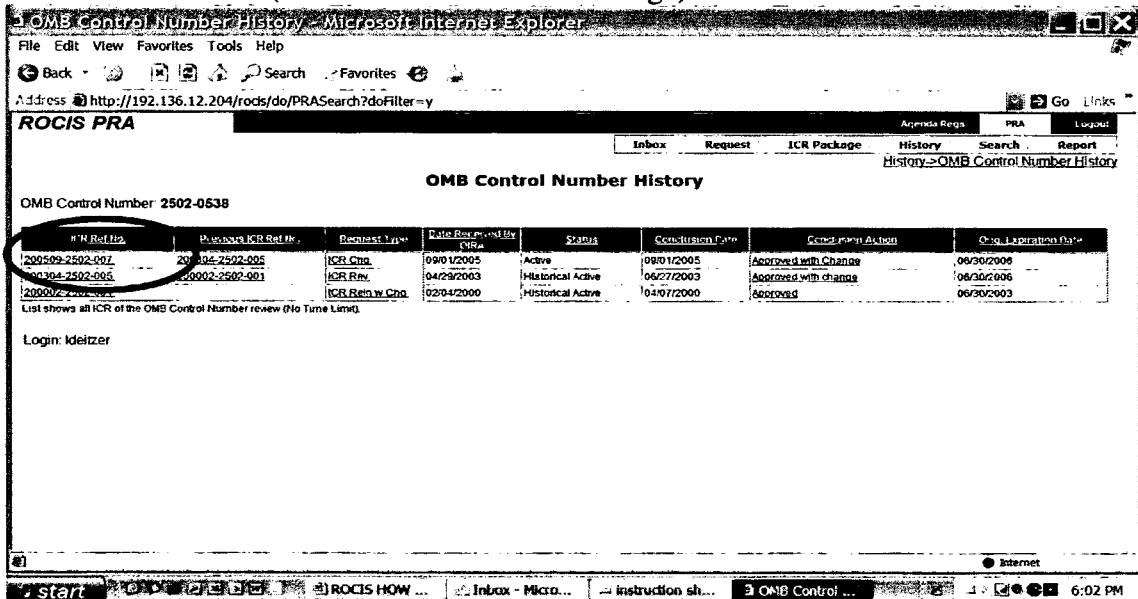
009652

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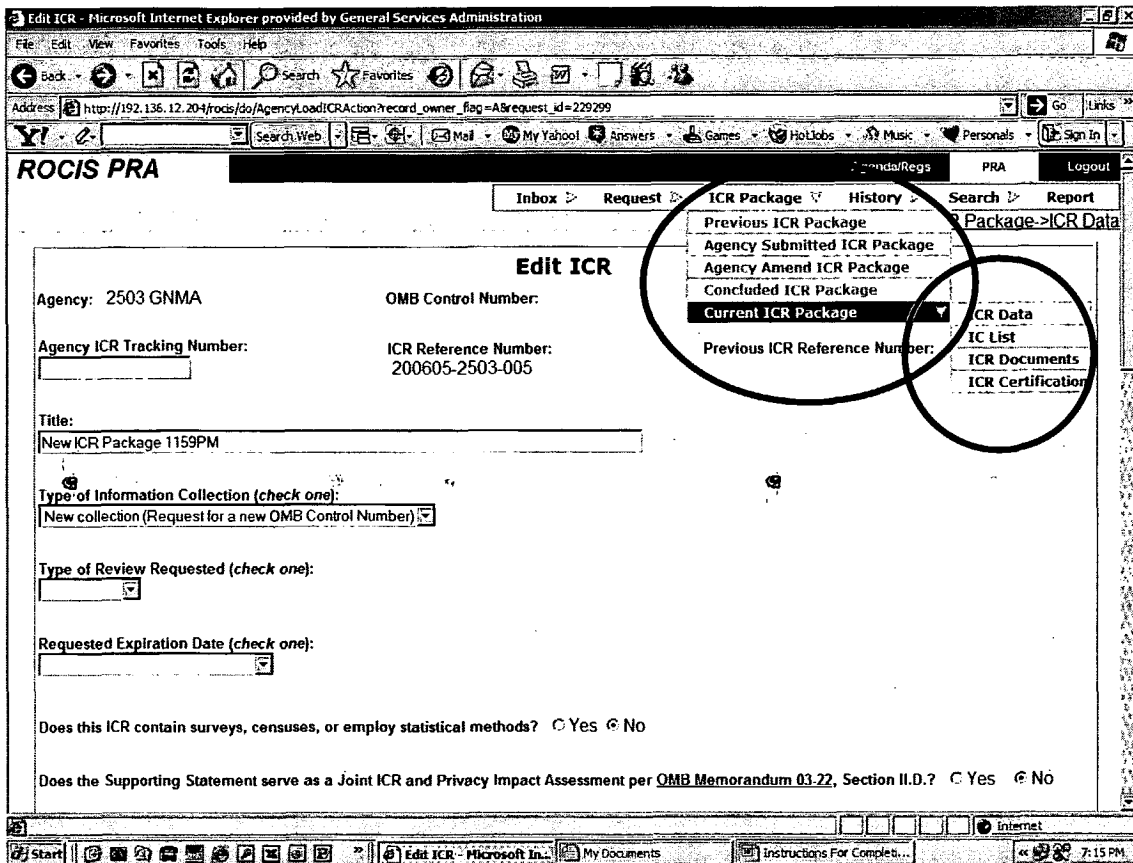
### 3. Create an ICR by Using the Simple Search--Enter the OMB Control Number.



The result is the OMB Control Number History. Find the last approved ICR from which to base the new ICR (revision or extension or change). Here is the result of the search:



Click on the ICR Reference Number or the Request Type and you will be brought to the same View ICR-OIRA Conclusion screen from which to make your choice of action at the bottom of the screen; e.g., Create ICR Package.



## Instructions for Completing the Fields of the EDIT ICR Screen

These instructions should be used in conjunction with 5 CFR 1320, which provides information on coverage, definitions, and other matters of procedure and interpretation under the Paperwork Reduction Act of 1995.

### 1. Agency/Sub agency of the originating request

Provide the four digit agency code for your agency or sub agency originating the request. For most cabinet-level agencies, a sub agency designation is also necessary. For non-cabinet agencies, the sub agency designation is generally unassigned.

### 2. OMB Control Number

a. If the information collection in this request has previously received or now has an OMB Control Number, enter the number.

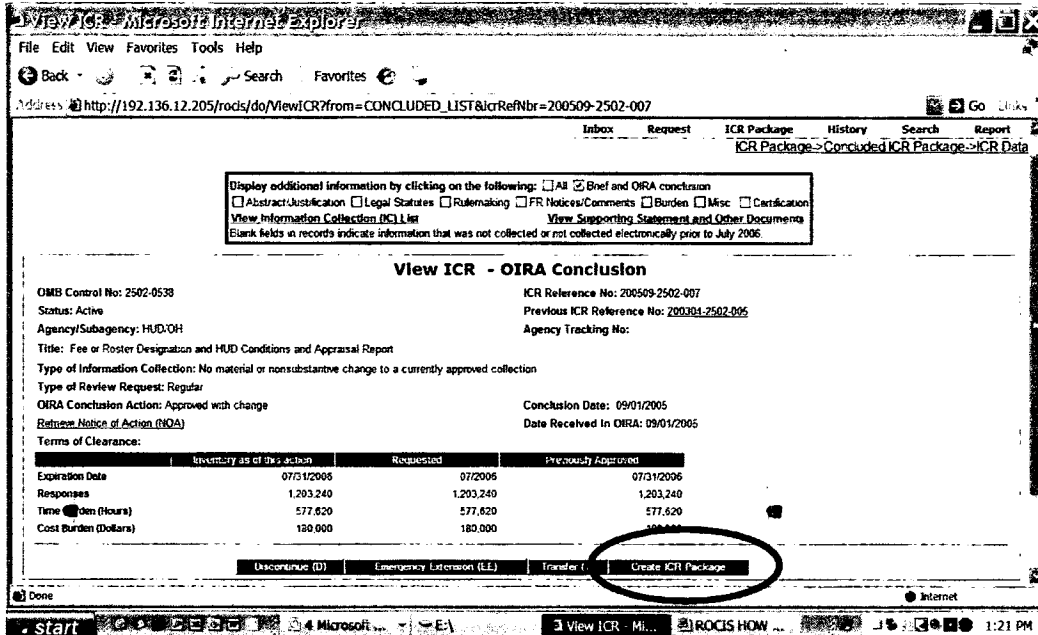
b. If the information collection in this request has not previously received an OMB Control Number, one will be assigned upon approval of the ICR by OIRA.

### 3. Agency Tracking Number

Use to distinguish ICRs in ways helpful to your agency; for instance, include codes for strategic goals, associated rules, associated IT investments, record number in former

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## HOW TO Edit the ICR Package

Similar to the former paper process, the electronic ICR package contains four basic elements:

- ✓ ICR Data (equivalent to the former 831--one per package)
- ✓ IC (Information Collection) form(s), survey(s) or other collection instrument(s) and/or CFR citation(s) requiring collections --at least one IC per ICR package
- ✓ ICR Documents
  - Supporting Statement A
  - Supporting Statement B (when statistical .....
  - Supplemental Documents
    - Draft (not published) Proposed Rule
    - Draft (not published) Final Rule
    - Draft Federal Register Notice
    - Justification for a no material/nonsubstantive change (old 83C)
    - Supplemental Documents not fitting the other categories
  - Public Comments
- ✓ ICR Certification (back of the former 831) of adherence to provisions of PRA.

The Edit ICR screen is equivalent to the former 831 in the paper process and is the foundation of the package. While working on the Current ICR package, you may use ICR Package and History tabs at the home row to assist your preparation.

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8. Requested expiration date

- a. Select "Three years" if the agency requests a three year approval for the collection.
- b. Select "Other" if the agency requests approval for less than three years. Specify the month and year of the requested expiration date. The maximum request for an Emergency ICR is 6 months.

9. Does this ICR contain surveys, censuses, or employ statistical methods?

Select "Yes" if the information collection uses statistical methods such as sampling or imputation. Generally, select "No" for applications and audits (unless a random auditing scheme is used). Select "Yes" for statistical collections, most research collections, and program evaluations using scientific methods. For other types of data collection, the use of sampling, imputation, or other statistical estimation techniques should dictate the response for this item. Ensure that supporting documentation is provided in Supporting Statement B. Upload Supporting Statement B on the Manage Documents screen. Select ICR Docs at the Current ICR at the ICR Package tab at Home Row of Tabs.

10. Does the Supporting Statement serve as a Joint ICR and Privacy Impact Assessment (PIA) per OMB Memorandum 03-22, Section II.D?

If "Yes," according to the OMB Memorandum 03-22, address accordingly in the Supporting Statement A. To learn more about a joint ICR and PIA, open the hot linked Memorandum.

Agency Contact  Add New Contact

Abstract (4000 characters maximum):  
New ICR Package 1159PM

Authorizing Statute(s):  
 Remove  
Add Another Authorizing Statute

Associated Rulemaking Information  
RIN:  Stage of Rulemaking (check one):  
 Proposed Rule  
 Interim Final or Final Rule  
 Not associated with rulemaking  
Federal Register Citation:  FR  Citation Date:

*For a Proposed Rule, OMB will not consider an ICR complete until the Notice of Proposed Rulemaking has been published.  
For a Final Rule, please put the ICR reference number for the ICR reviewed at the proposed rule stage.  
For ICRs associated with Interim Final rules that are not significant under EO, please upload a draft of the Federal Register notice as a Supplementary Document in Manage ICR Documents.*

Federal Register Notices & Comments  
60-day Notice:  Federal Register Citation:  FR  Citation Date:   
Did the Agency receive public comments on this ICR?  
 Yes  No

00000

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agency-specific PRA tracking system, etc. Agencies without sub agency codes can use the Agency Tracking Number to identify ICRs to divisions or branches.

#### 4. ICR Reference Number and Previous ICR Reference Number

Assigned and populated by the system based on the Create action. The format is YYYYMM of the month of origin---Agency/Sub Agency code---sequential number assigned per action per month.

#### 5. Title

Provide the official title of the information collection request. If an official title does not exist, provide a description which will distinguish this collection request from others and enable text searches on titles.

#### 6. Type of information collection (select one)

a. Select "New collection" when the collection has not previously been used or sponsored by the agency.

b. Select "Revision" when the collection is currently approved by OMB, and the agency request includes a material change to the collection instrument, instructions, its frequency of collection, or the use to which the information is to be put.

c. Select "Extension" when the collection is currently approved by OMB, and the agency wishes only to extend the approval past the current expiration date without making any material change in the collection instrument, instructions, frequency of collection, or the use to which the information is to be put.

d. Select "Reinstatement without change" when the collection previously had OMB approval, but the approval has expired or was withdrawn before this submission was made, and there is no change to the collection.

e. Select "Reinstatement with change" when the collection previously had OMB approval, but the approval has expired or was withdrawn before this submission was made, and there is change to the collection.

f. Select "Existing collection in use without OMB control number" when the collection is currently in use but does not have a currently valid OMB control number.

g. Select Nonmaterial/Nonsubstantive Change to perform the function of the former 83C Change Sheet. (Upload—electronically attach—your explanation of the requested change in Supplemental Documents.)

#### 7. Type of review requested (select one)

a. Select "Regular" when the collection is submitted under 5 CFR 1320.10, 1320.11, or 1320.12 with a standard 60 day review schedule.

b. Select "Emergency" when the agency is submitting the request under 5 CFR 1320.13 for emergency processing and provides the required supporting material. Provide the date by which the agency requests approval and the justification in the blank presented upon selection of "Emergency."

c. Select "Delegated" when the agency is submitting the collection under the conditions OMB has granted the agency delegated authority.

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16. Did the Agency receive public comments on this ICR?

If comments were not received, select "No." If comments were received, select "Yes," and summarize public comments received and describe actions taken by the agency in response to these comments in Supporting Statement A. Specifically address comments received on cost and hour burden. Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported. Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years - even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

Public comments can be, but are not required to be, uploaded in ICR Documents, especially if the comments are available through the Federal Docket Management System or other electronic means that can be made available to the OIRA desk officer. Comments received by OIRA in response to the 30-day notice will be uploaded by OIRA. Public comments can be uploaded at the Manage Documents page located at ICR Documents under the Current ICR Package at the home row. When providing multiple comments, it is adequate to provide a representative comment document.

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#### 11. Agency Contact

Provide the name and telephone number of the agency person best able to answer questions regarding the content of this submission. If sensitive to having this name published on the OMB website, <http://www.whitehouse.gov/omb/inforeg/infocoll.html> or [www.RegInfo.gov](http://www.RegInfo.gov), please consider using the name of the agency's Clearance Officer.

#### 12. Abstract

Provide a statement, limited to 4,000 characters of text, covering the agency's need for the information, uses to which it will be put, and a brief description of the respondents. The requirement to identify Keywords has been removed as a requirement because the text search of titles and abstracts are possible. You may want to continue to include in titles and abstracts keywords (descriptors) from the "Federal Register Thesaurus of Indexing Terms" that describe the subject area(s) of the information collection.

#### 13. Authorizing Statute

Provide the statute that is the source of the ICR or the source of the associated rulemaking, whichever is more appropriate. If neither is appropriate, provide the authorizing statute for the program or for the agency or leave blank.

#### 14. Associated rulemaking Information

Select Proposed Rule, Interim Final or Final Rule, or Not associated with rulemaking as appropriate. If Proposed rule or Interim Final Rule, enter the RIN number, the Federal Register Citation and the Citation Date. For a Final Rule, please put the ICR reference number for the ICR reviewed at the proposed rule stage when creating the ICR. For a Proposed Rule, OMB will not consider an ICR complete until the Notice of Proposed Rulemaking has been published. You do not need to attach the rule unless it has not been published (i.e., Federal Register information is blank). If this is the case, check the appropriate stage of rulemaking and upload (electronically attach) the draft rule in the Supplemental Documents (proposed rule or final rule) at the Manage ICR Documents screen. Locate the screen via the ICR Documents item in the drop down of choices of the Current ICR Package at ICR Package at the Home Row of Tabs. For ICRs associated with Interim Final rules that are not significant under EO 12866, please upload a draft of the Federal Register notice as a Supplementary Document in Manage ICR Documents. The note "For a final rule, please put the ICR reference number for the ICR reviewed at the Proposed Rule stage," is for a preapproval process your OIRA desk officer will discuss with you when applicable.

#### 15. Federal Register Notices and Comments

Enter the Federal Register Citations and Citation Dates of the 60- and 30-day notices for the ICR. You no longer need to provide a copy of the FR notice. However, if you wish to provide a draft Federal Register notice, for a request for an Emergency ICR, for instance, upload (electronically attach) it in the Supplemental Documents (drop down for draft Federal Register Notice) via the ICR Documents tab of the ICR Package. Unless submitted as an Emergency or Associated with Rulemaking, OMB will not consider an ICR complete without the 30-day notice publication citation.

## HOW TO Create and Edit an Information Collection

The first step to creating or editing an IC is to save the ICR Data and click on "Add/Edit Information Collections" hotlink on the Edit ICR screen OR to select IC List from the drop down of choices in the Current ICR Package at the ICR Package Tab at the Home Row of Tabs. Either choice will take you to the Add/Edit Information Collection screen below.

Data from OIRA's legacy data base will be "migrated" to the ROCIS ICR Module. Each ICR will be assigned one IC and will list the form numbers related to the current OMB Control Number. Click on the IC Title of the migrated IC to open the Edit IC screen and proceed to review, correct, modify, and supplement the legacy "migrated" data to form the IC. For instance, you will need to complete the CFR citation(s) and/or will need to upload the form, survey, or other instrument(s) you wish the OIRA desk officer to consider in its review.

When creating new ICR's, you will need to choose the Add IC button on the Add/Edit Information Collections screen below to enter the IC information.

Both Add or Edit choices will take you to the Edit IC screen displayed below.

**ROCIS PRA** Agenda/Regs PRA Logout

Inbox > Request > ICR Package > History > Search > Report

ICR Package > Current ICR Package > IC List

OMB Control No.: 2577-0232	ICR Ref. No.: 200605-2577-002	ICR Expiration Date: 05/31/2006	ICR Status:
Agency/Sub-Agency: HUD/PIH	Agency Tracking No.:	Title: Screening and Eviction for Drug Abuse and other Criminal Activity-Final Rule	
Request Status: Created	Last Event: Load Document	Last Event User: Deitzer, Lillian	Last Event Date: 05/22/2006

### Add/Edit Information Collections

Remove	IC Title	Form No.	Form Name	Status
	Screening and Eviction for Drug Abuse and other Criminal Activity-Final Rule			Modified

To edit an IC, click on IC Title.

**Add IC**

Login: ldeitzer

Start | ROCIS HOW TO Guide for... | Add/Edit Information | 10:00 PM

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30-day Notice:  FR

Unless submitted as an Emergency or Associated with Rulemaking, OMB will not consider an ICR complete until the 30-day notice has been published.

Annual Cost to Federal Government: \$

[Add/Edit Information Collections](#)

ICR Summary of Burden:

	Requested	Program Change Due to New Statute	Program Change Due to Agency Discretion	Change Due to Adjustment in Agency Estimate	Change Due to Violation of the PRA	Approved (in Current Inventory)
Annual Number of Responses	0	0	0	0	0	0
Annual Time Burden (Hr)	0	0	0	0	0	0
Annual Cost Burden (\$)	0	0	0	0	0	0

Citations for New Statutory Requirements: *(Required if any change in burden is a Program Change Due to New Statute.)*

Burden increases because of Program Change due to Agency Discretion

Burden decreases because of Program Change due to Agency Discretion

[Add/Edit Supporting Statement and Other Documents](#)

### 17. Annual Cost to Federal Government

Provide estimated annualized cost to the Federal government, if any, of implementing the collection. In the Supporting Statement A, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Do not use commas or \$ sign.

### 18. ICR Summary of Burden

Burden is accounted for at the information collection (IC) level; that is, per collection, whether one collection or multiple collections within one ICR. An IC is a set of information collected by an agency that is associated with a given affected public, obligation to respond, and line of business. The set of information may be defined by the instrument (e.g., a form), an activity (e.g., loans, filing taxes), or any other logical grouping determined by the agency that will provide explicit burden estimates by affected public, obligation to respond, and line of business.

Therefore, the Edit ICR page will display the sum of the burden entered on the Edit IC page for each IC. To enter your burden request, SAVE the ICR Data by clicking on Save at the bottom of the Edit ICR screen, and move to the IC List.

b. Mark "Required to obtain or retain benefits" when the response is elective, but is required to obtain or retain a benefit.

c. Mark "Mandatory" when the respondent must reply or face civil or criminal sanctions.

CFR Citation: An information collection is usually a form or survey, but can also be required by a statute or regulation. To identify regulation that is the requirement to collect the information, enter the regulation in the CFR Citation. Multiple citations can be entered for a single IC as long as one Affected Public, Obligation to Respond, and the Line of Business applies. To add another, click on Add Another CFR Citation.

Information Collection Instruments: An "instrument" is the mechanism for gathering the information. The most obvious and easily identified type of instrument is a paper form or a survey, but it may be a web-based application, a telephone script, or any other means you use to gather information. If forms were recorded as part of the ICR in the migrated legacy data base, they will be listed here. However, you will need to open the Instrument File by clicking on the instrument file on the Add/Edit IC Instrument screen to upload the form, survey, or other instrument that is applicable to the IC.

To remove the reference to the form from the migrated legacy data, or for some other reason, use the Remove button.

To add a new instrument, click on Add Instrument on the Edit IC screen.

### **HOW TO Add an Instrument and Share Electronic Forms with E-Forms**

The Add Instrument screen is a shared screen for making the instrument available for the OIRA desk officer's review and to share an electronic form's url and information about the electronic form with the E-gov initiative, Business Gateway Forms Catalog, E-Forms.

### Instructions for Completing the Fields of the ADD/EDIT IC Screen

**IC Title:** Title the IC with potential text search in mind.

**Agency IC Tracking Number:** This field is entirely optional. One possibility is to provide the IT investment number (Exhibit 300 ITBRS number) when an information system is associated with the ICR.

**Is this a Common Form?:** Select Yes to identify forms that your agency is willing to host for potential use by other agencies as well as your own. If your OIRA desk officer agrees, the form will become part of an inventory of common forms. When an agency selects a common form from the inventory, the using agency will be accountable for the burden of its use rather than the hosting agency. The inventory will be built in 2006 and the use of the common form will be available in 2007.

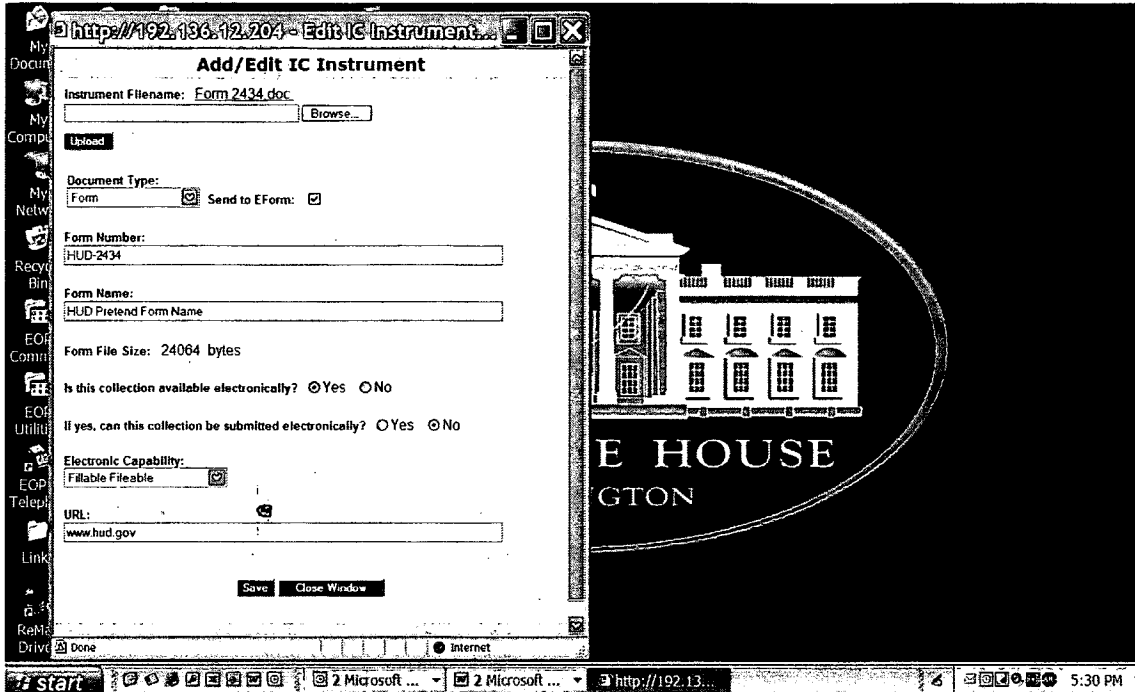
**IC Status:** ROCIS will populate this field; no entry by the agency is required.

**Obligation to Respond:** The "obligation to respond" is either mandatory, required to obtain benefits, or voluntary. Select the category that applies to the IC. If more than one category applies, you will need to create a second IC to account for the burden associated with all the categories that apply.

a. Mark "Voluntary" when the response is entirely discretionary and has no direct effect on any benefit or privilege for the respondent.

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To upload an instrument for OIRA's review, browse to locate it and select upload. Answer the questions and save the instrument file, close the window to return to the Edit IC screen.

If the document type is a form or form and instruction and you answer "Yes" to "Is this form available electronically?" "Send to E-Forms" with a check mark to indicate the default position of checked will appear. This will alert ROCIS to send the url, the document type, form number, form name, document size, and electronic capability to the Forms Catalog upon approval of the ICR. If the ICR is new (without OMB Control Number), please ensure that the url is not live until after the agency receives approval for the form. (If there is no form number, please state "NA.")

Just as it is possible to list multiple CFR citations for an IC, it is possible that an IC will have multiple forms; such as an electronic and a paper version of the same collection. Of course, if the burden is considerably less for one version than the other, it might be advantageous to record the two versions as two ICs. If for some reason the two versions of the same instrument have different answers to Affected Public, Obligation to Respond, or Line of Business, the instruments should be recorded as two ICs.

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Microsoft Internet Explorer provided by General Services Administration

Address: http://192.136.12.204/roas/foi/LoadIC?TYPE=EDIT&CID=415317&record\_owner\_flag=AS&menu=currentICRPackage

CFR Citation:

Title	Part	Operation
CFR		Remove

Add Another CFR Citation

Information Collection Instruments:

Remove	Instrument File	Form No.	Form Name	Document Type	URL	Available Electronically?	Can Be Submitted Electronically?	Electronic Capability
<input type="checkbox"/>	donar form.pdf							

Remove Add Instrument

Federal Enterprise Architecture Business Reference Module

Line of Business:  Subfunction:

Privacy Act System of Records(if applicable)

Title:  FR Citation:

Number of Respondents:  Number of Respondents for Small Entity:

Affected Public:

Percentage of Respondents Reporting Electronically: (%)

Annual IC Burden: (Select appropriate IC Burden Worksheet)

This ICR Requests Change in Net Burden  This ICR Requests No Change in Net Burden

Change Due to  Change Due to

**Federal Enterprise Architecture Business Reference Model Line of Business and Subfunction:** The “line of business” refers to the federal government’s lines of business in services to citizens and management of governmental resources affecting citizens as defined by the Federal Enterprise Architecture Business Reference Model.

For more information on the Business Reference Model see [http://www.whitehouse.gov/omb/egov/documents/FEA\\_CRM\\_v20\\_Final\\_June\\_2006.pdf](http://www.whitehouse.gov/omb/egov/documents/FEA_CRM_v20_Final_June_2006.pdf) “The Business Reference Model is a function-driven framework for describing the business operations of the federal government independent of the agencies that perform them. The Business Reference Model lines of business provide a way to identify “government-wide common solutions for improved service to citizens.”

If an IT investment/system is related to the information collection, the line of business should be that which is used by the agency to justify the IT investment in its Exhibit 300. If there is no system, please use the definitions at <http://www.whitehouse.gov/omb/egov/a-3-2-services.html> to select the line of business that most accurately reflects the “business” of the collection.

Because lines of business functionally cross organizations, assignment of lines of business to ICs will also enable identification of potential opportunities for merged and/or common forms and reduced burden.

**Privacy Act System of Records and FR Citation:** Enter if applicable. If not, leave blank.

**Number of Respondents:** This is the basis for a burden number that is calculated by ROCIS on the Burden Worksheet.

**Number of Respondents for Small Entity:** Indicate the number of respondents upon which the information collection will have a significant impact. A small entity may be (1) a small business which is deemed to be one that is independently owned and operated and that is not dominant in its field of operation; (2) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field; or (3) a small government jurisdiction which is a government of a city, county, town, township, school district, or special district with a population of less than 50,000.

**Affected Public:** Select one from the following choices: federal government, households and individuals, the private sector, and state and local governments. You may select one of the choices per IC. If you select private sector, you will be presented another set of choices to select from; i.e., private sector, farms, and not-for-profit institutions.

**Percentage of Respondents Reporting Electronically:** Enter the estimated percentage of responses that will be submitted/collected electronically using electronic means, such as electronic mail, (mailed) diskette, or web-based transaction. Facsimile is not considered an electronic submission.

Number of Respondents: 4500      Number of Respondents for Small Entity: 0

Affected Public: State, Local, and Tribal Governments

Percentage of Respondents Reporting Electronically: (%) 0

Annual IC Burden: (Select appropriate IC Burden Worksheet)

This ICR Requests Change in Net Burden       This ICR Requests No Change in Net Burden

	Original	Program Change Due to New Statute	Program Change Due to Agency Discretion	Change Due to Adjustment in Agency Estimate	Change Due to Revision of the PRA	Approved for Current Inventory
Annual Number of Responses for this IC	4,500	0	0	0	0	4,500
Annual IC Time Burden (Hours)	10,850	0	0	0	0	10,850
Annual IC Cost Burden (Dollars)	0	0	0	0	0	0

Documents for IC

Remove	Title	Document	Date Uploaded	Uploaded By
Remove		Upload Supplementary		Add Non-Electronic

Remove reason:

ICR Data Save Check IC Completeness Remove Cancel

Login: Ideitzer

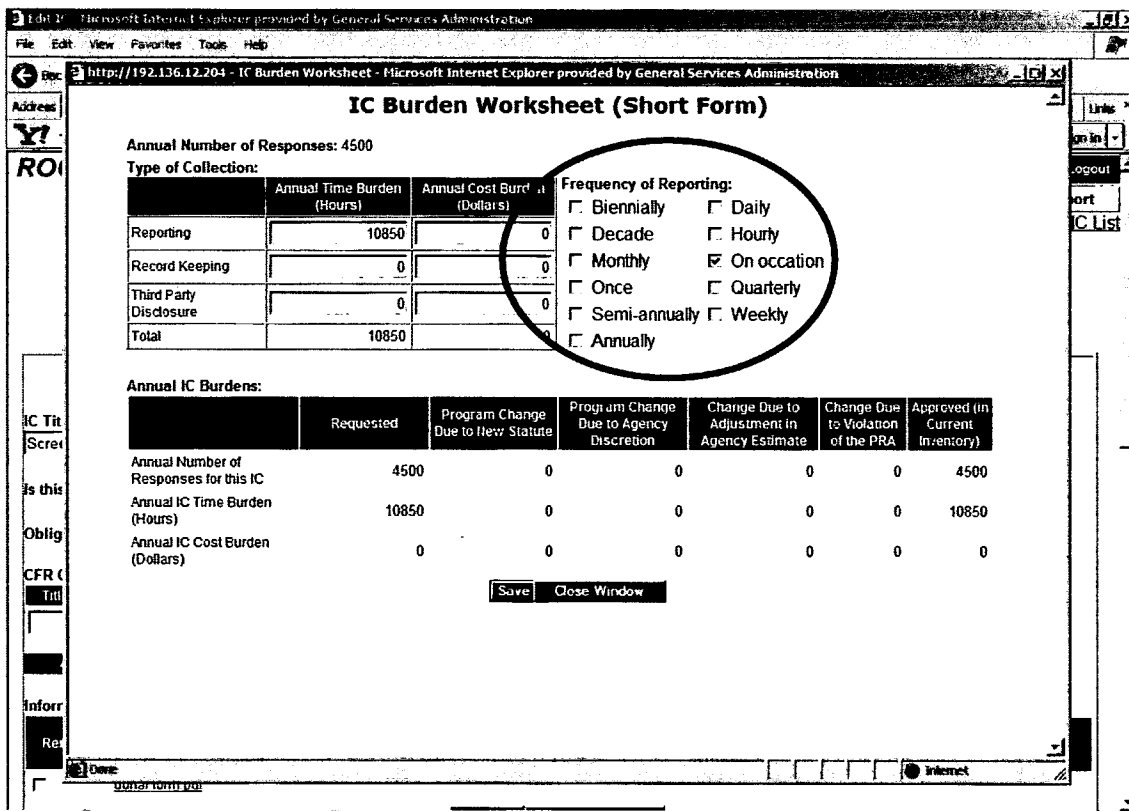
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Annual IC Burden (Select appropriate IC Burden Worksheet): Burden is calculated and accounted for at the IC level. Therefore, new burden and increases and/or decreases to existing burden are requested on the Edit IC screen and more specifically through one of two Burden Worksheet pop-up screens circled above.

**HOW TO Calculate and Record Burden at the IC level**

ROCIS will populate Revisions/Extensions from the migrated legacy data with the burden hours currently approved by OMB. ROCIS will assume the request will be the same as the current inventory and will populate the current inventory with zero (0) for ICRs from scratch or for any collection whose OMB approval has expired.

**If there is no change in burden and the revision/extension requires the same IC,** choose "This ICR Requests No Change in Net Burden" to review the burden and to enter the frequency of reporting.



Frequency of Reporting: Multiple choices are acceptable; doesn't affect calculations.

Select "Reporting" for information collections that involve reporting and select the frequency of reporting that is requested or required of a respondent. If the reporting is on "an event" basis, select "On occasion."

Select "Recordkeeping" if the collection of information explicitly includes a recordkeeping requirement.

Select "Third party disclosure" if a collection of information includes third-party disclosure requirements as defined by 1320.3(c).

**NOTE:** When creating new collections from scratch, you must select and use “This ICR Requests Change in Net Burden.”

**To request new burden or change burden,** select (by clicking on the link for) “This ICR Requests a Change in Burden” worksheet. ROCIS will populate the worksheet with the Number of Respondents you verified or entered on the Edit IC screen.

Enter the Number of Responses per Respondent per Time Period by selecting from the drop down of a variety of frequency options. ROCIS will calculate Annual Frequency and Annual Number of Responses based on your choice.

**IC Burden Worksheet**

Number of Respondents: 100

Number of Responses per Respondent:  per Time Period:

Annual Frequency: 0 Annual Number of Responses: 0

Type of Collection and Burden

Burden per Response:

	Time Per Response	Hours	Cost Per Response
Reporting	<input type="text" value="0.0"/>	0	0.00
Record Keeping	<input type="text" value="0.0"/>	0	0.00
Third Party Disclosure	<input type="text" value="0.0"/>	0	0.00
Total		0	0.00

Annual Burden:

	Annual Time Burden (Hours)	Annual Cost Burden (Dollars)
Reporting	<input type="text" value="0"/>	0
Record Keeping	<input type="text" value="0"/>	0
Third Party Disclosure	<input type="text" value="0"/>	0
Total	0	0

Enter Time per Response in seconds, minutes, or hours (drop down choices) per Reporting, Record Keeping, and/or Third Party Disclosure and ROCIS will calculate the hours and Annual Time Burden for each category and summarize the total in the Annual Responses and Burden with Changes summary table.

Notes regarding hour burden: Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. Generally, estimates should not include burden hours for customary and usual business practices.

Likewise, if appropriate, enter the estimated Cost per Response and ROCIS will calculate the Annual Cost Burden for each category and summarize the total in the Annual Responses and Burden with Changes summary table.

Annual hour burden and annual cost burden are mutually exclusive. On these forms, do not report as a dollar cost any burden reported in hours. The supporting statement asks for this information, but it should not be reported here.

**Cost Burden includes:**

- a. the annualized dollar cost for capital investment or start-up costs, such as, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.
- b. recurring annual dollar amount of cost for all respondents associated with operating or maintaining systems or purchasing services.
- c. total annual reporting and recordkeeping cost burden. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information.

*Generally, Cost Burden should not include investments or purchases made:*

- a. to achieve regulatory compliance with requirements not associated with the information collection;*
- b. for reasons other than to provide information or keep records for the government; or*
- c. as part of customary and usual business or private practices.*

In developing cost burden estimates, agencies may consult with a small sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.

ROCIS will place the increase and/or decrease between the current inventory and the request in the "Program Change Due to Agency Discretion" column to identify the reason for the change. See example:

	Requested	Program Change Due to New Statute	Program Change Due to Agency Discretion	Change Due to Adjustment in Agency Estimate	Change Due to Violation of the PRA	Previously Approved
Annual Number of Responses	20000	0	20000	0	0	0
Annual Time Burden (Hr)	100000	0	100000	0	0	0
Annual Cost Burden (\$)	500000	0	500000	0	0	0

You may move the numbers into the other three columns as appropriate on the burden worksheet. The other three columns to place the requested changes are:

**Program Change due to New Statute.** "Program change" is the result of deliberate Federal government action. All new collections and any subsequent revision of existing collections (e.g., the addition or deletion of questions) are recorded as program changes. When program changes due to New Statute is selected at the IC level, you will be prompted to provide the statute citation on the ICR screen.

**Change Due to Adjustment in Agency Estimate.** "Adjustment" is a change that is not the result of a deliberate Federal government action. Changes resulting from new estimates or action not controllable by the Federal government are recorded as adjustments.

**Change due to Violation of the PRA.** This is a change as a result of a reinstatement due to expiration or a request for approval for collections not in adherence to the PRA, "bootleg collections."

	Requested	Program Change Due to New Statute	Program Change Due to Agency Discretion	Change Due to Adjustment in Agency Estimate	Change Due to Violation of the PRA	Previously Approved
Annual Number of Responses	3,792	0	0	0	3,792	0
Annual Time Burden (Hr)	948	0	0	0	948	0
Annual Cost Burden (\$)	0	0	0	0	0	0

**Frequency of Reporting:** Multiple choices are acceptable; doesn't affect calculations.

Select "Reporting" for information collections that involve reporting and select the frequency of reporting that is requested or required of a respondent. If the reporting is on "an event" basis, select "On occasion."

Select "Recordkeeping" if the collection of information explicitly includes a recordkeeping requirement.

Select "Third party disclosure" if a collection of information includes third-party disclosure requirements as defined by 1320.3(c).

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**IC Burden Worksheet**

Number of Respondents: 20

Number of Responses per Respondent: 1 per Time Period: Year

Annual Frequency: 1.0 Annual Number of Responses: 20

Type of Collection and Burden

Burden per Response:	Time Per Response	Hours	Cost Per Response
Reporting	12 Hours	12.00	0.00
Record Keeping	12 Hours	12.00	0.00
Third Party Disclosure	0 Hours	0.00	0.00
<b>Total</b>		<b>24.00</b>	<b>0.00</b>

Annual Burden:	Annual Time Burden (Hours)	Annual Cost Burden (Dollars)
Reporting	240.00	0
Record Keeping	240.00	0
Third Party Disclosure	0.00	0
<b>Total</b>	<b>480</b>	<b>0</b>

Annual Responses and Burden with Changes:	Requested	Program Change Due to New Statute	Program Change Due to Agency Discretion	Change Due to Adjustment in Agency Estimate	Change Due to Violation of the PRA	Previously Approved
Annual Number of Responses for this IC	20	0	0	0	0	0
Annual IC Time Burden (Hour)	480	0	480	0	0	0
Annual IC Cost Burden (Dollars)	0	0	0	0	0	0

When you are satisfied with the calculation of the burden worksheet and identified frequency of reporting, Save it and Close the Window. The calculation will be saved to the Edit IC page at the Annual IC Burden table.

After saving the calculation, return to the IC, and save the IC.

Then either add another IC and repeat the process above or return to the ICR Data page to complete the ICR Burden questions.



Edit ICR - Microsoft Internet Explorer provided by General Services Administration

Address: http://192.136.12.204/rocs/da/ICRData/menu=currentICRPackage

	Requested	Due to New Statute	Due to Agency Discretion	Adjustment in Agency Estimate	Violation of the PRA	Current Inventory
Annual Number of Responses	25200	0	0	0	0	25200
Annual Time Burden (Hr)	4200	0	-3360	0	0	7560
Annual Cost Burden (\$)	0	0	0	0	0	0

Citations for New Statutory Requirements: (Required if any change in burden is a Program Change Due to New Statute.)

Add Another Statutory Requirement

Burden increases because of Program Change due to Agency Discretion

Burden decreases because of Program Change due to Agency Discretion

Burden Reduction Due to:

Short Statement: (Explain the reasons for any program changes or adjustments reported; that is, provide a short statement of how the reduction in burden was achieved or why the increase in burden occurred. (If you need more space, please provide a short statement less than 4000 characters here and elaborate in the Supporting Statement.))

Add/Edit Supporting Statement and Other Documents

Check Spelling | IC List | Agency Review | Save | Check For Completeness | Submit | Delete | Cancel

Burden Results of the IC page(s) sum to the ICR page. If changes in burden have occurred because the ICR is new or due to a revision with change, you will be prompted to answer questions related to the changes. This information will be used to draft the Information Collection Budget Report to Congress and better inform management through improved search/query capability.

- Citations for New Statutory Requirements are required if summary change in burden is a Program Change Due to New Statute.
- When the summary indicates changes attributed to Program Change Due to Agency Discretion, select the Information Collection Budget chapter headings to which the increase or decrease is attributed from the drop down list offered.
- When there is a change in burden of any kind in the ICs, the system will prompt you to provide a short explanation. This is the justification that was previously provided in the supporting statement. If you need more than 4000 characters to elaborate, please offer a concise explanation in the space provided and write a longer version in the supporting statement.

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## HOW TO Use Function Buttons & Agency Review Notes

Use the buttons at the bottom of the screens to guide your actions. Most are self explanatory and remember to save your data before moving between screens.

**Buttons for the ICR Page:** Check Spelling; (go to) IC List; Agency Review; Save; Check (whole ICR) for Completeness; Submit (to OIRA); Delete; and Cancel.

**Buttons for the IC Page:** ICR Data, Save, Check IC Completeness, Remove, Cancel

Pop-up screens are used in ROCIS to enable you to complete information while staying on a page; for instance, completing the instrument page as a pop up while on the Edit IC page. Your access to Internet may block pop ups and you will need to, at least temporarily, allow pop ups to complete the input of an ICR package.

Another tip: Do not use commas, periods, or dollar or cent signs in numeric fields.

One button that is essential to communications within your agency is the **Agency Review Button**. Use this short note space to record status of the ICR or to write a short request of another user in the Agency ICR Review chain. Your user id and date will appear in the Agency Created Request List "Last Reviewed By" column but will not be viewable to OIRA. To view all status notes written during the create and edit stage of the ICR package, go to the Home Row, History, and select ICR History.

The screenshot shows a web browser window with a pop-up titled "Agency Review". The pop-up contains the following information:

- Reviewed By: Deitzer, Lilian
- Reviewed Date: 06/19/2006
- Brief Note: this is a test note (100 characters maximum)
- Close Window button

The main browser window displays the "ICR History" table. The table has three columns: Event, User, and Event Date.

Event	User	Event Date
Reviewed by	Zeiter, Jacqueline (jzeitera)	07/10/2006
Reviewed by	Deitzer, Lilian (ldeitzer)	06/19/2006
Load Document	Deitzer, Lilian (ldeitzer)	06/19/2006
Load Document	Deitzer, Lilian (ldeitzer)	06/19/2006
Created	Deitzer, Lilian (ldeitzer)	06/19/2006

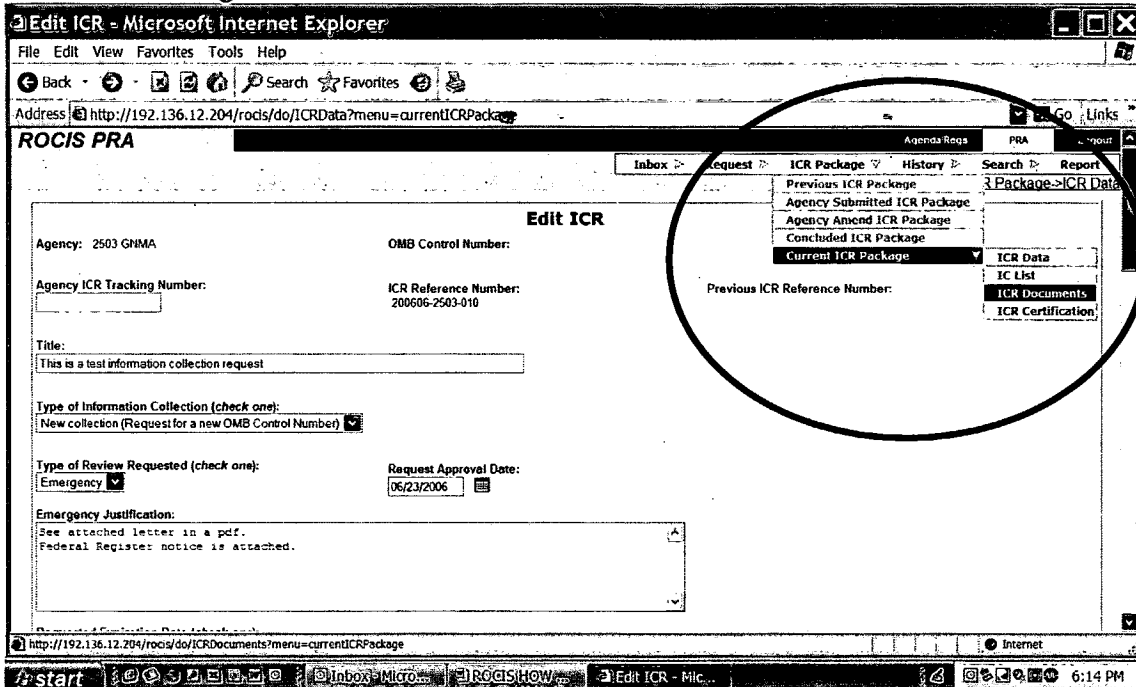
Below the table, the text "Login: jzeitera" is visible.

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## HOW TO Electronically Attach (Upload) ICR Documents

To upload (electronically attach) the Supporting Statements A and B, draft rules, draft FR notices, Justification for Nonmaterial/Nonsubstantive changes (formerly 83C), and to document public comments, use the Manage ICR Documents screen.

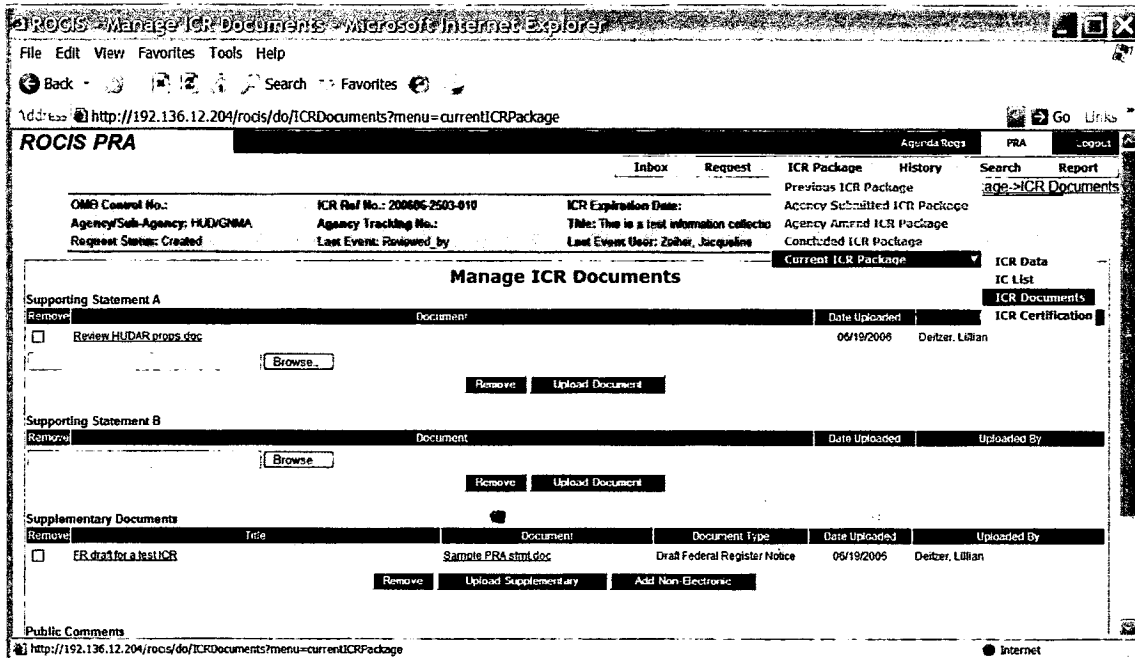
While in Edit ICR, select ICR Documents in the drop down at the Current ICR Package at the ICR Package tab at the Home Row of Tabs.



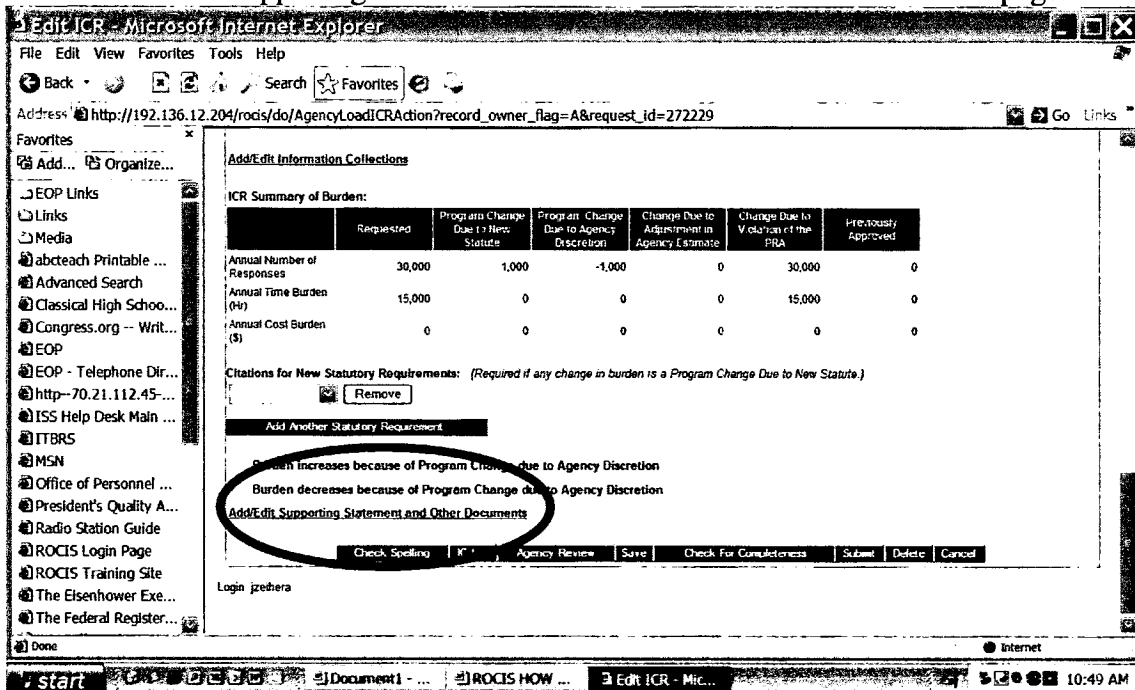
You will arrive at the Manage ICR Documents screen:

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78800

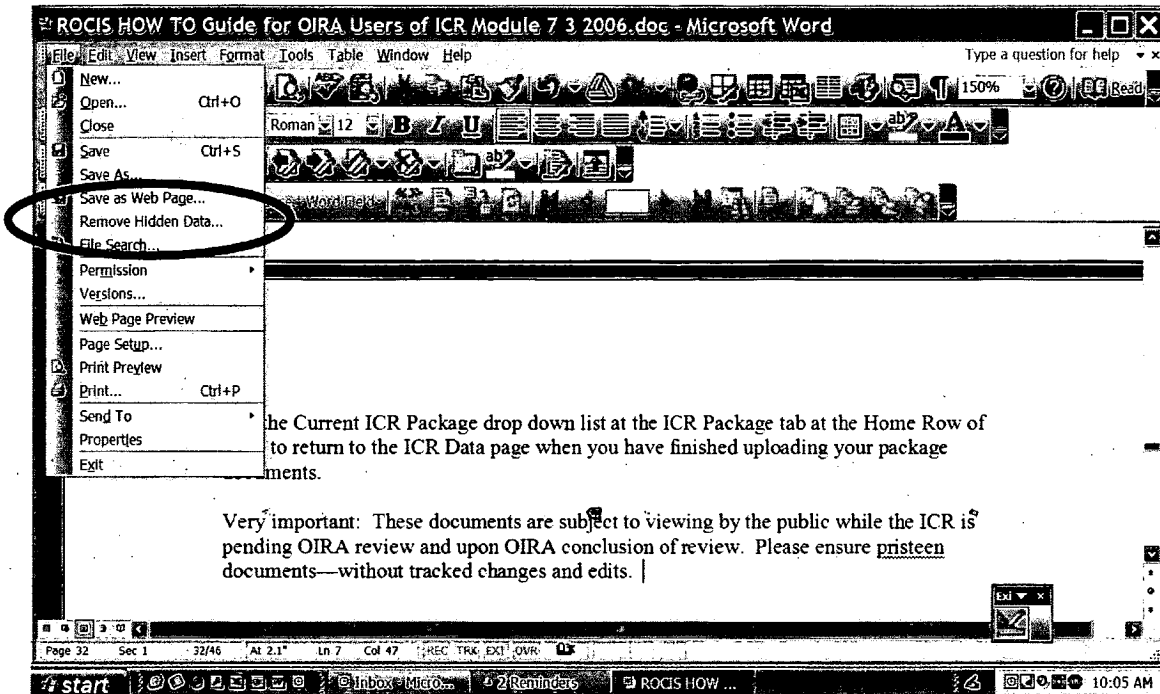


You can also reach the Manage ICR Documents screen by saving and selecting the hotlink Add/Edit Supporting Statement and Other Documents on the Edit ICR page.



Use the Current ICR Package drop down list at the ICR Package tab at the Home Row of Tabs to return to the ICR Data page when finished uploading your package documents.

**Very important:** These documents are subject to viewing by the public while the ICR is pending OIRA review and upon OIRA conclusion of review at RegInfo.gov and at the OMB website. Please ensure pristine documents—without tracked changes and edits. It is important to use the Remove Hidden Data feature in Microsoft Word. Find it in the File tab-- illustrated below. Uploading as pdf documents is another way to ensure against displaying modifications.



## HOW TO Submit an ICR

The Certification Requirement for Paperwork Reduction Act Submissions

5 CFR 1320.9 reads "As part of the agency submission to OMB of a proposed collection of information, the agency (through the head of the agency, the Senior Official, or their designee) shall certify (and provide a record supporting such certification) that the proposed collection of information....

After saving, checking for completeness and correcting any deficiencies, preparers may select and complete the ICR Certification Page at the Home Row, ICR Package, Current, ICR Certification. Submitters will reach the ICR Certification page when they click on Submit at the bottom of the Edit ICR screen.

The Certifying Official or Designee certifies that the collection of information encompassed by the request complies with 5 CFR 1320.9 by check marking each of the provision statements. Provisions of this certification that the agency cannot comply with should be identified by leaving unchecked and fully explaining in the Supporting Statement A. NOTE: The Office that "develops" and "uses" the information to be collected is the office that "conducts or sponsors" the collection of information. (See 5 CFR1320.3(d)).

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Certification for Paperwork Reduction Act Submissions - Microsoft Internet Explorer provided by General Services Administration

http://192.136.12.204/rocis/do/ICRCertification?menu=agencySubmittedICRPackage

On behalf of this Federal agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9 and the related provisions of 5 CFR 1320.8(b)(3)

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It uses plain, coherent, and unambiguous language that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention periods for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8 (b)(3) about:
  - (i) Why the information is being collected;
  - (ii) Use of information;
  - (iii) Burden estimate;
  - (iv) Nature of response (voluntary, required for a benefit, or mandatory);
  - (v) Nature and extent of confidentiality; and
  - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected.
- (i) It uses effective and efficient statistical survey methodology (if applicable); and
- (j) It makes appropriate use of information technology

If you are unable to certify compliance with any of these provisions, identify the item(s) and explain the reason in the Supporting Statement

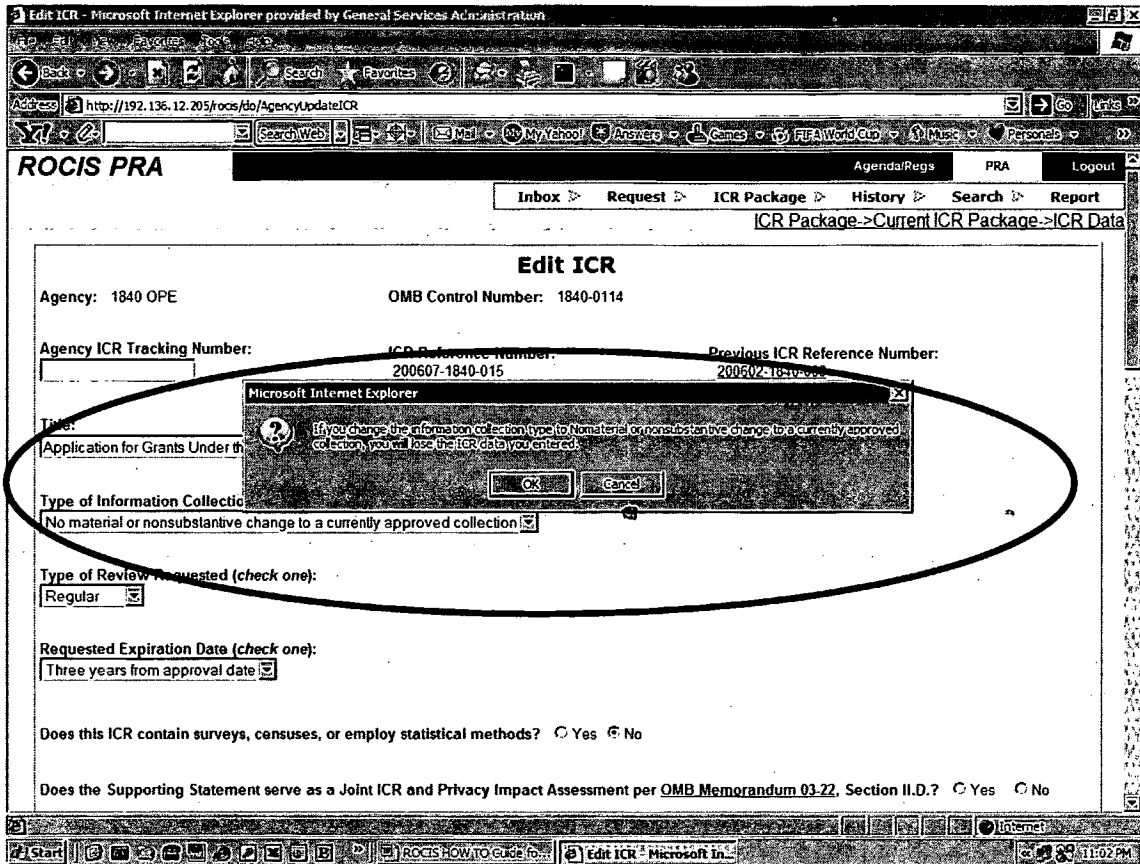
Certification Date: 06/19/2006  
 Certifying Official  
 APC: Schroff, Laura 202-708-0614 ext 8339 Laura\_M\_Schroff@hud.gov  
 On Behalf of: Schlosser, Lisa 202 555-1212

## **HOW TO Request a Nonmaterial/Nonsubstantive Change (former 83C)**

A nonmaterial/nonsubstantive change is handled in ROCIS as an ICR. The directions for creating an ICR generally apply, however, there is no requirement for federal register notices and information that isn't subject to change is grayed out so that it cannot be modified.

Create ICR following the instructions HOW TO Create an ICR and select "No material/nonsubstantive Change to a currently approved collection" as the type of information collection at the Edit ICR Screen.

009677



Make the proposed changes on the appropriate screens (Edit ICR, Edit IC, Add Instrument, Burden Worksheet).

Upload a Justification for Nonmaterial/Nonsubstantive Change in the Supplemental Documents at the Manage Documents screen. Select ICR Documents from the drop down list of the Current ICR at the ICR Package tab at the Home Row of Tabs. Supporting Statements A and B are not required.





## HOW TO Request an Emergency Extension of an OMB Control No.

You may create a Request for Emergency Extension the same way as to create an ICR.

1. Find the OMB Control Number and active ICR through the Concluded List Sort or Filter or through Simple Search and select the Emergency Extension (EE) button to reach the Create Request for Emergency Extension of OMB Control Number screen.

2. Select Emergency Extension (EE) in the drop down list at the Request tab at the Home Row of Tabs.

1. In the first scenario, upon selecting the Emergency Extension (EE) button at the bottom of the View ICR screen of the OMB Control Number's active ICR, you will be brought directly to the Create Request for Emergency Extension of OMB Control Number screen with the information about the OMB Control Number and active ICR in the header box.

The screenshot shows a web browser window with the URL <http://192.136.12.204/rocs/do/EmergencyExtension>. The page title is "ROCIS - Create Request to Discontinue OMB Control Number - Microsoft Internet Explorer provided by General Services Administration". The browser's address bar shows the URL. The page content includes a navigation menu with tabs: "Inbox", "Request", "ICR Package", "History", "Search", and "Report". Below the navigation menu is a header box containing the following information:

OMB Control No.: 2502-0029	ICR Ref No.: 200509-2502-005	ICR Expiration Date: 05/31/2006	ICR Status: Active
Agency/Sub-Agency: HUD/OH	Agency Tracking No.	Title: Multifamily Project Applications and Construction Prior to Initial Endorsement	
Request Status: Created	Last Event: Created	Last Event User: Deitzer, Lilian	Last Event Date: 05/10/2006

Below the header box is the main form titled "Create Request to Emergency Extension of OMB Control Number". The form contains the following fields:

Current Expiration Date: 05/31/2006

Requested Expiration Date: Specify Date: (mm/yyyy) [ ] Or Number of Month(s) beyond the Current Expiration Date: 3

Justification: To gain additional support from program office and publish in the federal register.

At the bottom of the form are buttons: "Check Spelling", "Agency Review", "Save", "Submit", "Delete", and "Cancel".

At the bottom of the browser window, the status bar shows "Done" and the system clock displays "10:44 PM".

Enter the justification to OMB and write an Agency Review note for other internal agency users. A saved request will be displayed in the Created Request List inbox. You and other authorized agency users may return to edit the request. Your agency's authorized paperwork contact (APC) may submit the request. Submitted requests will be displayed in the Submitted Request List and the item will be displayed as well in your OIRA desk officer's Pending Inbox.

009680

ROCIS - Submitted Request List - Microsoft Internet Explorer provided by General Services Administration

Address: http://192.136.12.204/rocs/do/AgencySubmittedPRAList

**ROCIS PRA**      Agenda Regs      PRA      Logout

Inbox    Request    ICR Package    History    Search    Report

**Submitted Request List**

Filter List    View All

Criteria Status=(Received in OIRA, Open for Amendment, Closed for Amendment);

OMB Control No	ICR Ref No	Submitted Date	Agency Sub	Agency ICR Tracking Number	Title	Current Expiration Date	Last Reviewed By	Status	Request Type
2507-0001	200606-2507-001	06/29/2006	HUD/PSA		Customer Service and Satisfaction Survey of Public Housing Residents	06/29/2006	Zeiber, Jacqueline on 06/29/2006 13:15:48	Received in OIRA	ICR Rev
2539-0017	200309-2539-001	06/28/2006	HUD/OLBPPP		A Study of the Effectiveness of the Milwaukee Lead Hazard Control Ordinance	11/30/2006	Zeiber, Jacqueline on 06/28/2006 15:19:36	Received in OIRA	EE
2510-0001	200606-2510-006	06/28/2006	HUD/HUDGC		Opinion of Counsel to the Mortgage	07/31/2006	Zeiber, Jacqueline on 06/28/2006 14:04:48	Received in OIRA	ICR Rev
	200606-2506-001	06/23/2006	HUD/CPD	8888888888mmmmmm	the HUD CPD Survey		Zeiber, Jacqueline on 06/23/2006 11:59:45	Received in OIRA	ICR New
	200606-2528-007	06/19/2006	HUD/PD&R		Survey of American Homeownership in rural communities		Schroff, Laura on 06/19/2006 11:35:37	Received in OIRA	ICR New
	200606-2508-002	06/19/2006	HUD/HUDIG		HUD IG Survey of Citizen		Zeiber, Jacqueline on 06/19/2006 11:35:37	Received in OIRA	ICR

2. The second way to request and emergency extension is to select Emergency Extension (EE) from the choices at the Request tab at the Home Row of Tabs.

ROCIS - Created Request List - Microsoft Internet Explorer

Address: http://192.136.12.204/rocs/do/AgencyCreatedPRAList?default=0

**ROCIS PRA**      Agenda Regs      PRA      Logout

Inbox    Request    ICR Package    History    Search    Report

**Created Request List**

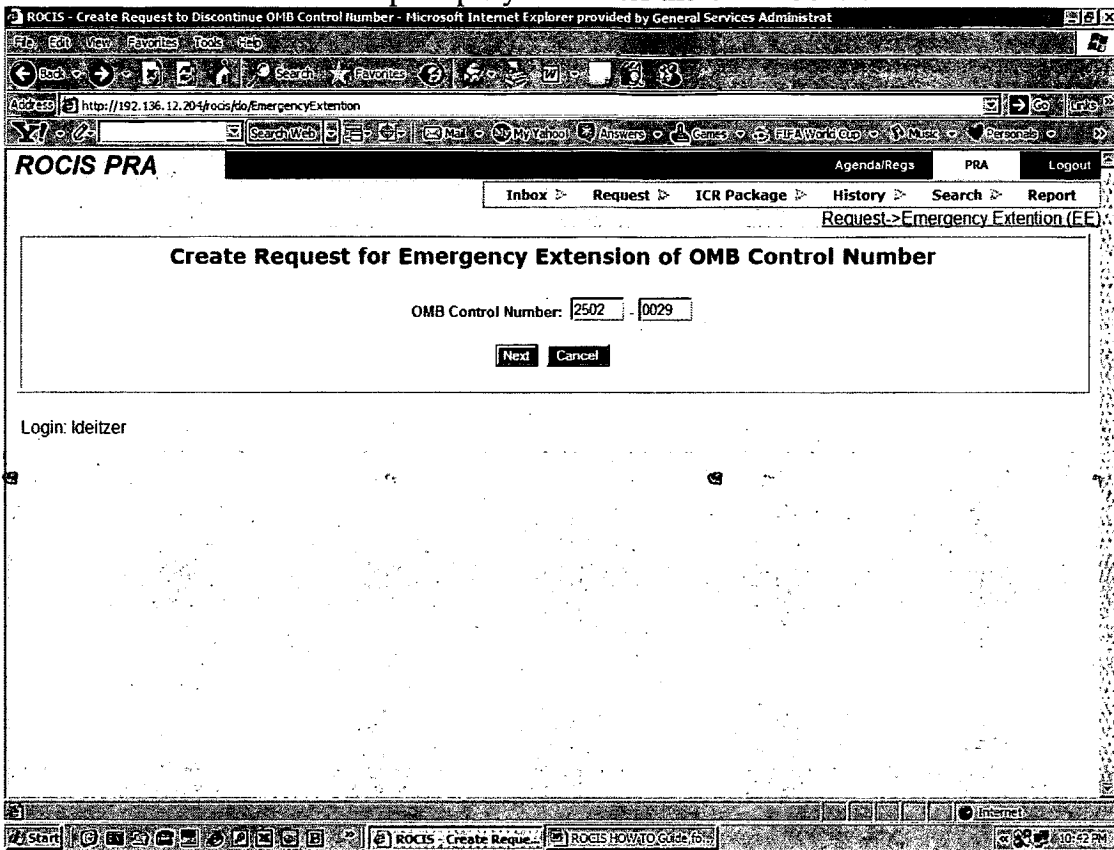
Filter List    View All

Criteria Status=(Created);

OMB Control No	ICR Ref No	Agency Sub	Created Date	Agency ICR Tracking Number	Title	Current Expiration Date	Last Reviewed By	Request Type	Status
2502-0550	200606-2502-037	Schroff, Laura	06/30/2006	HUD/OH	Inventory of Housing Units Designated for the Elderly/Persons with Disabilities	06/30/2006	Schroff, Laura on 06/30/2006	ICR Renewal	No
2528-0241	200602-2528-001	Zeiber, Jacqueline	06/27/2006	HUD/PD&R	Universities Rebuilding America Partnerships Community Design Program	04/30/2009	Zeiber, Jacqueline on 06/27/2006	I	No
2577-0037	200606-2577-005	Zeiber, Jacqueline	06/23/2006	HUD/PH	Analysis of Proposed Main Construction Contract	12/31/2007		ICR Rev	No
2535-0114	200601-2535-002	Zeiber, Jacqueline	06/23/2006	HUD/OA	"Logic Model" Grant Performance Report Standard	07/31/2006	Zeiber, Jacqueline on 06/27/2006	EE	No
	200606-2502-035	Zeiber, Jacqueline	06/22/2006	HUD/OH	subagency New ICR for 6/22/2006			ICR New	No

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You will receive a screen that prompts you to enter the OMB Control Number.



Upon entering the OMB Control Number and selecting Next, the Create Request for Emergency Extension of OMB Control Number will appear. The remainder of the process is exactly as stated in the first scenario.

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## HOW TO Request to Discontinue an OMB Control Number

You may create a Request to Discontinue an OMB Control Number the same way as to create an ICR.

1. Find the OMB Control Number and active ICR through the Concluded List Sort or Filter or through Simple Search and select the Discontinue (D) button to reach the Request to Discontinue an OMB Control Number screen.
2. Select Discontinue OMB Control Number (D) in the drop down list at the Request tab at the Home Row of Tabs.

1. In the first scenario, upon selecting the Discontinue (D) button at the bottom of the View ICR screen of the OMB Control Number's active ICR, you will be brought directly to the Create Request to Discontinue OMB Control Number screen with the information about the OMB Control Number and active ICR in the header box.

The screenshot shows a web browser window with the URL <http://192.136.12.204/rocis/Do/DiscontinueOMBControlNum>. The page title is "ROCIS PRA". The navigation menu includes "Inbox", "Request", "ICR Package", "History", "Search", and "Report". The "Request" tab is selected, and a dropdown menu shows "Request -> Discontinue OMB Control Number (D)".

The main form is titled "Create Request to Discontinue OMB Control Number". It contains the following fields:

- Expiration Date: 05/31/2006
- Requested Discontinue Date: Specify Date. (mm/yyyy)
- Program Change Due to: Agency Discretion
- Justification: The Agency will no longer use this form; using another form instead.

At the bottom of the form, there are buttons for "Check Spelling", "Agency Review", "Save", "Submit", "Delete", and "Cancel".

Complete your justification for OMB and an Agency Review note for internal agency users and select Save or Submit. A saved request will be displayed in the Created Request List inbox. You and other authorized agency users may return to edit the request. Your agency's authorized paperwork contact (APC) may submit the request. Submitted requests will be displayed in the Submitted Request List and the item will be displayed as well in your OIRA desk officer's Pending Inbox.

ROCIS - Created Request List - Microsoft Internet Explorer provided by General Services Administration

Address: http://192.136.12.204/rocs/oa/AgencyCreatedPRAList?default=0

**ROCIS PRA**      Agenda/Regs    PRA    Logout

Inbox   Request   ICR Package   History   Search   Report

Inbox->Created Request List

### Created Request List

Filter List   View All      NEXT   LAST

Criteria: Status=(Created);

OMB Control No	ICR Ref No	Created By	Created Date	Agency/Sub	Agency ICR Tracking Number	Title	Current Expiration Date	Last Reviewed By	Request Type	Stat Methods
2502-0416	200302-2502-002	Deitzer, Lillian	06/10/2006	HUD/OH		Request for Termination of Multifamily Mortgage Insurance	05/31/2006		D	No
2528-0228	200606-2528-003	Deitzer, Lillian	06/09/2006	HUD/PD&R		Research Studies on Homeownership and Affordable Lending (NOFA)	01/31/2007		ICR Rev	No
2528-0013	200606-2528-002	Deitzer, Lillian	06/08/2006	HUD/PD&R		Survey of Market Absorption of New Apartment Buildings	11/30/2007		ICR Rev	No
2502-0182	200606-2502-025	Deitzer, Lillian	06/08/2006	HUD/OH		Applications for Housing Assistance Payments; Special Claims Processing	04/30/2009		ICR Rev	No
2502-0118	200606-2502-024	Deitzer, Lillian	06/07/2006	HUD/OH		Previous Participation Certification	07/31/2006		ICR Rev	No
	200606-2501-004	Deitzer, Lillian	06/07/2006	HUD/HUDSEC		workshop june 7 Mortgagee's			ICR New	No

2. The second way to create a request to discontinue is to select the Discontinue an OMB Control Number (D) from the list of drop down choices at the Request tab at the Home Row of Tabs.

ROCIS - Submitted Request List - Microsoft Internet Explorer provided by General Services Administration

Address: http://192.136.12.204/rocs/oa/AgencySubmittedRequestList?default=0

**ROCIS PRA**      Agenda/Regs    PRA    Logout

Inbox   Request   ICR Package   History   Search   Report

Inbox->Submitted Request List

### Submitted Request List

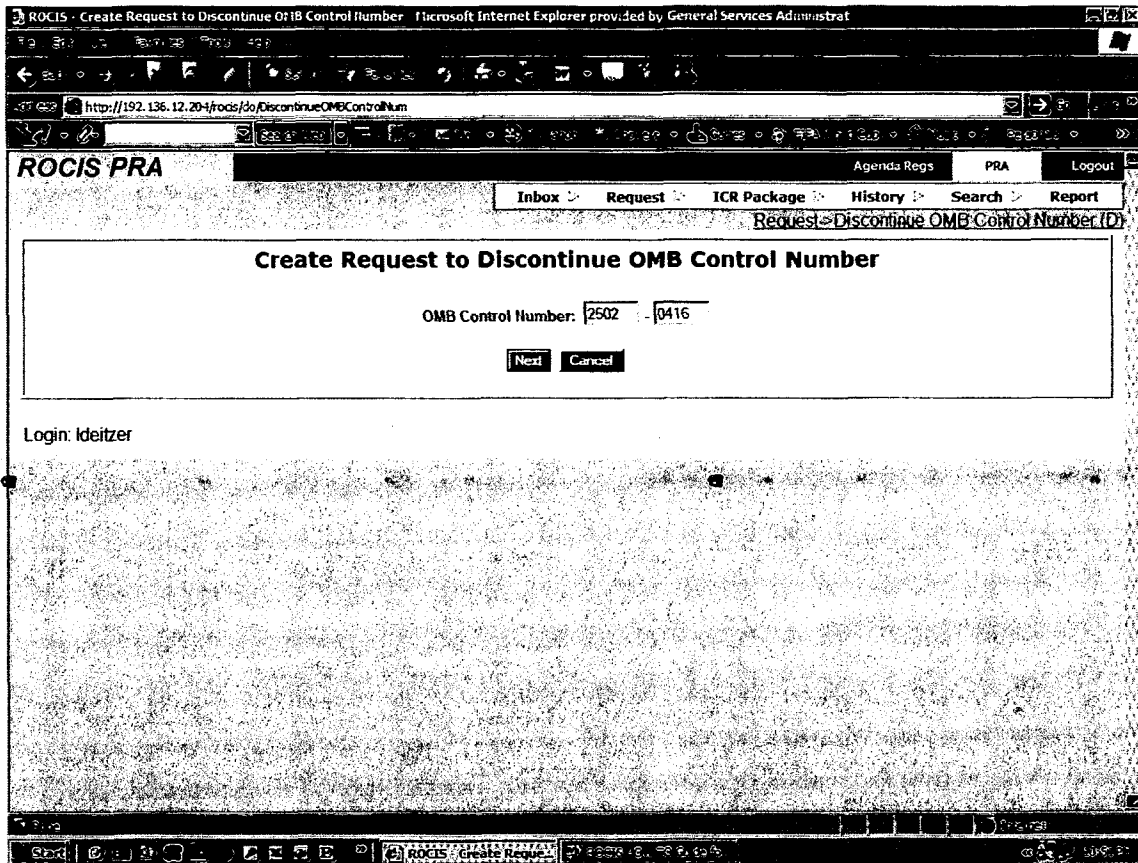
Filter List   View All      NEXT   LAST

Criteria: Status=(Received in OIRA, Open for Amendment, Closed for Amendment);

OMB Control No	ICR Ref No	Submitted Date	Agency/Sub	Agency ICR Tracking Number	Title	Current Expiration Date	Last Reviewed By	Status	Request Type
2502-2072	200409-2502-005	06/10/2006	HUD/OH		Multifamily Project Applications and Construction Prior to Initial Endorsement	05/31/2006		Received in OIRA	EE
	200606-2504-001	06/08/2006	HUD/SEEC		This is the new ICR Workshop 8 June			Received in OIRA	ICR New
	200606-2501-005	06/07/2006	HUD/HUDSEC	8888	This is the site of the June 7 workshop		Deitzer, Lillian on 06/07/2006	Received in OIRA	ICR New
	200606-2505-001	06/06/2006	HUD/OMAR		The housing rental survey		Deitzer, Lillian on 06/06/2006	Received in OIRA	ICR New
2503-0024	200505-2503-006	05/25/2006	HUD/GBA		Create New ICR Package 522	05/31/2007		Received in OIRA	EE
2502-0352	200310-2502-002	05/22/2006	HUD/OH		Utility Allowance Adjustments Community Outreach Partnerships Center (COFC) Program	12/31/2008	Deitzer, Lillian on 06/22/2006	Received in OIRA	I
2528-0182	200604-2528-003	04/28/2006	HUD/PD&R		Builder's Certification of			Received in OIRA	ICR Ed

You will be brought to a screen that asks you what OMB Control Number you'd like to discontinue.

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Upon entering the OMB Control Number and selecting Next, you will be brought to the Create Request to Discontinue an OMB Control Number. The remainder of the process is exactly as stated in the first scenario.

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## HOW TO Request a Transfer of an OMB Control Number

You may create a Request to Transfer the same way as to create an ICR.

1. Find the OMB Control Number and active ICR through the Concluded List Sort or Filter or through Simple Search and select the Transfer (T) button to reach the Request Transfer screen.
2. Select Transfer OMB Control Number (T) in the drop down list at the Request tab at the Home Row of Tabs.

1. In the first scenario, upon selecting the Transfer (T) button at the bottom of the View ICR screen of the OMB Control Number's active ICR, you will be brought directly to the Create Request to Transfer OMB Control Number screen with the information about the OMB Control Number and active ICR in the header box.

**View ICR - OIRA Conclusion**

OMB Control No: 2528-0241  
 Status: Active  
 Agency/Subagency: HUD/PD&R  
 Title: Universities Rebuilding America Partnerships: Community Design Program  
 Type of Information Collection: Extension without change of a currently approved collection  
 OIRA Conclusion Action: Approved without change  
 Retrieve Notice of Action (NOA)  
 Terms of Clearance:

ICR Reference No: 200602-2528-001  
 Previous ICR Reference No: 200510-2528-002  
 Agency Tracking No:

Type of Review Request: Regular  
 Conclusion Date: 04/14/2006

Date Received in OIRA: 02/14/2006

	Inventory as of this action	Requested	Previously Approved
Expiration Date	04/30/2009	04/2009	04/30/2006
Responses	50	50	50
Time Burden (Hours)	2,240	2,240	2,080
Cost Burden (Dollars)	0	0	0

Buttons: Discontinue (D) | Emergency Extension (EE) | Transfer (T) | Create ICR Package

Enter the justification to OMB as well as the agency and/or subagency to which you wish to transfer the OMB Control Number. Please provide the reason for the transfer and whatever coordination has taken place between the two agencies/subagencies in the justification; such as noting memoranda for the record, etc. Please also write an internal Agency review note for status to other preparers and submitters in your agency. Upon submission, the transfer request will appear as a submission in the inboxes of both agencies/subagencies involved in the transfer.

009686

Back Search Favorites

Address: http://192.136.12.204/rocs/do/EditTransferOMBControlNum

**ROCIS PRA** Agendas/Logs PRA Logout

Inbox Request ICR Package History Search Report

Request -> Transfer OMB Control Number (1)

OMB Control No: 2528-0241 ICR Ref No.: 200602-2528-001 ICR Expiration Date: 04/30/2009 ICR Status: Active  
 Agency/Sub-Agency: HUD/PC&R Agency Tracking No.: Title: Universities Rebuilding America Partnerships Community Design Program

**Create Request to Transfer OMB Control Number**

Transfer to: Agency: 1800 ED Sub Agency: 1845 FSA

Justification:  
 This collection is transferred to Financial Student Assistance per memorandum of understanding dated 6/1/2006 between HUD and ED.

Agency Review  
 Information about Agency Review has been saved  
 Reviewed By: Jacqueline Zeher  
 Reviewed Date: 06/27/2006  
 Brief Note: Ready for submission to OIRA.

Check Spelling Agency Review Save Submit

Login: jzehera

Done Internet

ROCIS - Created Request List - Microsoft Internet Explorer

File Edit View Favorites Tools Help

Back Search Favorites

Address: http://192.136.12.204/rocs/do/AgencyCreatedPRAList?default=0

**ROCIS PRA** Agendas/Logs PRA Logout

Inbox Request ICR Package History Search Report

**Created Request List**

Filter List View All

Criteria: Status=(Created)

OMB Control No	ICR Ref No	Created By	Created Date	Agency/Sub	Agency ICR Tracking Number	Title	Current Expiration Date	Last Reviewed By	Request Type	Status
2528-0241	200602-2528-001	Zeher, Jacqueline	06/27/2006	HUD/PC&R		Universities Rebuilding America Partnerships Community Design Program	04/30/2009	Zeher, Jacqueline on 06/27/2006	I	No
2577-0037	200606-2577-005	Zeher, Jacqueline	06/23/2006	HUD/PIH		Main Construction Contract	12/31/2007		ICR Rev	No
2535-0114	200601-2535-002	Zeher, Jacqueline	05/23/2006	HUD/OA		"Logic Model" Grant Performance Report Standard	07/31/2006	Zeher, Jacqueline on 06/23/2006	EE	No
	200606-2502-036	Zeher, Jacqueline	06/22/2006	HUD/OH	subagency	New ICR for 6/22/2006			ICR New	No
2502-0468	200606-2502-036	Help Desk System	06/22/2006	HUD/OH		Mortgagee's Certification of Fees and Escrow and Surety Bond Against Defects	04/30/2009		ICR Rev	No
2506-0112	200601-2506-001	Zeher, Jacqueline	06/22/2006	HUD/CPD		Continuum of Care Homeless Assistance Grant Application	03/31/2009	Zeher, Jacqueline on 06/22/2006	EE	No
	200606-2504-002	Zeher, Jacqueline	06/20/2006	HUD/SEECB		New ICR for workshop Applications for Housing		Zeher, Jacqueline on 06/20/2006	ICR New	No

Done Internet

2. The second way to create a Request to Transfer an OMB Control Number is to select Transfer OMB Control Number from the drop down list at the Requests tab at the Home Row of Tabs, which will lead you to a screen that asks you to identify the OMB Control Number of the collection you wish to transfer.

009687



ROCID - Created Request List - Microsoft Internet Explorer

Address: http://192.136.12.204/rocs/do/Redirector

ROCIS PRA

Inbox > Request > ICR Package > History > Search > Report

Information Collection Request (ICR) > Created Request List

New IC to Generic ICR (Gen IC)

Discontinue OMB Control Number (D)

Emergency Extension (EE)

Transfer OMB Control Number (T)

Filter List View All

Criteria: Status=(Created).

OMB Control No	ICR Ref No	Created By	Created Date	Agency/Sub	Agency ICR Tracking Number	Title	Original Expiration Date	Last Renewed By	Request Type	Status
2502-0550	200605-2502-037	Schrott, Laura	06/30/2006	HUD/OH		Inventory of Housing Units Designated for the Elderly/Persons with Disabilities	05/31/2006	Schrott, Laura on 05/30/2006	ICR Rein w/o Cha	No
2526-0241	200602-2526-001	Zeiter, Jacqueline	06/27/2005	HUD/PD&R		Universities Rebuilding America Partnerships Community Design Program	04/30/2009	Zeiter, Jacqueline on 05/27/2006	I	No
2577-0037	200606-2577-005	Zeiter, Jacqueline	06/23/2006	HUD/PIH		Analysis of Proposed Main Construction Contract	12/31/2007		ICR Rev	No
2535-0114	200601-2535-002	Zeiter, Jacqueline	06/23/2006	HUD/OA		"Logic Model" Grant Performance Report Standard	07/31/2006	Zeiter, Jacqueline on 06/23/2006	EE	No
	200606-2502-035	Zeiter, Jacqueline	06/22/2006	HUD/OH	subagency	New ICR for 6/22/2006			ICR New	No

start | Document1 | ROCIS HOW... | ROCIS - Creat... | 10:03 AM

ROCID - Create Request to Discontinue OMB Control Number - Microsoft Internet Explorer

Address: http://192.136.12.204/rocs/do/TransferOMBControlNum

ROCIS PRA

Inbox > Request > ICR Package > History > Search > Report

Request > Transfer OMB Control Number (T)

Create Request to Transfer OMB Control Number

OMB Control Number:

Next Cancel

Login: jzeitera

Done

start | Document1 | ROCIS HOW... | ROCIS - Creat... | 10:04 AM

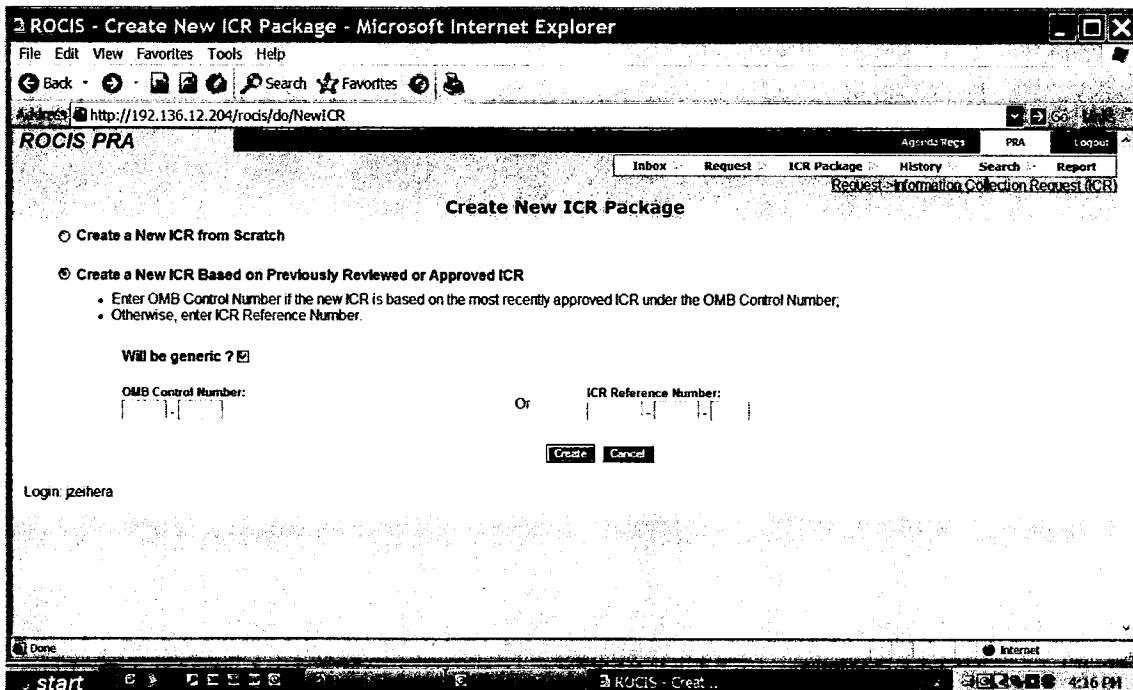
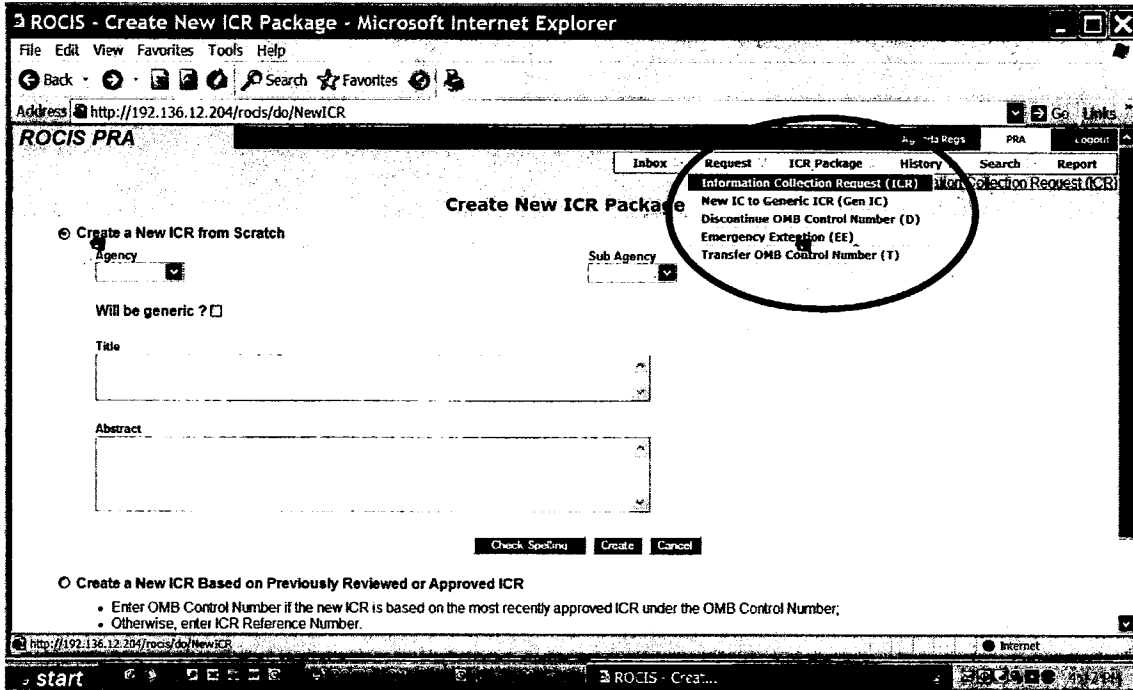
The remainder of the process is exactly as stated in the first scenario.

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# HOW TO Create a Generic ICR and Request Generic ICs

The generic ICR is created by selecting Information Collection Request (ICR) in the drop down at the Request tab in the home row of tabs. In either a Create a New ICR from Scratch or Create an ICR from a Previously Reviewed or Approved ICR, be sure to check mark in response to the question posed, "Will be generic?"



When you arrive in the Edit ICR screen upon clicking the Create button, complete the data as you would a regular ICR with one exception. You will be able to request the annual number of responses, the annual hour burden and annual cost burden by entering the request directly into the Requested column. You will need to provide a Supporting Statement in the ICR Documents but you will not be required to complete an Edit IC screen unless you would like to submit a Generic IC with the Generic ICR.

Upon approval from OIRA, the generic ICR will establish a “budget” from which future IC’s can be submitted

Once the Generic ICR is approved by OIRA, you may submit ICs as long as they do not exceed the “budget,” which is the current inventory of the ICR.

To request a Generic IC, select New IC to Generic ICR (Gen IC) under the Request choices in the home row of tabs.

**Edit Generic ICR**

Agency: 2502 OH      OMB Control Number:

Agency ICR Tracking Number: subagency      ICR Reference Number: 200606-2502-035

Title: New ICR for 9/22/2006

Type of Information Collection (check one):  
 New collection (Request for a new OMB Control Number)

Type of Review Requested (check one):  
 Regular

Requested Expiration Date (check one):  
 Three years from approval date

Does this ICR contain surveys, censuses, or employ statistical methods?  Yes  No

Does the Supporting Statement serve as a Joint ICR and Privacy Impact Assessment per OMB Memorandum 03-22, Section II.D.?  Yes  No

Previous ICR Reference Number:

Request Choices:  
 Information Collection Request (ICR)  
 New IC to Generic ICR (Gen IC) **(Circled)**  
 Discontinue OMB Control Number (D)  
 Emergency Extension (EE)  
 Transfer OMB Control Number (T)

Enter the OMB Control Number of the Generic ICR and you will arrive at the Generic ICR. Click on Add/Edit Information Collections and note the difference of the format for the requested burden, which is a result of using the Generic IC Burden Worksheet. The Generic IC Burden Worksheet carries the burden to the IC page but does not affect the overall Generic ICR burden summary. When the Generic IC is approved by OIRA, the List of ICs of the Generic ICR will show each approved IC and the resultant drawdown of the ICR approved inventory, the budget. When the ICR budget is depleted, ROCIS will not process a Generic IC until you submit a nonmaterial/nonsubstantive change in burden request for the overall Generic ICR.



Laiza N. Otero/EAC/GOV  
11/09/2006 05:13 PM

To "Adam L. Bourne"  
cc "Meredith" <mimwalle@winnerscirclecomm.com>, Karen Lynn-Dyson/EAC/GOV@EAC  
bcc  
Subject Re: First-Time Voter Study - Focus Group Materials and PRA Statements

Hello,

I am putting the final touches on the documents and the submission package and need your assistance. For the following question for the Supporting Statement A, the following answer is what appears there currently. However, is that amount the total cost for all of the work on Tasks 4.6-4.7 of the Statement of Work, which relate to the focus groups? Is the rest of the contract money going towards the case studies? Thank you!

**14. Provide estimates of annualized cost to the Federal government.**

The estimated cost to the Federal Government is \$11,088. This estimate includes \$4,050 for stipends, transportation, and food for focus group participants; \$4,854 for staff travel, airfare, hotel, and per diem; and \$2,184 for staff labor.

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)  
Fax (202) 566-3128

"Adam L. Bourne" <adamlbourne@gmail.com>



"Adam L. Bourne"  
<adamlbourne@gmail.com>  
11/06/2006 12:10 PM

To "lotoero@eac.gov" <lotoero@eac.gov>, klynndyson@eac.gov  
cc "Meredith" <mimwalle@winnerscirclecomm.com>  
Subject First-Time Voter Study - Focus Group Materials and PRA Statements

Ms. Lynn-Dyson and Ms. Otero:

Please find attached for your review the focus group quiz, the focus group script, and the accompanying Paperwork Reduction Act supporting statements.

I will be faxing a copy of the OMB 83-I form to you shortly, as it is not a writable PDF document.

Thank you for your assistance. Please feel free to contact me or Meredith if you have any

009691

questions or would like us to make any revisions.

Adam Bourne

--

Adam L. Bourne

155 Sylvest Drive # 2204

Montgomery, Alabama 36117

[adamlboune@gmail.com](mailto:adamlboune@gmail.com)

(205) 246-9290

[attachment "Focus Group Quiz.doc" deleted by Laiza N. Otero/EAC/GOV] [attachment "Focus Group Script Final.doc" deleted by Laiza N. Otero/EAC/GOV] [attachment "Supporting Statements.doc" deleted by Laiza N. Otero/EAC/GOV]

009692



"Adam L. Bourne"

11/06/2006 12:10 PM

To "lotero@eac.gov" <lotero@eac.gov>, klynndyson@eac.gov

cc "Meredith" <mimwalle@winnerscirclecomm.com>

bcc

Subject First-Time Voter Study - Focus Group Materials and PRA Statements

History:

This message has been replied to.

Ms. Lynn-Dyson and Ms. Otero:

Please find attached for your review the focus group quiz, the focus group script, and the accompanying Paperwork Reduction Act supporting statements.

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Thank you for your assistance. Please feel free to contact me or Meredith if you have any questions or would like us to make any revisions.

Adam Bourne

--

Adam L. Bourne  
155 Sylvest Drive # 2204  
Montgomery, Alabama 36117  
[adamlboune@gmail.com](mailto:adamlboune@gmail.com)  
(205) 246-9290



Focus Group Quiz.doc Focus Group Script Final.doc Supporting Statements.doc

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**WINNER'S CIRCLE COMMUNICATIONS, LLC**  
**Study of First-Time Voters Who Register to Vote by Mail**

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**Quiz for Focus Group Participants**

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**PART ONE**

**Instructions**

Please select the answer that best describes your state's laws, rules and/or requirements as you understand them. Your answers to these questions will be used to determine how effectively [STATE] communicated its first-time voter identification, or ID, requirements.

1. What types of ID does [STATE] require each person applying to register to vote, or applicant, to include with his or her voter registration form when that form is submitted via mail? Please circle all that apply.

Driver's License Number

Last four digits of Social Security Number

Copy of Driver's License

Copy of Social Security Card

Entire Social Security Number

Copy of Utility Bill

Copy of photo ID

Any government document with the voter's name and address

All of the above

None of the above

2. If the applicant does not have a driver's license or social security number, the state will assign the applicant a number which will serve to identify the applicant for voter registration purposes. Please circle one.

True

False

3. At the polls, [STATE] has different ID requirements for first-time voters who registered to vote by mail than it does for voters who have cast a ballot in another recent election. Please circle one.

True

False

4. All first-time voters in [STATE] are required to show government-issued photo ID at the polls. Please circle one.

True

False

5. Which of the following types of ID may first-time voters who registered to vote by mail show at the polls in order to meet [STATE'S] identification requirements? Please circle all that apply.

Any current and valid photo ID

Government-issued photo ID

Current utility bill

Bank statement

Government check

Paycheck

Any government document that includes the voter's name and address

All of the above

None of the above

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**PART TWO**

**Instructions**

Please base your answers to the following questions on your own opinions and experiences.

1. On a scale of one to 10, with one being the least confident and 10 being the most confident, how confident are you that you understand [STATE'S] ID requirements for first-time voters who register to vote by mail? Please circle one.

1      2      3      4      5      6      7      8      9      10

2. How did you learn of [STATE'S] ID requirements for first-time voters who register to vote by mail? Please circle all that apply.

- |   |   |
|---|---|
| TV or radio advertisement(s)            | State elections website                 |
| News reports                            | Local elections website                 |
| I contacted my state election office    | I contacted my local election office    |
| Instructions on voter registration form | From a poll worker at the polling place |
| All of the above                        | None of the above                       |

Other (please explain)

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3. How effectively do you believe [STATE] communicated its ID requirements for first-time voters? Please rate the state on a scale of one to 10, with one being the least effective and 10 being the most effective.

1    2    3    4    5    6    7    8    9    10

**WINNER'S CIRCLE COMMUNICATIONS, LLC**  
**Study of First-Time Voters Who Register to Vote by Mail**

---

**Focus Group Script and Questions**  
Prepared 11.06.06

---

**Background**

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*Introduction*

Thank you for joining us today and agreeing to participate in this focus group discussion of your experiences as first-time voters who registered to vote by mail. My name is Meredith Imwalle and I'll be your facilitator, which means it's my job to keep today's session on track by asking a series of open-ended questions, and some more specific ones, intended to stimulate discussion. My colleague, Adam Bourne, will serve as a co-facilitator.

We've organized this focus group as part of a study our company, Winner's Circle Communications, is conducting on behalf of the United States Election Assistance Commission, a federal government agency created to provide guidance to states implementing election reforms that are required by the federal Help America Vote Act, often referred to as HAVA. Since HAVA require that every state implement certain minimum identification, or ID, requirements for first-time voters like you, we've been asked to find out what your experiences were with registering to vote and voting this year. We hope to use your input to help us determine what state practices are working and how states can best communicate ID requirements to voters.

First let's go over a few ground rules for today:

- Your participation in this focus group is voluntary, and you may stop at any time.
- We hope to gather information about your voting experiences. There are no wrong answers today; please let everyone speak and respect everyone's opinion, even if it is different from your own.
- We will make an audio recording of this session, so that we can be sure not to miss any of your important comments today. The recording will not be released publicly, and it will not be shared with anyone outside of our company.

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## **Voters' Level of Understanding of New Requirements**

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Before we start our discussion today, we'd like to get a sense of how well each of you understand [STATE'S] voter ID requirements for first-time voters. Adam is handing out a quick quiz that we will give you 15 minutes to complete.

By testing your knowledge of [STATE'S] ID requirements, we are hoping to gauge how effectively your state's elections officials communicated the requirements to you, the voters. So please answer the questions as best you can and don't worry if you don't have all of the answers.

*Distribute quizzes; allow participants 15 minutes to complete.*

## **Voters' Experiences Registering to Vote by Mail**

---

### *Introduction*

Now that we've collected your completed quizzes, let's talk about your experiences registering to vote by mail.

### *Questions*

1. We'd like to ask each of you to describe the process of filling out your voter registration application. Please provide an estimate of how long it took you to complete the application and tell us whether you thought the form's instructions for submitting the required identification information (your driver's license number, Social Security Number or the last four digits of your Social Security Number) were easy to understand.
2. If you didn't include your driver's license number, Social Security Number or the last four digits of your Social Security Number with your application, why not?

### *Prompts*

Were the instructions unclear? Do you have a driver's license or Social Security Number? Did you hesitate to include one of these numbers due to privacy or security concerns?

3. If you included a copy of your utility bill or some other document that includes your name and address with your application, why did you choose to do so?

### *Prompts*

Did you believe you were required to include such information with your voter registration application? Were you hoping to save time at the polls by including the information with your application?

## **Voters' Experiences at the Polls on Election Day**

---

### *Introduction*

Now we'd like to move on and discuss your experiences at the polling place on Election Day.

### *Questions*

4. Were you required to show ID at the polls before you could vote? What kind of ID were you asked to present?
5. Did a poll worker or election official clearly explain what kinds of ID would be accepted?
6. Did you know before you arrived at the polling place that you would be required to show ID? Did you know what kinds of ID would be accepted?
7. Were you able to present an acceptable form of ID at the polling place?
8. Which statement best represents your feelings about being required to present ID and why:
  - "I felt comfortable showing my ID to the poll worker."
  - "I felt singled out or intimidated when I was asked to present ID at the polling place."

**\*Fifteen Minute Break: Let's take a short break and reconvene here in 15 minutes.\***

## **Voters' Overall Perceptions of Voter ID Requirements**

---

### *Introduction*

Let's discuss your overall perceptions of [STATE'S] voter ID requirements. Remember, we're interested in your opinions so there are no right or wrong answers. Any feedback you can offer may help the state improve upon current procedures.

### *Questions*

9. Did you find it to be easy or difficult to understand and comply with [STATE'S] voter ID requirements? Why?
10. Do you think [STATE'S] ID requirements for first-time voters are too strict, not strict enough or appropriate?

11. Do you think the requirements made registering to vote more complicated than it should be, less complicated, or do you believe they had no noticeable effect?

12. How about the requirement to show ID at the polling place? Do you think it contributed to a longer wait time at your polling place? Did showing ID make voting more complicated than it would have been if you had not been required to show ID?

13. Do you feel ID requirements are necessary to prevent voters from attempting to commit fraud?

*Prompts*

Instances of voter fraud may include an individual impersonating a registered voter in order to vote in his or her name or an individual voting in more than one precinct.

14. How effectively do you think your state and local election officials communicated the ID requirements to first-time voters?

*Prompts*

What were the most effective or memorable techniques used? Television and radio spots? Mailers? Other voter education materials?

15. What are the advantages of requiring first-time voters who registered to vote by mail to show ID at the polls? What are your concerns or reservations about the requirement?

**Voters' Perceptions of the General Advisability of Unique ID**

---

*Introduction*

Now we'd like to get your impressions of whether or not it's a good idea for states to require voters to present ID at the polls.

*Questions*

16. Do you support requiring every voter to provide his or her driver's license number, Social Security Number or the last four digits of his or her Social Security Number as part of his or her application to register to vote?

*Prompts*

Are you concerned about privacy or security issues? Do you believe the requirement helps prevent voter fraud?

17. Do you support requiring first-time voters who registered to vote by mail to provide ID at the polling place?

18. Should **all** voters be required to show ID at the polls, or just first-time voters?

*Prompts*

Are you concerned that some voters may not have the ID they need or may be intimidated by ID requirements? Do you believe that ID requirements could help prevent voter fraud?

19. Would you find it useful to have access to some form of special ID, provided by the state, that you could show at the polls in order to vote? Do you think such an ID should be provided free of charge to voters, or should voters pay to obtain this ID?

**Final Solicitation**

---

20. Do you have any other thoughts about your experiences registering to vote and casting a ballot for the first time this year that we haven't covered?

21. What recommendations do you have for states working to educate first-time voters about ID requirements?

*Prompt*

What methods did your state use to educate voters about ID requirements? Were they effective? What did you like or dislike about them?

**Conclusion**

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That concludes our focus group discussion. Thank you all for participating. The input you provided today will be studied and compiled into a report that we are preparing on behalf of the U.S. Election Assistance Commission. We expect it to be released some time in June 2007. To learn more about the EAC, visit their website: [www.eac.gov](http://www.eac.gov).

**SUPPORTING STATEMENTS**  
**U.S. Election Assistance Commission**  
**Study on First-Time Voters who Register to Vote by Mail**

**A. JUSTIFICATION**

**1. Explain the circumstances that make the collection of information necessary.**

This information collection is necessary to conduct a study that the U.S. Election Assistance Commission ("EAC") is required by federal law to complete. Section 244 of the Help America Vote Act of 2002, Pub. L. 107-252, ("HAVA") requires the EAC to conduct a study on the effects of HAVA Section 303(b) on (1) first-time mail registrants who vote in person, (2) voter registration, (3) the accuracy of voter rolls, and (4) existing state practices. The study will provide the EAC and state election offices with critical information as to how to implement potential future identification requirements and better educate voters.

The EAC is requesting emergency review of this information collection. In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, Pub. L. 104-13, the EAC is requesting emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR Part 1320(a)(2)(ii). The information collection at issue is necessary to conduct a study mandated by HAVA. The EAC cannot reasonably comply with the normal clearance procedures because failure to implement this study in an expedited fashion is reasonably likely to result in a public harm, as stated in 5 CFR 1320.13(a)(2)(i).

Emergency approval of this information collection is essential to comply with HAVA, which requires that the EAC conduct a study of voters who register by mail and the impact of HAVA Section 303(b). The study will take approximately nine (9) months to complete, at which time there will be approximately one (1) year until the 2008 Federal elections. Ensuring that this information is available to election administrators and policymakers in time to be of use for the 2008 Election Cycle is essential to the public welfare. To that end, the EAC respectfully requests that approval of this emergency collection be granted by November 22, 2006.

**2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.**

This information collection will be used by federal, state, and local election officials and policymakers to assess the impact of HAVA Section 303(b) on election administration, voter registration, and voting.

The information collection will be summarized by the study contractor and incorporated into a report to the EAC. The report will summarize all key topics discussed in the focus group meetings and make recommendations to the states as to how to implement potential future voter identification requirements and better educate voters.

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The primary audience for the aforementioned report is the EAC and state election offices. However, the report will be available to the general public per the Freedom of Information Act, Pub. L. 104-231 (“FOIA”).

**3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.**

The information collection will occur at in-person focus group meetings. The responses to the written “quiz” (included with this submission) will be recorded on paper by focus group participants. The remaining information will be collected via a scripted conversation (also included with this submission), which will be tape recorded for interoffice use only.

**4. Describe efforts to identify duplication.**

This is the first study conducted by the EAC on the effects of HAVA Section 303(b) and first-time voters who register by mail. The study contractor and the EAC staff have reviewed previous and contemporaneous surveys of election officials and voters to eliminate duplicative questions.

**5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.**

Not applicable to this information collection.

**6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.**

If the EAC does not collect this information, it will be unable to comply with HAVA Section 244. Further, without this information, the EAC and state election officials and policymakers would be unable to objectively assess the impact of relatively new identification requirements for first-time voters who register by mail.

**7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.**

*(a) Requiring respondents to report information to the agency more often than quarterly.*

Not applicable to this information collection.

*(b) Requiring respondents to prepare a written response to a collection of information in*

*fewer than 30 days after receipt of it.*

This information collection will involve a 15 minute “quiz,” a copy of which is included with this submission, which will be completed by focus group participants during the focus group meetings.

- (c) *Requiring respondents to submit more than an original and two copies of any document.*

Not applicable to this information collection.

- (d) *Requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than 3 years.*

Not applicable to this information collection.

- (e) *In connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study.*

Not applicable to this information collection.

- (f) *Requiring the use of statistical data classification that has been reviewed and approved by OMB.*

Not applicable to this information collection.

- (g) *That includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use.*

This information collection does not include a pledge of confidentiality.

- (h) *Requiring respondents to submit proprietary trade secrets or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information’s confidentiality to the extent permitted by law.*

Not applicable to this information collection.

**8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.**

The EAC is requesting emergency approval to collect this information. The EAC is

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requesting a waiver of the 60-day and 30-day *Federal Register* notices described in 5 CFR 1320.13(d) to ensure that it complies with HAVA and meets the needs of the public.

The study contractor has contacted state election officials that will be involved in the study to gather information on the burdens imposed by this information collection.

**9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.**

Each focus group participant will be paid a \$100 stipend for his or her time, plus reimbursement of travel expenses.

**10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.**

No assurance of confidentiality will be provided to respondents. Information will be made public consistent with the requirements of FOIA.

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.**

This information collection does not include sensitive or private questions.

**12. Provide an estimate in hours of the burden of the collection of information.**

This information collection will consist of three (3) separate focus group meetings, each expected to last no more than two (2) hours based on the scripted conversation and the 15 minute "quiz," both of which are included with this submission. Therefore the total, collective time burden for respondents is expected to be no more than six (6) hours.

Prior to the focus group meetings, state election officials will assist the study contractor in identifying eligible focus group participants. This will involve three (3) state election offices. Assuming the use of both automated voter registration systems and limited manual sorting, it is estimated that each state election office will spend no more than four (4) hours identifying eligible focus group participants. Therefore, total, collective time burden for participating state election officials is expected to be no more than twelve (12) hours.

**13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in #12 above).**

The focus group participants will bear no significant cost burden, as each participant will receive a stipend of \$100 and will be reimbursed promptly for all reasonable travel expenses.

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Retrieving and disseminating voter registration information to members of the public and government entities is a usual and customary business practice for any state election office. Therefore, participating state election offices are not expected to bear any cost in excess of their usual operating expenses.

**14. Provide estimates of annualized cost to the Federal government.**

The estimated cost to the Federal Government is \$11,088. This estimate includes \$4,050 for stipends, transportation, and food for focus group participants; \$4,854 for staff travel, airfare, hotel, and per diem; and \$2,184 for staff labor.

**15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.**

This is the first time this information collection has been performed by the Federal Government.

**16. For collections whose results will be published, outline the plans for tabulation and publication.**

The results from this information collection will be summarized into three (3) separate reports by the study contractor. The results will also be reflected in a spreadsheet compiled by the study contractor. These documents will be made available to state election officials and transmitted to the President and Congress per HAVA Section 244. Additionally, the documents will be available to the general public per FOIA and may be posted on the Internet website of the EAC.

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.**

Not applicable to this information collection.

**18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.**

To the extent that the topics apply to this information collection, the EAC is not making any exception to the "Certification for Paperwork Reduction Act Submissions."

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

*(If your collection does not employ statistical methods, just say that and delete the following five questions from the format.)*

This information collection does not employ statistical methods.

009707



Laiza N. Otero/EAC/GOV

11/07/2006 07:37 PM

To Karen Lynn-Dyson/EAC/GOV@EAC

cc

bcc

Subject Re: Fw: First-Time Voter Study - Focus Group Materials and PRA Statements

Hello!

No, this quiz does not seem to require for us to submit a privacy impact assessment since they don't seem to be requesting participants' personal information or identifiers. I will confirm with Julie tomorrow.

L.

-----Karen Lynn-Dyson/EAC/GOV wrote: -----

To: Laiza N. Otero/EAC/GOV@EAC

From: Karen Lynn-Dyson/EAC/GOV

Date: 11/07/2006 06:32PM

Subject: Fw: First-Time Voter Study - Focus Group Materials and PRA Statements

I assume, then, that this Focus Group "quiz" doesn't fall under the Privacy Act, as does the other focus group material for the Free Absentee Postage group.

K

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 11/07/2006 06:28 PM -----

"Adam L. Bourne"  
<adamlbourne@gmail.com>

11/06/2006 12:10 PM

To "lotoero@eac.gov" <lotoero@eac.gov>,  
klynndyson@eac.gov

cc "Meredith"  
<mimwalle@winnerscirclecomm.com>

Subject First-Time Voter Study - Focus Group Materials  
and PRA Statements

Ms. Lynn-Dyson and Ms. Otero:

Please find attached for your review the focus group quiz, the focus group script, and

009708

the accompanying Paperwork Reduction Act supporting statements .

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Thank you for your assistance. Please feel free to contact me or Meredith if you have any questions or would like us to make any revisions .

Adam Bourne

--

Adam L. Bourne  
155 Sylvest Drive # 2204  
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(205) 246-9290



Focus Group Quiz.doc Focus Group Script Final.doc Supporting Statements.doc

009709

**SUPPORTING STATEMENTS**  
**U.S. Election Assistance Commission**  
**Study on First-Time Voters who Register to Vote by Mail**

**A. JUSTIFICATION**

**1. Explain the circumstances that make the collection of information necessary.**

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Emergency approval of this information collection is essential to comply with HAVA, which requires that the EAC conduct a study of voters who register by mail and the impact of HAVA Section 303(b). The study will take approximately nine (9) months to complete, at which time there will be approximately one (1) year until the 2008 Federal elections. Ensuring that this information is available to election administrators and policymakers in time to be of use for the 2008 Election Cycle is essential to the public welfare. To that end, the EAC respectfully requests that approval of this emergency collection be granted by November 22, 2006.

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009710

The primary audience for the aforementioned report is the EAC and state election offices. However, the report will be available to the general public per the Freedom of Information Act, Pub. L. 104-231 ("FOIA").

**3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.**

The information collection will occur at in-person focus group meetings. The responses to the written "quiz" (included with this submission) will be recorded on paper by focus group participants. The remaining information will be collected via a scripted conversation (also included with this submission), which will be tape recorded for interoffice use only.

**4. Describe efforts to identify duplication.**

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**5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.**

Not applicable to this information collection.

**6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.**

If the EAC does not collect this information, it will be unable to comply with HAVA Section 244. Further, without this information, the EAC and state election officials and policymakers would be unable to objectively assess the impact of relatively new identification requirements for first-time voters who register by mail.

**7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.**

*(a) Requiring respondents to report information to the agency more often than quarterly.*

Not applicable to this information collection.

*(b) Requiring respondents to prepare a written response to a collection of information in*

009711



*fewer than 30 days after receipt of it.*

This information collection will involve a 15 minute "quiz," a copy of which is included with this submission, which will be completed by focus group participants during the focus group meetings.

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- (d) *Requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than 3 years.*

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- (e) *In connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study.*

Not applicable to this information collection.

- (f) *Requiring the use of statistical data classification that has been reviewed and approved by OMB.*

Not applicable to this information collection.

- (g) *That includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use.*

This information collection does not include a pledge of confidentiality.

- (h) *Requiring respondents to submit proprietary trade secrets or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.*

Not applicable to this information collection.

**8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.**

The EAC is requesting emergency approval to collect this information. The EAC is

009712

requesting a waiver of the 60-day and 30-day *Federal Register* notices described in 5 CFR 1320.13(d) to ensure that it complies with HAVA and meets the needs of the public.

The study contractor has contacted state election officials that will be involved in the study to gather information on the burdens imposed by this information collection.

**9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.**

Each focus group participant will be paid a \$100 stipend for his or her time, plus reimbursement of travel expenses.

**10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.**

No assurance of confidentiality will be provided to respondents. Information will be made public consistent with the requirements of FOIA.

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.**

This information collection does not include sensitive or private questions.

**12. Provide an estimate in hours of the burden of the collection of information.**

This information collection will consist of three (3) separate focus group meetings, each expected to last no more than two (2) hours based on the scripted conversation and the 15 minute "quiz," both of which are included with this submission. Therefore the total, collective time burden for respondents is expected to be no more than six (6) hours.

Prior to the focus group meetings, state election officials will assist the study contractor in identifying eligible focus group participants. This will involve three (3) state election offices. Assuming the use of both automated voter registration systems and limited manual sorting, it is estimated that each state election office will spend no more than four (4) hours identifying eligible focus group participants. Therefore, total, collective time burden for participating state election officials is expected to be no more than twelve (12) hours.

**13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in #12 above).**

The focus group participants will bear no significant cost burden, as each participant will receive a stipend of \$100 and will be reimbursed promptly for all reasonable travel expenses.

009713

Retrieving and disseminating voter registration information to members of the public and government entities is a usual and customary business practice for any state election office. Therefore, participating state election offices are not expected to bear any cost in excess of their usual operating expenses.

**14. Provide estimates of annualized cost to the Federal government.**

The estimated cost to the Federal Government is \$11,088. This estimate includes \$4,050 for stipends, transportation, and food for focus group participants; \$4,854 for staff travel, airfare, hotel, and per diem; and \$2,184 for staff labor.

**15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.**

This is the first time this information collection has been performed by the Federal Government.

**16. For collections whose results will be published, outline the plans for tabulation and publication.**

The results from this information collection will be summarized into three (3) separate reports by the study contractor. The results will also be reflected in a spreadsheet compiled by the study contractor. These documents will be made available to state election officials and transmitted to the President and Congress per HAVA Section 244. Additionally, the documents will be available to the general public per FOIA and may be posted on the Internet website of the EAC.

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.**

Not applicable to this information collection.

**18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.**

To the extent that the topics apply to this information collection, the EAC is not making any exception to the "Certification for Paperwork Reduction Act Submissions."

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

*(If your collection does not employ statistical methods, just say that and delete the following five questions from the format.)*

This information collection does not employ statistical methods.

009714

**WINNER'S CIRCLE COMMUNICATIONS, LLC**  
**Study of First-Time Voters Who Register to Vote by Mail**

---

**Focus Group Script and Questions**  
Prepared 11.06.06

---

**Background**

---

*Introduction*

Thank you for joining us today and agreeing to participate in this focus group discussion of your experiences as first-time voters who registered to vote by mail. My name is Meredith Imwalle and I'll be your facilitator, which means it's my job to keep today's session on track by asking a series of open-ended questions, and some more specific ones, intended to stimulate discussion. My colleague, Adam Bourne, will serve as a co-facilitator.

We've organized this focus group as part of a study our company, Winner's Circle Communications, is conducting on behalf of the United States Election Assistance Commission, a federal government agency created to provide guidance to states implementing election reforms that are required by the federal Help America Vote Act, often referred to as HAVA. Since HAVA require that every state implement certain minimum identification, or ID, requirements for first-time voters like you, we've been asked to find out what your experiences were with registering to vote and voting this year. We hope to use your input to help us determine what state practices are working and how states can best communicate ID requirements to voters.

First let's go over a few ground rules for today:

- Your participation in this focus group is voluntary, and you may stop at any time.
- We hope to gather information about your voting experiences. There are no wrong answers today; please let everyone speak and respect everyone's opinion, even if it is different from your own.
- We will make an audio recording of this session, so that we can be sure not to miss any of your important comments today. The recording will not be released publicly, and it will not be shared with anyone outside of our company.

009715

## **Voters' Level of Understanding of New Requirements**

---

Before we start our discussion today, we'd like to get a sense of how well each of you understand [STATE'S] voter ID requirements for first-time voters. Adam is handing out a quick quiz that we will give you 15 minutes to complete.

By testing your knowledge of [STATE'S] ID requirements, we are hoping to gauge how effectively your state's elections officials communicated the requirements to you, the voters. So please answer the questions as best you can and don't worry if you don't have all of the answers.

*Distribute quizzes; allow participants 15 minutes to complete.*

## **Voters' Experiences Registering to Vote by Mail**

---

### *Introduction*

Now that we've collected your completed quizzes, let's talk about your experiences registering to vote by mail.

### *Questions*

1. We'd like to ask each of you to describe the process of filling out your voter registration application. Please provide an estimate of how long it took you to complete the application and tell us whether you thought the form's instructions for submitting the required identification information (your driver's license number, Social Security Number or the last four digits of your Social Security Number) were easy to understand.
2. If you didn't include your driver's license number, Social Security Number or the last four digits of your Social Security Number with your application, why not?

### *Prompts*

Were the instructions unclear? Do you have a driver's license or Social Security Number? Did you hesitate to include one of these numbers due to privacy or security concerns?

3. If you included a copy of your utility bill or some other document that includes your name and address with your application, why did you choose to do so?

### *Prompts*

Did you believe you were required to include such information with your voter registration application? Were you hoping to save time at the polls by including the information with your application?

## **Voters' Experiences at the Polls on Election Day**

---

### *Introduction*

Now we'd like to move on and discuss your experiences at the polling place on Election Day.

### *Questions*

4. Were you required to show ID at the polls before you could vote? What kind of ID were you asked to present?
5. Did a poll worker or election official clearly explain what kinds of ID would be accepted?
6. Did you know before you arrived at the polling place that you would be required to show ID? Did you know what kinds of ID would be accepted?
7. Were you able to present an acceptable form of ID at the polling place?
8. Which statement best represents your feelings about being required to present ID and why:
  - "I felt comfortable showing my ID to the poll worker."
  - "I felt singled out or intimidated when I was asked to present ID at the polling place."

**\*Fifteen Minute Break: Let's take a short break and reconvene here in 15 minutes.\***

## **Voters' Overall Perceptions of Voter ID Requirements**

---

### *Introduction*

Let's discuss your overall perceptions of [STATE'S] voter ID requirements. Remember, we're interested in your opinions so there are no right or wrong answers. Any feedback you can offer may help the state improve upon current procedures.

### *Questions*

9. Did you find it to be easy or difficult to understand and comply with [STATE'S] voter ID requirements? Why?
10. Do you think [STATE'S] ID requirements for first-time voters are too strict, not strict enough or appropriate?

11. Do you think the requirements made registering to vote more complicated than it should be, less complicated, or do you believe they had no noticeable effect?

12. How about the requirement to show ID at the polling place? Do you think it contributed to a longer wait time at your polling place? Did showing ID make voting more complicated than it would have been if you had not been required to show ID?

13. Do you feel ID requirements are necessary to prevent voters from attempting to commit fraud?

*Prompts*

Instances of voter fraud may include an individual impersonating a registered voter in order to vote in his or her name or an individual voting in more than one precinct.

14. How effectively do you think your state and local election officials communicated the ID requirements to first-time voters?

*Prompts*

What were the most effective or memorable techniques used? Television and radio spots? Mailers? Other voter education materials?

15. What are the advantages of requiring first-time voters who registered to vote by mail to show ID at the polls? What are your concerns or reservations about the requirement?

**Voters' Perceptions of the General Advisability of Unique ID**

*Introduction*

Now we'd like to get your impressions of whether or not it's a good idea for states to require voters to present ID at the polls.

*Questions*

16. Do you support requiring every voter to provide his or her driver's license number, Social Security Number or the last four digits of his or her Social Security Number as part of his or her application to register to vote?

*Prompts*

Are you concerned about privacy or security issues? Do you believe the requirement helps prevent voter fraud?

17. Do you support requiring first-time voters who registered to vote by mail to provide ID at the polling place?

18. Should **all** voters be required to show ID at the polls, or just first-time voters?

*Prompts*

Are you concerned that some voters may not have the ID they need or may be intimidated by ID requirements? Do you believe that ID requirements could help prevent voter fraud?

19. Would you find it useful to have access to some form of special ID, provided by the state, that you could show at the polls in order to vote? Do you think such an ID should be provided free of charge to voters, or should voters pay to obtain this ID?

**Final Solicitation**

---

20. Do you have any other thoughts about your experiences registering to vote and casting a ballot for the first time this year that we haven't covered?

21. What recommendations do you have for states working to educate first-time voters about ID requirements?

*Prompt*

What methods did your state use to educate voters about ID requirements? Were they effective? What did you like or dislike about them?

**Conclusion**

---

That concludes our focus group discussion. Thank you all for participating. The input you provided today will be studied and compiled into a report that we are preparing on behalf of the U.S. Election Assistance Commission. We expect it to be released some time in June 2007. To learn more about the EAC, visit their website: [www.eac.gov](http://www.eac.gov).



**WINNER'S CIRCLE COMMUNICATIONS, LLC**  
**Study of First-Time Voters Who Register to Vote by Mail**

---

**Quiz for Focus Group Participants**

---

**PART ONE**

**Instructions**

Please select the answer that best describes your state's laws, rules and/or requirements as you understand them. Your answers to these questions will be used to determine how effectively [STATE] communicated its first-time voter identification, or ID, requirements.

1. What types of ID does [STATE] require each person applying to register to vote, or applicant, to include with his or her voter registration form when that form is submitted via mail? Please circle all that apply.

Driver's License Number

Last four digits of Social Security Number

Copy of Driver's License

Copy of Social Security Card

Entire Social Security Number

Copy of Utility Bill

Copy of photo ID

Any government document with the voter's name and address

All of the above

None of the above

2. If the applicant does not have a driver's license or social security number, the state will assign the applicant a number which will serve to identify the applicant for voter registration purposes. Please circle one.

True

False

009720

3. At the polls, [STATE] has different ID requirements for first-time voters who registered to vote by mail than it does for voters who have cast a ballot in another recent election. Please circle one.

True

False

4. All first-time voters in [STATE] are required to show government-issued photo ID at the polls. Please circle one.

True

False

5. Which of the following types of ID may first-time voters who registered to vote by mail show at the polls in order to meet [STATE'S] identification requirements? Please circle all that apply.

Any current and valid photo ID

Government-issued photo ID

Current utility bill

Bank statement

Government check

Paycheck

Any government document that includes the voter's name and address

All of the above

None of the above

009721

**PART TWO**

**Instructions**

Please base your answers to the following questions on your own opinions and experiences.

1. On a scale of one to 10, with one being the least confident and 10 being the most confident, how confident are you that you understand [STATE'S] ID requirements for first-time voters who register to vote by mail? Please circle one.

1      2      3      4      5      6      7      8      9      10

2. How did you learn of [STATE'S] ID requirements for first-time voters who register to vote by mail? Please circle all that apply.

TV or radio advertisement(s)

State elections website

News reports

Local elections website

I contacted my state election office

I contacted my local election office

Instructions on voter registration form

From a poll worker at the polling place

All of the above

None of the above

Other (please explain)

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---

3. How effectively do you believe [STATE] communicated its ID requirements for first-time voters? Please rate the state on a scale of one to 10, with one being the least effective and 10 being the most effective.

1    2    3    4    5    6    7    8    9    10



"Meredith"  
 <mimwalle@winnerscircleco  
 mm.com>  
 11/10/2006 10:58 AM

To: [REDACTED] lotero@eac.gov  
 cc: klynndyson@eac.gov  
 bcc:

Subject: Re: First-Time Voter Study - Focus Group Materials and PRA Statements

History: This message has been replied to.

Laiza:

Thank you for your email. We did not include the total labor cost for Tasks 4.6-4.7 but rather, just the labor cost for conducting the three, two-hour groups. Please find a revised total cost below which includes the total cost for all work related to the focus groups, as outlined in Tasks 4.6-4.7 of the SOW. Thanks for catching this for us.

Labor	\$75,720
Travel	\$4,854
Stipends, food and transportation for focus group participants	\$4,050
Total Cost	\$84,624

Regards,

*Meredith Battle Imwalle*

Meredith Battle Imwalle  
 President  
 Winner's Circle Communications, LLC  
 703.786.1823 cell  
<http://www.winnerscirclecomm.com>

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

**From:** lotero@eac.gov  
**To:** adamlbourne@gmail.com  
**Cc:** Meredith ; klynndyson@eac.gov  
**Sent:** Thursday, November 09, 2006 4:13 PM  
**Subject:** Re: First-Time Voter Study - Focus Group Materials and PRA Statements

Hello,

009724

I am putting the final touches on the documents and the submission package and need your assistance. For the following question for the Supporting Statement A, the following answer is what appears there currently. However, is that amount the total cost for all of the work on Tasks 4.6-4.7 of the Statement of Work, which relate to the focus groups? Is the rest of the contract money going towards the case studies? Thank you!

**14. Provide estimates of annualized cost to the Federal government.**

The estimated cost to the Federal Government is \$11,088. This estimate includes \$4,050 for stipends, transportation, and food for focus group participants; \$4,854 for staff travel, airfare, hotel, and per diem; and \$2,184 for staff labor.

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)  
Fax (202) 566-3128

"Adam L. Bourne" <adamibourne@gmail.com>

11/06/2006 12:10 PM

To "lotoero@eac.gov" <lotoero@eac.gov>, klynndyson@eac.gov  
CC "Meredith" <mimwalle@winnerscirclecomm.com>  
Subject First-Time Voter Study - Focus Group Materials and PRA Statements

Ms. Lynn-Dyson and Ms. Otero:

Please find attached for your review the focus group quiz, the focus group script, and the accompanying Paperwork Reduction Act supporting statements.

I will be faxing a copy of the OMB 83-I form to you shortly, as it is not a writable PDF document.

Thank you for your assistance. Please feel free to contact me or Meredith if you have any questions or would like us to make any revisions.

Adam Bourne

009725

--

Adam L. Bourne  
155 Sylvest Drive # 2204  
Montgomery, Alabama 36117

[REDACTED]  
0  
[attachment "Focus Group Quiz.doc" deleted by Laiza N. Otero/EAC/GOV] [attachment "Focus Group Script Final.doc" deleted by Laiza N. Otero/EAC/GOV] [attachment "Supporting Statements.doc" deleted by Laiza N. Otero/EAC/GOV]

009726



Laiza N. Otero/EAC/GOV

11/13/2006 10:11 AM

To Juliet E. Hodgkins/EAC/GOV@EAC

cc Karen Lynn-Dyson/EAC/GOV@EAC

bcc

Subject 1st Time Voters Research Project

Hello Julie,

Here is another project for emergency clearance. Could you review and approve the attached documents? Upon approval, I will go ahead and submit them via ROCIS to our friend Mr. Hunt :-). Thank you!

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)



Fax (202) 566-3128 1st Time Voters Emergency Justification.doc 1st Time Voters Supporting Statements.doc



1st Time Voters Focus Group Quiz.doc 1st Time Voters Focus Group Script.doc

009727



**WINNER'S CIRCLE COMMUNICATIONS, LLC**  
**Study of First-Time Voters Who Register to Vote by Mail**

---

**Focus Group Script and Questions**  
Prepared 11.06.06

---

**Background**

---

*Introduction*

Thank you for joining us today and agreeing to participate in this focus group discussion of your experiences as first-time voters who registered to vote by mail. My name is Meredith Imwalle and I'll be your facilitator, which means it's my job to keep today's session on track by asking a series of open-ended questions, and some more specific ones, intended to stimulate discussion. My colleague, Adam Bourne, will serve as a co-facilitator.

We've organized this focus group as part of a study our company, Winner's Circle Communications, is conducting on behalf of the United States Election Assistance Commission, a federal government agency created to provide guidance to states implementing election reforms that are required by the federal Help America Vote Act, often referred to as HAVA. Since HAVA require that every state implement certain minimum identification, or ID, requirements for first-time voters like you, we've been asked to find out what your experiences were with registering to vote and voting this year. We hope to use your input to help us determine what state practices are working and how states can best communicate ID requirements to voters.

First let's go over a few ground rules for today:

- Your participation in this focus group is voluntary, and you may stop at any time.
- We hope to gather information about your voting experiences. There are no wrong answers today; please let everyone speak and respect everyone's opinion, even if it is different from your own.
- We will make an audio recording of this session, so that we can be sure not to miss any of your important comments today. The recording will not be released publicly, and it will not be shared with anyone outside of our company.

## **Voters' Level of Understanding of New Requirements**

---

Before we start our discussion today, we'd like to get a sense of how well each of you understand [STATE'S] voter ID requirements for first-time voters. Adam is handing out a quick quiz that we will give you 15 minutes to complete.

By testing your knowledge of [STATE'S] ID requirements, we are hoping to gauge how effectively your state's elections officials communicated the requirements to you, the voters. So please answer the questions as best you can and don't worry if you don't have all of the answers.

*Distribute quizzes; allow participants 15 minutes to complete.*

## **Voters' Experiences Registering to Vote by Mail**

---

### *Introduction*

Now that we've collected your completed quizzes, let's talk about your experiences registering to vote by mail.

### *Questions*

1. We'd like to ask each of you to describe the process of filling out your voter registration application. Please provide an estimate of how long it took you to complete the application and tell us whether you thought the form's instructions for submitting the required identification information (your driver's license number, Social Security Number or the last four digits of your Social Security Number) were easy to understand.
2. If you didn't include your driver's license number, Social Security Number or the last four digits of your Social Security Number with your application, why not?

### *Prompts*

Were the instructions unclear? Do you have a driver's license or Social Security Number? Did you hesitate to include one of these numbers due to privacy or security concerns?

3. If you included a copy of your utility bill or some other document that includes your name and address with your application, why did you choose to do so?

### *Prompts*

Did you believe you were required to include such information with your voter registration application? Were you hoping to save time at the polls by including the information with your application?

009729

## **Voters' Experiences at the Polls on Election Day**

---

### *Introduction*

Now we'd like to move on and discuss your experiences at the polling place on Election Day.

### *Questions*

4. Were you required to show ID at the polls before you could vote? What kind of ID were you asked to present?
5. Did a poll worker or election official clearly explain what kinds of ID would be accepted?
6. Did you know before you arrived at the polling place that you would be required to show ID? Did you know what kinds of ID would be accepted?
7. Were you able to present an acceptable form of ID at the polling place?
8. Which statement best represents your feelings about being required to present ID and why:
  - "I felt comfortable showing my ID to the poll worker."
  - "I felt singled out or intimidated when I was asked to present ID at the polling place."

**\*Fifteen Minute Break: Let's take a short break and reconvene here in 15 minutes.\***

## **Voters' Overall Perceptions of Voter ID Requirements**

---

### *Introduction*

Let's discuss your overall perceptions of [STATE'S] voter ID requirements. Remember, we're interested in your opinions so there are no right or wrong answers. Any feedback you can offer may help the state improve upon current procedures.

### *Questions*

9. Did you find it to be easy or difficult to understand and comply with [STATE'S] voter ID requirements? Why?
10. Do you think [STATE'S] ID requirements for first-time voters are too strict, not strict enough or appropriate?

11. Do you think the requirements made registering to vote more complicated than it should be, less complicated, or do you believe they had no noticeable effect?

12. How about the requirement to show ID at the polling place? Do you think it contributed to a longer wait time at your polling place? Did showing ID make voting more complicated than it would have been if you had not been required to show ID?

13. Do you feel ID requirements are necessary to prevent voters from attempting to commit fraud?

*Prompts*

Instances of voter fraud may include an individual impersonating a registered voter in order to vote in his or her name or an individual voting in more than one precinct.

14. How effectively do you think your state and local election officials communicated the ID requirements to first-time voters?

*Prompts*

What were the most effective or memorable techniques used? Television and radio spots? Mailers? Other voter education materials?

15. What are the advantages of requiring first-time voters who registered to vote by mail to show ID at the polls? What are your concerns or reservations about the requirement?

**Voters' Perceptions of the General Advisability of Unique ID**

---

*Introduction*

Now we'd like to get your impressions of whether or not it's a good idea for states to require voters to present ID at the polls.

*Questions*

16. Do you support requiring every voter to provide his or her driver's license number, Social Security Number or the last four digits of his or her Social Security Number as part of his or her application to register to vote?

*Prompts*

Are you concerned about privacy or security issues? Do you believe the requirement helps prevent voter fraud?

17. Do you support requiring first-time voters who registered to vote by mail to provide ID at the polling place?

009731

18. Should **all** voters be required to show ID at the polls, or just first-time voters?

*Prompts*

Are you concerned that some voters may not have the ID they need or may be intimidated by ID requirements? Do you believe that ID requirements could help prevent voter fraud?

19. Would you find it useful to have access to some form of special ID, provided by the state, that you could show at the polls in order to vote? Do you think such an ID should be provided free of charge to voters, or should voters pay to obtain this ID?

**Final Solicitation**

---

20. Do you have any other thoughts about your experiences registering to vote and casting a ballot for the first time this year that we haven't covered?

21. What recommendations do you have for states working to educate first-time voters about ID requirements?

*Prompt*

What methods did your state use to educate voters about ID requirements? Were they effective? What did you like or dislike about them?

**Conclusion**

---

That concludes our focus group discussion. Thank you all for participating. The input you provided today will be studied and compiled into a report that we are preparing on behalf of the U.S. Election Assistance Commission. We expect it to be released some time in June 2007. To learn more about the EAC, visit their website: [www.eac.gov](http://www.eac.gov).

009732

**WINNER'S CIRCLE COMMUNICATIONS, LLC**  
**Study of First-Time Voters Who Register to Vote by Mail**

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**Quiz for Focus Group Participants**

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**PART ONE**

**Instructions**

Please select the answer that best describes your state's laws, rules and/or requirements as you understand them. Your answers to these questions will be used to determine how effectively [STATE] communicated its first-time voter identification, or ID, requirements.

1. What types of ID does [STATE] require each person applying to register to vote, or applicant, to include with his or her voter registration form when that form is submitted via mail? Please circle all that apply.

Driver's License Number

Last four digits of Social Security Number

Copy of Driver's License

Copy of Social Security Card

Entire Social Security Number

Copy of Utility Bill

Copy of photo ID

Any government document with the voter's name and address

All of the above

None of the above

2. If the applicant does not have a driver's license or social security number, the state will assign the applicant a number which will serve to identify the applicant for voter registration purposes. Please circle one.

True

False

009733

3. At the polls, [STATE] has different ID requirements for first-time voters who registered to vote by mail than it does for voters who have cast a ballot in another recent election. Please circle one.

True

False

4. All first-time voters in [STATE] are required to show government-issued photo ID at the polls. Please circle one.

True

False

5. Which of the following types of ID may first-time voters who registered to vote by mail show at the polls in order to meet [STATE'S] identification requirements? Please circle all that apply.

Any current and valid photo ID

Government-issued photo ID

Current utility bill

Bank statement

Government check

Paycheck

Any government document that includes the voter's name and address

All of the above

None of the above

**PART TWO**

**Instructions**

Please base your answers to the following questions on your own opinions and experiences.

1. On a scale of one to 10, with one being the least confident and 10 being the most confident, how confident are you that you understand [STATE'S] ID requirements for first-time voters who register to vote by mail? Please circle one.

1      2      3      4      5      6      7      8      9      10

2. How did you learn of [STATE'S] ID requirements for first-time voters who register to vote by mail? Please circle all that apply.

TV or radio advertisement(s)

State elections website

News reports

Local elections website

I contacted my state election office

I contacted my local election office

Instructions on voter registration form

From a poll worker at the polling place

All of the above

None of the above

Other (please explain)

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3. How effectively do you believe [STATE] communicated its ID requirements for first-time voters? Please rate the state on a scale of one to 10, with one being the least effective and 10 being the most effective.

1      2      3      4      5      6      7      8      9      10

## Supporting Statement A

OMB Control Number: xxxx-xxxx

U.S. Election Assistance Commission

### Study on First-Time Voters Who Register to Vote by Mail

#### A. JUSTIFICATION

**1. Explain the circumstances that make the collection of information necessary.**

The proposed information collection is necessary to meet requirements of the Help America Vote Act (HAVA) of 2002 (42 U.S.C. 15301). Section 244 of HAVA requires the U.S. Election Assistance Commission (EAC) to conduct a study of the effects of HAVA §303(b) on (1) first-time mail registrants who vote in person, (2) voter registration, (3) the accuracy of voter rolls, and (4) existing state practices. Upon completion of the study, the EAC is required to submit a report to the President and Congress on the study together with such recommendations for administrative and legislative action as the EAC determines appropriate.

**2. Explain how, by whom, how frequently, and for what purpose the information will be used.**

Section 244 of HAVA (42 U.S.C. 15301) requires the EAC to conduct this information collection and submit a report to the President and Congress on the study together with such recommendations for administrative and legislative action as the EAC determines appropriate. In addition, the EAC shall make the study and its findings available to the public. This information collection is being carried out only once for purposes of meeting the statutory requirements under HAVA.

**3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.**

The information collection will occur at in-person focus group meetings. The responses to the written "quiz" (included with this submission) will be recorded on paper by focus group participants. The remaining information will be collected via a scripted conversation (also included with this submission), which will be tape recorded for interoffice use only.

**4. Describe efforts to identify duplication.**

This is the first study conducted by the EAC on the effects of HAVA Section 303(b) and first-time voters who register by mail. The study contractor and the EAC staff have reviewed previous and contemporaneous surveys of election officials and voters to eliminate duplicative questions.

009737

**5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.**

Not applicable to this information collection.

**6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.**

If the EAC does not collect this information it may be unable to comply with its statutory requirements under HAVA (42 U.S.C. 15301). This is a one-time collection.

**7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.**

There are no special circumstances applicable to this information collection.

**8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.**

The EAC is requesting emergency approval to collect this information. The EAC is requesting a waiver of the 60-day and 30-day *Federal Register* notices described in 5 CFR 1320.13(d) to ensure that it complies with HAVA and meets the needs of the public. The study Contractor has contacted state election officials that will be involved in the study to gather information on the burdens imposed by this information collection.

**9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.**

Each focus group participant will be paid a \$100 stipend for his or her time, plus reimbursement of travel expenses.

**10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.**

There is no assurance of confidentiality.

009738

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.**

There are no questions of a sensitive nature.

**12. Provide an estimate in hours of the burden of the collection of information.**

This information collection will consist of three (3) separate focus group meetings, each expected to last no more than two (2) hours based on the scripted conversation and the 15 minute "quiz," both of which are included with this submission. Prior to the focus group meetings, state election officials will assist the study contractor in identifying eligible focus group participants. This will involve three (3) state election offices. Assuming the use of both automated voter registration systems and limited manual sorting, it is estimated that each state election office will spend no more than four (4) hours identifying eligible focus group participants. Therefore, total, collective time burden for participating state election officials is expected to be no more than twelve (12) hours.

- a. Number of respondents = 30
- b. Number of responses per each respondent = 1
- c. Total annual responses = 1
- d. Hours per response = 2.25 hours
- e. Total annual reporting burden = 67.5 hours (*# of respondents x frequency of response x hours of response*)

**13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in #12 above).**

There are no capital or start-up costs associated with this information collection.

**14. Provide estimates of annualized cost to the Federal government.**

The estimated cost to the Federal Government is \$84,624. This estimate includes \$4,050 for stipends, transportation, and food for focus group participants; \$4,854 for staff travel, airfare, hotel, and per diem; and \$75,720 for staff labor.

**15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.**

This is the first time this information collection has been performed by the Federal 009739

Government.

**16. For collections whose results will be published, outline the plans for tabulation and publication.**

Section 244 of HAVA (42 U.S.C. 15301) requires the EAC to conduct this information collection and submit a report to the President and Congress on the study together with such recommendations for administrative and legislative action as the EAC determines appropriate. In addition, the EAC shall make the study and its findings available to the public. The final report will be made available on EAC's website. The report is expected to be released in mid to late 2007.

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.**

Not applicable to this information collection.

**18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.**

The EAC does not request an exception to the certification of this information collection

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

This information collection does not employ statistical methods.

009740

## JUSTIFICATION

The EAC is requesting emergency review of this information collection. In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, Pub. L. 104-13, the EAC is requesting emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR Part 1320(a)(2)(ii). The information collection at issue is necessary to conduct a study mandated by HAVA. The EAC cannot reasonably comply with the normal clearance procedures because failure to implement this study in an expedited fashion is reasonably likely to result in a public harm, as stated in 5 CFR 1320.13(a)(2)(i).

Emergency approval of this information collection is essential to comply with HAVA, which requires that the EAC conduct a study of voters who register by mail and the impact of HAVA Section 303(b). The study will take approximately nine (9) months to complete, at which time there will be approximately one (1) year until the 2008 Federal elections. Ensuring that this information is available to election administrators and policymakers in time to be of use for the 2008 Election Cycle is essential to the public welfare. To that end, the EAC respectfully requests that approval of this emergency collection be granted by November 22, 2006.

009741



Laiza N. Otero/EAC/GOV

11/15/2006 04:16 PM

To Alexander\_T.\_Hunt@omb.eop.gov

cc Juliet E. Hodgkins/EAC/GOV@EAC, Karen  
Lynn-Dyson/EAC/GOV@EAC

bcc

Subject New ICR - Emergency Submission

Dear Mr. Hunt,

This e-mail is to notify you that we have submitted a second ICR for emergency clearance as we had spoken about previously that we would do. This study is required under Section 244 of the Help America Vote Act of 2002, and we are required to report the results of this study to the President and Congress. If you have any questions or need more information relating to this particular ICR, please, do not hesitate to contact me at your earliest convenience. As always, thank you for your time and assistance in this matter.

Respectfully yours,

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)  
Fax (202) 566-3128

009742

 **Laiza N. Otero/EAC/GOV**

12/12/2006 08:24 AM

To "Meredith" <mimwalle@winnerscirclecomm.com>, "Adam L. Bourne" 

cc

bcc

Subject Documents for viewing

Good morning,


Hope all is well. I'm preparing an announcement regarding your project for our website and I would like to have the final version of the focus group materials with the OMB info on them (number, expiration, disclaimer). We'll post the info under the Research and Reports section of our main page. It's just for informational purposes - it will include the background and scope of the project, the focus group materials, and a link to our ICR (OMB) documents. Thank you!

Laiza

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)  
Fax (202) 566-3128

009743



 Laiza N. Otero/EAC/GOV  
12/12/2006 10:32 AM

To Karen Lynn-Dyson/EAC/GOV@EAC  
cc  
bcc

Subject First Time Voters Web Text

Hello,

Hope you feel better. I've pasted below for your review the draft text for the First-Time Voters study to post on our website. I've also asked Meredith for the final copy of the focus group materials with the OMB info on them so we can post that version. Thank you!

L.

## **U.S. Election Assistance Commission (EAC)**

### **Research in Progress: Study on First-Time Voters Who Register by Mail – Focus Groups (OMB Control No. 3265-0007 – ICR Ref. No. 200611-3265-002)**

#### **Background:**

Section 244 of the Help America Vote Act (HAVA) of 2002 (42 U.S.C. 15301) requires the EAC to conduct a study assessing the impact of HAVA §303(b) on: 1) first-time mail registrants who vote in person; 2) voter registration; 3) the accuracy of voter rolls; and 4) existing state practices. HAVA §303(b) requires citizens who (1) registered to vote by mail and (2) will be voting for the first time in their jurisdiction to supply a copy of a current valid photo identification or government document displaying their name and address before they cast their first ballot. First-time voters can avoid the heightened identification requirements by (1) sending a copy of such identification with their registration materials or (2) providing their driver's license number or a minimum of the last four digits of their social security number. If a first-time voter does not comply with any of these requirements, §303(b) allows citizens to cast provisional ballots.

To meet its requirements under HAVA §244, the EAC awarded a contract on September 2006 to Winner's Circle Communications, LLC to conduct case studies and focus groups on the effect that implementation of §303(b) has on first-time voters, voter registration, the accuracy of voter rolls, and existing state practices. The case study and focus groups will analyze the issues and impediments associated with implementation of §303(b) and provide the basis for recommendations regarding program administration and voter education should states choose to implement more stringent identification requirements in the future. Upon completion of the study, the EAC is required to submit a report to the President and Congress on the study together with such recommendations for administrative and legislative action as the EAC determines appropriate. In addition, the report will be made available on the EAC website at [www.eac.gov](http://www.eac.gov).

In accordance with the information clearance process under the Paperwork Reduction Act (PRA) of 1995, the EAC received approval from the Office of Management and Budget (OMB) to carry out the focus groups for this study; a copy of the survey and OMB documentation are available below.

009744

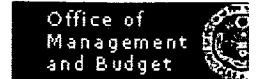
VIEW First-Time Voters Focus Group **Script** (OMB Control No. 3265-0007) (PDF)

VIEW First-Time Voters Focus Group **Quiz** (OMB Control No. 3265-0007) (PDF)

VIEW Information Collection Request (ICR) submitted to the Office of Management and Budget (OMB)  
– [http://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=200611-3265-002](http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200611-3265-002)

**Information:**

For more information or questions regarding this collection, please, contact the U.S. Election Assistance Commission at 1-866-747-1471 or by e-mail at [lotero@eac.gov](mailto:lotero@eac.gov).



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Abstract/Justification  Legal Statutes  Rulemaking  FR Notices/Comments  IC List  Burden  Misc.  Certification

[View Information Collection \(IC\) List](#) [View Supporting Statement and Other Documents](#)

Please note that the OMB number and expiration date may not have been determined when this Information Collection Request and associated Information Collection forms were submitted to OMB. The approved OMB number and expiration date may be found by clicking on the Notice of Action link below.

## View ICR - OIRA Conclusion

OMB Control No: 3265-0007

ICR Reference No: 200611-3265-002

Status: Active

Previous ICR Reference No:

Agency/Subagency:

Agency Tracking No:

Title: EAC Study on First-Time Voters Who Register to Vote by Mail

Type of Information Collection: New collection (Request for a new OMB Control Number)

Type of Review Request: Emergency

Approval Requested By: 11/29/2006

OIRA Conclusion Action: Approved without change

Conclusion Date: 11/30/2006

[Retrieve Notice of Action \(NOA\)](#)

Date Received in OIRA: 11/15/2006

Terms of Clearance:

	Inventory as of this Action	Requested	Previously Approved
Expiration Date	05/31/2007	6 Months From Approved	
Responses	30	30	0
Time Burden (Hours)	68	68	0
Cost Burden (Dollars)	0	0	0

[Disclosure](#) | [Accessibility](#) | [Privacy Policy](#) | [Contact Us](#)

009746



Winner's Circle Communications, LLC for the  
UNITED STATES ELECTION ASSISTANCE COMMISSION  
Study of First-Time Voters Who Register to Vote by Mail

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Focus Group Script and Questions

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**Background**

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*Introduction*

Thank you for joining us today and agreeing to participate in this focus group discussion of your experiences as first-time voters who registered to vote by mail. My name is Meredith Imwalle and I'll be your facilitator, which means it's my job to keep today's session on track by asking a series of open-ended questions, and some more specific ones, intended to stimulate discussion. My colleague, Adam Bourne, will serve as a co-facilitator.

We've organized this focus group as part of a study our company, Winner's Circle Communications, is conducting on behalf of the United States Election Assistance Commission, a federal government agency created to provide guidance to states implementing election reforms that are required by the federal Help America Vote Act, often referred to as HAVA. Since HAVA requires that every state implement certain minimum identification, or ID, requirements for first-time voters like you, we've been asked to find out what your experiences were with registering to vote and voting this year. We hope to use your input to help us determine what state practices are working and how states can best communicate ID requirements to voters.

First let's go over a few ground rules for today:

- Your participation in this focus group is voluntary, and you may stop at any time. The entire session will last approximately two hours and 15 minutes.
- We hope to gather information about your voting experiences. There are no wrong answers today; please let everyone speak and respect everyone's opinion, even if it is different from your own.
- We will make an audio recording of this session, so that we can be sure not to miss any of your important comments today. The recording will not be released publicly, and it will not be shared with anyone outside of our company.

## **Voters' Level of Understanding of New Requirements**

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Before we start our discussion today, we'd like to get a sense of how well each of you understand [STATE'S] voter ID requirements for first-time voters. Adam is handing out a quick quiz that we will give you 15 minutes to complete.

By testing your knowledge of [STATE'S] ID requirements, we are hoping to gauge how effectively your state's election officials communicated the requirements to you, the voters. So please answer the questions as best you can and don't worry if you don't have all of the answers.

*Distribute quizzes; allow participants 15 minutes to complete.*

## **Voters' Experiences Registering to Vote by Mail**

---

### *Introduction*

Now that we've collected your completed quizzes, let's talk about your experiences registering to vote by mail.

### *Questions*

1. We'd like to ask each of you to describe the process of filling out your voter registration application. Please provide an estimate of how long it took you to complete the application and tell us whether you thought the form's instructions for submitting the required identification information (your driver's license number, Social Security number or the last four digits of your Social Security number) were easy to understand.
2. If you didn't include your driver's license number, Social Security number or the last four digits of your Social Security number with your application, why not?

### *Prompts*

Were the instructions unclear? Do you have a driver's license or Social Security number? Did you hesitate to include one of these numbers due to privacy or security concerns?

3. If you included a copy of your utility bill or some other document that includes your name and address with your application, why did you choose to do so?

### *Prompts*

Did you believe you were required to include such information with your voter registration application? Were you hoping to save time at the polls by including the information with your application?

## **Voters' Experiences at the Polls on Election Day**

---

### *Introduction*

Now we'd like to move on and discuss your experiences at the polling place on Election Day.

### *Questions*

4. Were you required to show ID at the polls before you could vote? What kind of ID were you asked to present?
5. Did a poll worker or election official clearly explain what kinds of ID would be accepted?
6. Did you know before you arrived at the polling place that you would be required to show ID? Did you know what kinds of ID would be accepted?
7. Were you able to present an acceptable form of ID at the polling place?
8. Which statement best represents your feelings about being required to present ID and why:
  - "I felt comfortable showing my ID to the poll worker."
  - "I felt singled out or intimidated when I was asked to present ID at the polling place."

**\*Fifteen Minute Break: Let's take a short break and reconvene here in 15 minutes.\***

## **Voters' Overall Perceptions of Voter ID Requirements**

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### *Introduction*

Let's discuss your overall perceptions of [STATE'S] voter ID requirements. Remember, we're interested in your opinions so there are no right or wrong answers. Any feedback you can offer may help the state improve upon current procedures.

### *Questions*

9. Did you find it to be easy or difficult to understand and comply with [STATE'S] voter ID requirements? Why?
10. Do you think [STATE'S] ID requirements for first-time voters are too strict, not strict enough or appropriate?

11. Do you think the requirements made registering to vote more complicated than it should be, less complicated, or do you believe they had no noticeable effect?

12. How about the requirement to show ID at the polling place? Do you think it contributed to a longer wait time at your polling place? Did showing ID make voting more complicated than it would have been if you had not been required to show ID?

13. Do you feel ID requirements are necessary to prevent voters from attempting to commit fraud?

*Prompts*

Instances of voter fraud may include an individual impersonating a registered voter in order to vote in his or her name or an individual voting in more than one precinct.

14. How effectively do you think your state and local election officials communicated the ID requirements to first-time voters?

*Prompts*

What were the most effective or memorable techniques used? Television and radio spots? Mailers? Other voter education materials?

15. What are the advantages of requiring first-time voters who registered to vote by mail to show ID at the polls? What are your concerns or reservations about the requirement?

**Voters' Perceptions of the General Advisability of Unique ID**

---

*Introduction*

Now we'd like to get your impressions of whether or not it's a good idea for states to require voters to present ID at the polls.

*Questions*

16. Do you support requiring every voter to provide his or her driver's license number, Social Security number or the last four digits of his or her Social Security number as part of his or her application to register to vote?

*Prompts*

Are you concerned about privacy or security issues? Do you believe the requirement helps prevent voter fraud?

17. Do you support requiring first-time voters who registered to vote by mail to provide ID at the polling place?

18. Should **all** voters be required to show ID at the polls, or just first-time voters?

*Prompts*

Are you concerned that some voters may not have the ID they need or may be intimidated by ID requirements? Do you believe that ID requirements could help prevent voter fraud?

19. Would you find it useful to have access to some form of special ID, provided by the state, that you could show at the polls in order to vote? Do you think such an ID should be provided free of charge to voters, or should voters pay to obtain this ID?

**Final Solicitation**

---

20. Do you have any other thoughts about your experiences registering to vote and casting a ballot for the first time this year that we haven't covered?

21. What recommendations do you have for states working to educate first-time voters about ID requirements?

*Prompts*

What methods did your state use to educate voters about ID requirements? Were they effective? What did you like or dislike about them?

**Conclusion**

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That concludes our focus group discussion. Thank you all for participating. The input you provided today will be studied and compiled into a report that we are preparing on behalf of the U.S. Election Assistance Commission. We expect it to be released some time in June 2007. To learn more about the EAC, visit their website: [www.eac.gov](http://www.eac.gov).

**About This Study**

Section 245 of the Help America Vote Act (HAVA) of 2002 (42 U.S.C. 15301) requires the U.S. Election Assistance Commission (EAC) to conduct a series of studies, including this study of first-time voters who register to vote by mail. The EAC will submit a report on the results of this study to Congress and the White House; and the agency will make the document publicly available on its website: [www.eac.gov](http://www.eac.gov). Focus group participants will include first-time voters who registered to vote by mail.

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB Control No. 3265-0007, which expires 05/31/2007. The time required to complete this information collection is estimated to average 2 hours and 15 minutes per focus group participant and 4 hours per state/local election office. This estimate includes the time it will take each focus group participant to complete the focus group discussion and a short quiz. The time burden estimate for state/local election offices includes the time it will take to identify potential focus group participants. Comments regarding this burden estimate should be sent to the Program Manager – Study on First-Time Voters Who Register to Vote by Mail, U.S. Election Assistance Commission, 1225 New York Ave, NW, Suite 1100, Washington, DC 20005.

009751





Winner's Circle Communications, LLC for the  
UNITED STATES ELECTION ASSISTANCE COMMISSION  
Study of First-Time Voters Who Register to Vote by Mail

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Quiz for Focus Group Participants

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**PART ONE**

**Instructions**

Please select the answer that best describes your state's laws, rules and/or requirements as you understand them. Your answers to these questions will be used to determine how effectively [STATE] communicated its first-time voter identification, or ID, requirements.

1. What types of ID does [STATE] require each person applying to register to vote, or applicant, to include with his or her voter registration form when that form is submitted via mail? Please circle all that apply.

Driver's License Number

Last Four Digits of Social Security  
Number

Copy of Driver's License

Copy of Social Security Card

Entire Social Security Number

Copy of Utility Bill

Copy of Photo ID

Any Government Document that  
Includes the Voter's Name and Address

All of the Above

None of the Above

2. If the applicant does not have a driver's license or Social Security number, the state will assign the applicant a number which will serve to identify the applicant for voter registration purposes. Please circle one.

True

False

3. At the polls, [STATE] has different ID requirements for first-time voters who registered to vote by mail than it does for voters who have cast a ballot in another recent election. Please circle one.

True

False

4. All first-time voters in [STATE] are required to show government-issued photo ID at the polls. Please circle one.

True

False

5. Which of the following types of ID may first-time voters who registered to vote by mail show at the polls in order to meet [STATE'S] identification requirements? Please circle all that apply.

Any Current and Valid Photo ID

Government-Issued Photo ID

Current Utility Bill

Bank Statement

Government Check

Paycheck

Any Government Document that  
Includes the Voter's Name and Address

All of the Above

None of the Above

**PART TWO**

**Instructions**

Please base your answers to the following questions on your own opinions and experiences.

1. On a scale of one to 10, with one being the least confident and 10 being the most confident, how confident are you that you understand [STATE'S] ID requirements for first-time voters who register to vote by mail? Please circle one.

1      2      3      4      5      6      7      8      9      10

2. How did you learn of [STATE'S] ID requirements for first-time voters who register to vote by mail? Please circle all that apply.

TV or Radio Advertisement(s)

State Elections Website

News Reports

Local Elections Website

I Contacted My State Election Office

I Contacted My Local Election Office

Instructions on Voter Registration Form

From a Poll Worker at the Polling Place

All of the Above

None of the Above

Other (please explain)

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3. How effectively do you believe [STATE] communicated its ID requirements for first-time voters? Please rate the state on a scale of one to 10, with one being the least effective and 10 being the most effective.

1      2      3      4      5      6      7      8      9      10

**About This Study**

Section 245 of the Help America Vote Act (HAVA) of 2002 (42 U.S.C. 15301) requires the U.S. Election Assistance Commission (EAC) to conduct a series of studies, including this study of first-time voters who register to vote by mail. The EAC will submit a report on the results of this study to Congress and the White House; and the agency will make the document publicly available on its website: [www.eac.gov](http://www.eac.gov). Focus group participants will include first-time voters who registered to vote by mail.

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB Control No. 3265-0007, which expires 05/31/2007. The time required to complete this information collection is estimated to average 2 hours and 15 minutes per focus group participant and 4 hours per state/local election office. This estimate includes the time it will take each focus group participant to complete the focus group discussion and a short quiz. The time burden estimate for state/local election offices includes the time it will take to identify potential focus group participants. Comments regarding this burden estimate should be sent to the Program Manager – Study on First-Time Voters Who Register to Vote by Mail, U.S. Election Assistance Commission, 1225 New York Ave, NW, Suite 1100, Washington, DC 20005.

009755



Laiza N. Otero/EAC/GOV  
12/12/2006 01:14 PM

To "Meredith"  
<mimwalle@winnerscirclecomm.com>@GSAEXTERNAL  
cc  
bcc  
Subject Re: OMB Control Number

At the beginning preferably, but it can go at the end as well. For the number and exp date, it can either be a header or a footer - depends on the layout of your document and your personal preference. Also, when I submitted the documents to OMB, I placed the EAC logo on the upper right hand corner of the documents to make it "official" - I'm attaching the document so you can see it and also a separate file containing the logo in case you want to use it in other documents. Let me know if you have any questions.

Laiza



Focus Group Quiz.doc



EAC Logo.JPG

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)  
Fax (202) 566-3128  
"Meredith" <mimwalle@winnerscirclecomm.com>



"Meredith"  
<mimwalle@winnerscirclecomm.com>  
12/12/2006 12:36 PM

To lotero@eac.gov  
cc  
Subject Re: OMB Control Number

Thanks Laiza. Have other projects included this information as a header or footer on every page or just at the beginning or end of each document?

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

**From:** [lotero@eac.gov](mailto:lotero@eac.gov)  
**To:** [mimwalle@winnerscirclecomm.com](mailto:mimwalle@winnerscirclecomm.com)  
**Sent:** Tuesday, December 12, 2006 11:32 AM  
**Subject:** Re: OMB Control Number

No need to put the ICR reference number. Below is the boiler plate information - just insert your information on the parts I have emphasized:

**This information collection is required for the EAC to meet its statutory requirements under the Help America Vote Act (HAVA) of 2002 (42 U.S.C. 15301), the National Voter Registration Act (NVRA) (42 U.S.C. 1973gg-1 et seq.), and the Uniformed and Overseas**

009756

**Citizens Absentee Voters Act (UOCAVA) (42 U.S.C. 1973ff-1). Respondent's obligation to reply to this information collection is mandatory as required under NVRA (42 U.S.C. 1973gg-1 et seq.) and UOCAVA (42 U.S.C. 1973ff-1); respondents include the 50 States, the District of Columbia, and the U.S. Territories.** This information will be made publicly available on the EAC website at [www.eac.gov](http://www.eac.gov). According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is **OMB Control No. 3265-0006 (expires 11/30/2009)**. The time required to complete this information collection is estimated to average **115.07 hours per response**. This estimate includes the time for reviewing the instructions, gathering information, and completing the form. Comments regarding this burden estimate should be sent to the Program Manager - 2006 Election Administration and Voting Survey, U.S. Election Assistance Commission, 1225 New York Ave, NW, Suite 1100, Washington, DC 20005.

Below is how it was modified for one of the other projects:

Section 245 of the Help America Vote Act (HAVA) of 2002 (42 U.S.C. 15301) requires the U.S. Election Assistance Commission (EAC) to conduct a study of issues and challenges, including the potential for election fraud, that are presented by the incorporation of communications and Internet technologies in the Federal, State, and local electoral process; the EAC is required to submit a report on the results of the study to Congress. In addition, this information will be made publicly available on the EAC website at [www.eac.gov](http://www.eac.gov). Respondents to this survey are uniformed and overseas voters. According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB Control No. 3265-0005 (expires 5/31/2007). The time required to complete this information collection is estimated to average .25 hours per response. This estimate includes the time for reviewing the instructions, gathering information, and completing the form. Comments regarding this burden estimate should be sent to the Program Manager - 2006 Election Administration and Voting Survey, U.S. Election Assistance Commission, 1225 New York Ave, NW, Suite 1100, Washington, DC 20005.

"Meredith" <[mimwalle@winnerscirclecomm.com](mailto:mimwalle@winnerscirclecomm.com)>

12/12/2006 12:04 PM

To [lotero@eac.gov](mailto:lotero@eac.gov), [adamlbourne@gmail.com](mailto:adamlbourne@gmail.com)

cc

Subject Re: OMB Control Number

009757

Laiza:

I have the OMB control number and expiration date, but I don't think we ever received the boiler plate information you mentioned below. If you'll send that over, I'll add it to the documents and send them to you today. Also, were you able to determine whether we are required to include the ICR reference number?

Thanks,

*Meredith Battle Imwalle*

Meredith Battle Imwalle  
President  
Winner's Circle Communications, LLC  
703.786.1823 cell  
<http://www.winnerscirclecomm.com>

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

**From:** [lotero@eac.gov](mailto:lotero@eac.gov)

**To:** [mimwalle@winnerscirclecomm.com](mailto:mimwalle@winnerscirclecomm.com) ; [adamlbourne@gmail.com](mailto:adamlbourne@gmail.com)

**Cc:** [klynndyson@eac.gov](mailto:klynndyson@eac.gov)

**Sent:** Monday, December 04, 2006 10:37 AM

**Subject:** OMB Control Number

Greetings to all,

The OMB Control number for the focus groups collection is: 3265-0007. The expiration date is 5/31/2007. Both these pieces of information need to appear everywhere on the collection instrument - my suggestion is to make them part of the heading or footer of the pages. In addition, there is boiler plate information I am working on today with our general counsel's office that needs to be included as well - the latter is info on the time and cost burden on respondents, the response requirements (voluntary/mandatory), and compliance with the PRA process - I should have that information by the end of today.

Also, for your records the ICR Reference Number is: 200611-3265-002. This is an internal OMB number given to the request we made. This may or may not have to be included - waiting to hear on that.

If you have any questions or need more information, please, do not hesitate to contact me at your earliest convenience. Have a great day!

Sincerely,

Laiza N. Otero

009758

Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)  
Fax (202) 566-3128

009759





# U.S. ELECTION ASSISTANCE COMMISSION

## WINNER'S CIRCLE COMMUNICATIONS, LLC Study of First-Time Voters Who Register to Vote by Mail

### Quiz for Focus Group Participants

#### PART ONE

##### Instructions

Please select the answer that best describes your state's laws, rules and/or requirements as you understand them. Your answers to these questions will be used to determine how effectively [STATE] communicated its first-time voter identification, or ID, requirements.

1. What types of ID does [STATE] require each person applying to register to vote, or applicant, to include with his or her voter registration form when that form is submitted via mail? Please circle all that apply.

Driver's License Number

Last four digits of Social Security Number

Copy of Driver's License

Copy of Social Security Card

Entire Social Security Number

Copy of Utility Bill

Copy of photo ID

Any government document with the voter's name and address

All of the above

None of the above

2. If the applicant does not have a driver's license or social security number, the state will assign the applicant a number which will serve to identify the applicant for voter registration purposes. Please circle one.

True

False

009760

3. At the polls, [STATE] has different ID requirements for first-time voters who registered to vote by mail than it does for voters who have cast a ballot in another recent election. Please circle one.

True

False

4. All first-time voters in [STATE] are required to show government-issued photo ID at the polls. Please circle one.

True

False

5. Which of the following types of ID may first-time voters who registered to vote by mail show at the polls in order to meet [STATE'S] identification requirements? Please circle all that apply.

Any current and valid photo ID

Government-issued photo ID

Current utility bill

Bank statement

Government check

Paycheck

Any government document that includes the voter's name and address

All of the above

None of the above

**PART TWO**

**Instructions**

Please base your answers to the following questions on your own opinions and experiences.

1. On a scale of one to 10, with one being the least confident and 10 being the most confident, how confident are you that you understand [STATE'S] ID requirements for first-time voters who register to vote by mail? Please circle one.

1    2    3    4    5    6    7    8    9    10

2. How did you learn of [STATE'S] ID requirements for first-time voters who register to vote by mail? Please circle all that apply.

TV or radio advertisement(s)

State elections website

News reports

Local elections website

I contacted my state election office

I contacted my local election office

Instructions on voter registration form

From a poll worker at the polling place

All of the above

None of the above

Other (please explain)

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3. How effectively do you believe [STATE] communicated its ID requirements for first-time voters? Please rate the state on a scale of one to 10, with one being the least effective and 10 being the most effective.

1    2    3    4    5    6    7    8    9    10



009763



"Meredith"  
<mimwalle@winnerscircleco  
mm.com>  
12/12/2006 02:57 PM

To lotero@eac.gov  
cc  
bcc  
Subject Re: OMB Control Number

History: This message has been replied to.

Laiza:

Attached please find the consent form for focus group participants. I'll keep my fingers crossed that your OMB contact gives us the thumbs up.

--MBI

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

**From:** lotero@eac.gov  
**To:** mimwalle@winnerscirclecomm.com  
**Sent:** Tuesday, December 12, 2006 12:14 PM  
**Subject:** Re: OMB Control Number

At the beginning preferably, but it can go at the end as well. For the number and exp date, it can either be a header or a footer - depends on the layout of your document and your personal preference. Also, when I submitted the documents to OMB, I placed the EAC logo on the upper right hand corner of the documents to make it "official" - I'm attaching the document so you can see it and also a separate file containing the logo in case you want to use it in other documents. Let me know if you have any questions.

Laiza

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)  
Fax (202) 566-3128

"Meredith" <mimwalle@winnerscirclecomm.com>

12/12/2006 12:36 PM

To lotero@eac.gov  
cc  
Subject Re: OMB Control Number

009764

Thanks Laiza. Have other projects included this information as a header or footer on every page or just at the beginning or end of each document?

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

**From:** [lotero@eac.gov](mailto:lotero@eac.gov)

**To:** [mimwalle@winnerscirclecomm.com](mailto:mimwalle@winnerscirclecomm.com)

**Sent:** Tuesday, December 12, 2006 11:32 AM

**Subject:** Re: OMB Control Number

No need to put the ICR reference number. Below is the boiler plate information - just insert your information on the parts I have emphasized:

**This information collection is required for the EAC to meet its statutory requirements under the Help America Vote Act (HAVA) of 2002 (42 U.S.C. 15301), the National Voter Registration Act (NVRA) (42 U.S.C. 1973gg-1 et seq.), and the Uniformed and Overseas Citizens Absentee Voters Act (UOCAVA) (42 U.S.C. 1973ff-1). Respondent's obligation to reply to this information collection is mandatory as required under NVRA (42 U.S.C. 1973gg-1 et seq.) and UOCAVA (42 U.S.C. 1973ff-1); respondents include the 50 States, the District of Columbia, and the U.S. Territories.** This information will be made publicly available on the EAC website at [www.eac.gov](http://www.eac.gov). According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is **OMB Control No. 3265-0006 (expires 11/30/2009)**. The time required to complete this information collection is estimated to average **115.07 hours per response**. This estimate includes the time for reviewing the instructions, gathering information, and completing the form. Comments regarding this burden estimate should be sent to the Program Manager - 2006 Election Administration and Voting Survey, U.S. Election Assistance Commission, 1225 New York Ave, NW, Suite 1100, Washington, DC 20005.

Below is how it was modified for one of the other projects:

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009765

"Meredith" <mimwalle@winnerscirclecomm.com>

12/12/2006 12:04 PM

To: lotero@eac.gov, adamlbourne@gmail.com  
cc  
Subject Re: OMB Control Number

Laiza:


I have the OMB control number and expiration date, but I don't think we ever received the boiler plate information you mentioned below. If you'll send that over, I'll add it to the documents and send them to you today. Also, were you able to determine whether we are required to include the ICR reference number?

Thanks,

*Meredith Battle Imwalle*

*Meredith Battle Imwalle  
President  
Winner's Circle Communications, LLC  
703.786.1823 cell  
<http://www.winnerscirclecomm.com>*

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

**From:** [lotero@eac.gov](mailto:lotero@eac.gov)  
**To:** [mimwalle@winnerscirclecomm.com](mailto:mimwalle@winnerscirclecomm.com)   
**Cc:** [klynndyson@eac.gov](mailto:klynndyson@eac.gov)  
**Sent:** Monday, December 04, 2006 10:37 AM  
**Subject:** OMB Control Number

Greetings to all,

The OMB Control number for the focus groups collection is: 3265-0007. The expiration date is 5/31/2007. Both these pieces of information need to appear everywhere on the collection instrument - my suggestion is to make them part of the heading or footer of the pages. In addition, there is boiler plate

009766

information I am working on today with our general counsel's office that needs to be included as well - the latter is info on the time and cost burden on respondents, the response requirements (voluntary/mandatory), and compliance with the PRA process - I should have that information by the end of today.

Also, for your records the ICR Reference Number is: 200611-3265-002. This is an internal OMB number given to the request we made. This may or may not have to be included - waiting to hear on that.

If you have any questions or need more information, please, do not hesitate to contact me at your earliest convenience. Have a great day!

Sincerely,

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)



Fax (202) 566-3128 Focus Group Consent Form.doc

009767





**Winner's Circle Communications, LLC for the  
UNITED STATES ELECTION ASSISTANCE COMMISSION  
Study of First-Time Voters Who Register to Vote by Mail**

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**CONSENT TO PARTICIPATE IN A RESEARCH STUDY**

---

**Study Title:** Study on First-Time Voters Who Register to Vote by Mail

**Funding Source:** United States Election Assistance Commission  
**OMB Control No.:** 3265-0007, expires 05/31/2007

**Principal Investigator/Study Contact:**  
Meredith Battle Imwalle  
Winner's Circle Communications, LLC

**Study contact's telephone number:** (703) 786-1823

**Study contact's email address:** admin@winnerscirclecomm.com

---

**What are some general things you should know about research studies?**

You are being asked to take part in a focus group for a research study. Your participation is voluntary. You may decline the invitation to participate or withdraw your consent for any reason without penalty.

Research studies are designed to obtain new knowledge that may help individuals and organizations in the future. You may not receive any direct benefit, other than the designated stipend and reimbursement for travel expenses, for participating in the study.

Details about this study are included below. It is important that you read and understand this information so that you can make an informed decision about whether or not you would like to participate in the study. You will be given a copy of this consent form. You should feel free to ask the study contact named above any questions you have about this study at any time.

**What is the purpose of this study?**

The purpose of this research study is to assess the impact that certain provisions of the federal Help America Vote Act of 2002 (HAVA) have had on first-time voters who register by mail and vote in person; voter registration; the accuracy of state voter rolls; and existing state practices.

Section 303(b) of HAVA requires citizens who registered to vote by mail and who will be voting for the first time in their jurisdiction to supply a copy of a current valid photo identification or government document displaying their name and address before they cast their first ballot. First-time voters can avoid the heightened identification requirements by sending a copy of such identification with their registration materials or providing their driver's license number or a minimum of the last four digits of their Social Security number. If a first-time voter does not comply with any of these requirements, §303(b) allows citizens to cast provisional ballots.

This study will analyze the issues and impediments associated with implementing these federal mandates and make recommendations for program administration and voter education should states choose to implement more stringent voter identification requirements in the future.

The U.S. Election Assistance Commission (EAC), a federal agency established by Congress to provide guidance to the states with regard to administering federal elections, is required by HAVA to complete this study and submit a report on the results to Congress and the White House.

**How many people will take part in this study?**

Approximately 30 people will take part in this research study, which is being conducted in three states: Indiana, North Carolina and Pennsylvania. All participants were chosen in consultation with state and local election offices in order to ensure that each group is representative of first-time voters in the state.

**How long will your part in this study last?**

Your participation in this focus group will last approximately two hours and fifteen minutes.

**What can you expect if you take part in the study?**

The focus group will be asked questions designed to assess their actual experiences with voter identification requirements for first-time voters. No questions will be directed to you individually, but instead will be posed to the group. You may choose to respond or not respond at any point during the discussion. The focus group discussion will be recorded on audio tape so that the study contact may capture all comments for future analysis.

**What are the possible benefits from being in this study?**

This particular study will provide state and federal officials with information designed to help them develop future voter identification requirements and related voter education materials and programs. You may not receive any direct benefit, other than the designated stipend and reimbursement for travel expenses, for participating in the study.

009769

**What are the possible risks involved?**

We do not anticipate any risks to you as a result of participating in this study. It is possible that participants may repeat comments outside of the group at some time in the future. Therefore, we encourage you to be as honest and open as you can, but remain aware of our limits in protecting confidentiality.

**How will your privacy be protected?**

You will not be specifically identified in any report or publication of this study or its results. Your name will not appear on any transcripts. You will instead be assigned a code number. The list which matches names and code numbers will be kept in a locked file cabinet. After the focus group audio recording has been transcribed, the tape and the list of names and corresponding code numbers will be destroyed.

**Will you receive anything for being in this study?**

You will receive a \$100 stipend for your participation in the study.

**Will it cost you anything to be in this study?**

There will be no costs to you for being in the study. You will be reimbursed for up to \$20 in travel expenses.

**What if you have questions about this study?**

You have the right to ask, and have answered, any questions you may have about this research. If you have questions or concerns you should contact the study contact listed on the first page of this form.

---

**Participant's Agreement:**

I have read the information provided above. I have asked and had answered all of the questions I have at this time. I voluntarily agree to participate in this research study.

\_\_\_\_\_  
Signature of Research Participant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name of Research Participant

\_\_\_\_\_  
Signature of Person Obtaining Consent

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name of Person Obtaining Consent

009770

OMB Control No. 3265-007, expires 05/31/2007

**About This Study**

Section 245 of the Help America Vote Act (HAVA) of 2002 (42 U.S.C. 15301) requires the U.S. Election Assistance Commission (EAC) to conduct a series of studies, including this study of first-time voters who register to vote by mail. The EAC will submit a report on the results of this study to Congress and the White House; and the agency will make the document publicly available on its website: [www.eac.gov](http://www.eac.gov). Focus group participants will include first-time voters who registered to vote by mail.

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB Control No. 3265-007, which expires 05/31/2007. The time required to complete this information collection is estimated to average 2 hours and 15 minutes per focus group participant and 4 hours per state/local election office. This estimate includes the time it will take each focus group participant to complete the focus group discussion and a short quiz. The time burden estimate for state/local election offices includes the time it will take to identify potential focus group participants. Comments regarding this burden estimate should be sent to the Program Manager – Study on First-Time Voters Who Register to Vote by Mail, U.S. Election Assistance Commission, 1225 New York Ave, NW, Suite 1100, Washington, DC 20005.

009771



"Meredith"  
<mimwalle@winnerscircleco  
mm.com>

12/12/2006 03:03 PM

To lotero@eac.gov

cc

bcc

Subject Re: OMB Control Number

History:

This message has been replied to.

Laiza:

I've attached the focus group script and quiz, as approved by OMB, including the required OMB information. I tried to paste the OMB info on the first page of each document, but then thought all of that gov-speak at the beginning might be overwhelming to our focus group participants. I ended up putting it at the end instead. Please let me know if these versions will work.

Thanks!

--MBI

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

**From:** lotero@eac.gov

**To:** mimwalle@winnerscirclecomm.com

**Sent:** Tuesday, December 12, 2006 12:14 PM

**Subject:** Re: OMB Control Number

At the beginning preferably, but it can go at the end as well. For the number and exp date, it can either be a header or a footer - depends on the layout of your document and your personal preference. Also, when I submitted the documents to OMB, I placed the EAC logo on the upper right hand corner of the documents to make it "official" - I'm attaching the document so you can see it and also a separate file containing the logo in case you want to use it in other documents. Let me know if you have any questions.

Laiza

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)  
Fax (202) 566-3128

"Meredith" <mimwalle@winnerscirclecomm.com>

12/12/2006 12:36 PM

To lotero@eac.gov

cc

Subject Re: OMB Control Number

009772

Thanks Laiza. Have other projects included this information as a header or footer on every page or just at the beginning or end of each document?

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

**From:** [lotero@eac.gov](mailto:lotero@eac.gov)

**To:** [mimwalle@winnerscirclecomm.com](mailto:mimwalle@winnerscirclecomm.com)

**Sent:** Tuesday, December 12, 2006 11:32 AM

**Subject:** Re: OMB Control Number

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009773

form. Comments regarding this burden estimate should be sent to the Program Manager - 2006 Election Administration and Voting Survey, U.S. Election Assistance Commission, 1225 New York Ave, NW, Suite 1100, Washington, DC 20005.

"Meredith" <mimwalle@winnerscirclecomm.com>

12/12/2006 12:04 PM

To lotero@eac.gov, adamlbourne@gmail.com  
cc

Subject Re: OMB Control Number

Laiza:

I have the OMB control number and expiration date, but I don't think we ever received the boiler plate information you mentioned below. If you'll send that over, I'll add it to the documents and send them to you today. Also, were you able to determine whether we are required to include the ICR reference number?

Thanks,

*Meredith Battle Imwalle*

Meredith Battle Imwalle  
President  
Winner's Circle Communications, LLC  
703.786.1823 cell  
<http://www.winnerscirclecomm.com>

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

**From:** [lotero@eac.gov](mailto:lotero@eac.gov)  
**To:** [mimwalle@winnerscirclecomm.com](mailto:mimwalle@winnerscirclecomm.com) ; [adamlbourne@gmail.com](mailto:adamlbourne@gmail.com)  
**Cc:** [klynndyson@eac.gov](mailto:klynndyson@eac.gov)  
**Sent:** Monday, December 04, 2006 10:37 AM  
**Subject:** OMB Control Number

Greetings to all,

009774

The OMB Control number for the focus groups collection is: 3265-0007. The expiration date is 5/31/2007. Both these pieces of information need to appear everywhere on the collection instrument - my suggestion is to make them part of the heading or footer of the pages. In addition, there is boiler plate information I am working on today with our general counsel's office that needs to be included as well - the latter is info on the time and cost burden on respondents, the response requirements (voluntary/mandatory), and compliance with the PRA process - I should have that information by the end of today.

Also, for your records the ICR Reference Number is: 200611-3265-002. This is an internal OMB number given to the request we made. This may or may not have to be included - waiting to hear on that.

If you have any questions or need more information, please, do not hesitate to contact me at your earliest convenience. Have a great day!

Sincerely,

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)



Fax (202) 566-3128 Focus Group Script Final.doc Focus Group Quiz Final.doc

009775





Winner's Circle Communications, LLC for the  
UNITED STATES ELECTION ASSISTANCE COMMISSION  
Study of First-Time Voters Who Register to Vote by Mail

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Quiz for Focus Group Participants

---

**PART ONE**

**Instructions**

Please select the answer that best describes your state's laws, rules and/or requirements as you understand them. Your answers to these questions will be used to determine how effectively [STATE] communicated its first-time voter identification, or ID, requirements.

1. What types of ID does [STATE] require each person applying to register to vote, or applicant, to include with his or her voter registration form when that form is submitted via mail? Please circle all that apply.

Driver's License Number

Last four digits of Social Security Number

Copy of Driver's License

Copy of Social Security Card

Entire Social Security Number

Copy of Utility Bill

Copy of photo ID

Any government document with the voter's name and address

All of the above

None of the above

2. If the applicant does not have a driver's license or social security number, the state will assign the applicant a number which will serve to identify the applicant for voter registration purposes. Please circle one.

True

False

3. At the polls, [STATE] has different ID requirements for first-time voters who registered to vote by mail than it does for voters who have cast a ballot in another recent election. Please circle one.

True

False

4. All first-time voters in [STATE] are required to show government-issued photo ID at the polls. Please circle one.

True

False

5. Which of the following types of ID may first-time voters who registered to vote by mail show at the polls in order to meet [STATE'S] identification requirements? Please circle all that apply.

Any current and valid photo ID

Government-issued photo ID

Current utility bill

Bank statement

Government check

Paycheck

Any government document that includes the voter's name and address

All of the above

None of the above

**PART TWO**

**Instructions**

Please base your answers to the following questions on your own opinions and experiences.

1. On a scale of one to 10, with one being the least confident and 10 being the most confident, how confident are you that you understand [STATE'S] ID requirements for first-time voters who register to vote by mail? Please circle one.

1      2      3      4      5      6      7      8      9      10

2. How did you learn of [STATE'S] ID requirements for first-time voters who register to vote by mail? Please circle all that apply.

- |   |   |
|---|---|
| TV or radio advertisement(s)            | State elections website                 |
| News reports                            | Local elections website                 |
| I contacted my state election office    | I contacted my local election office    |
| Instructions on voter registration form | From a poll worker at the polling place |
| All of the above                        | None of the above                       |

Other (please explain)

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3. How effectively do you believe [STATE] communicated its ID requirements for first-time voters? Please rate the state on a scale of one to 10, with one being the least effective and 10 being the most effective.

1      2      3      4      5      6      7      8      9      10

### ***About This Study***

*Section 245 of the Help America Vote Act (HAVA) of 2002 (42 U.S.C. 15301) requires the U.S. Election Assistance Commission (EAC) to conduct a series of studies, including this study of first-time voters who register to vote by mail. The EAC will submit a report on the results of this study to Congress and the White House; and the agency will make the document publicly available on its website: [www.eac.gov](http://www.eac.gov). Focus group participants will include first-time voters who registered to vote by mail.*

*According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB Control No. 3265-007, which expires 05/31/2007. The time required to complete this information collection is estimated to average 2 hours and 15 minutes per focus group participant and 4 hours per state/local election office. This estimate includes the time it will take each focus group participant to complete the focus group discussion and a short quiz. The time burden estimate for state/local election offices includes the time it will take to identify potential focus group participants. Comments regarding this burden estimate should be sent to the Program Manager – Study on First-Time Voters Who Register to Vote by Mail, U.S. Election Assistance Commission, 1225 New York Ave, NW, Suite 1100, Washington, DC 20005.*

009779



Winner's Circle Communications, LLC for the  
UNITED STATES ELECTION ASSISTANCE COMMISSION  
Study of First-Time Voters Who Register to Vote by Mail

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Focus Group Script and Questions

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**Background**

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*Introduction*

Thank you for joining us today and agreeing to participate in this focus group discussion of your experiences as first-time voters who registered to vote by mail. My name is Meredith Imwalle and I'll be your facilitator, which means it's my job to keep today's session on track by asking a series of open-ended questions, and some more specific ones, intended to stimulate discussion. My colleague, Adam Bourne, will serve as a co-facilitator.

We've organized this focus group as part of a study our company, Winner's Circle Communications, is conducting on behalf of the United States Election Assistance Commission, a federal government agency created to provide guidance to states implementing election reforms that are required by the federal Help America Vote Act, often referred to as HAVA. Since HAVA require that every state implement certain minimum identification, or ID, requirements for first-time voters like you, we've been asked to find out what your experiences were with registering to vote and voting this year. We hope to use your input to help us determine what state practices are working and how states can best communicate ID requirements to voters.

First let's go over a few ground rules for today:

- Your participation in this focus group is voluntary, and you may stop at any time.
- We hope to gather information about your voting experiences. There are no wrong answers today; please let everyone speak and respect everyone's opinion, even if it is different from your own.
- We will make an audio recording of this session, so that we can be sure not to miss any of your important comments today. The recording will not be released publicly, and it will not be shared with anyone outside of our company.

## **Voters' Level of Understanding of New Requirements**

---

Before we start our discussion today, we'd like to get a sense of how well each of you understand [STATE'S] voter ID requirements for first-time voters. Adam is handing out a quick quiz that we will give you 15 minutes to complete.

By testing your knowledge of [STATE'S] ID requirements, we are hoping to gauge how effectively your state's elections officials communicated the requirements to you, the voters. So please answer the questions as best you can and don't worry if you don't have all of the answers.

*Distribute quizzes; allow participants 15 minutes to complete.*

## **Voters' Experiences Registering to Vote by Mail**

---

### *Introduction*

Now that we've collected your completed quizzes, let's talk about your experiences registering to vote by mail.

### *Questions*

1. We'd like to ask each of you to describe the process of filling out your voter registration application. Please provide an estimate of how long it took you to complete the application and tell us whether you thought the form's instructions for submitting the required identification information (your driver's license number, Social Security Number or the last four digits of your Social Security Number) were easy to understand.
2. If you didn't include your driver's license number, Social Security Number or the last four digits of your Social Security Number with your application, why not?

### *Prompts*

Were the instructions unclear? Do you have a driver's license or Social Security Number? Did you hesitate to include one of these numbers due to privacy or security concerns?

3. If you included a copy of your utility bill or some other document that includes your name and address with your application, why did you choose to do so?

### *Prompts*

Did you believe you were required to include such information with your voter registration application? Were you hoping to save time at the polls by including the information with your application?

## **Voters' Experiences at the Polls on Election Day**

---

### *Introduction*

Now we'd like to move on and discuss your experiences at the polling place on Election Day.

### *Questions*

4. Were you required to show ID at the polls before you could vote? What kind of ID were you asked to present?
5. Did a poll worker or election official clearly explain what kinds of ID would be accepted?
6. Did you know before you arrived at the polling place that you would be required to show ID? Did you know what kinds of ID would be accepted?
7. Were you able to present an acceptable form of ID at the polling place?
8. Which statement best represents your feelings about being required to present ID and why:
  - "I felt comfortable showing my ID to the poll worker."
  - "I felt singled out or intimidated when I was asked to present ID at the polling place."

**\*Fifteen Minute Break: Let's take a short break and reconvene here in 15 minutes.\***

## **Voters' Overall Perceptions of Voter ID Requirements**

---

### *Introduction*

Let's discuss your overall perceptions of [STATE'S] voter ID requirements. Remember, we're interested in your opinions so there are no right or wrong answers. Any feedback you can offer may help the state improve upon current procedures.

### *Questions*

9. Did you find it to be easy or difficult to understand and comply with [STATE'S] voter ID requirements? Why?
10. Do you think [STATE'S] ID requirements for first-time voters are too strict, not strict enough or appropriate?

11. Do you think the requirements made registering to vote more complicated than it should be, less complicated, or do you believe they had no noticeable effect?

12. How about the requirement to show ID at the polling place? Do you think it contributed to a longer wait time at your polling place? Did showing ID make voting more complicated than it would have been if you had not been required to show ID?

13. Do you feel ID requirements are necessary to prevent voters from attempting to commit fraud?

*Prompts*

Instances of voter fraud may include an individual impersonating a registered voter in order to vote in his or her name or an individual voting in more than one precinct.

14. How effectively do you think your state and local election officials communicated the ID requirements to first-time voters?

*Prompts*

What were the most effective or memorable techniques used? Television and radio spots? Mailers? Other voter education materials?

15. What are the advantages of requiring first-time voters who registered to vote by mail to show ID at the polls? What are your concerns or reservations about the requirement?

**Voters' Perceptions of the General Advisability of Unique ID**

---

*Introduction*

Now we'd like to get your impressions of whether or not it's a good idea for states to require voters to present ID at the polls.

*Questions*

16. Do you support requiring every voter to provide his or her driver's license number, Social Security Number or the last four digits of his or her Social Security Number as part of his or her application to register to vote?

*Prompts*

Are you concerned about privacy or security issues? Do you believe the requirement helps prevent voter fraud?

17. Do you support requiring first-time voters who registered to vote by mail to provide ID at the polling place?



18. Should all voters be required to show ID at the polls, or just first-time voters?

*Prompts*

Are you concerned that some voters may not have the ID they need or may be intimidated by ID requirements? Do you believe that ID requirements could help prevent voter fraud?

19. Would you find it useful to have access to some form of special ID, provided by the state, that you could show at the polls in order to vote? Do you think such an ID should be provided free of charge to voters, or should voters pay to obtain this ID?

**Final Solicitation**

---

20. Do you have any other thoughts about your experiences registering to vote and casting a ballot for the first time this year that we haven't covered?

21. What recommendations do you have for states working to educate first-time voters about ID requirements?

*Prompts*

What methods did your state use to educate voters about ID requirements? Were they effective? What did you like or dislike about them?

**Conclusion**

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That concludes our focus group discussion. Thank you all for participating. The input you provided today will be studied and compiled into a report that we are preparing on behalf of the U.S. Election Assistance Commission. We expect it to be released some time in June 2007. To learn more about the EAC, visit their website: [www.eac.gov](http://www.eac.gov).

**About This Study**

Section 245 of the Help America Vote Act (HAVA) of 2002 (42 U.S.C. 15301) requires the U.S. Election Assistance Commission (EAC) to conduct a series of studies, including this study of first-time voters who register to vote by mail. The EAC will submit a report on the results of this study to Congress and the White House; and the agency will make the document publicly available on its website: [www.eac.gov](http://www.eac.gov). Focus group participants will include first-time voters who registered to vote by mail.

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB Control No. 3265-007, which expires 05/31/2007. The time required to complete this information collection is estimated to average 2 hours and 15 minutes per focus group participant and 4 hours per state/local election office. This estimate includes the time it will take each focus group participant to complete the focus group discussion and a short quiz. The time burden estimate for state/local election offices includes the time it will take to identify potential focus group participants. Comments regarding this burden estimate should be sent to the Program Manager – Study on First-Time Voters Who Register to Vote by Mail, U.S. Election Assistance Commission, 1225 New York Ave, NW, Suite 1100, Washington, DC 20005.

009784



"Meredith"  
<mimwalle@winnerscircleco  
mm.com>

12/12/2006 03:45 PM

To lotero@eac.gov

cc

bcc

Subject Re: OMB Control Number

Here are the revised documents with the correct OMB number and a line about the length of the focus group length. Thanks!

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

**From:** [lotero@eac.gov](mailto:lotero@eac.gov)

**To:** [mimwalle@winnerscirclecomm.com](mailto:mimwalle@winnerscirclecomm.com)

**Sent:** Tuesday, December 12, 2006 2:15 PM

**Subject:** Re: OMB Control Number

Hi again!

They look great in my opinion - the only thing you should note is that you're missing a "0" in the OMB Control Number- it should be 3265-0007 instead of 3265-007 :-)

Should you mention in the beginning the estimated time it will take to complete the focus group session?

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)  
Fax (202) 566-3128

"Meredith" <mimwalle@winnerscirclecomm.com>

12/12/2006 03:03 PM

To lotero@eac.gov

cc

Subject Re: OMB Control Number

Laiza:

I've attached the focus group script and quiz, as approved by OMB, including the required OMB information. I tried to paste the OMB info on the first page of each document, but then thought all of that gov-speak at the beginning might be overwhelming to our focus group participants. I ended up putting it

009785

at the end instead. Please let me know if these versions will work.

Thanks!

--MBI

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

**From:** [lotero@eac.gov](mailto:lotero@eac.gov)

**To:** [mimwalle@winnerscirclecomm.com](mailto:mimwalle@winnerscirclecomm.com)

**Sent:** Tuesday, December 12, 2006 12:14 PM

**Subject:** Re: OMB Control Number

At the beginning preferably, but it can go at the end as well. For the number and exp date, it can either be a header or a footer - depends on the layout of your document and your personal preference. Also, when I submitted the documents to OMB, I placed the EAC logo on the upper right hand corner of the documents to make it "official" - I'm attaching the document so you can see it and also a separate file containing the logo in case you want to use it in other documents. Let me know if you have any questions.

Laiza

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)  
Fax (202) 566-3128

"Meredith" <[mimwalle@winnerscirclecomm.com](mailto:mimwalle@winnerscirclecomm.com)>

12/12/2006 12:36 PM

To: [lotero@eac.gov](mailto:lotero@eac.gov)

cc

Subject Re: OMB Control Number

Thanks Laiza. Have other projects included this information as a header or footer on every page or just at the beginning or end of each document?

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

**From:** [lotero@eac.gov](mailto:lotero@eac.gov)

**To:** [mimwalle@winnerscirclecomm.com](mailto:mimwalle@winnerscirclecomm.com)

**Sent:** Tuesday, December 12, 2006 11:32 AM

009786

**Subject:** Re: OMB Control Number

No need to put the ICR reference number. Below is the boiler plate information - just insert your information on the parts I have emphasized:

**This information collection is required for the EAC to meet its statutory requirements under the Help America Vote Act (HAVA) of 2002 (42 U.S.C. 15301), the National Voter Registration Act (NVRA) (42 U.S.C. 1973gg-1 et seq.), and the Uniformed and Overseas Citizens Absentee Voters Act (UOCAVA) (42 U.S.C. 1973ff-1). Respondent's obligation to reply to this information collection is mandatory as required under NVRA (42 U.S.C. 1973gg-1 et seq.) and UOCAVA (42 U.S.C. 1973ff-1); respondents include the 50 States, the District of Columbia, and the U.S. Territories.** This information will be made publicly available on the EAC website at [www.eac.gov](http://www.eac.gov). According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is **OMB Control No. 3265-0006 (expires 11/30/2009)**. The time required to complete this information collection is estimated to average **115.07 hours per response**. This estimate includes the time for reviewing the instructions, gathering information, and completing the form. Comments regarding this burden estimate should be sent to the Program Manager - 2006 Election Administration and Voting Survey, U.S. Election Assistance Commission, 1225 New York Ave, NW, Suite 1100, Washington, DC 20005.

Below is how it was modified for one of the other projects:

Section 245 of the Help America Vote Act (HAVA) of 2002 (42 U.S.C. 15301) requires the U.S. Election Assistance Commission (EAC) to conduct a study of issues and challenges, including the potential for election fraud, that are presented by the incorporation of communications and Internet technologies in the Federal, State, and local electoral process; the EAC is required to submit a report on the results of the study to Congress. In addition, this information will be made publicly available on the EAC website at [www.eac.gov](http://www.eac.gov). Respondents to this survey are uniformed and overseas voters. According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB Control No. 3265-0005 (expires 5/31/2007). The time required to complete this information collection is estimated to average .25 hours per response. This estimate includes the time for reviewing the instructions, gathering information, and completing the form. Comments regarding this burden estimate should be sent to the Program Manager - 2006 Election Administration and Voting Survey, U.S. Election Assistance Commission, 1225 New York Ave, NW, Suite 1100, Washington, DC 20005.

"Meredith" <[mimwalle@winnerscirclecomm.com](mailto:mimwalle@winnerscirclecomm.com)>

12/12/2006 12:04 PM

To [lotero@eac.gov](mailto:lotero@eac.gov), [adamlboune@gmail.com](mailto:adamlboune@gmail.com)

cc

Subject Re: OMB Control Number

009787

Laiza:

I have the OMB control number and expiration date, but I don't think we ever received the boiler plate information you mentioned below. If you'll send that over, I'll add it to the documents and send them to you today. Also, were you able to determine whether we are required to include the ICR reference number?

Thanks,

*Meredith Battle Imwalle*

Meredith Battle Imwalle  
President  
Winner's Circle Communications, LLC  
703.786.1823 cell  
<http://www.winnerscirclecomm.com>

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

**From:** [lotero@eac.gov](mailto:lotero@eac.gov)  
**To:** [mimwalle@winnerscirclecomm.com](mailto:mimwalle@winnerscirclecomm.com) ; [adamlbourne@gmail.com](mailto:adamlbourne@gmail.com)  
**Cc:** [klynndyson@eac.gov](mailto:klynndyson@eac.gov)  
**Sent:** Monday, December 04, 2006 10:37 AM  
**Subject:** OMB Control Number

Greetings to all,

The OMB Control number for the focus groups collection is: 3265-0007. The expiration date is 5/31/2007. Both these pieces of information need to appear everywhere on the collection instrument - my suggestion is to make them part of the heading or footer of the pages. In addition, there is boiler plate information I am working on today with our general counsel's office that needs to be included as well - the latter is info on the time and cost burden on respondents, the response requirements (voluntary/mandatory), and compliance with the PRA process - I should have that information by the end of today.

Also, for your records the ICR Reference Number is: 200611-3265-002. This is an internal OMB number given to the request we made. This may or may not have to be included - waiting to hear on that.

If you have any questions or need more information, please, do not hesitate to contact me at your earliest

009788

convenience. Have a great day!

Sincerely,

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)

Fax (202) 566-3128 [attachment "Focus Group Script Final.doc" deleted by Laiza N. Otero/EAC/GOV] [attachment "Focus Group Quiz Final.doc" deleted by Laiza N.



Otero/EAC/GOV] Focus Group Quiz Final.doc Focus Group Script Final.doc

009789



Winner's Circle Communications, LLC for the  
UNITED STATES ELECTION ASSISTANCE COMMISSION  
Study of First-Time Voters Who Register to Vote by Mail

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Quiz for Focus Group Participants

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PART ONE

**Instructions**

Please select the answer that best describes your state's laws, rules and/or requirements as you understand them. Your answers to these questions will be used to determine how effectively [STATE] communicated its first-time voter identification, or ID, requirements.

1. What types of ID does [STATE] require each person applying to register to vote, or applicant, to include with his or her voter registration form when that form is submitted via mail? Please circle all that apply.

Driver's License Number

Last Four Digits of Social Security  
Number

Copy of Driver's License

Copy of Social Security Card

Entire Social Security Number

Copy of Utility Bill

Copy of Photo ID

Any Government Document that  
Includes the Voter's Name and Address

All of the Above

None of the Above

2. If the applicant does not have a driver's license or Social Security number, the state will assign the applicant a number which will serve to identify the applicant for voter registration purposes. Please circle one.

True

False

3. At the polls, [STATE] has different ID requirements for first-time voters who registered to vote by mail than it does for voters who have cast a ballot in another recent election. Please circle one.

True

False

4. All first-time voters in [STATE] are required to show government-issued photo ID at the polls. Please circle one.

True

False

5. Which of the following types of ID may first-time voters who registered to vote by mail show at the polls in order to meet [STATE'S] identification requirements? Please circle all that apply.

Any Current and Valid Photo ID

Government-Issued Photo ID

Current Utility Bill

Bank Statement

Government Check

Paycheck

Any Government Document that  
Includes the Voter's Name and Address

All of the Above

None of the Above



**PART TWO**

**Instructions**

Please base your answers to the following questions on your own opinions and experiences.

1. On a scale of one to 10, with one being the least confident and 10 being the most confident, how confident are you that you understand [STATE'S] ID requirements for first-time voters who register to vote by mail? Please circle one.

1      2      3      4      5      6      7      8      9      10

2. How did you learn of [STATE'S] ID requirements for first-time voters who register to vote by mail? Please circle all that apply.

TV or Radio Advertisement(s)

State Elections Website

News Reports

Local Elections Website

I Contacted My State Election Office

I Contacted My Local Election Office

Instructions on Voter Registration Form

From a Poll Worker at the Polling Place

All of the Above

None of the Above

Other (please explain)

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3. How effectively do you believe [STATE] communicated its ID requirements for first-time voters? Please rate the state on a scale of one to 10, with one being the least effective and 10 being the most effective.

1      2      3      4      5      6      7      8      9      10

### ***About This Study***

*Section 245 of the Help America Vote Act (HAVA) of 2002 (42 U.S.C. 15301) requires the U.S. Election Assistance Commission (EAC) to conduct a series of studies, including this study of first-time voters who register to vote by mail. The EAC will submit a report on the results of this study to Congress and the White House; and the agency will make the document publicly available on its website: [www.eac.gov](http://www.eac.gov). Focus group participants will include first-time voters who registered to vote by mail.*

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009793



**Winner's Circle Communications, LLC for the  
UNITED STATES ELECTION ASSISTANCE COMMISSION  
Study of First-Time Voters Who Register to Vote by Mail**

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**Focus Group Script and Questions**

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**Background**

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*Introduction*

Thank you for joining us today and agreeing to participate in this focus group discussion of your experiences as first-time voters who registered to vote by mail. My name is Meredith Imwalle and I'll be your facilitator, which means it's my job to keep today's session on track by asking a series of open-ended questions, and some more specific ones, intended to stimulate discussion. My colleague, Adam Bourne, will serve as a co-facilitator.

We've organized this focus group as part of a study our company, Winner's Circle Communications, is conducting on behalf of the United States Election Assistance Commission, a federal government agency created to provide guidance to states implementing election reforms that are required by the federal Help America Vote Act, often referred to as HAVA. Since HAVA requires that every state implement certain minimum identification, or ID, requirements for first-time voters like you, we've been asked to find out what your experiences were with registering to vote and voting this year. We hope to use your input to help us determine what state practices are working and how states can best communicate ID requirements to voters.

First let's go over a few ground rules for today:

- Your participation in this focus group is voluntary, and you may stop at any time. The entire session will last approximately two hours and 15 minutes.
- We hope to gather information about your voting experiences. There are no wrong answers today; please let everyone speak and respect everyone's opinion, even if it is different from your own.
- We will make an audio recording of this session, so that we can be sure not to miss any of your important comments today. The recording will not be released publicly, and it will not be shared with anyone outside of our company.

## **Voters' Level of Understanding of New Requirements**

---

Before we start our discussion today, we'd like to get a sense of how well each of you understand [STATE'S] voter ID requirements for first-time voters. Adam is handing out a quick quiz that we will give you 15 minutes to complete.

By testing your knowledge of [STATE'S] ID requirements, we are hoping to gauge how effectively your state's election officials communicated the requirements to you, the voters. So please answer the questions as best you can and don't worry if you don't have all of the answers.

*Distribute quizzes; allow participants 15 minutes to complete.*

## **Voters' Experiences Registering to Vote by Mail**

---

### *Introduction*

Now that we've collected your completed quizzes, let's talk about your experiences registering to vote by mail.

### *Questions*

1. We'd like to ask each of you to describe the process of filling out your voter registration application. Please provide an estimate of how long it took you to complete the application and tell us whether you thought the form's instructions for submitting the required identification information (your driver's license number, Social Security number or the last four digits of your Social Security number) were easy to understand.
2. If you didn't include your driver's license number, Social Security number or the last four digits of your Social Security number with your application, why not?

### *Prompts*

Were the instructions unclear? Do you have a driver's license or Social Security number? Did you hesitate to include one of these numbers due to privacy or security concerns?

3. If you included a copy of your utility bill or some other document that includes your name and address with your application, why did you choose to do so?

### *Prompts*

Did you believe you were required to include such information with your voter registration application? Were you hoping to save time at the polls by including the information with your application?

## **Voters' Experiences at the Polls on Election Day**

---

### *Introduction*

Now we'd like to move on and discuss your experiences at the polling place on Election Day.

### *Questions*

4. Were you required to show ID at the polls before you could vote? What kind of ID were you asked to present?
5. Did a poll worker or election official clearly explain what kinds of ID would be accepted?
6. Did you know before you arrived at the polling place that you would be required to show ID? Did you know what kinds of ID would be accepted?
7. Were you able to present an acceptable form of ID at the polling place?
8. Which statement best represents your feelings about being required to present ID and why:
  - "I felt comfortable showing my ID to the poll worker."
  - "I felt singled out or intimidated when I was asked to present ID at the polling place."

**\*Fifteen Minute Break: Let's take a short break and reconvene here in 15 minutes.\***

## **Voters' Overall Perceptions of Voter ID Requirements**

---

### *Introduction*

Let's discuss your overall perceptions of [STATE'S] voter ID requirements. Remember, we're interested in your opinions so there are no right or wrong answers. Any feedback you can offer may help the state improve upon current procedures.

### *Questions*

9. Did you find it to be easy or difficult to understand and comply with [STATE'S] voter ID requirements? Why?
10. Do you think [STATE'S] ID requirements for first-time voters are too strict, not strict enough or appropriate?

11. Do you think the requirements made registering to vote more complicated than it should be, less complicated, or do you believe they had no noticeable effect?

12. How about the requirement to show ID at the polling place? Do you think it contributed to a longer wait time at your polling place? Did showing ID make voting more complicated than it would have been if you had not been required to show ID?

13. Do you feel ID requirements are necessary to prevent voters from attempting to commit fraud?

*Prompts*

Instances of voter fraud may include an individual impersonating a registered voter in order to vote in his or her name or an individual voting in more than one precinct.

14. How effectively do you think your state and local election officials communicated the ID requirements to first-time voters?

*Prompts*

What were the most effective or memorable techniques used? Television and radio spots? Mailers? Other voter education materials?

15. What are the advantages of requiring first-time voters who registered to vote by mail to show ID at the polls? What are your concerns or reservations about the requirement?

**Voters' Perceptions of the General Advisability of Unique ID**

---

*Introduction*

Now we'd like to get your impressions of whether or not it's a good idea for states to require voters to present ID at the polls.

*Questions*

16. Do you support requiring every voter to provide his or her driver's license number, Social Security number or the last four digits of his or her Social Security number as part of his or her application to register to vote?

*Prompts*

Are you concerned about privacy or security issues? Do you believe the requirement helps prevent voter fraud?

17. Do you support requiring first-time voters who registered to vote by mail to provide ID at the polling place?

18. Should **all** voters be required to show ID at the polls, or just first-time voters?

*Prompts*

Are you concerned that some voters may not have the ID they need or may be intimidated by ID requirements? Do you believe that ID requirements could help prevent voter fraud?

19. Would you find it useful to have access to some form of special ID, provided by the state, that you could show at the polls in order to vote? Do you think such an ID should be provided free of charge to voters, or should voters pay to obtain this ID?

**Final Solicitation**

---

20. Do you have any other thoughts about your experiences registering to vote and casting a ballot for the first time this year that we haven't covered?

21. What recommendations do you have for states working to educate first-time voters about ID requirements?

*Prompts*

What methods did your state use to educate voters about ID requirements? Were they effective? What did you like or dislike about them?

**Conclusion**

---

That concludes our focus group discussion. Thank you all for participating. The input you provided today will be studied and compiled into a report that we are preparing on behalf of the U.S. Election Assistance Commission. We expect it to be released some time in June 2007. To learn more about the EAC, visit their website: [www.eac.gov](http://www.eac.gov).

**About This Study**

*Section 245 of the Help America Vote Act (HAVA) of 2002 (42 U.S.C. 15301) requires the U.S. Election Assistance Commission (EAC) to conduct a series of studies, including this study of first-time voters who register to vote by mail. The EAC will submit a report on the results of this study to Congress and the White House; and the agency will make the document publicly available on its website: [www.eac.gov](http://www.eac.gov). Focus group participants will include first-time voters who registered to vote by mail.*

*According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB Control No. 3265-0007, which expires 05/31/2007. The time required to complete this information collection is estimated to average 2 hours and 15 minutes per focus group participant and 4 hours per state/local election office. This estimate includes the time it will take each focus group participant to complete the focus group discussion and a short quiz. The time burden estimate for state/local election offices includes the time it will take to identify potential focus group participants. Comments regarding this burden estimate should be sent to the Program Manager – Study on First-Time Voters Who Register to Vote by Mail, U.S. Election Assistance Commission, 1225 New York Ave, NW, Suite 1100, Washington, DC 20005.*

009798



"Meredith"  
<mimwalle@winnerscircleco  
mm.com>

12/12/2006 03:46 PM

To lotero@eac.gov

cc

bcc

Subject Re: OMB Control Number

History:

✉ This message has been replied to.

Here is the consent form with the correct OMB number.

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

**From:** lotero@eac.gov

**To:** mimwalle@winnerscirclecomm.com

**Sent:** Tuesday, December 12, 2006 2:15 PM

**Subject:** Re: OMB Control Number

Hi again!

They look great in my opinion - the only thing you should note is that you're missing a "0" in the OMB Control Number- it should be 3265-0007 instead of 3265-007 :-)

Should you mention in the beginning the estimated time it will take to complete the focus group session?

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)  
Fax (202) 566-3128

"Meredith" <mimwalle@winnerscirclecomm.com>

12/12/2006 03:03 PM

To lotero@eac.gov

cc

Subject Re: OMB Control Number

Laiza:

I've attached the focus group script and quiz, as approved by OMB, including the required OMB information. I tried to paste the OMB info on the first page of each document, but then thought all of that gov-speak at the beginning might be overwhelming to our focus group participants. I ended up putting it

009799



at the end instead. Please let me know if these versions will work.

Thanks!

--MBI

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

**From:** [lotero@eac.gov](mailto:lotero@eac.gov)

**To:** [mimwalle@winnerscirclecomm.com](mailto:mimwalle@winnerscirclecomm.com)

**Sent:** Tuesday, December 12, 2006 12:14 PM

**Subject:** Re: OMB Control Number

At the beginning preferably, but it can go at the end as well. For the number and exp date, it can either be a header or a footer - depends on the layout of your document and your personal preference. Also, when I submitted the documents to OMB, I placed the EAC logo on the upper right hand corner of the documents to make it "official" - I'm attaching the document so you can see it and also a separate file containing the logo in case you want to use it in other documents. Let me know if you have any questions.

Laiza

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)  
Fax (202) 566-3128

"Meredith" <[mimwalle@winnerscirclecomm.com](mailto:mimwalle@winnerscirclecomm.com)>

12/12/2006 12:36 PM

To [lotero@eac.gov](mailto:lotero@eac.gov)  
cc

Subject Re: OMB Control Number

Thanks Laiza. Have other projects included this information as a header or footer on every page or just at the beginning or end of each document?

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

**From:** [lotero@eac.gov](mailto:lotero@eac.gov)

**To:** [mimwalle@winnerscirclecomm.com](mailto:mimwalle@winnerscirclecomm.com)

**Sent:** Tuesday, December 12, 2006 11:32 AM

009800

**Subject:** Re: OMB Control Number

No need to put the ICR reference number. Below is the boiler plate information - just insert your information on the parts I have emphasized:

**This information collection is required for the EAC to meet its statutory requirements under the Help America Vote Act (HAVA) of 2002 (42 U.S.C. 15301), the National Voter Registration Act (NVRA) (42 U.S.C. 1973gg-1 et seq.), and the Uniformed and Overseas Citizens Absentee Voters Act (UOCAVA) (42 U.S.C. 1973ff-1). Respondent's obligation to reply to this information collection is mandatory as required under NVRA (42 U.S.C. 1973gg-1 et seq.) and UOCAVA (42 U.S.C. 1973ff-1); respondents include the 50 States, the District of Columbia, and the U.S. Territories.** This information will be made publicly available on the EAC website at [www.eac.gov](http://www.eac.gov). According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is **OMB Control No. 3265-0006 (expires 11/30/2009)**. The time required to complete this information collection is estimated to average **115.07 hours per response**. This estimate includes the time for reviewing the instructions, gathering information, and completing the form. Comments regarding this burden estimate should be sent to the Program Manager - 2006 Election Administration and Voting Survey, U.S. Election Assistance Commission, 1225 New York Ave, NW, Suite 1100, Washington, DC 20005.

Below is how it was modified for one of the other projects:

Section 245 of the Help America Vote Act (HAVA) of 2002 (42 U.S.C. 15301) requires the U.S. Election Assistance Commission (EAC) to conduct a study of issues and challenges, including the potential for election fraud, that are presented by the incorporation of communications and Internet technologies in the Federal, State, and local electoral process; the EAC is required to submit a report on the results of the study to Congress. In addition, this information will be made publicly available on the EAC website at [www.eac.gov](http://www.eac.gov). Respondents to this survey are uniformed and overseas voters. According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB Control No. 3265-0005 (expires 5/31/2007). The time required to complete this information collection is estimated to average .25 hours per response. This estimate includes the time for reviewing the instructions, gathering information, and completing the form. Comments regarding this burden estimate should be sent to the Program Manager - 2006 Election Administration and Voting Survey, U.S. Election Assistance Commission, 1225 New York Ave, NW, Suite 1100, Washington, DC 20005.

"Meredith" <[mimwalle@winnerscirclecomm.com](mailto:mimwalle@winnerscirclecomm.com)>

12/12/2006 12:04 PM

To: [lotero@eac.gov](mailto:lotero@eac.gov), [adambourne@gmail.com](mailto:adambourne@gmail.com)  
cc

Subject Re: OMB Control Number

00980

Laiza:

I have the OMB control number and expiration date, but I don't think we ever received the boiler plate information you mentioned below. If you'll send that over, I'll add it to the documents and send them to you today. Also, were you able to determine whether we are required to include the ICR reference number?

Thanks,

*Meredith Battle Imwalle*

*Meredith Battle Imwalle*  
*President*  
*Winner's Circle Communications, LLC*  
*703.786.1823 cell*  
<http://www.winnerscirclecomm.com>

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

**From:** [lotero@eac.gov](mailto:lotero@eac.gov)

**To:** [mimwalle@winnerscirclecomm.com](mailto:mimwalle@winnerscirclecomm.com) ; [adamlboune@gmail.com](mailto:adamlboune@gmail.com)

**Cc:** [klynndyson@eac.gov](mailto:klynndyson@eac.gov)

**Sent:** Monday, December 04, 2006 10:37 AM

**Subject:** OMB Control Number

Greetings to all,

The OMB Control number for the focus groups collection is: 3265-0007. The expiration date is 5/31/2007. Both these pieces of information need to appear everywhere on the collection instrument - my suggestion is to make them part of the heading or footer of the pages. In addition, there is boiler plate information I am working on today with our general counsel's office that needs to be included as well - the latter is info on the time and cost burden on respondents, the response requirements (voluntary/mandatory), and compliance with the PRA process - I should have that information by the end of today.

Also, for your records the ICR Reference Number is: 200611-3265-002. This is an internal OMB number given to the request we made. This may or may not have to be included - waiting to hear on that.

If you have any questions or need more information, please, do not hesitate to contact me at your earliest

009802

convenience. Have a great day!

Sincerely,

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)  
Fax (202) 566-3128 [attachment "Focus Group Script Final.doc" deleted by Laiza N.  
Otero/EAC/GOV] [attachment "Focus Group Quiz Final.doc" deleted by Laiza N.



Otero/EAC/GOV] Focus Group Consent Form.doc

009803



**Winner's Circle Communications, LLC for the  
UNITED STATES ELECTION ASSISTANCE COMMISSION  
Study of First-Time Voters Who Register to Vote by Mail**

---

**CONSENT TO PARTICIPATE IN A RESEARCH STUDY**

---

**Study Title:** Study on First-Time Voters Who Register to Vote by Mail

**Funding Source:** United States Election Assistance Commission  
**OMB Control No.:** 3265-0007, expires 05/31/2007

**Principal Investigator/Study Contact:**  
Meredith Battle Imwalle  
Winner's Circle Communications, LLC

**Study contact's telephone number:** (703) 786-1823  
**Study contact's email address:** admin@winnerscirclecomm.com

---

**What are some general things you should know about research studies?**

You are being asked to take part in a focus group for a research study. Your participation is voluntary. You may decline the invitation to participate or withdraw your consent for any reason without penalty.

Research studies are designed to obtain new knowledge that may help individuals and organizations in the future. You may not receive any direct benefit, other than the designated stipend and reimbursement for travel expenses, for participating in the study.

Details about this study are included below. It is important that you read and understand this information so that you can make an informed decision about whether or not you would like to participate in the study. You will be given a copy of this consent form. You should feel free to ask the study contact named above any questions you have about this study at any time.

*OMB Control No. 3265-0007, expires 05/31/2007*

009804

**What is the purpose of this study?**

The purpose of this research study is to assess the impact that certain provisions of the federal Help America Vote Act of 2002 (HAVA) have had on first-time voters who register by mail and vote in person; voter registration; the accuracy of state voter rolls; and existing state practices.

Section 303(b) of HAVA requires citizens who registered to vote by mail and who will be voting for the first time in their jurisdiction to supply a copy of a current valid photo identification or government document displaying their name and address before they cast their first ballot. First-time voters can avoid the heightened identification requirements by sending a copy of such identification with their registration materials or providing their driver's license number or a minimum of the last four digits of their Social Security number. If a first-time voter does not comply with any of these requirements, §303(b) allows citizens to cast provisional ballots.

This study will analyze the issues and impediments associated with implementing these federal mandates and make recommendations for program administration and voter education should states choose to implement more stringent voter identification requirements in the future.

The U.S. Election Assistance Commission (EAC), a federal agency established by Congress to provide guidance to the states with regard to administering federal elections, is required by HAVA to complete this study and submit a report on the results to Congress and the White House.

**How many people will take part in this study?**

Approximately 30 people will take part in this research study, which is being conducted in three states: Indiana, North Carolina and Pennsylvania. All participants were chosen in consultation with state and local election offices in order to ensure that each group is representative of first-time voters in the state.

**How long will your part in this study last?**

Your participation in this focus group will last approximately two hours and fifteen minutes.

**What can you expect if you take part in the study?**

The focus group will be asked questions designed to assess their actual experiences with voter identification requirements for first-time voters. No questions will be directed to you individually, but instead will be posed to the group. You may choose to respond or not respond at any point during the discussion. The focus group discussion will be recorded on audio tape so that the study contact may capture all comments for future analysis.

**What are the possible benefits from being in this study?**

This particular study will provide state and federal officials with information designed to help them develop future voter identification requirements and related voter education materials and programs. You may not receive any direct benefit, other than the designated stipend and reimbursement for travel expenses, for participating in the study.

**What are the possible risks involved?**

We do not anticipate any risks to you as a result of participating in this study. It is possible that participants may repeat comments outside of the group at some time in the future. Therefore, we encourage you to be as honest and open as you can, but remain aware of our limits in protecting confidentiality.

**How will your privacy be protected?**

You will not be specifically identified in any report or publication of this study or its results. Your name will not appear on any transcripts. You will instead be assigned a code number. The list which matches names and code numbers will be kept in a locked file cabinet. After the focus group audio recording has been transcribed, the tape and the list of names and corresponding code numbers will be destroyed.

**Will you receive anything for being in this study?**

You will receive a \$100 stipend for your participation in the study.

**Will it cost you anything to be in this study?**

There will be no costs to you for being in the study. You will be reimbursed for up to \$20 in travel expenses.

**What if you have questions about this study?**

You have the right to ask, and have answered, any questions you may have about this research. If you have questions or concerns you should contact the study contact listed on the first page of this form.

---

**Participant's Agreement:**

I have read the information provided above. I have asked and had answered all of the questions I have at this time. I voluntarily agree to participate in this research study.

\_\_\_\_\_  
Signature of Research Participant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name of Research Participant

\_\_\_\_\_  
Signature of Person Obtaining Consent

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name of Person Obtaining Consent

**About This Study**

Section 245 of the Help America Vote Act (HAVA) of 2002 (42 U.S.C. 15301) requires the U.S. Election Assistance Commission (EAC) to conduct a series of studies, including this study of first-time voters who register to vote by mail. The EAC will submit a report on the results of this study to Congress and the White House; and the agency will make the document publicly available on its website: [www.eac.gov](http://www.eac.gov). Focus group participants will include first-time voters who registered to vote by mail.

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"Meredith"  
<mimwalle@winnerscircleco  
mm.com>

12/12/2006 04:20 PM

To lotero@eac.gov

cc

bcc

Subject Re: OMB Control Number

Thanks, Laiza. We should have all of these bullets covered in the consent form.

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

**From:** [lotero@eac.gov](mailto:lotero@eac.gov)

**To:** [mimwalle@winnerscirclecomm.com](mailto:mimwalle@winnerscirclecomm.com)

**Sent:** Tuesday, December 12, 2006 2:51 PM

**Subject:** Re: OMB Control Number

:-)

Did a quick search and it seems like generally we should have given the consent form along with the rest of the docs, but since he already approved it, he may just have me upload the form onto their site - I'll let you know as soon as he responds. Also, this information may be useful - I think most if not all is covered in the documents:

**What should respondents be told about their participation in an information collection?**

- The reasons the information is to be collected;
- The way the information will be used to further agency purposes and serve agency needs;
- An estimate of the average burden of the collection and whom to contact about the estimate;
- Whether responses to the collection of information are voluntary or mandatory, or required to obtain a benefit;
- The nature and extent of confidentiality to be provided, if any; (In our Supporting Statement A we said "There is no assurance of confidentiality.")
- The duration of respondents' expected involvement (e.g., if this is a longitudinal survey, they should be informed that they will be contacted in the future); and
- If the agency is collecting "sensitive information," respondents should be informed about what type(s) of sensitive information will be requested. (In our Supporting Statement A we said "There are no questions of a sensitive nature.")

Agencies that conduct research studies involving human subjects may also be required by Institutional Review Boards (IRBs) to provide additional information such as informed consent statements that are signed by the respondent. Typically, statistical surveys do not require formal consent forms.

For more info - see OMB's guide on surveys and statistical information collections at:  
[http://www.whitehouse.gov/omb/inforeg/pmc\\_survey\\_guidance\\_2006.pdf](http://www.whitehouse.gov/omb/inforeg/pmc_survey_guidance_2006.pdf)

009808

L.

"Meredith" <mimwalle@winnerscirclecomm.com>

12/12/2006 03:27 PM

To lotero@eac.gov

cc

Subject Re: OMB Control Number

I must have been thinking of James Bond (007).:) I'll make the changes and resend the docs shortly.

--MBI

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

**From:** [lotero@eac.gov](mailto:lotero@eac.gov)

**To:** [mimwalle@winnerscirclecomm.com](mailto:mimwalle@winnerscirclecomm.com)

**Sent:** Tuesday, December 12, 2006 2:15 PM

**Subject:** Re: OMB Control Number

Hi again!

They look great in my opinion - the only thing you should note is that you're missing a "0" in the OMB Control Number- it should be 3265-0007 instead of 3265-007 :-)

Should you mention in the beginning the estimated time it will take to complete the focus group session?

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)  
Fax (202) 566-3128

"Meredith" <mimwalle@winnerscirclecomm.com>

12/12/2006 03:03 PM

To lotero@eac.gov

cc

Subject Re: OMB Control Number

009809

Laiza:

I've attached the focus group script and quiz, as approved by OMB, including the required OMB information. I tried to paste the OMB info on the first page of each document, but then thought all of that gov-speak at the beginning might be overwhelming to our focus group participants. I ended up putting it at the end instead. Please let me know if these versions will work.

Thanks!

--MBI

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

**From:** [lotero@eac.gov](mailto:lotero@eac.gov)

**To:** [mimwalle@winnerscirclecomm.com](mailto:mimwalle@winnerscirclecomm.com)

**Sent:** Tuesday, December 12, 2006 12:14 PM

**Subject:** Re: OMB Control Number

At the beginning preferably, but it can go at the end as well. For the number and exp date, it can either be a header or a footer - depends on the layout of your document and your personal preference. Also, when I submitted the documents to OMB, I placed the EAC logo on the upper right hand corner of the documents to make it "official" - I'm attaching the document so you can see it and also a separate file containing the logo in case you want to use it in other documents. Let me know if you have any questions.

Laiza

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)  
Fax (202) 566-3128  
"Meredith" <[mimwalle@winnerscirclecomm.com](mailto:mimwalle@winnerscirclecomm.com)>

12/12/2006 12:36 PM

To [lotero@eac.gov](mailto:lotero@eac.gov)

cc

Subject Re: OMB Control Number

009810

Thanks Laiza. Have other projects included this information as a header or footer on every page or just at the beginning or end of each document?

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

**From:** [lotero@eac.gov](mailto:lotero@eac.gov)

**To:** [mimwalle@winnercirclecomm.com](mailto:mimwalle@winnercirclecomm.com)

**Sent:** Tuesday, December 12, 2006 11:32 AM

**Subject:** Re: OMB Control Number

No need to put the ICR reference number. Below is the boiler plate information - just insert your information on the parts I have emphasized:

**This information collection is required for the EAC to meet its statutory requirements under the Help America Vote Act (HAVA) of 2002 (42 U.S.C. 15301), the National Voter Registration Act (NVRA) (42 U.S.C. 1973gg-1 et seq.), and the Uniformed and Overseas Citizens Absentee Voters Act (UOCAVA) (42 U.S.C. 1973ff-1). Respondent's obligation to reply to this information collection is mandatory as required under NVRA (42 U.S.C. 1973gg-1 et seq.) and UOCAVA (42 U.S.C. 1973ff-1); respondents include the 50 States, the District of Columbia, and the U.S. Territories.** This information will be made publicly available on the EAC website at [www.eac.gov](http://www.eac.gov). According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is **OMB Control No. 3265-0006 (expires 11/30/2009)**. The time required to complete this information collection is estimated to average **115.07 hours per response**. This estimate includes the time for reviewing the instructions, gathering information, and completing the form. Comments regarding this burden estimate should be sent to the Program Manager - 2006 Election Administration and Voting Survey, U.S. Election Assistance Commission, 1225 New York Ave, NW, Suite 1100, Washington, DC 20005.

Below is how it was modified for one of the other projects:

Section 245 of the Help America Vote Act (HAVA) of 2002 (42 U.S.C. 15301) requires the U.S. Election Assistance Commission (EAC) to conduct a study of issues and challenges, including the potential for election fraud, that are presented by the incorporation of communications and Internet technologies in the Federal, State, and local electoral process; the EAC is required to submit a report on the results of the study to Congress. In addition, this information will be made publicly available on the EAC website at [www.eac.gov](http://www.eac.gov). Respondents to this survey are uniformed and overseas voters. According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB Control No. 3265-0005 (expires 5/31/2007). The time required to complete this information collection is estimated to average .25 hours per response. This estimate includes the time for reviewing the instructions, gathering information, and completing the form. Comments regarding this burden estimate should be sent to the Program Manager - 2006 Election

009811

Administration and Voting Survey, U.S. Election Assistance Commission, 1225 New York Ave, NW, Suite 1100, Washington, DC 20005.

"Meredith" <mimwalle@winnerscirclecomm.com>

12/12/2006 12:04 PM

To: lotero@eac.gov, adamlbourne@gmail.com

cc

Subject Re: OMB Control Number

Laiza:

I have the OMB control number and expiration date, but I don't think we ever received the boiler plate information you mentioned below. If you'll send that over, I'll add it to the documents and send them to you today. Also, were you able to determine whether we are required to include the ICR reference number?

Thanks,

*Meredith Battle Imwalle*

Meredith Battle Imwalle  
President  
Winner's Circle Communications, LLC  
703.786.1823 cell  
<http://www.winnerscirclecomm.com>

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

**From:** [lotero@eac.gov](mailto:lotero@eac.gov)

**To:** [mimwalle@winnerscirclecomm.com](mailto:mimwalle@winnerscirclecomm.com) ; [adamlbourne@gmail.com](mailto:adamlbourne@gmail.com)

**Cc:** [klynndyson@eac.gov](mailto:klynndyson@eac.gov)

**Sent:** Monday, December 04, 2006 10:37 AM

**Subject:** OMB Control Number

009812

Greetings to all,

The OMB Control number for the focus groups collection is: 3265-0007. The expiration date is 5/31/2007. Both these pieces of information need to appear everywhere on the collection instrument - my suggestion is to make them part of the heading or footer of the pages. In addition, there is boiler plate information I am working on today with our general counsel's office that needs to be included as well - the latter is info on the time and cost burden on respondents, the response requirements (voluntary/mandatory), and compliance with the PRA process - I should have that information by the end of today.

Also, for your records the ICR Reference Number is: 200611-3265-002. This is an internal OMB number given to the request we made. This may or may not have to be included - waiting to hear on that.

If you have any questions or need more information, please, do not hesitate to contact me at your earliest convenience. Have a great day!

Sincerely,

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)  
Fax (202) 566-3128 [attachment "Focus Group Script Final.doc" deleted by Laiza N. Otero/EAC/GOV] [attachment "Focus Group Quiz Final.doc" deleted by Laiza N. Otero/EAC/GOV]

009813



"Hunt, Alexander T."  
<Alexander\_T.\_Hunt@omb.e  
op.gov>  
12/13/2006 07:10 PM

To: lotero@eac.gov  
cc:  
bcc:  
Subject: RE: Question regarding focus groups - consent forms

History: This message has been forwarded.

No. Consent forms are exempt from the PRA.

Thanks.

---

**From:** lotero@eac.gov [mailto:lotero@eac.gov]  
**Sent:** Tuesday, December 12, 2006 3:10 PM  
**To:** Hunt, Alexander T.  
**Subject:** Question regarding focus groups - consent forms

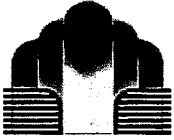
Alex,

For focus group ICRs, do you require a copy of the consent form given to participants? For the recently approved ICR (3265-0007) regarding First-Time Voters, this was not part of the package - and in hindsight, we were wondering if we have/had to provide you a copy of this form before we proceed with the collection. Thank you.

Laiza

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)  
Fax (202) 566-3128

009814



Laiza N. Otero/EAC/GOV

04/13/2007 01:01 PM

To Karen Lynn-Dyson/EAC/GOV@EAC

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

bcc

Subject First Time Voters

First Time Voters was also an emergency approval:

[http://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=200611-3265-002](http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200611-3265-002)



First-Time Voters - Supporting Statement A.doc



1st Time Voters - Focus Group Script.pdf



1st Time Voters - Focus Group Quiz.pdf



1st Time Voters - Notice of OMB Action.11.30.2006.pdf



JUSTIFICATION.doc



Consent Form.doc

Laiza N. Otero  
Election Research Specialist  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)  
Fax (202) 566-3128

009815





"Hunt, Alexander T."  
<Alexander\_T.\_Hunt@omb.e  
op.gov>  
03/30/2007 12:04 PM

To lotero@eac.gov  
cc bhancock@eac.gov  
bcc  
Subject RE: Request for Extension of a previously approved  
collection with changes

Excellent. Thanks.

**From:** lotero@eac.gov [mailto:lotero@eac.gov]  
**Sent:** Friday, March 30, 2007 11:55 AM  
**To:** Hunt, Alexander T.  
**Cc:** lotero@eac.gov; bhancock@eac.gov  
**Subject:** RE: Request for Extension of a previously approved collection with changes

Mr. Hunt,

I have submitted the ICR (ICR Ref. No 200703-3265-001) for review via ROCIS. Please, let me know if you need any other information from our agency to complete the review. Thank you very much and have a great weekend.

Sincerely,

Laiza N. Otero  
Election Research Specialist  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)  
Fax (202) 566-3128

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009833

# ROCIS PRA

## Submitted Request

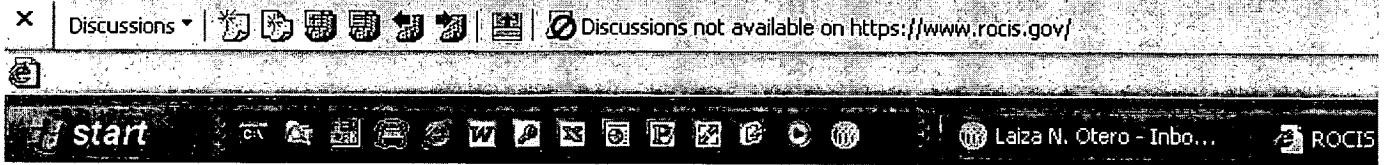
[Filter List](#) [View All](#)

Criteria: **Status**=(Received in OIRA, Open for Amendment, Closed for Amendment);

<u>OMB Control No</u>	<u>ICR Ref.No</u>	<u>Submitted Date</u>	<u>Agency/Sub</u>	<u>Agency ICR Tracking Number</u>	
3265-0004	200703-3265-001	03/30/2007	EAC		U.S. Election Assistance Commission Voluntary System and Certification Program

List shows all requests for ICR review (No Time Limit).

Login: lotero



"Hunt, Alexander T." <Alexander\_T.\_Hunt@omb.eop.gov>

03/22/2007 03:38 PM

To lotero@eac.gov  
cc

Subje RE: Request for Extension of a previously approved collection  
ct with changes

Yes. As long as you submit the 3-year extension request before the end of the month, OMB's approval will remain in effect while the request is pending.

Thanks.

**From:** lotero@eac.gov [mailto:lotero@eac.gov]

**Sent:** Thursday, March 22, 2007 11:49 AM

**To:** Hunt, Alexander T.

**Subject:** Request for Extension of a previously approved collection with changes

Dear Mr. Hunt,

I am writing to inform you that we will be submitting next week a request for an extension with revisions of a previously approved collection (Title: EAC Voting System Testing and Certification Manual, OMB Control Number 3265-0004, expiration 3/31/2007). This collection had been approved under the emergency approval process on 9/29/2006. The 60-day Federal Register notice is set to conclude on March 24th, at which time we will proceed with the second 30-day FR notice and the submission of the ICR package to you via ROCIS. So as not to disrupt the program, may we continue to use the current number while you review our submission?

If you have any questions, please, do not hesitate to contact me at your earliest convenience. As always, thank you for your time and assistance in this process; it is greatly appreciated.

009835

Sincerely,

Laiza N. Otero  
Election Research Specialist  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)  
Fax (202) 566-3128

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009836



"Hunt, Alexander T."  
<Alexander\_T.\_Hunt@omb.eop.gov>

09/18/2006 04:26 PM

To lotero@eac.gov

cc

bcc

Subject RE: Supporting Statement

History:

↳ This message has been forwarded.

1. Yes.
2. No. The FR notice refers to a request that has been submitted to OMB.
3. Although Form 83-I is no longer in use, agency responses to the 18 questions still constitute the Supporting Statement A that must be uploaded into ROCIS. The 18 questions are available at this link: <http://www.whitehouse.gov/omb/inforeg/83i-fill.pdf>

**From:** lotero@eac.gov [mailto:lotero@eac.gov]

**Sent:** Monday, September 18, 2006 4:03 PM

**To:** Hunt, Alexander T.

**Cc:** bhancock@eac.gov; ggilmour@eac.gov

**Subject:** RE: Supporting Statement

Hello Mr. Hunt,

Just to make sure we have understood the process: for an emergency review:

1. do we need to publish a notice in the Federal Register?
2. if we are going to publish it, can we publish it before we complete our ROCIS submission?
3. is there any guidance on how to create the Supporting Statement A other than the instructions on form OMB 83-1? --- since it's no longer in effect and references the form.

Thank you as always,

Sincerely,

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)  
Fax (202) 566-3128

"Hunt, Alexander T." <Alexander\_T.\_Hunt@omb.eop.gov>

09/18/2006 03:32 PM

To ggilmour@eac.gov

cc bhancock@eac.gov, lotero@eac.gov

Subject RE: Supporting Statement

009816

Per 1320.13, the emergency processing concerns "submissions of collections of information," which include completed supporting statements. Just because OMB is waiving the full notice-and-comment process does not mean that the agency can submit incomplete information collections requests.

You can request 180 days, and you can use the following for the OMB contact:

*OMB Reviewer:* Alexander T. Hunt

Office of Management and Budget, Room 10235

New Executive Office Building

Washington, DC 20503, (202) 395-7316.

**From:** ggilmour@eac.gov [mailto:ggilmour@eac.gov]  
**Sent:** Monday, September 18, 2006 2:09 PM  
**To:** Hunt, Alexander T.  
**Cc:** bhancock@eac.gov; lotero@eac.gov  
**Subject:** RE: Supporting Statement

Mr. Hunt,

two additional questions...

(1) in the example you gave us, the emergency request asks for more than 90 days (180) is this acceptable?

(2) is there a specific name and address at OMB that we give, other than the example.

GG

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

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009817

Gavin S. Gilmour/EAC/GOV

09/18/2006 01:59 PM

To "Hunt, Alexander T." <Alexander\_T.\_Hunt@omb.eop.gov>@GSAEXTERNAL  
cc bhancock@eac.gov, lotero@eac.gov  
Subject RE: Supporting Statement [Link](#)

I do not see a requirement in the CFR that we provide a supporting statement in an emergency filing. Is this correct?

GG

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

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"Hunt, Alexander T." <Alexander\_T.\_Hunt@omb.eop.gov>

09/18/2006 10:08 AM

To ggilmour@eac.gov  
cc bhancock@eac.gov, lotero@eac.gov  
Subject RE: Contact Info

That's correct. You will not have OMB control numbers until the forms are approved. However, you can assign agency numbers to the form (e.g., the IRS Form 1040). It's the agency form number that you would enter below in item #4.

**From:** ggilmour@eac.gov [mailto:ggilmour@eac.gov]  
**Sent:** Monday, September 18, 2006 9:06 AM  
**To:** Hunt, Alexander T.  
**Cc:** bhancock@eac.gov; lotero@eac.gov

009818

**Subject:** RE: Contact Info

There will be three forms... but as this is our first filing we have no numbers for them... unless we are to receive numbers in advance.

Gg

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

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"Hunt, Alexander T." <Alexander\_T.\_Hunt@omb.eop.gov>

09/15/2006 05:32 PM

To ggilmour@eac.gov  
cc bhancock@eac.gov, lotero@eac.gov  
Subject RE: Contact Info

You should use the same headings. If there is no form, then do not include that heading.

The comment solicitation is PRA boilerplate that you should also use.

**From:** ggilmour@eac.gov [mailto:ggilmour@eac.gov]  
**Sent:** Friday, September 15, 2006 1:03 PM  
**To:** Hunt, Alexander T.  
**Cc:** bhancock@eac.gov; lotero@eac.gov  
**Subject:** RE: Contact Info

Mr. Hunt,

A couple of quick questions...

1) Are we to have the same informational headings and content as the example, ie:

1. Type of Information Collection Request:

009819



2. Title of Information Collection:
3. Use:
4. Form Number: (HOW WOULD WE KNOW THIS?)
5. Frequency:
6. Affected Public:
7. Number of Respondents:
8. Total Annual Responses:
9. Total Annual Hours:

4) are we to use the same comment areas or subjects as the example? i.e.:

(1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

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

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"Hunt, Alexander T." <Alexander\_T.\_Hunt@omb.eop.gov>

09/15/2006 12:02 PM

To ggilmour@eac.gov

cc bhancock@eac.gov, lotero@eac.gov

Subject RE: Contact Info

Attached is model you can use.

**From:** ggilmour@eac.gov [mailto:ggilmour@eac.gov]

**Sent:** Friday, September 15, 2006 11:35 AM

009820

**To:** Hunt, Alexander T.  
**Cc:** bhancock@eac.gov; lotero@eac.gov  
**Subject:** Contact Info

Mr. Hunt,

Per our discussion, please forward me an example of emergency processing language for our federal register publication.

Let me know if you have any questions

Thankyou for your help

GG

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

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009321



Laiza N. Otero/EAC/GOV  
09/19/2006 09:35 AM

To Gavin S. Gilmour/EAC/GOV@EAC  
cc Brian Hancock/EAC/GOV@EAC  
bcc  
Subject supporting statement



INSTRUCTIONS FOR THE SUPPORTING STATEMENT.doc



template for supporting statement.doc - template 1



sample supporting statement 4. emergency review.pdf



Supporting\_Statement.doc - template 2



Sample supporting statement 1.pdf

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)  
Fax (202) 566-3128

009822



"Hunt, Alexander T." <Alexander\_T.\_Hunt@omb.eop.gov>

09/29/2006 02:08 PM

To lotero@eac.gov

cc

bcc

Subject RE: Voluntary Voting System Testing and Certification Program Manual

History: This message has been forwarded.

Nope. You have the correct next steps.

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

Sent: Friday, September 29, 2006 1:43 PM

To: Hunt, Alexander T.

Subject: Re: Voluntary Voting System Testing and Certification Program Manual

Thank you!!!!!! The next steps would be insert the OMB Control Number and expiration date into the document, as well as the calculation of the estimated time it will take the respondent to prepare and provide the information? Anything else we need to do at this point then for this particular ICR?

FYI: Today is the last day for the 60-day public comment period of the next ICR we will submit early next week for the 2006 Election Day Survey. We have only received 6 comments during that period, and we don't expect too many during the 30-day notice coming up.

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)  
Fax (202) 566-3128

"Hunt, Alexander T." <Alexander\_T.\_Hunt@omb.eop.gov>

09/29/2006 12:47 PM



To ggilmour@eac.gov

cc bhancock@eac.gov, lotero@eac.gov

Subject Voluntary Voting System Testing and Certification Program Manual

I approved the emergency request today. The OMB Control Number is 3265-0004, which expires 3/31/2007.

009823



Laiza N. Otero/EAC/GOV  
09/29/2006 03:02 PM

To Gavin S. Gilmour/EAC/GOV@EAC, Brian  
Hancock/EAC/GOV@EAC  
cc  
bcc

Subject Fw: Voluntary Voting System Testing and Certification  
Program Manual

See below for next steps regarding your certification program

----- Forwarded by Laiza N. Otero/EAC/GOV on 09/29/2006 03:03 PM -----



"Hunt, Alexander T."  
<Alexander\_T.\_Hunt@omb.eop.gov>  
09/29/2006 02:08 PM

To lotero@eac.gov  
cc  
Subject RE: Voluntary Voting System Testing and Certification  
Program Manual

Nope. You have the correct next steps.

**From:** lotero@eac.gov [mailto:lotero@eac.gov]  
**Sent:** Friday, September 29, 2006 1:43 PM  
**To:** Hunt, Alexander T.  
**Subject:** Re: Voluntary Voting System Testing and Certification Program Manual

Thank you!!!!!! The next steps would be insert the OMB Control Number and expiration date into the document, as well as the calculation of the estimated time it will take the respondent to prepare and provide the information? Anything else we need to do at this point then for this particular ICR?

FYI: Today is the last day for the 60-day public comment period of the next ICR we will submit early next week for the 2006 Election Day Survey. We have only received 6 comments during that period, and we don't expect too many during the 30-day notice coming up.

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
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Tel. (202) 566-2209 (direct)  
Fax (202) 566-3128

"Hunt, Alexander T." <Alexander\_T.\_Hunt@omb.eop.gov>

09/29/2006 12:47 PM

To ggilmour@eac.gov  
cc bhancock@eac.gov, lotero@eac.gov

009324

Subject Voluntary Voting System Testing and Certification  
Program Manual

I approved the emergency request today. The OMB Control Number is 3265-0004, which expires 3/31/2007.

009825

Gavin S. Gilmour/EAC/GOV  
09/25/2006 04:57 PM

To Jeannie Layson/EAC/GOV, Bryan  
Whitener/EAC/GOV@EAC  
cc Brian Hancock/EAC/GOV@EAC, Juliet E.  
Hodgkins/EAC/GOV@EAC, Thomas R.  
Wilkey/EAC/GOV@EAC, Laiza N. Otero/EAC/GOV@EAC  
bcc  
Subject Federal Register Read Draft of the EAC Voting System  
Testing and Certification Program Manual

Jeannie and Bryan,

Here are the documents to be posted on the Web site and the Federal Register notice.

**Web Cite Posting:**

- A copy of the Manual for public view and comment:



Voting System Testing and Certification Program Manual FR DRAFT (Sept 25).doc

- Copies of the three (3) appendix for public view and comment.



Voluntary Anomaly Reporting Form 1.1.pdf Application for testing 1.1.pdf Manufacturer Reg App 3.0.pdf

- A copy of our Paper Work Reduction Act proposed information collection Supporting Statement for public view.



Supporting Statement.doc

- The public comment portal.
- A warning on the portal that comments on the manual's collection and recordkeeping requirements are not collected on the EAC Web site, but must be mailed and/or faxed to the OMB as referenced below by October 31, 2006:

*OMB Reviewer:* Alexander T. Hunt

Office of Management and Budget, Room 10235

New Executive Office Building

Washington, DC 20503, (202) 395-7316.

**Federal Register Notice.**

Here is the document for publication in the Federal Register. It must be published on the Monday, October 2. Thus, based upon our conversations it should be filed tomorrow...



Notice Cert Program Emergency.doc

Gavin S. Gilmour

009826

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

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009827





Laiza N. Otero/EAC/GOV  
10/12/2006 04:13 PM

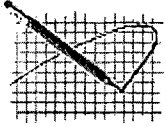
To Gavin S. Gilmour/EAC/GOV@EAC  
cc  
bcc  
Subject OMB

FYI:

I just spoke with Alex Hunt at OMB. He said to wait until the 30 days are over and then go ahead and publish the 60-day notice. We will be seeking an "Extension of a currently approved collection." The paperwork is the same, but it is much easier since we have most if not all of it done already.

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)  
Fax (202) 566-3128

009828



Laiza N. Otero/EAC/GOV  
11/27/2006 10:46 AM

To Gavin S. Gilmour/EAC/GOV@EAC  
cc Brian Hancock/EAC/GOV@EAC  
bcc  
Subject OMB Control Number

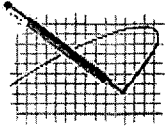
Gavin,

Check the following document for how they placed the OMB control number - it's on the cover page and on the bottom they have the disclaimer - they also have the number on the forms within the document.

<http://www.doleta.gov/Performance/guidance/WIA/WIA-Quarterly-Report-Specifications-Expires-02282009.doc>

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
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Fax (202) 566-3128

009829



Laiza N. Otero/EAC/GOV

11/27/2006 10:56 AM

To Gavin S. Gilmour/EAC/GOV@EAC

cc Brian Hancock/EAC/GOV@EAC

bcc

Subject OMB number placement per 5 CFR 1320.3

Here's more info - in particular subsection (f).

Laiza N. Otero  
Research Associate  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)



Fax (202) 566-3128 5\_C\_F\_R\_1320\_3.pdf

009830

**From:** Laiza N. Otero/EAC/GOV  
**To:** Brian Hancock/EAC/GOV@EAC

**Date:** Thursday, March 22, 2007 07:53PM  
**Subject:** Fw: Request for Extension of a previously approved collection with changes

---

FYI: (per my communications with OMB - read below) First thing Monday, we need to send out the second FR notice for the T&C Manual. I was informed that only Tom or the Commissioners may sign for an FR Notice - that's why we need to wait until Monday. I will draft it and send it to you; then we need to meet to go over the other documentation to make sure it's all there for the OMB package. Thank you!

L.

----- Forwarded by Laiza N. Otero/EAC/GOV on 03/22/2007 03:47 PM -----

**"Hunt, Alexander T."**  
**<Alexander\_T.\_Hunt@omb.eop.gov>**

Tolotero@eac.gov  
cc

03/22/2007 03:38 PM

Subject: RE: Request for Extension of a previously approved collection with changes

Yes. As long as you submit the 3-year extension request before the end of the month, OMB's approval will remain in effect while the request is pending.

Thanks.

---

**From:** lotero@eac.gov [<mailto:lotero@eac.gov>]  
**Sent:** Thursday, March 22, 2007 11:49 AM  
**To:** Hunt, Alexander T.  
**Subject:** Request for Extension of a previously approved collection with changes

Dear Mr. Hunt,

I am writing to inform you that we will be submitting next week a request for an extension with revisions of a previously approved collection (Title: EAC Voting System Testing and Certification Manual, OMB Control Number 3265-0004, expiration 3/31/2007). This

009831

collection had been approved under the emergency approval process on 9/29/2006. The 60-day Federal Register notice is set to conclude on March 24th, at which time we will proceed with the second 30-day FR notice and the submission of the ICR package to you via ROCIS. So as not to disrupt the program, may we continue to use the current number while you review our submission?

If you have any questions, please, do not hesitate to contact me at your earliest convenience. As always, thank you for your time and assistance in this process; it is greatly appreciated.

Sincerely,

Laiza N. Otero  
Election Research Specialist  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)  
Fax (202) 566-3128

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009832

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 09/29/2006

U.S. Election Assistance Commission

FOR CERTIFYING OFFICIAL: Juliet Thompson-Hodgkins  
FOR CLEARANCE OFFICER: Laiza Otero

In accordance with the Paperwork Reduction Act, OMB has taken action on your request received 09/22/2006

ACTION REQUESTED: New collection (Request for a new OMB Control Number)

TYPE OF REVIEW REQUESTED: Emergency

ICR REFERENCE NUMBER: 200609-3265-002

TITLE: U.S. Election Assistance Commission Voluntary Voting System Testing and Certification Program Manual

LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved without change

OMB CONTROL NUMBER: 3265-0004

The agency is required to display the OMB Control Number and inform respondents of its legal significance in accordance with 5 CFR 1320.5(b).

EXPIRATION DATE: 03/31/2007

DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	0	0	0
New	96	117	4,850
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	96	117	4,850
Change due to Agency Adjustment	0	0	0
Change Due to Potential Violation of the PRA	0	0	0

TERMS OF CLEARANCE:

OMB Authorizing Official:

John F. Morrall III  
Acting Deputy Administrator,  
Office Of Information And Regulatory Affairs

009837

List of ICs

IC Title	Form No.	Form Name	CFR Citation
Collection of Voting System Manufacturer Information	EAC 001C	Manufacturer Registration Application	
Collection of Information and Record Keeping for Certified Voting System	EAC 002C	Application for Voting System Testing	
Field Anomaly Reporting	EAC 003C	Voting System Anomaly Reporting Form	

009838



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Display additional information by clicking on the following:  All  Brief and OIRA conclusion  
 Abstract/Justification  Legal Statutes  Rulemaking  FR Notices/Comments  IC List  Burden  Misc.   
[View Information Collection \(IC\) List](#) [View Supporting Statement and Other Documents](#)

Please note that the OMB number and expiration date may not have been determined when this Information Collection Request associated Information Collection forms were submitted to OMB. The approved OMB number and expiration date may be found on the Notice of Action link below.

### View ICR - OIRA Conclusion

**OMB Control No:** 3265-0004 **ICR Reference No:** 200609-3265-002  
**Status:** Active **Previous ICR Reference No:**  
**Agency/Subagency:** **Agency Tracking No:**  
**Title:** U.S. Election Assistance Commission Voluntary Voting System Testing and Certification Program Manual  
**Type of Information Collection:** New collection (Request for a new OMB Control Number)  
**Type of Review Request:** Emergency **Approval Requested By:** 11/30/2006  
**OIRA Conclusion Action:** Approved without change **Conclusion Date:** 09/29/2006  
[Retrieve Notice of Action \(NOA\)](#) **Date Received in OIRA:** 09/22/2006  
**Terms of Clearance:**

	Inventory as of this Action	Requested	Previously Approved
<b>Expiration Date</b>	03/31/2007	6 Months From Approved	
<b>Responses</b>	96	96	0
<b>Time Burden (Hours)</b>	117	117	0
<b>Cost Burden (Dollars)</b>	4,850	4,850	0

**Abstract:** HAVA requires that the EAC certify and decertify voting systems (42 U.S.C. §15371). Section 231(a)(1) of HAVA specifically requires the EAC to "... provide for the certification, de-certification and re-certification of voting system hardware and software laboratories." The EAC will perform this mandated function through the use of its Voting System Testing and Certification Program. Voting systems certified by the EAC will be used by citizens to cast votes in Federal Elections. Therefore, it is paramount that the program operate in a reliable and affective manner. In order to certify a voting system, it is necessary for the EAC to (1) require voting system manufacturers to submit information about their organization and the voting systems they submit for testing and certification; (2) require voting system manufacturers to retain voting system technical and test records; and (3) to provide a mechanism for election officials to report events which may effect system's certification.

**Emergency Justification:** HAVA requires that the EAC certify and decertify voting systems (42 U.S.C. §15371). Section 231(a)(1) specifically requires the EAC to "... provide for the certification, de-certification and re-certification of voting system hardware and accredited laboratories." The EAC will perform this mandated function through the use of its Voting System Testing and Certification Program. Voting systems certified by the EAC will be used by citizens to cast votes in Federal Elections. Therefore, it is paramount that the program operates in a reliable and affective manner. In order to certify a voting system, it is necessary for the EAC to (1) require voting system manufacturers to submit information about their organization and the voting systems they submit for testing and certification; (2) require voting system manufacturers to retain voting system technical and test records; and (3) to provide a mechanism for election officials and the public to report events which may effect a voting system's certification. The EAC is requesting an emergency review of the collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. The EAC is requesting emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's 5 CFR Part 1320(a)(2)(ii). The information collection at issue is necessary in order to provide for the certification of voting system

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by the Help America Vote Act of 2002 (42 U.S.C. §15371). The EAC cannot reasonably comply with the normal clearance procedure failure to implement this program in an expedited fashion is reasonably likely to result in a public harm, as stated in 5 CFR 1320.1. Approval of this emergency collection is essential in order to comply with Help America Vote Act of 2002 (42 U.S.C. §15371). Hence, that the EAC certify and decertify voting systems. This mandate represents the first time the Federal government will provide for the testing and certification of voting systems, nationwide. In response to this HAVA requirement, the EAC is developing the Voting System Testing and Certification Program. This program requires the collection and retention of information by voting system manufacturers. Until national voting system certification was conducted by a private membership organization, the National Association of State Election Officials (NASEO). NASEO certified voting systems for over a decade, using standards issued by the Federal government. The organization certification efforts on July 10, 2006. While the EAC and NASEO have worked together to provide for the certification of emergency modifications necessary to properly field voting systems for the 2006 General Election, there is presently no mechanism in place to certify new systems or to process modifications for the 2008 Federal elections. Given the fact that (1) it can take years to develop, test, sell, and field a new or modified voting systems; and (2) a large volume of voting systems (new, existing and modified) are expected submitted to the EAC upon initiation of the new Certification Program, it is imperative that the EAC's Voting System Testing and Certification Program begin on the earliest possible date. The 2008 Federal elections are less than 2 years away. Ensuring that certified voting systems are available for the 2008 Election Cycle is essential to the public welfare.

**Authorizing Statute(s):** US Code: 42 USC 15371 Name of Law: Help America Vote Act of 2002

**Citations for New Statutory Requirements:** None

#### Associated Rulemaking Information

<b>RIN:</b>	<b>Stage of Rulemaking:</b>	<b>Federal Register Citation:</b>	<b>Date:</b>
	Not associated with rulemaking		

#### Federal Register Notices & Comments

**Did the Agency receive public comments on this ICR?** No

#### Number of Information Collection (IC) in this ICR: 3

IC Title	Form No.	Form Name
<u>Collection of Information and Record Keeping for Certified Voting System</u>	EAC 002C	<u>Application for Voting System Testing</u>
<u>Field Anomaly Reporting</u>	EAC 003C	<u>Voting System Anomaly Reporting Form</u>
<u>Collection of Voting System Manufacturer Information</u>	EAC 001C	<u>Manufacturer Registration Application</u>

#### ICR Summary of Burden

	Total Approved	Previously Approved	Change Due to New Statute	Change Due to Agency Discretion	Change Due to Adjustment in Estimate	Change Potential
Annual Number of Responses	96	0	0	96	0	0
Annual Time Burden (Hours)	117	0	0	117	0	0
Annual Cost Burden (Dollars)	4,850	0	0	4,850	0	0

**Burden increases because of Program Change due to Agency Discretion:** Yes

**Burden Increase Due to:** Miscellaneous Actions

**Burden decreases because of Program Change due to Agency Discretion:** No

**Burden Reduction Due to:**

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**Short Statement:** This is the first time this information collection, or the program upon which it is based, has been performed by the government.

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**Annual Cost to Federal Government:** \$902,000

**Does this IC contain surveys, censuses, or employ statistical methods?** No

**Is the Supporting Statement intended to be a Privacy Impact Assessment required by the E-Government Act of 2002?** No

**Agency Contact:** Laiza Otero 202-566-2209 lotero@eac.gov

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On behalf of this Federal agency, I certify that the collection of information encompassed by this request complies with 5 CFR 132 related provisions of 5 CFR 1320.8(b)(3).

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It uses plain, coherent, and unambiguous language that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention periods for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8 (b)(3) about:
  - (i) Why the information is being collected;
  - (ii) Use of information;
  - (iii) Burden estimate;
  - (iv) Nature of response (voluntary, required for a benefit, or mandatory);
  - (v) Nature and extent of confidentiality; and
  - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management of the information to be collected.
- (i) It uses effective and efficient statistical survey methodology (if applicable); and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of these provisions, identify the item by leaving the box unchecked and explain the Supporting Statement.

**Certification Date:** 09/22/2006

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009841



Print Form

Submit by Email

# Application for Voting System Testing

1. Manufacturer Name:

2. Manufacturer Code:

3. Version of Standards to be Used for Testing:

4. Voting System Name:

5. System Model/Version Number:

6. EAC Accredited VSTL:

7. Requested EAC Certification number:

8. Brief Description of System or system modification:

Signature:

Date:

009842

# Instructions

This form provides manufacturers with the means to apply for a certification of a voting system. Completion of a voting system application is a required step in the EAC Voting System Certification Program. This form is prescribed by Section 4.3 of the Manual. For more information on registration requirements please see Section 4.3.

This form is generally self-explanatory, however the numbers and the instructions below correspond to the numbered sections of the form.

**1. Manufacturer Name:** Full legal name of the manufacturer.

**2. Manufacturer Code:** The three letter identification code provided by the EAC upon manufacturer registration.

**3. Version of Standards to be Used for Testing:** Select the version of the EAC approved voting system standards to which the candidate system or modification is to be tested and certified.

**4-5** Provide information as requested.

**6. EAC Accredited VSTL:** Provide the name of the EAC accredited voting system test laboratory which will perform testing on the candidate system.

**7. Requested EAC Certification Number:** Provide the certification number to be carried by the candidate system following certification. This number must begin with the three letter manufacturer identification code and be unique only to the specific candidate voting system. The number may be alpha-numeric and contain no more than 20 characters.

**8. Brief Description of the System or System Modification:** Describe the system, carefully listing all components submitted for certification.

This information is required for the EAC to provide for the certification of voting systems as required by 42 U.S.C. Section 15371. This information will be used solely to administer the EAC Testing and Certification Program. This program is voluntary, however, individuals who wish to participate must meet the requirements of the Program. This information will be made public consistent with the requirements of the Freedom of Information Act, the Trade Secrets Act, and any other applicable Federal law or regulation. Public reporting burden for this collection of information is estimated to average about XX hours for completion of this form. This estimate includes the time for reviewing the instructions, gathering information and completing the form. Send comments regarding this burden estimate to the Testing and Certification Program Director, Election Assistance Commission, 1225 New York Avenue, N.W., Suite 1100, Washington, DC 20005. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to respond to, or comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

009843

# Application for Voting System Testing (For EAC Use only)

Application Number:

Application Received      Date/Time

Lead Technical Reviewer

Test Plan       Received      Date/Time

Accepted       Not Accepted

If Not Accepted, provide attachment for file containing explanation.

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Test Report       Received      Date/Time

Estimated Date for Completion of Report Review:

Approved       Not Approved

If Not Approved, provide attachment for file containing explanation.

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System Certificatio Date:

System Certification Number:

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# Voting System Anomaly Reporting Form

For VOLUNTARY reporting of Voting System Anomalies

### A. Election Official:

1. Name, Title, Jurisdiction

2. Phone Number

3. Email

4. Reported to Manufacturer?

YES

NO

### B. Product Description:

5. Manufacturer Name

6. Type of Voting System

DRE

Ballot Marking Device

Optical Scan

Other

7. System Model

8. Hardware & Software version

9. Unit Serial Number

10. EAC Certification Number

### C. Description of Anomaly or Event:

11. Date of Occurrence

Polling Place Name or Location

12. Election Type

Primary

General

Special

13. Was this your first election using this system?

YES

NO

14. Description of Anomaly

# Instructions

This form provides for the reporting of voting system anomalies by election officials. This form is part of the EAC Quality Monitoring Program. The use of this form is voluntary. Information regarding its use can be found in Section 8.7 of the Manual.

This form is self-explanatory.

This information is required for the EAC to provide for the certification of voting systems as required by 42 U.S.C. Section 15371. This information will be used solely to administer the EAC Testing and Certification Program. This program is voluntary, however, individuals who wish to participate must meet the requirements of the Program. This information will be made public consistent with the requirements of the Freedom of Information Act, the Trade Secrets Act, and any other applicable Federal law or regulation. Public reporting burden for this collection of information is estimated to average about XX hours for completion of this form. This estimate includes the time for reviewing the instructions, gathering information and completing the form. Send comments regarding this burden estimate to the Testing and Certification Program Director, Election Assistance Commission, 1225 New York Avenue, N.W., Suite 1100, Washington, DC 20005. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to respond to, or comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.



# Manufacturer Registration Application

## 1. Manufacturer Information

Legal Name of Business:

Address of Business:

City:  State  Zip Code:

Organization Type:  Corporation  Partnership  Sole Proprietorship  Other

Names of Officers and/or Board of Directors and/or any and all Partners :

Name of Individual or Entity with Controlling Ownership in the Manufacturer:

## 2. Management Representative

First Name:  Title:

Last Name:  Middle Initial:

Address:

City:  State

Zip Code:  Email:

Phone Number:  FAX Number:

## 3. Technical Representative

First Name:  Title:

Last Name:  Middle Initial:

Address:

City:  State

Zip Code:  Email:

Phone Number:  FAX Number:



**4. Briefly describe your quality system ( i.e. ISO 9001). Provide your written policies supporting this description as a part of this application :**

**5. Briefly describe your internal requirements for managing change control/version control for both hardware/firmware and software . Provide your written policies supporting this description as a part of this application :**

**6. Please list the Name, Street Address, City, State/Province, Country, Postal Code, and Telephone Number for all facilities used by your company to manufacture your voting system product :**

## 7. Manufacturer Certification Agreement:

To maintain a voting system certification under the Election Assistance Commission (EAC) program, the manufacturer must agree to:

1. Represent a voting system as certified only when it is authorized by the EAC and consistent with the procedures and requirements of the Testing and Certification Program Manual (the Manual).
2. Produce and permanently affix an EAC certification label to all production units of the certified system.
3. Notify the EAC of changes to any system previously certified by the EAC pursuant to the requirements of the Manual.
4. Permit an EAC representative to verify manufacturer quality control by coordinating with EAC efforts to test and review fielded voting systems consistent with Section 8.6 of the Manual.
5. Permit an EAC representative to verify manufacturer quality control by conducting periodic inspections of manufacturing facilities consistent with Chapter 8 of the Manual.
6. Cooperate with any EAC inquiries and investigations into a certified systems compliance with voting system standards or the procedural requirements of the Manual.
7. Report to the Program Director any known malfunction of a voting system holding a current EAC Certification. A malfunction is defined as a failure of the voting system, not caused by operator or administrative error, which causes the system to fail or otherwise not operate as designed.
8. Certify that the manufacturer is not bared or otherwise prohibited by statute regulation or ruling from doing business in the United States.
9. Adhere to all procedural requirements of the Manual.

Signature:

Title:

Date:

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### EAC Use Only

Manufacturers  
Designation:

Notes:

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# Instructions:

This form provides for the registration of voting system manufacturers. Registration is the initial required step in the EAC Voting System Certification Program. This form is prescribed by Section 2.4 of the Manual. For more information on registration requirements please see Section 2.4 of the Manual.

This form is generally self-explanatory however the numbers and the instructions below correspond to the numbered sections of the form.

## 1. Manufacturer Information.

**Names of Officers and/or Board of Directors and/or any and all Partners:** Ensure that all individuals are identified by name, and title.

**Name of Individual or Entity with Controlling Ownership in the Manufacturer:** Ensure that the controlling individual is properly named and an address is provided.

## 2. Management Representative.

Please provide the name and information requested for the designated Manufacturer Representative pursuant to Section 2.3 of the Manual.

## 3. Technical Representative.

Please provide the name and information requested for the designated Technical Representative pursuant to Section 2.3 of the Manual.

## 4, 5 and 6

Provide the information listed and attach to your submission the written documentation required by Section 2.3.1 of the Manual.

## 7. Manufacturer Certification Agreement

Manufacturers are required to take or abstain from certain actions consistent with the certification program. Your concurrence to these requirements is signified by affixing the signature of the manufacturer representative.

This information is required for the EAC to provide for the certification of voting systems as required by 42 U.S.C. Section 15371. This information will be used solely to administer the EAC Testing and Certification Program. This program is voluntary, however, individuals who wish to participate must meet the requirements of the Program. This information will be made public consistent with the requirements of the Freedom of Information Act, the Trade Secrets Act, and any other applicable Federal law or regulation. Public reporting burden for this collection of information is estimated to average about XX hours for completion of this form. This estimate includes the time for reviewing the instructions, gathering information and completing the form. Send comments regarding this burden estimate to the Testing and Certification Program Director, Election Assistance Commission, 1225 New York Avenue, N.W., Suite 1100, Washington, DC 20005. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to respond to, or comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

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**SUPPORTING STATEMENT**  
**U.S. Election Assistance Commission**  
**Voting System Testing and Certification Program**

**A. JUSTIFICATION**

**1. Explain the circumstances that make the collection of information necessary.**

HAVA requires that the EAC certify and decertify voting systems (42 U.S.C. §15371). Section 231(a)(1) of HAVA specifically requires the EAC to "... provide for the certification, de-certification and re-certification of voting system hardware and software by accredited laboratories." The EAC will perform this mandated function through the use of its Voting System Testing and Certification Program. Voting systems certified by the EAC will be used by citizens to cast votes in Federal Elections. Therefore, it is paramount that the program operates in a reliable and affective manner. In order to certify a voting system, it is necessary for the EAC to (1) require voting system manufacturers to submit information about their organization and the voting systems they submit for testing and certification; (2) require voting system manufacturers to retain voting system technical and test records; and (3) to provide a mechanism for election officials and other members of the public to report events which may effect a voting system's certification.

The EAC is requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. The EAC is requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR Part 1320(a)(2)(ii). The information collection at issue is necessary in order to provide for the certification of voting systems as mandated by the Help America Vote Act of 2002 (42 U.S.C. §15371). The EAC cannot reasonably comply with the normal clearance procedures because failure to implement this program in an expedited fashion is reasonably likely to result in a public harm, as stated in 5 CFR 1320.13(a)(2)(i).

Approval of this emergency collection is essential in order to comply with Help America Vote Act of 2002 (42 U.S.C. §15371). HAVA requires that the EAC certify and decertify voting systems. This mandate represents the first time the Federal government will provide for the voluntary testing and certification of voting systems, nationwide. In response to this HAVA requirement, the EAC is developing the Voting System Testing and Certification Program. This program requires the collection and retention of information by voting system manufacturers.

Until recently, national voting system certification was conducted by a private membership organization, the National Association of State Election Directors (NASD). NASD certified voting systems for over a decade, using standards issued by the Federal government. The organization terminated its certification efforts on July 10, 2006. While the EAC and NASD have worked together to provide for the certification of emergency modifications necessary to properly field voting systems for the 2006 General Election, there is presently no mechanism in place to test and certify new systems or to process modifications for the 2008 Federal elections. Given the fact that (1) it can take years to develop, test, certify, sell,

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and field a new or modified voting systems; and (2) a large volume of voting systems (new, existing and modified) are expected to be submitted to the EAC upon initiation of the new Certification Program, it is imperative that the EAC's Voting System Testing and Certification Program begin on the earliest possible date. The 2008 Federal elections are less than 2 years away. Ensuring that certified voting systems are available for the 2008 Election Cycle is essential to the public welfare.

**2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.**

The information collected under the EAC Voting System Testing and Certification Program will be used solely by EAC personnel to determine whether a voting system meets voluntary Federal voting system standards. Ultimately, EAC determination regarding whether a voting system is certified will be published. However, the information provided to the EAC to support a grant of certification will be made public subject to the requirements of the Freedom of Information Act and the Trade Secrets Act. A detailed guide regarding the publication of information collected for this program is found in Chapter 10 of the EAC's Voting System Testing and Certification Manual. A copy of the manual has been provided.

**3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.**

The EAC will provide for the secure collection of information using its website. Submission will be accepted using a secure, automated, form-fillable web application. Information will also be accepted via e-mail from identified parties. The EAC is committed to making the submission of information to the agency as secure, efficient, and easy as possible through the use of technology. Ultimately, given the technical sophistication of the group from which we are collecting information, the limited nature of the collection and the small number of participants, electronic filing is an ideal methodology.

**4. Describe efforts to identify duplication.**

The Voting System Testing and Certification Program is new to the EAC. It is the first Federal program of its type. As such, the information we seek has not been collected and is not available from other Federal agencies. As for collection within the program itself, the amount of information sought in Paper Work Reduction Act collections is not significant. This fact, itself, reduces the potential for duplication. Further, in developing the program, the EAC was focused on efficiency. The EAC will assign each participant an identification number. This number can be used to pull all information submitted by the participant and, thus, prevent them from having to provide previously provided information in new contexts or collection efforts.

**5. If the collection of information involves small businesses or other small entities, describe**

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**the methods used to minimize burden.**

This collection of information does not have a significant economic effect on a substantial number of small entities; however, some small businesses or other small entities are among potential respondents. The EAC has made efforts to limit the information requested and burden on all participants. The information sought is limited to that information necessary to certify and maintain a certification for voting systems.

**6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.**

If the EAC does not collect this information, it will be unable to provide for the certification and decertification of voting system hardware and software in accordance with the Help America Voting Act of 2002. As no national body presently exists to perform this function, such a consequence could have a significant negative impact on the nation's election administration.

**7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.**

*(a) Requiring respondents to report information to the agency more often than quarterly.*

Not applicable in this collection.

*(b) Requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it.*

Not applicable in this collection

*(c) Requiring respondents to submit more than an original and two copies of any document.*

Not applicable in this collection.

*(d) Requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than 3 years.*

Not applicable in this collection.

*(e) In connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study.*

Not applicable in this collection.

*(f) Requiring the use of statistical data classification that has been reviewed and approved by OMB.*

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Not applicable in this collection.

*(g) That includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use.*

This collection does not include a pledge of confidentiality not supported by statute or regulation.

*(h) requiring respondents to submit proprietary trade secrets or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.*

This collection does require the collection of proprietary or trade secret information protected by agency procedures. Proprietary technical information on voting systems is necessary to make a determination on certification. The EAC has set procedures and policy for the identification and protection of this information consistent with the requirements of the Freedom of Information Act and the Trade Secrets Act. These policies are laid out in Chapter 10 of the EAC Voting System Testing and Certification Manual. A copy of this manual has been provided.

**8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.**

The EAC is requesting an emergency approval to collect this information. We are requesting a waiver of the 60-day and 30-day *Federal Register* notices required in 5 CFR 1320.13(d) in order to ensure that we comply the Help America Vote Act at meet the needs of the public. However, we intend to publish the program manual and IC forms for a period of 30 days starting on or about October 1, 2006. This will be done before any information collection begins on December 7, 2006.

We have contacted specific manufacturers of voting systems to gather information on the burdens imposed by this collection. We have also gathered them together to discuss the program as a whole and expect another (second) meeting with program participants before the collection of information commences.

**9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.**

We will not provide any payment or gift to respondents in this collection.

**10. Describe any assurance of confidentiality provided to respondents and the basis for**

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**assurance in statute, regulation, or agency policy.**

No assurance of confidentiality has been provided to respondents. Information provided will be made public consistent with the requirements of the Freedom of Information Act and the Trade Secrets Act.

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.**

The collection does not include sensitive or private questions.

**12. Provide an estimate in hours of the burden of the collection of information.**

- (a) Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Generally, estimates should not include burden hours for customary and usual business practices.*
- (b) If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.*
- (c) Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate. The cost of contracting out or paying outside parties for information collection activities should not be included here.*

The EAC will be collecting information on voting systems and their manufacturers. The agency will use three forms to collect this information (1) a manufacturer registration form, (2) a voting system certification application form and (3) a field anomaly reporting form. The program requires the submission and retention of other information regarding the manufacturer and its business practices, the technical aspects of its voting systems and the testing of its voting systems. However this information is not part of this burden analysis as its creation is part of the industry's customary and usual business practices. Moreover, much of the information is and was required by state and local governments, independent of, and prior to, any federal requirement proposed by this voluntary program. The estimated total annual hourly burden on the voting system manufacturing industry and election officials is 114 hours. The estimated annual cost burden to these parties is \$4,610.

- **Manufacturer Registration Form:** The EAC estimates that there are approximately 13 potential respondents. This estimate reflects the number of known entities manufacturing and selling voting systems in the United States. This form is required to be submitted once for participation in the EAC's program. However, it is estimated that based upon organizational changes the form will be amended once every 4 years. Thus, submission is expected once every 4 years or .25 annually. Based upon discussions with industry, completion of this form is estimated to take approximately 3 hours. Therefore, the total estimated, annual, hourly burden for this form will be 9.75 hours (13 respondents X 3

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hours X .25 annual rate). Based on an hourly cost factor of \$80, the total cost to the industry of this information collection is \$780.

- Voting System Certification Application Form: The EAC estimates that there are approximately 13 potential respondents. This estimate reflects the number of known entities selling and manufacturing voting systems in the United States. This form is required to be submitted each time a voting system is submitted for EAC certification. The number of submissions will vary significantly between respondents and from year to year. Based upon the experience of the National Association of State Election Directors, a private organization that previously operated a similar program, the EAC estimates it will receive an average of 54 submissions per year. This averages over 4 submissions per potential respondents, annually. Based upon discussions with industry, completion of this form is estimated to take approximately .5 hours. Therefore, the total annual hourly burden for this form will be 27 hours. Based on an hourly cost factor of \$80, the total cost to the industry of this information collection is \$2,160.
- Field Anomaly Reporting Form. This form may be used by election officials (state employees), in a purely voluntary capacity, to report problems with certified voting systems. Respondents are election officials who have witnessed a voting system anomaly. This is a new Federal program. No historic data exists to quantify the number of respondents. There are approximately 8,100 election officials in the United States. Assuming an anomaly rate of 1% per election year, the EAC estimates the submission of 81 responses and respondents per election year. As Federal elections take place once every 2 years, the annual submission and respondent estimate is 41, annually. The EAC estimates that this form will take 2 hours to complete. Therefore, the total annual hourly burden for this form will be 82 hours a year. Based upon an average hourly cost factor of \$25 for election officials, the total estimated cost of such submissions is \$2,050.

**13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in #12 above).**

- (a) The cost estimate should be split into two components: (1) a total capital and start-up cost component (annualized over its expected useful life) and (2) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information [including filing fees paid]. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.*
- (b) If cost estimates are expected to vary widely, agencies should present ranges of cost burden and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents.*

*(fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.*

- (c) Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.*

The EAC has identified no “non-hour” cost burdens for this collection of information that are not part of the effected industry’s customary and usual business practices.

**14. Provide estimates of annualized cost to the Federal government.**

The estimated annual cost to the Federal Government is \$902,000. This estimate includes \$624,000 for technical experts to review and accept collections, \$180,000 for personnel to administer and manage collections, \$46,000 in training costs, \$42,000 for program printing and website management and \$10,000 for equipment and overhead.

- We estimate \$624,000 to provide for technical experts to review and accept collections. These experts have an average pay \$100 an hour. We expect to have six experts working half time (1040 Hrs a year).
- We estimate \$180,000 for personnel to administer and manage the collections. Two full time personnel will be assigned to this program. With an average cost (pay and benefits) of approximately \$90,000 a year.
- We estimate \$46,000 in training program costs. This includes travel costs, training program development costs and training personnel.
- We estimate \$42,000 for program printing and website development, maintenance and administration.
- We estimate \$10,000 for equipment costs and overhead.

**15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.**

This is the first time this information collection or the program upon which it is based has been performed by the Federal government.

**16. For collections whose results will be published, outline the plans for tabulation and publication.**

Not applicable to this collection.

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.**

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Not applicable to this collection.

**18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.**

To the extent that the topics apply to this collection of information, we are not making any exceptions to the “Certification for Paperwork Reduction Act Submissions.”

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

*(This collection does not employ statistical methods)*



**United States  
Election Assistance  
Commission**

1225 New York Ave. N.W.  
Ste. 1100  
Washington, DC 20005

**Testing and Certification  
Program Manual  
2006**

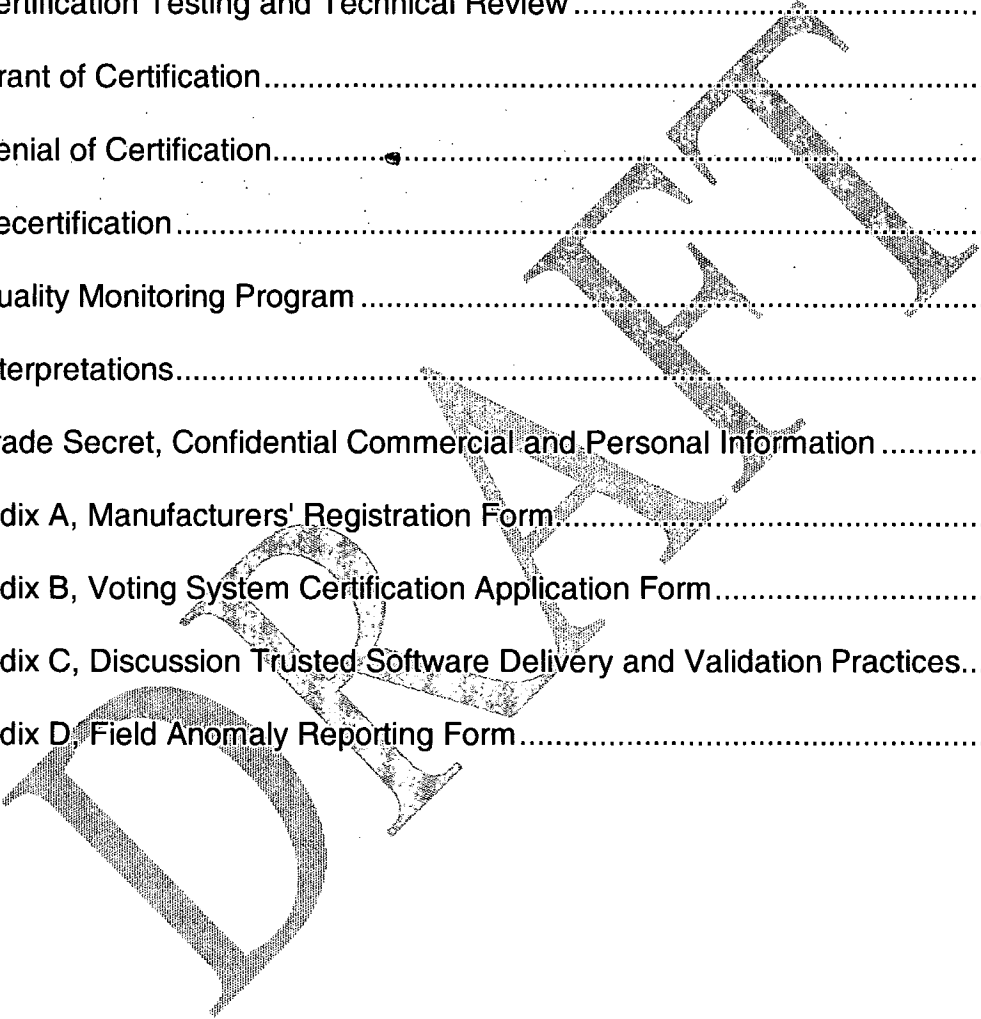
**DRAFT**

[www.eac.gov](http://www.eac.gov)

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## 1. Introduction

- 1.1. Background.** The Federal Election Commission adopted the first formal set of voluntary national standards for computer-based voting systems in January 1990. At that time, no national program or organization existed to test and certify such systems to the standards. The National Association of State Election Directors (NASSED) stepped up to fill this void in 1994. NASSED is an independent, non-governmental organization of state election officials. The organization formed the nation's first national program to test and qualify voting systems to the new Federal standards. The organization worked for over a decade, on a strictly voluntary basis, to help assure the reliability, consistency and accuracy of voting systems fielded in the United States. In late 2002, Congress passed the Help America Vote Act of 2002 (HAVA). HAVA created the U.S. Election Assistance Commission (EAC) and assigned to the EAC the responsibility for both setting voting system standards and providing for the testing and certification of voting systems. This mandate represented the first time the Federal government provided for the voluntary testing and certification of voting systems, nationwide. In response to this HAVA requirement, the EAC has developed the Federal Voting System Testing and Certification Program (Certification Program).
- 1.2. Authority.** HAVA requires that the EAC certify and decertify voting systems. Section 231(a)(1) of HAVA specifically requires the EAC to "... provide for the certification, de-certification and re-certification of voting system hardware and software by accredited laboratories." The EAC has the sole authority to grant certification or withdraw certification at the Federal level. This includes the authority to grant, maintain, extend, suspend and withdraw the right to retain or use any certificates, marks or other indicators of certification.
- 1.3. Scope.** This manual provides the procedural requirements of the EAC Voting System Testing and Certification Program. While participation in the program is voluntary, adherence to the program's procedural requirements is mandatory for participants. The procedural requirements of the manual supersede any prior voting system certification requirements issued by the EAC.
- 1.4. Purpose.** The primary purpose of this program is to provide for the testing and certification of voting systems to specified Federal standards consistent with the requirements of HAVA Section 321(a)(1). However, the program also serves to:
- 1.4.1. Support state certification programs;
  - 1.4.2. Support local election officials in the areas of acceptance testing and pre-election system verification;
  - 1.4.3. Increase quality control in voting system manufacturing; and
  - 1.4.4. Increase voter confidence in the use of voting systems.
- 1.5. Manual.** This manual is a comprehensive presentation of the EAC Voting System Testing and Certification Program. It is intended to establish all of the program requirements.

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- 1.5.1. Contents. The contents of the manual serve as an overview to the program itself. The manual contains the following chapters:
- 1.5.1.1. *Manufacturer Registration*. Under the program, manufacturers are required to register with the EAC prior to participation. This registration provides the EAC with needed information and requires the manufacture to agree to the requirements of the Certification Program. This chapter sets out the requirements and procedure for registration.
  - 1.5.1.2. *When Voting Systems Must Be Submitted for Testing and Certification*. All systems must be submitted consistent with this manual before they may receive a certification from the EAC. This chapter discusses the various circumstances that require submission in order to obtain or maintain a certification.
  - 1.5.1.3. *Certification Testing and Review*. Under this program, the testing and review process requires the completion of an application, employment of an EAC accredited laboratory for system testing, and technical analysis of the laboratory test report by the EAC. The result of this process is an Initial Decision on Certification. This chapter discusses the required step for voting system testing and review.
  - 1.5.1.4. *Grant of Certification*. If an initial decision to grant certification is made, the manufacturer must take additional steps before it may be issued a certification. These steps require the Manufacturer to document the performance of a trusted build, the deposit of software into a repository and the creation of system identification tools. This chapter outlines the action that manufacturers must take to receive a certification and its post certification responsibilities.
  - 1.5.1.5. *Denial of Certification*. If an initial decision to deny certification is made, the manufacturer has certain rights and responsibilities under the program. This chapter contains procedures for requesting reconsideration, opportunity to cure defects, and appeal.
  - 1.5.1.6. *Decertification*. Decertification is the process by which the EAC revokes a Certification it previously granted to a voting system. It is an important part of the Certification Program, as it serves to ensure that the requirements of the program are followed and that certified voting systems fielded for use in our Federal elections maintain the same level of quality as those presented for testing. This chapter sets procedures for decertification and explains the manufacturer's rights and responsibilities during that process.
  - 1.5.1.7. *Quality Monitoring Program*. Under the Certification Program, EAC will implement a quality monitoring process that will help ensure that voting systems certified by the EAC are the same systems sold by manufacturers. The quality monitoring process is a mandatory part of the program and

includes elements such as fielded voting system review, anomaly reporting, and manufacturing site visits. This chapter sets forth the requirements of the Quality Monitoring Program.

1.5.1.8. *Interpretation.* An interpretation is a means by which a registered manufacturer or VSTL may seek clarification on a specific Voluntary Voting System Guideline standard. This chapter outlines the policy, requirements, and procedure for requesting an Interpretation.

1.5.1.9. *Trade Secrets, Confidential Commercial and Personal Information.* Federal law protects certain types of information individuals provided the government from release. This chapter outlines the program's policies, sets procedures and discusses responsibilities associated with the public release of potential protected commercial information.

1.5.2. Maintenance and Revision. This manual sets the procedural requirements for a new Federal program and is expected to be improved and expanded as experience and circumstances dictate. The manual will be reviewed periodically and updated to meet the needs of the EAC, Manufactures, VSTLs, election officials and public policy. The EAC is responsible for revisions of this document. All revisions will be made consistent with Federal law. Substantive input from stakeholders and the public will be sought whenever possible, at the discretion of the agency. Changes in policy requiring immediate implementation will be noticed via policy memorandum and issued to each registered manufacturer. Changes, addendums, or updated versions will also be posted to the EAC website at [www.eac.gov](http://www.eac.gov).

**1.6. Program Methodology.** EAC's Voting System Testing and Certification Program is but one part of the overall conformity assessment process that includes companion efforts at the state and local levels:

1.6.1. Federal and State Roles. The process to assure that voting equipment meets the technical requirements is a distributed, cooperative effort of federal, state and local officials in the United States. Working with voting equipment manufacturers these officials each have unique responsibility for assuring that the equipment a voter uses on Election Day meets specific requirements.

1.6.1.1. The EAC testing and certification program plays a vital role in the process. The EAC program has primary responsibility for assuring that system designs meet the foundational requirements for all voting equipment in the US.

1.6.1.2. State officials have responsibility for testing voting systems to ensure that they will support the specific requirements of each individual state. Typically state officials will perform mock elections to confirm that a voting system will perform as intended within the election management process of that particular state.

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- 1.6.1.3. State or local officials are responsible for making the final purchase choice. They are responsible to decide which system offers the best fit and total value for their specific state or local jurisdiction.
- 1.6.1.4. In addition, state or local officials are also responsible for acceptance testing, to assure that the equipment delivered is identical to the equipment certified on the federal and state level is fully operational and meets the contractual requirements of the purchase.
- 1.6.1.5. State or local officials perform pre-election logic and accuracy testing to confirm that equipment is operating properly and is unmodified from its certified state.
- 1.6.2. Conformity Assessment, Generally. Conformity assessment is a system established to ensure that a product or service meets the requirements that apply to it. Many conformity assessment systems exist to protect the quality and assure compliance with requirements of products and services. All conformity assessment systems attempt to answer some simple yet difficult questions:
  - 1.6.2.1. *What specifications are required of an acceptable system?* For voting systems, the EAC voting system standards (VVSG and VSS) address this issue. States and local jurisdiction also have supplementing standards.
  - 1.6.2.2. *How are systems tested against required specifications?* The EAC Voting System Testing and Certification Program is a central element of the larger conformity assessment system. The program, as set forth in this manual, provides for the testing and certification of voting systems to identified versions of the VVSG. The testing and certification program's purpose is to assure that state and local jurisdictions receive voting systems that meet the requirements of the VVSG.
  - 1.6.2.3. *Are the testing authorities qualified to make an accurate evaluation?* The EAC accredits Voting System Testing Laboratories (VSTLs), after the National Institute of Standards and Technology (NIST) National Voluntary Lab Accreditation Program (NVLAP) has reviewed their technical competence and lab practices, to ensure these test authorities are fully qualified. Furthermore, EAC technical experts review all test reports from accredited laboratories to ensure accurate and complete evaluation. Many states provide similar reviews of laboratory reports.
  - 1.6.2.4. *Will Manufacturers deliver units within manufacturing tolerances to those tested?* The VVSG and this manual require that vendors have appropriate change management and quality control processes to control the quality and configuration of their products. The Certification Program provides mechanisms for the EAC to verify manufacturer quality processes through

field system testing and manufacturing site visits. States have implemented policies for acceptance of delivered units.

- 1.7. Program Personnel.** All EAC personnel and contractors associated with this program will be held to the highest ethical standards. All agents of the EAC involved in the certification program will be subject to a conflict of interest reporting and review, consistent with Federal law and regulation.
- 1.8. Program Records.** The EAC Program Director is responsible for maintaining accurate records to demonstrate that the testing and certification program procedures have been effectively fulfilled and to ensure the traceability, repeatability, and reproducibility of testing and test report review. All records will be maintained, managed, secured, stored, archived and disposed of in accordance with Federal law, regulation and procedures of the EAC.
- 1.9. Submission of Documents.** Any documents submitted pursuant to the requirements of this manual shall be submitted:
- 1.9.1. Electronically, either via secure e-mail or physical delivery of CD-ROM, unless otherwise specified;
  - 1.9.2. In an unalterable Microsoft Word or Adobe PDF format.
  - 1.9.3. Using an electronic signature. Documents that require an authorized signature shall be signed with the electronic signature (digitized) of an authorized management representative and must meet any and all subsequent requirements established by the Program Director regarding security.
  - 1.9.4. If via physical delivery, shall be sent by certified mail (or similar means that allow tracking) to:  

Testing and Certification Program Director,  
U.S. Election Assistance Commission  
1225 New York Ave, Suite 1100  
Washington, DC 20005
- 1.10. Receipt of Documents.** For the purposes of this manual, a document, notice or other communication is considered received by a manufacturer upon the earlier of:
- 1.10.1. The actual, documented date the correspondence was received (either electronically or physically) at the manufacturer's place of business; or
  - 1.10.2. The date of constructive receipt for the communication. For electronic correspondence, documents will be constructively received the day after the date sent. For mail correspondence, document will be constructively received three days after the date sent.

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1.10.3. The term receipt shall mean the date a document or correspondence arrived (either electronically or physically) at the Manufacturer's place of business. Arrival does not require that an agent of the manufacturer opened, read or review the correspondence.

**1.11. Records Retention.** The manufacturer is responsible for ensuring that all documents submitted to the EAC or that otherwise serve as the basis for the certification of a voting system are retained. A copy of all such records shall be retained as long as the voting system is in use or for sale in the United States and for three years thereafter.

**1.12. Publication and Release of Documents.** The EAC will release documents consistent with the requirements of Federal law. It is EAC policy to make the certification process as open and public as possible. To this end, any documents submitted under this program and not protected from release by law, will be made available to the public. The primary means for making this information available is through the EAC website.

**1.13. Definitions.** For the purpose of this manual, the terms listed below have the following definitions.

Appeal: A formal process by which the EAC is petitioned to reconsider a final agency decision.

Appeal Authority: The individual or individuals appointed to serve as the determination authority on appeal.

Build Environment: The disk or other media which holds the source code, compiler and other necessary files for the compilation and on which the compiler will store the resulting executable code. A compiler is a computer program that translates programs expressed in a high-order language into their machine language equivalents.

Certificate of Conformance: The certificate issued by the EAC when a system has been found to meet the requirements of the VVSG. The document conveys certification of a system.

Commission: The U.S. Election Assistance Commission, as an agency.

Commissioners: The serving commissioners of the U.S. Election Assistance Commission.

Days: The term days shall refer to calendar days, unless otherwise noted. When counting days, for the purpose of submitting or receiving a document, the count shall begin on the first full calendar day after the day the document was received.

Digital Signature: The signature of a file produced using a HASH algorithm. A digital signature creates a value that is "Computationally infeasible" for two different files less than 264 bits in size produce the same value. Digital signatures are utilized to verify that files are unmodified from their original. For the purposes of this manual, the HASH algorithm shall be the minimum current recommendation of the NIST NSRL, which is currently the Secure Hash Algorithm (SHA-1) specified in FIPS 180-1.

Disk Image: An exact copy of the entire contents of a computer disk.

Election Official: A state or local government employee, who has as one of his or her primary duties the management or administration of a Federal Election.

Federal Election: Any primary, general, run-off or special election in which a candidate for Federal office (President, Senator or Representative) appears on the ballot.

Fielded Voting System: A voting system purchased or leased by a state or local government that is being use in a Federal Election.

Installation Disk: A computer disk containing program files and software to install them onto a computer or other device.

Memorandum for the Record: A written statement drafted to document an event or finding, without a specific addressee other than the pertinent file.

Manufacturer: The entity with ownership and control over a voting system submitted for certification.

Mark of Conformance: A uniform notice permanently posted on a voting system which signifies that it has been certified by the EAC.

Proprietary Information: Commercial information or trade secrets protected from release under the Freedom of Information Act and the Trade Secrets Act.

Receipt (of a document): For the purposes of this manual

Technical Reviewers: Technical experts in the areas of voting system technology and conformity assessment used by the EAC to provide expert guidance.

Testing and Certification Decision Authority: The EAC Executive Director or individual appointed by the Executive Director authorized to make final agency determinations on certification.

Testing and Certification Program Director: The individual appointed by the EAC Executive Director to administer and manage the Testing and Certification Program.

Voting System: The total combination of mechanical, electromechanical and electronic equipment that is used to define ballots; to cast and count votes; to report or display election results; to connect the voting system to the voter registration system; and to maintain and produce any audit trail information.

Voting System Test Laboratories: Laboratories accredited by the EAC to test voting systems to the VVSG, consistent with the requirements of this manual.

Voting System Standards: Voluntary voting system standards developed by the Federal Election Commission. Voting System Standards have been published twice, once in 1990 and again in 2002. The Help America Vote Act made the 2002 Voting System Standards EAC guidance. All new voting system standards are issued by the EAC as Voluntary Voting System Guidelines.

Voluntary Voting System Guidelines: Voluntary voting system standards developed, adopted and published by the EAC. The guidelines are identified by version number and date.

**1.14. Acronyms and Abbreviations.** For the purpose of this manual, the acronyms and abbreviations listed below represent the following terms.

Certification Program: The EAC Voting System Testing and Certification Program

EAC: United States Election Assistance Commission

Decision Authority: Testing and Certification Decision Authority

HAVA: Help America Vote Act of 2002

Labs or Laboratories: Voting System Test Laboratories

NIST: National Institute of Standards and Technology

NVLAP: National Voluntary Laboratory Accreditation Program

Program Director: Director of the EAC's Testing and Certification Program

VSTL: Voting System Test Laboratory

VSS: Voting System Standards

VVSG: Voluntary Voting System Guidelines

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## 2. Manufacturer Registration

**2.1. Overview.** Manufacturer Registration is the process by which voting system manufacturers make initial contact with the EAC and provide information essential to participate in the EAC's voting system testing and certification program. Before a manufacturer of a voting system can submit an application to have a voting system certified by the EAC, the vendor must be registered. This process requires the manufacturer to provide certain contact information and agree to certain requirements of the Certification Program. Once successfully registered, the manufacturer will receive an identification code.

**2.2. Registration Required.** In order to submit a voting system for certification or otherwise participate in the EAC Voluntary Voting System Certification Program, a manufacturer must register with the EAC.

**2.3. Registration Requirements.** The registration process will require the voting system manufacturer to provide certain information to the EAC. This information is necessary to enable the EAC to administer the Certification program and communicate effectively with the Manufacturer. The registration process also requires the Manufacturer to agree to certain certification program requirements. These requirements deal with some of the manufacturer's duties and responsibilities under the program. In order for this program to succeed it is vital that a manufacturer know and assent to these duties at the outset of the program.

**2.3.1. Information.** Manufactures are required to provide the following information:

2.3.1.1. The manufacturer's organizational information, including:

2.3.1.1.1. The official name of the manufacturer;

2.3.1.1.2. Address of manufacturer's official place of business;

2.3.1.1.3. A description of how the manufacturer is organized (i.e. type of corporation or partnership);

2.3.1.1.4. Names of officers and/or members of the board of directors;

2.3.1.1.5. Names of any and all partners;

2.3.1.1.6. Identification of any individual, organization or entity with a controlling ownership interest in the manufacturer;

2.3.1.2. The identity of an individual authorized to represent and make binding commitments and management determinations for the Manufacturer (management representative). The information required for the individual includes:

2.3.1.2.1. Name and title;

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- 2.3.1.2.2. Mailing and physical addresses;
- 2.3.1.2.3. Telephone number, fax number and email address.
- 2.3.1.3. The identity an individual authorized to provide technical information on behalf of the manufacturer (technical representative). The information required for the individual includes:
  - 2.3.1.3.1. Name and title;
  - 2.3.1.3.2. Mailing and physical addresses;
  - 2.3.1.3.3. Telephone number, fax number and email address
- 2.3.1.4. The Manufacturer's written policies regarding its quality assurance system. This policy must be consistent with guidance provided in the VVSG and this manual.
- 2.3.1.5. The Manufacturer's written polices regarding internal procedures for controlling and managing changes to and versions of its voting systems. Such polices shall be consistent with this manual and guidance provided in the VVSG.
- 2.3.1.6. The Manufacturer's written polices on document retention. Such policies must be consistent with the requirements of this manual.
- 2.3.1.7. A list of production facilities used by the Manufacturer and the name and contact information of a person at each facility. The information required for each individual, includes:
  - 2.3.1.7.1. Name and title;
  - 2.3.1.7.2. Mailing and physical addresses; and
  - 2.3.1.7.3. Telephone number, fax number and email address.
- 2.3.2. Agreements. Manufacturers are required to take or abstain from certain actions in order to protect the integrity of the certification program and promote quality assurance. Manufacturers are required to agree to the following program requirements:
  - 2.3.2.1. Represent a voting system as certified only when authorized by the EAC and consistent with the procedures and requirements of this manual.

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- 2.3.2.2. Produce and permanently affix an EAC certification label to all production units of the certified system. Such labels must meet the requirements put forth in Chapter 5.
- 2.3.2.3. Notify the EAC of changes to any system previously certified by the EAC pursuant to the requirements of this Manual (see Chapter 3). Such systems shall be submitted for testing and additional certification when required.
- 2.3.2.4. Permit an EAC representative to verify manufacturer quality control, by cooperation with EAC efforts to test and review fielded voting systems consistent with Section 8.6 of this Manual.
- 2.3.2.5. Permit an EAC representative to verify manufacturer quality control, by conducting periodic inspections of manufacturing facilities consistent with Chapter 8 of this Manual.
- 2.3.2.6. Cooperate with any EAC inquiries and investigations into a certified systems compliance with VVSG standards or the procedural requirements of this manual consistent with Chapter 10.
- 2.3.2.7. Report to the Program Director any known malfunction of a voting system holding an EAC Certification. A malfunction is failure of a voting system, not caused by operator or administrative error, which causes the system to fail or otherwise not operate as designed.
- 2.3.2.8. Certify that the entity is not bared or otherwise prohibited by statute, regulation or ruling from doing business in the United States.
- 2.3.2.9. Adhere to all procedural requirements of this Manual.

**2.4. Registration Process.** Generally, registration is accomplished through use of the EAC registration form. Once a registration form and other required registration documents have been received by the EAC, the information is reviewed for completeness and approved.

2.4.1. Application Process. To become a registered voting system manufacturer, one must apply by submitting a Manufacturer Registration Application Form (Appendix A). This form will be used as the means for the manufacturer to provide the information and agree to the responsibilities required in section 2.3, above.

2.4.1.1. *Application Form.* In order for the EAC to accept and process the registration form:

2.4.1.1.1. All fields must be completed by the manufacturer;

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- 2.4.1.1.2. All required attachments prescribed by the form and this manual are identified, complete and timely forwarded to the EAC (i.e. Manufacturer's quality control and system change policies); and
- 2.4.1.1.3. The application form is affixed with the signature (including a digital representation of a hand written signature) of the authorized representative of the vendor.

2.4.1.2. *Availability and Use of the Form.* The Manufacturer Registration Application Form may be accessed through the EAC web site at [www.eac.gov](http://www.eac.gov). Instructions for completing and submitting the form are included on the website. The website will also provide contact information regarding questions about the form or the application process.

#### 2.4.2. EAC Review Process.

- 2.4.2.1. Once the application form and required attachments have been submitted, the applicant will receive an acknowledgement that the EAC has received the submission and that the application will be processed.
- 2.4.2.2. If a form is submitted incomplete or an attachment is not provided, the EAC will notify the manufacturer and request the information. Registration applications will not be processed unless they are complete.
- 2.4.2.3. Upon receipt of the completed registration form and accompanying documentation, the EAC will review the information for sufficiency. If the EAC requires clarification or additional information, the EAC will contact the manufacturer and request the needed information.
- 2.4.2.4. Upon satisfactory completion of a registration application's sufficiency review, the EAC will notify the Manufacturer that it has been registered.

**2.5. Registered Manufacturers.** Once a manufacturer has received notice that it is registered, it will receive an identification code, password and will be eligible to participate in the voluntary voting system certification program.

2.5.1. Manufacturer Code. Registered manufacturers will be issued a unique, three-letter identification code. This code will be used to identify the manufacturer and its products.

2.5.2. Continuing Responsibility to Report. Registered Manufacturers are required to keep all registration information up-to-date. Manufacturers must submit a revised application form to the EAC within 30 days of any changes to the information required on the

application form. Manufacturers will remain registered participants in the program during this up-date process.

2.5.3. Program Information Updates. Registered manufacturers will be automatically provided timely information relevant to the certification program.

2.5.4. Website Postings. The EAC will add the Manufacturer to the EAC listing of registered voting system Manufacturers publicly available at [www.eac.gov](http://www.eac.gov).

**2.6. Suspension of Registration.** Manufacturers are required to establish policies and operate within the EAC certification program consistent with the procedural requirements laid out in this Manual. When manufacturers are engaging in management activities that violate the program's requirements, their registration may be suspended until such time as the problem is remedied.

2.6.1. Procedures. Where a manufacturer's activities violate the procedural requirements of this manual they will be notified of the violations, given an opportunity to respond and provided the steps required to bring themselves into compliance.

2.6.1.1. *Notice*. Manufacturers shall be provided written notice that they have taken action inconsistent with or failed to act in violation of the requirements of this manual. The notice will state the violations and the specific steps required to cure them. The notice will also provide them with 30 days (or a greater period of time as stated by the Program Director) to (1) respond to the notice and/or (2) cure the defect.

2.6.1.2. *Manufacturer Action*. The Manufacturer is required to either timely respond to the notice (demonstrating that it was not in violation of program requirements) or timely cure the violations identified. In any case, Manufacturer action must be approved by the Program Director to prevent suspension.

2.6.1.3. *Non-Compliance*. If the Manufacturer fails to timely respond, is unable to provide a cure or response acceptable the Program Director, or otherwise refuses to cooperate, the Program Director may suspend the Manufacturer's registration. The Program Director shall issue a notice of his or her intent to suspend and provide the Manufacturer five working days to object to the action and submit information in support of the objection.

2.6.1.4. *Suspension*. After notice and opportunity to be heard (consistent with the above), the Program Director may suspend a Manufacturer's registration. The suspension shall be noticed in writing. The notice must inform the Manufacturer of the steps that can be taken to remedy the violations and lift the suspension.

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2.6.2. Effect of Suspension. A suspended Manufacturer may not submit a system for certification under this program. A suspension shall remain in effect until lifted. Manufacturers always have the right to remedy a non-compliance and lift a suspension consistent with EAC guidance. Failure of a Manufacturer to follow the requirements of this section may also result in decertification of voting systems consistent with Chapter 7 of this Manual.

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### 3. When Voting Systems Must Be Submitted for Testing and Certification.

**3.1. Overview.** An EAC Certification signifies that a voting system has been successfully tested to identified, voting system standards adopted by the EAC. Only the EAC can issue a Federal Certification. Ultimately, systems must be submitted for testing and certification under this program to receive this certification. Systems will usually be submitted when (1) they are new to the marketplace, (2) they have never before received an EAC Certification, (3) they are modified and (4) the manufacturer wishes to test a previously certified system to a different (newer) standard.

**3.2. What is an EAC Certification?** Certification is the process by which the EAC, through testing and evaluation conducted by an accredited Voting System Test Laboratory (VSTL), validates that a voting system meets the requirements set forth in existing voting system testing standards (VSS or VVSG), and performs according to the manufacturer's specifications for the system. An EAC Certification may only be issued by the EAC in accordance with the procedures laid out in this manual. Certifications issued by other bodies (e.g. NASED and state certification programs) are not EAC Certifications.

**3.2.1. Types of voting systems certified.** The EAC Certification Program is designed to test and certify electromechanical and electronic voting systems. The EAC will not accept for certification review voting systems that do not contain any electronic components. Ultimately, the determination of whether a voting system meets these requirements is a determination of the EAC.

**3.2.2. Voting system standards.** Voting systems certified under this program are tested to a set of voluntary standards providing requirements that voting systems must meet to receive a Federal Certification. Presently, these standards are referred to as Voluntary Voting System Guidelines (in the past they were called Voting System Standards).

**3.2.2.1. Versions—availability and identification.** Voluntary Voting System Guidelines (or applicable Voting System Standards) are published by the EAC and available on the EAC website ([www.eac.gov](http://www.eac.gov)). The standards will be routinely updated. Versions will be identified by version number and/or release date.

**3.2.2.2. Versions—basis for certification.** The EAC will promulgate which version or versions of the standards it will accept as the basis for testing and certification. This may be accomplished through the setting of an implementation date for a particular version's applicability or the setting a date by which testing to a particular version is mandatory. The EAC will only certify voting systems tested to standards it has identified as valid for certification.

**3.2.2.2.1. End date.** When a version's status as the basis of an EAC Certification is set to expire on a date certain, the submission of the system's test report will be the controlling event (See Chapter 4). This means the system's test report must be received by the EAC

on or before the end date to be certified to the terminating standard.

3.2.2.2.2. **Start date.** When a version's status as the basis of an EAC Certification is set to begin on a date certain, the submission of the system's application for certification will be the controlling event (See Chapter 4). This means the system's application, requesting certification to the new standard, will not be accepted by the EAC until the start date.

3.2.2.3. **Version—manufacturer's option.** When the EAC has authorized certification to more than one version of the standards, the manufacturer must choose which version it wishes to have its voting system tested against. The voting system will then be certified to that version of the standard. Manufacturers must ensure that all applications for certification identify a particular version of the standards.

3.2.2.4. **Emerging technologies.** If a voting system or component thereof is eligible for a certification under this program (see Section 3.2.1.) and employs technology which is not addressed by a presently accepted version of the VVSG or VSS, the system shall be subjected to full integration testing and testing to ensure that it operates to the manufacturer's specifications. Information on emerging technologies will be forwarded to the U.S. Election Assistance Commission's Technical Guidelines Development Committee.

3.2.3. **Significance of an EAC Certification.** An EAC certification is an official recognition that a voting system (in a specific configuration) has been tested to and met an identified set of Federal voting standards. An EAC Certification is not:

3.2.3.1. an endorsement of a manufacturer, voting system or any of the system's components;

3.2.3.2. a Federal warranty of the voting system or any of its components;

3.2.3.3. a determination that a voting system, when fielded, will meet all HAVA requirements;

3.2.3.4. a substitute for State or local certification and testing;

3.2.3.5. a determination that the system is ready for use in an election; or

3.2.3.6. a determination that any particular component of a certified system is itself certified for use outside the certified configuration.

**3.3. Effect of EAC Certification Program on Other National Certifications.** Prior to the creation of the EAC Certification Program, national voting system qualification was conducted

by a private membership organization, the National Association of State Election Directors (NASED). NASED offered a qualification for voting systems for over a decade, using standards issued by the Federal government. EAC's certification program does not repeal NASED issued qualifications. All voting systems previously qualified under the NASED program retain their NASED qualification consistent with state law. In any event, a NASED qualified voting system is not EAC Certified and is treated like an uncertified system for the purposes of this program.

**3.4. When Certification is Required under the Program.** In order to obtain or maintain an EAC Certification, manufacturers must submit a voting system for testing and certification under this program. Such action is usually required for (1) new systems not previously tested to any standard; (2) existing systems not previously certified by the EAC; (3) previously certified systems that have been modified; or (4) previously certified systems which the manufacturer seeks to upgrade to a higher standard (i.e. more recent version of the VVSG).

3.4.1. New System Certification. New systems are defined, for the purposes of this manual, as voting systems which have not been previously tested to applicable Federal standards. New voting systems must be fully tested and submitted to the EAC per the requirements of Chapter 4 of this manual.

3.4.2. Systems not previously EAC Certified. This term describes any voting system not previously certified by the EAC. This includes systems previously tested and qualified by NASED or systems previously test and denied certification by the EAC. Such systems must be fully tested and submitted to the EAC per the requirements of Chapter 4 of this manual.

3.4.3. Modifications. A modification is any change to a *previously EAC Certified voting system's* hardware, software or firmware. Modifications to voting systems will require testing and review by the EAC in accordance with the requirements of Chapter 4 of this manual.

3.4.4. Certification Upgrade. This term defines any system previously certified by the EAC, but submitted for additional testing and certification to a higher standard (i.e. to a newer version of the VVSG). Such systems must be tested to the new standards and submitted to the EAC per Chapter 4 of this manual.

**3.5. Provisional, Pre-Election Emergency Modifications.** In order to deal with extraordinary, pre-election, emergency situations, the EAC has developed a special provisional modification process. This process is **only** to be used for the emergency situations indicated, and **only** when there is a clear and compelling need for temporary relief until the regular certification process can be followed.

3.5.1. Purpose. The purpose of this section is to allow a mechanism within the EAC Certification Program for manufacturers to modify EAC certified voting systems in emergency situations immediately prior to an election. This situation arises when a modification to a voting system is required and an election deadline is imminent,

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preventing the completion of the full certification process (and State and/or local testing process) in time for Election Day. In such situations the EAC may issue a waiver to the manufacturer, granting it leave to make the modification without submission for modification testing and certification.

- 3.5.2. General Requirements. A request for an emergency modification waiver may only be made by a manufacturer *in conjunction* with the State or local election official whose jurisdiction(s) would be adversely affected if the requested modification were not implemented before Election Day. Requests must be submitted at least five calendar day prior to an election. Only systems previously certified are eligible for such a waiver. To receive a waiver a manufacturer must demonstrate:
- 3.5.2.1. The modification is functionally or legally required, such that the system cannot be fielded in an election without the change.
  - 3.5.2.2. The voting system requiring modification is need by state or local election officials to conduct a pending Federal election.
  - 3.5.2.3. The voting system to be modified has previously been certified by the EAC.
  - 3.5.2.4. The modification cannot be tested by a VSTL and submitted to the EAC for certification, consistent with the procedural requirements of this manual, at least 30 days before the pending Federal election.
  - 3.5.2.5. Relevant state law requires Federal certification of the requested modification.
  - 3.5.2.6. The manufacturer has taken steps to ensure that the modification will properly function as designed, is suitably integrated with the system and otherwise will not negatively affect system reliability, functionality and accuracy.
  - 3.5.2.7. The Manufacturer has completed as much of the evaluation testing as possible for the modification and has provided the results of such testing to the EAC.
  - 3.5.2.8. The emergency modification is required and otherwise supported by an election official seeking to field the voting system in an impending Federal election.
- 3.5.3. Request for Waiver. A Manufacturer's request for waiver shall be made in writing to the Decision Authority and shall include:
- 3.5.3.1. A statement providing sufficient description, background, information, documentation and other evidence necessary to demonstrate that the request for a waiver meets each of the eight requirements stated in section 3.5.2., above.

- 3.5.3.2. A signed statement from the chief election official in the locality or state which is requiring the emergency modification. This signed statement shall identify the pending election creating the emergency situation and attest that (1) the modification is required to field the system, (2) state law requires EAC action in order to field the system in an election, and (3) normal timelines required under the EAC Certification Program cannot be met.
- 3.5.3.3. A signed statement from a VSTL that there is insufficient time to perform necessary testing and complete the certification process. The statement shall also state what testing has been performed on the modification to date, provide the results of such tests and state the schedule for completion of testing.
- 3.5.3.4. A detailed description of the modification, the need for the modification, how it was developed, how it addresses the need for which it was designed, its impact on the voting system, and how the modification will be timely fielded or implemented.
- 3.5.3.5. Any and all documentation of tests performed on modification by the manufacturer, a laboratory or other third party.
- 3.5.3.6. A stated agreement signed by the manufacturer's representative agreeing to:
- 3.5.3.6.1. Submit for testing and certification, consistent with Chapter 4 of this manual, any voting system receiving a waiver under this section which has not already been submitted. This shall be done immediately.
- 3.5.3.6.2. Abstain from representing the modified system as EAC certified. The modified system has not been certified; rather the originally certified system has received a waiver providing the manufacturer leave to modify it.
- 3.5.3.6.3. Submit a report to the EAC regarding the performance of the modified voting system within 60 days of the Federal election which served as the basis for the waiver. This report shall identify and describe any (1) performance failures, (2) technical failures, (3) security failures, and/or (4) accuracy problems.
- 3.5.4. EAC review. EAC will review all waiver requests timely submitted and make determinations regarding the requests. Incomplete requests will be returned for resubmission with a written notification regarding its deficiencies.
- 3.5.5. Letter of Approval. If the EAC approves the modification waiver, the Decision Authority shall issue a letter granting the temporary waiver.

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- 3.5.6. Effect of Grant of Waiver. An EAC grant of waiver for an emergency modification is not an EAC certification of the modification. Waivers under this program only grant manufacturers leave to temporarily amend previously certified systems without testing and certification for the specific election noted in the request. Without such a waiver, such action would ordinarily result in decertification of the modified system. Systems receiving a waiver shall satisfy any state requirement that a system be nationally or Federally certified. Additionally:
- 3.5.6.1. All waivers are temporary and expire 60 days after the Federal Election for which the system was modified and waiver granted.
  - 3.5.6.2. Any system granted a waiver must be submitted for testing and certification immediately following the Federal election for which the waiver was granted.
  - 3.5.6.3. The grant of a waiver is no indication that the modified system will ultimately be granted a certification.
- 3.5.7. Denial of Request for Waiver. A denial of a request for emergency modification by the EAC shall be final and not subject to appeal. Manufacturers may submit for certification, consistent with Chapter 4 of this manual, modifications for which emergency waivers were denied.

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## 4. Certification Testing and Technical Review

- 4.1. Overview.** This chapter discusses the procedural requirements for submitting a voting system to the EAC for testing and review. The testing and review process requires an application, employment of an EAC accredited testing laboratory and technical analysis of the laboratory test report by the EAC. The result of this process is an Initial Decision on Certification by the Decision Authority.
- 4.2. Policy.** Generally, in order to receive an initial determination on an EAC Certification for a voting system, a registered Manufacturer must have (1) submitted an EAC-approved application for certification, (2) submitted an EAC-approved test plan created by an accredited laboratory, (3) tested a voting system to applicable voting system standards using an accredited VSTL, (4) submitted a test report (through the VSTL) to the EAC for technical review and approval and (5) received EAC approval of the report in an Initial Decision on Certification.
- 4.3. Certification Application.** The first step in submitting a voting system for certification is submission of an application package. The Package contains an application form and a copy of the Technical Data Package for the system submitted for testing and certification. The process initiates the certification process and provides the EAC with needed information.
- 4.3.1. Information.** The application (application form) provides certain pieces of information to the EAC which are essential at the outset of the certification process. This information includes:
- 4.3.1.1. Manufacturer Information.** Identification of the Manufacturer (name and three letter identification code);
- 4.3.1.2. Accredited Laboratory Information.** Identification of the accredited laboratory which will perform voting system testing and other prescribed laboratory action consistent with the requirements of this manual;
- 4.3.1.3. Voting System Standards Information.** Identification of the Voluntary Voting System Guidelines or Voting Systems Standards, including the document's date and version number, to which the manufacture wishes to have the identified voting system test and certified;
- 4.3.1.4. Nature of the submission.** Manufacturers must identify nature of their submission by selecting one of four submission types:
- **New Systems.** New systems are defined, for the purposes of this manual, as voting systems which have not been previously tested to any applicable Federal standards.
  - **Systems not previously EAC Certified.** This term describes any voting system not previously certified by the EAC. This includes systems

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previously tested and qualified by NASED or systems previously test and denied certification by the EAC.

- **Modifications.** A modification is any change to a *previously EAC Certified voting system's* hardware, software or firmware.
- **Certification Upgrade.** This term defines any system previously certified by the EAC, but submitted (without modification) for additional testing and certification to a higher standard (i.e. to a newer version of the VVSG).

4.3.1.5. *Identification of the Voting System.* Manufacturers must identify the system submitted for testing by providing its name and applicable version number. If the system submitted has been previously fielded, but the manufacturer wishes to change its name or version number after receipt of EAC Certification, it must provide identification information on both the past name or names and the new, proposed name. This might occur in systems submitted for modification, for their first EAC certification or for a certification upgrade.

4.3.1.6. *Description of Voting System.* Manufacturers must provide a brief description of the system or modification being submitted for testing and certification. This information shall include:

4.3.1.6.1. A listing of all components of the system submitted,

4.3.1.6.2. Each component's version number,

4.3.1.6.3. Any other information necessary to identify the specific configuration being submitted for certification.

4.3.1.7. *Date submitted.* Manufacturers must note the date the application was submitted for EAC approval.

4.3.1.8. *Signature.* The Manufacturer must affix the signature of the authorized management representative.

4.3.2. Submission of the Application Package. Manufacturers must submit a copy of the application form described above and copies of all relevant Technical Data Packages.

4.3.2.1. *Application Form.* Application forms will be available on EAC's website. The application form submitted to the EAC must be signed, dated and fully, accurately and completely filled out. Incomplete or inaccurate application forms will not be accepted.

4.3.2.2. *Technical Data Package(s).* The manufacture must submit with the application form a copy of the voting system's technical data package. This

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technical data package must meet the requirements of the VVSG. If an existing system is being submitted with a modification, the manufacturer must submit a copy of the revised Technical Data Package. The Manufacturer shall also submit the original data package which served as a basis for the prior EAC certification.

4.3.2.3. *Submission.* Applications and Technical Data Packages shall be submitted in Adobe PDF, Microsoft Word or other electronic formats as prescribed by the Program Director. Information on how to submit packages will be posted on EAC's website.

4.3.3. EAC Review. Upon receipt of a Manufacturer's application package, the EAC will review the submission for completeness and accuracy. If the application package is incomplete, it will be returned to the manufacturer with instructions for resubmission. If the form submitted is acceptable, the manufacturer will be notified and provided a unique application number within five working days of the EAC's receipt of the application.

4.4. **Test Plan.** The manufacturer shall authorize the accredited lab identified in its application to submit a test plan. This plan shall provide for testing of the system sufficient to ensure it is functional and meets all applicable voting system standards.

4.4.1. Development. Test Plans shall be developed by an accredited laboratory. The plans shall utilize appropriate test protocols, standards or test suites developed by the laboratory. Laboratories must use all applicable protocols, standards or test suites issued by the EAC.

4.4.2. Required Testing. Test plans shall be developed to ensure that a voting system is functional and meets all requirements of the applicable voting system standards. The highest level of care and vigilance is required to ensure that comprehensive test plans are created. A test plan should ensure that the voting system meets all applicable standards and that test results and other factual evidence of the testing is clearly documented. System testing must meet the requirements of the VVSG. Generally, full testing will be required of any voting system applying for certification, regardless of prior certification history.

4.4.2.1. *New Systems.* New systems shall be subject to full testing of all hardware and software according to applicable voting system standards.

4.4.2.2. *Systems not previously EAC Certified.* Systems not previously certified by the EAC shall be fully tested as new systems.

4.4.2.3. *Modifications.* A modification to a previously EAC Certified voting systems shall be tested in manner to ensure all changes meet applicable voting system standards and that the modified system (as a whole) will properly and reliable function. The systems submitted for modification shall be subject to full

testing of the modifications and those systems or subsystems altered or impacted by the modification. The system will also be subject to system integration testing to ensure overall functionality. The modification will be tested to the version or versions of the VVSG presently accepted for testing and certification by the EAC. However, this does not mean that the full system must be tested to such standards. If the system has been previously certified to a VVSG version deemed acceptable by the EAC, it may retain that level of certification with only the modification being tested to the present version(s).

- 4.4.2.4. *Certification Upgrade.* Systems submitted for testing to new voting system standard (without modification) shall be tested in manner necessary to ensure that the systems meet all requirements of the new standards. Test Plans shall ensure that hardware and software components affected by changes in the standards are fully retested according to the new standards.
- 4.4.3. *Format.* Test labs shall issue test plans consistent with the requirements in the VVSG and any applicable EAC guidance.
- 4.4.4. *EAC Approval.* All test plans are subject to EAC approval. No test report will be accepted for technical review unless the test plan upon which it is based has been approved by EAC's Program Director.
- 4.4.4.1. *Review.* All test plans must be reviewed for adequacy by the Program Director. For each submission the Program Director will determine whether the test report is acceptable or unacceptable. Unacceptable plans will returned to the laboratory for further action. Acceptable plans will be approved. While manufacturers may direct test labs to begin testing before approval of a test plan, the manufacturer bears the full risk that the test plan (and thus any tests performed) will be deemed unacceptable.
- 4.4.4.2. *Unaccepted Plans.* If a plan is not accepted, the Program Director will return the submission to the Manufacturer's identified laboratory for additional action. Notice of unacceptability will be provided in writing to the laboratory and include a description of the problems identified and steps required to remedy the test plan. Questions concerning the notice shall be forwarded to Program Director in writing. Plans that have not been accepted may be resubmitted for review after remedial action is taken.
- 4.4.4.3. *Effect of Approval.* Approval of a test plan is required before a test report may be filed. In most cases, approval of a test plan signifies that the tests proposed, if performed properly, are sufficient to fully test the system. However, a test plan is approved based upon the information submitted. New or additional information may require a change in testing requirements at any point in the certification process.

- 4.5. Testing.** During testing, manufacturers are responsible for ensuring that VSTLs report any changes to a voting system or an approved test plan to the EAC. Manufacturers shall also ensure that VSTLs report all test failures or anomalies to the EAC.
- 4.5.1. Changes. Any changes to the voting system, initiated as a result of the testing process, will require submission of a new Technical Data Package and, potentially, an updated test plan. Any changes to or deviation from the test plan by a lab during the testing process will require resubmission of an updated test plan.
- 4.5.2. Test Anomalies or Failures. Manufacturers shall ensure that accredited laboratories notify the EAC of any test anomalies or failures during testing. This notice shall be in writing. Unless the laboratory can document (for EAC approval) that a failure was a result of testing methodology or execution, effected systems must be modified and the Technical Data Packages and Test Plans resubmitted.
- 4.6. Test Report.** Manufactures shall have their identified test lab submit test reports directly to the EAC. Test reports shall be submitted only if the voting system has been successfully tested and all tests identified in the test report have been performed.
- 4.6.1. Submission. The test reports shall be submitted to the Program Director. The Program Director shall review the submission for completeness. Any reports showing incomplete or unsuccessful testing will be returned to the test laboratory for action and resubmission. Test reports shall be submitted in Adobe PDF, Microsoft Word or other electronic formats as prescribed by the Program Director. Information on how to submit reports will be posted on EAC's website.
- 4.6.2. Format. Manufacturers shall ensure that test labs submit reports consistent with the requirements in the VVSG.
- 4.6.3. Technical Review. A technical review of the test report, Technical Data Package and test plan will be conducted by technical experts. These EAC experts will submit a report outlining their findings to the Program Director. The report will provide an assessment of the completeness, appropriateness and adequacy of the VSTL's testing as documented in the test report.
- 4.6.4. Program Director's Recommendation. The program director shall review the report. The Program Director shall either:
- 4.6.4.1. Recommend certification of the candidate system consistent with the reviewed test report and forward it to the Decision Authority for action (Initial Decision); or
- 4.6.4.2. Refer the matter back to the technical reviewers for additional specified action and resubmission.

**4.7. Initial Decision on Certification.** Upon receipt of the report and recommendation forwarded by the Program Director, the Decision Authority shall issue an Initial Decision on Certification. The decision shall be forwarded to the Manufacturer consistent with the requirements of this manual.

4.7.1. An Initial Decision granting certification shall be processed consistent with Chapter 5 of this manual.

4.7.2. An Initial Decision denying certification shall be processed consistent with Chapter 6 of this manual.

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## 5. Grant of Certification

- 5.1. Overview.** The grant of certification is the formal process through which EAC acknowledges that a voting system has successfully completed conformance testing to an appropriate set of standards or guidelines. The grant of certification begins with the initial decision of the Decision Authority. This decision becomes final after the manufacturer confirms that the final version of the software that was certified and which the manufacturer will deliver with the certified system has been subject to a trusted build, placed in an EAC approved repository and can be verified using the manufacturer's system identification tools. Once a certification is issued, the manufacturer is provided a Certificate of Conformance and relevant information about the system is added to the EAC website. Manufacturers with certified voting systems are responsible for ensuring that each system it produces is properly labeled as certified.
- 5.2. Applicability of this Chapter.** This chapter applies when the Decision Authority makes an initial decision to grant a certification to a voting system based upon the materials and recommendation provided by the program director.
- 5.3. Initial Decision.** The Decision Authority shall make and issue to a manufacturer a written decision on all voting systems submitted for certification. When such decisions result in a grant of certification, the decision shall be considered preliminary and referred to as an *Initial Decision* pending required action by the manufacturer. The Initial Decision shall:
- 5.3.1. State the preliminary determination reached (granting certification);
  - 5.3.2. Inform the manufacturer of the steps that must be taken to make the determination final and receive a certification. This shall include providing the manufacturer with specific instructions, guidance and procedures for confirming that the final certified version of the software meets the requirements for:
    - 5.3.2.1. Performing and documenting a trusted build pursuant to section 5.6 of this chapter, and
    - 5.3.2.2. Depositing software in an approved repository pursuant to section 5.7 of this chapter.
    - 5.3.2.3. Creating and making available system verification tools pursuant to section 5.8 of this chapter.
  - 5.3.3. Certification is not final until the manufacturer accepts the certification and any and all conditions placed on the certification.
- 5.4. Pre-Certification Requirements.** Before an initial decision becomes final and a certification is issued, manufacturers must ensure certain steps are taken. They must confirm that the final version of the software that was certified and which the manufacturer will deliver with the certified system has been subject to a trusted build (see section 5.6), deposited in an EAC approved repository (see section 5.7) and can be verified using manufacturer developed



identification tools (see section 5.8). The manufacturer must provide the EAC documentation demonstrating compliance with these requirements.

**5.5. Trusted Build.** A software build (also referred to as a compilation) is the process whereby source code is converted to machine readable binary instructions (executable code) for the computer. A “trusted build” (or trusted compilation) is a build performed with adequate security measures implemented to give confidence that the executable code is a verifiable and faithful representation of the source code. A trusted build creates a chain of evidence from the Technical Data Package and source code submitted for certification to the actual executable programs that are run on the system. Specifically, the build will:

- 5.5.1.1. Demonstrate that the software was built as described in the Technical Data Package;
- 5.5.1.2. Show that the tested and approved source code was actually used to build the executable code used on the system;
- 5.5.1.3. Demonstrate that no elements other than those included in the Technical Data Package were introduced in the software build; and
- 5.5.1.4. Document for future reference the configuration of the system certified.

**5.6. Trusted Build Procedure.** A trusted build is three step process: (1) the build environment is constructed, (2) the source code is loaded onto the build environment, and (3) the executable code is compiled and installation disk created. The process may be simplified for modification to previously certified systems. In each step, a minimum of two witnesses from different organizations are required to participate. These participants must include a VSTL representative and vendor representative. Prior to creating the trusted build the VSTL must complete the source code review of the software delivered from the vendor for compliance with the VVSG, and produce and record digital signatures of all source code modules. An instructive discussion of this process may be found in Appendix C.

**5.6.1. Constructing the Build Environment.** The VSTL shall construct the build environment in an isolated environment controlled by the VSTL, as follows:

- 5.6.1.1. The disk that will hold the build environment shall be completely erased by the VSTL to assure a total and complete cleaning of the disk. The VSTL shall use commercial off-the-shelf software (COTS), purchased by the laboratory, for cleaning the disk.
- 5.6.1.2. The VSTL, with vendor consultation and observation, shall construct the build environment.
- 5.6.1.3. After construction of the build environment, the VSTL shall produce and record a digital signature of the build environment.

5.6.2. Loading Source Code onto the Build Environment. After successful source code review, the VSTL shall load source code onto the build environment as follows:

5.6.2.1. The VSTL shall check the digital signatures of the source code modules and build environment to assure that they are unchanged from their original form.

5.6.2.2. The VSTL shall load the source code onto the build environment and produce and record the digital signature of the resulting combination.

5.6.2.3. The VSTL shall capture a disk image of the combination build environment and source code modules immediately prior to performing the build.

5.6.2.4. The VSTL shall deposit the disk image into an authorized archive to assure that the build can be reproduced if necessary, at a later date.

5.6.3. Creating the Executable Code. Upon completion of all the tasks outlined above, the VSTL shall produce the executable code.

5.6.3.1. The VSTL shall produce and record a digital signature of the executable code.

5.6.3.2. The VSTL shall deposit into an EAC approved software repository the executable code and create installation disk(s) from the executable code.

5.6.3.3. The VSTL shall produce and record digital signatures of the installation disk(s) in order to provide a mechanism to validate the software prior to installation on the voting system in a purchasing jurisdictions.

5.6.3.4. The VSTL shall install the executable code onto the system submitted for testing and certification prior to completion of system testing.

5.6.4. Trusted Build for Modifications. The process of building new executable code when a previously certified system has been modified is somewhat simplified.

5.6.4.1. The build environment used in the original certification is removed from storage and its digital signature verified.

5.6.4.2. After source code review the modified files are placed onto the verified build environment and new executable files are produced.

5.6.4.3. If the original build environment is unavailable or its digital signatures cannot be verified against those recorded from the original certification then the more labor intensive process of creating the build environment must be performed. Further source code review may be required of unmodified files to validate that they are unmodified from their originally certified versions.

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**5.7. Depositing Software in an Approved Repository.** After EAC certification has been granted, the VSTL project manager, or an appropriate delegate of the project manager, shall deposit the following in one or more trusted archive(s) (repositories) designated by the EAC, such as the NIST NSRL.

5.7.1. Source code used for the trusted build and its digital signatures.

5.7.2. Disk image of the pre-build, build environment and any digital signatures to validate that it is unmodified.

5.7.3. Disk image of the post-build, build environment and any digital signatures to validate that it is unmodified.

5.7.4. Executable code produced by the trusted build and its digital signatures of all files produced.

5.7.5. Installation disk(s) and its digital signatures.

**5.8. System Identification Tools.** The manufacturer shall provide tools through which a fielded voting system may be identified and demonstrated to be unmodified from the system which was certified. The purpose of this requirement is to make such tools available to state, local and Federal officials to identify and verify that the equipment used in elections is unmodified from its certified version. Manufacturers may develop and provide these tools as they see fit. However, the tools must provide the means to identify and verify hardware and software. The EAC may review the system identification tools developed by the manufacture to ensure compliance. Examples of system identification methodology include:

5.8.1. Hardware is commonly identified by model and revision numbers on the unit, its printed wiring boards (PWB) and major subunits. Typically hardware is verified as unmodified by providing detailed photographs of the PWB's and internal construction of the unit. These may be used to compare to the unit being verified.

5.8.2. Software operating in on a host computer will typically be verified by providing a self-booting CD or similar device that verifies the digital signatures of the voting system application files AND the signatures of all non-volatile files that the application files access during their operation. Note that the creation of such a CD requires having a file map of all non-volatile files that are used by the voting system. Such a tool must be provided for verification using the digital signatures of the original executable files provided for testing. If during the certification process modifications are made and new executable files created then the tool must be updated to reflect the digital signatures of the final files to be distributed for use. For software operating on devices where a self-booting CD or similar device cannot be used a procedure must be provided to allow identification and verification of the software that is being used on the device.

**5.9. Documentation.** Manufacturers' shall provide documentation to the Program Director verifying that the trusted build has been performed, software has been deposited in an approved repository and that system identification tools are available to election officials. The Manufacturer shall submit a letter, signed by both its management representative and a VSTL

official, stating (under penalty of law) that it has (1) performed a trusted build consistent with the requirements of Section 5.6 of this Manual; (2) deposited software consistent with Section 5.7 of this Manual and (3) created and made available system identification tools consistent with Section 5.8 of this Manual. This letter shall also include (as attachments) a copy and description of the system identification tool developed under Section 5.8, above.

**5.10. Agency Decision.** Upon receipt of documentation demonstrating the successful completion of the requirements above and recommendation of the Program Director, the Decision Authority will issue an Agency Decision granting certification and providing the manufacturer with a certification number and Certificate of Conformance.

**5.11. Certification Document.** A Certificate of Conformance will be provided to manufacturers for voting systems which have successfully met the requirements of this program. The document will serve as the manufacturer's evidence that a particular system is certified to a particular set of voting system standards. The EAC certification and certificate applies only to the specific voting system configuration submitted and evaluated under the program. Any modification to the system not authorized by the EAC will void the certificate. The certificate will include the product (voting system) name, the specific model or version of the product tested, the name of the VSTL conducting the testing, identification of the standards to which the system was tested, the EAC Certification Number for the product, and the signature of the EAC Executive Director.

**5.12. Certification Number and Version Control.** Each system certified by the EAC will receive a certification number. This number is unique to the system and will remain with the system until such time as the system is decertified, sufficiently modified or tested and certified to newer standards. Generally, when a previously certified system is issued a new certification number, the manufacturer will be required to change the system's name or version number.

**5.12.1. New voting systems and those not previously Certified by the EAC.** All systems receiving their first certification from the EAC will receive a new Certification Number. Manufacturers must provide the EAC with the voting system's name and version number during the application process (Chapter 4). Systems previously certified by another body may retain the prior system name and version number unless the system was modified prior to its submission to the EAC. Such modified systems must be submitted with a new naming convention (i.e. new version number).

**5.12.2. Modifications.** Voting systems previously certified by the EAC and submitted for certification of a modification will generally receive a new voting system certification number. Such modified systems must be submitted with a new naming convention (i.e. new version number). In rare instances, the EAC may authorize retention of the same certification and naming convention when the modification is so minor that it does not represent a substantive change in the voting system. Request for such authorization must be made and approved by the EAC during application phase of the program.

**5.12.3. Certification upgrade.** Voting systems previously certified and submitted (without modification) for testing to a new version of the VVSG will receive a new certification

number. However, in such cases the manufacturer will not be required to change the systems name or version.

**5.13. Publication of EAC Certification.** The EAC will publish and maintain on its website a list of all certified voting systems including copies of all Certificates of Conformance, the supporting test report and information about the manufacturer. Note that ALL information contained in the test report and Technical Data Package EXCEPT that identified as confidential AT THE TIME OF SUBMISSION will be posted to the website. Such information will be posted immediately following the Manufacturer's receipt of the EAC Final Decision and Certificate of Conformance.

**5.14. Representation of EAC Certification.** Manufacturers may not represent or imply that a voting system is certified unless it has received a Certificate of Conformance for that system. Statements regarding EAC certification in brochures, websites, displays and advertising/sales literature must be made solely in reference to specific systems. Any action by a manufacturer to suggest EAC endorsement of their product or organization is strictly prohibited.

**5.15. Mark of Certification Requirement.** Manufacturers shall post a mark of certification on all EAC Certified voting systems produced. This mark or label must be permanently attached to the system prior to sale, lease or release to third parties. A mark of certification shall be made through the use of an EAC mandated template available for download on the EAC website. These templates identify the version of the VVSG or VSS to which the system is certified. Use of this template shall be mandatory. The EAC mark must be displayed as follows:

5.15.1. The Manufacturer may only use the mark of certification which accurately reflects the certification held by the system. In the event a system has components or modifications tested to various versions of the VVSG (or VSS) the system shall bear only one mark of certification. This shall be the mark of the oldest or least rigorous standard to which any component or modification of the system was tested.

5.15.2. The mark shall be placed on the outside of the voting system in a place readily available to election officials.

5.15.3. The notice shall be permanently affixed to the voting system. The label shall not be a paper label. "Permanently affixed" means that the label is etched, engraved, stamped, silk-screened, indelibly printed, or otherwise permanently marked on a permanently attached part of the equipment or on a nameplate of metal, plastic, or other material fastened to the equipment by welding, riveting, or a permanent adhesive.

5.15.4. The label must be designed to last the expected lifetime of the voting system in the environment in which the system may be operated and must not be readily detachable.

**5.16. Information to Election officials purchasing voting systems.** The user's manual or instruction manual for a certified voting system shall warn purchasers that changes or modifications not tested and certified by EAC will void the EAC certification of the voting system. In cases where the manual is provided only in a form other than paper, such as on a

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computer disk or over the internet, the information required in this section may be included in this alternative format provided that the election official can reasonably be expected to have the capability to access information in that format.

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## 6. Denial of Certification

- 6.1. Overview.** When the Decision Authority issues an Initial Decision denying certification, the Manufacturer has certain rights and responsibilities. The Manufacturer may request an opportunity to cure the defects identified by the Decision Authority. Additionally, the Manufacturer may request the Decision Authority to reconsider the Initial Decision after the Manufacturer has had the opportunity to review the record and submit supporting written materials, data and rational for its position. Finally, in the event reconsideration is denied, the Manufacturer may appeal the decision to the Appeal Authority.
- 6.2. Applicability of this Chapter.** This chapter applies when the Decision Authority makes an initial decision to deny an application for voting system certification based upon the materials and recommendation provided by the program director.
- 6.3. Form of Decisions.** All agency determinations shall be made in writing. Moreover, all materials and recommendations reviewed or used by agency decision makers in arriving at an official determination shall be in written form.
- 6.4. Effect of Denial of Certification.** Upon receipt of the agency's decision denying certification—or in the event of an appeal, the decision on appeal—the manufacturer's application for certification is finally denied. Such systems will not be reviewed again by the EAC for certification unless the manufacturer alters the system, retest it and submits a new application for system certification.
- 6.5. The Record.** The Program Director shall maintain all documents related to a denial of certification. Such documents shall constitute the procedural and substantive record of the decision making process. Examples include:
- 6.5.1. The Program Director's report and recommendation to the Decision Authority;
  - 6.5.2. The Decision Authority's Initial Decision and Final Decision;
  - 6.5.3. Any materials gathered by the Decision Authority that served as a basis for a certification determination;
  - 6.5.4. All relevant and allowable materials submitted by the Manufacturer upon request for reconsideration or appeal;
  - 6.5.5. All correspondence between the EAC and a Manufacturer after the issuance of an Initial Decision denying certification.
- 6.6. Initial Decision.** The Decision Authority shall make and issue a written decision on voting systems submitted for certification. When such decisions result in a denial of certification, the decision shall be considered preliminary and referred to as an *Initial Decision*. Initial Decisions shall be in writing and contain (1) the Decision Authority's basis and explanation for the decision and (2) notice of the manufacturer's rights in the denial of certification process:

6.6.1. Basis and Explanation. The Initial Decision of the Decision Authority shall:

6.6.1.1. Clearly state the agency's decision on Certification;

6.6.1.2. Explain the basis for the decision, including identifying:

6.6.1.2.1. the relevant facts,

6.6.1.2.2. the applicable EAC voting system standards (VVSG or VSS),

6.6.1.2.3. relevant analysis in the Program Director's recommendation, and

6.6.1.2.4. the reasoning behind the determination.

6.6.1.3. State the actions the manufacturer must take, if any, to cure all defects in the voting system and obtain a certification.

6.6.2. Manufacturer's Rights. The written Initial Decision must also inform the manufacture of its procedural rights under the program. These include:

6.6.2.1. Right to request reconsideration. The manufacturer shall be informed of its right to request a timely reconsideration. (see Section 6.9). Such request must be made within 20 days of the manufacturer's receipt of the Initial Decision.

6.6.2.2. Right to request a copy or otherwise have access to the information that served as the basis of the Initial Decision ("the record").

6.6.2.3. Right to cure system defects prior to final agency decision (see Section 6.8). A manufacturer may request an opportunity to cure within 20 days of its receipt of the Initial Decision.

**6.7. No Manufacturer Action on Initial Decision.** If a manufacturer takes no action (by either failing to request an opportunity to cure or request reconsideration) within 20 calendar days of its receipt of the initial decision, the initial decision shall become the agency's final decision on certification. In such cases, the manufacture is determined to have forgone its right to reconsideration, cure and appeal. The certification application shall be considered finally denied.

**6.8. Opportunity to Cure.** Within 20 calendar days of receiving the EAC's Initial Decision on certification, a manufacturer may request an opportunity to cure the defects identified in the EAC's Initial Decision. If the request is approved, a compliance plan must be created, approved and followed. If this cure process is successfully completed, a voting system denied certification in an Initial Decision may receive a certification without resubmission.

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- 6.8.1. Manufacturer's Request to Cure. The Manufacturer must send a request to cure within 20 calendar days of receipt of an initial decision. The request must be sent to the Program Director.
- 6.8.2. EAC Action on Request. The Decision Authority will review the request and approve it. The Decision Authority will deny a request to cure only if the proposed plan to cure is inadequate or does not present a viable way to remedy the identified defects. Approval or denial of a request to cure shall be provided the manufacturer in writing. If the manufacturer's Request to Cure is denied, it shall have 20 days from the date it received such notice to request reconsideration of the Initial Decision pursuant to section 6.6.2.
- 6.8.3. Manufacturer's Compliance Plan. Upon approval of the manufacturer's request for an opportunity to cure, it shall submit a compliance plan to the Decision Authority for approval. This compliance plan must set forth steps to be taken to cure all identified defects. It shall include the proposed changes to the system, an updated technical data package, a test plan (limited to those tests required by the proposed changes), and provide for the testing of the amended system and submission of the test report to the EAC for approval. It should also provide an estimated date for receipt of the test report and include a schedule of periodic progress reports to the Program Director.
- 6.8.4. EAC Action on the Compliance Plan. The Decision Authority must review and approve the compliance plan. The Decision Authority may require the manufacturer to provide additional information and modify the plan as required. If the Manufacturer is unable or unwilling to provide a compliance plan acceptable to the Decision Authority, the Decision Authority shall provide written notice terminating the "opportunity to cure" process. The Manufacturer shall have 20 calendar days from the date it received such notice to request reconsideration of the Initial Decision pursuant to section 6.6.2.
- 6.8.5. Manufacturer's Issuance of the Compliance Plan Test Report. The manufacturer shall submit the test report created pursuant to its EAC-approved compliance plan. The EAC shall review the test report, along with the original test report and other materials originally provided. The report will be technically reviewed by the EAC consistent with the procedures laid out in Chapter 4 of this Manual.
- 6.8.6. EAC Decision on the System. After receipt of the test plan, the Decision Authority shall issue a decision on a voting system amended pursuant to an approved compliance plan. This decision shall be issued in the same manner and with the same process and rights as an initial decision on certification.

**6.9. Requests for Reconsideration.** Manufacturers may request reconsideration of an Initial Decision.

- 6.9.1. Submission of Request. A request for reconsideration must be made within 20 days of the Manufacturer's receipt of an Initial Decision. The request shall be made and sent to the Decision Authority.

6.9.2. Acknowledgement of Request. The Decision Authority shall acknowledge receipt of the manufacturer's request for reconsideration. This acknowledgement shall either enclose all information that served as the basis for the Initial Decision (the record) or provide a date by which the record will be forwarded to the manufacturer.

6.9.3. Manufacturer Submissions. Within 30 days of receipt of the record, a manufacturer may submit written materials in support of its position. This includes:

6.9.3.1. A written argument responding to the conclusions in the Initial Decision.

6.9.3.2. Documentary evidence relevant to the issues raised in the Initial Decision.

6.9.3.3. Other written materials created to provide relevant facts (such as additional test data, technical analyses and statements).

6.9.4. Decision Authority's Review of Request. The Decision Authority shall review and consider all relevant submissions of the manufacturer. In making a decision on reconsideration, the Decision Authority shall also consider all documents that make up the record and any other documentary information he or she determines relevant.

**6.10. Agency Final Decision.** The Decision Authority shall issue a written Agency Decision after review of the manufacturer's request for reconsideration. This Decision shall be the decision of the agency. The decision shall:

6.10.1.1. Clearly state the agency's determination on the application for certification;

6.10.1.2. Address the issues raised by the manufacturer in its request for reconsideration;

6.10.1.3. Identify all facts, evidence and EAC voting system standards (VVSG or VSS), that served as the basis for the decision;

6.10.1.4. Provide the reasoning behind the determination;

6.10.1.5. Identify and provide, as an attachment, any additional documentary information that served as a basis for the decision and that was not part of the manufacturer's submission or the prior record; and

6.10.1.6. Provide the manufacturer notice of its right to appeal.

**6.11. Appeal of Agency Final Decision.** A manufacturer may, upon receipt of an Agency Final Decision denying certification, issue a request for appeal.

6.11.1. Requesting Appeal.

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6.11.1.1. *Submission.* Requests must be submitted in writing to the Program Director, addressed to Chair of the U.S. Election Assistance Commission.

6.11.1.2. *Timing of Appeal.* The manufacturer may request an appeal within 20 calendar days of receipt of the Agency Final Decision. Late requests will not be considered.

6.11.1.3. *Contents of Request.*

6.11.1.3.1. The request must clearly state the specific conclusions of the Final Decision it wishes to appeal.

6.11.1.3.2. The request may include additional written argument.

6.11.1.3.3. The request may not reference or include any factual material not in the record.

6.11.2. Consideration of Appeal. All timely appeals will be considered by the appeal authority.

6.11.2.1. The appeal authority shall be two or more U.S. EAC Commissioners or other individual or individuals appointed by the Commissioners who have not previously served as the initial or reconsideration authority on the matter.

6.11.2.2. All decisions on appeal shall be based on the record.

6.11.2.3. The decision of the Decision Authority shall be given deference by the appeal authority. While it is unlikely that the scientific certification process will produce factual disputes, in such cases, the burden of proof shall belong to the Manufacturer to demonstrate by clear and convincing evidence that their voting system met all substantive and procedural requirements for certification. In other words, the determination of the Decision Authority will be overturned only when the appeal authority finds the ultimate facts in controversy highly probable.

**6.12. Decision on Appeal.** The appeal authority shall make a written, final Decision on Appeal. This Decision on Appeal shall be provided the Manufacturer.

6.12.1. Contents. The Decision on Appeal shall:

6.12.1.1. State the final determination of the agency;

6.12.1.2. Address the matters raised by the Manufacturer on appeal;

6.12.1.3. Provide the reasoning behind the decisions; and

6.12.1.4. State that the decision on appeal is final.

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6.12.2. Determinations. The appeal authority may make one of three determinations.

6.12.2.1. *Approval of Certification*. The Appeal Authority may overturn the decision of the Decision Authority and grant the appeal in full. In such cases, certification will be approved subject to the requirements of Chapter 5.

6.12.2.2. *Denial of Certification*. The Appeal Authority may uphold the decision of the Decision Authority and deny the appeal in full. In such cases the application for appeal is finally denied.

6.12.2.3. *Grant of Appeal in Part with Opportunity to Cure*. The Appeal Authority may grant the appeal in part. This will only occur in instances where the denied issues on appeal may be cured. In such cases, the Manufacturer must cure the identified discrepancies prior to the grant of certification. The appeal authority shall remand the matter to the Decision Authority to initiate to cure process consistent with the decision.

6.12.2.3.1. If the Manufacturer successfully completes the cure process, the certification will be approved by the Decision Authority subject to the requirements in Chapter 5.

6.12.2.3.2. If the Decision Authority determines the cure process to have failed, he or she shall submit a report to the Appeal Authority (with a copy to the Manufacturer) for final determination. If the Appeal Authority concurs with the report, the Appeal Authority shall issue a Second Decision on Appeal denying certification. If the Appeal Authority disagrees with the Decision Authority, the matter shall be remanded back to the Decision Authority with specific instructions.

6.12.3. Effect. All Decisions on Appeal shall be final and binding on the Manufacturer. No additional appeal shall be granted.

## 7. Decertification

**7.1. Overview.** Decertification is the process by which the EAC revokes a Certification previously granted to a voting system. It is an important part of the Certification Program, as it serves to ensure that the requirements of the program are followed and that certified voting systems fielded for use in our Federal elections maintain the same level of quality as those presented for testing. Decertification, is a serious matter. Its use will have a significant impact on Manufacturers, State and local governments, the public and the administration of elections. As such, the process for decertification is involved. It is initiated when the EAC receives information that a voting system may not be in compliance with the Voluntary Voting System Guidelines or the procedural requirements of this manual. Upon receipt of such information, the Program Director may initiate an Informal Inquiry to determine the credibility of the information. If the information is credible and suggests the system is noncompliant, a Formal Investigation will be initiated. If the results of the Formal Investigation demonstrate noncompliance, the manufacturer will be provided a Notice of Non-Compliance. Before a final decision on decertification is made, the manufacturer will have the opportunity to remedy any defects identified in the voting system and present information for consideration by the decertification authority. A decertification of a voting system may be timely appealed.

**7.2. Decertification Policy.** Voting systems certified by the EAC are subject to Decertification. Systems shall be decertified if they (1) are shown not to meet applicable Voluntary Voting System Guideline Standards, (2) have been modified without following the requirements of this manual or (3) the Manufacturer has otherwise failed to follow the procedures outlined in this manual such that the quality, configuration or compliance of the system is in question. Decertification of a voting system is a serious matter. Systems will be decertified only after completion of the process outlined in this chapter.

**7.3. Informal inquiry.** An Informal Inquiry is the first step taken when information is presented to the EAC that suggests a voting system may not be in compliance with the Voluntary Voting System Standards or the procedural requirements of this Manual.

**7.3.1. Informal Inquiry Authority.** The authority to conduct an Informal Inquiry shall rest with the Program Director.

**7.3.2. Purpose.** The purpose of the informal inquiry is solely to determine whether a formal investigation is warranted. The outcome of an informal inquiry is limited to a decision on referral for investigation.

**7.3.3. Procedure.** Informal Inquiries do not follow a formal process.

**7.3.3.1. *Initiation.*** Informal Inquiries are initiated at the discretion of the Program Director. They may be initiated any time the Program Director receives attributable, relevant information that suggests a certified voting system may require decertification. The information shall come from a source which has directly observed or witnessed the reported occurrence. Such information may be a product of the Certification Quality Monitoring Program (see

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Chapter 8). Information may also come from state and local election officials or voters who have used a given voting system. The Program Director may notify a Manufacturer that an Informal Inquiry has been initiated, but this is not required. Initiation of an inquiry shall be documented through the creation of a memorandum for the record.

- 7.3.3.2. *Inquiry.* The informal inquiry process is limited to that inquiry necessary to determine whether a Formal Investigation is required. In other words, the Program Director shall conduct such inquiry necessary to determine (1) that the information obtained is credible and (2) that the information, if true, would serve as a basis for decertification. There is no set procedure for an inquiry. The nature and extent of the inquiry process will vary depending upon the source of the information. For example, an informal inquiry initiated as a result of action taken under the Quality Monitoring Program will often require the Program Director merely to read the report issued as a result of the Quality Monitoring action. On the other hand, information provided by voters who have used a voting system or election officials may require the Program Director (or assigned technical experts) to perform an in-person inspection or make inquiries of the manufacturer.
- 7.3.3.3. *Conclusion.* An inquiry shall be concluded once the Program Director is in a position to determine the credibility of the information which initiated the inquiry and whether that information, if true, would require decertification. The Program Director may make only two conclusions: (1) Refer the matter for a formal investigation or (2) Close the matter without additional action.
- 7.3.4. Closing the Matter without Referral. If the Program Director determines, after informal inquiry, that a matter does not require a Formal Investigation, the Program Director shall close the inquiry by filing a Memorandum for Record. This document shall state the findings of the inquiry and the reasons a Formal Investigation was not warranted.
- 7.3.5. Referral. If the Program Director determines, after informal inquiry, that a matter requires a Formal Investigation, the Program Director shall refer the matter in writing to the Decision Authority. This referral shall:
- 7.3.5.1. State the facts that served as the basis for the referral.
- 7.3.5.2. State the findings of the Program Director.
- 7.3.5.3. Attach all documentary evidence that served as the basis for the conclusion.
- 7.3.5.4. Recommend a formal investigation, specifically stating the system to be investigated and the scope and focus of the proposed investigation.

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**7.4. Formal Investigation.** A Formal Investigation is an official investigation to determine whether a voting system requires decertification. The end result of a Formal Investigation is a Report of Investigation.

7.4.1. Formal Investigation Authority. The Decision Authority shall have the authority to initiate and conclude a Formal Investigation by the EAC.

7.4.2. Purpose. The purpose of a Formal Investigation is to gather and document relevant information sufficient to make a determination on whether an EAC certified voting system requires decertification consistent with the policy put forth in Section 7.2, above.

7.4.3. Initiation of Investigation. The Decision Authority shall authorize the initiation of an EAC Formal Investigation.

7.4.3.1. *Scope.* The Decision Authority shall clearly set the scope of the investigation by identifying (in writing) the voting system (or systems) and specific procedural or operational non-conformance to be investigated. The non-conformance or non-conformances to be investigated shall be set forth in the form of numbered allegations.

7.4.3.2. *Investigator.* The Program Director shall be responsible for conducting the investigation unless another individual is appointed by the Decision Authority. The Program Director (or Decision Authority appointee) may assign staff or technical experts as required to investigate the matter.

7.4.4. Notice of Formal Investigation. Upon initiation of a Formal Investigation, notice shall be given the Manufacturer of the scope of the investigation. This notice shall:

7.4.4.1. Identify the voting system and specific procedural or operation non-conformance being investigated (scope of investigation).

7.4.4.2. Provide the Manufacturer an opportunity to provide relevant information in writing.

7.4.4.3. Provide an estimated timeline for the investigation.

7.4.5. Investigation. Due to the vital role voting systems play in our democratic process, investigations shall be conducted impartially, diligently, promptly and confidentially. Investigators shall use techniques to gather necessary information that meet these requirements.

7.4.5.1. *Fair and Impartial Investigation.* All Formal Investigations shall be conducted in a fair and impartial manner. All individuals assigned to an investigation must be free from any financial conflict of interest.

- 7.4.5.2. *Diligent Collection of Information.* All investigations shall be conducted in a meticulous and thorough manner. Investigations shall gather all relevant information and documentation that is reasonably available. The diligent collection of information is vital for informed decision making.
- 7.4.5.3. *Prompt Collection of Information.* Determinations which may affect the administration of Federal Elections must be made with all reasonable speed. EAC determinations on decertification will impact the actions of state and local election officials conducting elections. As such, all investigations regarding decertification must proceed with an appropriate sense of urgency.
- 7.4.5.4. *Confidential Collection of Information.* Consistent with Federal Law, information pertaining to a Formal Investigation should not be made public until the Report of Investigation is complete. The release of incomplete and unsubstantiated information or pre-decisional opinions which may be contrary or inconsistent with the final determination of the EAC, could cause public confusion or unnecessarily negatively effect public confidence in active voting systems. Such actions could serve to impermissibly impact election administration and voter turnout. All pre-decisional investigative materials must be appropriately safeguarded.
- 7.4.5.5. *Methodologies.* Investigators shall gather information by means consistent with the four principals noted above. Investigative tools include (but are not limited to):
- 7.4.5.5.1. *Interviews.* Investigators may interview individuals with relevant information (such as state and local election officials, voters with relevant information or representatives of the Manufacturer). All interviews shall be reduced to written form, the interview should be summarized in a statement that is reviewed, approved and signed by the subject.
  - 7.4.5.5.2. *Field Audits.*
  - 7.4.5.5.3. *Manufacturer Site Audits.*
  - 7.4.5.5.4. *Written Interrogatories.* Investigators may pose specific, written questions to the manufacturers for the purpose of gathering information relevant to the investigation. The manufacturer shall respond to the queries within a reasonable timeframe (as specified in the request).
  - 7.4.5.5.5. *System Testing.* Testing may be performed in an attempt to reproduce a condition or failure that has been reported.

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- 7.4.5.6. *Report of Investigation.* The end result of a Formal Investigation is a Report of Investigation.
- 7.4.6. Report of Investigation. The Report of Investigation serves, primarily, to document (1) all relevant and reliable information gathered in the course of the investigation and (2) the conclusion reached by the Decision Authority.
- 7.4.6.1. *When Complete.* The report is complete and final when certified and signed by the Decision Authority.
- 7.4.6.2. *Contents of Report.* The written report shall:
- 7.4.6.2.1. Restate the scope of the investigation, identifying the voting system and specific matter investigated;
  - 7.4.6.2.2. Briefly describe the investigative process employed;
  - 7.4.6.2.3. Summarize the relevant and reliable facts and information gathered in the course of investigation;
  - 7.4.6.2.4. Attach all relevant and reliable evidence collected in the course of investigation that documents the facts. All fact shall be documented in written form;
  - 7.4.6.2.5. Analyze the information gathered; and
  - 7.4.6.2.6. Clearly state the findings of the investigation.
- 7.4.7. Findings Report of Investigation. The Report of Investigation shall state one of two conclusions. After gathering and reviewing all applicable facts the report shall find each allegation investigated to be either (1) substantiated or (2) unsubstantiated.
- 7.4.7.1. *Substantiated Allegations.* An allegation is substantiated if a preponderance of the relevant and reliable information gathered requires that the voting system at issue be decertified (consistent with the policy set out in Section 7.2). If any allegation is substantiated a Notice of Non-Compliance must be issued.
- 7.4.7.2. *Unsubstantiated Allegations.* An allegation is unsubstantial if the preponderance of the relevant and reliable information gathered does not require decertification (see Section 7.2). If all allegations are unsubstantiated, the matter shall be closed and a copy of the report forwarded to the Manufacturer.
- 7.4.8. Publication of Report. The report shall not be made public nor released to the public until final.

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- 7.5. Effect of Informal Inquiry or Formal Investigation on Certification.** A voting system's EAC Certification is not affected by the initiation or conclusion of an Informal Inquiry or Formal Investigation. Systems under investigation remain certified until a final Decision on Decertification is issued by the EAC.
- 7.6. Notice of Non-Compliance.** If an allegation in a Formal Investigation is substantiated, the Decision Authority shall send the Manufacturer a Notice of Non-Compliance. The Notice of Non-Compliance is not, itself, a decertification of the voting system. The purpose of the notice is (1) to notify the Manufacturer of the non-compliance and (2) inform the Manufacturer of its procedural rights so that it may be heard prior to decertification.
- 7.6.1. Noncompliance Information.** The Notice of Non-Compliance shall:
- 7.6.1.1. Provide Manufacturer a copy of the Report of Investigation;
  - 7.6.1.2. Identify the noncompliance, consistent with the Report of investigation;
  - 7.6.1.3. Inform Manufacturer that if the voting system is not made compliant, the voting system will be decertified.
  - 7.6.1.4. State the actions the manufacturer must take, if any, to bring the voting system into compliance and avoid decertification.
- 7.6.2. Manufacturer's Rights.** The written Initial Decision must also inform the manufacturer of its procedural rights under the program. These include:
- 7.6.2.1. *Right to Present Information Prior to Decertification Decision.* The manufacturer shall be informed of its right to present information to the Decision Authority prior to a determination of decertification.
  - 7.6.2.2. *Right to have access to the information that will serve as the basis of the Decertification Decision.* The manufacturer shall be provided the Report of Investigation and any other materials that will serve as the basis of an agency Decision on Decertification.
  - 7.6.2.3. *Right to cure system defects prior to Decertification Decision.* A manufacturer may request an opportunity to cure within 20 days of its receipt of the Notice of Non-Compliance.
- 7.7. Procedure for Decision on Decertification.** The Decision Authority shall make and issue a written Decision on Decertification whenever a Notice of Non-Compliance is issued. The Decision Authority will not take such action until the Manufacturer has had a reasonable opportunity to cure the non-compliance and submit information for consideration.
- 7.7.1. Opportunity to Cure.** The Manufacturer shall have an opportunity to *timely* cure a non-conformant voting system prior to decertification. Cure is timely when the cure process

can be completed prior to the next Federal Election. This means that any proposed cure must be in place before *any* individual jurisdiction fielding the system holds a Federal election. The Manufacturer must request the opportunity to cure. If the request is approved, a compliance plan must be created, approved and followed. If this cure process is successfully completed, a Manufacturer may modify a non-compliant voting system, remedy procedural discrepancies or otherwise bring its system into compliance without resubmission or decertification.

- 7.7.1.1. *Manufacturer's Request to Cure.* Within 20 calendar days of receiving the EAC's Notice of Non-Compliance, a manufacturer may request an opportunity to *timely* cure all defects identified in the Notice of Non-Compliance. The request must be sent to the Decision Authority and outline how the Manufacturer would modify the system, update the technical data package, create a test plan, test the system and obtain EAC approval prior to the next election for Federal office.
- 7.7.1.2. *EAC Action on Request.* The Decision Authority will review the request and approve it if the defects identified in the Notice of Non-Compliance may reasonably be cured prior to the next election for Federal office.
- 7.7.1.3. *Manufacturer's Compliance Plan.* Upon approval of the manufacturer's request for an opportunity to cure, the manufacturer shall submit a compliance plan to the Decision Authority for approval. This compliance plan must put forth the steps to be taken (including time frames) to cure all identified defects in a timely manner. The plan shall describe the proposed changes to the system, provide for modification of the system, update the technical data package, create a test plan (limited to those tests required by the proposed changes), and provide for the testing of the system and submission of the test report to the EAC for approval. The plan shall also include a schedule of periodic progress reports to the Program Director.
- 7.7.1.4. *EAC Action on the Compliance Plan.* The Decision Authority must review and approve the compliance plan. The Decision Authority may require the manufacturer to provide additional information and modify the plan as required. If the Manufacturer is unable or unwilling to provide a Compliance Plan acceptable to the Decision Authority, the Decision Authority shall provide written notice terminating the "opportunity to cure" process.
- 7.7.1.5. *Manufacturer's Submission of the Compliance Plan Test Report.* The manufacturer shall submit the test report created pursuant to its EAC approved Compliance Plan. The EAC shall review the test report and any other necessary or relevant materials. The report will be technically reviewed by the EAC in a manner similar to the procedures laid out in Chapter 4 of this Manual.

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- 7.7.1.6. *EAC Decision on the System.* After receipt of the test plan, the Decision Authority shall issue a decision on a voting system amended pursuant to an approved Compliance Plan. For the purposes of planning, manufacturers should allow at least 20 working days for this process.
- 7.7.2. Opportunity to be Heard. The Manufacturer may submit written materials in response to the Notice of Non-Compliance and Report of Investigation. These documents shall be considered by the Decision Authority when making a determination on decertification. The Manufacturer shall ordinarily have 20 calendar days from the date it received the Notice of Non-Compliance (or in the case of a failed effort to cure, the termination of that process) to deliver its submissions to the Decision Authority. However, when warranted by the public interest (because a delay in making a determination on decertification would effect the timely, fair and effective administration of Federal elections), the Decision Authority may provide a Manufacturer less time to submit information. This alternative period (and the basis for it) must be stated in the Notice of Non-Compliance. The alternative time period must allow the manufacturer a reasonable amount of time to gather its submissions. Submissions may include:
- 7.7.2.1. A written argument responding to the conclusions in the Notice of Non-Compliance or Report of Investigation.
  - 7.7.2.2. Documentary evidence relevant to the allegations or conclusions in the Notice of Non-Compliance.
  - 7.7.2.3. Other written materials created to provide relevant facts (such as technical information, testing data or statements).
- 7.7.3. Decision on Decertification. The Decision Authority shall make an agency determination on Decertification.
- 7.7.3.1. *Timing.* The Decision Authority shall promptly make a decision on Decertification. However, the Decision Authority may not issue such a decision until the Manufacturer has provided all of its written materials for consideration or the time allotted for submission (usually 20 calendar days) has run.
  - 7.7.3.2. *Considered Materials.* The Decision Authority shall review and consider all relevant submissions of the manufacturer. In make a decision on decertification, the Decision Authority shall also consider all documents that make up the record and any other documentary information he or she determines relevant.
  - 7.7.3.3. *Agency Decision.* The Decision Authority shall issue a written Agency Decision after review of applicable materials. This decision shall be the final decision of the agency. The decision shall:

- 7.7.3.3.1. Clearly state the agency's determination on the decertification, specifically addressing the areas of non-compliance investigated;
- 7.7.3.3.2. Address the issues raised by the manufacturer in the materials it submitted for consideration;
- 7.7.3.3.3. Identify all facts, evidence, procedural requirements and/or voting system standards (VVSG or VSS) that served as the basis for the decision;
- 7.7.3.3.4. Provide the reasoning behind the determination;
- 7.7.3.3.5. Identify and provide, as an attachment, any additional documentary information that served as a basis for the decision and that was not part of the manufacturer's submission or the Report of Investigation; and
- 7.7.3.3.6. Provide the manufacturer notice of its right to appeal.

**7.8. Effect of Decision Authority's Decision on Decertification.** The Decision Authority's Decision on Decertification is the decision of the agency. A decertification is effective upon the manufacturer's receipt of the decision. A manufacturer that has had a voting system decertified may appeal that decision.

**7.9. Appeal of Decertification.** A manufacturer may, upon receipt of an Agency Final Decision on Decertification, timely request an appeal.

**7.9.1. Requesting Appeal.**

7.9.1.1. *Submission.* Requests must be submitted in writing to the Chair of the U.S. Election Assistance Commission.

7.9.1.2. *Timing of Appeal.* The manufacturer may request an appeal within 20 days of receipt of the Agency Final Decision on Decertification. Late requests will not be considered.

7.9.1.3. *Contents of Request.*

- 7.9.1.3.1. The request must clearly state the specific conclusions of the Final Decision it wishes to appeal.
- 7.9.1.3.2. The request may include additional written argument.
- 7.9.1.3.3. The request may not reference or include any factual material not previously considered or submitted to the EAC.

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- 7.9.1.4. *Effect of Appeal on Decertification.* The initiation of an appeal does not impact the decertified status of a voting system. Systems are decertified upon notice of decertification in the agency's Decision on Decertification (see Section 7.8).
- 7.9.2. Consideration of Appeal. All timely appeals will be considered by the appeal authority.
- 7.9.2.1. The appeal authority shall be two or more U.S. EAC Commissioners or other individual or individuals appointed by the Commissioners who have not previously served as investigators, advisors or decision makers in the decertification process.
- 7.9.2.2. All decisions on appeal shall be based on the record.
- 7.9.2.3. The decision of the Decision Authority shall be given deference by the appeal authority. While it is unlikely that the scientific certification process will produce factual disputes, in such cases, the burden of proof shall belong to the Manufacturer to demonstrate by clear and convincing evidence that their voting system met all substantive and procedural requirements for certification. In other words, the determination of the Decision Authority will be overturned only when the appeal authority finds the ultimate facts in controversy highly probable.
- 7.9.3. Decision on Appeal. The appeal authority shall make a written, final Decision on Appeal. This decision shall be provided the Manufacturer. All Decisions on Appeal shall be final and binding on the Manufacturer. No additional appeal shall be granted. The Decision on Appeal shall:
- 7.9.3.1. State the final determination of the agency;
- 7.9.3.2. Address the matters raised by the Manufacturer on appeal;
- 7.9.3.3. Provide the reasoning behind the decisions; and
- 7.9.3.4. State that the decision on appeal is final.
- 7.9.4. Effect of Appeal.
- 7.9.4.1. *Grant of Appeal.* If a manufacturer's appeal is granted in whole, the decision of the Decision Authority is reversed. The voting system shall have its certification reinstated. For the purposes of this program, the system shall be treated as though it was never decertified.

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7.9.4.2. *Denial of Appeal.* If a manufacturer's appeal is denied (in whole or in part), the decision of the Decision Authority is upheld. The voting system remains decertified and no additional appeal is available.

**7.10. Effect of Decertification.** Voting systems that have been decertified no longer hold an EAC Certification under the program. For the purposes of this manual and the program, such systems will be treated as any other uncertified voting system. As such:

7.10.1. The manufacturer may not represent the voting system as certified;

7.10.2. The voting system may not be labeled as certified;

7.10.3. The voting system will be removed from the EAC list of Certified Systems; and

7.10.4. The EAC will notify state and local election officials of the decertification.

**7.11. Recertification.** A decertified system may be re-submitted for certification. Such systems shall be treated as any other system seeking certification. The Manufacturer shall present an application for certification consistent with this manual.

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## 8. Quality Monitoring Program

- 8.1. Overview.** The quality of any product, including a voting system, depends on two specific elements: (1) the design of the product or system; and (2) the care and consistency of the manufacturing process. The EAC testing and certification process focuses on voting system design by ensuring that a representative sample of a system meets the technical specifications of the applicable EAC voting system standards. This process is commonly called 'type acceptance'. It determines whether the representative sample submitted for testing meets the requirements. What type acceptance does not do is explore whether variations in manufacturing may allow production of non-compliant systems. Generally, the quality of the manufacturing is the responsibility of the manufacturer. Once a system is certified, the vendor assumes primary responsibility for compliance of the produced products. This is accomplished by the manufacturer's configuration management and quality control processes. However, the EAC's Quality Monitoring Program, as outlined in this chapter, provides an additional layer of quality control by allowing the EAC to perform manufacturing site reviews, carry out fielded system reviews and gather information on voting system anomalies from election officials. These are additional tools to help assure that voting systems continue to meet the requirements of EAC's voting system standards as they are manufactured, delivered and used in elections. These aspects of the program allow the EAC to independently monitor the continued compliance of fielded voting systems.
- 8.2. Purpose.** The purpose of the Quality Monitoring Program is to ensure that the voting systems certified by the EAC are identical to those fielded in election jurisdictions. This is done primarily by identifying: (1) potential quality problems in manufacturing, (2) uncertified voting system configurations and (3) field performance issues with certified systems.
- 8.3. Manufacturer Quality Control.** EAC's Quality Monitoring Program is not a substitute for the manufacturer's quality control program. As stated in Chapter 2 of this manual, all manufacturers must have an acceptable quality control program in place before they may be registered. The EAC's program serves as an independent and complimentary process of quality control which works in tandem with manufacturer's efforts.
- 8.4. Quality Monitoring Methodology.** This chapter provides the EAC with three primary tools it will use to assess the level of effectiveness of the certification process and the compliance of fielded voting systems. These tools include (1) manufacturing site reviews, (2) fielded system reviews and (3) a means to receive anomaly reports from the field.
- 8.5. Manufacturing Site Review.** Facilities that produce certified voting systems will be reviewed periodically, at the discretion of the EAC, to verify that the system being manufactured, shipped and sold is the same as the sample submitted for certification testing. All registered manufacturers must cooperate with such audits as a condition of program participation.
- 8.5.1. Notice.** The site review may be scheduled or unscheduled, at the discretion of the EAC. Unscheduled reviews will be performed with at least 24 hours notice. Scheduling and notice of site reviews will be coordinated with and provided to both the manufacturing facility representative and the Manufacturer's representative.



- 8.5.2. Frequency. At a minimum, one or more manufacturing facilities of a registered manufacturer shall be subject to a site review at least once every four years.
- 8.5.3. The Review. The production facility and production test records must be made available for review. When requested, production schedules must be provided to the EAC. Production or production testing may be witnessed by EAC representatives. If equipment is not being produced during the inspection, the review may be limited to production records. During the inspection, the manufacturer must make available to the EAC representative the manufacturer's quality manual and other documentation sufficient to enable the inspector to evaluate the facility's:
  - 8.5.3.1. Manufacturing quality controls;
  - 8.5.3.2. Final inspection and testing;
  - 8.5.3.3. History of deficiencies or anomalies and corrective actions taken;
  - 8.5.3.4. Equipment calibration and maintenance;
  - 8.5.3.5. Corrective action program;
  - 8.5.3.6. Policies on product labeling and the application of the EAC mark of certification; and
- 8.5.4. Exit Briefing. Site reviewers will provide the manufacturing facility representative a verbal exit briefing regarding the preliminary observations of the review.
- 8.5.5. Written Report. A written report documenting the review will be drafted by the EAC representative and provided to the manufacturer. The report will detail the findings of the review and identify actions that are required to correct any deficiencies.

**8.6. Fielded System Review and Testing.** Upon invitation or with the permission of a state or local election authority, the EAC may, at its discretion, conduct a review of fielded voting systems. Such reviews will be done to ensure that a fielded system is in the same configuration as that certified by the EAC and that it has the proper mark of certification. This review may include the testing of a fielded system, if deemed necessary. Any anomalies found during this review and testing will be provided to the election jurisdiction and the manufacturer.

**8.7. Field Anomaly Reporting.** The EAC will collect information from election officials who field EAC certified voting systems as another means of gathering field data. Information on actual voting system field performance is a basic means to assess the effectiveness of certification program and the manufacturing quality and version control. The EAC will provide a mechanism for election officials to provide real world input on voting system anomalies.

8.7.1. Anomaly Report. An anomaly report is a form that election officials may use to report voting system anomalies to the EAC. The form (and instructions for its completion) are available at Appendix D or on the EAC website, [www.eac.gov](http://www.eac.gov). The form may be filed with the EAC on-line or by mail. Use of the form is required.

8.7.2. Who May Report? Reports may be filed by state or local election officials who have experienced voting system anomalies in their jurisdiction. The individuals reporting must identify themselves and have firsthand knowledge or official responsibility over the anomaly being reported. Anonymous or hearsay reporting will not be accepted.

8.7.3. What Is Reported? Election officials shall report voting system anomalies. An “anomaly” is defined as an irregular or inconsistent action or response from the voting system or system component resulting in some disruption to the election process. Incidents resulting from administrator error or procedural deficiencies are not considered an anomaly for the purposes of this chapter. Officials must report:

8.7.3.1. Their name, title, contact information and jurisdiction;

8.7.3.2. A description of the voting system at issue;

8.7.3.3. The date and location of the reported occurrence;

8.7.3.4. The type of election; and

8.7.3.5. A description of the anomaly witnessed.

8.7.4. Report Distribution. Credible reports will be distributed to state and local election jurisdictions who field similar systems and the manufacturer of the voting system at issue.

**8.8. Use of Quality Monitoring Information.** Ultimately, the information the EAC gathers from manufacturing site reviews, fielded system reviews and field anomaly reports will be used to improve the program and ensure the quality of voting systems. The system is not designed to be punitive, but focused on improvement of the process. Information gathered will be used to:

8.8.1. Identify areas for improvement in the EAC’s testing and certification program;

8.8.2. Improve manufacturing quality and change control processes;

8.8.3. increase voter confidence in voting technology;

8.8.4. Inform manufacturers, election officials and the EAC of issues associated with voting systems in a real world environment;

8.8.5. Share information between jurisdictions who utilize similar voting systems;

- 8.8.6. Resolve problems associated with voting technology or manufacturing in a timely fashion by involving manufacturers, election officials and the EAC;
- 8.8.7. Provide feedback to the EAC, NIST and the TDGC regarding issues which may need to be addressed through a revision to the Voluntary Voting System Guidelines;
- 8.8.8. Initiate an investigation where information suggests that decertification is warranted (See Chapter 7).

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## 9. Interpretations

- 9.1. Overview.** A request for Interpretation is a means by which a registered manufacturer or VSTL may seek clarification on a specific EAC voting system standard (VVSG or VSS). Interpretations are clarifications of the voting system standards and guidance on how to properly evaluate conformance to it. Suggestions or requests for modifications to the standards are provided by other processes. This chapter outlines the policy, requirements and procedure for requesting an Interpretation.
- 9.2. Policy.** Registered Manufacturers or VSTLs may request that the EAC provide a definitive interpretation of EAC accepted voting system standards (VVSG or VSS) when, in the course of developing or testing a voting system, facts arise which make the meaning of a particular standard ambiguous or unclear. The EAC may self-initiate such a request when its agents identify a need for interpretation within the program. An interpretation issued by the EAC will serve to clarify what a given standard requires and how to properly evaluate compliance. Ultimately, interpretations do not amend voting system standards, but serve only to clarify existing standards.
- 9.3. Requirements for Requesting an Interpretation.** EAC interpretations are limited in scope. The purpose of the interpretation process is to provide manufacturers, who are in the process of developing a voting system, a means to resolve the meaning of a voting system standard in light of a specific voting system technology without having to present a finished product to EAC for certification. In order to submit a request for interpretation, one must (1) be a proper requester, (2) request interpretation of an applicable voting system standard, (3) present an actual controversy and (4) seek clarification on a matter of unsettled ambiguity.
- 9.3.1. Proper Requestors.** A request for interpretation may only be submitted by a registered manufacturer or agent of the manufacturer acting on its behalf (such as a VSTL). Requests for interpretation will not be accepted from any other party.
- 9.3.2. Applicable Standard.** Requests for interpretation are limited to queries on EAC voting system standards (i.e. VVSG or VSS). Moreover, a manufacturer may only request an interpretation on a version of EAC voting system standards to which the EAC currently offers certification.
- 9.3.3. Existing Factual Controversy.** In order to request an interpretation, a manufacturer must present a question relative to a specific voting system or technology proposed for use in a voting system. Requests for interpretation on hypothetical issues will not be addressed by the EAC. In order to request interpretation, the need for clarification must have arisen from the development or testing of a voting system. A factual controversy exists when an attempt to apply a specific section of the VVSG or VSS to a specific system or piece of technology creates ambiguity.
- 9.3.4. Unsettled, Ambiguous Matter.** Requests for interpretation must involve actual controversies which have not been previously settled. This is a two part requirement:

9.3.4.1. *Actual Ambiguity.* A proper request must contain an actual ambiguity. The interpretation process is not a means to challenge a clear EAC voting system standard. Recommended changes to voting system standards are welcome and may be forwarded to the EAC, but are not part of the Certification Program. An Ambiguity arises when (in applying a voting system standard to a specific technology):

9.3.4.1.1. The language of the standard is unclear on its face;

9.3.4.1.2. One section of the standards seems to contradict another, relevant section;

9.3.4.1.3. The language of the standard, though clear on its face, lacks sufficient detail or breadth to determine its proper application to a particular technology;

9.3.4.1.4. The language of a particular standard, when applied to a specific technology, clearly conflicts with the established purpose or intent of the standard; or

9.3.4.1.5. The language of the standard is clear, but the proper means to assess compliance is unclear.

9.3.4.2. *Not Previously Clarified.* The EAC will not accept a request for interpretation where the issues raised have previously been clarified.

**9.4. Procedure for Requesting an Interpretation.** Requests for an interpretation shall be made in writing to the Program Director. All requests should be complete and as detailed as possible, as interpretations issued by the EAC are based upon, and limited to, the facts presented. Failure to provide complete information may result in an Interpretation that is off point and ultimately immaterial to the issue at hand. Requests for Interpretation must:

9.4.1. Establish Standing to Make the Request. In order to make a request one must meet the requirements identified in section 9.3, above. Thus the written request must provide sufficient information for the Program Director to conclude that the requestor is (1) a proper requester, (2) requesting interpretation of an applicable voting system standard, (3) presenting an actual factual controversy and (4) seeking clarification on a matter of unsettled ambiguity.

9.4.2. Identify the EAC Voting System Standard to be Clarified. The request must identify the specific standard or standards to which the requestor seeks clarification. The request must state the version of the voting system standards at issue (if applicable) and quote and correctly cite the applicable standards.

9.4.3. State the Facts Giving Rise to the Ambiguity. The request must provide the facts associated with the voting system technology that gave rise to the ambiguity in the

identified standard. The request must be careful to provide all necessary information in a clear and concise fashion. Any interpretation issued by the EAC will be based upon the facts provided.

9.4.4. **Identify the Ambiguity.** The request must identify the ambiguity it seeks to resolve. The ambiguity shall be identified by stating a concise question. This question:

9.4.4.1. Shall be clearly stated.

9.4.4.2. Shall be related to and reference the voting system standard and voting system technology information provided.

9.4.4.3. *Shall be limited to a single issue.* Each question or issue arising from an ambiguous standard must be stated separately. Compound questions are unacceptable. If multiple issues exist, they should be presented as individual, numbered questions.

9.4.4.4. Shall be stated in a way that can ultimately be answered yes or no.

9.4.5. **Provide a Proposed Interpretation.** A request for interpretation should propose an answer to the question posed. The answer should interpret the voting system standard in the context of the facts presented. It should also provide the basis and reasoning behind the proposal.

**9.5. EAC Action on Request for Interpretation.** Upon receipt of a Request for Interpretation the EAC shall:

9.5.1. **Review of Request.** The Program Director shall review the request to ensure it is complete, clear and meets the requirements of Section 9.3. Upon review the Program Director may:

9.5.1.1. *Request Clarification.* If the Request of Interpretation is incomplete or additional information is otherwise required, the Program Director may send the Manufacturer a request for clarification. This request will identify the additional information required.

9.5.1.2. *Reject the Request for Interpretation.* If the Request for Interpretation does not meet the requirements of Section 9.3 the Program Director may reject it. Such rejection must be provided the Manufacturer in writing and state the basis for the rejection.

9.5.1.3. *Notice Acceptance of the Request.* If the Request of Interpretation is acceptable the Program Director will notify the manufacturer in writing, providing it with an estimated date of completion. Requests for Interpretation may be accepted in whole or in part. A notice of acceptance shall state the issues accepted for interpretation.

9.5.2. **Consideration of the Request.** Once a Request for Interpretation has been accepted, the matter shall be investigated and researched. Such action may require the EAC to employ technical experts. It may also require the EAC to request additional information from the Manufacturer. The Manufacturer shall respond promptly to such requests.

9.5.3. **Interpretation.** The Decision Authority shall be responsible for making determinations on requests for interpretation. Once this determination has been made, a written Interpretation shall be sent to the Manufacturer. This written Interpretation shall:

9.5.3.1. State the question or questions investigated;

9.5.3.2. Outline the relevant facts that served as the basis of the Interpretation;

9.5.3.3. Identify the voting system standards interpreted;

9.5.3.4. State the conclusion reached.

9.5.3.5. Inform the Manufacturer of the effect of an interpretation (see Section 9.6, below).

**9.6. Effect of Interpretation.** Interpretations are fact and case specific. They are not tools of policy, but specific, fact based guidance useful for resolving a particular problem. Ultimately, an interpretation is determinative and conclusive only with regard to the case presented. Nevertheless, interpretations do have some value as precedence. Interpretations published by the EAC shall serve as reliable guidance and authority over identical or similar questions of interpretation. These Interpretations will assist users of EAC voting system standards in understanding and applying its provisions.

**9.7. Library of Interpretations.** To better serve Manufacturers and those interested in the EAC voting system standards, the Program Director shall select Interpretations for general publication. All proprietary information contained in an Interpretation will be redacted before publication consistent with Chapter 10 of this Manual. The library of published opinions may be found at [www.eac.gov](http://www.eac.gov).

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## 10. Trade Secret, Confidential Commercial and Personal Information

**10.1. Overview.** Participants in the Certification Program will be required to provide the EAC a variety of documents, some of these documents may include trade secret, confidential commercial or personal information protected from release by Federal law. This chapter discusses the certification program's standards, processes and requirements that work to identify, document and protect such information from improper release.

**10.2. Policy on Trade Secret and Confidential Commercial Information.** The Freedom of Information Action (FOIA) and EAC policy promote an open and transparent government process. FOIA generally provides for the release of documents to the public upon request. In most cases, access to government held documents benefit Federal agencies by creating an informed and involved public. However, in some instances the release of information can be harmful to both the individual who submitted it and a Federal agency's ability to perform its mission. Confidential commercial or trade secret information falls into this category. Such information has value in the marketplace. Requiring release of the information would result in competitive harm to its submitter and damage the government's ability to gather such information in the future. Because of this fact, FOIA (5 U.S.C. §522) along with the Trade Secrets Act (18 U.S.C. §1905) protect from public release (1) trade secrets information and (2) privileged or confidential commercial information.

**10.3. Trade Secrets.** A trade secret is a secret, commercially valuable plan, process, or device that is used for the making or processing of a product and that is the end result of either innovation or substantial effort. It relates to the productive process itself, describing how a product is made. It does not relate to information describing end product capabilities, features, or performance.

10.3.1. For illustrative purposes, examples of trade secrets may include:

10.3.1.1. Plans schematics and other drawings useful in production;

10.3.1.2. Specifications of materials used in production;

10.3.1.3. Voting system source code used to develop or manufacture software where release would reveal actual programming;

10.3.1.4. Technical descriptions of manufacturing processes and other secret information relating directly to the production process.

10.3.2. Examples of documents that are likely not trade secrets include:

10.3.2.1. Information pertaining to a finished products capabilities or features;

10.3.2.2. Information pertaining to a finished products performance.



10.3.2.3. Information regarding product components that would not reveal any commercially valuable information regarding production.

**10.4. Privileged or Confidential Commercial Information.** Privileged or confidential commercial information is that information submitted by a manufacturer that is *commercial or financial* in nature and *privileged or confidential*.

10.4.1. *Commercial or Financial Information.* The terms “commercial” and “financial” should be given their ordinary meanings. They include records in which a submitting manufacturer has any *commercial interest*.

10.4.2. *Privileged or Confidential.* Commercial or financial information is privileged or confidential if its disclosure would likely cause substantial harm to the competitive position of the submitter. The concept of harm to one’s competitive position focuses on harm flowing from a competitor’s affirmative use of the proprietary information. It does not include incidental harm associated with upset customers or employees.

**10.5. Documents Submitted Voluntarily.** Documents submitted voluntarily to a Federal agency are granted a greater degree of protection from public release than those documents submitted involuntarily. Information the EAC requires Manufacturers to submit as a function of the Certification Program are not provided voluntarily. Voluntarily submitted documents are those the manufacturer chooses to submit outside the Certification Program requirements. If a manufacturer wishes to provide such information, it should contact and coordinate with the certification Program Director. If the Program Director determines the information to be voluntary in nature, the manufacturer should label the information appropriately. Such action will prevent the inappropriate or inadvertent release of protected information.

**10.6. EAC’s Responsibilities.** The EAC is ultimately responsible for determining whether or not a document must be released pursuant to Federal law. In doing so, however, the EAC will require information and input from the manufacturers submitting the documents. This is essential for the EAC to identify, track and make determinations on the large volume of documentation it receives. The EAC has the following responsibilities.

10.6.1. Document and information management. The EAC will control the documentation it receives. It will do so in a manner that:

10.6.1.1. Ensures documents are secure and only released to third parties after the appropriate review and determination;

10.6.1.2. Track documents manufactures have previously identified as proprietary and requiring protection under FOIA.

10.6.2. Contact manufacturers upon proposed release of potentially protected documents. In the event a member of the public submits a FOIA request for documents provided by a manufacturer or the EAC otherwise proposes the release of such documents, the EAC will:

10.6.2.1. Review the documents to determine if they are potentially protected from release as trade secrets or confidential commercial information. The documents at issue may have been previously identified as protected by the manufacturer when submitted (see section 10.7.1, below) or identified by the EAC upon review.

10.6.2.2. Grant submitting manufacturer an opportunity to provide input. In the event the information has been identified as potentially protected from release as a trade secret or confidential, commercial information, the EAC will notify the submitter and allow them an opportunity to submit their position on the issue. The submitter shall respond consistent with section 10.7.1, below.

10.6.3. Make a final determination on release. After providing the submitter of the information an opportunity to be heard, the EAC will make a final decision on release. The EAC will inform the submitter of this decision.

**10.7. Manufacture's Responsibilities.** While the EAC is ultimately responsible for determining if a document, or a portion of it, is protected from release as a trade secret or confidential commercial information, the Manufacturer shall be responsible for identifying documents it believes warrant such protection. This responsibility arises in two situations (1) upon the initial submission of information, and (2) upon notification by the EAC that it is considering the release of potentially protected information.

10.7.1. Initial submission of information. When a manufacturer is submitting documents to the EAC as required by the certification program, it is responsible for identifying any document or portion of a document that it believes is protected from release by law. Examples of submissions required under this program include information submitted during the manufacturer registration process, Technical Data Packages, Test Plans and Test Reports. Manufacturers shall identify protected information by:

10.7.1.1. *Submitting a Notice of Protected Information.* This notice shall identify the document, document page or portion of a page that is believed to be protected from release. This must be done with specificity. For each piece of information identified, state the legal basis for its protected status.

10.7.1.1.1. Cite the applicable law which exempts the information from release.

10.7.1.1.2. Clearly discuss why that legal authority applies and why the document must be protected from release.

10.7.1.1.3. If necessary, provide additional documentation or information. For example, if a document is claimed to contain confidential commercial information, evidence and analysis of the competitive harm that would result upon release would have to be provided.

10.7.1.2. *Label Submissions.* Label all submissions identified in the notice as “Proprietary Commercial Information.” Only those submission that are identified as protected should be labeled. Attempts to indiscriminately label all materials as proprietary will render the markings moot.

10.7.2. Notification of potential release. In the event a manufacturer is notified that the EAC is considering the release of information that may be protected, the manufacturer shall:

10.7.2.1. Respond to the notice within 15 days. If additional time is needed, the manufacturer must promptly notify the Program Director. Requests for additional time will be granted only for good cause and must be made before the 15 day deadline. Manufacturers that do not timely respond, will be viewed as not objecting to release.

10.7.2.2. Clearly state in the response:

10.7.2.2.1. That there is no objection to release; OR

10.7.2.2.2. That the manufacturer objects to release. In this case, the response must clearly state which portions of the document are believed to be protected from release. The manufacture shall follow the procedures discussed in section 10.7.1, above.

**10.8. Personal Information.** Certain personal information is protected from release under FOIA and the Privacy Act (5 U.S.C. §552a). This information includes private information about a person which if released would cause the individual embarrassment or constitute and unwarranted invasion of personal privacy. Generally, the EAC will not require the submission of private information about individuals. The incidental submission of such information should be avoided. If a manufacturer believes it is required to submit such information, it should contact the Program Director. If the information will be submitted, it must be properly identified. Examples of such information include:

10.8.1. Social Security Numbers;

10.8.2. Bank account numbers;

10.8.3. Home addresses and

10.8.4. Home phone numbers.

**Appendix A**

**Manufacturers' Registration Form**

Available in electronic format at [www.eac.gov](http://www.eac.gov)

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**Appendix B**

**Voting System Certification Application Form**

Available in electronic format at [www.eac.gov](http://www.eac.gov)

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**Appendix C**

**Discussion of Practices:  
Delivery and Validation of Trusted Voting System  
Software**

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# Delivery and Validation of Trusted Voting System Software

## Overview

This document discusses the design of a proposed system for delivery and validation of trusted voting system software and the rationale for this system. The purpose of the system is to provide a high level of confidence that software used in elections is a faithful and unmodified copy of the certified version. This foundation of trust is built upon two pillars. The first pillar is that the certification process is effective and will prevent deficient or malicious software from being approved. The second pillar, and the subject of this document, is that the software that was certified is what is being used in elections and can be verified as that.

We begin with a discussion of how software is built and delivered. Next the security risks of the system are discussed and the security principles used to protect the system are set forth. The main part of the document then discusses how those security principles are or could be implemented to protect the delivery of voting system software. In some cases the features described future possibilities. In other cases features are already in use in some states, but not in others.

## Building and Delivering Software

Computers only understand numbers. In fact they only understand 1's and 0's. This is called binary coding. Back in ancient computing times (the 1950's and 1960's), some people actually wrote computer programs as long strings of numbers. The computer's central processing unit (CPU) that understood certain numbers were instructions for different actions like add, subtract, read memory or write to the disk. It also understood that some of the numbers were its data. For example the number that meant read memory would be followed by a number that wasn't another instruction but pointed to the location in the memory to be read.

People soon grew tired of writing computer programs as long lists of numbers and so computer languages were developed. These computer languages were meant to allow people to write programs in something that looked more like speech. So now programmers would write lists of commands like "read", "print" or "if..else.."

However, the computers still only understood numbers so a special program was developed that translated the programming instructions to the numbers the computer would understand. This program is usually called a compiler and the process of converting the programming instructions into the numbers a computer can read is called a compilation or a build. The result of a build is called executable code, because it is in a form the computer can execute.

Today computer programmers use very sophisticated computer languages to write programs. Some of these languages even start to look like human language, if you are a computer geek. These programs are called source code because they are the input or source for the next steps in

the process. When they are ready they use a compiler to build their program into executable code and run it on a computer. So the steps in the process are:

1. Write a source code program in computer language.
2. Build the source code into executable code.
3. Take the executable code to a computer.
4. Load the executable onto the computer and run it.

This is all pretty simple. Now let's see what could go wrong.

## **Securing the System**

Once the system for producing, delivering and installing executable code is understood the system must be examined to identify any security vulnerabilities. The first step in a security analysis is to develop a threat model. What are we worried about? What threat do we need to protect the system against?

We could hypothesize a conspiracy involving two or more people. However, large conspiracies are almost impossible to keep secret. Even two people, if they work for different organizations, are hard to co-opt successfully. Once you start assuming that a conspiracy is possible then the situation starts becoming increasingly complex and there is more debate over how likely that is to happen. Debating the possibility of conspiracy scenarios is not within the scope of this document. Everyone seems to agree that the system should be protected in a way that one rogue employee could not do anything bad without being detected.

Once we have agreed on the threats then we can talk about how to protect the system from those threats. Developing a complete security system is a very complex and involved task. This document only focuses on some of the issues that are important for protecting the production, delivery and installation of executable code in a voting system.

### *The Threat Model*

So what are we worried about? There are many, many possible answers to that question. This document deals with preventing a single threat of a rogue actor in the system. Let's assume we may get a rogue person who wants to manipulate the voting system. An insider probably has the most potential for doing damage, so let's assume this person is an employee of an organization that is involved with the voting system. The person may work for a local elections office, an equipment manufacturer, a test house or any other organization that deals with voting equipment.

What could one rogue employee do and how would we protect the system against them?

### *Security Principles*



The system should be designed with multiple protections. This is called a defense in depth. Some of these protections will try and prevent a malicious person from doing what they want to do. Other features will try and detect if somehow they were able to do it anyway. Still other features will document what happened and provide evidence in an investigation if there is ever suspicion that something bad happened.

### **Multiple Independent Knowledgeable Witnesses**

One principle the system should follow is that nothing is done without multiple, independent and knowledgeable witnesses. At least two witnesses should be present at every step in the process. Witnesses should be independent of each other, meaning they work for different organizations and don't have any connection other than coming together to complete a task related to the voting system. Both of our witnesses should be sufficiently knowledgeable about the task so that they can be expected to spot an action that might potentially compromise the system. The first principle then is that every action in the process must be witnessed by two or more people, from different organizations who understand what is being done.

### **Documented Chain of Custody**

A voting system should have a documented chain of custody. Officials should be able to track the software on a voting system back to the source code that was delivered to the national lab for certification. We want to be able to prove that the executable code used in an election is exactly the same as that certified at the national and state level.

### **Protection, Detection and Recording Mechanisms**

A voting system should also have multiple levels of protection. It isn't unusual for our homes to have locks on the door, a light on the porch, a dog and, for some, a shotgun under the bed. That is one form of defense in depth. A thief might easily get by any one of those things but together they make it reasonably hard and potentially unpleasant for a thief to successfully break in. Similarly the voting system should also have multiple levels of protection. Some features will prevent something bad from happening. Other features will serve to detect if somehow the system is compromised. If the protections work, the detection features should never be needed. However, we live in an imperfect world so we need to provide for both prevention and detection. Even more, we want good records so that if there is ever a reason to investigate we can prove or disprove that the system worked. If these records show that despite all of the protections, someone corrupted the system, then the courts can decide the appropriate action. The system should be able to give the courts the evidence to determine what has happened.

### *Security System Design*

A certification system with three major elements flows from our security discussion. These elements are:

- Build source code into executable code
- Delivery unmodified version of the executable code to state and local authorities

- Verify that the code in use is unmodified from the certified code

To accomplish our security objectives the following principles are applied to each step of the process:

- Multiple independent knowledgeable witnesses
- Documented chain of custody
- Protection, detection and recording mechanisms

The application of these security principles to the different stages of the delivery process gives us the system design that will be discussed in the remainder of this document.

## Source Code Review

The first step in the process is an independent review of the source code. This is a requirement for national certification and also for some State certifications. This is one example of using multiple independent witnesses in which the manufacturer's programmer writes the programs for the voting system and then the national test lab review those programs, line-by-line, to make sure they do what they are supposed to do and only what they are supposed to do.

After the source code is built into executable code, there is testing of the software as it is used in a voting system. The source code review, together with the operational testing, provides multiple checks that the software operates correctly and doesn't have hidden code in it.

## Building Software

Once the source code has been reviewed by the national laboratory it must be compiled to build the executable code that will actually run on the voting system. A software build is a complex process and a lot goes on under the control of the computer during the process. When this process is completed, we need to be very confident that the source code reviewed is exactly what is in the executable code that is produced and that there hasn't been anything else added. This is easier said than done, but let's take a look at some options.

### *Witness Build*

The national certification system, under NASED and the ITA's, required a witness build. The manufacturer delivered source code to the ITA. The source code was reviewed. Then the manufacturer with a witness from the ITA performed the build. The executable code created was then loaded onto the machines and the rest of the testing on the voting system was performed. This system was a great improvement over what had existed before, which was no national certification system. Prior to the NASED national certification system every state conducted its own system review with very uneven levels of scrutiny.

There are notable weaknesses in the witness build process. First, the manufacturer's employee provided the build environment, without any kind of qualification. A computer loaded with a build environment is a very complex environment with numerous files and programs. It is quite

conceivable that someone could hide some additional software module and instructions to insert that software into the executable code. The ITA's witness and even the manufacturer's employee who performs the build might perform the build in good conscience, unaware that more was happening than they were aware of.

A second major weakness is that the records of the build process were inadequate to recreate it. If at a later time there was a need to investigate an allegation the records of the witness build process have been insufficient to recreate the original build environment or validate that the build environment is unchanged from that which was originally used.

A third weakness is that the witness build, while valuable, was not constructed with a view to its being an important part of a verifiable chain of custody from the national certification process to the software used in an election.

### *Trusted Build*

The concept of a trusted build may be considered a generational revision of the original witness build. The trusted build is constructed with the intent that it serve as an important component of a verifiable chain of custody. The role of the test authority witness is revised to make them the primary operator of the build process. Records and file signatures are significantly enhanced to allow recreation of the build environment and verification that the original build environment has been reproduced without modification. Significant added supervision is given to the creation of the build environment itself to assure that the environment itself is free of unknown elements.

The trusted build, depicted in Figure 1, begins with delivery of the source code from the manufacturer. The source code is reviewed for compliance with the EAC's applicable voting systems standards. File signatures of the source code modules are produced and recorded.

The build environment is then constructed. The disk that will hold the environment is completely erased using special software that assures complete and total cleaning of the disk, including the root sectors. It is preferred that the build environment be created by test authority personnel using commercial software purchased by them from the open market. Once the build environment is created its file signature is recorded so that if there is ever a need to recreated it the fidelity of the recreation may be verified.

After the source code has successfully passed the source code review it is time to perform the build. First the file signatures of the source code modules and the build environment are checked to assure that they are unchanged from their original form. Then the source code is loaded onto the build environment and file signatures are taken of the resulting combination. A disk image is also taken of the combination just before the build is performed. The disk image is archived in a trusted archive to assure that the build can be reproduced should there ever be a need to do so. Having this disk image available is a great help in incorporating modifications to software. For modifications, having the original build environment allows focus on only the modified software modules. The rest of the modules can be verified as unchanged and therefore can be trusted based on the original certification.

The executable code is then produced. File signatures of the executable code are taken and recorded. The executable code is then archived and also used to create installation disks. File signatures are also taken of the installation disks so that they may be validated by those who will later install the software into voting systems.

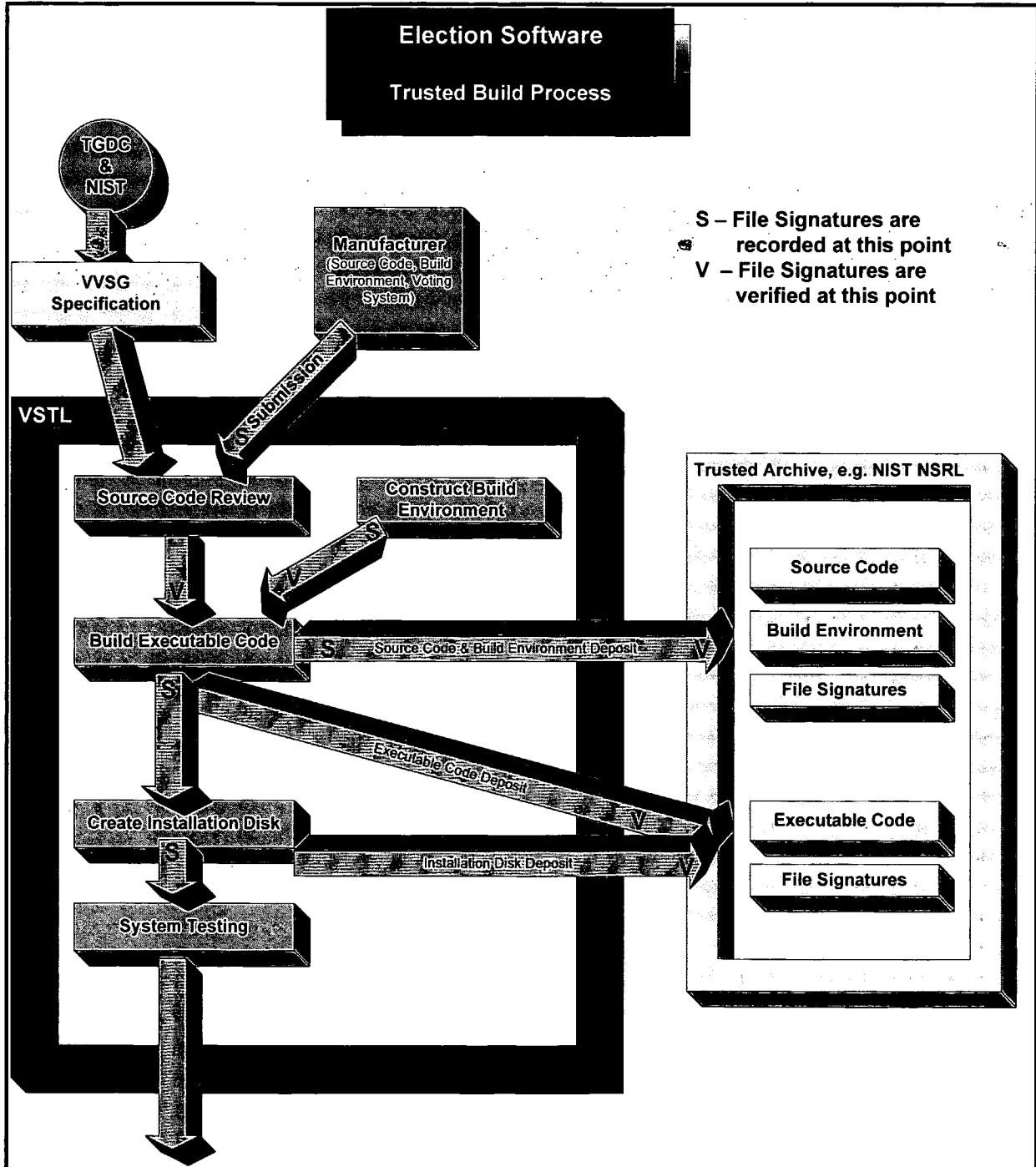


Figure 1 – The Trusted Build Process

The executable code is then installed on the system submitted for certification and the rest of the certification testing is performed.

The combination of recording file signatures and using trusted archives allows a well documented chain of custody to the end user of the software and a mechanism for the end user to independently verify that the software loaded onto their voting systems is unmodified from the certified version.

### **Protecting Delivery**

Delivery of voting system software is challenging because of the wide geographical distribution of users and the many different scenarios under which new software is required. In some cases large purchases are made of new voting systems. Typically the purchasing authority wants complete delivery of system as ready to use as possible. In these circumstances the purchaser would prefer that the software be installed before delivering the systems. Independent verification that the installed software is unmodified from the certified version is particularly important in this case. In other situations new software version must be delivered and installed on equipment already deployed for use.

Regardless of the scenario there should be carefully constructed and documented delivery of the software from the source through installation on the equipment. Once the software is installed the voting systems should be locked with tamper-proof seals and maintained under careful physical security. These requirements are part of good election administration, and are mentioned simply to highlight the role election administration plays in conjunction with the certification process to safeguard the election system.

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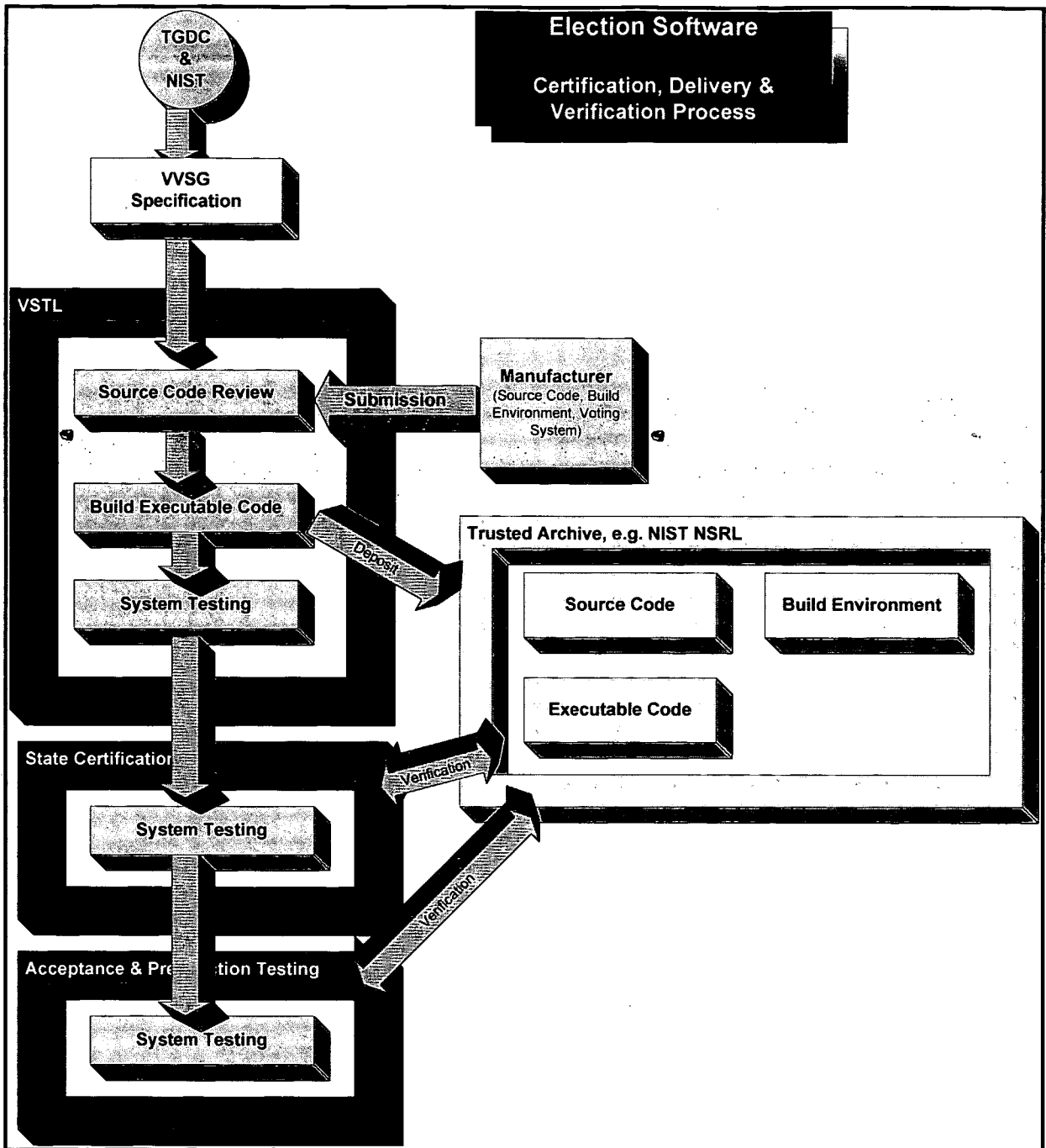


Figure 2 – Process Model for the Certification, Delivery and Verification of Voting System Software

## Verifying Delivery

### *Value of File Signatures*

File signatures, commonly called HASH codes, are a valuable tool for verifying that the chain of custody has not been violated. File signatures give a high confidence that the software being used has not been modified from the version that was certified. They can be used by local election administrators to assure that the software to be used in an election is identical to what was certified and that no modifications have been made.

It is recommended that the file signatures be checked and confirmed at critical junctures in the process. State officials should check file signatures as part of conducting a state examination. When this is done it creates an independent verification that the chain of custody was performed properly.

### *Trusted Archive*

Archiving of information is an important function. It creates a trusted source to hold certified software. When the file signatures are made available independent verification of software is possible. Further archiving provides a secure record providing detailed evidence should serious allegations need to be investigated.

### *On-Site Signature Verification*

It is recommended that when practical the file signatures of the software used in elections be confirmed before every election. This simple mechanism serves to document that software is unmodified. If the signatures do not conform then an investigation will be required and further actions necessary to assure that only certified software is used in an election.

### *3rd Party Signature Verification*

An additional feature could be the use of 3rd party verification of file signatures. Checks of software file signatures sometimes require special equipment and expertise. For example once firmware has been loaded onto chips on a printed circuit board it may require special equipment to verify that the loaded software is a correct copy of the certified version.

A 3rd party verification also provides another independent witness along with other security features. If in addition to on-site signature verification an appropriately delegated official randomly selects and sends copies of software to a trusted and independent 3rd party then an additional level of verification can be created.

### *Private/Public Key Encryption*

The use of Private/Public Key encryption may offer some real benefits in assuring that only trusted software is loaded onto a voting system. If the system itself or election officials require

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that only software that can be authenticated through a public encryption key be installed then confidence is gained that the software has been encrypted by the corresponding private key. The private key would be carefully guarded by the EAC or state officials. This could be a simple mechanism to protect voting system software during transport from being modified.

Vulnerabilities in this mechanism are that the private key might be switched with another that would allow modified software to be loaded. Further the key validation software might be compromised to allow software encrypted by either of two keys to be loaded.

The protections against these vulnerabilities are the other security features of the system, e.g. the validation of file signatures after the software is loaded and the physical security used throughout the process. An alternative could be to return the software after it is loaded to the source or another trusted party to have an audit check of the software that was loaded. As long as the process and people involved in receiving the software were different from those sending back the software to be audited there is additional confidence that the software loaded was a faithful copy of the certified software.

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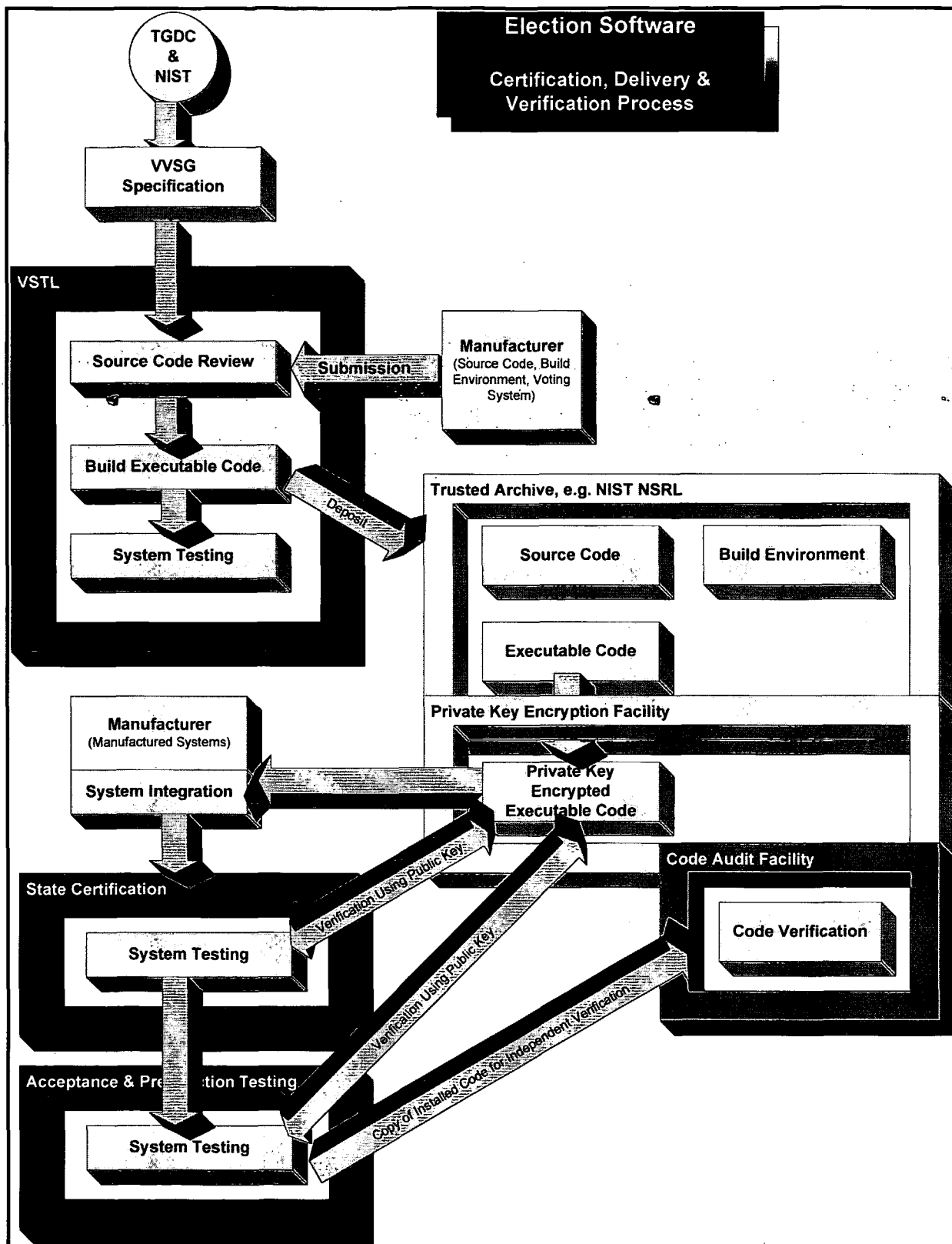


Figure 3 – Integration of PKI to delivery and verification process

## Preserving Evidence

The system described in this document makes extensive use of trusted archives and retains more material than is the practice currently. Specifically the following items are archived:

- The source code
- The build environment (pre and post build)
- The executable code
- The installation disks

Archiving these items provides evidence for any future investigations. Further these archives support other features of the system such as having 3rd party delivery of software after it is certified.

## Compounding Confidence

The certification process for voting equipment in the United States is a diverse system with federal, state and local participation. The design of the total system is that confidence is build as different participants perform their function and build increasing confidence. On the national level the EAC certification program assures that systems meet the technical standards established by the EAC. State certification efforts take an independent look at the same system and assure that the system meets the specific requirements of individual states. Local evaluation testing focuses on selecting the best system for a particular jurisdiction. Finally acceptance testing is intended to assure that the equipment received is in good operating condition and is identical to that certified on the national and state level.

## Conclusion

The voting system software deliver and validation system provides a safe and effective system, to assure that the software used in elections can be trusted. The system provides multiple security features, creating a defense in depth of the system. Some features are intended to assure that only certified software is delivered for use in voting systems. Other features are intended to detect if the system ever fails in any way to use certified software. Careful records and archiving provide trusted 3rd party sources for software and preserve evidence should investigations become necessary.

To achieve these ends the system for delivering and verifying voting system software has been analyzed as having three major components:

- Build source code into executable code
- Delivery unmodified version of the executable code to state and local authorities
- Verify that the code in use is unmodified from the certified code

The security objectives have been implemented by following the principles of:

- Multiple independent knowledgeable witnesses
- Documented chain of custody
- Protection, detection and recording mechanisms

The features suggested intend to first create a high confidence that the build process faithfully transforms the source code into executable code without any additional code or modifications being introduced. From the trusted build we then turn our attention to the delivery process. File signatures are recorded at the end of the build process. These allow verification of the code as it is delivered for use. Trusted archiving is used to give confidence that faithful copies of the source and executable code are available. Archiving further creates evidence that can later be used in investigations. Taken together these features create a robust system to assure that the software used in elections can be trusted.

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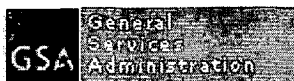
**Appendix D**

**Field Anomaly Reporting Form**

Available in electronic format at [www.eac.gov](http://www.eac.gov)

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[View Information Collection \(IC\) List](#)      [View Supporting Statement and Other Documents](#)

## View ICR - Agency Submission

**OMB Control No:** 3265-0004      **ICR Reference No:** 200703-3265-001  
**Status:** Received in OIRA      **Previous ICR Reference No:** 200609-3265-002  
**Agency/Subagency:**      **Agency Tracking No:**  
**Title:** U.S. Election Assistance Commission Voluntary Voting System Testing and Certification Program Manual  
**Type of Information Collection:** Revision of a currently approved collection  
**Type of Review Request:** Regular      **Date Submitted to OIRA:** 03/30/2007

	Requested	Previously Approved
<b>Expiration Date</b>	36 Months From Approved	05/31/2007
<b>Responses</b>	96	96
<b>Time Burden (Hours)</b>	117	117
<b>Cost Burden (Dollars)</b>	4,850	4,850

**Abstract:** HAVA requires that the EAC certify and decertify voting systems (42 U.S.C. §15371). Section 231(a)(1) of HAVA specifies that the EAC shall "... provide for the certification, de-certification and re-certification of voting system hardware and software by laboratories." The EAC will perform this mandated function through the use of its Voting System Testing and Certification Program. Only voting systems certified by the EAC will be used by citizens to cast votes in Federal Elections. Therefore, it is paramount that the program be conducted in a reliable and affective manner. In order to certify a voting system, it is necessary for the EAC to (1) require voting system manufacturers to provide information about their organization and the voting systems they submit for testing and certification; (2) require voting system manufacturers to retain voting system technical and test records; and (3) to provide a mechanism for election officials to report events which may affect a voting system's certification.

**Authorizing Statute(s):** US Code: 42 USC 15371 Name of Law: Help America Vote Act of 2002

**Citations for New Statutory Requirements:** None

### Associated Rulemaking Information

RIN:	Stage of Rulemaking:	Federal Register Citation:	Date:
	Not associated with rulemaking		

### Federal Register Notices & Comments

<b>60-day Notice:</b>	<b>Federal Register Citation:</b> 72 FR 3127	<b>Citation Date:</b> 01/24/2007
<b>30-day Notice:</b>	<b>Federal Register Citation:</b> 72 FR 15131	<b>Citation Date:</b> 03/30/2007

**Did the Agency receive public comments on this ICR?** Yes

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**Number of Information Collection (IC) in this ICR: 3**

IC Title	Form No.	Form Name
<u>Field Anomaly Reporting</u>	EAC 003C	<u>Voting System Anomaly Reporting Form</u>
<u>Collection of Voting System Manufacturer Information</u>	EAC 001C	<u>Manufacturer Registration Application</u>
<u>Collection of Information and Record Keeping for Certified Voting System</u>	EAC 002C	<u>Application for Voting System Testing</u>

**ICR Summary of Burden**

	Total Request	Previously Approved	Change Due to New Statute	Change Due to Agency Discretion	Change Due to Adjustment in Estimate	Change Due to Potential
Annual Number of Responses	96	96	0	0	0	0
Annual Time Burden (Hours)	117	117	0	0	0	0
Annual Cost Burden (Dollars)	4,850	4,850	0	0	0	0

**Burden increases because of Program Change due to Agency Discretion: No**

**Burden Increase Due to:**

**Burden decreases because of Program Change due to Agency Discretion: No**

**Burden Reduction Due to:**

**Short Statement:**

**Annual Cost to Federal Government: \$770,200**

**Does this IC contain surveys, censuses, or employ statistical methods? No**

**Is the Supporting Statement intended to be a Privacy Impact Assessment required by the E-Government Act of 2002? No**

**Agency Contact: Laiza Otero 202-566-2209 lotero@eac.gov**

On behalf of this Federal agency, I certify that the collection of information encompassed by this request complies with 5 CFR 132 related provisions of 5 CFR 1320.8(b)(3).

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It uses plain, coherent, and unambiguous language that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention periods for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8 (b)(3) about:
  - (i) Why the information is being collected;
  - (ii) Use of information;
  - (iii) Burden estimate;

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(iv) Nature of response (voluntary, required for a benefit, or mandatory);

(v) Nature and extent of confidentiality; and

(vi) Need to display currently valid OMB control number;

- (h) It was developed by an office that has planned and allocated resources for the efficient and effective manager the information to be collected.
- (i) It uses effective and efficient statistical survey methodology (if applicable); and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of these provisions, identify the item by leaving the box unchecked and explain the Supporting Statement.

**Certification Date:** 03/30/2007

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## **SUPPORTING STATEMENT A**

### **U.S. Election Assistance Commission**

#### **Voting System Testing and Certification Program**

##### **A. JUSTIFICATION**

###### **1. Explain the circumstances that make the collection of information necessary.**

HAVA requires that the EAC certify and decertify voting systems (42 U.S.C. §15371). Section 231(a)(1) of HAVA specifically requires the EAC to "... provide for the certification, de-certification and re-certification of voting system hardware and software by accredited laboratories." The EAC will perform this mandated function through the use of its Voting System Testing and Certification Program. Voting systems certified by the EAC will be used by citizens to cast votes in Federal Elections. Therefore, it is paramount that the program operates in a reliable and affective manner. In order to certify a voting system, it is necessary for the EAC to (1) require voting system manufacturers to submit information about their organization and the voting systems they submit for testing and certification; (2) require voting system manufacturers to retain voting system technical and test records; and (3) to provide a mechanism for election officials and other members of the public to report events which may effect a voting system's certification.

Approval of this collection is essential in order to comply with Help America Vote Act of 2002 (42 U.S.C. §15371). HAVA requires that the EAC certify and decertify voting systems. This mandate represents the first time the Federal government will provide for the voluntary testing and certification of voting systems, nationwide. In response to this HAVA requirement, the EAC is developing the Voting System Testing and Certification Program. This program requires the collection and retention of information by voting system manufacturers.

Until recently, national voting system certification was conducted by a private membership organization, the National Association of State Election Directors (NASED). NASED certified voting systems for over a decade, using standards issued by the Federal government. The organization terminated its certification efforts on July 10, 2006. While the EAC and NASED have worked together to provide for the certification of emergency modifications necessary to properly field voting systems for the 2006 General Election, there is presently no mechanism in place to test and certify new systems or to process modifications for the 2008 Federal elections. Given the fact that (1) it can take years to develop, test, certify, sell, and field a new or modified voting systems; and (2) a large volume of voting systems (new, existing and modified) are expected to be submitted to the EAC upon initiation of the new Certification Program, it is imperative that the EAC's Voting System Testing and Certification Program begin on the earliest possible date. The 2008 Federal elections are less than 2 years away. Ensuring that certified voting systems are available for the 2008 Election Cycle is essential to the public welfare.

###### **2. Explain how, by whom, how frequently, and for what purpose the information will be**

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**used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.**

The information collected under the EAC Voting System Testing and Certification Program will be used solely by EAC personnel to determine whether a voting system meets voluntary Federal voting system standards. Ultimately, EAC determination regarding whether a voting system is certified will be published. However, the information provided to the EAC to support a grant of certification will be made public subject to the requirements of the Freedom of Information Act and the Trade Secrets Act. A detailed guide regarding the publication of information collected for this program is found in Chapter 10 of the EAC's Voting System Testing and Certification Manual. A copy of the manual has been provided.

**3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.**

The EAC will provide for the secure collection of information using its website. Submission will be accepted using a secure, automated, form-fillable web application. Information will also be accepted via e-mail from identified parties. The EAC is committed to making the submission of information to the agency as secure, efficient, and easy as possible through the use of technology. Ultimately, given the technical sophistication of the group from which we are collecting information, the limited nature of the collection and the small number of participants, electronic filing is an ideal methodology.

**4. Describe efforts to identify duplication.**

The Voting System Testing and Certification Program is new to the EAC. It is the first Federal program of its type. As such, the information we seek has not been collected and is not available from other Federal agencies. As for collection within the program itself, the amount of information sought in Paper Work Reduction Act collections is not significant. This fact, itself, reduces the potential for duplication. Further, in developing the program, the EAC was focused on efficiency. The EAC will assign each participant an identification number. This number can be used to pull all information submitted by the participant and, thus, prevent them from having to provide previously provided information in new contexts or collection efforts.

**5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.**

This collection of information does not have a significant economic effect on a substantial number of small entities; however, some small businesses or other small entities are among potential respondents. The EAC has made efforts to limit the information requested and burden on all participants. The information sought is limited to that information necessary to certify and maintain a certification for voting systems.

**6. Describe the consequences to the Federal program or policy activities if the collection is**

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**not conducted or is conducted less frequently.**

If the EAC does not collect this information, it will be unable to provide for the certification and decertification of voting system hardware and software in accordance with the Help America Voting Act of 2002 (42 U.S.C. §15371). As no national body presently exists to perform this function, such a consequence could have a significant negative impact on the nation's election administration.

**7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.**

*(a) Requiring respondents to report information to the agency more often than quarterly.*

Not applicable in this collection.

*(b) Requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it.*

Not applicable in this collection

*(c) Requiring respondents to submit more than an original and two copies of any document.*

Not applicable in this collection.

*(d) Requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than 3 years.*

Not applicable in this collection.

*(e) In connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study.*

Not applicable in this collection.

*(f) Requiring the use of statistical data classification that has been reviewed and approved by OMB.*

Not applicable in this collection.

*(g) That includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use.*

This collection does not include a pledge of confidentiality not supported by statute or regulation.

*(h) requiring respondents to submit proprietary trade secrets or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.*

This collection does require the collection of proprietary or trade secret information protected by agency procedures. Proprietary technical information on voting systems is necessary to make a determination on certification. The EAC has set procedures and policy for the identification and protection of this information consistent with the requirements of the Freedom of Information Act and the Trade Secrets Act. These policies are laid out in Chapter 10 of the EAC Voting System Testing and Certification Manual. A copy of this manual has been provided.

**8. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.**

On two occasions, the EAC met with representatives from the voting system manufacturers and the testing laboratories impacted by this information collection to discuss the burdens imposed by this collection and methods for improving it. In addition, the EAC made revisions to the collection based on comments received during a public comment period. A copy of the Federal Register notices, a summary of the comments received, and an explanation of the revisions made have been submitted with this ICR.

**9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.**

We will not provide any payment or gift to respondents in this collection.

**10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.**

No assurance of confidentiality has been provided to respondents. Information provided will be made public consistent with the requirements of the Freedom of Information Act and the Trade Secrets Act.

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.**

The collection does not include sensitive or private questions.

**12. Provide an estimate in hours of the burden of the collection of information.**

*(a) Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Generally, estimates should not include burden hours for customary and usual business practices.*

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***(b) If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.***

***(c) Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate. The cost of contracting out or paying outside parties for information collection activities should not be included here.***

The EAC will be collecting information on voting systems and their manufacturers. The agency will use three forms to collect this information (1) a manufacturer registration form, (2) a voting system certification application form and (3) a field anomaly reporting form. The program requires the submission and retention of other information regarding the manufacturer and its business practices, the technical aspects of its voting systems and the testing of its voting systems. However this information is not part of this burden analysis as its creation is part of the industry's customary and usual business practices. Moreover, much of the information is and was required by state and local governments, independent of, and prior to, any federal requirement proposed by this voluntary program. The estimated total annual hourly burden on the voting system manufacturing industry and election officials is 114 hours. The estimated annual cost burden to these parties is \$4,610.

- Manufacturer Registration Form: The EAC estimates that there are approximately 13 potential respondents. This estimate reflects the number of known entities manufacturing and selling voting systems in the United States. This form is required to be submitted once for participation in the EAC's program. However, it is estimated that based upon organizational changes the form will be amended once every 4 years. Thus, submission is expected once every 4 years or .25 annually. Based upon discussions with industry, completion of this form is estimated to take approximately 3 hours. Therefore, the total estimated, annual, hourly burden for this form will be 9.75 hours (13 respondents X 3 hours X .25 annual rate). Based on an hourly cost factor of \$80, the total cost to the industry of this information collection is \$780.
- Voting System Certification Application Form: The EAC estimates that there are approximately 13 potential respondents. This estimate reflects the number of known entities selling and manufacturing voting systems in the United States. This form is required to be submitted each time a voting system is submitted for EAC certification. The number of submissions will vary significantly between respondents and from year to year. Based upon the experience of the National Association of State Election Directors, a private organization that previously operated a similar program, the EAC estimates it will receive an average of 54 submissions per year. This averages over 4 submissions per potential respondents, annually. Based upon discussions with industry, completion of this form is estimated to take approximately .5 hours. Therefore, the total annual hourly burden for this form will be 27 hours. Based on an hourly cost factor of \$80, the total cost to the industry of this information collection is \$2,160.
- Field Anomaly Reporting Form. This form may be used by election officials (state employees), in a purely voluntary capacity, to report problems with certified voting

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systems. Respondents are election officials who have witnessed a voting system anomaly. This is a new Federal program. No historic data exists to quantify the number of respondents. There are approximately 8,100 election officials in the United States. Assuming an anomaly rate of 1% per election year, the EAC estimates the submission of 81 responses and respondents per election year. As Federal elections take place once every 2 years, the annual submission and respondent estimate is 41, annually. The EAC estimates that this form will take 2 hours to complete. Therefore, the total annual hourly burden for this form will be 82 hours a year. Based upon an average hourly cost factor of \$25 for election officials, the total estimated cost of such submissions is \$2,050.

**13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in #12 above).**

- (a) The cost estimate should be split into two components: (1) a total capital and start-up cost component (annualized over its expected useful life) and (2) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information [including filing fees paid]. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.*
- (b) If cost estimates are expected to vary widely, agencies should present ranges of cost burden and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.*
- (c) Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.*

The EAC has identified no “non-hour” cost burdens for this collection of information that are not part of the effected industry’s customary and usual business practices.

**14. Provide estimates of annualized cost to the Federal government.**

The estimated annual cost to the Federal Government is \$770,200. This estimate includes \$499,200 for technical experts to review and accept collections, \$180,000 for personnel to

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administer and manage collections, \$46,000 in training costs, \$42,000 for program printing and website management and \$10,000 for equipment and overhead.

- We estimate \$499,200 to provide for technical experts to review and accept collections. These experts have an average pay of \$80 an hour. We expect to have six experts working half time (1040 Hrs a year).
- We estimate \$180,000 for personnel to administer and manage the collections. Two full time personnel will be assigned to this program. With an average cost (pay and benefits) of approximately \$90,000 a year.
- We estimate \$46,000 in training program costs. This includes travel costs, training program development costs and training personnel.
- We estimate \$42,000 for program printing and website development, maintenance and administration.
- We estimate \$10,000 for equipment costs and overhead.

**15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.**

This is the first time this information collection or the program upon which it is based has been performed by the Federal government.

**16. For collections whose results will be published, outline the plans for tabulation and publication.**

Not applicable to this collection.

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.**

Not applicable to this collection.

**18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.**

To the extent that the topics apply to this collection of information, we are not making any exceptions to the "Certification for Paperwork Reduction Act Submissions."

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## **Summary of and Response to Comments on the U.S. Election Assistance Commission's Voting System Testing and Certification Manual**

The U.S. Election Assistance Commission (EAC) issued its Voting System Testing and Certification Manual for public comments on October 2, 2006 (71 FR 57932), and on January 24, 2007 (72 FR 3127). The EAC received over 400 comments from the public. The majority of these comments came from voting system test laboratories, voting system manufacturers, and public interest groups. The EAC also received a number of comments from State and local officials and private individuals.

The majority of comments received by the Commission raised concerns or questioned the meaning or application of various provisions of the manual. These comments were requests for clarification. Another significant block of comments were less specific and focused on the fundamental purpose behind the program or its basic methodology. Comments in this category included individuals who noted that electronic voting machines should not be used in Federal elections and those who disagreed with the program's fundamental structure which utilizes EAC accredited laboratories to test voting systems through direct contracting with the system's manufacturer. Finally, there were a range of specific recommendations on a wide variety of topics. Examples include: (1) comments from manufacturers and interest groups requesting the EAC to provide specific timeframes or response times for various program elements or activities; (2) recommendations that the EAC Mark of Certification requirements be abolished or that the mark not be "permanently" affixed to voting machines to allow for its removal in the event of a voting system upgrade or decertification; (3) recommendations from test laboratories and public interest groups that the EAC clarify the role of its Voting System Test Laboratories, emphasizing that test plans, test reports, and other information submitted under this program be submitted directly and independently by the test labs; (4) comments from test laboratories recommending that the program provide a means for dealing with de minimis hardware changes; (5) recommendations from interest groups that the EAC utilize a third party group of technical advisors for all of its determinations under the program; (6) recommendations from interest groups urging the commission to make Certification Program documents available to the public; and (7) recommendations from State officials that the EAC contact and work with the Chief State Election Official when reviewing fielded voting systems, providing emergency modification waivers, or reviewing anomaly reports.

The EAC reviewed and considered each of the comments presented. In doing so, it also gathered additional information and performed research regarding the suggestions. The EAC's commitment to public participation is evident in the final version of the Certification Manual. The Manual has been enhanced in a number of areas in response to conscientious public comment. A total of six pages have been added to the Manual. Throughout the entire Manual the EAC added or amended language to clarify its procedures consistent with the comments it received. For example, to further clarify terminology used throughout the Manual almost a dozen terms were newly defined or

significantly clarified in the definition section of Chapter 1. Additionally, the EAC made changes to clarify the independent role of Voting System Test Labs in the program, require the EAC to publish its average response timeframes, and increase its coordination on State Election Officials. Examples of larger changes made in the document include an added section to Chapter 3 of the Manual, providing procedures for de minimis changes. This was put in place to deal with the numerous engineering change orders the Commission expects will be submitted to test laboratories under the program. Similarly, the EAC re-titled and re-wrote a major portion of Chapter 10 of the Manual (Release of Certification Program Information) to more clearly and affirmatively state EAC's policy on the release of Certification Program information.

## **Significant Changes to Manual by Chapter**

### **Chapter 1**

- 1.12 EAC Response Timeframes. We had a number of comments on setting EAC response times. Rather than setting arbitrary time periods we decided to use our website to note actual (average) timeframes for certain activities.
- Added Definitions for *Component, File Signature, HASH Algorithm, Installation Devise, Integration Testing, Linker, System Identification Tools, and Trusted Build.*

### **Chapter 2**

- 2.3.2.7 Defined malfunction for the purpose of the Manufacturer reporting requirement.
- 2.6 et al. Clarified that suspension of manufacturer registration can be triggered by a failure to meet program requirements and prohibits suspended manufacturers from submitting modifications and changes to certified systems.

### **Chapter 3**

- Added "EAC Identification" as another reason certification may be required.
- Added De Minimis Changes.
- Added that emergency modification requires consent of the Chief State Election Official (per State comments).
- Noted that EAC will make a decision on emergency modification within 5 Business days.
- Clarified basis for denial of request for emergency modification.
- Noted that info regarding emergency modifications will be posted on EAC Website.

### **Chapter 4**

- Clarified that manufacturers may NOT change VSTL once selected unless approved by the EAC.
- Added requirement for Manufacturers to identify all usable configurations of the voting system submitted for testing and certification.



- Replaced request for the TDP with requests for (1) Implementations statement, (2) Functional Diagram, and (3) System Overview Documentation.
- 4.5. Clarified VSTL's role as direct supplier of testing plan and report.
- 4.5.2 Clarified and added detail to the requirement that VSTLs notify the EAC of all failures and anomalies during testing.
- Clarified EAC authority to request additional information as needed during test report review.

### **Chapter 5**

- 5.4 - 5.7 Clarified Trusted Build procedure by replacing the term "digital signature" with the more correct (and inclusive) term "file signature".
- Elements of trusted build clarified by adding Definitions of "file signature" and "HASH Algorithm" in Chapter 1.
- 5.1 1 Clarified that the Certification Document will identify all legitimate configurations of a certified voting system.
- 5.15 Clarified that the mark of certification need be securely affixed as opposed to permanently affixed.
- Clarified that components of voting systems are not certified apart from the system itself.
- 5.1 5 Clarified that the mark of certification should only reflect the certification of the system as a whole and not a component.

### **Chapter 6**

- Reduced Manufacturers' time for responding to an initial decision from 20 days to 10 days.

### **Chapter 7**

- Clarified that the EAC will provide for (via contract with a VSTL) testing of a voting system during a decertification investigation.
- Stressed need for Manufacturer to consider EAC approval time and state certification time when creating a compliance plan (plan to cure during decertification).

### **Chapter 8**

- 8.7.4 Defined "credible" anomaly report.

### **Chapter 9**

- Clarified intent to publish all VVSG/VSS interpretations.

### **Chapter 10**

- 10.1 and 10.2 Redrafted to focus on information release rather than withholding. While not changing substance, the section now spotlights transparency.
- Added a list of areas where publication of documents or information is expected.



# Voting System Anomaly Reporting Form

For VOLUNTARY reporting of Voting System Anomalies

### A. Election Official:

1. Name, Title, Jurisdiction

2. Phone Number

3. Email

4. Reported to Manufacturer?

YES

NO

### B. Product Description:

5. Manufacturer Name

6. Type of Voting System

DRE

Ballot Marking Device

Optical Scan

Other

7. System Model

8. Hardware & Software version

9. Unit Serial Number

10. EAC Certification Number

### C. Description of Anomaly or Event:

11. Date of Occurrence

Polling Place Name or Location

12. Election Type

Primary

General

Special

13. Was this your first election using this system?

YES

NO

14. Description of Anomaly

# Instructions

This form provides for the reporting of voting system anomalies by election officials. This form is part of the EAC Quality Monitoring Program. The use of this form is voluntary. Information regarding its use can be found in Section 8.7 of the Manual.

This form is self-explanatory.

This information is required for the EAC to provide for the certification of voting systems as required by 42 U.S.C. Section 15371. This information will be used solely to administer the EAC Testing and Certification Program. This program is voluntary, however, individuals who wish to participate must meet the requirements of the Program. This information will be made public consistent with the requirements of the Freedom of Information Act, the Trade Secrets Act, and any other applicable Federal law or regulation. Public reporting burden for this collection of information is estimated to average about XX hours for completion of this form. This estimate includes the time for reviewing the instructions, gathering information and completing the form. Send comments regarding this burden estimate to the Testing and Certification Program Director, Election Assistance Commission, 1225 New York Avenue, N.W., Suite 1100, Washington, DC 20005. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to respond to, or comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

# Manufacturer Registration Application

OMB Control # 3265-0004

## 1. Manufacturer Information

Legal Name of Business: \_\_\_\_\_

Address of Business: \_\_\_\_\_

City: \_\_\_\_\_ State Alabama ZIP Code: \_\_\_\_\_

Organization Type:  Corporation  Partnership  Sole Proprietorship  Other

Names of Officers and/or Board of Directors and/or any and all Partners : \_\_\_\_\_

Name of Individual or Entity with Controlling Ownership in the Manufacturer: \_\_\_\_\_

## 2. Management Representative

First Name: \_\_\_\_\_ Title: \_\_\_\_\_

Last Name: \_\_\_\_\_ Middle Initial: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State Alabama

ZIP Code: \_\_\_\_\_ Email: \_\_\_\_\_

Phone Number: \_\_\_\_\_ FAX Number: \_\_\_\_\_

## 3. Technical Representative

First Name: \_\_\_\_\_ Title: \_\_\_\_\_

Last Name: \_\_\_\_\_ Middle Initial: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State Alabama

ZIP Code: \_\_\_\_\_ Email: \_\_\_\_\_

Phone Number: \_\_\_\_\_ FAX Number: \_\_\_\_\_

**4: Briefly describe your quality system (e.g. ISO 9001). Provide your written policies supporting this description as a part of this application :**

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**5. Briefly describe your internal requirements for managing change control/version control for both hardware/firmware and software . Provide your written policies supporting this description as part of this application :**

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**6. Briefly describe your document retention requirements . Provide your written policies supporting this description as part of this application :**

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**7. Please, list the Name, Street Address, City, State/Province, Country, Postal Code, and Telephone Number for all facilities used by your company to manufacture your voting system product :**

## 8. Manufacturer Certification Agreement:

To maintain a voting system certification under the Election Assistance Commission (EAC) program, the manufacturer must agree to:

1. Represent a voting system as certified only when it is authorized by the EAC and consistent with the procedures and requirements of the Testing and Certification Program Manual (the Manual).
2. Produce and permanently affix an EAC certification label to all production units of the certified system.
3. Notify the EAC of changes to any system previously certified by the EAC pursuant to the requirements of the Manual.
4. Permit an EAC representative to verify manufacturer quality control by coordinating with EAC efforts to test and review fielded voting systems consistent with Section 8.6 of the Manual.
5. Permit an EAC representative to verify manufacturer quality control by conducting periodic inspections of manufacturing facilities consistent with Chapter 8 of the Manual.
6. Cooperate with any EAC inquiries and investigations into a certified system's compliance with voting system standards or the procedural requirements of the Manual.
7. Report to the Program Director any known malfunction of a voting system holding a current EAC Certification. A malfunction is defined as a failure of the voting system, not caused by operator or administrative error, which causes the system to fail or otherwise not operate as designed.
8. Certify that the manufacturer is not barred or otherwise prohibited by statute regulation or ruling from doing business in the United States.
9. Adhere to all procedural requirements of the Manual.

Signature:

Title:

Date:

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### EAC Use Only

Manufacturer's  
Designation:

Notes:

# Instructions:

This form provides for the registration of voting system manufacturers. Registration is the initial required step in the EAC Voting System Certification Program. This form is prescribed by Section 2.4 of the Manual. For more information on registration requirements please see Section 2.4 of the Manual.

This form is generally self-explanatory however the numbers and the instructions below correspond to the numbered sections of the form.

## 1. Manufacturer Information.

**Names of Officers and/or Board of Directors and/or any and all Partners:** Ensure that all individuals are identified by name, and title.

**Name of Individual or Entity with Controlling Ownership in the Manufacturer:** Ensure that the controlling individual is properly named and an address is provided.

## 2. Management Representative.

Please provide the name and information requested for the designated Manufacturer Representative pursuant to Section 2.3 of the Manual.

## 3. Technical Representative.

Please provide the name and information requested for the designated Technical Representative pursuant to Section 2.3 of the Manual.

## 4, 5 and 6

Provide the information listed and attach to your submission the written documentation required by Section 2.3.1 of the Manual.

## 7. Manufacturer Certification Agreement

Manufacturers are required to take or abstain from certain actions consistent with the certification program. Your concurrence to these requirements is signified by affixing the signature of the manufacturer representative.

This information is required for the EAC to provide for the certification of voting systems as required by 42 U.S.C. Section 15371. This information will be used solely to administer the EAC Testing and Certification Program. This program is voluntary, however, individuals who wish to participate must meet the requirements of the Program. This information will be made public consistent with the requirements of the Freedom of Information Act, the Trade Secrets Act, and any other applicable Federal law or regulation. Public reporting burden for this collection of information is estimated to average about 9.75 hours for completion of this form. This estimate includes the time for reviewing the instructions, gathering information and completing the form. Send comments regarding this burden estimate to the Testing and Certification Program Director, Election Assistance Commission, 1225 New York Avenue, N.W., Suite 1100, Washington, DC 20005. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to respond to, or comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.



Print Form

Submit by Email

# Application for Voting System Testing

1. **Manufacturer Name:**

2. **Manufacturer Code:**

3. **Version of Standards to be Used for Testing:**

4. **Voting System Name:**

5. **System Model/Version Number:**

6. **EAC Accredited VSTL:**

7. **Requested EAC Certification number:**

8. **Brief Description of System or system modification:**

**Signature:**

**Date:**



# Instructions

This form provides manufacturers with the means to apply for a certification of a voting system. Completion of a voting system application is a required step in the EAC Voting System Certification Program. This form is prescribed by Section 4.3 of the Manual. For more information on registration requirements please see Section 4.3.

This form is generally self-explanatory, however the numbers and the instructions below correspond to the numbered sections of the form.

- 1. Manufacturer Name:** Full legal name of the manufacturer.
- 2. Manufacturer Code:** The three letter identification code provided by the EAC upon manufacturer registration.
- 3. Version of Standards to be Used for Testing:** Select the version of the EAC approved voting system standards to which the candidate system or modification is to be tested and certified.
- 4-5** Provide information as requested.
- 6. EAC Accredited VSTL:** Provide the name of the EAC accredited voting system test laboratory which will perform testing on the candidate system.
- 7. Requested EAC Certification Number:** Provide the certification number to be carried by the candidate system following certification. This number must begin with the three letter manufacturer identification code and be unique only to the specific candidate voting system. The number may be alpha-numeric and contain no more than 20 characters.
- 8. Brief Description of the System or System Modification:** Describe the system, carefully listing all components submitted for certification.

This information is required for the EAC to provide for the certification of voting systems as required by 42 U.S.C. Section 15371. This information will be used solely to administer the EAC Testing and Certification Program. This program is voluntary, however, individuals who wish to participate must meet the requirements of the Program. This information will be made public consistent with the requirements of the Freedom of Information Act, the Trade Secrets Act, and any other applicable Federal law or regulation. Public reporting burden for this collection of information is estimated to average about XX hours for completion of this form. This estimate includes the time for reviewing the instructions, gathering information and completing the form. Send comments regarding this burden estimate to the Testing and Certification Program Director, Election Assistance Commission, 1225 New York Avenue, N.W., Suite 1100, Washington, DC 20005. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to respond to, or comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

# Application for Voting System Testing (For EAC Use only)

Application Number:

Application Received      Date/Time

Lead Technical Reviewer

Test Plan       Received      Date/Time

Accepted       Not Accepted

If Not Accepted, provide attachment for file containing explanation.

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Test Report       Received      Date/Time

Estimated Date for Completion of Report Review:

Approved       Not Approved

If Not Approved, provide attachment for file containing explanation.

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System Certificatio Date:

System Certification Number:

without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act, under a computer matching agreement. Any disclosure of individually identifiable information from a record in this system must also comply with the requirements of section 183 of the ESRA (20 U.S.C. 9573) providing for confidentiality standards that apply to all collections, reporting and publication of data by the Institute of Education Sciences (IES).

**Contract Disclosure.** If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

Not applicable to this system notice.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

The Department maintains records on CD-ROM, and the contractor and subcontractors maintain data for this system on computers and in hard copy.

**RETRIEVABILITY:**

Records in this system are indexed by a number assigned to each student, each teacher or other school staff member that is cross-referenced by the individual's name on a separate list. A list of names of the students whose parents have consented to their participation in the impact evaluation, as well as a list of names of participating teachers and other school staff members will be entered into a Microsoft Access database for purposes of tracking over the three years of the study.

**SAFEGUARDS:**

All physical access to the Department's site, and the site of the Department's contractor and subcontractors where this system of records is maintained, is controlled and monitored by security personnel. The computer system employed by the Department offers a high degree of resistance to tampering and circumvention. This computer system

permits data access to Department and contract staff only on a "need to know" basis, and controls individual users' ability to access and alter records within the system.

The Department's contractor, RTI, and its subcontractors, Tanglewood and PIRE, have established a set of procedures to ensure confidentiality of data. The systems of RTI, Tanglewood, and PIRE ensure that information identifying individuals is in files physically separated from other research data. RTI and its subcontractors will maintain security of the complete set of all master data files and documentation. Access to individually identifiable data will be strictly controlled. All data will be kept in locked file cabinets during nonworking hours and work on hardcopy data will take place in a single room except for data entry. Physical security of electronic data also will be maintained. Security features that protect project data include: Password-protected accounts that authorize users to use the system of records but to access only specific network directories and network software; user rights and directory and file attributes that limit those who can use particular directories and files and determine how they can use them; e-mail passwords that authorize the user to access mail services; and additional security features that the network administrator establishes for projects as needed. The contractor and subcontractor employees who maintain (collect, maintain, use, or disseminate) data in this system must comply with the requirements of the confidentiality standards in section 183 of the ESRA (20 U.S.C. 9573).

**RETENTION AND DISPOSAL:**

Records are maintained and disposed of in accordance with the Department's Records Disposition Schedules in Part 3 (Research Projects and Management Study Records) and Part 14 (Electronic Records).

**SYSTEM MANAGER AND ADDRESS:**

Ricky Takai, Associate Commissioner, Evaluation Division, National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 502D, Washington, DC 20208-0001.

**NOTIFICATION PROCEDURE:**

If you wish to determine whether a record exists regarding you in the system of records, contact the systems manager. Your request must meet the requirements of regulations in 34 CFR 5b.5, including proof of identity.

**RECORD ACCESS PROCEDURE:**

If you wish to gain access to your record in the system of records, contact the system manager. Your request must meet the requirements of regulations in 34 CFR 5b.5, including proof of identity.

**CONTESTING RECORD PROCEDURES:**

If you wish to contest the content of a record regarding you in the system of records, contact the system manager. Your request must meet the requirements of regulations in 34 CFR 5b.7, including proof of identity.

**RECORD SOURCE CATEGORIES:**

The system includes students' names, demographic information (such as date of birth and race/ethnicity), self-reported attitudes about violence and feelings of safety, self-reported victimization, and self-reported violent and delinquent behaviors. The system also will include information from school records such as records of students' attendance, suspensions, expulsions, and school policy violations. The system also will include teachers' and other school staff members' self-reported victimization at school as well as their experiences with training and technical assistance related to the violence prevention program.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. E6-16172 Filed 9-29-06; 8:45 am]

BILLING CODE 4000-01-P

**ELECTION ASSISTANCE COMMISSION**

**Request for Substantive Comments on Procedural Manual for the Election Assistance Commission's Voting System Testing and Certification Program; Proposed Information Collection: Request for Comments on Information Collection Burden; U.S. EAC Voting System Testing and Certification Program**

**AGENCY:** United States Election Assistance Commission (EAC).

**ACTION:** Notice.

**SUMMARY:** The EAC has drafted a procedural manual for its Voting System Testing and Certification Program. This program sets administrative procedures for obtaining an EAC Certification for voting systems. Participation in the program is strictly voluntary. The program is mandated by 42 U.S.C. § 15371. The purpose of this notice is twofold: (1) To request public comment on the substantive aspects of the program (2) to request public comment on the proposed collection of

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information pursuant to the emergency processing provisions of the Paperwork Reduction Act as submitted to the Office of Management and Budget (OMB).

(1) *Substantive Comments:* The EAC seeks substantive comments from the public on its proposed procedural manual. Please submit comments consistent with the information below. Comments should identify and cite the section of the manual at issue. Where a substantive issue is raised, please propose a recommended change or alternative policy. This publication and request for comment is not required under the rulemaking, adjudicative or licensing provisions of the Administrative Procedures Act (APA). It is a voluntary effort by the EAC to gather input from the public on the EAC's administrative procedures for certifying or decertifying voting systems. Furthermore, this request by the EAC for public comment is not intended to make any of the APA's rulemaking provisions applicable to development of this or future EAC procedural programs.

**DATES:** (*Comments*): Submit written or electronic comments on this draft procedural manual on or before 5 p.m. EDT on October 31, 2006.

**ADDRESSES:** Submit comments on-line on EAC's Web site: <http://www.eac.gov>; via mail to Brian Hancock, Director of Voting System Certification, U.S. Election Assistance Commission, 1225 New York Avenue, Suite 1100, Washington, DC 20005; or via fax to 202-566-1392. An electronic copy of the proposed guidance may be found on the EAC's Web site <http://www.eac.gov>.

**FOR FURTHER INFORMATION CONTACT:** Brian Hancock, Director of Voting System Certification, 1225 New York Avenue, Suite 1100, Washington, DC, (202) 566-3100, Fax: (202) 566-1392.

(2) *Comments on the Proposed Collection of Information:* In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the EAC is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to

minimize the information collection burden.

The EAC is requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. The EAC is requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320(a)(2)(ii). The information collection at issue is necessary in order to provide for the certification of voting systems as mandated by the Help America Vote Act of 2002 (42 U.S.C. 15371). The EAC cannot reasonably comply with the normal clearance procedures because failure to implement this program in an expedited fashion is reasonably likely to result in a public harm, as stated in 5 CFR 1320.13(a)(2)(i).

Approval of this emergency collection is essential in order to comply with Help America Vote Act of 2002 (42 U.S.C. 15371). HAVA requires that the EAC certify and decertify voting systems. Section 231(a)(1) of HAVA specifically requires the EAC to "provide for the certification, decertification and re-certification of voting system hardware and software." This mandate represents the first time the Federal government will provide for the voluntary testing and certification of voting systems, nationwide. In response to this HAVA requirement, the EAC is developing the Voting System Testing and Certification Program. This program requires the submission and retention of information related to voting systems and voting system manufacturers.

Until recently, national voting system certification was conducted by a private membership organization, the National Association of State Election Directors (NASED). NASED certified voting systems for a over a decade, using standards issued by the Federal government. The organization terminated its certification efforts on July 10, 2006. While the EAC and NASED have worked together to provide for the certification of emergency modifications necessary to properly field voting systems for the 2006 General Election, there is presently no mechanism in place to test and certify new systems or to process modifications for the 2008 Federal elections. Given the fact that (1) it can take years to develop, test, certify, sell and field a new or modified voting system, and (2) a large volume of voting systems (new, existing

and modified) are expected to be submitted to the EAC upon initiation of the new Certification Program, it is imperative that the EAC's Voting System Testing and Certification Program begin on the earliest possible date. The 2008 Federal elections are less than 2 years away. Ensuring that the certified voting systems are available for the 2008 Election Cycle is essential to the public welfare.

1. *Type of Information Collection Request:* New collection;

2. *Title of Information Collection:* EAC Voting System Testing and Certification Program Manual;

3. *Use:* HAVA requires that the EAC certify and decertify voting systems (42 U.S.C. 15371). Section 231(a)(1) of HAVA specifically requires the EAC to " \* \* \* provide for the certification, decertification and re-certification of voting system hardware and software by the accredited laboratories." The EAC will perform this mandated function through the use of its Voting System Testing and Certification Program. Voting systems certified by the EAC will be used by citizens to cast votes in Federal Elections. Therefore, it is paramount that the program operates in a reliable and effective manner. In order to certify a voting system, it is necessary for the EAC to (1) require voting system manufacturers to submit information about their organization and the voting systems they submit for testing and certification; (2) require voting system manufacturers to retain voting system technical and test records; and (3) to provide a mechanism for election officials to report events which may effect a voting system's certification.

4. *Form Numbers:* EAC-001C, 002C and 003C.

5. *Frequency:* Voluntary Reporting—(1) *Manufacturer Registration Form:* one time when a manufacturer registers for the program. (2) *Voting System Certification Application Form:* as needed, when a manufacturer submits a voting system for testing and certification, and (3) *Field Anomaly Reporting Form:* as needed, when an election official voluntarily notifies the EAC of a witnessed voting system anomaly.

6. *Affected Public:* Business or other for-profit institutions and state and local election officials;

7. *Number of Respondents:* 94 annually;

8. *Total Annual Responses:* 99 annually;

9. *Total Annual Hours:* 119 hours, annually.

EAC is requesting OMB review and approval of this collection by November 30, 2006, with a 180-day approval

period. Written comments and recommendations will be considered from the public if received by the individuals designated below by October 31, 2006.

To obtain copies of the supporting statement, the Voting System Testing and Certification Program Manual or EAC forms referenced above, access the EAC Web site at <http://www.eac.gov> or mail your request, including your address, phone number, to Director of Voting System Certification, U.S. Election Assistance Commission, 1225 New York Avenue, Suite 1100, Washington, DC 20005; or fax the EAC Director of Voting System Certification at 202-566-1392.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below by October 31, 2006: OMB Reviewer: Alexander T. Hunt, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395-7316.

**Thomas R. Wilkey,**  
*Executive Director, U.S. Election Assistance Commission.*  
[FR Doc. 06-8375 Filed 9-29-06; 8:45 am]  
BILLING CODE 6820-KF-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 2210-142]

#### Appalachian Power Company, Virginia; Notice of Extension of Time To File Comments

September 26, 2006.

On September 21, 2006, the Federal Energy Regulatory Commission issued a Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions to Intervene, and Protests for the Smith Mountain Pumped Storage Project in the above-referenced proceeding. The notice requested that comments regarding the application be filed with the Commission by October 6, 2006. The comment period should have been 30 days from the date the notice was issued. Accordingly, the deadline for

filing comments is extended to and including October 23, 2006.

**Magalie R. Salas,**  
*Secretary.*  
[FR Doc. E6-16148 Filed 9-29-06; 8:45 am]  
BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP06-603-000]

#### CenterPoint Energy—Mississippi River Transmission Corporation; Notice of Annual Fuel Adjustment

September 26, 2006.

Take notice that on September 22, 2006, CenterPoint Energy—Mississippi River Transmission Corporation (MRT), filed with the Commission its annual fuel adjustment filing pursuant to Section 22 of the General Terms and Conditions of MRT's FERC Gas Tariff, Third Revised Volume No. 1, requesting an effective date of November 1, 2006, MRT filed the following sheets:

Fifty-Ninth Revised Sheet No. 5.  
Fifty-Ninth Revised Sheet No. 6.  
Fifty-Sixth Revised Sheet No. 7.  
Twenty-Sixth Revised Sheet No. 8.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

**Magalie R. Salas,**  
*Secretary.*  
[FR Doc. E6-16155 Filed 9-29-06; 8:45 am]  
BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP06-602-000]

#### CenterPoint Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 26, 2006.

Take notice that on September 22, 2006, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following revised tariff sheets to be effective November 1, 2006:

Ninth Revised Sheet No. 17.  
Ninth Revised Sheet No. 18.  
Eighth Revised Sheet No. 19.  
Eighth Revised Sheet No. 31.  
Eighth Revised Sheet No. 32.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

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To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

Dated: January 18, 2007.

**James F. Manning,**

*Delegated the Authority of Assistant Secretary for Postsecondary Education.*

[FR Doc. E7-1019 Filed 1-23-07; 8:45 am]

BILLING CODE 4000-01-P

## ELECTION ASSISTANCE COMMISSION

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Election Assistance Commission (EAC).

**ACTION:** Notice and request for comments.

**SUMMARY:** The EAC, as part of its continuing effort to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995, invites the general public and other Federal agencies to take this opportunity to comment on a proposed information collection. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

**DATES:** Written comments must be submitted on or before March 24, 2007.

**ADDRESSES:** Submit comments and recommendations on the proposed information collection in writing to the U.S. Election Assistance Commission, 1225 New York Avenue, NW., Suite

1100, Washington, DC 20005, ATTN: Brian Hancock, Director of Voting System Certification; or via fax to 202-566-1392.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the EAC Voting System Testing and Certification Program Manual, please, write to the above address or call Brian Hancock, Director of Voting System Certification, 1225 New York Avenue, Suite 1100, Washington, DC, (202) 566-3100; Fax: (202) 566-1392. You may also view the proposed collection instrument by visiting the EAC Web site at <http://www.eac.gov>.

### SUPPLEMENTARY INFORMATION:

*Title:* EAC Voting System Testing and Certification Program Manual.

*OMB Number:* 3265-0004.

*Type of Review:* Extension with revisions of a currently approved collection.

*Needs and Uses:* HAVA requires that the EAC certify and decertify voting systems (42 U.S.C. 15371). Section 231(a)(1) of HAVA specifically requires to EAC to “\* \* \* provide for the certification, decertification and recertification of voting system hardware and software by accredited laboratories.” The EAC will perform this mandated function through the use of its Voting System Testing and Certification Program. Voting systems certified by the EAC will be used by citizens to cast votes in Federal Elections. Therefore, it is paramount that the program operates in a reliable and effective manner. In order to certify a voting system, it is necessary for the EAC to (1) Require voting system manufacturers to submit information about their organization and the voting systems they submit for testing and certification; (2) require voting system manufacturers to retain voting system technical and test records; and (3) to provide a mechanism for election officials to report events which may effect a voting system's certification.

*Affected Public:* Business or other for-profit institutions and state and local election officials.

*Estimated Number of Respondents:* 94 annually.

*Total Annual Responses:* 99 annually.

*Estimated Total Annual Burden Hours:* 119 hours.

**Thomas R. Wilkey,**

*Executive Director, U.S. Election Assistance Commission.*

[FR Doc. 07-290 Filed 1-23-07; 8:45 am]

BILLING CODE 6820-KF-M

## DEPARTMENT OF ENERGY

### Office of Fossil Energy; Ultra-Deepwater Advisory Committee: Solicitation of Nominations for Appointment as a Member to the Ultra-Deepwater Advisory Committee

**AGENCY:** Department of Energy.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of Energy (DOE) Office of Fossil Energy is soliciting nominations for candidates to serve as members of the Ultra-Deepwater Advisory Committee. The Advisory Committee shall advise the Secretary of Energy on the development and implementation of programs under Subtitle J, Section 999 of the Energy Policy Act of 2005 (EPACT) related to ultra-deepwater natural gas and other petroleum resources and review and provide written comments on the annual plan as described in this subtitle of the EPACT. The membership of the Advisory Committee must be in accordance with the provisions of the Federal Advisory Committee Act and some members of the Advisory Committee may be appointed as special Government employees of the Department of Energy.

**DATES:** Nominations must be received by February 2, 2007.

**FOR FURTHER INFORMATION CONTACT:** For information regarding this Request for Nominations please contact Ms. Elena Melchert, Mr. Bill Hochheiser, or Mr. James Slutz, Designated Federal Official (DFO), Ultra-Deepwater Advisory Committee, at [ultradeepwater@hq.doe.gov](mailto:ultradeepwater@hq.doe.gov) or (202) 586-5600. Complete text of Subtitle J, Section 999 of the Energy Policy Act of 2005 can be found on the DOE Office of Fossil Energy Web site at <http://www.fe.doe.gov/programs/oilgas/advisorycommittees/UltraDeepwater.html>.

### SUPPLEMENTARY INFORMATION:

*Background:* Under Subtitle J, Section 999, the Secretary of Energy is required to carry out a program of research, development, demonstration, and commercial application of technologies for ultra-deepwater and unconventional natural gas and other petroleum resource exploration and production, including addressing the technology challenges for small producers, safe operations, and environmental mitigation (including reduction of greenhouse gas emissions and sequestration of carbon). The activities should maximize the value of natural gas and other petroleum resources of the United States by increasing the supply

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services are comprehensive and aligned with a school or district improvement plan. A school improvement plan may include the required two-year plan (under section 1116(b)(3) of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001) that addresses the academic issues that caused a school to be identified as in need of improvement. The plan could also include a voluntary plan developed by the school or district to improve academic achievement. The applicant must clearly describe the improvement plan that is in place, whether it is for the school or the entire district, the reasons why the plan was put in place, and how the proposed project and the operation of the school library media center will directly support the academic goals established in the improvement plan.

#### Executive Order 12866

This notice of proposed priority has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of proposed priority are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priority, we have determined that the benefits of the proposed priority justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

#### Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

#### Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable

Document Form (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

(Catalog of Federal Domestic Assistance Number 84.364A Improving Literacy Through School Libraries Program)

**Program Authority:** 20 U.S.C. 6383.

Dated: December 15, 2006.

**Henry L. Johnson,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. E6-21754 Filed 12-19-06; 8:45 am]

**BILLING CODE 4000-01-P**

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## ELECTION ASSISTANCE COMMISSION

### Procedural Manual for the Election Assistance Commission's Voting System Testing and Certification Program

**AGENCY:** United States Election Assistance Commission (EAC).

**ACTION:** Notice; publication of Voting System Testing and Certification Manual.

**SUMMARY:** The U.S. Election Assistance Commission (EAC) is publishing a procedural manual for its Voting System Testing and Certification Program. This program sets the administrative procedures for obtaining an EAC Certification for voting systems. Participation in the program is strictly voluntary. The program is mandated by the Help America Vote Act (HAVA) at 42 U.S.C. 15371.

**FOR FURTHER INFORMATION CONTACT:** Brian Hancock, Director, Voting System Certification, Washington, DC, (202) 566-3100, Fax: (202) 566-1392.

#### SUPPLEMENTARY INFORMATION:

*Background.* HAVA requires that the EAC certify and decertify voting systems. Section 231(a)(1) of HAVA (42 U.S.C. 15371) specifically requires the EAC to "... provide for the testing, certification, decertification and recertification of voting system hardware and software by accredited laboratories." To meet this obligation, the EAC has created a voluntary

program to test voting systems to Federal voting system standards. The Voting System Testing and Certification Manual, published below, will set the procedures for this program.

In creating the Certification Manual the EAC sought input from experts and stakeholders. Specifically, the EAC conducted meetings with representatives from the voting system test laboratory and voting system manufacturing community. The Commission also held a public hearing in which it received testimony from State election officials, the National Institute of Standards and Technology, academics, electronic voting system experts and public interest groups. Finally, the EAC sought input from the public. A draft version of the EAC Voting System Testing and Certification Program Manual was published with a request for public comment on October 2, 2006. (71 FR 57934). The public comment period was open until 5 p.m. e.d.t. on October 31, 2006. While this publication and public comment period were not required under the rulemaking, adjudicative or licensing provisions of the Administrative Procedures Act, all comments received were considered in the drafting of this final administrative manual.

*Discussion of Comments.* The EAC received over 400 comments from the public. The majority of these comments came from voting system test laboratories, voting system manufacturers, and public interest groups. The EAC also received a number of comments from State and local officials and private individuals.

The majority of comments received by the Commission raised concerns or questioned the meaning or application of various provisions of the manual. These comments were requests for clarification. Another significant block of comments were less specific and focused on the fundamental purpose behind the program or its basic methodology. Comments in this category included individuals who noted that electronic voting machines should not be used in Federal elections and those who disagreed with the program's fundamental structure which utilizes EAC accredited laboratories to test voting systems through direct contracting with the system's manufacturer. Finally, there were a range of specific recommendations on a wide variety of topics. Examples include: (1) Comments from manufacturers and interest groups requesting the EAC to provide specific timeframes or response times for various program elements or activities; (2) recommendations that the EAC Mark of,

Certification requirements be abolished or that the mark not be "permanently" affixed to voting machines to allow for its removal in the event of a voting system upgrade or decertification; (3) recommendations from test laboratories and public interest groups that the EAC clarify the role of its Voting System Test Laboratories, emphasizing that test plans, test reports and other information submitted under this program be submitted directly and independently by the test labs; (4) Comments from test laboratories recommending that the program provide a means for dealing with *de minimis* hardware changes; (5) recommendations from interest groups that the EAC utilize a third party group of technical advisors for all of its determinations under the program; (6) recommendations from interest groups urging the commission to make Certification Program documents available to the public; and (7) recommendations from State officials

that the EAC contact and work with the Chief State Election Official when reviewing fielded voting systems, providing emergency modification waivers or reviewing anomaly reports.

The EAC reviewed and considered each of the comments presented. In doing so, it also gathered additional information and performed research regarding the suggestions. The EAC's commitment to public participation is evident in the final version of the Certification Manual. The Manual has been enhanced in a number of areas in response to conscientious public comment. A total of six pages have been added to the Manual. Throughout the entire Manual the EAC added or amended language to clarify its procedures consistent with the comments it received. For example, to further clarify terminology used throughout the Manual almost a dozen terms were newly defined or "Significantly clarified in the definition

section of Chapter 1. Additionally, the EAC made changes to clarify the independent role of Voting System Test Labs in the program, require the EAC to publish its average response timeframes, and increase its coordination on State Election Officials. Examples of larger changes made in the document include an added section to Chapter 3 of the Manual, providing procedures for *de minimis* changes. This was put in place to deal with the numerous engineering change orders the Commission expects will be submitted to test laboratories under the program. Similarly, the EAC re-titled and re-wrote a major portion of Chapter 10 of the Manual (Release of Certification Program Information) to more clearly and affirmatively state EAC's policy on the release of Certification Program information.

**Thomas R. Wilkey,**

*Executive Director, U.S. Election Assistance Commission.*

BILLING CODE 6820-KF-M

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**United States  
Election Assistance  
Commission**

1225 New York Avenue, N.W.  
Ste. 1100  
Washington, DC 20005  
202-566-3100

# **Voting System Testing & Certification Program Manual**

*Version 1.0 - Effective January 1, 2007*

[www.eac.gov](http://www.eac.gov)

OMB Control Number 3265-0004

BILLING CODE 6820-KF-C

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The reporting requirements in this manual have been approved under the Paperwork Reduction Act of 1995, Office of Management and Budget Control (OMB) Number 3265-0004, expiring March 31, 2007. Persons are not required to respond to this collection of information unless it displays a currently valid OMB number. Information gathered pursuant to this document and its forms will be used solely to administer the EAC Testing and Certification Program. This program is voluntary. Individuals who wish to participate in the program, however, must meet its requirements. The estimated total annual hourly burden on the voting system manufacturing industry and election officials is 114 hours. This estimate includes the time required for reviewing the instructions, gathering information, and completing the prescribed forms. Send comments regarding this burden estimate or any other aspect of this collection, including suggestions for reducing this burden, to the U.S. Election Assistance Commission, Voting System Testing and Certification Program, Office of the Program Director, 1225 New York Avenue, NW., Suite 1100, Washington, DC 20005.

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Appendix C. Voting System Anomaly Reporting Form

#### Introduction

1.1. Background. The Federal Election Commission (FEC) adopted the first formal set of voluntary Federal standards for computer-based voting systems in January 1990. At that time, no national program or organization existed to test and certify such systems to the standards. The National Association of State Election Directors (NASD) stepped up to fill this void in 1994. NASD is an independent, nongovernmental organization of State election officials. The organization formed the Nation's first national program to test and qualify voting systems to the new Federal standards. The organization worked for more than a decade, on a strictly voluntary basis, to help ensure the reliability, consistency, and accuracy of voting systems fielded in the United States. In late 2002, Congress passed the Help

America Vote Act of 2002 (HAVA). HAVA created the U.S. Election Assistance Commission (EAC) and assigned to the EAC the responsibility for both setting voting system standards and providing for the testing and certification of voting systems. This mandate represented the first time the Federal government provided for the voluntary testing, certification, and decertification of voting systems nationwide. In response to this HAVA requirement, the EAC has developed the Voting System Testing and Certification Program (Certification Program).

1.2. Authority. HAVA requires that the EAC certify and decertify voting systems. Section 231(a)(1) of HAVA specifically requires the EAC to " \* \* \* provide for the testing, certification, decertification and recertification of voting system hardware and software by accredited laboratories." The EAC has the sole authority to grant certification or withdraw certification at the Federal level, including the authority to grant, maintain, extend, suspend, and withdraw the right to retain or use any certificates, marks, or other indicators of certification.

1.3. Scope. This Manual provides the procedural requirements of the EAC Voting System Testing and Certification Program. Although participation in the program is voluntary, adherence to the program's procedural requirements is mandatory for participants. The procedural requirements of this Manual supersede any prior voting system certification requirements issued by the EAC.

1.4. Purpose. The primary purpose of the EAC Certification Program Manual is to provide clear procedures to Manufacturers for the testing and certification of voting systems to specified Federal standards consistent with the requirements of HAVA Section 231(a)(1). The program, however, also serves to do the following:

- 1.4.1. Support State certification programs.
- 1.4.2. Support local election officials in the areas of acceptance testing and pre-election system verification.
- 1.4.3. Increase quality control in voting system manufacturing.
- 1.4.4. Increase voter confidence in the use of voting systems.

1.5. Manual. This Manual is a comprehensive presentation of the EAC Voting System Testing and Certification Program. It is intended to establish all of the program's administrative requirements.

1.5.1. Contents. The contents of the Manual serve as an overview of the program itself. The Manual contains the following chapters:

1.5.1.1. *Manufacturer Registration*. Under the program, a Manufacturer is required to register with the EAC prior to participation. This registration provides the EAC with needed information and requires the Manufacturer to agree to the requirements of the Certification Program. This chapter sets out the requirements and procedures for registration.

1.5.1.2. *When Voting Systems Must Be Submitted for Testing and Certification*. All voting systems must be submitted consistent with this Manual before they may receive a certification from the EAC. This chapter

discusses the various circumstances that require submission to obtain or maintain a certification.

1.5.1.3. *Certification Testing and Review*. Under this program, the testing and review process requires the completion of an application, employment of an EAC-accredited laboratory for system testing, and technical analysis of the laboratory test report by the EAC. The result of this process is an Initial Decision on Certification. This chapter discusses the required steps for voting system testing and review.

1.5.1.4. *Grant of Certification*. If an Initial Decision to grant certification is made, the Manufacturer must take additional steps before the Manufacturer may be issued a certification. These steps require the Manufacturer to document the performance of a trusted build (see definition at Section 1.16), the deposit of software into a repository, and the creation of system identification tools. This chapter outlines the action that a Manufacturer must take to receive a certification and the Manufacturer's post-certification responsibilities.

1.5.1.5. *Denial of Certification*. If an Initial Decision to deny certification is made, the Manufacturer has certain rights and responsibilities under the program. This chapter contains procedures for requesting reconsideration, opportunity to cure defects, and appeal.

1.5.1.6. *Decertification*. Decertification is the process by which the EAC revokes a certification it previously granted to a voting system. It is an important part of the Certification Program because it serves to ensure that the requirements of the program are followed and that certified voting systems fielded for use in Federal elections maintain the same level of quality as those presented for testing. This chapter sets procedures for Decertification and explains the Manufacturer's rights and responsibilities during that process.

1.5.1.7. *Quality Monitoring Program*. Under the Certification Program, EAC will implement a quality monitoring process that will help ensure that voting systems certified by the EAC are the same systems sold by Manufacturers. The quality monitoring process is a mandatory part of the program and includes elements such as fielded voting system review, anomaly reporting, and manufacturing site visits. This chapter sets forth the requirements of the Quality Monitoring Program.

1.5.1.8. *Requests for Interpretations*. An Interpretation is a means by which a registered Manufacturer or Voting System Test Laboratory (VSTL) may seek clarification on a specific Voluntary Voting System Guidelines (VVSG) standard. This chapter outlines the policy, requirements, and procedures for requesting an Interpretation.

1.5.1.9. *Release of Certification Program Information*. Federal law protects certain types of information individuals provided the government from release. This chapter outlines the program's policies, sets procedures, and discusses responsibilities associated with the public release of potential protected commercial information.

1.5.2. *Maintenance and Revision*. This Manual, which sets the procedural

requirements for a new Federal program, is expected to be improved and expanded as experience and circumstances dictate. The Manual will be reviewed periodically and updated to meet the needs of the EAC, Manufacturers, VSTLs, election officials, and public policy. The EAC is responsible for revising this document. All revisions will be made consistent with Federal law. Substantive input from stakeholders and the public will be sought whenever possible, at the discretion of the agency. Changes in policy requiring immediate implementation will be noticed via policy memoranda and will be issued to each registered Manufacturer. Changes, addendums, or updated versions will also be posted to the EAC Web site at <http://www.eac.gov>.

1.6. Program Methodology. EAC's Voting System Testing and Certification Program is but one part of the overall conformity assessment process that includes companion efforts at the State and local levels.

1.6.1. *Federal and State Roles*. The process to ensure that voting equipment meets the technical requirements is a distributed, cooperative effort of Federal, State, and local officials in the United States. Working with voting equipment Manufacturers, these officials each have unique responsibility for ensuring that the equipment a voter uses on Election Day meets specific requirements.

1.6.1.1. The EAC Program has primary responsibility for ensuring that voting systems submitted under this program meet Federal standards established for voting systems.

1.6.1.2. State officials have responsibility for testing voting systems to ensure that they will support the specific requirements of each individual State. States may use EAC VSTLs to perform testing of voting systems to unique State requirements while the systems are being tested to Federal standards. The EAC will not, however, certify voting systems to State requirements.

1.6.1.3. State or local officials are responsible for making the final purchase choice. They are responsible for deciding which system offers the best fit and total value for their specific State or local jurisdiction.

1.6.1.4. State or local officials are also responsible for acceptance testing to ensure that the equipment delivered is identical to the equipment certified on the Federal and State levels, is fully operational, and meets the contractual requirements of the purchase.

1.6.1.5. State or local officials should perform pre-election logic and accuracy testing to confirm that equipment is operating properly and is unmodified from its certified state.

1.6.2. *Conformity Assessment Generally*. Conformity assessment is a system established to ensure that a product or service meets the requirements that apply to it. Many conformity assessment systems exist to protect the quality and ensure compliance with requirements of products and services. All conformity assessment systems attempt to answer a variety of questions:

1.6.2.1. What specifications are required of an acceptable system? For voting systems, the EAC voting system standards (VVSG and Voting System Standards [VSS]) address this

issue. States and local jurisdictions also have supplementing standards.

1.6.2.2. How are systems tested against required specifications? The EAC Voting System Testing and Certification Program is a central element of the larger conformity assessment system. The program, as set forth in this Manual, provides for the testing and certification of voting systems to identified versions of the VVSG. The Testing and Certification Program's purpose is to ensure that State and local jurisdictions receive voting systems that meet the requirements of the VVSG.

1.6.2.3. Are the testing authorities qualified to make an accurate evaluation? The EAC accredits VSTLs, after the National Institute of Standards and Technology (NIST) National Voluntary Lab Accreditation Program (NVLAP) has reviewed their technical competence and lab practices, to ensure these test authorities are fully qualified. Furthermore, EAC technical experts review all test reports from accredited laboratories to ensure an accurate and complete evaluation. Many States provide similar reviews of laboratory reports.

1.6.2.4. Will Manufacturers deliver units within manufacturing tolerances to those tested? The VVSG and this Manual require that vendors have appropriate change management and quality control processes to control the quality and configuration of their products. The Certification Program provides mechanisms for the EAC to verify Manufacturer quality processes through field system testing and manufacturing site visits. States have implemented policies for acceptance of delivered units.

1.7. Program Personnel. All EAC personnel and contractors associated with this program will be held to the highest ethical standards. All agents of the EAC involved in the Certification Program will be subject to conflict-of-interest reporting and review, consistent with Federal law and regulation.

1.8. Program Records. The EAC Program Director is responsible for maintaining accurate records to demonstrate that the testing and certification program procedures have been effectively fulfilled and to ensure the traceability, repeatability, and reproducibility of testing and test report review. All records will be maintained, managed, secured, stored, archived, and disposed of in accordance with Federal law, Federal regulations, and procedures of the EAC.

1.9. Submission of Documents. Any documents submitted pursuant to the requirements of this Manual shall be submitted:

1.9.1. If sent electronically, via secure e-mail or physical delivery of a compact disk, unless otherwise specified.

1.9.2. In a Microsoft Word or Adobe PDF file, formatted to protect the document from alteration.

1.9.3. With a proper signature when required by this Manual. Documents that require an authorized signature may be signed with an electronic representation or image of the signature of an authorized management representative and must meet any and all subsequent requirements established by the Program Director regarding security.

1.9.4. If sent via physical delivery, by Certified Mail™ (or similar means that allows tracking) to the following address: Testing and Certification Program Director, U.S. Election Assistance Commission, 1225 New York Avenue, NW., Suite 1100, Washington, DC 20005.

1.10. Receipt of Documents—Manufacturer. For purposes of this Manual, a document, notice, or other communication is considered received by a Manufacturer upon one of the following:

1.10.1. The actual, documented date the correspondence was received (either electronically or physically) at the Manufacturer's place of business, or

1.10.2. If no documentation of the actual delivery date exists, the date of constructive receipt of the communication. For electronic correspondence, documents will be constructively received the day after the date sent. For mail correspondence, the document will be constructively received 3 days after the date sent.

1.10.3. The term "receipt" shall mean the date a document or correspondence arrives (either electronically or physically) at the Manufacturer's place of business. Arrival does not require that an agent of the Manufacturer open, read, or review the correspondence.

1.11. Receipt of Documents—EAC. For purposes of this Manual, a document, notice, or other communication is considered received by the EAC upon its physical or electronic arrival at the agency. All documents received by the agency will be physically or electronically date stamped. This stamp shall serve as the date of receipt. Documents received after the regular business day (5 p.m. Eastern Standard Time), will be treated as if received on the next business day.

1.12. EAC Response Timeframes. In recognition of the responsibilities and challenges facing Manufacturers as they work to meet the requirements imposed by this program, State certification programs, customers, State law and production schedules, the EAC will provide timeframes for its response to significant program elements. This shall be done by providing current metrics on EAC's Web site regarding the actual average EAC response time for (1) approving Test Plans, (2) issuing Initial Decisions, and (3) issuing Certificates of Conformance.

1.13. Records Retention—Manufacturers. The Manufacturer is responsible for ensuring that all documents submitted to the EAC or that otherwise serve as the basis for the certification of a voting system are retained. A copy of all such records shall be retained as long as a voting system is offered for sale or supported by a Manufacturer and for 5 years thereafter.

1.14. Record Retention—EAC. The EAC shall retain all records associated with the certification of a voting system as long as such system is fielded in a State or local election jurisdiction for use in Federal elections. The records shall otherwise be retained or disposed of consistent with Federal statutes and regulations.

1.15. Publication and Release of Documents. The EAC will release documents

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consistent with the requirements of Federal law. It is EAC policy to make the certification process as open and public as possible. Any documents (or portions thereof) submitted under this program will be made available to the public unless specifically protected from release by law. The primary means for making this information available is through the EAC Web site.

1.16. Definitions. For purposes of this Manual, the terms listed below have the following definitions.

**Appeal.** A formal process by which the EAC is petitioned to reconsider an Agency Decision.

**Appeal Authority.** The individual or individuals appointed to serve as the determination authority on appeal.

**Build Environment.** The disk or other media that holds the source code, compiler, linker, integrated development environments (IDE), and/or other necessary files for the compilation and on which the compiler will store the resulting executable code.

**Certificate of Conformance.** The certificate issued by the EAC when a system has been found to meet the requirements of the VVSG. The document conveys certification of a system.

**Commission.** The U.S. Election Assistance Commission, as an agency.

**Commissioners.** The serving commissioners of the U.S. Election Assistance Commission.

**Component.** A discrete and identifiable element of hardware or software within a larger voting system.

**Compiler.** A computer program that translates programs expressed in a high-level language into machine language equivalents.

**Days.** Calendar days, unless otherwise noted. When counting days, for the purpose of submitting or receiving a document, the count shall begin on the first full calendar day after the date the document was received.

**Disk Image.** An exact copy of the entire contents of a computer disk.

**Election Official.** A State or local government employee who has as one of his or her primary duties the management or administration of a Federal election.

**Federal Election.** Any primary, general, runoff, or special Election in which a candidate for Federal office (President, Senator, or Representative) appears on the ballot.

**Fielded Voting System.** A voting system purchased or leased by a State or local government that is being used in a Federal election.

**File Signature.** A signature of a file or set of files produced using a HASH algorithm. A file signature, sometimes called a HASH value, creates a value that is computationally infeasible of being produced by two similar but different files. File signatures are used to verify that files are unmodified from their original versions.

**HASH Algorithm.** An algorithm that maps a bit string of arbitrary length to a shorter, fixed-length bit string. (A HASH uniquely identifies a file similar to the way a fingerprint identifies an individual. Likewise, as an individual cannot be recreated from his or her fingerprint, a file cannot be recreated

from a HASH. The HASH algorithm used primarily in the NIST (National Software Reference Library), and this program is the Secure HASH Algorithm (SHA-1) specified in Federal Information Processing Standard (FIPS) 180-1.)

**Installation Device.** A device containing program files, software, and installation instructions for installing an application (program) onto a computer. Examples of such devices include installation disks, flash memory cards, and PCMCIA cards.

**Integration Testing.** The end-to-end testing of a full system configured for use in an election to assure that all legitimate configurations meet applicable standards.

**Linker.** A computer program that takes one or more objects generated by compilers and assembles them into a single executable program.

**Manufacturer.** The entity with ownership and control over a voting system submitted for certification.

**Mark of Conformance.** A uniform notice permanently posted on a voting system that signifies that it has been certified by the EAC.

**Memorandum for the Record.** A written statement drafted to document an event or finding, without a specific addressee other than the pertinent file.

**Proprietary Information.** Commercial information or trade secrets protected from release under the Freedom of Information Act (FOIA) and the Trade Secrets Act.

**System Identification Tools.** Tools created by a Manufacturer of voting systems that allow elections officials to verify that the hardware and software of systems purchased are identical to the systems certified by the EAC.

**Technical Reviewers.** Technical experts in the areas of voting system technology and conformity assessment appointed by the EAC to provide expert guidance.

**Testing and Certification Decision Authority.** The EAC Executive Director or Acting Executive Director.

**Testing and Certification Program Director.** The individual appointed by the EAC Executive Director to administer and manage the Testing and Certification Program.

**Trusted Build.** A witnessed software build where source code is converted to machine-readable binary instructions (executable code) in a manner providing security measures that help ensure that the executable code is a verifiable and faithful representation of the source code.

**Voting System.** The total combination of mechanical, electromechanical, and electronic equipment (including the software, firmware, and documentation required to program, control, and support the equipment) that is used to define ballots, cast and count votes, report or display election results, connect the voting system to the voter registration system, and maintain and produce any audit trail information.

**Voting System Standards.** Voluntary voting system standards developed by the FEC. Voting System Standards have been published twice: once in 1990 and again in 2002. The Help America Vote Act made the 2002 Voting System Standards EAC guidance. All new voting system standards are issued by the EAC as Voluntary Voting System Guidelines.

#### *Voting System Test Laboratories.*

Laboratories accredited by the EAC to test voting systems to EAC approved voting system standards. Each Voting System Test Laboratory (VSTL) must be accredited by the National Voluntary Laboratory Accreditation Program (NVLAP) and recommended by the National Institute of Standards Technology (NIST) before it may receive an EAC accreditation. NVLAP provides third party accreditation to testing and calibration laboratories. NVLAP is in full conformance with the standards of the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC), including ISO/IEC Guide 17025 and 17011.

#### *Voluntary Voting System Guidelines.*

Voluntary voting system standards developed, adopted, and published by the EAC. The guidelines are identified by version number and date.

1.17. Acronyms and Abbreviations. For purposes of this Manual, the acronyms and abbreviations listed below represent the following terms.

**Certification Program.** The EAC Voting System Testing and Certification Program

**Decision Authority.** Testing and Certification Decision Authority

**EAC.** United States Election Assistance Commission

**FEC.** Federal Election Commission

**HAVA.** Help America Vote Act of 2002 (42 U.S.C. 15301 *et seq.*)

**Labs or Laboratories.** Voting System Test Laboratories

**NASED.** National Association of State Election Directors

**NIST.** National Institute of Standards and Technology

**NVLAP.** National Voluntary Laboratory Accreditation Program

**Program Director.** Director of the EAC Testing and Certification Program

**VSS.** Voting System Standards

**VSTL.** Voting System Test Laboratory

**VVSG.** Voluntary Voting System Guidelines

## 2. Manufacturer Registration

2.1. Overview. Manufacturer Registration is the process by which voting system Manufacturers make initial contact with the EAC and provide information essential to participate in the EAC Voting System Testing and Certification Program. Before a Manufacturer of a voting system can submit an application to have a voting system certified by the EAC, the Manufacturer must be registered. This process requires the Manufacturer to provide certain contact information and agree to certain requirements of the Certification Program. After successfully registering, the Manufacturer will receive an identification code.

2.2. Registration Required. To submit a voting system for certification or otherwise participate in the EAC voluntary Voting System Testing and Certification Program, a Manufacturer must register with the EAC. Registration does not constitute an EAC endorsement of the Manufacturer or its products. Registration of a Manufacturer is not a certification of that Manufacturer's products.

2.3. Registration Requirements. The registration process will require the voting system Manufacturer to provide certain information to the EAC. This information is necessary to enable the EAC to administer the Certification Program and communicate effectively with the Manufacturer. The registration process also requires the Manufacturer to agree to certain Certification Program requirements. These requirements relate to the Manufacturer's duties and responsibilities under the program. For this program to succeed, it is vital that a Manufacturer know and assent to these duties at the outset of the program.

2.3.1. *Information.* Manufacturers are required to provide the following information.

2.3.1.1. The Manufacturer's organizational information:

2.3.1.1.1. The official name of the Manufacturer.

2.3.1.1.2. The address of the Manufacturer's official place of business.

2.3.1.1.3. A description of how the Manufacturer is organized (*i.e.*, type of corporation or partnership).

2.3.1.1.4. Names of officers and/or members of the board of directors.

2.3.1.1.5. Names of all partners and members (if organized as a partnership or limited liability corporation).

2.3.1.1.6. Identification of any individual, organization, or entity with a controlling ownership interest in the Manufacturer.

2.3.1.2. The identity of an individual authorized to represent and make binding commitments and management determinations for the Manufacturer (management representative). The following information is required for the management representative:

2.3.1.2.1. Name and title.

2.3.1.2.2. Mailing and physical addresses.

2.3.1.2.3. Telephone number, fax number, and e-mail address.

2.3.1.3. The identity of an individual authorized to provide technical information on behalf of the Manufacturer (technical representative). The following information is required for the technical representative:

2.3.1.3.1. Name and title.

2.3.1.3.2. Mailing and physical addresses.

2.3.1.3.3. Telephone number, fax number, and e-mail address.

2.3.1.4. The Manufacturer's written policies regarding its quality assurance system. This policy must be consistent with guidance provided in the VVSG and this Manual.

2.3.1.5. The Manufacturer's written policies regarding internal procedures for controlling and managing changes to and versions of its voting systems. Such policies shall be consistent with this Manual and guidance provided in the VVSG.

2.3.1.6. The Manufacturer's written policies on document retention. Such policies must be consistent with the requirements of this Manual.

2.3.1.7. A list of all manufacturing and/or assembly facilities used by the Manufacturer and the name and contact information of a person at each facility. The following information is required for a person at each facility:

2.3.1.7.1. Name and title.

2.3.1.7.2. Mailing and physical addresses.

2.3.1.7.3. Telephone number, fax number, and e-mail address.

2.3.2. *Agreements.* Manufacturers are required to take or abstain from certain actions to protect the integrity of the Certification Program and promote quality assurance. Manufacturers are required to agree to the following program requirements:

2.3.2.1. Represent a voting system as certified only when it is authorized by the EAC and is consistent with the procedures and requirements of this Manual.

2.3.2.2. Produce and affix an EAC certification label to all production units of the certified system. Such labels must meet the requirements set forth in Chapter 5 of this Manual.

2.3.2.3. Notify the EAC of changes to any system previously certified by the EAC pursuant to the requirements of this Manual (see Chapter 3). Such systems shall be submitted for testing and additional certification when required.

2.3.2.4. Permit an EAC representative to verify the Manufacturer's quality control procedures by cooperating with EAC efforts to test and review fielded voting systems consistent with Section 8.6 of this Manual.

2.3.2.5. Permit an EAC representative to verify the Manufacturer's quality control procedures by conducting periodic inspections of manufacturing facilities consistent with Chapter 8 of this Manual.

2.3.2.6. Cooperate with any EAC inquiries and investigations into a certified system's compliance with VVSG standards or the procedural requirements of this Manual consistent with Chapter 7.

2.3.2.7. Report to the Program Director any known malfunction of a voting system holding an EAC Certification. A malfunction is a failure of a voting system, not caused solely by operator or administrative error, which causes the system to cease operation during a Federal election or otherwise results in data loss. Malfunction notifications should be consolidated into one report. This report should identify the location, nature, date, impact, and resolution (if any) of the malfunction and be filed within 60 days of any Federal election.

2.3.2.8. Certify that the entity is not barred or otherwise prohibited by statute, regulation, or ruling from doing business in the United States.

2.3.2.9. Adhere to all procedural requirements of this Manual.

2.4. Registration Process. Generally, registration is accomplished through use of an EAC registration form. After the EAC has received a registration form and other required registration documents, the agency reviews the information for completeness before approval.

2.4.1. *Application Process.* To become a registered voting system Manufacturer, one must apply by submitting a Manufacturer Registration Application Form (Appendix A). This form will be used as the means for the Manufacturer to provide the information and agree to the responsibilities required in Section 2.3, above.

2.4.1.1. Application Form. In order for the EAC to accept and process the registration

form, the applicant must adhere to the following requirements:

2.4.1.1.1. All fields must be completed by the Manufacturer.

2.4.1.1.2. All required attachments prescribed by the form and this Manual must be identified, completed, and forwarded in a timely manner to the EAC (*e.g.*, Manufacturer's quality control and system change policies).

2.4.1.1.3. The application form must be affixed with the handwritten signature (including a digital representation of the handwritten signature) of the authorized representative of the vendor.

2.4.1.2. Availability and Use of the Form. The Manufacturer Registration Application Form may be accessed through the EAC Web site at <http://www.eac.gov>. Instructions for completing and submitting the form are included on the Web site. The Web site will also provide contact information regarding questions about the form or the application process.

2.4.2. *EAC Review Process.* The EAC will review all registration applications.

2.4.2.1. After the application form and required attachments have been submitted, the applicant will receive an acknowledgment that the EAC has received the submission and that the application will be processed.

2.4.2.2. If an incomplete form is submitted or an attachment is not provided, the EAC will notify the Manufacturer and request the information. Registration applications will not be processed until they are complete.

2.4.2.3. Upon receipt of the completed registration form and accompanying documentation, the EAC will review the information for sufficiency. If the EAC requires clarification or additional information, the EAC will contact the Manufacturer and request the needed information.

2.4.2.4. Upon satisfactory completion of a registration application's sufficiency review, the EAC will notify the Manufacturer that it has been registered.

2.5. Registered Manufacturers. After a Manufacturer has received notice that it is registered, it will receive an identification code and will be eligible to participate in the voluntary voting system Certification Program.

2.5.1. *Manufacturer Code.* Registered Manufacturers will be issued a unique, three-letter identification code. This code will be used to identify the Manufacturer and its products.

2.5.2. *Continuing Responsibility To Report.* Registered Manufacturers are required to keep all registration information up to date. Manufacturers must submit a revised application form to the EAC within 30 days of any changes to the information required on the application form. Manufacturers will remain registered participants in the program during this update process.

2.5.3. *Program Information Updates.*

Registered Manufacturers will be automatically provided timely information relevant to the Certification Program.

2.5.4. *Web site Postings.* The EAC will add the Manufacturer to the EAC listing of registered voting system Manufacturers publicly available at <http://www.eac.gov>.

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### 2.6. Suspension of Registration.

Manufacturers are required to establish policies and operate within the EAC Certification Program consistent with the procedural requirements presented in this Manual. When Manufacturers engage in management activities that are inconsistent with this Manual or fail to cooperate with the EAC in violation of the Certification Program's requirements, their registration may be suspended until such time as the problem is remedied.

2.6.1. *Procedures.* When a Manufacturer's activities violate the procedural requirements of this Manual, the Manufacturer will be notified of the violations, given an opportunity to respond, and provided the steps required to bring itself into compliance.

2.6.1.1. *Notice.* Manufacturers shall be provided written notice that they have taken action inconsistent with or acted in violation of the requirements of this Manual. The notice will state the violations and the specific steps required to cure them. The notice will also provide Manufacturers with 30 days (or a greater period of time as stated by the Program Director) to (1) respond to the notice and/or (2) cure the defect.

2.6.1.2. *Manufacturer Action.* The Manufacturer is required to either respond in a timely manner to the notice (demonstrating that it was not in violation of program requirements) or cure the violations identified in a timely manner. In any case, the Manufacturer's action must be approved by the Program Director to prevent suspension.

2.6.1.3. *Non-Compliance.* If the Manufacturer fails to respond in a timely manner, is unable to provide a cure or response that is acceptable to the Program Director, or otherwise refuses to cooperate, the Program Director may suspend the Manufacturer's registration. The Program Director shall issue a notice of his or her intent to suspend the registration and provide the Manufacturer five (5) business days to object to the action and submit information in support of the objection.

2.6.1.4. *Suspension.* After notice and opportunity to be heard (consistent with the above), the Program Director may suspend a Manufacturer's registration. The suspension shall be noticed in writing. The notice must inform the Manufacturer of the steps that can be taken to remedy the violations and lift the suspension.

2.6.2. *Effect of Suspension.* A suspended Manufacturer may not submit a voting system for certification under this program. This prohibition includes a ban on the submission of modifications and changes to certified system. A suspension shall remain in effect until lifted. Suspended Manufacturers will have their registration status reflected on the EAC Web site. Manufacturers have the right to remedy a non-compliance issue at any time and lift a suspension consistent with EAC guidance. Failure of a Manufacturer to follow the requirements of this section may also result in Decertification of voting systems consistent with Chapter 7 of this Manual.

### 3. When Voting Systems Must Be Submitted for Testing and Certification

3.1. *Overview.* An EAC certification signifies that a voting system has been successfully tested to identified voting system standards adopted by the EAC. Only the EAC can issue a Federal certification. Ultimately, systems must be submitted for testing and certification under this program to receive this certification. Systems will usually be submitted when (1) they are new to the marketplace, (2) they have never before received an EAC certification, (3) they are modified, or (4) the Manufacturer wishes to test a previously certified system to a different (newer) standard. This chapter also discusses the submission of *de minimis* changes, which may not require additional testing and certification, as well as provisional, pre-election emergency modifications, which provide for pre-election, emergency waivers.

3.2. *What Is an EAC Certification?* Certification is the process by which the EAC, through testing and evaluation conducted by an accredited Voting System Test Laboratory, validates that a voting system meets the requirements set forth in existing voting system testing standards (Voting System Standards [VSS] or VVSG), and performs according to the Manufacturers specifications for the system. An EAC certification may be issued only by the EAC in accordance with the procedures presented in this Manual. Certifications issued by other bodies (e.g., the National Association of State Election Directors and State certification programs) are not EAC certifications.

3.2.1. *Type of Voting Systems Certified.* The EAC Certification Program is designed to test and certify electromechanical and electronic voting systems. The EAC will not accept for certification review voting systems that do not contain any electronic components. Ultimately, the determination of whether a voting system may be submitted for testing and certification under this program is solely at the discretion of the EAC.

3.2.2. *Voting System Standards.* Voting systems certified under this program are tested to a set of voluntary standards providing requirements that voting systems must meet to receive a Federal certification. Currently, these standards are referred to as Voluntary Voting System Guidelines (in the past they were called Voting System Standards).

3.2.2.1. *Versions—Availability and Identification.* Voluntary Voting System Guidelines (or applicable Voting System Standards) are published by the EAC and are available on the EAC Web site (<http://www.eac.gov>). The standards will be routinely updated. Versions will be identified by version number and/or release date.

3.2.2.2. *Versions—Basis for Certification.* The EAC will promulgate which version or versions of the standards it will accept as the basis for testing and certification.

This effort may be accomplished through the setting of an implementation date for a particular version's applicability, the setting of a date by which testing to a particular version is mandatory, or the setting of a date

by which the EAC will no longer test to a particular standard. The EAC will certify only those voting systems tested to standards that the EAC has identified as valid for certification.

3.2.2.2.1. *End date.* When a version's status as the basis of an EAC certification is set to expire on a certain date, the submission of the system's test report will be the controlling event (see Chapter 4). This requirement means the system's test report must be received by the EAC on or before the end date to be certified to the terminating standard.

3.2.2.2.2. *Start date.* When a version's status as the basis of an EAC certification is set to begin on a certain date, the submission of the system's application for certification will be the controlling event (see Chapter 4). This requirement means the system's application, requesting certification to the new standard, will not be accepted by the EAC until the start date.

3.2.2.3. *Version—Manufacturer's Option.* When the EAC has authorized certification to more than one version of the standards, the Manufacturer must choose which version it wishes to have its voting system tested against. The voting system will then be certified to that version of the standards. Manufacturers must ensure that all applications for certification identify a particular version of the standards.

3.2.2.4. *Emerging Technologies.* If a voting system or component thereof is eligible for a certification under this program (see Section 3.2.1.) and employs technology that is not addressed by a currently accepted version of the VVSG or VSS, the relevant technology shall be subjected to full integration testing and shall be tested to ensure that it operates to the Manufacturer's specifications. The remainder of the system will be tested to the applicable Federal standards. Information on emerging technologies will be forwarded to the EAC's Technical Guidelines Development Committee (TGDC).

3.2.3. *Significance of an EAC Certification.* An EAC certification is an official recognition that a voting system (in a specific configuration or configurations) has been tested to and has met an identified set of Federal voting standards. An EAC certification is not any of the following:

3.2.3.1. An endorsement of a Manufacturer, voting system, or any of the system's components.

3.2.3.2. A Federal warranty of the voting system or any of its components.

3.2.3.3. A determination that a voting system, when fielded, will be operated in a manner that meets all HAVA requirements.

3.2.3.4. A substitute for State or local certification and testing.

3.2.3.5. A determination that the system is ready for use in an election.

3.2.3.6. A determination that any particular component of a certified system is itself certified for use outside the certified configuration.

3.3. *Effect of the EAC Certification Program on Other National Certifications.* Before the creation of the EAC Certification Program, national voting system qualification was conducted by a private membership organization, the National Association of

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State Election Directors (NASED). NASED offered a qualification for voting systems for more than a decade, using standards issued by the Federal government. The EAC Certification Program does not repeal NASED-issued qualifications. All voting systems previously qualified under the NASED program retain their NASED qualification consistent with State law; however, a NASED-qualified voting system is not an EAC-certified system and is treated like an uncertified system for purposes of the EAC Certification Program.

3.4. When Certification Is Required Under the Program. To obtain or maintain an EAC certification, Manufacturers must submit a voting system for testing and certification under this program. Such action is usually required for (1) new systems not previously tested to any standard; (2) existing systems not previously certified by the EAC; (3) previously certified systems that have been modified; (4) systems or technology specifically identified for retesting by the EAC; or (5) previously certified systems that the Manufacturer seeks to upgrade to a higher standard (e.g., a more recent version of the VVSG).

3.4.1. *New System Certification.* For purposes of this Manual, new systems are defined as voting systems that have not been previously tested to applicable Federal standards. New voting systems must be fully tested and submitted to the EAC according to the requirements of Chapter 4 of this Manual.

3.4.2. *System Not Previously EAC Certified.* This term describes any voting system not previously certified by the EAC, including systems previously tested and qualified by NASED or systems previously tested and denied certification by the EAC. Such systems must be fully tested and submitted to the EAC according to the requirements of Chapter 4 of this Manual.

3.4.3. *Modification.* A modification is any change to a previously EAC-certified voting system's hardware, software, or firmware that is not a *de minimis* change. Any modification to a voting system will require testing and review by the EAC according to the requirements of Chapter 4 of this Manual.

3.4.4. *EAC Identified Systems.* Manufacturers may be required to submit systems previously certified by the EAC for retesting. This may occur when the EAC determines that the original tests conducted on the voting system are now insufficient to demonstrate compliance with Federal standards in light of newly discovered threats or information.

3.4.5. *Certification Upgrade.* This term defines any system previously certified by the EAC but submitted for additional testing and certification to a higher standard (e.g., to a newer version of the VVSG). Any such system must be tested to the new standards and submitted to the EAC per Chapter 4 of this Manual.

3.5. *De Minimis Changes.* A *de minimis* change is a change to voting system hardware that is so minor in nature and effect that it requires no additional testing and certification. Such changes, however, require VSTL review and endorsement as well as EAC approval. Any proposed change not accepted as a *de minimis* change is a

modification and shall be submitted for testing and review consistent with the requirements of this Manual. An approved *de minimis* change is not a modification.

3.5.1. *De Minimis Change—Defined.* A *de minimis* change is a change to a certified voting system's hardware, the nature of which will not materially alter the system's reliability, functionality, capability, or operation. Software and firmware modifications are not *de minimis* changes. In order for a hardware change to qualify as a *de minimis* change, it must not only maintain, unaltered, the reliability, functionality, capability and operability of a system, it shall also ensure that when hardware is replaced, the original hardware and the replacement hardware are electronically and mechanically interchangeable and have identical functionality and tolerances. Under no circumstance shall a change be considered a *de minimis* change if it has reasonable and identifiable potential to impact the system's operation and compliance with applicable voting system standards.

3.5.2. *De Minimis Change—Procedure.* Manufacturers who wish to implement a proposed *de minimis* change must submit it for VSTL review and endorsement and EAC approval. A proposed change is not a *de minimis* change and may not be implemented as such until it has been approved in writing by the EAC.

3.5.2.1. *VSTL Review.* Manufacturers must submit any proposed *de minimis* change to an EAC VSTL for review and endorsement. The Manufacturer will provide the VSTL (1) a detailed description of the change; (2) a description of the facts giving rise to or necessitating the change; (3) the basis for its determination that the change will not alter the system's reliability, functionality, or operation; and (4) upon request of the VSTL, a sample voting system at issue or any relevant technical information needed to make the determination. The VSTL will review the proposed *de minimis* change and make an independent determination as to whether the change meets the definition of *de minimis* change or requires the voting system to go through additional testing as a system modification. If the VSTL determines that a *de minimis* change is appropriate, it shall endorse the proposed change as a *de minimis* change. If the VSTL determines that modification testing and certification should be performed, it shall reject the proposed change. Endorsed changes shall be forwarded to the EAC Program Director for final approval. Rejected changes shall be returned to the Manufacturer for resubmission as system modifications.

3.5.2.2. *VSTL Endorsed Changes.* The VSTL shall forward to the EAC any change it has endorsed as *de minimis*. The VSTL shall forward its endorsement in a package that includes:

3.5.2.2.1. The Manufacturer's initial description of the *de minimis* change, a narrative of facts giving rise to or necessitating the change, and the determination that the change will not alter the system's reliability, functionality, or operation.

3.5.2.2.2. The written determination of the VSTL endorsement of the *de minimis* change.

The endorsement document must explain why the VSTL, in its engineering judgment, determined that the proposed *de minimis* change met the definition in this section and otherwise does not require additional testing and certification.

3.5.2.3. *EAC Action.* The EAC will review all proposed *de minimis* changes endorsed by the VSTL. The EAC has sole authority to determine whether any VSTL endorsed change constitutes a *de minimis* change under this section. The EAC will inform the Manufacturer and VSTL of its determination in writing.

3.5.2.3.1. *EAC approval.* If the EAC approves the change as a *de minimis* change, it shall provide written notice to the Manufacturer and VSTL. The EAC will maintain copies of all approved *de minimis* changes and otherwise track such changes.

3.5.2.3.2. *EAC denial.* If the EAC determines that a proposed *de minimis* change cannot be approved, it will inform the VSTL and Manufacturer of its decision. The proposed change will be considered a modification and require testing and certification consistent with this Manual.

3.5.3. *De Minimis Change—Effect of EAC Approval.* EAC approval of a *de minimis* change permits the Manufacturer to implement the proposed change (as identified, endorsed, and approved) without additional modification testing and certification. Fielding an engineering change not approved by the EAC is a basis for system Decertification.

3.6. *Provisional, Pre-Election Emergency Modification.* To deal with extraordinary pre-election emergency situations, the EAC has developed a special provisional modification process. This process is to be used only for the emergency situations indicated and only when there is a clear and compelling need for temporary relief until the regular certification process can be followed.

3.6.1. *Purpose.* The purpose of this section is to allow a mechanism within the EAC Certification Program for Manufacturers to modify EAC-certified voting systems in emergency situations immediately before an election. This situation arises when a modification to a voting system is required and an election deadline is imminent, preventing the completion of the full certification process (and State and/or local testing process) in time for Election Day. In such situations the EAC may issue a waiver to the Manufacturer, granting it leave to make the modification without submission for modification testing and certification.

3.6.2. *General Requirements.* A request for an emergency modification waiver may be made by a Manufacturer only in conjunction with the State election official whose jurisdiction(s) would be adversely affected if the requested modification were not implemented before Election Day. Requests must be submitted at least 5 calendar days before an election. Only systems previously certified are eligible for such a waiver. To receive a waiver, a Manufacturer must demonstrate the following:

3.6.2.1. The modification is functionally or legally required; that is, the system cannot be fielded in an election without the change.

3.6.2.2. The voting system requiring modification is needed by State or local

election officials to conduct a pending Federal election.

3.6.2.3. The voting system to be modified has previously been certified by the EAC.

3.6.2.4. The modification cannot be tested by a VSTL and submitted to the EAC for certification, consistent with the procedural requirements of this Manual, at least 30 days before the pending Federal election.

3.6.2.5. Relevant State law requires Federal certification of the requested modification.

3.6.2.6. The Manufacturer has taken steps to ensure that the modification will properly function as designed, is suitably integrated with the system, and otherwise will not negatively affect system reliability, functionality, or accuracy.

3.6.2.7. The Manufacturer (through a VSTL) has completed as much of the evaluation testing as possible for the modification and has provided the results of such testing to the EAC.

3.6.2.8. The emergency modification is required and otherwise supported by the Chief State Election Official seeking to field the voting system in an impending Federal election.

3.6.3. *Request for Waiver.* A Manufacturer's request for waiver shall be made in writing to the Decision Authority and shall include the following elements:

3.6.3.1. A signed statement providing sufficient description, background, information, documentation, and other evidence necessary to demonstrate that the request for a waiver meets each of the eight requirements stated in Section 3.5.2 above.

3.6.3.2. A signed statement from the Chief State Election Official requiring the emergency modification. This signed statement shall identify the pending election creating the emergency situation and attest that (1) the modification is required to field the system, (2) State law (citation) requires EAC action to field the system in an election, and (3) normal timelines required under the EAC Certification Program cannot be met.

3.6.3.3. A signed statement from a VSTL that there is insufficient time to perform necessary testing and complete the certification process. The statement shall also state what testing the VSTL has performed on the modification to date, provide the results of such tests, and state the schedule for completion of testing.

3.6.3.4. A detailed description of the modification, the need for the modification, how it was developed, how it addresses the need for which it was designed, its impact on the voting system, and how the modification will be fielded or implemented in a timely manner consistent with the Manufacturer's quality control program.

3.6.3.5. All documentation of tests performed on the modification by the Manufacturer, a laboratory, or other third party.

3.6.3.6. A stated agreement signed by the Manufacturer's representative agreeing to take the following action:

3.6.3.6.1. Submit for testing and certification, consistent with Chapter 4 of this Manual, any voting system receiving a waiver under this section that has not already been submitted. This action shall be taken immediately.

3.6.3.6.2. Abstain from representing the modified system as EAC certified. The modified system has not been certified; rather, the originally certified system has received a waiver providing the Manufacturer leave to modify it.

3.6.3.6.3. Submit a report to the EAC regarding the performance of the modified voting system within 60 days of the Federal election that served as the basis for the waiver. This report shall (at a minimum) identify and describe any (1) performance failures, (2) technical failures, (3) security failures, and/or (4) accuracy problems.

3.6.4. *EAC Review.* The EAC will review all waiver requests submitted in a timely manner and make determinations regarding the requests. Incomplete requests will be returned for resubmission with a written notification regarding its deficiencies.

3.6.5. *Letter of Approval.* If the EAC approves the modification waiver, the Decision Authority shall issue a letter granting the temporary waiver within five (5) business days of receiving a complete request.

3.6.6. *Effect of Grant of Waiver.* An EAC grant of waiver for an emergency modification is not an EAC certification of the modification. Waivers under this program grant Manufacturers leave to only temporarily amend previously certified systems without testing and certification for the specific election noted in the request. Without such a waiver, such action would ordinarily result in Decertification of the modified system (See Chapter 7). Systems receiving a waiver shall satisfy any State requirement that a system be nationally or federally certified. In addition—

3.6.6.1. All waivers are temporary and expire 60 days after the Federal election for which the system was modified and the waiver granted.

3.6.6.2. Any system granted a waiver must be submitted for testing and certification. This shall be accomplished as soon as possible.

3.6.6.3. The grant of a waiver is no indication that the modified system will ultimately be granted a certification.

3.6.7. *Denial of Request for Waiver.* A request for waiver may be denied by the EAC if the request does not meet the requirements noted above, fails to follow the procedure established by this section or otherwise fails to sufficiently support a conclusion that the modification at issue is needed, will function properly, and is in the public interest. A denial of a request for emergency modification by the EAC shall be final and not subject to appeal. Manufacturers may submit for certification, consistent with Chapter 4 of this Manual, modifications for which emergency waivers were denied.

3.6.8. *Publication Notice of Waiver.* The EAC will post relevant information relating to the temporary grant of an emergency waiver on its Web site. This information will be posted upon grant of the waiver and removed upon the waiver's expiration. This posting will include information concerning the limited nature and effect of the waiver.

#### 4. Certification Testing and Technical Review

4.1. Overview. This chapter discusses the procedural requirements for submitting a voting system to the EAC for testing and review. The testing and review process requires an application, employment of an EAC-accredited testing laboratory, and technical analysis of the laboratory test report by the EAC. The result of this process is an Initial Decision on Certification by the Decision Authority.

4.2. Policy. Generally, to receive an initial determination on an EAC certification for a voting system, a registered Manufacturer must have (1) submitted an EAC-approved application for certification, (2) had a VSTL submit an EAC-approved test plan, (3) had a VSTL test a voting system to applicable voting system standards, (4) had a VSTL submit a test report to the EAC for technical review and approval, and (5) received EAC approval of the report in an Initial Decision on Certification.

4.3. Certification Application. The first step in submitting a voting system for certification is submission of an application package. The package contains an application form and a copy of the voting system's Implementation Statement (see VVSG 2005—Version 1.0, Vol. I, Section 1.6.4), functional diagram, and System Overview documentation submitted to the VSTL as a part of the Technical Data Package (see VVSG 2005—Version 1.0, Vol. II, Section 2.2). This application process initiates the certification process and provides the EAC with needed information.

4.3.1. *Information on Application Form.* The application (application form) provides the EAC certain pieces of information that are essential at the outset of the certification process. This information includes the following:

4.3.1.1. *Manufacturer Information.* Identification of the Manufacturer (name and three-letter identification code).

4.3.1.2. *Selection of Accredited Laboratory.* Selection and identification of the VSTL that will perform voting system testing and other prescribed laboratory action consistent with the requirements of this Manual. Once selected, a Manufacturer may NOT replace the selected VSTL without the express written consent of the Program Director. Such permission will be granted solely at the discretion of the Program Director and only upon demonstration of good cause.

4.3.1.3. *Voting System Standards Information.* Identification of the VVSG or VSS, including the document's date and version number, to which the Manufacturer wishes to have the identified voting system tested and certified.

4.3.1.4. *Nature of the Submission.* Manufacturers must identify the nature of their submission by selecting one of the following four submission types:

4.3.1.4.1. New system. For purposes of this Manual, a new system is defined as a voting system that has not been previously tested to any applicable Federal standards.

4.3.1.4.2. System not previously EAC certified. This term describes any voting system not previously certified by the EAC, including systems previously tested and

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qualified by NASED or systems previously tested and denied certification by the EAC.

4.3.1.4.3. *Modification.* A modification is any change to a previously EAC-certified voting system's hardware, software, or firmware.

4.3.1.4.4. *Certification upgrade.* This term defines any system previously certified by the EAC but submitted (without modification) for additional testing and certification to a higher standard (e.g., to a newer version of the VVSG).

4.3.1.5. *Identification of the Voting System.* Manufacturers must identify the system submitted for testing by providing its name and applicable version number. If the system submitted has been previously fielded, but the Manufacturer wishes to change its name or version number after receipt of EAC certification, it must provide identification information on both the past name or names and the new, proposed name. This requirement might occur in systems submitted for modification, for their first EAC certification, or for a certification upgrade.

4.3.1.6. *Description of the Voting System.* Manufacturers must provide a brief description of the system or modification being submitted for testing and certification. This description shall include the following information:

4.3.1.6.1. A listing of all components of the system submitted.

4.3.1.6.2. Each component's version number.

4.3.1.6.3. A complete list of each configuration of the system's components that could be fielded as the certified voting system.<sup>1</sup>

4.3.1.6.4. Any other information necessary to identify the specific configuration being submitted for certification.

4.3.1.7. *Date Submitted.* Manufacturers must note the date the application was submitted for EAC approval.

4.3.1.8. *Signature.* The Manufacturer must affix the signature of the authorized management representative.

4.3.2. *Submission of the Application Package.* Manufacturers must submit a copy of the application form described above and copies of the voting system's (1) Implementation Statement, (2) functional diagram, and (3) System Overview documentation submitted to the VSTL as a part of the Technical Data Package.

4.3.2.1. *Application Form.* Application forms will be available on the EAC Web site: <http://www.eac.gov>. The application form submitted to the EAC must be signed; dated; and fully, accurately, and completely filled out. The EAC will not accept incomplete or inaccurate applications.

<sup>1</sup> An EAC certification applies to the configuration of components (the voting system) presented for testing. A voting system may be fielded without using each of the components that formed the system presented, since voting systems, as certified, may contain optional or redundant components to meet the varying needs of election officials. Systems may not be fielded with additional components or without sufficient components to properly prosecute an election, as neither individual components nor separately tested systems may be combined to create new certified voting systems.

4.3.2.2. *Implementation Statement.* The Manufacturer must submit with the application form a copy of the voting system's Implementation Statement, which must meet the requirements of the VVSG (VVSG 2005—Version 1.0, Vol. I, Section 1.6.4). If an existing system is being submitted with a modification, the Manufacturer must submit a copy of a revised Implementation Statement.

4.3.2.3. *Functional Diagram.* The Manufacturer must submit with the application form a high-level Functional Diagram of the voting system that includes all of its components. The diagram must portray how the various components relate and interact.

4.3.2.4. *System Overview.* The Manufacturer must submit with the application form a copy of the voting system's System Overview documentation submitted to the VSTL as a part of the Technical Data Package. This document must meet the requirements of the VVSG (VVSG 2005—Version 1.0, Vol. II, Section 2.2).

4.3.2.5. *Submission.* Applications, with the accompanying documentation, shall be submitted in Adobe PDF, Microsoft Word, or other electronic formats as prescribed by the Program Director. Information on how to submit packages will be posted on the EAC Web site: <http://www.eac.gov>.

4.3.3. *EAC Review.* Upon receipt of a Manufacturer's application package, the EAC will review the submission for completeness and accuracy. If the application package is incomplete, the EAC will return it to the Manufacturer with instructions for resubmission. If the form submitted is acceptable, the Manufacturer will be notified and provided a unique application number within five (5) business days of the EAC's receipt of the application.

4.4. *Test Plan.* The Manufacturer shall authorize the VSTL identified in its application to submit a test plan directly to the EAC. This plan shall provide for testing of the system sufficient to ensure it is functional and meets all applicable voting system standards.

4.4.1. *Development.* An accredited laboratory will develop test plans that use appropriate test protocols, standards, or test suites developed by the laboratory. Laboratories must use all applicable protocols, standards, or test suites issued by the EAC.

4.4.2. *Required Testing.* Test plans shall be developed to ensure that a voting system is functional and meets all requirements of the applicable, approved voting system standards. The highest level of care and vigilance is required to ensure that comprehensive test plans are created. A test plan should ensure that the voting system meets all applicable standards and that test results and other factual evidence of the testing are clearly documented. System testing must meet the requirements of the VVSG. Generally, full testing will be required of any voting system applying for certification, regardless of previous certification history.

4.4.2.1. *New System.* A new system shall be subject to full testing of all hardware and software according to applicable voting system standards.

4.4.2.2. *System Not Previously EAC Certified.* A system not previously certified by the EAC shall be fully tested as a new system.

4.4.2.3. *Modification.* A modification to a previously EAC-certified voting system shall be tested in a manner necessary to ensure that all changes meet applicable voting system standards and that the modified system (as a whole) will properly and reliably function. Any system submitted for modification shall be subject to full testing of the modifications (delta testing) and those systems or subsystems altered or impacted by the modification (regression testing). The system will also be subject to system integration testing to ensure overall functionality. The modification will be tested to the version or versions of the VVSG/VSS currently accepted for testing and certification by the EAC. This requirement, however, does not mean that the full system must be tested to such standards. If the system has been previously certified to a VVSG/VSS version deemed acceptable by the EAC (see Section 3.2.2.2), it may retain that level of certification with only the modification being tested to the present version(s).

4.4.2.4. *EAC Identified Systems.* Previously certified systems identified for retesting by the EAC (see Section 3.4.4) shall be tested as directed by the Program Director (after consultation with NIST, VSTLs, or other technical experts as necessary).

4.4.2.5. *Certification Upgrade.* A previously certified system submitted for testing to a new voting system standard (without modification) shall be tested in a manner necessary to ensure that the system meets all requirements of the new standards. The VSTL shall create a test plan that identifies the differences between the new and old standards and, based upon the differences, fully retest all hardware and software components affected.

4.4.3. *Format.* Test labs shall issue test plans consistent with the requirements in VVSG, Vol. II and any applicable EAC guidance.

4.4.4. *EAC Approval.* All test plans are subject to EAC approval. No test report will be accepted for technical review unless the test plan on which it is based has been approved by EAC's Program Director.

4.4.4.1. *Review.* All test plans must be reviewed for adequacy by the Program Director. For each submission, the Program Director will determine whether the test plan is acceptable or unacceptable. Unacceptable plans will be returned to the laboratory for further action. Acceptable plans will be approved. Although Manufacturers may direct test labs to begin testing before approval of a test plan, the Manufacturer bears the full risk that the test plan (and thus any tests performed) will be deemed unacceptable.

4.4.4.2. *Unaccepted Plans.* If a plan is not accepted, the Program Director will return the submission to the Manufacturer's identified VSTL for additional action. Notice of unacceptability will be provided in writing to the laboratory and include a description of the problems identified and steps required to remedy the test plan. A copy of this notice

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will also be sent to the Manufacturer. Questions concerning the notice shall be forwarded to the Program Director in writing. Plans that have not been accepted may be resubmitted for review after remedial action is taken.

4.4.4.3. *Effect of Approval.* Approval of a test plan is required before a test report may be filed. In most cases, approval of a test plan signifies that the tests proposed, if performed properly, are sufficient to fully test the system. A test plan, however, is approved based on the information submitted. New or additional information may require a change in testing requirements at any point in the certification process.

4.5. *Testing.* During testing, Manufacturers are responsible for enabling VSTLs to report any changes to a voting system or an approved test plan directly to the EAC. Manufacturers shall also enable VSTLs to report all test failures or anomalies directly to the EAC.

4.5.1. *Changes.* Any changes to a voting system, initiated as a result of the testing process, will require submission of an updated Implementation Statement, functional diagram, and System Overview document and, potentially, an updated test plan. Test plans must be updated whenever a change to a voting system requires deviation from the test plan originally approved by the EAC. Changes requiring alteration or deviation from the originally approved test plan must be submitted to the EAC (by the VSTL) for approval before the completion of testing. The submission shall include an updated Implementation Statement, functional diagram, and System Overview document, as needed.

4.5.2. *Test Anomalies or Failures.* Manufacturers shall enable VSTLs to notify the EAC directly and independently of any test anomalies, or failures during testing. The VSTLs shall ensure that all anomalies or failures are addressed and resolved before testing is completed. All test failures, anomalies and actions taken to resolve such failures and anomalies shall be documented by the VSTL in an appendix to the test report submitted to the EAC. These matters shall be reported in a matrix, or similar format, that identifies the failure or anomaly, the applicable voting system standards, and a description of how the failure or anomaly was resolved. Associated or similar anomalies/failures may be summarized and reported in a single entry on the report (matrix) as long as the nature and scope of the anomaly/failure is clearly identified.

4.6. *Test Report.* Manufacturers shall enable their identified VSTL to submit test reports directly to the EAC. The VSTL shall submit test reports only if the voting system has been tested and all tests identified in the test plan have been successfully performed.

4.6.1. *Submission.* The test reports shall be submitted to the Program Director. The Program Director shall review the submission for completeness. Any reports showing incomplete or unsuccessful testing will be

returned to the test laboratory for action and resubmission. Notice of this action will be provided to the Manufacturer. Test reports shall be submitted in Adobe PDF, Microsoft Word, or other electronic formats as prescribed by the Program Director. Information on how to submit reports will be posted on the EAC Web site: <http://www.eac.gov>.

4.6.2. *Format.* Manufacturers shall ensure that test labs submit reports consistent with the requirements in the VVSG and this Manual.

4.6.3. *Technical Review.* A technical review of the test report, technical documents, and test plan will be conducted by EAC technical experts. The EAC may require the submission of additional information from the VSTL or Manufacturer if deemed necessary to complete the review. These experts will submit a report outlining their findings to the Program Director. The report will provide an assessment of the completeness, appropriateness, and adequacy of the VSTL's testing as documented in the test report.

4.6.4. *Program Director's Recommendation.* The Program Director shall review the report and take one of the following actions:

4.6.4.1. Recommend certification of the candidate system consistent with the reviewed test report and forward it to the Decision Authority for action (Initial Decision); or

4.6.4.2. Refer the matter back to the technical reviewers for additional specified action and resubmission.

4.7. *Initial Decision on Certification.* Upon receipt of the report and recommendation forwarded by the Program Director, the Decision Authority shall issue an Initial Decision on Certification. The decision shall be forwarded to the Manufacturer consistent with the requirements of this Manual.

4.7.1. An Initial Decision granting certification shall be processed consistent with Chapter 5 of this Manual.

4.7.2. An Initial Decision denying certification shall be processed consistent with Chapter 6 of this Manual.

## 5. Grant of Certification

5.1. *Overview.* The grant of certification is the formal process through which EAC acknowledges that a voting system has successfully completed conformance testing to an appropriate set of standards or guidelines. The grant of certification begins with the Initial Decision of the Decision Authority. This decision becomes final after the Manufacturer confirms that the final version of the software that was certified and which the Manufacturer will deliver with the certified system has been subject to a trusted build, placed in an EAC-approved repository, and can be verified using the Manufacturer's system identification tools. After a certification is issued, the Manufacturer is provided a Certificate of Conformance and relevant information about the system is added to the EAC Web site. Manufacturers with certified voting systems are responsible for ensuring that each system they produce is properly labeled as certified.

5.2. *Applicability of This Chapter.* This chapter applies when the Decision Authority

makes an Initial Decision to grant a certification to a voting system based on the materials and recommendation provided by the Program Director.

5.3. *Initial Decision.* The Decision Authority shall make a written decision on all voting systems submitted for certification and issue the decision to a Manufacturer. When such decisions result in a grant of certification, the decision shall be considered preliminary and referred to as an Initial Decision pending required action by the Manufacturer. The Initial Decision shall:

5.3.1. State the preliminary determination reached (granting certification).

5.3.2. Inform the Manufacturer of the steps that must be taken to make the determination final and receive a certification. This action shall include providing the Manufacturer with specific instructions, guidance, and procedures for confirming and documenting that the final certified version of the software meets the requirements for:

5.3.2.1. Performing and documenting a trusted build pursuant to Section 5.6 of this chapter.

5.3.2.2. Depositing software in an approved repository pursuant to Section 5.7 of this chapter.

5.3.2.3. Creating and making available system verification tools pursuant to Section 5.8 of this chapter.

5.3.3. Certification is not final until the Manufacturer accepts the certification and all conditions placed on the certification.

5.4. *Pre-Certification Requirements.* Before an Initial Decision becomes final and a certification is issued, Manufacturers must ensure certain steps are taken. They must confirm that the final version of the software that was certified and which the Manufacturer will deliver with the certified system has been subject to a trusted build (see Section 5.6), has been delivered for deposit in an EAC-approved repository (see Section 5.7), and can be verified using Manufacturer-developed identification tools (see Section 5.8). The Manufacturer must provide the EAC documentation demonstrating compliance with these requirements.

5.5. *Trusted Build.* A software build (also referred to as a compilation) is the process whereby source code is converted to machine-readable binary instructions (executable code) for the computer. A "trusted build" (or trusted compilation) is a build performed with adequate security measures implemented to give confidence that the executable code is a verifiable and faithful representation of the source code. A trusted build creates a chain of evidence from the Technical Data Package and source code submitted to the VSTLs to the actual executable programs that are run on the system. Specifically, the build will do the following:

5.5.1. Demonstrate that the software was built as described in the Technical Data Package.

5.5.2. Show that the tested and approved source code was actually used to build the executable code used on the system.

5.5.3. Demonstrate that no elements other than those included in the Technical Data Package were introduced in the software build.

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5.5.4. Document for future reference the configuration of the system certified.

5.6. **Trusted Build Procedure.** A trusted build is a three-step process: (1) The build environment is constructed, (2) the source code is loaded onto the build environment, and (3) the executable code is compiled and the installation device is created. The process may be simplified for modification to previously certified systems. In each step, a minimum of two witnesses from different organizations is required to participate. These participants must include a VSTL representative and vendor representative. Before creating the trusted build, the VSTL must complete the source code review of the software delivered from the vendor for compliance with the VVSG and must produce and record file signatures of all source code modules.

5.6.1. **Constructing the Build Environment.** The VSTL shall construct the build environment in an isolated environment controlled by the VSTL, as follows:

5.6.1.1. The device that will hold the build environment shall be completely erased by the VSTL to ensure a total and complete cleaning of it. The VSTL shall use commercial off-the-shelf software, purchased by the laboratory, for cleaning the device.

5.6.1.2. The VSTL, with vendor consultation and observation, shall construct the build environment.

5.6.1.3. After construction of the build environment, the VSTL shall produce and record a file signature of the build environment.

5.6.2. **Loading Source Code Onto the Build Environment.** After successful source code review, the VSTL shall load source code onto the build environment as follows:

5.6.2.1. The VSTL shall check the file signatures of the source code modules and build environment to ensure that they are unchanged from their original form.

5.6.2.2. The VSTL shall load the source code onto the build environment and produce and record the file signature of the resulting combination.

5.6.2.3. The VSTL shall capture a disk image of the combination build environment and source code modules immediately before performing the build.

5.6.2.4. The VSTL shall deposit the disk image into an authorized archive to ensure that the build can be reproduced, if necessary, at a later date.

5.6.3. **Creating the Executable Code.** Upon completion of all the tasks outlined above, the VSTL shall produce the executable code.

5.6.3.1. The VSTL shall produce and record a file signature of the executable code.

5.6.3.2. The VSTL shall deposit the executable code into an EAC-approved software repository and create installation disk(s) from the executable code.

5.6.3.3. The VSTL shall produce and record file signatures of the installation disk(s) in order to provide a mechanism to validate the software before installation on the voting system in a purchasing jurisdiction.

5.6.3.4. The VSTL shall install the executable code onto the system submitted for testing and certification before completion of system testing.

5.6.4. **Trusted Build for Modifications.** The process of building new executable code when a previously certified system has been modified is somewhat simplified.

5.6.4.1. The build environment used in the original certification is removed from storage and its file signature verified.

5.6.4.2. After source code review, the modified files are placed onto the verified build environment and new executable files are produced.

5.6.4.3. If the original build environment is unavailable or its file signatures cannot be verified against those recorded from the original certification, then the more labor-intensive process of creating the build environment must be performed. Further source code review may be required of unmodified files to validate that they are unmodified from their originally certified versions.

5.7. **Depositing Software in an Approved Repository.** After EAC certification has been granted, the VSTL project manager, or an appropriate delegate of the project manager, shall deliver for deposit the following elements in one or more trusted archive(s) (repositories) designated by the EAC:

5.7.1. Source code used for the trusted build and its file signatures.

5.7.2. Disk image of the pre-build, build environment, and any file signatures to validate that it is unmodified.

5.7.3. Disk image of the post-build, build environment, and any file signatures to validate that it is unmodified.

5.7.4. Executable code produced by the trusted build and its file signatures of all files produced.

5.7.5. Installation device(s) and file signatures.

5.8. **System Identification Tools.** The Manufacturer shall provide tools through which a fielded voting system may be identified and demonstrated to be unmodified from the system that was certified. The purpose of this requirement is to make such tools available to Federal, State, and local officials to identify and verify that the equipment used in elections is unmodified from its certified version. Manufacturers may develop and provide these tools as they see fit. The tools, however, must provide the means to identify and verify hardware and software. The EAC may review the system identification tools developed by the Manufacturer to ensure compliance. System identification tools include the following examples:

5.8.1. Hardware is commonly identified by model number and revision number on the unit, its printed wiring boards (PWBs), and major subunits. Typically, hardware is verified as unmodified by providing detailed photographs of the PWBs and internal construction of the unit. These images may be used to compare with the unit being verified.

5.8.2. Software operating on a host computer will typically be verified by providing a selfbooting compact disk (CD) or similar device that verifies the file signatures of the voting system application files AND the signatures of all nonvolatile files that the application files access during their operation. Note that the creation of such a CD

requires having a file map of all nonvolatile files that are used by the voting system. Such a tool must be provided for verification using the file signatures of the original executable files provided for testing. If during the certification process modifications are made and new executable files created, then the tool must be updated to reflect the file signatures of the final files to be distributed for use. For software operating on devices in which a self-booting CD or similar device cannot be used, a procedure must be provided to allow identification and verification of the software that is being used on the device.

5.9. **Documentation.** Manufacturers shall provide documentation to the Program Director verifying that the trusted build has been performed, software has been deposited in an approved repository, and system identification tools are available to election officials. The Manufacturer shall submit a letter, signed by both its management representative and a VSTL official, stating (under penalty of law) that it has (1) performed a trusted build consistent with the requirements of Section 5.6 of this Manual, (2) deposited software consistent with Section 5.7 of this Manual, and (3) created and made available system identification tools consistent with Section 5.8 of this Manual. This letter shall also include (as attachments) a copy and description of the system identification tool developed under Section 5.8 above.

5.10. **Agency Decision.** Upon receipt of documentation demonstrating the successful completion of the requirements above and recommendation of the Program Director, the Decision Authority will issue an Agency Decision granting certification and providing the Manufacturer with a certification number and Certificate of Conformance.

5.11. **Certification Document.** A Certificate of Conformance will be provided to Manufacturers for voting systems that have successfully met the requirements of the EAC Certification Program. The document will serve as the Manufacturer's evidence that a particular system is certified to a particular set of voting system standards. The EAC certification and certificate apply only to the specific voting system configuration(s) identified, submitted and evaluated under the Certification Program. Any modification to the system not authorized by the EAC will void the certificate. The certificate will include the product (voting system) name, the specific model or version of the product tested, the name of the VSTL conducting the testing, identification of the standards to which the system was tested, the EAC certification number for the product, and the signature of the EAC Executive Director. The certificate will also identify each of the various configurations of the voting system's components that may be represented as certified.

5.12. **Certification Number and Version Control.** Each system certified by the EAC will receive a certification number that is unique to the system and will remain with the system until such time as the system is decertified, sufficiently modified, or tested and certified to newer standards. Generally, when a previously certified system is issued

a new certification number, the Manufacturer will be required to change the system's name or version number.

**5.12.1. New Voting Systems and Those Not Previously Certified by the EAC.** All systems receiving their first certification from the EAC will receive a new certification number. Manufacturers must provide the EAC with the voting system's name and version number during the application process (see Chapter 4). Systems previously certified by another body may retain the previous system name and version number unless the system was modified before its submission to the EAC. Such modified systems must be submitted with a new naming convention (i.e., a new version number).

**5.12.2. Modifications.** Voting systems previously certified by the EAC and submitted for certification of a modification will generally receive a new voting system certification number. Such modified systems must be submitted with a new naming convention (i.e., a new version number). In rare instances, the EAC may authorize retention of the same certification and naming convention when the modification is so minor that it does not represent a substantive change in the voting system. A request for such authorization must be made and approved by the EAC during the application phase of the program.

**5.12.3. Certification Upgrade.** Voting systems previously certified and submitted (without modification) for testing to a new version of the VVSG will receive a new certification number. In such cases, however, the Manufacturer will not be required to change the system name or version.

**5.12.4. De Minimis Change.** Voting systems previously certified and implementing an approved de minimis change (per Chapter 3) will not be issued a new certification number and are not required to implement a new naming convention.

**5.13. Publication of EAC Certification.** The EAC will publish and maintain on its Web site a list of all certified voting systems, including copies of all Certificates of Conformance, the supporting test report, and information about the voting system and Manufacturer. Such information will be posted immediately following the Manufacturer's receipt of the EAC Final Decision and Certificate of Conformance.

**5.14. Representation of EAC Certification.** Manufacturers may not represent or imply that a voting system is certified unless it has received a Certificate of Conformance for that system. Statements regarding EAC certification in brochures, on Web sites, on displays, and in advertising/sales literature must be made solely in reference to specific systems. Any action by a Manufacturer to suggest EAC endorsement of its product or organization is strictly prohibited and may result in a Manufacturer's suspension or other action pursuant to Federal civil and criminal law.

**5.15. Mark of Certification Requirement.** Manufacturers shall post a mark of certification on all EAC-certified voting systems produced. This mark or label must be securely attached to the system before sale, lease, or release to third parties. A mark of certification shall be made using an EAC-

mandated template available for download on the EAC Web site: <http://www.eac.gov>. These templates identify the version of the VVSG or VSS to which the system is certified. Use of this template shall be mandatory. The EAC mark must be displayed as follows:

**5.15.1.** The Manufacturer may use only the mark of certification that accurately reflects the certification held by the voting system as a whole. The certification of individual components or modifications shall not be independently represented by a mark of certification. In the event a system has components or modifications tested to various (later) versions of the VVSG, the system shall bear only the mark of certification of the standard to which the system (as a whole) was tested and certified (i.e. the lesser standard). Ultimately, a voting system shall only display the mark of certification of the oldest or least rigorous standard to which any of its components are certified.

**5.15.2.** The mark shall be placed on the outside of a unit of voting equipment in a place readily visible to election officials. The mark need not be affixed to each of the voting system's components. The mark shall be affixed to either (1) each unit that is used to cast ballots or (2) each unit that is used to tabulate ballots.

**5.15.3.** The notice shall be securely affixed to the voting system. The label shall not be a paper label. "Securely affixed" means that the label is etched, engraved, stamped, silk-screened, indelibly printed, or otherwise securely marked on a permanently attached part of the equipment or on a nameplate of metal, plastic, or other sturdy material fastened to the equipment by use of welding, riveting, or adhesive.

**5.15.4.** The label must be designed to last the expected lifetime of the voting system in the environment in which the system may be operated and must not be readily detachable.

**5.16. Information to Election Officials Purchasing Voting Systems.** The user's manual or instruction manual for a certified voting system shall warn purchasers that changes or modifications not tested and certified by the EAC will void the EAC certification of the voting system. In cases in which the manual is provided only in a form other than paper, such as on a CD or over the Internet, the information required in this section may be included in this alternative format provided the election official can reasonably be expected to have the capability to access information in that format.

## 6. Denial of Certification

**6.1. Overview.** When the Decision Authority issues an Initial Decision denying certification, the Manufacturer has certain rights and responsibilities. The Manufacturer may request an opportunity to cure the defects identified by the Decision Authority. In addition, the Manufacturer may request that the Decision Authority reconsider the Initial Decision after the Manufacturer has had the opportunity to review the record and submit supporting written materials, data, and the rationale for its position. Finally, in the event reconsideration is denied, the Manufacturer may appeal the decision to the Appeal Authority.

**6.2. Applicability of This Chapter.** This chapter applies when the Decision Authority makes an Initial Decision to deny an application for voting system certification based on the materials and recommendation provided by the Program Director.

**6.3. Form of Decisions.** All agency determinations shall be made in writing. Moreover, all materials and recommendations reviewed or used by agency decision makers in arriving at an official determination shall be in written form.

**6.4. Effect of Denial of Certification.** Upon receipt of the agency's decision denying certification—or in the event of an appeal, subject to the Decision on Appeal—the Manufacturer's application for certification is denied. Such systems will not be reviewed again by the EAC for certification unless the Manufacturer alters the system, retests it, and submits a new application for system certification.

**6.5. The Record.** The Program Director shall maintain all documents related to a denial of certification. Such documents shall constitute the procedural and substantive record of the decision making process. Records may include the following:

**6.5.1.** The Program Director's report and recommendation to the Decision Authority.

**6.5.2.** The Decision Authority's Initial Decision and Final Decision.

**6.5.3.** Any materials gathered by the Decision Authority that served as a basis for a certification determination.

**6.5.4.** All relevant and allowable materials submitted by the Manufacturer upon request for reconsideration or appeal.

**6.5.5.** All correspondence between the EAC and a Manufacturer after the issuance of an Initial Decision denying certification.

**6.6. Initial Decision.** The Decision Authority shall make and issue a written decision on voting systems submitted for certification. When such decisions result in a denial of certification, the decision shall be considered preliminary and referred to as an Initial Decision. Initial Decisions shall be in writing and contain (1) the Decision Authority's basis and explanation for the decision and (2) notice of the Manufacturer's rights in the denial of certification process.

**6.6.1. Basis and Explanation.** The Initial Decision of the Decision Authority shall accomplish the following:

**6.6.1.1.** Clearly state the agency's decision on certification.

**6.6.1.2.** Explain the basis for the decision, including identifying the following:

**6.6.1.2.1.** The relevant facts.

**6.6.1.2.2.** The applicable EAC voting system standards (VVSG or VSS).

**6.6.1.2.3.** The relevant analysis in the Program Director's recommendation.

**6.6.1.2.4.** The reasoning behind the decision.

**6.6.1.3.** State the actions the Manufacturer must take, if any, to cure all defects in the voting system and obtain a certification.

**6.6.2. Manufacturer's Rights.** The written Initial Decision must also inform the Manufacturer of its procedural rights under the program, including the following:

**6.6.2.1.** Right to request reconsideration. The Manufacturer shall be informed of its

right to request a timely reconsideration (see Section 6.9). Such request must be made within 10 calendar days of the Manufacturer's receipt of the Initial Decision.

6.6.2.2. Right to request a copy or otherwise have access to the information that served as the basis of the Initial Decision ("the record").

6.6.2.3. Right to cure system defects prior to final Agency Decision (see Section 6.8). A Manufacturer may request an opportunity to cure within 10 calendar days of its receipt of the Initial Decision.

6.7. No Manufacturer Action on Initial Decision. If a Manufacturer takes no action (by either failing to request an opportunity to cure or request reconsideration) within 10 calendar days of its receipt of the Initial Decision, the Initial Decision shall become the agency's Final Decision on Certification. In such cases, the Manufacturer is determined to have foregone its right to reconsideration, cure, and appeal. The certification application shall be considered finally denied.

6.8. Opportunity To Cure. Within 10 calendar days of receiving the EAC's Initial Decision on Certification, a Manufacturer may request an opportunity to cure the defects identified in the EAC's Initial Decision. If the request is approved, a compliance plan must be created, approved, and followed. If this cure process is successfully completed, a voting system denied certification in an Initial Decision may receive a certification without resubmission.

6.8.1. *Manufacturer's Request To Cure.* The Manufacturer must send a request to cure within 10 calendar days of receipt of an Initial Decision. The request must be sent to the Program Director.

6.8.2. *EAC Action on Request.* The Decision Authority will review the request and approve it. The Decision Authority will deny a request to cure only if the proposed plan to cure is inadequate or does not present a viable way to remedy the identified defects. Approval or denial of a request to cure shall be provided the Manufacturer in writing. If the Manufacturer's request to cure is denied, it shall have 10 calendar days from the date it received such notice to request reconsideration of the Initial Decision pursuant to Section 6.6.2.

6.8.3. *Manufacturer's Compliance Plan.* Upon approval of the Manufacturer's request for an opportunity to cure, it shall submit a compliance plan to the Decision Authority for approval. This compliance plan must set forth steps to be taken to cure all identified defects. It shall include the proposed changes to the system, updated technical information (as required by Section 4.3.2), and a new test plan created and submitted directly to the EAC by the VSTL (testing the system consistent with Section 4.4.2.3). The plan shall also provide for the testing of the amended system and submission of a test report by the VSTL to the EAC for approval. It should provide an estimated date for receipt of this test report and include a schedule of periodic VSTL progress reports to the Program Director.

6.8.4. *EAC Action on the Compliance Plan.* The Decision Authority must review and

approve the compliance plan. The Decision Authority may require the Manufacturer to provide additional information and modify the plan as required. If the Manufacturer is unable or unwilling to provide a compliance plan acceptable to the Decision Authority, the Decision Authority shall provide written notice terminating the "opportunity to cure" process. The Manufacturer shall have 10 calendar days from the date it receives such notice to request reconsideration of the Initial Decision pursuant to Section 6.6.2.

6.8.5. *Compliance Plan Test Report.* The VSTL shall submit the test report created pursuant to its EAC-approved compliance plan. The EAC shall review the test report, along with the original test report and other materials originally provided. The report will be technically reviewed by the EAC consistent with the procedures laid out in Chapter 4 of this Manual.

6.8.6. *EAC Decision on the System.* After receipt of the test plan, the Decision Authority shall issue a decision on a voting system amended pursuant to an approved compliance plan. This decision shall be issued in the same manner and with the same process and rights as an Initial Decision on Certification.

6.9. Requests for Reconsideration. Manufacturers may request reconsideration of an Initial Decision.

6.9.1. *Submission of Request.* A request for reconsideration must be made within 10 calendar days of the Manufacturer's receipt of an Initial Decision. The request shall be made and sent to the Decision Authority.

6.9.2. *Acknowledgment of Request.* The Decision Authority shall acknowledge receipt of the Manufacturer's request for reconsideration. This acknowledgment shall either enclose all information that served as the basis for the Initial Decision (the record) or provide a date by which the record will be forwarded to the Manufacturer.

6.9.3. *Manufacturer's Submission.* Within 30 calendar days of receipt of the record, a Manufacturer may submit written materials in support of its position, including the following:

6.9.3.1. A written argument responding to the conclusions in the Initial Decision.

6.9.3.2. Documentary evidence relevant to the issues raised in the Initial Decision.

6.9.4. *Decision Authority's Review of Request.* The Decision Authority shall review and consider all relevant submissions of the Manufacturer. In making a decision on reconsideration, the Decision Authority shall also consider all documents that make up the record and any other documentary information he or she determines relevant.

6.10. Agency Final Decision. The Decision Authority shall issue a written Agency Decision after review of the Manufacturer's request for reconsideration. This Decision shall be the decision of the agency. The following actions are necessary for writing the decision:

6.10.1.1. Clearly state the agency's determination on the application for certification.

6.10.1.2. Address the issues raised by the Manufacturer in its request for reconsideration.

6.10.1.3. Identify all facts, evidence, and EAC voting system standards (VVSG or VSS) that served as the basis for the decision.

6.10.1.4. Provide the reasoning behind the determination.

6.10.1.5. Identify and provide, as an attachment, any additional documentary information that served as a basis for the decision and that was not part of the Manufacturer's submission or the prior record.

6.10.1.6. Provide the Manufacturer notice of its right to appeal.

6.11. Appeal of Agency Final Decision. A Manufacturer may, upon receipt of an Agency Final Decision denying certification, issue a request for appeal.

6.11.1. *Requesting Appeal.* A Manufacturer may appeal a final decision of the agency by issuing a written request for appeal.

6.11.1.1. *Submission.* Requests must be submitted in writing to the Program Director, addressed to the Chair of the U.S. Election Assistance Commission.

6.11.1.2. *Timing of Appeal.* The Manufacturer may request an appeal within 20 calendar days of receipt of the Agency Final Decision. Late requests will not be considered.

6.11.1.3. *Contents of Request.*

6.11.1.3.1. The request must clearly state the specific conclusions of the Final Decision the Manufacturer wishes to appeal.

6.11.1.3.2. The request may include additional written argument.

6.11.1.3.3. The request may not reference or include any factual material not in the record.

6.11.2. *Consideration of Appeal.* All timely appeals will be considered by the Appeal Authority.

6.11.2.1. The Appeal Authority shall be two or more EAC Commissioners or other individuals appointed by the Commissioners who have not previously served as the initial or reconsideration authority on the matter.

6.11.2.2. All decisions on appeal shall be based on the record.

6.11.2.3. The determination of the Decision Authority shall be given deference by the Appeal Authority. Although it is unlikely that the scientific certification process will produce factual disputes, in such cases, the burden of proof shall belong to the Manufacturer to demonstrate by clear and convincing evidence that its voting system met all substantive and procedural requirements for certification. In other words, the determination of the Decision Authority will be overturned only when the Appeal Authority finds the ultimate facts in controversy highly probable.

6.12. Decision on Appeal. The Appeal Authority shall make a written, final Decision on Appeal and shall provide it to the Manufacturer.

6.12.1. *Contents.* The following actions are necessary to write the Decision on Appeal:

6.12.1.1. State the final determination of the agency.

6.12.1.2. Address the matters raised by the Manufacturer on appeal.

6.12.1.3. Provide the reasoning behind the decisions.

6.12.1.4. State that the Decision on Appeal is final.

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6.12.2. *Determinations.* The Appeal Authority may make one of two determinations:

6.12.2.1. *Grant of Appeal.* If the Appeal Authority determines that the conclusions of the Decision Authority shall be overturned in full, the appeal shall be granted. In such cases, certification will be approved subject to the requirements of Chapter 5.

6.12.2.2. *Denial of Appeal.* If the Appeal Authority determines that any part of the Decision Authority's determination shall be upheld, the appeal shall be denied. In such cases, the application for appeal is finally denied.

6.12.3. *Effect.* All Decisions on Appeal shall be final and binding on the Manufacturer. No additional appeal shall be granted.

## 7. Decertification

7.1. *Overview.* Decertification is the process by which the EAC revokes a certification previously granted to a voting system. It is an important part of the Certification Program because it serves to ensure that the requirements of the program are followed and that certified voting systems fielded for use in Federal elections maintain the same level of quality as those presented for testing. Decertification is a serious matter. Its use will significantly affect Manufacturers, State and local governments, the public, and the administration of elections. As such, the process for Decertification is complex. It is initiated when the EAC receives information that a voting system may not be in compliance with the applicable voting system standard or the procedural requirements of this Manual. Upon receipt of such information, the Program Director may initiate an Informal Inquiry to determine the credibility of the information. If the information is credible and suggests the system is non-compliant, a Formal Investigation will be initiated. If the results of the Formal Investigation demonstrate non-compliance, the Manufacturer will be provided a Notice of Non-Compliance. Before a Final Decision on Decertification is made, the Manufacturer will have the opportunity to remedy any defects identified in the voting system and present information for consideration by the Decertification Authority. A Decertification of a voting system may be appealed in a timely manner.

7.2. *Decertification Policy.* Voting systems certified by the EAC are subject to Decertification. Systems shall be decertified if (1) they are shown not to meet applicable voting system standard, (2) they have been modified or changed without following the requirements of this Manual, or (3) the Manufacturer has otherwise failed to follow the procedures outlined in this Manual so that the quality, configuration, or compliance of the system is in question. Decertification of a voting system is a serious matter. Systems will be decertified only after completion of the process outlined in this chapter.

7.3. *Informal Inquiry.* An Informal Inquiry is the first step taken when information is presented to the EAC that suggests a voting system may not be in compliance with the

applicable voting system standard or the procedural requirements of this Manual.

7.3.1. *Informal Inquiry Authority.* The authority to conduct an Informal Inquiry shall rest with the Program Director.

7.3.2. *Purpose.* The sole purpose of the Informal Inquiry is to determine whether a Formal Investigation is warranted. The outcome of an Informal Inquiry is limited to a decision on referral for investigation.

7.3.3. *Procedure.* Informal Inquiries do not follow a formal process.

7.3.3.1. *Initiation.* Informal Inquiries are initiated at the discretion of the Program Director. They may be initiated any time the Program Director receives attributable, relevant information that suggests a certified voting system may require Decertification. The information shall come from a source that has directly observed or witnessed the reported occurrence. Such information may be a product of the Certification Quality Monitoring Program (see Chapter 8). Information may also come from State and local election officials, voters, or others who have used or tested a given voting system. The Program Director may notify a Manufacturer that an Informal Inquiry has been initiated, but such notification is not required. Initiation of an inquiry shall be documented through the creation of a Memorandum for the Record.

7.3.3.2. *Inquiry.* The Informal Inquiry process is limited to that inquiry necessary to determine whether a Formal Investigation is required. In other words, the Program Director shall conduct such inquiry necessary to determine (1) that the information obtained is credible and (2) that the information, if true, would serve as a basis for Decertification. The nature and extent of the inquiry process will vary depending on the source of the information. For example, an Informal Inquiry initiated as a result of action taken under the Certification Quality Monitoring Program will often require the Program Director merely to read the report issued as a result of the Quality Monitoring action. On the other hand, information provided by election officials or by voters who have used a voting system may require the Program Director (or assigned technical experts) to perform an in-person inspection or make inquiries of the Manufacturer.

7.3.3.3. *Conclusion.* An Informal Inquiry shall be concluded after the Program Director is in a position to determine the credibility of the information that initiated the inquiry and whether that information, if true, would require Decertification. The Program Director may make only two conclusions: (1) refer the matter for a Formal Investigation or (2) close the matter without additional action or referral.

7.3.4. *Closing the Matter Without Referral.* If the Program Director determines, after Informal Inquiry, that a matter does not require a Formal Investigation, the Program Director shall close the inquiry by filing a Memorandum for the Record. This document shall state the focus of the inquiry, the findings of the inquiry and the reasons a Formal Investigation was not warranted.

7.3.5. *Referral.* If the Program Director determines, after Informal Inquiry, that a

matter requires a Formal Investigation, the Program Director shall refer the matter in writing to the Decision Authority. In preparing this referral, the Program Director shall do the following:

7.3.5.1. State the facts that served as the basis for the referral.

7.3.5.2. State the findings of the Program Director.

7.3.5.3. Attach all documentary evidence that served as the basis for the conclusion.

7.3.5.4. Recommend a Formal Investigation, specifically stating the system to be investigated and the scope and focus of the proposed investigation.

7.4. *Formal Investigation.* A Formal Investigation is an official investigation to determine whether a voting system requires Decertification. The end result of a Formal Investigation is a Report of Investigation.

7.4.1. *Formal Investigation Authority.* The Decision Authority shall have the authority to initiate and conclude a Formal Investigation by the EAC.

7.4.2. *Purpose.* The purpose of a Formal Investigation is to gather and document relevant information sufficient to make a determination on whether an EAC-certified voting system requires Decertification consistent with the policy put forth in Section 7.2 above.

7.4.3. *Initiation of Investigation.* The Decision Authority shall authorize the initiation of an EAC Formal Investigation.

7.4.3.1. *Scope.* The Decision Authority shall clearly set the scope of the investigation by identifying (in writing) the voting system (or systems) and specific procedural or operational non-conformance to be investigated. The nonconformance or non-conformances to be investigated shall be set forth in the form of numbered allegations.

7.4.3.2. *Investigator.* The Program Director shall be responsible for conducting the investigation unless the Decision Authority appoints another individual to conduct the investigation. The Program Director (or Decision Authority appointee) may assign staff or technical experts, as required, to investigate the matter.

7.4.4. *Notice of Formal Investigation.* Upon initiation of a Formal Investigation, notice shall be given the Manufacturer of the scope of the investigation. The following actions are necessary to prepare this notice:

7.4.4.1. Identify the voting system and specific procedural or operation nonconformance being investigated (scope of investigation).

7.4.4.2. Provide the Manufacturer an opportunity to provide relevant information in writing.

7.4.4.3. Provide an estimated timeline for the investigation.

7.4.5. *Investigation.* Because voting systems play a vital role in our democratic process, investigations shall be conducted impartially, diligently, promptly, and confidentially. Investigators shall use techniques to gather necessary information that meet these requirements.

7.4.5.1. *Fair and Impartial Investigation.* All Formal Investigations shall be conducted in a fair and impartial manner. All individuals assigned to an investigation must be free from any financial conflicts of interest.



**7.4.5.2. Diligent Collection of Information.**

All investigations shall be conducted in a meticulous and thorough manner. Investigations shall gather all relevant information and documentation that is reasonably available. The diligent collection of information is vital for informed decision making.

**7.4.5.3. Prompt Collection of Information.**

Determinations that may affect the administration of Federal elections must be made with all reasonable speed. EAC determinations on Decertification will affect the actions of State and local election officials conducting elections. As such, all investigations regarding Decertification must proceed with an appropriate sense of urgency.

**7.4.5.4. Confidential Collection of Information.**

Consistent with Federal law, information pertaining to a Formal Investigation should not be made public until the Report of Investigation is complete. The release of incomplete and unsubstantiated information or predecisional opinions that may be contrary or inconsistent with the final determination of the EAC could cause public confusion or could unnecessarily negatively affect public confidence in active voting systems. Such actions could serve to impermissibly affect election administration and voter turnout. All predecisional investigative materials must be appropriately safeguarded.

**7.4.5.5. Methodologies.** Investigators shall gather information by means consistent with the four principles noted above. Investigative tools include (but are not limited to) the following:

**7.4.5.5.1. Interviews.** Investigators may interview individuals (such as State and local election officials, voters, or representatives of the Manufacturer) with relevant information. All interviews shall be reduced to written form; each interview should be summarized in a statement that is reviewed, approved, and signed by the subject.

**7.4.5.5.2. Field audits.****7.4.5.5.3. Manufacturer site audits.****7.4.5.5.4. Written interrogatories.**

Investigators may pose specific, written questions to the Manufacturer for the purpose of gathering information relevant to the investigation. The Manufacturer shall respond to the queries within a reasonable timeframe (as specified in the request).

**7.4.5.5.5. System testing.** Testing may be performed in an attempt to reproduce a condition or failure that has been reported. This testing will be conducted at a VSTL under contract with the EAC.

**7.4.5.6. Report of Investigation.** The end result of a Formal Investigation is a Report of Investigation.

**7.4.6. Report of Investigation.** The Report of Investigation serves, primarily, to document (1) all relevant and reliable information gathered in the course of the investigation, and (2) the conclusion reached by the Decision Authority.

**7.4.6.1. When Complete.** The report is complete and final when certified and signed by the Decision Authority.

**7.4.6.2. Contents of the Report of Investigation.** The following actions are necessary to prepare the written report:

**7.4.6.2.1.** Restate the scope of the investigation, identifying the voting system and specific matter investigated.

**7.4.6.2.2.** Briefly describe the investigative process employed.

**7.4.6.2.3.** Summarize the relevant and reliable facts and information gathered in the course of the investigation.

**7.4.6.2.4.** Attach all relevant and reliable evidence collected in the course of the investigation that documents the facts. All facts shall be documented in written form.

**7.4.6.2.5.** Analyze the information gathered.

**7.4.6.2.6.** Clearly state the findings of the investigation.

**7.4.7. Findings, Report of Investigation.**

The Report of Investigation shall state one of two conclusions. After gathering and reviewing all applicable facts, the report shall find each allegation investigated to be either (1) substantiated, or (2) unsubstantiated.

**7.4.7.1. Substantiated Allegation.** An allegation is substantiated if a preponderance of the relevant and reliable information gathered requires that the voting system at issue be decertified (consistent with the policy set out in Section 7.2). If any allegation is substantiated, a Notice of Non-Compliance must be issued.

**7.4.7.2. Unsubstantiated Allegation.** An allegation is unsubstantiated if the preponderance of the relevant and reliable information gathered does not require Decertification (see Section 7.2). If all allegations are unsubstantiated, the matter shall be closed and a copy of the report forwarded to the Manufacturer.

**7.4.8. Publication of Report.** The report shall not be made public nor released to the public until final.

**7.5. Effect of Informal Inquiry or Formal Investigation on Certification.** A voting system's EAC certification is not affected by the initiation or conclusion of an Informal Inquiry or Formal Investigation. Systems under investigation remain certified until a final Decision on Decertification is issued by the EAC.

**7.6. Notice of Non-Compliance.** If an allegation in a Formal Investigation is substantiated, the Decision Authority shall send the Manufacturer a Notice of Non-Compliance. The Notice of Non-Compliance is not, itself, a Decertification of the voting system. The purpose of the notice is to (1) notify the Manufacturer of the non-compliance and the EAC's intent to Decertify the system and (2) inform the Manufacturer of its procedural rights so that it may be heard prior to Decertification.

**7.6.1. Non-Compliance Information.** The following actions are necessary for preparing a Notice of Non-Compliance:

**7.6.1.1.** Provide a copy of the Report of Investigation to the Manufacturer.

**7.6.1.2.** Identify the non-compliance, consistent with the Report of Investigation.

**7.6.1.3.** Inform the Manufacturer that if the voting system is not made compliant, the voting system will be decertified.

**7.6.1.4.** State the actions the Manufacturer must take, if any, to bring the voting system into compliance and avoid Decertification.

**7.6.2. Manufacturer's Rights.** The written Notice of Non-Compliance must also inform

the Manufacturer of its procedural rights under the program, which include the following:

**7.6.2.1. Right to Present Information Prior to Decertification Decision.** The Manufacturer shall be informed of its right to present information to the Decision Authority prior to a determination of Decertification.

**7.6.2.2. Right to Have Access to the Information That Will Serve as the Basis of the Decertification Decision.** The Manufacturer shall be provided the Report of Investigation and any other materials that will serve as the basis of an Agency Decision on Decertification.

**7.6.2.3. Right to Cure System Defects Prior to the Decertification Decision.** A Manufacturer may request an opportunity to cure within 20 calendar days of its receipt of the Notice of Non-Compliance.

**7.7. Procedure for Decision on Decertification.** The Decision Authority shall make and issue a written Decision on Decertification whenever a Notice of Non-Compliance is issued. The Decision Authority will not take such action until the Manufacturer has had a reasonable opportunity to cure the non-compliance and submit information for consideration.

**7.7.1. Opportunity to Cure.** The Manufacturer shall have an opportunity to cure a nonconforming voting system in a timely manner prior to Decertification. A cure is timely when the cure process can be completed before the next Federal election, meaning that any proposed cure must be in place before any individual jurisdiction fielding the system holds a Federal election. The Manufacturer must request the opportunity to cure. If the request is approved, a compliance plan must be created, approved, and followed. If this cure process is successfully completed, a Manufacturer may modify a non-compliant voting system, remedy procedural discrepancies, or otherwise bring its system into compliance without resubmission or Decertification.

**7.7.1.1. Manufacturer's Request to Cure.** Within 10 calendar days of receiving the EAC's Notice of Non-Compliance, a Manufacturer may request an opportunity to cure all defects identified in the Notice of Non-Compliance in a timely manner. The request must be sent to the Decision Authority and outline how the Manufacturer would modify the system, update the technical information (as required by Section 4.3.2), have the VSTL create a test plan and test the system, and obtain EAC approval before the next election for Federal office.

**7.7.1.2. EAC Action on Request.** The Decision Authority will review the request and approve it if the defects identified in the Notice of Non-Compliance may reasonably be cured before the next election for Federal office.

**7.7.1.3. Manufacturer's Compliance Plan.** Upon approval of the Manufacturer's request for an opportunity to cure, the Manufacturer shall submit a compliance plan to the Decision Authority for approval. This compliance plan must set forth the steps to be taken (including time frames) to cure all identified defects in a timely manner. The

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plan shall describe the proposed changes to the system, provide for modification of the system, update the technical information required by Section 4.3.2, include a test plan delivered to the EAC by the VSTL (testing the system consistent with Section 4.4.2.3), and provide for the VSTL's testing of the system and submission of the test report to the EAC for approval (assume at least 20 working days). The plan shall also include a schedule of periodic progress reports to the Program Director.<sup>2</sup>

7.7.1.4. EAC Action on the Compliance Plan. The Decision Authority must review and approve the compliance plan. The Decision Authority may require the Manufacturer to provide additional information and modify the plan as required. If the Manufacturer is unable or unwilling to provide a Compliance Plan acceptable to the Decision Authority, the Decision Authority shall provide written notice terminating the "opportunity to cure" process.

7.7.1.5. VSTL's Submission of the Compliance Plan Test Report. The VSTL shall submit the test report created pursuant to the Manufacturer's EAC-approved Compliance Plan. The EAC shall review the test report and any other necessary or relevant materials. The report will be technically reviewed by the EAC in a manner similar to the procedures described in Chapter 4 of this Manual.

7.7.1.6. EAC Decision on the System. After receipt of the VSTL's test report, the Decision Authority shall issue a decision on a voting system amended pursuant to an approved Compliance Plan. For the purpose of planning, the Manufacturer should allow at least 20 working days for this process.

7.7.2. *Opportunity to Be Heard.* The Manufacturer may submit written materials in response to the Notice of Non-Compliance and Report of Investigation. These documents shall be considered by the Decision Authority when making a determination on Decertification. The Manufacturer shall ordinarily have 20 calendar days from the date it received the Notice of Non-Compliance (or in the case of a failed effort to cure, the termination of that process) to deliver its submissions to the Decision Authority. When warranted by public interest (because a delay in making a determination on Decertification would affect the timely, fair, and effective administration of a Federal election), however, the Decision Authority may provide a Manufacturer less time to submit information. This alternative period (and the basis for it) must be stated in the Notice of Non-Compliance. The alternative time period must allow the Manufacturer a reasonable amount of time to gather its submissions. Submissions may include the following materials:

7.7.2.1. A written argument responding to the conclusions in the Notice of Non-Compliance or Report of Investigation.

7.7.2.2. Documentary evidence relevant to the allegations or conclusions in the Notice of Non-Compliance.

7.7.3. *Decision on Decertification.* The Decision Authority shall make an agency determination on Decertification.

7.7.3.1. Timing. The Decision Authority shall promptly make a decision on Decertification. The Decision Authority may not issue such a decision, however, until the Manufacturer has provided all of its written materials for consideration or the time allotted for submission (usually 20 calendar days) has run out.

7.7.3.2. Considered Materials. The Decision Authority shall review and consider all relevant submissions of the Manufacturer. In making a Decision on Decertification, the Decision Authority shall also consider all documents that make up the record and any other documentary information he or she determines relevant.

7.7.3.3. Agency Decision. The Decision Authority shall issue a written Agency Decision after review of applicable materials. This decision shall be the final decision of the agency. The following actions are necessary to write the decision:

7.7.3.3.1. Clearly state the agency's determination on the Decertification, specifically addressing the areas of non-compliance investigated.

7.7.3.3.2. Address the issues raised by the Manufacturer in the materials it submitted for consideration.

7.7.3.3.3. Identify all facts, evidence, procedural requirements, and/or voting system standards (VVSC or VSS) that served as the basis for the decision.

7.7.3.3.4. Provide the reasoning behind the decision.

7.7.3.3.5. Identify, and provide as an attachment, any additional documentary information that served as a basis for the decision and that was not part of the Manufacturer's submission or the Report of Investigation.

7.7.3.3.6. Provide the Manufacturer notice of its right to appeal.

7.8. Effect of Decision Authority's Decision on Decertification. The Decision Authority's Decision on Decertification is the determination of the agency. A Decertification is effective upon the EAC's publication or Manufacturer's receipt of the decision (whichever is earlier). A Manufacturer that has had a voting system decertified may appeal that decision.

7.9. Appeal of Decertification. A Manufacturer may, upon receipt of an Agency Final Decision on Decertification, request an appeal in a timely manner.

7.9.1. *Requesting Appeal.*

7.9.1.1. Submission. Requests must be submitted by the Manufacturer in writing to the Chair of the U.S. Election Assistance Commission.

7.9.1.2. Timing of Appeal. The Manufacturer may request an appeal within 20 calendar days of receipt of the Agency Final Decision on Decertification. Late requests will not be considered.

7.9.1.3. Contents of Request. The following actions are necessary for the Manufacturer to write and submit a request for appeal:

7.9.1.3.1. Clearly state the specific conclusions of the Final Decision the Manufacturer wishes to appeal.

7.9.1.3.2. Include additional written argument, if any.

7.9.1.3.3. Do not reference or include any factual material not previously considered or submitted to the EAC.

7.9.1.4. Effect of Appeal on Decertification. The initiation of an appeal does not affect the decertified status of a voting system. Systems are decertified upon notice of Decertification in the agency's Decision on Decertification (see Section 7.8).

7.9.2. *Consideration of Appeal.* All timely appeals will be considered by the Appeal Authority.

7.9.2.1. The Appeal Authority shall be two or more EAC Commissioners or other individual or individuals appointed by the Commissioners who have not previously served as investigators, advisors, or decision makers in the Decertification process.

7.9.2.2. All decisions on appeal shall be based on the record.

7.9.2.3. The decision of the Decision Authority shall be given deference by the Appeal Authority. Although it is unlikely that the scientific certification process will produce factual disputes, in such cases the burden of proof shall belong to the Manufacturer to demonstrate by clear and convincing evidence that its voting system met all substantive and procedural requirements for certification. In other words, the determination of the Decision Authority will be overturned only when the Appeal Authority finds the ultimate facts in controversy to be highly probable.

7.9.3. *Decision on Appeal.* The Appeal Authority shall make a written, final Decision on Appeal that it shall provide to the Manufacturer. Each Decision on Appeal shall be final and binding on the Manufacturer. No additional appeal shall be granted. The following actions are necessary to write a Decision on Appeal:

7.9.3.1. State the final determination of the agency.

7.9.3.2. Address the matters raised by the Manufacturer on appeal.

7.9.3.3. Provide the reasoning behind the decision.

7.9.3.4. State that the Decision on Appeal is final.

7.9.4. *Effect of Appeal.*

7.9.4.1. Grant of Appeal. If a Manufacturer's appeal is granted in whole, the decision of the Decision Authority is reversed. The voting system shall have its certification reinstated. For purposes of this program, the system shall be treated as though it was never decertified.

7.9.4.2. Denial of Appeal. If a Manufacturer's appeal is denied in whole or in part, the decision of the Decision Authority is upheld. The voting system remains decertified and no additional appeal is available.

7.10. Effect of Decertification. A voting system that has been decertified no longer holds an EAC certification under the Certification Program. For purposes of this Manual and the program, a decertified system will be treated as any other uncertified voting system. As such, the effects of Decertification are as follows:

<sup>2</sup> Manufacturers should also be cognizant of State certification procedures and local pre-election logic and accuracy testing. Systems that meet EAC guidelines will also be impacted by independent State and local requirements. These requirements may also prevent a system from being fielded, irrespective of EAC Certification.



7.10.1. The Manufacturer may not represent the voting system as certified.

7.10.2. The voting system may not be labeled with a mark of certification.

7.10.3. The voting system will be removed from the EAC list of certified systems.

7.10.4. The EAC will notify State and local election officials of the Decertification.

7.11. Recertification. A decertified system may be resubmitted for certification. Such systems shall be treated as any other system seeking certification. The Manufacturer shall present an application for certification consistent with the instructions of this Manual.

## 8. Quality Monitoring Program

8.1. Overview. The quality of any product, including a voting system, depends on two specific elements: (1) the design of the product or system and (2) the care and consistency of the manufacturing process. The EAC testing and certification process focuses on voting system design by ensuring that a representative sample of a system meets the technical specifications of the applicable EAC voting system standards. This process, commonly called "type acceptance," determines whether the representative sample submitted for testing meets the requirements. What type acceptance does not do is explore whether variations in manufacturing may allow production of non-compliant systems. Generally, the quality of the manufacturing is the responsibility of the Manufacturer. After a system is certified, the vendor assumes primary responsibility for compliance of the products produced. This level of compliance is accomplished by the Manufacturer's configuration management and quality control processes. The EAC's Quality Monitoring Program, as outlined in this chapter, however, provides an additional layer of quality control by allowing the EAC to perform manufacturing site reviews, carry out fielded system reviews, and gather information on voting system anomalies from election officials. These additional tools help ensure that voting systems continue to meet the requirements of EAC's voting system standards as the systems are manufactured, delivered, and used in Federal elections. These aspects of the program enable the EAC to independently monitor the continued compliance of fielded voting systems.

8.2. Purpose. The purpose of the Quality Monitoring Program is to ensure that EAC-certified voting systems are identical to those fielded in election jurisdictions. This level of quality control is accomplished primarily by identifying (1) potential quality problems in manufacturing, (2) uncertified voting system configurations, and (3) field performance issues with certified systems.

8.3. Manufacturer's Quality Control. EAC's Quality Monitoring Program is not a substitute for the Manufacturer's quality control program. As stated in Chapter 2 of this Manual, all Manufacturers must have an acceptable quality control program in place before they may be registered. The EAC's program serves as an independent and complementary process of quality control that works in tandem with the Manufacturer's efforts.

8.4. Quality Monitoring Methodology. This chapter provides the EAC with three primary tools for assessing the level of effectiveness of the certification process and the compliance of fielded voting systems. These tools include (1) manufacturing site reviews, (2) fielded system reviews, and (3) a means for receiving anomaly reports from the field.

8.5. Manufacturing Site Review. Facilities that produce certified voting systems will be reviewed periodically, at the discretion of the EAC, to verify that the system being manufactured, shipped, and sold is the same as the sample submitted for certification testing. All registered Manufacturers must cooperate with such audits as a condition of program participation.

8.5.1. Notice. The site review may be scheduled or unscheduled, at the discretion of the EAC. Unscheduled reviews will be performed with at least 24 hours notice. Scheduling and notice of site reviews will be coordinated with and provided to both the manufacturing facility's representative and the Manufacturer's representative.

8.5.2. Frequency. At a minimum, at least one manufacturing facility of a registered Manufacturer shall be subject to a site review at least once every 4 years.

8.5.3. The Review. The production facility and production test records must be made available for review. When requested, production schedules must be provided to the EAC. Production or production testing may be witnessed by EAC representatives. If equipment is not being produced during the inspection, the review may be limited to production records. During the inspection, the Manufacturer must make available to the EAC representative the Manufacturer's quality manual and other documentation sufficient to enable the inspector to evaluate the following factors of the facility's production:

8.5.3.1. Manufacturing quality controls.

8.5.3.2. Final inspection and testing.

8.5.3.3. History of deficiencies or anomalies and corrective actions taken.

8.5.3.4. Equipment calibration and maintenance.

8.5.3.5. Corrective action program.

8.5.3.6. Policies on product labeling and the application of the EAC mark of certification.

8.5.4. Exit Briefing. Site reviewers will provide the manufacturing facility representative a verbal exit briefing regarding the preliminary observations of the review.

8.5.5. Written Report. A written report documenting the review will be drafted by the EAC representative and provided to the Manufacturer. The report will detail the findings of the review and identify actions that are required to correct any deficiencies.

8.6. Fielded System Review and Testing. Upon invitation or with the permission of a State or local election authority, the EAC may, at its discretion, conduct a review of fielded voting systems. Such reviews will be done to ensure that a fielded system is in the same configuration as that certified by the EAC and that it has the proper mark of certification. This review may include the testing of a fielded system, if deemed necessary. Any anomalies found during this review and testing will be provided to the election jurisdiction and the Manufacturer.

8.7. Field Anomaly Reporting. As another means of gathering field data, the EAC will collect information from election officials who field EAC-certified voting systems. Information on actual voting system field performance is a basic means for assessing the effectiveness of the Certification Program and the manufacturing quality and version control. The EAC will provide a mechanism for election officials to provide real-world input on voting system anomalies.

8.7.1. Anomaly Report. Election officials may use the Voting System Anomaly Reporting Form to report voting system anomalies to the EAC. The form and instructions for its completion are available as Appendix C in this Manual or on the EAC Web site, <http://www.eac.gov>. The form may be filed with the EAC on line, by mail or by facsimile. Use of the form is required.

8.7.2. Who May Report? State or local election officials who have experienced voting system anomalies in their jurisdiction may file anomaly reports. The individuals reporting must identify themselves and have firsthand knowledge of or official responsibility over the anomaly being reported. Anonymous or hearsay reporting will not be accepted.

8.7.3. What Is Reported? Election officials shall report voting system anomalies. An anomaly is defined as an irregular or inconsistent action or response from the voting system or system component resulting in some disruption to the election process. Incidents resulting from administrator error or procedural deficiencies are not considered anomalies for purposes of this chapter. The report must include the following information:

8.7.3.1. The official's name, title, contact information, and jurisdiction.

8.7.3.2. A description of the voting system at issue.

8.7.3.3. The date and location of the reported occurrence.

8.7.3.4. The type of election.

8.7.3.5. A description of the anomaly witnessed.

8.7.4. Distribution of Credible Reports. Credible reports will be distributed to State and local election jurisdictions who field similar systems, the Manufacturer of the voting system at issue, and the VSTLs. Reports are reviewed by EAC staff in coordination with relevant State officials. Credible reports:

8.7.4.1. Meet the definition of anomaly under Section 8.7.3,

8.7.4.2. Constitute a complete report per the requirements of Sections 8.7.3.1 through 8.7.3.5,

8.7.4.3. Have had alleged facts confirmed by contacting filer and/or others present at the time of the incident, and

8.7.4.4. Have been verified by the relevant State's chief election official.

8.8. Use of Quality Monitoring Information. Ultimately, the information the EAC gathers from manufacturing site reviews, fielded system reviews, and field anomaly reports will be used to improve the program and ensure the quality of voting systems. The Quality Monitoring Program is not designed to be punitive but to be focused on improving the process. Information gathered will be used to accomplish the following:

8.8.1. Identify areas for improvement in the EAC Testing and Certification Program.

8.8.2. Improve manufacturing quality and change control processes.

8.8.3. Increase voter confidence in voting technology.

8.8.4. Inform Manufacturers, election officials, and the EAC of issues associated with voting systems in a real-world environment.

8.8.5. Share information among jurisdictions that use similar voting systems.

8.8.6. Resolve problems associated with voting technology or manufacturing in a timely manner by involving Manufacturers, election officials, and the EAC.

8.8.7. Provide feedback to the EAC and the Technical Guidelines Development Committee (TGDC) regarding issues that may need to be addressed through a revision to the Voluntary Voting System Guidelines.

8.8.8. Initiate an investigation when information suggests that Decertification is warranted (see Chapter 7).

## 9. Requests for Interpretations

9.1. Overview. A Request for Interpretation is a means by which a registered Manufacturer or VSTL may seek clarification on a specific EAC voting system standard (VVSG or VSS). An Interpretation is a clarification of the voting system standards and guidance on how to properly evaluate conformance to it. Suggestions or requests for modifications to the standards are provided by other processes. This chapter outlines the policy, requirements, and procedures for submitting a Request for Interpretation.

9.2. Policy. Registered Manufacturers or VSTLs may request that the EAC provide a definitive Interpretation of EAC-accepted voting system standards (VVSG or VSS) when, in the course of developing or testing a voting system, facts arise that make the meaning of a particular standard ambiguous or unclear. The EAC may self-initiate such a request when its agents identify a need for interpretation within the program. An Interpretation issued by the EAC will serve to clarify what a given standard requires and how to properly evaluate compliance. Ultimately, an Interpretation does not amend voting system standards, but serves only to clarify existing standards.

9.3. Requirements for Submitting a Request for Interpretation. An EAC Interpretation is limited in scope. The purpose of the Interpretation process is to provide Manufacturers or VSTLs who are in the process of developing or testing a voting system a means for resolving the meaning of a voting system standard in light of a specific voting system technology without having to present a finished product to EAC for certification. To submit a Request for Interpretation, one must (1) be a proper requester, (2) request interpretation of an applicable voting system standard, (3) present an actual controversy, and (4) seek clarification on a matter of unsettled ambiguity.

9.3.1. *Proper Requestor.* A Request for Interpretation may be submitted only by a registered Manufacturer or a VSTL. Requests for Interpretation will not be accepted from any other parties.

9.3.2. *Applicable Standard.* A Request for Interpretation is limited to queries on EAC voting system standards (i.e., VVSG or VSS). Moreover, a Manufacturer or VSTL may submit a Request for Interpretation only on a version of EAC voting system standards to which the EAC currently offers certification.

9.3.3. *Existing Factual Controversy.* To submit a Request for Interpretation, a Manufacturer or VSTL must present a question relative to a specific voting system or technology proposed for use in a voting system. A Request for Interpretation on hypothetical issues will not be addressed by the EAC. To submit a Request for Interpretation, the need for clarification must have arisen from the development or testing of a voting system. A factual controversy exists when an attempt to apply a specific section of the VVSG or VSS to a specific system or piece of technology creates ambiguity.

9.3.4. *Unsettled, Ambiguous Matter.* Requests for Interpretation must involve actual controversies that have not been previously settled. This requirement mandates that interpretations contain actual ambiguities not previously clarified.

9.3.4.1. *Actual Ambiguity.* A proper Request for Interpretation must contain an actual ambiguity. The interpretation process is not a means for challenging a clear EAC voting system standard. Recommended changes to voting system standards are welcome and may be forwarded to the EAC, but they are not part of this program. An ambiguity arises (in applying a voting system standard to a specific technology) when one of the following occurs:

9.3.4.1.1. The language of the standard is unclear on its face.

9.3.4.1.2. One section of the standard seems to contradict another, relevant section.

9.3.4.1.3. The language of the standard, though clear on its face, lacks sufficient detail or breadth to determine its proper application to a particular technology.

9.3.4.1.4. The language of a particular standard, when applied to a specific technology, clearly conflicts with the established purpose or intent of the standard.

9.3.4.1.5. The language of the standard is clear, but the proper means to assess compliance is unclear.

9.3.4.2. *Not Previously Clarified.* The EAC will not accept a Request for Interpretation when the issue has previously been clarified.

9.4. Procedure for Submitting a Request for Interpretation. A Request for Interpretation shall be made in writing to the Program Director. All requests should be complete and as detailed as possible because Interpretations issued by the EAC are based on, and limited to, the facts presented. Failure to provide complete information may result in an Interpretation that is off point and ultimately immaterial to the issue at hand. The following steps must be taken when writing a Request for Interpretation:

9.4.1. *Establish Standing To Make the Request.* To make a request, one must meet the requirements identified in Section 9.3 above. Thus, the written request must provide sufficient information for the Program Director to conclude that the requestor is (1) a proper requester, (2)

requesting an Interpretation of an applicable voting system standard, (3) presenting an actual factual controversy, and (4) seeking clarification on a matter of unsettled ambiguity.

9.4.2. *Identify the EAC Voting System Standard To Be Clarified.* The request must identify the specific standard or standards to which the requestor seeks clarification. The request must state the version of the voting system standards at issue (if applicable) and quote and correctly cite the applicable standards.

9.4.3. *State the Facts Giving Rise to the Ambiguity.* The request must provide the facts associated with the voting system technology that gave rise to the ambiguity in the identified standard. The requestor must be careful to provide all necessary information in a clear, concise manner. Any Interpretation issued by the EAC will be based on the facts provided.

9.4.4. *Identify the Ambiguity.* The request must identify the ambiguity it seeks to resolve. The ambiguity shall be identified by stating a concise question that meets the following requirements:

9.4.4.1. Shall be clearly stated.

9.4.4.2. Shall be related to and reference the voting system standard and voting system technology information provided.

9.4.4.3. Shall be limited to a single issue. Each question or issue arising from an ambiguous standard must be stated separately. Compound questions are unacceptable. If multiple issues exist, they should be presented as individual, numbered questions.

9.4.4.4. Shall be stated in a way that can ultimately be answered yes or no.

9.4.5. *Provide a Proposed Interpretation.* A Request for Interpretation should propose an answer to the question posed. The answer should interpret the voting system standard in the context of the facts presented. It should also provide the basis and reasoning behind the proposal.

9.5. EAC Action on a Request for Interpretation. Upon receipt of a Request for Interpretation, the EAC shall take the following action:

9.5.1. *Review the Request.* The Program Director shall review the request to ensure it is complete, is clear, and meets the requirements of Section 9.3. Upon review, the Program Director may take the following action:

9.5.1.1. *Request Clarification.* If the Request for Interpretation is incomplete or additional information is otherwise required, the Program Director may request that the Manufacturer or VSTL clarify its Request for Interpretation and identify any additional information required.

9.5.1.2. *Reject the Request for Interpretation.* If the Request for Interpretation does not meet the requirements of Section 9.3, the Program Director may reject it. Such rejection must be provided in writing to the Manufacturer or VSTL and must state the basis for the rejection.

9.5.1.3. *Notify Acceptance of the Request.* If the Request for Interpretation is acceptable, the Program Director will notify the Manufacturer or VSTL in writing and provide

it with an estimated date of completion. A Request for Interpretation may be accepted in whole or in part. A notice of acceptance shall state the issues accepted for interpretation.

9.5.2. *Consideration of the Request.* After a Request for Interpretation has been accepted, the matter shall be investigated and researched. Such action may require the EAC to employ technical experts. It may also require the EAC to request additional information from the Manufacturer or VSTL. The Manufacturer or VSTL shall respond promptly to such requests.

9.5.3. *Interpretation.* The Decision Authority shall be responsible for making determinations on a Request for Interpretation. After this determination has been made, a written Interpretation shall be sent to the Manufacturer or VSTL. The following actions are necessary to prepare this written Interpretation:

9.5.3.1. State the question or questions investigated.

9.5.3.2. Outline the relevant facts that served as the basis of the Interpretation.

9.5.3.3. Identify the voting system standards interpreted.

9.5.3.4. State the conclusion reached.

9.5.3.5. Inform the Manufacturer or VSTL of the effect of an Interpretation (see Section 9.6).

9.6. *Effect of Interpretation.* Interpretations are fact specific and case specific. They are not tools of policy, but specific, fact-based guidance useful for resolving a particular problem. Ultimately, an Interpretation is determinative and conclusive only with regard to the case presented. Nevertheless, Interpretations do have some value as precedent. Interpretations published by the EAC shall serve as reliable/guidance and authority over identical or similar questions of interpretation. These Interpretations will help users understand and apply the provisions of EAC voting system standards.

9.7. *Library of Interpretations.* To better serve Manufacturers, VSTLs, and those interested in the EAC voting system standards, the Program Director shall publish EAC Interpretations. All proprietary information contained in an Interpretation will be redacted before publication consistent with Chapter 10 of this Manual. The library of published opinions is posted on the EAC Web site: <http://www.eac.gov>.

## 10. Release of Certification Program Information

10.1. *Overview.* Manufacturers participating in the Certification Program will be required to provide the EAC a variety of documents. In general, these documents will be releasable to the public. Moreover, in many cases, the information provided will be affirmatively published by the EAC. In limited cases, however, documents may not be released if they include trade secrets, confidential commercial information, or personal information. While the EAC is ultimately responsible for determining which documents Federal law protects from release, Manufacturers must identify the information they believe is protected and ultimately provide substantiation and a legal basis for withholding. This chapter discusses EAC's general policy on the release of information

and provides Manufacturers with standards, procedures, and requirements for identifying documents as trade secrets or confidential commercial information.

10.2. *EAC Policy on the Release of Certification Program Information.* The EAC seeks to make its Voting System Testing and Certification Program as transparent as possible. The agency believes that such action benefits the program by increasing public confidence in the process and creating a more informed and involved public. As such, it is the policy of the EAC to make all documents, or severable portions thereof, available to the public consistent with Federal law (e.g. Freedom of Information Act (FOIA) and the Trade Secrets Act).

10.2.1. *Requests for information.* As in any Federal program, members of the public may request access to Certification Program documents under FOIA (5 U.S.C. § 552). The EAC will promptly process such requests per the requirements of that Act.

10.2.2. *Publication of documents.* Beyond the requirements of FOIA, the EAC intends to affirmatively publish program documents (or portions of documents) it believes will be of interest to the public. This publication will be accomplished through the use of the EAC Web site (<http://www.eac.gov>). The published documents will cover the full spectrum of the program, including information pertaining to:

- 10.2.2.1. Registered Manufacturers;
- 10.2.2.2. VSTL test plans;
- 10.2.2.3. VSTL test reports;
- 10.2.2.4. Agency decisions;
- 10.2.2.5. Denials of Certification;
- 10.2.2.6. Issuance of Certifications;
- 10.2.2.7. Information on a certified voting system's operation, components, features or capabilities;
- 10.2.2.8. Appeals;
- 10.2.2.9. Reports of investigation and Notice of Non-compliance;
- 10.2.2.10. Decertification actions;
- 10.2.2.11. Manufacturing facility review reports;
- 10.2.2.12. Official Interpretations (VVSG or VSS); and
- 10.2.2.13. Other topics as determined by the EAC.

10.2.3. *Trade Secret and Confidential Commercial Information.* Federal law places a number of restrictions on a Federal agency's authority to release information to the public. Two such restrictions are particularly relevant to the Certification program: (1) trade secrets information and (2) privileged or confidential commercial information. Both types of information are explicitly prohibited from release by the FOIA and the Trade Secrets Act (18 U.S.C. 1905).

10.3. *Trade Secrets.* A trade secret is a secret, commercially valuable plan, process, or device that is used for the making or processing of a product and that is the end result of either innovation or substantial effort. It relates to the productive process itself, describing how a product is made. It does not relate to information describing end product capabilities, features, or performance.

10.3.1. The following examples illustrate productive processes that may be trade secrets:

10.3.1.1. Plans, schematics, and other drawings useful in production.

10.3.1.2. Specifications of materials used in production.

10.3.1.3. Voting system source code used to develop or manufacture software where release would reveal actual programming.

10.3.1.4. Technical descriptions of manufacturing processes and other secret information relating directly to the production process.

10.3.2. The following examples are likely not trade secrets:

10.3.2.1. Information pertaining to a finished product's capabilities or features.

10.3.2.2. Information pertaining to a finished product's performance.

10.3.2.3. Information regarding product components that would not reveal any commercially valuable information regarding production.

10.4. *Privileged or Confidential Commercial Information.* Privileged or confidential commercial information is that information submitted by a Manufacturer that is commercial or financial in nature and privileged or confidential.

10.4.1. *Commercial or Financial Information.* The terms *commercial* and *financial* should be given their ordinary meanings. They include records in which a submitting Manufacturer has any *commercial interest*.

10.4.2. *Privileged or Confidential Information.* Commercial or financial information is privileged or confidential if its disclosure would likely cause substantial harm to the competitive position of the submitter. The concept of harm to one's competitive position focuses on harm flowing from a competitor's affirmative use of the proprietary information. It does not include incidental harm associated with upset customers or employees.

10.5. *EAC's Responsibilities.* The EAC is ultimately responsible for determining whether or not a document (in whole or in part) may be released pursuant to Federal law. In doing so, however, the EAC will require information and input from the Manufacturer submitting the documents. This requirement is essential for the EAC to identify, track, and make determinations on the large volume of documentation it receives. The EAC has the following responsibilities:

10.5.1. *Managing Documentation and Information.* The EAC will control the documentation it receives by ensuring that documents are secure and released to third parties only after the appropriate review and determination.

10.5.2. *Contacting Manufacturer on Proposed Release of Potentially Protected Documents.* In the event a member of the public submits a FOIA request for documents provided by a Manufacturer or the EAC otherwise proposes the release of such documents, the EAC will take the following actions:

10.5.2.1. Review the documents to determine if they are potentially protected from release as trade secrets or confidential commercial information. The documents at issue may have been previously identified as protected by the Manufacturer when

submitted (see Section 10.7.1 below) or identified by the EAC on review.

10.5.2.2. Grant the submitting Manufacturer an opportunity to provide input. In the event the information has been identified as potentially protected from release as a trade secret or confidential commercial information, the EAC will notify the submitter and allow it an opportunity to submit its position on the issue prior to release of the information. The submitter shall respond consistent with Section 10.7.1 below.

10.5.3. *Final Determination on Release.* After providing the submitter of the information an opportunity to be heard, the EAC will make a final decision on release. The EAC will inform the submitter of this decision.

10.6. *Manufacturer's Responsibilities.* Although the EAC is ultimately responsible for determining if a document, or any portion thereof, is protected from release as a trade secret or confidential commercial information, the Manufacturer shall be responsible for identifying documents, or portions of documents, it believes warrant such protection. Moreover, the Manufacturer will be responsible for providing the legal basis and substantiation for its determination regarding the withholding of a document. This responsibility arises in two situations: (1) upon the initial submission of information, and (2) upon notification by the EAC that it is considering the release of potentially protected information.

10.6.1. *Initial Submission of Information.* When a Manufacturer is submitting documents to the EAC as required by the Certification Program, it is responsible for identifying any document or portion of a

document that it believes is protected from release by Federal law. Manufacturers shall identify protected information by taking the following action:

10.6.1.1. Submitting a Notice of Protected Information. This notice shall identify the document, document page, or portion of a page that the Manufacturer believes should be protected from release. This identification must be done with specificity. For each piece of information identified, the Manufacturer must state the legal basis for its protected status.

10.6.1.1.1. Cite the applicable law that exempts the information from release.

10.6.1.1.2. Clearly discuss why that legal authority applies and why the document must be protected from release.

10.6.1.1.3. If necessary, provide additional documentation or information. For example, if the Manufacturer claims a document contains confidential commercial information, it would also have to provide evidence and analysis of the competitive harm that would result upon release.

10.6.1.2. *Label Submissions.* Label all submissions identified in the notice as "Proprietary Commercial Information." Label only those submissions identified as protected. Attempts to indiscriminately label all materials as proprietary will render the markings moot.

10.6.2. *Notification of Potential Release.* In the event a Manufacturer is notified that the EAC is considering the release of information that may be protected, the Manufacturer shall take the following action:

10.6.2.1. Respond to the notice within 15 calendar days. If additional time is needed, the Manufacturer must promptly notify the Program Director. Requests for additional

time will be granted only for good cause and must be made before the 15-day deadline. Manufacturers that do not respond in a timely manner will be viewed as not objecting to release.

10.6.2.2. Clearly state one of the following in the response:

10.6.2.2.1. There is no objection to release, or

10.6.2.2.2. The Manufacturer objects to release. In this case, the response must clearly state which portions of the document the Manufacturer believes should be protected from release. The Manufacturer shall follow the procedures discussed in Section 10.7.1 above.

10.7. *Personal Information.* Certain personal information is protected from release under FOIA and the Privacy Act (5 U.S.C. 552a). This information includes private information about a person that, if released, would cause the individual embarrassment or constitute an unwarranted invasion of personal privacy. Generally, the EAC will not require the submission of private information about individuals. The incidental submission of such information should be avoided. If a Manufacturer believes it is required to submit such information, it should contact the Program Director. If the information will be submitted, it must be properly identified. Examples of such information include the following:

10.7.1. Social Security Number.

10.7.2. Bank account numbers.

10.7.3. Home address.

10.7.4. Home phone number.

BILLING CODE 6820-KF-M

## Appendix A

# Manufacturer Registration Application Form

Available in electronic format at [www.eac.gov](http://www.eac.gov)

## Appendix B

# Application for Voting System Testing Form

Available in electronic format at [www.eac.gov](http://www.eac.gov)

## Appendix C

# Voting System Anomaly Reporting Form

Available in electronic format at [www.eac.gov](http://www.eac.gov)

impact of mandatory-random drug testing policies in high schools and to determine if mandatory-random drug testing policies result in less reported use of tobacco, alcohol, and illicit substances among a group of students in participating high schools compared to a comparable group of students in high schools that do not operate a mandatory-random drug testing program.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The Department may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act, under a computer matching agreement. Any disclosure of individually identifiable information from a record in this system must also comply with the requirements of section 183 of the ESRA (20 U.S.C. 9573) providing for confidentiality standards that apply to all collections, reporting, and publication of data by IES.

**Contract Disclosure.** If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

Not applicable to this system notice.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

The Department maintains records on CD-ROM, and the contractor and subcontractor maintain data for this system on computers and in hard copy.

**RETRIEVABILITY:**

Records in this system are indexed by a number assigned to each individual that is cross referenced by the individual's name on a separate list.

**SAFEGUARDS:**

All physical access to the Department's site and to the sites of the

Department's contractor and subcontractor, where this system of records is maintained, is controlled and monitored by security personnel. The computer system employed by the Department offers a high degree of resistance to tampering and circumvention. This security system limits data access to Department and contract staff on a "need to know" basis, and controls individual users' ability to access and alter records within the system. The contractor and subcontractor will establish similar sets of procedures at their sites to ensure confidentiality of data. Their systems are required to ensure that information identifying individuals is in files physically separated from other research data. The contractor and subcontractor will maintain security of the complete set of all master data files and documentation. Access to individually identifiable data will be strictly controlled. At each site all data will be kept in locked file cabinets during nonworking hours, and work on hardcopy data will take place in a single room, except for data entry. Physical security of electronic data will also be maintained. *Security features that protect project data include:* password-protected accounts that authorize users to use the contractor's and subcontractor's systems but to access only specific network directories and network software; user rights and directory and file attributes that limit those who can use particular directories and files and determine how they can use them; e-mail passwords that authorize the user to access mail services; and additional security features that the network administrators will establish for projects as needed. The contractor and subcontractor employees who "maintain" (collect, maintain, use, or disseminate) data in this system shall comply with the requirements of the confidentiality standards in section 183 of the ESRA (20 U.S.C. 9573).

**RETENTION AND DISPOSAL:**

Records are maintained and disposed of in accordance with the Department's Records Disposition Schedules (Section Ed/RDS, Part 3, Item 2b and Part 3, Item 5a).

**SYSTEM MANAGER AND ADDRESS:**

Director, Evaluation Division, National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education, 555 New Jersey Avenue, NW., room 502D, Washington, DC 20208.

**NOTIFICATION PROCEDURE:**

If you wish to determine whether a record exists regarding you in the system of records, contact the systems manager. Your request must meet the requirements of regulations at 34 CFR 5b.5, including proof of identity.

**RECORD ACCESS PROCEDURE:**

If you wish to gain access to your record in the system of records, contact the system manager. Your request must meet the requirements of regulations at 34 CFR 5b.5, including proof of identity.

**CONTESTING RECORD PROCEDURE:**

If you wish to contest the content of a record regarding you in the system of records, contact the system manager. Your request must meet the requirements of the regulations at 34 CFR 5b.7, including proof of identity.

**RECORD SOURCE CATEGORIES:**

The system will contain information about two cohorts of approximately 200 high school students each of (i) 26 high schools operating the mandatory-random drug testing program and (ii) 26 high schools that will not operate the program but that will serve as control high schools for this evaluation. The total number of high school students included in this system of records will be approximately 10,400 in each of school years 2006-07 and 2007-08. The 52 participating high schools will be from school districts that are recipients of the grants for School-Based Student Drug-Testing Programs that were announced in 2006 by OSDFS.

The system of records will include information about the high school students participating in the evaluation including the students' names; addresses; demographic information such as race/ethnicity, gender, age, and educational background; and attitudes and beliefs concerning substance use, and substance use itself.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. E7-5933 Filed 3-29-07; 8:45 am]  
BILLING CODE 4000-01-P

**ELECTION ASSISTANCE COMMISSION**

**Notice of Request for Extension and Revision of a Currently Approved Information Collection**

**AGENCY:** U.S. Election Assistance Commission (EAC).

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this

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notice announces the U.S. Election Assistance Commission's (EAC) intention to request an extension and revision of a currently approved collection. The information collection was previously published in the **Federal Register** on January 24, 2007, at 72 FR 3127. The notice allowed for a 60-day public comment period. No comments were received on this information collection. The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until April 27, 2007. This process is conducted in accordance with 5 CFR 1320.10. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments must be submitted on or before April 27, 2007.

**ADDRESSES:** Written comments and recommendations on the proposed information collection should be sent to *OMB Reviewer:* Alexander T. Hunt, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395-7316.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call Mr. Brian Hancock at (202) 566-3100.

**SUPPLEMENTARY INFORMATION:**

*Title:* EAC Voting System Testing and Certification Program Manual.

*OMB Number:* 3265-0004.

*Type of Review:* Extension with change of a currently approved collection.

*Needs and Uses:* HAVA requires that the EAC certify and decertify voting systems (42 U.S.C. 15371). Section 231(a)(1) of HAVA specifically requires the EAC to " \* \* \* provide for the certification, decertification and recertification of voting system hardware and software by accredited laboratories." The EAC will perform this mandated function through the use of its Voting System Testing and Certification Program. Voting systems certified by the EAC will be used by

citizens to cast votes in Federal Elections. Therefore, it is paramount that the program operates in a reliable and effective manner. In order to certify a voting system, it is necessary for the EAC to (1) Require voting system manufacturers to submit information about their organization and the voting systems they submit for testing and certification; (2) require voting system manufacturers to retain voting system technical and test records; and (3) to provide a mechanism for election officials to report events which may effect a voting system's certification.

*Affected Public:* Business or other for-profit institutions and state and local election officials.

*Estimated Number of Respondents:* 94 annually.

*Total Annual Responses:* 99 annually.

*Estimated Total Annual Burden Hours:* 119 hours.

**Donetta L. Davidson,**

*Chair, U.S. Election Assistance Commission.*

[FR Doc. 07-1556 Filed 3-29-07; 8:45 am]

**BILLING CODE 6820-KF-M**

## ELECTION ASSISTANCE COMMISSION

### Sunshine Act Notice

**AGENCY:** United States Election Assistance Commission.

**ACTION:** Notice of Public Teleconference Meetings for the Working Subcommittees of the Technical Guidelines Development Committee.

**DATES AND TIMES:**

Tuesday, April 3, 2007 at 10:30 a.m. ET.

Thursday, April 5 at 11 a.m. ET.

Thursday, April 5 at 1 p.m. ET.

Tuesday, April 10, 2007 at 10:30 a.m.

ET.

Thursday, April 12 at 11 a.m. ET.

Friday, April 13 at 11 a.m. ET.

Tuesday, April 17, 2007 at 10:30 a.m.

ET.

Thursday, April 19 at 11 a.m. ET.

Friday, April 20 at 11 a.m. ET.

Tuesday, April 24, 2007 at 10:30 a.m.

ET.

Thursday, April 26 at 11 a.m. ET.

Thursday, April 26 at 1 p.m. ET.

Tuesday, May 1, 2007 at 10:30 a.m. ET.

Thursday, May 3 at 11 a.m. ET.

Friday, May 4 at 11 a.m. ET.

Tuesday, May 8, 2007 at 10:30 a.m. ET.

Thursday, May 10 at 11 a.m. ET.

Friday, May 11 at 11 a.m. ET.

Tuesday, May 15, 2007 at 10:30 a.m. ET.

Thursday, May 17 at 11 a.m. ET.

Friday, May 18 at 11 a.m. ET.

Tuesday, May 22, 2007 at 10:30 a.m. ET.

Friday, May 25 at 11 a.m. ET.

**STATUS:** Audio recordings of working subcommittee teleconferences are

available upon conclusion of each meeting at: [http://vote.nist.gov/subcomm\\_mtg.htm](http://vote.nist.gov/subcomm_mtg.htm). Agendas for each teleconference will be posted one week in advance of each meeting at the above Web site.

**SUMMARY:** The Technical Guidelines Development Committee (the "Development Committee") was established to act in the public interest to assist the Executive Director of the U.S. Election Assistance Commission (EAC) in the development of voluntary voting system guidelines. The Committee held their first plenary meeting on July 9, 2004. At this meeting, the Development Committee agreed to a resolution forming three working groups: (1) Human Factors & Privacy; (2) Security & Transparency; and (3) Core Requirements & Testing to gather and analyze information on relevant issues. These working subcommittees propose resolutions to the TGDC on best practices, specifications and standards. Specifically, NIST staff and Committee members will meet via the above scheduled teleconferences to review and discuss progress on tasks defined in resolutions passed at Development Committee plenary meetings. The resolutions define technical work tasks for NIST that will assist the Committee in developing recommendations for voluntary voting system guidelines. The Committee met in its eighth plenary session on March 22-23, 2007.

Documents and transcriptions of Committee proceedings are available at: <http://vote.nist.gov/PublicHearingsandMeeting.html>.

**SUPPLEMENTARY INFORMATION:** The Technical Guidelines Development Committee (the "Development Committee") was established pursuant to 42 U.S.C. 15361, to act in the public interest to assist the Executive Director of the Election Assistance Commission in the development of the voluntary voting system guidelines. The information gathered and analyzed by the working subcommittees during their teleconference meetings will be reviewed at future Development Committee plenary meetings.

**FOR FURTHER INFORMATION CONTACT:** Allan Eustis 301-975-5099. If a member of the public would like to submit written comments concerning the Committee's affairs at any time before or after subcommittee teleconference meetings, written comments should be



**United States  
Election Assistance  
Commission**

1225 New York Avenue, N.W.  
Ste. 1100  
Washington, DC 20005  
202-566-3100

**Testing and Certification  
Program Manual**

*Version 1.0 - Effective January 1, 2007*

[www.eac.gov](http://www.eac.gov)

OMB Control Number 3265-0004

009993

*The reporting requirements in this manual have been approved under the Paperwork Reduction Act of 1995, Office of Management and Budget Control (OMB) Number 3265-0004, expiring March 31, 2007. Persons are not required to respond to this collection of information unless it displays a currently valid OMB number. Information gathered pursuant to this document and its forms will be used solely to administer the EAC Testing and Certification Program. This program is voluntary. Individuals who wish to participate in the program, however, must meet its requirements. The estimated total annual hourly burden on the voting system manufacturing industry and election officials is 114 hours. This estimate includes the time required for reviewing the instructions, gathering information, and completing the prescribed forms. Send comments regarding this burden estimate or any other aspect of this collection, including suggestions for reducing this burden, to the U.S. Election Assistance Commission, Voting System Testing and Certification Program, Office of the Program Director, 1225 New York Avenue, NW, Suite 1100, Washington, D.C. 20005.*

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## 1. Introduction

- 1.1. Background.** The Federal Election Commission (FEC) adopted the first formal set of voluntary Federal standards for computer-based voting systems in January 1990. At that time, no national program or organization existed to test and certify such systems to the standards. The National Association of State Election Directors (NASED) stepped up to fill this void in 1994. NASED is an independent, nongovernmental organization of State election officials. The organization formed the Nation's first national program to test and qualify voting systems to the new Federal standards. The organization worked for more than a decade, on a strictly voluntary basis, to help ensure the reliability, consistency, and accuracy of voting systems fielded in the United States. In late 2002, Congress passed the Help America Vote Act of 2002 (HAVA). HAVA created the U.S. Election Assistance Commission (EAC) and assigned to the EAC the responsibility for both setting voting system standards and providing for the testing and certification of voting systems. This mandate represented the first time the Federal government provided for the voluntary testing, certification, and decertification of voting systems nationwide. In response to this HAVA requirement, the EAC has developed the Voting System Testing and Certification Program (Certification Program).
- 1.2. Authority.** HAVA requires that the EAC certify and decertify voting systems. Section 231(a)(1) of HAVA specifically requires the EAC to "... provide for the testing, certification, decertification and recertification of voting system hardware and software by accredited laboratories." The EAC has the sole authority to grant certification or withdraw certification at the Federal level, including the authority to grant, maintain, extend, suspend, and withdraw the right to retain or use any certificates, marks, or other indicators of certification.
- 1.3. Scope.** This Manual provides the procedural requirements of the EAC Voting System Testing and Certification Program. Although participation in the program is voluntary, adherence to the program's procedural requirements is mandatory for participants. The procedural requirements of this Manual supersede any prior voting system certification requirements issued by the EAC.
- 1.4. Purpose.** The primary purpose of the EAC Certification Program Manual is to provide clear procedures to Manufacturers for the testing and certification of voting systems to specified Federal standards consistent with the requirements of HAVA Section 231(a)(1). The program, however, also serves to do the following:
- 1.4.1. Support State certification programs.
  - 1.4.2. Support local election officials in the areas of acceptance testing and pre-election system verification.
  - 1.4.3. Increase quality control in voting system manufacturing.
  - 1.4.4. Increase voter confidence in the use of voting systems.

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**1.5. Manual.** This Manual is a comprehensive presentation of the EAC Voting System Testing and Certification Program. It is intended to establish all of the program's administrative requirements.

1.5.1. Contents. The contents of the Manual serve as an overview of the program itself. The Manual contains the following chapters:

1.5.1.1. *Manufacturer Registration.* Under the program, a Manufacturer is required to register with the EAC prior to participation. This registration provides the EAC with needed information and requires the Manufacturer to agree to the requirements of the Certification Program. This chapter sets out the requirements and procedures for registration.

1.5.1.2. *When Voting Systems Must Be Submitted for Testing and Certification.* All voting systems must be submitted consistent with this Manual before they may receive a certification from the EAC. This chapter discusses the various circumstances that require submission to obtain or maintain a certification.

1.5.1.3. *Certification Testing and Review.* Under this program, the testing and review process requires the completion of an application, employment of an EAC-accredited laboratory for system testing, and technical analysis of the laboratory test report by the EAC. The result of this process is an Initial Decision on Certification. This chapter discusses the required steps for voting system testing and review.

1.5.1.4. *Grant of Certification.* If an Initial Decision to grant certification is made, the Manufacturer must take additional steps before the Manufacturer may be issued a certification. These steps require the Manufacturer to document the performance of a trusted build (*see* definition at Section 1.16), the deposit of software into a repository, and the creation of system identification tools. This chapter outlines the action that a Manufacturer must take to receive a certification and the Manufacturer's post-certification responsibilities.

1.5.1.5. *Denial of Certification.* If an Initial Decision to deny certification is made, the Manufacturer has certain rights and responsibilities under the program. This chapter contains procedures for requesting reconsideration, opportunity to cure defects, and appeal.

1.5.1.6. *Decertification.* Decertification is the process by which the EAC revokes a certification it previously granted to a voting system. It is an important part of the Certification Program because it serves to ensure that the requirements of the program are followed and that certified voting systems fielded for use in Federal elections maintain the same level of quality as those presented for testing. This chapter sets procedures for Decertification and explains the Manufacturer's rights and responsibilities during that process.

- 1.5.1.7. *Quality Monitoring Program.* Under the Certification Program, EAC will implement a quality monitoring process that will help ensure that voting systems certified by the EAC are the same systems sold by Manufacturers. The quality monitoring process is a mandatory part of the program and includes elements such as fielded voting system review, anomaly reporting, and manufacturing site visits. This chapter sets forth the requirements of the Quality Monitoring Program.
- 1.5.1.8. *Requests for Interpretations.* An Interpretation is a means by which a registered Manufacturer or Voting System Test Laboratory (VSTL) may seek clarification on a specific Voluntary Voting System Guidelines (VVSG) standard. This chapter outlines the policy, requirements, and procedures for requesting an Interpretation.
- 1.5.1.9. *Release of Certification Program Information.* Federal law protects certain types of information individuals provided the government from release. This chapter outlines the program's policies, sets procedures, and discusses responsibilities associated with the public release of potential protected commercial information.

1.5.2. Maintenance and Revision. This Manual, which sets the procedural requirements for a new Federal program, is expected to be improved and expanded as experience and circumstances dictate. The Manual will be reviewed periodically and updated to meet the needs of the EAC, Manufacturers, VSTLs, election officials, and public policy. The EAC is responsible for revising this document. All revisions will be made consistent with Federal law. Substantive input from stakeholders and the public will be sought whenever possible, at the discretion of the agency. Changes in policy requiring immediate implementation will be noticed via policy memoranda and will be issued to each registered Manufacturer. Changes, addendums, or updated versions will also be posted to the EAC Web site at [www.eac.gov](http://www.eac.gov).

**1.6. Program Methodology.** EAC's Voting System Testing and Certification Program is but one part of the overall conformity assessment process that includes companion efforts at the State and local levels.

1.6.1. Federal and State Roles. The process to ensure that voting equipment meets the technical requirements is a distributed, cooperative effort of Federal, State, and local officials in the United States. Working with voting equipment Manufacturers, these officials each have unique responsibility for ensuring that the equipment a voter uses on Election Day meets specific requirements.

1.6.1.1. The EAC Program has primary responsibility for ensuring that voting systems submitted under this program meet Federal standards established for voting systems.

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- 1.6.1.2. State officials have responsibility for testing voting systems to ensure that they will support the specific requirements of each individual State. States may use EAC VSTLs to perform testing of voting systems to unique State requirements while the systems are being tested to Federal standards. The EAC will not, however, certify voting systems to State requirements.
  - 1.6.1.3. State or local officials are responsible for making the final purchase choice. They are responsible for deciding which system offers the best fit and total value for their specific State or local jurisdiction.
  - 1.6.1.4. State or local officials are also responsible for acceptance testing to ensure that the equipment delivered is identical to the equipment certified on the Federal and State levels, is fully operational, and meets the contractual requirements of the purchase.
  - 1.6.1.5. State or local officials should perform pre-election logic and accuracy testing to confirm that equipment is operating properly and is unmodified from its certified state.
- 1.6.2. Conformity Assessment, Generally. Conformity assessment is a system established to ensure that a product or service meets the requirements that apply to it. Many conformity assessment systems exist to protect the quality and ensure compliance with requirements of products and services. All conformity assessment systems attempt to answer a variety of questions:
- 1.6.2.1. *What specifications are required of an acceptable system?* For voting systems, the EAC voting system standards (VVSG and Voting System Standards [VSS]) address this issue. States and local jurisdictions also have supplementing standards.
  - 1.6.2.2. *How are systems tested against required specifications?* The EAC Voting System Testing and Certification Program is a central element of the larger conformity assessment system. The program, as set forth in this Manual, provides for the testing and certification of voting systems to identified versions of the VVSG. The Testing and Certification Program's purpose is to ensure that State and local jurisdictions receive voting systems that meet the requirements of the VVSG.
  - 1.6.2.3. *Are the testing authorities qualified to make an accurate evaluation?* The EAC accredits VSTLs, after the National Institute of Standards and Technology (NIST) National Voluntary Lab Accreditation Program (NVLAP) has reviewed their technical competence and lab practices, to ensure these test authorities are fully qualified. Furthermore, EAC technical experts review all test reports from accredited laboratories to ensure an accurate and complete evaluation. Many States provide similar reviews of laboratory reports.

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1.6.2.4. *Will Manufacturers deliver units within manufacturing tolerances to those tested?* The VVSG and this Manual require that vendors have appropriate change management and quality control processes to control the quality and configuration of their products. The Certification Program provides mechanisms for the EAC to verify Manufacturer quality processes through field system testing and manufacturing site visits. States have implemented policies for acceptance of delivered units.

**1.7. Program Personnel.** All EAC personnel and contractors associated with this program will be held to the highest ethical standards. All agents of the EAC involved in the Certification Program will be subject to conflict-of-interest reporting and review, consistent with Federal law and regulation.

**1.8. Program Records.** The EAC Program Director is responsible for maintaining accurate records to demonstrate that the testing and certification program procedures have been effectively fulfilled and to ensure the traceability, repeatability, and reproducibility of testing and test report review. All records will be maintained, managed, secured, stored, archived, and disposed of in accordance with Federal law, Federal regulations, and procedures of the EAC.

**1.9. Submission of Documents.** Any documents submitted pursuant to the requirements of this Manual shall be submitted:

1.9.1. If sent electronically, via secure e-mail or physical delivery of a compact disk, unless otherwise specified.

1.9.2. In a Microsoft Word or Adobe PDF file, formatted to protect the document from alteration.

1.9.3. With a proper signature when required by this Manual. Documents that require an authorized signature may be signed with an electronic representation or image of the signature of an authorized management representative and must meet any and all subsequent requirements established by the Program Director regarding security.

1.9.4. If sent via physical delivery, by Certified Mail™ (or similar means that allows tracking) to the following address:

Testing and Certification Program Director  
U.S. Election Assistance Commission  
1225 New York Avenue, NW, Suite 1100  
Washington, D.C. 20005

**1.10. Receipt of Documents—Manufacturer.** For purposes of this Manual, a document, notice, or other communication is considered received by a Manufacturer upon one of the following:

1.10.1. The actual, documented date the correspondence was received (either electronically or physically) at the Manufacturer's place of business, or

1.10.2. If no documentation of the actual delivery date exists, the date of constructive receipt of the communication. For electronic correspondence, documents will be constructively received the day after the date sent. For mail correspondence, the document will be constructively received 3 days after the date sent.

1.10.3. The term “receipt” shall mean the date a document or correspondence arrives (either electronically or physically) at the Manufacturer’s place of business. Arrival does not require that an agent of the Manufacturer open, read, or review the correspondence.

**1.11. Receipt of Documents—EAC.** For purposes of this Manual, a document, notice, or other communication is considered received by the EAC upon its physical or electronic arrival at the agency. All documents received by the agency will be physically or electronically date stamped. This stamp shall serve as the date of receipt. Documents received after the regular business day (5:00 PM Eastern Standard Time), will be treated as if received on the next business day.

**1.12. EAC Response Timeframes.** In recognition of the responsibilities and challenges facing Manufacturers as they work to meet the requirements imposed by this program, State certification programs, customers, State law and production schedules, the EAC will provide timeframes for its response to significant program elements. This shall be done by providing current metrics on EAC’s Web site regarding the actual average EAC response time for (1) approving Test Plans, (2) issuing Initial Decisions, and (3) issuing Certificates of Conformance.

**1.13. Records Retention—Manufacturers.** The Manufacturer is responsible for ensuring that all documents submitted to the EAC or that otherwise serve as the basis for the certification of a voting system are retained. A copy of all such records shall be retained as long as a voting system is offered for sale or supported by a Manufacturer and for 5 years thereafter.

**1.14. Record Retention—EAC.** The EAC shall retain all records associated with the certification of a voting system as long as such system is fielded in a State or local election jurisdiction for use in Federal elections. The records shall otherwise be retained or disposed of consistent with Federal statutes and regulations.

**1.15. Publication and Release of Documents.** The EAC will release documents consistent with the requirements of Federal law. It is EAC policy to make the certification process as open and public as possible. Any documents (or portions thereof) submitted under this program will be made available to the public unless specifically protected from release by law. The primary means for making this information available is through the EAC Web site.

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**1.16. Definitions.** For purposes of this Manual, the terms listed below have the following definitions.

Appeal. A formal process by which the EAC is petitioned to reconsider an Agency Decision.

Appeal Authority. The individual or individuals appointed to serve as the determination authority on appeal.

Build Environment. The disk or other media that holds the source code, compiler, linker, integrated development environments (IDE), and/or other necessary files for the compilation and on which the compiler will store the resulting executable code.

Certificate of Conformance. The certificate issued by the EAC when a system has been found to meet the requirements of the VVSG. The document conveys certification of a system.

Commission. The U.S. Election Assistance Commission, as an agency.

Commissioners. The serving commissioners of the U.S. Election Assistance Commission.

Component. A discrete and identifiable element of hardware or software within a larger voting system.

Compiler. A computer program that translates programs expressed in a high-level language into machine language equivalents.

Days. Calendar days, unless otherwise noted. When counting days, for the purpose of submitting or receiving a document, the count shall begin on the first full calendar day after the date the document was received.

Disk Image. An exact copy of the entire contents of a computer disk.

Election Official. A State or local government employee who has as one of his or her primary duties the management or administration of a Federal election.

Federal Election. Any primary, general, runoff, or special Election in which a candidate for Federal office (President, Senator, or Representative) appears on the ballot.

Fielded Voting System. A voting system purchased or leased by a State or local government that is being use in a Federal election.

File Signature. A signature of a file or set of files produced using a HASH algorithm. A file signature, sometimes called a HASH value, creates a value that is computationally infeasible of being produced by two similar but different files. File signatures are used to verify that files are unmodified from their original versions.

HASH Algorithm. An algorithm that maps a bit string of arbitrary length to a shorter, fixed-length bit string. (A HASH uniquely identifies a file similar to the way a fingerprint identifies an individual. Likewise, as an individual cannot be recreated from his or her fingerprint, a file cannot be recreated from a HASH. The HASH algorithm used primarily in the NIST (National Software Reference Library), and this program is the Secure HASH Algorithm (SHA-1) specified in Federal Information Processing Standard (FIPS) 180-1.)

Installation Device. A device containing program files, software, and installation instructions for installing an application (program) onto a computer. Examples of such devices include installation disks, flash memory cards, and PCMCIA cards.

Integration Testing. The end-to-end testing of a full system configured for use in an election to assure that all legitimate configurations meet applicable standards.

Linker. A computer program that takes one or more objects generated by compilers and assembles them into a single executable program.

Manufacturer. The entity with ownership and control over a voting system submitted for certification.

Mark of Conformance. A uniform notice permanently posted on a voting system that signifies that it has been certified by the EAC.

Memorandum for the Record. A written statement drafted to document an event or finding, without a specific addressee other than the pertinent file.

Proprietary Information. Commercial information or trade secrets protected from release under the Freedom of Information Act (FOIA) and the Trade Secrets Act.

System Identification Tools. Tools created by a Manufacturer of voting systems that allow elections officials to verify that the hardware and software of systems purchased are identical to the systems certified by the EAC.

Technical Reviewers. Technical experts in the areas of voting system technology and conformity assessment appointed by the EAC to provide expert guidance.

Testing and Certification Decision Authority. The EAC Executive Director or Acting Executive Director.

Testing and Certification Program Director. The individual appointed by the EAC Executive Director to administer and manage the Testing and Certification Program.

Trusted Build. A witnessed software build where source code is converted to machine-readable binary instructions (executable code) in a manner providing security measures that help ensure that the executable code is a verifiable and faithful representation of the source code.

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Voting System. The total combination of mechanical, electromechanical, and electronic equipment (including the software, firmware, and documentation required to program, control, and support the equipment) that is used to define ballots, cast and count votes, report or display election results, connect the voting system to the voter registration system, and maintain and produce any audit trail information.

Voting System Standards. Voluntary voting system standards developed by the FEC. Voting System Standards have been published twice: once in 1990 and again in 2002. The Help America Vote Act made the 2002 Voting System Standards EAC guidance. All new voting system standards are issued by the EAC as Voluntary Voting System Guidelines.

Voting System Test Laboratories. Laboratories accredited by the EAC to test voting systems to EAC approved voting system standards. Each Voting System Test Laboratory (VSTL) must be accredited by the National Voluntary Laboratory Accreditation Program (NVLAP) and recommended by the National Institute of Standards Technology (NIST) before it may receive an EAC accreditation. NVLAP provides third party accreditation to testing and calibration laboratories. NVLAP is in full conformance with the standards of the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC), including ISO/IEC Guide 17025 and 17011.

Voluntary Voting System Guidelines. Voluntary voting system standards developed, adopted, and published by the EAC. The guidelines are identified by version number and date.

**1.17. Acronyms and Abbreviations.** For purposes of this Manual, the acronyms and abbreviations listed below represent the following terms.

Certification Program. The EAC Voting System Testing and Certification Program

Decision Authority. Testing and Certification Decision Authority

EAC. United States Election Assistance Commission

FEC. Federal Election Commission

HAVA. Help America Vote Act of 2002 (42 U.S.C. §15301 et seq.)

Labs or Laboratories. Voting System Test Laboratories

NASED. National Association of State Election Directors

NIST. National Institute of Standards and Technology

NVLAP. National Voluntary Laboratory Accreditation Program

Program Director. Director of the EAC Testing and Certification Program

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VSS. Voting System Standards

VSTL. Voting System Test Laboratory

VVSG. Voluntary Voting System Guidelines

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## 2. Manufacturer Registration

**2.1. Overview.** Manufacturer Registration is the process by which voting system Manufacturers make initial contact with the EAC and provide information essential to participate in the EAC Voting System Testing and Certification Program. Before a Manufacturer of a voting system can submit an application to have a voting system certified by the EAC, the Manufacturer must be registered. This process requires the Manufacturer to provide certain contact information and agree to certain requirements of the Certification Program. After successfully registering, the Manufacturer will receive an identification code.

**2.2. Registration Required.** To submit a voting system for certification or otherwise participate in the EAC voluntary Voting System Testing and Certification Program, a Manufacturer must register with the EAC. Registration does not constitute an EAC endorsement of the Manufacturer or its products. Registration of a Manufacturer is not a certification of that Manufacturer's products.

**2.3. Registration Requirements.** The registration process will require the voting system Manufacturer to provide certain information to the EAC. This information is necessary to enable the EAC to administer the Certification Program and communicate effectively with the Manufacturer. The registration process also requires the Manufacturer to agree to certain Certification Program requirements. These requirements relate to the Manufacturer's duties and responsibilities under the program. For this program to succeed, it is vital that a Manufacturer know and assent to these duties at the outset of the program.

**2.3.1. Information.** Manufacturers are required to provide the following information.

2.3.1.1. The Manufacturer's organizational information:

2.3.1.1.1. The official name of the Manufacturer.

2.3.1.1.2. The address of the Manufacturer's official place of business.

2.3.1.1.3. A description of how the Manufacturer is organized (i.e., type of corporation or partnership).

2.3.1.1.4. Names of officers and/or members of the board of directors.

2.3.1.1.5. Names of all partners and members (if organized as a partnership or limited liability corporation).

2.3.1.1.6. Identification of any individual, organization, or entity with a controlling ownership interest in the Manufacturer.

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- 2.3.1.2. The identity of an individual authorized to represent and make binding commitments and management determinations for the Manufacturer (management representative). The following information is required for the management representative:
  - 2.3.1.2.1. Name and title.
  - 2.3.1.2.2. Mailing and physical addresses.
  - 2.3.1.2.3. Telephone number, fax number, and e-mail address.
- 2.3.1.3. The identity of an individual authorized to provide technical information on behalf of the Manufacturer (technical representative). The following information is required for the technical representative:
  - 2.3.1.3.1. Name and title.
  - 2.3.1.3.2. Mailing and physical addresses.
  - 2.3.1.3.3. Telephone number, fax number, and e-mail address.
- 2.3.1.4. The Manufacturer's written policies regarding its quality assurance system. This policy must be consistent with guidance provided in the VVSG and this Manual.
- 2.3.1.5. The Manufacturer's written policies regarding internal procedures for controlling and managing changes to and versions of its voting systems. Such policies shall be consistent with this Manual and guidance provided in the VVSG.
- 2.3.1.6. The Manufacturer's written policies on document retention. Such policies must be consistent with the requirements of this Manual.
- 2.3.1.7. A list of all manufacturing and/or assembly facilities used by the Manufacturer and the name and contact information of a person at each facility. The following information is required for a person at each facility:
  - 2.3.1.7.1. Name and title.
  - 2.3.1.7.2. Mailing and physical addresses.
  - 2.3.1.7.3. Telephone number, fax number, and e-mail address.

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2.3.2. Agreements. Manufacturers are required to take or abstain from certain actions to protect the integrity of the Certification Program and promote quality assurance. Manufacturers are required to agree to the following program requirements:

- 2.3.2.1. Represent a voting system as certified only when it is authorized by the EAC and is consistent with the procedures and requirements of this Manual.
- 2.3.2.2. Produce and affix an EAC certification label to all production units of the certified system. Such labels must meet the requirements set forth in Chapter 5 of this Manual.
- 2.3.2.3. Notify the EAC of changes to any system previously certified by the EAC pursuant to the requirements of this Manual (see Chapter 3). Such systems shall be submitted for testing and additional certification when required.
- 2.3.2.4. Permit an EAC representative to verify the Manufacturer's quality control procedures by cooperating with EAC efforts to test and review fielded voting systems consistent with Section 8.6 of this Manual.
- 2.3.2.5. Permit an EAC representative to verify the Manufacturer's quality control procedures by conducting periodic inspections of manufacturing facilities consistent with Chapter 8 of this Manual.
- 2.3.2.6. Cooperate with any EAC inquiries and investigations into a certified system's compliance with VVSG standards or the procedural requirements of this Manual consistent with Chapter 7.
- 2.3.2.7. Report to the Program Director any known malfunction of a voting system holding an EAC Certification. A malfunction is a failure of a voting system, not caused solely by operator or administrative error, which causes the system to cease operation during a Federal election or otherwise results in data loss. Malfunction notifications should be consolidated into one report. This report should identify the location, nature, date, impact, and resolution (if any) of the malfunction and be filed within 60 days of any Federal election.
- 2.3.2.8. Certify that the entity is not barred or otherwise prohibited by statute, regulation, or ruling from doing business in the United States.
- 2.3.2.9. Adhere to all procedural requirements of this Manual.

2.4. **Registration Process**. Generally, registration is accomplished through use of an EAC registration form. After the EAC has received a registration form and other required registration documents, the agency reviews the information for completeness before approval.

2.4.1. Application Process. To become a registered voting system Manufacturer, one must apply by submitting a Manufacturer Registration Application Form (Appendix A). This

form will be used as the means for the Manufacturer to provide the information and agree to the responsibilities required in Section 2.3, above.

2.4.1.1. *Application Form.* In order for the EAC to accept and process the registration form, the applicant must adhere to the following requirements:

2.4.1.1.1. All fields must be completed by the Manufacturer.

2.4.1.1.2. All required attachments prescribed by the form and this Manual must be identified, completed, and forwarded in a timely manner to the EAC (e.g., Manufacturer's quality control and system change policies).

2.4.1.1.3. The application form must be affixed with the handwritten signature (including a digital representation of the handwritten signature) of the authorized representative of the vendor.

2.4.1.2. *Availability and Use of the Form.* The Manufacturer Registration Application Form may be accessed through the EAC Web site at [www.eac.gov](http://www.eac.gov). Instructions for completing and submitting the form are included on the Web site. The Web site will also provide contact information regarding questions about the form or the application process.

2.4.2. EAC Review Process. The EAC will review all registration applications.

2.4.2.1. After the application form and required attachments have been submitted, the applicant will receive an acknowledgment that the EAC has received the submission and that the application will be processed.

2.4.2.2. If an incomplete form is submitted or an attachment is not provided, the EAC will notify the Manufacturer and request the information. Registration applications will not be processed until they are complete.

2.4.2.3. Upon receipt of the completed registration form and accompanying documentation, the EAC will review the information for sufficiency. If the EAC requires clarification or additional information, the EAC will contact the Manufacturer and request the needed information.

2.4.2.4. Upon satisfactory completion of a registration application's sufficiency review, the EAC will notify the Manufacturer that it has been registered.

**2.5. Registered Manufacturers.** After a Manufacturer has received notice that it is registered, it will receive an identification code and will be eligible to participate in the voluntary voting system Certification Program.

- 2.5.1. Manufacturer Code. Registered Manufacturers will be issued a unique, three-letter identification code. This code will be used to identify the Manufacturer and its products.
  - 2.5.2. Continuing Responsibility To Report. Registered Manufacturers are required to keep all registration information up to date. Manufacturers must submit a revised application form to the EAC within 30 days of any changes to the information required on the application form. Manufacturers will remain registered participants in the program during this update process.
  - 2.5.3. Program Information Updates. Registered Manufacturers will be automatically provided timely information relevant to the Certification Program.
  - 2.5.4. Web site Postings. The EAC will add the Manufacturer to the EAC listing of registered voting system Manufacturers publicly available at [www.eac.gov](http://www.eac.gov).
- 2.6. Suspension of Registration.** Manufacturers are required to establish policies and operate within the EAC Certification Program consistent with the procedural requirements presented in this Manual. When Manufacturers engage in management activities that are inconsistent with this Manual or fail to cooperate with the EAC in violation the Certification Program's requirements, their registration may be suspended until such time as the problem is remedied.
- 2.6.1. Procedures. When a Manufacturer's activities violate the procedural requirements of this Manual, the Manufacturer will be notified of the violations, given an opportunity to respond, and provided the steps required to bring itself into compliance.
    - 2.6.1.1. *Notice*. Manufacturers shall be provided written notice that they have taken action inconsistent with or acted in violation of the requirements of this Manual. The notice will state the violations and the specific steps required to cure them. The notice will also provide Manufacturers with 30 days (or a greater period of time as stated by the Program Director) to (1) respond to the notice and/or (2) cure the defect.
    - 2.6.1.2. *Manufacturer Action*. The Manufacturer is required to either respond in a timely manner to the notice (demonstrating that it was not in violation of program requirements) or cure the violations identified in a timely manner. In any case, the Manufacturer's action must be approved by the Program Director to prevent suspension.

- 2.6.1.3. *Non-Compliance.* If the Manufacturer fails to respond in a timely manner, is unable to provide a cure or response that is acceptable to the Program Director, or otherwise refuses to cooperate, the Program Director may suspend the Manufacturer's registration. The Program Director shall issue a notice of his or her intent to suspend the registration and provide the Manufacturer five (5) business days to object to the action and submit information in support of the objection.
- 2.6.1.4. *Suspension.* After notice and opportunity to be heard (consistent with the above), the Program Director may suspend a Manufacturer's registration. The suspension shall be noticed in writing. The notice must inform the Manufacturer of the steps that can be taken to remedy the violations and lift the suspension.
- 2.6.2. Effect of Suspension. A suspended Manufacturer may not submit a voting system for certification under this program. This prohibition includes a ban on the submission of modifications and changes to certified system. A suspension shall remain in effect until lifted. Suspended Manufacturers will have their registration status reflected on the EAC Web site. Manufacturers have the right to remedy a non-compliance issue at any time and lift a suspension consistent with EAC guidance. Failure of a Manufacturer to follow the requirements of this section may also result in Decertification of voting systems consistent with Chapter 7 of this Manual.

### 3. When Voting Systems Must Be Submitted for Testing and Certification

3.1. **Overview.** An EAC certification signifies that a voting system has been successfully tested to identified voting system standards adopted by the EAC. Only the EAC can issue a Federal certification. Ultimately, systems must be submitted for testing and certification under this program to receive this certification. Systems will usually be submitted when (1) they are new to the marketplace, (2) they have never before received an EAC certification, (3) they are modified, or (4) the Manufacturer wishes to test a previously certified system to a different (newer) standard. This chapter also discusses the submission of de minimis changes, which may not require additional testing and certification, as well as provisional, pre-election emergency modifications, which provide for pre-election, emergency waivers.

3.2. **What Is an EAC Certification?** Certification is the process by which the EAC, through testing and evaluation conducted by an accredited Voting System Test Laboratory, validates that a voting system meets the requirements set forth in existing voting system testing standards (Voting System Standards [VSS] or VVSG), and performs according to the Manufacturer's specifications for the system. An EAC certification may be issued only by the EAC in accordance with the procedures presented in this Manual. Certifications issued by other bodies (e.g., the National Association of State Election Directors and State certification programs) are not EAC certifications.

3.2.1. **Types of Voting Systems Certified.** The EAC Certification Program is designed to test and certify electromechanical and electronic voting systems. The EAC will not accept for certification review voting systems that do not contain any electronic components. Ultimately, the determination of whether a voting system may be submitted for testing and certification under this program is solely at the discretion of the EAC.

3.2.2. **Voting System Standards.** Voting systems certified under this program are tested to a set of voluntary standards providing requirements that voting systems must meet to receive a Federal certification. Currently, these standards are referred to as Voluntary Voting System Guidelines (in the past they were called Voting System Standards).

3.2.2.1. *Versions—Availability and Identification.* Voluntary Voting System Guidelines (or applicable Voting System Standards) are published by the EAC and are available on the EAC Web site ([www.eac.gov](http://www.eac.gov)). The standards will be routinely updated. Versions will be identified by version number and/or release date.

3.2.2.2. *Versions—Basis for Certification.* The EAC will promulgate which version or versions of the standards it will accept as the basis for testing and certification. This effort may be accomplished through the setting of an implementation date for a particular version's applicability, the setting of a date by which testing to a particular version is mandatory, or the setting of a date by which the EAC will no longer test to a particular standard. **The EAC will certify only those voting systems tested to standards that the EAC has identified as valid for certification.**

- 3.2.2.2.1. End date. When a version's status as the basis of an EAC certification is set to expire on a certain date, the submission of the system's test report will be the controlling event (see Chapter 4). This requirement means the system's test report must be received by the EAC on or before the end date to be certified to the terminating standard.
- 3.2.2.2.2. Start date. When a version's status as the basis of an EAC certification is set to begin on a certain date, the submission of the system's application for certification will be the controlling event (see Chapter 4). This requirement means the system's application, requesting certification to the new standard, will not be accepted by the EAC until the start date.
- 3.2.2.3. *Version—Manufacturer's Option.* When the EAC has authorized certification to more than one version of the standards, the Manufacturer must choose which version it wishes to have its voting system tested against. The voting system will then be certified to that version of the standards. Manufacturers must ensure that all applications for certification identify a particular version of the standards.
- 3.2.2.4. *Emerging Technologies.* If a voting system or component thereof is eligible for a certification under this program (see Section 3.2.1.) and employs technology that is not addressed by a currently accepted version of the VVSG or VSS, the relevant technology shall be subjected to full integration testing and shall be tested to ensure that it operates to the Manufacturer's specifications. The remainder of the system will be tested to the applicable Federal standards. Information on emerging technologies will be forwarded to the EAC's Technical Guidelines Development Committee (TGDC).
- 3.2.3. Significance of an EAC Certification. An EAC certification is an official recognition that a voting system (in a specific configuration or configurations) has been tested to and has met an identified set of Federal voting standards. An EAC certification is **not** any of the following:
  - 3.2.3.1. An endorsement of a Manufacturer, voting system, or any of the system's components.
  - 3.2.3.2. A Federal warranty of the voting system or any of its components.
  - 3.2.3.3. A determination that a voting system, when fielded, will be operated in a manner that meets all HAVA requirements.
  - 3.2.3.4. A substitute for State or local certification and testing.

3.2.3.5. A determination that the system is ready for use in an election.

3.2.3.6. A determination that any particular component of a certified system is itself certified for use outside the certified configuration.

**3.3. Effect of the EAC Certification Program on Other National Certifications.** Before the creation of the EAC Certification Program, national voting system qualification was conducted by a private membership organization, the National Association of State Election Directors (NASED). NASED offered a qualification for voting systems for more than a decade, using standards issued by the Federal government. The EAC Certification Program does not repeal NASED-issued qualifications. All voting systems previously qualified under the NASED program retain their NASED qualification consistent with State law; however, a NASED-qualified voting system is not an EAC-certified system and is treated like an uncertified system for purposes of the EAC Certification Program.

**3.4. When Certification Is Required Under the Program.** To obtain or maintain an EAC certification, Manufacturers must submit a voting system for testing and certification under this program. Such action is usually required for (1) new systems not previously tested to any standard; (2) existing systems not previously certified by the EAC; (3) previously certified systems that have been modified; (4) systems or technology specifically identified for retesting by the EAC; or (5) previously certified systems that the Manufacturer seeks to upgrade to a higher standard (e.g., a more recent version of the VVSG).

3.4.1. New System Certification. For purposes of this Manual, new systems are defined as voting systems that have not been previously tested to applicable Federal standards. New voting systems must be fully tested and submitted to the EAC according to the requirements of Chapter 4 of this Manual.

3.4.2. System Not Previously EAC Certified. This term describes any voting system not previously certified by the EAC, including systems previously tested and qualified by NASED or systems previously tested and denied certification by the EAC. Such systems must be fully tested and submitted to the EAC according to the requirements of Chapter 4 of this Manual.

3.4.3. Modification. A modification is any change to a *previously EAC-certified voting system's* hardware, software, or firmware that is not a de minimis change. Any modification to a voting system will require testing and review by the EAC according to the requirements of Chapter 4 of this Manual.

3.4.4. EAC Identified Systems. Manufacturers may be required to submit systems previously certified by the EAC for retesting. This may occur when the EAC determines that the original tests conducted on the voting system are now insufficient to demonstrate compliance with Federal standards in light of newly discovered threats or information.

3.4.5. Certification Upgrade. This term defines any system previously certified by the EAC but submitted for additional testing and certification to a higher standard (e.g., to a newer version of the VVSG). Any such system must be tested to the new standards and submitted to the EAC per Chapter 4 of this Manual.

3.5. **De Minimis Changes**. A de minimis change is a change to voting system hardware that is so minor in nature and effect that it requires no additional testing and certification. Such changes, however, require VSTL review and endorsement as well as EAC approval. Any proposed change not accepted as a de minimis change is a modification and shall be submitted for testing and review consistent with the requirements of this Manual. An approved de minimis change is not a modification.

3.5.1. De Minimis Change—Defined. A de minimis change is a change to a certified voting system's hardware, the nature of which will not materially alter the system's reliability, functionality, capability, or operation. Software and firmware modifications are not de minimis changes. In order for a hardware change to qualify as a de minimis change, it must not only maintain, unaltered, the reliability, functionality, capability and operability of a system, it shall also ensure that when hardware is replaced, the original hardware and the replacement hardware are electronically and mechanically interchangeable and have identical functionality and tolerances. Under no circumstance shall a change be considered a de minimis change if it has reasonable and identifiable potential to impact the system's operation and compliance with applicable voting system standards.

3.5.2. De Minimis Change—Procedure. Manufacturers who wish to implement a proposed de minimis change must submit it for VSTL review and endorsement and EAC approval. A proposed change is not a de minimis change and may not be implemented as such until it has been approved in writing by the EAC.

3.5.2.1. *VSTL Review*. Manufacturers must submit any proposed de minimis change to an EAC VSTL for review and endorsement. The Manufacturer will provide the VSTL (1) a detailed description of the change; (2) a description of the facts giving rise to or necessitating the change; (3) the basis for its determination that the change will not alter the system's reliability, functionality, or operation; and (4) upon request of the VSTL, a sample voting system at issue or any relevant technical information needed to make the determination. The VSTL will review the proposed de minimis change and make an independent determination as to whether the change meets the definition of de minimis change or requires the voting system to go through additional testing as a system modification. If the VSTL determines that a de minimis change is appropriate, it shall endorse the proposed change as a de minimis change. If the VSTL determines that modification testing and certification should be performed, it shall reject the proposed change. Endorsed changes shall be forwarded to the EAC Program Director for final



approval. Rejected changes shall be returned to the Manufacturer for resubmission as system modifications.

3.5.2.2. *VSTL Endorsed Changes.* The VSTL shall forward to the EAC any change it has endorsed as de minimis. The VSTL shall forward its endorsement in a package that includes:

3.5.2.2.1. The Manufacturer's initial description of the de minimis change, a narrative of facts giving rise to or necessitating the change, and the determination that the change will not alter the system's reliability, functionality, or operation.

3.5.2.2.2. The written determination of the VSTL endorsement of the de minimis change. The endorsement document must explain why the VSTL, in its engineering judgment, determined that the proposed de minimis change met the definition in this section and otherwise does not require additional testing and certification.

3.5.2.3. *EAC Action.* The EAC will review all proposed de minimis changes endorsed by the VSTL. The EAC has sole authority to determine whether any VSTL endorsed change constitutes a de minimis change under this section. The EAC will inform the Manufacturer and VSTL of its determination in writing.

3.5.2.3.1. EAC approval. If the EAC approves the change as a de minimis change, it shall provide written notice to the Manufacturer and VSTL. The EAC will maintain copies of all approved de minimis changes and otherwise track such changes.

3.5.2.3.2. EAC denial. If the EAC determines that a proposed de minimis change cannot be approved, it will inform the VSTL and Manufacturer of its decision. The proposed change will be considered a modification and require testing and certification consistent with this Manual.

3.5.3. De Minimis Change—Effect of EAC Approval. EAC approval of a de minimis change permits the Manufacturer to implement the proposed change (as identified, endorsed, and approved) without additional modification testing and certification. Fielding an engineering change not approved by the EAC is a basis for system Decertification.

**3.6. Provisional, Pre-Election Emergency Modification.** To deal with extraordinary pre-election emergency situations, the EAC has developed a special provisional modification process. This process is to be used **only** for the emergency situations indicated and **only** when there is a clear and compelling need for temporary relief until the regular certification process can be followed.

- 3.6.1. Purpose. The purpose of this section is to allow a mechanism within the EAC Certification Program for Manufacturers to modify EAC-certified voting systems in emergency situations immediately before an election. This situation arises when a modification to a voting system is required and an election deadline is imminent, preventing the completion of the full certification process (and State and/or local testing process) in time for Election Day. In such situations the EAC may issue a waiver to the Manufacturer, granting it leave to make the modification without submission for modification testing and certification.
- 3.6.2. General Requirements. A request for an emergency modification waiver may be made by a Manufacturer only *in conjunction with* the State election official whose jurisdiction(s) would be adversely affected if the requested modification were not implemented before Election Day. Requests must be submitted at least 5 calendar days before an election. Only systems previously certified are eligible for such a waiver. To receive a waiver, a Manufacturer must demonstrate the following:
- 3.6.2.1. The modification is functionally or legally required; that is, the system cannot be fielded in an election without the change.
  - 3.6.2.2. The voting system requiring modification is needed by State or local election officials to conduct a pending Federal election.
  - 3.6.2.3. The voting system to be modified has previously been certified by the EAC.
  - 3.6.2.4. The modification cannot be tested by a VSTL and submitted to the EAC for certification, consistent with the procedural requirements of this Manual, at least 30 days before the pending Federal election.
  - 3.6.2.5. Relevant State law requires Federal certification of the requested modification.
  - 3.6.2.6. The Manufacturer has taken steps to ensure that the modification will properly function as designed, is suitably integrated with the system, and otherwise will not negatively affect system reliability, functionality, or accuracy.
  - 3.6.2.7. The Manufacturer (through a VSTL) has completed as much of the evaluation testing as possible for the modification and has provided the results of such testing to the EAC.
  - 3.6.2.8. The emergency modification is required and otherwise supported by the Chief State Election Official seeking to field the voting system in an impending Federal election.
- 3.6.3. Request for Waiver. A Manufacturer's request for waiver shall be made in writing to the Decision Authority and shall include the following elements:

- 3.6.3.1. A signed statement providing sufficient description, background, information, documentation, and other evidence necessary to demonstrate that the request for a waiver meets each of the eight requirements stated in Section 3.5.2 above.
- 3.6.3.2. A signed statement from the Chief State Election Official requiring the emergency modification. This signed statement shall identify the pending election creating the emergency situation and attest that (1) the modification is required to field the system, (2) State law (citation) requires EAC action to field the system in an election, and (3) normal timelines required under the EAC Certification Program cannot be met.
- 3.6.3.3. A signed statement from a VSTL that there is insufficient time to perform necessary testing and complete the certification process. The statement shall also state what testing the VSTL has performed on the modification to date, provide the results of such tests, and state the schedule for completion of testing.
- 3.6.3.4. A detailed description of the modification, the need for the modification, how it was developed, how it addresses the need for which it was designed, its impact on the voting system, and how the modification will be fielded or implemented in a timely manner consistent with the Manufacturer's quality control program.
- 3.6.3.5. All documentation of tests performed on the modification by the Manufacturer, a laboratory, or other third party.
- 3.6.3.6. A stated agreement signed by the Manufacturer's representative agreeing to take the following action:
  - 3.6.3.6.1. Submit for testing and certification, consistent with Chapter 4 of this Manual, any voting system receiving a waiver under this section that has not already been submitted. This action shall be taken immediately.
  - 3.6.3.6.2. Abstain from representing the modified system as EAC certified. The modified system has not been certified; rather, the originally certified system has received a waiver providing the Manufacturer leave to modify it.
  - 3.6.3.6.3. Submit a report to the EAC regarding the performance of the modified voting system within 60 days of the Federal election that served as the basis for the waiver. This report shall (at a minimum) identify and describe any (1) performance failures, (2) technical failures, (3) security failures, and/or (4) accuracy problems.

- 3.6.4. EAC Review. The EAC will review all waiver requests submitted in a timely manner and make determinations regarding the requests. Incomplete requests will be returned for resubmission with a written notification regarding its deficiencies.
- 3.6.5. Letter of Approval. If the EAC approves the modification waiver, the Decision Authority shall issue a letter granting the temporary waiver within five (5) business days of receiving a complete request.
- 3.6.6. Effect of Grant of Waiver. An EAC grant of waiver for an emergency modification is not an EAC certification of the modification. Waivers under this program grant Manufacturers leave to only temporarily amend previously certified systems without testing and certification for the specific election noted in the request. Without such a waiver, such action would ordinarily result in Decertification of the modified system (See Chapter 7). Systems receiving a waiver shall satisfy any State requirement that a system be nationally or federally certified. In addition—
- 3.6.6.1. All waivers are temporary and expire 60 days after the Federal election for which the system was modified and the waiver granted.
- 3.6.6.2. Any system granted a waiver must be submitted for testing and certification. This shall be accomplished as soon as possible.
- 3.6.6.3. The grant of a waiver is no indication that the modified system will ultimately be granted a certification.
- 3.6.7. Denial of Request for Waiver. A request for waiver may be denied by the EAC if the request does not meet the requirements noted above, fails to follow the procedure established by this section or otherwise fails to sufficiently support a conclusion that the modification at issue is needed, will function properly, and is in the public interest. A denial of a request for emergency modification by the EAC shall be final and not subject to appeal. Manufacturers may submit for certification, consistent with Chapter 4 of this Manual, modifications for which emergency waivers were denied.
- 3.6.8. Publication Notice of Waiver. The EAC will post relevant information relating to the temporary grant of an emergency waiver on its Web site. This information will be posted upon grant of the waiver and removed upon the waiver's expiration. This posting will include information concerning the limited nature and effect of the waiver.

## 4. Certification Testing and Technical Review

- 4.1. Overview.** This chapter discusses the procedural requirements for submitting a voting system to the EAC for testing and review. The testing and review process requires an application, employment of an EAC-accredited testing laboratory, and technical analysis of the laboratory test report by the EAC. The result of this process is an Initial Decision on Certification by the Decision Authority.
- 4.2. Policy.** Generally, to receive an initial determination on an EAC certification for a voting system, a registered Manufacturer must have (1) submitted an EAC-approved application for certification, (2) had a VSTL submit an EAC-approved test plan, (3) had a VSTL test a voting system to applicable voting system standards, (4) had a VSTL submit a test report to the EAC for technical review and approval, and (5) received EAC approval of the report in an Initial Decision on Certification.
- 4.3. Certification Application.** The first step in submitting a voting system for certification is submission of an application package. The package contains an application form and a copy of the voting system's Implementation Statement (see VVSG 2005—Version 1.0, Vol. I, Section 1.6.4), functional diagram, and System Overview documentation submitted to the VSTL as a part of the Technical Data Package (see VVSG 2005—Version 1.0, Vol. II, Section 2.2). This application process initiates the certification process and provides the EAC with needed information.
- 4.3.1. Information on Application Form.** The application (application form) provides the EAC certain pieces of information that are essential at the outset of the certification process. This information includes the following:
- 4.3.1.1. *Manufacturer Information.* Identification of the Manufacturer (name and three-letter identification code).
  - 4.3.1.2. *Selection of Accredited Laboratory.* Selection and identification of the VSTL that will perform voting system testing and other prescribed laboratory action consistent with the requirements of this Manual. Once selected, a Manufacturer may NOT replace the selected VSTL without the express written consent of the Program Director. Such permission will be granted solely at the discretion of the Program Director and only upon demonstration of good cause.
  - 4.3.1.3. *Voting System Standards Information.* Identification of the VVSG or VSS, including the document's date and version number, to which the Manufacturer wishes to have the identified voting system tested and certified.
  - 4.3.1.4. *Nature of the Submission.* Manufacturers must identify the nature of their submission by selecting one of the following four submission types:

- 4.3.1.4.1. New system. For purposes of this Manual, a new system is defined as a voting system that has not been previously tested to any applicable Federal standards.
- 4.3.1.4.2. System not previously EAC certified. This term describes any voting system not previously certified by the EAC, including systems previously tested and qualified by NASED or systems previously tested and denied certification by the EAC.
- 4.3.1.4.3. Modification. A modification is any change to a *previously EAC-certified voting system's* hardware, software, or firmware.
- 4.3.1.4.4. Certification upgrade. This term defines any system previously certified by the EAC but submitted (without modification) for additional testing and certification to a higher standard (e.g., to a newer version of the VVSG).
- 4.3.1.5. *Identification of the Voting System.* Manufacturers must identify the system submitted for testing by providing its name and applicable version number. If the system submitted has been previously fielded, but the Manufacturer wishes to change its name or version number after receipt of EAC certification, it must provide identification information on both the past name or names and the new, proposed name. This requirement might occur in systems submitted for modification, for their first EAC certification, or for a certification upgrade.
- 4.3.1.6. *Description of the Voting System.* Manufacturers must provide a brief description of the system or modification being submitted for testing and certification. This description shall include the following information:
  - 4.3.1.6.1. A listing of all components of the system submitted.
  - 4.3.1.6.2. Each component's version number.
  - 4.3.1.6.3. A complete list of each configuration of the system's components that could be fielded as the certified voting system.<sup>1</sup>
  - 4.3.1.6.4. Any other information necessary to identify the specific configuration being submitted for certification.

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<sup>1</sup> An EAC certification applies to the configuration of components (the voting system) presented for testing. A voting system may be fielded without using each of the components that formed the system presented, since voting systems, as certified, may contain optional or redundant components to meet the varying needs of election officials. Systems may not be fielded with additional components or without sufficient components to properly prosecute an election, as neither individual components nor separately tested systems may be combined to create new certified voting systems.

- 4.3.1.7. *Date Submitted.* Manufacturers must note the date the application was submitted for EAC approval.
- 4.3.1.8. *Signature.* The Manufacturer must affix the signature of the authorized management representative.
- 4.3.2. Submission of the Application Package. Manufacturers must submit a copy of the application form described above and copies of the voting system's (1) Implementation Statement, (2) functional diagram, and (3) System Overview documentation submitted to the VSTL as a part of the Technical Data Package
- 4.3.2.1. *Application Form.* Application forms will be available on the EAC Web site: [www.eac.gov](http://www.eac.gov). The application form submitted to the EAC must be signed; dated; and fully, accurately, and completely filled out. The EAC will not accept incomplete or inaccurate applications.
- 4.3.2.2. *Implementation Statement.* The Manufacturer must submit with the application form a copy of the voting system's Implementation Statement, which must meet the requirements of the VVSG (VVSG 2005—Version 1.0, Vol. I, Section 1.6.4). If an existing system is being submitted with a modification, the Manufacturer must submit a copy of a revised Implementation Statement.
- 4.3.2.3. *Functional Diagram.* The Manufacturer must submit with the application form a high-level Functional Diagram of the voting system that includes all of its components. The diagram must portray how the various components relate and interact.
- 4.3.2.4. *System Overview.* The Manufacturer must submit with the application form a copy of the voting system's System Overview documentation submitted to the VSTL as a part of the Technical Data Package. This document must meet the requirements of the VVSG (VVSG 2005—Version 1.0, Vol. II, Section 2.2).
- 4.3.2.5. *Submission.* Applications, with the accompanying documentation, shall be submitted in Adobe PDF, Microsoft Word, or other electronic formats as prescribed by the Program Director. Information on how to submit packages will be posted on the EAC Web site: [www.eac.gov](http://www.eac.gov).
- 4.3.3. EAC Review. Upon receipt of a Manufacturer's application package, the EAC will review the submission for completeness and accuracy. If the application package is incomplete, the EAC will return it to the Manufacturer with instructions for resubmission. If the form submitted is acceptable, the Manufacturer will be notified and provided a unique application number within five (5) business days of the EAC's receipt of the application.

- 4.4. Test Plan.** The Manufacturer shall authorize the VSTL identified in its application to submit a test plan directly to the EAC. This plan shall provide for testing of the system sufficient to ensure it is functional and meets all applicable voting system standards.
- 4.4.1. **Development.** An accredited laboratory will develop test plans that use appropriate test protocols, standards, or test suites developed by the laboratory. Laboratories must use all applicable protocols, standards, or test suites issued by the EAC.
- 4.4.2. **Required Testing.** Test plans shall be developed to ensure that a voting system is functional and meets all requirements of the applicable, approved voting system standards. The highest level of care and vigilance is required to ensure that comprehensive test plans are created. A test plan should ensure that the voting system meets all applicable standards and that test results and other factual evidence of the testing are clearly documented. System testing must meet the requirements of the VVSG. Generally, full testing will be required of any voting system applying for certification, regardless of previous certification history.
- 4.4.2.1. *New System.* A new system shall be subject to full testing of all hardware and software according to applicable voting system standards.
- 4.4.2.2. *System Not Previously EAC Certified.* A system not previously certified by the EAC shall be fully tested as a new system.
- 4.4.2.3. *Modification.* A modification to a previously EAC-certified voting system shall be tested in a manner necessary to ensure that all changes meet applicable voting system standards and that the modified system (as a whole) will properly and reliably function. Any system submitted for modification shall be subject to full testing of the modifications (delta testing) and those systems or subsystems altered or impacted by the modification (regression testing). The system will also be subject to system integration testing to ensure overall functionality. The modification will be tested to the version or versions of the VVSG/VSS currently accepted for testing and certification by the EAC. This requirement, however, does not mean that the full system must be tested to such standards. If the system has been previously certified to a VVSG/VSS version deemed acceptable by the EAC (see Section 3.2.2.2), it may retain that level of certification with only the modification being tested to the present version(s).
- 4.4.2.4. *EAC Identified Systems.* Previously certified systems identified for retesting by the EAC (see Section 3.4.4) shall be tested as directed by the Program Director (after consultation with NIST, VSTLs, or other technical experts as necessary).
- 4.4.2.5. *Certification Upgrade.* A previously certified system submitted for testing to a new voting system standard (without modification) shall be tested in a manner necessary to ensure that the system meets all requirements of the new



standards. The VSTL shall create a test plan that identifies the differences between the new and old standards and, based upon the differences, fully retest all hardware and software components affected.

4.4.3. Format. Test labs shall issue test plans consistent with the requirements in VVSG, Vol. II and any applicable EAC guidance.

4.4.4. EAC Approval. All test plans are subject to EAC approval. No test report will be accepted for technical review unless the test plan on which it is based has been approved by EAC's Program Director.

4.4.4.1. *Review*. All test plans must be reviewed for adequacy by the Program Director. For each submission, the Program Director will determine whether the test plan is acceptable or unacceptable. Unacceptable plans will be returned to the laboratory for further action. Acceptable plans will be approved. Although Manufacturers may direct test labs to begin testing before approval of a test plan, the Manufacturer bears the full risk that the test plan (and thus any tests performed) will be deemed unacceptable.

4.4.4.2. *Unaccepted Plans*. If a plan is not accepted, the Program Director will return the submission to the Manufacturer's identified VSTL for additional action. Notice of unacceptability will be provided in writing to the laboratory and include a description of the problems identified and steps required to remedy the test plan. A copy of this notice will also be sent to the Manufacturer. Questions concerning the notice shall be forwarded to the Program Director in writing. Plans that have not been accepted may be resubmitted for review after remedial action is taken.

4.4.4.3. *Effect of Approval*. Approval of a test plan is required before a test report may be filed. In most cases, approval of a test plan signifies that the tests proposed, if performed properly, are sufficient to fully test the system. A test plan, however, is approved based on the information submitted. New or additional information may require a change in testing requirements at any point in the certification process.

4.5. **Testing**. During testing, Manufacturers are responsible for enabling VSTLs to report any changes to a voting system or an approved test plan directly to the EAC. Manufacturers shall also enable VSTLs to report all test failures or anomalies directly to the EAC.

4.5.1. Changes. Any changes to a voting system, initiated as a result of the testing process, will require submission of an updated Implementation Statement, functional diagram, and System Overview document and, potentially, an updated test plan. Test plans must be updated whenever a change to a voting system requires deviation from the test plan originally approved by the EAC. Changes requiring alteration or deviation from the originally approved test plan must be submitted to the EAC (by the VSTL) for approval before the completion of testing. The submission shall include an updated

Implementation Statement, functional diagram, and System Overview, as needed. Changes not affecting the test plan shall be reported in the test report. The submission shall include an updated Implementation Statement, functional diagram, and System Overview document, as needed.

- 4.5.2. Test Anomalies or Failures. Manufacturers shall enable VSTLs to notify the EAC directly and independently of any test anomalies, or failures during testing. The VSTLs shall ensure that all anomalies or failures are addressed and resolved before testing is completed. All test failures, anomalies and actions taken to resolve such failures and anomalies shall be documented by the VSTL in an appendix to the test report submitted to the EAC. These matters shall be reported in a matrix, or similar format, that identifies the failure or anomaly, the applicable voting system standards, and a description of how the failure or anomaly was resolved. Associated or similar anomalies/failures may be summarized and reported in a single entry on the report (matrix) as long as the nature and scope of the anomaly/failure is clearly identified.
- 4.6. **Test Report.** Manufacturers shall enable their identified VSTL to submit test reports directly to the EAC. The VSTL shall submit test reports only if the voting system has been tested and all tests identified in the test plan have been successfully performed.
  - 4.6.1. Submission. The test reports shall be submitted to the Program Director. The Program Director shall review the submission for completeness. Any reports showing incomplete or unsuccessful testing will be returned to the test laboratory for action and resubmission. Notice of this action will be provided to the Manufacturer. Test reports shall be submitted in Adobe PDF, Microsoft Word, or other electronic formats as prescribed by the Program Director. Information on how to submit reports will be posted on the EAC Web site: [www.eac.gov](http://www.eac.gov).
  - 4.6.2. Format. Manufacturers shall ensure that test labs submit reports consistent with the requirements in the VVSG and this Manual.
  - 4.6.3. Technical Review. A technical review of the test report, technical documents, and test plan will be conducted by EAC technical experts. The EAC may require the submission of additional information from the VSTL or Manufacturer if deemed necessary to complete the review. These experts will submit a report outlining their findings to the Program Director. The report will provide an assessment of the completeness, appropriateness, and adequacy of the VSTL's testing as documented in the test report.
  - 4.6.4. Program Director's Recommendation. The Program Director shall review the report and take one of the following actions:
    - 4.6.4.1. Recommend certification of the candidate system consistent with the reviewed test report and forward it to the Decision Authority for action (Initial Decision); or

4.6.4.2. Refer the matter back to the technical reviewers for additional specified action and resubmission.

**4.7. Initial Decision on Certification.** Upon receipt of the report and recommendation forwarded by the Program Director, the Decision Authority shall issue an Initial Decision on Certification. The decision shall be forwarded to the Manufacturer consistent with the requirements of this Manual.

4.7.1. An Initial Decision granting certification shall be processed consistent with Chapter 5 of this Manual.

4.7.2. An Initial Decision denying certification shall be processed consistent with Chapter 6 of this Manual.

## 5. Grant of Certification

**5.1. Overview.** The grant of certification is the formal process through which EAC acknowledges that a voting system has successfully completed conformance testing to an appropriate set of standards or guidelines. The grant of certification begins with the Initial Decision of the Decision Authority. This decision becomes final after the Manufacturer confirms that the final version of the software that was certified and which the Manufacturer will deliver with the certified system has been subject to a trusted build, placed in an EAC-approved repository, and can be verified using the Manufacturer's system identification tools. After a certification is issued, the Manufacturer is provided a Certificate of Conformance and relevant information about the system is added to the EAC Web site. Manufacturers with certified voting systems are responsible for ensuring that each system they produce is properly labeled as certified.

**5.2. Applicability of This Chapter.** This chapter applies when the Decision Authority makes an Initial Decision to grant a certification to a voting system based on the materials and recommendation provided by the Program Director.

**5.3. Initial Decision.** The Decision Authority shall make a written decision on all voting systems submitted for certification and issue the decision to a Manufacturer. When such decisions result in a grant of certification, the decision shall be considered preliminary and referred to as an *Initial Decision* pending required action by the Manufacturer. The Initial Decision shall:

5.3.1. State the preliminary determination reached (granting certification).

5.3.2. Inform the Manufacturer of the steps that must be taken to make the determination final and receive a certification. This action shall include providing the Manufacturer with specific instructions, guidance, and procedures for confirming and documenting that the final certified version of the software meets the requirements for:

5.3.2.1. Performing and documenting a trusted build pursuant to Section 5.6 of this chapter.

5.3.2.2. Depositing software in an approved repository pursuant to Section 5.7 of this chapter.

5.3.2.3. Creating and making available system verification tools pursuant to Section 5.8 of this chapter.

5.3.3. Certification is not final until the Manufacturer accepts the certification and all conditions placed on the certification.

**5.4. Pre-Certification Requirements.** Before an Initial Decision becomes final and a certification is issued, Manufacturers must ensure certain steps are taken. They must confirm that the final version of the software that was certified and which the Manufacturer will deliver with the certified system has been subject to a trusted build (see Section 5.6), has been delivered for deposit in an EAC-approved repository (see Section 5.7), and can be verified using

Manufacturer-developed identification tools (see Section 5.8). The Manufacturer must provide the EAC documentation demonstrating compliance with these requirements.

**5.5. Trusted Build.** A software build (also referred to as a compilation) is the process whereby source code is converted to machine-readable binary instructions (executable code) for the computer. A “trusted build” (or trusted compilation) is a build performed with adequate security measures implemented to give confidence that the executable code is a verifiable and faithful representation of the source code. A trusted build creates a chain of evidence from the Technical Data Package and source code submitted to the VSTLs to the actual executable programs that are run on the system. Specifically, the build will do the following:

- 5.5.1. Demonstrate that the software was built as described in the Technical Data Package.
- 5.5.2. Show that the tested and approved source code was actually used to build the executable code used on the system.
- 5.5.3. Demonstrate that no elements other than those included in the Technical Data Package were introduced in the software build.
- 5.5.4. Document for future reference the configuration of the system certified.

**5.6. Trusted Build Procedure.** A trusted build is a three-step process: (1) the build environment is constructed, (2) the source code is loaded onto the build environment, and (3) the executable code is compiled and the installation device is created. The process may be simplified for modification to previously certified systems. In each step, a minimum of two witnesses from different organizations is required to participate. These participants must include a VSTL representative and vendor representative. Before creating the trusted build, the VSTL must complete the source code review of the software delivered from the vendor for compliance with the VVSG and must produce and record file signatures of all source code modules.

5.6.1. Constructing the Build Environment. The VSTL shall construct the build environment in an isolated environment controlled by the VSTL, as follows:

- 5.6.1.1. The device that will hold the build environment shall be completely erased by the VSTL to ensure a total and complete cleaning of it. The VSTL shall use commercial off-the-shelf software, purchased by the laboratory, for cleaning the device.
- 5.6.1.2. The VSTL, with vendor consultation and observation, shall construct the build environment.
- 5.6.1.3. After construction of the build environment, the VSTL shall produce and record a file signature of the build environment.

- 5.6.2. Loading Source Code Onto the Build Environment. After successful source code review, the VSTL shall load source code onto the build environment as follows:
- 5.6.2.1. The VSTL shall check the file signatures of the source code modules and build environment to ensure that they are unchanged from their original form.
  - 5.6.2.2. The VSTL shall load the source code onto the build environment and produce and record the file signature of the resulting combination.
  - 5.6.2.3. The VSTL shall capture a disk image of the combination build environment and source code modules immediately before performing the build.
  - 5.6.2.4. The VSTL shall deposit the disk image into an authorized archive to ensure that the build can be reproduced, if necessary, at a later date.
- 5.6.3. Creating the Executable Code. Upon completion of all the tasks outlined above, the VSTL shall produce the executable code.
- 5.6.3.1. The VSTL shall produce and record a file signature of the executable code.
  - 5.6.3.2. The VSTL shall deposit the executable code into an EAC-approved software repository and create installation disk(s) from the executable code.
  - 5.6.3.3. The VSTL shall produce and record file signatures of the installation disk(s) in order to provide a mechanism to validate the software before installation on the voting system in a purchasing jurisdiction.
  - 5.6.3.4. The VSTL shall install the executable code onto the system submitted for testing and certification before completion of system testing.
- 5.6.4. Trusted Build for Modifications. The process of building new executable code when a previously certified system has been modified is somewhat simplified.
- 5.6.4.1. The build environment used in the original certification is removed from storage and its file signature verified.
  - 5.6.4.2. After source code review, the modified files are placed onto the verified build environment and new executable files are produced.
  - 5.6.4.3. If the original build environment is unavailable or its file signatures cannot be verified against those recorded from the original certification, then the more labor-intensive process of creating the build environment must be performed. Further source code review may be required of unmodified files to validate that they are unmodified from their originally certified versions.

**5.7. Depositing Software in an Approved Repository.** After EAC certification has been granted, the VSTL project manager, or an appropriate delegate of the project manager, shall deliver for deposit the following elements in one or more trusted archive(s) (repositories) designated by the EAC:

- 5.7.1. Source code used for the trusted build and its file signatures.
- 5.7.2. Disk image of the pre-build, build environment, and any file signatures to validate that it is unmodified.
- 5.7.3. Disk image of the post-build, build environment, and any file signatures to validate that it is unmodified.
- 5.7.4. Executable code produced by the trusted build and its file signatures of all files produced.
- 5.7.5. Installation device(s) and file signatures.

**5.8. System Identification Tools.** The Manufacturer shall provide tools through which a fielded voting system may be identified and demonstrated to be unmodified from the system that was certified. The purpose of this requirement is to make such tools available to Federal, State, and local officials to identify and verify that the equipment used in elections is unmodified from its certified version. Manufacturers may develop and provide these tools as they see fit. The tools, however, must provide the means to identify and verify hardware and software. The EAC may review the system identification tools developed by the Manufacturer to ensure compliance. System identification tools include the following examples:

- 5.8.1. Hardware is commonly identified by model number and revision number on the unit, its printed wiring boards (PWBs), and major subunits. Typically, hardware is verified as unmodified by providing detailed photographs of the PWBs and internal construction of the unit. These images may be used to compare with the unit being verified.
- 5.8.2. Software operating on a host computer will typically be verified by providing a self-booting compact disk (CD) or similar device that verifies the file signatures of the voting system application files AND the signatures of all nonvolatile files that the application files access during their operation. Note that the creation of such a CD requires having a file map of all nonvolatile files that are used by the voting system. Such a tool must be provided for verification using the file signatures of the original executable files provided for testing. If during the certification process modifications are made and new executable files created, then the tool must be updated to reflect the file signatures of the final files to be distributed for use. For software operating on devices in which a self-booting CD or similar device cannot be used, a procedure must be provided to allow identification and verification of the software that is being used on the device.

**5.9. Documentation.** Manufacturers shall provide documentation to the Program Director verifying that the trusted build has been performed, software has been deposited in an approved repository, and system identification tools are available to election officials. The Manufacturer

shall submit a letter, signed by both its management representative and a VSTL official, stating (under penalty of law) that it has (1) performed a trusted build consistent with the requirements of Section 5.6 of this Manual, (2) deposited software consistent with Section 5.7 of this Manual, and (3) created and made available system identification tools consistent with Section 5.8 of this Manual. This letter shall also include (as attachments) a copy and description of the system identification tool developed under Section 5.8 above.

**5.10. Agency Decision.** Upon receipt of documentation demonstrating the successful completion of the requirements above and recommendation of the Program Director, the Decision Authority will issue an Agency Decision granting certification and providing the Manufacturer with a certification number and Certificate of Conformance.

**5.11. Certification Document.** A Certificate of Conformance will be provided to Manufacturers for voting systems that have successfully met the requirements of the EAC Certification Program. The document will serve as the Manufacturer's evidence that a particular system is certified to a particular set of voting system standards. The EAC certification and certificate apply only to the specific voting system configuration(s) identified, submitted and evaluated under the Certification Program. Any modification to the system not authorized by the EAC will void the certificate. The certificate will include the product (voting system) name, the specific model or version of the product tested, the name of the VSTL conducting the testing, identification of the standards to which the system was tested, the EAC certification number for the product, and the signature of the EAC Executive Director. The certificate will also identify each of the various configurations of the voting system's components that may be represented as certified.

**5.12. Certification Number and Version Control.** Each system certified by the EAC will receive a certification number that is unique to the system and will remain with the system until such time as the system is decertified, sufficiently modified, or tested and certified to newer standards. Generally, when a previously certified system is issued a new certification number, the Manufacturer will be required to change the system's name or version number.

**5.12.1. New Voting Systems and Those Not Previously Certified by the EAC.** All systems receiving their first certification from the EAC will receive a new certification number. Manufacturers must provide the EAC with the voting system's name and version number during the application process (see Chapter 4). Systems previously certified by another body may retain the previous system name and version number unless the system was modified before its submission to the EAC. Such modified systems must be submitted with a new naming convention (i.e., a new version number).

**5.12.2. Modifications.** Voting systems previously certified by the EAC and submitted for certification of a modification will generally receive a new voting system certification number. Such modified systems must be submitted with a new naming convention (i.e., a new version number). In rare instances, the EAC may authorize retention of the same certification and naming convention when the modification is so minor that it does not represent a substantive change in the voting system. A request for such authorization must be made and approved by the EAC during the application phase of the program.



5.12.3. **Certification Upgrade.** Voting systems previously certified and submitted (without modification) for testing to a new version of the VVSG will receive a new certification number. In such cases, however, the Manufacturer will not be required to change the system name or version.

5.12.4. **De Minimis Change.** Voting systems previously certified and implementing an approved de minimis change (per Chapter 3) will not be issued a new certification number and are not required to implement a new naming convention.

**5.13. Publication of EAC Certification.** The EAC will publish and maintain on its Web site a list of all certified voting systems, including copies of all Certificates of Conformance, the supporting test report, and information about the voting system and Manufacturer. Such information will be posted immediately following the Manufacturer's receipt of the EAC Final Decision and Certificate of Conformance.

**5.14. Representation of EAC Certification.** Manufacturers may not represent or imply that a voting system is certified unless it has received a Certificate of Conformance for that system. Statements regarding EAC certification in brochures, on Web sites, on displays, and in advertising/sales literature must be made solely in reference to specific systems. Any action by a Manufacturer to suggest EAC endorsement of its product or organization is strictly prohibited and may result in a Manufacturer's suspension or other action pursuant to Federal civil and criminal law.

**5.15. Mark of Certification Requirement.** Manufacturers shall post a mark of certification on all EAC-certified voting systems produced. This mark or label must be securely attached to the system before sale, lease, or release to third parties. A mark of certification shall be made using an EAC-mandated template available for download on the EAC Web site: [www.eac.gov](http://www.eac.gov). These templates identify the version of the VVSG or VSS to which the system is certified. Use of this template shall be mandatory. The EAC mark must be displayed as follows:

5.15.1. The Manufacturer may use only the mark of certification that accurately reflects the certification held by the voting system as a whole. The certification of individual components or modifications shall not be independently represented by a mark of certification. In the event a system has components or modifications tested to various (later) versions of the VVSG, the system shall bear only the mark of certification of the standard to which the system (as a whole) was tested and certified (i.e. the lesser standard). Ultimately, a voting system shall only display the mark of certification of the oldest or least rigorous standard to which any of its components are certified.

5.15.2. The mark shall be placed on the outside of a unit of voting equipment in a place readily visible to election officials. The mark need not be affixed to each of the voting system's components. The mark shall be affixed to either (1) each unit that is used to cast ballots or (2) each unit that is used to tabulate ballots.

5.15.3. The notice shall be securely affixed to the voting system. The label shall not be a paper label. "Securely affixed" means that the label is etched, engraved, stamped, silk-

screened, indelibly printed, or otherwise securely marked on a permanently attached part of the equipment or on a nameplate of metal, plastic, or other sturdy material fastened to the equipment by use of welding, riveting, or adhesive.

5.15.4. The label must be designed to last the expected lifetime of the voting system in the environment in which the system may be operated and must not be readily detachable.

**5.16. Information to Election Officials Purchasing Voting Systems.** The user's manual or instruction manual for a certified voting system shall warn purchasers that changes or modifications not tested and certified by the EAC will void the EAC certification of the voting system. In cases in which the manual is provided only in a form other than paper, such as on a CD or over the Internet, the information required in this section may be included in this alternative format provided the election official can reasonably be expected to have the capability to access information in that format.

## 6. Denial of Certification

- 6.1. Overview.** When the Decision Authority issues an Initial Decision denying certification, the Manufacturer has certain rights and responsibilities. The Manufacturer may request an opportunity to cure the defects identified by the Decision Authority. In addition, the Manufacturer may request that the Decision Authority reconsider the Initial Decision after the Manufacturer has had the opportunity to review the record and submit supporting written materials, data, and the rationale for its position. Finally, in the event reconsideration is denied, the Manufacturer may appeal the decision to the Appeal Authority.
- 6.2. Applicability of This Chapter.** This chapter applies when the Decision Authority makes an Initial Decision to deny an application for voting system certification based on the materials and recommendation provided by the Program Director.
- 6.3. Form of Decisions.** All agency determinations shall be made in writing. Moreover, all materials and recommendations reviewed or used by agency decision makers in arriving at an official determination shall be in written form.
- 6.4. Effect of Denial of Certification.** Upon receipt of the agency's decision denying certification—or in the event of an appeal, subject to the Decision on Appeal—the Manufacturer's application for certification is denied. Such systems will not be reviewed again by the EAC for certification unless the Manufacturer alters the system, retests it, and submits a new application for system certification.
- 6.5. The Record.** The Program Director shall maintain all documents related to a denial of certification. Such documents shall constitute the procedural and substantive record of the decision making process. Records may include the following:
- 6.5.1. The Program Director's report and recommendation to the Decision Authority.
  - 6.5.2. The Decision Authority's Initial Decision and Final Decision.
  - 6.5.3. Any materials gathered by the Decision Authority that served as a basis for a certification determination.
  - 6.5.4. All relevant and allowable materials submitted by the Manufacturer upon request for reconsideration or appeal.
  - 6.5.5. All correspondence between the EAC and a Manufacturer after the issuance of an Initial Decision denying certification.
- 6.6. Initial Decision.** The Decision Authority shall make and issue a written decision on voting systems submitted for certification. When such decisions result in a denial of certification, the decision shall be considered preliminary and referred to as an *Initial Decision*. Initial Decisions shall be in writing and contain (1) the Decision Authority's basis and explanation for the decision and (2) notice of the Manufacturer's rights in the denial of certification process.

6.6.1. Basis and Explanation. The Initial Decision of the Decision Authority shall accomplish the following:

6.6.1.1. Clearly state the agency's decision on certification.

6.6.1.2. Explain the basis for the decision, including identifying the following:

6.6.1.2.1. The relevant facts.

6.6.1.2.2. The applicable EAC voting system standards (VVSG or VSS).

6.6.1.2.3. The relevant analysis in the Program Director's recommendation.

6.6.1.2.4. The reasoning behind the decision.

6.6.1.3. State the actions the Manufacturer must take, if any, to cure all defects in the voting system and obtain a certification.

6.6.2. Manufacturer's Rights. The written Initial Decision must also inform the Manufacturer of its procedural rights under the program, including the following:

6.6.2.1. Right to request reconsideration. The Manufacturer shall be informed of its right to request a timely reconsideration (see Section 6.9). Such request must be made within 10 calendar days of the Manufacturer's receipt of the Initial Decision.

6.6.2.2. Right to request a copy or otherwise have access to the information that served as the basis of the Initial Decision ("the record").

6.6.2.3. Right to cure system defects prior to final Agency Decision (see Section 6.8). A Manufacturer may request an opportunity to cure within 10 calendar days of its receipt of the Initial Decision.

**6.7. No Manufacturer Action on Initial Decision.** If a Manufacturer takes no action (by either failing to request an opportunity to cure or request reconsideration) within 10 calendar days of its receipt of the Initial Decision, the Initial Decision shall become the agency's Final Decision on Certification. In such cases, the Manufacturer is determined to have foregone its right to reconsideration, cure, and appeal. The certification application shall be considered finally denied.

**6.8. Opportunity To Cure.** Within 10 calendar days of receiving the EAC's Initial Decision on Certification, a Manufacturer may request an opportunity to cure the defects identified in the EAC's Initial Decision. If the request is approved, a compliance plan must be created, approved, and followed. If this cure process is successfully completed, a voting system denied certification in an Initial Decision may receive a certification without resubmission.

- 6.8.1. Manufacturer's Request To Cure. The Manufacturer must send a request to cure within 10 calendar days of receipt of an Initial Decision. The request must be sent to the Program Director.
- 6.8.2. EAC Action on Request. The Decision Authority will review the request and approve it. The Decision Authority will deny a request to cure only if the proposed plan to cure is inadequate or does not present a viable way to remedy the identified defects. Approval or denial of a request to cure shall be provided the Manufacturer in writing. If the Manufacturer's request to cure is denied, it shall have 10 calendar days from the date it received such notice to request reconsideration of the Initial Decision pursuant to Section 6.6.2.
- 6.8.3. Manufacturer's Compliance Plan. Upon approval of the Manufacturer's request for an opportunity to cure, it shall submit a compliance plan to the Decision Authority for approval. This compliance plan must set forth steps to be taken to cure all identified defects. It shall include the proposed changes to the system, updated technical information (as required by Section 4.3.2), and a new test plan created and submitted directly to the EAC by the VSTL (testing the system consistent with Section 4.4.2.3). The plan shall also provide for the testing of the amended system and submission of a test report by the VSTL to the EAC for approval. It should provide an estimated date for receipt of this test report and include a schedule of periodic VSTL progress reports to the Program Director.
- 6.8.4. EAC Action on the Compliance Plan. The Decision Authority must review and approve the compliance plan. The Decision Authority may require the Manufacturer to provide additional information and modify the plan as required. If the Manufacturer is unable or unwilling to provide a compliance plan acceptable to the Decision Authority, the Decision Authority shall provide written notice terminating the "opportunity to cure" process. The Manufacturer shall have 10 calendar days from the date it receives such notice to request reconsideration of the Initial Decision pursuant to Section 6.6.2.
- 6.8.5. Compliance Plan Test Report. The VSTL shall submit the test report created pursuant to its EAC-approved compliance plan. The EAC shall review the test report, along with the original test report and other materials originally provided. The report will be technically reviewed by the EAC consistent with the procedures laid out in Chapter 4 of this Manual.
- 6.8.6. EAC Decision on the System. After receipt of the test plan, the Decision Authority shall issue a decision on a voting system amended pursuant to an approved compliance plan. This decision shall be issued in the same manner and with the same process and rights as an Initial Decision on Certification.

- 6.9. Requests for Reconsideration.** Manufacturers may request reconsideration of an Initial Decision.
- 6.9.1. Submission of Request. A request for reconsideration must be made within 10 calendar days of the Manufacturer's receipt of an Initial Decision. The request shall be made and sent to the Decision Authority.
  - 6.9.2. Acknowledgment of Request. The Decision Authority shall acknowledge receipt of the Manufacturer's request for reconsideration. This acknowledgment shall either enclose all information that served as the basis for the Initial Decision (the record) or provide a date by which the record will be forwarded to the Manufacturer.
  - 6.9.3. Manufacturer's Submission. Within 30 calendar days of receipt of the record, a Manufacturer may submit written materials in support of its position, including the following:
    - 6.9.3.1. A written argument responding to the conclusions in the Initial Decision.
    - 6.9.3.2. Documentary evidence relevant to the issues raised in the Initial Decision.
  - 6.9.4. Decision Authority's Review of Request. The Decision Authority shall review and consider all relevant submissions of the Manufacturer. In making a decision on reconsideration, the Decision Authority shall also consider all documents that make up the record and any other documentary information he or she determines relevant.
- 6.10. Agency Final Decision.** The Decision Authority shall issue a written Agency Decision after review of the Manufacturer's request for reconsideration. This Decision shall be the decision of the agency. The following actions are necessary for writing the decision:
- 6.10.1.1. Clearly state the agency's determination on the application for certification.
  - 6.10.1.2. Address the issues raised by the Manufacturer in its request for reconsideration.
  - 6.10.1.3. Identify all facts, evidence, and EAC voting system standards (VVSG or VSS) that served as the basis for the decision.
  - 6.10.1.4. Provide the reasoning behind the determination.
  - 6.10.1.5. Identify and provide, as an attachment, any additional documentary information that served as a basis for the decision and that was not part of the Manufacturer's submission or the prior record.
  - 6.10.1.6. Provide the Manufacturer notice of its right to appeal.

**6.11. Appeal of Agency Final Decision.** A Manufacturer may, upon receipt of an Agency Final Decision denying certification, issue a request for appeal.

6.11.1. Requesting Appeal. A Manufacturer may appeal a final decision of the agency by issuing a written request for appeal.

6.11.1.1. *Submission.* Requests must be submitted in writing to the Program Director, addressed to the Chair of the U.S. Election Assistance Commission.

6.11.1.2. *Timing of Appeal.* The Manufacturer may request an appeal within 20 calendar days of receipt of the Agency Final Decision. Late requests will not be considered.

6.11.1.3. *Contents of Request.*

6.11.1.3.1. The request must clearly state the specific conclusions of the Final Decision the Manufacturer wishes to appeal.

6.11.1.3.2. The request may include additional written argument.

6.11.1.3.3. The request may not reference or include any factual material not in the record.

6.11.2. Consideration of Appeal. All timely appeals will be considered by the Appeal Authority.

6.11.2.1. The Appeal Authority shall be two or more EAC Commissioners or other individuals appointed by the Commissioners who have not previously served as the initial or reconsideration authority on the matter.

6.11.2.2. All decisions on appeal shall be based on the record.

6.11.2.3. The determination of the Decision Authority shall be given deference by the Appeal Authority. Although it is unlikely that the scientific certification process will produce factual disputes, in such cases, the burden of proof shall belong to the Manufacturer to demonstrate by clear and convincing evidence that its voting system met all substantive and procedural requirements for certification. In other words, the determination of the Decision Authority will be overturned only when the Appeal Authority finds the ultimate facts in controversy highly probable.

**6.12. Decision on Appeal.** The Appeal Authority shall make a written, final Decision on Appeal and shall provide it to the Manufacturer.

6.12.1. Contents. The following actions are necessary to write the Decision on Appeal:

6.12.1.1. State the final determination of the agency.

6.12.1.2. Address the matters raised by the Manufacturer on appeal.

6.12.1.3. Provide the reasoning behind the decisions.

6.12.1.4. State that the Decision on Appeal is final.

6.12.2. Determinations. The Appeal Authority may make one of two determinations:

6.12.2.1. *Grant of Appeal.* If the Appeal Authority determines that the conclusions of the Decision Authority shall be overturned *in full*, the appeal shall be granted. In such cases, certification will be approved subject to the requirements of Chapter 5.

6.12.2.2. *Denial of Appeal.* If the Appeal Authority determines that *any part* of the Decision Authority's determination shall be upheld, the appeal shall be denied. In such cases, the application for appeal is finally denied.

6.12.3. Effect. All Decisions on Appeal shall be final and binding on the Manufacturer. No additional appeal shall be granted.



## 7. Decertification

**7.1. Overview.** Decertification is the process by which the EAC revokes a certification previously granted to a voting system. It is an important part of the Certification Program because it serves to ensure that the requirements of the program are followed and that certified voting systems fielded for use in Federal elections maintain the same level of quality as those presented for testing. Decertification is a serious matter. Its use will significantly affect Manufacturers, State and local governments, the public, and the administration of elections. As such, the process for Decertification is complex. It is initiated when the EAC receives information that a voting system may not be in compliance with the applicable voting system standard or the procedural requirements of this Manual. Upon receipt of such information, the Program Director may initiate an Informal Inquiry to determine the credibility of the information. If the information is credible and suggests the system is non-compliant, a Formal Investigation will be initiated. If the results of the Formal Investigation demonstrate non-compliance, the Manufacturer will be provided a Notice of Non-Compliance. Before a Final Decision on Decertification is made, the Manufacturer will have the opportunity to remedy any defects identified in the voting system and present information for consideration by the Decertification Authority. A Decertification of a voting system may be appealed in a timely manner.

**7.2. Decertification Policy.** Voting systems certified by the EAC are subject to Decertification. Systems shall be decertified if (1) they are shown not to meet applicable voting system standard, (2) they have been modified or changed without following the requirements of this Manual, or (3) the Manufacturer has otherwise failed to follow the procedures outlined in this Manual so that the quality, configuration, or compliance of the system is in question. Decertification of a voting system is a serious matter. Systems will be decertified only after completion of the process outlined in this chapter.

**7.3. Informal inquiry.** An Informal Inquiry is the first step taken when information is presented to the EAC that suggests a voting system may not be in compliance with the applicable voting system standard or the procedural requirements of this Manual.

**7.3.1. Informal Inquiry Authority.** The authority to conduct an Informal Inquiry shall rest with the Program Director.

**7.3.2. Purpose.** The sole purpose of the Informal Inquiry is to determine whether a Formal Investigation is warranted. The outcome of an Informal Inquiry is limited to a decision on referral for investigation.

**7.3.3. Procedure.** Informal Inquiries do not follow a formal process.

**7.3.3.1. *Initiation.*** Informal Inquiries are initiated at the discretion of the Program Director. They may be initiated any time the Program Director receives attributable, relevant information that suggests a certified voting system may require Decertification. The information shall come from a source that has directly observed or witnessed the reported occurrence. Such information may be a product of the Certification Quality Monitoring Program (see Chapter 8).

Information may also come from State and local election officials, voters, or others who have used or tested a given voting system. The Program Director may notify a Manufacturer that an Informal Inquiry has been initiated, but such notification is not required. Initiation of an inquiry shall be documented through the creation of a Memorandum for the Record.

- 7.3.3.2. *Inquiry.* The Informal Inquiry process is limited to that inquiry necessary to determine whether a Formal Investigation is required. In other words, the Program Director shall conduct such inquiry necessary to determine (1) that the information obtained is credible and (2) that the information, if true, would serve as a basis for Decertification. The nature and extent of the inquiry process will vary depending on the source of the information. For example, an Informal Inquiry initiated as a result of action taken under the Certification Quality Monitoring Program will often require the Program Director merely to read the report issued as a result of the Quality Monitoring action. On the other hand, information provided by election officials or by voters who have used a voting system may require the Program Director (or assigned technical experts) to perform an in-person inspection or make inquiries of the Manufacturer.
- 7.3.3.3. *Conclusion.* An Informal Inquiry shall be concluded after the Program Director is in a position to determine the credibility of the information that initiated the inquiry and whether that information, if true, would require Decertification. The Program Director may make only two conclusions: (1) refer the matter for a Formal Investigation or (2) close the matter without additional action or referral.
- 7.3.4. Closing the Matter Without Referral. If the Program Director determines, after Informal Inquiry, that a matter does not require a Formal Investigation, the Program Director shall close the inquiry by filing a Memorandum for the Record. This document shall state the focus of the inquiry, the findings of the inquiry and the reasons a Formal Investigation was not warranted.
- 7.3.5. Referral. If the Program Director determines, after Informal Inquiry, that a matter requires a Formal Investigation, the Program Director shall refer the matter in writing to the Decision Authority. In preparing this referral, the Program Director shall do the following:
  - 7.3.5.1. State the facts that served as the basis for the referral.
  - 7.3.5.2. State the findings of the Program Director.
  - 7.3.5.3. Attach all documentary evidence that served as the basis for the conclusion.
  - 7.3.5.4. Recommend a Formal Investigation, specifically stating the system to be investigated and the scope and focus of the proposed investigation.

**7.4. Formal Investigation.** A Formal Investigation is an official investigation to determine whether a voting system requires Decertification. The end result of a Formal Investigation is a Report of Investigation.

7.4.1. Formal Investigation Authority. The Decision Authority shall have the authority to initiate and conclude a Formal Investigation by the EAC.

7.4.2. Purpose. The purpose of a Formal Investigation is to gather and document relevant information sufficient to make a determination on whether an EAC-certified voting system requires Decertification consistent with the policy put forth in Section 7.2 above.

7.4.3. Initiation of Investigation. The Decision Authority shall authorize the initiation of an EAC Formal Investigation.

7.4.3.1. *Scope.* The Decision Authority shall clearly set the scope of the investigation by identifying (in writing) the voting system (or systems) and specific procedural or operational non-conformance to be investigated. The non-conformance or non-conformances to be investigated shall be set forth in the form of numbered allegations.

7.4.3.2. *Investigator.* The Program Director shall be responsible for conducting the investigation unless the Decision Authority appoints another individual to conduct the investigation. The Program Director (or Decision Authority appointee) may assign staff or technical experts, as required, to investigate the matter.

7.4.4. Notice of Formal Investigation. Upon initiation of a Formal Investigation, notice shall be given the Manufacturer of the scope of the investigation. The following actions are necessary to prepare this notice:

7.4.4.1. Identify the voting system and specific procedural or operation non-conformance being investigated (scope of investigation).

7.4.4.2. Provide the Manufacturer an opportunity to provide relevant information in writing.

7.4.4.3. Provide an estimated timeline for the investigation.

7.4.5. Investigation. Because voting systems play a vital role in our democratic process, investigations shall be conducted impartially, diligently, promptly, and confidentially. Investigators shall use techniques to gather necessary information that meet these requirements.

- 7.4.5.1. *Fair and Impartial Investigation.* All Formal Investigations shall be conducted in a fair and impartial manner. All individuals assigned to an investigation must be free from any financial conflicts of interest.
- 7.4.5.2. *Diligent Collection of Information.* All investigations shall be conducted in a meticulous and thorough manner. Investigations shall gather all relevant information and documentation that is reasonably available. The diligent collection of information is vital for informed decision making.
- 7.4.5.3. *Prompt Collection of Information.* Determinations that may affect the administration of Federal elections must be made with all reasonable speed. EAC determinations on Decertification will affect the actions of State and local election officials conducting elections. As such, all investigations regarding Decertification must proceed with an appropriate sense of urgency.
- 7.4.5.4. *Confidential Collection of Information.* Consistent with Federal law, information pertaining to a Formal Investigation should not be made public until the Report of Investigation is complete. The release of incomplete and unsubstantiated information or predecisional opinions that may be contrary or inconsistent with the final determination of the EAC could cause public confusion or could unnecessarily negatively affect public confidence in active voting systems. Such actions could serve to impermissibly affect election administration and voter turnout. All predecisional investigative materials must be appropriately safeguarded.
- 7.4.5.5. *Methodologies.* Investigators shall gather information by means consistent with the four principles noted above. Investigative tools include (but are not limited to) the following:
  - 7.4.5.5.1. Interviews. Investigators may interview individuals (such as State and local election officials, voters, or representatives of the Manufacturer) with relevant information. All interviews shall be reduced to written form; each interview should be summarized in a statement that is reviewed, approved, and signed by the subject.
  - 7.4.5.5.2. Field audits.
  - 7.4.5.5.3. Manufacturer site audits.
  - 7.4.5.5.4. Written interrogatories. Investigators may pose specific, written questions to the Manufacturer for the purpose of gathering information relevant to the investigation. The Manufacturer shall respond to the queries within a reasonable timeframe (as specified in the request).

- 7.4.5.5.5. System testing. Testing may be performed in an attempt to reproduce a condition or failure that has been reported. This testing will be conducted at a VSTL under contract with the EAC.
- 7.4.5.6. *Report of Investigation.* The end result of a Formal Investigation is a Report of Investigation.
- 7.4.6. Report of Investigation. The Report of Investigation serves, primarily, to document (1) all relevant and reliable information gathered in the course of the investigation, and (2) the conclusion reached by the Decision Authority.
  - 7.4.6.1. *When Complete.* The report is complete and final when certified and signed by the Decision Authority.
  - 7.4.6.2. *Contents of the Report of Investigation.* The following actions are necessary to prepare the written report:
    - 7.4.6.2.1. Restate the scope of the investigation, identifying the voting system and specific matter investigated.
    - 7.4.6.2.2. Briefly describe the investigative process employed.
    - 7.4.6.2.3. Summarize the relevant and reliable facts and information gathered in the course of the investigation.
    - 7.4.6.2.4. Attach all relevant and reliable evidence collected in the course of the investigation that documents the facts. All facts shall be documented in written form.
    - 7.4.6.2.5. Analyze the information gathered.
    - 7.4.6.2.6. Clearly state the findings of the investigation.
- 7.4.7. Findings, Report of Investigation. The Report of Investigation shall state one of two conclusions. After gathering and reviewing all applicable facts, the report shall find each allegation investigated to be either (1) substantiated, or (2) unsubstantiated.
  - 7.4.7.1. *Substantiated Allegation.* An allegation is substantiated if a preponderance of the relevant and reliable information gathered requires that the voting system at issue be decertified (consistent with the policy set out in Section 7.2). If any allegation is substantiated, a Notice of Non-Compliance must be issued.
  - 7.4.7.2. *Unsubstantiated Allegation.* An allegation is unsubstantiated if the preponderance of the relevant and reliable information gathered does not require Decertification (see Section 7.2). If all allegations are unsubstantiated,

the matter shall be closed and a copy of the report forwarded to the Manufacturer.

7.4.8. Publication of Report. The report shall not be made public nor released to the public until final.

7.5. **Effect of Informal Inquiry or Formal Investigation on Certification**. A voting system's EAC certification is not affected by the initiation or conclusion of an Informal Inquiry or Formal Investigation. Systems under investigation remain certified until a final Decision on Decertification is issued by the EAC.

7.6. **Notice of Non-Compliance**. If an allegation in a Formal Investigation is substantiated, the Decision Authority shall send the Manufacturer a Notice of Non-Compliance. *The Notice of Non-Compliance is not, itself, a Decertification of the voting system.* The purpose of the notice is to (1) notify the Manufacturer of the non-compliance and the EAC's intent to Decertify the system and (2) inform the Manufacturer of its procedural rights so that it may be heard prior to Decertification.

7.6.1. Non-Compliance Information. The following actions are necessary for preparing a Notice of Non-Compliance:

7.6.1.1. Provide a copy of the Report of Investigation to the Manufacturer.

7.6.1.2. Identify the non-compliance, consistent with the Report of Investigation.

7.6.1.3. Inform the Manufacturer that if the voting system is not made compliant, the voting system will be decertified.

7.6.1.4. State the actions the Manufacturer must take, if any, to bring the voting system into compliance and avoid Decertification.

7.6.2. Manufacturer's Rights. The written Notice of Non-Compliance must also inform the Manufacturer of its procedural rights under the program, which include the following:

7.6.2.1. *Right to Present Information Prior to Decertification Decision*. The Manufacturer shall be informed of its right to present information to the Decision Authority prior to a determination of Decertification.

7.6.2.2. *Right to Have Access to the Information That Will Serve as the Basis of the Decertification Decision*. The Manufacturer shall be provided the Report of Investigation and any other materials that will serve as the basis of an Agency Decision on Decertification.

7.6.2.3. *Right to Cure System Defects Prior to the Decertification Decision*. A Manufacturer may request an opportunity to cure within 20 calendar days of its receipt of the Notice of Non-Compliance.

**7.7. Procedure for Decision on Decertification.** The Decision Authority shall make and issue a written Decision on Decertification whenever a Notice of Non-Compliance is issued. The Decision Authority will not take such action until the Manufacturer has had a reasonable opportunity to cure the non-compliance and submit information for consideration.

**7.7.1. Opportunity to Cure.** The Manufacturer shall have an opportunity to cure a non-conforming voting system in a *timely* manner prior to Decertification. A cure is timely when the cure process can be completed before the next Federal election, meaning that any proposed cure must be in place before *any* individual jurisdiction fielding the system holds a Federal election. The Manufacturer must request the opportunity to cure. If the request is approved, a compliance plan must be created, approved, and followed. If this cure process is successfully completed, a Manufacturer may modify a non-compliant voting system, remedy procedural discrepancies, or otherwise bring its system into compliance without resubmission or Decertification.

**7.7.1.1. Manufacturer's Request to Cure.** Within 10 calendar days of receiving the EAC's Notice of Non-Compliance, a Manufacturer may request an opportunity to cure all defects identified in the Notice of Non-Compliance in a *timely* manner. The request must be sent to the Decision Authority and outline how the Manufacturer would modify the system, update the technical information (as required by Section 4.3.2), have the VSTL create a test plan and test the system, and obtain EAC approval before the next election for Federal office.

**7.7.1.2. EAC Action on Request.** The Decision Authority will review the request and approve it if the defects identified in the Notice of Non-Compliance may reasonably be cured before the next election for Federal office.

**7.7.1.3. Manufacturer's Compliance Plan.** Upon approval of the Manufacturer's request for an opportunity to cure, the Manufacturer shall submit a compliance plan to the Decision Authority for approval. This compliance plan must set forth the steps to be taken (including time frames) to cure *all* identified defects in a timely manner. The plan shall describe the proposed changes to the system, provide for modification of the system, update the technical information required by Section 4.3.2, include a test plan delivered to the EAC by the VSTL (testing the system consistent with Section 4.4.2.3), and provide for the VSTL's testing of the system and submission of the test report to the EAC for approval (assume *at least* 20 working days). The plan shall also include a schedule of periodic progress reports to the Program Director<sup>2</sup>.

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<sup>2</sup> Manufacturers should also be cognizant of State certification procedures and local pre-election logic and accuracy testing. Systems that meet EAC guidelines will also be impacted by independent State and local requirements. These requirements may also prevent a system from being fielded, irrespective of EAC Certification.

- 7.7.1.4. *EAC Action on the Compliance Plan.* The Decision Authority must review and approve the compliance plan. The Decision Authority may require the Manufacturer to provide additional information and modify the plan as required. If the Manufacturer is unable or unwilling to provide a Compliance Plan acceptable to the Decision Authority, the Decision Authority shall provide written notice terminating the “opportunity to cure” process.
- 7.7.1.5. *VSTL’s Submission of the Compliance Plan Test Report.* The VSTL shall submit the test report created pursuant to the Manufacturer’s EAC-approved Compliance Plan. The EAC shall review the test report and any other necessary or relevant materials. The report will be technically reviewed by the EAC in a manner similar to the procedures described in Chapter 4 of this Manual.
- 7.7.1.6. *EAC Decision on the System.* After receipt of the VSTL’s test report, the Decision Authority shall issue a decision on a voting system amended pursuant to an approved Compliance Plan. For the purpose of planning, the Manufacturer should allow *at least 20* working days for this process.
- 7.7.2. Opportunity to Be Heard. The Manufacturer may submit written materials in response to the Notice of Non-Compliance and Report of Investigation. These documents shall be considered by the Decision Authority when making a determination on Decertification. The Manufacturer shall ordinarily have 20 calendar days from the date it received the Notice of Non-Compliance (or in the case of a failed effort to cure, the termination of that process) to deliver its submissions to the Decision Authority. When warranted by public interest (because a delay in making a determination on Decertification would affect the timely, fair, and effective administration of a Federal election), however, the Decision Authority may provide a Manufacturer less time to submit information. This alternative period (and the basis for it) must be stated in the Notice of Non-Compliance. The alternative time period must allow the Manufacturer a reasonable amount of time to gather its submissions. Submissions may include the following materials:
- 7.7.2.1. A written argument responding to the conclusions in the Notice of Non-Compliance or Report of Investigation.
- 7.7.2.2. Documentary evidence relevant to the allegations or conclusions in the Notice of Non-Compliance.
- 7.7.3. Decision on Decertification. The Decision Authority shall make an agency determination on Decertification.
- 7.7.3.1. *Timing.* The Decision Authority shall promptly make a decision on Decertification. The Decision Authority may not issue such a decision, however, until the Manufacturer has provided all of its written materials for



consideration or the time allotted for submission (usually 20 calendar days) has run out.

7.7.3.2. *Considered Materials.* The Decision Authority shall review and consider all relevant submissions of the Manufacturer. In making a Decision on Decertification, the Decision Authority shall also consider all documents that make up the record and any other documentary information he or she determines relevant.

7.7.3.3. *Agency Decision.* The Decision Authority shall issue a written Agency Decision after review of applicable materials. This decision shall be the final decision of the agency. The following actions are necessary to write the decision:

7.7.3.3.1. Clearly state the agency's determination on the Decertification, specifically addressing the areas of non-compliance investigated.

7.7.3.3.2. Address the issues raised by the Manufacturer in the materials it submitted for consideration.

7.7.3.3.3. Identify all facts, evidence, procedural requirements, and/or voting system standards (VMSG or VSS) that served as the basis for the decision.

7.7.3.3.4. Provide the reasoning behind the decision.

7.7.3.3.5. Identify, and provide as an attachment, any additional documentary information that served as a basis for the decision and that was not part of the Manufacturer's submission or the Report of Investigation.

7.7.3.3.6. Provide the Manufacturer notice of its right to appeal.

**7.8. Effect of Decision Authority's Decision on Decertification.** The Decision Authority's Decision on Decertification is the determination of the agency. A Decertification is effective upon the EAC's publication or Manufacturer's receipt of the decision (whichever is earlier). A Manufacturer that has had a voting system decertified may appeal that decision.

**7.9. Appeal of Decertification.** A Manufacturer may, upon receipt of an Agency Final Decision on Decertification, request an appeal in a timely manner.

7.9.1. Requesting Appeal.

7.9.1.1. *Submission.* Requests must be submitted by the Manufacturer in writing to the Chair of the U.S. Election Assistance Commission.

- 7.9.1.2. *Timing of Appeal.* The Manufacturer may request an appeal within 20 calendar days of receipt of the Agency Final Decision on Decertification. Late requests will not be considered.
- 7.9.1.3. *Contents of Request.* The following actions are necessary for the Manufacturer to write and submit a request for appeal:
  - 7.9.1.3.1. Clearly state the specific conclusions of the Final Decision the Manufacturer wishes to appeal.
  - 7.9.1.3.2. Include additional written argument, if any.
  - 7.9.1.3.3. Do not reference or include any factual material not previously considered or submitted to the EAC.
- 7.9.1.4. *Effect of Appeal on Decertification.* The initiation of an appeal does not affect the decertified status of a voting system. Systems are decertified upon notice of Decertification in the agency's Decision on Decertification (see Section 7.8).

7.9.2. Consideration of Appeal. All timely appeals will be considered by the Appeal Authority.

- 7.9.2.1. The Appeal Authority shall be two or more EAC Commissioners or other individual or individuals appointed by the Commissioners who have not previously served as investigators, advisors, or decision makers in the Decertification process.
- 7.9.2.2. All decisions on appeal shall be based on the record.
- 7.9.2.3. The decision of the Decision Authority shall be given deference by the Appeal Authority. Although it is unlikely that the scientific certification process will produce factual disputes, in such cases the burden of proof shall belong to the Manufacturer to demonstrate by clear and convincing evidence that its voting system met all substantive and procedural requirements for certification. In other words, the determination of the Decision Authority will be overturned only when the Appeal Authority finds the ultimate facts in controversy to be highly probable.

7.9.3. Decision on Appeal. The Appeal Authority shall make a written, final Decision on Appeal that it shall provide to the Manufacturer. Each Decision on Appeal shall be final and binding on the Manufacturer. No additional appeal shall be granted. The following actions are necessary to write a Decision on Appeal:

- 7.9.3.1. State the final determination of the agency.

7.9.3.2. Address the matters raised by the Manufacturer on appeal.

7.9.3.3. Provide the reasoning behind the decision.

7.9.3.4. State that the Decision on Appeal is final.

7.9.4. Effect of Appeal.

7.9.4.1. *Grant of Appeal.* If a Manufacturer's appeal is granted in whole, the decision of the Decision Authority is reversed. The voting system shall have its certification reinstated. For purposes of this program, the system shall be treated as though it was never decertified.

7.9.4.2. *Denial of Appeal.* If a Manufacturer's appeal is denied in whole or in part, the decision of the Decision Authority is upheld. The voting system remains decertified and no additional appeal is available.

**7.10. Effect of Decertification.** A voting system that has been decertified no longer holds an EAC certification under the Certification Program. For purposes of this Manual and the program, a decertified system will be treated as any other uncertified voting system. As such, the effects of Decertification are as follows:

7.10.1. The Manufacturer may not represent the voting system as certified.

7.10.2. The voting system may not be labeled with a mark of certification.

7.10.3. The voting system will be removed from the EAC list of certified systems.

7.10.4. The EAC will notify State and local election officials of the Decertification.

**7.11. Recertification.** A decertified system may be resubmitted for certification. Such systems shall be treated as any other system seeking certification. The Manufacturer shall present an application for certification consistent with the instructions of this Manual.

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## 8. Quality Monitoring Program

- 8.1. Overview.** The quality of any product, including a voting system, depends on two specific elements: (1) the design of the product or system and (2) the care and consistency of the manufacturing process. The EAC testing and certification process focuses on voting system design by ensuring that a representative sample of a system meets the technical specifications of the applicable EAC voting system standards. This process, commonly called “type acceptance,” determines whether the representative sample submitted for testing meets the requirements. What type acceptance does not do is explore whether variations in manufacturing may allow production of non-compliant systems. Generally, the quality of the manufacturing is the responsibility of the Manufacturer. After a system is certified, the vendor assumes primary responsibility for compliance of the products produced. This level of compliance is accomplished by the Manufacturer’s configuration management and quality control processes. The EAC’s Quality Monitoring Program, as outlined in this chapter, however, provides an additional layer of quality control by allowing the EAC to perform manufacturing site reviews, carry out fielded system reviews, and gather information on voting system anomalies from election officials. These additional tools help ensure that voting systems continue to meet the requirements of EAC’s voting system standards as the systems are manufactured, delivered, and used in Federal elections. These aspects of the program enable the EAC to independently monitor the continued compliance of fielded voting systems.
- 8.2. Purpose.** The purpose of the Quality Monitoring Program is to ensure that EAC-certified voting systems are identical to those fielded in election jurisdictions. This level of quality control is accomplished primarily by identifying (1) potential quality problems in manufacturing, (2) uncertified voting system configurations, and (3) field performance issues with certified systems.
- 8.3. Manufacturer’s Quality Control.** EAC’s Quality Monitoring Program is not a substitute for the Manufacturer’s quality control program. As stated in Chapter 2 of this Manual, all Manufacturers must have an acceptable quality control program in place before they may be registered. The EAC’s program serves as an independent and complementary process of quality control that works in tandem with the Manufacturer’s efforts.
- 8.4. Quality Monitoring Methodology.** This chapter provides the EAC with three primary tools for assessing the level of effectiveness of the certification process and the compliance of fielded voting systems. These tools include (1) manufacturing site reviews, (2) fielded system reviews, and (3) a means for receiving anomaly reports from the field.
- 8.5. Manufacturing Site Review.** Facilities that produce certified voting systems will be reviewed periodically, at the discretion of the EAC, to verify that the system being manufactured, shipped, and sold is the same as the sample submitted for certification testing. All registered Manufacturers must cooperate with such audits as a condition of program participation.
- 8.5.1. Notice.** The site review may be scheduled or unscheduled, at the discretion of the EAC. Unscheduled reviews will be performed with at least 24 hours notice. Scheduling and

notice of site reviews will be coordinated with and provided to both the manufacturing facility's representative and the Manufacturer's representative.

- 8.5.2. Frequency. At a minimum, at least one manufacturing facility of a registered Manufacturer shall be subject to a site review at least once every 4 years.
- 8.5.3. The Review. The production facility and production test records must be made available for review. When requested, production schedules must be provided to the EAC. Production or production testing may be witnessed by EAC representatives. If equipment is not being produced during the inspection, the review may be limited to production records. During the inspection, the Manufacturer must make available to the EAC representative the Manufacturer's quality manual and other documentation sufficient to enable the inspector to evaluate the following factors of the facility's production:
- 8.5.3.1. Manufacturing quality controls.
  - 8.5.3.2. Final inspection and testing.
  - 8.5.3.3. History of deficiencies or anomalies and corrective actions taken.
  - 8.5.3.4. Equipment calibration and maintenance.
  - 8.5.3.5. Corrective action program.
  - 8.5.3.6. Policies on product labeling and the application of the EAC mark of certification.
- 8.5.4. Exit Briefing. Site reviewers will provide the manufacturing facility representative a verbal exit briefing regarding the preliminary observations of the review.
- 8.5.5. Written Report. A written report documenting the review will be drafted by the EAC representative and provided to the Manufacturer. The report will detail the findings of the review and identify actions that are required to correct any deficiencies.

**8.6. Fielded System Review and Testing.** Upon invitation or with the permission of a State or local election authority, the EAC may, at its discretion, conduct a review of fielded voting systems. Such reviews will be done to ensure that a fielded system is in the same configuration as that certified by the EAC and that it has the proper mark of certification. This review may include the testing of a fielded system, if deemed necessary. Any anomalies found during this review and testing will be provided to the election jurisdiction and the Manufacturer.

**8.7. Field Anomaly Reporting.** As another means of gathering field data, the EAC will collect information from election officials who field EAC-certified voting systems. Information on actual voting system field performance is a basic means for assessing the effectiveness of the Certification Program and the manufacturing quality and version control. The EAC will

provide a mechanism for election officials to provide real-world input on voting system anomalies.

- 8.7.1. Anomaly Report. Election officials may use the Voting System Anomaly Reporting Form to report voting system anomalies to the EAC. The form and instructions for its completion are available as Appendix C in this Manual or on the EAC Web site, [www.eac.gov](http://www.eac.gov). The form may be filed with the EAC on line, by mail or by facsimile. Use of the form is required.
- 8.7.2. Who May Report? State or local election officials who have experienced voting system anomalies in their jurisdiction may file anomaly reports. The individuals reporting must identify themselves and have firsthand knowledge of or official responsibility over the anomaly being reported. Anonymous or hearsay reporting will not be accepted.
- 8.7.3. What Is Reported? Election officials shall report voting system anomalies. An *anomaly* is defined as an irregular or inconsistent action or response from the voting system or system component resulting in some disruption to the election process. Incidents resulting from administrator error or procedural deficiencies are not considered anomalies for purposes of this chapter. The report must include the following information:
  - 8.7.3.1. The official's name, title, contact information, and jurisdiction.
  - 8.7.3.2. A description of the voting system at issue.
  - 8.7.3.3. The date and location of the reported occurrence.
  - 8.7.3.4. The type of election.
  - 8.7.3.5. A description of the anomaly witnessed.
- 8.7.4. Distribution of Credible Reports. Credible reports will be distributed to State and local election jurisdictions who field similar systems, the Manufacturer of the voting system at issue, and the VSTLs. Reports are reviewed by EAC staff in coordination with relevant State officials. Credible reports:
  - 8.7.4.1. Meet the definition of anomaly under Section 8.7.3,
  - 8.7.4.2. Constitute a complete report per the requirements of Sections 8.7.3.1 through 8.7.3.5,
  - 8.7.4.3. Have had alleged facts confirmed by contacting filer and/or others present at the time of the incident, and
  - 8.7.4.4. Have been verified by the relevant State's chief election official.

- 8.8. Use of Quality Monitoring Information.** Ultimately, the information the EAC gathers from manufacturing site reviews, fielded system reviews, and field anomaly reports will be used to improve the program and ensure the quality of voting systems. The Quality Monitoring Program is not designed to be punitive but to be focused on improving the process. Information gathered will be used to accomplish the following:
- 8.8.1. Identify areas for improvement in the EAC Testing and Certification Program.
  - 8.8.2. Improve manufacturing quality and change control processes.
  - 8.8.3. Increase voter confidence in voting technology.
  - 8.8.4. Inform Manufacturers, election officials, and the EAC of issues associated with voting systems in a real-world environment.
  - 8.8.5. Share information among jurisdictions that use similar voting systems.
  - 8.8.6. Resolve problems associated with voting technology or manufacturing in a timely manner by involving Manufacturers, election officials, and the EAC.
  - 8.8.7. Provide feedback to the EAC and the Technical Guidelines Development Committee (TGDC) regarding issues that may need to be addressed through a revision to the Voluntary Voting System Guidelines.
  - 8.8.8. Initiate an investigation when information suggests that Decertification is warranted (see Chapter 7).

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## 9. Requests for Interpretations

**9.1. Overview.** A Request for Interpretation is a means by which a registered Manufacturer or VSTL may seek clarification on a specific EAC voting system standard (VVSG or VSS). An Interpretation is a clarification of the voting system standards and guidance on how to properly evaluate conformance to it. Suggestions or requests for modifications to the standards are provided by other processes. This chapter outlines the policy, requirements, and procedures for submitting a Request for Interpretation.

**9.2. Policy.** Registered Manufacturers or VSTLs may request that the EAC provide a definitive Interpretation of EAC-accepted voting system standards (VVSG or VSS) when, in the course of developing or testing a voting system, facts arise that make the meaning of a particular standard ambiguous or unclear. The EAC may self-initiate such a request when its agents identify a need for interpretation within the program. An Interpretation issued by the EAC will serve to clarify what a given standard requires and how to properly evaluate compliance. Ultimately, an Interpretation does not amend voting system standards, but serves only to clarify existing standards.

**9.3. Requirements for Submitting a Request for Interpretation.** An EAC Interpretation is limited in scope. The purpose of the Interpretation process is to provide Manufacturers or VSTLs who are in the process of developing or testing a voting system a means for resolving the meaning of a voting system standard in light of a specific voting system technology without having to present a finished product to EAC for certification. To submit a Request for Interpretation, one must (1) be a proper requester, (2) request interpretation of an applicable voting system standard, (3) present an actual controversy, and (4) seek clarification on a matter of unsettled ambiguity.

9.3.1. Proper Requestor. A Request for Interpretation may be submitted only by a registered Manufacturer or a VSTL. Requests for Interpretation will not be accepted from any other parties.

9.3.2. Applicable Standard. A Request for Interpretation is limited to queries on EAC voting system standards (i.e., VVSG or VSS). Moreover, a Manufacturer or VSTL may submit a Request for Interpretation only on a version of EAC voting system standards to which the EAC currently offers certification.

9.3.3. Existing Factual Controversy. To submit a Request for Interpretation, a Manufacturer or VSTL must present a question relative to a specific voting system or technology proposed for use in a voting system. A Request for Interpretation on hypothetical issues will not be addressed by the EAC. To submit a Request for Interpretation, the need for clarification must have arisen from the development or testing of a voting system. A factual controversy exists when an attempt to apply a specific section of the VVSG or VSS to a specific system or piece of technology creates ambiguity.

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9.3.4. Unsettled, Ambiguous Matter. Requests for Interpretation must involve actual controversies that have not been previously settled. This requirement mandates that interpretations contain actual ambiguities not previously clarified.

9.3.4.1. *Actual Ambiguity.* A proper Request for Interpretation must contain an actual ambiguity. The interpretation process is not a means for challenging a clear EAC voting system standard. Recommended changes to voting system standards are welcome and may be forwarded to the EAC, but they are not part of this program. An ambiguity arises (in applying a voting system standard to a specific technology) when one of the following occurs:

9.3.4.1.1. The language of the standard is unclear on its face.

9.3.4.1.2. One section of the standard seems to contradict another, relevant section.

9.3.4.1.3. The language of the standard, though clear on its face, lacks sufficient detail or breadth to determine its proper application to a particular technology.

9.3.4.1.4. The language of a particular standard, when applied to a specific technology, clearly conflicts with the established purpose or intent of the standard.

9.3.4.1.5. The language of the standard is clear, but the proper means to assess compliance is unclear.

9.3.4.2. *Not Previously Clarified.* The EAC will not accept a Request for Interpretation when the issue has previously been clarified.

**9.4. Procedure for Submitting a Request for Interpretation.** A Request for Interpretation shall be made in writing to the Program Director. All requests should be complete and as detailed as possible because Interpretations issued by the EAC are based on, and limited to, the facts presented. Failure to provide complete information may result in an Interpretation that is off point and ultimately immaterial to the issue at hand. The following steps must be taken when writing a Request for Interpretation:

9.4.1. Establish Standing To Make the Request. To make a request, one must meet the requirements identified in Section 9.3 above. Thus, the written request must provide sufficient information for the Program Director to conclude that the requestor is (1) a proper requester, (2) requesting an Interpretation of an applicable voting system standard, (3) presenting an actual factual controversy, and (4) seeking clarification on a matter of unsettled ambiguity.

9.4.2. Identify the EAC Voting System Standard To Be Clarified. The request must identify the specific standard or standards to which the requestor seeks clarification. The request

must state the version of the voting system standards at issue (if applicable) and quote and correctly cite the applicable standards.

9.4.3. State the Facts Giving Rise to the Ambiguity. The request must provide the facts associated with the voting system technology that gave rise to the ambiguity in the identified standard. The requestor must be careful to provide all necessary information in a clear, concise manner. Any Interpretation issued by the EAC will be based on the facts provided.

9.4.4. Identify the Ambiguity. The request must identify the ambiguity it seeks to resolve. The ambiguity shall be identified by stating a concise question that meets the following requirements:

9.4.4.1. Shall be clearly stated.

9.4.4.2. Shall be related to and reference the voting system standard and voting system technology information provided.

9.4.4.3. Shall be limited to a single issue. Each question or issue arising from an ambiguous standard must be stated separately. Compound questions are unacceptable. If multiple issues exist, they should be presented as individual, numbered questions.

9.4.4.4. Shall be stated in a way that can ultimately be answered *yes* or *no*.

9.4.5. Provide a Proposed Interpretation. A Request for Interpretation should propose an answer to the question posed. The answer should interpret the voting system standard in the context of the facts presented. It should also provide the basis and reasoning behind the proposal.

**9.5. EAC Action on a Request for Interpretation.** Upon receipt of a Request for Interpretation, the EAC shall take the following action:

9.5.1. Review the Request. The Program Director shall review the request to ensure it is complete, is clear, and meets the requirements of Section 9.3. Upon review, the Program Director may take the following action:

9.5.1.1. *Request Clarification.* If the Request for Interpretation is incomplete or additional information is otherwise required, the Program Director may request that the Manufacturer or VSTL clarify its Request for Interpretation and identify any additional information required.

9.5.1.2. *Reject the Request for Interpretation.* If the Request for Interpretation does not meet the requirements of Section 9.3, the Program Director may reject it. Such rejection must be provided in writing to the Manufacturer or VSTL and must state the basis for the rejection.

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9.5.1.3. *Notify Acceptance of the Request.* If the Request for Interpretation is acceptable, the Program Director will notify the Manufacturer or VSTL in writing and provide it with an estimated date of completion. A Request for Interpretation may be accepted in whole or in part. A notice of acceptance shall state the issues accepted for interpretation.

9.5.2. Consideration of the Request. After a Request for Interpretation has been accepted, the matter shall be investigated and researched. Such action may require the EAC to employ technical experts. It may also require the EAC to request additional information from the Manufacturer or VSTL. The Manufacturer or VSTL shall respond promptly to such requests.

9.5.3. Interpretation. The Decision Authority shall be responsible for making determinations on a Request for Interpretation. After this determination has been made, a written Interpretation shall be sent to the Manufacturer or VSTL. The following actions are necessary to prepare this written Interpretation:

9.5.3.1. State the question or questions investigated.

9.5.3.2. Outline the relevant facts that served as the basis of the Interpretation.

9.5.3.3. Identify the voting system standards interpreted.

9.5.3.4. State the conclusion reached.

9.5.3.5. Inform the Manufacturer or VSTL of the effect of an Interpretation (see Section 9.6).

**9.6. Effect of Interpretation.** Interpretations are fact specific and case specific. They are not tools of policy, but specific, fact-based guidance useful for resolving a particular problem. Ultimately, an Interpretation is determinative and conclusive only with regard to the case presented. Nevertheless, Interpretations do have some value as precedent. Interpretations published by the EAC shall serve as reliable guidance and authority over identical or similar questions of interpretation. These Interpretations will help users understand and apply the provisions of EAC voting system standards.

**9.7. Library of Interpretations.** To better serve Manufacturers, VSTLs, and those interested in the EAC voting system standards, the Program Director shall publish EAC Interpretations. All proprietary information contained in an Interpretation will be redacted before publication consistent with Chapter 10 of this Manual. The library of published opinions is posted on the EAC Web site: [www.eac.gov](http://www.eac.gov).

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## 10. Release of Certification Program Information

**10.1. Overview.** Manufacturers participating in the Certification Program will be required to provide the EAC a variety of documents. In general, these documents will be releasable to the public. Moreover, in many cases, the information provided will be affirmatively published by the EAC. In limited cases, however, documents may not be released if they include trade secrets, confidential commercial information, or personal information. While the EAC is ultimately responsible for determining which documents Federal law protects from release, Manufacturers must identify the information they believe is protected and ultimately provide substantiation and a legal basis for withholding. This chapter discusses EAC's general policy on the release of information and provides Manufacturers with standards, procedures, and requirements for identifying documents as trade secrets or confidential commercial information.

**10.2. EAC Policy on the Release of Certification Program Information.** The EAC seeks to make its Voting System Testing and Certification Program as transparent as possible. The agency believes that such action benefits the program by increasing public confidence in the process and creating a more informed and involved public. As such, it is the policy of the EAC to make all documents, or severable portions thereof, available to the public consistent with Federal law (e.g. Freedom of Information Act (FOIA) and the Trade Secrets Act).

10.2.1. Requests for information. As in any Federal program, members of the public may request access to Certification Program documents under FOIA (5 U.S.C. §552). The EAC will promptly process such requests per the requirements of that Act.

10.2.2. Publication of documents. Beyond the requirements of FOIA, the EAC intends to affirmatively publish program documents (or portions of documents) it believes will be of interest to the public. This publication will be accomplished through the use of the EAC Web site ([www.eac.gov](http://www.eac.gov)). The published documents will cover the full spectrum of the program, including information pertaining to:

10.2.2.1. Registered Manufacturers;

10.2.2.2. VSTL test plans;

10.2.2.3. VSTL test reports;

10.2.2.4. Agency decisions;

10.2.2.5. Denials of Certification;

10.2.2.6. Issuance of Certifications;

10.2.2.7. Information on a certified voting system's operation, components, features or capabilities;

10.2.2.8. Appeals;

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10.2.2.9. Reports of investigation and Notice of Non-compliance;

10.2.2.10. Decertification actions;

10.2.2.11. Manufacturing facility review reports;

10.2.2.12. Official Interpretations (VVSG or VSS); and

10.2.2.13. Other topics as determined by the EAC.

10.2.3. Trade Secret and Confidential Commercial Information. Federal law places a number of restrictions on a Federal agency's authority to release information to the public. Two such restrictions are particularly relevant to the Certification program: (1) trade secrets information and (2) privileged or confidential commercial information. Both types of information are explicitly prohibited from release by the FOIA and the Trade Secrets Act (18 U.S.C. §1905).

**10.3. Trade Secrets.** A trade secret is a secret, commercially valuable plan, process, or device that is used for the making or processing of a product and that is the end result of either innovation or substantial effort. It relates to the productive process itself, describing how a product is made. It does not relate to information describing end product capabilities, features, or performance.

10.3.1. The following examples illustrate productive processes that may be trade secrets:

10.3.1.1. Plans, schematics, and other drawings useful in production.

10.3.1.2. Specifications of materials used in production.

10.3.1.3. Voting system source code used to develop or manufacture software where release would reveal actual programming.

10.3.1.4. Technical descriptions of manufacturing processes and other secret information relating directly to the production process.

10.3.2. The following examples are likely not trade secrets:

10.3.2.1. Information pertaining to a finished product's capabilities or features.

10.3.2.2. Information pertaining to a finished product's performance.

10.3.2.3. Information regarding product components that would not reveal any commercially valuable information regarding production.

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**10.4. Privileged or Confidential Commercial Information.** Privileged or confidential commercial information is that information submitted by a Manufacturer that is commercial or financial in nature and privileged or confidential.

10.4.1. Commercial or Financial Information. The terms *commercial* and *financial* should be given their ordinary meanings. They include records in which a submitting Manufacturer has any *commercial interest*.

10.4.2. Privileged or Confidential Information. Commercial or financial information is privileged or confidential if its disclosure would likely cause substantial harm to the competitive position of the submitter. The concept of harm to one's competitive position focuses on harm flowing from a competitor's affirmative use of the proprietary information. It does not include incidental harm associated with upset customers or employees.

**10.5. EAC's Responsibilities.** The EAC is ultimately responsible for determining whether or not a document (in whole or in part) may be released pursuant to Federal law. In doing so, however, the EAC will require information and input from the Manufacturer submitting the documents. This requirement is essential for the EAC to identify, track, and make determinations on the large volume of documentation it receives. The EAC has the following responsibilities:

10.5.1. Managing Documentation and Information. The EAC will control the documentation it receives by ensuring that documents are secure and released to third parties only after the appropriate review and determination.

10.5.2. Contacting Manufacturer on Proposed Release of Potentially Protected Documents. In the event a member of the public submits a FOIA request for documents provided by a Manufacturer or the EAC otherwise proposes the release of such documents, the EAC will take the following actions:

10.5.2.1. Review the documents to determine if they are potentially protected from release as trade secrets or confidential commercial information. The documents at issue may have been previously identified as protected by the Manufacturer when submitted (see Section 10.7.1 below) or identified by the EAC on review.

10.5.2.2. Grant the submitting Manufacturer an opportunity to provide input. In the event the information has been identified as potentially protected from release as a trade secret or confidential commercial information, the EAC will notify the submitter and allow it an opportunity to submit its position on the issue prior to release of the information. The submitter shall respond consistent with Section 10.7.1 below.

10.5.3. Final Determination on Release. After providing the submitter of the information an opportunity to be heard, the EAC will make a final decision on release. The EAC will inform the submitter of this decision.

**10.6. Manufacturer's Responsibilities.** Although the EAC is ultimately responsible for determining if a document, or any portion thereof, is protected from release as a trade secret or confidential commercial information, the Manufacturer shall be responsible for identifying documents, or portions of documents, it believes warrant such protection. Moreover, the Manufacturer will be responsible for providing the legal basis and substantiation for its determination regarding the withholding of a document. This responsibility arises in two situations: (1) upon the initial submission of information, and (2) upon notification by the EAC that it is considering the release of potentially protected information.

**10.6.1. Initial Submission of Information.** When a Manufacturer is submitting documents to the EAC as required by the Certification Program, it is responsible for identifying any document or portion of a document that it believes is protected from release by Federal law. Manufacturers shall identify protected information by taking the following action:

**10.6.1.1. Submitting a Notice of Protected Information.** This notice shall identify the document, document page, or portion of a page that the Manufacturer believes should be protected from release. This identification must be done with specificity. For each piece of information identified, the Manufacturer must state the legal basis for its protected status.

10.6.1.1.1. Cite the applicable law that exempts the information from release.

10.6.1.1.2. Clearly discuss why that legal authority applies and why the document must be protected from release.

10.6.1.1.3. If necessary, provide additional documentation or information. For example, if the Manufacturer claims a document contains confidential commercial information, it would also have to provide evidence and analysis of the competitive harm that would result upon release.

**10.6.1.2. Label Submissions.** Label all submissions identified in the notice as "Proprietary Commercial Information." Label only those submissions identified as protected. Attempts to indiscriminately label all materials as proprietary will render the markings moot.

**10.6.2. Notification of Potential Release.** In the event a Manufacturer is notified that the EAC is considering the release of information that may be protected, the Manufacturer shall take the following action:

10.6.2.1. Respond to the notice within 15 calendar days. If additional time is needed, the Manufacturer must promptly notify the Program Director. Requests for additional time will be granted only for good cause and must be made before the 15-day deadline. Manufacturers that do not respond in a timely manner will be viewed as not objecting to release.

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10.6.2.2. Clearly state **one** of the following in the response:

10.6.2.2.1. There is no objection to release, or

10.6.2.2.2. The Manufacturer objects to release. In this case, the response must clearly state which portions of the document the Manufacturer believes should be protected from release. The Manufacturer shall follow the procedures discussed in Section 10.7.1 above.

**10.7. Personal Information.** Certain personal information is protected from release under FOIA and the Privacy Act (5 U.S.C. §552a). This information includes private information about a person that, if released, would cause the individual embarrassment or constitute an unwarranted invasion of personal privacy. Generally, the EAC will not require the submission of private information about individuals. The incidental submission of such information should be avoided. If a Manufacturer believes it is required to submit such information, it should contact the Program Director. If the information will be submitted, it must be properly identified. Examples of such information include the following:

10.7.1. Social Security Number.

10.7.2. Bank account numbers.

10.7.3. Home address.

10.7.4. Home phone number.

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**Appendix A**  
**Manufacturer Registration Application Form**

Available in electronic format at [www.eac.gov](http://www.eac.gov)

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**Appendix B**  
**Application for Voting System Testing Form**

Available in electronic format at [www.eac.gov](http://www.eac.gov)

**Appendix C**  
**Voting System Anomaly Reporting Form**

Available in electronic format at [www.eac.gov](http://www.eac.gov)



"Karen Buerkle "  
 <KBuerkle@ifes.org>  
 02/01/2007 01:39 PM

To: [Redacted]  
 cc: klynndyson@eac.gov  
 bcc:

Subject: RE: Voter Hotline: Updated Draft Survey and Detailed Memo re SOW and Timeline

History: This message has been replied to.

Here you go. I halved the burden hours, which should please OMB, and modified some of the language on the survey topics. I think this new, user-friendly questionnaire will take much less time to complete.

Let me know if there is anything else.

Best,  
 Karen

Karen Buerkle, PhD  
 Senior Researcher  
 Applied Research Center on Democracy and Elections  
 IFES  
 1101 15th St., NW, Suite 300  
 Washington, DC 20005  
 (202) 350-6741

**From:** lotero@eac.gov [mailto:lotero@eac.gov]  
**Sent:** Thursday, February 01, 2007 11:01 AM  
**To:** collinsfoley@ [Redacted]  
**Cc:** Karen Buerkle; klynndyson@eac.gov  
**Subject:** Re: Voter Hotline: Updated Draft Survey and Detailed Memo re SOW and Timeline

Hello!

Please, go ahead and make any changes you wish to the highlighted section of the notice so it reflects the current focus or any other information you feel is critical to have there ---- this section was originally drafted by you (or staff), and you would be able to provide insight that I don't have (plus, I wouldn't have to send you back another draft for approval - I would take your changes as is.). Thank you!

Laiza N. Otero  
 Election Research Specialist  
 U.S. Election Assistance Commission  
 1225 New York Avenue, Suite 1100  
 Washington, DC 20005  
 Tel. (202) 566-3100 (main office)  
 Tel. (202) 566-2209 (direct)  
 Fax (202) 566-3128

"Jennifer Collins-Foley" [Redacted]

02/01/2007 10:39 AM

To: lotero@eac.gov  
 cc: klynndyson@eac.gov, KBuerkle@ifes.org

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Subject: Voter Hotline: Updated Draft Survey and Detailed Memo re SOW and  
Timeline

Hi Laiza, I don't want to slow anything down but I think it would be a good idea if you updated the wording about what we are collecting so that it correlates to the updated focus - for example, you can see from our memo that we are no longer asking for details on their software. If you are ok with it in its current form, please go ahead. Thanks, Jennifer

*lotero@eac.gov* wrote:

Hi Jennifer and Karen,

I have informed the counsel that it is an online survey. I have attached the draft notice for your review to make sure that all of the information is still correct on it (since it was originally drafted in early December and some changes have occurred since). Once I have your go ahead, I will get it signed and submit it today asap. As for the signing-off on the SOW pieces, Karen will be able to provide you more information on that. Thank you!

Laiza N. Otero  
Election Research Specialist  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)  
Fax (202) 566-3128

"Jennifer Collins-Foley"

01/31/2007 07:44 PM

To: *lotero@eac.gov*  
cc: "Jennifer Collins-Foley" <*collinsfoley@yea.com*>, "Karen Buerkle" <*kbuerkle@ifes.org*>, "Karen Lynn Dyson" <*klynndyson@eac.gov*>, "Connie Schmidt" <*connieschmidt@ifes.org*>, "Scott Lansell" <*slansell@ifes.org*>  
Subject: Voter Hotline: Updated Draft Survey and Detailed Memo re SOW and Timeline  
bjc  
ct

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Hi Laiza,

GREAT news re the survey being approved for publication! Hurrah!

Please remind the Counsel that the survey is an ONLINE survey - we will be following up by phone with particular jurisdictions to encourage them to complete the survey, and with others on follow up to survey responses.

Has the Counsel signed off on the various peices of the memo/revised Statement of Work/revised timeline?

Best Regards, Jennifer

*lotero@eac.gov* wrote:

Update: we have the go ahead from the General Counsel's office to publish the survey on the Federal Register. However, she would like to know if the survey will be administered strictly by phone or will election officials have the option of completing it by mail or electronic format ?

Thank you!

Laiza N. Otero  
Election Research Specialist  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, DC 20005  
Tel. (202) 566-3100 (main office)  
Tel. (202) 566-2209 (direct)  
Fax (202) 566-3128



VH 60-Day FR Notice 21 2007.doc

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**U.S. ELECTION ASSISTANCE COMMISSION**

**Information Collection Activity; Study of Voter Hotlines Operated by Election Offices**

**AGENCY:** U.S. Election Assistance Commission (EAC).

**ACTION:** Notice; request for comments.

**SUMMARY:** The EAC, as part of its continuing effort to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995, invites the general public and other Federal agencies to take this opportunity to comment on a proposed information collection. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

**DATES:** Written comments must be submitted on or before April 6, 2007.

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**ADDRESSES:** Submit comments and recommendations on the proposed information collection in writing to the U.S. Election Assistance Commission, 1225 New York Avenue, NW, Suite 1100, Washington, DC 20005, ATTN: Ms. Laiza N. Otero (or via the Internet at [lotero@eac.gov](mailto:lotero@eac.gov)).

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the survey instrument, please, write to the above address or call Ms. Laiza N. Otero at (202) 566-3100. You may also view the proposed collection instrument by visiting our website at [www.eac.gov](http://www.eac.gov).

**SUPPLEMENTARY INFORMATION:**

*Title:* Study of Voter Hotlines Operated by Election Offices

*OMB Number:* Pending.

*Type of Review:* Regular submission.

*Needs and Uses:* Section 241(b)(9) of the Help America Vote Act (HAVA) requires the U.S. Election Assistance Commission (EAC) to periodically study election administration issues, including methods of educating voters about the process of registering to vote and voting, the operation of voting mechanisms, the location of polling places, and all other aspects of participating in elections. Furthermore, Section 245(a)(2)(C) of HAVA indicates that the EAC may investigate the impact new communications or Internet technology systems used in the electoral process could have on voter participation rates, voter education, and public

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accessibility. In 2005, the EAC undertook a research study of voter hotline data available online to determine trends. A voter hotline was defined as a toll-free line that connects voters with elections offices, which then disseminate information and educate voters. The EAC found several hotlines in operation during the 2004 Presidential election, and their sponsorship and capabilities varied to a great degree. To build on and augment these research findings, the EAC wishes to conduct a study to determine the current state of voter information hotlines that are operated by Federal, State, and local election offices.

*Affected Public:* Federal, State, and local election offices

*Estimated Number of Respondents:* 6,500

*Responses per Respondent:* 1

*Estimated Burden per Response:* 1 hours

*Estimated Total Annual Burden Hours:* 6,500 hours

Information will be collected through a survey of existing hotline services operated by Federal, State, and local government agencies and election offices during the 2006 primary and general elections. The data collected will include information on voter hotlines operated by election offices and their features, including, but not limited to:

1. *Basic Information.* Hotline hours of operation, type of information available through the hotline, automated or non-automated service, links to other sources of voting information.
2. *Costs.* Breakdown of cost based on volume, cost of database maintenance per record, and all personnel and administrative costs of the service.
3. *Features.* Important factors include, but are not limited to: (1) languages used, (2)

disability-compliant features, (3) touch tone and voice services, (4) voice response options, and (5) ability for interactivity with additional databases (for example interactivity with a voter registration database).

4. *Network Capacity.* Number of calls capable of being routed per hour and the number of incoming calls that can be received.
5. *Call Tracking.* How calls are logged or tracked, how they are routed, and the types or categories of calls received.
6. *Hotline personnel.* Number of hotline operators and methods by which hotline operators are trained, the frequency of their training and how they are monitored for accuracy, currency, security, and other critical performance variables.
7. Methods by which the network operator maintains the accuracy and currency of the data. Important factors include, but are not limited to how regularly updates are made and quality-control procedures.
8. *Maintenance agreements with service providers.* Percentage of hotlines that outsource all or part of the Hotline, and experiences working with contractors?
9. *Timelines* for database creation, contractor integration, and final testing before launch.
10. Security measures to ensure that data in the call-routing network is confidential.
11. *Other information* such as: who the intended audience is; demographic, political and socioeconomic information of the community served; cost of publicizing the service and effectiveness of various publicity methods; and lessons learned.

A report on the key findings of the study, along with recommendations for the development and

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implementation of voter hotlines, will be made available to election officials and the public at the conclusion of this effort. The report will include a state-by-state compendium of the existing voter hotlines and their features. The report will be made available on the EAC website at [www.eac.gov](http://www.eac.gov).

**Signed:** \_\_\_\_\_

**Thomas R. Wilkey**, Executive Director,

U.S. Election Assistance Commission

**[Billing Code 6820-KF]**

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Advisory Committee is available on the Committee's Web site, [www.ed.gov/ACCSFA](http://www.ed.gov/ACCSFA).

Dated: February 1, 2007.

**Dr. William J. Goggin,**

*Executive Director, Advisory Committee on Student Financial Assistance.*

[FR Doc. 07-531 Filed 2-6-07; 8:45 am]

BILLING CODE 4000-01-M

## ELECTION ASSISTANCE COMMISSION

### Information Collection Activity; Study of Voter Hotlines Operated by Election Offices

**AGENCY:** U.S. Election Assistance Commission (EAC).

**ACTION:** Notice; request for comments.

**SUMMARY:** The EAC, as part of its continuing effort to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995, invites the general public and other Federal agencies to take this opportunity to comment on a proposed information collection. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

**DATES:** Written comments must be submitted on or before April 6, 2007.

**ADDRESSES:** Submit comments and recommendations on the proposed information collection in writing to the U.S. Election Assistance Commission, 1225 New York Avenue, NW., Suite 1100, Washington, DC 20005, *ATTN:* Ms. Laiza N. Otero (or via the Internet at [lotero@eac.gov](mailto:lotero@eac.gov)).

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the survey instrument, please, write to the above address or call Ms. Laiza N. Otero at (202) 566-3100. You may also view the proposed collection instrument by visiting our Web site at [www.eac.gov](http://www.eac.gov).

### SUPPLEMENTARY INFORMATION:

*Title:* Study of Voter Hotlines Operated by Election Offices.

*OMB Number:* Pending.

*Type of Review:* Regular submission.

*Needs and Uses:* Section 241(b)(9) of the Help America Vote Act (HAVA) requires the U.S. Election Assistance Commission (EAC) to periodically study election administration issues, including methods of educating voters about the process of registering to vote and voting, the operation of voting mechanisms, the location of polling places, and all other aspects of participating in elections. Furthermore, Section 245(a)(2)(C) of HAVA indicates that the EAC may investigate the impact new communications or Internet technology systems used in the electoral process could have on voter participation rates, voter education, and public accessibility. In 2005, the EAC undertook a research study of voter hotline data available online to determine trends. At the time a voter hotline was defined as a toll-free line that connects voters with elections offices, which then disseminate information and educate voters. The EAC found several hotlines in operation during the 2004 Presidential election, and their sponsorship and capabilities varied to a great degree. To build on and augment these research findings, the EAC wishes to conduct a study to determine the current state of voter information hotlines that are operated by Federal, State, and local election offices. The definition of voter hotline has been broadened to include data from government agencies that employ non-toll free interactive phone systems to provide services to voters and pollworkers and to receive information from callers.

*Affected Public:* Federal, State, and local election offices.

*Estimated Number of Respondents:* 6,500.

*Responses per Respondent:* 1.

*Estimated Burden per Response:* 1 hour.

*Estimated Total Annual Burden Hours:* 6,500 hours.

Information will be collected through a survey of existing hotline services operated by Federal, State, and local government agencies and election offices during the 2006 primary and general elections. The data collected will include information on voter hotlines operated by election offices and their features, including, but not limited to:

1. *Basic Information.* Hotline hours of operation, type of information available through the hotline, automated or non-

automated service, links to other sources of voting information.

2. *Costs.* Breakdown of cost based on volume, cost of database maintenance per record, and all personnel and administrative costs of the service.

3. *Features.* Important factors include, but are not limited to: (1) Languages used, (2) disability-compliant features, (3) touch tone and voice services, (4) voice response options, and (5) ability for interactivity with additional databases (for example interactivity with a voter registration database).

4. *Network Capacity.* Number of calls capable of being routed per hour and the number of incoming calls that can be received.

5. *Call Tracking.* How calls are logged or tracked, how they are routed, and the types or categories of calls received.

6. *Hotline personnel.* Number of hotline operators and methods by which hotline operators are trained, the frequency of their training and how they are monitored for accuracy, currency, security, and other critical performance variables.

7. Methods by which the network operator maintains the accuracy and currency of the data. Important factors include, but are not limited to how regularly updates are made and quality-control procedures.

8. *Maintenance agreements with service providers.* Percentage of hotlines that outsource all or part of the Hotline, and experiences working with contractors?

9. *Timelines* for database creation, contractor integration, and final testing before launch.

10. Security measures to ensure that data in the call-routing network is confidential.

11. *Other information* such as: Who the intended audience is; demographic, political and socioeconomic information of the community served; cost of publicizing the service and effectiveness of various publicity methods; and lessons learned.

A report on the key findings of the study, along with recommendations for the development and implementation of voter hotlines, will be made available to election officials and the public at the conclusion of this effort. The report will include a state-by-state compendium of the existing voter hotlines and their features. The report will be made available on the EAC Web site at <http://www.eac.gov>.

**Thomas R. Wilkey,**

*Executive Director, U.S. Election Assistance Commission.*

[FR Doc. 07-533 Filed 2-6-07; 8:45 am]

BILLING CODE 6820-KF-M

010075



Laiza N. Otero/EAC/GOV

04/13/2007 01:11 PM

To Karen Lynn-Dyson/EAC/GOV@EAC

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

bcc

Subject Voter Hotlines

For this study, we have not submitted a package to OMB. The Contractor has provided the requested information, and I am preparing the documentation for Julie to review and approve. They have done the initial 60-day FR Notice, and I am attaching that along with the draft collection instruments.



VH.60-Day FR Notice.2.7.07pub.pdf



Voter Hotline Survey.60-Day Comment Period.pdf

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## U.S. Election Assistance Commission

### Voter Hotline Study

#### Background:

The U.S. Election Assistance Commission has commissioned The Pollworker Institute (PI) and the International Foundation for Election Systems (IFES) to conduct a survey on the current state-of-the-art in election hotlines operated by Federal, State and local government agencies and election offices. The data will serve as the basis for a report to the EAC that highlights the experiences and opinions of people like you who set-up, operate, and maintain the country's voter and pollworker hotlines.

This survey is for **research** purposes only. We are not selling anything and we are not associated with or being paid by any political party or candidate. Your participation is voluntary and will only take a few minutes. All of your answers will be kept **strictly confidential** and will not be connected to your name or the name of your office.

This survey should be completed by the person in your office **most knowledgeable about your office's phone hotlines** and/or voter information programs. If there is someone in your office who is more knowledgeable, please give your log-on and password to the person and request that he or she complete the survey.

Your time is valuable to us, and we thank you for your time!

If your office does not have voter and/or pollworker hotlines, it is still important that you complete the initial portion of this survey in order to help us collect the most scientifically valid results possible.

#### Q1. Please indicate your level of government:

1. Federal [GO TO Q4]
2. State [GO TO Q3b]
3. County [GO TO Q2a]
4. City [GO TO Q2b]
9. (No answer) [GO TO Q3]

IF COUNTY OFFICE, ASK:

#### Q2a. What county or counties does your office serve?

- [Open text response] [GO TO Q3a]  
9 (No answer)

IF CITY OFFICE, ASK:

#### Q2b. What town/city does your office serve?

- [Open text response] [GO TO Q3a]  
9 (No answer)

IF COUNTY OR CITY OFFICE, ASK:

#### Q3a. And what state is this jurisdiction in?

- [Dropdown menu with list of states] [GO TO Q4]  
9 (No answer)

IF STATE OFFICE, ASK:

**Q3b. What state does your office serve?**

[Dropdown menu with list of states] [GO TO Q4]

9 (No answer)

ASK ALL:

**Q4. During the 2006 Election season, did your office operate a phone "hotline" separate from your office's main number to provide services or information to voters or pollworkers in your area?**

1. Yes
2. No [GO TO DEMOGRAPHICS]
9. (No answer)

IF HOTLINE, ASK:

**Q5. How many dedicated phone hotlines did your office operate?**

\_\_\_ Record 2-digit response]

9999 (No answer)

IF ONLY ONE HOTLINE, ASK:

**Q6a. Was this a voter hotline toll-free (1-800) or a normal toll-call hotline?**

1. Voter hotline toll-free (1-800)
2. Normal toll-call hotline
9. (No answer)

**Q7a. And does this voter hotline operate year round, only during the election season, or only on Election Day?**

1. Year round
2. Only during election season
3. Only on Election Day
9. (No answer)

IF MORE THAN ONE HOTLINE, ASK:

**Q6b. Please indicate how many, if any, of these hotlines are toll-free (1-800) and how many are normal toll call phone numbers.**

\_\_\_ toll-free (1-800)

\_\_\_ normal toll-call

9999 (No answer)

**Q7b. Do your office's toll-free (1-800) hotline(s) operate year round, only during election season, or only on Election Day? (mark all that applies)**

1. Year round
2. Only during election season
3. Only on Election Day
9. (No answer)

**Q7c. And how about your office's normal toll-call hotline(s)? Do they operate year round, only during election season, or only on Election Day? (mark all that applies)**

1. Year round
2. Only during election season
3. Only on Election Day
9. (No answer)

**Q8. For each of the following areas of election services, please indicate if the service is available to voters through any of your office's dedicated toll-free phone hotline(s), normal toll-call hotline(s), or not offered. (multiple responses accepted)**

	Yes, available through toll-free hotline	Yes, available through normal toll hotline	Not offered	(No answer)
Voter registration – am I registered?	1	2	3	9
Absentee ballot information – request, status of request	1	2	3	9
Information on voting location and hours	1	2	3	9
Information on voting system used in voter's polling place	1	2	3	9
Information on accessibility provisions in polling locations for voters with disabilities	1	2	3	9
Provisional ballot status	1	2	3	9
Voter information specific to Overseas and Military Voters (UOCAVA ballot sent, received (status))	1	2	3	9
How to be a pollworker	1	2	3	9
Clarification of laws and/or procedures	1	2	3	9
Report fraud – file HAVA complaint	1	2	3	9
Other general voter complaints/concerns	1	2	3	9

**Q9. Please indicate if this is available to pollworkers through your office's dedicated toll-free phone hotline(s), normal toll-call hotline, or not offered.**

	Yes, available through toll-free hotline	Yes, available through normal toll hotline	Not offered	(No answer)
Pollworker recruiting and pollworker information (assignment, training schedule, etc.)	1	2	3	9
Election Day Hotlines for Pollworkers (clarification on laws and procedures, troubleshooting with voting system problems, "no-show" pollworkers, missing supplies, etc.)	1	2	3	9
Automated system for pollworkers to signal the open/closed station of that polling location	1	2	3	9

**Q10. Thinking only about the calls made to your hotline(s) on Election Day, approximately what percentage of calls are made to the following categories? (Just your best guess is fine)**

- \_\_\_ % Am I registered?
- \_\_\_ % Where do I vote?
- \_\_\_ % Did you get my absentee ballot?
- \_\_\_ % I suspect fraud
- \_\_\_ % I have a complaint (non-fraud related)
- \_\_\_ % Other (specify) \_\_\_\_\_
- 9999 (No answer)



**Q11. Does your office's hotline(s) operate solely in English or do you offer support in a language other than English?**

1. English only
2. Languages other than English
9. (No answer)

*IF LANGUAGE OTHER THAN ENGLISH AVAILABLE, ASK:*

**Q12. Which, if any, of the following languages are available through your office's hotline(s)?**

	Available	Not available	(No answer)
Chinese	1	2	9
Japanese	1	2	9
Korean	1	2	9
Spanish	1	2	9
Tagalog	1	2	9
Vietnamese	1	2	9
Other language(s) (specify)	1	2	9

**Q13. Does your office offer a number that is equipped with TTY or TTD technology for the hearing impaired?**

1. Yes
2. No
9. (No answer)

*IF ONLY ONE HOTLINE, ASK:*

**Q14a. Is your dedicated voter hotline initially answered by a live operator or is it answered by an automated system?**

1. Answered by a live operator
2. Answered by an automated system
9. (No answer)

*IF MORE THAN ONE HOTLINE, ASK:*

**Q14b. Are your dedicated voter hotlines answered by a live operator or are they answered by an automated system or do you have both kinds of hotlines?**

1. Answered by a live operator
2. Answered by an automated system
3. Have both a hotline answered by live operator and one answered by automated system
9. (No answer)

*IF HAVE HOTLINE ANSWERED BY A LIVE OPERATOR, ASK:*

**Q15a. Why did your office choose to have a live-operator hotline rather than an automated one? For each of the following, please indicate whether this was a "minor reason", "major reason", or "not a reason".**

	Minor reason	Major reason	Not a reason	(No answer)
A. Costs	1	2	3	9
B. Availability of staff	1	2	3	9
C. Anticipated call volume	1	2	3	9
D. Wait times / time on hold	1	2	3	9
E. Special needs of voters in jurisdiction	1	2	3	9
F. Other (specify _____)	1	2	3	9

IF HAVE AUTOMATED HOTLINE, ASK:

**Q15b. Why did your office choose to have an automated hotline rather than one answered by a live operator? For each of the following, please indicate whether this was a "minor reason", "major reason", or "not a reason."**

	Minor reason	Major reason	Not a reason	(No answer)
A. Costs	1	2	3	9
B. Availability of staff	1	2	3	9
C. Anticipated call volume	1	2	3	9
D. Wait times / time on hold	1	2	3	9
E. Special needs of voters in jurisdiction	1	2	3	9
F. Other (specify _____)	1	2	3	9

For the next few questions, please think back to when you first developed your office's dedicated hotline to provide service or information to voters and/or pollworkers. (If your office operates more than one hotline, please think about the most recent hotline developed by your office).

**Q16. Overall, how would you describe your office's experience developing the hotline? Would you say the overall process for developing the hotline was very easy, somewhat easy, somewhat hard or very hard?**

1. Very easy
2. Somewhat easy
3. Somewhat hard
4. Very hard
9. (No answer)

**Q17. And did you develop the hotline in-house or did you outsource most or all of the work to another company or organization?**

1. Developed the hotline in-house
2. Outsourced some of the development work
3. Outsourced most of the development work
4. Outsourced all of the development work
9. (No answer)

IF OUTSOURCE SOME, MOST, OR ALL, ASK:

**Q18. How would you rate your satisfaction with this service provider?**

1. Very satisfied
2. Somewhat satisfied
3. Somewhat unsatisfied
4. Very unsatisfied
9. (No answer)

**Q19. Approximately how many months did it take you to develop the hotline—from the time that you started planning the hotline's features to when the hotline was fully operational?**

\_\_\_\_ months  
9999 (No answer)

**Q20. Approximately, how much did it cost for your office to develop and implement the hotline?**

\_\_\_\_ USD  
9999 (No answer)

**Q21. What words of advice would you offer to another jurisdiction like yours that was planning to develop its own hotline to provide services and/or information to voters or pollworkers?**

[open-ended text box]

9 (No answer)

**IF HAVE AUTOMATED HOTLINE:** For the next several questions, we'd like you to think about the gathering and maintenance of the information used by your hotline (If your office operates more than one hotline, please think about the most recent hotline developed by your office).

**IF HAVE OPERATOR-ANSWERED HOTLINE:** For the next several questions, we'd like you to think about the day-to-day operation of your hotline (If your office operates more than one hotline, please think about the most recent hotline developed by your office).

**Q22. Does your office handle in-house the day-to-day maintenance of information and/or databases used by your hotline or do you outsource some, most or all of the work to another company or organization?**

1. Handle maintenance of information completely in-house
2. Outsourced some of the work
3. Outsourced most of the work
4. Outsourced all of the work
9. (No answer)

**IF OUTSOURCE SOME, MOST, OR ALL, ASK:**

**Q23. How would you rate your satisfaction with this service provider?**

1. Very satisfied
2. Somewhat satisfied
3. Somewhat unsatisfied
4. Very unsatisfied
9. (No answer)

**IF HAVE OPERATOR-ANSWERED HOTLINE, ASK:**

**Q24. Do your call-takers have a protocol card or software system to guide their interaction with callers or does your office use a non-structured and non-automated approach to respond to callers questions?**

1. Use protocol cards / checklist script
2. Use automated script / protocol software system
3. Use BOTH protocol cards and an automated software system
4. Use a non-structured and non-automated approach
9. (No answer)

**IF HAVE OPERATOR-ANSWERED HOTLINE, ASK:**

**Q25a. What databases, if any, do your hotline operators have access to?**

1. Voter registration database
2. Pollworker management database
3. Absentee ballot database
4. Provisional ballot database
5. Polling-place lookup database
9. (No answer)

*IF ONE AUTOMATED HOTLINE, ASK:*

**Q25b. What databases, if any, are integrated with your hotline(s) system?**

1. Voter registration database
2. Pollworker management database
3. Absentee ballot database
4. Provisional ballot database
5. Polling-place lookup database
9. (No answer)

*IF MORE THAN AUTOMATED ONE HOTLINE, ASK:*

**Q25c. Thinking about all the dedicated hotlines your office operates to provide information or services to voters or pollworkers, what databases, if any, are integrated with your hotline(s) system?**

1. Voter registration database
2. Pollworker management database
3. Absentee ballot database
4. Provisional ballot database
5. Polling-place lookup database
9. (No answer)

*IF STATE OFFICE, ASK:*

**Q26. Does your hotline have access to statewide voter registration lists?**

1. Yes
2. No
9. (No answer)

*IF STATE OFFICE, ASK:*

**Q27. Is your office's hotline able to give callers the general contact information for their specific county/township election office?**

1. Yes, operators have a hard copy list of phone numbers of county/city offices
2. Yes, operators have access to a database of phone numbers for counties/cities on the computer at their workstation
3. Operators are provided access to local jurisdiction's databases so they can provide immediate assistance.
9. (No answer)

*IF STATE OFFICE, ASK:*

**Q28. Does your office have a list of voter information hotlines operated by subordinate jurisdictions in your state?**

1. Yes
2. No
9. (No answer)

*IF HAVE AUTOMATED SYSTEM, ASK:*

**Q29a. During election season, how often are updates made to the system?**

1. In real time / as changes are made
2. Daily
3. Weekly
3. Monthly
4. Only at the end of the canvass/audit period
5. None of the above
9. (No answer)

IF HAVE OPERATOR-ANSWERED HOTLINE, ASK:

Q29b. During election season, how often are updates made to the information operators have access to?

- 1. In real time / as changes are made
- 2. Daily
- 3. Weekly
- 3. Monthly
- 4. Only at the end of the canvass/audit period
- 5. None of the above
- 9. (No answer)

Q30. Over the last year, what were the total costs including administration and personnel costs associated with maintaining and/or updating the information for your hotline?

\_\_\_\_ USD  
9999 (No answer)

ONLY IF HAVE AUTOMATED HOTLINE, ASK:

Q31. Is there a database maintenance charge per record?

- 1. Yes
- 2. No
- 9. (No answer)

IF CHARGE, ASK:

Q32. What is the monetary charge per call?

\_\_\_\_ USD  
9999 (No answer)

IF AUTOMATED HOLTINE, ASK:

Q33a. What advice about information gathering and maintenance would you offer to a jurisdiction such as yours that is setting up a voter hotline?

[open-ended text box]  
9 (No answer)

IF OPERATOR-ANSWERED HOLTINE, ASK:

Q33b. What advice about the day-to-day operation of a hotline would you offer to a jurisdiction such as yours that is setting up a voter hotline?

[open-ended text box]  
9 (No answer)

IF AUTOMATED HOLTINE, ASK:

Q34. Does your automated hotline system have the following features....

	Yes	No	(No answer)
Track the wait time of calls	1	2	9
Track the duration of calls	1	2	9
Track the disposition of each call	1	2	9

Q35. Do you currently track the type of call or information being sought after by the caller (for example, polling place lookup or absentee ballot status, etc.)?

- 1. Yes, track manually
- 2. Yes, track through automated system
- 3. No, don't currently track
- 9 (No answer)

**Q36. What is the average wait time for calls made to your hotline? (just your best guess is fine)**

- 98 not enough information to answer
- 99 (no answer)

**Q37. What is the average duration of calls made to your hotline once a caller is connected? (just your best guess is fine)**

- 98 not enough information to answer
- 99 (no answer)

**Q38. What is the number of incoming calls that can be received at one time?**

- 98 not enough information to answer
- 99 (no answer)

**Q39. Historically, what is the largest number of calls received in one day?**

- 98 not enough information to answer
- 99 (no answer)

**IF AUTOMATED HOTLINE, ASK:**

**Q40. Are callers able to exit the automated portion of the hotline and speak to an operator or is your hotline 100% automated?**

- 1. able to speak to an operator
- 2. 100% automated
- 9. (No answer)

**ONLY IF ABLE TO SPEAK TO OPERATOR:**

For the next few questions, we'd like you to think about the people who operate or staff the hotline and take calls.

**IF ABLE TO SPEAK TO OPERATOR, ASK:**

**Q41. Does your office handle in-house the day-to-day operation and staffing of the operators who take hotline calls, or do you outsource some, most or all of the staffing of the hotline staff to another company or organization?**

- 1. Handle day-to-day operation and staffing completely in-house
- 2. Outsourced some of the day-to-day operation and staffing
- 3. Outsourced most of the day-to-day operation and staffing
- 4. Outsourced all of the day-to-day operation and staffing
- 9. (No answer)

**IF OUTSOURCE SOME, MOST or ALL, ASK:**

**Q42. How would you rate your satisfaction with this service provider?**

- 1. Very satisfied
- 2. Somewhat satisfied
- 3. Somewhat unsatisfied
- 4. Very unsatisfied
- 9. (No answer)

IF ABLE TO SPEAK TO OPERATOR, ASK:

**Q43. During peak times or seasons what is the average number of full-time and part time hotline operators?**

- \_\_\_ full-time
- \_\_\_ part-time
- 9998 Not sure
- 9999 (No answer)

IF ABLE TO SPEAK TO OPERATOR, ASK:

**Q44. During non-peak peak times or seasons what is the average number of full-time and part time hotline operators?**

- \_\_\_ full-time
- \_\_\_ part-time
- 9998 Not sure
- 9999 (No answer)

IF ABLE TO SPEAK TO OPERATOR, ASK:

**Q45. For each of the following, please indicate whether or not this method is used to train hotline operators:**

	Used	Not used	Not sure / Not enough information to answer	(No answer)
Classroom lectures	1	2	8	9
Role playing / simulated calls	1	2	8	9
Computer-based tutorial	1	2	8	9
Shadowing experienced operator or person	1	2	8	9

IF ABLE TO SPEAK TO OPERATOR, ASK:

**Q46. Are all operators, regardless of their level of experience, trained before each major election cycle?**

- 1. Yes
- 2. No
- 9. (No answer)

IF ABLE TO SPEAK TO OPERATOR, ASK:

**Q47. Switching topics, what, if any, systematic effort does your office undertake to monitor the hotline for accuracy, security, or other critical performance variables?**

	Yes	No	Not sure / Not enough information to answer	(No answer)
Periodic listening in on calls	1	2	8	9
Tracking of complaints	1	2	8	9
Other (please describe)	1	2	8	9

**Q48. When a voter calls the hotline seeking information such as voting location, absentee ballot request, change of address, do you have a standardized procedure for verifying the caller's identity such as verifying social security number, date of birth, etc?**

- 1. Yes, always
- 2. Yes, sometimes
- 3. No
- 9. (No answer)

**Q49. Which, if any of the following security measures do you employ?**

	Yes	No	Not enough information to answer	(No answer)
The data utilized by the hotline(s) is secured behind a firewall.	1	2	3	9
Operators need a secure password to access data.	1	2	3	9

**Q50. Thinking now about possible outreach efforts, what methods, if any, do you use to inform voters about your voter hotline?**

	Use	Don't use	(No answer)
Advertise number in election mailing/sample ballot	1	2	9
Publicize number on office's website	1	2	9
Ads in local or community paper	1	2	9
Phone company operator	1	2	9
Handouts at polling place	1	2	9

**Q51. Last year, approximately how much did you spend specifically on publicizing your office's hotline(s)?**

\_\_\_\_ USD  
 9999 (No answer)

We have just a few more questions to help us better understand the types of election offices taking part in our survey.

**Q52. How many full-time and part-time staff work in your election office?**

\_\_\_\_ full-time  
 \_\_\_\_ part-time  
 9999 (No answer)

**Q53. Approximately how many voters are in your jurisdiction?**

\_\_\_\_ [7-digit numeric response]  
 9 (No answer)

**Q54. How would you describe the area of your jurisdiction?**

- 1. Mainly rural
- 2. Mainly urban
- 3. Mainly suburban
- 4. Mixed
- 9. (No answer)

**Q55. About what percentage of the voters in your area would you say are well-off, about average, and poorer than average? (just your best guess is fine)**

\_\_\_\_ % well-off  
 \_\_\_\_ % about average  
 \_\_\_\_ % poorer than average  
 9999 (No answer)

**Q56. About what percentage of the voters in your jurisdiction have a limited English proficiency? (just your best guess is fine)**

\_\_\_\_ %  
 9999 (No answer)



**Q57. If your office required by federal law to publish election materials in a language other than English?**

- 1. Yes
- 2. No
- 9. (No answer)

**Q58. Would you be willing to speak with one of our project researchers about your office's experience with hotlines?**

- 1. Yes
- 2. No
- 9. (No answer)

**IF WILLING TO BE CONTACTED, ASK:**

**Q59. Please fill in your contact information below:**

First name:  
Last name:  
Phone number:  
Email:

\*This information collection is required for the EAC to meet its statutory requirements under the Help America Vote Act (HAVA) of 2002 (42 U.S.C. 15301). Respondent's obligation to reply to this information collection is voluntary; respondents include election offices in the 50 States and the District of Columbia. This information will be made publicly available on the EAC website at [www.eac.gov](http://www.eac.gov). According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB Control No. pending (expires: to be determined). The time required to complete this information collection is estimated to average 30 minutes per response. Comments regarding this burden estimate should be sent to the Program Manager – 2007 Study of the Voter Hotlines, U.S. Election Assistance Commission, 1225 New York Ave. NW, Suite 1100, Washington, DC 20005.



"Jennifer Collins -Foley"

04/20/2007 04:27 PM

To "Karen Lynn Dyson" <klynndyson@eac.gov>, "Laiza Otero" <lotoero@eac.gov>  
cc "Karen Buerkle" <kbuerkle@ifes.org>, "Scott Lansell" <slansell@ifes.org>, "Connie Schmidt" <scjschmidt@aol.com>

bcc









Subject EAC Voter Hotline Survey: OMB Package

Hi Karen and Laiza,

Attached are 8 documents for the OMB Package, including a Summary of changes made to the survey after the 60-day public commenting period. We believe that the survey is in really good shape and benefited from feedback and pre-tests with sample jurisdictions. Please let us know when you have forwarded the package to OMB as we are anxiously watching the timeline!

- **Hotline\_QQ\_for\_OMB\_package.doc (282k)**
- **HAVA\_241\_b\_9.doc (31k)**
- **OMB\_83\_I\_Hotline\_survey.pdf (305k)**
- **Summary\_of\_Public\_Comments\_for\_Voter\_Hotline.doc (24k)**
- **Supporting\_Statements\_A\_and\_B\_hotline\_SURVEY.doc (64k)**
- **VH\_30\_Day\_FR\_Notice\_2007.doc (47k)**
- **VH.60\_Day\_FR\_Notice.2.7.07pub.pdf**

Best Regards, Jennifer and the PI/IFES Team

-  HAVA\_241\_b\_9.doc
  Hotline\_QQ\_for\_OMB\_package[1].doc
  OMB\_83\_I\_Hotline\_survey.pdf
-  Summary\_of\_changes\_made\_to\_Hotline\_survey\_after\_60.doc
  Summary\_of\_Public\_Comments\_for\_Voter\_Hotline.doc
-  Supporting\_Statements\_A\_and\_B\_hotline\_SURVEY.doc
  VH[1].60\_Day\_FR\_Notice.2.7.07pub.pdf
-  VH\_30\_Day\_FR\_Notice\_2007.doc

010089

**SEC. 241. <<NOTE: 42 USC 15381.>> PERIODIC STUDIES OF ELECTION ADMINISTRATION ISSUES.**

(a) <<NOTE: Public information.>> In General.--On such periodic basis as the Commission may determine, the Commission shall conduct and make available to the public studies regarding the election administration issues described in subsection (b), with the goal of promoting methods of voting and administering elections which--

(1) will be the most convenient, accessible, and easy to use for voters, including members of the uniformed services and overseas voters, individuals with disabilities, including the blind and visually impaired, and voters with limited proficiency in the English language;

(2) will yield the most accurate, secure, and expeditious system for voting and tabulating election results;

(3) will be nondiscriminatory and afford each registered and eligible voter an equal opportunity to vote and to have that vote counted; and

(4) will be efficient and cost-effective for use.

**(b) Election Administration Issues Described.--For purposes of subsection (a), the election administration issues described in this subsection are as follows:**

(1) Methods and mechanisms of election technology and voting systems used in voting and counting votes in elections for Federal office, including the over-vote and under-vote notification capabilities of such technology and systems.

(2) Ballot designs for elections for Federal office.

(3) Methods of voter registration, maintaining secure and accurate lists of registered voters (including the establishment of a centralized, interactive, statewide voter registration list linked to relevant agencies and all polling sites), and ensuring that registered voters appear on the voter registration list at the appropriate polling site.

(4) Methods of conducting provisional voting.

(5) Methods of ensuring the accessibility of voting, registration, polling places, and voting equipment to all voters, including individuals with disabilities (including the blind and visually impaired), Native American or Alaska Native citizens, and voters with limited proficiency in the English language.

(6) Nationwide statistics and methods of identifying, deterring, and investigating voting fraud in elections for Federal office.

(7) Identifying, deterring, and investigating methods of voter intimidation.

(8) Methods of recruiting, training, and improving the performance of poll workers.

**(9) Methods of educating voters about the process of registering to vote and voting, the operation of voting mechanisms, the location of polling places, and all other aspects of participating in elections.**

(10) The feasibility and advisability of conducting elections for Federal office on different days, at different places, and

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## SUPPORTING STATEMENTS

OMB Control Number: xxxx-xxxx

U.S. Election Assistance Commission

### RESEARCH ASSISTANCE TO THE U.S. ELECTION ASSISTANCE COMMISSION TO STUDY VOTER HOTLINES OPERATED BY GOVERNMENT AGENCIES AND ELECTION OFFICES

#### A. JUSTIFICATION

**1. Explain the circumstances that make the collection of information necessary.**

Section 241(b)(9) of the Help America Vote Act (HAVA) requires the U.S. Election Assistance Commission (EAC) to periodically study election administration issues, including methods of educating voters about the process of registering to vote and voting, the operation of voting mechanisms, the location of polling places, and all other aspects of participating in elections. Furthermore, Section 245(a)(2)(C) of HAVA indicates that the EAC may investigate the impact that new communications or Internet technology systems used in the electoral process could have on voter participation rates, voter education, and public accessibility.

The EAC seeks to conduct a study to determine the current state of voter information hotlines that are operated by Federal, State and local government agencies and election offices. The data will serve as the basis for a report on voter hotlines currently operating in this country.

**2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.**

In 2005, the EAC undertook a research study of voter hotline data available online to determine trends. A voter hotline is defined as a toll-free line that connects voters with elections offices, which then disseminate information and educate voters. The EAC found that there were several hotlines in operation during the 2004 Presidential election, and their sponsorship and capabilities varied to a great degree. To build on and augment these research findings, the EAC wishes to conduct another study to determine the current state of voter information hotlines that are operated by Federal, State and local government agencies and election offices.

The information will be gathered through a one-time Internet survey of Federal, State and local government agencies and election offices.

Based upon the information gathered in the study, the EAC will draft a report on the current state of voter hotlines currently operating in this country.

**3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.**

The collection of information does utilize web-based internet software to conduct the opinion survey. This survey will be a self-administered electronically.

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**4. Describe efforts to identify duplication.**

This is the second study conducted by the EAC on the part of HAVA Section 241 (b) (9). In 2005, the EAC undertook a pilot research study of voter hotline data available online to determine trends. The purpose of this survey is to build on and augment this previous research conducted by the EAC.

The study contractor has reviewed previous and contemporaneous information on information hotlines offered by U.S. election offices to eliminate duplication.

**5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.**

This collection of information does not involve small businesses or other small entities.

**6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.**

Section 241 (b) (9) of the Help American Vote Act requires the EAC to collect this information to draft a report on voter hotlines currently operating in this country.

If the collection is not conducted, the EAC will be unable to fulfill Section 241 (b) (9) of HAVA. Furthermore, without this information the EAC will be unable to draft a report on voter hotlines operating in this country.

**7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.**

Not applicable.

**8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.**

This information collection request did not receive any public comments.

In drafting the survey questionnaire, the study contractor consulted extensively with U.S. election officials in small, medium and large jurisdictions.

The study contractor, IFES, has more than ten years of experience in conducting innovative and effective public opinion research around the world. IFES' survey and focus group capabilities provide relevant and reliable information on the opinions and attitudes in a country to government officials, development professionals, political actors, academics and others interested in democratic and political development. Further, a key strength of IFES' research is

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its use of a standard set of questions gauging sociopolitical development in most surveys we perform. Data from these questions can help researchers compare attitudes and opinions from country to country and across time in a single nation. To date, IFES has conducted more than 60 public opinion research projects in 24 countries around the world.

In addition to its survey capability, IFES has worked with election assistance and democratic development in over 100 countries since 1987. IFES' international professionals ensure that democracy solutions are home grown. IFES professionals provide technical assistance across many areas of democracy development. With its experience promoting democracy abroad, IFES has begun to work to strengthen democracy in the U.S.

The study contractor worked in tandem with the Pollworker Institute. The Pollworker Institute is a nonprofit organization dedicated to improving the recruitment and training of pollworkers. IFES and the Pollworker Institute have previously collaborated under a contract enacted in late September 2005 under the U.S. Election Assistance Commission (EAC). In partnership with the League of Women Voters (LWV), IFES and the Pollworker Institute are finalizing a year-long research project aimed at improving pollworker recruitment, training and retention in the United States. The project will develop better recruitment, training and retention methods to improve the Election Day experience for voters and election officials.

**9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.**

Respondents are voluntary and they will not be provided any incentives to participate.

**10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.**

Prior to volunteering to participate, respondents will be given a written pledge of confidentiality

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.**

There are no questions of a sensitive nature.

**12. Provide an estimate in hours of the burden of the collection of information.**

The burden to each respondent is .5 hours. This survey will be sent to each election jurisdictions in the US resulting in six thousand four hundred and fifty-five (6,455) respondents being sent the survey. Based on a 30% response rate the total annual burden is estimated at 968.5 hours.

**13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in #12 above).**

We have identified no reporting and recordkeeping "non-hour cost" burdens associated with this proposed collection of information.

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**14. Provide estimates of annualized cost to the Federal government.**

The estimated cost to the Federal Government is \$50,000. We estimate \$1,600 for the data collection software, \$47,700 in personnel to design and monitor the data collection exercise, and \$700 in office expenses including communication and printing costs.

**15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.**

This is the first time this information collection has been performed by the Federal government.

**16. For collections whose results will be published, outline the plans for tabulation and publication.**

The results from this information collection will be summarized into a report on voter hotlines currently operating in this country.

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.**

Not applicable to this collection.

**18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.**

To the extent that the topics apply to this collection of information, we are not making any exceptions to the "Certification for Paperwork Reduction Act Submissions."

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

*(If your collection does not employ statistical methods, just say that and delete the following five questions from the format.)*

**1. Describe (including a numerical estimate) the potential respondent universe and any sampling or other respondent selection method to be used. Data on the number of entities (e.g. establishments, State and local governmental units, households, or persons) in the universe and the corresponding sample are to be provided in tabular form. The tabulation must also include expected response rates for the collection as a whole. If the collection has been conducted before, provide the actual response rate achieved.**

This data collection request is a census of all US state, country, and local election offices. As attempts will be made to contact and collection information from each entity in the potential respondent universe, no statistical sampling procedures are needed. However, as a part of this data collection exercise will monitor and report response rates including, based on available information, contact and cooperation rates.

Based on previous studies on this population, we estimate that we will achieve a 30% response

rate.

**2. Describe the procedures for the collection, including: the statistical methodology for stratification and sample selection; the estimation procedure; the degree of accuracy needed for the purpose described in the justification; any unusual problems requiring specialized sampling procedures; and any use of periodic (less frequent than annual) data collection cycles to reduce burden.**

As this study is a census of all election jurisdictions in the US, sampling techniques will not be used. Using information gathered for the Election Assistance Commission and State Election offices, we will send this data collection instrument to the universe of election office in the US that administer federal elections.

**3. Describe the methods used to maximize response rates and to deal with nonresponse. The accuracy and reliability of the information collected must be shown to be adequate for the intended uses. For collections based on sampling, a special justification must be provided if they will not yield "reliable" data that can be generalized to the universe studied.**

Although no sampling will be employed, to maximize the chances of making contact with a potential respondent, the web-based survey will utilize a five-contact design, the timing of which will be approximately as follows:

- 1st contact: letter of introduction sent by email
- 2nd contact: email invitation with hyperlink to survey
- 3rd contact: email reminder
- 4th contact: second email reminder
- 5th contact: Final email reminder

The five-contact design will be staggered over the 25-day survey field period.

**4. Describe any tests of procedures or methods to be undertaken. Tests are encouraged as effective means to refine collections, but if ten or more test respondents are involved OMB must give prior approval.**

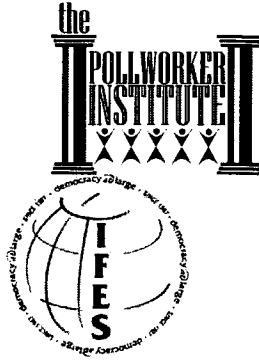
In total, five pretests were conducted. The survey instrument was tested in large, medium and small jurisdictions.

**5. Provide the name and telephone number of individuals consulted on the statistical aspects of the design, and the name of the agency unit, contractor(s), grantee(s), or other person(s) who will actually collect and/or analyze the information for the agency.**

Contractor contact: Dr. Karen Buerkle; 202-350-6741; [kbuerkle@ifes.org](mailto:kbuerkle@ifes.org)

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**April 20, 2007**

**TO: Karen Lynn-Dyson, U.S. Election Assistance Commission**

**FROM: The Pollworker Institute and IFES**

**RE: Summary of changes made to Hotline survey after 60-public commenting period: Voter Hotline Project (Contract#63507)**

cc: Laiza Otero, Scott Lansell, Karen Buerkle, Connie Schmidt

- Shortened the introductory language.
- Q4a added the words "phone-based information line, phone bank" due to pre-test respondents' confusion over the term "hotline". The language of "phone information line" was added repeatedly through out the survey, especially at the beginning, to help respondents understand what we mean by "hotline".
- Q4b added separate question on dedicated line rather than including it as part of Q4a in response to comments made in pre-test.
- Q4c added so as to collect information on provisional ballot measures for offices that do not have dedicated hotlines.
- Q7series modified to collect information on hours of operation in addition to season of operation in response to reviewer from county election office.
- Q8 added item on legal deadlines to request/return absentee ballot.
- Q8series broke "not offered" category into 1) not offered but person referred and 2) not offered, in response to comments made in the pre-test.

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- Q9 added item on pre-election day pollworker information, in response to reviewer from county election office.
- Q12 added clarification of “directly or via a referral program”, in response to comments made in the pre-test.
- Q13 added response options of a relay program, in response to comments made in the pre-test.
- Q14a added the words “even if momentarily put on hold”, in response to comments made in the pre-test.
- Q15a/b added the item “customer service”, based on comments of county election office reviewer.
- Q24 added “checklist script”, in response to comments made in the pre-test
- Q34 added item on category of call and call volume, in response to comments of county election office reviewer.
- Q37 added words “not including hold time”, in response to pre-test.
- Q50 added item on advertising through outreach partner, in response to comments made in pre-test.
- Q58 added question collecting hotline number, in response to request from EAC.

(April 2007)

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**Summary of Public Comments Received on the Information Collection  
Materials for the Study of Voter Hotlines Operated by Government  
Agencies and Election Offices**

**Public Comment Summary:**

This collection of information did not receive any public comments.

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## SUPPORTING STATEMENTS

OMB Control Number: xxxx-xxxx

U.S. Election Assistance Commission

### RESEARCH ASSISTANCE TO THE U.S. ELECTION ASSISTANCE COMMISSION TO STUDY VOTER HOTLINES OPERATED BY GOVERNMENT AGENCIES AND ELECTION OFFICES

#### A. JUSTIFICATION

**1. Explain the circumstances that make the collection of information necessary.**

Section 241(b)(9) of the Help America Vote Act (HAVA) requires the U.S. Election Assistance Commission (EAC) to periodically study election administration issues, including methods of educating voters about the process of registering to vote and voting, the operation of voting mechanisms, the location of polling places, and all other aspects of participating in elections. Furthermore, Section 245(a)(2)(C) of HAVA indicates that the EAC may investigate the impact that new communications or Internet technology systems used in the electoral process could have on voter participation rates, voter education, and public accessibility.

The EAC seeks to conduct a study to determine the current state of voter information hotlines that are operated by Federal, State and local government agencies and election offices. The data will serve as the basis for a report on voter hotlines currently operating in this country.

**2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.**

In 2005, the EAC undertook a research study of voter hotline data available online to determine trends. A voter hotline is defined as a toll-free line that connects voters with elections offices, which then disseminate information and educate voters. The EAC found that there were several hotlines in operation during the 2004 Presidential election, and their sponsorship and capabilities varied to a great degree. To build on and augment these research findings, the EAC wishes to conduct another study to determine the current state of voter information hotlines that are operated by Federal, State and local government agencies and election offices.

The information will be gathered through a one-time Internet survey of Federal, State and local government agencies and election offices.

Based upon the information gathered in the study, the EAC will draft a report on the current state of voter hotlines currently operating in this country.

**3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.**

The collection of information does utilize web-based internet software to conduct the opinion survey. This survey will be a self-administered electronically.

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**4. Describe efforts to identify duplication.**

This is the second study conducted by the EAC on the part of HAVA Section 241 (b) (9). In 2005, the EAC undertook a pilot research study of voter hotline data available online to determine trends. The purpose of this survey is to build on and augment this previous research conducted by the EAC.

The study contractor has reviewed previous and contemporaneous information on information hotlines offered by U.S. election offices to eliminate duplication.

**5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.**

This collection of information does not involve small businesses or other small entities.

**6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.**

Section 241 (b) (9) of the Help American Vote Act requires the EAC to collect this information to draft a report on voter hotlines currently operating in this country.

If the collection is not conducted, the EAC will be unable to fulfill Section 241 (b) (9) of HAVA. Furthermore, without this information the EAC will be unable to draft a report on voter hotlines operating in this country.

**7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.**

Not applicable.

**8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.**

This information collection request did not receive any public comments.

In drafting the survey questionnaire, the study contractor consulted extensively with U.S. election officials in small, medium and large jurisdictions.

The study contractor, IFES, has more than ten years of experience in conducting innovative and effective public opinion research around the world. IFES' survey and focus group capabilities provide relevant and reliable information on the opinions and attitudes in a country to government officials, development professionals, political actors, academics and others interested in democratic and political development. Further, a key strength of IFES' research is

its use of a standard set of questions gauging sociopolitical development in most surveys we perform. Data from these questions can help researchers compare attitudes and opinions from country to country and across time in a single nation. To date, IFES has conducted more than 60 public opinion research projects in 24 countries around the world.

In addition to its survey capability, IFES has worked with election assistance and democratic development in over 100 countries since 1987. IFES' international professionals ensure that democracy solutions are home grown. IFES professionals provide technical assistance across many areas of democracy development. With its experience promoting democracy abroad, IFES has begun to work to strengthen democracy in the U.S.

The study contractor worked in tandem with the Pollworker Institute. The Pollworker Institute is a nonprofit organization dedicated to improving the recruitment and training of pollworkers. IFES and the Pollworker Institute have previously collaborated under a contract enacted in late September 2005 under the U.S. Election Assistance Commission (EAC). In partnership with the League of Women Voters (LWV), IFES and the Pollworker Institute are finalizing a year-long research project aimed at improving pollworker recruitment, training and retention in the United States. The project will develop better recruitment, training and retention methods to improve the Election Day experience for voters and election officials.

**9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.**

Respondents are voluntary and they will not be provided any incentives to participate.

**10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.**

Prior to volunteering to participate, respondents will be given a written pledge of confidentiality

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.**

There are no questions of a sensitive nature.

**12. Provide an estimate in hours of the burden of the collection of information.**

The burden to each respondent is .5 hours. This survey will be sent to each election jurisdictions in the US resulting in six thousand four hundred and fifty-five (6,455) respondents being sent the survey. Based on a 30% response rate the total annual burden is estimated at 968.5 hours.

**13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in #12 above).**

We have identified no reporting and recordkeeping "non-hour cost" burdens associated with this proposed collection of information.

**14. Provide estimates of annualized cost to the Federal government.**

The estimated cost to the Federal Government is \$50,000. We estimate \$1,600 for the data collection software, \$47,700 in personnel to design and monitor the data collection exercise, and \$700 in office expenses including communication and printing costs.

**15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.**

This is the first time this information collection has been performed by the Federal government.

**16. For collections whose results will be published, outline the plans for tabulation and publication.**

The results from this information collection will be summarized into a report on voter hotlines currently operating in this country.

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.**

Not applicable to this collection.

**18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.**

To the extent that the topics apply to this collection of information, we are not making any exceptions to the "Certification for Paperwork Reduction Act Submissions."

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

*(If your collection does not employ statistical methods, just say that and delete the following five questions from the format.)*

**1. Describe (including a numerical estimate) the potential respondent universe and any sampling or other respondent selection method to be used. Data on the number of entities (e.g. establishments, State and local governmental units, households, or persons) in the universe and the corresponding sample are to be provided in tabular form. The tabulation must also include expected response rates for the collection as a whole. If the collection has been conducted before, provide the actual response rate achieved.**

This data collection request is a census of all US state, country, and local election offices. As attempts will be made to contact and collection information from each entity in the potential respondent universe, no statistical sampling procedures are needed. However, as a part of this data collection exercise will monitor and report response rates including, based on available information, contact and cooperation rates.

Based on previous studies on this population, we estimate that we will achieve a 30% response

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rate.

**2. Describe the procedures for the collection, including: the statistical methodology for stratification and sample selection; the estimation procedure; the degree of accuracy needed for the purpose described in the justification; any unusual problems requiring specialized sampling procedures; and any use of periodic (less frequent than annual) data collection cycles to reduce burden.**

As this study is a census of all election jurisdictions in the US, sampling techniques will not be used. Using information gathered for the Election Assistance Commission and State Election offices, we will send this data collection instrument to the universe of election office in the US that administer federal elections.

**3. Describe the methods used to maximize response rates and to deal with nonresponse. The accuracy and reliability of the information collected must be shown to be adequate for the intended uses. For collections based on sampling, a special justification must be provided if they will not yield "reliable" data that can be generalized to the universe studied.**

Although no sampling will be employed, to maximize the chances of making contact with a potential respondent, the web-based survey will utilize a five-contact design, the timing of which will be approximately as follows:

- 1st contact: letter of introduction sent by email
- 2nd contact: email invitation with hyperlink to survey
- 3rd contact: email reminder
- 4th contact: second email reminder
- 5th contact: Final email reminder

The five-contact design will be staggered over the 25-day survey field period.

**4. Describe any tests of procedures or methods to be undertaken. Tests are encouraged as effective means to refine collections, but if ten or more test respondents are involved OMB must give prior approval.**

In total, five pretests were conducted. The survey instrument was tested in large, medium and small jurisdictions.

**5. Provide the name and telephone number of individuals consulted on the statistical aspects of the design, and the name of the agency unit, contractor(s), grantee(s), or other person(s) who will actually collect and/or analyze the information for the agency.**

Contractor contact: Dr. Karen Buerkle; 202-350-6741; [kbuerkle@ifes.org](mailto:kbuerkle@ifes.org)

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Advisory Committee is available on the Committee's Web site, [www.ed.gov/ACSFA](http://www.ed.gov/ACSFA).

Dated: February 1, 2007.

**Dr. William J. Goggin,**  
Executive Director, Advisory Committee on  
Student Financial Assistance.

[FR Doc. 07-531 Filed 2-6-07; 8:45 am]

BILLING CODE 4000-01-M

## ELECTION ASSISTANCE COMMISSION

### Information Collection Activity; Study of Voter Hotlines Operated by Election Offices

**AGENCY:** U.S. Election Assistance Commission (EAC).

**ACTION:** Notice; request for comments.

**SUMMARY:** The EAC, as part of its continuing effort to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995, invites the general public and other Federal agencies to take this opportunity to comment on a proposed information collection. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

**DATES:** Written comments must be submitted on or before April 6, 2007.

**ADDRESSES:** Submit comments and recommendations on the proposed information collection in writing to the U.S. Election Assistance Commission, 1225 New York Avenue, NW., Suite 1100, Washington, DC 20005, *ATTN:* Ms. Laiza N. Otero (or via the Internet at [lotero@eac.gov](mailto:lotero@eac.gov)).

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the survey instrument, please, write to the above address or call Ms. Laiza N. Otero at (202) 566-3100. You may also view the proposed collection instrument by visiting our Web site at [www.eac.gov](http://www.eac.gov).

### SUPPLEMENTARY INFORMATION:

*Title:* Study of Voter Hotlines Operated by Election Offices.

*OMB Number:* Pending.

*Type of Review:* Regular submission.

*Needs and Uses:* Section 241(b)(9) of the Help America Vote Act (HAVA) requires the U.S. Election Assistance Commission (EAC) to periodically study election administration issues, including methods of educating voters about the process of registering to vote and voting, the operation of voting mechanisms, the location of polling places, and all other aspects of participating in elections. Furthermore, Section 245(a)(2)(C) of HAVA indicates that the EAC may investigate the impact new communications or Internet technology systems used in the electoral process could have on voter participation rates, voter education, and public accessibility. In 2005, the EAC undertook a research study of voter hotline data available online to determine trends. At the time a voter hotline was defined as a toll-free line that connects voters with elections offices, which then disseminate information and educate voters. The EAC found several hotlines in operation during the 2004 Presidential election, and their sponsorship and capabilities varied to a great degree. To build on and augment these research findings, the EAC wishes to conduct a study to determine the current state of voter information hotlines that are operated by Federal, State, and local election offices. The definition of voter hotline has been broadened to include data from government agencies that employ non-toll free interactive phone systems to provide services to voters and pollworkers and to receive information from callers.

*Affected Public:* Federal, State, and local election offices.

*Estimated Number of Respondents:* 6,500.

*Responses per Respondent:* 1.

*Estimated Burden per Response:* 1 hour.

*Estimated Total Annual Burden Hours:* 6,500 hours.

Information will be collected through a survey of existing hotline services operated by Federal, State, and local government agencies and election offices during the 2006 primary and general elections. The data collected will include information on voter hotlines operated by election offices and their features, including, but not limited to:

1. *Basic Information.* Hotline hours of operation, type of information available through the hotline, automated or non-

automated service, links to other sources of voting information.

2. *Costs.* Breakdown of cost based on volume, cost of database maintenance per record, and all personnel and administrative costs of the service.

3. *Features.* Important factors include, but are not limited to: (1) Languages used, (2) disability-compliant features, (3) touch tone and voice services, (4) voice response options, and (5) ability for interactivity with additional databases (for example interactivity with a voter registration database).

4. *Network Capacity.* Number of calls capable of being routed per hour and the number of incoming calls that can be received.

5. *Call Tracking.* How calls are logged or tracked, how they are routed, and the types or categories of calls received.

6. *Hotline personnel.* Number of hotline operators and methods by which hotline operators are trained, the frequency of their training and how they are monitored for accuracy, currency, security, and other critical performance variables.

7. Methods by which the network operator maintains the accuracy and currency of the data. Important factors include, but are not limited to how regularly updates are made and quality-control procedures.

8. *Maintenance agreements with service providers.* Percentage of hotlines that outsource all or part of the Hotline, and experiences working with contractors?

9. *Timelines* for database creation, contractor integration, and final testing before launch.

10. Security measures to ensure that data in the call-routing network is confidential.

11. *Other information* such as: Who the intended audience is; demographic, political and socioeconomic information of the community served; cost of publicizing the service and effectiveness of various publicity methods; and lessons learned.

A report on the key findings of the study, along with recommendations for the development and implementation of voter hotlines, will be made available to election officials and the public at the conclusion of this effort. The report will include a state-by-state compendium of the existing voter hotlines and their features. The report will be made available on the EAC Web site at <http://www.eac.gov>.

**Thomas R. Wilkey,**  
Executive Director, U.S. Election Assistance Commission.

[FR Doc. 07-533 Filed 2-6-07; 8:45 am]

BILLING CODE 6820-KF-M

010105

# PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the Supporting Statement, and any additional documentation to: **Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.**

1. Agency/Subagency originating request  P	2. OMB control number <span style="float: right;">b. <input checked="" type="checkbox"/> None</span> a. _____
3. Type of information collection ( <i>check one</i> ) a. <input checked="" type="checkbox"/> New collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension, without change, of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number	4. Type of review requested ( <i>check one</i> ) a. <input checked="" type="checkbox"/> Regular b. <input type="checkbox"/> Emergency - Approval requested by: ____/____/____ c. <input type="checkbox"/> Delegated
3a. Public Comments Has the agency received public comments on this information collection?  <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
7. Title  Research Assistance to the U.S. Election Assistance Commission to Study Voter Hotlines Operated by Government Agencies and Election Offices	6. Requested expiration date a. <input checked="" type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: ____/____/____
8. Agency form number(s) ( <i>if applicable</i> ) NA	
9. Keywords  Elections, Administrative practice and procedure, Organization and functions (Government agencies), Telephone	
10. Abstract  The Help America Vote Act requires the EAC to periodically study election administration issues, including all aspects of participating in elections. The EAC seeks to conduct a study to determine the current state of the voter information hotlines that are operated by Federal, State and local government agencies and election offices. Using this information, the EAC will draft a report on voter hotlines currently operating in this country.	
11. Affected public ( <i>Mark primary with "P" and all others that apply with "X"</i> ) a. <input type="checkbox"/> Individuals or households      d. <input type="checkbox"/> Farms b. <input type="checkbox"/> Business or other for-profit      e. <input type="checkbox"/> Federal Government c. <input type="checkbox"/> Not-for-profit institutions      f. <input type="checkbox"/> State, Local or Tribal Government	12. Obligation to respond ( <i>Mark primary with "P" and all others that apply with "X"</i> ) a. <input type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory
13. Annual reporting and recordkeeping hour burden a. Number of respondents <u>968.5</u> b. Total annual responses <u>968.5</u> 1. Percentage of these responses collected electronically <u>100</u> % c. Total annual hours requested <u>968.5</u> d. Current OMB inventory <u>0</u> e. Difference <u>968.5</u> f. Explanation of difference 1. Program change <u>968.5</u> 2. Adjustment _____	14. Annual reporting and recordkeeping cost burden ( <i>in thousands of dollars</i> ) a. Total annualized capital/startup costs <u>0</u> b. Total annual costs (O&M) <u>0</u> c. Total annualized cost requested <u>0</u> d. Current OMB inventory <u>0</u> e. Difference <u>0</u> f. Explanation of difference 1. Program change <u>0</u> 2. Adjustment <u>0</u>
15. Purpose of information collection ( <i>Mark primary with "P" and all others that apply with "X"</i> ) a. <input type="checkbox"/> Application for benefits      e. <input checked="" type="checkbox"/> Program planning or management b. <input type="checkbox"/> Program evaluation      f. <input checked="" type="checkbox"/> Research c. <input type="checkbox"/> General purpose statistics      g. <input type="checkbox"/> Regulatory or compliance d. <input type="checkbox"/> Audit	16. Frequency of recordkeeping or reporting ( <i>check all that apply</i> ) a. <input type="checkbox"/> Recordkeeping      b. <input type="checkbox"/> Third party disclosure c. <input checked="" type="checkbox"/> Reporting 1. <input type="checkbox"/> On occasion    2. <input type="checkbox"/> Weekly      3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly      5. <input type="checkbox"/> Semi-annually    6. <input type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially      8. <input checked="" type="checkbox"/> Other (describe) <u>Once</u>
17. Statistical methods Does this information collection employ statistical methods?  <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	18. Agency contact ( <i>person who can best answer questions regarding the content of this submission</i> )  Name: <u>Laiza N. Otero</u>  Phone: <u>(202) 566-2209</u>

## 19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9.

**Note:** The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It uses plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
  - (i) Why the information is being collected;
  - (ii) Use of information;
  - (iii) Burden estimate;
  - (iv) Nature of response (voluntary, required for a benefit, or mandatory);
  - (v) Nature and extent of confidentiality; and
  - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of the instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of these provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

# Instructions For Completing OMB Form 83-I

Please answer all questions and have the Senior Official or designee sign the form. These instructions should be used in conjunction with 5 CFR 1320, which provides information on coverage, definitions, and other matters of procedure and interpretation under the Paperwork Reduction Act of 1995.

## 1. Agency/Subagency originating request

Provide the name of the agency or subagency originating the request. For most cabinet-level agencies, a subagency designation is also necessary. For non-cabinet agencies, the subagency designation is generally unnecessary.

## 2. OMB control number

- If the information collection in this request has previously received or now has an OMB control or comment number, enter the number.
- Check "None" if the information collection in this request has not previously received an OMB control number. Enter the four digit agency code for your agency.

## 3. Type of information collection (check one)

- Check "New collection" when the collection has not previously been used or sponsored by the agency.
- Check "Revision" when the collection is currently approved by OMB, and the agency request includes a material change to the collection instrument, instructions, its frequency of collection, or the use to which the information is to be put.
- Check "Extension" when the collection is currently approved by OMB, and the agency wishes only to extend the approval past the current expiration date without making any material change in the collection instrument, instructions, frequency of collection, or the use to which the information is to be put.
- Check "Reinstatement without change" when the collection previously had OMB approval, but the approval has expired or was withdrawn before this submission was made, and there is no change to the collection.
- Check "Reinstatement with change" when the collection previously had OMB approval, but the approval has expired or was withdrawn before this submission was made, and there is change to the collection.
- Check "Existing collection in use without OMB control number" when the collection is currently in use but does not have a currently valid OMB control number.

## 4. Type of review requested (check one)

- Check "Regular" when the collection is submitted under 5 CFR 1320.10, 1320.11, or 1320.12 with a standard 60 day review schedule.
- Check "Emergency" when the agency is submitting the request under 5 CFR 1320.13 for emergency processing and provides the required supporting material. Provide the date by which the agency requests approval.
- Check "Delegated" when the agency is submitting the collection under the conditions OMB has granted the agency delegated authority.

## 5. Small entities

Indicate whether this information collection will have a significant impact on a substantial number of small entities. A small entity may be (1) a small business which is deemed to be one that is independently owned and operated and that is not dominant in its field of operation; (2) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field; or (3) a small government jurisdiction which is a government of a city, county, town, township, school district, or special district with a population of less than 50,000.

## 6. Requested expiration date

- Check "Three years" if the agency requests a three year approval for the collection.
- Check "Other" if the agency requests approval for less than three years. Specify the month and year of the requested expiration date.

## 7. Title

Provide the official title of the information collection. If an official title does not exist, provide a description which will distinguish this collection from others.

## 8. Agency form number(s) (if applicable)

Provide any form number the agency has assigned to this collection of information. Separate each form number with a comma.

## 9. Keywords

Select and list at least two keywords (descriptors) from the "Federal Register Thesaurus of Indexing Terms" that describe the subject area(s) of the information collection. Other terms may be used but should be listed after those selected from the thesaurus. Separate keywords with commas. Keywords should not exceed two lines of text.

## 10. Abstract

Provide a statement, limited to five lines of text, covering the agency's need for the information, uses to which it will be put, and a brief description of the respondents.

## 11. Affected public

Mark all categories that apply, denoting the primary public with a "P" and all others that apply with "X."

## 12. Obligation to respond

Mark all categories that apply, denoting the primary obligation with a "P" and all others that apply with "X."

- Mark "Voluntary" when the response is entirely discretionary and has no direct effect on any benefit or privilege for the respondent.
- Mark "Required to obtain or retain benefits" when the response is elective, but is required to obtain or retain a benefit.
- Mark "Mandatory" when the respondent must reply or face civil or criminal sanctions.

## 13. Annual reporting and recordkeeping hour burden

- Enter the number of respondents and/or recordkeepers. If a respondent is also a recordkeeper, report the respondent only once.
- Enter the number of responses provided annually. For recordkeeping as compared to reporting activity, the number of responses equals the number of recordkeepers.
  - Enter the estimated percentage of responses that will be submitted/collected electronically using magnetic media (i.e., diskette), electronic mail, or electronic data interchange. Facsimile is **not** considered an electronic submission.
  - Enter the total annual recordkeeping and reporting hour burden.
  - Enter the burden hours currently approved by OMB for this collection of information. Enter zero (0) for any new submission or for any collection whose OMB approval has expired.
  - Enter the difference by subtracting line d from line c. Record a negative number (d larger than c) within parentheses.
  - Explain the difference. The difference in line e must be accounted for in lines f.1. and f.2.
    - "Program change" is the result of deliberate Federal government action. All new collections and any subsequent revision of existing collections (e.g., the addition or deletion of questions) are recorded as program changes.
    - "Adjustment" is a change that is not the result of a deliberate Federal government action. Changes resulting from new estimates or action not controllable by the Federal government are recorded as adjustments.

## 14. Annual reporting and recordkeeping cost burden (in thousands of dollars)

The costs identified in this item must exclude the cost of hour burden identified in Item 13.

- Enter the total dollar amount of annualized cost for all respondents of any associated capital or start-up costs.
- Enter recurring annual dollar amount of cost for all respondents associated with operating or maintaining systems or purchasing services.
- Enter total (14.a. + 14.b.) annual reporting and recordkeeping cost burden.
- Enter any cost burden currently approved by OMB for this collection of information. Enter zero (0) if this is the first submission after October 1, 1995.
- Enter the difference by subtracting line d from line c. Record a negative number (d larger than c) within parenthesis.
- Explain the difference. The difference in line e must be accounted for in lines f.1. and f.2.
  - "Program change" is the result of deliberate Federal government action. All new collections and any subsequent revisions or changes resulting in cost changes are recorded as program changes.

f.2. "Adjustment" is a change that is not the result of a deliberate Federal government action. Changes resulting from new estimations or actions not controllable by the Federal government are recorded as adjustments.

#### 15. Purpose of information collection

Mark all categories that apply, denoting the primary purpose with a "P" and all others that apply with "X."

a. Mark "Application for benefits" when the purpose is to participate in, receive, or qualify for a grant, financial assistance, etc., from a Federal agency or program.

b. Mark "Program evaluation" when the purpose is a formal assessment, through objective measures and systematic analysis, of the manner and extent to which Federal programs achieve their objectives or produce other significant effects.

c. Mark "General purpose statistics" when the data is collected chiefly for use by the public or for general government use without primary reference to the policy or program operations of the agency collecting the data.

d. Mark "Audit" when the purpose is to verify the accuracy of accounts and records.

e. Mark "Program planning or management" when the purpose relates to progress reporting, financial reporting and grants management, procurement and quality control, or other administrative information that does not fit into any other category.

f. Mark "Research" when the purpose is to further the course of research, rather than for a specific program purpose.

g. Mark "Regulatory or compliance" when the purpose is to measure compliance with laws or regulations.

#### 16. Frequency of recordkeeping or reporting

Check "Recordkeeping" if the collection of information explicitly includes a recordkeeping requirement.

Check "Third party disclosure" if a collection of information includes third-party disclosure requirements as defined by 1320.3(c).

Check "Reporting" for information collections that involve reporting and check the frequency of reporting that is requested or required of a respondent. If the reporting is on "an event" basis, check "On occasion."

#### 17. Statistical methods

Check "Yes" if the information collection uses statistical methods such as sampling or imputation. Generally, check "No" for applications and audits (unless a random auditing scheme is used). Check "Yes" for statistical collections, most research collections, and program evaluations using scientific methods. For other types of data collection, the use of sampling, imputation, or other statistical estimation techniques should dictate the response for this item. Ensure that supporting documentation is provided in accordance with Section B of the Supporting Statement.

#### 18. Agency contact

Provide the name and telephone number of the agency person best able to answer questions regarding the content of this submission.

#### 19. Certification for Paperwork Reduction Act Submissions

The Senior Official or designee signing this statement certifies that the collection of information encompassed by the request complies with 5 CFR 1320.9. Provisions of this certification that the agency cannot comply with should be identified here and fully explained in item 18 of the attached Supporting Statement. NOTE: The Office that "develops" and "uses" the information to be collected is the office that "conducts or sponsors" the collection of information. (See 5 CFR 1320.3(d)).

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## Certification Requirement for Paperwork Reduction Act Submissions

5 CFR 1320.9 reads "As part of the agency submission to OMB of a proposed collection of information, the agency (through the head of the agency, the Senior Official, or their designee) shall certify (and provide a record supporting such certification) that the proposed collection of information--

"(a) is necessary for the proper performance of the functions of the agency, including that the information to be collected will have practical utility;

"(b) is not unnecessarily duplicative of information otherwise reasonably accessible to the agency;

"(c) reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency, including with respect to small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. § 601(6)), the use of such techniques as:

"(1) establishing differing compliance or reporting requirements or timetables that take into account the resources available to those who are to respond;

"(2) the clarification, consolidation, or simplification of compliance and reporting requirements; or collections of information, or any part thereof;

"(3) an exemption from coverage of the collection of information, or any part thereof;

"(d) is written using plain, coherent, and unambiguous terminology and is understandable to those who are to respond;

"(e) is to be implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond;

"(f) indicates for each recordkeeping requirement the length of time persons are required to maintain the records specified;

"(g) informs potential respondents of the information called for under §1320.8(b)(3); [see below]

"(h) has been developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected, including the processing of the information in a manner which shall enhance, where appropriate, the utility of the information to agencies and the public;

"(i) uses effective and efficient statistical survey methodology appropriate to the purpose for which the information is to be collected; and

"(j) to the maximum extent practicable, uses appropriate information technology to reduce burden and improve data quality, agency efficiency and responsiveness to the public."

NOTE: 5 CFR 1320.8(b)(3) requires that each collection of information:

"(3) informs and provides reasonable notice to the potential persons to whom the collection of information is addressed of:

"(i) the reasons the information is planned to be and/or has been collected;

"(ii) the way such information is planned to be and/or has been used to further the proper performance of the functions of the agency;

"(iii) an estimate, to the extent practicable, of the average burden of the collection (together with a request that the public direct to the agency any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden);

"(iv) whether responses to the collection of information are voluntary, require to obtain or retain a benefit (citing authority) or mandatory (citing authority);

"(v) the nature and extent of confidentiality to be provided, if any (citing authority); and

"(vi) the fact that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number."

# Supporting Statement for Paperwork Reduction Act Submissions

## General Instructions

A Supporting Statement, including the text of the notice to the public required by 5 CFR 1320.5(a)(i)(iv) and its actual or estimated date of publication in the Federal Register, must accompany each request for approval of a collection of information. The Supporting Statement must be prepared in the format described below, and must contain the information specified in Section A below. If an item is not applicable, provide a brief explanation. When Item 17 of the OMB Form 83-1 is checked "Yes", Section B of the Supporting Statement must be completed. OMB reserves the right to require the submission of additional information with respect to any request for approval.

## Specific Instructions

### A. Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.
2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.
3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.
4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.
5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-1), describe any methods used to minimize burden.
6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.
7. Explain any special circumstances that would cause an information collection to be conducted in a manner:
  - \* requiring respondents to report information to the agency more often than quarterly;
  - \* requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;
  - \* requiring respondents to submit more than an original and two copies of any document;

- \* requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;
- \* in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;
- \* requiring the use of a statistical data classification that has not been reviewed and approved by OMB;
- \* that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or
- \* requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.  
Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.  
Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years - even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

9. Explain any decision to provide any payment or gift to respondents, other than reenumeration of contractors or grantees.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information

is requested, and any steps to be taken to obtain their consent.

12. Provide estimates of the hour burden of the collection of information. The statement should:
  - \* Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.
  - \* If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-1.
  - \* Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 13.
13. Provide an estimate for the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).
  - \* The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.
  - \* If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collections services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use

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existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.

\* Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

14. Provide estimates of annualized costs to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.

#### **B. Collections of Information Employing Statistical Methods**

The agency should be prepared to justify its decision not to use statistical methods in any case where such methods might reduce burden or improve accuracy of results. When Item 17 on the Form OMB 83-I is checked, "Yes," the following documentation should be included in the Supporting Statement to the extent that it applies to the methods proposed:

1. Describe (including a numerical estimate) the potential respondent universe and any sampling or other respondent selection methods to be used. Data on the number of entities (e.g., establishments, State and local government units, households, or persons) in the universe covered by the collection and in the corresponding sample are to be provided in tabular form for the universe as a whole and for each of the strata in the proposed sample. Indicate expected response rates for the collection as a whole. If the collection had been conducted previously, include the actual response rate achieved during the last collection.

2. Describe the procedures for the collection of information including:

- \* Statistical methodology for stratification and sample selection,
- \* Estimation procedure,
- \* Degree of accuracy needed for the purpose described in the justification,
- \* Unusual problems requiring specialized sampling procedures, and
- \* Any use of periodic (less frequent than annual) data collection cycles to reduce burden.

3. Describe methods to maximize response rates and to deal with issues of non-response. The accuracy and reliability of information collected must be shown to be adequate for intended uses. For collections based on sampling, a special justification must be provided for any collection that will not yield "reliable" data that can be generalized to the universe studied.

4. Describe any tests of procedures or methods to be undertaken. Testing is encouraged as an effective means of refining collections of information to minimize burden and improve utility. Tests must be approved if they call for answers to identical questions from 10 or more respondents. A proposed test or set of test may be submitted for approval separately or in combination with the main collection of information.

5. Provide the name and telephone number of individuals consulted on statistical aspects of the design and the name of the agency unit, contractor(s), grantee(s), or other person(s) who will actually collect and/or analyze the information for the agency.

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**U.S. ELECTION ASSISTANCE COMMISSION**

**Information Collection Activity; Study of Voter Hotlines Operated by Election Offices**

**AGENCY:** U.S. Election Assistance Commission (EAC).

**ACTION:** Notice; request for comments.

**SUMMARY:** The EAC, as part of its continuing effort to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995, invites the general public and other Federal agencies to take this opportunity to comment on a proposed information collection. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

**DATES:** Written comments must be submitted on or before **May 15, 2007**

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**ADDRESSES:** Submit comments and recommendations on the proposed information collection in writing to the U.S. Election Assistance Commission, 1225 New York Avenue, NW, Suite 1100, Washington, DC 20005, ATTN: Ms. Laiza N. Otero (or via the Internet at [lotero@eac.gov](mailto:lotero@eac.gov)).

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the survey instrument, please, write to the above address or call Ms. Laiza N. Otero at (202) 566-3100. You may also view the proposed collection instrument by visiting our website at [www.eac.gov](http://www.eac.gov).

**SUPPLEMENTARY INFORMATION:**

*Title:* Study of Voter Hotlines Operated by Election Offices

*OMB Number:* Pending.

*Type of Review:* Regular submission.

*Needs and Uses:* Section 241(b)(9) of the Help America Vote Act (HAVA) requires the U.S. Election Assistance Commission (EAC) to periodically study election administration issues, including methods of educating voters about the process of registering to vote and voting, the operation of voting mechanisms, the location of polling places, and all other aspects of participating in elections. Furthermore, Section 245(a)(2)(C) of HAVA indicates that the EAC may investigate the impact new communications or Internet technology systems used in the electoral process could have on voter participation rates, voter education, and public

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accessibility. In 2005, the EAC undertook a research study of voter hotline data available online to determine trends. A voter hotline was defined as a toll-free line that connects voters with elections offices, which then disseminate information and educate voters. The EAC found several hotlines in operation during the 2004 Presidential election, and their sponsorship and capabilities varied to a great degree. To build on and augment these research findings, the EAC wishes to conduct a study to determine the current state of voter information hotlines that are operated by Federal, State, and local election offices.

*Affected Public:* Federal, State, and local election offices

*Estimated Number of Respondents:* 1937

*Responses per Respondent:* 1

*Estimated Burden per Response:* .5 hours

*Estimated Total Annual Burden Hours:* 968.5 hours

Information will be collected through a survey of existing hotline services operated by Federal, State, and local government agencies and election offices during the 2006 primary and general elections. The data collected will include information on voter hotlines operated by election offices and their features, including, but not limited to:

1. *Basic Information.* Hotline hours of operation, type of information available through the hotline, automated or non-automated service, links to other sources of voting information.
2. *Costs.* Breakdown of cost based on volume, cost of database maintenance per record, and all personnel and administrative costs of the service.
3. *Features.* Important factors include, but are not limited to: (1) languages used, (2)

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disability-compliant features, (3) touch tone and voice services, (4) voice response options, and (5) ability for interactivity with additional databases (for example interactivity with a voter registration database).

4. *Network Capacity.* Number of calls capable of being routed per hour and the number of incoming calls that can be received.
5. *Call Tracking.* How calls are logged or tracked, how they are routed, and the types or categories of calls received.
6. *Hotline personnel.* Number of hotline operators and methods by which hotline operators are trained, the frequency of their training and how they are monitored for accuracy, currency, security, and other critical performance variables.
7. Methods by which the network operator maintains the accuracy and currency of the data. Important factors include, but are not limited to how regularly updates are made and quality-control procedures.
8. *Maintenance agreements with service providers.* Percentage of hotlines that outsource all or part of the Hotline, and experiences working with contractors?
9. *Timelines* for database creation, contractor integration, and final testing before launch.
10. Security measures to ensure that data in the call-routing network is confidential.
11. *Other information* such as: who the intended audience is; demographic, political and socioeconomic information of the community served; cost of publicizing the service and effectiveness of various publicity methods; and lessons learned.

A report on the key findings of the study, along with recommendations for the development and

implementation of voter hotlines, will be made available to election officials and the public at the conclusion of this effort. The report will include a state-by-state compendium of the existing voter hotlines and their features. The report will be made available on the EAC website at [www.eac.gov](http://www.eac.gov).

**Signed:** \_\_\_\_\_

**Thomas R. Wilkey**, Executive Director,

U.S. Election Assistance Commission

**[Billing Code 6820-KF]**

compensation is based primarily on student academic achievement.

(d) *Quality of the Management Plan and Key Personnel* (15 points).

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, milestones, and processes for continuous improvement to accomplish project tasks.

(2) The qualifications, including experience, education, and training of proposed key personnel.

(e) *Evaluation* (10 points).

(1) The extent to which the applicant's evaluation plan includes the use of objective measures that are clearly related to the goals of the project to raise student achievement and increase teacher effectiveness, including the extent to which the evaluation will produce quantitative and qualitative data.

(2) The extent to which the applicant includes adequate evaluation procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

(3) The extent to which the applicant commits to participating in a rigorous national evaluation that will provide a common design methodology, data collection instruments, and performance measures for all grantees funded under this competition.

#### VI. Award Administration Information

1. *Award Notices*: If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements*: We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting*: At the end of the project period, recipients must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the

most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures*: Pursuant to the Government Performance and Results Act (GPRA), the Department has established the following performance measures that it will use to evaluate the overall effectiveness of the grantee's project, as well as the TIF program as a whole:

(1) Changes in LEA personnel deployment practices, as measured by changes over time in the percentage of teachers and principals in high-need schools who have a record of effectiveness; and

(2) Changes in teacher and principal compensation systems in participating LEAs, as measured by the percentage of a district's personnel budget that is used for performance-related payments to effective (as measured by student achievement gains) teachers and principals.

All grantees will be expected to submit an annual performance report documenting their success in addressing these performance measures. The Department will use the applicant's performance data for program management and administration, in such areas as determining new and continuation funding and planning technical assistance.

#### VII. Agency Contacts

##### FOR FURTHER INFORMATION CONTACT:

April Lee, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W229, Washington, DC 20202-6200. Telephone number: (202) 205-5224 or by e-mail: [tif@ed.gov](mailto:tif@ed.gov) or by Internet at the following Web site: <http://www.ed.gov/programs/teacherincentive/index.html>.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotope, or computer diskette) on request to the individuals listed in this section.

#### VIII. Other Information

*Electronic Access to This Document*: You may view this document, as well as all other documents of this Department published in the *Federal Register*, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about

using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

**Note**: The official version of this document is the document published in the *Federal Register*. Free Internet access to the official edition of the *Federal Register* and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

Dated: November 8, 2006.

**Henry L. Johnson,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. E6-19193 Filed 11-13-06; 8:45 am]

BILLING CODE 4000-01-P

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### ELECTION ASSISTANCE COMMISSION

#### Information Collection; Study of the Feasibility and Advisability of Establishing a Program of Free Return or Reduced Postage for Absentee Ballots—Focus Groups

**AGENCY**: U.S. Election Assistance Commission (EAC).

**ACTION**: Notice; request for comments.

**SUMMARY**: The EAC, as part of its continuing effort to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995, invites the general public and other Federal agencies to take this opportunity to comment on a proposed information collection. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

**DATES**: Written comments must be submitted on or before January 11, 2007.

**ADDRESSES**: Submit comments and recommendations on the proposed information collection in writing to the U.S. Election Assistance Commission, 1225 New York Avenue, NW., Suite 1100, Washington, DC 20005, Attn: Ms.

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Laiza N. Otero (or via the Internet at [lotero@eac.gov](mailto:lotero@eac.gov)).

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the Focus Group Discussion Guide, please, write to the above address or call Ms. Laiza N. Otero at (202) 566-3100. You may also view the proposed collection instrument by visiting our Web site at <http://www.eac.gov>.

**SUPPLEMENTARY INFORMATION:**

**Title:** Study of the Feasibility and Advisability of Establishing a Program of Free Return or Reduced Postage for Absentee Ballots—Focus Groups  
**OMB Number:** Pending.

**Type of Review:** Regular submission.  
**Needs and Uses:** Sec. 246 of the Help America Vote Act requires the Election Assistance Commission (EAC), in consultation with the United States Postal Service, to conduct a study on the feasibility and advisability of establishing a program under which the U.S. Postal Service shall waive or otherwise reduce the amount of postage applicable with respect to absentee ballots returned by voters in general elections for Federal office. This study does not address the cost to the U.S. Postal Service for free postage for sending absentee ballots but may consider costs to election officials that are related to implementing such a program including the costs of sending absentee ballots to voters. It also does not include consideration of the 39 U.S.C. 3406 provisions for the mailing of balloting materials for military and overseas absentee voters. As part of the study the Commission is directed to conduct a nationwide survey of potential beneficiaries, including the elderly and disabled, and to take into account the results of this survey in determining the feasibility and advisability of establishing such a program. This survey will be supplemented by focus groups among potential beneficiaries—elderly, disabled, low-income—to obtain more specific information on the challenges these populations face when participating in election and to assess the potential benefit these populations might receive from a program of free return or reduced postage for absentee ballots.

At the conclusion of the study effort, EAC is required to submit a report to Congress with recommendations for such legislative and administrative action as EAC determines appropriate. The report shall contain an analysis of the feasibility of implementing such a program and an estimate of the costs. It

is required to specifically contain recommendations regarding the elderly and disabled populations, including ways a free absentee ballot return postage program would target these populations and identify methods to increase the number of such individuals who vote in elections for Federal office.

**Affected Public:** Citizens.

**Number of Respondents:** 36.

**Responses per Respondent:** 1.

**Estimated Burden per Response:** 1.25 hours.

**Estimated Total Annual Burden Hours:** 45 hours.

Information will be collected through a series of three focus groups comprised of potential beneficiaries of a free and/or discounted absentee ballot postage program: One focus group will be dedicated to issues confronting the elderly population; one focus group will be dedicated to issues confronting disabled people; and one focus group will be dedicated to issues confronting the low-income citizens. At least one official from the United States Postal Service will observe each planned focus group. The topics that will be explored include:

1. The challenges that the particular population faces when participating in elections.

a. Information on respondents' previous experiences with voting in Federal elections. Information on any difficulties encountered in the process of voting and how the issues were resolved.

2. The concerns members of the particular population have about voting (e.g. voter intimidation, voter confidentiality, security, use of ballots).

a. Information on particular incidents that has prevented respondent from being able to vote.

3. The possible remedies to those challenges that would likely increase the rates of voter participation in the particular population (e.g. relaxed absentee voting laws, better accessibility to polling places, voter education).

a. Information on respondents' interest in absentee ballot voting.

4. The likelihood that a free or discounted absentee ballot postage program would assist the particular population.

a. Information on respondents' interest in a program of free or discounted postage for absentee ballots.

5. How the program could possibly be implemented to target the particular population.

a. Information on creating and implementing the program to ensure that it benefits the particular population.

6. The factors that would make reaching the particular population difficult.

a. Information on advertising such a program to the particular population so that they can take advantage of the change.

**Thomas R. Wilkey,**

*Executive Director, U.S. Election Assistance Commission.*

[FR Doc. 06-9191 Filed 11-13-06; 8:45 am]

**BILLING CODE 6820-KF-M**

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**Combined Notice of Filings #2**

November 6, 2006.

Take notice that the Commission received the following electric rate filings:

**Docket Numbers:** ER01-205-014; ER98-2640-012; ER98-4590-010; ER99-1610-018.

**Applicants:** Xcel Energy Services Inc.; Northern States Power Company; Northern States Power Company (Wisconsin); Public Service Company of Colorado; Southwestern Public Service Company.

**Description:** Xcel Energy Services Inc. on behalf of Northern States Power Co submits a change in status report to NSP's market-based rate authority.

**Filed Date:** 11/02/2006.

**Accession Number:** 20061102-5052.

**Comment Date:** 5 p.m. Eastern Time on Friday, November 24, 2006.

**Docket Numbers:** ER03-985-001.

**Applicants:** El Cap II, LLC.

**Description:** El Cap II, LLC submits its Triennial Updated Market Power Analysis Report.

**Filed Date:** 10/30/2006.

**Accession Number:** 20061101-0147.

**Comment Date:** 5 p.m. Eastern Time on Monday, November 20, 2006.

**Docket Numbers:** ER06-451-010.

**Applicants:** Southwest Power Pool, Inc.

**Description:** Southwest Power Pool, Inc submits revisions to its Open Access Transmission Tariff effective 2/1/07.

**Filed Date:** 11/02/2006.

**Accession Number:** 20061103-0103.

**Comment Date:** 5 p.m. Eastern Time on Friday, November 24, 2006.

**Docket Numbers:** ER07-115-000.

**Applicants:** ISO New England Inc.

**Description:** ISO New England Inc submits its 2007 Capital Budget and Capital Budget Quarterly Filing for the Third Quarter of 2006.

**Filed Date:** 10/31/2006.

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"Karen Buerkle "  
<KBuerkle@ifes.org>  
12/19/2006 01:49 PM

To lotero@eac.gov, klynndyson@eac.gov  
cc ernieh@aol.com, "Scott Lansell" <SLANSELL@ifes.org>, "Kathleen Holzwart" <KHolzwart@ifes.org>  
bcc

Subject Free Return Postage QQ for Public Comment

Karen and Laiza,

Here is the questionnaire for the Free Return Postage survey for the 60 commenting period. We eagerly await its posting in the Federal Registry.

Thanks again for such a good and productive meeting yesterday.

Best,



Karen Free Return Postage QQ for Public Comment.doc

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Free or Reduced Return Postage Study  
Survey Questionnaire

Hello, my name is \_\_\_\_\_. We are conducting an important study for the U.S. Election Assistance Commission. This survey is for research purposes only, we are not selling anything and we are not associated with or being paid by any political party or candidate. Your participation is voluntary and will only take a few minutes of your time. All your answers will be strictly confidential. Am I speaking with someone 18 or older?

- S1** To make sure our survey includes many different kinds of people, I need to ask a few questions about who lives in your household. How many adults age 18 or older live in your household?
- 1 One—**GO TO S2**
  - 2 Two or more—**GO TO S3**

ASK IF ONLY ONE ADULT AGE 18+ IN HH (S1=1)

- S2** May I please speak to that person?
- 1 Continue with current respondent—**GO TO Q1**
  - 2 New respondent being brought to phone—**GO TO INTRO2**
  - 3 New respondent not available—**SCHEDULE CALL BACK**
  - 9 Refused—**TERMINATE**

ASK IF MORE THAN ONE ADULT AGE 18+ IN HH (S1=2)

- S3** May I please speak with the adult (18+) in your household who has most recently had a birthday. Are you this person?
- 1 Yes—**GO TO S4**
  - 2 No—**ASK TO SPEAK TO THAT PERSON AND REINTRODUCE THE SURVEY**

**S4** Because we are talking today about issues related to voting in the U.S., we only need to speak with people who are U.S. citizens. Are you currently a U.S. citizen or not?

- 1 Yes—**GO TO Q1**
- 2 No—**ASK FOR ANOTHER ADULT IN HH**

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ASK ALL

- Q1 How would you rate your neighborhood as a place to live? Would you say it is excellent, good, fair or poor?
- 1 Excellent
  - 2 Good
  - 3 Fair
  - 4 Poor
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK ALL

- Q2 And how interested are you in matters of politics and government? Would you say you are very interested, somewhat interested, not too interested or not interested at all?
- 1 Very interested
  - 2 Somewhat interested
  - 3 Not too interested
  - 4 Not interested at all
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK ALL

- Q3 How much information do you feel you have about politics and current events in the United States today? Do you have a great deal of information, a fair amount, not very much or no information at all?
- 1 Great deal
  - 2 Fair amount
  - 3 Not very much
  - 4 None at all
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK ALL

- Q4 And how much information do you feel you have about the way elections are organized in your community such as the rules about who can vote and when, where to go to vote, etc? Do you have a great deal of information, a fair amount, not very much or no information at all?
- 1 Great deal
  - 2 Fair amount
  - 3 Not very much
  - 4 None at all
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

010122

ASK ALL

- Q5 Some states are using an election system in which residents are allowed to CHOOSE if they want to cast their vote through the MAIL in the weeks leading up the election OR vote IN PERSON ON Election Day. Do you strongly favor, somewhat favor, somewhat oppose or strongly oppose allowing people to CHOOSE if they vote by mail before Election Day or vote in a booth ON Election Day?
- 1 Strongly favor
  - 2 Somewhat favor
  - 3 Somewhat oppose
  - 4 Strongly oppose
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK IF SOMEWHAT OR STRONGLY OPPOSE (Q5=3 or 4)

- Q6 There are many reasons why people may have reservations about voting by mail before election-day instead of in a booth on election-day. Can you tell me the main reason why you have reservations about people voting by mail before election-day? [OPEN END FOR FIRST 100 RESPONDENTS; ACCEPT UP TO THREE RESPONSES BUT DO NOT PROBE FOR MORE THAN ONE]
- 1 Gave response [**Record verbatim**]
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK ALL

- Q7 These days, many people are so busy they can't find time to register to vote, or move around so often they don't get a chance to re-register... Are you CURRENTLY registered to vote or haven't you been able to register so far? [IF RESPONDENT ANSWERS '1' YES, ASK, Are you registered to vote at your CURRENT address or are you registered to vote at some other previous address]
- 1 Yes, registered at current address
  - 2 Yes, registered at other/previous address
  - 3 No, not registered
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK IF REGISTERED TO VOTE (Q7=1 or 2)

- Q8 Every state has different regulations for voting by absentee ballot. If there were to be an election next week, do you know whether or not you would be eligible to vote by absentee ballot in your state?
- 1 Yes, eligible
  - 2 No, not eligible
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

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ASK IF CURRENTLY REGISTERED TO VOTE (Q7 = 1 or 2)

- Q9 Can you please tell me which state you are currently registered to vote in?  
1 Gave response [**Record verbatim—OK to use official two letter abbreviations**]  
8 Don't know [DO NOT READ]  
9 Refused [DO NOT READ]

ASK IF NOT REGISTERED, DK, OR REFUSED (Q7 = 3, 8, or 9)

- Q10 Have you previously been registered to vote, or have you never been registered?  
1 Previously registered  
2 Never registered  
8 Don't know [DO NOT READ]  
9 Refused [DO NOT READ]

ASK IF NOT CURRENTLY REGISTERED

- Q11 What would you say is the MAIN reason you're not registered to vote?  
[OPEN END; ACCEPT UP TO THREE RESPONSES BUT DO NOT PROBE FOR MORE THAN ONE]  
1 Gave response [**Record verbatim**]  
8 Don't know [DO NOT READ]  
9 Refused [DO NOT READ]

ASK IF CURRENTLY REGISTERED OR PREVIOUSLY REGISTERED (Q7 = 1 OR Q7=2 OR Q10 = 1)

- Q12 Did you vote in the 2006 Election this past November for either a Senator or Congressperson?  
1 Yes  
2 No  
3 Too young to vote/Not registered to vote at the time/Not eligible [DO NOT READ]  
8 Don't know [DO NOT READ]  
9 Refused [DO NOT READ]

ASK IF VOTED IN 2006 ELECTION (Q12 = 1)

- Q13 In the 2006 congressional election, do you recall if you voted BEFORE Election Day, that is at an early voting site or with an absentee ballot, OR did you vote in-person at your polling place ON Election Day?  
1 Before Election Day - Early Voting Site/Absentee  
2 In person at polling place on Election Day  
3 Dropped off absentee ballot on Election Day [DO NOT READ]  
8 Don't know [DO NOT READ]  
9 Refused [DO NOT READ]

ASK IF VOTED IN 2006 BEFORE ELECTION DAY (Q13 = 1)

- Q14 And did you vote BEFORE Election Day in person at an early voting site or did you mail in an absentee ballot?
- 1 In person at an early voting site
  - 2 Mailed in absentee ballot
  - 3 Dropped off absentee ballot on Election Day [DO NOT READ]
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK IF VOTED BY MAIL (Q14=2)

- Q15 Did being able to vote by MAIL before Election Day make it a lot more possible, somewhat more possible for you to vote, or did it not make any difference in your ability to vote in this election?
- 1 A lot more possible
  - 2 Somewhat more possible
  - 3 No difference in ability to vote
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK IF CURRENTLY REGISTERED OR PREVIOUSLY REGISTERED (Q7 = 1 OR Q7=2 OR Q10 = 1)

- Q16 Did you vote in the 2004 Presidential election between George Bush and John Kerry?
- 1 Yes
  - 2 No
  - 3 Not 18 at the time/Not eligible [DO NOT READ]
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK IF VOTED IN 2004 ELECTION (Q16 = 1)

- Q17 In the 2004 Presidential election, do you recall if you voted BEFORE Election Day, that is at an early voting site, or with an absentee ballot, OR did you vote in-person at your polling place ON Election Day?
- 1 Before Election Day - Early Voting Site/Absentee
  - 2 In person at polling place on Election Day
  - 3 Dropped off absentee ballot on Election Day [DO NOT READ]
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK IF VOTED IN 2004 BEFORE ELECTION DAY (Q17 = 1)

- Q18 And did you vote BEFORE Election Day in person at an early voting site or did you mail in an absentee ballot?
- 1 In person at an early voting site
  - 2 Mailed in absentee ballot
  - 3 Dropped off absentee ballot on Election Day [DO NOT READ]
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK IF VOTED BY MAIL (Q18=2)

Q19 Did being able to vote by MAIL before Election Day make it a lot more possible, somewhat more possible for you to vote, or did it not make any difference in your ability to vote in this election?

- 1 A lot more possible
- 2 Somewhat more possible
- 3 No difference in ability to vote
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK ALL

Q20 Suppose that in addition to being able to vote IN-PERSON at the polls on Election Day, you also had the option of choosing to vote by MAIL before Election Day WITHOUT having to pay ANY postage. Would having these two options make it a lot more likely that you would vote in future elections, somewhat more likely, or would having the option to vote by mail WITHOUT paying ANY postage make no difference in your likelihood of voting?

- 1 A lot more likely
- 2 Somewhat more likely
- 3 Make no difference
- 4 Already voting by mail without paying postage [DO NOT READ]
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK IF MAIL WOULD MAKE MORE LIKELY TO VOTE OR ALREADY VOTE BY MAIL (Q20=1, 2, or 4)

Q21 Please tell me the main reason you think you would be more likely to vote in elections if you had the option to vote by mail before Election Day. [OPEN END FOR FIRST 100 RESPONDENTS; ACCEPT UP TO THREE RESPONSES BUT DO NOT PROBE FOR MORE THAN ONE]

- 1 Gave response [**Record verbatim**]
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK IF A LOT OR SOMEWHAT MORE LIKELY TO VOTE (Q20 = 1 OR 2)

Q22 Suppose you were able to mail in your ballot before Election Day BUT you were required to PAY postage. Which of these do you think is most likely: 1) You would pay the postage and still vote by mail, 2) vote in person on Election Day instead, or 3) there is a chance you wouldn't be able to vote.

[IF ASKED, the amount of postage depends on the size and weight of the ballot in your area—usually between 39 and 87 cents.]

- 1 Vote by mail anyway
- 2 Vote in person
- 3 Chance won't be able to vote
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

I would like to ask you a few final questions for statistical purposes. Please be assured that all of your responses will be kept entirely anonymous and absolutely confidential.

- D1 Record gender  
1 Male  
2 Female

ASK ALL

- D2 What is your age?  
Range 18-96  
97 97 or older  
98 Don't know  
99 Refused

ASK ALL

- D3 What is the highest level of education you received?  
1 High School or less  
2 Some College  
3 College Graduate  
4 Post graduate  
8 Don't know [DO NOT READ]  
9 Refused [DO NOT READ]

ASK ALL

- D4 Are you now employed full-time, part-time, or not employed?  
1 Full-time  
2 Part-time  
3 Not employed  
8 Don't know [DO NOT READ]  
9 Refused [DO NOT READ]

ASK ALL

- D5 Are you or someone in your household an active-duty member of the armed forces?  
1 Yes  
2 No  
8 Don't know [DO NOT READ]  
9 Refused [DO NOT READ]

ASK ALL

- D6 Are you yourself of Latino or Hispanic origin or descent, such as Mexican, Puerto Rican, Cuban, or some other Latin American background?  
1 Yes  
2 No  
8 Don't know [DO NOT READ]  
9 Refused [DO NOT READ]

ASK ALL

- D7 What is your race? (If Latino ask:) Are you white Latino, black Latino or some other race? (Else:) Are you white, African American or black, Asian or some other race?
- 1 White/White Latino
  - 2 African American/Black/Black Latino
  - 3 Asian
  - 4 Other
  - 8 Don't know
  - 9 Refused

ASK ALL

- D8 Last year, that is in 2006, what was your total household income from all sources before taxes? Was it under or over \$25,000?
- 1 Under \$25,000
  - 2 Over \$25,000
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK IF INCOME LESS THAN \$25,000 (D8=1)

D9 Now just stop me when I get to the right category. Was your income ...

**Read responses**

- 1 Less than \$10,000
- 2 \$10,000 to under \$15,000
- 3 \$15,000 to under \$20,000 or
- 4 \$20,000 to under \$25,000
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK IF INCOME MORE THAN \$25,000 (D8=2)

D10 Now just stop me when I get to the right category. Was your income ...

**Read responses**

- 1 \$25,000 to under \$30,000
- 2 \$30,000 to under \$35,000
- 3 \$35,000 to under \$40,000
- 4 \$40,000 to under \$50,000
- 5 \$50,000 to under \$75,000 or
- 6 \$75,000 or more
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

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ASK ALL

- D11 Are you limited in any way in any activities because of physical, mental, or emotional problems?
- 1 Yes
  - 2 No
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK IF HAS DISABILITY (D11= 1).

- D12 Does this condition require you to use special equipment, such as a cane, a wheelchair, a special bed, or a special telephone?
- 1 Yes
  - 2 No
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

**Thank you. That is all of the questions I have for you.**

\*This information collection is required for the EAC to meet its statutory requirements under the Help America Vote Act (HAVA) of 2002 (42 U.S.C. 15301). Respondent's obligation to reply to this information collection is voluntary; respondents include the 50 States, and the District of Columbia. This information will be made publicly available on the EAC website at [www.eac.gov](http://www.eac.gov). According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB Control No. pending (expires: to be determined). The time required to complete this information collection is estimated to average 1.25 hours per response. Comments regarding this burden estimate should be sent to the Program Manager – 2007 Study of the Feasibility and Advisability of Establishing a Program of Free Return Postage for Absentee Ballots, U.S. Election Assistance Commission, 1225 New York Ave, NW, Suite 1100, Washington, DC 20005.

Dated: January 17, 2007.

**James F. Manning,**

*Acting Assistant Secretary for Postsecondary Education.*

[FR Doc. E7-876 Filed 1-22-07; 8:45 am]

BILLING CODE 4000-01-P

## U.S. ELECTION ASSISTANCE COMMISSION

### Information Collection; Study of the Feasibility and Advisability of Establishing a Program of Free Return or Reduced Postage for Absentee Ballots—Survey of Registered Voters

**AGENCY:** U.S. Election Assistance Commission (EAC).

**ACTION:** Notice; request for comments.

**SUMMARY:** The EAC, as part of its continuing effort to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995, invites the general public and other Federal agencies to take this opportunity to comment on a proposed information collection. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

**DATES:** Written comments must be submitted on or before March 23, 2007.

**ADDRESSES:** Submit comments and recommendations on the proposed information collection in writing to the U.S. Election Assistance Commission, 1225 New York Avenue, NW., Suite 1100, Washington, DC 20005, ATTN: Ms. Laiza N. Otero (or via the Internet at [lotero@eac.gov](mailto:lotero@eac.gov)).

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the Focus Group Discussion Guide, please, write to the above address or call Ms. Laiza N. Otero at (202) 566-3100. You may also view the proposed collection instrument by visiting our Web site at [www.eac.gov](http://www.eac.gov).

### SUPPLEMENTARY INFORMATION:

**Title and OMB Number:** Study of the Feasibility and Advisability of Establishing a Program of Free Return or Reduced Postage for Absentee Ballots—Survey of Registered Voters.

**OMB Number:** Pending.

**Type of Review:** Regular submission.

**Needs and Uses:** Sec. 246 of the Help America Vote Act requires the Election Assistance Commission (EAC), in consultation with the United States Postal Service, to conduct a study on the feasibility and advisability of establishing a program under which the U.S. Postal Service shall waive or otherwise reduce the amount of postage applicable with respect to absentee ballots returned by voters in general elections for Federal office. This study does not address the cost to the U.S. Postal Service for free postage for sending absentee ballots but may consider costs to election officials that are related to implementing such a program including the costs of sending absentee ballots to voters. It also does not include consideration of the 39 U.S.C. 3406 provisions for the mailing of balloting materials for military and overseas absentee voters. As part of the study, the Commission is directed to conduct a survey of potential beneficiaries, including the elderly and disabled, and to take into account the results of this survey in determining the feasibility and advisability of establishing such a program. At the conclusion of the study effort, EAC is required to submit a report to Congress with recommendations for such legislative and administrative action as EAC determines appropriate. The report shall contain an analysis of the feasibility of implementing such a program and an estimate of the costs.

**Affected Public:** Citizens.

**Estimated Number of Respondents:** 1,200.

**Responses per Respondent:** 1.

**Estimated Burden per Response:** .25 hours.

**Estimated Total Annual Burden Hours:** 300 hours.

Information will be collected through a survey of U.S. citizens to determine the possible effect that a free and/or reduced cost absentee ballot postage program would have on voter participation. The sample will be designed in such a way so as to afford analysis of the results according to significant sub-groups including those living in states with high versus low rates of absentee voting and states with restrictive versus states with laws favoring absentee voting. The surveys will be representative of the U.S. population and will be conducted by

phone using random digit dialing (RDD) technology. Within each contacted household, a respondent will be selected among all adults in the household aged 18 years and older. The following information will be requested from each respondent:

#### 1. Background Information

The survey will gather data regarding each respondent's background. Background information will include, the respondent's location (state, county, and zip code), the location of the respondent's voter registration (state, county, zip code), age, ethnicity, education, income bracket, whether the respondent is living with a disability, whether the respondent was displaced due to a natural disaster, and whether the respondent is currently an active-duty member of the armed forces (or a dependent thereof).

#### 2. Voting Information

The survey will gather data regarding the respondent's voting history. Voting information will include, registration status, whether the respondent voted in the 2006 Congressional election, whether the respondent voted in the 2004 Presidential election, whether the respondent voted in the 2000 Presidential election, how the respondent voted in past elections (in person, by mail, absentee), whether the respondent is eligible to vote absentee (or whether the respondent does not know).

#### 3. Program Effect

The survey will gather data from all respondents regarding the various effects that the establishment of this program would have on the targeted citizens. Questions on the program will cover (1) whether the program will increase the likelihood that the respondent would use the absentee ballot process; (2) whether the program will increase the likelihood that the respondent would vote in a federal election; (3) whether the program will make it easier for the voter to participate in elections.

This study is further being supplemented with information collected through a series of three focus groups comprised of potential beneficiaries of a free and/or discounted absentee ballot postage program. Information about the focus groups' information collection can be found at

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www.eac.gov and the **Federal Register** (Vol. 71, No. 219, Page 66321).

**Thomas R. Wilkey,**  
Executive Director, U.S. Election Assistance  
Commission.

[FR Doc. 07-261 Filed 1-22-07; 8:45 am]

BILLING CODE 6820-KF-M

## DEPARTMENT OF ENERGY

### Office of International Regimes and Agreements

#### Proposed Subsequent Arrangement

**AGENCY:** Department of Energy.

**ACTION:** Notice of Proposed Subsequent  
Arrangement.

**SUMMARY:** This notice is being issued under the authority of Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160). The Department is providing notice of a proposed "subsequent arrangement" under the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy between the United States and the European Atomic Energy Community (EURATOM).

This subsequent arrangement concerns a request for a one-year extension (April 2007 to April 2008) of the current one-year programmatic approval for retransfer of U.S.-obligated irradiated fuel rods between Studsvik Nuclear AB, Sweden and the Institutt for Energiteknikk, Norway. The rods are being transferred for irradiation service, tests and examination, and returned to Sweden for further tests and disposal. The amounts are the same as under the current approval—a maximum of 30,000 grams uranium, 400 grams U-235 and 400 grams plutonium in all shipments combined, with a maximum of 100 grams of plutonium per shipment. The original programmatic consent, published in the **Federal Register** June 13, 2006, is set to expire in March 2007. Additional transactions are scheduled to occur between April 2007 and April 2008 and will be subject to U.S.-Euratom Agreement for Cooperation on Peaceful Uses of Nuclear Energy.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, we have determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than 15 days after the date of publication of this notice.

Dated: January 12, 2007.

For the Department of Energy.  
**Richard Goorevich,**  
Director, Office of International Regimes and  
Agreements.  
[FR Doc. E7-914 Filed 1-22-07; 8:45 am]  
BILLING CODE 6450-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #1

January 16, 2007.

Take notice that the Commission received the following electric rate filings:

**Docket Numbers:** ER06-707-000.  
**Applicants:** Arkansas Electric  
Cooperative Corporation.

**Description:** Arkansas Electric  
Cooperative Corporation submits a  
notice, of conditional withdrawal of  
protests.

**Filed Date:** 01/11/2007.  
**Accession Number:** 20070111-5016.  
**Comment Date:** 5 p.m. Eastern Time  
on Monday, January 22, 2007.

**Docket Numbers:** ER06-739-004;  
ER06-738-004; ER03-983-003.  
**Applicants:** Cogen Technologies  
Linden Venture, L.P.; East Coast Power,  
Linden Holding, L.L.C.

**Description:** Cogen Technologies  
Linden Venture LP et al notifies FERC,  
of a change in status resulting from  
acquisition of an ownership interest in  
Babcock & Brown Wind Portfolio,  
Holdings 1 LLC etc.

**Filed Date:** 01/09/2007.  
**Accession Number:** 20070111-0043.  
**Comment Date:** 5 p.m. Eastern Time  
on Tuesday, January 30, 2007.

**Docket Numbers:** ER06-1452-001.  
**Applicants:** PJM Interconnection,  
L.L.C.

**Description:** PJM Interconnection,  
LLC submits a corrected Wholesale,  
Market Participation Agreement.

**Filed Date:** 01/11/2007.  
**Accession Number:** 20070112-0061.  
**Comment Date:** 5 p.m. Eastern Time  
on Thursday, February 01, 2007.

**Docket Numbers:** ER06-1453-001.  
**Applicants:** PJM Interconnection,  
L.L.C.

**Description:** PJM Interconnection,  
LLC submits a corrected Wholesale,  
Market Participation Agreement.

**Filed Date:** 01/10/2007.  
**Accession Number:** 20070111-0046.  
**Comment Date:** 5 p.m. Eastern Time  
on Wednesday, January 31, 2007.

**Docket Numbers:** ER07-233-001.  
**Applicants:** Occidental Power  
Services, Inc.

**Description:** Occidental Power  
Services, Inc submits an amendment to  
its, 11/17/06 rate schedule amendment.  
**Filed Date:** 01/10/2007.

**Accession Number:** 20070111-0044.  
**Comment Date:** 5 p.m. Eastern Time  
on Wednesday, January 31, 2007.

**Docket Numbers:** ER07-340-001.  
**Applicants:** Bell Independent Power  
Corporation.

**Description:** Bell Independent Power  
Corp submits an amended petition, for  
acceptance of initial Tariff, Original  
Volume 1, waivers, and blanket  
authority.

**Filed Date:** 01/11/2007.  
**Accession Number:** 20070112-0062.  
**Comment Date:** 5 p.m. Eastern Time  
on Thursday, February 01, 2007.

**Docket Numbers:** ER07-358-001.  
**Applicants:** Southwest Power Pool,  
Inc.

**Description:** Southwest Power Pool,  
Inc submits a supplement to its, 12/22/  
06 filing of an executed Service  
Agreement for Firm, Point-to-Point  
Transmission Service w/ Western  
Resources, dba Westar Energy etc.

**Filed Date:** 01/11/2007.  
**Accession Number:** 20070112-0063.  
**Comment Date:** 5 p.m. Eastern Time  
on Thursday, February 01, 2007.

**Docket Numbers:** ER07-422-000.  
**Applicants:** New York Independent  
System Operator, Inc.

**Description:** New York Independent  
System Operator, Inc submits, proposed  
revisions to its Open Access  
Transmission Tariff, and its Market  
Administration and Control Area  
Services, Tariff.

**Filed Date:** 01/09/2007.  
**Accession Number:** 20070111-0017.  
**Comment Date:** 5 p.m. Eastern Time  
on Tuesday, January 30, 2007.

**Docket Numbers:** ER07-423-000.  
**Applicants:** South Carolina Electric &  
Gas Company.

**Description:** South Carolina Electric &  
Gas Co submits a Facilities, Agreement  
with New Horizon Electric Cooperative.

**Filed Date:** 01/10/2007.  
**Accession Number:** 20070111-0045.  
**Comment Date:** 5 p.m. Eastern Time  
on Wednesday, January 31, 2007.

**Docket Numbers:** ER07-424-000.  
**Applicants:** PJM Interconnection,  
L.L.C.

**Description:** PJM Interconnection LLC  
submits a report of the, recommended  
allocations of cost responsibility for  
baseline, transmission upgrades  
reviewed and approved by PJM, Board  
of Managers and revised tariff sheets.

**Filed Date:** 01/11/2007.  
**Accession Number:** 20070112-0064.  
**Comment Date:** 5 p.m. Eastern Time  
on Monday, February 12, 2007.

010131



ernieh@aol.com  
03/30/2007 06:27 PM

To klynndyson@eac.gov, lotero@eac.gov  
cc  
bcc  
Subject Fwd: Free Return Postage Package

History:  This message has been replied to.

Karen, Laiza:

Here is all the material needed for the OMB submission for the Free Return Postage survey.  
Please let me know if you have any questions.

1. Information Collection Request

- OMB Form 83-I
- Supporting Statement A
- Supporting Statement B
- Copy of 60 day Federal Register Notice
- Copy of 30 day Federal Register Notice **to be submitted to post in Register**
- Summary of public comments received, including actions in response to the comments
- Copies of pertinent statutory authority and regulations

AOL now offers free email to everyone. Find out more about what's free from AOL at [AOL.com](http://AOL.com)



. FABP.60\_Day\_FR\_Notice.1.23.2007.pdf



HAVA\_246.doc



OMB\_83-I\_form\_1.pdf



Summary\_of\_Public\_Comments\_for\_Free\_Return\_Postage.doc



Federal\_Register\_Notice-Survey\_30\_days.doc



Supporting\_Statements\_A\_and\_B\_SURVEY.doc

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Dated: January 17, 2007.

**James F. Manning,**

*Acting Assistant Secretary for Postsecondary Education.*

[FR Doc. E7-876 Filed 1-22-07; 8:45 am]

BILLING CODE 4000-01-P

## U.S. ELECTION ASSISTANCE COMMISSION

### Information Collection; Study of the Feasibility and Advisability of Establishing a Program of Free Return or Reduced Postage for Absentee Ballots—Survey of Registered Voters

**AGENCY:** U.S. Election Assistance Commission (EAC).

**ACTION:** Notice; request for comments.

**SUMMARY:** The EAC, as part of its continuing effort to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995, invites the general public and other Federal agencies to take this opportunity to comment on a proposed information collection. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

**DATES:** Written comments must be submitted on or before March 23, 2007.

**ADDRESSES:** Submit comments and recommendations on the proposed information collection in writing to the U.S. Election Assistance Commission, 1225 New York Avenue, NW., Suite 1100, Washington, DC 20005, ATTN: Ms. Laiza N. Otero (or via the Internet at [lotero@eac.gov](mailto:lotero@eac.gov)).

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the Focus Group Discussion Guide, please, write to the above address or call Ms. Laiza N. Otero at (202) 566-3100. You may also view the proposed collection instrument by visiting our Web site at [www.eac.gov](http://www.eac.gov).

### SUPPLEMENTARY INFORMATION:

*Title and OMB Number:* Study of the Feasibility and Advisability of Establishing a Program of Free Return or Reduced Postage for Absentee Ballots—Survey of Registered Voters.

*OMB Number:* Pending.

*Type of Review:* Regular submission.

*Needs and Uses:* Sec. 246 of the Help America Vote Act requires the Election Assistance Commission (EAC), in consultation with the United States Postal Service, to conduct a study on the feasibility and advisability of establishing a program under which the U.S. Postal Service shall waive or otherwise reduce the amount of postage applicable with respect to absentee ballots returned by voters in general elections for Federal office. This study does not address the cost to the U.S. Postal Service for free postage for sending absentee ballots but may consider costs to election officials that are related to implementing such a program including the costs of sending absentee ballots to voters. It also does not include consideration of the 39 U.S.C. 3406 provisions for the mailing of balloting materials for military and overseas absentee voters. As part of the study, the Commission is directed to conduct a survey of potential beneficiaries, including the elderly and disabled, and to take into account the results of this survey in determining the feasibility and advisability of establishing such a program. At the conclusion of the study effort, EAC is required to submit a report to Congress with recommendations for such legislative and administrative action as EAC determines appropriate. The report shall contain an analysis of the feasibility of implementing such a program and an estimate of the costs.

*Affected Public:* Citizens.

*Estimated Number of Respondents:* 1,200.

*Responses per Respondent:* 1.

*Estimated Burden per Response:* .25 hours.

*Estimated Total Annual Burden Hours:* 300 hours.

Information will be collected through a survey of U.S. citizens to determine the possible effect that a free and/or reduced cost absentee ballot postage program would have on voter participation. The sample will be designed in such a way so as to afford analysis of the results according to significant sub-groups including those living in states with high versus low rates of absentee voting and states with restrictive versus states with laws favoring absentee voting. The surveys will be representative of the U.S. population and will be conducted by

phone using random digit dialing (RDD) technology. Within each contacted household, a respondent will be selected among all adults in the household aged 18 years and older. The following information will be requested from each respondent:

#### 1. Background Information

The survey will gather data regarding each respondent's background. Background information will include, the respondent's location (state, county, and zip code), the location of the respondent's voter registration (state, county, zip code), age, ethnicity, education, income bracket, whether the respondent is living with a disability, whether the respondent was displaced due to a natural disaster, and whether the respondent is currently an active-duty member of the armed forces (or a dependent thereof).

#### 2. Voting Information

The survey will gather data regarding the respondent's voting history. Voting information will include, registration status, whether the respondent voted in the 2006 Congressional election, whether the respondent voted in the 2004 Presidential election, whether the respondent voted in the 2000 Presidential election, how the respondent voted in past elections (in person, by mail, absentee), whether the respondent is eligible to vote absentee (or whether the respondent does not know).

#### 3. Program Effect

The survey will gather data from all respondents regarding the various effects that the establishment of this program would have on the targeted citizens. Questions on the program will cover (1) whether the program will increase the likelihood that the respondent would use the absentee ballot process; (2) whether the program will increase the likelihood that the respondent would vote in a federal election; (3) whether the program will make it easier for the voter to participate in elections.

This study is further being supplemented with information collected through a series of three focus groups comprised of potential beneficiaries of a free and/or discounted absentee ballot postage program. Information about the focus groups' information collection can be found at

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www.eac.gov and the **Federal Register** (Vol. 71, No. 219, Page 66321).

**Thomas R. Wilkey,**  
Executive Director, U.S. Election Assistance Commission.  
[FR Doc. 07-261 Filed 1-22-07; 8:45 am]  
BILLING CODE 6820-KF-M

## DEPARTMENT OF ENERGY

### Office of International Regimes and Agreements

#### Proposed Subsequent Arrangement

**AGENCY:** Department of Energy.

**ACTION:** Notice of Proposed Subsequent Arrangement.

**SUMMARY:** This notice is being issued under the authority of Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160). The Department is providing notice of a proposed "subsequent arrangement" under the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy between the United States and the European Atomic Energy Community (EURATOM).

This subsequent arrangement concerns a request for a one-year extension (April 2007 to April 2008) of the current one-year programmatic approval for retransfer of U.S.-obligated irradiated fuel rods between Studsvik Nuclear AB, Sweden and the Institutt for Energiteknikk, Norway. The rods are being transferred for irradiation service, tests and examination, and returned to Sweden for further tests and disposal. The amounts are the same as under the current approval—a maximum of 30,000 grams uranium, 400 grams U-235 and 400 grams plutonium in all shipments combined, with a maximum of 100 grams of plutonium per shipment. The original programmatic consent, published in the **Federal Register** June 13, 2006, is set to expire in March 2007. Additional transactions are scheduled to occur between April 2007 and April 2008 and will be subject to U.S.-Euratom Agreement for Cooperation on Peaceful Uses of Nuclear Energy.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, we have determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than 15 days after the date of publication of this notice.

Dated: January 12, 2007.

For the Department of Energy.  
**Richard Goorevich,**  
Director, Office of International Regimes and Agreements.  
[FR Doc. E7-914 Filed 1-22-07; 8:45 am]  
BILLING CODE 6450-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #1

January 16, 2007.

Take notice that the Commission received the following electric rate filings:

**Docket Numbers:** ER06-707-000.  
**Applicants:** Arkansas Electric Cooperative Corporation.

**Description:** Arkansas Electric Cooperative Corporation submits a notice, of conditional withdrawal of protests.

**Filed Date:** 01/11/2007.  
**Accession Number:** 20070111-5016.  
**Comment Date:** 5 p.m. Eastern Time on Monday, January 22, 2007.

**Docket Numbers:** ER06-739-004; ER06-738-004; ER03-983-003.  
**Applicants:** Cogen Technologies Linden Venture, L.P.; East Coast Power, Linden Holding, L.L.C.

**Description:** Cogen Technologies Linden Venture LP et al notifies FERC, of a change in status resulting from acquisition of an, ownership interest in Babcock & Brown Wind Portfolio, Holdings 1 LLC etc.

**Filed Date:** 01/09/2007.  
**Accession Number:** 20070111-0043.  
**Comment Date:** 5 p.m. Eastern Time on Tuesday, January 30, 2007.

**Docket Numbers:** ER06-1452-001.  
**Applicants:** PJM Interconnection, L.L.C.

**Description:** PJM Interconnection, LLC submits a corrected Wholesale, Market Participation Agreement.

**Filed Date:** 01/11/2007.  
**Accession Number:** 20070112-0061.  
**Comment Date:** 5 p.m. Eastern Time on Thursday, February 01, 2007.

**Docket Numbers:** ER06-1453-001.  
**Applicants:** PJM Interconnection, L.L.C.

**Description:** PJM Interconnection, LLC submits a corrected Wholesale, Market Participation Agreement.

**Filed Date:** 01/10/2007.  
**Accession Number:** 20070111-0046.  
**Comment Date:** 5 p.m. Eastern Time on Wednesday, January 31, 2007.

**Docket Numbers:** ER07-233-001.  
**Applicants:** Occidental Power Services, Inc.

**Description:** Occidental Power Services, Inc submits an amendment to its, 11/17/06 rate schedule amendment.  
**Filed Date:** 01/10/2007.

**Accession Number:** 20070111-0044.  
**Comment Date:** 5 p.m. Eastern Time on Wednesday, January 31, 2007.

**Docket Numbers:** ER07-340-001.  
**Applicants:** Bell Independent Power Corporation.

**Description:** Bell Independent Power Corp submits an amended petition, for acceptance of initial Tariff, Original Volume 1, waivers, and blanket authority.

**Filed Date:** 01/11/2007.  
**Accession Number:** 20070112-0062.  
**Comment Date:** 5 p.m. Eastern Time on Thursday, February 01, 2007.

**Docket Numbers:** ER07-358-001.  
**Applicants:** Southwest Power Pool, Inc.

**Description:** Southwest Power Pool, Inc submits a supplement to its, 12/22/06 filing of an executed Service Agreement for Firm, Point-to-Point Transmission Service w/ Western Resources, dba Westar Energy etc.

**Filed Date:** 01/11/2007.  
**Accession Number:** 20070112-0063.  
**Comment Date:** 5 p.m. Eastern Time on Thursday, February 01, 2007.

**Docket Numbers:** ER07-422-000.  
**Applicants:** New York Independent System Operator, Inc.

**Description:** New York Independent System Operator, Inc submits, proposed revisions to its Open Access Transmission Tariff, and its Market Administration and Control Area Services, Tariff.

**Filed Date:** 01/09/2007.  
**Accession Number:** 20070111-0017.  
**Comment Date:** 5 p.m. Eastern Time on Tuesday, January 30, 2007.

**Docket Numbers:** ER07-423-000.  
**Applicants:** South Carolina Electric & Gas Company.

**Description:** South Carolina Electric & Gas Co submits a Facilities, Agreement with New Horizon Electric Cooperative.

**Filed Date:** 01/10/2007.  
**Accession Number:** 20070111-0045.  
**Comment Date:** 5 p.m. Eastern Time on Wednesday, January 31, 2007.

**Docket Numbers:** ER07-424-000.  
**Applicants:** PJM Interconnection, L.L.C.

**Description:** PJM Interconnection LLC submits a report of the, recommended allocations of cost responsibility for baseline, transmission upgrades reviewed and approved by PJM, Board of Managers and revised tariff sheets.

**Filed Date:** 01/11/2007.  
**Accession Number:** 20070112-0064.  
**Comment Date:** 5 p.m. Eastern Time on Monday, February 12, 2007.

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SEC. 246. <<NOTE: 42 USC 15386.>> STUDY AND REPORT ON FREE ABSENTEE BALLOT POSTAGE.

(a) Study on the Establishment of a Free Absentee Ballot Postage Program.--

(1) In general.--The Commission, in consultation with the Postal Service, shall conduct a study on the feasibility and advisability of the establishment of a program under which the Postal Service shall waive or otherwise reduce the amount of postage applicable with respect to absentee ballots submitted

by

voters in general elections for Federal office (other than balloting materials mailed under section 3406 of title 39, United States Code) that does not apply with respect to the postage required to send the absentee ballots to voters.

(2) Public survey.--As part of the study conducted under paragraph (1), the Commission shall conduct a survey of potential beneficiaries under the program described in such paragraph, including the elderly and disabled, and shall take into account the results of such survey in determining the feasibility and advisability of establishing such a program.

(b) Report.--

(1) <<NOTE: Deadline.>> Submission.--Not later than the date that is 1 year after the date of the enactment of this

Act,

the Commission shall submit to Congress a report on the study conducted under subsection (a) (1) together with recommendations for such legislative and administrative action as the

Commission

determines appropriate.

(2) Costs.--The report submitted under paragraph (1) shall contain an estimate of the costs of establishing the program described in subsection (a) (1).

(3) Implementation.--The report submitted under paragraph (1) shall contain an analysis of the feasibility of

implementing

the program described in subsection (a) (1) with respect to the absentee ballots to be submitted in the general election for Federal office held in 2004.

(4) Recommendations regarding the elderly and disabled.--

The

report submitted under paragraph (1) shall--

(A) include recommendations on ways that program described in subsection (a) (1) would target elderly individuals and individuals with disabilities; and

(B) identify methods to increase the number of such individuals who vote in elections for Federal office.

(c) Postal Service Defined.--The term ``Postal Service'' means the United States Postal Service established under section 201 of title 39, United States Code.

# PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the Supporting Statement, and any additional documentation to: **Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.**

1. Agency/Subagency originating request <b>Election Assistance Commission</b>	2. OMB control number <span style="float: right;">b. <input checked="" type="checkbox"/> None</span> a. _____
3. Type of information collection (check one) a. <input checked="" type="checkbox"/> New collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension, without change, of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number	4. Type of review requested (check one) a. <input checked="" type="checkbox"/> Regular b. <input type="checkbox"/> Emergency - Approval requested by: ____/____/____ c. <input type="checkbox"/> Delegated  5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
3a. Public Comments Has the agency received public comments on this information collection? <input type="checkbox"/> Yes <input type="checkbox"/> No	6. Requested expiration date a. <input checked="" type="checkbox"/> Three years from approval date <input type="checkbox"/> Other Specify: ____/____/____
7. Title <b>Study of the Feasibility and Advisability of Establishing a Program of Free Return or Reduced Postage for Absentee Ballots</b>	
8. Agency form number(s) (if applicable) <b>NA</b>	
9. Keywords <b>Elections, Postal Service,</b>	
10. Abstract <b>The Help America Vote Act requires the EAC to conduct a study on the feasibility of establishing a program under which the U.S. Postal Service shall waive or reduce the amount of postage for absentee ballots. The study will conduct a public opinion survey of registered and non-registered voters throughout the fifty U.S. states. Using this information, the EAC will submit a required report to Congress with recommendations for action.</b>	
11. Affected public (Mark primary with "P" and all others that apply with "X") a. <u>P</u> Individuals or households <span style="margin-left: 100px;">d. <input type="checkbox"/> Farms</span> b. <input type="checkbox"/> Business or other for-profit <span style="margin-left: 100px;">e. <input type="checkbox"/> Federal Government</span> c. <input type="checkbox"/> Not-for-profit institutions <span style="margin-left: 100px;">f. <input type="checkbox"/> State, Local or Tribal Government</span>	12. Obligation to respond (Mark primary with "P" and all others that apply with "X") a. <input type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory
13. Annual reporting and recordkeeping hour burden a. Number of respondents <u>1,200</u> b. Total annual responses <u>1,200</u> 1. Percentage of these responses collected electronically <u>0</u> % c. Total annual hours requested <u>300</u> d. Current OMB inventory <u>0</u> e. Difference <u>300</u> f. Explanation of difference 1. Program change <u>300</u> 2. Adjustment _____	14. Annual reporting and recordkeeping cost burden (in thousands of dollars) a. Total annualized capital/startup costs <u>0</u> b. Total annual costs (O&M) <u>0</u> c. Total annualized cost requested <u>0</u> d. Current OMB inventory <u>0</u> e. Difference <u>0</u> f. Explanation of difference 1. Program change <u>0</u> 2. Adjustment <u>0</u>
15. Purpose of information collection (Mark primary with "P" and all others that apply with "X") a. <input type="checkbox"/> Application for benefits <span style="margin-left: 100px;">e. <input checked="" type="checkbox"/> Program planning or management</span> b. <input type="checkbox"/> Program evaluation <span style="margin-left: 100px;">f. <input checked="" type="checkbox"/> Research</span> c. <input type="checkbox"/> General purpose statistics <span style="margin-left: 100px;">g. <input checked="" type="checkbox"/> Regulatory or compliance</span> d. <input type="checkbox"/> Audit	16. Frequency of recordkeeping or reporting (check all that apply) a. <input type="checkbox"/> Recordkeeping <span style="margin-left: 100px;">b. <input type="checkbox"/> Third party disclosure</span> c. <input checked="" type="checkbox"/> Reporting 1. <input type="checkbox"/> On occasion <span style="margin-left: 20px;">2. <input type="checkbox"/> Weekly</span> <span style="margin-left: 20px;">3. <input type="checkbox"/> Monthly</span> 4. <input type="checkbox"/> Quarterly <span style="margin-left: 20px;">5. <input type="checkbox"/> Semi-annually</span> <span style="margin-left: 20px;">6. <input checked="" type="checkbox"/> Annually</span> 7. <input type="checkbox"/> Biennially <span style="margin-left: 20px;">8. <input type="checkbox"/> Other (describe) _____</span>
17. Statistical methods Does this information collection employ statistical methods? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	18. Agency contact (person who can best answer questions regarding the content of this submission) Name: <u>Laiza N. Otero</u> Phone: <u>(202) 566-2209</u>



## 19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9.

**Note:** The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It uses plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
  - (i) Why the information is being collected;
  - (ii) Use of information;
  - (iii) Burden estimate;
  - (iv) Nature of response (voluntary, required for a benefit, or mandatory);
  - (v) Nature and extent of confidentiality; and
  - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of the instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of these provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee	Date
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# Instructions For Completing OMB Form 83-I

Please answer all questions and have the Senior Official or designee sign the form. These instructions should be used in conjunction with 5 CFR 1320, which provides information on coverage, definitions, and other matters of procedure and interpretation under the Paperwork Reduction Act of 1995.

## 1. Agency/Subagency originating request

Provide the name of the agency or subagency originating the request. For most cabinet-level agencies, a subagency designation is also necessary. For non-cabinet agencies, the subagency designation is generally unnecessary.

## 2. OMB control number

- If the information collection in this request has previously received or now has an OMB control or comment number, enter the number.
- Check "None" if the information collection in this request has not previously received an OMB control number. Enter the four digit agency code for your agency.

## 3. Type of information collection (check one)

- Check "New collection" when the collection has not previously been used or sponsored by the agency.
- Check "Revision" when the collection is currently approved by OMB, and the agency request includes a material change to the collection instrument, instructions, its frequency of collection, or the use to which the information is to be put.
- Check "Extension" when the collection is currently approved by OMB, and the agency wishes only to extend the approval past the current expiration date without making any material change in the collection instrument, instructions, frequency of collection, or the use to which the information is to be put.
- Check "Reinstatement without change" when the collection previously had OMB approval, but the approval has expired or was withdrawn before this submission was made, and there is no change to the collection.
- Check "Reinstatement with change" when the collection previously had OMB approval, but the approval has expired or was withdrawn before this submission was made, and there is change to the collection.
- Check "Existing collection in use without OMB control number" when the collection is currently in use but does not have a currently valid OMB control number.

## 4. Type of review requested (check one)

- Check "Regular" when the collection is submitted under 5 CFR 1320.10, 1320.11, or 1320.12 with a standard 60 day review schedule.
- Check "Emergency" when the agency is submitting the request under 5 CFR 1320.13 for emergency processing and provides the required supporting material. Provide the date by which the agency requests approval.
- Check "Delegated" when the agency is submitting the collection under the conditions OMB has granted the agency delegated authority.

## 5. Small entities

Indicate whether this information collection will have a significant impact on a substantial number of small entities. A small entity may be (1) a small business which is deemed to be one that is independently owned and operated and that is not dominant in its field of operation; (2) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field; or (3) a small government jurisdiction which is a government of a city, county, town, township, school district, or special district with a population of less than 50,000.

## 6. Requested expiration date

- Check "Three years" if the agency requests a three year approval for the collection.
- Check "Other" if the agency requests approval for less than three years. Specify the month and year of the requested expiration date.

## 7. Title

Provide the official title of the information collection. If an official title does not exist, provide a description which will distinguish this collection from others.

## 8. Agency form number(s) (if applicable)

Provide any form number the agency has assigned to this collection of information. Separate each form number with a comma.

## 9. Keywords

Select and list at least two keywords (descriptors) from the "Federal Register Thesaurus of Indexing Terms" that describe the subject area(s) of the information collection. Other terms may be used but should be listed after those selected from the thesaurus. Separate keywords with commas. Keywords should not exceed two lines of text.

## 10. Abstract

Provide a statement, limited to five lines of text, covering the agency's need for the information, uses to which it will be put, and a brief description of the respondents.

## 11. Affected public

Mark all categories that apply, denoting the primary public with a "P" and all others that apply with "X."

## 12. Obligation to respond

Mark all categories that apply, denoting the primary obligation with a "P" and all others that apply with "X."

- Mark "Voluntary" when the response is entirely discretionary and has no direct effect on any benefit or privilege for the respondent.
- Mark "Required to obtain or retain benefits" when the response is elective, but is required to obtain or retain a benefit.
- Mark "Mandatory" when the respondent must reply or face civil or criminal sanctions.

## 13. Annual reporting and recordkeeping hour burden

- Enter the number of respondents and/or recordkeepers. If a respondent is also a recordkeeper, report the respondent only once.
- Enter the number of responses provided annually. For recordkeeping as compared to reporting activity, the number of responses equals the number of recordkeepers.
- Enter the estimated percentage of responses that will be submitted/collected electronically using magnetic media (i.e., diskette, electronic mail, or electronic data interchange). Facsimile is **not** considered an electronic submission.
- Enter the total annual recordkeeping and reporting hour burden.
- Enter the burden hours currently approved by OMB for this collection of information. Enter zero (0) for any new submission or for any collection whose OMB approval has expired.
- Enter the difference by subtracting line d from line c. Record a negative number (d larger than c) within parentheses.
- Explain the difference. The difference in line e must be accounted for in lines f.1. and f.2.
  - "Program change" is the result of deliberate Federal government action. All new collections and any subsequent revision of existing collections (e.g., the addition or deletion of questions) are recorded as program changes.
  - "Adjustment" is a change that is not the result of a deliberate Federal government action. Changes resulting from new estimates or action not controllable by the Federal government are recorded as adjustments.

## 14. Annual reporting and recordkeeping cost burden (in thousands of dollars)

The costs identified in this item must exclude the cost of hour burden identified in Item 13.

- Enter the total dollar amount of annualized cost for all respondents of any associated capital or start-up costs.
- Enter recurring annual dollar amount of cost for all respondents associated with operating or maintaining systems or purchasing services.
- Enter total (14.a. + 14.b.) annual reporting and recordkeeping cost burden.
- Enter any cost burden currently approved by OMB for this collection of information. Enter zero (0) if this is the first submission after October 1, 1995.
- Enter the difference by subtracting line d from line c. Record a negative number (d larger than c) within parenthesis.
- Explain the difference. The difference in line e must be accounted for in lines f.1. and f.2.
  - "Program change" is the result of deliberate Federal government action. All new collections and any subsequent revisions or changes resulting in cost changes are recorded as program changes.

f.2. "Adjustment" is a change that is not the result of a deliberate Federal government action. Changes resulting from new estimations or actions not controllable by the Federal government are recorded as adjustments.

#### 15. Purpose of information collection

Mark all categories that apply, denoting the primary purpose with a "P" and all others that apply with "X."

a. Mark "Application for benefits" when the purpose is to participate in, receive, or qualify for a grant, financial assistance, etc., from a Federal agency or program.

b. Mark "Program evaluation" when the purpose is a formal assessment, through objective measures and systematic analysis, of the manner and extent to which Federal programs achieve their objectives or produce other significant effects.

c. Mark "General purpose statistics" when the data is collected chiefly for use by the public or for general government use without primary reference to the policy or program operations of the agency collecting the data.

d. Mark "Audit" when the purpose is to verify the accuracy of accounts and records.

e. Mark "Program planning or management" when the purpose relates to progress reporting, financial reporting and grants management, procurement and quality control, or other administrative information that does not fit into any other category.

f. Mark "Research" when the purpose is to further the course of research, rather than for a specific program purpose.

g. Mark "Regulatory or compliance" when the purpose is to measure compliance with laws or regulations.

#### 16. Frequency of recordkeeping or reporting

Check "Recordkeeping" if the collection of information explicitly includes a recordkeeping requirement.

Check "Third party disclosure" if a collection of information includes third-party disclosure requirements as defined by 1320.3(c).

Check "Reporting" for information collections that involve reporting and check the frequency of reporting that is requested or required of a respondent. If the reporting is on "an event" basis, check "On occasion."

#### 17. Statistical methods

Check "Yes" if the information collection uses statistical methods such as sampling or imputation. Generally, check "No" for applications and audits (unless a random auditing scheme is used). Check "Yes" for statistical collections, most research collections, and program evaluations using scientific methods. For other types of data collection, the use of sampling, imputation, or other statistical estimation techniques should dictate the response for this item. Ensure that supporting documentation is provided in accordance with Section B of the Supporting Statement.

#### 18. Agency contact

Provide the name and telephone number of the agency person best able to answer questions regarding the content of this submission.

#### 19. Certification for Paperwork Reduction Act Submissions

The Senior Official or designee signing this statement certifies that the collection of information encompassed by the request complies with 5 CFR 1320.9. Provisions of this certification that the agency cannot comply with should be identified here and fully explained in item 18 of the attached Supporting Statement. NOTE: The Office that "develops" and "uses" the information to be collected is the office that "conducts or sponsors" the collection of information. (See 5 CFR 1320.3(d)).

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## Certification Requirement for Paperwork Reduction Act Submissions

5 CFR 1320.9 reads "As part of the agency submission to OMB of a proposed collection of information, the agency (through the head of the agency, the Senior Official, or their designee) shall certify (and provide a record supporting such certification) that the proposed collection of information—

"(a) is necessary for the proper performance of the functions of the agency, including that the information to be collected will have practical utility;

"(b) is not unnecessarily duplicative of information otherwise reasonably accessible to the agency;

"(c) reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency, including with respect to small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. § 601(6)), the use of such techniques as:

"(1) establishing differing compliance or reporting requirements or timetables that take into account the resources available to those who are to respond;

"(2) the clarification, consolidation, or simplification of compliance and reporting requirements; or collections of information, or any part thereof;

"(3) an exemption from coverage of the collection of information, or any part thereof;

"(d) is written using plain, coherent, and unambiguous terminology and is understandable to those who are to respond;

"(e) is to be implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond;

"(f) indicates for each recordkeeping requirement the length of time persons are required to maintain the records specified;

"(g) informs potential respondents of the information called for under §1320.8(b)(3); [see below]

"(h) has been developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected, including the processing of the information in a manner which shall enhance, where appropriate, the utility of the information to agencies and the public;

"(i) uses effective and efficient statistical survey methodology appropriate to the purpose for which the information is to be collected; and

"(j) to the maximum extent practicable, uses appropriate information technology to reduce burden and improve data quality, agency efficiency and responsiveness to the public."

NOTE: 5 CFR 1320.8(b)(3) requires that each collection of information:

"(3) informs and provides reasonable notice to the potential persons to whom the collection of information is addressed of:

"(i) the reasons the information is planned to be and/or has been collected;

"(ii) the way such information is planned to be and/or has been used to further the proper performance of the functions of the agency;

"(iii) an estimate, to the extent practicable, of the average burden of the collection (together with a request that the public direct to the agency any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden);

"(iv) whether responses to the collection of information are voluntary, require to obtain or retain a benefit (citing authority) or mandatory (citing authority);

"(v) the nature and extent of confidentiality to be provided, if any (citing authority); and

"(vi) the fact that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number."

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# Supporting Statement for Paperwork Reduction Act Submissions

## General Instructions

A Supporting Statement, including the text of the notice to the public required by 5 CFR 1320.5(a)(i)(iv) and its actual or estimated date of publication in the Federal Register, must accompany each request for approval of a collection of information. The Supporting Statement must be prepared in the format described below, and must contain the information specified in Section A below. If an item is not applicable, provide a brief explanation. When Item 17 of the OMB Form 83-1 is checked "Yes", Section B of the Supporting Statement must be completed. OMB reserves the right to require the submission of additional information with respect to any request for approval.

## Specific Instructions

### A. Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-1), describe any methods used to minimize burden.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- \* requiring respondents to report information to the agency more often than quarterly;
- \* requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;
- \* requiring respondents to submit more than an original and two copies of any document;

- \* requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;
- \* in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;
- \* requiring the use of a statistical data classification that has not been reviewed and approved by OMB;
- \* that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or
- \* requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years - even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

9. Explain any decision to provide any payment or gift to respondents, other than reenumeration of contractors or grantees.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information

is requested, and any steps to be taken to obtain their consent.

12. Provide estimates of the hour burden of the collection of information. The statement should:

- \* Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.
- \* If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-1.

- \* Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 13.

13. Provide an estimate for the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).

- \* The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.

- \* If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collections services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use

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existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.

\* Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

14. Provide estimates of annualized costs to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.

#### **B. Collections of Information Employing Statistical Methods**

The agency should be prepared to justify its decision not to use statistical methods in any case where such methods might reduce burden or improve accuracy of results. When Item 17 on the Form OMB 83-I is checked, "Yes," the following documentation should be included in the Supporting Statement to the extent that it applies to the methods proposed:

1. Describe (including a numerical estimate) the potential respondent universe and any sampling or other respondent selection methods to be used. Data on the number of entities (e.g., establishments, State and local government units, households, or persons) in the universe covered by the collection and in the corresponding sample are to be provided in tabular form for the universe as a whole and for each of the strata in the proposed sample. Indicate expected response rates for the collection as a whole. If the collection had been conducted previously, include the actual response rate achieved during the last collection.

2. Describe the procedures for the collection of information including:

- \* Statistical methodology for stratification and sample selection,
- \* Estimation procedure,
- \* Degree of accuracy needed for the purpose described in the justification,
- \* Unusual problems requiring specialized sampling procedures, and
- \* Any use of periodic (less frequent than annual) data collection cycles to reduce burden.

3. Describe methods to maximize response rates and to deal with issues of non-response. The accuracy and reliability of information collected must be shown to be adequate for intended uses. For collections based on sampling, a special justification must be provided for any collection that will not yield "reliable" data that can be generalized to the universe studied.

4. Describe any tests of procedures or methods to be undertaken. Testing is encouraged as an effective means of refining collections of information to minimize burden and improve utility. Tests must be approved if they call for answers to identical questions from 10 or more respondents. A proposed test or set of test may be submitted for approval separately or in combination with the main collection of information.

5. Provide the name and telephone number of individuals consulted on statistical aspects of the design and the name of the agency unit, contractor(s), grantee(s), or other person(s) who will actually collect and/or analyze the information for the agency.

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**U.S. ELECTION ASSISTANCE COMMISSION**

**Information Collection Activity; Proposed Information Collection; Comment Request**

**AGENCY:** U.S. Election Assistance Commission (EAC).

**ACTION:** Notice.

**SUMMARY:** In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, EAC announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents.

**DATES:** Written comments must be submitted on or before May 5, 2007.

**ADDRESSES:** Written comments and recommendations on the proposed information collection should be sent to the U.S. Election Assistance Commission, 1225 New York Avenue NW, Suite 1100, Washington, DC 20005, ATTN: Ms. Laiza N. Otero (or via the Internet at

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lotero@eac.gov).

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the survey instrument, please, write to the above address or call Ms. Laiza N. Otero at (202) 566-3100. You may also view the proposed collection instrument by visiting our website at [www.eac.gov](http://www.eac.gov).

**SUPPLEMENTARY INFORMATION:**

*Title and OMB Number:* STUDY OF THE FEASIBILITY AND ADVISABILITY OF ESTABLISHING A PROGRAM OF FREE RETURN OR REDUCED POSTAGE FOR ABSENTEE BALLOTS; OMB Number Pending.

*Needs and Uses:* Sec. 246 of the Help America Vote Act requires the Election Assistance Commission (EAC), in consultation with the United States Postal Service, to conduct a study on the feasibility and advisability of establishing a program under which the U.S. Postal Service shall waive or otherwise reduce the amount of postage applicable with respect to absentee ballots returned by voters in general elections for Federal office. This study does not address the cost to the U.S. Postal Service for free postage for sending absentee ballots but may consider costs to election officials that are related to implementing such a program including the costs of sending absentee ballots to voters. It also does not include consideration of the 39 USC 3406 provisions for the mailing of balloting materials for military and overseas absentee voters. As part of the study the Commission is directed to conduct a survey of potential beneficiaries, including the elderly and disabled, and to take into account the results of this survey in determining the feasibility and advisability of establishing such a program.

At the conclusion of the study effort, EAC is required to submit a report to Congress with recommendations for such legislative and administrative action as EAC determines appropriate. The report shall contain an analysis of the feasibility of implementing such a program and an estimate of the costs.

*Affected Public:* US Citizens

*Number of Respondents:* 1200

*Responses per Respondent:* 1

*Estimated Burden Per Response:* 15 minutes

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*Estimated Total Annual Burden Hours: 300 hours*

Information will be collected through a survey of U.S. citizens to determine the possible effect that a free and/or reduced cost absentee ballot postage program would have on voter participation. The sample will be designed in such a way so as to afford analysis of the results according to significant sub-groups including those living in states with high versus low rates of absentee voting and states with restrictive versus states with laws favoring absentee voting. The surveys will be representative of the U.S. population in the fifty U.S. states and will be conducted by phone using random digit dialing (RDD) technology. Within each contacted household, a respondent will be selected among all adults in the household aged 18 years and older. The following information will be requested from each respondent:

1. Background Information

The survey will gather data regarding each respondent's background. Background information will include, the respondent's location, the location of the respondent's voter registration, age, ethnicity, education, income bracket, whether the respondent is living with a disability, and whether the respondent is currently an active-duty member of the armed forces (or a dependent thereof).

2. Voting Information

The survey will gather data regarding the respondent's voting history. Voting information will include, registration status, whether the respondent voted in the 2006 Congressional election, whether the respondent voted in the 2004 Presidential election, whether the respondent voted in the 2000 Presidential election, the method the respondent voted in past elections (in person, by mail, absentee), whether the respondent is eligible to vote absentee (or whether the respondent does not know).

3. Program Effect.

The survey will gather data from all respondents regarding the various effects that the establishment of this program would have on the targeted citizens. Questions on the program will cover (1) whether the program will increase the likelihood that the respondent would use the absentee ballot process; (2) whether the program will increase the likelihood that the respondent would vote in a federal election; (3) whether the program will make it easier for the voter to participate in elections.

**Signed:** \_\_\_\_\_

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**Thomas R. Wilkey**, Executive Director,

U.S. Election Assistance Commission

**[Billing Code 6820-KF]**

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## SUPPORTING STATEMENTS

OMB Control Number: xxxx-xxxx

U.S. Election Assistance Commission

### Study of the Feasibility and Advisability of Establishing a Program of Free Return or Reduced Postage for Absentee Ballots

#### A. JUSTIFICATION

**1. Explain the circumstances that make the collection of information necessary.**

Sec. 246 of the Help America Vote Act requires the Election Assistance Commission (EAC), in consultation with the United States Postal Service, to conduct a study on the feasibility and advisability of establishing a program under which the U.S. Postal Service shall waive or otherwise reduce the amount of postage applicable with respect to absentee ballots returned by voters in general elections for Federal office. This study does not address the cost to the U.S. Postal Service for free postage for sending absentee ballots but may consider costs to election officials that are related to implementing such a program including the costs of sending absentee ballots to voters. It also does not include consideration of the 39 USC 3406 provisions for the mailing of balloting materials for military and overseas absentee voters. As part of the study the Commission is directed to conduct a survey of potential beneficiaries, including the elderly and disabled, and to take into account the results of this survey in determining the feasibility and advisability of establishing such a program.

**2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.**

The information will be gathered through a one-time public opinion survey of 1,200 randomly selected U.S. citizen throughout the fifty U.S. states.

Based upon the information gathered in the study, EAC is required to submit a one-time report to Congress with recommendations for such legislative and administrative action as EAC determines appropriate. The report shall contain an analysis of the feasibility of implementing such a program and an estimate of the costs. The survey will gather information to study the feasibility of establishing free or reduced postage for absentee ballots.

**3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.**

The collection of information does utilize Computer Assisted Telephone Interviewing (CATI). CATI will be used to conduct the public opinion survey. CATI is a telephone surveying technique in which the interviewer follows a script by a software application. The software is able to customize the flow of the questionnaire based on the answers provided, as well as information already known about the participant.

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**4. Describe efforts to identify duplication.**

This is the first study conducted by the EAC on the part of HAVA Section 246. The study contractor has reviewed previous and contemporaneous public opinion surveys to eliminate duplication.

**5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.**

This collection of information does not involve small businesses or other small entities.

**6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.**

Section 246 of the Help American Vote Act requires the EAC to collect this information to provide recommendations on the establishment of this program to Congress.

If the collection is not conducted, the EAC will be unable to fulfill Section 246 of HAVA. Furthermore, without this information the EAC will be unable to submit a report to Congress detailing recommendations for legislative and administrative action. The determination of whether or not this program is feasible and advisable rests upon the collection of this information. HAVA only necessitates that this information be collected once.

**7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.**

Not applicable.

**8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.**

This information collection request received a comment concerned that the accuracy of the sample will be harmed through the exclusion of respondents who can only be reached through a cell phone. The comment suggests that the study include respondents that can be reached through landline telephones and cell phones.

**Action Taken:**

Research was conducted to evaluate this claim and determine if it was necessary to include cell phone users in this study. Based upon this research, it has been determined that the study will still be conducted using only random digit dialing technology (RDD).

In drafting the survey questionnaire, the study contractor consulted extensively with the U.S.

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Postal Service. The study contractor also consulted previous public opinion research conducted by The Pew Research Center for the People and the Press. The study contractor also consulted extensively with the U.S. state and county election officials in preparing the questionnaire.

The study contractor, IFES, has more than ten years of experience in conducting innovative and effective public opinion research around the world. IFES' survey and focus group capabilities provide relevant and reliable information on the opinions and attitudes in a country to government officials, development professionals, political actors, academics and others interested in democratic and political development. However, a key strength of IFES' research is its use of a standard set of questions gauging sociopolitical development in most surveys we perform. Data from these questions can help researchers compare attitudes and opinions from country to country and across time in a single nation. To date, IFES has conducted more than 60 public opinion research projects in 24 countries around the world.

In addition to its survey capability, IFES has worked with election assistance and democratic development in over 100 countries since 1987. IFES' international professionals ensure that democracy solutions are home grown. IFES professionals provide technical assistance across many areas of democracy development. With its experience promoting democracy abroad, IFES has begun to work to strengthen democracy in the U.S. IFES works directly with local, state, federal and private partners in the U.S. to support technical assistance initiatives and projects. Under a contract enacted in late September 2005 under the U.S. Election Assistance Commission (EAC) IFES, working with The Pollworker Institute and the League of Women Voters (LWV), is finalizing a year-long research project aimed at improving pollworker recruitment, training and retention in the United States. The project will develop better recruitment, training and retention methods to improve the Election Day experience for voters and election officials.

The study contractor also consulted with The Election Center. The Election Center is a nonprofit organization that works to promote and improve democracy in the U.S. The Center has experience performing research for governmental units concerning the similarities and differences in state or local laws, regulations, or practices concerning voter registration and elections administration. The Center also designs regional workshops and seminars on methods to improve operations and enhance efficiency of government election units.

**9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.**

Respondents are voluntary and they will not be provided any incentives to participate.

**10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.**

Respondents will be given a verbal pledge of confidentiality prior to volunteering to participate.

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.**

There are no questions of a sensitive nature.

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**12. Provide an estimate in hours of the burden of the collection of information.**

The burden to each respondent is 15 minutes. Twelve hundred (1,200) respondents are required for this study. Total annual burden is estimated at 300 hours.

**13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in #12 above).**

We have identified no reporting and recordkeeping "non-hour cost" burdens associated with this proposed collection of information.

**14. Provide estimates of annualized cost to the Federal government.**

The estimated cost to the Federal Government is \$40,100. This estimate includes \$34,000 for the public opinion research firm and \$6,000 for personnel and \$100 in office expenses.

- We estimate \$34,000 for the public opinion research firm. This will include services for programming the survey instrument into a Computer Assisted Telephone Interviewing (CATI) system so that survey questions, instruction and response categories are displayed in the computer, conduct of 1,200 completed interviews, quality control, data entry, coding of data and delivery of final data.
- We estimate \$5,000 for personnel to design the study, oversee its implementation, analyze data, and draft a final report and \$100 for office expenses including telephone and printing costs.

**15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.**

This is the first time this information collection has been performed by the Federal government.

**16. For collections whose results will be published, outline the plans for tabulation and publication.**

The results from this information collection will be summarized into a report by the study contractor. Based upon the report, the Commission shall submit to Congress a report on the study together with recommendations for such legislative and administrative action as the Commission determines appropriate. Additionally, the documents will be available to the general public per FOIA and may be posted on the Internet website of the EAC.

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.**

Not applicable to this collection.

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**18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.**

To the extent that the topics apply to this collection of information, we are not making any exceptions to the "Certification for Paperwork Reduction Act Submissions."

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

*(If your collection does not employ statistical methods, just say that and delete the following five questions from the format.)*

**1. Describe (including a numerical estimate) the potential respondent universe and any sampling or other respondent selection method to be used. Data on the number of entities (e.g. establishments, State and local governmental units, households, or persons) in the universe and the corresponding sample are to be provided in tabular form. The tabulation must also include expected response rates for the collection as a whole. If the collection has been conducted before, provide the actual response rate achieved.**

The respondent universe for this study includes all adults aged 18 years who reside in one of the 50 U.S. states. The sample will be 1,200 respondents, and we aim to obtain a response rate of 30%. This is the first collection for this federal agency of this kind.

**2. Describe the procedures for the collection, including: the statistical methodology for stratification and sample selection; the estimation procedure; the degree of accuracy needed for the purpose described in the justification; any unusual problems requiring specialized sampling procedures; and any use of periodic (less frequent than annual) data collection cycles to reduce burden.**

The survey will be conducted by phone in both English and Spanish using random digit dialing (RDD) technology. In RDD surveys, telephone exchanges in the United States are selected at random according to the specifications of the sampling plan. The last digits needed to complete the phone number are generated completely at random. This design ensures full implementation of the sampling plan and ensures that those with listed and unlisted numbers have an equal chance of being included in the sample. Within each contacted household, a respondent will be selected among all adults in the household aged 18 years and who are citizens.

**3. Describe the methods used to maximize response rates and to deal with nonresponse. The accuracy and reliability of the information collected must be shown to be adequate for the intended uses. For collections based on sampling, a special justification must be provided if they will not yield "reliable" data that can be generalized to the universe studied.**

To maximize the chances of making contact with a potential respondent, as many as 10 attempts will be made to complete an interview at every sampled household, and calls will be staggered over times of the day and days of the week.

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**4. Describe any tests of procedures or methods to be undertaken. Tests are encouraged as effective means to refine collections, but if ten or more test respondents are involved OMB must give prior approval.**

The Pew Research Center for the People and the Press has used these questions in previous surveys, thus through other organizations these questions have already been refined.

**5. Provide the name and telephone number of individuals consulted on the statistical aspects of the design, and the name of the agency unit, contractor(s), grantee(s), or other person(s) who will actually collect and/or analyze the information for the agency.**

Contractor contact: Dr. Karen Buerkle; 202-350-6741; [kbuerkle@ifes.org](mailto:kbuerkle@ifes.org)

010152





ernieh@aol.com  
03/30/2007 06:30 PM

To klyndyson@eac.gov, lotero@eac.gov  
cc  
bcc  
Subject The Survey

History:  This message has been forwarded.

AOL now offers free email to everyone. Find out more about what's free from AOL at [AOL.com](http://AOL.com)



. EAC Free\_Return\_Postage\_QQ\_for\_OMB\_full\_package[1] 33007.doc

010153



Free or Reduced Return Postage Study  
Survey Questionnaire

Hello, my name is \_\_\_\_\_. We are conducting an important study for the U.S. Election Assistance Commission. This survey is for research purposes only, we are not selling anything and we are not associated with or being paid by any political party or candidate. Your participation is voluntary and will only take a few minutes of your time. All your answers will be strictly confidential. Am I speaking with someone 18 or older?

- S1** To make sure our survey includes many different kinds of people, I need to ask a few questions about who lives in your household. How many adults age 18 or older live in your household?
- 1 One—**GO TO S2**
  - 2 Two or more—**GO TO S3**

**ASK IF ONLY ONE ADULT AGE 18+ IN HH (S1=1)**

- S2** May I please speak to that person?
- 1 Continue with current respondent—**GO TO Q1**
  - 2 New respondent being brought to phone—**GO TO INTRO2**
  - 3 New respondent not available—**SCHEDULE CALL BACK**
  - 9 Refused—**TERMINATE**

**ASK IF MORE THAN ONE ADULT AGE 18+ IN HH (S1=2)**

- S3** May I please speak with the adult (18+) in your household who has most recently had a birthday. Are you this person?
- 1 Yes—**GO TO S4**
  - 2 No—**ASK TO SPEAK TO THAT PERSON AND REINTRODUCE THE SURVEY**

**S4** Because we are talking today about issues related to voting in the U.S., we only need to speak with people who are U.S. citizens. Are you currently a U.S. citizen or not?

- 1 Yes—**GO TO Q1**
- 2 No—**ASK FOR ANOTHER ADULT IN HH**

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ASK ALL

- Q1 How would you rate your neighborhood as a place to live? Would you say it is excellent, good, fair or poor?
- 1 Excellent
  - 2 Good
  - 3 Fair
  - 4 Poor
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK ALL

- Q2 And how interested are you in matters of politics and government? Would you say you are very interested, somewhat interested, not too interested or not interested at all?
- 1 Very interested
  - 2 Somewhat interested
  - 3 Not too interested
  - 4 Not interested at all
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK ALL

- Q3 How much information do you feel you have about politics and current events in the United States today? Do you have a great deal of information, a fair amount, not too much or no information at all?
- 1 Great deal
  - 2 Fair amount
  - 3 Not too much
  - 4 None at all
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK ALL

- Q4 And how much information do you feel you have about the way elections are organized in your community such as the rules about who can vote and when, where to go to vote, etc? Do you have a great deal of information, a fair amount, not too much or no information at all?
- 1 Great deal
  - 2 Fair amount
  - 3 Not too much
  - 4 None at all
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

010155

ASK ALL

Q5 Some states are using an election system in which residents are allowed to CHOOSE if they want to cast their vote through the MAIL in the weeks leading up the election OR vote IN PERSON ON Election Day. Do you strongly favor, somewhat favor, somewhat oppose or strongly oppose allowing people to CHOOSE if they vote by mail before Election Day or vote in a booth ON Election Day?

- 1 Strongly favor
- 2 Somewhat favor
- 3 Somewhat oppose
- 4 Strongly oppose
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK IF SOMEWHAT OR STRONGLY OPPOSE (Q5=3 or 4)

Q6 There are many reasons why people may have reservations about voting by mail before election-day instead of in a booth on election-day. Can you tell me the main reason why you have reservations about people voting by mail before election-day? [ACCEPT UP TO THREE RESPONSES BUT DO NOT PROBE FOR MORE THAN ONE]

- 1 Gave response [**Record verbatim**]
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK ALL

Q7 These days, many people are so busy they can't find time to register to vote, or move around so often they don't get a chance to re-register... Are you CURRENTLY registered to vote or haven't you been able to register so far?  
[IF RESPONDENT ANSWERS '1' YES, ASK,  
Are you registered to vote at your CURRENT address or are you registered to vote at some other previous address]

- 1 Yes, registered at current address
- 2 Yes, registered at other/previous address
- 3 No, not registered
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK IF REGISTERED TO VOTE (Q7=1 or 2)

Q8 Every state has different regulations for voting by absentee ballot. If there were to be an election next week, do you know whether or not you would be eligible to vote by absentee ballot in your state?

- 1 Yes, eligible
- 2 No, not eligible
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK IF CURRENTLY REGISTERED TO VOTE AT PREVIOUS ADDRESS (Q7 = 2)

- Q9 Can you please tell me which state you are currently registered to vote in?
- 1 Gave response [**Record verbatim—OK to use official two letter abbreviations**]
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK IF NOT REGISTERED (Q7 = 3)

- Q10 Have you previously been registered to vote, or have you never been registered?
- 1 Previously registered
  - 2 Never registered
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK IF NOT REGISTERED (Q7 = 3)

- Q11 What would you say is the MAIN reason you're not registered to vote?  
[OPEN END; ACCEPT UP TO THREE RESPONSES BUT DO NOT PROBE FOR MORE THAN ONE]
- 1 Gave response [**Record verbatim**]
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK IF CURRENTLY REGISTERED OR PREVIOUSLY REGISTERED (Q7 = 1 OR Q7=2 OR Q10 = 1)

- Q12 Did you vote in the 2006 Election this past November for either a Senator or Congressperson?
- 1 Yes
  - 2 No
  - 3 Too young to vote/Not registered to vote at the time/Not eligible [DO NOT READ]
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK IF VOTED IN 2006 ELECTION (Q12 = 1)

- Q13 In the 2006 congressional election, do you recall if you voted BEFORE Election Day, that is at an early voting site or with an absentee ballot, OR did you vote in-person at your polling place ON Election Day?
- 1 Before Election Day - Early Voting Site/Absentee
  - 2 In person at polling place on Election Day
  - 3 Dropped off absentee ballot on Election Day [DO NOT READ]
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

010157

ASK IF VOTED IN 2006 BEFORE ELECTION DAY (Q13 = 1)

- Q14 And did you vote BEFORE Election Day in person at an early voting site or did you mail in an absentee ballot?
- 1 In person at an early voting site
  - 2 Mailed in absentee ballot
  - 3 Dropped off absentee ballot on Election Day [DO NOT READ]
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK IF VOTED BY MAIL (Q14=2)

- Q15 Did being able to vote by MAIL before Election Day make it a lot easier, somewhat easier, somewhat harder, a lot harder, or did it make no difference in your ability to vote?
- 1 A lot easier
  - 2 Somewhat easier
  - 3 Somewhat harder
  - 4 A lot harder
  - 5 No difference in ability to vote
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK IF CURRENTLY REGISTERED OR PREVIOUSLY REGISTERED (Q7 = 1 OR Q7=2 OR Q10 = 1)

- Q16 Did you vote in the 2004 Presidential election between George Bush and John Kerry?
- 1 Yes
  - 2 No
  - 3 Not 18 at the time/Not eligible [DO NOT READ]
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK IF VOTED IN 2004 ELECTION (Q16 = 1)

- Q17 In the 2004 Presidential election, do you recall if you voted BEFORE Election Day, that is at an early voting site, or with an absentee ballot, OR did you vote in-person at your polling place ON Election Day?
- 1 Before Election Day - Early Voting Site/Absentee
  - 2 In person at polling place on Election Day
  - 3 Dropped off absentee ballot on Election Day [DO NOT READ]
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK IF VOTED IN 2004 BEFORE ELECTION DAY (Q17 = 1)

- Q18 And did you vote BEFORE Election Day in person at an early voting site or did you mail in an absentee ballot?
- 1 In person at an early voting site
  - 2 Mailed in absentee ballot
  - 3 Dropped off absentee ballot on Election Day [DO NOT READ]
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK IF VOTED BY MAIL (Q18=2)

- Q19 Did being able to vote by MAIL before Election Day make it a lot easier, somewhat easier, somewhat harder, a lot harder, or did it make no difference in your ability to vote?
- 1 A lot easier
  - 2 Somewhat easier
  - 3 Somewhat harder
  - 4 A lot harder
  - 5 No difference in ability to vote
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK ALL

- Q20 Suppose that in addition to being able to vote IN-PERSON at the polls on Election Day, you also had the option of choosing to vote by MAIL before Election Day WITHOUT having to pay ANY postage. Would having these two options make it a lot more likely, somewhat more likely, somewhat less likely, a lot less likely to vote or would having the option to vote by mail WITHOUT paying ANY postage make no difference in your ability to vote?
- 1 A lot more likely
  - 2 Somewhat more likely
  - 3 Somewhat less likely
  - 4 A lot less likely
  - 5 No difference in ability to vote
  - 6 Already voting by mail without paying postage [DO NOT READ]
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK IF MAIL WOULD MAKE MORE LIKELY TO VOTE (Q20=1 or 2)

- Q21 Please tell me the main reason you think you would be more likely to vote in elections if you had the option to vote by mail before Election Day. [ACCEPT UP TO THREE RESPONSES BUT DO NOT PROBE FOR MORE THAN ONE]
- 1 Gave response [**Record verbatim**]
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK IF A LOT OR SOMEWHAT MORE LIKELY TO VOTE (Q20 = 1 OR 2)

- Q22 Suppose you were able to mail in your ballot before Election Day BUT you were required to PAY postage. Which of these do you think is most likely: 1) You would pay the postage and still vote by mail, 2) vote in person on Election Day instead, or 3) there is a chance you wouldn't be able to vote.  
[IF ASKED, the amount of postage depends on the size and weight of the ballot in your area—usually between 39 and 87 cents.]
- 1 Vote by mail anyway
  - 2 Vote in person
  - 3 Chance won't be able to vote
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

010159

I would like to ask you a few final questions for statistical purposes. Please be assured that all of your responses will be kept entirely anonymous and absolutely confidential.

- D1 Record gender  
1 Male  
2 Female

ASK ALL

- D2 What is your age?  
Range 18-96  
97 97 or older  
98 Don't know  
99 Refused

ASK ALL

- D3 What is the highest level of education you received?  
1 High School or less  
2 Some College  
3 College Graduate  
4 Post graduate  
8 Don't know [DO NOT READ]  
9 Refused [DO NOT READ]

ASK ALL

- D4 What is your marital status: are you now married, widowed, divorced separated, or never married?  
1 Now married  
2 Widowed  
3 Divorced  
4 Separated  
5 Never married  
8 Don't know [DO NOT READ]  
9 Refused [DO NOT READ]

ASK ALL

- D5 Are you or someone in your household an active-duty member of the armed forces?  
1 Yes  
2 No  
8 Don't know [DO NOT READ]  
9 Refused [DO NOT READ]

- D5a Which of the following best describes your current employment status—employed, self-employed, retired and not working, are you not in the labor force, or are you unemployed



and looking for work?

- 1 Employed
- 2 Self-employed
- 3 Retired and not working
- 4 Not in the labor force [INTERVIEWER, this includes homemakers]
- 6 Unemployed and looking for work
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK IF EMPLOYED (D5a=1)

D5b Is this part-time or full-time?

- 1 Part-time
- 2 Full-time
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK IF EMPLOYED OR SELF-EMPLOYED (D5a=1 or 2)

D5c What is your MAIN occupation?

- 1 Gave response
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK IF EMPLOYED OR SELF-EMPLOYED (D5a=1 or 2)

D5d And would you characterize your occupation as...?

- 1 Executive/ high-level management
- 2 Professional/ middle manager
- 3 Technical/ administrative/ clerical
- 4 Service worker/ protective services
- 5 Skilled labor
- 6 Unskilled labor
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK ALL

D6a Are you yourself of Latino or Hispanic origin or descent, such as Mexican, Puerto Rican, Cuban, or some other Latin American background?

- 1 Yes
- 2 No
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK ALL

- D6b What is your race? (If Latino ask:) Are you white Latino, black Latino or some other race? (Else:) Are you white, African American or black, Asian or some other race?
- 1 White/White Latino
  - 2 African American/Black/Black Latino
  - 3 Asian
  - 4 Other
  - 8 Don't know
  - 9 Refused

- D7 Including your self, how many people are there living in your household?
- Range 1 – 30
- 98 Don't know
  - 99 Refused

- D8 Last year, that is in 2006, what was your total household income from all sources before taxes? Was it under or over \$40,000?
- 1 Under \$40,000
  - 2 Over \$40,000
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK IF INCOME LESS THAN \$40,000 (D8=1)

D9a Now just stop me when I get to the right category. Was your income ...

**Read responses**

- 1 Less than \$10,000
- 2 \$10,000 to under \$15,000
- 3 \$15,000 to under \$20,000
- 4 \$20,000 to under \$25,000
- 5 \$25,000 to under \$30,000
- 6 \$30,000 to under \$35,000 or
- 7 \$35,000 to under \$40,000
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK IF INCOME MORE THAN \$40,000 (D8=2)

D9b Now just stop me when I get to the right category. Was your income ...

**Read responses**

- 1 \$40,000 to under \$50,000
- 2 \$50,000 to under \$75,000
- 3 \$75,000 to under \$100,000
- 4 \$100,000 to under \$150,000 or
- 5 \$150,000 or more
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK ALL

- D10 Are you limited in any way in any activities because of physical, mental, or emotional problems?
- 1 Yes
  - 2 No
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK IF HAS DISABILITY (D10= 1).

- D11 Does this condition require you to use special equipment, such as a cane, a wheelchair, a special bed, or a special telephone?
- 1 Yes
  - 2 No
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

**Thank you. That is all of the questions I have for you.**

\*This information collection is required for the EAC to meet its statutory requirements under the Help America Vote Act (HAVA) of 2002 (42 U.S.C. 15301). Respondent's obligation to reply to this information collection is voluntary; respondents include the 50 States, and the District of Columbia. This information will be made publicly available on the EAC website at [www.eac.gov](http://www.eac.gov). According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB Control No. pending (expires: to be determined). The time required to complete this information collection is estimated to average 1.25 hours per response. Comments regarding this burden estimate should be sent to the Program Manager – 2007 Study of the Feasibility and Advisability of Establishing a Program of Free Return Postage for Absentee Ballots, U.S. Election Assistance Commission, 1225 New York Ave, NW, Suite 1100, Washington, DC 20005.

010163

Karen Lynn-Dyson/EAC/GOV

To Juliet E. Hodgkins/EAC/GOV@EAC

04/05/2007 05:44 PM

cc Laiza N. Otero/EAC/GOV@EAC

bcc

Subject Fw: The Survey

Julie-

I'm fairly certain that this does not need to go to the Commissioners but I think a legal OK is probably in order?

Thanks

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

----- Forwarded by Karen Lynn-Dyson/EAC/GOV on 04/05/2007 05:43 PM -----



Laiza N. Otero/EAC/GOV

04/05/2007 09:43 AM

To Karen Lynn-Dyson/EAC/GOV@EAC

cc

Subject Fw: The Survey

Karen,

Does this survey have your approval/blessings for submission to OMB? Does it need to go through any other vetting with the legal staff or the commissioners prior to me doing all the paperwork for OMB and the FR? Thank you.

L.

----- Forwarded by Laiza N. Otero/EAC/GOV on 04/05/2007 09:41 AM -----



ernieh@aol.com

03/30/2007 06:30 PM

To klynndyson@eac.gov, lotero@eac.gov

cc

Subject The Survey

AOL now offers free email to everyone. Find out more about what's free from AOL at [AOL.com](http://AOL.com)



. EAC Free\_Return\_Postage\_QQ\_for\_OMB\_full\_package[1] 33007.doc

010164



Free or Reduced Return Postage Study  
Survey Questionnaire

Hello, my name is \_\_\_\_\_. We are conducting an important study for the U.S. Election Assistance Commission. This survey is for research purposes only, we are not selling anything and we are not associated with or being paid by any political party or candidate. Your participation is voluntary and will only take a few minutes of your time. All your answers will be strictly confidential. Am I speaking with someone 18 or older?

- S1** To make sure our survey includes many different kinds of people, I need to ask a few questions about who lives in your household. How many adults age 18 or older live in your household?
- 1 One—**GO TO S2**
  - 2 Two or more—**GO TO S3**

ASK IF ONLY ONE ADULT AGE 18+ IN HH (S1=1)

- S2** May I please speak to that person?
- 1 Continue with current respondent—**GO TO Q1**
  - 2 New respondent being brought to phone—**GO TO INTRO2**
  - 3 New respondent not available—**SCHEDULE CALL BACK**
  - 9 Refused—**TERMINATE**

ASK IF MORE THAN ONE ADULT AGE 18+ IN HH (S1=2)

- S3** May I please speak with the adult (18+) in your household who has most recently had a birthday. Are you this person?
- 1 Yes—**GO TO S4**
  - 2 No—**ASK TO SPEAK TO THAT PERSON AND REINTRODUCE THE SURVEY**

**S4** Because we are talking today about issues related to voting in the U.S., we only need to speak with people who are U.S. citizens. Are you currently a U.S. citizen or not?

- 1 Yes—**GO TO Q1**
- 2 No—**ASK FOR ANOTHER ADULT IN HH**

ASK ALL

- Q1 How would you rate your neighborhood as a place to live? Would you say it is excellent, good, fair or poor?
- 1 Excellent
  - 2 Good
  - 3 Fair
  - 4 Poor
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK ALL

- Q2 And how interested are you in matters of politics and government? Would you say you are very interested, somewhat interested, not too interested or not interested at all?
- 1 Very interested
  - 2 Somewhat interested
  - 3 Not too interested
  - 4 Not interested at all
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK ALL

- Q3 How much information do you feel you have about politics and current events in the United States today? Do you have a great deal of information, a fair amount, not too much or no information at all?
- 1 Great deal
  - 2 Fair amount
  - 3 Not too much
  - 4 None at all
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK ALL

- Q4 And how much information do you feel you have about the way elections are organized in your community such as the rules about who can vote and when, where to go to vote, etc? Do you have a great deal of information, a fair amount, not too much or no information at all?
- 1 Great deal
  - 2 Fair amount
  - 3 Not too much
  - 4 None at all
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

010166

ASK ALL

- Q5 Some states are using an election system in which residents are allowed to CHOOSE if they want to cast their vote through the MAIL in the weeks leading up the election OR vote IN PERSON ON Election Day. Do you strongly favor, somewhat favor, somewhat oppose or strongly oppose allowing people to CHOOSE if they vote by mail before Election Day or vote in a booth ON Election Day?
- 1 Strongly favor
  - 2 Somewhat favor
  - 3 Somewhat oppose
  - 4 Strongly oppose
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK IF SOMEWHAT OR STRONGLY OPPOSE (Q5=3 or 4)

- Q6 There are many reasons why people may have reservations about voting by mail before election-day instead of in a booth on election-day. Can you tell me the main reason why you have reservations about people voting by mail before election-day? [ACCEPT UP TO THREE RESPONSES BUT DO NOT PROBE FOR MORE THAN ONE]
- 1 Gave response [**Record verbatim**]
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK ALL

- Q7 These days, many people are so busy they can't find time to register to vote, or move around so often they don't get a chance to re-register... Are you CURRENTLY registered to vote or haven't you been able to register so far? [IF RESPONDENT ANSWERS '1' YES, ASK, Are you registered to vote at your CURRENT address or are you registered to vote at some other previous address]
- 1 Yes, registered at current address
  - 2 Yes, registered at other/previous address
  - 3 No, not registered
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK IF REGISTERED TO VOTE (Q7=1 or 2)

- Q8 Every state has different regulations for voting by absentee ballot. If there were to be an election next week, do you know whether or not you would be eligible to vote by absentee ballot in your state?
- 1 Yes, eligible
  - 2 No, not eligible
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK IF CURRENTLY REGISTERED TO VOTE AT PREVIOUS ADDRESS (Q7 = 2)

- Q9 Can you please tell me which state you are currently registered to vote in?  
1 Gave response [**Record verbatim—OK to use official two letter abbreviations**]  
8 Don't know [DO NOT READ]  
9 Refused [DO NOT READ]

ASK IF NOT REGISTERED (Q7 = 3)

- Q10 Have you previously been registered to vote, or have you never been registered?  
1 Previously registered  
2 Never registered  
8 Don't know [DO NOT READ]  
9 Refused [DO NOT READ]

ASK IF NOT REGISTERED (Q7 = 3)

- Q11 What would you say is the MAIN reason you're not registered to vote?  
[OPEN END; ACCEPT UP TO THREE RESPONSES BUT DO NOT PROBE FOR MORE THAN ONE]  
1 Gave response [**Record verbatim**]  
8 Don't know [DO NOT READ]  
9 Refused [DO NOT READ]

ASK IF CURRENTLY REGISTERED OR PREVIOUSLY REGISTERED (Q7 = 1 OR Q7=2 OR Q10 = 1)

- Q12 Did you vote in the 2006 Election this past November for either a Senator or Congressperson?  
1 Yes  
2 No  
3 Too young to vote/Not registered to vote at the time/Not eligible [DO NOT READ]  
8 Don't know [DO NOT READ]  
9 Refused [DO NOT READ]

ASK IF VOTED IN 2006 ELECTION (Q12 = 1)

- Q13 In the 2006 congressional election, do you recall if you voted BEFORE Election Day, that is at an early voting site or with an absentee ballot, OR did you vote in-person at your polling place ON Election Day?  
1 Before Election Day - Early Voting Site/Absentee  
2 In person at polling place on Election Day  
3 Dropped off absentee ballot on Election Day [DO NOT READ]  
8 Don't know [DO NOT READ]  
9 Refused [DO NOT READ]



ASK IF VOTED IN 2006 BEFORE ELECTION DAY (Q13 = 1)

- Q14 And did you vote BEFORE Election Day in person at an early voting site or did you mail in an absentee ballot?
- 1 In person at an early voting site
  - 2 Mailed in absentee ballot
  - 3 Dropped off absentee ballot on Election Day [DO NOT READ]
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK IF VOTED BY MAIL (Q14=2)

- Q15 Did being able to vote by MAIL before Election Day make it a lot easier, somewhat easier, somewhat harder, a lot harder, or did it make no difference in your ability to vote?
- 1 A lot easier
  - 2 Somewhat easier
  - 3 Somewhat harder
  - 4 A lot harder
  - 5 No difference in ability to vote
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK IF CURRENTLY REGISTERED OR PREVIOUSLY REGISTERED (Q7 = 1 OR Q7=2 OR Q10 = 1)

- Q16 Did you vote in the 2004 Presidential election between George Bush and John Kerry?
- 1 Yes
  - 2 No
  - 3 Not 18 at the time/Not eligible [DO NOT READ]
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK IF VOTED IN 2004 ELECTION (Q16 = 1)

- Q17 In the 2004 Presidential election, do you recall if you voted BEFORE Election Day, that is at an early voting site, or with an absentee ballot, OR did you vote in-person at your polling place ON Election Day?
- 1 Before Election Day - Early Voting Site/Absentee
  - 2 In person at polling place on Election Day
  - 3 Dropped off absentee ballot on Election Day [DO NOT READ]
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK IF VOTED IN 2004 BEFORE ELECTION DAY (Q17 = 1)

- Q18 And did you vote BEFORE Election Day in person at an early voting site or did you mail in an absentee ballot?
- 1 In person at an early voting site
  - 2 Mailed in absentee ballot
  - 3 Dropped off absentee ballot on Election Day [DO NOT READ]
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK IF VOTED BY MAIL (Q18=2)

- Q19 Did being able to vote by MAIL before Election Day make it a lot easier, somewhat easier, somewhat harder, a lot harder, or did it make no difference in your ability to vote?
- 1 A lot easier
  - 2 Somewhat easier
  - 3 Somewhat harder
  - 4 A lot harder
  - 5 No difference in ability to vote
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK ALL

- Q20 Suppose that in addition to being able to vote IN-PERSON at the polls on Election Day, you also had the option of choosing to vote by MAIL before Election Day WITHOUT having to pay ANY postage. Would having these two options make it a lot more likely, somewhat more likely, somewhat less likely, a lot less likely to vote or would having the option to vote by mail WITHOUT paying ANY postage make no difference in your ability to vote?
- 1 A lot more likely
  - 2 Somewhat more likely
  - 3 Somewhat less likely
  - 4 A lot less likely
  - 5 No difference in ability to vote
  - 6 Already voting by mail without paying postage [DO NOT READ]
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK IF MAIL WOULD MAKE MORE LIKELY TO VOTE (Q20=1 or 2)

- Q21 Please tell me the main reason you think you would be more likely to vote in elections if you had the option to vote by mail before Election Day. [ACCEPT UP TO THREE RESPONSES BUT DO NOT PROBE FOR MORE THAN ONE]
- 1 Gave response [**Record verbatim**]
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK IF A LOT OR SOMEWHAT MORE LIKELY TO VOTE (Q20 = 1 OR 2)

- Q22 Suppose you were able to mail in your ballot before Election Day BUT you were required to PAY postage. Which of these do you think is most likely: 1) You would pay the postage and still vote by mail, 2) vote in person on Election Day instead, or 3) there is a chance you wouldn't be able to vote.  
[IF ASKED, the amount of postage depends on the size and weight of the ballot in your area—usually between 39 and 87 cents.]
- 1 Vote by mail anyway
  - 2 Vote in person
  - 3 Chance won't be able to vote
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

I would like to ask you a few final questions for statistical purposes. Please be assured that all of your responses will be kept entirely anonymous and absolutely confidential.

- D1 Record gender  
1 Male  
2 Female

ASK ALL

- D2 What is your age?  
Range 18-96  
97 97 or older  
98 Don't know  
99 Refused

ASK ALL

- D3 What is the highest level of education you received?  
1 High School or less  
2 Some College  
3 College Graduate  
4 Post graduate  
8 Don't know [DO NOT READ]  
9 Refused [DO NOT READ]

ASK ALL

- D4 What is your marital status: are you now married, widowed, divorced separated, or never married?  
1 Now married  
2 Widowed  
3 Divorced  
4 Separated  
5 Never married  
8 Don't know [DO NOT READ]  
9 Refused [DO NOT READ]

ASK ALL

- D5 Are you or someone in your household an active-duty member of the armed forces?  
1 Yes  
2 No  
8 Don't know [DO NOT READ]  
9 Refused [DO NOT READ]

- D5a Which of the following best describes your current employment status—employed, self-employed, retired and not working, are you not in the labor force, or are you unemployed

and looking for work?

- 1 Employed
- 2 Self-employed
- 3 Retired and not working
- 4 Not in the labor force [INTERVIEWER, this includes homemakers]
- 6 Unemployed and looking for work
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK IF EMPLOYED (D5a=1)

D5b Is this part-time or full-time?

- 1 Part-time
- 2 Full-time
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK IF EMPLOYED OR SELF-EMPLOYED (D5a=1 or 2)

D5c What is your MAIN occupation?

- 1 Gave response
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK IF EMPLOYED OR SELF-EMPLOYED (D5a=1 or 2)

D5d And would you characterize your occupation as...?

- 1 Executive/ high-level management
- 2 Professional/ middle manager
- 3 Technical/ administrative/ clerical
- 4 Service worker/ protective services
- 5 Skilled labor
- 6 Unskilled labor
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK ALL

D6a Are you yourself of Latino or Hispanic origin or descent, such as Mexican, Puerto Rican, Cuban, or some other Latin American background?

- 1 Yes
- 2 No
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK ALL

010172

- D6b What is your race? (If Latino ask:) Are you white Latino, black Latino or some other race? (Else:) Are you white, African American or black, Asian or some other race?
- 1 White/White Latino
  - 2 African American/Black/Black Latino
  - 3 Asian
  - 4 Other
  - 8 Don't know
  - 9 Refused

- D7 Including your self, how many people are there living in your household?  
Range 1 – 30
- 98 Don't know
  - 99 Refused

- D8 Last year, that is in 2006, what was your total household income from all sources before taxes? Was it under or over \$40,000?
- 1 Under \$40,000
  - 2 Over \$40,000
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK IF INCOME LESS THAN \$40,000 (D8=1)

D9a Now just stop me when I get to the right category. Was your income ...

**Read responses**

- 1 Less than \$10,000
- 2 \$10,000 to under \$15,000
- 3 \$15,000 to under \$20,000
- 4 \$20,000 to under \$25,000
- 5 \$25,000 to under \$30,000
- 6 \$30,000 to under \$35,000 or
- 7 \$35,000 to under \$40,000
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK IF INCOME MORE THAN \$40,000 (D8=2)

D9b Now just stop me when I get to the right category. Was your income ...

**Read responses**

- 1 \$40,000 to under \$50,000
- 2 \$50,000 to under \$75,000
- 3 \$75,000 to under \$100,000
- 4 \$100,000 to under \$150,000 or
- 5 \$150,000 or more
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK ALL

- D10 Are you limited in any way in any activities because of physical, mental, or emotional problems?
- 1 Yes
  - 2 No
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK IF HAS DISABILITY (D10= 1).

- D11 Does this condition require you to use special equipment, such as a cane, a wheelchair, a special bed, or a special telephone?
- 1 Yes
  - 2 No
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

**Thank you. That is all of the questions I have for you.**

\*This information collection is required for the EAC to meet its statutory requirements under the Help America Vote Act (HAVA) of 2002 (42 U.S.C. 15301). Respondent's obligation to reply to this information collection is voluntary; respondents include the 50 States, and the District of Columbia. This information will be made publicly available on the EAC website at [www.eac.gov](http://www.eac.gov). According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB Control No. pending (expires: to be determined). The time required to complete this information collection is estimated to average 1.25 hours per response. Comments regarding this burden estimate should be sent to the Program Manager – 2007 Study of the Feasibility and Advisability of Establishing a Program of Free Return Postage for Absentee Ballots, U.S. Election Assistance Commission, 1225 New York Ave, NW, Suite 1100, Washington, DC 20005.



Laiza N. Otero/EAC/GOV  
04/09/2007 04:20 PM

To ernieh@aol.com@GSAEXTERNAL  
cc  
bcc  
Subject Re: Free Return Postage Package 

No problem, thank you! I know that Karen has also provided you comments/revisions. What I need is a summary of the changes that were done to the survey from the first version (the one posted on the FR in January) to this latest version.

Laiza

ernieh@aol.com



ernieh@aol.com  
04/09/2007 04:16 PM

To lotero@eac.gov  
cc  
Subject Re: Free Return Postage Package

Laiza

I'm working on the changes now and should have them to you by the time you come in tomorrow.

Ernie

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

From: lotero@eac.gov  
To: ernieh@aol.com  
Cc: klynndyson@eac.gov  
Sent: Fri, 6 Apr 2007 8:03 AM  
Subject: Re: Fwd: Free Return Postage Package

Hi Ernieh,

Were there changes made to the survey (questions added or removed, items rephrased to increase clarity, etc.) during this period? In other words, is the draft you sent for the 30-days exactly the same as the one we posted for comments in January? I need to note these changes for OMB purposes. Thank you!

Laiza

[ernieh@aol.com](mailto:ernieh@aol.com)

010175

03/30/2007 06:27  
PM

To  
[klyndyson@eac.gov](mailto:klyndyson@eac.gov), [lotero@eac.gov](mailto:lotero@eac.gov)  
cc

Subject  
Fwd: Free Return Postage Package

Karen, Laiza:

Here is all the material needed for the OMB submission for the Free Return Postage survey. Please let me know if you have any questions.

1. Information Collection Request

- OMB Form 83-I
- Supporting Statement A
- Supporting Statement B
- Copy of 60 day Federal Register Notice
- Copy of 30 day Federal Register Notice to be submitted to post in Register
- Summary of public comments received, including actions in response to the comments
- Copies of pertinent statutory authority and regulations

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010176





"Karen Buerkle "  
<KBuerkle@ifes.org>  
04/09/2007 11:20 AM

To lotero@eac.gov  
cc ernieh@aol.com, klynndyson@eac.gov  
bcc

Subject RE: Free Return Postage Package

History:

 This message has been replied to.

We did not make any changes due to public comments. As you saw, we responded to the one comment that came in but did not make any changes. We revised the questionnaire to modify certain questions when administered to Puerto Rico (the previous version did not), made some small changes to respond to some of the things we got from the Postal commission, and I fiddled a tiny bit to improve the question wording in a few cases. Nothing that had a substantial (or even moderate) impact on the material covered by the questionnaire.

Does this help?

---

**From:** lotero@eac.gov [mailto:lotero@eac.gov]  
**Sent:** Monday, April 09, 2007 10:06 AM  
**To:** Karen Buerkle  
**Cc:** ernieh@aol.com; klynndyson@eac.gov  
**Subject:** RE: Free Return Postage Package

Hi Karen,

Hope all is well. My question was regarding the changes done to the questions themselves on the questionnaire, not the burden hours (which you did provide in the supporting statement and I assume were calculated for the latest version). But were questions: added, deleted, rephrased, moved within the survey, etc.?

Thank you! - - - - Laiza

"Karen Buerkle " <KBuerkle@ifes.org>

04/06/2007 04:28 PM

To ernieh@aol.com, lotero@eac.gov  
cc  
Subject RE: Free Return Postage Package

There were no significant changes in the burden hours. There were some changes in the questionnaire but we are still within the originally estimated time. I believe we have the burden hours calculated somewhere in the paperwork we gave you. Sorry, but I don't have it with me at the moment to look it up.

010177

---

**From:** ernieh@aol.com [mailto:ernieh@aol.com]  
**Sent:** Friday, April 06, 2007 11:45 AM  
**To:** lotero@eac.gov  
**Cc:** Karen Buerkle  
**Subject:** Re: Free Return Postage Package

Laiza  
I am forwarding to Karen Buerkle for reply.  
Ernie

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

**From:** lotero@eac.gov  
**To:** ernieh@aol.com  
**Cc:** klynndyson@eac.gov  
**Sent:** Fri, 6 Apr 2007 8:03 AM  
**Subject:** Re: Fwd: Free Return Postage Package

Hi Ernieh,

Were there changes made to the survey (questions added or removed, items rephrased to increase clarity, etc.) during this period? In other words, is the draft you sent for the 30-days exactly the same as the one we posted for comments in January? I need to note these changes for OMB purposes.  
Thank you!

Laiza

ernieh@aol.com

03/30/2007 06:27  
PM

To  
klynndyson@eac.gov, lotero@eac.gov  
cc

Subject  
Fwd: Free Return Postage Package

010178

Karen, Laiza:

Here is all the material needed for the OMB submission for the Free Return Postage survey. Please let me know if you have any questions.

1. Information Collection Request

- OMB Form 83-I
- Supporting Statement A
- Supporting Statement B
- Copy of 60 day Federal Register Notice
- Copy of 30 day Federal Register Notice to be submitted to post in Register
- Summary of public comments received, including actions in response to the comments
- Copies of pertinent statutory authority and regulations

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010179



Laiza N. Otero/EAC/GOV

04/09/2007 11:39 AM

To "Karen Buerkle" <KBuerkle@ifes.org>@GSAEXTERNAL

cc Karen Lynn-Dyson/EAC/GOV@EAC, ernieh@aol.com

bcc

Subject RE: Free Return Postage Package 

Yes, sort of; I apologize if I have not been clear. What I wanted to know were the changes you did to the survey like what you mention regarding Puerto Rico, the Postal Commission, and improving the wording. These are revisions and I need to note those; if you have a record or notes of those changes in more detail I would greatly appreciate it. I need to include them in the FR notice and for OMB.

Thank you!

Laiza

"Karen Buerkle" <KBuerkle@ifes.org>



"Karen Buerkle "  
<KBuerkle@ifes.org>

04/09/2007 11:20 AM

To lotero@eac.gov

cc ernieh@aol.com, klynndyson@eac.gov

Subject RE: Free Return Postage Package

We did not make any changes due to public comments. As you saw, we responded to the one comment that came in but did not make any changes. We revised the questionnaire to modify certain questions when administered to Puerto Rico (the previous version did not), made some small changes to respond to some of the things we got from the Postal commission, and I fiddled a tiny bit to improve the question wording in a few cases. Nothing that had a substantial (or even moderate) impact on the material covered by the questionnaire.

Does this help?

---

**From:** lotero@eac.gov [mailto:lotero@eac.gov]

**Sent:** Monday, April 09, 2007 10:06 AM

**To:** Karen Buerkle

**Cc:** ernieh@aol.com; klynndyson@eac.gov

**Subject:** RE: Free Return Postage Package

Hi Karen,

Hope all is well. My question was regarding the changes done to the questions themselves on the questionnaire, not the burden hours (which you did provide in the supporting statement and I assume were calculated for the latest version). But were questions: added, deleted, rephrased, moved within the survey, etc.?

Thank you! - - - - Laiza

010180

"Karen Buerkle" <KBuerkle@ifes.org>

04/06/2007 04:28 PM

To: ernieh@aol.com, lotero@eac.gov  
cc

Subject: RE: Free Return Postage Package

There were no significant changes in the burden hours. There were some changes in the questionnaire but we are still within the originally estimated time. I believe we have the burden hours calculated somewhere in the paperwork we gave you. Sorry, but I don't have it with me at the moment to look it up.

---

**From:** ernieh@aol.com [mailto:ernieh@aol.com]  
**Sent:** Friday, April 06, 2007 11:45 AM  
**To:** lotero@eac.gov  
**Cc:** Karen Buerkle  
**Subject:** Re: Free Return Postage Package

Laiza  
I am forwarding to Karen Buerkle for reply.  
Ernie

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

**From:** lotero@eac.gov  
**To:** ernieh@aol.com  
**Cc:** klynndyson@eac.gov  
**Sent:** Fri, 6 Apr 2007 8:03 AM  
**Subject:** Re: Fwd: Free Return Postage Package

Hi Ernieh,

Were there changes made to the survey (questions added or removed, items rephrased to increase clarity, etc.) during this period? In other words, is the draft you sent for the 30-days exactly the same as the one we posted for comments in January? I need to note these changes for OMB purposes. Thank you!

010181

Laiza

ernieh@aol.com

03/30/2007 06:27  
PM

To  
klyndyson@eac.gov, lotero@eac.gov  
cc

Subject  
Fwd: Free Return Postage Package

Karen, Laiza:

Here is all the material needed for the OMB submission for the Free Return Postage survey. Please let me know if you have any questions.

1. Information Collection Request

- OMB Form 83-I
- Supporting Statement A
- Supporting Statement B
- Copy of 60 day Federal Register Notice
- Copy of 30 day Federal Register Notice to be submitted to post in Register
- Summary of public comments received, including actions in response to the comments
- Copies of pertinent statutory authority and regulations

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010183



ernieh@aol.com  
04/11/2007 01:55 PM

To: lotero@eac.gov, klynndyson@eac.gov  
cc  
bcc  
Subject: Fwd: OMB Clearance Package: Focus Groups

Laiza and Keren

Attached is the OMB package for the Absentee Ballot Focus Groups. We are waiting for further instructions from GovWorks, but I don't think we need to hold up the OMB submission pending that....do we?

Ernie

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

From: RSharma@ifes.org  
To: ernieh@aol.com  
Sent: Wed, 11 Apr 2007 10:44 AM  
Subject: FW: OMB Clearance Package: Focus Groups

[Original message attached...]

---

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----- Message from "Rakesh Sharma" <RSharma@ifes.org> on Wed, 11 Apr 2007 13:44:53 -0400 -----  
**To:** ernieh@aol.com

**Subject:** FW: OMB Clearance Package: Focus Groups

Hi Ernie,

Katie has compiled the OMB package for the postage focus groups. This is ready to go for clearance.

Rakesh

---

**From:** Kathleen Holzwart  
**Sent:** Wednesday, April 11, 2007 1:37 PM  
**To:** Rakesh Sharma  
**Cc:** Karen Buerkle  
**Subject:** OMB Clearance Package: Focus Groups

I had to make an adjustment. Please send these attached documents.

1. Information Collection Request




- OMB Form 83-I
- Supporting Statement A and B
- Copy of 60 day Federal Register Notice
- Copy of 30 day Federal Register Notice **to be submitted to post in Register**



010184







- Summary of public comments received; including actions in response to the comments
- Copies of pertinent statutory authority and regulations
- Focus Group Materials, 3

Katie M. Holzwart  
 Research Associate  
 F. Clifton White Applied Research Center  
 for Democracy and Elections  
 IFES - democracy-at-large  
 (202) 350-6831  
[kholtzward@ifes.org](mailto:kholtzward@ifes.org)

 OMB 834 FRP focus groups.pdf
  HAVA Section 246.doc
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 Supporting statement A and B Focus groups.doc
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 Federal Register Notice - 30 day Focus Groups.doc

# PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the Supporting Statement, and any additional documentation to: **Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.**

1. Agency/Subagency originating request Election Assistance Commission	2. OMB control number <span style="float: right;">b. <input checked="" type="checkbox"/> None</span> a. _____
3. Type of information collection (check one) a. <input checked="" type="checkbox"/> New collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension, without change, of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number	4. Type of review requested (check one) a. <input checked="" type="checkbox"/> Regular b. <input type="checkbox"/> Emergency - Approval requested by: ____/____/____ c. <input type="checkbox"/> Delegated
3a. Public Comments Has the agency received public comments on this information collection? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
6. Requested expiration date a. <input checked="" type="checkbox"/> Three years from approval date <input type="checkbox"/> Other Specify: ____/____/____	
7. Title Study of the Feasibility and Advisability of Establishing a Program of Free Return or Reduced Postage for Absentee Ballots	
8. Agency form number(s) (if applicable) NA	
9. Keywords Elections, Postal Service, Aged, Individuals with disabilities,	
10. Abstract The Help America Vote Act requires the EAC to conduct a study on the feasibility of establishing a program under which the U.S. Postal Service shall waive or reduce the amount of postage for absentee ballots. The study will conduct nine focus groups comprised of potential beneficiaries of the program, including the elderly, individuals with disabilities and the impoverished. Using this information, the EAC will submit a required report to Congress with recommendations for action.	
11. Affected public (Mark primary with "P" and all others that apply with "X") a. <u>P</u> Individuals or households <span style="margin-left: 100px;">d. <input type="checkbox"/> Farms</span> b. <input type="checkbox"/> Business or other for-profit <span style="margin-left: 100px;">e. <input type="checkbox"/> Federal Government</span> c. <input type="checkbox"/> Not-for-profit institutions <span style="margin-left: 100px;">f. <input type="checkbox"/> State, Local or Tribal Government</span>	12. Obligation to respond (Mark primary with "P" and all others that apply with "X") a. <input type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory
13. Annual reporting and recordkeeping hour burden a. Number of respondents <u>108</u> b. Total annual responses <u>108</u> 1. Percentage of these responses collected electronically <u>0</u> % c. Total annual hours requested <u>135</u> d. Current OMB inventory <u>0</u> e. Difference <u>135</u> f. Explanation of difference 1. Program change <u>135</u> 2. Adjustment _____	14. Annual reporting and recordkeeping cost burden (in thousands of dollars) a. Total annualized capital/startup costs <u>0</u> b. Total annual costs (O&M) <u>0</u> c. Total annualized cost requested <u>0</u> d. Current OMB inventory <u>0</u> e. Difference <u>0</u> f. Explanation of difference 1. Program change <u>0</u> 2. Adjustment <u>0</u>
15. Purpose of information collection (Mark primary with "P" and all others that apply with "X") a. <input type="checkbox"/> Application for benefits <span style="margin-left: 100px;">e. <input checked="" type="checkbox"/> Program planning or management</span> b. <input type="checkbox"/> Program evaluation <span style="margin-left: 100px;">f. <input checked="" type="checkbox"/> Research</span> c. <input type="checkbox"/> General purpose statistics <span style="margin-left: 100px;">g. <input checked="" type="checkbox"/> Regulatory or compliance</span> d. <input type="checkbox"/> Audit	16. Frequency of recordkeeping or reporting (check all that apply) a. <input type="checkbox"/> Recordkeeping <span style="margin-left: 100px;">b. <input type="checkbox"/> Third party disclosure</span> c. <input checked="" type="checkbox"/> Reporting 1. <input type="checkbox"/> On occasion <span style="margin-left: 20px;">2. <input type="checkbox"/> Weekly</span> <span style="margin-left: 20px;">3. <input type="checkbox"/> Monthly</span> 4. <input type="checkbox"/> Quarterly <span style="margin-left: 20px;">5. <input type="checkbox"/> Semi-annually</span> <span style="margin-left: 20px;">6. <input type="checkbox"/> Annually</span> 7. <input type="checkbox"/> Biennially <span style="margin-left: 20px;">8. <input checked="" type="checkbox"/> Other (describe) <u>Once</u></span>
17. Statistical methods Does this information collection employ statistical methods? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	18. Agency contact (person who can best answer questions regarding the content of this submission) Name: <u>Laiza N. Otero</u> Phone: <u>(202) 566-2209</u>

## 19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9.

**Note:** The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It uses plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
  - (i) Why the information is being collected;
  - (ii) Use of information;
  - (iii) Burden estimate;
  - (iv) Nature of response (voluntary, required for a benefit, or mandatory);
  - (v) Nature and extent of confidentiality; and
  - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of the instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of these provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

# Instructions For Completing OMB Form 83-I

Please answer all questions and have the Senior Official or designee sign the form. These instructions should be used in conjunction with 5 CFR 1320, which provides information on coverage, definitions, and other matters of procedure and interpretation under the Paperwork Reduction Act of 1995.

## 1. Agency/Subagency originating request

Provide the name of the agency or subagency originating the request. For most cabinet-level agencies, a subagency designation is also necessary. For non-cabinet agencies, the subagency designation is generally unnecessary.

## 2. OMB control number

a. If the information collection in this request has previously received or now has an OMB control or comment number, enter the number.

b. Check "None" if the information collection in this request has not previously received an OMB control number. Enter the four digit agency code for your agency.

## 3. Type of information collection (check one)

a. Check "New collection" when the collection has not previously been used or sponsored by the agency.

b. Check "Revision" when the collection is currently approved by OMB, and the agency request includes a material change to the collection instrument, instructions, its frequency of collection, or the use to which the information is to be put.

c. Check "Extension" when the collection is currently approved by OMB, and the agency wishes only to extend the approval past the current expiration date without making any material change in the collection instrument, instructions, frequency of collection, or the use to which the information is to be put.

d. Check "Reinstatement without change" when the collection previously had OMB approval, but the approval has expired or was withdrawn before this submission was made, and there is no change to the collection.

e. Check "Reinstatement with change" when the collection previously had OMB approval, but the approval has expired or was withdrawn before this submission was made, and there is change to the collection.

f. Check "Existing collection in use without OMB control number" when the collection is currently in use but does not have a currently valid OMB control number.

## 4. Type of review requested (check one)

a. Check "Regular" when the collection is submitted under 5 CFR 1320.10, 1320.11, or 1320.12 with a standard 60 day review schedule.

b. Check "Emergency" when the agency is submitting the request under 5 CFR 1320.13 for emergency processing and provides the required supporting material. Provide the date by which the agency requests approval.

c. Check "Delegated" when the agency is submitting the collection under the conditions OMB has granted the agency delegated authority.

## 5. Small entities

Indicate whether this information collection will have a significant impact on a substantial number of small entities. A small entity may be (1) a small business which is deemed to be one that is independently owned and operated and that is not dominant in its field of operation; (2) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field; or (3) a small government jurisdiction which is a government of a city, county, town, township, school district, or special district with a population of less than 50,000.

## 6. Requested expiration date

a. Check "Three years" if the agency requests a three year approval for the collection.

b. Check "Other" if the agency requests approval for less than three years. Specify the month and year of the requested expiration date.

## 7. Title

Provide the official title of the information collection. If an official title does not exist, provide a description which will distinguish this collection from others.

## 8. Agency form number(s) (if applicable)

Provide any form number the agency has assigned to this collection of information. Separate each form number with a comma.

## 9. Keywords

Select and list at least two keywords (descriptors) from the "Federal Register Thesaurus of Indexing Terms" that describe the subject area(s) of the information collection. Other terms may be used but should be listed after those selected from the thesaurus. Separate keywords with commas. Keywords should not exceed two lines of text.

## 10. Abstract

Provide a statement, limited to five lines of text, covering the agency's need for the information, uses to which it will be put, and a brief description of the respondents.

## 11. Affected public

Mark all categories that apply, denoting the primary public with a "P" and all others that apply with "X."

## 12. Obligation to respond

Mark all categories that apply, denoting the primary obligation with a "P" and all others that apply with "X."

a. Mark "Voluntary" when the response is entirely discretionary and has no direct effect on any benefit or privilege for the respondent.

b. Mark "Required to obtain or retain benefits" when the response is elective, but is required to obtain or retain a benefit.

c. Mark "Mandatory" when the respondent must reply or face civil or criminal sanctions.

## 13. Annual reporting and recordkeeping hour burden

a. Enter the number of respondents and/or recordkeepers. If a respondent is also a recordkeeper, report the respondent only once.

b. Enter the number of responses provided annually. For recordkeeping as compared to reporting activity, the number of responses equals the number of recordkeepers.

b1. Enter the estimated percentage of responses that will be submitted/collected electronically using magnetic media (i.e., diskette), electronic mail, or electronic data interchange. Facsimile is **not** considered an electronic submission.

c. Enter the total annual recordkeeping and reporting hour burden.

d. Enter the burden hours currently approved by OMB for this collection of information. Enter zero (0) for any new submission or for any collection whose OMB approval has expired.

e. Enter the difference by subtracting line d from line c. Record a negative number (d larger than c) within parentheses.

f. Explain the difference. The difference in line e must be accounted for in lines f.1. and f.2.

f.1. "Program change" is the result of deliberate Federal government action. All new collections and any subsequent revision of existing collections (e.g., the addition or deletion of questions) are recorded as program changes.

f.2. "Adjustment" is a change that is not the result of a deliberate Federal government action. Changes resulting from new estimates or action not controllable by the Federal government are recorded as adjustments.

## 14. Annual reporting and recordkeeping cost burden (in thousands of dollars)

The costs identified in this item must exclude the cost of hour burden identified in Item 13.

a. Enter the total dollar amount of annualized cost for all respondents of any associated capital or start-up costs.

b. Enter recurring annual dollar amount of cost for all respondents associated with operating or maintaining systems or purchasing services.

c. Enter total (14.a. + 14.b.) annual reporting and recordkeeping cost burden.

d. Enter any cost burden currently approved by OMB for this collection of information. Enter zero (0) if this is the first submission after October 1, 1995.

e. Enter the difference by subtracting line d from line c. Record a negative number (d larger than c) within parentheses.

f. Explain the difference. The difference in line e must be accounted for in lines f.1. and f.2.

f.1. "Program change" is the result of deliberate Federal government action. All new collections and any subsequent revisions or changes resulting in cost changes are recorded as program changes.

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f.2. "Adjustment" is a change that is not the result of a deliberate Federal government action. Changes resulting from new estimations or actions not controllable by the Federal government are recorded as adjustments.

#### 15. Purpose of information collection

Mark all categories that apply, denoting the primary purpose with a "P" and all others that apply with "X."

a. Mark "Application for benefits" when the purpose is to participate in, receive, or qualify for a grant, financial assistance, etc., from a Federal agency or program.

b. Mark "Program evaluation" when the purpose is a formal assessment, through objective measures and systematic analysis, of the manner and extent to which Federal programs achieve their objectives or produce other significant effects.

c. Mark "General purpose statistics" when the data is collected chiefly for use by the public or for general government use without primary reference to the policy or program operations of the agency collecting the data.

d. Mark "Audit" when the purpose is to verify the accuracy of accounts and records.

e. Mark "Program planning or management" when the purpose relates to progress reporting, financial reporting and grants management, procurement and quality control, or other administrative information that does not fit into any other category.

f. Mark "Research" when the purpose is to further the course of research, rather than for a specific program purpose.

g. Mark "Regulatory or compliance" when the purpose is to measure compliance with laws or regulations.

#### 16. Frequency of recordkeeping or reporting

Check "Recordkeeping" if the collection of information explicitly includes a recordkeeping requirement.

Check "Third party disclosure" if a collection of information includes third-party disclosure requirements as defined by 1320.3(c).

Check "Reporting" for information collections that involve reporting and check the frequency of reporting that is requested or required of a respondent. If the reporting is on "an event" basis, check "On occasion."

#### 17. Statistical methods

Check "Yes" if the information collection uses statistical methods such as sampling or imputation. Generally, check "No" for applications and audits (unless a random auditing scheme is used). Check "Yes" for statistical collections, most research collections, and program evaluations using scientific methods. For other types of data collection, the use of sampling, imputation, or other statistical estimation techniques should dictate the response for this item. Ensure that supporting documentation is provided in accordance with Section B of the Supporting Statement.

#### 18. Agency contact

Provide the name and telephone number of the agency person best able to answer questions regarding the content of this submission.

#### 19. Certification for Paperwork Reduction Act Submissions

The Senior Official or designee signing this statement certifies that the collection of information encompassed by the request complies with 5 CFR 1320.9. Provisions of this certification that the agency cannot comply with should be identified here and fully explained in item 18 of the attached Supporting Statement. NOTE: The Office that "develops" and "uses" the information to be collected is the office that "conducts or sponsors" the collection of information. (See 5 CFR 1320.3(d)).

## Certification Requirement for Paperwork Reduction Act Submissions

5 CFR 1320.9 reads "As part of the agency submission to OMB of a proposed collection of information, the agency (through the head of the agency, the Senior Official, or their designee) shall certify (and provide a record supporting such certification) that the proposed collection of information--

"(a) is necessary for the proper performance of the functions of the agency, including that the information to be collected will have practical utility;

"(b) is not unnecessarily duplicative of information otherwise reasonably accessible to the agency;

"(c) reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency, including with respect to small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. § 601(6)), the use of such techniques as:

"(1) establishing differing compliance or reporting requirements or timetables that take into account the resources available to those who are to respond;

"(2) the clarification, consolidation, or simplification of compliance and reporting requirements; or collections of information, or any part thereof;

"(3) an exemption from coverage of the collection of information, or any part thereof;

"(d) is written using plain, coherent, and unambiguous terminology and is understandable to those who are to respond;

"(e) is to be implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond;

"(f) indicates for each recordkeeping requirement the length of time persons are required to maintain the records specified;

"(g) informs potential respondents of the information called for under §1320.8(b)(3); [see below]

"(h) has been developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected, including the processing of the information in a manner which shall enhance, where appropriate, the utility of the information to agencies and the public;

"(i) uses effective and efficient statistical survey methodology appropriate to the purpose for which the information is to be collected; and

"(j) to the maximum extent practicable, uses appropriate information technology to reduce burden and improve data quality, agency efficiency and responsiveness to the public."

NOTE: 5 CFR 1320.8(b)(3) requires that each collection of information:

"(3) informs and provides reasonable notice to the potential persons to whom the collection of information is addressed of:

"(i) the reasons the information is planned to be and/or has been collected;

"(ii) the way such information is planned to be and/or has been used to further the proper performance of the functions of the agency;

"(iii) an estimate, to the extent practicable, of the average burden of the collection (together with a request that the public direct to the agency any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden);

"(iv) whether responses to the collection of information are voluntary, require to obtain or retain a benefit (citing authority) or mandatory (citing authority);

"(v) the nature and extent of confidentiality to be provided, if any (citing authority); and

"(vi) the fact that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number."

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# Supporting Statement for Paperwork Reduction Act Submissions

## General Instructions

A Supporting Statement, including the text of the notice to the public required by 5 CFR 1320.5(a)(i)(iv) and its actual or estimated date of publication in the Federal Register, must accompany each request for approval of a collection of information. The Supporting Statement must be prepared in the format described below, and must contain the information specified in Section A below. If an item is not applicable, provide a brief explanation. When Item 17 of the OMB Form 83-I is checked "Yes", Section B of the Supporting Statement must be completed. OMB reserves the right to require the submission of additional information with respect to any request for approval.

## Specific Instructions

### A. Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- \* requiring respondents to report information to the agency more often than quarterly;
- \* requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;
- \* requiring respondents to submit more than an original and two copies of any document;

- \* requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;
- \* in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;
- \* requiring the use of a statistical data classification that has not been reviewed and approved by OMB;
- \* that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or
- \* requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years - even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

9. Explain any decision to provide any payment or gift to respondents, other than reenumeration of contractors or grantees.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information

is requested, and any steps to be taken to obtain their consent.

12. Provide estimates of the hour burden of the collection of information. The statement should:  
\* Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.  
\* If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.

\* Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 13.

13. Provide an estimate for the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).

\* The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.

\* If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collections services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use

existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.

\* Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

14. Provide estimates of annualized costs to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.

#### **B. Collections of Information Employing Statistical Methods**

The agency should be prepared to justify its decision not to use statistical methods in any case where such methods might reduce burden or improve accuracy of results. When Item 17 on the Form OMB 83-I is checked, "Yes," the following documentation should be included in the Supporting Statement to the extent that it applies to the methods proposed:

1. Describe (including a numerical estimate) the potential respondent universe and any sampling or other respondent selection methods to be used. Data on the number of entities (e.g., establishments, State and local government units, households, or persons) in the universe covered by the collection and in the corresponding sample are to be provided in tabular form for the universe as a whole and for each of the strata in the proposed sample. Indicate expected response rates for the collection as a whole. If the collection had been conducted previously, include the actual response rate achieved during the last collection.

2. Describe the procedures for the collection of information including:

- \* Statistical methodology for stratification and sample selection,
- \* Estimation procedure,
- \* Degree of accuracy needed for the purpose described in the justification,
- \* Unusual problems requiring specialized sampling procedures, and
- \* Any use of periodic (less frequent than annual) data collection cycles to reduce burden.

3. Describe methods to maximize response rates and to deal with issues of non-response. The accuracy and reliability of information collected must be shown to be adequate for intended uses. For collections based on sampling, a special justification must be provided for any collection that will not yield "reliable" data that can be generalized to the universe studied.

4. Describe any tests of procedures or methods to be undertaken. Testing is encouraged as an effective means of refining collections of information to minimize burden and improve utility. Tests must be approved if they call for answers to identical questions from 10 or more respondents. A proposed test or set of test may be submitted for approval separately or in combination with the main collection of information.

5. Provide the name and telephone number of individuals consulted on statistical aspects of the design and the name of the agency unit, contractor(s), grantee(s), or other person(s) who will actually collect and/or analyze the information for the agency.



**SEC. 246. <<NOTE: 42 USC 15386.>> STUDY AND REPORT ON FREE ABSENTEE  
BALLOT POSTAGE.**

**(a) Study on the Establishment of a Free Absentee Ballot Postage  
Program.--**

(1) In general.--The Commission, in consultation with the Postal Service, shall conduct a study on the feasibility and advisability of the establishment of a program under which the Postal Service shall waive or otherwise reduce the amount of postage applicable with respect to absentee ballots submitted by voters in general elections for Federal office (other than balloting materials mailed under section 3406 of title 39, United States Code) that does not apply with respect to the postage required to send the absentee ballots to voters.

(2) Public survey.--As part of the study conducted under paragraph (1), the Commission shall conduct a survey of potential beneficiaries under the program described in such paragraph, including the elderly and disabled, and shall take into account the results of such survey in determining the feasibility and advisability of establishing such a program.

**(b) Report.--**

(1) <<NOTE: Deadline.>> Submission.--Not later than the date that is 1 year after the date of the enactment of this Act, the Commission shall submit to Congress a report on the study conducted under subsection (a)(1) together with recommendations for such legislative and administrative action as the Commission determines appropriate.

(2) Costs.--The report submitted under paragraph (1) shall contain an estimate of the costs of establishing the program described in subsection (a)(1).

(3) Implementation.--The report submitted under paragraph (1) shall contain an analysis of the feasibility of implementing the program described in subsection (a)(1) with respect to the absentee ballots to be submitted in the general election for Federal office held in 2004.

(4) Recommendations regarding the elderly and disabled.--The report submitted under paragraph (1) shall--

(A) include recommendations on ways that program described in subsection (a)(1) would target elderly individuals and individuals with disabilities; and

(B) identify methods to increase the number of such individuals who vote in elections for Federal office.

(c) Postal Service Defined.--The term "Postal Service" means the United States Postal Service established under section 201 of title 39, United States Code.

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compensation is based primarily on student academic achievement.

(d) *Quality of the Management Plan and Key Personnel* (15 points).

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, milestones, and processes for continuous improvement to accomplish project tasks.

(2) The qualifications, including experience, education, and training of proposed key personnel.

(e) *Evaluation* (10 points).

(1) The extent to which the applicant's evaluation plan includes the use of objective measures that are clearly related to the goals of the project to raise student achievement and increase teacher effectiveness, including the extent to which the evaluation will produce quantitative and qualitative data.

(2) The extent to which the applicant includes adequate evaluation procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

(3) The extent to which the applicant commits to participating in a rigorous national evaluation that will provide a common design methodology, data collection instruments, and performance measures for all grantees funded under this competition.

#### VI. Award Administration Information

1. *Award Notices*: If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements*: We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting*: At the end of the project period, recipients must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the

most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures*: Pursuant to the Government Performance and Results Act (GPRA), the Department has established the following performance measures that it will use to evaluate the overall effectiveness of the grantee's project, as well as the TIF program as a whole:

(1) Changes in LEA personnel deployment practices, as measured by changes over time in the percentage of teachers and principals in high-need schools who have a record of effectiveness; and

(2) Changes in teacher and principal compensation systems in participating LEAs, as measured by the percentage of a district's personnel budget that is used for performance-related payments to effective (as measured by student achievement gains) teachers and principals.

All grantees will be expected to submit an annual performance report documenting their success in addressing these performance measures. The Department will use the applicant's performance data for program management and administration, in such areas as determining new and continuation funding and planning technical assistance.

#### VII. Agency Contacts

##### FOR FURTHER INFORMATION CONTACT:

April Lee, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W229, Washington, DC 20202-6200. Telephone number: (202) 205-5224 or by e-mail: [tif@ed.gov](mailto:tif@ed.gov) or by Internet at the following Web site: <http://www.ed.gov/programs/teacherincentive/index.html>.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the individuals listed in this section.

#### VIII. Other Information

*Electronic Access to This Document*: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about

using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

**Note**: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

Dated: November 8, 2006.

**Henry L. Johnson,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. E6-19193 Filed 11-13-06; 8:45 am]

BILLING CODE 4000-01-P

## ELECTION ASSISTANCE COMMISSION

### Information Collection; Study of the Feasibility and Advisability of Establishing a Program of Free Return or Reduced Postage for Absentee Ballots—Focus Groups

**AGENCY**: U.S. Election Assistance Commission (EAC).

**ACTION**: Notice; request for comments.

**SUMMARY**: The EAC, as part of its continuing effort to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995, invites the general public and other Federal agencies to take this opportunity to comment on a proposed information collection. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

**DATES**: Written comments must be submitted on or before January 11, 2007.

**ADDRESSES**: Submit comments and recommendations on the proposed information collection in writing to the U.S. Election Assistance Commission, 1225 New York Avenue, NW., Suite 1100, Washington, DC 20005, Attn: Ms.

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Laiza N. Otero (or via the Internet at [lotero@eac.gov](mailto:lotero@eac.gov)).

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the Focus Group Discussion Guide, please, write to the above address or call Ms. Laiza N. Otero at (202) 566-3100. You may also view the proposed collection instrument by visiting our Web site at <http://www.eac.gov>.

**SUPPLEMENTARY INFORMATION:**

*Title:* Study of the Feasibility and Advisability of Establishing a Program of Free Return or Reduced Postage for Absentee Ballots—Focus Groups  
*OMB Number:* Pending.

*Type of Review:* Regular submission.  
*Needs and Uses:* Sec. 246 of the Help America Vote Act requires the Election Assistance Commission (EAC), in consultation with the United States Postal Service, to conduct a study on the feasibility and advisability of establishing a program under which the U.S. Postal Service shall waive or otherwise reduce the amount of postage applicable with respect to absentee ballots returned by voters in general elections for Federal office. This study does not address the cost to the U.S. Postal Service for free postage for sending absentee ballots but may consider costs to election officials that are related to implementing such a program including the costs of sending absentee ballots to voters. It also does not include consideration of the 39 U.S.C. 3406 provisions for the mailing of balloting materials for military and overseas absentee voters. As part of the study the Commission is directed to conduct a nationwide survey of potential beneficiaries, including the elderly and disabled, and to take into account the results of this survey in determining the feasibility and advisability of establishing such a program. This survey will be supplemented by focus groups among potential beneficiaries—elderly, disabled, low-income—to obtain more specific information on the challenges these populations face when participating in election and to assess the potential benefit these populations might receive from a program of free return or reduced postage for absentee ballots.

At the conclusion of the study effort, EAC is required to submit a report to Congress with recommendations for such legislative and administrative action as EAC determines appropriate. The report shall contain an analysis of the feasibility of implementing such a program and an estimate of the costs. It

is required to specifically contain recommendations regarding the elderly and disabled populations, including ways a free absentee ballot return postage program would target these populations and identify methods to increase the number of such individuals who vote in elections for Federal office.

*Affected Public:* Citizens.

*Number of Respondents:* 36.

*Responses per Respondent:* 1.

*Estimated Burden per Response:* 1.25 hours.

*Estimated Total Annual Burden*

*Hours:* 45 hours.

Information will be collected through a series of three focus groups comprised of potential beneficiaries of a free and/or discounted absentee ballot postage program: One focus group will be dedicated to issues confronting the elderly population; one focus group will be dedicated to issues confronting disabled people; and one focus group will be dedicated to issues confronting the low-income citizens. At least one official from the United States Postal Service will observe each planned focus group. The topics that will be explored include:

1. The challenges that the particular population faces when participating in elections.

a. Information on respondents' previous experiences with voting in Federal elections. Information on any difficulties encountered in the process of voting and how the issues were resolved.

2. The concerns members of the particular population have about voting (e.g. voter intimidation, voter confidentiality, security, use of ballots).

a. Information on particular incidents that has prevented respondent from being able to vote.

3. The possible remedies to those challenges that would likely increase the rates of voter participation in the particular population (e.g. relaxed absentee voting laws, better accessibility to polling places, voter education).

a. Information on respondents' interest in absentee ballot voting.

4. The likelihood that a free or discounted absentee ballot postage program would assist the particular population.

a. Information on respondents' interest in a program of free or discounted postage for absentee ballots.

5. How the program could possibly be implemented to target the particular population.

a. Information on creating and implementing the program to ensure that it benefits the particular population.

6. The factors that would make reaching the particular population difficult.

a. Information on advertising such a program to the particular population so that they can take advantage of the change.

**Thomas R. Wilkey,**

*Executive Director, U.S. Election Assistance Commission.*

[FR Doc. 06-9191 Filed 11-13-06; 8:45 am]

BILLING CODE 6820-KF-M

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**Combined Notice of Filings #2**

November 6, 2006.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER01-205-014; ER98-2640-012; ER98-4590-010; ER99-1610-018.

*Applicants:* Xcel Energy Services Inc.; Northern States Power Company; Northern States Power Company (Wisconsin); Public Service Company of Colorado; Southwestern Public Service Company.

*Description:* Xcel Energy Services Inc. on behalf of Northern States Power Co submits a change in status report to NSP's market-based rate authority.

*Filed Date:* 11/02/2006.

*Accession Number:* 20061102-5052.

*Comment Date:* 5 p.m. Eastern Time on Friday, November 24, 2006.

*Docket Numbers:* ER03-985-001.

*Applicants:* El Cap II, LLC.

*Description:* El Cap II, LLC submits its Triennial Updated Market Power Analysis Report.

*Filed Date:* 10/30/2006.

*Accession Number:* 20061101-0147.

*Comment Date:* 5 p.m. Eastern Time on Monday, November 20, 2006.

*Docket Numbers:* ER06-451-010.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Southwest Power Pool, Inc submits revisions to its Open Access Transmission Tariff effective 2/1/07.

*Filed Date:* 11/02/2006.

*Accession Number:* 20061103-0103.

*Comment Date:* 5 p.m. Eastern Time on Friday, November 24, 2006.

*Docket Numbers:* ER07-115-000.

*Applicants:* ISO New England Inc.

*Description:* ISO New England Inc submits its 2007 Capital Budget and Capital Budget Quarterly Filing for the Third Quarter of 2006.

*Filed Date:* 10/31/2006.

## SUPPORTING STATEMENTS

OMB Control Number: xxxx-xxxx

U.S. Election Assistance Commission

### Study of the Feasibility and Advisability of Establishing a Program of Free Return or Reduced Postage for Absentee Ballots

#### A. JUSTIFICATION

**1. Explain the circumstances that make the collection of information necessary.**

Sec. 246 of the Help America Vote Act requires the Election Assistance Commission (EAC), in consultation with the United States Postal Service, to conduct a study on the feasibility and advisability of establishing a program under which the U.S. Postal Service shall waive or otherwise reduce the amount of postage applicable with respect to absentee ballots returned by voters in general elections for Federal office. This study does not address the cost to the U.S. Postal Service for free postage for sending absentee ballots but may consider costs to election officials that are related to implementing such a program including the costs of sending absentee ballots to voters. It also does not include consideration of the 39 USC 3406 provisions for the mailing of balloting materials for military and overseas absentee voters. As part of the study the Commission is directed to conduct a survey of potential beneficiaries, including the elderly and disabled, and to take into account the results of this survey in determining the feasibility and advisability of establishing such a program.

**2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.**

The information will be gathered through nine focus groups meetings to explore, in-depth, issues concerning the potential beneficiaries of this program. The beneficiaries include those who will be more likely to participate in federal elections should this program be implemented, including the elderly, the disabled, and the impoverished. Three (3) focus groups will be dedicated to issues confronting the elderly population; three (3) focus groups will be dedicated to issues confronting the disabled population; and three (3) focus groups will be dedicated to issues confronting the impoverished. Locations of the focus groups have been determined through consultation with the U.S. Postal Service and the study contractor, see Figure 1 below.

Figure 1

	Low income	Senior Citizens	Individuals with Disabilities
Urban	Washington, DC	Sacramento, California	Washington, DC
Rural	Lenawee/Hillsdale County Michigan	Lafayette County, Mississippi	Central Valley, California
Suburban	Memphis, Tennessee Metro (Marshall County, Mississippi)	Colorado Springs, Colorado	Detroit area Michigan

Based upon the information gathered in the study, EAC is required to submit a one-time report to Congress with recommendations for such legislative and administrative action as EAC determines appropriate. The report shall contain an analysis of the feasibility of implementing such a program and an estimate of the costs. It is required to specifically contain recommendations regarding the elderly and disabled populations, including ways a free absentee ballot return postage program would target these populations and identify methods to increase the number of such individuals who vote in elections for Federal office.

**3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.**

The collection of information does not utilize the use of any forms of automated, electronic, mechanical or other technological techniques.

**4. Describe efforts to identify duplication.**

This is the first study conducted by the EAC on the part of HAVA Section 246. The study contractor has reviewed previous and contemporaneous public opinion surveys to eliminate duplication.

**5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.** This collection of information will seek out assistance from small entities that specialize in working with the elderly, impoverished or disabled in securing participants for the focus groups. The study contractor will also seek out assistance from small entities in meeting any special needs of the possible participants. The assistance provided by these small organizations will be on a voluntary basis and will have minimal economic impact.

**6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.**

Section 246 of the Help America Vote Act requires the EAC to collect this information to provide recommendations on the establishment of this program to Congress.

If the collection is not conducted, the EAC will be unable to fulfill Section 246 of HAVA. Furthermore, without this information the EAC will be unable to submit a report to Congress detailing recommendations for legislative and administrative action. The determination of whether or not this program is feasible and advisable rests upon the collection of this information. HAVA only necessitates that this information be collected once.

**7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.**

Not applicable.

**8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their**

**views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.**

**Public Comment Summary:**

1. This information collection request received a comment from the U.S. Postal Service citing a concern over the potential establishment of a program of free return or reduced postage for absentee ballots. The U.S. Postal Service indicates that it lacks appropriations to fund such a program and the positive experience of Oregon and Washington, which rely almost exclusively on a vote-by-mail system, suggests that increased voter participation is not correlated with free or reduced postage for absentee ballots. In a separate communication, the U.S. Postal Service provided some suggestions to improve this information collection.
2. This information collection request received a comment from a member of the public indicating that the study will fail to draw any valid conclusions due to such a small sample of potential beneficiaries.

**Action Taken:**

In response to these comments, the study contractor and the EAC have decided to increase the number of focus groups from three to nine. Each selected group (individuals with disabilities, Senior Citizens and people with low-incomes) will have three dedicated focus groups. To ensure the diversity of responses and participants, each selected group will have one focus group from an urban, rural and suburban location (Figure 1).

Figure 1.

	Low income	Senior Citizens	Individuals with Disabilities
Urban	Washington, DC	Sacramento, California	Washington, DC
Rural	Lenawee/Hillsdale County Michigan	Lafayette County, Mississippi	Central Valley, California
Suburban	Memphis, Tennessee Metro (Marshall County, Mississippi)	Colorado Springs, Colorado	Detroit area Michigan

Furthermore, in consideration of the concerns presented by the U.S. Postal Service, the study contractor has adjusted the focus group discussion guides to address these issues. However, Section 246 of the Help America Vote Act requires the EAC to collect this information to provide recommendations on the establishment of this program to Congress. If the collection is not conducted, the EAC will be unable to fulfill Section 246 of HAVA. The study contractor and the EAC have decided to push forward with this information collection.

The study contractor has consulted extensively with the U.S. Postal Service in preparing the information collection request. Wherever possible, the study contractor has adjusted the information collection to accommodate the comments from the U.S. Postal Service. The study contractor also consulted extensively with the U.S. state and county election officials in preparing the focus group materials.

The study contractor, IFES, has more than ten years of experience in conducting innovative and

effective public opinion research around the world. IFES' survey and focus group capabilities provide relevant and reliable information on the opinions and attitudes in a country to government officials, development professionals, political actors, academics and others interested in democratic and political development.

In addition to its survey and focus group capability, IFES has worked with election assistance and democratic development in over 100 countries since 1987. IFES' international professionals ensure that democracy solutions are home grown. IFES professionals provide technical assistance across many areas of democracy development. With its experience promoting democracy abroad, IFES has begun to work to strengthen democracy in the U.S. IFES works directly with local, state, federal and private partners in the U.S. to support technical assistance initiatives and projects. Under a contract enacted in late September 2005 under the U.S. Election Assistance Commission (EAC) IFES, working with The Pollworker Institute and the League of Women Voters (LWV), is finalizing a year-long research project aimed at improving pollworker recruitment, training and retention in the United States. The project will develop better recruitment, training and retention methods to improve the Election Day experience for voters and election officials.

The study contractor also consulted with The Election Center. The Election Center is a nonprofit organization that works to promote and improve democracy in the U.S. The Center has experience performing research for governmental units concerning the similarities and differences in state or local laws, regulations, or practices concerning voter registration and elections administration. The Center also designs regional workshops and seminars on methods to improve operations and enhance efficiency of government election units.

**9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.**

Respondents will be supplied a cash incentive at the rate of \$25 per participant. Providing an incentive for participation will help in the process of securing respondents for this study.

**10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.**

Assurance of confidentiality will be provided verbally by the Moderator of each focus group. The contributions of respondents in the focus groups will be anonymous and will not be connected to their name.

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.**

There are no questions of a sensitive nature.

**12. Provide an estimate in hours of the burden of the collection of information.**

The burden to each respondent is 1 hour 15 minutes. Each focus group will last no longer than 1

hour and 15 minutes. One-hundred and eight (108) respondents are required for this study. Total annual burden is estimated at 135 hours.

Due to comments received from the U.S. Postal Service and U.S. state and county election officials, the number of focus groups was increased from originally three (3) to nine (9). This has increased the Total annual burden to 135 hours.

**13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in #12 above).**

We have identified no reporting and recordkeeping “non-hour cost” burdens associated with this proposed collection of information.

**14. Provide estimates of annualized cost to the Federal government.**

The estimated cost to the Federal Government is \$46,940. This estimate includes \$27,984 for personnel, \$13,243 for travel expenses, \$210 in office expenses, and \$5,593 for the focus group events.

- We estimate \$27,984 for personnel to design the study, oversee its implementation, oversee the focus groups, and draft a final report. The travel expenses for this project are estimated at \$13,243.
- We estimate \$210 for office expenses including telephone and printing costs.
- We estimate \$5,593 for the focus group events, including payment of \$25 to each participant.

**15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.**

This is the first time this information collection has been performed by the Federal government.

**16. For collections whose results will be published, outline the plans for tabulation and publication.**

The results from this information collection will be summarized into a report by the study contractor. Based upon the report, the Commission shall submit to Congress a report on the study together with recommendations for such legislative and administrative action as the Commission determines appropriate. Additionally, the documents will be available to the general public per FOIA and may be posted on the Internet website of the EAC.

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.**

Not applicable to this collection.

**18. Explain each exception to the certification statement identified in Item 19 of the**

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**OMB 83-I.**

To the extent that the topics apply to this collection of information, we are not making any exceptions to the "Certification for Paperwork Reduction Act Submissions."

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

The collection of this information does not employ statistical methods.

**Summary of Public Comments Received on the Information Collection Materials for the Study of the Feasibility and Advisability of Establishing a Program of Free Return or Reduced Postage for Absentee Ballots; OMB Number Pending**

**Public Comment Summary:**

1. This information collection request received a comment from the U.S. Postal Service citing a concern over the potential establishment of a program of free return or reduced postage for absentee ballots. The U.S. Postal Service indicates that it lacks appropriations to fund such a program and the positive experience of Oregon and Washington, which rely almost exclusively on a vote-by-mail system, suggests that increased voter participation is not correlated with free or reduced postage for absentee ballots. In a separate communication, the U.S. Postal Service provided some suggestions to improve this information collection.

2. This information collection request received a comment from a member of the public indicating that the study will fail to draw any valid conclusions due to such a small sample of potential beneficiaries.

**Action Taken:**

In response to these comments, the study contractor and the EAC have decided to increase the number of focus groups from three to nine. Each selected group (individuals with disabilities, the elderly and people with low-incomes) will have three dedicated focus groups. To ensure the diversity of responses and participants, each selected group will have one focus group from an urban, rural and suburban location.

Furthermore, in consideration of the concerns presented by the U.S. Postal Service, the study contractor has adjusted the focus group discussion guides to address these issues.

However, Section 246 of the Help America Vote Act requires the EAC to collect this information to provide recommendations on the establishment of this program to Congress. If the collection is not conducted, the EAC will be unable to fulfill Section 246 of HAVA. The study contractor and the EAC have decided to push forward with this information collection.

## **Focus Group Free or Reduced Ballot Project Discussion Guide**

### **Introduction (5 minutes):**

Moderator into: My name is .....

Project intro: The Election Center and IFES (formerly the International Foundation for Election Systems) are jointly working on a project funded by the Election Assistance Commission to identify the challenges that people like you face when participating in elections. Our discussion today will help us better understand the needs and challenges of people like you.

Ground rules for today's discussion:

- All points are valid and needed.
- It is okay to disagree—do not be disagreeable.
- Be specific and talk about your own experiences.
- Allow everyone to speak. Speak briefly and often, but please, no speeches.
- One person speaks at a time – please don't interrupt.
- Your contributions are anonymous and will not be connected to your name.
- There are observers in the room, but they won't be participating.
- This discussion will be videotaped, but this videotape will only be used for analysis as we write a report on these focus groups. You will not be individually identified in any of the reporting for this project.

### **Experiences voting—challenges and remedies (20 minute)**

I'd like each of you to think back to the last federal election that you voted in. By federal election I mean voting for the President, the U.S. Senate, or the U.S. House of Representatives. What sticks out in your mind about the experience voting—not who you voted for but the process of voting itself?

- Probe: How did you vote: in-person at the polls or by mail?
- Probe: Was the process easy or hard?
- Probe: Did you encounter any particular difficulties?
- Probe: How did election officials respond?
- Probe: How did you resolve the situation?

And have any of you have been in the situation where you wanted to vote but for some reason you just weren't able to?

- Probe: Can you talk a little bit about the circumstances that kept you from being able to vote?
- Probe: What sorts of things do you think could have been done to make it easier for you to be able to participate in elections?

### **Voting by mail and free or reduced postage (20 minutes)**

As you may be aware, there has been a lot of discussion in the last year or so about the pluses and minuses of voting by mail. Some states have what is called "no-excuse absentee voting" that allows anyone who wants to, to be able to vote by mail-in absentee ballot. On the other hand, some states require people to provide a reason why they can't make it to the polls on Election Day.

What is your overall opinion of absentee voting by mail?

- Probe: Do you think everyone should have the opportunity to vote by mail or should

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be limited to those with a valid excuse? For example, being sick, disabled or out of town on Election Day?

Who here has voted by mail?

- Probe: If you weren't able to vote by mail would you still have been able to vote at the polls?

Can you tell me about your experience the last time you mailed in an absentee ballot?

- Probe: Would a free or discounted absentee ballot postage program have made things easier for you or would a free or discounted absentee ballot postage program make no substantial impact in your ability to get your vote in?

Do you think that finding ways to make it easier for people to vote by mail-in absentee ballot increase voter turn out among people like you?

- Probe: What sorts of things could be done to make this easier?
- Probe: What would be a good way of letting people like you know about such a program/changes so that they could take advantage of these changes?
- What kind of impact do you think a free or discounted absentee ballot postage program would make on the ability of people like you to vote?

Would you have any concerns about voting by mail?

- Probe: Would you be concerned about the security of your ballot once you drop it in the mail box?
- Probe: Would you have concerns about whether the ballot reaching its destination in time?

### **Concerns about voting (15 minutes)**

Still thinking about the elections process and voting, do any of you have personal concerns about voting that you would like to express?

- Probe: How do you think this problem could be solved?
- Probe: What would a program like this look like; how could it be implemented?

And do any of you have other more general concerns about election process or voting that you'd like to discuss?

- Probe: How do you think this problem could be solved?
- Probe: What would a program like this look like; how could it be implemented?

## Post Discussion Comment Sheet

Please take a few minutes to complete this form. Your answers to these questions as well as your viewpoints expressed in today's discussions will be kept confidential—your opinions will not be identified with your name.

By answering these questions, you help us understand the types of people who took part in today's discussion, and your opinions and feelings provide us with important information about this discussion that will help us in the future.

1) Name: \_\_\_\_\_

2)  Male  Female

3) What is your race/ethnicity? \_\_\_\_\_

4) What is your age? \_\_\_\_\_

5) What is the highest level of education you received?

- High School or less
- Some College
- College Graduate
- Post Graduate

6) What is your employment status?

- Full-time
- Part-time
- Unemployed
- Homemaker
- Retired
- Student

7) How many people, including yourself, are there in your household?

\_\_\_\_\_

8) In 2005, what was your total income from all sources before taxes?

- Under \$30,000
- \$30,000 to \$49,999
- \$50,000 to \$74,999
- \$75,000 +

9) Are you currently registered to vote?

Yes

No

10) How often do you vote?

Always

Sometimes

Rarely

11) What is the year and type of the last federal election (presidential or congressional) that you voted in? \_\_\_\_\_

12) Are there any feelings or opinions that you didn't share during the discussion that we should know? Please describe in as much detail as possible.

13) Any comments about the discussion itself and/or the moderator?

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**Focus Group**  
**Free or Reduced Ballot Project**  
**Discussion Guide for Voters with Disabilities**

**Introduction (5 minutes):**

Moderator into: My name is .....

Project intro: The Election Center and IFES (formerly the International Foundation for Election Systems) are jointly working on a project funded by the Election Assistance Commission to identify the challenges that people with disabilities face when participating in elections. Our discussion today will help us better understand the needs and challenges of people like you.

Ground rules for today's discussion:

- All points are valid and needed.
- It is okay to disagree—do not be disagreeable.
- Be specific and talk about your own experiences.
- Allow everyone to speak. Speak briefly and often, but please, no speeches.
- One person speaks at a time – please don't interrupt.
- Your contributions are anonymous and will not be connected to your name.
- There are observers in the room, but they won't be participating.
- This discussion will be videotaped, but this videotape will only be used for analysis as we write a report on these focus groups. You will not be individually identified in any of the reporting for this project.

**Experiences voting—challenges and remedies (20 minute)**

I'd like each of you to think back to the last federal election that you voted in. By federal election I mean voting for the President, the U.S. Senate, or the U.S. House of Representatives. What sticks out in your mind about the experience of voting—not who you voted for but the process of voting itself?

- How did you vote: in-person at the polls or by mail?
- Probe: Was the process easy or hard?
- Did you encounter any particular difficulties?
- How did election officials respond?
- How did you resolve the situation?

And have any of you have been in the situation where you wanted to vote but for some reason you just weren't able to?

- Probe: Can you talk a little bit about the circumstances that kept you from being able to vote?
- What sorts of things do you think that could have been done to make it easier for you to be able to participate in elections?

**Voting by mail and free or reduced postage (20 minutes)**

As you may be aware, there has been a lot of discussion in the last year or so about the pluses and minuses of voting by mail. Some states have what is called "no-excuse absentee voting" that allows anyone who wants to, to be able to vote by mail-in absentee ballot. On the other hand, some states require people to provide a reason why they can't make it to the polls on Election Day.

What is your overall opinion of absentee voting by mail?

- Probe: Do you think everyone should have the opportunity to vote by mail or should this

010207

be limited to those with a valid excuse? For example, being sick, disabled or out of town on Election Day?

Who here has voted by mail?

- Probe: If you weren't able to vote by mail would you still have been able to vote at the polls?

Can you tell me about your experience the last time you mailed in an absentee ballot?

- Probe: Would a free or discounted absentee ballot postage program have made things easier for you or would a free or discounted absentee ballot postage program really make no impact in your ability to get your vote in.

Do you think that finding ways to make it easier for people to vote by mail-in absentee ballot increase voter turn out among voters with disabilities?

- Probe: What sorts of things could be done to make this easier?
- Probe: What would be a good way of letting voters with disabilities know about such a program/changes so that they could take advantage of these changes?
- What kind of impact do you think a free or discounted absentee ballot postage program would make on the ability of people with disabilities to vote?

Would you have any concerns about voting by mail?

- Probe: Would you be concerned about the security of your ballot once you drop it in the mail box?
- Probe: Would you have concerns about whether the ballot reaching its destination in time?

### **Concerns about voting (15 minutes)**

Still thinking about the elections process and voting, do any of you have personal concerns about voting that you would like to express?

- Probe: How do you think this problem could be solved?
- What would a program like this look like; how could it be implemented?

And do any of you have other more general concerns about voting and voters with disabilities that you would like to discuss?

- Probe: How do you think this problem could be solved?
- What would a program like this look like; how could it be implemented?



## Post Discussion Comment Sheet People with Disabilities

Please take a few minutes to complete this form. Your answers to these questions as well as your viewpoints expressed in today's discussions will be kept confidential—your opinions will not be identified with your name.

By answering these questions, you help us understand the types of people who took part in today's discussion, and your opinions and feelings provide us with important information about this discussion that will help us in the future.

1) Name: \_\_\_\_\_

2)  Male  Female

3) What is your race/ethnicity? \_\_\_\_\_

4) What is your age? \_\_\_\_\_

5) What is the highest level of education you received?

- High School or less
- Some College
- College Graduate
- Post Graduate

6) What is your employment status?

- Full-time
- Part-time
- Unemployed
- Homemaker
- Retired
- Student

7) How many people, including yourself, are there in your household?

\_\_\_\_\_

8) In 2005, what was your total income from all sources before taxes?

- Under \$30,000
- \$30,000 to \$49,999
- \$50,000 to \$74,999
- \$75,000 +

9) Are you currently registered to vote?

Yes

No

10) How often do you vote?

Always

Sometimes

Rarely

11) What is the year and type of the last federal election (presidential or congressional) that you voted in? \_\_\_\_\_

12) Are there any feelings or opinions that you didn't share during the discussion that we should know? Please describe in as much detail as possible.

13) Any comments about the discussion itself and/or the moderator?

010210

**Focus Group  
Free or Reduced Ballot Project  
Discussion Guide for Senior Citizens**

**Introduction (5 minutes):**

Moderator into: My name is .....

Project intro: The Election Center and IFES (formerly the International Foundation for Election Systems) are jointly working on a project funded by the Election Assistance Commission to identify the challenges that older voters face when participating in elections. Our discussion today will help us better understand the needs and challenges of people like you.

Ground rules for today's discussion:

- All points are valid and needed.
- It is okay to disagree—do not be disagreeable.
- Be specific and talk about your own experiences.
- Allow everyone to speak. Speak briefly and often, but please, no speeches.
- One person speaks at a time – please don't interrupt.
- Your contributions are anonymous and will not be connected to your name.
- There are observers in the room, but they won't be participating.
- This discussion will be videotaped, but this videotape will only be used for analysis as we write a report on these focus groups. You will not be individually identified in any of the reporting for this project.

**Experiences voting—challenges and remedies (20 minute)**

I'd like each of you to think back to the last federal election that you voted in. By federal election I mean voting for the President, the U.S. Senate, or the U.S. House of Representatives. What sticks out in your mind about the experience voting—not who you voted for but the process of voting itself?

- Probe: How did you vote: in-person at the polls or by mail?
- Probe: Was the process easy or hard?
- Probe: Did you encounter any particular difficulties?
- Probe: How did election official respond?
- Probe: How did you resolve the situation?

And have any of you have been in the situation where you wanted to vote but for some reason you just weren't able to?

- Probe: Can you talk a little bit about the circumstances that kept you from being able to vote?
- Probe: What sorts of things do you think could have been done to make it easier for you to be able to participate in elections?

**Voting by mail and free or reduced postage (20 minutes)**

As you may be aware, there has been a lot of discussion in the last year or so about the pluses and minuses of voting by mail. Some states have what is called "no-excuse absentee voting" that allows anyone who wants to, to be able to vote by mail-in absentee ballot. On the other hand, some states require people to provide a reason why they can't make it to the polls on Election Day.

What is your overall opinion of absentee voting by mail?

- Probe: Do you think everyone should have the opportunity to vote by mail or should this

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be limited to those with a valid excuse? For example, being sick, disabled or out of town on Election Day?

Who here has voted by mail?

- Probe: If you weren't able to vote by mail would you still have been able to vote at the polls?

Can you tell me about your experience the last time you mailed in an absentee ballot?

- Probe: Would a free or discounted absentee ballot postage program have made things easier for you or would a free or discounted absentee ballot postage program make no substantial impact in your ability to get your vote in?

Would finding ways to make it easier for people to vote by mail-in absentee ballot increase voter turn out among older voters?

- Probe: What sorts of things could be done to make this easier?
- Probe: What would be a good way of letting older voters know about such a program/changes so that they could take advantage of these changes?
- What kind of impact do you think a free or discounted absentee ballot postage program would make on the ability of older people to vote?

Would you have any concerns about voting by mail?

- Probe: Would you be concerned about the security of your ballot once you drop it in the mail box?
- Probe: Would you have concerns about whether the ballot reaching its destination in time?

### **Concerns about voting (15 minutes)**

Still thinking about the elections process and voting, do any of you have personal concerns about voting that you would like to express?

- Probe: How do you think this problem could be solved?
- Probe: What would a program like this look like; how could it be implemented?

And do any of you have other more general concerns about voting and older citizens that you'd like to discuss?

- Probe: How do you think this problem could be solved?
- Probe: What would a program like this look like; how could it be implemented?

## Post Discussion Comment Sheet Older Voters (65+)

Please take a few minutes to complete this form. Your answers to these questions as well as your viewpoints expressed in today's discussions will be kept confidential—your opinions will not be identified with your name.

By answering these questions, you help us understand the types of people who took part in today's discussion, and your opinions and feelings provide us with important information about this discussion that will help us in the future.

1) Name: \_\_\_\_\_

2)  Male  Female

3) What is your race/ethnicity? \_\_\_\_\_

4) What is your age? \_\_\_\_\_

5) What is the highest level of education you received?

- High School or less
- Some College
- College Graduate
- Post Graduate

6) What is your employment status?

- Full-time
- Part-time
- Unemployed
- Homemaker
- Retired
- Student

7) How many people, including yourself, are there in your household?

\_\_\_\_\_

8) In 2005, what was your total income from all sources before taxes?

- Under \$30,000
- \$30,000 to \$49,999
- \$50,000 to \$74,999
- \$75,000 +

9) Are you currently registered to vote?

Yes

No

10) How often do you vote?

Always

Sometimes

Rarely

11) What is the year and type of the last federal election (presidential or congressional) that you voted in? \_\_\_\_\_

12) Are there any feelings or opinions that you didn't share during the discussion that we should know? Please describe in as much detail as possible.

13) Any comments about the discussion itself and/or the moderator?

**U.S. ELECTION ASSISTANCE COMMISSION**

**Information Collection Activity; Proposed Information Collection; Comment Request**

**AGENCY:** U.S. Election Assistance Commission (EAC).

**ACTION:** Notice.

**SUMMARY:** In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, EAC announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents.

**DATES:** Written comments must be submitted on or before May 13, 2007.

**ADDRESSES:** Written comments and recommendations on the proposed information collection should be sent to the U.S. Election Assistance Commission, 1225 New York Avenue NW, Suite 1100, Washington, DC 20005, ATTN: Ms. Laiza N. Otero (or via the Internet at

lotero@eac.gov).

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the Focus Group Discussion Guide, please, write to the above address or call Ms. Laiza N. Otero at (202) 566-3100. You may also view the proposed collection instrument by visiting our website at [www.eac.gov](http://www.eac.gov).

**SUPPLEMENTARY INFORMATION:**

*Title and OMB Number:* STUDY OF THE FEASIBILITY AND ADVISABILITY OF ESTABLISHING A PROGRAM OF FREE RETURN OR REDUCED POSTAGE FOR ABSENTEE BALLOTS FOCUS GROUPS; OMB Number Pending.

*Needs and Uses:* Sec. 246 of the Help America Vote Act requires the Election Assistance Commission (EAC), in consultation with the United States Postal Service, to conduct a study on the feasibility and advisability of establishing a program under which the U.S. Postal Service shall waive or otherwise reduce the amount of postage applicable with respect to absentee ballots returned by voters in general elections for Federal office. This study does not address the cost to the U.S. Postal Service for free postage for sending absentee ballots but may consider costs to election officials that are related to implementing such a program including the costs of sending absentee ballots to voters. It also does not include consideration of the 39 USC 3406 provisions for the mailing of balloting materials for military and overseas absentee voters. As part of the study the Commission is directed to conduct a nationwide survey of potential beneficiaries, including the elderly and disabled, and to take into account the results of this survey in determining the feasibility and advisability of establishing such a program. This survey will be supplemented by focus groups among potential beneficiaries—elderly, disabled, low-income—to obtain more specific information on the challenges these populations face when participating in election and to assess the potential benefit these populations might receive from a program of free return or reduced postage for absentee ballots.

At the conclusion of the study effort, EAC is required to submit a report to Congress with recommendations for such legislative and administrative action as EAC determines appropriate. The report shall contain an analysis of the feasibility of implementing such a program and an estimate of the costs. It is required to specifically contain recommendations regarding the elderly and disabled populations, including ways a free absentee ballot return postage program would target these populations and identify methods to increase the number of such individuals who



vote in elections for Federal office.

*Affected Public:* Citizens

*Number of Respondents:* 108

*Responses per Respondent:* 1

*Estimated Burden Per Response:* 1 hour 15 minutes; focus groups will last no longer than 1 hour 15 minutes

*Estimated Total Annual Burden Hours:* 135 hours

Information will be collected through a series of nine focus groups comprised of potential beneficiaries of a free and/or discounted absentee ballot postage program. Three (3) focus groups will be dedicated to issues confronting the elderly population, three (3) focus groups will be dedicated to issues confronting disabled people and three (3) focus groups will be dedicated to issues confronting the low-income citizens. An official from the United States Postal Service will observe at least one of the planned focus groups. The topics that will be explored include:

1. The challenges that the particular population faces when participating in elections.
  - a. Information on respondents' previous experiences with voting in Federal elections. Information on any difficulties encountered in the process of voting and how the issues were resolved.
2. The concerns members of the particular population have about voting (e.g. voter intimidation, voter confidentiality, security, use of ballots).
  - a. Information on particular incidents that has prevented respondent from being able to vote.
3. The possible remedies to those challenges that would likely increase the rates of voter participation in the particular population (e.g. relaxed absentee voting laws, better accessibility to polling places, voter education).
  - a. Information on respondents' interest in absentee ballot voting
4. The likelihood that a free or discounted absentee ballot postage program would assist the particular population.

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- a. Information on respondents' interest in a program of free or discounted postage for absentee ballots.
5. How the program could possibly be implemented to target the particular population.
    - a. Information on creating and implementing the program to ensure that it benefits the particular population.
  6. The factors that would make reaching the particular population difficult.
    - a. Information on advertising such a program to the particular population so that they can take advantage of the change.

**Signed:** \_\_\_\_\_

**Thomas R. Wilkey**, Executive Director,

U.S. Election Assistance Commission

**[Billing Code 6820-KF]**

010219



Laiza N. Otero/EAC/GOV  
04/13/2007 03:21 PM

To Karen Lynn-Dyson/EAC/GOV@EAC  
cc  
bcc  
Subject Fw: Free Absentee Postage

----- Forwarded by Laiza N. Otero/EAC/GOV on 04/13/2007 03:20 PM -----



Laiza N. Otero/EAC/GOV  
04/13/2007 01:06 PM

To Karen Lynn-Dyson/EAC/GOV  
cc Juliet E. Thompson-Hodgkins/EAC/GOV@EAC  
Subject Free Absentee Postage

For this study, we have not submitted a package to OMB. The Contractor has provided the requested information, and I am preparing the documentation for Julie to review and approve. They have done the initial 60-day FR Notice, and I am attaching that along with the draft collection instruments.



60 Day FR Notice Vol 71 No 219 Page 66321.pdf



Draft Focus Group Materials 1 - Low Income.pdf



Draft Focus Group Materials 2 - Disabilities.pdf



Draft Focus Group Materials 3 - Seniors.pdf



FABP.Draft Survey.60 Day.FR Notice.pdf



FABP.60 Day FR Notice.1.23.2007.pdf

010220



"Karen Buerkle "  
<KBuerkle@ifes.org>  
04/21/2007 04:42 PM

To klyndyson@eac.gov, lotero@eac.gov  
cc ernieh@aol.com  
bcc

Subject Free return postage questionnaire

Karen, here is the revised questionnaire for the Free Return Postage project per our Thursday conversation regarding the changes requested by your legal department. I've also enclosed a summary of all changes made since the version posted for the 1<sup>st</sup> (60-day) public commenting period. Please let me know if you have any other outstanding questions or concerns.

Best,  
Karen

Karen Buerkle, PhD  
Senior Researcher  
Applied Research Center on Democracy and Elections  
IFES  
1101 15th St., NW, Suite 300  
Washington, DC 20005  
(202) 350-6741



Summary of changes made after 60 notice.doc Free Return Postage QQ for OMB full package revised with legal comments.doc

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Free or Reduced Return Postage Study  
Survey Questionnaire

Hello, my name is \_\_\_\_\_. We are conducting an important study for the U.S. Election Assistance Commission. This survey is for research purposes only, we are not selling anything and we are not associated with or being paid by any political party or candidate. Your participation is voluntary and will only take a few minutes of your time. All your answers will be strictly confidential. Am I speaking with someone 18 or older?

- S1** To make sure our survey includes many different kinds of people, I need to ask a few questions about who lives in your household. How many adults age 18 or older live in your household?
- 1 One—**GO TO S2**
  - 2 Two or more—**GO TO S3**

**ASK IF ONLY ONE ADULT AGE 18+ IN HH (S1=1)**

- S2** May I please speak to that person?
- 1 Continue with current respondent—**GO TO Q1**
  - 2 New respondent being brought to phone—**GO TO INTRO2**
  - 3 New respondent not available—**SCHEDULE CALL BACK**
  - 9 Refused—**TERMINATE**

**ASK IF MORE THAN ONE ADULT AGE 18+ IN HH (S1=2)**

- S3** May I please speak with the adult (18+) in your household who has most recently had a birthday. Are you this person?
- 1 Yes—**GO TO S4**
  - 2 No—**ASK TO SPEAK TO THAT PERSON AND REINTRODUCE THE SURVEY**

- S4** Because we are talking today about issues related to voting in the U.S., we only need to speak with people who are U.S. citizens. Are you currently a U.S. citizen or not?
- 1 Yes—**GO TO Q1**
  - 2 No—**ASK FOR ANOTHER ADULT IN HH**

ASK ALL

- Q1 How much information do you feel you have about politics and current events in the United States today? Do you have a great deal of information, a fair amount, not too much or no information at all?
- 1 Great deal
  - 2 Fair amount
  - 3 Not too much
  - 4 None at all
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK ALL

- Q2 And how much information do you feel you have about the way elections are organized in your community such as the rules about who can vote and when, where to go to vote, etc? Do you have a great deal of information, a fair amount, not too much or no information at all?
- 1 Great deal
  - 2 Fair amount
  - 3 Not too much
  - 4 None at all
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK ALL

- Q3 Some states are using an election system in which residents are allowed to CHOOSE if they want to cast their vote through the MAIL in the weeks leading up the election OR vote IN PERSON ON Election Day. Do you strongly favor, somewhat favor, somewhat oppose or strongly oppose allowing people to CHOOSE if they vote by mail before Election Day or vote in a booth ON Election Day?
- 1 Strongly favor
  - 2 Somewhat favor
  - 3 Somewhat oppose
  - 4 Strongly oppose
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK IF SOMEWHAT OR STRONGLY OPPOSE (Q3=3 or 4)

- Q4 There are many reasons why people may have reservations about voting by mail before election-day instead of in a booth on election-day. Can you tell me the main reason why you oppose people voting by mail before election-day? [ACCEPT UP TO THREE RESPONSES BUT DO NOT PROBE FOR MORE THAN ONE]
- 1 Gave response [**Record verbatim**]
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK ALL

- Q5 These days, many people are so busy they can't find time to register to vote, or move around so often they don't get a chance to re-register... Are you CURRENTLY registered to vote or haven't you been able to register so far?  
[IF RESPONDENT ANSWERS '1' YES, ASK,  
Are you registered to vote at your CURRENT address or are you registered to vote at some other previous address]
- 1 Yes, registered at current address
  - 2 Yes, registered at other/previous address/not sure of which address
  - 3 No, not registered
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK IF REGISTERED TO VOTE (Q5=1 or 2)

- Q6 Every state has different regulations for voting by absentee ballot. If there were to be an election next week, do you know whether or not you would be eligible to vote by absentee ballot in your state?
- 1 Yes, eligible
  - 2 No, not eligible
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK IF CURRENTLY REGISTERED TO VOTE AT PREVIOUS ADDRESS (Q5 = 2)

- Q7 Can you please tell me which state you are currently registered to vote in?
- 1 Gave response [**Record verbatim—OK to use official two letter abbreviations**]
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK IF NOT REGISTERED (Q5 = 3)

- Q8 Have you previously been registered to vote, or have you never been registered?
- 1 Previously registered
  - 2 Never registered
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK IF NOT REGISTERED (Q5 = 3)

- Q9 What would you say is the MAIN reason you are currently not registered to vote?  
[OPEN END; ACCEPT UP TO THREE RESPONSES BUT DO NOT PROBE FOR MORE THAN ONE]
- 1 Gave response [**Record verbatim**]
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK IF CURRENTLY REGISTERED OR PREVIOUSLY REGISTERED (Q5 = 1 OR Q5=2 OR Q8 = 1)

- Q10 Talking to lots of people, we understand that for various reasons not everyone votes in every election. Did you vote in the 2006 Election this past November for either a Senator or Congressperson?
- 1 Yes
  - 2 No
  - 3 Too young to vote/Not registered to vote at the time/Not eligible [DO NOT READ]
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK IF VOTED IN 2006 ELECTION (Q10 = 1)

- Q11 In the 2006 congressional election, do you remember if you voted BEFORE Election Day, either at an early voting site or with an absentee ballot, OR did you vote in-person at your polling place ON Election Day?
- 1 Before Election Day - Early Voting Site/Absentee
  - 2 In person at polling place on Election Day
  - 3 Dropped off absentee ballot at the polls on Election Day [DO NOT READ]
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK IF VOTED IN 2006 BEFORE ELECTION DAY (Q11 = 1)

- Q12 And did you vote BEFORE Election Day in person at an early voting site or did you mail in your absentee ballot?
- 1 In person at an early voting site
  - 2 Mailed in absentee ballot
  - 3 Dropped off absentee ballot at the polls on Election Day [DO NOT READ]
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK IF VOTED BY MAIL (Q12=2)

- Q13 Did being able to vote by MAIL before Election Day make it a lot easier, somewhat easier, somewhat harder, a lot harder, or did it make no difference in your ability to vote?
- 1 A lot easier
  - 2 Somewhat easier
  - 3 Somewhat harder
  - 4 A lot harder
  - 5 No difference in ability to vote
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]



ASK IF CURRENTLY REGISTERED OR PREVIOUSLY REGISTERED (Q5 = 1 OR Q5=2 OR Q8 = 1)

Q14 And were you able to vote in the 2004 Presidential election between George Bush and John Kerry?

- 1 Yes
- 2 No
- 3 Not 18 at the time/Not eligible [DO NOT READ]
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK IF VOTED IN 2004 ELECTION (Q14 = 1)

Q15 In the 2004 Presidential election, do you remember if you voted BEFORE Election Day, either at an early voting site, or with an absentee ballot, OR did you vote in-person at your polling place ON Election Day?

- 1 Before Election Day - Early Voting Site/Absentee
- 2 In person at polling place on Election Day
- 3 Dropped off absentee ballot at the polls on Election Day [DO NOT READ]
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK IF VOTED IN 2004 BEFORE ELECTION DAY (Q15 = 1)

Q16 And did you vote BEFORE Election Day in person at an early voting site or did you mail in an absentee ballot?

- 1 In person at an early voting site
- 2 Mailed in absentee ballot [DO NOT READ]
- 3 Dropped off absentee ballot at the polls on Election Day [DO NOT READ]
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK IF VOTED BY MAIL (Q16=2)

Q17 Did being able to vote by MAIL before Election Day make it a lot easier, somewhat easier, somewhat harder, a lot harder, or did it make no difference in your ability to vote?

- 1 A lot easier
- 2 Somewhat easier
- 3 Somewhat harder
- 4 A lot harder
- 5 No difference in ability to vote
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK ALL

Q18 Suppose that in addition to being able to vote IN-PERSON at the polls on Election Day, you also had the option of choosing to vote by MAIL before Election Day WITHOUT having to pay ANY postage. Would having these two options to chose from make it more likely you would vote, less likely you would vote, or would having the option to vote by mail WITHOUT paying ANY postage make no difference in your ability to vote?

- 1 More likely
- 2 Less likely
- 3 No difference in ability to vote
- 6 Already voting by mail without paying postage [DO NOT READ]
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK IF MAIL WOULD MAKE MORE LIKELY TO VOTE (Q18=1)

Q19 And is this a lot more likely or somewhat more likely?

- 1 A lot more likely
- 2 Somewhat more likely
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK IF MAIL WOULD MAKE LESS LIKELY TO VOTE (Q18=2)

Q20 And is this a lot less likely or somewhat less likely?

- 1 A lot less likely
- 2 Somewhat less likely
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK IF MAIL WOULD MAKE MORE LIKELY TO VOTE (Q18=1)

Q21 Please tell me the main reason you think you would be more likely to vote in elections if you had the option to vote by mail before Election Day without having to pay postage. [ACCEPT UP TO THREE RESPONSES BUT DO NOT PROBE FOR MORE THAN ONE]

- 1 Gave response [**Record verbatim**]
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

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ASK IF MAIL WOULD MAKE MORE LIKELY TO VOTE (Q18=1)

Q22 Suppose you were able to mail in your ballot before Election Day BUT you were required to PAY postage. Which of these do you think is most likely: 1) You would pay the postage and still vote by mail, 2) vote in person on Election Day instead, or 3) there is a chance you wouldn't be able to vote.

[IF ASKED, the amount of postage depends on the size and weight of the ballot in your area—usually between 39 and 87 cents.]

- 1 Vote by mail anyway
- 2 Vote in person
- 3 Chance won't be able to vote
- 4 Would drop off absentee ballot at the polls on Election Day [DO NOT READ]
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK IF WOULD VOTE BY MAIL EVEN IF HAD TO PAY POSTAGE (Q22 = 1)

Q23 Please tell me the main reason why you would still prefer to vote by mail even if you had to pay postage. [ACCEPT UP TO THREE RESPONSES BUT DO NOT PROBE FOR MORE THAN ONE]

- 1 Gave response [**Record verbatim**]
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

I would like to ask you a few final questions for statistical purposes. Please be assured that all of your responses will be kept entirely anonymous and absolutely confidential.

- D1 Record gender
- 1 Male
  - 2 Female

ASK ALL

- D2 What is your age?  
Range 18-96
- 97 97 or older
  - 98 Don't know
  - 99 Refused

ASK ALL

- D3 What is the highest level of education you received?
- 1 High School or less
  - 2 Some College
  - 3 College Graduate
  - 4 Post graduate
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK ALL

D4 What is your marital status: are you now married, widowed, divorced separated, or never married?

- 1 Now married
- 2 Widowed
- 3 Divorced
- 4 Separated
- 5 Never married
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK ALL

D5 Are you or someone in your household an active-duty member of the armed forces?

- 1 Yes
- 2 No
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

D5a Which of the following best describes your current employment status—employed, self-employed, retired and not working, are you not in the labor force, or are you unemployed and looking for work?

- 1 Employed
- 2 Self-employed
- 3 Retired and not working
- 4 Not in the labor force [INTERVIEWER, this includes homemakers]
- 6 Unemployed and looking for work
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK IF EMPLOYED (D5a=1)

D5b Is this part-time or full-time?

- 1 Part-time
- 2 Full-time
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK IF EMPLOYED OR SELF-EMPLOYED (D5a=1 or 2)

D5c What is your MAIN occupation?

- 1 Gave response
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK IF EMPLOYED OR SELF-EMPLOYED (D5a=1 or 2)

D5d And would you characterize your occupation as...?

- 1 Executive/ high-level management
- 2 Professional/ middle manager
- 3 Technical/ administrative/ clerical
- 4 Service worker/ protective services
- 5 Skilled labor
- 6 Unskilled labor
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK ALL

D6a Are you yourself of Latino or Hispanic origin or descent, such as Mexican, Puerto Rican, Cuban, or some other Latin American background?

- 1 Yes
- 2 No
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK ALL

D6b What is your race? (If Latino ask:) Are you white Latino, black Latino or some other race? (Else:) Are you white, African American or black, Asian or some other race?

- 1 White/White Latino
- 2 African American/Black/Black Latino
- 3 Asian
- 4 Other
- 8 Don't know
- 9 Refused

D7 Including your self, how many people are there living in your household?

Range 1 - 30

- 98 Don't know
- 99 Refused

D8 Last year, that is in 2006, what was your total household income from all sources before taxes? Was it under or over \$40,000?

- 1 Under \$40,000
- 2 Over \$40,000
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

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ASK IF INCOME LESS THAN \$40,000 (D8=1)

D9a Now just stop me when I get to the right category. Was your income ...

**Read responses**

- 1 Less than \$10,000
- 2 \$10,000 to under \$15,000
- 3 \$15,000 to under \$20,000
- 4 \$20,000 to under \$25,000
- 5 \$25,000 to under \$30,000
- 6 \$30,000 to under \$35,000 or
- 7 \$35,000 to under \$40,000
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK IF INCOME MORE THAN \$40,000 (D8=2)

D9b Now just stop me when I get to the right category. Was your income ...

**Read responses**

- 1 \$40,000 to under \$50,000
- 2 \$50,000 to under \$75,000
- 3 \$75,000 to under \$100,000
- 4 \$100,000 to under \$150,000 or
- 5 \$150,000 or more
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK ALL

D10 Are you limited in any way in any activities because of physical, mental, or emotional problems?

- 1 Yes
- 2 No
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK IF HAS DISABILITY (D10= 1).

D11 Does this condition require you to use special equipment, such as a cane, a wheelchair, a special bed, or a special telephone?

- 1 Yes
- 2 No
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

**Thank you. That is all of the questions I have for you.**

\*This information collection is required for the EAC to meet its statutory requirements under the Help America Vote Act (HAVA) of 2002 (42 U.S.C. 15301). Respondent's obligation to reply to this information collection is voluntary; respondents include the 50 States, and the District of Columbia. This information will be made publicly available on the EAC website at [www.eac.gov](http://www.eac.gov). According to the Paperwork Reduction Act of 1995,

an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB Control No. pending (expires: to be determined). The time required to complete this information collection is estimated to average 1.25 hours per response. Comments regarding this burden estimate should be sent to the Program Manager – 2007 Study of the Feasibility and Advisability of Establishing a Program of Free Return Postage for Absentee Ballots, U.S. Election Assistance Commission, 1225 New York Ave, NW, Suite 1100, Washington, DC 20005.

Summary of changes  
Free Return Postage

- First two questions after the respondent screening removed from beginning of the survey at request of the EAC
- Q6 words “have reservations about” changed to “oppose” to make question more closely parallel wording in Q5.
- Q10 text “Talking to lots of people, we understand that for various reasons not everyone votes in every election” added to make more socially acceptable to admit have not voted.
- Q11 word “recall” change to “remember” at request of EAC
- Q13 scales changed from “likely” to “easy” and negative categories (harder) added at request of USPS
- Q17 scales changed from “likely” to “easy” and negative categories (harder) added at request of USPS
- Q18 small wording changes made to improve clarity. “Less likely” option added at request of USPS
- Q19 & Q20 added to complete collection of revised scales in Q18
- Q21 words “without having to pay postage” added for greater specificity
- Q23 added
- D4 added at request of USPS
- D5series added at request of USPS
- D7 added to assist in classifying respondent’s financial situation
- D8 & D9 income brackets expanded at request of USPS

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**DEPARTMENT OF EDUCATION**

[CFDA Number: 84.184H]

**Office of Safe and Drug-Free Schools;  
Grant Competition To Prevent High-  
Risk Drinking or Violent Behavior  
Among College Students****ACTION:** Correction; Notice correcting the Deadline dates.**SUMMARY:** We correct the *Deadline dates* in the notice published on December 22, 2006 (71 FR 77004).**SUPPLEMENTARY INFORMATION:** On December 22, 2006 we published a notice in the *Federal Register* inviting applications for the Grant Competition to Prevent High-Risk Drinking or Violent Behavior among College Students (71 FR 77004-77007). The Deadline dates in the notice were incorrect. The Deadline for Transmittal of Applications (as published on pages 77004 and 77005) is corrected to February 20, 2007, and the Deadline for Intergovernmental Review (as published on pages 77004 and 77005) is corrected to April 20, 2007.**FOR FURTHER INFORMATION CONTACT:** Richard Lucey, Jr., U.S. Department of Education, 400 Maryland Avenue, SW., room 3E335, Washington, DC 20202-6450. Telephone: (202) 205-5471 or by e-mail: [richard.lucey@ed.gov](mailto:richard.lucey@ed.gov).

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotope, or computer diskette) on request to the contact person listed in this section.

**Electronic Access to This Document:** You may view this document, as well as all other documents of this Department published in the *Federal Register*, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

You may also view this document in text or PDF at the following site: <http://www.ed.gov/programs/dvphighrisk/applicant.html>.**Note:** The official version of this document is the document published in the *Federal Register*. Free Internet access to the official edition of the *Federal Register* and the Codeof Federal Regulations is available on GPO Access at: <http://www.access.gpo.gov/nara/index.html>.

Dated: January 4, 2007.

**Deborah A. Price,***Assistant Deputy Secretary for Safe and Drug-Free Schools.*

[FR Doc. E7-105 Filed 1-8-07; 8:45 am]

**BILLING CODE 4000-01-P****DEPARTMENT OF EDUCATION****National Board for Education  
Sciences; Meeting****AGENCY:** National Board for Education Sciences; ED.**ACTION:** Notice of open meeting and a partially closed meeting.**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Board for Education Sciences. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the open portion of the meeting. Individuals who will need accommodations for a disability in order to attend the meeting (i.e., interpreting services, assistive listening devices, materials in alternative format) should notify Mary Grace Lucier at 202/219-2253 (or [Mary.Grace.Lucier@ed.gov](mailto:Mary.Grace.Lucier@ed.gov)) by January 12. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.**Dates:** January 23 and 24, 2007.**Time:** January 23, 1:30 to 4:30 p.m.

January 24, 9-9:15 a.m., open; 9:15 to 10 a.m., closed; 10 a.m.-2 p.m., open.

**Location:** Washington Court Hotel, 525 New Jersey Ave., NW., Washington, DC 20001, (room to be announced).**FOR FURTHER INFORMATION CONTACT:**

Mary Grace Lucier, 202/219-2253.

**SUPPLEMENTARY INFORMATION:** The National Board for Education Sciences is authorized by Section 116 of the Education Sciences Reform Act of 2002. The Board advises the Director of the Institute of Education Sciences (IES) on the establishment of activities to be supported by the Institute, on the funding of applications for grants, contracts, and cooperative agreements for research after the completion of peer review, and reviews and evaluates the work of the Institute. On January 23 at 1:30 p.m., the Board will receive an update from the Director of IES on the

work of the Institute and its short and long-term goals. At 3 p.m., Alex Nock, Director of the Commission on No Child Left Behind, will discuss the role of research and evaluation in the reauthorization of the No Child Left Behind Act and the Education Sciences Reform Act.

On January 24, after a review of the prior day's activities the meeting will be closed to the public from 9:15 a.m.-10 a.m. under exemptions (2) and (6) of the Section 552b(c) of Title 5 U.S.C. The Board will discuss internal personnel issues relating to filling the positions of chairperson and executive director. After a 15-minute break, the Board will resume in open session at 10:15 a.m. At that time, the contractor chosen to conduct an evaluation of IES will give a presentation. This portion of the meeting will last until 11:30 a.m. The Board will hear a presentation by Dr. Mark Schneider, Commissioner of the National Center for Education Statistics from 11:30 a.m. to 12:15 p.m., followed by the Board's annual ethics briefing. From 1 p.m. to 2 p.m. the Board will hear reports from its subcommittees and consider next steps for its work in FY 2007. The meeting will adjourn at 2 p.m. A final agenda will be available from Mary Grace Lucier on January 12, 2007.

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b(c) will be available to the public. Records will be kept of all Board proceedings and will be available for public inspection at the office of the National Board for Education Sciences, Room 627H, 555 New Jersey Ave., NW., Washington, DC 20208.

Dated: January 3, 2007.

**Grover J. Whitehurst,***Director, Institute of Education Sciences.*

[FR Doc. 07-16 Filed 1-8-07; 8:45 am]

**BILLING CODE 4000-01-M****ELECTION ASSISTANCE COMMISSION****Information Collection Activity; Study  
of Alternative Voting Methods****AGENCY:** Election Assistance Commission (EAC).**ACTION:** Notice; request for comments.**SUMMARY:** The EAC, as part of its continuing effort to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995, invites the general public and other Federal agencies to take this opportunity to comment on a proposed

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information collection. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

**DATES:** Written comments must be submitted on or before March 9, 2007.

**ADDRESSES:** Submit comments and recommendations on the proposed information collection in writing to the U.S. Election Assistance Commission, 1225 New York Avenue, NW., Suite 1100, Washington, DC 20005, ATTN: Ms. Laiza N. Otero (or via the Internet at [lotero@eac.gov](mailto:lotero@eac.gov)).

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the survey, please write to the above address or call Ms. Laiza N. Otero at (202) 566-3100. You may also view the proposed collection instrument by visiting our Web site at <http://www.eac.gov>.

**SUPPLEMENTARY INFORMATION:**

*Title:* Study of Alternative Voting Methods.

*OMB Number:* Pending.

*Type of Review:* Regular submission.

*Needs and Uses:* Section 241 of the Help America Vote Act (HAVA) requires the U.S. Election Assistance Commission (EAC) to periodically study election administration issues with the goal of promoting voting methods and improving election administration. Section 241(b)(10) instructs the EAC to study the feasibility and advisability of conducting elections for Federal office on different days, at different places, and during different hours. In addition, it recommends the study include a discussion of the advisability of establishing a uniform poll closing time and establishing:

(A) A legal public holiday under section 6103 of title 5 United States Code, as the date on which general elections for Federal office are held;

(B) The Tuesday after the 1st Monday in November, in every even numbered

year, as a legal public holiday under such section;

(C) A date other than the Tuesday next after the 1st Monday in November, in every even numbered year as the date on which general elections for Federal office are held; and

(D) Any date described in subparagraph (C) as a legal public holiday under such section.

To provide information to the States and the Congress on the feasibility and advisability of using alternative days, times, and places to conduct Federal elections, the EAC seeks to survey voters to better understand their motivations and perceptions of impediments to voting. The survey will provide insights into the public's perceptions of particular aspects of the voting process.

*Affected Public:* Citizens.

*Number of Respondents:* 3,000.

*Responses per Respondent:* 1.

*Estimated Burden per Response:* .25 hours.

*Estimated Total Annual Burden Hours:* 750 hours.

*Frequency:* One time collection.

Information will be collected through a statistically valid survey of 3,000 registered voters to determine how they currently respond to alternative voting methods (if in a State that offers them) or would respond to alternative voting methods (if in a State that does not allow them). The survey will be representative of the 50 States, the District of Columbia, and U.S. territories. The topics that will be explored include, but are not limited to:

- a. Voting by mail
- b. Voting at a consolidated polling center
- c. Voting online
- d. Voting earlier/later on Election Day
- e. Voting on weekend day
- f. Voting on day other than first Tuesday in November
- g. Making the day on which Federal elections are held a Federal holiday
- h. No alternative voting method, prefer status quo

The survey will gather data regarding each respondent's background. Background information will include, but is not limited to, (1) Respondents' voter registration history, (2) respondents' voting history, and (3) standard demographic questions covering (age, ethnicity, education, employment status, and income bracket).

**Thomas R. Wilkey,**

*Executive Director, U.S. Election Assistance Commission.*

[FR Doc. 07-27 Filed 1-8-07; 8:45 am]

**BILLING CODE 6820-KF-M**

**DEPARTMENT OF ENERGY**

**Environmental Management Site-Specific Advisory Board, Savannah River Site**

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site. The Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Monday, January 22, 2007, 1 p.m.-5 p.m.; Tuesday, January 23, 2007, 8:30 a.m.-4 p.m.

**ADDRESSES:** Crowne Plaza, 130 Shipyard Dr., Hilton Head, SC 29928.

**FOR FURTHER INFORMATION CONTACT:** Gerri Flemming, Closure Project Office, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; Phone: (803) 952-7886.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

**Tentative Agenda**

*Monday, January 22, 2007*

1 p.m. Combined Committee Session  
5 p.m. Adjourn

*Tuesday, January 23, 2007*

8:30 a.m. Approval of Minutes, Agency Updates  
9:45 a.m. Public Comment Session  
10 a.m. Chair and Facilitator Update  
10:45 a.m. Strategic & Legacy Management Committee Report  
11:45 a.m. Public Comment Session  
12 p.m. Lunch Break  
1 p.m. Nuclear Materials Committee Report  
1:30 p.m. Waste Management Committee Report  
2 p.m. Public Comment Session  
2:15 p.m. Facility Disposition & Site Remediation Committee Report  
3 p.m. Administrative Committee Report  
4 p.m. Adjourn

If needed, time will be allotted after public comments for items added to the agenda and administrative details. A final agenda will be available at the meeting Monday, January 22, 2007.

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements

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Laiza N. Otero/EAC/GOV

03/12/2007 04:09 PM

To Karen Lynn-Dyson/EAC/GOV@EAC

cc

bcc

Subject Alternative Voting Methods Study

Karen,

The last day for public comments regarding the Alternative Voting Methods survey instrument posted on 1/9/2007 has passed (last day was March 9, 2007). To proceed with clearance, the Contractor should finalize the survey instrument (incorporate all comment, make revisions, etc.). Then they must publish it on the Federal Register once more for 30 days and submit the ICR package to OMB. The OMB package includes:

Contractor Responsibilities - prepare all information and supporting documents required for the submission package

Provide IC instrument in its final form

Information on OMB Form 83-I

Supporting Statement A – joint Privacy Impact Assessment (PIA)

Supporting Statement B (if using statistical methods)

Copy of 60-day Federal Register Notice

Copy of 30-day Federal Register Notice

Summary of public comments received, including actions in response to the comments.

Copy of public comments received

Copies of pertinent statutory authority and regulation

EAC Responsibilities:

Review and approve documents prepared by Contractor

Submit ICR package to OMB via their online ROCIS system

The same applies to the focus groups for the free absentee postage study. As always, I am happy to provide you the necessary information to get these studies through PRA. For sample ICR submissions, one can go to: <http://www.reginfo.gov/public/do/PRAMain>).

Laiza



Template for Supporting Statement A.doc



Template for Supporting Statement B.doc



OMB 83-I form.pdf



INSTRUCTIONS FOR THE SUPPORTING STATEMENT.doc

010230

**Supporting Statement A:**  
**OMB Control Number: xxxx-xxxx**  
**U.S. Election Assistance Commission**  
**Name of Study**

**A. JUSTIFICATION**

1. Explain the circumstances that make the collection of information necessary.
  
2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.
  
3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.
  
4. Describe efforts to identify duplication.
  
5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.
  
6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.
  
7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

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**8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.**

**9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.**

**10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.**

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.**

**12. Provide an estimate in hours of the burden of the collection of information.**

**13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in #12 above).**

**14. Provide estimates of annualized cost to the Federal government.**

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**15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.**

**16. For collections whose results will be published, outline the plans for tabulation and publication.**

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.**

**18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.**

**Supporting Statement B:**

**OMB Control Number: xxxx-xxxx**

**U.S. Election Assistance Commission**

**Name of Study**

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

*(If your collection does not employ statistical methods, just say that and delete the following five questions from the format.)*

**1. Describe (including a numerical estimate) the potential respondent universe and any sampling or other respondent selection method to be used. Data on the number of entities (e.g. establishments, State and local governmental units, households, or persons) in the universe and the corresponding sample are to be provided in tabular form. The tabulation must also include expected response rates for the collection as a whole. If the collection has been conducted before, provide the actual response rate achieved.**

**2. Describe the procedures for the collection, including: the statistical methodology for stratification and sample selection; the estimation procedure; the degree of accuracy needed for the purpose described in the justification; any unusual problems requiring specialized sampling procedures; and any use of periodic (less frequent than annual) data collection cycles to reduce burden.**

**3. Describe the methods used to maximize response rates and to deal with nonresponse. The accuracy and reliability of the information collected must be shown to be adequate for the intended uses. For collections based on sampling, a special justification must be provided if they will not yield "reliable" data that can be generalized to the universe studied.**

**4. Describe any tests of procedures or methods to be undertaken. Tests are encouraged as effective means to refine collections, but if ten or more test respondents are involved OMB must give prior approval.**

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**5. Provide the name and telephone number of individuals consulted on the statistical aspects of the design, and the name of the agency unit, contractor(s), grantee(s), or other person(s) who will actually collect and/or analyze the information for the agency.**



# PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the Supporting Statement, and any additional documentation to: **Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.**

1. Agency/Subagency originating request	2. OMB control number <span style="float: right;">b. <input type="checkbox"/> None</span> a. _____
3. Type of information collection ( <i>check one</i> ) a. <input type="checkbox"/> New collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension, without change, of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number	4. Type of review requested ( <i>check one</i> ) a. <input type="checkbox"/> Regular b. <input type="checkbox"/> Emergency - Approval requested by: ____/____/____ c. <input type="checkbox"/> Delegated
3a. Public Comments Has the agency received public comments on this information collection? <div style="text-align: center;"> <input type="checkbox"/> Yes    <input type="checkbox"/> No                 </div>	5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input type="checkbox"/> No
6. Requested expiration date a. <input type="checkbox"/> Three years from approval date    b. <input type="checkbox"/> Other Specify: ____/____/____	
7. Title	
8. Agency form number(s) ( <i>if applicable</i> )	
9. Keywords	
10. Abstract	
11. Affected public ( <i>Mark primary with "P" and all others that apply with "X"</i> ) a. <input type="checkbox"/> Individuals or households                      d. <input type="checkbox"/> Farms b. <input type="checkbox"/> Business or other for-profit                      e. <input type="checkbox"/> Federal Government c. <input type="checkbox"/> Not-for-profit institutions                      f. <input type="checkbox"/> State, Local or Tribal Government	12. Obligation to respond ( <i>Mark primary with "P" and all others that apply with "X"</i> ) a. <input type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory
13. Annual reporting and recordkeeping hour burden a. Number of respondents _____ b. Total annual responses _____ 1. Percentage of these responses collected electronically _____ % c. Total annual hours requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____	14. Annual reporting and recordkeeping cost burden ( <i>in thousands of dollars</i> ) a. Total annualized capital/startup costs _____ b. Total annual costs (O&M) _____ c. Total annualized cost requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____
15. Purpose of information collection ( <i>Mark primary with "P" and all others that apply with "X"</i> ) a. <input type="checkbox"/> Application for benefits                      e. <input type="checkbox"/> Program planning or management b. <input type="checkbox"/> Program evaluation                              f. <input type="checkbox"/> Research c. <input type="checkbox"/> General purpose statistics                      g. <input type="checkbox"/> Regulatory or compliance d. <input type="checkbox"/> Audit	16. Frequency of recordkeeping or reporting ( <i>check all that apply</i> ) a. <input type="checkbox"/> Recordkeeping                                      b. <input type="checkbox"/> Third party disclosure c. <input type="checkbox"/> Reporting 1. <input type="checkbox"/> On occasion    2. <input type="checkbox"/> Weekly            3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly        5. <input type="checkbox"/> Semi-annually    6. <input type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially        8. <input type="checkbox"/> Other (describe) _____
17. Statistical methods Does this information collection employ statistical methods? <div style="text-align: center;"> <input type="checkbox"/> Yes    <input type="checkbox"/> No                 </div>	18. Agency contact ( <i>person who can best answer questions regarding the content of this submission</i> ) Name: _____ Phone: _____

## 19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9.

**Note:** The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It uses plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
  - (i) Why the information is being collected;
  - (ii) Use of information;
  - (iii) Burden estimate;
  - (iv) Nature of response (voluntary, required for a benefit, or mandatory);
  - (v) Nature and extent of confidentiality; and
  - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of the instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of these provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

# Instructions For Completing OMB Form 83-1

Please answer all questions and have the Senior Official or designee sign the form. These instructions should be used in conjunction with 5 CFR 1320, which provides information on coverage, definitions, and other matters of procedure and interpretation under the Paperwork Reduction Act of 1995.

## 1. Agency/Subagency originating request

Provide the name of the agency or subagency originating the request. For most cabinet-level agencies, a subagency designation is also necessary. For non-cabinet agencies, the subagency designation is generally unnecessary.

## 2. OMB control number

- If the information collection in this request has previously received or now has an OMB control or comment number, enter the number.
- Check "None" if the information collection in this request has not previously received an OMB control number. Enter the four digit agency code for your agency.

## 3. Type of information collection (check one)

- Check "New collection" when the collection has not previously been used or sponsored by the agency.
- Check "Revision" when the collection is currently approved by OMB, and the agency request includes a material change to the collection instrument, instructions, its frequency of collection, or the use to which the information is to be put.
- Check "Extension" when the collection is currently approved by OMB, and the agency wishes only to extend the approval past the current expiration date without making any material change in the collection instrument, instructions, frequency of collection, or the use to which the information is to be put.
- Check "Reinstatement without change" when the collection previously had OMB approval, but the approval has expired or was withdrawn before this submission was made, and there is no change to the collection.
- Check "Reinstatement with change" when the collection previously had OMB approval, but the approval has expired or was withdrawn before this submission was made, and there is change to the collection.
- Check "Existing collection in use without OMB control number" when the collection is currently in use but does not have a currently valid OMB control number.

## 4. Type of review requested (check one)

- Check "Regular" when the collection is submitted under 5 CFR 1320.10, 1320.11, or 1320.12 with a standard 60 day review schedule.
- Check "Emergency" when the agency is submitting the request under 5 CFR 1320.13 for emergency processing and provides the required supporting material. Provide the date by which the agency requests approval.
- Check "Delegated" when the agency is submitting the collection under the conditions OMB has granted the agency delegated authority.

## 5. Small entities

Indicate whether this information collection will have a significant impact on a substantial number of small entities. A small entity may be (1) a small business which is deemed to be one that is independently owned and operated and that is not dominant in its field of operation; (2) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field; or (3) a small government jurisdiction which is a government of a city, county, town, township, school district, or special district with a population of less than 50,000.

## 6. Requested expiration date

- Check "Three years" if the agency requests a three year approval for the collection.
- Check "Other" if the agency requests approval for less than three years. Specify the month and year of the requested expiration date.

## 7. Title

Provide the official title of the information collection. If an official title does not exist, provide a description which will distinguish this collection from others.

## 8. Agency form number(s) (if applicable)

Provide any form number the agency has assigned to this collection of information. Separate each form number with a comma.

## 9. Keywords

Select and list at least two keywords (descriptors) from the "Federal Register Thesaurus of Indexing Terms" that describe the subject area(s) of the information collection. Other terms may be used but should be listed after those selected from the thesaurus. Separate keywords with commas. Keywords should not exceed two lines of text.

## 10. Abstract

Provide a statement, limited to five lines of text, covering the agency's need for the information, uses to which it will be put, and a brief description of the respondents.

## 11. Affected public

Mark all categories that apply, denoting the primary public with a "P" and all others that apply with "X."

## 12. Obligation to respond

Mark all categories that apply, denoting the primary obligation with a "P" and all others that apply with "X."

- Mark "Voluntary" when the response is entirely discretionary and has no direct effect on any benefit or privilege for the respondent.
- Mark "Required to obtain or retain benefits" when the response is elective, but is required to obtain or retain a benefit.
- Mark "Mandatory" when the respondent must reply or face civil or criminal sanctions.

## 13. Annual reporting and recordkeeping hour burden

- Enter the number of respondents and/or recordkeepers. If a respondent is also a recordkeeper, report the respondent only once.
- Enter the number of responses provided annually. For recordkeeping as compared to reporting activity, the number of responses equals the number of recordkeepers.
  - Enter the estimated percentage of responses that will be submitted/collected electronically using magnetic media (i.e., diskette), electronic mail, or electronic data interchange. Facsimile is **not** considered an electronic submission.
  - Enter the total annual recordkeeping and reporting hour burden.
  - Enter the burden hours currently approved by OMB for this collection of information. Enter zero (0) for any new submission or for any collection whose OMB approval has expired.
  - Enter the difference by subtracting line d from line c. Record a negative number (d larger than c) within parentheses.
  - Explain the difference. The difference in line e must be accounted for in lines f.1. and f.2.

f.1. "Program change" is the result of deliberate Federal government action. All new collections and any subsequent revision of existing collections (e.g., the addition or deletion of questions) are recorded as program changes.

f.2. "Adjustment" is a change that is not the result of a deliberate Federal government action. Changes resulting from new estimates or action not controllable by the Federal government are recorded as adjustments.

## 14. Annual reporting and recordkeeping cost burden (in thousands of dollars)

The costs identified in this item must exclude the cost of hour burden identified in Item 13.

- Enter the total dollar amount of annualized cost for all respondents of any associated capital or start-up costs.
  - Enter recurring annual dollar amount of cost for all respondents associated with operating or maintaining systems or purchasing services.
  - Enter total (14.a. + 14.b.) annual reporting and recordkeeping cost burden.
  - Enter any cost burden currently approved by OMB for this collection of information. Enter zero (0) if this is the first submission after October 1, 1995.
  - Enter the difference by subtracting line d from line c. Record a negative number (d larger than c) within parenthesis.
  - Explain the difference. The difference in line e must be accounted for in lines f.1. and f.2.
- f.1. "Program change" is the result of deliberate Federal government action. All new collections and any subsequent revisions or changes resulting in cost changes are recorded as program changes.

f.2. "Adjustment" is a change that is not the result of a deliberate Federal government action. Changes resulting from new estimations or actions not controllable by the Federal government are recorded as adjustments.

#### 15. Purpose of information collection

Mark all categories that apply, denoting the primary purpose with a "P" and all others that apply with "X."

a. Mark "Application for benefits" when the purpose is to participate in, receive, or qualify for a grant, financial assistance, etc., from a Federal agency or program.

b. Mark "Program evaluation" when the purpose is a formal assessment, through objective measures and systematic analysis, of the manner and extent to which Federal programs achieve their objectives or produce other significant effects.

c. Mark "General purpose statistics" when the data is collected chiefly for use by the public or for general government use without primary reference to the policy or program operations of the agency collecting the data.

d. Mark "Audit" when the purpose is to verify the accuracy of accounts and records.

e. Mark "Program planning or management" when the purpose relates to progress reporting, financial reporting and grants management, procurement and quality control, or other administrative information that does not fit into any other category.

f. Mark "Research" when the purpose is to further the course of research, rather than for a specific program purpose.

g. Mark "Regulatory or compliance" when the purpose is to measure compliance with laws or regulations.

#### 16. Frequency of recordkeeping or reporting

Check "Recordkeeping" if the collection of information explicitly includes a recordkeeping requirement.

Check "Third party disclosure" if a collection of information includes third-party disclosure requirements as defined by 1320.3(c).

Check "Reporting" for information collections that involve reporting and check the frequency of reporting that is requested or required of a respondent. If the reporting is on "an event" basis, check "On occasion."

#### 17. Statistical methods

Check "Yes" if the information collection uses statistical methods such as sampling or imputation. Generally, check "No" for applications and audits (unless a random auditing scheme is used). Check "Yes" for statistical collections, most research collections, and program evaluations using scientific methods. For other types of data collection, the use of sampling, imputation, or other statistical estimation techniques should dictate the response for this item. Ensure that supporting documentation is provided in accordance with Section B of the Supporting Statement.

#### 18. Agency contact

Provide the name and telephone number of the agency person best able to answer questions regarding the content of this submission.

#### 19. Certification for Paperwork Reduction Act Submissions

The Senior Official or designee signing this statement certifies that the collection of information encompassed by the request complies with 5 CFR 1320.9. Provisions of this certification that the agency cannot comply with should be identified here and fully explained in item 18 of the attached Supporting Statement. NOTE: The Office that "develops" and "uses" the information to be collected is the office that "conducts or sponsors" the collection of information. (See 5 CFR 1320.3(d)).

## Certification Requirement for Paperwork Reduction Act Submissions

5 CFR 1320.9 reads "As part of the agency submission to OMB of a proposed collection of information, the agency (through the head of the agency, the Senior Official, or their designee) shall certify (and provide a record supporting such certification) that the proposed collection of information--

"(a) is necessary for the proper performance of the functions of the agency, including that the information to be collected will have practical utility;

"(b) is not unnecessarily duplicative of information otherwise reasonably accessible to the agency;

"(c) reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency, including with respect to small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. § 601(6)), the use of such techniques as:

"(1) establishing differing compliance or reporting requirements or timetables that take into account the resources available to those who are to respond;

"(2) the clarification, consolidation, or simplification of compliance and reporting requirements; or collections of information, or any part thereof;

"(3) an exemption from coverage of the collection of information, or any part thereof;

"(d) is written using plain, coherent, and unambiguous terminology and is understandable to those who are to respond;

"(e) is to be implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond;

"(f) indicates for each recordkeeping requirement the length of time persons are required to maintain the records specified;

"(g) informs potential respondents of the information called for under §1320.8(b)(3); [see below]

"(h) has been developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected, including the processing of the information in a manner which shall enhance, where appropriate, the utility of the information to agencies and the public;

"(i) uses effective and efficient statistical survey methodology appropriate to the purpose for which the information is to be collected; and

"(j) to the maximum extent practicable, uses appropriate information technology to reduce burden and improve data quality, agency efficiency and responsiveness to the public."

NOTE: 5 CFR 1320.8(b)(3) requires that each collection of information:

"(3) informs and provides reasonable notice to the potential persons to whom the collection of information is addressed of:

"(i) the reasons the information is planned to be and/or has been collected;

"(ii) the way such information is planned to be and/or has been used to further the proper performance of the functions of the agency;

"(iii) an estimate, to the extent practicable, of the average burden of the collection (together with a request that the public direct to the agency any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden);

"(iv) whether responses to the collection of information are voluntary, require to obtain or retain a benefit (citing authority) or mandatory (citing authority);

"(v) the nature and extent of confidentiality to be provided, if any (citing authority); and

"(vi) the fact that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number."

# Supporting Statement for Paperwork Reduction Act Submissions

## General Instructions

A Supporting Statement, including the text of the notice to the public required by 5 CFR 1320.5(a)(i)(iv) and its actual or estimated date of publication in the Federal Register, must accompany each request for approval of a collection of information. The Supporting Statement must be prepared in the format described below, and must contain the information specified in Section A below. If an item is not applicable, provide a brief explanation. When Item 17 of the OMB Form 83-I is checked "Yes", Section B of the Supporting Statement must be completed. OMB reserves the right to require the submission of additional information with respect to any request for approval.

## Specific Instructions

### A. Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.
2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.
3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.
4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.
5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.
6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.
7. Explain any special circumstances that would cause an information collection to be conducted in a manner:
  - \* requiring respondents to report information to the agency more often than quarterly;
  - \* requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;
  - \* requiring respondents to submit more than an original and two copies of any document;

- \* requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;
- \* in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;
- \* requiring the use of a statistical data classification that has not been reviewed and approved by OMB;
- \* that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or
- \* requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years - even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

9. Explain any decision to provide any payment or gift to respondents, other than reenumeration of contractors or grantees.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information

is requested, and any steps to be taken to obtain their consent.

12. Provide estimates of the hour burden of the collection of information. The statement should:

- \* Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.
- \* If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.

- \* Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 13.

13. Provide an estimate for the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).

- \* The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.

- \* If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collections services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use

existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.

\* Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

14. Provide estimates of annualized costs to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.

#### **B. Collections of Information Employing Statistical Methods**

The agency should be prepared to justify its decision not to use statistical methods in any case where such methods might reduce burden or improve accuracy of results. When Item 17 on the Form OMB 83-I is checked, "Yes," the following documentation should be included in the Supporting Statement to the extent that it applies to the methods proposed:

1. Describe (including a numerical estimate) the potential respondent universe and any sampling or other respondent selection methods to be used. Data on the number of entities (e.g., establishments, State and local government units, households, or persons) in the universe covered by the collection and in the corresponding sample are to be provided in tabular form for the universe as a whole and for each of the strata in the proposed sample. Indicate expected response rates for the collection as a whole. If the collection had been conducted previously, include the actual response rate achieved during the last collection.

2. Describe the procedures for the collection of information including:

- \* Statistical methodology for stratification and sample selection,
- \* Estimation procedure,
- \* Degree of accuracy needed for the purpose described in the justification,
- \* Unusual problems requiring specialized sampling procedures, and
- \* Any use of periodic (less frequent than annual) data collection cycles to reduce burden.

3. Describe methods to maximize response rates and to deal with issues of non-response. The accuracy and reliability of information collected must be shown to be adequate for intended uses. For collections based on sampling, a special justification must be provided for any collection that will not yield "reliable" data that can be generalized to the universe studied.

4. Describe any tests of procedures or methods to be undertaken. Testing is encouraged as an effective means of refining collections of information to minimize burden and improve utility. Tests must be approved if they call for answers to identical questions from 10 or more respondents. A proposed test or set of test may be submitted for approval separately or in combination with the main collection of information.

5. Provide the name and telephone number of individuals consulted on statistical aspects of the design and the name of the agency unit, contractor(s), grantee(s), or other person(s) who will actually collect and/or analyze the information for the agency.

## **INSTRUCTIONS FOR THE SUPPORTING STATEMENT:**

**GENERAL INSTRUCTIONS** -Each request for OMB approval of an information collection must include a Supporting Statement prepared in the format described below. The quality of the Supporting Statement is a key factor in whether approval is obtained. If an item is not applicable, provide a brief explanation. All Statements must respond to the items in Section A; if Section B does not apply, state that the collection will not employ statistical methods. If Item 17 of the OMB 83-I was checked "Yes", then Section B must be completed. Electronic formats for the Supporting Statement are available here.

Attach copies of any forms or other instruments used to obtain the information from the public. Collection forms must display the required public notification information described in Preambles, under PRA Guidance.

Your Supporting Statement should repeat the underlined portions of each item below. These are already provided on the electronic format available on this site.

### **SPECIFIC INSTRUCTIONS** -

#### **1. Explain the circumstances that make the collection of information necessary.**

Include a citation and brief description of any statute or executive order that requires the collection, as well as any regulations on which revisions are based, if applicable. Copies of statutes mandating or authorizing a collection must be included with all a submissions. Provide some background information on the program and describe how the collection supports it. Detail any specific program problems you hope to resolve.

If NOAA is already collecting information from the same universe of respondents, briefly describe these collections and how they relate to the proposed collection. Every practical effort should be made to consolidate requirements on the same respondents, and the Supporting Statement should reflect that this has been done. If collections have very similar questions, you may wish to describe the relationship in Item 4, rather than in Item 1.

#### **2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.**

For all but "New" collection requests, indicate the actual use NOAA has made of the information received. This explanation of the proposed and any past use of the information is a key one and must be detailed. *Do not just make general statements about the overall use of the information, but address the specific items of information being collected. You should deal individually with each question or type of question being asked in your survey or on your form unless the purpose of the question is obvious to someone not familiar with your program.* One of OMB's key standards under the Paperwork Reduction Act is whether the information has "practical utility"; you must demonstrate that you will be using all of the information collected for a practical and necessary program purpose.

In response to Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106-554), NOAA has issued guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of information



disseminated by NOAA; and established administrative mechanisms allowing affected persons to seek and obtain correction of information that does not comply with applicable guidelines.

As a result of the Section 515 requirements and resulting guidelines, you need to do the following: (1) become familiar with the NOAA Information Quality Guidelines and determine whether they could apply to your collection; and (2) if they do apply (e.g. the information collected will be disseminated to the public or used to support information that will be disseminated to the public), explain at the end of #2 how the information collected complies with applicable Information Quality Guidelines.

The following statement would be applicable when the Guidelines do apply: It is anticipated that the information collected will be disseminated to the public or used to support publicly disseminated information. As explained in the preceding paragraphs, the information gathered has utility. NOAA (*insert line office or program name*) will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with NOAA standards for confidentiality, privacy, and electronic information. See response #10 of this Supporting Statement for more information on confidentiality and privacy. The information collection is designed to yield data that meet all applicable information quality guidelines. Prior to dissemination, the information will be subjected to quality control measures and a pre-dissemination review pursuant to Section 515 of Public Law 106-554.

If you do not plan to disseminate the information, or use it to support information that will be disseminated, explicitly state this in the answer: As explained in the preceding paragraphs, the information gathered has utility. NOAA Fisheries will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with NOAA standards for confidentiality, privacy, and electronic information. See response #10 of this Supporting Statement for more information on confidentiality and privacy. The information collection is designed to yield data that meet all applicable information quality guidelines. Although the information collected is not expected to be disseminated directly to the public, results may be used in scientific, management, technical or general informational publications. Should NOAA (*insert line office*) decide to disseminate the information, it will be subject to the quality control measures and pre-dissemination review pursuant to Section 515 of Public Law 106-554.

If the collection involves *vessel or gear marking only*, state simply that "The information collected will not be disseminated to the public, as it consists solely of marking gear and/or vessels with the appropriate vessel or permit number. This information is not submitted to NMFS." You should always address the quality of information guidelines per one of the three scenarios above. It is critical that your collection complies with the Guidelines if they are applicable, since failure to do so can open Fishery Management Plans and other actions to legal challenge.

Finally, OMB has standards for asking questions about race or ethnicity. If you ask such questions, you must comply with those standards.

**3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.**

Explain the basis for the decision for adopting this means of collection. Also describe

any consideration you have given or are giving to the use of improved information technology to reduce the burden on the public. You must address the following:

- a. Is the electronic submission of responses allowed\*
- b. If a form is involved, is it available for public printing off the Internet\*
- c. Will the results of the information collection be made available to the public over the Internet? If the answer to any of those questions is "no", are there plans to do so? Why not?

*Note: even in the best of scenarios, with all respondents having easy internet access, and all your forms being fillable on line, you would not state on the 83-I, #13(b)1, "100 %", as this would imply that should a respondent NOT be able to use electronic means, there would not be an alternative available. A separate aspect of the question is your use of technology. This is of particular concern in the case of interviews. Will your interviewers use laptops or other computers to directly enter the answers being provided? If not, why not?*

**4. Describe efforts to identify duplication.**

Describe your efforts to identify duplication with other collections which may be gathering the same or similar information. If the same or similar information is available, describe why it cannot be used or modified for the purposes described in "2" above.

**5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.**

If the collection will have a significant impact on small entities such as small businesses, organizations, or government bodies (see the instruction above for Item 5 of the OMB 83-I), describe the methods used to minimize the burden on them.

**6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.**

Address both parts of the question: not conducting the collection AND doing it less frequently. Generally one or two paragraphs is sufficient.

**7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.** See Attachment 1 and explain the need for any inconsistencies in your collection.

**\* All NMFS forms must be made available to the public as "fillable and printable" in the NMFS forms portal. Therefore, unless another electronic means such as an online web affiliation is available, you must respond that the forms and related instructions are available to the public on the Internet and can be completed online and printed.**

**8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.** Specifically address comments

received on the estimated cost and hour burden. If you are submitting the request in association with a Notice of Proposed Rulemaking, state that comment is being solicited in the proposed rule.

Re "Describe your efforts . . .", *consultation with representatives of those being affected should occur at least once every three years, even if the collection has not changed.* If circumstances prevent this consultation, describe them, but please note that OMB is emphasizing the need for such consultations. Do not list consultations done more than 3 years ago.

**9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.**

OMB is generally opposed to payments or gifts for information submissions, so if you are proposing to do so provide a good justification for it.

**10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.**

You must cite a specific authority for promising confidentiality. 1. For many NMFS PRAs, section 402(b) of the Magnuson-Stevens Act (16 U.S.C. 1801, *et seq.*) may apply: <http://www.nmfs.noaa.gov/sfa/magact/mag4.html#s4022>.

If the Privacy Act (5 USC 552a) applies to a collection, it can be used as a statutory authority for confidentiality: <http://www.privacy.gov.au/act/privacyact/>. If there is another appropriate statutory authority in addition to the privacy act, it is best to cite that authority. However, if the Privacy Act applies, compliance is still necessary (see below). This Act generally applies if the information collected will be stored, and retrievable by, identifiable individual. This Act, as described in an OMB PRA training, "governs the collection, maintenance, disclosure of information from or about identifiable individuals (not statistical or aggregate information)." *For these purposes, corporations are NOT considered to be individuals, but persons acting as or for corporations are still considered individuals.*

If an information collection falls under this Act, a "system of records" must be published in the Federal Register, which describes how and where the information is stored, and how it is secured. . If a system of records already exists under which this collection would fall, then you do not need to go through this process. For instance, NOAA has a general fishery statistics system of records, NMFS Alaska Region has a permits system of records, and the NMFS Northwest Region's permits system of records is pending DOC approval.. A summary of the information in the system of records description - a Privacy Act Statement - must be posted on each form related to the collection. The [NOAA Privacy Act homepage](#) provides links to tutorials and instructions related to the Act, as well as a list of NOAA systems of records (which, however, may not be current). The NOAA PRA Clearance Officer can work with you to determine the applicability of the Privacy Act, and how to make your collection compliant if it is determined to be applicable.

If you request a respondent's social security number, this Privacy Act note (Section 7(a)(1) applies: *Any Federal, State or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.* You must also cite the statutory authority for requiring the SSN. Generally, this will be the Debt Collection Improvement Act, 31 U.S.C. 7701(c)(1), which provides that: "the head of

each Federal agency shall require each person doing business with that agency to furnish that agency such person's taxpayer identification number (*usually the SSN*). Further, at 31 U.S.C. 7701 (c)(2)(B): "For purposes of the subsection, a person shall be considered doing business with a Federal agency if the person is an applicant for, or recipient of, a Federal license, permit, right of way, grant or benefit payment administered by the agency...."

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.**

The justification should include the reasons why the questions are necessary, the specific uses for the information, the explanation to be given to the respondents, and any steps taken to obtain their consent.

*Note on the following two questions: You may present burden hour and cost estimates from Items 12 and 13 in a single table, making sure to separate "labor costs" from 12 and "recordkeeping and reporting" costs from 13 into separate, clearly labeled columns! See the sample table format, with two types of types of response that might be found in a NMFS collection. The hour and dollar amounts are examples only, not necessarily accurate for your purposes.*

**12. Provide an estimate in hours of the burden of the collection of information.**

This question corresponds most closely to #13 on the 83-I but also asks for the labor cost per burden hour. Although this submission may be a revision to an approved collection, and thus describes only the new or changed requirements in Question 2, this answer should state the total new burden hours and how much this figure is increased/decreased from the previous burden (if any) for the requirement. a. The statement must provide the number of respondents expected annually, the frequency of their responses, the total number of responses expected, the average response time per respondent, and the total annual response time (in hours) for the collection. Response time includes not only the time necessary to complete the form or answer the questions, but also the time needed to gather the information (unless it was already being gathered for other purposes), have it reviewed by lawyers or accountants, etc. Explain how you arrived at these estimates.

b. Remember that figures should be annualized. For example, if a permit will be valid for three years, and you expect 300 respondents the first year and none the second and third years, use the average of 100 respondents. If the burden per response is expected to vary widely, show the expected range of responses and explain the variance.

c. If the collection will involve more than one form, provide burden estimates for each form.

d. Provide estimates of annualized labor cost to respondents for the hour burden for the collection, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for the collecting the information should not be included here (see Item 14 below).

**13. Provide an estimate of the total annual recordkeeping/reporting cost burden to the respondents resulting from the collection (excluding the value of the burden hours in #12 above).**

This bears repeating - do NOT include the labor cost (wage equivalent) of the burden hours described in Question 12 (above). The information required here corresponds

to that in #14 on the 83-I.

The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. The total figure should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life), *if applicable*; and (b) a total operations, maintenance, and purchase of services components.

a. Capital and start-up costs, averaged over the three-year collection period, include among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling, and testing equipment; and record storage facilities.

(1) If cost estimates are expected to vary widely (e.g. based on choice of equipment vendor), present ranges of cost burden and explain the reasons for the variance, but in your final figures use ~~the~~ the highest estimate.

(2) Generally, estimates should *not* include purchases of equipment or services, or portions thereof, made: (a) to achieve regulatory compliance with requirements *not associated with the information collection*, (b) for reasons other than to provide information or keep records for the government, or (c) as part of customary and usual business of private practices.

b. Operations and maintenance costs include the costs of mailing, faxing or calling in information, making paper copies, and electronic transmission from vessel monitoring systems. Paint and brushes for vessel and gear marking would also fall under this category. Regular maintenance of any equipment whose initial costs fall under "capital and start-up" would also belong here.

**14. Provide estimates of annualized cost to the Federal government.**

Include here a description of the method used to estimate costs to the Federal government, which should show the quantification of hours, operational expenses (such as equipment, overhead, printing, and staff support), and any other expense which would not have been incurred without this collection of information.

**15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.**

Program changes are new collections or changes in requirements. Adjustments are re-estimates of the number of respondents, responses and/or the response times for *existing* requirements. Please be more specific than, e.g. "Changes were due to the requirement that \_\_\_\_"). List at least net changes and the specific reasons for them, e.g. "Increased reporting/recordkeeping costs are due to the capital costs of vessel monitoring systems".

**16. For collections whose results will be published, outline the plans for tabulation and publication.**

Address any complex analytical techniques that will be used.

Provide a time schedule for the collection, publication, and other actions. Also, will the results of the collection be made available on your organization's Home Pages? If not, why not?

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.**

Self-explanatory.

**18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.**

Self-explanatory. There are virtually never exceptions.

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

*If your collection does not employ statistical methods, just say that and delete the following five questions from the format –UNLESS your proposed information collection is a survey. OMB has recently clarified that Part B must be completed for all survey requests, whether or not statistical analysis will be applied. In addition to statistical analysis, Part B addresses the description of the target group of respondents, the sampling plan, and plans to maximize response rates and address non-response.*

When Item 17 of the OMB 83-I is checked "Yes", the following documentation should be provided to the extent that it applies to the methods proposed. *Please see this document for OMB's guidance on surveys*

**1. Describe (including a numerical estimate) the potential respondent universe and any sampling or other respondent selection method to be used. Data on the number of entities (e.g. establishments, State and local governmental units, households, or persons) in the universe and the corresponding sample are to be provided in tabular form. The tabulation must also include expected response rates for the collection as a whole. If the collection has been conducted before, provide the actual response rate achieved.** Note: response rate means: Of those in your respondent sample, from what percentage do you expect to get the required information (if this is not a mandatory collection). The nonrespondents would include those you could not contact, as well as those you contacted but who refused to give the information.

**2. Describe the procedures for the collection, including: the statistical methodology for stratification and sample selection; the estimation procedure; the degree of accuracy needed for the purpose described in the justification; any unusual problems requiring specialized sampling procedures; and any use of periodic (less frequent than annual) data collection cycles to reduce burden.**

If you are selecting a uniform respondent universe, you may be using simply a random numbers table to select a sample.

- Stratified sampling is often used when the sampling population can be split into non-overlapping strata that individually are more homogeneous than the population as a whole (e.g. gender and age groups). If there are no obvious "dividing lines", grid lines can be used to divide the population. Random samples are taken from each stratum (or class) and the results are combined to estimate a population mean. Stratified sampling is most successful when the variance within each stratum is less than the overall variance of the

population (Christopher and Schmitt, Environmental Monitoring and Sampling Primer, 1997:  
<http://ewr.cee.vt.edu/environmental/teach/smprimer/design/sample.html#stratified>

**3. Describe the methods used to maximize response rates and to deal with nonresponse. The accuracy and reliability of the information collected must be shown to be adequate for the intended uses. For collections based on sampling, a special justification must be provided if they will not yield "reliable" data that can be generalized to the universe studied.** Any aspect of your plan which makes it easier and more attractive to comply with the request for information, would tend to maximize response rate:

- This would include such steps as pre-notification and various types of follow-up with those who did not respond at the first opportunity.
- Making the questions as simple and brief as possible is also important.
- Already having a good working relationship with this group would also be important, as would the group's perception that actions based on the information collected would be helpful to them.

A lower response rate than 75% would definitely require a plan to address nonresponse, according to OMB's standards. This means that a large enough number of respondents didn't give information so that there is a possibility that their answers as a group might have differed significantly from those who did respond. Following up with nonrespondents – resending surveys or sending a shorter version of the survey, trying a phone interview if possible, etc. are all effective strategies.

**4. Describe any tests of procedures or methods to be undertaken. Tests are encouraged as effective means to refine collections, but if ten or more test respondents are involved OMB must give prior approval under the Paperwork Reduction Act.** Pilot surveys of 10 or more are often conducted, and must go through the PRA approval process.

**5. Provide the name and telephone number of individuals consulted on the statistical aspects of the design, and the name of the agency unit, contractor(s), grantee(s), or other person(s) who will actually collect and/or analyze the information for the agency.** Self-explanatory.

#### **ATTACHMENT 1: INFORMATION THAT MUST BE DISPLAYED ON FORMS USED TO COLLECT INFORMATION FROM THE PUBLIC**

Certain information has to be provided to the public for an OMB approval to be valid. Any approved information collection form must display the OMB control number assigned upon approval and the expiration date for current OMB approval. Potential respondents also have to be provided with notice of the following, although the information can be placed in a cover letter or instructions instead of on the survey form itself:

1. The policy reasons for collecting the information.
2. The way in which the information will be used to further performance of agency functions.
3. An estimate of the average burden using the following format: Public reporting burden for this collection of information is estimated to average \_\_\_\_\_ hours (or

minutes) per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to (name and address of sponsoring office).

4. Whether responses to the collection are voluntary, required to obtain or retain a benefit [citing the authority], or mandatory [citing the authority].

5. The nature and extent of confidentiality to be provided, if any [citing the authority].

6. The following sentence - "Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number."

All forms submitted for approval must display this information. For new collections, when neither control number or expiration date is available at the time of submission, you must indicate where this information will be placed on the final form. This is usually done by placing "OMB Control # \_\_\_\_" and "Expires \_\_\_\_" in the upper right-hand corner of the form.

***NOTE: if information is being collected through a telephone survey, the above information INCLUDING the OMB Control Number must be conveyed orally to the respondent (in addition to any written or emailed notice).***

010257





Laiza N. Otero/EAC/GOV

03/16/2007 10:54 AM

To

cc klyndyson@eac.gov

bcc

Subject Fw: Alternative Voting Methods Study

-----Forwarded by Laiza N. Otero/EAC/GOV on 03/16/2007 10:51AM -----

To: Karen Lynn-Dyson/EAC/GOV@EAC  
From: Laiza N. Otero/EAC/GOV  
Date: 03/12/2007 04:09PM  
Subject: Alternative Voting Methods Study

Karen,

The last day for public comments regarding the Alternative Voting Methods survey instrument posted on 1/9/2007 has passed (last day was March 9, 2007). To proceed with clearance, the Contractor should finalize the survey instrument (incorporate all comment, make revisions, etc.). Then they must publish it on the Federal Register once more for 30 days and submit the ICR package to OMB. The OMB package includes:

Contractor Responsibilities - prepare all information and supporting documents required for the submission package

Provide IC instrument in its final form

Information on OMB Form 83-I

Supporting Statement A – joint Privacy Impact Assessment (PIA)

Supporting Statement B (if using statistical methods)

Copy of 60-day Federal Register Notice

Copy of 30-day Federal Register Notice

Summary of public comments received, including actions in response to the comments.

Copy of public comments received

Copies of pertinent statutory authority and regulation

EAC Responsibilities:

Review and approve documents prepared by Contractor

Submit ICR package to OMB via their online ROCIS system

The same applies to the focus groups for the free absentee postage study. As always, I am happy to provide you the necessary information to get these studies through PRA. For sample ICR submissions, one can go to: <http://www.reginfo.gov/public/do/PRAMain>.

Laiza



Template for Supporting Statement A.doc Template for Supporting Statement B.doc OMB 83-I form.pdf

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INSTRUCTIONS FOR THE SUPPORTING STATEMENT.doc

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Karen Lynn-Dyson/EAC/GOV  
04/09/2007 05:52 PM

To [REDACTED]  
cc lotero@eac.gov  
bcc  
Subject Re: Fwd: Alternative Voting OMB Package [icon]

I don't believe so.  
Thanks for sending it along.

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

[REDACTED]  
04/09/2007 05:48 PM

To lotero@eac.gov, klyndyson@eac.gov  
cc  
Subject Fwd: Alternative Voting OMB Package

This was sent last week (April 4), did you receive it?  
Ernie

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

From: KBuerkle@ifes.org  
To [REDACTED]  
Sent: Wed, 4 Apr 2007 9:27 AM  
Subject: Alternative Voting OMB Package

Ernie, we revised the questionnaire to make it administrable to Puerto Rico. I believe all the needed docs for the OMB package are attached. Let me know if you have any questions.

- OMB Form 83-I
- Supporting Statement A
- Supporting Statement B

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- Copy of 60 day Federal Register Notice
- Copy of 30 day Federal Register Notice to be submitted to post in Register
- Summary of public comments received, including actions in response to the comments
- Copies of pertinent statutory authority and regulations (HAVA 241)
- Copy of the survey instrument

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Alternative\_Voting\_methods\_Federal\_Register\_Notice.pdf Hava\_241.doc Summary\_of\_Public\_Comments.doc



OMB\_Form\_83-I\_Alternative\_Voting\_Study.pdf Federal\_Register\_Notice\_30\_days\_alt\_vote.doc



Statements\_A\_and\_B\_Alternative\_Voting\_Study.doc Alternative\_Voting\_QQ\_with\_PR\_for\_OMB.doc

**DEPARTMENT OF EDUCATION**

[CFDA Number: 84.184H]

**Office of Safe and Drug-Free Schools;  
Grant Competition To Prevent High-  
Risk Drinking or Violent Behavior  
Among College Students****ACTION:** Correction; Notice correcting the Deadline dates.**SUMMARY:** We correct the *Deadline dates* in the notice published on December 22, 2006 (71 FR 77004).**SUPPLEMENTARY INFORMATION:** On December 22, 2006 we published a notice in the **Federal Register** inviting applications for the Grant Competition to Prevent High-Risk Drinking or Violent Behavior among College Students (71 FR 77004-77007). The Deadline dates in the notice were incorrect. The Deadline for Transmittal of Applications (as published on pages 77004 and 77005) is corrected to February 20, 2007, and the Deadline for Intergovernmental Review (as published on pages 77004 and 77005) is corrected to April 20, 2007.**FOR FURTHER INFORMATION CONTACT:** Richard Lucey, Jr., U.S. Department of Education, 400 Maryland Avenue, SW., room 3E335, Washington, DC 20202-6450. Telephone: (202) 205-5471 or by e-mail: [richard.lucey@ed.gov](mailto:richard.lucey@ed.gov).

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotope, or computer diskette) on request to the contact person listed in this section.

**Electronic Access to This Document:** You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

You may also view this document in text or PDF at the following site: <http://www.ed.gov/programs/dvphighrisk/applicant.html>.**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Codeof Federal Regulations is available on GPO Access at: <http://www.access.gpo.gov/nara/index.html>.Dated: January 4, 2007.  
**Deborah A. Price,**  
*Assistant Deputy Secretary for Safe and Drug-Free Schools.*

[FR Doc. E7-105 Filed 1-8-07; 8:45 am]

**BILLING CODE 4000-01-P****DEPARTMENT OF EDUCATION****National Board for Education  
Sciences; Meeting****AGENCY:** National Board for Education Sciences; ED.**ACTION:** Notice of open meeting and a partially closed meeting.**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Board for Education Sciences. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the open portion of the meeting. Individuals who will need accommodations for a disability in order to attend the meeting (i.e., interpreting services, assistive listening devices, materials in alternative format) should notify Mary Grace Lucier at 202/219-2253 (or [Mary.Grace.Lucier@ed.gov](mailto:Mary.Grace.Lucier@ed.gov)) by January 12. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.**Dates:** January 23 and 24, 2007.**Time:** January 23, 1:30 to 4:30 p.m.

January 24, 9-9:15 a.m., open; 9:15 to 10 a.m., closed; 10 a.m.-2 p.m., open.

**Location:** Washington Court Hotel, 525 New Jersey Ave., NW., Washington, DC 20001, (room to be announced).**FOR FURTHER INFORMATION CONTACT:** Mary Grace Lucier, 202/219-2253.**SUPPLEMENTARY INFORMATION:** The National Board for Education Sciences is authorized by Section 116 of the Education Sciences Reform Act of 2002. The Board advises the Director of the Institute of Education Sciences (IES) on the establishment of activities to be supported by the Institute, on the funding of applications for grants, contracts, and cooperative agreements for research after the completion of peer review, and reviews and evaluates the work of the Institute. On January 23 at 1:30 p.m., the Board will receive an update from the Director of IES on the

work of the Institute and its short and long-term goals. At 3 p.m., Alex Nock, Director of the Commission on No Child Left Behind, will discuss the role of research and evaluation in the reauthorization of the No Child Left Behind Act and the Education Sciences Reform Act.

On January 24, after a review of the prior day's activities the meeting will be closed to the public from 9:15 a.m.-10 a.m. under exemptions (2) and (6) of the Section 552b(c) of Title 5 U.S.C. The Board will discuss internal personnel issues relating to filling the positions of chairperson and executive director. After a 15-minute break, the Board will resume in open session at 10:15 a.m. At that time, the contractor chosen to conduct an evaluation of IES will give a presentation. This portion of the meeting will last until 11:30 a.m. The Board will hear a presentation by Dr. Mark Schneider, Commissioner of the National Center for Education Statistics from 11:30 a.m. to 12:15 p.m., followed by the Board's annual ethics briefing. From 1 p.m. to 2 p.m. the Board will hear reports from its subcommittees and consider next steps for its work in FY 2007. The meeting will adjourn at 2 p.m. A final agenda will be available from Mary Grace Lucier on January 12, 2007.

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b(c) will be available to the public. Records will be kept of all Board proceedings and will be available for public inspection at the office of the National Board for Education Sciences, Room 627H, 555 New Jersey Ave., NW., Washington, DC 20208.

Dated: January 3, 2007.

**Grover J. Whitehurst,**  
*Director, Institute of Education Sciences.*

[FR Doc. 07-16 Filed 1-8-07; 8:45 am]

**BILLING CODE 4000-01-M****ELECTION ASSISTANCE COMMISSION****Information Collection Activity; Study  
of Alternative Voting Methods****AGENCY:** Election Assistance Commission (EAC).**ACTION:** Notice; request for comments.**SUMMARY:** The EAC, as part of its continuing effort to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995, invites the general public and other Federal agencies to take this opportunity to comment on a proposed

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information collection. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

**DATES:** Written comments must be submitted on or before March 9, 2007.

**ADDRESSES:** Submit comments and recommendations on the proposed information collection in writing to the U.S. Election Assistance Commission, 1225 New York Avenue, NW., Suite 1100, Washington, DC 20005, ATTN: Ms. Laiza N. Otero (or via the Internet at [lotero@eac.gov](mailto:lotero@eac.gov)).

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the survey, please write to the above address or call Ms. Laiza N. Otero at (202) 566-3100. You may also view the proposed collection instrument by visiting our Web site at <http://www.eac.gov>.

**SUPPLEMENTARY INFORMATION:**

**Title:** Study of Alternative Voting Methods.

**OMB Number:** Pending.

**Type of Review:** Regular submission.

**Needs and Uses:** Section 241 of the Help America Vote Act (HAVA) requires the U.S. Election Assistance Commission (EAC) to periodically study election administration issues with the goal of promoting voting methods and improving election administration. Section 241(b)(10) instructs the EAC to study the feasibility and advisability of conducting elections for Federal office on different days, at different places, and during different hours. In addition, it recommends the study include a discussion of the advisability of establishing a uniform poll closing time and establishing:

(A) A legal public holiday under section 6103 of title 5 United States Code, as the date on which general elections for Federal office are held;

(B) The Tuesday after the 1st Monday in November, in every even numbered

year, as a legal public holiday under such section;

(C) A date other than the Tuesday next after the 1st Monday in November, in every even numbered year as the date on which general elections for Federal office are held; and

(D) Any date described in subparagraph (C) as a legal public holiday under such section.

To provide information to the States and the Congress on the feasibility and advisability of using alternative days, times, and places to conduct Federal elections, the EAC seeks to survey voters to better understand their motivations and perceptions of impediments to voting. The survey will provide insights into the public's perceptions of particular aspects of the voting process.

**Affected Public:** Citizens.

**Number of Respondents:** 3,000.

**Responses per Respondent:** 1.

**Estimated Burden per Response:** .25 hours.

**Estimated Total Annual Burden Hours:** 750 hours.

**Frequency:** One time collection.

Information will be collected through a statistically valid survey of 3,000 registered voters to determine how they currently respond to alternative voting methods (if in a State that offers them) or would respond to alternative voting methods (if in a State that does not allow them). The survey will be representative of the 50 States, the District of Columbia, and U.S. territories. The topics that will be explored include, but are not limited to:

- a. Voting by mail
- b. Voting at a consolidated polling center
- c. Voting online
- d. Voting earlier/later on Election Day
- e. Voting on weekend day
- f. Voting on day other than first Tuesday in November
- g. Making the day on which Federal elections are held a Federal holiday
- h. No alternative voting method, prefer status quo

The survey will gather data regarding each respondent's background. Background information will include, but is not limited to, (1) Respondents' voter registration history, (2) respondents' voting history, and (3) standard demographic questions covering (age, ethnicity, education, employment status, and income bracket).

**Thomas R. Wilkey,**

*Executive Director, U.S. Election Assistance Commission.*

[FR Doc. 07-27 Filed 1-8-07; 8:45 am]

**BILLING CODE 6820-KF-M**

**DEPARTMENT OF ENERGY**

**Environmental Management Site-Specific Advisory Board, Savannah River Site**

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site. The Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Monday, January 22, 2007, 1 p.m.-5 p.m.; Tuesday, January 23, 2007, 8:30 a.m.-4 p.m.

**ADDRESSES:** Crowne Plaza, 130 Shipyard Dr., Hilton Head, SC 29928.

**FOR FURTHER INFORMATION CONTACT:** Gerri Flemming, Closure Project Office, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; Phone: (803) 952-7886.

**SUPPLEMENTARY INFORMATION:**

**Purpose of the Board:** The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

**Tentative Agenda**

*Monday, January 22, 2007*

1 p.m. Combined Committee Session  
5 p.m. Adjourn

*Tuesday, January 23, 2007*

8:30 a.m. Approval of Minutes, Agency Updates  
9:45 a.m. Public Comment Session  
10 a.m. Chair and Facilitator Update  
10:45 a.m. Strategic & Legacy Management Committee Report  
11:45 a.m. Public Comment Session  
12 p.m. Lunch Break  
1 p.m. Nuclear Materials Committee Report  
1:30 p.m. Waste Management Committee Report  
2 p.m. Public Comment Session  
2:15 p.m. Facility Disposition & Site Remediation Committee Report  
3 p.m. Administrative Committee Report  
4 p.m. Adjourn

If needed, time will be allotted after public comments for items added to the agenda and administrative details. A final agenda will be available at the meeting Monday, January 22, 2007.

**Public Participation:** The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements

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SEC. 241. <<NOTE: 42 USC 15381.>> PERIODIC STUDIES OF ELECTION  
ADMINISTRATION ISSUES.

(a) <<NOTE: Public information.>> In General.--On such periodic basis as the Commission may determine, the Commission shall conduct and make available to the public studies regarding the election administration issues described in subsection (b), with the goal of promoting methods of voting and administering elections which--

(1) will be the most convenient, accessible, and easy to use

for voters, including members of the uniformed services and overseas voters, individuals with disabilities, including the blind and visually impaired, and voters with limited

proficiency in the English language;

(2) will yield the most accurate, secure, and expeditious system for voting and tabulating election results;

(3) will be nondiscriminatory and afford each registered and

eligible voter an equal opportunity to vote and to have that vote counted; and

(4) will be efficient and cost-effective for use.

(b) Election Administration Issues Described.--For purposes of subsection (a), the election administration issues described in this subsection are as follows:

(1) Methods and mechanisms of election technology and voting

systems used in voting and counting votes in elections for Federal office, including the over-vote and under-vote notification capabilities of such technology and systems.

(2) Ballot designs for elections for Federal office.

(3) Methods of voter registration, maintaining secure and accurate lists of registered voters (including the establishment

list

of a centralized, interactive, statewide voter registration

list linked to relevant agencies and all polling sites), and

ensuring that registered voters appear on the voter registration list at the appropriate polling site.

(4) Methods of conducting provisional voting.

(5) Methods of ensuring the accessibility of voting, registration, polling places, and voting equipment to all voters, including individuals with disabilities (including the blind and visually impaired), Native American or Alaska Native citizens, and voters with limited proficiency in the English language.

(6) Nationwide statistics and methods of identifying, deterring, and investigating voting fraud in elections for Federal office.

(7) Identifying, deterring, and investigating methods of voter intimidation.

(8) Methods of recruiting, training, and improving the performance of poll workers.

(9) Methods of educating voters about the process of registering to vote and voting, the operation of voting

mechanisms, the location of polling places, and all other aspects of participating in elections.

(10) The feasibility and advisability of conducting elections for Federal office on different days, at different places, and

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during different hours, including the advisability of establishing a uniform poll closing time and establishing--

(A) a legal public holiday under section 6103 of title 5, United States Code, as the date on which general elections for Federal office are held;

(B) the Tuesday next after the 1st Monday in November, in every even numbered year, as a legal

public

holiday under such section;

(C) a date other than the Tuesday next after the

1st

Monday in November, in every even numbered year as the date on which general elections for Federal office are held; and

(D) any date described in subparagraph (C) as a legal public holiday under such section.

(11) Federal and State laws governing the eligibility of persons to vote.

(12) Ways that the Federal Government can best assist State and local authorities to improve the administration of elections for Federal office and what levels of funding would be necessary to provide such assistance.

(13) (A) The laws and procedures used by each State that govern--

(i) recounts of ballots cast in elections for Federal office;

(ii) contests of determinations regarding whether votes are counted in such elections; and

(iii) standards that define what will constitute a vote on each type of voting equipment used in the State to conduct elections for Federal office.

(B) The best practices (as identified by the Commission) that are used by States with respect to the recounts and contests described in clause (i).

(C) Whether or not there is a need for more consistency among State recount and contest procedures used with respect to elections for Federal office.

(14) The technical feasibility of providing voting materials

in eight or more languages for voters who speak those languages and who have limited English proficiency.

(15) Matters particularly relevant to voting and administering elections in rural and urban areas.

(16) Methods of voter registration for members of the uniformed services and overseas voters, and methods of ensuring that such voters receive timely ballots that will be properly and expeditiously handled and counted.



(17) The best methods for establishing voting system performance benchmarks, expressed as a percentage of residual vote in the Federal contest at the top of the ballot.

(18) Broadcasting practices that may result in the broadcast

of false information concerning the location or time of operation of a polling place.

(19) Such other matters as the Commission determines are appropriate.

(c) Reports.--The Commission shall submit to the President and to the Committee on House Administration of the House of Representatives and the Committee on Rules and Administration of the Senate a report on each study conducted under subsection (a) together with such recommendations for administrative and legislative action as the Commission determines is appropriate.

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## **Summary of Public Comments Received on the Information Collection Materials for Study of Alternative Voting Methods; OMB Number Pending**

### **Public Comment Summary:**

The Study for Alternative Voting Methods received one comment regarding the Information Collection Materials. Overall, the comment demonstrated a support for the objectives of this study. Specifically, the comment indicated support for a key issue that will be examined in this study, namely, making the day on which Federal elections are held a Federal holiday. Providing several justifications for making Election Day a Federal holiday, the comment concluded that the benefits outweigh any drawbacks. There were no suggestions for changes to the study.

### **Action Taken:**

No action is necessary.

# PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the Supporting Statement, and any additional documentation to: **Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.**

1. Agency/Subagency originating request Election Assistance Commission	2. OMB control number <span style="float: right;">b. <input checked="" type="checkbox"/> None</span> a. _____
3. Type of information collection (check one) a. <input checked="" type="checkbox"/> New collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension, without change, of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number	4. Type of review requested (check one) a. <input checked="" type="checkbox"/> Regular b. <input type="checkbox"/> Emergency - Approval requested by: ____/____/____ c. <input type="checkbox"/> Delegated
3a. Public Comments Has the agency received public comments on this information collection? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
6. Requested expiration date a. <input checked="" type="checkbox"/> Three years from approval date <input type="checkbox"/> Other Specify: ____/____/____	
7. Title Alternative Voting Methods Study	
8. Agency form number(s) (if applicable)	
9. Keywords Elections, Holidays, Voting Rights	
10. Abstract The Help America Vote Act requires the EAC to study election administration issues and the use of alternative days, times, and places to conduct Federal elections. The study will conduct a public opinion survey of U.S. citizens and will be representative of the entire U.S. Using this information, the EAC shall submit a report on administrative and legislative action to the President and Congress.	
11. Affected public (Mark primary with "P" and all others that apply with "X") a. <u>P</u> Individuals or households <span style="margin-left: 100px;">d. <input type="checkbox"/> Farms</span> b. <input type="checkbox"/> Business or other for-profit <span style="margin-left: 100px;">e. <input type="checkbox"/> Federal Government</span> c. <input type="checkbox"/> Not-for-profit institutions <span style="margin-left: 100px;">f. <input type="checkbox"/> State, Local or Tribal Government</span>	12. Obligation to respond (Mark primary with "P" and all others that apply with "X") a. <input type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory
13. Annual reporting and recordkeeping hour burden a. Number of respondents <u>3000</u> b. Total annual responses <u>3000</u> 1. Percentage of these responses collected electronically <u>0</u> % c. Total annual hours requested <u>750</u> d. Current OMB inventory <u>0</u> e. Difference <u>750</u> f. Explanation of difference 1. Program change <u>0</u> 2. Adjustment <u>1250</u>	14. Annual reporting and recordkeeping cost burden (in thousands of dollars) a. Total annualized capital/startup costs <u>0</u> b. Total annual costs (O&M) <u>0</u> c. Total annualized cost requested <u>0</u> d. Current OMB inventory <u>0</u> e. Difference <u>0</u> f. Explanation of difference 1. Program change <u>0</u> 2. Adjustment <u>0</u>
15. Purpose of information collection (Mark primary with "P" and all others that apply with "X") a. <input type="checkbox"/> Application for benefits <span style="margin-left: 100px;">e. <input checked="" type="checkbox"/> Program planning or management</span> b. <input type="checkbox"/> Program evaluation <span style="margin-left: 100px;">f. <input checked="" type="checkbox"/> Research</span> c. <input type="checkbox"/> General purpose statistics <span style="margin-left: 100px;">g. <input checked="" type="checkbox"/> Regulatory or compliance</span> d. <input type="checkbox"/> Audit	16. Frequency of recordkeeping or reporting (check all that apply) a. <input type="checkbox"/> Recordkeeping <span style="margin-left: 100px;">b. <input type="checkbox"/> Third party disclosure</span> c. <input checked="" type="checkbox"/> Reporting 1. <input type="checkbox"/> On occasion <span style="margin-left: 20px;">2. <input type="checkbox"/> Weekly</span> <span style="margin-left: 20px;">3. <input type="checkbox"/> Monthly</span> 4. <input type="checkbox"/> Quarterly <span style="margin-left: 20px;">5. <input type="checkbox"/> Semi-annually</span> <span style="margin-left: 20px;">6. <input type="checkbox"/> Annually</span> 7. <input type="checkbox"/> Biennially <span style="margin-left: 20px;">8. <input checked="" type="checkbox"/> Other (describe) <u>Once</u></span>
17. Statistical methods Does this information collection employ statistical methods? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	18. Agency contact (person who can best answer questions regarding the content of this submission) Name: <u>Laiza N. Otero</u> Phone: <u>(202) 566-2209</u>

## 19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9.

**Note:** The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It uses plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
  - (i) Why the information is being collected;
  - (ii) Use of information;
  - (iii) Burden estimate;
  - (iv) Nature of response (voluntary, required for a benefit, or mandatory);
  - (v) Nature and extent of confidentiality; and
  - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of the instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of these provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

# Instructions For Completing OMB Form 83-I

Please answer all questions and have the Senior Official or designee sign the form. These instructions should be used in conjunction with 5 CFR 1320, which provides information on coverage, definitions, and other matters of procedure and interpretation under the Paperwork Reduction Act of 1995.

## 1. Agency/Subagency originating request

Provide the name of the agency or subagency originating the request. For most cabinet-level agencies, a subagency designation is also necessary. For non-cabinet agencies, the subagency designation is generally unnecessary.

## 2. OMB control number

- If the information collection in this request has previously received or now has an OMB control or comment number, enter the number.
- Check "None" if the information collection in this request has not previously received an OMB control number. Enter the four digit agency code for your agency.

## 3. Type of information collection (check one)

- Check "New collection" when the collection has not previously been used or sponsored by the agency.
- Check "Revision" when the collection is currently approved by OMB, and the agency request includes a material change to the collection instrument, instructions, its frequency of collection, or the use to which the information is to be put.
- Check "Extension" when the collection is currently approved by OMB, and the agency wishes only to extend the approval past the current expiration date without making any material change in the collection instrument, instructions, frequency of collection, or the use to which the information is to be put.
- Check "Reinstatement without change" when the collection previously had OMB approval, but the approval has expired or was withdrawn before this submission was made, and there is no change to the collection.
- Check "Reinstatement with change" when the collection previously had OMB approval, but the approval has expired or was withdrawn before this submission was made, and there is change to the collection.
- Check "Existing collection in use without OMB control number" when the collection is currently in use but does not have a currently valid OMB control number.

## 4. Type of review requested (check one)

- Check "Regular" when the collection is submitted under 5 CFR 1320.10, 1320.11, or 1320.12 with a standard 60 day review schedule.
- Check "Emergency" when the agency is submitting the request under 5 CFR 1320.13 for emergency processing and provides the required supporting material. Provide the date by which the agency requests approval.
- Check "Delegated" when the agency is submitting the collection under the conditions OMB has granted the agency delegated authority.

## 5. Small entities

Indicate whether this information collection will have a significant impact on a substantial number of small entities. A small entity may be (1) a small business which is deemed to be one that is independently owned and operated and that is not dominant in its field of operation; (2) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field; or (3) a small government jurisdiction which is a government of a city, county, town, township, school district, or special district with a population of less than 50,000.

## 6. Requested expiration date

- Check "Three years" if the agency requests a three year approval for the collection.
- Check "Other" if the agency requests approval for less than three years. Specify the month and year of the requested expiration date.

## 7. Title

Provide the official title of the information collection. If an official title does not exist, provide a description which will distinguish this collection from others.

## 8. Agency form number(s) (if applicable)

Provide any form number the agency has assigned to this collection of information. Separate each form number with a comma.

## 9. Keywords

Select and list at least two keywords (descriptors) from the "Federal Register Thesaurus of Indexing Terms" that describe the subject area(s) of the information collection. Other terms may be used but should be listed after those selected from the thesaurus. Separate keywords with commas. Keywords should not exceed two lines of text.

## 10. Abstract

Provide a statement, limited to five lines of text, covering the agency's need for the information, uses to which it will be put, and a brief description of the respondents.

## 11. Affected public

Mark all categories that apply, denoting the primary public with a "P" and all others that apply with "X."

## 12. Obligation to respond

Mark all categories that apply, denoting the primary obligation with a "P" and all others that apply with "X."

- Mark "Voluntary" when the response is entirely discretionary and has no direct effect on any benefit or privilege for the respondent.
- Mark "Required to obtain or retain benefits" when the response is elective, but is required to obtain or retain a benefit.
- Mark "Mandatory" when the respondent must reply or face civil or criminal sanctions.

## 13. Annual reporting and recordkeeping hour burden

- Enter the number of respondents and/or recordkeepers. If a respondent is also a recordkeeper, report the respondent only once.
- Enter the number of responses provided annually. For recordkeeping as compared to reporting activity, the number of responses equals the number of recordkeepers.
  - Enter the estimated percentage of responses that will be submitted/collected electronically using magnetic media (i.e., diskette), electronic mail, or electronic data interchange. Facsimile is **not** considered an electronic submission.
  - Enter the total annual recordkeeping and reporting hour burden.
  - Enter the burden hours currently approved by OMB for this collection of information. Enter zero (0) for any new submission or for any collection whose OMB approval has expired.
  - Enter the difference by subtracting line d from line c. Record a negative number (d larger than c) within parentheses.
  - Explain the difference. The difference in line e must be accounted for in lines f.1. and f.2.
    - "Program change" is the result of deliberate Federal government action. All new collections and any subsequent revision of existing collections (e.g., the addition or deletion of questions) are recorded as program changes.
    - "Adjustment" is a change that is not the result of a deliberate Federal government action. Changes resulting from new estimates or action not controllable by the Federal government are recorded as adjustments.

## 14. Annual reporting and recordkeeping cost burden (in thousands of dollars)

The costs identified in this item must exclude the cost of hour burden identified in Item 13.

- Enter the total dollar amount of annualized cost for all respondents of any associated capital or start-up costs.
- Enter recurring annual dollar amount of cost for all respondents associated with operating or maintaining systems or purchasing services.
- Enter total (14.a. + 14.b.) annual reporting and recordkeeping cost burden.
- Enter any cost burden currently approved by OMB for this collection of information. Enter zero (0) if this is the first submission after October 1, 1995.
- Enter the difference by subtracting line d from line c. Record a negative number (d larger than c) within parenthesis.
- Explain the difference. The difference in line e must be accounted for in lines f.1. and f.2.
  - "Program change" is the result of deliberate Federal government action. All new collections and any subsequent revisions or changes resulting in cost changes are recorded as program changes.

f.2. "Adjustment" is a change that is not the result of a deliberate Federal government action. Changes resulting from new estimations or actions not controllable by the Federal government are recorded as adjustments.

#### 15. Purpose of information collection

Mark all categories that apply, denoting the primary purpose with a "P" and all others that apply with "X."

a. Mark "Application for benefits" when the purpose is to participate in, receive, or qualify for a grant, financial assistance, etc., from a Federal agency or program.

b. Mark "Program evaluation" when the purpose is a formal assessment, through objective measures and systematic analysis, of the manner and extent to which Federal programs achieve their objectives or produce other significant effects.

c. Mark "General purpose statistics" when the data is collected chiefly for use by the public or for general government use without primary reference to the policy or program operations of the agency collecting the data.

d. Mark "Audit" when the purpose is to verify the accuracy of accounts and records.

e. Mark "Program planning or management" when the purpose relates to progress reporting, financial reporting and grants management, procurement and quality control, or other administrative information that does not fit into any other category.

f. Mark "Research" when the purpose is to further the course of research, rather than for a specific program purpose.

g. Mark "Regulatory or compliance" when the purpose is to measure compliance with laws or regulations.

#### 16. Frequency of recordkeeping or reporting

Check "Recordkeeping" if the collection of information explicitly includes a recordkeeping requirement.

Check "Third party disclosure" if a collection of information includes third-party disclosure requirements as defined by 1320.3(c).

Check "Reporting" for information collections that involve reporting and check the frequency of reporting that is requested or required of a respondent. If the reporting is on "an event" basis, check "On occasion."

#### 17. Statistical methods

Check "Yes" if the information collection uses statistical methods such as sampling or imputation. Generally, check "No" for applications and audits (unless a random auditing scheme is used). Check "Yes" for statistical collections, most research collections, and program evaluations using scientific methods. For other types of data collection, the use of sampling, imputation, or other statistical estimation techniques should dictate the response for this item. Ensure that supporting documentation is provided in accordance with Section B of the Supporting Statement.

#### 18. Agency contact

Provide the name and telephone number of the agency person best able to answer questions regarding the content of this submission.

#### 19. Certification for Paperwork Reduction Act Submissions

The Senior Official or designee signing this statement certifies that the collection of information encompassed by the request complies with 5 CFR 1320.9. Provisions of this certification that the agency cannot comply with should be identified here and fully explained in item 18 of the attached Supporting Statement. NOTE: The Office that "develops" and "uses" the information to be collected is the office that "conducts or sponsors" the collection of information. (See 5 CFR 1320.3(d)).

## Certification Requirement for Paperwork Reduction Act Submissions

5 CFR 1320.9 reads "As part of the agency submission to OMB of a proposed collection of information, the agency (through the head of the agency, the Senior Official, or their designee) shall certify (and provide a record supporting such certification) that the proposed collection of information--

"(a) is necessary for the proper performance of the functions of the agency, including that the information to be collected will have practical utility;

"(b) is not unnecessarily duplicative of information otherwise reasonably accessible to the agency;

"(c) reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency, including with respect to small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. § 601(6)), the use of such techniques as:

"(1) establishing differing compliance or reporting requirements or timetables that take into account the resources available to those who are to respond;

"(2) the clarification, consolidation, or simplification of compliance and reporting requirements; or collections of information, or any part thereof;

"(3) an exemption from coverage of the collection of information, or any part thereof;

"(d) is written using plain, coherent, and unambiguous terminology and is understandable to those who are to respond;

"(e) is to be implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond;

"(f) indicates for each recordkeeping requirement the length of time persons are required to maintain the records specified;

"(g) informs potential respondents of the information called for under §1320.8(b)(3); [see below]

"(h) has been developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected, including the processing of the information in a manner which shall enhance, where appropriate, the utility of the information to agencies and the public;

"(i) uses effective and efficient statistical survey methodology appropriate to the purpose for which the information is to be collected; and

"(j) to the maximum extent practicable, uses appropriate information technology to reduce burden and improve data quality, agency efficiency and responsiveness to the public."

NOTE: 5 CFR 1320.8(b)(3) requires that each collection of information:

"(3) informs and provides reasonable notice to the potential persons to whom the collection of information is addressed of:

"(i) the reasons the information is planned to be and/or has been collected;

"(ii) the way such information is planned to be and/or has been used to further the proper performance of the functions of the agency;

"(iii) an estimate, to the extent practicable, of the average burden of the collection (together with a request that the public direct to the agency any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden);

"(iv) whether responses to the collection of information are voluntary, require to obtain or retain a benefit (citing authority) or mandatory (citing authority);

"(v) the nature and extent of confidentiality to be provided, if any (citing authority); and

"(vi) the fact that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number."

# Supporting Statement for Paperwork Reduction Act Submissions

## General Instructions

A Supporting Statement, including the text of the notice to the public required by 5 CFR 1320.5(a)(i)(iv) and its actual or estimated date of publication in the Federal Register, must accompany each request for approval of a collection of information. The Supporting Statement must be prepared in the format described below, and must contain the information specified in Section A below. If an item is not applicable, provide a brief explanation. When Item 17 of the OMB Form 83-1 is checked "Yes", Section B of the Supporting Statement must be completed. OMB reserves the right to require the submission of additional information with respect to any request for approval.

## Specific Instructions

### A. Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-1), describe any methods used to minimize burden.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- \* requiring respondents to report information to the agency more often than quarterly;
- \* requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;
- \* requiring respondents to submit more than an original and two copies of any document;

- \* requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;
- \* in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;
- \* requiring the use of a statistical data classification that has not been reviewed and approved by OMB;
- \* that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or
- \* requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years - even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

9. Explain any decision to provide any payment or gift to respondents, other than reenumeration of contractors or grantees.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information

is requested, and any steps to be taken to obtain their consent.

12. Provide estimates of the hour burden of the collection of information. The statement should:

- \* Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.
- \* If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-1.

- \* Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 13.

13. Provide an estimate for the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).

- \* The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities.

- \* If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collections services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10), utilize the 60-day pre-OMB submission public comment process and use

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existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.

\* Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

14. Provide estimates of annualized costs to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.

#### **B. Collections of Information Employing Statistical Methods**

The agency should be prepared to justify its decision not to use statistical methods in any case where such methods might reduce burden or improve accuracy of results. When Item 17 on the Form OMB 83-I is checked, "Yes," the following documentation should be included in the Supporting Statement to the extent that it applies to the methods proposed:

1. Describe (including a numerical estimate) the potential respondent universe and any sampling or other respondent selection methods to be used. Data on the number of entities (e.g., establishments, State and local government units, households, or persons) in the universe covered by the collection and in the corresponding sample are to be provided in tabular form for the universe as a whole and for each of the strata in the proposed sample. Indicate expected response rates for the collection as a whole. If the collection had been conducted previously, include the actual response rate achieved during the last collection.

2. Describe the procedures for the collection of information including:

- \* Statistical methodology for stratification and sample selection,
- \* Estimation procedure,
- \* Degree of accuracy needed for the purpose described in the justification,
- \* Unusual problems requiring specialized sampling procedures, and
- \* Any use of periodic (less frequent than annual) data collection cycles to reduce burden.

3. Describe methods to maximize response rates and to deal with issues of non-response. The accuracy and reliability of information collected must be shown to be adequate for intended uses. For collections based on sampling, a special justification must be provided for any collection that will not yield "reliable" data that can be generalized to the universe studied.

4. Describe any tests of procedures or methods to be undertaken. Testing is encouraged as an effective means of refining collections of information to minimize burden and improve utility. Tests must be approved if they call for answers to identical questions from 10 or more respondents. A proposed test or set of test may be submitted for approval separately or in combination with the main collection of information.

5. Provide the name and telephone number of individuals consulted on statistical aspects of the design and the name of the agency unit, contractor(s), grantee(s), or other person(s) who will actually collect and/or analyze the information for the agency.

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## SUPPORTING STATEMENTS

OMB Control Number: XXXX-XXXX  
U.S. Election Assistance Commission  
Alternative Voting Methods Study

### A. JUSTIFICATION

#### 1. Explain the circumstances that make the collection of information necessary.

Section 241 of the Help America Vote Act (HAVA) (42 U.S.C. 15301) requires the U.S. Election Assistance Commission (USEAC or EAC) to periodically study election administration issues with the goal of promoting voting methods and improving election administration. Section 241 (b)(10) (42 U.S.C. 15301) instructs the EAC to study the feasibility and advisability of conducting elections for Federal office on different days, at different places, and during different hours. The study should include a discussion of the advisability of establishing a uniform poll closing time and establishing:

- A legal public holiday under section 6103 of title 5 United States Code, as the date on which general elections for Federal office are held;
- The Tuesday after the 1<sup>st</sup> Monday in November, in every even numbered year, as a legal public holiday under such section;
- A date other than the Tuesday next after the 1<sup>st</sup> Monday in November, in every even numbered year as the date on which general elections for Federal office are held; and

#### 2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.

The information will be collected through a statistically valid survey of 3,000 U.S. citizens and residents of Puerto Rico to determine how they respond to alternative voting methods (if in a state that offers them) or would respond to alternative voting methods (if in a state that does not allow them). This survey will be representative of the entire U.S. and Puerto Rico. The topics that will be explored include, but are not limited to: voting by mail, voting at consolidated polling center, voting online, voting earlier/later on Election Day, voting on weekend day, voting on day other than first Tuesday in November, making the day on which Federal elections are held a Federal holiday.

Standard background information of respondent will also be gathered and will include but not be limited to, (1) respondents' voter registration history, (2) respondents' voting history, (3) standard demographic questions covering: age, ethnicity, education, employment status, and income bracket.

The information will be assessed and evaluated to determine the feasibility and advisability of establishing a legal public holiday on election-day by making the first Tuesday after the 1<sup>st</sup> Monday in November a legal public holiday, or making another date on which elections will fall a legal public holiday.

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Based upon the information gathered in the study, the EAC shall submit a report to the President and to the Committee on House Administration of the House of Representatives and the Committee on Rules and Administration of the Senate a report on administrative and legislative action as the EAC determines is appropriate.

The information will be available to the public once it is completed. This information collection is being carried out only once for purposes of meeting the statutory requirements under HAVA.

**3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.**

The collection of information does utilize Computer Assisted Telephone Interviewing (CATI). CATI will be used to conduct the public opinion survey. CATI is a telephone surveying technique in which the interviewer follows a script by a software application. The software is able to customize the flow of the questionnaire based on the answers provided, as well as information already known about the participant.

**4. Describe efforts to identify duplication.**

This is the first study conducted by the EAC on the part of HAVA Section 241 (b) (10). The study contractor has reviewed previous and contemporaneous public opinion surveys to eliminate duplication.

**5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.**

This collection of information does not involve small businesses or other small entities.

**6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.**

Section 241 of the Help American Vote Act requires the EAC to study election administration issues with the goal of promoting voting methods and improving election administration.

If the collection is not conducted, the EAC will be unable to fulfill Section 241 of HAVA (42 U.S.C. 15301). Furthermore, without this information the EAC will be unable to provide States and Congress with the feasibility and advisability of using alternative days, times and places to conduct Federal elections. The determination of whether these alternative voting methods are feasible rests upon the collection of this information.

**7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.**

Not applicable.

**8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received**

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**in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.**

The Study for Alternative Voting Methods received one comment regarding the Information Collection Materials. Overall, the comment demonstrated a support for the objectives of this study. Specifically, the comment indicated support for a key issue that will be examined in this study, namely, making the day on which Federal elections are held a Federal holiday. Providing several justifications for making Election Day a Federal holiday, the comment concluded that the benefits outweigh any drawbacks. There were no suggestions for changes to the study and subsequently no action is necessary.

In drafting the survey questionnaire, the study contractor consulted previous public opinion research conducted by The Pew Research Center for the People and the Press. The study contractor also consulted public opinion polls conducted by CBS News and NBC news. The study contractor also consulted with the U.S. Postal Service.

The study contractor, IFES, has more than ten years of experience in conducting innovative and effective public opinion research around the world. IFES' survey and focus group capabilities provide relevant and reliable information on the opinions and attitudes in a country to government officials, development professionals, political actors, academics and others interested in democratic and political development. However, a key strength of IFES' research is its use of a standard set of questions gauging sociopolitical development in most surveys we perform. Data from these questions can help researchers compare attitudes and opinions from country to country and across time in a single nation. To date, IFES has conducted more than 60 public opinion research projects in 24 countries around the world.

In addition to its survey capability, IFES has worked with election assistance and democratic development in over 100 countries since 1987. IFES' international professionals ensure that democracy solutions are home grown. IFES professionals provide technical assistance across many areas of democracy development. With its experience promoting democracy abroad, IFES has begun to work to strengthen democracy in the U.S. IFES works directly with local, state, federal and private partners in the U.S. to support technical assistance initiatives and projects. Under a contract enacted in late September 2005 under the U.S. Election Assistance Commission (EAC) IFES, working with The Pollworker Institute and the League of Women Voters (LWV), is finalizing a year-long research project aimed at improving pollworker recruitment, training and retention in the United States. The project will develop better recruitment, training and retention methods to improve the Election Day experience for voters and election officials.

The study contractor also consulted with The Election Center. The Election Center is a nonprofit organization that works to promote and improve democracy in the U.S. The Center has experience performing research for governmental units concerning the similarities and differences in state or local laws, regulations, or practices concerning voter registration and elections administration. The Center also designs regional workshops and seminars on methods to improve operations and enhance efficiency of government election units.

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In the PRA Federal Register Notice, the estimated total annual burden hours was miscalculated and based upon the assumption that the estimated burden per response was 25 minutes, but the estimated burden per response is 15 minutes, thus the estimated burden per response is 750 hours.

**9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.**

We will not provide any payment or gift to respondents in this collection.

**10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.**

Respondents will be given a verbal pledge of confidentiality prior to volunteering to participate.

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.**

The collection does not include sensitive or private questions.

**12. Provide an estimate in hours of the burden of the collection of information.**

The study will gather information from 3,000 respondents. The estimated reporting burden is 750 hours (3,000 respondents X 15 minutes for interview) at no cost to the respondent.

In the PRA Federal Register Notice, the estimated total annual burden hours was miscalculated and based upon the assumption that the estimated burden per response was 25 minutes, but the estimated burden per response is 15 minutes, thus the estimated burden per response is 750 hours.

**13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in #12 above).**

We have identified no reporting and recordkeeping "non-hour cost" burdens associated with this proposed collection of information.

**14. Provide estimates of annualized cost to the Federal government.**

The estimated cost to the Federal Government is \$113,241. This estimate includes \$82,044 for the public opinion research firm, \$27,915 for personnel, \$3,064 office expenses, and \$219 for transportation.

- We estimate \$82,044 for the public opinion research firm. This will include services for programming the survey instrument into a Computer Assisted Telephone Interviewing (CATI) system so that survey questions, instruction and response categories are displayed in the computer, conduct of 3,000 completed interviews, quality control, data entry, coding of data and delivery of final data.
- We estimate \$27,915 for personnel to design the study, oversee its implementation,

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- translate the questionnaire into Spanish, analyze data, and draft a final report.
- We estimate \$3,064 for office expenses.
- We estimate \$219 for any transportation related to this project.

**15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.**

This is the first time this information collection has been performed by the Federal government.

**16. For collections whose results will be published, outline the plans for tabulation and publication.**

The results from this information collection will be summarized into a report by the study contractor. The document will be made available to the President and Congress per HAVA Section 244. Additionally, the documents will be available to the general public per FOIA and may be posted on the Internet website of the EAC.

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.**

Not applicable to this collection.

**18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.**

To the extent that the topics apply to this collection of information, we are not making any exceptions to the "Certification for Paperwork Reduction Act Submissions."

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

*(If your collection does not employ statistical methods, just say that and delete the following five questions from the format.)*

**1. Describe (including a numerical estimate) the potential respondent universe and any sampling or other respondent selection method to be used. Data on the number of entities (e.g. establishments, State and local governmental units, households, or persons) in the universe and the corresponding sample are to be provided in tabular form. The tabulation must also include expected response rates for the collection as a whole. If the collection has been conducted before, provide the actual response rate achieved.**

The respondent universe for this study includes all adults aged 18 years who reside in one of the 50 U.S. states. The sample will be 3,000 respondents, and we aim to obtain a response rate of 30%. This is the first collection for this federal agency of this kind.

**2. Describe the procedures for the collection, including: the statistical methodology for stratification and sample selection; the estimation procedure; the degree of accuracy needed for the purpose described in the justification; any unusual problems requiring**

**specialized sampling procedures; and any use of periodic (less frequent than annual) data collection cycles to reduce burden.**

The survey will be conducted by phone in both English and Spanish using random digit dialing (RDD) technology. In RDD surveys, telephone exchanges in the United States are selected at random according to the specifications of the sampling plan. The last digits needed to complete the phone number are generated completely at random. This design ensures full implementation of the sampling plan and ensures that those with listed and unlisted numbers have an equal chance of being included in the sample. Within each contacted household, a respondent will be selected among all adults in the household aged 18 years and who are citizens.

**3. Describe the methods used to maximize response rates and to deal with nonresponse. The accuracy and reliability of the information collected must be shown to be adequate for the intended uses. For collections based on sampling, a special justification must be provided if they will not yield "reliable" data that can be generalized to the universe studied.**

To maximize the chances of making contact with a potential respondent, as many as 10 attempts will be made to complete an interview at every sampled household, and calls will be staggered over times of the day and days of the week.

**4. Describe any tests of procedures or methods to be undertaken. Tests are encouraged as effective means to refine collections, but if ten or more test respondents are involved OMB must give prior approval.**

Organizations such as The Pew Research Center for the People and the Press, NBC News, and CBS News have used these questions in previous surveys, thus through other organizations these questions have already been refined. Additionally, we pre-tested the instrument on 9 persons. Demographics describing the 9 respondents are listed in the tables below.

Education	Number of Respondents
High School or Less	2
Some College	2
College Graduate	2
Post Graduate	3

Age	Number of Respondents
Under 30	3
30 - 44	2
45 - 60	2
61 +	2

Race	Number of Respondents
White/White Latino	7
African	2
American/Black/Black Latino	

Registered to Vote?	Number of Respondents
Yes	7
No	2

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**5. Provide the name and telephone number of individuals consulted on the statistical aspects of the design, and the name of the agency unit, contractor(s), grantee(s), or other person(s) who will actually collect and/or analyze the information for the agency.**

Contractor contact: Dr. Karen Buerkle; 202-350-6741; [kbuerkle@ifes.org](mailto:kbuerkle@ifes.org)





## ALTERNATIVE VOTING METHODS STUDY

Hello, my name is \_\_\_\_\_. We are conducting an important study for the U.S. Election Assistance Commission. This survey is for research purposes only, we are not selling anything and we are not associated with or being paid by any political party or candidate. Your participation is voluntary and will only take a few minutes of your time. All your answers will be strictly confidential. Am I speaking with someone 18 or older?

- S1 To make sure our survey includes many different kinds of people, I need to ask a few questions about who lives in your household. How many adults age 18 or older live in your household?
- 1 One—GO TO S2
  - 2 Two or more—GO TO S3

ASK IF ONLY ONE ADULT AGE 18+ IN HH (S1=1)

- S2 May I please speak to that person?
- 1 Continue with current respondent—GO TO Q1
  - 2 New respondent being brought to phone—GO TO INTRO2
  - 3 New respondent not available—SCHEDULE CALL BACK
  - 9 Refused—TERMINATE

ASK IF MORE THAN ONE ADULT AGE 18+ IN HH (S1=2)

- S3 May I please speak with the adult (18+) in your household who has most recently had a birthday. Are you this person?
- 1 Yes—GO TO Q1
  - 2 No—ASK TO SPEAK TO THAT PERSON AND REINTRODUCE THE SURVEY

ASK ALL

- Q1 How would you rate your neighborhood as a place to live? Would you say it is excellent, good, fair or poor?
- 1 Excellent
  - 2 Good
  - 3 Fair
  - 4 Poor
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK ALL IN UNITED STATES

- Q2 Can you please tell me which state you currently live in?
- 1 Gave response [**Record verbatim—OK to use official two letter abbreviations**]
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK ALL IN UNITED STATES

- Q3a And have you been living in this state at least 9 months?
- 1 Yes
  - 2 No [TERMINATE INTERVIEW]
  - 8 Don't know [DO NOT READ] [TERMINATE INTERVIEW]
  - 9 Refused [DO NOT READ] [TERMINATE INTERVIEW]

ASK ALL IN PUERTO RICO

- Q3a Have you been living in Puerto Rico at least 9 months?
- 1 Yes
  - 2 No [TERMINATE INTERVIEW]
  - 8 Don't know [DO NOT READ] [TERMINATE INTERVIEW]
  - 9 Refused [DO NOT READ] [TERMINATE INTERVIEW]

ASK ALL

- Q3b And are you a U.S. citizen or not?
- 1 Yes
  - 2 No [TERMINATE INTERVIEW]
  - 8 Don't know [DO NOT READ] [TERMINATE INTERVIEW]
  - 9 Refused [DO NOT READ] [TERMINATE INTERVIEW]

ASK ALL

- Q4 Switching topics, how much information do you feel you have about politics and current events in the United States today? Do you have a great deal of information, a fair amount, not very much or no information at all?
- 1 Great deal
  - 2 Fair amount
  - 3 Not very much
  - 4 None at all
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK ALL

- Q5a How much information do you feel you have about the way elections are organized in your community such as the rules about who can vote, where to go to vote, etc? Do you have a great deal of information, a fair amount, not very much or no information at all?
- 1 Great deal
  - 2 Fair amount
  - 3 Not very much
  - 4 None at all
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK ALL

- Q5b And how often would you say you vote in elections—always, nearly always, part of the time, seldom or never?
- 1 Always
  - 2 Nearly always
  - 3 Part of the time
  - 4 Seldom
  - 5 Never
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK ALL

- Q6 These days, many people are so busy they can't find time to register to vote or move around so often they don't get a chance to re-register. Are you CURRENTLY registered to vote or haven't you been able to register so far? (Trend Question: Pew Research Center Oct. 11, 2006)
- [IF RESPONDENT ANSWERS YES, ASK: Are you registered to vote at your CURRENT address or are you registered to vote at some OTHER previous address]
- 1 Yes, registered at current address
  - 2 Yes, registered at other/previous address
  - 3 No, not registered
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK IF NOT REGISTERED TO VOTE (Q6 = 3)

- Q7a What would you say is the MAIN reason you're not registered to vote? [OPEN END; ACCEPT UP TO THREE RESPONSES BUT DO NOT PROBE FOR MORE THAN ONE]
- 1 Gave response [**Record verbatim**]
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK IF REGISTERED TO VOTE (Q6 = 1 or 2)

- Q7b Can you please tell me which state you are currently registered to vote in?
- 1 Gave response [**Record verbatim—OK to use official two letter abbreviations**]
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK ALL IN UNITED STATES

- Q8a We understand from talking to lots of people, that not everyone votes in every election. Did you vote in the 2006 Election this past November for either a Senator or Congressperson?
- 1 Yes
  - 2 No
  - 3 Not 18 at the time/Not eligible [DO NOT READ]
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK IF DID NOT VOTE 2006 (Q8a=2 or 3)

- Q8b Can you please tell me why you did not vote in the 2006 elections?
- 1 Gave response
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK ALL

- Q9a And did you vote in the 2004 (in US: Presidential election between George Bush and John Kerry) (in PR: election for Resident Commissioner)?
- 1 Yes
  - 2 No
  - 3 Not 18 at the time/Not eligible [DO NOT READ]
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK IF DID NOT VOTE 2004 (Q9a=2 or 3)

- Q9b Can you please tell me why you did not vote in the 2004 elections?
- 1 Gave response
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK ALL

- Q10a And thinking about the upcoming 2008 election for (in US: President) (in PR: Resident Commissioner), would you say it is more likely that you will vote or more likely that you will NOT vote?
- 1 Likely to vote
  - 2 Likely to NOT vote
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK IF LIKELY TO VOTE (Q10a=1)

Q10b Would you say you are absolutely certain to vote, very likely to vote, or fairly likely to vote?

- 1 Absolutely certain to vote
- 2 Very likely to vote
- 3 Fairly likely to vote
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK IF UNLIKELY TO VOTE (Q10a=2)

Q10c Would you say you are absolutely certain not to vote, very likely not to vote, or fairly likely not to vote?

- 1 Absolutely certain not to vote
- 2 Very likely not to vote
- 3 Fairly likely not to vote
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK ALL

Q11 How much confidence do you have in the system in which votes are cast and counted in (in US: this country) (in PR: Puerto Rico)? Do you have a great deal, fair amount, not very much, or no confidence at all in the system in which votes are cast and counted?

- 1 Great deal
- 2 Fair amount
- 3 Not very much
- 4 None at all
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK ALL

Q12 There are many ways for people to vote, and some prefer one way over another. If you had the choice of voting in a booth at a polling place on Election Day or over the Internet or through the mail during the weeks leading up to Election Day, which would you prefer? (Trend question: Pew Research Center March 2000)

- 1 Vote in booth at polling place on Election Day
- 2 Vote over the Internet
- 3 Vote through the mail during the weeks leading up to Election Day
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK ALL

Q13 Some people have suggested reforms to the election process. Would you strongly favor somewhat favor, somewhat oppose or strongly oppose (insert item).  
How about (insert item)— strongly favor somewhat favor, somewhat oppose or strongly oppose?

**RANDOMIZE A thru C**

- A (ASK ONLY IN US) setting a uniform poll closing time on election night, so that all polling places across the country close at the same time regardless of the timezone? (Trend question: CBS News December 2000)?
- B changing the day of the election from Tuesday to a weekend so that people would be able to vote on either Saturday or Sunday [IF ASKED, the polls would be open both days and you could choose if you wanted to vote on Saturday or Sunday]?
- C holding elections over multiple WEEKdays?
- D (ASK ONLY IN US) making Election Day into a federal holiday? This would mean that schools would be closed and many people would have the day off work on Election Day.
  - 1 Strongly favor
  - 2 Somewhat favor
  - 3 Somewhat oppose
  - 4 Strongly oppose
  - 5 Depends what day [DO NOT READ]
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK IF OPPOSE FEDERAL HOLIDAY (Q13D=3, 4)

Q14a Can you please tell me why you oppose making Election Day a Federal holiday?

- 1 Gave response [**Record verbatim**]
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK IF FAVOR HOLIDAY or DEPENDS WHAT DAY (Q13D= 1, 2, or 5)

Q14b And would you prefer the holiday to be on our traditional Election Day, on the first Tuesday in November, an already existing Federal Holiday, or some other day or would it make no difference to you?

- 1 Traditional Election Day – first Tuesday in November
- 2 Existing Federal Holiday
- 3 Some other day
- 4 Makes no difference
- 8 Don't Know [DO NOT READ]
- 9 No Answer/Refused [DO NOT READ]

ASK ALL

Q15 I am going to read out a number of different ways of voting some people are talking about. For each, please tell me if you think it will make you PERSONALLY more likely to vote, less likely to vote, or would it make no difference in the likelihood you will vote in future elections? Would (insert) make you PERSONALLY more likely to vote, less likely to vote, or would it make no difference to YOU?

**RANDOMIZE A thru G**

- A Giving you the option to vote in-person or by mail
- B Giving you the option to vote at any polling station in your area
- C Giving you the option to vote in person or online
- D Extending the hours the polls are open on Election Day so you could vote earlier or later
- E Holding elections over the whole weekEND so that you have the option of voting on either Saturday or Sunday
- F Holding elections over two week DAYS
- G (Ask only in US) Making the day on which elections are held a Federal holiday
  - 1 More likely to vote
  - 2 Less likely to vote
  - 3 Make no difference
  - 8 Don't know [DO NOT READ]
  - 9 Refused [DO NOT READ]

ASK ALL

Q16 What ONE of these changes that we just talked about, if any, would make the biggest difference in your ability to be able to vote in elections? [RANDOMIZE RESPONSE OPTIONS AND READ OUT]

- 1 Option to vote in-person or by mail
- 2 Option to vote at any polling station in your area
- 3 Option to vote in person or online
- 4 Extending the hours the polls are open on Election Day so you could vote earlier or later
- 5 Holding elections over the whole weekEND so that you have the option of voting on either Saturday or Sunday
- 6 Holding elections over two week DAYS
- 7 Making the day on which elections are held a Federal holiday
- 8 No change will make more likely [DO NOT READ]
- 98 Don't know [DO NOT READ]
- 99 Refused [DO NOT READ]

ASK ALL

Q17 Some jurisdictions are discussing an election system in which all residents cast their vote through the mail in the weeks leading up to Election Day, rather than going to a polling place to vote in an election booth. Do you strongly favor, somewhat favor, somewhat oppose or strongly oppose replacing voting booths with voting by mail? (Trend Question: Pew Research Center Oct. 11, 2006)

- 1 Strongly favor
- 2 Somewhat favor
- 3 Somewhat oppose
- 4 Strongly oppose
- 8 Don't Know [DO NOT READ]
- 9 No Answer/Refused [DO NOT READ]

ASK ALL

Q18 Now I'm going to ask you to compare a traditional voting booth with voting over the Internet. For each item I mention, please tell me whether you think that a traditional voting booth or voting over the Internet would be a better method for addressing that concern. If you think that both methods would be equally good, just say so. Do you think a traditional voting booth or voting over the internet would be better at (insert item) or do you think that both methods are equally good at (insert item).

**RANDOMIZE A thru C**

- A Preventing fraud
- B Ensuring an accurate vote count.
- C Encouraging greater voter participation
  - 1 Traditional voting booth
  - 2 Internet voting
  - 3 Both equally good
  - 4 Neither good [DO NOT READ]
  - 8 Don't Know [DO NOT READ]
  - 9 No Answer/Refused [DO NOT READ]

ASK ALL

Q19 And how about comparing a traditional voting booth with voting through the MAIL. Do you think a traditional voting booth or voting through the MAIL would be better at (insert item) or do you think that both methods are equally good at (insert item).

**RANDOMIZE A thru C**

- A Preventing fraud
- B Ensuring an accurate vote count.
- C Encouraging greater voter participation
  - 1 Traditional voting booth
  - 2 Voting through the mail
  - 3 Both equally good
  - 4 Neither good [DO NOT READ]
  - 8 Don't Know [DO NOT READ]
  - 9 No Answer/Refused [DO NOT READ]

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ASK IF VOTED IN 2004 OR 2006 (Q8a or Q9a=1)

Q20 For the next few questions, I would like you to think about your experiences voting in the (IF Q8a=1: the 2006 congressional elections) (IF in US AND Q8a=2 AND Q9a=1: 2004 presidential election) (IF in PR AND Q9a=1: 2004 election for Resident Commissioner). Do you recall if you voted BEFORE Election Day, that is at an early voting site or with an absentee ballot, OR did you vote in person ON Election Day?

- 1 Before Election Day - Early Voting Site/Absentee
- 2 In person on Election Day
- 3 Dropped off absentee ballot on Election Day [DO NOT READ]
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK IF VOTED BEFORE ELECTION DAY (IF Q20 = 1)

Q21 And when you voted BEFORE Election Day in the (IF Q8a=1: 2006 elections) (IF Q8a=2 AND Q9a=1: 2004 elections), do you recall if you voted at an early voting site or through the mail?

- 1 Voted at early voting site
- 2 Voted through the mail
- 3 Did not vote before Election Day [DO NOT READ]
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK IF VOTED ON ELECTION DAY (IF Q20 = 2)

Q22 And were you assigned to a polling place or were you allowed to vote at any polling place in your area?

- 1 Assigned polling place
- 2 Allowed to vote at any polling place in area
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK ALL

Now I have just a few questions so we can describe the people who took part in our survey.

D1 Record gender

- 1 Male
- 2 Female

D2 What is your age?

Record range 18-96

- 97 97 or older
- 98 Don't know [DO NOT READ]
- 99 Refused [DO NOT READ]

D3 What is the highest level of education you received?

- 1 High School or less
- 2 Some College
- 3 College Graduate
- 4 Post graduate
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

D4 Do you or anyone in your household own a business?

- 1 Yes
- 2 No
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

D5a Which of the following best describes your current employment status—employed, self-employed, retired and not working, are you not in the labor force, or are you unemployed and looking for work?

- 1 Employed
- 2 Self-employed
- 3 Retired and not working
- 4 Not in the labor force [INTERVIEWER, this includes homemakers]
- 6 Unemployed and looking for work
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK IF EMPLOYED OR SELF EMPLOYED (D5a=1 or 2)

D5b Is this part-time or full-time?

- 1 Part-time
- 2 Full-time
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK IF EMPLOYED (D5a=1)

D5c What is your MAIN occupation?

- 1 Gave response
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK IF GAVE RESPONSE (D5c=1)

D5d And would you characterize this occupation as...?

- 1 Executive/ high-level management
- 2 Professional/ middle manager
- 3 Technical/ administrative/ clerical
- 4 Service worker/ protective services
- 5 Skilled labor
- 6 Unskilled labor
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK ALL

D6 Are you yourself of Latino or Hispanic origin or descent, such as (Ask in US: Mexican, Cuban,) Puerto Rican, Cuban, or some other Latin American background?

- 1 Yes
- 2 No
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

D7 What is your race? (If Latino ask :) Are you white Latino, black Latino or some other race? (Else:) Are you white, African American or black, Asian or some other race?

- 1 White/White Latino
- 2 African American/Black/Black Latino
- 3 Asian/Asian Latino
- 4 Other
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

D8 Last year, that is in 2006, what was your total household income from all sources before taxes? Was it under or over \$40,000?

- 1 Under \$40,000
- 2 Over \$40,000
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK IF INCOME LESS THAN \$40,000 (D8=1)

D9a Now just stop me when I get to the right category. Was your income ...

**Read responses**

- 1 Less than \$10,000
- 2 \$10,000 to under \$15,000
- 3 \$15,000 to under \$20,000
- 4 \$20,000 to under \$25,000
- 5 \$25,000 to under \$30,000
- 6 \$30,000 to under \$35,000 or
- 7 \$35,000 to under \$40,000
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

ASK IF INCOME MORE THAN \$40,000 (D8=2)

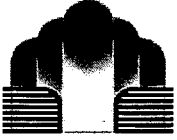
D9b Now just stop me when I get to the right category. Was your income ...

**Read responses**

- 1 \$40,000 to under \$50,000
- 2 \$50,000 to under \$75,000
- 3 \$75,000 to under \$100,000
- 4 \$100,000 to under \$150,000 or
- 5 \$150,000 or more
- 8 Don't know [DO NOT READ]
- 9 Refused [DO NOT READ]

**Thank you. That is all of the questions I have for you.**

\*This information collection is required for the EAC to meet its statutory requirements under the Help America Vote Act (HAVA) of 2002 (42 U.S.C. 15301). Respondent's reply to this information collection is voluntary; respondents are required to be U.S. citizens. This information will be made publicly available on the EAC website at [www.eac.gov](http://www.eac.gov). According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB Control No. 000000000 (expires 00/00/0000). The time required to complete this information collection is estimated to average 15 minutes per response. Comments regarding this burden estimate should be sent to the Program Manager – 2007 Alternative Voting Methods Study, U.S. Election Assistance Commission, 1225 New York Ave, NW, Suite 1100, Washington, DC 20005.



Laiza N. Otero/EAC/GOV  
04/09/2007 03:06 PM

To Karen Lynn-Dyson/EAC/GOV@EAC  
cc  
bcc  
Subject Fw: Alternative Voting Methods Study

This was Ernie's response.

----- Forwarded by Laiza N. Otero/EAC/GOV on 04/09/2007 03:05 PM -----



ernieh@aol.com  
03/20/2007 02:48 PM

To lotero@eac.gov  
cc klynndyson@eac.gov  
Subject Re: Alternative Voting Methods Study

We are waiting on the post office on the focus groups and on an EAC decision regarding the territories for the survey.

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

From: lotero@eac.gov  
To: ernieh@aol.com  
Cc: klynndyson@eac.gov  
Sent: Fri, 16 Mar 2007 7:54 AM  
Subject: Fw: Alternative Voting Methods Study

-----Forwarded by Laiza N. Otero/EAC/GOV on 03/16/2007 10:51AM -----

To: Karen Lynn-Dyson/EAC/GOV@EAC  
From: Laiza N. Otero/EAC/GOV  
Date: 03/12/2007 04:09PM  
Subject: Alternative Voting Methods Study

Karen,

The last day for public comments regarding the Alternative Voting Methods survey instrument posted on 1/9/2007 has passed (last day was March 9, 2007). To proceed with clearance, the Contractor should finalize the survey instrument (incorporate all comment, make revisions, etc.). Then they must publish it on the Federal Register once more for 30 days and submit the ICR package to OMB. The OMB package includes:

Contractor Responsibilities - prepare all information and supporting documents required for the submission package

Provide IC instrument in its final form

Information on OMB Form 83-I

Supporting Statement A - joint Privacy Impact Assessment (PIA)

010294

Supporting Statement B (if using statistical methods)  
Copy of 60-day Federal Register Notice  
Copy of 30-day Federal Register Notice  
Summary of public comments received, including actions in response to  
the comments.  
Copy of public comments received  
Copies of pertinent statutory authority and regulation

EAC Responsibilities:

Review and approve documents prepared by Contractor  
Submit ICR package to OMB via their online ROCIS system

The same applies to the focus groups for the free absentee postage study. As always, I am happy to provide you the necessary information to get these studies through PRA. For sample ICR submissions, one can go to: <http://www.reginfo.gov/public/do/PRAMain>.

Laiza

---

AOL now offers free email to everyone. Find out more about what's free from AOL at [AOL.com](http://AOL.com)

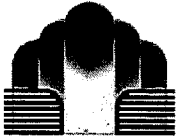
010295



Laiza N. Otero/EAC/GOV  
04/13/2007 03:22 PM

To Karen Lynn-Dyson/EAC/GOV@EAC  
cc  
bcc  
Subject Fw: Alternative Voting Methods

----- Forwarded by Laiza N. Otero/EAC/GOV on 04/13/2007 03:21 PM -----



Laiza N. Otero/EAC/GOV  
04/13/2007 01:11 PM

To Karen Lynn-Dyson/EAC/GOV  
cc Juliet E. Thompson-Hodgkins/EAC/GOV@EAC  
Subject Alternative Voting Methods

For this study, we have not submitted a package to OMB. The Contractor has provided the requested information, and I am preparing the documentation for Julie to review and approve. They have done the initial 60-day FR Notice, and I am attaching that along with the draft collection instruments.



AV.60-Day FR Notice.pdf




Alternative Voting Methods.Draft Survey.FR.pdf

010296

to receive a copy of these reports. If this request is denied, please provide an explanation as to why.

Sincerely,


Wendy R. Weiser  
Deputy Director, Democracy Program  
Brennan Center for Justice at NYU School of Law  
161 Avenue of the Americas, 12th Floor  
New York, NY 10013  
(212) 998-6130 (direct)  
(212) 995-4550 (fax)



010310



Thomas R. Wilkey/EAC/GOV  
09/15/2006 09:55 AM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Call to discuss release of Rutgers Voter ID report 

History

 This message has been replied to

I will be sitting in my dentist chair during that time frame but will call you afterward.  
Julie let me know where I can reach you

-----  
Sent from my BlackBerry Wireless Handheld  
Juliet E. Hodgkins  
----- Original Message -----

**From:** Juliet E. Hodgkins  
**Sent:** 09/15/2006 09:52 AM  
**To:** Thomas Wilkey  
**Subject:** Fw: Call to discuss release of Rutgers Voter ID report

FYI -- also my opinion is that we have not released this to anyone and that includes Hill staff.

-----  
Sent from my BlackBerry Wireless Handheld  
Juliet E. Hodgkins  
----- Original Message -----

**From:** Juliet E. Hodgkins  
**Sent:** 09/15/2006 09:41 AM  
**To:** Karen Lynn-Dyson  
**Subject:** Re: Call to discuss release of Rutgers Voter ID report

I am not available until after noon.

-----  
Sent from my BlackBerry Wireless Handheld  
Karen Lynn-Dyson  
----- Original Message -----

**From:** Karen Lynn-Dyson  
**Sent:** 09/15/2006 09:31 AM  
**To:** Juliet Hodgkins; Thomas Wilkey  
**Cc:** Bert Benavides  
**Subject:** Call to discuss release of Rutgers Voter ID report

Julie and Tom-

Commissioner Hillman has asked me to meet with each of you this morning regarding the sharing of the information of this report with Hill staffers.

Could we have a call at 10:30 or 11:00 this morning to reach a decision on how to proceed with this request?

I understand this is a time-sensitive matter that will need to be resolved by early afternoon.

Thanks

010311

Thomas R. Wilkey/EAC/GOV  
04/27/2006 03:51 PM

To: "Julie Thompson" <jthompson@eac.gov>  
cc  
bcc  
Subject: Fw: Schedule for completion of Prov. Voting and Voter ID research

Sorry forgot to reply all on this

---

Sent from my BlackBerry Wireless Handheld  
Thomas R. Wilkey

**From:** Thomas R. Wilkey  
**Sent:** 04/27/2006 03:50 PM  
**To:** Karen Lynn-Dyson  
**Subject:** Re: Schedule for completion of Prov. Voting and Voter ID research

I think we need to get their final documents to the Commissioners prior to review by both the Boards. You see the politics here and everyone wants to make sure their comments were taken care of before they go to these two boards...as to the June public meeting Julie, you and I need to discuss. Let's chat tomorrow sometime when I get a spare minute.  
Thanks

---

Sent from my BlackBerry Wireless Handheld  
Karen Lynn-Dyson

**From:** Karen Lynn-Dyson  
**Sent:** 04/27/2006 09:10 AM  
**To:** Juliet Thompson-Hodgkins  
**Cc:** Thomas Wilkey  
**Subject:** Re: Schedule for completion of Prov. Voting and Voter ID research

I think that a number of months ago we envisioned the Eagleton project culminating with a presentation of both of the papers at a public meeting. We had tentatively scheduled that presentation for the June public meeting. Also, we must provide for a review of these studies to EAC's Standards Board and Board of Advisors.

Clearly, plans have changed although we need to figure out how we have Eagleton present its final papers on Provisional Voting (already planned) and Voter Identification (still in process) to the EAC Standards and Advisory Boards.

Look forward to your suggestions on how best to proceed with wrapping up these two efforts.

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

010312

**Deliberative Process  
Privilege**

Thomas R. Wilkey/EAC/GOV  
10/30/2005 11:16 PM

To Juliet E. Thompson/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Eagleton/Moritz

In the Van from the airport but glad to hear you are feeling better. Haven't looked at the Eagleton report yet since I feared that I would see what you have seen.. May surprise you but this New York liberal has never been happy about anything Eagleton has done so far. Guess I have been hanging around a certain Conservative too much.

As for Kim no one is more disappointed with his crap than I and I have known him for yearsm  
Well we have come to a complete stop on the BWI Parkway may get home by midnight.  
Gorgeous Indian Summer day in New York and still some colors left on the treesm  
See you in the morning  
Tom

---

Sent from my BlackBerry Wireless Handheld  
Juliet E. Thompson

**From:** Juliet E. Thompson  
**Sent:** 10/30/2005 10:06 PM  
**To:** Thomas Wilkey  
**Subject:** Eagleton/Moritz

I just sent my detailed comments to Eagleton. I stopped short of accusing them of making unfounded conclusions, but I am seriously concerned about all of our research projects on the point of presenting facts versus conclusions based upon assumptions. This was an issue with Kim Brace's report and the summary of it. I think that I caught most of them, but this is something that the research staff should be pointing out. I know I am preaching to the choir when I say that our reports (research and otherwise) have to be beyond reproach. I would rather stop short of reaching sensational conclusions to assure that they are supported in fact.

By way of example, in the Kim Brace draft there was a statement about states having VR databases having superior voter registration management. I am not sure that those two logically derive from one another without additional information and assumptions. The same sort of statements are rampant in the state by state summaries that Eagleton/Moritz provided. We should not accept these as summaries if they don't clean up the unsupported conclusions and unstated assumptions that pervade those documents.


Just so you'll know I am not just griping tonight -- how was your trip home? Hope all was well and that you have arrived/will arrive safely back in DC. You missed a gorgeous weekend here. Hope it was equally nice in NY. I was more or less a slug up until today, but it helped. I can now sit in a chair for more than 30 minutes at a time without a shooting pain in my stomach.

See you tomorrow.

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

010313

Karen Lynn-Dyson/EAC/GOV  
10/06/2005 12:28 PM

To Gavin S. Gilmour/EAC/GOV@EAC  
cc Carol A. Paquette/EAC/GOV@EAC, Juliet E.  
Thompson/EAC/GOV@EAC, Margaret  
Sims/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC  
bcc  
Subject Re: Voter Fraud Contract 

Gavin-

A few answers to your questions:

They have not received contracts but did receive a Statement of Work about a month ago.

That Statement of Work does not reference use of Westlaw or a law clerk. I have no recollection of offering such services. I have, however, had many conversations with Tova and Job. At some point I may have said that because the EAC has Westlaw and legal interns, there may or may not be a way from Job and Tova to avail them of these services.

The Statements of Work developed (see draft attached) were used in place of an RFP. Tova and Job are to serve as consultants on a project that may or may not result in their developing an RFP on voting fraud and intimidation for the EAC.



Job Serebrov sow.doc Tova Wang sow.doc  
K

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

Gavin S. Gilmour/EAC/GOV

Gavin S. Gilmour/EAC/GOV  
10/06/2005 11:50 AM

To Karen Lynn-Dyson/EAC/GOV@EAC, Margaret  
Sims/EAC/GOV@EAC, Juliet E.  
Thompson/EAC/GOV@EAC, Thomas R.  
Wilkey/EAC/GOV@EAC  
cc Carol A. Paquette/EAC/GOV@EAC  
Subject Voter Fraud Contract

Karen/Tom,

Peggy held a meeting with voting fraud/intimidation contractors. In this meeting they noted that despite the fact that the contract requires them to perform legal research, they do not have the means to do so (no access to Westlaw, etc.). They noted that in discussions with the two of you, they were told that the EAC would provide them access to West Law and, possibly, a law clerk with office space. None of

010314

this is noted in the contract. They claim to have never seen the contract? Do we have their response to our RFP? We will all need to meet to clarify this.

GG

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

010315

## **Statement of Work**

### **Assistance with developing an Election Assistance Commission (EAC) Voting Fraud and Voter Intimidation Project**

**(Job Serebrov)**

#### **Background**

Section 241 of HAVA enumerates a number of periodic studies of election administration issues in which the U.S. Election Assistance Commission may elect to engage. In general “On such periodic basis as the Commission may determine, the Commission shall conduct and make available to the public studies regarding the election administration issues described in subsection (b)”

Sections 241(b) (6) and (7) list the following election administration issues:

(6) Nationwide statistics and methods of identifying, deterring and investigating voting fraud in election for Federal offices.

(7) Identifying, deterring and investigating methods of voter intimidation.

Building on this HAVA reference to studies of voting fraud and voter intimidation, the EAC Board of Advisors has indicated that further study of these issues to determine how the EAC might respond to them is a high priority.

The U.S. Election Assistance Commission (EAC) seeks to identify one or more senior-level project consultants to develop various project activities and studies related to voting fraud and voter intimidation affecting Federal elections.

The consultant(s) must of have knowledge of voting fraud and voter intimidation along with an understanding of the complexities, nuances and challenges which surround the topics. The EAC is particularly interested in candidates with experience in elections, with public policy and with the law. The consultant (s) must be able to demonstrate an ability to approach the issues of voting fraud and voter intimidation in a balanced, nonpartisan fashion.

010316

## **Duties**

The consultant(s), whose contract would run for the period September-February, 2005, would be responsible for the following.

1. Identifying what constitutes voting fraud and voter intimidation affecting Federal elections.
2. Performing background research, including Federal and state-by state administrative and case law review related to voting fraud and voter intimidation, and a review of current voting fraud and voter intimidation activities taking place with key government agencies, civic and advocacy organizations. A written summary of this research, and a copy of any source documentation used, will be presented to EAC.
3. Identifying, in consultation with EAC, and convening a working group of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation. The working group's goals and objectives and meeting agendas will be vetted with key EAC staff.
4. Developing a project scope of work and a project work plan related to voting fraud and voter intimidation. The consultants (s) will develop a draft scope of work and project work plan for EAC's consideration based on research into the topics, the deliberations and findings of the working group, and the consultants' understanding of EAC's mission and agency objectives.
5. Authoring a report summarizing the key findings of this preliminary study of voting fraud and voter intimidation. The report will also include suggestions for specific activities that EAC may undertake to address these topics.

From this initial research and exploration of these topics the consultant (s) may be retained to help oversee follow-on research projects and contracts EAC may pursue on the topics of voting fraud and voter intimidation.

## **Special Considerations**

Work for Hire. The services performed under the terms of this agreement are considered "work for hire," and any intellectual property or deliverables, including but not limited to, research, policies, procedures, manuals, and other works submitted; or which are specified to be delivered; or which are developed or produced and paid for by EAC, shall be owned exclusively by EAC, including copyright. EAC or its assignees have the exclusive right to reproduce all work products from this agreement without further payment to the Contractor.

### **Terms and Conditions**

The period of performance for this consulting contract is six months, with a fixed price ceiling of \$XXXXXX for labor. The consultant (s) is expected to work at least 200 hours in performing this work. The EAC estimates that the most efficient distribution of these hours would be as follows: XXXXX. The period of performance and level of effort can be revised in writing by mutual agreement of the EAC and the consultant, as required.

The Consultant is required to travel to the EAC Washington, D.C. offices on a periodic, as needed basis, throughout the duration of the contract. The Consultant will be reimbursed, at the Federal government rates, for hotel and ground transportation costs, other approved incidental expenses, and per diem costs while working on-site at the EAC offices. An estimated \$XXXXXX has been allocated for reimbursement for travel and other allowable expenses.

### **Invoicing**

Invoices may be submitted monthly in equal payments for labor. Expenses claimed for reimbursement shall be itemized with appropriate receipts provided. Invoices shall be delivered to Ms. Diana Scott, Administrative Officer, U.S. Election Assistance Commission, 1225 New York Avenue, N.W., Suite 1100, Washington DC 20005.

### **Deliverables and Timetable**

Deliverable	Due Date
Draft project work plan (Phase I)	ASAP after award
Progress Reports to Contracting Officer's Representative (COR)	Monthly
A written summary of background research on voting fraud and voter intimidation.	TBD
Identifying and convening a working group knowledgeable about voting fraud and voter intimidation.	TBD
Developing a project scope of work and project work plan ( Phase II)	TBD
Summary report describing key findings of this preliminary study of voting fraud and	TBD



voter intimidation	

## **Statement of Work**

### **Assistance with developing an Election Assistance Commission (EAC) Voting Fraud and Voter Intimidation Project**

**(Tova Wang)**

#### **Background**

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## **Duties**

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### **Terms and Conditions**

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Developing a project scope of work and project work plan ( Phase II)	TBD
Summary report describing key findings of this preliminary study of voting fraud and	TBD

voter intimidation	

Karen Lynn-Dyson/EAC/GOV

08/16/2005 02:52 PM

To Carol A. Paquette/EAC/GOV@EAC, Diana  
Scott/EAC/GOV@EAC, Margaret Sims/EAC/GOV@EAC  
cc Juliet E. Thompson/EAC/GOV@EAC, Nicole  
Mortellito/CONTRACTOR/EAC/GOV@EAC  
bcc

Subject Finishing touches on the Statement of Work for the Voter  
Fraud/Intimidation consultants

History

This message has been replied to.

All-

This morning the Commissioners approved the Statement of Work for the Voter Fraud/Voter Intimidation project consultants, with the caveat that some additional language would be added and the SOW polished up.

Tom, Peg and I are scheduled to interview the first candidate tomorrow morning at 10:00 am and will need your edits to this SOW by COB today.

I am attaching the item again, just in case you don't have a copy. Since I have an appointment out of the office and will be leaving at 4:00 today, I ask that you get your changes and edits to Nicole so that she may enter them and get the revised copy to the candidate first thing in the morning .

Thanks for your input on this.



voterfraud project consultants.2.doc  
K

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

010324

## **Statement of Work**

### **Assistance with developing an Election Assistance Commission (EAC) Voter Fraud and Voter Intimidation Project**

#### **Background**

Section 241 of HAVA enumerates a number of periodic studies of Election Administrations issues in which the U.S. Election Assistance Commission may elect to engage. In general "On such periodic basis as the Commission may determine, the Commission shall conduct and make available to the public studies regarding the election administration issues described in subsection (b), with the goal of promoting methods of voting and administering elections...."

Specifically, Section 241b 6 and 7 describes Election administration issues such as:

6. Nationwide statistics and methods of identifying, deterring and investigating voting fraud in election for Federal offices and
7. Identifying, deterring and investigation methods of voter intimidation.

Building on this HAVA reference to studies of voter fraud and voter intimidation, the EAC Board of Advisors has indicated a priority interest in further study of these issues to determine how the EAC might respond to them.

The U.S. Election Assistance Commission (EAC) seeks to identify senior-level project consultants to develop various project activities and studies related to U.S. election voter fraud and voter intimidation.

The consultant(s) must of have knowledge of voter fraud and intimidation along with an understanding of the complexities, nuances and challenges which surround the topics. The EAC is particularly interested in candidates with experience in elections, with public policy and the law. The consultant (s) must be able to demonstrate an ability to approach the issues of voter fraud and intimidation in a balanced, nonpartisan fashion.

010325

## **Duties**

The consultant (s), whose contract would run for the period September-February, 2005, would be responsible for the following.

1. Performing background research, including a state-by state administrative and case law review related to voter fraud and intimidation, and a review of current voter fraud and intimidation activities taking place with key government agencies, civic and advocacy organizations. This review will be summarized and presented to the EAC.
2. Identifying and convening a working group of key individuals and organizations knowledgeable about the topics of voter fraud and intimidation. The list of working group members and the methods used to identify the groups members will be shared with EAC staff prior to the confirmation of the working group. The working group's goals and objectives and meeting agendas will be vetted with key EAC staff.
3. Developing a project scope of work and a project work plan related to voter fraud and intimidation. Based on research into the topics, the deliberations and findings of the working group, and the consultants' understanding of the EAC's mission and agency objectives, the consultants will develop a draft scope of work and project work plan for the EAC's consideration.
4. Authoring a report summarizing the key findings of this preliminary study of voter fraud and intimidation. The report will also include suggestions for specific activities the EAC may undertake around these topics.

From this initial research and exploration of these topics the consultant (s) may be retained to help oversee follow-on research projects and contracts EAC may develop on the topics of voter fraud and intimidation.

## **Special Considerations**

Work for Hire Agreement (insert language)

## **Terms and Conditions**

The period of performance for this consulting contract is six months, with a fixed price ceiling of \$XXXXXX for labor. The consultant (s) is expected to work at least 200 hours in performing this work. The EAC estimates that the most efficient distribution of these hours would be as follows: XXXXX. The period of performance and level of effort can be revised in writing by mutual agreement of the EAC and the consultant, as required.



Karen Lynn-Dyson/EAC/GOV

08/04/2005 05:01 PM

To Thomas R. Wilkey/EAC/GOV@EAC, Carol A. Paquette/EAC/GOV@EAC, Diana Scott/EAC/GOV@EAC, Juliet E. Thompson/EAC/GOV@EAC  
cc Nicole Mortellito/CONTRACTOR/EAC/GOV@EAC, Barbara A. Costopoulos/CONTRACTOR/EAC/GOV@EAC

bcc

Subject Finalizing a Statement of Work for consultants working on a voter fraud and intimidation project

Greetings-

Tom Wilkey and I are working to schedule a series of conference calls with three consultants we have identified to work with us to help us develop the voter fraud and voter intimidation project.

We have tentatively scheduled a series of telephone interviews with these three consultants (all of whom would be hired to work on this project) for August 17, 18 and 19.

Attached you will find a draft of a Statement of Work that has been developed for these consultants. Dan Murphy's contract was used as a template for this.

I've sent this document to you all because I need your edits and corrections to this document, based on your expertise either in contracting, human resources or the subject area.

Since Tom and I will be interviewing the candidates in two weeks, I'm hoping you can react to the document and get to Tom and Nicole your changes by mid-week next week.

I will then ask Nicole to send the draft statement of work to the three candidates, so they might refer to it, prior to our interviews.

Thanks for your input and assistance.



K voterfraud project consultants.doc

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

010327

## **Statement of Work**

### **Assistance with developing an Election Assistance Commission (EAC) Voter Fraud and Voter Intimidation Project**

#### **Background**

Section 241 of HAVA enumerates a number of periodic studies of Election Administrations issues in which the U.S. Election Assistance Commission may elect to engage. Specifically, Section 241b 6 and 7 describe Election administration issues such as:

6. Nationwide statistics and methods of identifying, deterring and investigating voting fraud in election for Federal offices and

7. Identifying, deterring and investigation methods of voter intimidation.

Building on this reference to studies of voter fraud and voter intimidation, the EAC Board of Advisors has indicated a priority interest in further study of this issue to determine how the EAC might respond to it.

The U.S. Election Assistance Commission (EAC) seeks to identify senior-level project consultants to develop various project activities and studies related to U.S. election voter fraud and voter intimidation.

The consultant(s) must of have knowledge of voter fraud and intimidation along with an understanding of the complexities, nuances and challenges which surround the topics. The EAC is particularly interested in candidates with experience in elections, with public policy and the law. The consultant (s) must be able to demonstrate an ability to approach the issues of voter fraud and intimidation in a balanced, nonpartisan fashion.

#### **Duties**

The consultant (s), whose contract would run for the period September-February, 2005, would be responsible for the following.

1. Performing background research, including a state-by state administrative and case law review related to voter fraud and intimidation, and a review of current voter fraud and intimidation activities taking place with key government agencies, civic and advocacy organizations. This review will be summarized and presented to the EAC.

2. Identifying and convening a working group of key individuals and organizations knowledgeable about the topics of voter fraud and intimidation. The list of working group members and the methods used to identify the groups members will be shared with EAC staff prior to the confirmation of the working group. The working group's goals and objectives and meeting agendas will be vetted with key EAC staff.
3. Developing a project scope of work and a project work plan related to voter fraud and intimidation. Based on research into the topics, the deliberations and findings of the working group, and the consultants' understanding of the EAC's mission and agency objectives, develop a draft scope of work and project work plan for the EAC's consideration.
4. Authoring a report summarizing the key findings of this preliminary study of voter fraud and intimidation. The report will also include suggestions for specific activities the EAC may undertake around these topics.

From this initial research and exploration of these topics the consultant (s) may be retained to help oversee follow-on research projects and contracts EAC may develop on the topics of voter fraud and intimidation.

### **Special Considerations**

The Consultants will be required to sign a Non-Disclosure Agreement???

The Consultants are also required to sign a Conflict of Interest declaration???

### **Terms and Conditions**

The period of performance for this consulting contract is six months, with a fixed price ceiling of \$XXXXX for labor. The consultant (s) is expected to work at least 200 hours in performing this work. The EAC estimates that the most efficient distribution of these hours would be as follows: XXXXX. The period of performance and level of effort can be revised in writing by mutual agreement of the EAC and the consultant, as required.

Karen Lynn-Dyson/EAC/GOV

06/21/2005 01:27 PM

To . Raymundo Martinez/EAC/GOV@EAC

cc Gracia Hillman/EAC/GOV@EAC, Paul  
DeGregorio/EAC/GOV@EAC, Thomas R.  
Wilkey/EAC/GOV@EAC, Juliet E.

bcc

Subject Your recommendations for consultants to help frame EAC's  
work on voter fraud and intimidation

Ray-

As was discussed yesterday- you will get me the names of consultants and organizations who you think will be good for us to consider employing as consultants to help us frame our work around voter fraud and intimidation.

Once I have a list of names and resumes, I will work with Tom Wilkey to come up with a recommendation of a consultant or consultants to use on this project.

Thanks for your input.

K

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

010330

Karen Lynn-Dyson/EAC/GOV

05/25/2005 12:55 PM

To Paul DeGregorio/EAC/GOV@EAC, Raymundo  
Martinez/EAC/GOV@EAC

cc Juliet E. Thompson/EAC/GOV@EAC

bcc

Subject Job Description for a Voter Fraud Project Consultant

Commissioners-

Attached please find a first draft of a short job description outlining EAC's expectations for a project consultant on voter fraud.

As you are aware, Julie has shared with me the resume of someone with an interest in the position. Ray has indicated that he participates in a legal list-serve group that has recently focused on voter fraud issues. This list-serve is probably a good place to "advertise" the consultant opportunity.

Let me know your thoughts on next steps. I look forward to getting this project up and running.

Regards-

K



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

010331

**Job Description****U.S. Election Assistance Commission (EAC) Voter Fraud Project Consultant**

The U.S. Election Assistance Commission (EAC) seeks to identify a senior-level project consultant to assist with the oversight and development of a study and possible project examining U.S. election voter fraud.


The consultant must of have a knowledge of voter fraud and an understanding of the complexities, nuances and challenges which surround the topic. The EAC is particularly interested in candidates with experience in elections, with public policy and the law. The consultant must be able to demonstrate an ability to approach the issue of voter fraud in a balanced, nonpartisan fashion.

This consultant, whose contract would run for the period June-November, 2005, would be responsible for conceptualizing a project scope of work around the issue and from that, developing a statement of work for a research project around the topic.

In consultation with EAC staff, EAC Commissioners, and other key EAC stakeholders, the consultant will develop a project plan around voter fraud. The consultant will recommend certain EAC project activities related to voter fraud and will develop a scope of work for an EAC research study on voter fraud. The consultant will oversee and manage various processes related to EAC contracts awarded for work related to voter fraud.

EAC's consultant fees are competitive and are awarded based on the candidates' relevant background and experience.

Margaret Sims /EAC/GOV  
10/06/2005 01:53 PM

To Carol A. Paquette/EAC/GOV@EAC  
cc twilkey@eac.gov, Karen Lynn-Dyson/EAC/GOV@EAC,  
jthompson@eac.gov, Gavin S. Gilmour/EAC/GOV@EAC  
bcc  
Subject Re: Voter Fraud Contract 

Carol:

This updated version is helpful to me but may be problematic for our contractors, who do not have a final contract and (I think) are unaware of the deliverable dates listed in this version. Of course, I did not inform them of these deadlines because I did not have them until today.

Unfortunately, the delay in getting the signed contracts out to our selected contractors has already adversely impacted deliverable dates for the contracts to which I have been assigned. Most contractors cannot hire researchers or commit funds without having a contract in hand, so they have had to delay their work.

--- Peggy

Carol A.

Paquette/EAC/GOV

10/06/2005 01:07 PM

To klynndyson@eac.gov@EAC  
Gavin S. Gilmour/EAC/GOV@EAC, Juliet E. Thompson/EAC/GOV@EAC, Margaret  
cc Sims/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC  
Subj Re: Voter Fraud Contract [Link](#)  
ect

The SOWs that Karen provides below were revised for these contracts. I have attached one of these for your information, since they are identical.

Carol A. Paquette  
U.S. Election Assistance Commission  
(202)566-3125 cpaquette@eac.gov

Karen

Lynn-Dyson/EAC/GOV

To Gavin S. Gilmour/EAC/GOV@EAC  
cc Carol A. Paquette/EAC/GOV@EAC, Juliet E. Thompson/EAC/GOV@EAC, Margaret

010333

10/06/2005 12:28 PM

Sims/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC

Subj Re: Voter Fraud Contract [Link](#)  
ect

Gavin-

A few answers to your questions:

They have not received contracts but did receive a Statement of Work about a month ago.

That Statement of Work does not reference use of Westlaw or a law clerk. I have no recollection of offering such services. I have, however, had many conversations with Tova and Job. At some point I may have said that because the EAC has Westlaw and legal interns, there may or may not be a way from Job and Tova to avail them of these services.

The Statements of Work developed (see draft attached) were used in place of an RFP. Tova and Job are to serve as consultants on a project that may or may not result in their developing an RFP on voting fraud and intimidation for the EAC.

K

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

Gavin S.  
Gilmour/EAC/GOV

To Karen Lynn-Dyson/EAC/GOV@EAC, Margaret Sims/EAC/GOV@EAC, Juliet E.  
Thompson/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC

10/06/2005 11:50 AM

cc Carol A. Paquette/EAC/GOV@EAC  
Subj Voter Fraud Contract  
ect

010334



Karen/Tom,

Peggy held a meeting with voting fraud/intimidation contractors. In this meeting they noted that despite the fact that the contract requires them to perform legal research, they do not have the means to do so (no access to Westlaw, etc..). They noted that in discussions with the two of you, they were told that the EAC would provide them access to West Law and, possibly, a law clerk with office space. None of this is noted in the contract. They claim to have never seen the contract? Do we have their response to our RFP? We will all need to meet to clarify this.

GG

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



Wang consulting contract.doc Job Serebrov sow.doc Tova Wang sow.doc

010335

**EAC CONTRACT #05-66 Consulting Services to Assist EAC  
in the Development of a Voting Fraud and Voter Intimidation Project**

**Background**

Section 241 of HAVA lists a number of election administration topics on which the U.S. Election Assistance Commission may elect to do research. In particular, Section 241(b) (6) and (7) state the two topics of nationwide statistics and methods of identifying, deterring and investigating voting fraud in election for Federal offices; and identifying, deterring and investigating methods of voter intimidation. The EAC Board of Advisors has recommended that the EAC make research on these topics a high priority.

Due to the unavailability of internal staff, EAC needs to obtain consulting services to conduct a preliminary examination of these topics to determine if a larger research project might be warranted. If so, the consultant would also be tasked to define the scope of the project and prepare a Statement of Work for the EAC to use for a subsequent competitive procurement. To promote a balanced and non-partisan approach to this effort, EAC is contracting with two consultants, who will work jointly to perform the work described below and produce the required deliverables.

**Tasks**

1. Develop a comprehensive description of what constitutes voting fraud and voter intimidation in the context of Federal elections. Submit this description to the EAC for review and approval.
2. Using the description developed in Task 1, perform background research, including both Federal and State administrative and case law review, and a summation of current activities of key government agencies, civic and advocacy organizations regarding these topics. Deliver a written summary of this research and all source documentation.
3. In consultation with EAC, identify a working group of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation. Provide the Working Group with the results of Tasks 1 and 2 as background information. Develop a discussion agenda and convene the Working Group with the objective of identifying promising avenues for future research by EAC.
4. Prepare a report summarizing the findings of this preliminary research effort and Working Group deliberations. This report should include any recommendations for future research resulting from this effort.

5. Should the EAC decide to pursue one or more of the Task 4 recommendations, Consultant shall define appropriate project scope(s) and prepare Statement(s) of Work sufficient to issue for competitive procurement.

### **Special Considerations**

Work for Hire. The services performed under the terms of this agreement are considered “work for hire,” and any intellectual property or deliverables, including but not limited to research, policies, procedures, manuals, and other works submitted; or which are specified to be delivered; or which are developed or produced and paid for by EAC, shall be owned exclusively by EAC, including copyright. EAC or its assignees have the exclusive right to reproduce all work products from this agreement without further payment to the Contractor.

Acceptance of Work Product. The EAC Project Manager for this effort is Margaret Sims, EAC Research Specialist, who will review and approve all work.

### **Period of Performance and Compensation**

The period of performance for this contract is six months, with a fixed price ceiling of \$50,000 for labor. The Consultant is expected to work at least 450 hours during this period. The EAC suggests that these hours be distributed evenly over the period so that the Consultant is working approximately 20 hours per week. The period of performance and level of effort can be revised in writing by mutual agreement of the EAC and the consultant, if required.

The Consultant is required to travel to the EAC Washington, D.C. offices on a periodic, as needed basis, throughout the duration of the contract. The Consultant will be reimbursed, at the Federal government rates, for hotel and ground transportation costs, other approved incidental expenses, and per diem costs while working on-site at the EAC offices. A total of \$5,000 has been allocated for reimbursement for travel and other allowable expenses.

### **Invoicing**

Invoices may be submitted monthly in equal payments for labor. Expenses claimed for reimbursement shall be itemized with appropriate receipts provided. Invoices shall be delivered to Ms. Diana Scott, Administrative Officer, U.S. Election Assistance Commission, 1225 New York Avenue, N.W., Suite 1100, Washington DC 20005.

### **Contract Termination**

This contract can be terminated in advance of the current end date by two weeks' notice in writing by either of the parties.

**Deliverables and Timetable**

Deliverable	Due Date
Project work plan	10 days after contract award
Progress reports	monthly
Description of voting fraud and voter intimidation	October 2005
Summary of background research and associated source documentation	January 2006
Convene working group	February 2006
Summary report describing findings and recommendations for future EAC research	March 2006
Statement(s) of Work for future research project(s)	TBD

## **Statement of Work**

### **Assistance with developing an Election Assistance Commission (EAC) Voting Fraud and Voter Intimidation Project**

**(Job Serebrov)**

#### **Background**

Section 241 of HAVA enumerates a number of periodic studies of election administration issues in which the U.S. Election Assistance Commission may elect to engage. In general “On such periodic basis as the Commission may determine, the Commission shall conduct and make available to the public studies regarding the election administration issues described in subsection (b)”

Sections 241(b) (6) and (7) list the following election administration issues:

(6) Nationwide statistics and methods of identifying, deterring and investigating voting fraud in election for Federal offices.

(7) Identifying, deterring and investigating methods of voter intimidation.

Building on this HAVA reference to studies of voting fraud and voter intimidation, the EAC Board of Advisors has indicated that further study of these issues to determine how the EAC might respond to them is a high priority.

The U.S. Election Assistance Commission (EAC) seeks to identify one or more senior-level project consultants to develop various project activities and studies related to voting fraud and voter intimidation affecting Federal elections.

The consultant(s) must of have knowledge of voting fraud and voter intimidation along with an understanding of the complexities, nuances and challenges which surround the topics. The EAC is particularly interested in candidates with experience in elections, with public policy and with the law. The consultant (s) must be able to demonstrate an ability to approach the issues of voting fraud and voter intimidation in a balanced, nonpartisan fashion.

010339

## **Duties**

The consultant(s), whose contract would run for the period September-February, 2005, would be responsible for the following.

1. Identifying what constitutes voting fraud and voter intimidation affecting Federal elections.
2. Performing background research, including Federal and state-by state administrative and case law review related to voting fraud and voter intimidation, and a review of current voting fraud and voter intimidation activities taking place with key government agencies, civic and advocacy organizations. A written summary of this research, and a copy of any source documentation used, will be presented to EAC.
3. Identifying, in consultation with EAC, and convening a working group of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation. The working group's goals and objectives and meeting agendas will be vetted with key EAC staff.
4. Developing a project scope of work and a project work plan related to voting fraud and voter intimidation. The consultants (s) will develop a draft scope of work and project work plan for EAC's consideration based on research into the topics, the deliberations and findings of the working group, and the consultants' understanding of EAC's mission and agency objectives.
5. Authoring a report summarizing the key findings of this preliminary study of voting fraud and voter intimidation. The report will also include suggestions for specific activities that EAC may undertake to address these topics.

From this initial research and exploration of these topics the consultant (s) may be retained to help oversee follow-on research projects and contracts EAC may pursue on the topics of voting fraud and voter intimidation.

## **Special Considerations**

Work for Hire. The services performed under the terms of this agreement are considered "work for hire," and any intellectual property or deliverables, including but not limited to, research, policies, procedures, manuals, and other works submitted; or which are specified to be delivered; or which are developed or produced and paid for by EAC, shall be owned exclusively by EAC, including copyright. EAC or its assignees have the exclusive right to reproduce all work products from this agreement without further payment to the Contractor.

## Terms and Conditions

The period of performance for this consulting contract is six months, with a fixed price ceiling of \$XXXXXX for labor. The consultant (s) is expected to work at least 200 hours in performing this work. The EAC estimates that the most efficient distribution of these hours would be as follows: XXXXX. The period of performance and level of effort can be revised in writing by mutual agreement of the EAC and the consultant, as required.

The Consultant is required to travel to the EAC Washington, D.C. offices on a periodic, as needed basis, throughout the duration of the contract. The Consultant will be reimbursed, at the Federal government rates, for hotel and ground transportation costs, other approved incidental expenses, and per diem costs while working on-site at the EAC offices. An estimated \$XXXXXX has been allocated for reimbursement for travel and other allowable expenses.

## Invoicing

Invoices may be submitted monthly in equal payments for labor. Expenses claimed for reimbursement shall be itemized with appropriate receipts provided. Invoices shall be delivered to Ms. Diana Scott, Administrative Officer, U.S. Election Assistance Commission, 1225 New York Avenue, N.W., Suite 1100, Washington DC 20005.

## Deliverables and Timetable

Deliverable	Due Date
Draft project work plan (Phase I)	ASAP after award
Progress Reports to Contracting Officer's Representative (COR)	Monthly
A written summary of background research on voting fraud and voter intimidation.	TBD
Identifying and convening a working group knowledgeable about voting fraud and voter intimidation.	TBD
Developing a project scope of work and project work plan ( Phase II)	TBD
Summary report describing key findings of this preliminary study of voting fraud and	TBD

voter intimidation	



## **Statement of Work**

### **Assistance with developing an Election Assistance Commission (EAC) Voting Fraud and Voter Intimidation Project**

**(Tova Wang)**

#### **Background**

Section 241 of HAVA enumerates a number of periodic studies of election administration issues in which the U.S. Election Assistance Commission may elect to engage. In general “On such periodic basis as the Commission may determine, the Commission shall conduct and make available to the public studies regarding the election administration issues described in subsection (b)”

Sections 241(b) (6) and (7) list the following election administration issues:

(6) Nationwide statistics and methods of identifying, deterring and investigating voting fraud in election for Federal offices.

(7) Identifying, deterring and investigating methods of voter intimidation.

Building on this HAVA reference to studies of voting fraud and voter intimidation, the EAC Board of Advisors has indicated that further study of these issues to determine how the EAC might respond to them is a high priority.

The U.S. Election Assistance Commission (EAC) seeks to identify one or more senior-level project consultants to develop various project activities and studies related to voting fraud and voter intimidation affecting Federal elections.

The consultant(s) must of have knowledge of voting fraud and voter intimidation along with an understanding of the complexities, nuances and challenges which surround the topics. The EAC is particularly interested in candidates with experience in elections, with public policy and with the law. The consultant (s) must be able to demonstrate an ability to approach the issues of voting fraud and voter intimidation in a balanced, nonpartisan fashion.

## **Duties**

The consultant(s), whose contract would run for the period September-February, 2005, would be responsible for the following.

1. Identifying what constitutes voting fraud and voter intimidation affecting Federal elections.
2. Performing background research, including Federal and state-by state administrative and case law review related to voting fraud and voter intimidation, and a review of current voting fraud and voter intimidation activities taking place with key government agencies, civic and advocacy organizations. A written summary of this research, and a copy of any source documentation used, will be presented to EAC.
3. Identifying, in consultation with EAC, and convening a working group of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation. The working group's goals and objectives and meeting agendas will be vetted with key EAC staff.
4. Developing a project scope of work and a project work plan related to voting fraud and voter intimidation. The consultants (s) will develop a draft scope of work and project work plan for EAC's consideration based on research into the topics, the deliberations and findings of the working group, and the consultants' understanding of EAC's mission and agency objectives.
5. Authoring a report summarizing the key findings of this preliminary study of voting fraud and voter intimidation. The report will also include suggestions for specific activities that EAC may undertake to address these topics.

From this initial research and exploration of these topics the consultant (s) may be retained to help oversee follow-on research projects and contracts EAC may pursue on the topics of voting fraud and voter intimidation.

## **Special Considerations**

Work for Hire. The services performed under the terms of this agreement are considered "work for hire," and any intellectual property or deliverables, including but not limited to, research, policies, procedures, manuals, and other works submitted; or which are specified to be delivered; or which are developed or produced and paid for by EAC, shall be owned exclusively by EAC, including copyright. EAC or its assignees have the exclusive right to reproduce all work products from this agreement without further payment to the Contractor.

010344

## Terms and Conditions

The period of performance for this consulting contract is six months, with a fixed price ceiling of \$XXXXXX for labor. The consultant (s) is expected to work at least 200 hours in performing this work. The EAC estimates that the most efficient distribution of these hours would be as follows: XXXXX. The period of performance and level of effort can be revised in writing by mutual agreement of the EAC and the consultant, as required.

The Consultant is required to travel to the EAC Washington, D.C. offices on a periodic, as needed basis, throughout the duration of the contract. The Consultant will be reimbursed, at the Federal government rates, for hotel and ground transportation costs, other approved incidental expenses, and per diem costs while working on-site at the EAC offices. An estimated \$XXXXXX has been allocated for reimbursement for travel and other allowable expenses.

## Invoicing

Invoices may be submitted monthly in equal payments for labor. Expenses claimed for reimbursement shall be itemized with appropriate receipts provided. Invoices shall be delivered to Ms. Diana Scott, Administrative Officer, U.S. Election Assistance Commission, 1225 New York Avenue, N.W., Suite 1100, Washington DC 20005.

## Deliverables and Timetable

Deliverable	Due Date
Draft project work plan (Phase I)	ASAP after award
Progress Reports to Contracting Officer's Representative (COR)	Monthly
A written summary of background research on voting fraud and voter intimidation.	TBD
Identifying and convening a working group knowledgeable about voting fraud and voter intimidation.	TBD
Developing a project scope of work and project work plan ( Phase II)	TBD
Summary report describing key findings of this preliminary study of voting fraud and	TBD

voter intimidation	

Thomas R. Wilkey/EAC/GOV  
10/06/2005 11:57 AM

To Gavin S. Gilmour/EAC/GOV@EAC, Karen  
Lynn-Dyson/EAC/GOV, Margaret Sims/EAC/GOV, Juliet E.  
Thompson/EAC/GOV  
cc Carol A. Paquette/EAC/GOV

bcc

Subject Re: Voter Fraud Contract

Please do

---

Sent from my BlackBerry Wireless Handheld  
Gavin S. Gilmour

**From:** Gavin S. Gilmour  
**Sent:** 10/06/2005 11:50 AM  
**To:** Karen Lynn-Dyson; Margaret Sims; Juliet Thompson; Thomas Wilkey  
**Cc:** Carol Paquette  
**Subject:** Voter Fraud Contract

Karen/Tom,

Peggy held a meeting with voting fraud/intimidation contractors. In this meeting they noted that despite the fact that the contract requires them to perform legal research, they do not have the means to do so (no access to Westlaw, etc..). They noted that in discussions with the two of you, they were told that the EAC would provide them access to West Law and, possibly, a law clerk with office space. None of this is noted in the contract. They claim to have never seen the contract? Do we have their response to our RFP? We will all need to meet to clarify this.

GG

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


010347

**Deliberative Process  
Privilege**



Gracia Hillman/EAC/GOV  
03/19/2007 03:58 PM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc Caroline C. Hunter/EAC/GOV@EAC, "Davidson, Donetta"  
<ddavidson@eac.gov>, jlayson@eac.gov, Karen  
Lynn-Dyson/EAC/GOV@EAC,  
bcc

Subject Re: Revised Voter ID statement with Eagleton comments to  
paragraph 2 

I think Comm Rodriguez makes a good point about the document needing a different title. Also, it is my understanding that Jeannie has not yet edited the draft and therefore has not yet considered layout, subtitles, typos, etc.

I have raised three concerns/questions in Footnotes 2 and 4 and in the bullet that address the working group meeting.

Lastly, I have lost track of where we are with consideration of releasing the full report. The draft document does not do that, however I thought there was a suggestion that we should consider releasing the full report?



Voter ID edited 31507- changes accepted with Eagleton comments.doc

010348

## EAC Statement on Future Study of Voter Identification Requirements

### Background

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. In May 2005, EAC contracted with Rutgers, the State University of New Jersey through its Eagleton Institute of Politics ("Contractor") to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the Contractor was asked to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and to recommend various policies that could be applied to these approaches.

The Contractor performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Drawing on its nationwide review and legal analysis of state statutes and regulations for voter identification, the contractor compared states with similar voter identification requirements and drew conclusions based on comparing turnout rates among states for one election – November 2004. For example, the turnout rate in 2004 in states that required the voter to provide a photo identification document<sup>1</sup> was compared to the turnout rate in 2004 in states with a requirement that voters give his or her name in order to receive a ballot. Contractor used two sets of data to estimate turnout rates: 1) voting age population estimates,<sup>2</sup> and 2) individual-level survey data from the November 2004 Current Population Survey conducted by the U.S. Census Bureau.<sup>3</sup>

The Contractor presented testimony summarizing its findings from this statistical and data analysis at the February 8, 2007 public meeting of the U.S. Election Assistance Commission. The Contractor's testimony, its summary of voter identification requirements by State, its summary of court decisions and literature on voter identification and related issues, an annotated bibliography on voter identification issues and its summary of state statutes and regulations affecting voter identification are attached to this report and can also be found on EAC's website, [www.eac.gov](http://www.eac.gov).

**Comment [GH1]:** In Footnote #2:  
Regarding the estimate of non-citizens.  
Perhaps this could be clarified to say  
whether the % of non-citizens was in the  
VAP or of the US population as whole. It  
is not clear to me.

### EAC Recommendations for further study and next steps

<sup>1</sup> In 2004, three of the states that authorized election officials to request photo identification allowed voters to provide a non-photo ID and still vote a regular ballot and two others permitted voters who lacked photo ID to vote a regular ballot by swearing and affidavit.

<sup>2</sup> The July 2004 estimates for voting age population were provided by the U.S. Census Bureau. Because these numbers include non-citizens, the Contractor reduced the numbers by the same percentage the U.S. Census Bureau estimated were non-citizens in 2000. Estimates of voting age population include persons who are not registered to vote.

<sup>3</sup> The Current Population Survey is based on reports from self-described registered voters who also describe themselves as U.S. citizens.

EAC finds the Contractor's summary of States' voter identification requirements and its summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements, to be a first step in the Commission's efforts to study the possible impact of voter identification requirements.

However, EAC has concerns regarding the data, analysis, and statistical methodology the Contractor used to analyze voter identification requirements to determine if these laws have an impact on turnout rates. The Contractor used a single election's statistics to conduct this analysis. The two sets of data came from the Census Bureau and included persons who were not eligible to and did not vote. The first analysis using averaged county-level turnout data from the U.S. Census showed no statistically significant correlations. So, a second analysis using a data set based upon the Current Population Survey (which was self-reported and showed a significantly higher turnout rate than other conventional data) was conducted that produced only some evidence of correlation between voter identification requirements and turnout. Furthermore, the initial categorization of voter identification requirements included classifications that actually require no identification at all, such as "state your name." The research methodology and the statistical analysis used by the Contractor were questioned by independent working and peer review groups comprised of social scientists and statisticians. The Contractor and the EAC agree that the report raises more questions than provides answers.<sup>4</sup> Thus, EAC will not adopt the Contractor's study and will not issue an EAC report based upon this study. EAC, however, is releasing the data and analysis conducted by Contractor.

**Comment [GH2]:** There is no page 109 in the Eagleton Testimony that was presented on 2/8/07, so I am not clear what document the public is being directed to see.

EAC will engage in a longer-term, more systematic review of voter identification requirements. Additional study on the topic will include more than one Federal election cycle, additional environmental and political factors that effect voter participation, and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004.

EAC will undertake the following activities:

- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements which require a voter to state this or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identify.
- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors. EAC will use some of the information collected by Eagleton as well as additional data from the states to develop this baseline.

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<sup>4</sup> See EAC Public Testimony, February 8, 2007, page 109.



- Convene, by mid-2007, a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include methodology, specific issues to be covered in the study and timelines for completing an EAC study on voter identification.
- Study how voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures, and fraud, study the effects of voter identification provisions, or the lack thereof, on early, absentee and vote-by-mail voting. Included in this study will be an examination of the relationship between voter turnout and other factors such as race and gender.
- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.

Comment (GH3): Is it realistic that this meeting will be convened by June 30? Perhaps we should say "Convene in 2007 a working

DRAFT

**Deliberative Process  
Privilege**



Elieen L. Kuala/EAC/GOV  
03/19/2007 02:15 PM


To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
bcc  
Subject Fw: Short introduction to the Eagleton Voter ID report

Donetta asked me to forward you these materials on Voter ID

Elle L.K. Kuala  
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— Forwarded by Elieen L. Kuala/EAC/GOV on 03/19/2007 02:14 PM —

Karen Lynn-Dyson/EAC/GOV  
01/26/2007 11:36 AM

To Donetta L. Davidson/EAC/GOV@EAC, Juliet E.  
Hodgkins/EAC/GOV@EAC  
cc  
Subject Re: Short introduction to the Eagleton Voter ID report 

Chair Davidson and Julie-

Attached are the two draft documents I have created related to the Voter Identification Study.

I look forward to our 2:00 PM conversation.



EAC Voter ID Report.doc New EAC Voter ID Report.doc

Karen Lynn-Dyson  
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010352

## **EAC Report on Voter Identification**

### **Executive Summary**

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. HAVA Section 303 (b) mandates that first time voters who register by mail are required to show proof of identity before being allowed to cast a ballot. The law prescribes certain requirements concerning this section, but also leaves considerable discretion to the States for its implementation. The EAC sought to examine how these voter identification requirements were implemented in the 2004 general elections and to prepare guidance for the states on this topic.

In May 2005 EAC entered into a contract with the Eagleton Institute of Politics at Rutgers, the State University of New Jersey and the Moritz College of Law at the Ohio State University to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the contractor was to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and recommend various policies that could be applied to these approaches.

The contractor also performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Using two sets of data, aggregate turnout data at the county level for each state, and reports of individual voters collected in the November 2004 Current Population Survey conducted by the U.S. Census Bureau, the contractor found the overall relationship between the stringency of ID requirements and turnout to be fairly small, but statistically significant.

Based on The Eagleton Institute year-long inquiry into voter identification requirements EAC will implement one or more of the following recommendations:

- Further research into the connection between voter ID requirements and the number of ballots cast and counted;
- A state-by-state review of the impact that voter ID requirements are having on voter's participation;
- A state-by-state review of the relationship between ballot access and ballot security and the number of voters whose ballot is counted;
- A state-by-state review of time periods between voters casting of provisional ballots and the time allowed to return with an ID as well as a review of acceptable forms of identification other than photo ID.

## **Introduction**

This study was conducted at a time in which considerable attention is being paid to the issue of voter identification. Proponents of stricter identification requirements base their case on improving the security of the ballot by reducing opportunities for multiple voting or voting by those who are not eligible. The goal is to ensure that only those legally entitled to vote do so, and do so only once at each election. Opponents of stricter ID requirements seek to ensure board access to a regular ballot. There is a fear that some voters -- racial and ethnic minorities, young and elderly voters-- lack convenient access to required ID documents, or that these voters may be fearful of submitting their ID documents for official scrutiny.

This report considers policy issues associated with the voter ID debate. It examines the relationships between voter ID requirements and voter turnout along with the various policy implications of the issue.

## **Methodology of the Study**

In May 2005, under contract with the EAC, the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at the Ohio State University undertook a review and legal analysis of state statutes, regulations and litigation concerning voter identification and provisional voting as well as a statistical analysis of the relationship of various requirements for voter identification to turnout in the 2004 election. The contract also included research and study related to provisional voting requirements. These research findings were submitted and reviewed by the EAC as a separate study.

The Eagleton Institute of Politics gathered information on the voter identification requirements in 50 states and the District of Columbia for 2004. Based on interpretations of state statutes and supplemental information provided through conversations with state election officials, state ID requirements were divided into five categories, with each category of identification more rigorous than the one preceding: stating name, signing name, signature match, presenting an ID, and the most rigorous, presenting a government photo ID. The Eagleton Institute also categorized and identified each state according to maximum and minimum identification requirements. Maximum requirements refer to the most that voters may be asked to do or show at the polling place. Minimum requirements refer to the most that voters can be required to do or show in order to cast a regular ballot. These definitions and the subsequent state-by-state analysis of voter identification requirements omitted those cases in which a particular voter's eligibility might be questioned using a state's voter ballot challenge process.

Two data sets were used to apply the criteria (variables) that were developed above: aggregate voter turnout data at the county level which was gathered from the EAC's 2004 Election Day Survey and; reports of individual voters collected through the November 2004 Current Population Survey administered by the U.S. Census Bureau. Use of EAC

survey data and Census Bureau CPS data provided a way to cross-check the validity of the analysis and conclusions that would be drawn regarding the effect of voter ID requirements on voter turnout.

## **Study Oversight and Methodological Review**

A draft of the Eagleton Institute report and findings on voter identification requirements was critiqued by a peer review group convened by the Eagleton Institute. A second review of the study's research and statistical methodologies was conducted using a group of research and statistical experts independently convened by the EAC. Comments and insights of the peer review group members were taken into account in the drafting of a study report although there was not unanimous agreement among the individual reviewers regarding the study findings and recommendations.

### **The Eagleton Institute of Politics Peer Review Group**

R Michael Alvarez, California Institute of Technology  
John C. Harrison, University of Virginia School of Law  
Martha E. Kropf, University of Missouri-Kansas City  
Daniel H. Lowenstein, University of California at Los Angeles  
Timothy G. O'Rourke, Salisbury University  
Bradley Smith, Capital University Law School  
Tim Storey, National Conference of State Legislatures  
Peter G. Verniero, former Attorney General, State of New Jersey

### **The EAC Peer Review Group**

Jonathan Nagler, New York University  
Jan Leighley, University of Arizona  
Adam Berninsky, Massachusetts Institute of Technology

## **Summary of the Research**

### **Maximum and Minimum Voter Identification Requirements**

In order to analyze what, if any, correlation may exist between a State's voter identification requirements and voter turnout, the Eagleton Institute first coded a state according to how demanding its voter ID requirement was. The voter ID requirement, ranked from lowest to highest was as follows: stating one's name, signing one's name, matching one's signature to a signature on file, providing a form of identification and, providing a form of photo identification. Several possible caveats to this ranking system were noted. For all states which had photo identification requirements in 2004, voters

without a photo ID were permitted to cast a regular ballot after signing an affidavit regarding his or her identity and eligibility. These voters were also allowed to provide other forms of ID. The researchers also noted that while each state may be assigned to a category, that categorization may not reflect the actual practice related to voter identification that may or may not have taken place at many polling places.

Research performed for this study by the Moritz College of Law found that states had five different types of **maximum** identification requirements in place on Election Day 2004. For the purposes of this study a requirement that called for a signed affidavit or the provision of other forms of ID was considered the most rigorous or the “maximum” requirement. At the polling place voters were asked to:

- State his or her name (10 states)
- Sign his or her name (13 states and the District of Columbia)
- Sign his or her name, which would be matched to a signature on file (seven states)
- Provide a form of identification that did not necessarily include a photo (15 states)
- Provide a photo identification (five states)

Using the same criteria, but applying them as **minimum** rather than maximum criteria for voting the research showed: **(check this section- it doesn't really make sense)**

- State his or her name (12 states)
- Sign his or her name (14 states and the District of Columbia)
- Matching the voter's signature to the signature on file (6 states)
- Provide a non-photo identification (14 states)
- Swear by an affidavit (4 states)

The results of the research are summarized in Table 1.

Election laws in several states offer exceptions to these ID requirements if potential voters lack the necessary form of identification. Laws in these states set a minimum requirement that a voter may be required to satisfy in order to vote using a regular ballot. In 2004 none of the states required photo identification as a minimum standard for voting with a regular ballot. That is, voters who lacked photo ID were allowed to vote in all states, if he or she was able to meet another ID requirement.

### **The Relationship of Voter Identification Requirements to Voter Turnout**

A statistical analysis examining the variation in turnout rates based on the type of voter ID required by each state in the 2004 election was conducted using two sets of data: 1) aggregate turnout data at the county level for each state (compiled by the Eagleton Institute of Politics-**footnote about how they collected the data**) and 2) individual level survey data included in the November 2004 Current Population Survey (CPS), conducted by the U.S. Census Bureau.

The analysis looked at the voter identification requirements as a continuous variable and as a series of discrete variables. As a continuous variable the maximum voter identification requirements were ranked according to how demanding they were judged to be, with photo identification considered to be the most demanding requirement (**what about affidavit????**). Used as discrete variable, the statistical analysis considered stating the name as the least demanding ID requirement; the other ID requirements were then compared to that requirement.

### **Aggregate-level statistical analysis**

The statistical analysis performed by the Eagleton Institute of Politics found that when averaging across counties in each state, statewide turnout is negatively correlated to maximum voter identification requirements ( $r = -.30$ ,  $p$  less than .05). When a statistical analysis is performed on the other minimum voter ID requirements (with affidavit being the most demanding requirement), the correlation between voter identification and turnout is negative, but not statistically significant ( $r = -.20$ ,  $p = .16$ ). These findings would suggest that the relationship between turnout rates and minimum requirements may not be linear.

The aggregate data show that 60.9 percent of the estimated citizen voting age population voted in 2004. Taking into account the maximum requirements, an average of 64.6 percent of the voting age population turned out in states that required voters to state their names, compared to 58.1 percent in states that required photo identification. A similar trend was found when analyzing minimum ID requirements: Sixty-three percent of the voting age population turned out in states requiring voters to state their name, compared to 60.1 percent in states that required an affidavit from voters. This analysis showed there was not a clear, consistent linear relationship between turnout and minimum identification requirements.

**(insert table 2- Variation in 2004 State Turnout Based on Voter Identification Requirements)**

### **Multivariate models of analysis using aggregate-level data**

The Eagleton Institute of Politics performed an additional analysis that would estimate the effects of voter identification requirements, that took into account the electoral context in 2004 and, the demographic characteristics of the population in each county. The model also considers such variables as whether or not the county was 1) in a presidential battleground state, 2) if the county was in a state with a competitive race for government and/or the U.S. Senate, 3) the percentage of voting-age population in each county that was Hispanic or African-American 4) the percentage of county residents age 65 and older, 5) the percent of county residents below the poverty line, and 6) the number of days between each state's registration deadline and the election.

The results of this statistical modeling and subsequent analysis indicated that the stricter voter ID requirements of matching a voter's signature to a signature on file or with presenting a non-photo identification are associated with lower voter turnout when compared to voter turnout in states that required voters to simply state his or her name. These conclusions were reached when variables 1-5 listed above were held constant.

Other results from the Eagleton Institute analysis of stricter voter identification requirements showed that:

- Increased voter turnout was associated with whether the county was in a battleground state or whether that state have a competitive race for governor and/or U.S.Senate.
- A slight negative effect on turnout was correlated with those state's with a longer time between the closing date for registration and the election.
- Voter turnout declined as the percentage of Hispanics in a county's population increased.
- Higher turnout (and a positive correlation) was associated with a higher percentage of senior citizens and household median income.
- The percentage of African-Americans in the county did not have a significant effect on turnout.

The Eagleton Institute analysis of minimum voter identification requirements showed that:

- A relationship between minimum voter ID requirements and turnout was not demonstrated.
- Battleground states and those with competitive state races had a significant and positive correlation to turnout.
- A higher percentage of senior citizens in the county and higher household median income were associated with higher turnout and showed a positive correlation to turnout.
- The percentage of Hispanics in the county was associated with reduced turnout.
- The increased number of days between the closing date for registration was associated with reduced turnout.

The analysis of these aggregate, county-level data showed a significant correlation, between maximum voter identification requirements (a signature match and non-photo



identification, but not a photo identification) and lower turnout in the 2004 election. This correlation was also significant when compared to the minimum voter ID requirement of the voter simply having to state his or her name.

### **Multivariate analysis using individual level turnout data**

This analysis which used November 2004 Current Population Survey data conducted by the U.S. Census Bureau is based on reports from self-described registered voters. Not included in the analysis are persons who said they are not registered to vote, those who said they cast absentee ballots and those who said they were not U.S. citizens. The CPS' Voting and Registration Supplement consisted of interviews, either by telephone or in person, with 96,452 respondents. ( why is the N is Table 3 54,973?)

In addition to the five maximum voter identification requirements (enumerated on page XX) the analysis performed included other socioeconomic, demographic and political factors that could have influenced turnout in the 2004 election. These independent variables were analyzed against the dependent variable of whether or not the respondent said he or she voted in the November 2004 election.

In this analysis three of the voter identification requirements were shown to have a statistically significant correlation with whether or not the survey respondents said they have voted in 2004. Lower voter turnout was associated with:

- those states with maximum voter requirements to sign one's name,
- those states with maximum voter requirements to provide a non-photo ID or photo ID, or
- those states with the minimum voter requirement to swear by an affidavit in order to cast a ballot without the state-required identification

Increased voter turnout showed:

- A significant correlation with the competitiveness of the Presidential race **(explain)**.
- African-American voters were more likely than white or other voters to say they have voted.
- Income and marital status were positive predictors of voting **(high income or low income, single, married?)**,
- Women were more likely to say they voted than men.
- Those ages 45 to 64 and 65 and older were more likely to say they voted than those ages 18 to 24.
- Those who earned a high school diploma, attended some college, graduated from college or attended graduate school were more likely to say they have voted than those who had not finished high school.

## **Analysis of the predicted probability of voter turnout using the individual data**

Using this Census Bureau Current Population Survey data the Eagleton Institute of Politics performed an additional statistical analysis in which they calculated the effect of various independent variables on the probability that a respondent said he or she voted. This analysis, involving 54,973 voters cross-tabulated the maximum and minimum voter identification requirements in each state with the five levels of voting requirements: stating name, signing name, matching the signature, a non-photo ID, photo-ID signing an affidavit. The results of these **Predicted Probability of Voter Turnout for all Voter** tabulations are summarized in Table 3 below:

From this analysis, the Eagleton Institute of Politics found that three of the voter identification requirements (**which ones?**) exerted a statistically significant, negative effect on whether or not the CPS survey respondents said they had voted in 2004. That is, compared to states that require voters to only state their name, those states which require the voter to sign his or her name, to provide a non-photo ID, or to provide a photo ID as a maximum requirement, were shown to have a negative influence on turnout. Also, a negative influence on turnout was found when comparing those states that require voters to only state their name, as compared to those states which have as a minimum requirement for verifying voter ID, signing an affidavit.

This probability analysis also found that the competitiveness of the presidential race had a significant effect on turnout as well as some significant demographic and educational effects. For the entire voting population signature, non-photo identification and photo identification requirements were all associated with lower turnout rates compared to the requirements that voter simply state their names. The analysis further found that:

- The predicted probability that Hispanics would vote in states that required non-photo identification was about 10 percentage points lower than in states where Hispanic voters gave their names and that Hispanic voters were less likely to vote in states that required non-photo identification as opposed to only having to state one's name.
- Hispanic voters were 10 percent less likely to vote in non-photo identification states compared to states where voters only had to give their name. African American and Asian-American voters were about 6 percent less likely, while white voters were about 2 percent less likely.
- Asian-American voters were 8.5 percent less likely to vote in states that required non-photo identification compared to states that require voters to state their names under the maximum requirements, while they were 6.1

percent less likely to vote where non-photo identification was the minimum requirement.

- For those with less than a high school diploma, the probability of voting was 5.1 percent lower in states that required photo identification as the maximum requirement and 7 percent lower in those states that required an affidavit as the minimum requirement. These percentages were arrived at when comparing these states to ones that use as a minimum or maximum requirement, the voter to merely state his or her name.

### **Conclusions from the statistical analysis**

The statistical analysis found that as voter identification requirements vary, so do voter turnout rates. These findings were borne out through analyses conducted on aggregate data and individual-level data. There were, however, some distinctions found depending upon whether or not the state's particular voter identification requirements were set as minimums or maximums.

- The overall relationship between voter identification requirements and turnout for all registered voters was found to be small but statistically significant.
- Using the aggregate data the signature match and the non-photo identification requirement correlated with lower turnout. The photo identification requirement did not have a statistically significant effect.
- In the individual-level data the signature, no-photo identification and photo identification requirement were all correlated with lower turnout when compared to the requirements that voter simply state their names.
- Across various demographic groups (African-Americans, Asian-Americans and Hispanics) a statistically significant relationship was found between the non-photo identification requirement and voter turnout

### **Caveats to the Analysis**

The Eagleton Institute for Politics and the EAC make note that while this analysis is a good beginning, significant questions remain regarding the relationship between voter identification requirements and turnout. These analyses are unable, for example, to capture how or why identification requirements might lower turnout. That is, is it because voters are aware of the identification requirements and stay away from the polls because of them? Alternatively, do the requirements result in some voters being turned away when they cannot provide the identification, or must cast a provisional ballot?

Knowing more about the “on the ground” experience of voters regarding various identification requirements will guide state and local level policy makers in their efforts to educate voters about the requirements. These experiences could also help instruct election judges on how to handle questions and possible disputes over voter identification requirements.

## **Public Policy and Administrative Considerations**

Voter Identification, often described as the critical step in protecting the integrity of the ballot, is a process which can ensure that the potential voter is eligible and, if eligible, is permitted to cast one ballot. A voting system that requires voters to produce an identification document or documents may prevent the ineligible from voting, but also may prevent the eligible from casting a ballot.

Evaluating the effect of different voter identification regimes can be most effective when based on clear legal, equitable and practical standards. The questions outlined below might point policymakers to standards that can be created around voter identification requirements.

1. Is the voter ID system designed on the basis of valid and reliable empirical studies the will address concerns regarding certain types of voting fraud?
2. Does the voter ID requirement comply with the letter and spirit of the Voting Rights Act?
3. How effective is the voter ID requirement on increasing the security of the ballot and can it be coordinated with the statewide voter registration database?
4. How feasible is the voter identification requirement? That is, are there administrative or budgetary considerations or concerns? How easy or difficult will it be for pollworkers who must administer the requirement?
5. How cost effective is the voter ID system? That is, what are the monetary and non-monetary costs to the voter and to the state for implementing the ID system?
6. If voter ID requirements are shown to reduce voter turnout (generally, or with some particular groups), what possible steps should be taken to ameliorate this problem?

## **Recommendations and Next Steps**

As the Federal agency charged with informing election officials and the public about various issues related to the administration of elections EAC believes it should, in its capacity as a supporter of elections research, undertake additional study into the topic of voter identification requirements and the implementation of them in the following ways:

- Longitudinal studies of jurisdictions that have changed voter identification requirements.

- State-by-state and precinct-level analyses that will examine the correlations between various voter identification requirements and voter registration and turnout
- Alternative forms and methods for verifying a voter's identity.
- Continuing research into the connection between various voter identification requirements and the number of ballots cast and counted
- A continuing state-by-state update on changes to voter identification requirements.
- Continued collection of state-by-state data which will help examine the impact that voter identification requirements are having on the number of voters who are casting provisional ballots because of voter identification verification issues.

Appendix A: Summary of Voter Identification Requirements by State

Appendix B: Court Decisions and Literature on Voter Identification and Related Issue Court Decisions

Appendix C: Annotated Bibliography on Voter Identification Issues

**DRAFT**

## EAC Statement on Future Study of Voter Identification Requirements

### Background

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. HAVA Section 303 (b) mandates that first time voters who register by mail are required to show proof of identity before being allowed to cast a ballot. The law prescribes certain requirements concerning this section, but also leaves considerable discretion to the States for its implementation. The EAC sought to examine how these voter identification requirements were implemented in the 2004 general elections and to prepare guidance for the states on this topic.

In May 2005 EAC entered into a contract with the Eagleton Institute of Politics at Rutgers, the State University of New Jersey and the Moritz College of Law at the Ohio State University to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the contractor was to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and recommend various policies that could be applied to these approaches.

The contractor also performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Using two sets of data-- aggregate turnout data at the county level for each state, and reports of individual voters collected in the November 2004 Current Population Survey conducted by the U.S. Census Bureau-- the contractor arrived at a series of findings, conclusions and subsequent recommendations for further research into the topic which are detailed in the attached report.

### EAC Recommendations for further study and next steps

EAC finds this initial review of States' voter identification requirements, state laws and litigation surrounding the implementation of voter identification requirements an important beginning step in its consideration of voter identification requirements. From this study and compilation of data EAC considers it advisable to engage in a longer-term, systematic review of voter identification requirements and is recommending that at a minimum the agency engage on an ongoing basis in:

- A state-by-state review, reporting and tracking of voter identification requirements.
- A review and study of how voter identification requirements are implemented and how these practices may vary from state law and statute.

From this ongoing review and tracking EAC can determine the feasibility and advisability of further research and study into how voter identification requirements have had an impact over time on factors such as voter turnout and voter registration.

EAC believes that the findings from this initial study of voter identification requirements are helping inform additional studies it is conducting on a variety of related topics. The EAC study on first time voters who have registered to vote by mail and several forthcoming studies related to voter registration processes will provide necessary additional data to help inform discussions and debate related to ballot access and ballot security. The EAC also anticipates that follow-on study it does related to election crimes and various aspects of voting accessibility will also help inform and guide these ballot security and ballot access discussions.

Finally, EAC is likely to consider implementing one or more of the following research studies that will serve to augment the work begun by the Eagleton Institute of Politics:

- A study of how certain voter identification provisions that have been in place for two or more Federal elections have had an impact on voter turnout and voter registration figures;
- A research study which examines, in greater detail, the relationship between race and voter turnout, and race and methods for registering voters;
- Studies on the inter-relationship between various voter registration processes, voter turnout and number of election crimes reported or litigated;
- Publication of a series of case studies which detail a particular state's or jurisdiction's experiences with various voter identification and voter registration regimes;
- A policy paper or memorandum exploring the alternatives to current voter identification processes and regimes.



Gracia Hillman /EAC/GOV  
03/30/2007 06:26 PM

To Jeannie Layson/EAC/GOV@EAC; Donetta L. Davidson/EAC/GOV@EAC, Rosemary E. Rodriguez/EAC/GOV@EAC, Caroline C. cc Thomas R. Wilkey/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC

bcc

Subject Re: Voter ID update

Too early yet.

Sent from my BlackBerry Wireless Handheld

---

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

**From:** Jeannie Layson

**Sent:** 03/30/2007 04:19 PM EDT

**To:** Donetta Davidson; Rosemary Rodriguez; Caroline Hunter; Gracia Hillman

**Cc:** Thomas Wilkey; Karen Lynn-Dyson; Juliet Hodgkins

**Subject:** Voter ID update

Commissioners,

Absolutely no activity/interest since my last update. Eagleton says no one other than NPR has contacted them. I'll let you know if anything changes. Otherwise, have a good weekend.

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


010366



Rosemary E.  
Rodriguez/EAC/GOV  
03/30/2007 04:14 PM

To Jeannie Layson/EAC/GOV@EAC, Donetta L.  
Davidson/EAC/GOV@EAC, Caroline C.  
Hunter/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC  
cc Thomas R. Wilkey/EAC/GOV@EAC, Karen  
Lynn-Dyson/EAC/GOV@EAC, Juliet E.  
Hodgkins/EAC/GOV@EAC

bcc

Subject Re: Voter ID update 

Woo hoo!!!

Jeannie Layson

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

**From:** Jeannie Layson  
**Sent:** 03/30/2007 04:19 PM EDT  
**To:** Donetta Davidson; Rosemary Rodriguez; Caroline Hunter; Gracia Hillman  
**Cc:** Thomas Wilkey; Karen Lynn-Dyson; Juliet Hodgkins  
**Subject:** Voter ID update

Commissioners,  
Absolutely no activity/interest since my last update. Eagleton says no one other than NPR has contacted them. I'll let you know if anything changes. Otherwise, have a good weekend.

Jeannie Layson  
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Washington, DC 20005  
Phone: 202-566-3100  
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010367

Jeannie Layson /EAC/GOV  
03/30/2007 04:19 PM

To ddavidson@eac.gov, Rosemary E.  
Rodriguez/EAC/GOV@EAC, Caroline C.  
Hunter/EAC/GOV@EAC, ghillman@eac.gov  
cc twilkey@eac.gov, klynndyson@eac.gov,  
jthompson@eac.gov

bcc

Subject Voter ID update

Commissioners,  
Absolutely no activity/interest since my last update. Eagleton says no one other than NPR has contacted them. I'll let you know if anything changes. Otherwise, have a good weekend.

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010368

Bryan Whitener /EAC/GOV  
03/30/2007 02:40 PM

To  
cc  
bcc Juliet E. Hodgkins/EAC/GOV  
Subject EAC to Launch Comprehensive Study of Voter ID Laws,  
3-30-07

## **For Immediate Release**

March 30, 2007

### Contact:

Jeannie Layson  
Bryan Whitener  
(202) 566-3100

## **EAC to Launch Comprehensive Study of Voter ID Laws**

**WASHINGTON** - The U.S. Election Assistance Commission (EAC) has voted unanimously to launch a comprehensive study focused on voter identification laws after concluding that initial research it received in a report, which focused on only one election cycle, was not sufficient to draw any conclusions. The Commission declined to adopt the report, but is releasing all of the data to the public.

The report and the research, conducted by Rutgers, the State University of New Jersey, through its Eagleton Institute of Politics, are available at [www.eac.gov](http://www.eac.gov). The Commission's statement regarding its decision is attached.

"After careful consideration of the initial research, the Commission decided this important issue deserves a more in-depth research approach, and that it should be examined beyond only one election cycle," said EAC Chair Donetta Davidson. "The Commission and our contractor agree that the research conducted for EAC raises more questions than provides answers."

EAC's strategy for moving forward is based upon an examination of the initial research and the testimony and discussion about this research project at the Commission's February 8, 2007 public meeting. For more information about the public meeting, including the agenda, transcript, and testimony go to [http://www.eac.gov/Public\\_Meeting\\_020807.asp](http://www.eac.gov/Public_Meeting_020807.asp).

EAC's future research on this topic will be expanded to include more than one federal election, environmental and political factors, and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004. EAC's comprehensive research approach will undertake the following activities:

\* Conduct an ongoing state-by-state review, reporting and tracking of voter identification

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requirements.

\* Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation. EAC will use some of the information collected by the contractor as well as additional data from the states to develop this baseline.

\* In 2007, convene a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification.

\* Study how voter identification provisions that have been in place for two or more federal elections have impacted voter turnout, voter registration figures, and fraud.

\* Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements.

EAC is an independent bipartisan commission created by the Help America Vote Act of 2002 (HAVA). It is charged with administering payments to states and developing guidance to meet HAVA requirements, implementing election administration improvements, adopting voluntary voting system guidelines, accrediting voting system test laboratories and certifying voting equipment and serving as a national clearinghouse and resource of information regarding election administration. The four EAC commissioners are Donetta Davidson, chair; Rosemary Rodriguez, Caroline Hunter and Gracia Hillman.

###

## **EAC Statement on Study of Voter Identification Requirements**

### **Background**

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. In May 2005, EAC contracted with Rutgers, the State University of New Jersey through its Eagleton Institute of Politics ("Contractor") to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the Contractor was asked to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and to recommend various policies that could be applied to these approaches.

The Contractor performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Drawing on its nationwide review and legal analysis of state statutes and regulations for voter identification, the contractor compared states with similar voter identification requirements and drew conclusions based on comparing turnout rates among states for one election - November 2004. For example, the turnout rate in 2004 in states that required the voter to provide a photo identification document\* was compared to the turnout rate in 2004 in states with a requirement that voters give his or her name in order to

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receive a ballot. Contractor used two sets of data to estimate turnout rates: 1) voting age population estimates\* and 2) individual-level survey data from the November 2004 Current Population Survey conducted by the U.S. Census Bureau.\*

The Contractor presented testimony summarizing its findings from this statistical and data analysis at the February 8, 2007 public meeting of the U.S. Election Assistance Commission. The Contractor's testimony, its summary of voter identification requirements by State, its summary of court decisions and literature on voter identification and related issues, an annotated bibliography on voter identification issues and its summary of state statutes and regulations affecting voter identification are attached to this report and can also be found on EAC's website, [www.eac.gov](http://www.eac.gov).

### **EAC Declines to Adopt Draft Report**

EAC finds the Contractor's summary of States' voter identification requirements and its summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements, to be a first step in the Commission's efforts to study the possible impact of voter identification requirements.

However, EAC has concerns regarding the data, analysis, and statistical methodology the Contractor used to analyze voter identification requirements to determine if these laws have an impact on turnout rates. The study only focused on one federal election. An analysis using averaged county-level turnout data from the U.S. Census showed no statistically significant correlations. A second analysis using a data set based upon the Current Population Survey (which was self-reported and showed a significantly higher turnout rate than other conventional data) was conducted that produced some evidence of correlation between voter identification requirements and turnout. The initial categorization of voter identification requirements included classifications that, actually, require no identification documentation, such as "state your name." The research methodology and the statistical analysis used by the Contractor were questioned by an EAC review group comprised of social scientists and statisticians. The Contractor and the EAC agree that the report raises more questions than provides answers and both agree the study should have covered more than one federal election.\* Thus, EAC will not adopt the Contractor's study and will not issue an EAC report based upon this study. All of the material provided by the Contractor is attached.

\*1 In 2004, three of the states that authorized election officials to request photo identification allowed voters to provide a non-photo ID and still vote a regular ballot and two others permitted voters who lacked photo ID to vote a regular ballot by swearing and affidavit.

\*2 The July 2004 estimates for voting age population were provided by the U.S. Census Bureau. These data did not differentiate between citizens and non-citizens; because these numbers include non-citizens, the Contractor applied the percentage of citizens included in voting age population statistics in 2000 to the U.S. Census Bureau estimated voting age population in 2004. Thus, 2004 estimates of voting age population include persons who are not registered to vote.

\*3 The Current Population Survey is based on reports from self-described registered voters who also describe themselves as U.S. citizens.

\*4 See Transcript of EAC Public Meeting, February 8, 2007, page 109.

### **Further EAC Study on Voter Identification Requirements**

EAC will engage in a longer-term, more systematic review of voter identification requirements. Additional study on the topic will include more than one Federal election cycle, additional environmental and political factors that effect voter participation and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004.

EAC will undertake the following activities:

\* Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements which require a voter to state his or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identify.

\* Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors. EAC will use some of the information collected by Eagleton as well as additional data from the states to develop this baseline.

\* In 2007, convene a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include methodology, specific issues to be covered in the study and timelines for completing an EAC study on voter identification.

\* Study how voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures, and fraud. Included in this study will be an examination of the relationship between voter turnout and other factors such as race and gender. Study the effects of voter identification provisions, or the lack thereof, on early, absentee and vote-by-mail voting.

\* Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.

###

010372

Jeannie Layson /EAC/GOV  
03/30/2007 02:04 PM

To ddavidson@eac.gov, Rosemary E.  
Rodriguez/EAC/GOV@EAC, Caroline C.  
Hunter/EAC/GOV@EAC, ghillman@eac.gov  
cc twilkey@eac.gov, klyndyson@eac.gov,  
jthompson@eac.gov

bcc

Subject Voter ID update

Commissioners,

The press release, the statement, and the draft report has been posted on our site. The press release is being distributed, and is on the way to all of you and the entire EAC staff. The following activities have occurred:

1. Press release was sent in advance to Eagleton.
2. I called Wendy Weiser of the Brennan Center and sent her the info.
3. I called and sent the info to Ray M. and Paul D.
4. I sent the info to Tom Hicks and Adam A.
5. Tom called Dan Tokaji, Dan Oak, and Rep. Hinchey's office.
6. Karen gave the three EAC experts a heads up.
7. Comm. Rodriguez was interviewed by NPR (the only outlet that showed any interest), as was Eagleton. Eagleton told NPR they are glad we are expanding the scope. Interview will run on affiliates today at approximately 5:44 pm EST.
8. I offered interviews to USA Today, WaPo, NYT, and AP but none were interested.
9. I have kept Eagleton apprised of our activities.

I'll continue to keep you apprised as the day goes on, and please let me know if there's anyone else you'd like me to contact.

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

010373

Jeannie Layson /EAC/GOV  
03/30/2007 08:28 AM

To jthompson@eac.gov  
cc  
bcc  
Subject voter id

History

This message has been replied to

This is going out today (finally). Is there anyone on the Hill I need to reach out to, like that guy who calls you a million times a day or someone on Hinchey's staff?

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

010374



Thomas R. Wilkey/EAC/GOV  
03/29/2007 11:52 AM

To Donetta L. Davidson/EAC/GOV@EAC, Gracia  
Hillman/EAC/GOV@EAC, Caroline C.  
Hunter/EAC/GOV@EAC, Rosemary E.  
cc Sheila A. Banks/EAC/GOV@EAC, Elieen L.  
Kuala/EAC/GOV@EAC, Juliet E.  
Hodgkins/EAC/GOV@EAC, Jeannie  
bcc

Subject Withdrawl of Tally Vote Memo of March 28, 2007, Draft Study  
Of Voter Identification Requirements

Commissioners;

The tally vote memo issued on March 28, 2007 concerning the Draft Study of Identification Requirements  
is hereby withdrawn.

A new memo will be re-issued to you shortly.

Tom Wilkey

Thomas R. Wilkey  
Executive Director  
US Election Assistance Commission  
1225 New York Ave, NW - Suite 1100  
Washington, DC 20005  
(202) 566-3109 phone  
TWilkey@eac.gov

010375

Thomas R. Wilkey/EAC/GOV  
03/28/2007 12:11 PM

To Donetta L. Davidson/EAC/GOV@EAC, Gracia  
Hillman/EAC/GOV@EAC, Caroline C.  
Hunter/EAC/GOV@EAC, Rosemary E.  
cc DeAnna M. Smith/EAC/GOV@EAC, Jeannie  
Layson/EAC/GOV@EAC, Karen  
Lynn-Dyson/EAC/GOV@EAC

bcc

Subject Tally Vote on Voter Identification Draft Report

Commissioners;

Please be advised that I am withdrawing the Tally Vote on the Voter Identification Draft Report which closes at 1PM today.

The Tally Vote memo will be re-issued later this afternoon and will close within 48 Hours after issuing.

Tom Wilkey

Thomas R. Wilkey  
Executive Director  
US Election Assistance Commission  
1225 New York Ave, NW - Suite 1100  
Washington, DC 20005  
(202) 566-3109 phone  
TWilkey@eac.gov

010376

Thomas R. Wilkey/EAC/GOV  
03/27/2007 05:51 PM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
bcc  
Subject Fw: Voter ID Statement

History

This message has been replied to.

What do you think

Thomas R. Wilkey  
Executive Director  
US Election Assistance Commission  
1225 New York Ave, NW - Suite 1100  
Washington, DC 20005  
(202) 566-3109 phone  
TWilkey@eac.gov

— Forwarded by Thomas R. Wilkey/EAC/GOV on 03/27/2007 05:49 PM —



Gracia Hillman/EAC/GOV  
03/27/2007 01:40 PM

To Thomas R. Wilkey/EAC/GOV@EAC  
cc  
Subject Voter ID Statement

Is the final statement to be a signed or unsigned document?

-----  
Sent from my BlackBerry Wireless Handheld

010377

**Deliberative Process  
Privilege**



"Rosemary Rodriguez"

03/27/2007 02:20 PM

To jlayson@eac.gov, ddavidson@eac.gov, chunter@eac.gov,  
ghillman@eac.gov, rrodriguez@eac.gov  
cc twilkey@eac.gov, klynndyson@eac.gov,  
jthompson@eac.gov, bwhitener@eac.gov, ekuala@eac.gov,  
stephanie.wolson@gmail.com, sbanks@eac.gov,  
bcc

Subject Re: FOR YOUR APPROVAL: Voter ID PR and Roll Out  
Strategy

I think we should be prepared to answer a question that may go something like: *What are your specific objections/concerns with the methodologies utilized by Eagleton?*

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

From: "jlayson@eac.gov" <jlayson@eac.gov>  
To: ddavidson@eac.gov; [REDACTED] chunter@eac.gov; ghillman@eac.gov  
Cc: twilkey@eac.gov; klynndyson@eac.gov; jthompson@eac.gov; bwhitener@eac.gov;  
ekuala@eac.gov; [REDACTED] sbanks@eac.gov; bbenavides@eac.gov  
Sent: Tuesday, March 27, 2007 2:02:01 PM  
Subject: FOR YOUR APPROVAL: Voter ID PR and Roll Out Strategy

Commissioners,

I have incorporated your edits, so please take a look at the latest drafts of both documents and let me know if you have further changes. I recommend making this public on Thursday. If possible, please let me know by the end of the day on Wed. if you have additional edits. Press release edits were made in the first two paragraphs, including backing off calling this a "multi-year study," and a more direct description of the action you took -- you declined to adopt the report. The only edit in the memo is new language in the Q&A that points out that the \$500K included work for both prov. voting and voter ID.

Thank you, and let me know if you have any questions.

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

---

8:00? 8:25? 8:40? Find a flick in no time  
with the Yahoo! Search movie showtime shortcut.

010378

Jeannie Layson /EAC/GOV  
03/27/2007 02:02 PM

To ddavidson@eac.gov, rosemaryrod2003@yahoo.com,  
Caroline C. Hunter/EAC/GOV@EAC, ghillman@eac.gov  
cc twilkey@eac.gov, klynndyson@eac.gov,  
jthompson@eac.gov, bwhitener@eac.gov, Eileen L.  
Kuala/EAC/GOV@EAC, stephanie.wolson@gmail.com,  
bcc

Subject FOR YOUR APPROVAL: Voter ID PR and Roll Out Strategy

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I have incorporated your edits, so please take a look at the latest drafts of both documents and let me know if you have further changes. I recommend making this public on Thursday. If possible, please let me know by the end of the day on Wed. if you have additional edits. Press release edits were made in the first two paragraphs, including backing off calling this a "multi-year study," and a more direct description of the action you took -- you declined to adopt the report. The only edit in the memo is new language in the Q&A that points out that the \$500K included work for both prov. voting and voter ID.

Thank you, and let me know if you have any questions.

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Washington, DC 20005  
Phone: 202-566-3100



[www.eac.gov](http://www.eac.gov) VoterIDRollOutProposal REV.doc VoterIDTallyVotePRDRAFT3-27.doc

010379



*Deliberative Process  
Privilege*

**March 27, 2007**

**MEMORANDUM**

**To:** Commissioners Davidson, Rodriguez, Hunter and Hillman  
**Fr:** Jeannie Layson  
**Cc:** Tom Wilkey, Julie Hodgkins, Karen Lynn-Dyson, Bryan Whitener  
**RE:** Communications Strategy for Release of Voter ID Tally Vote Results

In anticipation of the release of the results of the tally vote and all of the information provided by the contractor, I suggest taking the following steps to effectively communicate your decision. Taking this approach will help us control how the information is distributed, how it is framed, and how to focus the discussion on the positive outcome of your decision.

The bottom line is that we want to try our best to make this a story about EAC's decision to conduct a thorough and in-depth look into the subject of voter ID, and we have decided to release the preliminary research. We do not want this to evolve into a storyline about squabbling between EAC and Eagleton.

I have provided a suggested overall message that reflects the action taken, as well as questions we should be prepared to answer.

Please let me know if you have any questions about my proposal, and I look forward to your input.

010380

**Deliberative Process  
Privilege**

**PRELIMINARY ACTIVITIES**

Prior to the completion of the tally vote and the subsequent release of the results and the contractor's materials, I suggest taking the following steps:

1. Discuss EAC's decision with the contractors in advance of distributing the press release and discussions with reporters so that they have an opportunity to respond and also so they will be well informed and prepared to discuss the facts with reporters or others who will most likely contact them.
2. Prior to release of EAC's decision, reach out to key Hill staffers who have been following this issue, including those members who have requested this data in the past. This should include staffers for the House Appropriations Committee Subcommittee on Financial Services and General Government since the Committee requested this information a few weeks ago. It should be made clear to committee staffers that the tally vote is the culmination of a directive made by the EAC chair in Feb. that the agency move forward to complete this project. These staffers should also be included on our list of key stakeholders.
3. Executive director should determine whether there are other key stakeholders that should be made aware of this decision from EAC personally, not from a press release. Possible candidates include members of Congress, NASS, individual secretaries of state, DOJ, and NASED.

**PUBLIC ROLL-OUT**

Once the above preliminary steps have been completed, EAC Communications will:

1. Post the press release and the related data on the website, with a link from the home page.
2. Prior to release of the tally vote decision and related data, call Richard Whitt of USA Today, Will Lester of AP, Chris Drew of the NYT, and Zach Goldfarb of the WaPo and let them know we are about to release the information. Offer interviews with the chair or other commissioners.
3. Send the press release (with a link to the research) to all recipients in the media database. This includes national dailies, as well as wire services such as the Associated Press.
4. Send the press release (with a link to the research) to all recipients in the stakeholder database. The database consists of election officials, advocates, and other interested parties, including representatives from organizations who have been critical of EAC, including VoteTrust USA and the People for the American Way.

010381

## **Deliberative Process Privilege**

### **OVERALL MESSAGE**

Voter identification at the polling place is an important issue that affects voters in jurisdictions throughout the country. Understanding that this issue deserves a more in-depth approach, EAC has decided to move forward with a thorough, multi-year research project that will examine everything from turnout to voter education.

The findings of the preliminary research, which focused exclusively on the 2004 general elections, was insufficient to provide meaningful conclusions and raises more questions than provides answers. Future research will be expanded to include more than one election cycle and will examine environmental and political factors including, the many changes in state laws and regulations that have occurred since the 2004.

### **Q&A**

We should be prepared to answer the following questions:

#### **Q: Why not release the draft fraud report, too?**

A: EAC issued a final Voting Fraud and Voter Intimidation Report in December 2006, which included recommendations adopted by the Commission to conduct a comprehensive assessment of all claims, charges and prosecutions of voting crimes.

In the case of the voter ID report, the Commission chose not to adopt a final report because it was determined that there was insufficient data to provide meaningful conclusions.

#### **Q: You cited concerns with the contractor's methodology and analysis. Didn't your contract with Eagleton include specific language regarding these issues?**

A: Yes, but in retrospect, perhaps we could have done a better job articulating how we wanted this research to be conducted.

#### **Q: During the course of the project, did you see draft reports? If so, why didn't these concerns get addressed at that time?**

A: We did receive progress reports, and when we identified areas of concern, we discussed it with the contractor. It was because of these concerns that EAC decided to revisit the methodologies used so that we could provide a more in-depth look at the subject matter.

#### **Q: During the course of the contract, did you ever express these concerns with Eagleton?**

A: Yes, and as a result of these conversations, EAC decided to revisit the methodologies used so that we could provide a more in-depth look at the subject matter.

#### **Q: You spent more than \$500,000 for a report the Commission doesn't think should be adopted – so basically you're flushing a lot of money down the drain. Is this a wise use of taxpayer dollars?**

A: There is value in what Eagleton provided, and this included work they did for us regarding provisional voting. As a result of the research on provisional voting, EAC



**Deliberative Process  
Privilege**

issued a set of best practices last fall. The voter ID data will help provide a baseline for how to move forward. And even though their research raised many questions, contemplating the answers to those questions has informed us on how to move forward.

**Q: If you were not satisfied with the final product, why did you pay for it?**

A: We adhered to the terms of the contract.

**Q: EAC received this data in June of last year. What has taken so long to bring it to a conclusion?**

A: This is an important issue, one that deserves careful deliberation and a thorough approach. Yes, we like to get things done quickly, but it is more important to take the time to get things right.

010383

## **Deliberative Process Privilege**

### **TRANSITION PHRASES**

To stay on message and avoid being dragged into discussions about anything other than the action taken, employ the following phrases and transition back to the overall message.

#### ***Overall Message***

Voter identification at the polling place is an important issue that affects voters in jurisdictions throughout the country. Understanding that this issue deserves a more in-depth approach, EAC has decided to move forward with a thorough, multi-year research project that will examine everything from turnout to voter education.

The findings of the preliminary research, which focused exclusively on the 2004 general elections, were insufficient to provide meaningful conclusions and raises more questions than provides answers. Future research will be expanded to include more than one election cycle and will examine environmental and political factors, including the many changes in state laws and regulations that have occurred since 2004.

#### ***Bridge/Transition Phrases***

- What's really important here...
- The bottom line is...
- The point is...
- We have a responsibility to...
- I'll let others speak to that, but let me tell you what's important to EAC...
- Everyone agrees that...



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

## EAC to Launch Comprehensive Study of Voter ID Laws

For Immediate Release  
DATE, 2007

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

WASHINGTON – The U.S. Election Assistance Commission (EAC) has voted unanimously to launch a comprehensive study focused on voter identification laws. The initial research on voter identification laws are available at [www.eac.gov](http://www.eac.gov), but because this research focused exclusively on the 2004 general elections, included populations that are not eligible to vote, and did not take into account influential factors such as the competitiveness of campaigns, it was insufficient to provide meaningful conclusions and thus the Commission declined to adopt a report based on it.

“New voter identification laws have been enacted recently, and the Commission began working to determine the possible impact of these new laws,” said EAC Chair Donetta Davidson. “After careful consideration of the initial research conducted by our contractor, the Commission decided this important issue deserves a more in-depth research approach and that it should be examined beyond only one election cycle. The bottom line is that the research raises more questions than provides answers.

EAC’s strategy for moving forward is based upon an examination of the initial research and the testimony and discussion about this research project at the Commission’s February 8, 2007, public meeting. For more information about the public meeting agenda, transcript, and testimony go to [http://www.eac.gov/Public\\_Meeting\\_020807.asp](http://www.eac.gov/Public_Meeting_020807.asp).

EAC’s future research on this topic will be expanded to include more than one election cycle and to examine environmental and political factors and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004. EAC’s comprehensive research approach will undertake the following activities:

- Convene a working group of advocates, academics, research methodologists and election officials to discuss EAC’s next study of voter identification. Topics to be discussed include methodology, specific issues to be covered in the study and timelines for completing an EAC study on voter identification.
- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states’ requirements that require a voter to state his or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identity.
- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors. EAC will use some of the information already collected as well as additional data from the states to develop this baseline.

010385

- Study how voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures and fraud. Included in this study will be an examination of the relationship between voter turnout and other factors such as race and gender. Study the effects of voter identification provisions, or the lack thereof, on early, absentee and vote-by-mail voting.
- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.


EAC is an independent bipartisan commission created by the Help America Vote Act of 2002 (HAVA). It is charged with administering payments to states and developing guidance to meet HAVA requirements, implementing election administration improvements, adopting voluntary voting system guidelines, accrediting voting system test laboratories and certifying voting equipment and serving as a national clearinghouse and resource of information regarding election administration. The four EAC commissioners are Donetta Davidson, chair; Rosemary Rodriguez, Caroline Hunter and Gracia Hillman.

###

**DRAFT**

**Deliberative Process  
Privilege**

Karen Lynn-Dyson/EAC/GOV  
03/21/2007 01:43 PM

To Jeannie Layson/EAC/GOV@EAC  
cc jthompson@eac.gov  
bcc  
Subject Re: voter ID press release 

It looks fine to me.

I do have a pet peeve about using impacted as a verb rather than a noun ( bullet four). I'm about the only one who seems to have a problem with it, however.

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

Jeannie Layson /EAC/GOV

03/21/2007 12:14 PM

To jthompson@eac.gov, klyndyson@eac.gov  
cc  
Subject voter ID press release

Let me know what you think of this...

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



[www.eac.gov](http://www.eac.gov) VoterIDreport.doc

010387

Jeannie Layson /EAC/GOV  
03/21/2007 12:14 PM

To jthompson@eac.gov, klynndyson@eac.gov  
cc  
bcc  
Subject voter ID press release

Let me know what you think of this...

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



[www.eac.gov](http://www.eac.gov) VoterIDreport.doc

010388



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

**Deliberative Process  
Privilege**

## **EAC to Launch Comprehensive Study of Voter ID Laws** *Releases Initial Research*

For Immediate Release  
March 23, 2007

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

**WASHINGTON** – The U.S. Election Assistance Commission (EAC) has voted unanimously to launch a comprehensive, multi-year study on the impact of voter identification laws in the states based upon initial efforts that focused on the 2004 election cycle. The Commission also voted to provide all of the initial research conducted by its consultant, Rutgers, the State University of New Jersey, through its Eagleton Institute of Politics. The information is available at [www.eac.gov](http://www.eac.gov).

“Many new voter identification laws have been enacted recently, and the Commission began working to determine the impact of these new laws,” said EAC Chair Donetta Davidson. “However, after careful consideration of the initial research conducted by our contractor, the Commission decided this important issue deserves a more in-depth research approach and that it should be examined beyond only one election cycle.”

EAC’s strategy for moving forward is based upon an examination of the initial research and the testimony and discussion of this research at the Commission’s February 8, 2007 public meeting. For more information about the meeting agenda, transcript, and testimony go to [http://www.eac.gov/Public\\_Meeting\\_020807.asp](http://www.eac.gov/Public_Meeting_020807.asp).

EAC’s future research on this topic will be expanded to include more than one election cycle, environmental and political factors, and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004. EAC comprehensive research approach will undertake the following activities:

- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states’ requirements which require a voter to state this or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identify.
- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors. EAC will use some of the information collected by Eagleton as well as additional data from the states to develop this baseline.
- Convene a working group of advocates, academics, research methodologists and election officials to discuss EAC’s next study of voter identification. Topics to be discussed include methodology, specific issues to be covered in the study and timelines for completing an EAC study on voter identification.
- Study how voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures, and fraud, study the effects of voter identification provisions, or the lack thereof, on early, absentee and vote-by-mail voting. Included in this study will be an examination of the relationship between voter turnout and other factors such as race and gender.

010389

- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.


EAC is an independent bipartisan commission created by the Help America Vote Act of 2002 (HAVA). It is charged with administering payments to states and developing guidance to meet HAVA requirements, implementing election administration improvements, adopting voluntary voting system guidelines, accrediting voting system test laboratories and certifying voting equipment and serving as a national clearinghouse and resource of information regarding election administration. The four EAC commissioners are Donetta Davidson, chair; Rosemary Rodriguez, Caroline Hunter and Gracia Hillman.

###

010390



Karen Lynn-Dyson/EAC/GOV  
03/21/2007 09:13 AM

To Jeannie Layson/EAC/GOV@EAC  
cc jthompson@eac.gov  
bcc  
Subject Re: voter ID materials 

Hi-

Have given DeAnna the notebook with the complete set delivered to EAC on June 28th.

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

Jeannie Layson/EAC/GOV

03/21/2007 08:27 AM

To ktlyndyson@eac.gov, jthompson@eac.gov  
cc  
Subject voter ID materials

In anticipation of the release of this material, I need to get a complete set of what we are planning to release. Karen -- could you send that to me? Thanks.

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

010391

Karen Lynn-Dyson/EAC/GOV

To Juliet E. Hodgkins/EAC/GOV@EAC

03/20/2007 01:31 PM

cc twilkey@eac.gov

bcc

Subject Forwarding e-mail exchanges on the Voter ID statement

When you get a moment please send me copies of the various e-mail exchanges related to the voter ID statement ( between EAC staff and the Commissioners), that I may have missed since late last week.


I'll have these to file in my records.

Many thanks

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

010392

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

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

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

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

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


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

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

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

010393

Juliet E. Hodgkins/EAC/GOV  
03/30/2007 10:24 AM

To Jeannie Layson/EAC/GOV@EAC  
cc  
bcc  
Subject Re: voter id 

Dale Oak - House Approps majority staff. Just tell him that I asked youi to call. DaAnna has his contact info.

I assume you will send to all oversight and approps staff anyway??

-----  
Sent from my BlackBerry Wireless Handheld

---

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


**From:** Jeannie Layson  
**Sent:** 03/30/2007 08:28 AM EDT  
**To:** Juliet Hodgkins  
**Subject:** voter id

This is going out today (finally). Is there anyone on the Hill I need to reach out to, like that guy who calls you a million times a day or someone on Hinchey's staff?

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

010394

Juliet E. Hodgkins/EAC/GOV  
03/20/2007 05:07 PM

To Jeannie Layson/EAC/GOV@EAC  
cc  
bcc  
Subject Re: voter id stuff 

That's fine

-----  
Sent from my BlackBerry Wireless Handheld

---

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


**From:** Jeannie Layson  
**Sent:** 03/20/2007 05:12 PM EDT  
**To:** Juliet Hodgkins  
**Subject:** voter id stuff

They want me to add a line that says "The material Eagleton provided is attached." And then they will be ready to take a tally vote. I wasn't sure where you were with the last round of edits, so do you want to finish this up in the a.m.?

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

010395

Juliet E. Hodgkins/EAC/GOV  
03/27/2007 05:45 PM

To Thomas R. Wilkey/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Voter ID Statement 

My thoughts...it would have more impact if it were signed.

-----  
Sent from my BlackBerry Wireless Handheld  
Thomas R. Wilkey  
----- Original Message -----

**From:** Thomas R. Wilkey  
**Sent:** 03/27/2007 05:51 PM EDT  
**To:** Juliet Hodgkins  
**Subject:** Fw: Voter ID Statement

What do you think

Thomas R. Wilkey  
Executive Director  
US Election Assistance Commission  
1225 New York Ave, NW - Suite 1100  
Washington, DC 20005  
(202) 566-3109 phone  
TWilkey@eac.gov

----- Forwarded by Thomas R. Wilkey/EAC/GOV on 03/27/2007 05:49 PM -----



Gracia Hillman/EAC/GOV  
03/27/2007 01:40 PM

To Thomas R. Wilkey/EAC/GOV@EAC  
cc  
Subject Voter ID Statement

Is the final statement to be a signed or unsigned document?

-----  
Sent from my BlackBerry Wireless Handheld

010396

Juliet E.  
Thompson-Hodgkins/EAC/G  
OV

04/28/2006 02:41 PM

To Thomas R. Wilkey/EAC/GOV@EAC  
cc  
bcc  
Subject Fw: Voter ID Paper --Final Draft

The hole or dearth of common sense grows!

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

----- Forwarded by Juliet E. Thompson-Hodgkins/EAC/GOV on 04/28/2006 02:45 PM -----

Karen Lynn-Dyson/EAC/GOV

04/28/2006 12:44 PM

To "Tom O'neill" [REDACTED]

cc [REDACTED]

Subject Re: Voter ID Paper --Final Draft [REDACTED]

Tim, Tom, John, et.al--

The EAC has identified three academics who are going to serve as peer reviewers of the Eagleton Voter ID paper and research.

They are Jonathan Nagler of New York University, Jan Leighley, University of Arizona, and Adam Berinsky of MIT.

They are ready to review the documents as soon as they are available.

I would like to them one week to review the material and then have a joint conference call on **Thursday, May 11**, in which we would all have an opportunity to discuss the research methodology and statistical analysis, along with general comments and suggestions.

If you are able to get to me the paper and the supporting data analysis, I will distribute to the documents ASAP.

Also let me know, if you would, your availability on May 11 to do this conference all.

I anticipate that it will last approximately 90 minutes.

Regards-

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

010397

tel:202-566-3123

010398



Juliet E. Hodgkins/EAC/GOV  
09/15/2006 09:52 AM

To "Tom Wilkey" <twilkey@eac.gov>  
cc  
bcc  
Subject Fw: Call to discuss release of Rutgers Voter ID report

FYI -- also my opinion is that we have not released this to anyone and that includes Hill staff.

-----  
Sent from my BlackBerry Wireless Handheld  
Juliet E. Hodgkins  
----- Original Message -----

**From:** Juliet E. Hodgkins  
**Sent:** 09/15/2006 09:41 AM  
**To:** Karen Lynn-Dyson  
**Subject:** Re: Call to discuss release of Rutgers Voter ID report

I am not available until after noon.

-----  
Sent from my BlackBerry Wireless Handheld  
Karen Lynn-Dyson  
----- Original Message -----

**From:** Karen Lynn-Dyson  
**Sent:** 09/15/2006 09:31 AM  
**To:** Juliet Hodgkins; Thomas Wilkey  
**Cc:** Bert Benavides  
**Subject:** Call to discuss release of Rutgers Voter ID report

Julie and Tom-

Commissioner Hillman has asked me to meet with each of you this morning regarding the sharing of the information of this report with Hill staffers.

Could we have a call at 10:30 or 11:00 this morning to reach a decision on how to proceed with this request?

I understand this is a time-sensitive matter that will need to be resolved by early afternoon.

Thanks

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

010399

**Deliberative Process  
Privilege**

Juliet E. Hodgkins/EAC/GOV  
03/16/2007 01:39 PM

To: Caroline C. Hunter/EAC/GOV@EAC  
cc  
bcc  
Subject: Re: Voter ID statement

I don't know the status of Eagleton's review of that paragraph, but I will check on it.

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

Caroline C. Hunter/EAC/GOV  
03/16/2007 11:43 AM

To: Juliet E. Hodgkins/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, "rosemaryrod2003"  
cc: Thomas R. Wilkey/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC, [REDACTED]  
Subject: Re: voter ID statement

This looks good to me, thank you Julie. Two things- did Eagleton approve the 2nd graph and I made a minor change to the 4th bullet as a point of clarification.

Juliet E. Hodgkins

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

**From:** Juliet E. Hodgkins  
**Sent:** 03/16/2007 09:41 AM EDT  
**To:** Donetta Davidson; Gracia Hillman; Caroline Hunter; rosemaryrod2003@yahoo.com  
**Cc:** Thomas Wilkey; Jeannie Layson  
**Subject:** Voter ID statement

Commissioners,

Attached below are two versions of the Voter ID statement. One shows the track changes and the other shows the document having accepted all of those changes (so that it would be easier to read). Jeannie and Tom have both taken a look at this document and we think that it captures what we discussed on Wednesday.

Please take a look and let me know if this meets with your understanding of what we discussed.

[attachment "Voter ID edited 31507- track changes.doc" deleted by Caroline C. Hunter/EAC/GOV]  
[attachment "Voter ID edited 31507- changes accepted.doc" deleted by Caroline C. Hunter/EAC/GOV]

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission

010400

1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

010401

**Deliberative Process  
Privilege**

Juliet E. Hodgkins/EAC/GOV  
03/16/2007 01:42 PM

To Karen Lynn-Dyson/EAC/GOV@EAC  
cc  
bcc  
Subject What is the status of Eagleton's review

Commissioner Hunter wanted to know if Eagleton has approved the text in the 2nd paragraph of the ID statement. Please advise.

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

010402

**Deliberative Process  
Privilege**



Juliet E.  
Thompson-Hodgkins/EAC/G  
OV

02/13/2006 11:31 AM

To Karen Lynn-Dyson/EAC/GOV@EAC

cc

bcc

Subject EAgleton Comments

Karen,

I have reviewed the Eagleton final report and have a couple of questions for clarification:

1. On page 8, in the paragraph after the bulleted information, they list "high mobility" as a factor for the effective operation of provisional voting factors. There is no previous mention of this as a factor. What research do they have to back up naming this as a factor?
2. On page 10, line 2, the sentence begins "A rough estimate"? I have no idea what they are trying to say here. Is it that they are trying to compare the number of provisional ballots actual counted to the estimate that MIT made of lost ballots in 2000? If so, then they need to consider in making this statement whether the MIT survey would be influenced by the onset of statewide voter registration databases and interim measures that have been instituted by election officials that would improve the quality of the voter registration list and thus limit the need for provisional ballots.
3. On page 13, second bullet, do they literally mean that the state should provide poll workers training? Most of this training is provided in actuality by the local election jurisdiction (county, municipality). Are they deviating from the current practice?

I have many other comments that are more appropriately directed to the Commissioners in considering what has been provided by Eagleton in terms of what they desire to make "guidance" or "best practices".

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

010403

Bryan Whitener /EAC/GOV  
12/07/2006 04:46 PM

To Juliet E. Hodgkins/EAC/GOV@EAC, Gavin S.  
Gilmour/EAC/GOV@EAC  
cc  
bcc  
Subject FYI - Tova Wang back & forth from yesterday

— Forwarded by Bryan Whitener/EAC/GOV on 12/07/2006 04:44 PM —

Bryan Whitener /EAC/GOV  
12/06/2006 06:55 PM

To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL  
cc  
Subject RE: EAC to Assess 2006 Election; Decide on Voting System  
Certification Program & Election Crimes Report

12/07/06 - Agenda (revised): Public Meeting

"Tova Wang" <wang@tcf.org>



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

To bwhitener@eac.gov  
cc  
Subject RE: EAC to Assess 2006 Election; Decide on Voting System  
Certification Program & Election Crimes Report

What is the proposal?

Tova Andrea Wang, Democracy Fellow  
**The Century Foundation**  
1333 H Street, NW, Washington, D.C. 20005  
(202) 741-6263

Visit our Web site, [www.tcf.org](http://www.tcf.org), for the latest news, analysis, opinions, and events.

---

**From:** bwhitener@eac.gov [mailto:bwhitener@eac.gov]  
**Sent:** Wednesday, December 06, 2006 6:06 PM  
**To:** wang@tcf.org  
**Subject:** RE: EAC to Assess 2006 Election; Decide on Voting System Certification Program & Election Crimes Report

Only that they will consider and vote tomorrow.

010404

Karen Lynn-Dyson/EAC/GOV

05/25/2005 12:55 PM

To Paul DeGregorio/EAC/GOV@EAC, Raymundo  
Martinez/EAC/GOV@EAC

cc Juliet E. Thompson/EAC/GOV@EAC

bcc

Subject Job Description for a Voter Fraud Project Consultant

Commissioners-

Attached please find a first draft of a short job description outlining EAC's expectations for a project consultant on voter fraud.

As you are aware, Julie has shared with me the resume of someone with an interest in the position. Ray has indicated that he participates in a legal list-serve group that has recently focused on voter fraud issues. This list-serve is probably a good place to "advertise" the consultant opportunity.

Let me know your thoughts on next steps. I look forward to getting this project up and running.

Regards-

K



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

010405

**Job Description****U.S. Election Assistance Commission (EAC) Voter Fraud Project Consultant**

The U.S. Election Assistance Commission (EAC) seeks to identify a senior-level project consultant to assist with the oversight and development of a study and possible project examining U.S. election voter fraud.

The consultant must of have a knowledge of voter fraud and an understanding of the complexities, nuances and challenges which surround the topic. The EAC is particularly interested in candidates with experience in elections, with public policy and the law. The consultant must be able to demonstrate an ability to approach the issue of voter fraud in a balanced, nonpartisan fashion.

This consultant, whose contract would run for the period June-November, 2005, would be responsible for conceptualizing a project scope of work around the issue and from that, developing a statement of work for a research project around the topic.

In consultation with EAC staff, EAC Commissioners, and other key EAC stakeholders, the consultant will develop a project plan around voter fraud. The consultant will recommend certain EAC project activities related to voter fraud and will develop a scope of work for an EAC research study on voter fraud. The consultant will oversee and manage various processes related to EAC contracts awarded for work related to voter fraud.

EAC's consultant fees are competitive and are awarded based on the candidates' relevant background and experience.



Thomas R. Wilkey/EAC/GOV  
09/26/2005 06:14 PM

To Gracia Hillman/EAC/GOV@EAC, Paul  
DeGregorio/EAC/GOV@EAC, Raymundo  
Martinez/EAC/GOV@EAC, Paul  
cc Juliet E. Thompson/EAC/GOV@EAC, Karen  
Lynn-Dyson/EAC/GOV@EAC

bcc

Subject Eagleton Draft

We have received and are in the process of reviewing a draft of the Eagleton Report.  
This is to be considered an internal working document and should not be released to anyone without the  
approval of the Commissioners.

Thank You  
Tom Wilkey

Thomas R. Wilkey  
Executive Director  
US Election Assistance Commission  
1225 New York Ave, NW - Suite 1100  
Washington, DC 20005  
(202) 566-3109 phone  
TWilkey@eac.gov

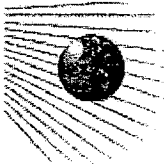
010407

Bert A. Benavides/EAC/GOV  
03/02/2006 02:46 PM

To Nicole Mortellito/CONTRACTOR/EAC/GOV@EAC  
cc Adam Ambrogi/EAC/GOV@EAC, Amie J.  
Sherrill/EAC/GOV@EAC, DeAnna M.  
Smith/EAC/GOV@EAC, Donetta L.  
bcc  
Subject Re: Eagleton close-out meeting

Re April 3rd Eagleton meeting: Tom is holding this time for Julie who may be scheduling a House briefing. The other held date for the House briefing is April 5.

Nicole Mortellito/CONTRACTOR/EAC/GOV



Nicole  
Mortellito/CONTRACTOR/EA  
C/GOV  
03/02/2006 01:16 PM

To Paul DeGregorio/EAC/GOV@EAC, Raymundo  
Martinez/EAC/GOV@EAC, Donetta L.  
Davidson/EAC/GOV@EAC, Gracia  
Hillman/EAC/GOV@EAC, Juliet E.  
Thompson-Hodgkins/EAC/GOV@EAC, Thomas R.  
Wilkey/EAC/GOV@EAC  
cc Karen Lynn-Dyson/EAC/GOV@EAC, Amie J.  
Sherrill/EAC/GOV@EAC, Bert A.  
Benavides/EAC/GOV@EAC, Adam  
Ambrogi/EAC/GOV@EAC, Sheila A.  
Banks/EAC/GOV@EAC, Elieen L. Collver/EAC/GOV@EAC,  
DeAnna M. Smith/EAC/GOV@EAC  
Subject Eagleton close-out meeting

A close out meeting with the folks from Rutgers and the Eagleton Institute is being scheduled for April 3, 2006.

After a preliminary survey of your availability with your Special Assistants the time slot of 2:30-4:30 has been chosen for this meeting.

Please confirm that you are able to attend this meeting here at the EAC office if it is held at this time.

Regards,

Nicole K. Mortellito  
Research Assistant  
U.S. Election Assistance Commission  
1225 New York Avenue - Suite 1100  
Washington, DC  
202.566.2209 phone  
202.566.3128 fax

010408

Carol A. Paquette/EAC/GOV  
06/10/2005 02:10 PM

To Gracia Hillman/EAC/GOV@EAC  
cc Jeannie Layson/EAC/GOV@EAC, Juliet E. Thompson/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC, Paul  
bcc  
Subject Re: Eagleton draft press release

Made essentially the same comment to Jeannie regarding the guidance language in paragraph two. We had no input to the creation of this release, so there is no EAC intent to use this as a trial balloon.

Carol A. Paquette  
Interim Executive Director  
U.S. Election Assistance Commission  
(202)566-3125 cpaquette@eac.gov  
Gracia Hillman/EAC/GOV



Gracia Hillman /EAC/GOV  
06/10/2005 02:00 PM

To Jeannie Layson/EAC/GOV@EAC, Raymundo Martinez/EAC/GOV, Paul DeGregorio/EAC/GOV, Karen Lynn-Dyson/EAC/GOV, Carol A. Paquette/EAC/GOV,  
cc Juliet E. Thompson/EAC/GOV, "Tom Wilkey"  
Subject Re: Eagleton draft press release

I have some concerns about the press release. In paragraph two, I am not comfortable with the following language in what I believe is paragraph two: Under the national contract, the institute will develop recommendations for EAC to issue as guidance to the states to use in 2006.

It seems to me that EAC will develop the guidance based on Eagleton's findings.

Also, I do not think the press release should contain the list of questions. Are they/we trying to float a trial balloon and elicit initial reaction at this early stage of the study??

-----  
Sent from my BlackBerry Wireless Handheld

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

**From:** Jeannie Layson  
**Sent:** 06/10/2005 12:57 PM  
**To:** Gracia Hillman; Raymundo Martinez; Paul DeGregorio  
**Cc:** Karen Lynn-Dyson; Carol Paquette; Juliet Thompson  
**Subject:** Eagleton draft press release

Commissioners,  
Below is a draft of a press release Eagleton wants to distribute regarding the EAC contract. (It's also

010409

attached.) Please let me know if you have edits/changes. Also, take a close look at the language regarding the scope for the voter ID study to make sure it is acceptable.

DRAFT FOR APPROVAL

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010410

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[www.eac.gov](http://www.eac.gov)

Carol A. Paquette/EAC/GOV  
06/10/2005 02:09 PM

To Gracia Hillman/EAC/GOV@EAC  
cc Jeannie Layson/EAC/GOV@EAC, Juliet E. Thompson/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC, Paul  
bcc  
Subject Re: Eagleton draft press release

Made essentially the same comment to Jeannie regarding the guidance language in paragraph two. We had no input to the creation of this release, so there is no EAC intent to use this as a trial balloon.

Carol A. Paquette  
Interim Executive Director  
U.S. Election Assistance Commission  
(202)566-3125 cpaquette@eac.gov  
Gracia Hillman/EAC/GOV



Gracia Hillman /EAC/GOV  
06/10/2005 02:00 PM

To Jeannie Layson/EAC/GOV@EAC, Raymundo Martinez/EAC/GOV, Paul DeGregorio/EAC/GOV, Karen Lynn-Dyson/EAC/GOV, Carol A. Paquette/EAC/GOV,  
cc Juliet E. Thompson/EAC/GOV, "Tom Wilkey"

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It seems to me that EAC will develop the guidance based on Eagleton's findings.

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-----  
Sent from my BlackBerry Wireless Handheld

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

**From:** Jeannie Layson  
**Sent:** 06/10/2005 12:57 PM  
**To:** Gracia Hillman; Raymundo Martinez; Paul DeGregorio  
**Cc:** Karen Lynn-Dyson; Carol Paquette; Juliet Thompson  
**Subject:** Eagleton draft press release

Commissioners,  
Below is a draft of a press release Eagleton wants to distribute regarding the EAC contract. (It's also

010412

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Questions include:

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010413

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[www.eac.gov](http://www.eac.gov)





Gracia Hillman/EAC/GOV  
06/10/2005 02:00 PM

To Jeannie Layson/EAC/GOV@EAC, Raymundo  
Martinez/EAC/GOV, Paul DeGregorio/EAC/GOV  
cc Karen Lynn-Dyson/EAC/GOV, Carol A. Paquette/EAC/GOV,  
Juliet E. Thompson/EAC/GOV, "Tom Wilkey"

bcc [REDACTED]

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[www.eac.gov](http://www.eac.gov)

Jeannie Layson /EAC/GOV  
06/13/2005 12:05 PM

To pdegregorio@eac.gov, rmartinez@eac.gov,  
ghillman@eac.gov  
cc cpaquette@eac.gov, jthompson@eac.gov,  
[REDACTED]

bcc

Subject Eagleton press release

Following is the Eagleton press release including revisions from the chair and Carol. If anyone else has changes or edits, please let me know by tomorrow morning so Eagleton can get this out. Thank you.

DRAFT FOR APPROVAL

**EDITOR'S NOTE: ATTENTION POLITICAL, ASSIGNMENT EDITORS**

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010418

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Jeannie Layson /EAC/GOV  
06/10/2005 12:57 PM

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010420

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[www.eac.gov](http://www.eac.gov) Eagleton release.doc

010421


**Deliberative Process  
Privilege**

Karen Lynn-Dyson/EAC/GOV  
01/26/2007 11:36 AM

To Donetta L. Davidson/EAC/GOV@EAC, Juliet E.  
Hodgkins/EAC/GOV@EAC

cc

bcc

Subject Re: Short introduction to the Eagleton Voter ID report 

Chair Davidson and Julie-

Attached are the two draft documents I have created related to the Voter Identification Study.

I look forward to our 2:00 PM conversation.



EAC Voter ID Report.doc New EAC Voter ID Report.doc

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

010422



## **EAC Report on Voter Identification**

### **Executive Summary**

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. HAVA Section 303 (b) mandates that first time voters who register by mail are required to show proof of identity before being allowed to cast a ballot. The law prescribes certain requirements concerning this section, but also leaves considerable discretion to the States for its implementation. The EAC sought to examine how these voter identification requirements were implemented in the 2004 general elections and to prepare guidance for the states on this topic.

In May 2005 EAC entered into a contract with the Eagleton Institute of Politics at Rutgers, the State University of New Jersey and the Moritz College of Law at the Ohio State University to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the contractor was to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and recommend various policies that could be applied to these approaches.

The contractor also performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Using two sets of data, aggregate turnout data at the county level for each state, and reports of individual voters collected in the November 2004 Current Population Survey conducted by the U.S. Census Bureau, the contractor found the overall relationship between the stringency of ID requirements and turnout to be fairly small, but statistically significant.

Based on The Eagleton Institute year-long inquiry into voter identification requirements EAC will implement one or more of the following recommendations:

- Further research into the connection between voter ID requirements and the number of ballots cast and counted;
- A state-by-state review of the impact that voter ID requirements are having on voter's participation;
- A state-by-state review of the relationship between ballot access and ballot security and the number of voters whose ballot is counted;
- A state-by-state review of time periods between voters casting of provisional ballots and the time allowed to return with an ID as well as a review of acceptable forms of identification other than photo ID.

## **Introduction**

This study was conducted at a time in which considerable attention is being paid to the issue of voter identification. Proponents of stricter identification requirements base their case on improving the security of the ballot by reducing opportunities for multiple voting or voting by those who are not eligible. The goal is to ensure that only those legally entitled to vote do so, and do so only once at each election. Opponents of stricter ID requirements seek to ensure board access to a regular ballot. There is a fear that some voters -- racial and ethnic minorities, young and elderly voters-- lack convenient access to required ID documents, or that these voters may be fearful of submitting their ID documents for official scrutiny.

This report considers policy issues associated with the voter ID debate. It examines the relationships between voter ID requirements and voter turnout along with the various policy implications of the issue.

## **Methodology of the Study**

In May 2005, under contract with the EAC, the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at the Ohio State University undertook a review and legal analysis of state statutes, regulations and litigation concerning voter identification and provisional voting as well as a statistical analysis of the relationship of various requirements for voter identification to turnout in the 2004 election. The contract also included research and study related to provisional voting requirements. These research findings were submitted and reviewed by the EAC as a separate study.

The Eagleton Institute of Politics gathered information on the voter identification requirements in 50 states and the District of Columbia for 2004. Based on interpretations of state statutes and supplemental information provided through conversations with state election officials, state ID requirements were divided into five categories, with each category of identification more rigorous than the one preceding: stating name, signing name, signature match, presenting an ID, and the most rigorous, presenting a government photo ID. The Eagleton Institute also categorized and identified each state according to maximum and minimum identification requirements. Maximum requirements refer to the most that voters may be asked to do or show at the polling place. Minimum requirements refer to the most that voters can be required to do or show in order to cast a regular ballot. These definitions and the subsequent state-by-state analysis of voter identification requirements omitted those cases in which a particular voter's eligibility might be questioned using a state's voter ballot challenge process.

Two data sets were used to apply the criteria (variables) that were developed above: aggregate voter turnout data at the county level which was gathered from the EAC's 2004 Election Day Survey and; reports of individual voters collected through the November 2004 Current Population Survey administered by the U.S. Census Bureau. Use of EAC

survey data and Census Bureau CPS data provided a way to cross-check the validity of the analysis and conclusions that would be drawn regarding the effect of voter ID requirements on voter turnout.

## **Study Oversight and Methodological Review**

A draft of the Eagleton Institute report and findings on voter identification requirements was critiqued by a peer review group convened by the Eagleton Institute. A second review of the study's research and statistical methodologies was conducted using a group of research and statistical experts independently convened by the EAC. Comments and insights of the peer review group members were taken into account in the drafting of a study report although there was not unanimous agreement among the individual reviewers regarding the study findings and recommendations.

### **The Eagleton Institute of Politics Peer Review Group**

R Michael Alvarez, California Institute of Technology  
John C. Harrison, University of Virginia School of Law  
Martha E. Kropf, University of Missouri-Kansas City  
Daniel H. Lowenstein, University of California at Los Angeles  
Timothy G. O'Rourke, Salisbury University  
Bradley Smith, Capital University Law School  
Tim Storey, National Conference of State Legislatures  
Peter G. Verniero, former Attorney General, State of New Jersey

### **The EAC Peer Review Group**

Jonathan Nagler, New York University  
Jan Leighley, University of Arizona  
Adam Berninsky, Massachusetts Institute of Technology

## **Summary of the Research**

### **Maximum and Minimum Voter Identification Requirements**

In order to analyze what, if any, correlation may exist between a State's voter identification requirements and voter turnout, the Eagleton Institute first coded a state according to how demanding its voter ID requirement was. The voter ID requirement, ranked from lowest to highest was as follows: stating one's name, signing one's name, matching one's signature to a signature on file, providing a form of identification and, providing a form of photo identification. Several possible caveats to this ranking system were noted. For all states which had photo identification requirements in 2004, voters

without a photo ID were permitted to cast a regular ballot after signing an affidavit regarding his or her identity and eligibility. These voters were also allowed to provide other forms of ID. The researchers also noted that while each state may be assigned to a category, that categorization may not reflect the actual practice related to voter identification that may or may not have taken place at many polling places.

Research performed for this study by the Moritz College of Law found that states had five different types of **maximum** identification requirements in place on Election Day 2004. For the purposes of this study a requirement that called for a signed affidavit or the provision of other forms of ID was considered the most rigorous or the “maximum” requirement. At the polling place voters were asked to:

- State his or her name (10 states)
- Sign his or her name (13 states and the District of Columbia)
- Sign his or her name, which would be matched to a signature on file (seven states)
- Provide a form of identification that did not necessarily include a photo (15 states)
- Provide a photo identification (five states)

Using the same criteria, but applying them as **minimum** rather than maximum criteria for voting the research showed: **(check this section- it doesn't really make sense)**

- State his or her name (12 states)
- Sign his or her name (14 states and the District of Columbia)
- Matching the voter's signature to the signature on file (6 states)
- Provide a non-photo identification (14 states)
- Swear by an affidavit (4 states)

The results of the research are summarized in Table 1.

Election laws in several states offer exceptions to these ID requirements if potential voters lack the necessary form of identification. Laws in these states set a minimum requirement that a voter may be required to satisfy in order to vote using a regular ballot. In 2004 none of the states required photo identification as a minimum standard for voting with a regular ballot. That is, voters who lacked photo ID were allowed to vote in all states, if he or she was able to meet another ID requirement.

### **The Relationship of Voter Identification Requirements to Voter Turnout**

A statistical analysis examining the variation in turnout rates based on the type of voter ID required by each state in the 2004 election was conducted using two sets of data: 1) aggregate turnout data at the county level for each state (compiled by the Eagleton Institute of Politics-**footnote about how they collected the data**) and 2) individual level survey data included in the November 2004 Current Population Survey (CPS), conducted by the U.S. Census Bureau.

The analysis looked at the voter identification requirements as a continuous variable and as a series of discrete variables. As a continuous variable the maximum voter identification requirements were ranked according to how demanding they were judged to be, with photo identification considered to be the most demanding requirement (**what about affidavit????**). Used as discrete variable, the statistical analysis considered stating the name as the least demanding ID requirement; the other ID requirements were then compared to that requirement.

### **Aggregate-level statistical analysis**

The statistical analysis performed by the Eagleton Institute of Politics found that when averaging across counties in each state, statewide turnout is negatively correlated to maximum voter identification requirements ( $r = -.30$ ,  $p$  less than .05). When a statistical analysis is performed on the other minimum voter ID requirements (with affidavit being the most demanding requirement), the correlation between voter identification and turnout is negative, but not statistically significant ( $r = -.20$ ,  $p = .16$ ). These findings would suggest that the relationship between turnout rates and minimum requirements may not be linear.

The aggregate data show that 60.9 percent of the estimated citizen voting age population voted in 2004. Taking into account the maximum requirements, an average of 64.6 percent of the voting age population turned out in states that required voters to state their names, compared to 58.1 percent in states that required photo identification. A similar trend was found when analyzing minimum ID requirements: Sixty-three percent of the voting age population turned out in states requiring voters to state their name, compared to 60.1 percent in states that required an affidavit from voters. This analysis showed there was not a clear, consistent linear relationship between turnout and minimum identification requirements.

**(insert table 2- Variation in 2004 State Turnout Based on Voter Identification Requirements)**

### **Multivariate models of analysis using aggregate-level data**

The Eagleton Institute of Politics performed an additional analysis that would estimate the effects of voter identification requirements, that took into account the electoral context in 2004 and, the demographic characteristics of the population in each county. The model also considers such variables as whether or not the county was 1) in a presidential battleground state, 2) if the county was in a state with a competitive race for government and/or the U.S. Senate, 3) the percentage of voting-age population in each county that was Hispanic or African-American 4) the percentage of county residents age 65 and older, 5) the percent of county residents below the poverty line, and 6) the number of days between each state's registration deadline and the election.

The results of this statistical modeling and subsequent analysis indicated that the stricter voter ID requirements of matching a voter's signature to a signature on file or with presenting a non-photo identification are associated with lower voter turnout when compared to voter turnout in states that required voters to simply state his or her name. These conclusions were reached when variables 1-5 listed above were held constant.

Other results from the Eagleton Institute analysis of stricter voter identification requirements showed that:

- Increased voter turnout was associated with whether the county was in a battleground state or whether that state have a competitive race for governor and/or U.S.Senate.
- A slight negative effect on turnout was correlated with those state's with a longer time between the closing date for registration and the election.
- Voter turnout declined as the percentage of Hispanics in a county's population increased.
- Higher turnout (and a positive correlation) was associated with a higher percentage of senior citizens and household median income.
- The percentage of African-Americans in the county did not have a significant effect on turnout.

The Eagleton Institute analysis of minimum voter identification requirements showed that:

- A relationship between minimum voter ID requirements and turnout was not demonstrated.
- Battleground states and those with competitive state races had a significant and positive correlation to turnout.
- A higher percentage of senior citizens in the county and higher household median income were associated with higher turnout and showed a positive correlation to turnout.
- The percentage of Hispanics in the county was associated with reduced turnout.
- The increased number of days between the closing date for registration was associated with reduced turnout.

The analysis of these aggregate, county-level data showed a significant correlation, between maximum voter identification requirements (a signature match and non-photo

identification, but not a photo identification) and lower turnout in the 2004 election. This correlation was also significant when compared to the minimum voter ID requirement of the voter simply having to state his or her name.

### **Multivariate analysis using individual level turnout data**

This analysis which used November 2004 Current Population Survey data conducted by the U.S. Census Bureau is based on reports from self-described registered voters. Not included in the analysis are persons who said they are not registered to vote, those who said they cast absentee ballots and those who said they were not U.S. citizens. The CPS' Voting and Registration Supplement consisted of interviews, either by telephone or in person, with 96,452 respondents. ( why is the N is Table 3 54,973?)

In addition to the five maximum voter identification requirements (enumerated on page XX) the analysis performed included other socioeconomic, demographic and political factors that could have influenced turnout in the 2004 election. These independent variables were analyzed against the dependent variable of whether or not the respondent said he or she voted in the November 2004 election.

In this analysis three of the voter identification requirements were shown to have a statistically significant correlation with whether or not the survey respondents said they have voted in 2004. Lower voter turnout was associated with:

- those states with maximum voter requirements to sign one's name,
- those states with maximum voter requirements to provide a non-photo ID or photo ID, or
- those states with the minimum voter requirement to swear by an affidavit in order to cast a ballot without the state-required identification

Increased voter turnout showed:

- A significant correlation with the competitiveness of the Presidential race **(explain)**.
- African-American voters were more likely than white or other voters to say they have voted.
- Income and marital status were positive predictors of voting **(high income or low income, single, married?)**,
- Women were more likely to say they voted than men.
- Those ages 45 to 64 and 65 and older were more likely to say they voted than those ages 18 to 24.
- Those who earned a high school diploma, attended some college, graduated from college or attended graduate school were more likely to say they have voted than those who had not finished high school.

## **Analysis of the predicted probability of voter turnout using the individual data**

Using this Census Bureau Current Population Survey data the Eagleton Institute of Politics performed an additional statistical analysis in which they calculated the effect of various independent variables on the probability that a respondent said he or she voted. This analysis, involving 54,973 voters cross-tabulated the maximum and minimum voter identification requirements in each state with the five levels of voting requirements: stating name, signing name, matching the signature, a non-photo ID, photo-ID signing an affidavit. The results of these **Predicted Probability of Voter Turnout for all Voter** tabulations are summarized in Table 3 below:

From this analysis, the Eagleton Institute of Politics found that three of the voter identification requirements (**which ones?**) exerted a statistically significant, negative effect on whether or not the CPS survey respondents said they had voted in 2004. That is, compared to states that require voters to only state their name, those states which require the voter to sign his or her name, to provide a non-photo ID, or to provide a photo ID as a maximum requirement, were shown to have a negative influence on turnout. Also, a negative influence on turnout was found when comparing those states that require voters to only state their name, as compared to those states which have as a minimum requirement for verifying voter ID, signing an affidavit.

This probability analysis also found that the competitiveness of the presidential race had a significant effect on turnout as well as some significant demographic and educational effects. For the entire voting population signature, non-photo identification and photo identification requirements were all associated with lower turnout rates compared to the requirements that voter simply state their names. The analysis further found that:

- The predicted probability that Hispanics would vote in states that required non-photo identification was about 10 percentage points lower than in states where Hispanic voters gave their names and that Hispanic voters were less likely to vote in states that required non-photo identification as opposed to only having to state one's name.
- Hispanic voters were 10 percent less likely to vote in non-photo identification states compared to states where voters only had to give their name. African American and Asian-American voters were about 6 percent less likely, while white voters were about 2 percent less likely.
- Asian-American voters were 8.5 percent less likely to vote in states that required non-photo identification compared to states that require voters to state their names under the maximum requirements, while they were 6.1



percent less likely to vote where non-photo identification was the minimum requirement.

- For those with less than a high school diploma, the probability of voting was 5.1 percent lower in states that required photo identification as the maximum requirement and 7 percent lower in those states that required an affidavit as the minimum requirement. These percentages were arrived at when comparing these states to ones that use as a minimum or maximum requirement, the voter to merely state his or her name.

### **Conclusions from the statistical analysis**

The statistical analysis found that as voter identification requirements vary, so do voter turnout rates. These findings were borne out through analyses conducted on aggregate data and individual-level data. There were, however, some distinctions found depending upon whether or not the state's particular voter identification requirements were set as minimums or maximums.

- The overall relationship between voter identification requirements and turnout for all registered voters was found to be small but statistically significant.
- Using the aggregate data the signature match and the non-photo identification requirement correlated with lower turnout. The photo identification requirement did not have a statistically significant effect.
- In the individual-level data the signature, no-photo identification and photo identification requirement were all correlated with lower turnout when compared to the requirements that voter simply state their names.
- Across various demographic groups (African-Americans, Asian-Americans and Hispanics) a statistically significant relationship was found between the non-photo identification requirement and voter turnout

### **Caveats to the Analysis**

The Eagleton Institute for Politics and the EAC make note that while this analysis is a good beginning, significant questions remain regarding the relationship between voter identification requirements and turnout. These analyses are unable, for example, to capture how or why identification requirements might lower turnout. That is, is it because voters are aware of the identification requirements and stay away from the polls because of them? Alternatively, do the requirements result in some voters being turned away when they cannot provide the identification, or must cast a provisional ballot?

Knowing more about the “on the ground” experience of voters regarding various identification requirements will guide state and local level policy makers in their efforts to educate voters about the requirements. These experiences could also help instruct election judges on how to handle questions and possible disputes over voter identification requirements.

## **Public Policy and Administrative Considerations**

Voter Identification, often described as the critical step in protecting the integrity of the ballot, is a process which can ensure that the potential voter is eligible and, if eligible, is permitted to cast one ballot. A voting system that requires voters to produce an identification document or documents may prevent the ineligible from voting, but also may prevent the eligible from casting a ballot.

Evaluating the effect of different voter identification regimes can be most effective when based on clear legal, equitable and practical standards. The questions outlined below might point policymakers to standards that can be created around voter identification requirements.

1. Is the voter ID system designed on the basis of valid and reliable empirical studies the will address concerns regarding certain types of voting fraud?
2. Does the voter ID requirement comply with the letter and spirit of the Voting Rights Act?
3. How effective is the voter ID requirement on increasing the security of the ballot and can it be coordinated with the statewide voter registration database?
4. How feasible is the voter identification requirement? That is, are there administrative or budgetary considerations or concerns? How easy or difficult will it be for pollworkers who must administer the requirement?
5. How cost effective is the voter ID system? That is, what are the monetary and non-monetary costs to the voter and to the state for implementing the ID system?
6. If voter ID requirements are shown to reduce voter turnout (generally, or with some particular groups), what possible steps should be taken to ameliorate this problem?

## **Recommendations and Next Steps**

As the Federal agency charged with informing election officials and the public about various issues related to the administration of elections EAC believes it should, in its capacity as a supporter of elections research, undertake additional study into the topic of voter identification requirements and the implementation of them in the following ways:

- Longitudinal studies of jurisdictions that have changed voter identification requirements.

- State-by-state and precinct-level analyses that will examine the correlations between various voter identification requirements and voter registration and turnout
- Alternative forms and methods for verifying a voter's identity.
- Continuing research into the connection between various voter identification requirements and the number of ballots cast and counted
- A continuing state-by-state update on changes to voter identification requirements.
- Continued collection of state-by-state data which will help examine the impact that voter identification requirements are having on the number of voters who are casting provisional ballots because of voter identification verification issues.

Appendix A: Summary of Voter Identification Requirements by State

Appendix B: Court Decisions and Literature on Voter Identification and Related Issue  
Court Decisions

Appendix C: Annotated Bibliography on Voter Identification Issues

## **EAC Statement on Future Study of Voter Identification Requirements**

### **Background**

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. HAVA Section 303 (b) mandates that first time voters who register by mail are required to show proof of identity before being allowed to cast a ballot. The law prescribes certain requirements concerning this section, but also leaves considerable discretion to the States for its implementation. The EAC sought to examine how these voter identification requirements were implemented in the 2004 general elections and to prepare guidance for the states on this topic.

In May 2005 EAC entered into a contract with the Eagleton Institute of Politics at Rutgers, the State University of New Jersey and the Moritz College of Law at the Ohio State University to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the contractor was to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and recommend various policies that could be applied to these approaches.

The contractor also performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Using two sets of data-- aggregate turnout data at the county level for each state, and reports of individual voters collected in the November 2004 Current Population Survey conducted by the U.S. Census Bureau-- the contractor arrived at a series of findings, conclusions and subsequent recommendations for further research into the topic which are detailed in the attached report.

### **EAC Recommendations for further study and next steps**

EAC finds this initial review of States' voter identification requirements, state laws and litigation surrounding the implementation of voter identification requirements an important beginning step in its consideration of voter identification requirements. From this study and compilation of data EAC considers it advisable to engage in a longer-term, systematic review of voter identification requirements and is recommending that at a minimum the agency engage on an ongoing basis in:

- A state-by-state review, reporting and tracking of voter identification requirements.
- A review and study of how voter identification requirements are implemented and how these practices may vary from state law and statute.

From this ongoing review and tracking EAC can determine the feasibility and advisability of further research and study into how voter identification requirements have had an impact over time on factors such as voter turnout and voter registration.

EAC believes that the findings from this initial study of voter identification requirements are helping inform additional studies it is conducting on a variety of related topics. The EAC study on first time voters who have registered to vote by mail and several forthcoming studies related to voter registration processes will provide necessary additional data to help inform discussions and debate related to ballot access and ballot security. The EAC also anticipates that follow-on study it does related to election crimes and various aspects of voting accessibility will also help inform and guide these ballot security and ballot access discussions.

Finally, EAC is likely to consider implementing one or more of the following research studies that will serve to augment the work begun by the Eagleton Institute of Politics:

- A study of how certain voter identification provisions that have been in place for two or more Federal elections have had an impact on voter turnout and voter registration figures;
- A research study which examines, in greater detail, the relationship between race and voter turnout, and race and methods for registering voters;
- Studies on the inter-relationship between various voter registration processes, voter turnout and number of election crimes reported or litigated;
- Publication of a series of case studies which detail a particular state's or jurisdiction's experiences with various voter identification and voter registration regimes;
- A policy paper or memorandum exploring the alternatives to current voter identification processes and regimes.

Karen Lynn-Dyson/EAC/GOV

08/21/2006 01:09 PM

To twilkey@eac.gov, Jeannie Layson/EAC/GOV@EAC, Juliet E. Thompson-Hodgkins/EAC/GOV@EAC  
cc Bert A. Benavides/EAC/GOV@EAC, Elieen L. Collver/EAC/GOV@EAC

bcc

Subject Fw: Eagleton/Moritz Study Release

All-

I know that Tom will be bringing the topic of the Provisional Voting and Voter ID studies up once again at this week's Commissioners meeting. To my knowledge, Elle is working with Commissioner Davidson to create the next draft of this document that the Commissioners will review. ( I have re-written the introduction to the report, using our 2005 EAC Advisory on the topic)

Prior to Thursday's meeting, however, I think we need ( or may want) to make clear to John Weingart that this report is ours to release or not release but that **we believe there is a lot of incorrect information stated in their studies .**

If Moritz/Rutgers decide to release their studies with or without our approval I fear the bad/misinformation contained in them will be attributed to us.

K

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

— Forwarded by Karen Lynn-Dyson/EAC/GOV on 08/21/2006 12:57 PM —



"John Weingart"

[Redacted email address]

08/16/2006 12:21 PM

Please respond to  
john.weingart@rutgers.edu

To twilkey@eac.gov

cc klynndyson@eac.gov

Subject Eagleton/Moritz Study Release




Wilkey081606final.doc Tom - I have just faxed the attached letter to you but thought you might also like an emailed version. I look forward to discussing it with you soon.

Thanks, John

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

010436

Karen Lynn-Dyson/EAC/GOV  
05/12/2006 01:36 PM

To "Tom O'Neill" <tom\_oneill@verizon.net>@GSAEXTERNAL  
cc Adam Ambrogi/EAC/GOV@EAC, Amie J.  
Sherrill/EAC/GOV@EAC  
bcc Juliet E. Thompson-Hodgkins/EAC/GOV  
Subject RE: Eagleton/Moritz presentations at the upcoming Board of  
Advisors and Standards Board meetings 

Tom-

To reiterate the details of our discussion:

**By May 17** I will have received all of the materials you wish distributed to the EAC Board of Advisors and Standards Boards. You have indicated that this will be the Provisional Voting paper and the Voter ID paper, only.

**On Tuesday, May 23 from 2:30-4:00 PM, Tom O'Neill and Ed Foley** will present the Provisional Voting report to the EAC Standards Board. Julie Thompson-Hodgkins will be the resource person for that session

**On Wednesday, May 24 from 1:40-2:45 PM, Tom O'Neill, Dan Tokaji, and Tim Vercellotti** will present the Voter Identification report to the EAC Standards Board. Julie Thompson-Hodgkins will be the resource person for that session.

**On Wednesday, May 24 from 8:30-9:15 am, Tom O'Neill and Ed Foley** will present the Provisional Voting report to the EAC Board of Advisors. Julie Thompson-Hodgkins will be the resource person for that session.

**On Wednesday, May 24 from 11:00-11:55 am, Tom O'Neill, Dan Takaji and Tim Vercellotti** will present the Voter Identification report to the EAC Board of Advisors. Julie Thompson-Hodgkins will be the resource person for that session.

If you have further questions regarding the details of these sessions, please do not hesitate to contact me.

Regards-

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

010437

Karen Lynn-Dyson/EAC/GOV

To Thomas R. Wilkey/EAC/GOV@EAC

03/28/2006 04:50 PM

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

bcc

Subject FYI-Eagleton

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

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

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


K

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

010438



Karen Lynn-Dyson/EAC/GOV  
03/02/2006 02:19 PM

To Gracia Hillman/EAC/GOV@EAC, Nicole  
Mortellito/CONTRACTOR/EAC/GOV@EAC  
cc Ddavidson@eac.gov, Juliet E. Thompson/EAC/GOV@EAC,  
pdegregorio@eac.gov, rmartinez@eac.gov,  
sbanks@eac.gov, Thomas R. Wilkey/EAC/GOV@EAC  
bcc  
Subject Re: Eagleton close-out meeting 

Commissioner-

I believe an earlier and a later meeting time on the same day can be accommodated.


I will ask Nicole to arrange for a morning briefing and an afternoon one.  
I will also ask her to check on Commissioners' availability for the morning slot.

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

Gracia Hillman/EAC/GOV



Gracia Hillman /EAC/GOV  
03/02/2006 02:08 PM

To Karen Lynn-Dyson/EAC/GOV@EAC  
cc Thomas R. Wilkey/EAC/GOV@EAC, pdegregorio@eac.gov,  
rmartinez@eac.gov, Ddavidson@eac.gov, sbanks@eac.gov,  
Juliet E. Thompson/EAC/GOV@EAC  
Subject Re: Eagleton close-out meeting 

Nicole's email says the time is 2:30 to 4:30, making it sound like one meeting. I am not suggesting two separate days but inquiring about the need for there to be two separate sessions, per our GC's counsel.

010439

Karen Lynn-Dyson/EAC/GOV  
03/02/2006 02:04 PM

To Gracia Hillman/EAC/GOV@EAC  
cc Adam Ambrogi/EAC/GOV@EAC, Amie J. Sherrill/EAC/GOV@EAC, Bert A. Benavides/EAC/GOV@EAC, DeAnna M.  
bcc  
Subject Re: Eagleton close-out meeting

Commissioner-

Given travels costs and the number of persons involved from the Eagleton/Moritz team, the idea was to do the two meetings in the same day.

However, I could ask Nicole to determine if there is a day in March that might work with your schedule.

I am very reluctant to schedule a meeting later in April as the contract is technically over March 31 (a Friday). April 3 is the following Monday.

Please advise. Thanks

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

Gracia Hillman/EAC/GOV



Gracia Hillman/EAC/GOV  
03/02/2006 01:57 PM

To klynn-dyson@eac.gov  
cc Adam Ambrogi/EAC/GOV@EAC, Amie J. Sherrill/EAC/GOV@EAC, Bert A. Benavides/EAC/GOV@EAC, DeAnna M. Smith/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, Elieen L. Collver/EAC/GOV@EAC, Juliet E. Thompson-Hodgkins/EAC/GOV@EAC, Paul DeGregorio/EAC/GOV@EAC, Raymundo Martinez/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC, Nicole Mortellito/CONTRACTOR/EAC/GOV@EAC  
Subject Re: Eagleton close-out meeting

I thought we were doing two separate time slots so that Eagleton would brief only two commissioners at a time?

010440

Karen Lynn-Dyson/EAC/GOV

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

02/23/2006 02:59 PM

cc Thomas R. Wilkey/EAC/GOV@EAC

bcc

Subject Eagleton requesting a project close-out meeting with the 4 C's

Julie-

Eagleton would like to meet with the 4 C's sometime in very late March to report on their project findings and to do a project "close-out" meeting.

Commissioner Hillman asked that I check with you to be certain that such a meeting ( with all four Commissioners) is legal.

Thanks for advising.

K

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

010441

Calendar Entry

## Meeting Change You are no longer required to attend this meeting

<b>Subject</b>	Eagleton Close-out Meeting - Provisional Voting	<b>Chair</b>	Nicole Mortellito/CONTRACTOR/EAC/ GOV
<b>When</b>	<b>Date</b> Monday 04/03/2006 <b>Time</b> 02:30 PM - 04:00 PM (1 hour 30 minutes)	<b>Invitees</b>	<b>Required (to)</b> Karen Lynn-Dyson/EAC/GOV@EAC Paul <b>Optional (cc)</b>
<b>Where</b>	Small Conference Room		

Commissioners and Tom:

This is the afternoon Close-out meeting with Eagleton-Rutgers regarding the Provisional Voting Contract. A list of attendees from Eagleton will be circulated with any peripheral or supplementary documentation will be disseminated no later than one week prior to the meeting.

If for some reason you become unable to attend this meeting at this time please be advised that you are able to attend a second identical briefing at 11:00a.m. here in the EAC offices.

010442

Calendar Entry

# Meeting

Notify me    
 Mark Private  Pencil In

**Subject** Close-out Meeting w/ Eagleton - Provisional Voting

**Chair** Nicole Mortellito/CONTRACTOR/EAC/GOV

**When**  
Starts: Mon 04/03/2006 11:00 AM  
Ends: Mon 04/03/2006 12:30 PM 1 hr 30 mins

**Where** Location: Small Conference Room

**Invitees**  
Required (to): Donetta L. Davidson/EAC/GOV@EAC  
Gracia Hillman/EAC/GOV@EAC, Juliet E. Thompson-Hodgkins/EAC/GOV@EAC

**Categorize**

**Description**

Julie: I heard the Hill Briefing has been scheduled for 2:30pm on April 3rd. Are you available to attend the Eagleton Close-out Briefing at 11am instead? I checked with Deanna she said your calendar appeared to be open. Thanks.

**Your Notes**

Calendar Entry

## Meeting Change Nicole Mortellito has rescheduled this meeting

<b>Subject</b>	Eagleton Close-out Meeting - Provisional Voting	<b>Chair</b>	Nicole Mortellito/CONTRACTOR/EAC/GOV
<b>When</b>	<b>Date</b> Monday 04/03/2006 <b>Time</b> 02:30 PM - 04:00 PM (1 hour 30 minutes)	<b>Invitees</b>	Juliet E. Thompson-Hodgkins/EAC/GOV@EAC. Karen
<b>Where</b>	Small Conference Room	<b>Optional (cc)</b>	

Commissioners and Tom:

This is the afternoon Close-out meeting with Eagleton-Rutgers regarding the Provisional Voting Contract. A list of attendees from Eagleton will be circulated with any peripheral or supplementary documentation will be disseminated no later than one week prior to the meeting.

If for some reason you become unable to attend this meeting at this time please be advised that you are able to attend a second identical briefing at 11:00a.m. here in the EAC offices.

010444

Calendar Entry

## Meeting Change You are no longer required to attend this meeting

**Subject** Eagleton Close-out Meeting - Provisional Voting

**When** Date: Thursday 03/09/2006  
Time: 09:15 AM - 10:15 AM (1 hour)

**Where** Small Conference Room

**Chair** Nicole Mortellito/CONTRACTOR/EAC/GOV

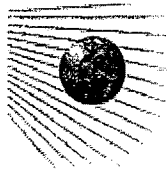
**Invitees**  
**Required (to)** Juliet E. Thompson-Hodgkins/EAC/GOV@EAC, Karen  
**Optional (cc)**

Commissioners and Tom:

This is the afternoon Close-out meeting with Eagleton-Rutgers regarding the Provisional Voting Contract. A list of attendees from Eagleton will be circulated with any peripheral or supplementary documentation will be disseminated no later than one week prior to the meeting.

If for some reason you become unable to attend this meeting at this time please be advised that you are able to attend a second identical briefing at 11:00a.m. here in the EAC offices.

010445



Nicole  
Mortellito/CONTRACTOR/EA  
C/GOV

03/08/2006 01:59 PM

To Nicole Mortellito/CONTRACTOR/EAC/GOV@EAC

cc Adam Ambrogi/EAC/GOV@EAC, Amie J.  
Sherrill/EAC/GOV@EAC, Bert A.  
Benavides/EAC/GOV@EAC, Donetta L.

bcc

Subject Update: Eagleton Close-Out Meeting

Commissioners:

I have spoken with each of you or your Special Assistants and, at this time, you or they have confirmed your attendance during the following time slot for the Eagleton Briefing.

Special Assistants, if there is any change in preference please let me know.

11am

- Commissioner Hillman
- Tom Wilkey
- Commissioner Davidson

2:30pm

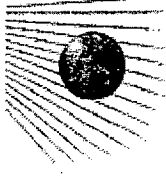
- Chairman DeGregorio
- Vice Chairman Martinez
- Juliet Hodgkins

Regards,

Nicole K. Mortellito  
Research Assistant  
U.S. Election Assistance Commission  
1225 New York Avenue - Suite 1100  
Washington, DC  
202.566.2209 phone  
202.566.3128 fax

010446





Nicole  
Mortellito/CONTRACTOR/EA  
C/GOV

03/08/2006 10:34 AM

To Paul DeGregorio/EAC/GOV@EAC, Raymundo  
Martinez/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC,  
Donetta L. Davidson/EAC/GOV@EAC, Thomas R.  
cc Adam Ambrogi/EAC/GOV@EAC, Amie J.  
Sherrill/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC,  
Eliien L. Collver/EAC/GOV@EAC, Bert A.

bcc

Subject Eagleton Close-Out Meeting

Commissioners:

The Eagleton Close-Out Meeting has been scheduled for Monday, April 3, 2006. As requested, the delegation from Eagleton will give two presentations so that you may choose to attend the briefing which most readily jibes with your schedule.

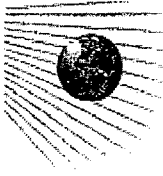
Please advise as to which session you will attend. The meetings should last approximately 45 minutes plus discussion/question and answer time.

The meeting times are either 11:00am or 2:30pm. And will be held in the small conference room.

Regards,

Nicole K. Mortellito  
Research Assistant  
U.S. Election Assistance Commission  
1225 New York Avenue - Suite 1100  
Washington, DC  
202.566.2209 phone  
202.566.3128 fax

010447



Nicole  
Mortellito/CONTRACTOR/EA  
C/GOV

03/02/2006 01:16 PM

To Paul DeGregorio/EAC/GOV@EAC, Raymundo  
Martinez/EAC/GOV@EAC, Donetta L.  
Davidson/EAC/GOV@EAC, Gracia  
cc Karen Lynn-Dyson/EAC/GOV@EAC, Amie J.  
Sherrill/EAC/GOV@EAC, Bert A.  
Benavides/EAC/GOV@EAC, Adam

bcc

Subject Eagleton close-out meeting

A close out meeting with the folks from Rutgers and the Eagleton Institute is being scheduled for April 3, 2006.

After a preliminary survey of your availability with your Special Assistants the time slot of 2:30-4:30 has been chosen for this meeting.

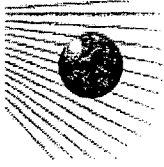
Please confirm that you are able to attend this meeting here at the EAC office if it is held at this time.

Regards,

Nicole K. Mortellito  
Research Assistant  
U.S. Election Assistance Commission  
1225 New York Avenue - Suite 1100  
Washington, DC  
202.566.2209 phone  
202.566.3128 fax

010448

**Deliberative Process  
Privilege**



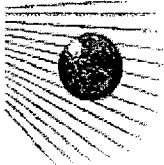
Paul DeGregorio /EAC/GOV  
03/27/2006 02:02 PM

To Juliet E. Thompson/EAC/GOV  
cc  
bcc

Subject Fw: Comments regarding the Eagleton Report on Voter ID

fyi

— Forwarded by Paul DeGregorio/EAC/GOV on 03/27/2006 01:01 PM —



Paul DeGregorio /EAC/GOV  
03/26/2006 08:34 PM

To Karen Lynn-Dyson  
cc Thomas R. Wilkey/EAC/GOV, Amie J. Sherrill/EAC/GOV

Subject Comments regarding the Eagleton Report on Voter ID

Karen,

As you requested, here are my comments regarding the final draft Eagleton report on Voter ID.

While the report is generally acceptable, I don't believe the current draft is ready to be released.

I found some parts of the report to be misleading and, at times, appearing biased to support a view that imposing ID requirements at the polls should be discouraged. As an example, on the first page they write about poll workers facing "long lines and limited time," suggesting that may be a problem for the workers to check ID. I am not sure what their point may be, as poll workers in states that require ID checking will still have to do so, no matter how long the voter lines they have. Many states and their polling places may not have long lines at the polls, and thus voters may not have the "limited time" suggested in the report. They don't support their suggestion with hard data on long voter lines and time limits on poll workers.

They selectively quote the Carter-Baker Commission study to suggest that "photographic ID requirements for in-person voting do little to address the problem of registration by mail" even though the Carter-Baker study actually promotes the idea of a photographic ID requirement at the polls. To be fair, they need to state that fact and the reasons why the Carter-Baker Commission comes to that conclusion.

Their table on page 7 indicates that Missouri's current ID requirement for first-time voters relies on HAVA requirements. It is my understanding that Missouri law requires that all voters must show some type of ID at the polls (therefore it should state "Provide ID" as they did in listing CO, CN and LA requirements).

On page 9 and on subsequent pages they make reference to "voting age population" (VAP) data issued by the Census Bureau. Is all the data they represent in their analysis based on the VAP or do they take into consideration the Citizen Voting Age Population (CVAP), which takes into account the number of non-citizens who may be included in the VAP? It is not clear from the report. You may remember that Kim Brace discussed the VAP vs. CVAP issue with us extensively, and he indicated that the CVAP figure is always the better one to use when analyzing Census Bureau data against voting data. He also said that many of the non-citizens included in the VAP figures tend to be Hispanic. And since the Eagleton study is making conclusions that indicate that more stringent ID requirements may tend to reduce Hispanic voter turnout, it becomes important to understand which figures Eagleton uses, as Kim told us that VAP figures do not compensate for the non-citizen Hispanic voters that are included at a higher rate in the VAP (because as Kim stated most of the non-citizen population in the USA tends to be Hispanic).

I would like to know if the new Census report data on the 2004 election released on March 15, 2006 changes any of their perspectives. <http://www.census.gov/prod/2006pubs/p20-556.pdf>

010449

On page 12 they make reference to the CPS data and indicate that it reported a voter turnout rate of 89%, which is much higher than other data reported (which is also explained in their narrative). However, while the report indicates that the CPS data is "widely-accepted," it does not make clear by whom. I think for credibility reasons they need more supporting language since there is a significant difference between a self-reported turnout of 89% and the reality of 63%.

Considering that the beginning of the document reveals a bias towards lesser ID requirements, I believe that it is important to highlight earlier in the report the conclusion found on page 14 that concerns by critics of voter identification requirements for African-American and elderly voters "are not borne out by the results." This will provide at least some balance to the reader.

On page 20 they indicate they lack good data on why voters must cast their ballots provisionally. I thought that our Election Day Survey captured some of that data.

It appears that a preponderance of their citations are from organizations or groups that support liberal positions on election issues, or take selective information from reports to support a more liberal interpretation of views on voter ID issues. Examples would include: Carter-Baker on page 1; Tova Wang on page 4; Carter-Baker on page 4; Brennan Center page 20. While many of published articles cited on pages 30 and 31 provide relatively neutral information, those that appear to take positions (read from the description of the articles) appear to favor a liberal position on most ID issues. I would have hoped they would have provided a more balanced approach. I don't see conservative writers, such as Thor Hearne, of the American Center for Voting Rights, quoted or cited once in the report. Mr. Hearne has testified before Congress and has had several articles that address voter identification issues.

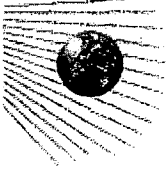
I was pleased that they cited (on page 5) a recent March 15, 2006 article from the Arizona Republic that indicated that their stricter voter ID law went smoothly in its first use.

They might want to be aware (and perhaps mention) that the recommendation from Edward Foley cited on the bottom of page 21 was actually used in Haiti's recent February 7, 2006 presidential election. In addition to each voter being provided a picture ID by the election commission, that same picture was found next to the voters' name on the voter rolls that were used at the polling places. Perhaps they want to contact Scott Lansell of IFES for confirmation. The picture ID project for Haiti's election was financed and implemented by the Organization for American States (OAS). I believe turnout for that election was over 60% of those eligible.

Please let me know if you or anyone from Eagleton has questions regarding these comments. Thanks.

Paul DeGregorio  
Chairman  
US Election Assistance Commission  
1225 New York Ave, NW  
Suite 1100  
Washington, DC 20005  
1-866-747-1471 toll-free  
202-566-3100  
202-566-3127 (FAX)  
pdegregorio@eac.gov  
www.eac.gov

010450



Paul DeGregorio /EAC/GOV  
12/04/2006 01:42 PM

To Juliet E. Thompson/EAC/GOV  
cc  
bcc  
Subject Fraud report

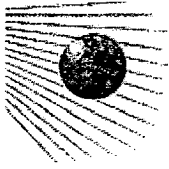
History  This message has been replied to

Julie,  
I looked over your changes and they look fine with me. I'll trust your judgement on the final product we receive on Thursday. If any policy or major changes are made by other commissioners, let me know.  
Thanks.  
Paul

-----  
Sent from my BlackBerry Wireless Handheld

*Counsel  
email &  
docs*

010297



Paul DeGregorio /EAC/GOV

11/17/2006 01:46 PM

To Juliet E. Hodgkins/EAC/GOV@EAC

cc

bcc

Subject Re: Draft Voting Fraud and Voter Intimidation Report

Thanks, Julie. Have a great Thanksgiving--and trip. I got your message just as we crossed the border into Germany (Arian is driving 100 mph+). Guten nacht!

-----  
Sent from my BlackBerry Wireless Handheld

Juliet E. Hodgkins

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

**From:** Juliet E. Hodgkins  
**Sent:** 11/17/2006 01:40 PM  
**To:** Donetta Davidson; Gracia Hillman; Paul DeGregorio; Thomas Wilkey  
**Cc:** Bert Benavides; Sheila Banks; Elieen Collver; Matthew Masterson; Gavin Gilmour  
**Subject:** Draft Voting Fraud and Voter Intimidation Report

Commissioners and Tom,

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

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

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

1. The consultants provided summaries of articles, books, and reports that they read, as well as summaries of the interviews that they conducted. Peggy created two tables summarizing the consultants' summaries of books, article and reports as well as interviews. We need to make a determination of which summaries we want to attach as appendixes. The only issue that I am aware of (and I have a question pending to Peggy about the quality of these summaries) is a significant disagreement over the summaries of interviews with Craig Donsanto and John Tanner of the Dept. of Justice. They disagree with the characterization given by the consultants to what they said in the interview. Obviously, this matter would have to be resolved if we decide to use the consultants' summaries.
2. Tom and I had a conversation with Tova and Job about the fact that we are going to issue a report. Tova was quite insistent about being able to see the report before it is released. I am NOT inclined to give her a copy of the report before it is released. Neither Tova nor Job are still on contract with the EAC. Thus, they are just like any other member of the public. I believe that if we release it to them, then we may have a significant problem withholding the document from others that may ask for it via FOIA request. I believe that the course of action should be to release it to all persons simultaneously.

Happy reading and Happy Thanksgiving!

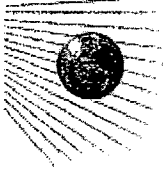
[attachment "Voter Fraud & Intimidation Report.doc" deleted by Paul DeGregorio/EAC/GOV]

Juliet Thompson Hodgkins

01029

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

010299



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

To Gracia Hillman/EAC/GOV@EAC, Thomas R.  
Wilkey/EAC/GOV@EAC, Donetta L.  
Davidson/EAC/GOV@EAC  
cc Juliet E. Hodgkins/EAC/GOV@EAC, Jeannie  
Layson/EAC/GOV@EAC

bcc

Subject Re: The Fraud "Report" 

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

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

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

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

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

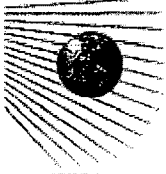
My thought is that Tom should report the matter to us in his report. New Business?? Just stating the facts as they exist, including the nature of the study, how we have handled the numerous requests and inquiries that we have received, etc.

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

-----  
Sent from my BlackBerry Wireless Handheld

010300





Paul DeGregorio /EAC/GOV  
10/22/2006 09:58 PM

To Amie J. Sherrill/EAC/GOV  
cc Juliet E. Thompson/EAC/GOV  
bcc  
Subject Re: Fw: Letter to Mr. Reynolds Re: Voter Fraud Report

History This message has been forwarded.

Amie,

Mr. Reynolds letter inquires about the status of the report. He does not ask for it to be released, as the first line of our response to him suggests. Please have our draft response to him changed to reflect this fact.

Paul DeGregorio  
Chairman  
US Election Assistance Commission  
1225 New York Ave, NW  
Suite 1100  
Washington, DC 20005  
1-866-747-1471 toll-free  
202-566-3100  
202-566-3127 (FAX)  
pdegregorio@eac.gov  
www.eac.gov

Amie J. Sherrill/EAC/GOV



Amie J. Sherrill/EAC/GOV  
10/20/2006 04:26 PM

To Paul DeGregorio/EAC/GOV@EAC  
cc  
Subject Fw: Letter to Mr. Reynolds Re: Voter Fraud Report

Attached is a draft letter from Julie to Mr. Reynolds of the Comm. on Civ Rights. It contains the same language as the other letters we have sent. Please let me know if you would like for me to use your e-signature and get it faxed to them this afternoon.

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

— Forwarded by Amie J. Sherrill/EAC/GOV on 10/20/2006 04:23 PM —



DeAnna M. Smith/EAC/GOV  
10/20/2006 04:02 PM

To Amie J. Sherrill/EAC/GOV@EAC  
cc  
Subject Letter to Mr. Reynolds Re: Voter Fraud Report



draft letter to Mr Reynolds.doc

DeAnna M. Smith  
Paralegal Specialist  
Office of the General Counsel  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
Washington, D.C. 20005  
202-566-3117 (phone)  
202-566-1392 (fax)  
[www.eac.gov](http://www.eac.gov)

010302

October 20, 2006

Gerald A Reynolds  
Chairman, United States Commission on Civil Rights  
624 9<sup>th</sup> Street, NW  
Washington, DC 20425

**Via Facsimile Transmission ONLY**  
**202-376-7672**

RE: October 19, 2006 Letter

Dear Mr. Reynolds:

Your letter of October 19, 2006 requests the release of EAC's Voter Fraud and Intimidation Report. I would like to take this opportunity to clarify the purpose and status of this study.

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

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

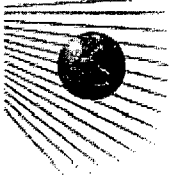
That draft report is currently being vetted by EAC staff. EAC will release a final report from this study after it has conducted a review of the draft provided by the consultants. However, it is important to remember the purpose of this study – finding a uniform definition of voter fraud and making recommendations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

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

Sincerely,

Paul S. DeGregorio  
Chairman

010303



Paul DeGregorio /EAC/GOV  
08/19/2005 11:06 AM

To Gracia Hillman/EAC/GOV, Raymundo Martinez/EAC/GOV,  
ddavidson@eac.gov, twilkey@nycap.rr.com, Juliet E.  
Thompson/EAC/GOV, Karen Lynn-Dyson/EAC/GOV, Carol

cc

bcc

Subject Eagleton

In his note regarding the Eagleton contract, Hans has raised some of the same concerns I raised from the beginning of any discussions I had regarding this contract with our staff, and at our first formal meeting with Eagleton. In reviewing their work product from time to time, I continue to have concerns about a lack of balanced input and have repeatedly voiced them with staff and with Eagleton. I did this when the initial peer review group was proposed and again during their presentation at our meeting in Pasadena (the outreach slide in their public presentation showed outreach to seven groups, of which only one could be considered conservative-leaning). Now, as I have just had the opportunity to read their July progress report, it appears that Eagleton seems to be going into a larger analysis of the voter fraud issue than was authorized in the contract. My suspicion is that Dan Tokaji is injecting his views into this to dismiss or diminish the concerns some people may have about voter fraud. I could be wrong, but his previous writings lead me to believe otherwise.

I only found one mention of voter fraud in the contract with Eagleton. It is in Section 3.5 regarding provisional voting, where it discusses "minimizing opportunity for voter fraud." Yet, on page 4 of the July progress report from Eagleton, in describing their work plan for the next month it states: "we will expand upon vote fraud research and examine further the relationship between instances of vote fraud and ensuing election reforms." This clearly seems to be going beyond the mandate we gave them as I thought they were going to be looking at voter fraud relating to provisional voting (as the contract calls for), not voter fraud as it relates to election reforms. While voter fraud was never mentioned in the contract regarding the voter ID issue, page 5 of their July report indicates that their narratives "will include an appraisal of the prevalence and nature of vote fraud." In addition to this, page 6 describes a look into the "relationship between voter ID regime and vote fraud."

Voter fraud is clearly an issue that is perceived differently from the Right and from the Left. I have struggled with determining what a clear definition of voter fraud is myself, and therefore want to obtain various perspectives and good analysis on this issue before I formulate a solid conclusion in my mind. It has been my understanding all along that the whole voter fraud/voter intimidation issue is going to be studied by the EAC using a balanced group of consultants--not Eagleton and Moritz, who are likely to focus on just on the number of prosecutions of voter fraud, rather than the complaints made or the fact that many election officials are frustrated that some prosecutors don't take their complaints about voter fraud seriously. I am not convinced at this point that we will get a balanced and objective study from Eagleton/Moritz on voter fraud. I am puzzled on why they seem to be expending a significant portion of their time on this and would want to know if we somehow authorized them to do more research into the voter fraud issue.

On page 7 of their July report Eagleton indicates that communications with the EAC on the Peer Review Group "were not clear or timely." I would like to know what this refers to. Also, I may have missed it, but I do not recall seeing the final list of who is serving as the Peer Review group.

The August 15th copy of the July report that I received from Karen did not include the attachment of the financial report of expenses incurred. I would like to see that attachment.

Outside of our NIST work, this contract represents our largest single outside expenditure of our operational funds. Any single expenditure of \$500,000+ needs to be closely monitored. I, for one, am not going to sign off on any report that appears to have been written from a biased viewpoint, especially one that doesn't appear to be interested in hearing from conservative organizations or right-leaning researchers, or seems to minimize any input from them. I've already had questions from congressional staff and others on why we picked Eagleton and Moritz, as they are perceived by some as biased against


010304

Republicans. I assured the critics that we have insisted all along on an objective study from Eagleton. An unbalanced or biased study from them will not only hurt my credibility, but also that of the EAC. I'm not suggesting that we stop their work, but I do want Tom and Julie to inform them in no uncertain terms that we will not accept a report that does not seriously consider all viewpoints on provisional voting and the voter ID issue, and that any study or interpretations they present to us reflect a diversity of opinions on these subjects. We also need for staff to determine whether their considerable work into the voter fraud area is authorized in the contract. We should not be paying for and receiving work we did not authorize.

The contract clearly calls for "alternative approaches" on voter ID requirements and "alternatives" on provisional voting. I agreed to support this contract to Eagleton because I was assured that we would receive a variety of approaches from their work, and not just those from a liberal perspective.

**Paul DeGregorio**  
Vice Chairman  
US Election Assistance Commission  
1225 New York Ave, NW  
Suite 1100  
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1-866-747-1471 toll-free  
202-566-3100  
202-566-3127 (FAX)  
pdegregorio@eac.gov  
www.eac.gov

Thomas R. Wilkey/EAC/GOV  
12/01/2006 02:20 PM

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

Cause I wasn't sure and you seemed to indicate during our conference call .  
Sorry if that is not the case..  
My brain cells are a bit displaced these days.

-----  
Sent from my BlackBerry Wireless Handheld  
Juliet E. Hodgkins  
----- Original Message -----

**From:** Juliet E. Hodgkins  
**Sent:** 12/01/2006 02:20 PM  
**To:** Thomas Wilkey  
**Subject:** Fw: fraud and intimidation report


why didn't you tell her that we can't release this to her?

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

— Forwarded by Juliet E. Hodgkins/EAC/GOV on 12/01/2006 02:19 PM —



wang@tcf.org  
12/01/2006 02:07 PM

To jthompson@eac.gov  
cc "Job Serebrov"   
Subject fraud and intimidation report


Julie,

I understand from Tom Wilkey that you are planning on releasing our report at the public meeting next Thursday, December 7. As we discussed, I respectfully request that Job and I be permitted to review what you are releasing before it is released. I would like us both to be provided with an embargoed copy as soon as possible so we have time to properly review it before Thursday. I can be contacted by email, cell phone at 917-656-7905, or office phone 202-741-6263. I hope to hear from you soon. Thanks.

Tova

010306

Thomas R. Wilkey/EAC/GOV  
01/22/2007 05:40 PM

To Bryan Whitener/EAC/GOV@EAC  
cc Gavin S. Gilmour/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, Karen  
bcc  
Subject Re: Response Requested - EAC voter ID report 

I think that is exactly what I am saying and what the Commissioners have decided how it would be released.

-----  
Sent from my BlackBerry Wireless Handheld  
Bryan Whitener  
----- Original Message -----


**From:** Bryan Whitener  
**Sent:** 01/22/2007 05:44 PM  
**To:** Thomas Wilkey  
**Cc:** Gavin Gilmour; Jeannie Layson; Juliet Hodgkins; Karen Lynn-Dyson  
**Subject:** Re: Response Requested - EAC voter ID report

Tom,

Regarding the FR notice, it can be short but it must be accurate and complete. We will also include this info in the newsletter on Thursday. Many people feel strongly about this issue and it may well generate news stories regardless of what we do. We must get it right at the beginning and be prepared to answer questions from the public and the media such as: How long have we had it ? Why are we discussing it now ? How much did it cost ? What will EAC do with it or what exactly are the next steps? If this is a report with preliminary research findings together with recommendations for future study, then could EAC acknowledge the findings without accepting them but instead accept recommendations for future study?

Thomas R. Wilkey/EAC/GOV

Thomas R. Wilkey/EAC/GOV  
01/22/2007 05:15 PM

To Gavin S. Gilmour/EAC/GOV@EAC, Bryan Whitener/EAC/GOV@EAC  
cc Jeannie Layson/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC  
Subject Re: Response Requested - EAC voter ID report 

Eagleton is submitting it's report as written. There will be a SHORT Executive Summary prepared by staff which will incorporate. Recommendations for. Future study which the Commissioners will be asked to adopt.

The report itself will be presented but not formally adopted but merley released and recommendations adopted.

-----  
Sent from my BlackBerry Wireless Handheld  
Gavin S. Gilmour  
----- Original Message -----

**From:** Gavin S. Gilmour

010307

**Sent:** 01/22/2007 05:16 PM  
**To:** Bryan Whitener  
**Cc:** Jeannie Layson; Juliet Hodgkins; Karen Lynn-Dyson; Thomas Wilkey  
**Subject:** Re: Response Requested - EAC voter ID report

Is Eagleton submitting a report to the EAC or is Eagleton assisting us the development of an EAC report...? I suspect it is the latter. Any statement should reflect this... as should the "briefing."

GG

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

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

Bryan Whitener/EAC/GOV

Bryan Whitener /EAC/GOV  
01/22/2007 04:55 PM

To Karen Lynn-Dyson/EAC/GOV@EAC  
cc Thomas R. Wilkey/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, Gavin S. Gilmour/EAC/GOV@EAC  
Subject Response Requested - EAC voter ID report

Karen,

We need to publish an FR notice early tomorrow regarding the next public meeting. In light of the recent matter regarding voter fraud, I want to be sure to accurately describe what's happening with the voter ID report item contained in the draft agenda. Please add some perspective about what will and will not be discussed and what, if any, action might be expected. The draft agenda says the following: "Presentation of Eagleton ID Report - "Best Practices to Improve Voter Identification Requirements," John Weingarten, Rutgers University (Time allotted 7-10 minutes; Q & A 5 min.)". What stage are we with this ? (preliminary, final, NOTA, etc.) Just trying to stay ahead of the curve,


Thanks,  
Bryan

[attachment "Public Meeting, 2-08-07, Wash., Draft Agenda.doc" deleted by Thomas R. Wilkey/EAC/GOV]

010308



Thomas R. Wilkey/EAC/GOV  
10/11/2006 11:42 AM

To Bryan Whitener/EAC/GOV@EAC  
cc Jeannie Layson/EAC/GOV@EAC, Margaret  
Sims/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC,  
Juliet E. Hodgkins/EAC/GOV@EAC  
bcc  
Subject Re: request for reports - Wendy Weiser, Brennan Center 

Both of these reports are draft reports to the EAC and are currently being reviewed by staff.  
While we have released some of the data tables that Eagleton nether of these reports can be released.

Sent from my BlackBerry Wireless Handheld  
Bryan Whitener

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

**From:** Bryan Whitener  
**Sent:** 10/11/2006 11:34 AM  
**To:** Thomas Wilkey  
**Cc:** Jeannie Layson; Margaret Sims; Karen Lynn-Dyson; Juliet Hodgkins  
**Subject:** Fw: request for reports - Wendy Weiser, Brennan Center

Tom,

Do we have a policy on distributing the items she is requesting?

----- Forwarded by Bryan Whitener/EAC/GOV on 10/11/2006 11:33 AM -----



"Wendy Weiser"

  
10/11/2006 10:57 AM

To bwhitener@eac.gov

cc

Subject request for reports

Mr. Whitener,

I write to request a copy of the following two reports submitted to the Election Assistance Commission:

- (1) a report on voter fraud and voter intimidation, outlining a future research agenda, prepared by Tova Wang and Job Serebrov, and discussed in this morning's USA TODAY;
- (2) a report on provisional ballots and voter ID, prepared by the Moritz School of Law at Ohio State University in collaboration with others.

It is my understanding that these reports were commissioned by and submitted to the EAC several months ago. It is in the public interest to release these reports since they will advance the public discussion and understanding of important election administration issues.

Thank you very much for your attention to this request. Please let me know when I can expect

010309

**Deliberative Process  
Privilege**



"Rosemary Rodriguez "

03/19/2007 10:56 AM

To: jhodgkins@eac.gov, "Davidson, Donetta"  
<ddavidson@eac.gov>, ghillman@eac.gov,  
chunter@eac.gov  
cc: twilkey@eac.gov, jlayson@eac.gov, klynndyson@eac.gov

bcc

Subject: Re: Revised Voter ID statement with Eagleton comments to  
paragraph 2

Several thoughts on formatting:

Does the title of the document still work?

I still think that the two paragraphs, the one that precedes the Julie paragraph and the one that follows, should be set apart and titled "conclusion" or "finding" or something that recognizes it was the subject of an action by the EAC.

and then i ask if the title of the next section still works--do we make recommendations to ourselves?

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

From: "jhodgkins@eac.gov" <jhodgkins@eac.gov>

To: "Davidson, Donetta" <ddavidson@eac.gov>; ghillman@eac.gov; chunter@eac.gov;

Cc: twilkey@eac.gov; jlayson@eac.gov; klynndyson@eac.gov

Sent: Friday, March 16, 2007 4:27:32 PM

Subject: Revised Voter ID statement with Eagleton comments to paragraph 2

Since this morning, we have received Eagleton's comments to the draft language provided to them. I have highlighted their changes in yellow.

Again, two documents are provided below: one showing track changes and one showing those changes accepted.

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


---

Bored stiff? Loosen up...

010451

Download and play hundreds of games for free on Yahoo! Games.

Bryan Whitener /EAC/GOV  
01/22/2007 05:44 PM


To Thomas R. Wilkey/EAC/GOV@EAC  
cc Gavin S. Gilmour/EAC/GOV@EAC, Jeannie  
Layson/EAC/GOV@EAC, Juliet E.  
Hodgkins/EAC/GOV@EAC, Karen  
bcc  
Subject Re: Response Requested - EAC voter ID report 

Tom,

Regarding the FR notice, it can be short but it must be accurate and complete. We will also include this info in the newsletter on Thursday. Many people feel strongly about this issue and it may well generate news stories regardless of what we do. We must get it right at the beginning and be prepared to answer questions from the public and the media such as: How long have we had it ? Why are we discussing it now ? How much did it cost ? What will EAC do with it or what exactly are the next steps? If this is a report with preliminary research findings together with recommendations for future study, then could EAC acknowledge the findings without accepting them but instead accept recommendations for future study?

Thomas R. Wilkey/EAC/GOV

Thomas R. Wilkey/EAC/GOV  
01/22/2007 05:15 PM

To Gavin S. Gilmour/EAC/GOV@EAC, Bryan  
Whitener/EAC/GOV@EAC  
cc Jeannie Layson/EAC/GOV@EAC, Juliet E.  
Hodgkins/EAC/GOV@EAC, Karen  
Lynn-Dyson/EAC/GOV@EAC  
Subject Re: Response Requested - EAC voter ID report 

Eagleton is submitting it's report as written. There will be a SHORT Executive Summary prepared by staff which will incorporate. Recommendations for. Future study which the Commissioners will be asked to adopt.

The report itself will be presented but not formally adopted but merely released and recommendations adopted.

-----  
Sent from my BlackBerry Wireless Handheld  
Gavin S. Gilmour  
----- Original Message -----

**From:** Gavin S. Gilmour  
**Sent:** 01/22/2007 05:16 PM  
**To:** Bryan Whitener  
**Cc:** Jeannie Layson; Juliet Hodgkins; Karen Lynn-Dyson; Thomas Wilkey  
**Subject:** Re: Response Requested - EAC voter ID report

Is Eagleton submitting a report to the EAC or is Eagleton assisting us the development of an EAC report...? I suspect it is the latter. Any statement should reflect this... as should the "briefing."

GG

Gavin S. Gilmour  
Deputy General Counsel  
United States Election Assistance Commission

010453

1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

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

Bryan Whitener/EAC/GOV

**Bryan Whitener /EAC/GOV**

01/22/2007 04:55 PM

To Karen Lynn-Dyson/EAC/GOV@EAC

cc Thomas R. Wilkey/EAC/GOV@EAC, Jeannie  
Layson/EAC/GOV@EAC, Juliet E.  
Hodgkins/EAC/GOV@EAC, Gavin S.  
Gilmour/EAC/GOV@EAC

Subject Response Requested - EAC voter ID report

Karen,

We need to publish an FR notice early tomorrow regarding the next public meeting. In light of the recent matter regarding voter fraud, I want to be sure to accurately describe what's happening with the voter ID report item contained in the draft agenda. Please add some perspective about what will and will not be discussed and what, if any, action might be expected. The draft agenda says the following: "Presentation of Eagleton ID Report - "Best Practices to Improve Voter Identification Requirements," John Weingarten, Rutgers University (Time allotted 7-10 minutes; Q & A 5 min.)". What stage are we with this ? (preliminary, final, NOTA, etc.) Just trying to stay ahead of the curve,

Thanks,  
Bryan

[attachment "Public Meeting, 2-08-07, Wash., Draft Agenda.doc" deleted by Thomas R. Wilkey/EAC/GOV]

010454

Bryan Whitener /EAC/GOV

01/22/2007 04:55 PM

To Karen Lynn-Dyson/EAC/GOV@EAC

cc Thomas R. Wilkey/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, Gavin S.

bcc

Subject Response Requested - EAC voter ID report

Karen,

We need to publish an FR notice early tomorrow regarding the next public meeting. In light of the recent matter regarding voter fraud, I want to be sure to accurately describe what's happening with the voter ID report item contained in the draft agenda. Please add some perspective about what will and will not be discussed and what, if any, action might be expected. The draft agenda says the following: "Presentation of Eagleton ID Report - "Best Practices to Improve Voter Identification Requirements," John Weingarten, Rutgers University (Time allotted 7-10 minutes; Q & A 5 min.)". What stage are we with this ? (preliminary, final, NOTA, etc.) Just trying to stay ahead of the curve,

Thanks,  
Bryan



Public Meeting, 2-08-07, Wash., Draft Agenda.doc

010455



## U.S. Election Assistance Commission Public Meeting Agenda

1225 New York Avenue, NW  
Suite 150  
Washington, DC  
Thursday, February 08, 2007  
10:00 AM - 1:00 PM EST

**Call to Order** (Chair Davidson) (1 minute)

**Pledge of Allegiance** (Chair Davidson) (1 minute)

**Roll Call** (1 minute)

**Adoption of Agenda** (Chair Davidson) (2 minutes)

**Welcoming Remarks** (Chair Davidson) (2-3 minutes)

### OLD BUSINESS:

- **Correction and Approval of Minutes from the December 07, 2006 Meeting** (Chair Davidson) (1-3 minutes)
- **Report of the Executive Director** (Thomas Wilkey) (5-15 minutes)

10:25 AM approximate time

### NEW BUSINESS:

- **Update on EAC/NIST Laboratory Accreditation Program**
  - Brian Hancock, EAC (Time allotted 7-10 minutes; Q & A 10 min.)
  - Mary Saunders, NIST (Time allotted 7-10 minutes; Q & A 10 min.)
- **Presentation of Eagleton ID Report - "Best Practices to Improve Voter Identification Requirements,"**
  - John Weingarten, Rutgers University (Time allotted 7-10 minutes; Q & A 5 min.)



**11:20 AM Break (10 minutes)**

- **EAC Audit Process**
  - **Curtis Crider, EAC Inspector General,** (Time allotted 5-7 minutes; Q & A 5 min.)
  - **Roger LaRouche, EAC Assistant Inspector General** (Time allotted 5-7 minutes; Q & A 5 min.) Note: Curtis is asking Roger if he wants to participate since he has been at EAC so much longer.
- **State Observations - EAC Program**
  - **Texas: Dan Glotzer, HAVA Grant Manager** (Time allotted 7-10 minutes; Q & A 5 min.)
  - **Awaiting recommendations by Curtis** (Time allotted 7-10 minutes Q & A 5 min.)

**Approximate time: 12:20 PM**

**Commissioners' Closing Remarks (Time allotted 20 minutes)**

**Adjournment (Approximately 12:45 PM)**



**Deliberative Process  
Privilege**

Caroline C. Hunter/EAC/GOV  
03/16/2007 11:43 AM

To Juliet E. Hodgkins/EAC/GOV@EAC, Donetta L.  
Davidson/EAC/GOV@EAC, Gracia  
Hillman/EAC/GOV@EAC, "rosemaryrod2003"  
cc Thomas R. Wilkey/EAC/GOV@EAC, Jeannie  
Layson/EAC/GOV@EAC, s [REDACTED]  
bcc

Subject Re: Voter ID statement

History This message has been replied to.

This looks good to me, thank you Julie. Two things- did Eagleton  
approve the 2nd graph and I made a minor change to the 4th bullet as a point of clarification.

Juliet E. Hodgkins

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

**From:** Juliet E. Hodgkins  
**Sent:** 03/16/2007 09:41 AM EDT  
**To:** Donetta Davidson; Gracia Hillman; Caroline Hunter;  
[REDACTED]  
**Cc:** Thomas Wilkey; Jeannie Layson  
**Subject:** Voter ID statement

Commissioners,

Attached below are two versions of the Voter ID statement. One shows the track changes and the other shows the document having accepted all of those changes (so that it would be easier to read). Jeannie and Tom have both taken a look at this document and we think that it captures what we discussed on Wednesday.

Please take a look and let me know if this meets with your understanding of what we discussed.

[attachment "Voter ID edited 31507- track changes.doc" deleted by Caroline C. Hunter/EAC/GOV]  
[attachment "Voter ID edited 31507- changes accepted.doc" deleted by Caroline C. Hunter/EAC/GOV]

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

010458

Gavin S. Gilmour/EAC/GOV

01/22/2007 05:16 PM

To Bryan Whitener/EAC/GOV@EAC

cc Jeannie Layson/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, Karen Lynn-Dyson/EAC/GOV@EAC, Thomas R.

bcc

Subject Re: Response Requested - EAC voter ID report   

Is Eagleton submitting a report to the EAC or is Eagleton assisting us the development of an EAC report...? I suspect it is the latter. Any statement should reflect this... as should the "briefing."

GG

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

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Bryan Whitener/EAC/GOV

Bryan Whitener /EAC/GOV

01/22/2007 04:55 PM

To Karen Lynn-Dyson/EAC/GOV@EAC

cc Thomas R. Wilkey/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, Gavin S. Gilmour/EAC/GOV@EAC

Subject Response Requested - EAC voter ID report

Karen,

We need to publish an FR notice early tomorrow regarding the next public meeting. In light of the recent matter regarding voter fraud, I want to be sure to accurately describe what's happening with the voter ID report item contained in the draft agenda. Please add some perspective about what will and will not be discussed and what, if any, action might be expected. The draft agenda says the following: "Presentation of Eagleton ID Report - "Best Practices to Improve Voter Identification Requirements," John Weingarten, Rutgers University (Time allotted 7-10 minutes; Q & A 5 min.)". What stage are we with this? (preliminary, final, NOTA, etc.) Just trying to stay ahead of the curve,

Thanks,  
Bryan



Public Meeting, 2-08-07, Wash., Draft Agenda.doc

010459

**Deliberative Process  
Privilege**

Jeannie Layson /EAC/GOV  
02/06/2007 03:09 PM

To ddavidson@eac.gov, ghilman@eac.gov,  
pdegregorio@eac.gov  
cc twilkey@eac.gov, jthompson@eac.gov,  
klyndyson@eac.gov

bcc

Subject Voter ID talking pts

Commissioners,

Attached are suggested talking pts for the voter ID segment of the public meeting. Please let me know if you have questions or edits. After I receive everyone's input, I will circulate a final version.

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



[www.eac.gov](http://www.eac.gov) 2-8-07 Egleton Talking Pts.doc

010460

## **VOTER ID REPORT TALKING POINTS**

**Public Meeting**

**February 8, 2007**

### **I. Chair Davidson's Opening Comments for Eagleton Portion of Public Meeting**

- This has been a highly anticipated report.
- We received the Eagleton draft in June 2006.
- We immediately realized that the data presented more questions than answers.
- Since we have limited staff and resources, we were unable to immediately resolve these questions. Our top priorities at the time were the lab accreditation and the voting system certification programs.
- In addition, we had to focus our efforts on getting information to election officials and the public concerning the November elections, especially because so many jurisdictions were using new voting equipment.
- Now that we have launched those programs, we are once again turning our attention to this research project.
- Let me introduce Tom O'Neil and Tim Vercellotti. They are here today to pick up where we left off, and to give us a brief overview of the research they conducted regarding voter identification.

### **II. Karen Lynn-Dyson Testimony**

### **III. Eagleton Testimony**

### **IV. Commissioners Q&A**

### **V. Chair Closes Eagleton Portion of Public Meeting**

- Obviously many questions have been raised today.
- Next step is for EAC to determine how to move forward.
- I request that Tom instruct staff to provide recommendations on how to proceed within the next 30 days.
- Once we determine how to move forward and what the final culmination of this initial research will be, we will notify everyone.
- Thank you Tom and Tim for your hard work and efforts in the study of this important topic.



"John Weingart"

03/16/2007 03:30 PM

Please respond to  
John.Weingart@rutgers.edu

To klynndyson@eac.gov

cc [redacted],  
twilkey@eac.gov, jhodgkins@eac.gov

bcc

Subject Re:Review of Voter ID Statement

Karen - I believe that both Tom and I had let you know to expect our comments today. In any case, they are attached. If they raise any questions, don't hesitate to contact me today at (609)397-8030 or next week at my office. Thanks, John

> John-  
>  
> EAC staff has asked when we can expect your approval of the statement  
> which I sent several days ago and asked for by COB today.  
>  
> As I am leaving the office early today, could you be certain that Tom  
> Wilkey and Julie Hodgkins are sent your response, as well as myself?  
>  
> Thanks  
> Karen  
>  
>  
> Karen Lynn-Dyson  
> Research Director  
> U.S. Election Assistance Commission  
> 1225 New York Avenue , NW Suite 1100  
> Washington, DC 20005  
> tel:202-566-3123  
>

--

John Weingart, Associate Director  
Eagleton Institute of Politics



(732) 932-9384, x.290 EACSummary31507a.doc

010462

The Contractor performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Drawing on its nationwide review and legal analysis of state statutes and regulations for voter identification, the Contractor compared states with similar voter identification requirements and drew conclusions based on comparing turnout rates among states for one election- November 2004. For example, the turnout rate in 2004 in states that required the voter to provide an identify document<sup>1</sup> was compared to the turnout rate in 2004 in states with a requirement that voters give his or her name in order to receive a ballot. The Contractor used two sets of data to estimate turnout rates: 1) voting age population estimates<sup>2</sup>, and 2) individual-level survey data from the November 2004 Current Population Survey conducted by the U.S. Census Bureau<sup>3</sup>

Comment [MSOffice1]: Some states compare signatures. Our base case was giving name - either orally or by signing without any attempt to verify the signature. Give is therefore a more precise word here than "sign".

Footnotes:

1. In 2004, three of the states that authorized election officials to request photo identification allowed voters to provide a non-photo ID and still vote a regular ballot and two others permitted voters who lacked a photo ID to vote a regular ballot by swearing an affidavit.

2. The July 2004 estimates for voting age population were provided by the U.S. Census Bureau. Because these numbers include non-citizens, the Contractor reduced the numbers by the same percentage the U.S. Census Bureau estimated were non-citizens in 2000. Estimates of voting age population includes persons who are not registered to vote.

3. The Current Population Survey is based on reports from self-described registered voters who also describe themselves as U.S citizens.

---

1  
2  
3


Karen Lynn-Dyson/EAC/GOV

03/16/2007 02:29 PM

To: [REDACTED]

cc "Tom O'Neill [REDACTED]"; twilkey@eac.gov,  
Juliet E. Hodgkins/EAC/GOV@EAC

bcc

Subject Re:Review of Voter ID Statement 

John-

EAC staff has asked when we can expect your approval of the statement which I sent several days ago and asked for by COB today.

As I am leaving the office early today, could you be certain that Tom Wilkey and Julie Hodgkins are sent your response, as well as myself?

Thanks  
Karen

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

010464

**Deliberative Process  
Privilege**

Karen Lynn-Dyson/EAC/GOV  
03/14/2007 05:46 PM

To [REDACTED]  
cc [REDACTED]  
bcc Juliet E. Hodgkins/EAC/GOV  
Subject Re: EAC Statement on its future study of Voter ID requirements

John and Tom-

EAC staff are putting the finishing touches on the statement and data it will be releasing, in the next several days, related to voter identification study.

In our brief statement we will be summarizing what Rutgers/Eagleton did when performing its statistical analysis.

Could you review the following statement for accuracy and send me any revisions and edits to it by Friday March 16, 2007?

" The Contractor performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. The Contractor compared states with similar voter identification requirements and drew conclusions based on comparing turnout rates among states for one election- November 2004. For example, the turnout rate in 2004 in states with a photo identification requirement was compared to the turnout rate in 2004 in states with a requirement that voters sign his or her name in order to receive a ballot. The Contractor used two sets of data to estimate turnout rates: 1) voting age population estimates 1 and 2) individual-level survey data from the November 2004 Current Population Survey conducted by the U.S. Census Bureau2 "

Footnotes:

1 The July 2004 estimates for voting age population were provided by the U.S. Census Bureau. Because these numbers include non-citizens, the Contractor reduced the numbers by the same percentage the U.S. Census Bureau estimated were non-citizens in 2000. Estimates of voting age population includes persons who are not registered to vote.

2. The Current Population Survey is based on reports from self-described registered voters who also describe themselves as U.S citizens.

Thanks for your feedback

Regards

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

010465



Karen Lynn-Dyson/EAC/GOV

03/12/2007 12:09 PM

To Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC, Caroline C. Hunter/EAC/GOV@EAC, [REDACTED]  
cc Jeannie Layson/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, twilkey@eac.gov, [REDACTED]

bcc

Subject Next draft of the Voter ID statement

Commissioners-

It appears that I may be the latest casualty of the EAC "bug". As such, I'm leaving early today and may or may not be in the office tomorrow.

Jeannie and I have spoken of her getting the next draft of the statement from the four of you and preparing the final edited draft for the tally vote.

I would imagine Tom's office can put together the tally vote for this document and get it to you all tomorrow, if you have been able to reach a consensus on the final document. If this is not seen as urgent and I am back in the office I will be happy to get the material together for Wednesday.

Thanks

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

010466

Karen Lynn-Dyson/EAC/GOV

03/09/2007 05:20 PM

To Caroline C. Hunter/EAC/GOV@EAC, Donetta L.  
Davidson/EAC/GOV@EAC, Gracia  
Hillman/EAC/GOV@EAC, [REDACTED]  
cc Juliet E. Hodgkins/EAC/GOV@EAC, Jeannie  
Layson/EAC/GOV@EAC, twilkey@eac.gov

bcc

Subject Latest draft of the EAC Voter ID statement

Commissioners-

Commissioner Hunter noted that several changes to the draft that she had recommended were not included in the latest draft that I sent to Julie and Jeannie. had.

Attached please find this new version which I hope accurately reflects her suggestions; we are asking that everyone take a look at this version.

Please get me your comments and recommended edits by Monday.

Thanks-



Voter ID Statement March 9.doc

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

010467

## **EAC Statement on Future Study of Voter Identification Requirements**

### **Background**

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. In May 2005, EAC contracted with Rutgers, the State University of New Jersey through its Eagleton Institute of Politics ("Contractor") to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the Contractor was asked to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and to recommend various policies that could be applied to these approaches.

The Contractor performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Using two sets of data-- aggregate turnout data at the county level for each state, and reports of individual voters collected in the November 2004 Current Population Survey conducted by the U.S. Census Bureau-- the Contractor arrived at a series of findings, conclusions and subsequent recommendations for further research into the topic.

The Contractor presented testimony summarizing its findings from this statistical and data analysis at the February 8, 2007 public meeting of the U.S. Election Assistance Commission. The Contractor's testimony, its summary of voter identification requirements by State, its summary of court decisions and literature on voter identification and related issues, an annotated bibliography on voter identification issues and its summary of state statutes and regulations affecting voter identification are attached to this report and can also be found on EAC's website, [www.eac.gov](http://www.eac.gov).

### **EAC Recommendations for further study and next steps**

EAC finds the Contractor's summary of States' voter identification requirements and its summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements, to be a first step in the Commission's consideration of voter identification requirements.

However, EAC has concerns regarding the research and statistical methodology the Contractor chose to employ in order to analyze voter identification requirements and the potential variation in turnout rates based on the type of voter identification requirements. EAC is not adopting the report submitted by the Contractor and, therefore, is not releasing the report.

EAC will engage in a longer-term, more systematic review of voter identification requirements. Additional study on the topic will include more than one Federal election

cycle, additional environmental and political factors that effect voter participation, and the numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004.

EAC will undertake the following activities:

- Conduct an ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements which require a voter to state this or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identify.
- Establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors. EAC will use some of the information collected by Eagleton as well as additional data from the states to develop this baseline.
- Convene, by mid-2007, a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include methodology, specific issues to be covered in the study and timelines for completing an EAC study on voter identification.
- Study how voter identification provisions that have been in place for two or more Federal elections have impacted voter turnout, voter registration figures, and fraud, study the effects of voter identification provisions, or the lack thereof, on early absentee and vote-by-mail voting. Included in this study will be an examination of the relationship between voter turnout and other factors such as race and gender.
- Publish a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating poll workers and voters about various voter identification requirements. Included in the case studies will be detail on the policies and practices used to educate and inform poll workers and voters.

**Deliberative Process  
Privilege**

Karen Lynn-Dyson/EAC/GOV  
03/09/2007 10:49 AM

To "Rosemary Rodriguez"  
[REDACTED]  
cc chunter@eac.gov, "Davidson, Donetta"  
<ddavidson@eac.gov>, ghillman@eac.gov,  
jhodgkins@eac.gov, jlayson@eac.gov  
bcc  
Subject Re: Final EAC statement on Voter ID report [REDACTED]

Commissioners-

As requested, Jeannie Layson will take the attached statement and prepare a final version for Commissioner's review and tally vote on Monday.

Regards-

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

"Rosemary Rodriguez"  
[REDACTED]

03/08/2007 05:15 PM

To jhodgkins@eac.gov, klynndyson@eac.gov  
cc jlayson@eac.gov, ghillman@eac.gov, "Davidson, Donetta"  
<ddavidson@eac.gov>, chunter@eac.gov  
Subj Re: Final EAC statement on Voter ID report  
ect

are we now in the 48 hour tally vote period?

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

From: "jhodgkins@eac.gov" <jhodgkins@eac.gov>  
To: klynndyson@eac.gov  
Cc: jlayson@eac.gov; ghillman@eac.gov; "Davidson, Donetta" <ddavidson@eac.gov>;  
chunter@eac.gov; [REDACTED]  
Sent: Thursday, March 8, 2007 4:35:27 PM  
Subject: Re: Final EAC statement on Voter ID report

010470

Karen,

I started by adopting all of the changes made to the document that you sent me. Then I made edits. Because they are so extensive, I thought it best to note them in track changes. Once you have had a chance to read them over, you can get rid of the formatting problems by "accepting all changes" to the document.

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

Karen Lynn-Dyson/EAC/GOV

03/08/2007 12:47 PM

To Juliet E. Hodgkins/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC  
cc  
Subject Final EAC statement on Voter ID report

Julie/Jeannie-

Attached please find the final version of the EAC statement on the Voter ID report.

As indicated, the Commissioners have asked that you all review this statement for legal accuracy, grammar, syntax, etc, before it is sent to them for final review and approval.

If you could, go ahead and make the edits without track changes (as track changes seem to create printing problems)

Once you all have edited the statement I will send the final version on to them for the tally vote.

Thanks

Karen Lynn-Dyson  
Research Director  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005

010471

tel:202-566-3123


---

Don't get soaked. Take a quick peek at the forecast  
with the Yahoo! Search weather shortcut.

010472

**Deliberative Process  
Privilege**

Karen Lynn-Dyson/EAC/GOV  
03/08/2007 04:43 PM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc jlayson@eac.gov  
bcc  
Subject Re: Final EAC statement on Voter ID report 

These are certainly all fine with me.



We are now awaiting Jeannie's input.

The document will then be ready for the Commissioners for a tally vote.

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

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV  
03/08/2007 04:35 PM

To Karen Lynn-Dyson/EAC/GOV@EAC  
cc jlayson@eac.gov, Gracia Hillman/EAC/GOV@EAC,  
"Davidson, Donetta" <ddavidson@eac.gov>, Caroline C.  
Hunter/EAC/GOV@EAC,   
Subject Re: Final EAC statement on Voter ID report 

Karen,

I started by adopting all of the changes made to the document that you sent me. Then I made edits. Because they are so extensive, I thought it best to note them in track changes. Once you have had a chance to read them over, you can get rid of the formatting problems by "accepting all changes" to the document.



Voter ID statement jth edits.doc

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

Karen Lynn-Dyson/EAC/GOV

03/08/2007 12:47 PM

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

010473



Subject Final EAC statement on Voter ID report

Julie/Jeannie-

Attached please find the final version of the EAC statement on the Voter ID report.

As indicated, the Commissioners have asked that you all review this statement for legal accuracy, grammar, syntax, etc, before it is sent to them for final review and approval.

If you could, go ahead and make the edits without track changes (as track changes seem to create printing problems)

Once you all have edited the statement I will send the final version on to them for the tally vote.

Thanks



Final EAC Voter ID Statement.doc

Karen Lynn-Dyson  
Research Director  
U.S. Election Assistance Commission  
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Washington, DC 20005  
tel:202-566-3123

010474

**Deliberative Process  
Privilege**

Karen Lynn-Dyson/EAC/GOV

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

03/08/2007 12:47 PM

cc

bcc

Subject Final EAC statement on Voter ID report

History

 This message has been replied to.

Julie/Jeannie-

Attached please find the final version of the EAC statement on the Voter ID report.

As indicated, the Commissioners have asked that you all review this statement for legal accuracy, grammar, syntax, etc, before it is sent to them for final review and approval.

If you could, go ahead and make the edits without track changes (as track changes seem to create printing problems)

Once you all have edited the statement I will send the final version on to them for the tally vote.

Thanks



Final EAC Voter ID Statement.doc

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

010475

## EAC Statement on Future Study of Voter Identification Requirements

### Background

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. In May 2005 EAC entered into a contract with Rutgers, The State University of New Jersey through its Eagleton Institute of Politics to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the contractor was to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and recommend various policies that could be applied to these approaches.

The contractor performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Using two sets of data-- aggregate turnout data at the county level for each state, and reports of individual voters collected in the November 2004 Current Population Survey conducted by the U.S. Census Bureau-- the contractor arrived at a series of findings, conclusions and subsequent recommendations for further research into the topic.

**Comment [GH1]:** th respect to the last sentence in paragraph one above, it is my opinion that it would have been reasonable for Eagleton to have considered the statistical analysis they conducted as being covered by that task. Therefore, I recommend striking the word "also" from this sentence.

The contractor presented testimony summarizing its findings from this statistical and data analysis at a February 8, 2007 public meeting of the U.S. Election Assistance Commission. The contractor's testimony, its summary of voter identification requirements by State, its summary of court decisions and literature on voter identification and related issues, an annotated bibliography on voter identification issues and its summary of state statutes and regulations affecting voter identification are attached to this report and can also be found on EAC's website: [www.EAC.gov](http://www.EAC.gov).

### EAC Recommendations for further study and next steps

EAC finds the contractor's summary of States' voter identification requirements and its summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements, to be an important first step in the Commission's consideration of voter identification requirements.

However, EAC has concerns regarding the research and statistical methodology the contractor chose to employ in order to analyze voter identification requirements.

Therefore, EAC is not adopting the contractor's full report that was submitted and is not releasing this report. Therefore, EAC will engage in a longer-term, more systematic review of voter identification requirements and the potential variation in turnout rates based on the types of voter identification requirements. EAC's additional study on the topic will include more than one Federal election cycle, examine additional environmental and political factors that effect voter participation, and consider the

numerous changes in state laws and regulations related to voter identification requirements that have occurred since 2004.


EAC will undertake the following activities.

- An ongoing state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements which require a voter to state this or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identify.
- Using some of the information collected by Eagleton and assembling data from states, EAC will establish a baseline of information that will include factors that may affect or influence Citizen Voting Age Population (CVAP) voter participation, including various voter identification requirements, the competitiveness of a race and certain environmental or political factors.
- Convening, by mid-2007, a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include specific issues to be covered in the study, research and statistical methodologies to be employed and timelines for completing an EAC study on voter identification.
- A study of how certain voter identification provisions that have been in place for two or more Federal elections have had an impact on voter turnout, voter registration figures, and fraud. Included in this study would be an examination of the relationship between voter turnout and race and gender.
- Publication of a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating pollworkers and voters about various voter identification requirements. Included in the case studies would be detail on the policies and practices used to educate and inform pollworkers and voters.
- A state-by-state tracking of early voting, absentee voting, and vote-by-mail policies and procedures. The data collected through this tracking would be then be compared to various state voter identification policies and procedures.

Comment [GH2]: I cannot craft the word

**Deliberative Process  
Privilege**

Karen Lynn-Dyson/EAC/GOV  
03/06/2007 05:15 PM

To "Rosemary Rodriguez"  
<[REDACTED]>@GSAEXTERNAL,  
Donetta L. Davidson/EAC/GOV@EAC, Caroline C.  
cc twilkey@eac.gov, Juliet E. Hodgkins/EAC/GOV@EAC,  
Jeannie Layson/EAC/GOV@EAC  
bcc  
Subject Close-to-final draft of Voter ID statement 

Commissioners-

Attached please find the draft statement on voter ID requirement in which I have attempted to incorporate your suggested changes. Those changes are highlighted in yellow and bolded.

You'll want to pay particular attention to the options for the third paragraph in which I have offered two choices:

One choice allows you to release all of Eagleton's documents, including the testimony, the 32-page report and the statistical analysis( Appendix C).

The second choice **only** includes the testimony and does **not** include the 32 page summary or the data analysis ( Appendix C).

Once you have reached a consensus on one of the choices, I'll ask Jeannie to take a close look at grammar and syntax.

Thanks



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

010478

## EAC Statement on Future Study of Voter Identification Requirements

### Background

The Help America Vote Act of 2002 (HAVA) authorizes the United States Election Assistance Commission (EAC) to conduct periodic studies of election administration issues. In May 2005 EAC entered into a contract with the Eagleton Institute of Politics at Rutgers, the State University of New Jersey and the Moritz College of Law at the Ohio State University to perform a review and legal analysis of state legislation, administrative procedures and court cases, and to perform a literature review on other research and data available on the topic of voter identification requirements. Further, the contractor was to analyze the problems and challenges of voter identification, to hypothesize alternative approaches and recommend various policies that could be applied to these approaches.

The contractor also performed a statistical analysis of the relationship of various requirements for voter identification to voter turnout in the 2004 election. Using two sets of data-- aggregate turnout data at the county level for each state, and reports of individual voters collected in the November 2004 Current Population Survey conducted by the U.S. Census Bureau-- the contractor arrived at a series of findings, conclusions and subsequent recommendations for further research into the topic.

On February 8, 2007 in an EAC public meeting, the contractor presented testimony summarizing the findings from this statistical and data analysis which it elected to perform on voter identification requirements. A summary of voter identification requirements by State, court decisions and literature on voter identification and related issues court decisions, an annotated bibliography on voter identification issues and, state statutes and regulations affecting voter identification can be found, along with the contractor's testimony, on EAC's website: [www.EAC.gov](http://www.EAC.gov).

OR

On February 8, 2007 in an EAC public meeting, the contractor presented testimony summarizing the findings from this statistical and data analysis which it elected to perform on voter identification requirements. The contractor's full report describing the statistical and data analysis which it performed along with the testimony that was delivered summarizing this can be found on EAC's website. A summary of voter identification requirements by State, court decisions and literature on voter identification and related issue court decisions, the statistical and data analysis of the effect of voter identification requirements on turnout, an annotated bibliography on voter identification issues and, state statutes and regulations affecting voter identification can also be found on EAC's website: [www.EAC.gov](http://www.EAC.gov).

## EAC Recommendations for further study and next steps

EAC finds the contractor's summary of States' voter identification requirements and summary of state laws, statutes, regulations and litigation surrounding the implementation of voter identification requirements, to be an important beginning step in the Commission's consideration of voter identification requirements. From the contractor's statistical analysis and compilation of data EAC considers it advisable to engage in a longer-term, more systematic review of voter identification requirements and is recommending that at a minimum the agency engage on an ongoing basis in:

- A state-by-state review, reporting and tracking of voter identification requirements. This will include tracking states' requirements which require a voter to state this or her name, to sign his or her name, to match his or her signature to a signature on file, to provide photo or non-photo identification or to swear an affidavit affirming his or her identify.
- To collect a baseline of information on what factors may effect or influence Citizen Voting Age Population (CVAP) voter participation. **At a minimum data on voter participation statistics for the 2004 and 2008 election cycles would be collected.** Other factors to be examined will include various voter identification requirements, whether or not the race was "hotly" contested and, other environmental or political factors

From this ongoing review and tracking EAC can determine the feasibility and advisability of further research and study into whether voter identification requirements have had an impact over several elections on factors such as voter turnout, registration, and fraud.

EAC is likely to consider implementing one or more of the following research studies that will serve to augment the work begun by the Eagleton Institute of Politics:

- **Convening a working group of advocates, academics, research methodologists and election officials to discuss EAC's next study of voter identification. Topics to be discussed include specific issues to be covered in the study and timelines for completing an EAC study on voter identification.**
- A study of how certain voter identification provisions that have been in place for two or more Federal elections have had an impact on voter turnout, voter registration figures, and fraud. Included in this study would be an examination of the relationship between voter turnout and race and gender;
- Publication of a series of best practice case studies which detail a particular state's or jurisdiction's experiences with educating pollworkers and voters about various voter identification requirements. Included in the case studies would be detail on the policies and practices used to educate and inform pollworkers and voters;

- A state-by-state tracking of early voting, absentee voting, and vote-by-mail policies and procedures. The data collected through this tracking would then be compared to the various state voter identification policies and procedures described above.

DRAFT



Karen Lynn-Dyson/EAC/GOV

To twilkey@eac.gov

02/13/2007 11:00 AM

cc Donetta L. Davidson/EAC/GOV@EAC, Juliet E.  
Hodgkins/EAC/GOV@EAC, Jeannie  
Layson/EAC/GOV@EAC

bcc

Subject Next Steps on the voter ID report

Tom-

Just wanted to check in to determine what, if anything, I need to do in order to assist with the creation and delivery of EAC's report on the Voter ID study.


I assume that we will have to issue something on or about **March 8**.

K

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

010482

Karen Lynn-Dyson/EAC/GOV  
02/06/2007 04:46 PM

To Jeannie Layson/EAC/GOV@EAC, Bert A.  
Benavides/EAC/GOV@EAC  
cc ddavidson@eac.gov, ghillman@eac.gov,  
jthompson@eac.gov, pdegregorio@eac.gov,  
twilkey@eac.gov  
bcc  
Subject Re: Voter ID talking pts 

Bert, et.al-

Here is the testimony Jeannie and Julie just approved

K

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

Jeannie Layson /EAC/GOV

02/06/2007 03:09 PM

To ddavidson@eac.gov, ghillman@eac.gov, pdegregorio@eac.gov  
cc twilkey@eac.gov, jthompson@eac.gov, klynndyson@eac.gov  
Subject Voter ID talking pts

Commissioners,  
Attached are suggested talking pts for the voter ID segment of the public meeting. Please let me know if you have questions or edits. After I receive everyone's input, I will circulate a final version.

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

010483



[www.eac.gov](http://www.eac.gov) 2-8-07 Eagleton Talking Pts.doc Karen Dyson testimony for Voter ID meeting.doc

**Deliberative Process  
Privilege**

Karen Lynn-Dyson/EAC/GOV

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

06/30/2006 09:24 AM

cc

bcc

Subject Fw: Final Provisional Voting and Voter ID reports

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

— Forwarded by Karen Lynn-Dyson/EAC/GOV on 06/30/2006 09:21 AM —



"Thomas O'Neill"

06/29/2006 08:42 PM

To klynndyson@eac.gov

cc

Subject Final Provisional Voting and Voter ID reports

Karen,

Attached are our final reports on Provisional Voting and Voter Identification in PDF format. The hard copies with all attachments are on their way to you via Fed Ex.

I understand from your email today that we will be receiving a letter from Tom Wilkey on the final steps to wrap up the contract. All of us are eager to see the Commission move forward with recommendations to the states for best practices on provisional voting and to take the next step on voter id issues by submitting our report to the advisory boards.

Thanks for your long effort to help us see this research through to submission. I hope we'll have a further chance to work together as our recommendations approach implementation.

Hope you enjoy some time off during the coming long weekend and July 4 celebration.



Tom O'Neill VoterIDReport062806INAL.pdf



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

010485

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

June 28, 2006

Submitted by

The Eagleton Institute of Politics, Rutgers, The State University of New Jersey  
The Moritz College of Law, The Ohio State University

**Report to the  
U. S. Election Assistance Commission**

**Best Practices to Improve Voter Identification Requirements**

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<b>Appendix E: State Statutes and Regulations Affecting Voter Identification     (included in electronic form only)</b>	

## The Research Team

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

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

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

### Project Management Team

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

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

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

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

John Weingart  
Associate Director  
Eagleton Institute of Politics

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

Dave Andersen  
Graduate Assistant,  
Eagleton Institute of Politics

John Harris  
Graduate Assistant  
Eagleton Institute of Politics

Donald Linky  
Senior Policy Fellow  
Eagleton Institute of Politics

Sara A. Sampson  
Reference Librarian,  
Moritz College of Law

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

Laura Williams  
The Moritz College of Law

### Peer Review Group

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

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

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

John C. Harrison  
Massee Professor of Law  
University of Virginia School of Law

Bradley Smith  
Professor of Law  
Capital University Law School

Martha E. Kropf  
Assistant Professor Political Science  
University of Missouri-Kansas City

Tim Storey  
Program Principal  
National Conference of State Legislatures

Daniel H. Lowenstein  
Professor of Law, School of Law  
University of California at Los Angeles

Peter G. Verniero  
former Attorney General, State of New Jersey  
Counsel, Sills, Cummis, Epstein and Gross, PC



# **REPORT AND RECOMMENDATIONS TO THE EAC VOTER IDENTIFICATION ISSUES**

---

## **Report Background**

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

This study provides information on voter identification practices in the 2004 election. It makes recommendations for best practices to evaluate future proposals for voter ID requirements, including the systematic collection and evaluation of information from the states. The research was conducted by the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at the Ohio State University under a contract with the EAC, dated May 24, 2005. The work included a review and legal analysis of state statutes, regulations and litigation concerning voter identification and provisional voting as well as a statistical analysis of the relationship of various requirements for voter identification to turnout in the 2004 election. This report is a companion to a report on Provisional Voting submitted to the EAC on November 28, 2005 under the same contract.

## **EXECUTIVE SUMMARY AND RECOMMENDATIONS**

### Background and Methods

This report arrives at a time of considerable ferment over the issue of voter identification. The debate across the nation over requiring voters to produce a specific identification document before being permitted to cast a regular (as opposed to a provisional) ballot, has revealed supporters and opponents in polarized camps.

- Proponents of stricter identification requirements base their case on improving the security of the ballot by reducing opportunities for one kind of vote fraud --multiple voting or voting by those who are not eligible. The proponents argue that their goal is to ensure that only those legally entitled to vote do so, and do so only once at each election.

- Opponents seek to forestall more stringent identification requirements, such as government-issued photo ID, in order to ensure broad access to a regular ballot. They fear that some voters --such as, they argue, racial and ethnic minorities, the young, and elderly voters-- may lack convenient access to the required ID documents, or that such voters may be fearful of submitting their ID documents to official scrutiny and thus stay away from the polls.
- Both sides argue that their preferred policy will engender faith in the electoral process among citizens.

This report considers policy issues associated with the voter ID debate. It inquires whether empirical study can suggest a way to estimate the effects of different voter ID requirements on turnout. That analysis would constitute an important first step in assessing tradeoffs between ballot security and ballot access. The aim of this research is to contribute to the effort to raise the quality of the debate over this contentious topic. The tradeoffs between ballot security and ballot access are crucial. A voting system that requires voters to produce an identity document or documents may prevent the ineligible from voting. It may also prevent eligible voters from casting a ballot. If the ID requirement of a ballot protection system blocks ineligible voters from the polls at the cost of preventing eligible voters who lack the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit.

As part of the project's effort to analyze the relationship between Voter ID requirements, turnout, and their policy implications, a statistical analysis examined the potential variation in turnout. This statistical study developed a model to illuminate the relationships between voter ID requirements and turnout. This model's findings and limitations suggest avenues for further research and analysis that may assist the EAC and the states as they explore policies to balance the goals of ballot integrity and ballot access.

The statistical analysis describes one possible way to estimate what might be the incremental effect on voters' access to the ballot of an increase in the rigor of voter identification requirements. We do not offer this statistical analysis as the last word, but rather as a preliminary word on the subject. Its findings must be regarded as tentative; the information (such as the specific reasons some potential voters are not allowed to cast a regular ballot) that that might permit greater certainty is simply not available. Indeed, as our recommendations indicate, the next step to improve understanding of the effects of stricter voter identification on

turnout and on vote fraud is to collect more information on both topics systematically and regularly.

Making a statistical estimate of the effect of voting regulations on turnout is difficult. The dynamics of turnout are complex, much studied, and only partially understood. Some agreement exists, however, that three factors that exert substantial influence on voter turnout are:<sup>1</sup> the socioeconomic status of the potential voter; legal requirements to vote; and the political context of the election. By focusing on how voters identify themselves at the polls, this report emphasizes legal requirements. The statistical analysis also considers some of the socioeconomic, racial, and age characteristics of the electorate, as well as the political context in 2004 (such as whether a state was a battleground in the presidential race).

Examining tradeoffs between ballot security and ballot access requires some measure of the effectiveness of voter ID requirements in reducing multiple voting or voting by ineligible voters. The existing evidence on the incidence of vote fraud, especially on the kind of vote fraud that could be reduced by requiring more rigorous voter identification, is not sufficient to evaluate those tradeoffs.<sup>2</sup> Assessing the effectiveness of voter ID as a way to protect the integrity of the ballot should logically include an estimate of the nature and frequency of vote fraud. This research does not include consideration of vote fraud, nor does it estimate the possible effectiveness of various voter ID regimes to counter attempts at vote fraud. Our analysis also cannot take into account how many potential voters who did not turn out under comparatively stricter voter ID requirements might have been ineligible or eligible to vote.

Despite these qualifications regarding the quality of the available data and the limitations of statistical analysis, however, the different statistical methods and two different sets of data on turnout in 2004 election used in the study point to the same general finding. Stricter voter identification requirements (for example, requiring voters to present non-photo ID compared to simply stating their names) were correlated with reduced turnout in the models employed, as described in detail in Appendix C.<sup>3</sup> As explained below, these models find that a statistically

---

<sup>1</sup> See, for example, Tom William Rice and Patrick J. Kenney, "Voter Turnout in Presidential Primaries." 1985. *Political Behavior*, 7: 101-112. Identification requirements are not the only legal restrictions on voting. States also differ, for example, in their registration requirements (including how long before the election registration must take place and the identity documents required register).

<sup>2</sup> The EAC has contracted with other researchers to study vote fraud issues.

<sup>3</sup> Appendix C: Tim Vercellotti, Eagleton Institute of Politics, *Analysis of Effects of Voter Identification Requirements on Turnout*. Using the aggregate data, photo ID did not have a significant effect on turnout, possibly because in the

significant relationship exists, even when controlling for other factors (such as whether the election was in a battleground state) that might affect turnout. (But note that in the model using the aggregate data, photo ID did not have a significant effect on turnout. The reason may have been that in this election, each state with a photo ID requirement provided an alternate way for those without a photo ID to cast a regular ballot.) Without knowing more about the effects of stricter voter ID on reducing multiple voting or voting by ineligible voters, however, the tradeoffs between ballot security and ballot access cannot be assessed.

#### Methodology

The report includes detailed information on the nature of the statutory requirements across the country in 2004 and on the statutes and court decisions that provide the legal context for the voter ID debate. We gathered information on the requirements in effect in the 50 states and the District of Columbia in that year. Based on our interpretation of state statutes, supplemented in some cases by conversations with state election officials, we divided the states' ID requirements into five categories. We believe each category is more rigorous than the one preceding, based on the demands they make on voters.<sup>4</sup> The categories range from "Stating Name" which we judge to be somewhat less demanding than "Signing Name." "Signature Match" requires poll workers to examine the signature and compare it to a sample, which is slightly more demanding than the voter simply signing. "Present ID" requires voters to offer some documentary evidence of their identity, ranging from a utility bill to a passport. It is more demanding than the previous three categories because it requires that the voter remember to bring this documentation to the polls. (Even a simple ID, such as a utility bill, may not be available to some renters or, say, those in group housing.) We regard a government "Photo ID" as the most rigorous requirement. Such identity documents may not be uniformly and conveniently available to all voters.

For each state, we identified both the "maximum" and "minimum" identification requirements. The term "maximum" refers to the most that voters may be *asked* to do or show at the polling place (putting aside cases in which particular voter's eligibility may be questioned pursuant to a state challenge process). The term "minimum," on the other hand, refers to the most that voters can be *required* to do or show, in order to cast regular ballot (again leaving aside a state

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2004 election every state requiring photo ID provided an alternative way to cast a regular ballot for those voters who lacked photo identification. The individual data from the Current Population Survey did show a significant effect, but only for the overall sample and for white voters, which may be an artifact of the large sample size.

<sup>4</sup> Even the most relaxed provisions for identification at the polls—anything stricter than the honor system used in North Dakota—will impose some burden on particular voters. Harvard Law Review 119:1146

challenge process). We have included “maximum” requirements in our analysis, and not simply “minimum” requirements, because simply asking voters to produce particular identifying information may have a deterrent effect, even if voters are ultimately allowed to cast a regular ballot without that identification. For example, in a state where voters are asked to show photo ID at the polling place, but still allowed to vote by completing an affidavit confirming their eligibility, the “maximum” of being asked to show photo ID may deter some voters even though the “minimum” would allow them to vote without photo ID.

It is worth emphasizing that, at the time of the 2004 election, there was *no* state that had a “minimum” requirement of showing photo ID – in other words, there was no state that required voters to show photo ID in order to cast a regular ballot. For this reason, our report does not measure the impact of laws, like those recently enacted in Indiana and Georgia, which require voters to show photo ID in order to cast a regular ballot without an affidavit exception.

To examine the potential variation on turnout rates associated with each type of voter ID requirements in effect on Election Day 2004, the statistical analysis drew on two sets of data. These were, first, aggregate turnout data at the county level for each state and, second, the reports of individual voters collected in the November 2004 Current Population Survey by the U. S. Census Bureau. Using two different data sets makes it possible to check the validity of one analysis against the other. It also provides insights not possible using only one of the data sets. The aggregate analysis cannot provide valid estimates on the effects of different ID requirements on particular demographic groups (e.g., the old, the young, African-Americans, the poor, or high school graduates). The Current Population Survey data does permit that kind of analysis, although it has the disadvantage of relying on self-reports by respondents about their registration status and experience in the polling place.

To understand legal issues that have been raised in recent litigation over voter ID requirements, we collected and analyzed the few major cases that have been decided so far on this issue. The decisions so far provide some guidance on the constitutional and other constraints as to voter ID requirements.

#### Summary of Findings

As voter identification requirements vary, voter turnout varies as well. This finding emerged from both the statistical analysis’s aggregate data and the individual-level data, although not always

for both the maximum and minimum sets of requirements. The overall relationship between the stringency of ID requirements and turnout was fairly small, but still statistically significant.

In the model used with the aggregate data in the statistical analysis, for the maximum ID requirements, the match-signature requirement and the provide-a- non-photo-ID requirement, but not the photo ID requirement, were all correlated with lower turnout compared to requiring that voters state their names. When the registration closing deadline was added as an independent variable in the aggregate analysis, signature match and non-photo id remained significant and negative predictors in the model.

The reduction in turnout was not the same for all demographic groups in the citizen voting age population.

The non-photo identification requirement showed the most significant and consistent correlation with reduced turnout. This result may be surprising given the intense debates surrounding photo identification requirements. The effect of photo ID requirements cannot, however, be assessed from the data the statistical analysis examined, since none of the states had laws in 2004 that conditioned voting on presentation of photo ID. Each of the five states that had photo ID as a “maximum” requirement (i.e., the most that voters could be asked to show at the polls) accepted another type of identification or an affidavit as a “minimum” requirement in the 2004 election (i.e., they were allowed to cast a regular ballot with something less than photo ID).

Significant questions about the relationship of voter identification requirements to turnout remain unanswered. The data examined in this project could not capture the dynamics of how identification requirements might lower turnout. If ID requirements dampen turnout, is it because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements? Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day? Other factors that may also be correlated with stricter ID laws – such as less user-friendly voter registration systems – may actually be causing lower turnout. The CPS data do not include the information needed to answer this question. Knowing more about the “on the ground” experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such

knowledge also could help in designing training for election judges to handle questions about, and potential disputes over, voter identification requirements.

Our analysis of litigation suggests that the courts will look more strictly at requirements that voters produce a photo ID in order to cast a regular ballot, than at non-photo ID laws. The courts have used a balancing test to weigh the legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, a best practice for the states may be to limit requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

The current lack of understanding of precisely how voter ID requirements affect turnout could be ameliorated by requiring the collection and reporting of additional data, including the reasons potential voters are required to cast a provisional ballot and the reasons for rejecting provisional ballots during the 2006 and subsequent elections. Also useful would be the results of surveys of voters on their experiences in meeting voter ID requirements and on what type of ballot they cast.<sup>5</sup> And, of course, more information is needed on the incidence and varieties of vote fraud, but that inquiry is outside the scope of this report.

#### Recommendations for consideration and action by the EAC

The dynamics of Voter ID requirements –how more rigorous voter ID requirements may affect the decision by potential voters to go or stay away from the polls-- are not perfectly understood. This lack of understanding should be recognized in the policy process in the states. The debate over voter ID in the states would be improved by additional research sponsored by the EAC.

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

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<sup>5</sup> Arizona held its first election with its new, stricter ID requirements on March 14, 2006. In at least one county (Maricopa) election officials handed a survey to voters that asked if they knew about the voter identification law and if they did, how they found out about it. Edythe Jensen, "New Voter ID Law Goes Smoothly in Chandler," *Arizona Republic*, March 15, 2006. More surveys of this kind can illuminate the dynamics of voter ID and voting in ways that are not possible now because of insufficient data.

1. Encourage or sponsor further research to clarify the connection between Voter ID requirements and the number of potential voters actually able to cast a ballot that is actually counted.
2. Recommend as a best practice the publication of a "Voting Impact Statement" by states as they assess their voter ID requirements to protect the integrity of the ballot. The analysis will help ensure that efforts to increase ballot security have a neutral effect on electoral participation by eligible voters. A "Voter Impact Statement" would estimate the number and demographics of 1) eligible, potential voters that may be kept from the polls or permitted to cast a provisional ballot by a stricter ID requirement; and 2) and assess the number of ineligible voters who will be prevented from voting by the stricter ID requirements.
3. Encourage or require the states in the 2006 election and beyond, to collect and report reliable, credible information on the relationship between ballot access and ballot security. EAC should publish an analysis of this information to provide a sound factual basis for the states to consider as they estimate the incidence of the kinds of vote fraud that more stringent ID requirements may prevent. The analysis should describe the dynamics of the voter ID process in preserving the security of the ballot. EAC might also use the information reported by the states to encourage further assessment by the states of the effectiveness of programs to ensure that all eligible voters have required ID and are permitted to vote in future elections. Well-designed longitudinal studies in the states can show the results of changing voter ID requirements on electoral participation over time. The studies should include precinct-level data to provide the fine-grained analysis that can provide a solid foundation for policy.
  - I. Useful information could be supplied by state-sponsored surveys of voters conducted by local election officials. Such surveys would make clear why those who cast a provisional ballot were found ineligible to cast a regular ballot. The answers would illuminate the frequency with which ID issues divert voters into the provisional ballot line.
  - II. Surveys to ask voters what they know about the voter id requirements would also provide useful context for evaluating the effect of various voter ID requirements on electoral participation.
  - III. Spot checks by state election officials on how the identification process works at polling places could provide information on how closely actual practice tracks



statutory or regulatory requirements. Such reports should be available to the public.

4. Encourage states to examine the time period allowed for voters who cast a provisional ballot because they lacked required ID to return with their identification. In eleven states, voters who had to cast a provisional ballot because they lacked the ID required for a regular ballot were permitted to return later with their ID. Their provision of this ID is the critical step in evaluating the ballots. The length of the period in which the voter may return with ID is important. In setting the time period for return, which now varies among the states from the same day to about two weeks, states should consider three factors: the convenience of the voter, the total time allowed to evaluate ballots<sup>6</sup>, and the safe harbor provision in presidential elections.
5. Recommendations to the states from EAC should reflect current judicial trends. Requirements that voters provide some identifying documentation have been upheld where photo ID is *not* the only acceptable form. Whether laws requiring photo ID will be upheld is less certain.

## **SUMMARY OF RESEARCH**

### **Background and Approach of the Study**

Voter ID requirements are just one set of rules governing voting that may affect turnout. Social scientists have long studied how election rules affect participation in elections. The general view today is that the individual citizen makes the choice of whether to vote in a way similar to other decisions that a rational citizen makes, by comparing costs and benefits. The benefits of voting are fairly stable and hard to specify given the remote probability that any one vote will make a difference in an election. But whatever the benefit as perceived by an individual voter, as the costs of voting (for example, time, hassle, acquisition of information) increase, the likelihood that a citizen will vote decrease. Not all groups in the population calculate the cost of participation in the same way, so that election laws (such as registration or identification requirements) may affect different groups differently.

A short summary of some of the social science literature illustrates what may be a broad consensus that the rules of elections affect turnout, but note the important differences in the details of what groups may be most affected.

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<sup>6</sup> Our research on provisional voting reveals that states that provide more than a week to evaluate provisional ballots end up counting substantially more of those ballots than states that provide less than a week.

- Bowler, Brockington and Donovan in "Election Systems and Voter Turnout: Experiments in the United States". *The Journal of Politics*, 63:3 (August 2001) concluded that electoral systems help shape turnout by altering the benefits perceived by voters. For example, cumulative voting systems have 5% greater turnout than plurality systems
- The effect of registration systems has been the subject of many studies over the last 40 years. Kelley, Ayres, and Bowen in "Registration and Voting: Putting First Things First." *American Political Science Review*. 61:2 (June 1967) found that local variations in the rate of voting are most directly tied to variations in the rate of registering to vote, and that the rate of registering to vote in localities is most directly related to the laws and administration of the registration process. They concluded that the decline in voting over the past 80 years was due, in part, to the rise of registration laws.
- Briens and Grofman in "Election Day Registration's Effect on U.S. Voter Turnout." *Social Science Quarterly*. 82:1 (March 2001), found that relaxing registration laws produces higher turnout. In particular, they observed that relaxing registration laws is more likely to promote voter turnout among those with medium levels of income and education, rather than those at the lowest levels. Highton in "Easy Registration and Voter Turnout," *Journal of Politics*. 59:2 (May 1997), concluded similarly that registration laws affect voter turnout, but also observed that easier registration promotes turnout among those in lower socio-economic status.
- Mitchell and Wlezien. "The Impact of Legal Constraints on Voter Registration, Turnout, and the Composition of the American Electorate," *Political Behavior*. 17:2 (June 1995) agreed that easier registration promotes higher turnout, but also concluded that higher turnout from easier registration would be unlikely to change the composition of the electorate. Nagler in "The Effect of Registration Laws and Education on U.S. Voter Turnout." *American Political Science Review*. 85:4 (December 1991) found that registration laws decrease voter turnout by depressing the eligible electorate, but that lower educated people are not disproportionately impacted by these laws. But Rosenstone and Raymond E. Wolfinger in "The Effect of Registration Laws on Voter Turnout." *American Political Science Review*. 72:1 (March 1978) found that while registration laws did affect both voter turnout and the composition of the electorate, the sharpest effect of these restrictions was felt in the South and among the least educated.

- Squire, Wolfinger, and Glass in "Residential Mobility and Voter Turnout." *American Political Science Review*. 81:1 (March 1987) found that people who move constitute a major demographic group affected by registration laws. They estimated that altering laws to facilitate voting by recently moved people could increase turnout by 9%. Highton in "Residential Mobility, Community Mobility, and Voter Turnout." *Political Behavior*. 22:2 (June 2000) also found that people who move have lower turnout than stable residents, and estimated that the decline was more a result of registration laws than a loss of social connections.
- Highton and Wolfinger in "Estimating the Effects of the National Voter Registration Act of 1993." *Political Behavior*. 20:2 (June 1998) concluded that the Motor Voter laws led to a significant increase in voting; that eliminating voter purges for not voting also increases voting; and that these effects are felt most heavily by the young (under 30) and the mobile (moved within past 2 years). Knack, in "Does 'Motor Voter' Work? Evidence from State-Level Data." *Journal of Politics*., 57:3 (August 1995), also found that motor voter does lead to increased registration and voting, but that other parts of NVRA of 1993, like mail-in registrations, agency-based registrations, and limitations on voter purges had not been as influential two years after the passage of the act.

While voter ID may not have been the subject of as much research as the registration process, establishing the eligibility of a person to vote has long been part of the electoral process. Voters may have to identify themselves twice in the electoral process: when registering to vote and then when casting a ballot. The pressures felt by the voter arising from the need to check ID, even so simple a check as a signature match, can be greater at the polls on Election Day than at the time of registration. Poll workers may feel under pressure when faced with long lines and limited time.

#### Voter ID requirements on Election Day

This analysis focuses on ID requirements on Election Day, but with an appreciation that the ID requirements at time of registration and on Election Day are inter-related.<sup>7</sup> The emphasis in this report is on Voter ID requirements on Election Day and afterwards as election judges evaluate provisional ballots. This is the critical period for the electoral system, the time when ballot access and ballot security are in the most sensitive balance.

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<sup>7</sup> As the Carter-Baker Commission noted, photo ID requirements for in-person voting do little to address the problem of fraudulent registration by mail, especially in states that do not require third-party organizations that register voters to verify ID. Commission on Federal Election Reform, pp 46-47.

The report looks at voter ID issues that go beyond the rather narrow identification requirements in HAVA. Much of the current debate in state legislatures over voter ID ranges beyond HAVA to require more rigorous documentation of identity for all would-be voters, not just those who had not registered in person and are casting a ballot for the first time. Current controversies in the states over voter ID seems to have been sparked in part by the HAVA requirements, but goes beyond those requirements, and sets the context for the analysis here.<sup>8</sup>

We recognize that the previously technical, rather dull subject of voter ID requirements has become fiercely partisan and divisive in many states. The polarization of the debate has raised the stakes over this issue, making dispassionate analysis both more valuable and more rare.<sup>9</sup> Voter ID is often described as the critical step in protecting the integrity of the ballot, the process to ensure that the potential voter is eligible and, if eligible, is permitted to cast one ballot and one ballot only. Truly protecting the integrity of the ballot, however, requires a perspective that takes in the entire voting process. It demands more than preventing the ineligible from voting, and should also ensure that all those who are eligible and want to vote can cast a ballot that counts. The protection effort must embrace all forms of voting, including absentee ballots, and consider each step in the process from registration through vote counting.

A voting system that requires voters to produce an identity document or documents may prevent the ineligible from voting. It may also prevent the eligible from casting a ballot. If the ID requirements block ineligible voters from the polls at the cost of preventing eligible voters who cannot obtain or have left at home the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit. Ultimately, a normative evaluation of whether a state should adopt a stricter voter ID requirement (and, if so, what particular form that new requirement should take) will weigh value judgments as well as available factual evidence. Nonetheless, this report has proceeded on the premise that

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<sup>8</sup> Harvard Law Review 119:1127: "Legislators hoping to stiffen their state antifraud laws have taken their cue from identification provisions buried in HAVA."

<sup>9</sup> "Of the various electoral procedure laws passed in the fifty states since the 2000 and 2004 presidential elections and those still being debated in state legislatures and local media, few arouse more potent partisan feelings than voter identification laws." *Harvard Law Review* 119:1144. John Fund's 2004 book, *Stealing Elections: How Voter Fraud Threaten Our Democracy*, cites (pages 16 – 17) a Rasmussen Research poll that asked respondents if they were more concerned with voting by ineligible participants or with disenfranchisement of eligible voters. Sixty-two percent of Kerry supporters, but only 18 percent of Bush supporters, worried more about *disenfranchisement*; 58 percent of Bush supporters, but only 19 percent of Kerry supporters were more concerned with *voter fraud*.

increased understanding of the factual evidence relating to the imposition of voter ID requirements, based on available data and statistical analysis of that data, can help inform the policy process.

Assessing the effectiveness of voter ID as a way to protect the integrity of the ballot should logically include an estimate of the nature and frequency of vote fraud. The EAC has commissioned a separate analysis of the incidence of vote fraud. Consequently, this research does not include consideration of vote fraud nor the possible effectiveness of various voter ID regimes to counter attempts at vote fraud. As a result, our study of the possible effects of voter ID requirements on turnout cannot take into account how many potential voters who did not turn out under comparatively stricter voter ID requirements might have been ineligible or eligible to vote.

In some states, voters lacking required ID, or who have ID that does not reflect their current address, are able to vote only by casting a provisional ballot.<sup>10</sup> Voter ID requirements that require voters to bring a document to the polls --rather than simply sign their names-- may divert more voters to the provisional ballot. Requiring poll workers to request and check ID, can put stress on the already demanding environment of the polling place. Scrutiny of ID can create lines at the polling places. Further delays can result when voters cast a provisional ballot and fill out the ballot envelope. Voters who cast a provisional ballot because they lack their ID on Election Day, and who then fail to return with the needed document or documents, will have their ballot rejected.<sup>11</sup> And, of course, the cost of processing provisional ballots is greater than the cost of regular ballots.

Each of these potential consequences of more elaborate voter identification processes can increase the chance of litigation. Long lines will, at best, discourage voters and at worst make voting seem a hassle, an impression that could keep more citizens (even those with ID) from the polls.

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<sup>10</sup> For example, the Florida voter ID law adopted after the 2004 election and pre-cleared by the Department of Justice, permits voters who cannot meet the ID requirements to sign an affidavit on the envelope of a provisional ballot, which will be counted if the signature matches that on the voter's registration form.

<sup>11</sup> The EAC's Election Day Study found "improper ID," to be the third most common reason for a provisional ballot to be rejected. "Improper ID" was cited by 7 states responding to the survey, compared to 14 mentions for voting in the wrong precinct. *Election Day Study*, Chapter 6, p. 5.

Evaluating the effect of different Voter ID regimes can be most effective when based on clear standards --legal, equitable, practical. The standards outlined here might be described as questions policy-makers should ask about Voter ID requirements. We suggest seven questions that address important dimensions of the problem.

1. Is the Voter ID system designed on the basis of valid and reliable empirical studies of the incidence of the sorts of vote fraud it is designed to prevent?<sup>12</sup>
2. How effective is the ID requirement in increasing the security of the ballot? How well can it be coordinated with a statewide voter database?<sup>13</sup>
3. How practical is the requirement? (Can it be administered smoothly by the staff and budget likely to be made available? How much additional training of polling place workers might be required?) Is it simple enough or can it be defined with sufficient clarity that poll workers throughout the state can administer it uniformly and with a minimum of local interpretation made on the fly under the pressure of Election Day?<sup>14</sup>
4. How cost-effective is the system? Does it demonstrably increase the security of the ballot affordably, measured in both monetary and other costs? To improve understanding of the non-monetary component of the costs, conducting a voter impact study might be appropriate. The voter impact study would examine, before the adoption of the regulation, the cost of compliance by the voter (such as the cost in time and money of acquiring a photo ID card), any offsetting benefits to voters, and the possible disparate effects of the regulation on various groups of voters.<sup>15</sup> A thorough, objective impact statement that demonstrated the nexus between the identification regime and the integrity of the ballot could provide protection against inevitable legal challenges.

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<sup>12</sup> "Often where the battle over voter identification is most heated, real evidence of voter fraud proves scarce: in Georgia, for example, the Secretary of State averred that she had never encountered a single instance of voter impersonation at the polls. State laws might sometimes impose tighter restrictions on in-person voting than on absentee ballots, which yield the greatest incidence of, and provide the easiest avenue for, voter fraud. . ." Harvard Law Review 127:1144 (2006)

<sup>13</sup> See the final section of this report for a brief overview of possible effects of a statewide voter database on voter identification issues.

<sup>14</sup> In New York, in 2004, disparities in training and voting information were made apparent in a study finding elections officials had wildly varying interpretations of what the state's voter identification requirement actually was. Tova Wang, "Warning Bell in Ohio," December 5, 2005. Website, the Foundation for National Progress.

<sup>15</sup> "Absent clear empirical evidence demonstrating widespread individual voter fraud, legislatures need to fashion narrowly tailored voter identification provisions with an eye toward the inevitable and well-grounded constitutional challenges that will arise in the courts. Only as states grow more adept at administering elections will courts likely demonstrate greater willingness to uphold strict identification requirements." Harvard Law Review 127:1144 (2006)

5. If a side effect of the Voter ID regulation is likely to reduce turnout, generally or among particular groups, is it possible to take other steps to ameliorate the adverse consequences?<sup>16</sup>
6. Does it comply with the letter and spirit of Voting Rights Act?
7. The seventh question is the most difficult to answer. How neutral is the effect of the Voter ID requirement on the composition of the qualified and eligible electorate? Might it, intentionally or unintentionally, reduce the turnout of particular groups of voters or supporters of one party or another without an offsetting decrease in vote fraud?

### **Voter ID and Turnout**

Based on research for this study by the Moritz College of Law, states had one of five types of maximum requirements in place on Election Day 2004. These are shown in Table 1, *Voter ID Requirements*. The five categories: at the polling place, voters were asked to either: state their names (10 states); sign their names (13 states and the District of Columbia); sign their names, to be matched to a signature on file (seven states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (five states).<sup>17</sup> Using this information made it possible to code the states according to these requirements, and examine the assumption that voter identification requirements would pose an increasingly demanding requirement in this order: stating one's name, signing one's name, matching one's signature to a signature on file, providing a form of identification, and providing a form of photo identification, however, in all "photo ID" states in 2004, voters without photo ID could cast a regular ballot after signing an affidavit concerning their identity and eligibility or provide other forms of ID). The report refers to this set of ID requirements as "maximum," the most rigorous ID the voter can be asked to present at the polling place in order to cast a regular ballot.<sup>18</sup>

Election laws in several states offer exceptions to these requirements if potential voters lack the necessary form of identification. Laws in those states set a minimum standard – that is the

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<sup>16</sup> For example, the Carter-Baker Commission coupled its recommendation for a national voter ID card to a call for an affirmative effort by the states to reach out and register the unregistered, that is, to use the new Voter ID regime as a means to enroll more voters. Similarly, Richard Hasen has suggested combining a national voter ID with universal registration. See his "Beyond the Margin of Litigation: Reforming U.S. Election Administration to Avoid Electoral Meltdown," 62 Washington and Lee Law Review 937 (2005).

<sup>17</sup> Oregon conducts elections entirely by mail. Voters sign their mail-in ballots, and election officials match the signatures to signatures on file. For the purposes of this analysis, Oregon is classified as a state that requires a signature match.

<sup>18</sup> As noted above, our analysis does not consider additional requirements that particular voters may be subjected to as part of an official challenge process, in the event that their eligibility is called into question.

minimum requirement that a voter may be required to satisfy in order to vote using a regular ballot. States can be categorized based on the minimum requirement for voting with a regular ballot. In 2004 the categories were somewhat different compared to the maximum requirement, in that none of the states required photo identification as a minimum standard for voting with a regular ballot. That is, voters who lacked photo ID would still be allowed to vote in all states, if able to meet another requirement. Four states required voters to swear an affidavit as to their identity (Florida, Indiana, Louisiana, and North Dakota). The five categories for minimum requirements were: state name (12 states), sign name (14 states and the District of Columbia), match one's signature to a signature on file (six states), provide a non-photo identification (14 states), or swear an affidavit (four states). The analysis also examined this array of minimum identification requirements to assess how they correlated with turnout: state name, sign name, match signature, provide non-photo identification, and, given the potential legal consequences for providing false information, swearing an affidavit. As noted above, *no* state had a "minimum" requirement of showing photo ID. This analysis therefore cannot estimate the effect of laws, such as those recently enacted in Indiana and Georgia that require voters to show photo ID in order to cast a regular ballot without an affidavit or other exception.

We recognize the difficulties in summarizing each state's voter ID requirements. The problem is illustrated by the number of footnotes to Table 1 below. The variety of statutory and regulatory details among the states is complex.

Moving beyond the statutes and regulations, we also recognize that the assignment of each state to one category may fail to reflect actual practice at many polling places. As in any system run by fallible humans, the voter ID process is subject to variation in practice.<sup>19</sup> Voters may have been confronted with demands for identification different from the directives in state statutes or regulation. It seems reasonable to conclude, however, that while actual practices may vary, the variance is around each state's legal requirement for ID. The analysis of the effect of state requirements on turnout must be viewed with some caution. We believe that the categories used in this report provide an acceptable level of discrimination among voter identification regimes.

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<sup>19</sup> One state election official told us that, "We have 110 election jurisdictions in Illinois, and I have reason to believe [the voter ID requirements] are administered little bit differently in each one. We wish it weren't that way, but it probably is."



**TABLE 1 – Voter ID Requirements<sup>20</sup>**

State	Maximum Forms of ID Required 2004	Current ID Requirement for First-Time Voters	Current ID Requirements for All Other Voters	Verification Method for Provisional Ballots
Alabama	Provide ID	Provide ID	Provide ID	Address & Registration
Alaska	Provide ID	Provide ID	Provide ID	Signature
Arizona	Provide ID	Gov-issued Photo ID	Gov-issued Photo ID <sup>1</sup>	Address & Registration
Arkansas	Provide ID	Provide ID	Provide ID	Address & Registration
California	Sign Name	Sign Name	Sign Name	Signature
Colorado	Provide ID	Provide ID	Provide ID	Address & Registration
Connecticut	Provide ID	Provide ID	Provide ID	Affidavit
D.C.	Sign Name	Provide ID*	Sign Name	Address & Registration
Delaware	Provide ID	Provide ID	Provide ID	Affidavit
Florida	Photo ID <sup>2</sup>	Photo ID	Photo ID	Signature
Georgia	Provide ID	Gov. Issued Photo ID	Gov. Issued Photo ID	Affidavit
Hawaii	Photo ID <sup>^^</sup>	Photo ID	Photo ID <sup>^^</sup>	Affidavit
Idaho	Sign Name	Provide ID*	Sign Name	EDR
Illinois	Give Name	Provide ID*	Match Sig.	Affidavit
Indiana	Sign Name	Gov. Issued Photo ID	Gov. Issued Photo ID	Bring ID Later
Iowa	Sign Name	Provide ID*	Sign Name	Bring ID Later
Kansas	Sign Name	Sign Name	Sign Name	Bring ID Later
Kentucky	Provide ID	Provide ID	Provide ID	Affidavit
Louisiana	Photo ID	Photo ID	Photo ID <sup>^</sup>	DOB and Address
Maine	Give Name	Provide ID*	Give Name	EDR
Maryland	Sign Name	Provide ID*	Sign Name	Bring ID Later
Mass.	Give Name	Provide ID*	Give Name	Affidavit
Michigan	Sign Name	Provide ID*	Sign Name	Bring ID Later
Minnesota	Sign Name	Provide ID*	Sign Name	EDR
Mississippi	Sign Name	Provide ID*	Sign Name	Affidavit
Missouri	Provide ID	Provide ID*	Provide ID	Address & Registration
Montana	Provide ID	Provide ID*	Provide ID	Bring ID Later
Nebraska	Sign Name	Provide ID*	Sign Name	Affidavit
Nevada	Match Sig.	Provide ID*	Match Sig.	Affidavit
New Jersey	Match Sig.	Provide ID*	Match Sig.	Bring ID Later
New Mexico	Sign Name	Provide ID	Provide ID	Bring ID Later
New York	Match Sig.	Provide ID*	Match Sig.	Affidavit
NH	Give Name	Provide ID	Give Name	EDR
North Carolina	Give Name	Provide ID*	Give Name	Varies
North Dakota	Provide ID	Provide ID	Provide ID	No Registration
Ohio	Match Sig.	Provide ID	Provide ID	Address & Registration
Oklahoma	Sign Name	Provide ID*	Sign Name	Address & Registration
Oregon	Match Sig.	Provide ID*	Match Sig.	Signature
Penn.	Match Sig.	Provide ID <sup>4</sup>	Match Sig.	Address & Registration
Rhode Island	Give Name	Provide ID*	Give Name	Address & Registration

<sup>20</sup> See Appendix 1 for a more detailed summary, including citations and statutory language, of the identification requirements in each state.

South Carolina	Photo ID <sup>5</sup>	Photo ID	Photo ID <sup>AA</sup>	Address & Registration
South Dakota	Photo ID <sup>6</sup>	Photo ID	Photo ID <sup>AA</sup>	Affidavit
Tennessee	Provide ID	Provide ID <sup>7</sup>	Provide ID	Affidavit
Texas	Provide ID	Provide ID <sup>8</sup>	Provide ID	Bring ID Later
Utah	Give Name	Provide ID	Give Name	Bring ID Later
Vermont	Give Name	Provide ID	Give Name	Affidavit
Virginia	Provide ID	Provide ID	Provide ID	Affidavit
Washington	Sign Name	Provide ID	Provide ID	Address & Registration
West Virginia	Match Sig.	Provide ID	Match Sig.	Address & Registration
Wisconsin	Give Name	Provide ID	Give Name	Bring ID Later
Wyoming	Give Name	Provide ID	Give Name	Affidavit

\* States applies only HAVA's ID requirement, applicable to first-time voters who registered by mail and did not provide applicable ID at the time of registration.

<sup>1</sup> Arizona voters who lack a photo ID may present 2 forms of ID with no photograph.

<sup>2</sup> Florida required a photo ID in 2004, but voters without that credential could sign an affidavit concerning their identity and eligibility and cast a regular ballot. Florida subsequently changed its law to require that voters present photo ID to cast a regular ballot, though voters without photo ID may still cast a provisional ballot by signing an affidavit, which ballot should ordinarily be counted.

<sup>3</sup> Louisiana required a photo ID in 2004. Voters without that credential could sign an affidavit concerning their identity and eligibility and cast a regular ballot.

<sup>4</sup> Pennsylvania requires ID of all first-time voters, whether they registered by mail or in-person.

<sup>5</sup> Voters lacking a photo ID could vote by providing another form of ID in 2004.

<sup>6</sup> Voters lacking a photo ID could vote by providing another form of ID in 2004.

<sup>7</sup> Tennessee voters must provide signature and address. In counties without computerized lists, the signature is compared to the registration card. In counties with computerized lists, the signature is compared to a signature on ID presented with the registration.

<sup>8</sup> Texas voters must present a current registration certificate. Those without a certificate can vote provisionally after completing an affidavit.

### Relationship of Voter ID requirements to Turnout

The statistical analysis examined the potential variation in turnout rates based on the type of voter identification required in each state on Election Day 2004 using two sets of data: aggregate turnout data at the county level for each state, as compiled by the Eagleton Institute of Politics, and individual-level survey data included in the November 2004 Current Population Survey conducted by the U.S. Census Bureau.

The statistical analysis examined turnout among U.S. citizens of voting age in both the aggregate and the individual-level data. Determining citizenship status in the individual-level data simply involved restricting the analyses to individuals who identified themselves as citizens in the November 2004 Current Population Survey. (Those who said they were not citizens did not have the opportunity to answer the supplemental voting questions contained in the Current Population Survey.)

Findings of the statistical analysis

The analysis looked at the voter identification requirements in two ways, as a continuous variable and as a series of discrete variables. As a continuous variable the maximum voter identification requirements are ranked according to how demanding they were judged to be, with photo ID as the most demanding requirement. As discrete variables, the statistical analysis assume that stating name is the least demanding ID requirement and compare each other requirement to it.

The analysis treating the requirements as a continuous variable offers some statistical support for the premise that as the level of required proof increases, turnout declines. Averaging across counties in each state, statewide turnout is negatively correlated with maximum voter identification requirements ( $r = -.30, p < .05$ ). In considering the array of minimum requirements, with affidavit as the most demanding requirement, however, the correlation between voter identification and turnout is negative, but it is not statistically significant ( $r = -.20, p = .16$ ). This suggests that the relationship between turnout rates and minimum requirements may not be linear. Breaking down the turnout rates by type of requirement reveals in greater detail the relationship between voter identification requirements and voter turnout.

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

Maximum Requirement		Minimum Requirement	
Voter Identification Required in the States	Mean Voter Turnout for States in that Category	Voter Identification Required in the States	Mean Voter Turnout for States in that Category
State Name	64.2 %	State Name	63.0 %
Sign Name	61.1 %	Sign Name	60.4 %
Match Signature	60.9 %	Match Signature	61.7 %
Provide Non-Photo ID	59.3 %	Provide Non-Photo ID	59.0 %
Provide Photo ID	58.1 %	Swear Affidavit	60.1 %
Average Turnout (All States)	60.9 %		

**This table displays the mean turnout using the aggregate county level data for each state in 2004.**

The aggregate data show that 60.9 percent of the estimated citizen voting age population voted in 2004. Differences in voter turnout at the state level in 2004 varied based on voter identification requirements. Taking into account the maximum requirements, an average of 64.6 percent of the voting age population turned out in states that required voters to state their names, compared to 58.1 percent in states that required photo identification. A similar trend

emerged when considering minimum requirements. Sixty-three percent of the voting age population turned out in states requiring voters to state their names, compared to 60.1 percent in states that required an affidavit from voters. Given the lack of a clear, consistent linear relationship between turnout and minimum identification requirements, however, we opted to treat the voter identification requirements as a series of dichotomous variables.<sup>21</sup>(Dichotomous variables reflect either the presence or absence of a characteristic. In the dummy variable for non-photo ID, a state would be coded as 1 if it required non-photo ID, and 0 otherwise.)

Voter identification requirements are just one factor that might affect voter turnout. Multivariate models that take into account other predictors of turnout can paint a more complete picture of the relationship between voter identification requirements and turnout. This analysis estimated the effects of voter identification requirements in multivariate models that also took into account the electoral context in 2004 and demographic characteristics of the population in each county. While the model takes account of several important variables, statistical models do not capture all the messiness of the real world. It is a simplification of a complex reality, and its results should be treated with appropriate caution.

The model also took into account such variables as:

- Was the county in a presidential battleground state?
- Was the county was in a state with a competitive race for governor and/or the U.S. Senate?
- Percentage of the voting-age population in each county that was Hispanic or African-American<sup>22</sup>
- Percentage of county residents age 65 and older
- Percentage of county residents below the poverty line

Another contextual factor to consider is voter registration requirements, such as the deadline for registration. As states set the deadline farther away from Election Day, the task of remembering

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<sup>21</sup> The voter identification requirements are coded as a series of dummy variables, coding each variable as one if the requirement existed in a given state, and zero otherwise. This yielded five dichotomous variables for maximum requirements (state name, sign name, match signature, non-photo identification, or photo identification), and five dichotomous variables for minimum requirements (state name, sign name, match signature, non-photo identification, or providing an affidavit). Omitted is the variable for stating one's name so that it could serve as the reference category in comparison with the other four identification requirements in each of the statistical analyses.

<sup>22</sup> The U.S. Census projections for 2003 provided the data for the percentage of the voting-age population in each county that was Hispanic or African-American and for the percentage of county residents age 65 and older.

to register to vote becomes more challenging. Thus our model takes into account the number of days between each state's registration deadline and the election.

The dependent variable in each model using the aggregate data was voter turnout at the county level, with turnout calculated as the percentage of the citizen voting-age population that voted in the 2004 election.

The results of this modeling suggest that the stricter voter identification requirements of matching one's signature to a signature on file with election authorities or presenting a non-photo ID are associated with lower turnout compared to turnout in states that required voters to simply state their name, holding constant the electoral context and demographic variables.

Contextual factors, such as whether the county was in a battleground state or whether that state had a competitive race for governor and/or U.S. Senate, were associated with increased voter turnout. The time between the closing date for registration and the election was correlated with a slight negative effect on turnout. As the percentage of Hispanics in the county's population increased, turnout declined. The percentage of senior citizens in the county and household median income were associated with higher turnout. The percentage of African-Americans in the county did not have a significant effect in the model. The percentage of senior citizens in the county and household median income showed a positive correlation with turnout. In this aggregate model, the percentage of African-Americans in the county was not associated with a significant difference in turnout.

The relationship of the minimum voter identification requirements to turnout was not demonstrated. None of the dummy variables for voter identification requirements were statistically significant. (A "dummy variable" represents a particular attribute and has the value zero or one for each observation, e.g. 1 for male and 0 for female.) Being a battleground state and having a competitive statewide race were significant and positive, as was the percentage of senior citizens in the county and household median income. The percentage of Hispanics in the county's population continued to be associated with reduced turnout, as was the number of days between the closing date for registration and the election.<sup>23</sup>

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<sup>23</sup> This test incorporated a series of interactions between the maximum and minimum voter identification requirements and the percentage of African-Americans and Hispanics living in the counties. In each case the interactions did not improve the fit of the models to the data. See tables A-1 and A-2 in the appendix of Vercellotti's paper in the appendices.

Analysis of the aggregate data at the county level generates some support for the hypothesis that stricter identification requirements are correlated with lower turnout. For the maximum requirements, a signature match and non-photo identification –but not photo identification– were correlated at a significant level with lower turnout in 2004, compared to requiring that voters simply state their names.

Aggregate data, however, cannot fully capture the individual demographic factors that may figure into the decision to turn out to vote.<sup>24</sup> Voter identification requirements could have a relationship to the turnout of particular groups of voters, in ways that county-level aggregate data on turnout would not capture. To explore the effects of voter identification requirements on turnout more completely, it is important to examine individual-level data as well.

#### Individual-level Analysis

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

One of the of the CPS is the sheer size of the sample. The survey's Voting and Registration Supplement consisted of interviews, either by telephone or in person, with 96,452 respondents.<sup>25</sup> The large sample size permits analyses of smaller groups, such as Black or Hispanic voters or voters with less than a high school education. The statistical analysis in relying on the CPS is based on reports from *self-described* registered voters. Omitted are those who said they were not registered to vote, as are those who said they cast absentee ballots because the identification requirements for absentee ballots may differ from those required when one votes in person. Eliminated from the sample are respondents who said they were not U.S. citizens, who in this survey were not asked the voter registration and turnout questions. In

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<sup>24</sup> For example, previous research has found that education is a powerful determinant of turnout (Wolfinger and Rosenstone 1980, but see also Nagler 1991).<sup>24</sup> Married people also are more likely to vote than those who are not married (Alvarez and Ansolabehere 2002; Alvarez, Nagler and Wilson 2004; Fisher, Kenny, and Morton 1993).

<sup>25</sup> It is important to note that the Census Bureau allows respondents to answer on behalf of themselves and others in the household during the interview. While proxy reporting of voter turnout raises the possibility of inaccurate reports concerning whether another member of the household voted, follow-up interviews with those for whom a proxy report had been given in the November 1984 CPS showed 99 percent agreement between the proxy report and the information given by the follow-up respondent (U.S. Census Bureau 1990).

addition to the voter identification requirements, the models include other socioeconomic, demographic, and political environment factors that might have influenced turnout in 2004.<sup>26</sup> The dependent variable in these analyses is whether a respondent said he or she voted in the November 2004 election.<sup>27</sup>

In the model, three of the voter identification requirements have a statistically significant correlation with whether survey respondents said they had voted in 2004. That is, compared to states that require voters only to state their names, the requirement to sign one's name, provide a non-photo ID, or photo ID in the maximum requirements or affidavit in the minimum is associated with lower turnout.

Of the other state factors, only the competitiveness of the presidential race showed a significant, correlation with increased turnout. In terms of demographic influences, African-American voters were more likely than white voters or other voters to say they had cast a ballot, while Asian-Americans were less likely than white or other voters to say they had turned out. Hispanic voters were not statistically different from white or other voters in terms of reported turnout. Consistent with previous research, income, and marital status all were positive predictors of voting. Women also were more likely to say they voted than men. Among the age categories, those ages 45 to 64 and 65 and older were more likely than those ages 18 to 24 to say they voted. Respondents who had earned a high school diploma, attended some college, graduated from college or attended graduate school were all more likely to say they voted than those who had not finished high school.

While the probit models provide statistical evidence for the relationship of voter identification requirements and other variables to turnout, probit coefficients do not lend themselves to intuitive interpretation.<sup>28</sup> Table 3 below shows predicted probabilities (calculated from the probit

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<sup>26</sup> The models are estimated using probit analysis, which calculates the effects of independent variables on the probability that an event occurred – in this case whether a respondent said he or she voted and using robust standard errors to control for correlated error terms for observations from within the same state.

<sup>27</sup> The U.S. Census Bureau reported, based on the November 2004 CPS, that 89 percent of those who identified themselves as registered voters said they voted in 2004 (U.S. Census Bureau 2005). Previous research has shown that, generally speaking, some survey respondents overstate their incidence of voting. Researchers speculate that over-reports may be due to the social desirability that accompanies saying one has done his or her civic duty, or a reluctance to appear outside the mainstream of American political culture (U.S. Census Bureau 1990). It is also possible that voting is an indication of civic engagement that predisposes voters to agree to complete surveys at a higher rate than non-voters (Flanigan and Zingale 2002). Hence the voter turnout rates reported in the CPS tend to be up to 10 percentage points higher than the actual turnout rate for the nation (Flanigan and Zingale 2002). Even with this caveat, however, the CPS serves as a widely accepted source of data on voting behavior.

<sup>28</sup> A probit model is a popular specification of a generalized linear regression model, using the probit link function.

coefficients) of voting for each level of voter identification requirements while holding all other independent variables in the models at their means.<sup>29</sup>

<b>Table 3. Predicted probability of voter turnout – all voters</b>		
	<b>Maximum requirement</b>	<b>Minimum requirement</b>
<b>State name</b>	91.7%	91.5%
<b>Sign name</b>	89.9%	90.2%
<b>Match signature</b>	Not significant	Not significant
<b>Non-photo ID</b>	89.0%	89.0%
<b>Photo ID</b>	88.8%	---
<b>Affidavit</b>	---	87.5%
<b>Total difference from “state name” to “photo ID” or “affidavit”</b>	<b>2.9%</b>	<b>4.0%</b>
<b>N</b>	54,973	
Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from stating one’s name to providing photo identification or an affidavit , with all other variables held constant.  Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.		

Taking into account that signature matches were not a predictor of turnout, the differences in predicted probability decline from stating one’s name to providing a photo identification or affidavit. Voters in states that required photo identification were 2.7 percent less likely to vote than voters in states where individuals had to give their names.<sup>30</sup> In terms of the minimum requirement, voters in states that required an affidavit at minimum were 4 percent less likely to turn out than voters in states where they had to give their names.

The differences were more pronounced for those with fewer years of education. Constraining the model to show predicted probabilities only for those with less than a high school diploma, the probability of voting was 5.1 percent lower in states that required photo identification as the maximum requirement and 7 percent lower in states that required an affidavit as the minimum

<sup>29</sup> In the case of dichotomous independent variables, holding them at their mean amounted to holding them at the percentage of the sample that was coded 1 for the variable (Long 1997).

<sup>30</sup> The voter turnout percentages may seem disproportionately high compared to the turnout rates reported in the aggregate data analysis. It is important to consider that the turnout rates in the aggregate data were a proportion of all citizens of voting-age population, while the turnout rates for the individual-level data are the proportion of only registered voters who said they voted.



requirement compared to states where stating one's name was the maximum or minimum requirement.

Race and ethnicity have generated particular interest in the debate over voter ID requirements.<sup>31</sup> The analysis using the aggregate data shed no light on the association between voter ID requirements and turnout for African-American and Hispanic voters. But in the models using the individual data, some significant relationships emerged for African-American, Hispanic and Asian citizens. For the entire population, the signature, non-photo identification and photo identification requirements all were associated with lower turnout compared to the requirement that voters simply state their names. These correlations translated into reduced probabilities of voting of about 3 to 4 percent for the entire sample, with larger differences for specific subgroups. For example, the predicted probability that Hispanics would vote in states that required non-photo identification was about 10 percentage points lower than in states where Hispanic voters gave their names. The difference was about 6 percent for African-Americans and Asian-Americans, and about 2 percent for white voters.

The model also showed that Hispanic voters were less likely to vote in states that required non-photo identification as opposed to stating one's name. Hispanic voters were 10 percent less likely to vote in non-photo identification states compared to states where voters only had to give their name.

More rigorous voter identification requirements were associated with lower turnout rates for Asian-American voters as well. Asian-American voters were 8.5 percent less likely to vote in states that required non-photo identification compared to states that require voters to state their names under the maximum requirements, and they were 6.1 percent less likely to vote where non-photo identification was the minimum requirement.

#### Conclusions of the Statistical Analysis

The statistical analysis found that, as voter identification requirements vary, voter turnout varies as well. This finding emerged from both the aggregate data and the individual-level data,

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<sup>31</sup> Incorporating discrete variables for Hispanics, African-Americans, and Asian-Americans into one model carries the implicit assumption that the remaining variables, including education and income, will influence each of these groups in a similar manner in terms of deciding whether to vote. These assumptions are not always born out by the data (see Leighley and Vedlitz, 1999.) To isolate the effects of voter identification and other variables on voter turnout within specific racial and ethnic groups, the sample is divided into sub-samples and the model re-run to calculate the data discussed and shown in Tables 5, 6, and 7 in Appendix C.

although not always for both the maximum and minimum sets of requirements. The overall relationship between ID requirements and turnout for all registered voters was fairly small, but still statistically significant.

In the aggregate data, the match-signature requirement and the provide-a-non-photo ID requirement were correlated with lower turnout compared to requiring that voters state their names. But the photo-ID requirement did not have an effect that was statistically significant, possibly because in 2004 each state requiring a photo-ID provided an alternative way to cast a regular ballot for voters who lacked that document.

In the model using the individual-level data the signature, non-photo ID, and photo ID requirements were all correlated with lower turnout compared to the requirement that voters simply state their names (in the entire sample and for white voters, but the statistical significance may be an artifact of the very large sample size). That the non-photo identification requirement was the most consistent in terms of statistical significance across the groups is intriguing given the intense debates surrounding photo identification requirements.

Significant questions about the relationship between voter identification requirements and turnout remain unanswered. The data examined in the statistical analysis could not capture the dynamics of how identification requirements might lower turnout, nor could they rule out that other attributes of a state's electoral system might explain the statistically significant correlations that the study found. If ID requirements dampen turnout, is it because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements? Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day, or forced to cast a provisional ballot that is not ultimately counted? The CPS data do not include measures that can answer this question. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for election judges to handle questions about, and potential disputes over, voter identification requirements.

## Litigation Over Voter ID Requirements

A handful of cases have challenged identification requirements in court in recent years. In general, requirements that voters provide some identifying documentation have been upheld, where photo ID is *not* the only acceptable form. Whether laws requiring photo ID will be upheld is more doubtful. To date, only two cases have considered laws requiring voters to show photo ID (*Common Cause v. Billups* and *Indiana Democratic Party v. Rokita*). Cases challenging the mandatory disclosure of voters' Social Security numbers on privacy grounds have yielded mixed results.

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

*Photo ID.* Since the 2004 election, two states have adopted laws requiring photo identification at the polls in order to have one's vote counted, without an affidavit exception: Georgia and Indiana.<sup>32</sup> Both these requirements were enacted in 2005 and both have been challenged in court. The Georgia law required voters attempting to cast a ballot in person present a valid form of photographic identification. O.C.G.A. § 21-2-417. On October 18, 2005, the District Court granted the plaintiffs' motion for a preliminary injunction, enjoining the application of the new identification requirements on constitutional grounds. In granting the injunction, the court held that plaintiffs' claims under both the Fourteenth Amendment (equal protection) and Twenty-Fourth Amendment (poll tax) had a

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<sup>32</sup> Indiana's law does allow voters without ID to cast provisional ballots, and then to appear before the county board of elections to execute an affidavit saying that they are indigent and unable to obtain the requisite ID without payment of a fee. But in contrast to other states, voters cannot cast a ballot that will be counted by submitting an affidavit at the polls, affirming that they are the registered voter and are otherwise eligible to vote.

substantial likelihood of succeeding on the merits at trial (*Common Cause v. Billups*, Prelim. Inj. 96, 104). In January 2006, Georgia enacted a modified version of its photo ID law, which the court has not yet ruled on. In the other state that has enacted a photo ID requirement (Indiana), legal challenges have also been filed. (*Indiana Democratic Party v. Rokita* and *Crawford v. Marion County Election Board*). On April 14, 2006, the district court granted defendants' motion for summary judgment, concluding that plaintiffs had failed to produce evidence showing that the state's ID law would have an adverse impact on voters. Another case of significance, for purposes of photo ID requirements, is *American Civil Liberties Union of Minnesota v. Kiffmeyer*, No. 04-CV-4653, 2004 WL 2428690, at \*1 (D. Minn. Oct. 28, 2004). In that case, the court enjoined a Minnesota law that allowed the use of tribal photo ID cards, only for an Indian who lived on the reservation. 2004 WL 2428690, at \*1. The Court found no rational basis for distinguishing based on whether or not the cardholder lives on the reservation. *Id.* at \*1, 3. These decisions indicate that courts are likely to carefully scrutinize the evidence regarding the impact of photo ID requirements.

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

These decisions suggest that the courts will carefully scrutinize the evidence, where states require that voters produce a photo ID in order to cast a regular ballot. The courts have used a

balancing test to weigh the legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, these early decisions suggest that best practice may be to limit requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

#### **Developments since 2004**

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

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

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

Answering these questions would provide the information needed for more informed judgement in the states as they consider the tradeoffs among the competing goals of ballot integrity, ballot access, and administrative efficiency. The Carter-Baker Commission recognized the tradeoffs when it tied recommendation for national ID to an affirmative effort by government to identify unregistered voters and make it easy for them to register.

#### **State Voter Databases and Voter ID**

With the implementation of the HAVA Computerized Statewide Voter Registration List, an application for voter registration for an election for Federal office may not be accepted or processed unless the application includes a driver's license number or last four digits of the

Social Security number on the voter registration form. This information can be used to verify the identity of the registrant through interfacing with lists maintained by the Motor Vehicle office and Social Security office. If registrants do not have either a driver's license or Social Security number, the State will assign a unique identifier number to that person.

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

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

### **Conclusions**

The analysis of voter ID requirements is complex. It takes into account important values associated with an electoral process, such as ballot access and integrity. The continuing effort to understand how voter ID requirements may affect turnout and the integrity of the ballot could benefit from additional factual information, including statistical analyses. Our research includes a statistical study of this kind. It indicated that the level of voter turnout in a state is correlated with the stringency of the voter ID requirement imposed by that state. Additional empirical research of this nature, with additional data collected by or for the EAC, would further illuminate the relationship between stricter voter ID rules and turnout, perhaps explaining if awareness of a strict ID requirement tends to discourage would-be voters from going to the polls. Or, additional research may shed light on whether, if voters did go to the polls, stricter Voter ID requirements will divert more voters into the line for provisional ballots. The consequence of increased reliance on provisional ballots can be longer lines at the polls and confusion, without necessarily a clear demonstration that the security of the ballot is correspondingly increased.<sup>33</sup>

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<sup>33</sup> In this connection, the Brennan Center's response to the Carter-Baker Commission report observes that, "while it might be true that in a close election "a small amount of fraud could make the margin of

The debate over voter ID in the states would be improved by additional research sponsored by the EAC. That might include longitudinal studies of jurisdictions that have changed voter ID requirements, as well as precinct-level analyses that would allow more finely tuned assessment of the correlation between stricter identification requirements and turnouts. Further research could also identify methods to eliminate the need for voters to bring specific identity documents with them to the polls, while assuring that each voter who casts a ballot is eligible and votes only once.

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difference," it is equally true that the rejection of a much larger number of eligible voters could make a much bigger difference in the outcome." *Response to the Report of the 2005 Commission on Federal Election Reform*, The Brennan Center for Justice at NYU School of Law and Spencer Overton, On Behalf Of The National Network on State Election Reform, September 19, 2005

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

June 28, 2006

Submitted by

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**Report to the  
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Best Practices to Improve Provisional Voting**

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<b>Appendix F: Provisional Voting Statutes by State (Included in electronic form only)</b>	

## The Research Team

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

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

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

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

# EXECUTIVE SUMMARY

## Background and Methodology

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

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

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

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

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

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

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

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

To answer those questions, we:

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

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

## **KEY FINDINGS**

### **Variation among the states**

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

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

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

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

An important source of variation among states was a state's previous experience with provisional voting and with the fail-safe voting provision of the National Voting Rights Act. The share of provisional ballots in the total vote was six times greater in states that had used provisional ballots before than in states where the provisional ballot was new. In the 25 states that had some experience with provisional voting before HAVA, a higher portion of the total vote was cast as provisional ballots and a greater percentage of the provisional ballots cast were counted than in the 18 new to provisional balloting.<sup>8</sup> Part of that difference was due to how states had implemented the National Voting Rights Act, particularly in regard to voters who changed address within weeks of the election. Voters in California, for example, who moved within their county must cast a provisional ballot, the information from which is used to update the voter's address. Other states, Tennessee for example, found that some fail-safe voters were reluctant to vote by provisional ballot. As a result, Tennessee abandoned provisional voting for those who moved within counties and allows failsafe voters cast a regular ballot. Relatively fewer provisional ballots would tend to be cast in such states.

#### **Variation within states**

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

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

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

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

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

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

- Jurisdictions with lower education and income tend to report more inactive voter registrations, lower turnout, and more provisional ballots cast.
- Jurisdictions with higher levels of income and education reported higher average numbers of poll workers per polling place or precinct and reported lower rates of staffing problems per precinct.

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

#### **The lessons of litigation**

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

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

#### **States move to improve their processes**

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

- Florida, Indiana, Virginia, and Washington have clarified or extended the timeline to evaluate the ballots.

- Colorado, New Mexico, North Carolina, and Washington have passed legislation focused on improving the efficacy and consistency of the voting and counting process.
- Colorado, Arkansas, and North Dakota took up the issue of counting provisional ballots cast in the wrong precinct.

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

### **SUMMARY OF RECOMMENDATIONS FOR BEST PRACTICES**

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

#### Take a quality-improvement approach

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

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

#### Emphasize the importance of clarity

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

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

#### Court decisions suggest areas for action



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

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

#### Assess each stage of the provisional voting process

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

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

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

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

- State statutes or regulations should define a reasonable period for voters who lack the HAVA-specified ID or other information bearing on their eligibility to provide it in order to facilitate the state's ability to verify that the person casting the provisional ballot is the same one who registered. At least 11 states allow voters to provide ID or other information one to 13 days after voting. Kansas allows voters to proffer their ID by electronic means or by mail, as well as in person.
- More provisional voters have their ballots counted in those states that count ballots cast outside the correct precinct. While HAVA arguably leaves this decision up to the states, pointing out the effect of the narrower definition on the portion of ballots counted could be useful to the states in deciding this question. States should be aware, however, of the additional burden placed on the ballot-evaluation process when out-of-precinct ballots

are considered. And tradeoffs are involved if out-of-precinct voters are unable to vote for the local offices that might appear on the ballot in their district of residence.

- If a state does require voters to appear at their assigned precinct, where the same polling site serves more than one precinct, a voter's provisional ballot should count so long as the voter cast that ballot at the correct polling site even if at the wrong precinct within that location. While the best practice might be for poll workers to direct the voter to correct precinct poll workers' advice is not always correct, and the voter should be protect against ministerial error.
- Officials should follow a written procedure, and perhaps a checklist, to identify the reason why a provisional ballot is rejected. Colorado's election rules offer particularly clear guidance to the official evaluating a provisional ballot.

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

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

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

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

#### Final observation

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

## Provisional Voting in 2004

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Other influences decreasing consistency among the states include:

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

- The more rigorous the verification requirements, the smaller the percentage of provisional ballots that were counted. Some states verified provisional ballots by comparing the voter's signature to a sample, some matched such identifying data as address, birth date, or social security number, others required voters who lacked ID at the polling place to return later with the ID to evaluate the provisional ballot, and some required provisional voters to execute an affidavit.<sup>15</sup>
  - In the 4 states that simply matched signatures, nearly 3.5% of the total turnout consisted of provisional ballots, and just under three-fourths of those ballots (73%) were counted.
  - In the 14 states that required voters to provide such additional information as address or date of birth just over 1.5% of the total turnout consisted of provisional ballots, and 55% of those ballots were counted.
  - In the 14 states that required an affidavit (attesting, for example, that the voter was legally registered and eligible to vote in the jurisdiction) just over one-half of a percent (0.6%) of turnout came from provisional ballots, and less than one-third of those (30%) were counted. (But note that HAVA requires all voters to certify that they are eligible and registered in order to cast a provisional ballot, which is functionally an affidavit. The 14 states described here used an explicit affidavit form.)
  - In the 10 states that required voters to return later with identifying documents just under 1.5% of the total turnout came from provisional ballots, and more than half (52%) of these were counted. Voters apparently found this requirement less onerous than the affidavit, even though it required a separate trip to a government office
- Voter registration databases provided information that reduced the number of provisional ballots counted.<sup>16</sup> In states using provisional voting for the first time, states with registered-voter databases counted only 20% of the ballots that were cast. States without such databases counted more than double that rate (44%). As HAVA's requirement for adoption of statewide databases spreads across the country, this variation among states is likely to narrow. Real-time access to a continually updated, statewide list of registered voters should reduce the number of provisional ballots used and reduce the percentage counted since most of those who receive them will be less likely to be actually registered in the state.
- States that counted out-of-precinct ballots counted 56% of the provisional ballots cast. States that counted only ballots cast in the proper precinct counted an average of 42% of provisional ballots.<sup>17</sup>
  - In experienced states, the disparity was even more pronounced: just over half of provisional ballots cast were counted in states requiring in-district ballots, while more than two-thirds were counted in those allowing out-of-precinct ballots.
  - If all states had counted out-of-precinct ballots, perhaps 290,000 more provisional ballots would have been counted across the country.<sup>18</sup>

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

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

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

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

#### Variation Within States

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

Electionline reported that:

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

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

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

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

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

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

provisional ballot. This would probably not have come to light except for the sharp examination caused by the very close election for governor.

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

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

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

### **Effectiveness of Provisional Voting**

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

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

Since we do not know how many registered voters who might have voted but could not, we cannot estimate with any precision how effective provisional voting was in 2004. The Cal Tech – MIT Voting Technology Project, however, estimated that 4 – 6 million votes were lost in the

2000 presidential election for the reasons shown in Table 1 below. The estimate is an approximation, but it may provide data good enough for a general assessment of the size of the pool of potential voters who might have been helped by the provisional ballot process.

**Estimates of Votes Lost In 2000 Presidential Election**

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

**Table 1 Cal Tech – MIT Voting Technology Project Estimates**

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

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

### Legislative Response

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

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

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

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

<sup>25</sup> The resources available to evaluate and count provisional ballots within a tight schedule may not be easily available. The General Accounting Office reports that Detroit, where 1,350 provisional ballots were cast and 123 counted, found the 6-day time frame for processing provisional ballots "very challenging and unrealistic. To overcome this challenge, the *entire department's employees were mobilized to process provisional ballots.*" The report also found that in Los Angeles County, "staff had to prepare duplicate ballots to remove ineligible or invalid contests when



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

### **Litigation**

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

This litigation was significant nonetheless.

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

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

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voters cast their ballots at the wrong precinct. To overcome this challenge, staffing was increased to prepare the duplicate ballots.” In a close, contested election, “duplicate” ballots would doubtless receive long and careful scrutiny.” See Appendix 7, GAO, “Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote,” September 2005. (GAO Report-05-997)

## **RECOMMENDATIONS**

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

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

### **Recommendations for Best Practices**

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

### **Self-evaluation of Provisional Voting –4 Key Questions**

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

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

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

## Best Practices For Each Step In The Process

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

### The Importance of Clarity

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

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

- Promulgate, ideally by legislation, clear standards for evaluating provisional ballots, and provide training for the officials who will apply those standards. For example, in Washington State, the court determined that an election official's failure in evaluating ballots to do a complete check against all signature records is an error serious enough to warrant re-canvassing.<sup>27</sup> Clear direction by regulation or statute on what records to use in evaluating ballots could have saved precious time and effort and increased the reliability of the provisional voting system.
- States should provide standard information resources for the training of poll workers by local jurisdictions. Training materials might include, for example, maps or databases with instruction on how to locate polling places for potential voters who show up at the wrong place. Usable and useful information in the hands of poll workers can protect voters from being penalized by ministerial errors at the polling place.<sup>28</sup>
- State training materials provided to local jurisdictions should make clear that the only permissible requirement to obtain a provisional ballot is an affirmation that the voter is registered in the jurisdiction and eligible to vote in an election for federal office.<sup>29</sup> Recent legislation in Arizona indicates that recommendations should emphasize HAVA's requirement that persons appearing at the polling place claiming to be registered voters cannot be denied a ballot because they do not have identification with them. Poll

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

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

<sup>28</sup> See *Panio v. Sunderland* 824 N.E.2d 488, 490 (NY, 2005) See also Order, *Hawkins v. Blunt*, No.04-4177-CV-C-RED (W.D. Mo. October 12, 2004). While rejecting the notion that all ballots cast in the wrong precinct should be counted, the court ruled that provisional votes cast in the wrong precinct should be thrown out provided that the voter had been directed to the correct precinct. This meant that provisional votes cast in the wrong precinct (and even the wrong polling place) would count if there were no evidence that the voter had been directed to a different polling place. The court placed a duty upon election officials to make sure the voters were in the correct locations. Note that this question would not arise in a state that counted ballots cast in the wrong polling place but within the correct county.

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

workers may need appropriate training to understand their duty to give such voters a provisional ballot.<sup>30</sup>

#### **A. Registration and Pre-Election Information for Voters**

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

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

#### **B. At the Polling Place**

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

1. The layout and staffing of the polling place, particularly the multi-precinct polling place is important. Greeters, maps, and prominently posted voter information about provisional ballots, ID requirements, and related topics can help the potential voters cast their ballot in the right place. States should require poll workers to be familiar with the options and provide the resources needed for them to achieve the knowledge needed to be helpful and effective. Colorado has clear regulations on polling place requirements, including HAVA information and voting demonstration display.<sup>33</sup> Many states require training of poll workers. In some states that requirement is recent: after the 2004 election, New Mexico adopted a requirement for poll workers to attend an "election school."<sup>34</sup> A state

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

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

<sup>32</sup> The Century Foundation, *op. cit.*

<sup>33</sup> 8 Colo. Code Regs. § 1505-1, Rule 7.1.

<sup>34</sup> 2005 N.M. Laws 270 page no. 4-5.

statutory requirement for training could facilitate uniform instruction of poll workers in those states that do not already provide it.

2. The provisional ballot should be of a design or color sufficiently different from a regular ballot to avoid confusion over counting, as occurred in Washington State. The ballot might include a tear-off leaflet with information for voters such as: "Reasons Why Your Provisional Ballot Might Not Be Counted" on one side and "What to Do if My Provisional Ballot Is Not Counted" on the other.
3. Because provisional ballots offer a fail-safe, supplies of the ballots at each polling place should be sufficient for all the potential voters likely to need them. In 2004, some polling places ran out of ballots, with unknown effects on the opportunity to vote. In Middlesex County, New Jersey, for example, on Election Day the Superior Court ordered the county clerk to assure that sufficient provisional ballots were available at several heavily used polling places, and it authorized the clerk "in the event additional provisional ballots are required . . . to photocopy official provisional ballots."<sup>35</sup> At least two states, Connecticut and Delaware, provide guidelines to local election officials on how to estimate the demand for provisional ballots. Connecticut sets the number at 1% of the voters in the district, Delaware at 6%.<sup>36</sup> States that do not offer a practical method to guide the supply of provisional ballots at polling places should consider doing so. The guideline should take into account both the number of voters in the district and the number of provisional ballots actually cast in recent elections.
4. To achieve the procedural clarity needed to forestall disputes, states should establish a clear chain of custody for the handling of provisional ballots from production through distribution, collection and, finally, evaluation. A number of states have clear procedures for at least parts of this chain of custody. All states should examine their chain-of-custody requirements for clarity. Illinois includes the potentially beneficial requirement that ballots be transported by bi-partisan teams, which offers the potential to avoid some charges of election fraud.

### C. Evaluating Voter Eligibility and Counting Provisional Ballots

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

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

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

<sup>37</sup> The Century Foundation, op. cit.

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

1. State statutes or regulations should define a reasonable period for voters who lack the HAVA-specified ID or other information bearing on their eligibility to provide it in order to facilitate the state's ability to verify that the person casting the provisional ballot is the same one who registered. While there may be a concern to ensure that the individual who returns with the ID may not be the same individual who cast the provisional ballot, the spirit of HAVA demands that the opportunity to prove identity be provided after Election Day. A signature match can go far in establishing that the individual who voted and the individual returning later with identification is, in fact, the same person. Encouraging a voter who lacks ID on Election Day to return later to help the verification process by providing proper identification will strengthen the system and increase public confidence in the electoral process. Our data indicate that some voters would prefer to return with ID rather than to sign an affidavit, perhaps because of uncertainty about the legal process involved in the affidavit. At least 11 states allow voters to provide ID or other information one to 13 days after voting. Of particular interest is Kansas, which allows voters to proffer their ID by electronic means or by mail, as well as in person.<sup>39</sup>
2. More provisional ballots are counted in those states that verify ballots cast outside the correct precinct.<sup>40</sup> While HAVA arguably leaves this decision up to the states, pointing out the effect of the narrower definition on the portion of ballots counted could be useful to the states in deciding this question. States should be aware, however, of the additional burden placed on the ballot-evaluation process when out-of-precinct ballots are considered. And tradeoffs are involved if out-of-precinct voters are unable to vote for the local offices that might appear on the ballot in their district of residence. One option for states is to involve the voters in the decision by pointing out that voters who cast their provisional ballots in the wrong precinct may not be able to participate in the local election. The voter could then decide to go to the correct precinct or vote provisionally for the higher offices at the top of the ticket only.
3. Alternatively, if a state chooses to require voters to appear at their assigned precinct, where the same polling site serves more than one precinct, a voter's provisional ballot should count so long as the voter cast that ballot at the correct polling site even if at the wrong precinct within that location.<sup>41</sup> Ideally the voter could be directed to the correct machine, but poll worker advice will not always be correct. One way to assess the balance of issues here is to consider that, if a voter in a multi-precinct polling place is sent to the wrong machine, the error is probably the poll worker's, and the voter should not be penalized.

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

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

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

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

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

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

**D. Verification of Provisional Ballots**

1. States that use the information on the provisional ballot to permit voters who have changed their addresses to update their registrations should adopt clear procedures on that process and specify how the new information will be communicated between different Boards of Elections.
2. In verifying provisional ballots, the time by which election officials must make their eligibility determinations is particularly important in presidential elections because of the need to certify electors to the Electoral College. States should consider in particular how to divide the time constraints imposed in presidential election by the safe-harbor provisions regarding certification to the Electoral College. Some part of this five-week period will be consumed by the eligibility evaluation, but states should take care to provide a sufficient period of time as well for challenges. If a state consumes 21 days

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

following the election in the eligibility evaluations, only two weeks will remain for legal challenges to be concluded. Is that sufficient? Or should the state provide the resources needed to complete the eligibility determinations in 10 days or two weeks, leaving three weeks or more for legal challenges in a close election? Our research did not identify an optimum division of the five weeks available. The prudent course here would be to encourage states to consider the issue and then make a careful decision about how to complete all steps in the evaluation of ballots and challenges to those determinations within the five weeks available.

#### **E. Post-election Information for Voters**

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

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

#### **F. State Laws Governing Litigation over Provisional Voting**

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

#### **Broader Considerations**

##### **G. Integrity and the Appearance of Integrity**

1. State laws or regulations providing for non-partisan or bi-partisan bodies to make a public determination of the validity of provisional ballots would increase confidence in the system.
2. To improve transparency, state laws or regulations should require the purging process for registration to be public and with an opportunity for voters to correct an erroneous determination that they should be purged.
3. State laws or regulation should require the evaluation process for provisional ballots to be public, while protecting the names of those who voted provisionally.

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

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

Defining quality requires a broad perspective about how well the system works, how open it is to error recognition and correction, and how well provisional voting processes are connected to the registration and voter identification regimes. The EAC should consider engaging one of the national quality organizations or processes, such as Six Sigma<sup>43</sup> or the Baldrige Quality

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



process<sup>44</sup> to evaluate the provisional ballot process. Pending such a review, the EAC can recommend that states take the following actions.

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

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

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

## ATTACHMENT 1 – Data Sources for Classification of the States

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

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

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

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

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

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

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

### New vs. Old States

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

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

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

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

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

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

Statewide List of Registered Voters

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

Out-of-Precinct Ballots

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

<b>Table 2 CATEGORIZATION OF STATES -- Counting Out-Of-Precinct Ballots</b>		
<b>Out-of-Precinct</b>	<b>In-Precinct Only</b>	<b>HAVA EXEMPT OR NA</b>
Alaska	Alabama	Idaho
Arkansas	Arizona	Maine
California	Colorado	Mississippi
Georgia	Connecticut	New Hampshire
Illinois <sup>47</sup>	Delaware	North Dakota
Kansas	District of Columbia	Wisconsin
Louisiana	Florida	Wyoming
Maryland	Hawaii	
New Mexico	Indiana	
North Carolina	Iowa	
Oregon	Kentucky	
Pennsylvania	Massachusetts	
Rhode Island	Michigan	
Utah	Missouri	
Vermont	Montana	
Washington	Nebraska	
	Nevada	
	New Jersey	
	New York	
	Ohio	
	Oklahoma	
	South Carolina	
	South Dakota	
	Tennessee	
	Texas	
	Virginia	
	West Virginia	
<b>16</b>	<b>27</b>	<b>7</b>

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

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

Verification Method

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

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

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

Data Collection

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

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

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

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

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

Data Differences

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

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

<sup>51</sup> Data not provided by the state itself is taken from Electionline figures.

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

To "Tom O'Neill" [REDACTED]  
cc [REDACTED]  
"Johanna Dobrich"  
bcc Juliet E. Thompson-Hodgkins/EAC/GOV  
Subject Re: Voter ID Report and Appendices [REDACTED]

Tom-

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

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

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

Regards-

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

"Tom O'Neill" [REDACTED]



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

To klynndyson@eac.gov  
cc [REDACTED]  
lauracw@columbus.rr.com, "Tim Vercellotti"  
[REDACTED]  
"Johanna Dobrich"  
Subject Voter ID Report and Appendices

Karen,

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

Thanks for your forbearance.

Tom O'Neill

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Appendices517.doc VoterIDReport05170910.doc

**Deliberative Process  
Privilege**

Karen Lynn-Dyson/EAC/GOV

05/18/2006 09:05 AM

To Juliet E. Thompson-Hodgkins/EAC/GOV@EAC, DeAnna M. Smith/EAC/GOV@EAC

cc

bcc

Subject Fw: Voter ID Report and Appendices

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

— Forwarded by Karen Lynn-Dyson/EAC/GOV on 05/18/2006 09:04 AM —



"Tom O'Neill"

[Redacted]

05/17/2006 09:25 AM

To klynndyson@eac.gov

cc

[Redacted]  
lauracw@columbus.rr.com, "Tim Vercellotti"

[Redacted]

"Johanna Dobrich"

Subject Voter ID Report and Appendices

Karen,

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

Thanks for your forbearance.

Tom O'Neill



Appendices517.doc VoterIDReport05170910.doc

010555

**Appendices**

- a. Summary of Voter ID Requirements by State
- b. Summary of case law on Voter ID issues
- c. Vercellotti –Analysis of Effects of Voter ID Requirements on Turnout
- d. Indexed database of major articles on Voter ID Requirements and related topics
- e. Compendium of states' legislation, procedures, and litigation (available as an electronic document)

**Appendix A**  
**Summary of Voter Identification Requirements By State**

Prepared by  
Sara A. Sampson, Reference Librarian,  
The Ohio State University Moritz College of Law.

**Voter ID Requirements**

State	Forms of ID Required 2004	Statutory Language	Statutory Citation
Alabama	Provide ID	<p>(b) Each elector shall provide identification to an appropriate election official prior to voting. A voter required to show identification when voting in person shall present to the appropriate election official either of the following forms of identification:</p> <p>(1) A current valid photo identification.</p> <p>(2) A copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter. The term "other government document" may include, but is not limited to, any of the following:</p> <p>a. A valid identification card issued by a branch, department, agency, or entity of the State of Alabama, any other state, or the United States authorized by law to issue personal identification.</p> <p>b. A valid United States passport.</p> <p>c. A valid Alabama hunting or fishing license.</p> <p>d. A valid Alabama permit to carry a pistol or revolver.</p> <p>e. A valid pilot's license issued by the Federal Aviation Administration or other authorized agency of the United States.</p> <p>f. A valid United States military identification card.</p> <p>g. A certified copy of the elector's birth certificate.</p> <p>h. A valid Social Security card.</p> <p>i. Certified naturalization documentation.</p> <p>j. A certified copy of court records showing adoption or name change.</p> <p>k. A valid Medicaid card, Medicare card, or an Electronic Benefits Transfer Card (formerly referred to as a "food stamp card").</p> <p>(c) For voters required to show identification when voting by mail, the voter shall submit with the ballot a copy of one of the forms of identification listed in subsection (b).</p> <p>(e) An individual required to present identification in accordance with this section who is unable to meet the identification requirements of this section shall be permitted to vote by a challenged or provisional ballot, as provided for by law.</p> <p>(f) In addition, an individual who does not have identification in his or her possession at the polls shall be permitted to vote if the individual is positively identified by two election officials as a voter on the poll list who is eligible to vote and the election official signs the voters list by where the voter signs.</p> <p>Effective Date: June 24, 2003</p>	Ala. Code § 17-11A-1
Alaska	Provide ID	<p>(a) Before being allowed to vote, each voter shall exhibit to an election official one form of identification, including</p> <p>(1) an official voter registration card, driver's license, state identification card, current and valid photo identification, birth certificate, passport, or hunting or fishing license; or</p> <p>(2) an original or a copy of a current utility bill, bank statement, paycheck, government check, or other government document; an item exhibited under this</p>	Alaska Stat. § 15.15.225

		<p>paragraph must show the name and current address of the voter.</p> <p>(b) An election official may waive the identification requirement if the election official knows the identity of the voter. The identification requirement may not be waived for voters who are first-time voters who initially registered by mail or by facsimile or other electronic transmission approved by the director under <u>AS 15.07.050</u>, and did not provide identification as required in <u>AS 15.07.060</u>.</p> <p>(c) A voter who cannot exhibit a required form of identification shall be allowed to vote a questioned ballot.</p> <p>effective June 17, 2003</p>	
Arizona	Provide ID	<p>B. If a statewide voter registration database is not yet operational, for any person who has registered to vote by mail for the first time in this state after January 1, 2003 or who is reregistering by mail after January 1, 2003 after moving from one county to another county in this state, the person shall comply with the following in order to be issued a ballot:</p> <p>1. The person shall present either one of the following:</p> <p>(a) A current form of identification that bears a photograph of the person and the name of the person.</p> <p>(b) A current utility bill, bank statement, paycheck, government issued check or other government document that shows the name and registration address of the person.</p> <p>2. If the person does not present a document that complies with paragraph 1, the person is only eligible to vote a provisional ballot as prescribed by <u>§ 16-584</u>.</p> <p>Effective Dec. 1, 2003</p>	Ariz. Rev. Stat. Ann. § 16-579
Arkansas	Provide ID	<p>7-5-305. Requirements.</p> <p>(a) Before a person is permitted to vote, the election official shall:</p> <p>(1) Request the voter to identify himself in order to verify the existence of his name on the precinct voter registration list;</p> <p>(2) Request the voter, in the presence of the election official, to state his address and state or confirm his date of birth;</p> <p>(3) Determine that the voter's date of birth and address are the same as those on the precinct voter registration list;</p> <p>(4) If the date of birth given by the voter is not the same as that on the precinct voter registration list, request the voter to provide identification as the election official deems appropriate;</p> <p>(5)(A) If the voter's address is not the same as that on the precinct voter registration list, verify with the county clerk that the address is within the precinct.</p> <p>(B) If the address is within the precinct, request the voter to complete a voter registration application form for the purpose of updating county voter registration record files.</p> <p>(C) If the address is not within the precinct, instruct the voter to contact the county clerk's office to determine the proper precinct;</p> <p>(6) If the voter's name is not the same as that on the precinct voter registration list, request the voter to complete a voter registration application form for purposes of updating county voter registration record files;</p> <p>(7) Request the voter, in the presence of the election official, to sign his name, including his given name, his middle name or initial, if any, and his last name in the space provided on the precinct voter registration list. If a person is unable to sign his signature or make his mark or cross, the election official shall enter his initials and the voter's date of birth in the space for the person's signature on the precinct voter registration list; and</p>	Arkansas Code Annotated § 7-5-305

		<p>(8)(A) Request the voter for purposes of identification to provide a valid driver's license, photo identification card issued by a governmental agency, voter card, social security card, birth certificate, United States passport, employee identification card issued by a governmental agency containing a photograph, employee identification card issued in the normal course of business of the employer, student identification card, Arkansas hunting license, or United States military identification card.</p> <p>(B)(i) If a voter is unable to provide this identification, the election official shall indicate on the precinct voter registration list that the voter did not provide identification.</p> <p>(ii) Following each election, the county board of election commissioners may review the precinct voter registration lists and may provide the information of the voters not providing identification at the polls to the prosecuting attorney.</p> <p>(iii) The prosecuting attorney may investigate possible voter fraud; and</p> <p>(9) Follow the procedures under §§ 7-5-310, 7-5-311, and 7-5-523, if the person is a disabled voter and presents himself or herself to vote.</p> <p>Effective: July 16, 2003</p>	
California	Sign Name	<p>Any person desiring to vote shall announce his or her name and address in an audible tone of voice, and when one of the precinct officers finds the name in the index, the officer shall in a like manner repeat the name and address. The voter shall then write his or her name and residence address or, if the voter is unable to write, shall have the name and residence address written by another person on a roster of voters provided for that purpose, whereupon a challenge may be interposed as provided in this article.</p> <p>(Enacted in 1994, no amendments since)</p>	Cal. Elec. Code § 14216
Colorado	Provide ID	<p>(1) Except as provided in subsection (4) of this section, any eligible elector desiring to vote shall show his or her identification as defined in section 1-1-104(19.5), write his or her name and address on the signature card, and give the signature card to one of the election judges, * * *</p> <p>(4) An eligible elector who is unable to produce identification may cast a provisional ballot in accordance with article 8.5 of this title.</p> <p>(19.5)(a) "Identification" means:</p> <p>(I) A valid Colorado driver's license;</p> <p>(II) A valid identification card issued by the department of revenue in accordance with the requirements of part 3 of article 2 of title 42, C.R.S.;</p> <p>(III) A valid United States passport;</p> <p>(IV) A valid employee identification card with a photograph of the eligible elector issued by any branch, department, agency, or entity of the United States government or of this state, or by any county, municipality, board, authority, or other political subdivision of this state;</p> <p>(V) A valid pilot's license issued by the federal aviation administration or other authorized agency of the United States;</p> <p>(VI) A valid United States military identification card with a photograph of the eligible elector;</p> <p>(VII) A copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the elector;</p> <p>(VIII) A valid medicare or medicaid card issued by the United States health care</p>	Colo. Rev. Stat. Ann. § 1-7-110; Colo. Rev. Stat. Ann. § 1-1-104

		<p>financing administration;</p> <p>(IX) A certified copy of a birth certificate for the elector issued in the United States; or</p> <p>(X) Certified documentation of naturalization.</p> <p>(b) Any form of identification indicated in paragraph (a) of this subsection (19.5) that shows the address of the eligible elector shall be considered identification only if the address is in the state of Colorado.</p> <p>Effective 5/28/2004</p>	
Connecticut	Provide ID	<p>(a) In each primary, election or referendum, when an elector has entered the polling place, the elector shall announce the elector's street address, if any, and the elector's name to the checkers in a tone sufficiently loud and clear as to enable all the election officials present to hear the same. Each elector who registered to vote by mail for the first time on or after January 1, 2003, and has a "mark" next to the elector's name on the official registry list, as required by <u>section 9-23r</u>, shall present to the checkers, before the elector votes, either a current and valid photo identification that shows the elector's name and address or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the elector. Each other elector shall (1) present to the checkers the elector's Social Security card or any other preprinted form of identification which shows the elector's name and either the elector's address, signature or photograph, or (2) on a form prescribed by the Secretary of the State, write the elector's residential address and date of birth, print the elector's name and sign a statement under penalty of false statement that the elector is the elector whose name appears on the official checklist. Such form shall clearly state the penalty of false statement. A separate such form shall be used for each elector. If the elector presents a preprinted form of identification under subdivision (1) of this subsection, the checkers shall check the name of such elector on the official checklist. If the elector completes the form under subdivision (2) of this subsection, the assistant registrar of voters shall examine the information on such form and either instruct the checkers to check the name of such elector on the official checklist or notify the elector that the form is incomplete or inaccurate.</p> <p>Effective May 10., 2004</p>	Conn. Gen. Stat. Ann. § 9-261
Delaware	Provide ID	<p>(a) A voter, upon entering the room where an election is being held, shall announce his or her name and address and provide proof of identity, whereupon the clerks shall place a mark or make a notation of his or her name upon the election district record. In the event the voter does not have proof of identity with them, he or she shall sign an affidavit of affirmation that he or she is the person listed on the election district record.</p> <p>Effective: July 9, 2002</p>	15 Del. Code § 4937
D.C.	Sign Name	<p>(i)(1) A person shall be entitled to vote in an election in the District of Columbia if he or she is a duly registered voter. A qualified elector shall be considered duly registered in the District if he or she has met the requirements for voter registration and, on the day of the election, either resides at the address listed on the Board's records or files an election day change of address pursuant to this subsection.</p> <p>(2) Each registered voter who changes his or her place of residence from that listed on the Board's records shall notify the Board, in writing, of the new residence address. A change of address shall be effective on the date the notification was mailed as shown by the United States Postal Service postmark. If not postmarked, the notification shall be effective on the date of receipt by the Board. Change of address notifications from registrants shall be accepted pursuant to subsection (g) of this section, except that any registrant who has not notified the Board of his or her current residence address by the deadline established by subsection (g) of this section may be permitted to vote at the</p>	D.C. Code § 1-1001.07

		<p>polling place that serves the current residence address by filing an election day change of address notice pursuant to paragraph (4) of this subsection.</p> <p>(3) Each registered voter who votes at a polling place on election day shall affirm his or her residence address as it appears on the official registration roll for the precinct. The act of signing a copy of the official registration roll for the precinct shall be deemed affirmation of the voter's address as it appears on the Board's registration records.</p> <p>(Effective April 3, 2001)(not added as part of 2005 amendment)</p>	
Florida	Photo ID	<p>101.043 (1) The precinct register, as prescribed in <u>s. 98.461</u>, shall be used at the polls in lieu of the registration books for the purpose of identifying the elector at the polls prior to allowing him or her to vote. The clerk or inspector shall require each elector, upon entering the polling place, to present a current and valid picture identification as provided in <u>s. 97.0535(3)(a)</u>. If the picture identification does not contain the signature of the voter, an additional identification that provides the voter's signature shall be required. The elector shall sign his or her name in the space provided, and the clerk or inspector shall compare the signature with that on the identification provided by the elector and enter his or her initials in the space provided and allow the elector to vote if the clerk or inspector is satisfied as to the identity of the elector.</p> <p>(2) Except as provided in subsection (3), if the elector fails to furnish the required identification, or if the clerk or inspector is in doubt as to the identity of the elector, such clerk or inspector shall follow the procedure prescribed in <u>s. 101.49</u>.</p> <p><b>97.0535 (3)(a)</b> The following forms of identification shall be considered current and valid if they contain the name and photograph of the applicant and have not expired:</p> <ol style="list-style-type: none"> <li>1. Florida driver's license.</li> <li>2. Florida identification card issued by the Department of Highway Safety and Motor Vehicles.</li> <li>3. United States passport.</li> <li>4. Employee badge or identification.</li> <li>5. Buyer's club identification.</li> <li>6. Debit or credit card.</li> <li>7. Military identification.</li> <li>8. Student identification.</li> <li>9. Retirement center identification.</li> <li>10. Neighborhood association identification.</li> <li>11. Entertainment identification.</li> <li>12. Public assistance identification.</li> </ol> <p>(b) The following forms of identification shall be considered current and valid if they contain the name and current residence address of the applicant:</p> <ol style="list-style-type: none"> <li>1. Utility bill.</li> </ol>	West's Fla. Stat. Ann. § 101.043 & West's Fla. Stat. Ann. § 97.0535



		<p>2. Bank statement.</p> <p>3. Government check.</p> <p>4. Paycheck.</p> <p>5. Other government document (excluding voter identification card).</p> <p>Version effective 1/1/2005-12/31/2005</p>	
Georgia	Provide ID	<p>(a) Each elector shall present proper identification to a poll worker at or prior to completion of a voter's certificate at any polling place and prior to such person's admission to the enclosed space at such polling place. Proper identification shall consist of any one of the following:</p> <ol style="list-style-type: none"> <li>(1) A valid Georgia driver's license;</li> <li>(2) A valid identification card issued by a branch, department, agency, or entity of the State of Georgia, any other state, or the United States authorized by law to issue personal identification;</li> <li>(3) A valid United States passport;</li> <li>(4) A valid employee identification card containing a photograph of the elector and issued by any branch, department, agency, or entity of the United States government, this state, or any county, municipality, board, authority, or other entity of this state;</li> <li>(5) A valid employee identification card containing a photograph of the elector and issued by any employer of the elector in the ordinary course of such employer's business;</li> <li>(6) A valid student identification card containing a photograph of the elector from any public or private college, university, or postgraduate technical or professional school located within the State of Georgia;</li> <li>(7) A valid Georgia license to carry a pistol or revolver;</li> <li>(8) A valid pilot's license issued by the Federal Aviation Administration or other authorized agency of the United States;</li> <li>(9) A valid United States military identification card;</li> <li>(10) A certified copy of the elector's birth certificate;</li> <li>(11) A valid social security card;</li> <li>(12) Certified naturalization documentation;</li> <li>(13) A certified copy of court records showing adoption, name, or sex change;</li> <li>(14) A current utility bill, or a legible copy thereof, showing the name and address of the elector;</li> <li>(15) A bank statement, or a legible copy thereof, showing the name and address of the elector;</li> <li>(16) A government check or paycheck, or a legible copy thereof, showing the name and address of the elector; or</li> <li>(17) A government document, or a legible copy thereof, showing the name and address of the elector.</li> </ol> <p>(b) If an elector is unable to produce any of the items of identification listed in subsection (a) of this Code section, he or she shall sign a statement under oath in a form approved by the Secretary of State, separate and distinct from the elector's voter certificate, swearing or affirming that he or she is the person identified on the elector's voter certificate. Such person shall be allowed to vote without undue delay; provided, however, that an elector who registered for the first time in this state by mail and did not provide one of the forms of identification set forth in subsection (a) of this Code section at the time of registration and who is voting for the first time may vote a provisional ballot pursuant to Code Section 21-2-418 upon swearing or affirming that the elector is the person identified in the elector's voter certificate. Such provisional ballot shall only be counted if the registrars are able to verify current and valid identification of the elector as provided in this Code section within the time period for verifying provisional ballots pursuant to Code Section 21-2-419. Falsely swearing or affirming such statement under oath shall be punishable as a felony, and the penalty shall be distinctly set forth on the face of the statement."</p> <p>effective June, 2003</p>	Ga. Code. Ann. § 21-2-417

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Hawaii	Photo ID	<p>(b) The voter shall present valid identification to the official in charge of the pollbook.</p> <p><i>Do I Need an I.D. to Vote on Election Day?</i>  <b>Yes.</b> Be sure to have an I.D. with a picture and signature (such as a Hawaii driver's license or state I.D. card) when you go to vote. The NVRAC card is not an acceptable form of identification.</p> <p>From the 2004 version of the administrative code.</p> <p><b>§ 11-136 Poll book, identification, voting.</b></p> <p>Every person upon applying to vote shall sign the person's name in the poll book prepared for that purpose. This requirement may be waived by the chairperson of the precinct officials if for reasons of illiteracy or blindness or other physical disability the voter is unable to write. Every person shall provide identification if so requested by a precinct official. A poll book shall not contain the social security number of any person.</p> <p>After signing the poll book and receiving the voter's ballot, the voter shall proceed to the voting booth to vote according to the voting system in use in the voter's precinct. The precinct official may, and upon request shall, explain to the voter the mode of voting.</p> <p>Last amended 2003.</p>	<p>Haw. Code. R. § 2-51-80 (Paper ballots; voting procedure at the polls), § 2-51-83 (Punchcard ballots; voting procedure at polls), 2-51-85.1 (Marksense ballots; voting procedure at the polls.) – All have same subsection (b)</p> <p>Haw. Code. R. T. 2, SUBT. 4, CH. 51, Appendix</p> <p>HRS 11-136</p>
Idaho	Sign Name	<p>(1) An elector desiring to vote shall state his name and address to the judge or clerk in charge of the combination election record and poll book.</p> <p>(2) Before receiving his ballot, each elector shall sign his name in the combination election record and poll book following his name therein.</p> <p>(5) The elector shall then be given the appropriate ballots which have been stamped with the official election stamp and shall be given folding instructions for such ballots.</p> <p>(Last amended in 1972)</p>	Id. St. §34-1106
Illinois	Give Name	<p>Any person desiring to vote shall give his name and, if required to do so, his residence to the judges of election, one of whom shall thereupon announce the same in a loud and distinct tone of voice, clear, and audible; the judges of elections shall check each application for ballot against the list of voters registered in that precinct to whom absentee or early ballots have been issued for that election, which shall be provided by the election authority and which list shall be available for inspection by pollwatchers. A voter applying to vote in the precinct on election day whose name appears on the list as having been issued an absentee or early ballot shall not be permitted to vote in the precinct. All applicable provisions of Articles 4, 5 or 6 shall be complied with and if such name is found on the register of voters by the officer having charge thereof, he</p>	10 Ill. Comp. Stat. 5/17-9

		<p>shall likewise repeat said name, and the voter shall be allowed to enter within the proximity of the voting booths, as above provided. One of the judges shall give the voter one, and only one of each ballot to be voted at the election, on the back of which ballots such judge shall indorse his initials in such manner that they may be seen when each such ballot is properly folded, and the voter's name shall be immediately checked on the register list. In those election jurisdictions where perforated ballot cards are utilized of the type on which write-in votes can be cast above the perforation, the election authority shall provide a space both above and below the perforation for the judge's initials, and the judge shall endorse his or her initials in both spaces. Whenever a proposal for a constitutional amendment or for the calling of a constitutional convention is to be voted upon at the election, the separate blue ballot or ballots pertaining thereto shall, when being handed to the voter, be placed on top of the other ballots to be voted at the election in such manner that the legend appearing on the back thereof, as prescribed in Section 16-6 of this Act, shall be plainly visible to the voter. At all elections, when a registry may be required, if the name of any person so desiring to vote at such election is not found on the register of voters, he or she shall not receive a ballot until he or she shall have complied with the law prescribing the manner and conditions of voting by unregistered voters. If any person desiring to vote at any election shall be challenged, he or she shall not receive a ballot until he or she shall have established his right to vote in the manner provided hereinafter; and if he or she shall be challenged after he has received his ballot, he shall not be permitted to vote until he or she has fully complied with such requirements of the law upon being challenged. Besides the election officer, not more than 2 voters in excess of the whole number of voting booths provided shall be allowed within the proximity of the voting booths at one time. The provisions of this Act, so far as they require the registration of voters as a condition to their being allowed to vote shall not apply to persons otherwise entitled to vote, who are, at the time of the election, or at any time within 60 days prior to such election have been engaged in the military or naval service of the United States, and who appear personally at the polling place on election day and produce to the judges of election satisfactory evidence thereof, but such persons, if otherwise qualified to vote, shall be permitted to vote at such election without previous registration.</p>	
<p>Indiana</p>	<p>Sign Name</p>		<p>West's Annotated Indiana Code § 3-11-8-25</p>
<p>Iowa</p>	<p>Sign Name</p>	<p>I. The board members of their respective precincts shall have charge of the ballots and furnish them to the voters. Any person desiring to vote shall sign a voter's declaration provided by the officials, in substantially the following form:</p> <p style="text-align: center;"><b>VOTER'S DECLARATION OF ELIGIBILITY</b></p> <p>I do solemnly swear or affirm that I am a resident of the ..... precinct, ..... ward or township, city of ....., county of ....., Iowa.</p> <p>I am a registered voter. I have not voted and will not vote in any other precinct in said election.</p> <p>I understand that any false statement in this declaration is a criminal offense punishable as provided by law.</p> <p style="text-align: center;">_____ Signature of Voter</p> <p style="text-align: center;">_____ Address</p> <p style="text-align: center;">_____ Telephone</p> <p>Approved:</p>	<p>Iowa Code § 49.77</p>

		<p>Board Member</p> <p>2. One of the precinct election officials shall announce the voter's name aloud for the benefit of any persons present pursuant to section 49.104, subsection 2, 3, or 5. Any of those persons may upon request view the signed declarations of eligibility and may review the signed declarations on file so long as the person does not interfere with the functions of the precinct election officials.</p> <p>3. A precinct election official shall require any person whose name does not appear on the election register as an active voter to show identification. Specific documents which are acceptable forms of identification shall be prescribed by the state commissioner.</p> <p>A precinct election official may require of the voter unknown to the official, identification upon which the voter's signature or mark appears. If identification is established to the satisfaction of the precinct election officials, the person may then be allowed to vote.</p> <p>(From 2004 version of Iowa Annotated Code; effective January 1, 1995)</p>	
Kansas	Sign Name	<p>(b) A person desiring to vote shall provide to the election board: (1) the voter's name; (2) if required, the voter's address; and (3) the voter's signature on the registration or poll book. A signature may be made by mark, initials, typewriter, print, stamp, symbol or any other manner if by placing the signature on the document the person intends the signature to be binding. A signature may be made by another person at the voter's direction if the signature reflects such voter's intention.</p> <p>(Approved April 14, 2004, 2004 Kansas Laws Ch. 93)</p>	Kan. Stat. Ann. § 25-2908(b)
Kentucky	Provide ID	<p>117.227 Confirmation of voter's identity</p> <p>Election officers shall confirm the identity of each voter by personal acquaintance or by a document, such as a motor vehicle operator's license, Social Security card, or credit card. The election officer confirming the identity shall sign the precinct voter roster and list the method of identification.</p> <p>Effective: 7/15/02</p> <p>31 KAR 4:010. Voter identification cards.</p> <p>Section 1. In addition to the forms of identification specifically provided for by <u>KRS 117.227</u>, any identification card that bears both the picture and signature of the voter, or any identification card that has been issued by the county, and which has been approved in writing by the State Board of Elections, shall be acceptable for confirmation of the voter's identity.</p>	<p>Ky Rev. Stat. Ann. 117.227</p> <p>31 Ky. Admin. Regs. 4:010.</p>
Louisiana	Photo ID	<p>A. Identification of voters.</p> <p>(1) A person who desires to vote in a primary or general election shall give his name and address to a commissioner, who shall announce the applicant's name and address to the persons at the polling place.</p> <p>(2) Each applicant shall identify himself, in the presence and view of the bystanders, and present to the commissioners a Louisiana driver's license, a Louisiana special identification card issued pursuant to <u>R.S. 40:1321</u>, or other generally recognized picture identification card. If the applicant does not have a Louisiana driver's license, a Louisiana special identification card, or other generally recognized picture identification card, the applicant shall sign an affidavit, which is supplied by the secretary of state, to that effect before the commissioners who shall place the affidavit in the envelope marked "Registrar of Voters" and attach the envelope to the precinct register, and the applicant</p>	La. Rev. Stat. Ann. 18:562

		<p>shall provide further identification by presenting his current registration certificate, giving his date of birth or providing other information stated in the precinct register that is requested by the commissioners. However, an applicant that is allowed to vote without the picture identification required by this Paragraph is subject to challenge as provided in <u>R.S. 18:565</u>.</p> <p>Effective: 1/1/2002</p>	
Maine	Give Name	<p>The voting procedure is as follows.</p> <p>1. Name announced. A voter who wishes to vote must state the voter's name and, upon request, residence address to an election clerk who shall announce the name in a loud, clear voice.</p> <p>(In effect at time of 2003 amendment: 2003, c. 584, § 9)</p>	Me. Rev. Stat. Ann. tit. 21-A, § 671
Maryland	Sign Name	<p>10-310.</p> <p>(a) For each individual who seeks to vote, an election judge, in accordance with instructions provided by the local board, shall:</p> <p>(1) locate the individual's name in the precinct register and locate the preprinted voting authority card and then authorize the individual to vote a regular ballot;</p> <p>(2)(i) if the individual's name is not found on the precinct register, search the inactive list and if the name is found, authorize the individual to vote a regular ballot; or</p> <p>(ii) if the individual's name is not on the inactive list, refer the individual for provisional ballot voting under § 9-404 of this article;</p> <p>(3) establish the identity of the voter by requesting the voter to state the month and day of the voter's birth and comparing the response to the information listed in the precinct register;</p> <p>(4) verify the address of the voter's residence;</p> <p>(5) if any changes to the voting authority card are indicated by a voter, make the appropriate changes in information on the card or other appropriate form; and</p> <p>(6) have the voter sign the voting authority card and either issue the voter a ballot or send the voter to a machine to vote.</p>	Md. Elec. Law § 10-310
Mass.	Give Name	<p>Each voter desiring to vote at a polling place shall give his name and, if requested, his residence to one of the officers at the entrance to the space within the guard rail, who shall thereupon distinctly announce the same. If such name is found on the voting list, the election officer shall check and repeat the name and shall admit the voter to the space enclosed by the guard rail and, in case official ballots, other than those marked "Challenged Ballots" as provided by section thirty-five A, are used, such voter shall be given one ballot. The use of electronic means such as tape recording equipment or radio broadcasting equipment for the recording or broadcasting of the names of voters not yet checked as having voted shall be prohibited.</p> <p>Last amended in 1981</p> <p>(5B) Identification. If so authorized by the city or town clerk or registrars of voters, an election officer may request any voter to present written identification. Such requests shall not discriminate in any way, but shall be entirely random, consistent, or based on reasonable suspicion. For the purpose of 950 CMR 52.03(5B), of M.G.L. c. 54, § 76B, and of 950 CMR 52.03(5)(b), suitable written identification includes a driver's license, recent utility bill, rent receipt on a landlord's printed letterhead, lease, duplicate copy of a voter registration affidavit, or any other printed identification which contains the voter's name and address. If voters fail to present suitable written identification when so requested, they must still be allowed to vote, but an election officer or any other person may challenge their right to vote under M.G.L. c. 54, § 85 and 950 CMR 52.03(23).</p>	<p>Mass. Ann. Laws 54 § 76</p> <p>950 Mass. Code Regs. 52.03</p>
Michigan	Sign Name	<p>(1) At each election, before being given a ballot, each registered elector offering to vote shall identify himself or herself by presenting an official state</p>	Mich. Comp. Laws Ann. §

		<p>identification card issued to that individual pursuant to Act No. 222 of the Public Acts of 1972, being sections 28.291 to 28.295 of the Michigan Compiled Laws, an operator's or chauffeur's license issued to that individual pursuant to the Michigan Vehicle Code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws, or other generally recognized picture identification card and by executing an application showing his or her signature or mark and address of residence in the presence of an election official. If the voter registration cards are used in the precinct, the election official in charge of the precinct registration file shall compare the signature upon the application with the signature upon the registration card. If voter registration lists are used in the precinct, the election inspector shall determine if the name on the application to vote appears on the voter registration list. If the name appears on the voter registration list, the elector shall provide further identification by giving his or her date of birth or other information stated upon the voter registration list. In precincts using voter registration lists, the date of birth may be required to be placed on the application to vote. If the signature or an item of information does not correspond, the vote of the person shall be challenged, and the same procedure shall be followed as provided in this act for the challenging of an elector. If the person offering to vote has signed the registration card or application by making a mark, the person shall identify himself or herself by giving his or her date of birth, which shall be compared with the date of birth stated upon the registration card or voter registration list, or shall give other identification as may be referred to upon the registration card or voter registration list. If the elector does not have an official state identification card, operator's or chauffeur's license as required in this subsection, or other generally recognized picture identification card, the individual shall sign an affidavit to that effect before an election inspector and be allowed to vote as otherwise provided in this act. However, an elector being allowed to vote without the identification required under this subsection is subject to challenge as provided in section 727.</p> <p>(2) If, upon a comparison of the signature or other identification, it is found that the applicant is entitled to vote, the election officer having charge of the registration list shall approve the application and write his or her initials on the application, after which the number on the ballot issued shall be noted on the application. The application shall serve as 1 of the 2 poll lists required to be kept as a record of a person who has voted. The application shall be filed with the township, city, or village clerk. If voter registration cards are used in the precinct, the date of the election shall be noted by 1 of the election officials upon the precinct registration card of each elector voting at an election. If voter registration lists are used in the precinct, the election official shall clearly indicate upon the list each elector voting at that election. The clerk of a city, village, or township shall maintain a record of voting participation for each registered elector.</p> <p>The Attorney General declared that this statute violated the Equal Protection Clause of the Fourteenth Amendment. Op. Atty. Gen. 1997, No. 6930. That decision is binding on all state agencies.</p> <p>(Effective March 31, 1997)</p>	168.523
Minnesota	Sign Name	(a) An individual seeking to vote shall sign a polling place roster which states that the individual is at least 18 years of age, a citizen of the United States, has resided in Minnesota for 20 days immediately preceding the election, maintains residence at the address shown, is not under a guardianship in which the court order revokes the individual's right to vote, has not been found by a court of law to be legally incompetent to vote or convicted of a felony without having civil rights restored, is registered and has not already voted in the election. The roster must also state: "I understand that deliberately providing false information is a felony punishable by not more than five years imprisonment and a fine of not	Minn. Stat. § 204C.10

		<p>more than \$10,000, or both."</p> <p>(b) A judge may, before the applicant signs the roster, confirm the applicant's name, address, and date of birth.</p> <p>(c) After the applicant signs the roster, the judge shall give the applicant a voter's receipt. The voter shall deliver the voter's receipt to the judge in charge of ballots as proof of the voter's right to vote, and thereupon the judge shall hand to the voter the ballot. The voters' receipts must be maintained during the time for notice of filing an election contest.</p> <p>(Effective January 1, 2004)</p>	
Mississippi	Sign Name	<p>***</p> <p>When any person entitled to vote shall appear to vote, he shall first sign his name in a receipt book or booklet provided for that purpose and to be used at that election only and said receipt book or booklet shall be used in lieu of the list of voters who have voted formerly made by the managers or clerks; whereupon and not before, the initialing manager or, in his absence, the alternate initialing manager shall indorse his initials on the back of an official blank ballot, prepared in accordance with law, and at such place on the back of the ballot that the initials may be seen after the ballot has been marked and folded, and when so indorsed he shall deliver it to the voter, which ballot the voter shall mark in the manner provided by law, which when done the voter shall deliver the same to the initialing manager or, in his absence, to the alternate initialing manager, in the presence of the others, and the manager shall see that the ballot so delivered bears on the back thereof the genuine initials of the initialing manager, or alternate initialing manager, and if so, but not otherwise, the ballot shall be put into the ballot box; and when so done one (1) of the managers or a duly appointed clerk shall make the proper entry on the pollbook. If the voter is unable to write his name on the receipt book, a manager or clerk shall note on the back of the ballot that it was receipted for by his assistance.</p> <p>(Effective January 1, 1987)</p>	Miss. Code Ann. § 23-15-541
Missouri	Provide ID	<p>1. Before receiving a ballot, voters shall identify themselves by presenting a form of personal identification from the following list:</p> <p>(1) Identification issued by the state of Missouri, an agency of the state, or a local election authority of the state;</p> <p>(2) Identification issued by the United States government or agency thereof;</p> <p>(3) Identification issued by an institution of higher education, including a university, college, vocational and technical school, located within the state of Missouri;</p> <p>(4) A copy of a current utility bill, bank statement, government check, paycheck or other government document that contains the name and address of the voter;</p> <p>(5) Driver's license or state identification card issued by another state; or</p> <p>(6) Other identification approved by the secretary of state under rules promulgated pursuant to subsection 3 of this section other identification approved by federal law. Personal knowledge of the voter by two supervising election judges, one from each major political party, shall be acceptable voter identification upon the completion of a secretary of state-approved affidavit that is signed by both supervisory election judges and the voter that attests to the personal knowledge of the voter by the two supervisory election judges. The secretary of state may provide by rule for a sample affidavit to be used for such purpose.</p> <p>(Last amended in 2002)</p>	Mo. Rev. Stat. §115.427.1

Montana	Provide ID	<p>(1) (a) Before an elector is permitted to receive a ballot or vote, the elector shall present to an election judge a current photo identification showing the elector's name. If the elector does not present photo identification, including but not limited to a valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification, the elector shall present a current utility bill, bank statement, paycheck, notice of confirmation of voter registration issued pursuant to 13-2-207, government check, or other government document that shows the elector's name and current address.</p> <p>(From 2004 version of the Montana Code Annotated; No updates in 2004, only in 2005 [ Unrelated section was amended in 2005])</p>	Mont. Code. Ann. §13-13-114(1)(a)
Nebraska	Sign Name	<p>(1) The clerks of election shall have a list of registered voters of the precinct and a sign-in register at the polling place on election day. The list of registered voters shall be used for guidance on election day and may be in the form of a computerized, typed, or handwritten list or precinct registration cards. Registered voters of the precinct shall place and record their signature in the sign-in register before receiving any ballot. The list of registered voters and the sign-in register may be combined into one document.</p> <p>(Last amended in 2003)</p> <p>Official ballots shall be used at all elections. No person shall receive a ballot or be entitled to vote unless and until he or she is registered as a voter except as provided in section 32-914.01, 32-914.02, 32-915, 32-915.01, or 32-936. Except as otherwise specifically provided, no ballot shall be handed to any registered voter at any election until (1) he or she announces his or her name and address to the clerk of election, (2) the clerk has found that he or she is a registered voter at the address as shown by the precinct list of registered voters unless otherwise entitled to vote in the precinct under section 32-328, 32-914.01, 32-914.02, 32-915, or 32-915.01, (3) if the voter registered by mail after January 1, 2003, and has not previously voted in an election for a federal office within the county, the clerk shall ask the registered voter to present a photographic identification which is current and valid or a copy of a utility bill, bank statement, government check, paycheck, or other government document that is current and that shows the name and address of the voter, (4) the clerk has instructed the registered voter to personally write his or her name in the precinct sign-in register on the appropriate line which follows the last signature of any previous voter, and (5) the clerk has listed on the precinct list of registered voters the corresponding line number and name of the registered voter.</p> <p>(Last updated in 2003)</p>	<p>Neb. Rev. Stat. § 32-913</p> <p>Neb. Rev. Stat. § 32-914</p>
Nevada	Match Sig.	<p>1. Except as otherwise provided in <u>NRS 293.541</u>, if a person's name appears in the election board register or if he provides an affirmation pursuant to <u>NRS 293.525</u>, he is entitled to vote and must sign his name in the election board register when he applies to vote. His signature must be compared by an election board officer with the signature or a facsimile thereof on his original application to register to vote or one of the forms of identification listed in subsection 2.</p> <p>2. Except as otherwise provided in <u>NRS 293.2725</u>, the forms of identification which may be used individually to identify a voter at the polling place are:</p> <p>(a) The card issued to the voter at the time he registered to vote;</p> <p>(b) A driver's license;</p> <p>(c) An identification card issued by the Department of Motor Vehicles;</p> <p>(d) A military identification card; or</p>	Nev. Rev. Stat. § 293.277



		(e) Any other form of identification issued by a governmental agency which contains the voter's signature and physical description or picture.  Last Amendment Effective Jan. 1, 2004.	
NH	Give Name	A person desiring to vote shall, before being admitted to the enclosed space within the guardrail, announce his or her name to one of the ballot clerks who shall thereupon repeat the name; and, if the name is found on the checklist by the ballot clerk, the ballot clerk shall put a checkmark beside it and again repeat the name. The ballot clerk shall state the address listed on the checklist for the voter, and ask if the address is correct; if the address on the checklist is not correct, the ballot clerk shall correct the address in red on the checklist. The voter, if still qualified to vote in the town or ward and unless challenged as provided for in <u>RSA 659:27-33</u> , shall then be allowed to enter the space enclosed by the guardrail. After the voter enters the enclosed space, the ballot clerk shall give the voter one of each ballot to be voted on in that election which shall be folded as it was upon receipt from the secretary of state.  Last Amendment Effective July 2, 2002.	N.H. Rev. Stat. Ann. 659:13
New Jersey	Match Sig.	19:15-17. Comparison of signatures or statements made openly; provisional ballots for newly registered voters without proper identification  a. The comparison of signatures of a voter made upon registration and upon election day, and if the voter alleges his inability to write, the comparison of the answers made by such voter upon registration and upon election day, shall be had in full view of the challengers.  b. If a voter has registered by mail after January 1, 2003 to vote for the first time in his or her current county of residence and did not provide personal identification when registering pursuant to section 16 of P.L.1974, c. 30 (C.19:31-6.4), the voter shall be permitted to vote starting at the first election held after January 1, 2004 at which candidates are seeking federal office after displaying one of the following items: (1) a current and valid photo identification card; (2) a current utility bill, bank statement, government check or pay check; (3) any other government document that shows the voter's name and current address; or (4) any other identifying document that the Attorney General has determined to be acceptable for this purpose. If the voter does not display one of these documents, the voter shall not be permitted to vote by machine but shall instead be provided with a provisional ballot, pursuant to the provisions of P.L.1999, c. 232 (C.19:53C-1 et seq.). This subsection shall not apply to any voter entitled to vote by absentee ballot under the "Uniformed and Overseas Citizens Absentee Voting Act" (42 U.S.C. 1973ff-1 et seq.) or to any voter who is provided the right to vote other than in person under section 3 of Pub.L.98-435, the "Voting Accessibility for the Elderly and Handicapped Act," or any other voter entitled to vote otherwise than in person under any other federal law. This subsection shall also not apply to any person who registers to vote by appearing in person at any voter registration agency or to any person whose voter registration form is delivered to the county commissioner of registration or to the Attorney General, as the case may be, through a third party by means other than by mail delivery.  c. Each county commissioner of registration shall collect and maintain, in the manner prescribed by the Attorney General, the information provided pursuant to subsection b. of this section and section 16 of P.L.1974, c. 30 (C.19:31-6.4). Access to the personal identification information provided pursuant to subsection b. of this section and section 16 of P.L.1974, c. 30 (C.19:31-6.4) shall be prohibited, in accordance with subsection a. of section 6 of P.L.2001, c. 404 (C.47:1A-5).  Last Amendment Effective July 9, 2004	N.J. Stat. Ann. 19:15-17
New Mexico	Sign Name	D. The judge assigned to the voter list used for confirmation of registration and voting shall determine that each person offering to vote is registered and, in the	N.M. Stat. Ann §1-5-10

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		<p>case of a primary election, that the voter is registered in a party designated on the primary election ballot. If the person's registration is confirmed by the presence of his name on the voter list or if the person presents a certificate under the seal and signature of the county clerk showing that he is entitled to vote in the election and to vote in that precinct, the judge shall announce to the election clerks the list number and the name of the voter as shown on the voter list.</p> <p>E. The election clerk shall locate that list number and name on the signature roster and shall require the voter to sign his usual signature or, if unable to write, to make his mark opposite his printed name. If the voter makes his mark, it shall be witnessed by one of the judges of the precinct board. If the signature roster indicates that the voter is required to present a form of identification before voting, the election judge shall ask the voter for a current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows and matches the name and address of the voter as indicated on the signature roster. If the voter does not provide the required identification, he shall be allowed to vote on a provisional paper ballot.</p> <p>G. A voter shall not be permitted to vote until he has properly signed his usual signature or made his mark in the signature roster.</p> <p>(From 2004 version of New Mexico Annotated Statutes, amended in 2005 to require presentation of ID)</p>	<p>(Recompiled as §1-12 -7.1 by L. 2005, Ch. 270, §63, effective July 1, 2005)</p>
New York	Match Sig.	<p>1. A person before being allowed to vote shall be required, except as provided in this chapter, to sign his name on the back of his registration poll record on the first line reserved for his signature at the time of election which is not filled with a previous signature, or on the line of the computer generated registration list reserved for his signature. The two inspectors in charge shall satisfy themselves by a comparison of this signature with his registration signature and by comparison of his appearance with the descriptive material on the face of the registration poll record that he is the person registered. If they are so satisfied they shall enter the other information required for the election on the same line with the voter's latest signature, shall sign their names or initials in the spaces provided therefor, and shall permit the applicant to vote. Any inspector or inspectors not satisfied shall challenge the applicant forthwith.</p> <p>2. If a person who alleges his inability to sign his name presents himself to vote, the board of inspectors shall permit him to vote, unless challenged on other grounds, provided he had been permitted to register without signing his name. The board shall enter the words "Unable to Sign" in the space on his registration poll record reserved for his signature or on the line of the computer generated registration list reserved for his signature at such election. If his signature appears upon his registration record or upon the computer generated registration list the board shall challenge him forthwith, except that if such a person claims that he is unable to sign his name by reason of a physical disability incurred since his registration, the board, if convinced of the existence of such disability, shall permit him to vote, shall enter the words "Unable to Sign" and a brief description of such disability in the space reserved for his signature at such election. At each subsequent election, if such disability still exists, he shall be entitled to vote without signing his name and the board of inspectors, without further notation, shall enter the words "Unable to Sign" in the space reserved for his signature at such election.</p> <p>3. The voter's signature made by him upon registration and his signature made at subsequent elections shall be effectively concealed from the voter by a blotter or piece of opaque paper until after the voter shall have completed his signature.</p> <p>4. In any case where a person who has heretofore voted has placed his voting signature on the back of his registration poll record on the first or any succeeding line or lines at the time or times of an election, instead of on the last line of the</p>	<p>N.Y. Law § 8-304 (McKinney)</p>

		<p>space thereon required to be reserved for such voting signatures and on any lines next running upward therefrom, the inspectors of election shall obliterate such misplaced signature or signatures, initial the obliteration and require such voter to sign his name again in the correct place on such registration poll record.</p> <p>5. Any person who has heretofore registered and who at such time placed his or her registration signature on the back of the registration poll record otherwise than in the space required to be provided therefor at the bottom of such poll record, shall, before being permitted to vote at any election thereafter, subscribe a new registration signature for himself on the last line at the bottom of such poll record, and, at the same time, if the inspectors of election are satisfied that the signatures were made by the same person, obliterate his original registration signature placed elsewhere than on the bottom of such record. Such obliterations may be made by crossing out the signature so as to completely efface the same or by affixing thereover a piece of gummed tape of a size sufficient only to cover such signature and of a type adequate to fully conceal the same</p> <p>Last Amended 1986</p>	
North Carolina	Give Name	<p>(a) Checking Registration. --A person seeking to vote shall enter the voting enclosure through the appropriate entrance. A precinct official assigned to check registration shall at once ask the voter to state current name and residence address. The voter shall answer by stating current name and residence address. In a primary election, that voter shall also be asked to state, and shall state, the political party with which the voter is affiliated or, if unaffiliated, the authorizing party in which the voter wishes to vote. After examination, that official shall state whether that voter is duly registered to vote in that precinct and shall direct that voter to the voting equipment or to the official assigned to distribute official ballots. If a precinct official states that the person is duly registered, the person shall sign the pollbook, other voting record, or voter authorization document in accordance with subsection (c) of this section before voting.</p>	N.C. Gen. Stat. Ann. § 163-166.7
North Dakota	Provide ID	<p>16.1-05-07 Poll clerks to check identification and verify eligibility -- Poll clerks to request, correct, and update incorrect information contained in the pollbook.</p> <p>1. Before delivering a ballot to an individual according to section 16.1-13- 22, the poll clerks shall request the individual to show a driver's license issued by the state, another form of identification displaying a photograph of the individual and the individual's date of birth, or another appropriate form of identification prescribed by the secretary of state. If an individual offering to vote fails or refuses to show an appropriate form of identification, the individual may be allowed to vote without being challenged according to section 16.1-05-06 if the individual provides to the election board the individual's date of birth and if a member of the election board or a clerk knows the individual and can personally vouch that the individual is a qualified elector of the precinct. After verifying that the individual's name is contained in the pollbook generated from the central voter file, poll clerks shall verify the individual's residential address and mailing address, if different from the individual's residential address.</p> <p>(From 2003 version of N.D. Century Code; only amendment to this statute that became effective in 2003 was in 2005)</p>	N.D. Cent. Code § 16.1-05-07

Ohio	Match Sig.	<p>When an elector appears in a polling place to vote he shall announce his full name and address to the precinct election officials. He shall then write his name and address at the proper place in the poll lists or signature pollbooks provided therefore, except that if, for any reason, an elector shall be unable to write his name and address in the poll list or signature pollbook, the elector may make his mark at the place intended for his name and a precinct official shall write the name of the elector at the proper place on the poll list or signature pollbook following the elector's mark, upon the presentation of proper identification. The making of such mark shall be attested by the precinct official who shall evidence the same by signing his name on the poll list or signature pollbook as a witness to such mark.</p> <p>The elector's signature in the poll lists or signature pollbooks shall then be compared with his signature on his registration form or a digitized signature list as provided for in section 3503.13 of the Revised Code, and if, in the opinion of a majority of the precinct election officials, the signatures are the signatures of the same person, the clerks shall enter the date of the election on the registration form or shall record the date by such other means as may be prescribed by the secretary of state. If the right of the elector to vote is not then challenged, or, if being challenged, he establishes his right to vote, he shall be allowed to proceed into the voting machine. If voting machines are not being used in that precinct, the judge in charge of ballots shall then detach the next ballots to be issued to the elector from Stub B attached to each ballot, leaving Stub A attached to each ballot, hand the ballots to the elector, and call his name and the stub number on each of the ballots. The clerk shall enter the stub numbers opposite the signature of the elector in the pollbook. The elector shall then retire to one of the voting compartments to mark his ballots. No mark shall be made on any ballot which would in any way enable any person to identify the person who voted the ballot.</p> <p>(Effective at time of last update, 1992 H 182, eff. 4-9-93)</p>	Ohio Rev. Code Ann. § 3505.18
Oklahoma	Sign Name	<p>Each person presenting himself to vote shall announce his name to the judge of the precinct, whereupon the judge shall determine whether said person's name is in the precinct registry.</p> <p>(Last amended in 1990)</p> <p>Persons who have been determined to be eligible to vote shall sign, in the presence of the clerk, the proper precinct registry. Said clerk shall thereupon issue proper ballots to said person. The voter's signature on said precinct registry shall be the best evidence of said voter's having voted at said election. Said precinct registry shall be retained in the office of the county election board for a period of twenty-two (22) months following the election and shall be subject to public inspection during regular office hours.</p> <p>(Last amended in 1990)</p>	<p>Okla. Stat. Ann. tit. 26, § 7-114</p> <p>Okla. Stat. Ann. tit. 26, § 7-117</p>
Oregon	Match Sig.	<p>All elections in Oregon are Vote by Mail.</p> <p>An Elections Official will compare the signature on your ballot return envelope to the signature on your voter registration card to verify your identity</p> <p>(<a href="http://www.uhavavote.org/votingguide/votebymail.html">http://www.uhavavote.org/votingguide/votebymail.html</a>) (unknown date, but use of wayback machine shows that this provision on site on following dates: 7/11/04, 10/20/04 and 10/29/04)</p>	Or. Rev. Stat. § 254.385
Penn.	Match Sig.	(a.3) All electors, including any elector that shows identification pursuant to subsection (a), shall subsequently sign a voter's certificate, and, unless he is a State or Federal employee who has registered under any registration act without declaring his residence by street and number, he shall insert his address therein, and hand the same to the election officer in charge of the district register. Such election officer shall thereupon announce the elector's name so that it may be heard by all members of the election board and by all watchers present in the	25 Pa. Stat. Ann. § 3050

		<p>polling place and shall compare the elector's signature on his voter's certificate with his signature in the district register. If, upon such comparison, the signature upon the voter's certificate appears to be genuine, the elector who has signed the certificate shall, if otherwise qualified, be permitted to vote: Provided, That if the signature on the voter's certificate, as compared with the signature as recorded in the district register, shall not be deemed authentic by any of the election officers, such elector shall not be denied the right to vote for that reason, but shall be considered challenged as to identity and required to make the affidavit and produce the evidence as provided in subsection (d) of this section. When an elector has been found entitled to vote, the election officer who examined his voter's certificate and compared his signature shall sign his name or initials on the voter's certificate, shall, if the elector's signature is not readily legible, print such elector's name over his signature, and the number of the stub of the ballot issued to him or his number in the order of admission to the voting machines, and at primaries a letter or abbreviation designating the party in whose primary he votes shall also be entered by one of the election officers or clerks. As each voter is found to be qualified and votes, the election officer in charge of the district register shall write or stamp the date of the election or primary, the number of the stub of the ballot issued to him or his number in the order of admission to the voting machines, and at primaries a letter or abbreviation designating the party in whose primary he votes, and shall sign his name or initials in the proper space on the registration card of such voter contained in the district register.</p> <p>(In effect at time of, and unaltered by: 2004, Oct. 8, P.L. 807, No. 97, § 5.1 (changes procedure for first time voters, not established voters))</p>	
<p>Rhode Island</p>	<p>Give Name</p>	<p>(a) Each person desiring to vote shall state his or her name and residence, including that person's street address, if he or she has any, to one of the first pair of bi-partisan supervisors, who shall then announce the name and residence in a loud and distinct voice, clear and audible. As each voter's name is announced, the voter shall be handed a ballot application in the following form:</p> <p><b>BALLOT APPLICATION</b></p> <p>(Poll List)          Senatorial District _____          Representative District _____          Voting District _____</p> <p>Election          Date _____</p> <p>I hereby certify that I am a registered and qualified elector in the above voting district of          City of _____</p> <p>and hereby make application for ballots to be voted at this election.</p> <p>_____</p> <p>(Signature of Voter)</p> <p>_____</p> <p>(Residence Address)</p> <p>Number Approved _____</p> <p>(Supervisor of Election)</p>	<p>R.I. Gen. Laws          § 17-19-24</p>

		<p>(b) The voter shall sign the application in the presence and view of a bipartisan pair. They shall locate the voter's name on the certified voting list for the voting district. Upon finding the voter's name on the certified voting list for the district, they shall initial the ballot application in the place provided next to the word "Approved" and shall enter on the certified list of voters a proper notation that the applicant has voted in the election. They shall then return the ballot application to the voter who shall pass down the line and present it to the clerk. After the voter has handed the approved ballot application to the clerk, the clerk shall provide the voter with the appropriate computer ballot and security sleeve, the warden shall direct the voter to the voting booth which the voter shall use, and unless the voter needs instruction or assistance as provided in this chapter, the voter shall cast his or her vote, and if he or she desires place the voted computer ballot in a security sleeve, and shall proceed to the optical scan precinct count unit and shall personally place his or her voted ballot into the designated ballot slot on the unit, and after doing so, shall leave the enclosure at once. No voter shall remain within the voting booth longer than ten (10) minutes, and if the voter refuses to leave after the lapse of ten (10) minutes, the voter shall be removed from the voting booth by order of the warden. Except for the election officials and the election inspector, not more than two (2) voters in excess of the number of voting booths shall be permitted within the enclosed space at any time.</p> <p>(Last amended 2004, Current through January 2005 Session)</p>	
South Carolina	Photo ID	<p><b>§ 7-13-710. Proof of right to vote; signing poll list; comparison of signatures.</b></p> <p>When any person presents himself to vote, he shall produce his valid South Carolina driver's license or other form of identification containing a photograph issued by the Department of Motor Vehicles, if he is not licensed to drive, or the written notification of registration provided for by §§ 7-5-125 and 7-5-180 if the notification has been signed by the elector. If the elector loses or defaces his registration notification, he may obtain a duplicate notification from his county board of registration upon request in person, or by telephone or mail. After presentation of the required identification, his name must be checked by one of the managers on the margin of the page opposite his name upon the registration books, or copy of the books, furnished by the board of registration. The managers shall keep a poll list which must contain one column headed "Names of Voters". Before any ballot is delivered to a voter, the voter shall sign his name on the poll list, which must be furnished to the appropriate election officials by the State Election Commission. At the top of each page the voter's oath appropriate to the election must be printed. The signing of the poll list or the marking of the poll list is considered to be an affirmation of the oath by the voter. One of the managers shall compare the signature on the poll list with the signature on the voter's driver's license, registration notification, or other identification and may require further identification of the voter and proof of his right to vote under this title as he considers necessary. If the voter is unable to write or if the voter is prevented from signing by physical handicap, he may sign his name to the poll list by mark with the assistance of one of the managers.</p> <p>Last amended: 1968</p>	S.C. Code Ann. § 7-13-710
South Dakota	Photo ID	<p>When a voter is requesting a ballot, the voter shall present a valid form of personal identification. The personal identification that may be presented shall be either:</p> <ol style="list-style-type: none"> <li>(1) A South Dakota driver's license or nondriver identification card;</li> <li>(2) A passport or an identification card, including a picture, issued by an agency of the United States government;</li> <li>(3) A tribal identification card, including a picture; or</li> <li>(4) An identification card, including a picture, issued by a high school or an accredited institution of higher education, including a university, college, or</li> </ol>	S.D. Codified Laws § 12-18-6.1

		<p>technical school, located within the State of South Dakota.</p> <p>Last amended March 2004</p>	
Tennessee	Provide ID	<p>Identification of eligible voters</p> <p>(a)(1) A voter shall sign an application for ballot, indicate the primary in which the voter desires to vote, if any, and present it to a registrar. The application for ballot shall include thereon a space for the address of the voter's current residence, and the voter shall write or print such address on the application when the voter signs it. The registrar shall compare the signature and information on the application with the signature and information on the duplicate permanent registration record. The registrar shall make a determination whether the voter's address is different from the address on the voter's permanent registration record or if the registration is in inactive status. If the voter has changed residence, or the voter's registration is inactive, the registrar shall follow the procedures for voting pursuant to § 2-7-140. If, upon comparison of the signature and other identification, it is found that the applicant is entitled to vote, the registrar shall initial the application and shall note on the reverse side of the voter's duplicate permanent registration record the date of the election, the number of the voter's ballot application, and the elections in which the voter votes. If the applicant's signature is illegible, the registrar shall print the name on the application. The registrar shall give the voter the ballot application which is the voter's identification for a paper ballot or ballots or for admission to a voting machine. The voter shall then sign the duplicate poll lists without leaving any lines blank on any poll list sheet.</p> <p>(2) In any computerized county, the county election commission shall have the option of using an application for a ballot as provided in this section, or using the computerized voter signature list. A computerized voter signature list shall include the voter's name, current address of residence, social security number or registration number, birth date and spaces for the voter's signature, elections voted, ballot number and precinct registrar's initials. The following procedures shall be followed in the case of computerized voter signature lists:</p> <p>(A) The voter shall sign the signature list and indicate the election or elections the voter desires to vote in and verify the voter's address in the presence of the precinct registrar;</p> <p>(B) The registrar shall compare the voter's signature and information on the signature list with other evidence of identification supplied by the voter. If, upon comparison of the signature and other evidence of identification, it is found that the applicant is entitled to vote, the registrar shall initial the signature list;</p> <p>(C) If the applicant's signature is illegible, the registrar shall print the name of the applicant on the voter list; and</p> <p>(D) If a voter is unable to present any evidence of identification specified in subsection (c), the voter shall be required to execute an affidavit of identity on a form provided by the county election commission.</p> <p>Last amended 2003</p>	Tenn. Code Ann. § 2-7-112
Texas	Provide ID	<p>(b) On offering to vote, a voter must present the voter's voter registration certificate to an election officer at the polling place.</p> <p>(Last amended in 1997)</p>	Tex. Elec. Code Ann. § 63.001
Utah	Give Name	<p>(1)(a) Any registered voter desiring to vote shall give his name, and, if requested, his residence, to one of the election judges.</p> <p>(b) If an election judge does not know the person requesting a ballot and has reason to doubt that person's identity, the judge shall request identification or have the voter identified by a known registered voter of the district.</p> <p>(3) If the election judge determines that the voter is registered:</p> <p>(a) the election judge in charge of the official register shall:</p> <p>(i) write the ballot number opposite the name of the voter in the official register; and</p>	Utah Code Ann. § 20A-3-104

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		<p>(ii) direct the voter to sign his name in the election column in the official register;</p> <p>(b) another judge shall list the ballot number and voter's name in the pollbook; and</p> <p>(c) the election judge having charge of the ballots shall:</p> <p>(i) endorse his initials on the stub;</p> <p>(ii) check the name of the voter on the pollbook list with the number of the stub;</p> <p>(iii) hand the voter a ballot; and</p> <p>(iv) allow the voter to enter the voting booth.</p> <p>(In effect at time of last update prior to 2005: Laws 2003, c. 37, § 1, eff. May 5, 2003)</p>	
Vermont	Give Name	<p>Before a person may be admitted to vote, he or she shall announce his or her name and if requested, his or her place of residence in a clear and audible tone of voice, or present his or her name in writing, or otherwise identify himself or herself by appropriate documentation. The election officials attending the entrance of the polling place shall then verify that the person's name appears on the checklist for the polling place. If the name does appear, and if no one immediately challenges the person's right to vote on grounds of identity or having previously voted in the same election, the election officials shall repeat the name of the person and:</p> <p>(1) If the checklist indicates that the person is a first-time voter in the municipality who registered by mail and who has not provided required identification before the opening of the polls, require the person to present any one of the following: a valid photo identification; a copy of a current utility bill; a copy of a current bank statement; or a copy of a government check, paycheck, or any other government document that shows the current name and address of the voter. If the person is unable to produce the required information, the person shall be afforded the opportunity to cast a provisional ballot, as provided in subchapter 6A of this chapter. The elections official shall note upon the checklist a first-time voter in the municipality who has registered by mail and who produces the required information, and place a mark next to the voter's name on the checklist and allow the voter to proceed to the voting booth for the purpose of voting.</p> <p>(2) If the voter is not a first-time voter in the municipality, no identification shall be required, the clerk shall place a check next to the voter's name on the checklist and allow the voter to proceed to the voting booth for the purpose of voting</p> <p>(Last amended in 2003)</p>	Vt. Stat. Ann. tit. 17, § 2563
Virginia	Provide ID	<p>§ 24.2-643. Qualified voter permitted to vote; procedures at polling place; voter identification</p> <p>A. After the polls are open, each qualified voter at a precinct shall be permitted to vote. The officers of election shall ascertain that a person offering to vote is a qualified voter before admitting him to the voting booth and furnishing an official ballot to him.</p> <p>B. An officer of election shall ask the voter for his full name and current residence address and repeat, in a voice audible to party and candidate representatives present, the full name and address stated by the voter. The officer shall ask the voter to present any one of the following forms of identification: his Commonwealth of Virginia voter registration card, his social security card, his valid Virginia driver's license, or any other identification card issued by a government agency of the Commonwealth, one of its political subdivisions, or the United States; or any valid employee identification card containing a photograph of the voter and issued by an employer of the voter in the ordinary course of the employer's business.</p> <p>If the voter's name is found on the pollbook, if he presents one of the forms of</p>	Va. Code Ann.



		<p>identification listed above, if he is qualified to vote in the election, and if no objection is made, an officer shall enter, opposite the voter's name on the pollbook, the first or next consecutive number from the voter count form provided by the State Board, or shall enter that the voter has voted if the pollbook is in electronic form; an officer shall provide the voter with the official ballot; and another officer shall admit him to the voting booth.</p> <p>Except as provided in subsection E of this section, if a voter is entitled to vote except that he is unable to present one of the forms of identification listed above, he shall be allowed to vote after signing a statement, subject to felony penalties for false statements pursuant to § 24.2-1016, that he is the named registered voter who he claims to be. A voter who requires assistance in voting by reason of physical disability or inability to read or write, and who requests assistance pursuant to § 24.2-649, may be assisted in preparation of this statement in accordance with that section. The provisions of § 24.2-649 regarding voters who are unable to sign shall be followed when assisting a voter in completing this statement.</p> <p>(Version in effect as of 2004- effective 4/12/2004)</p>	
Washington	Sign Name	<p>29A.44.201.</p> <p>A voter desiring to vote shall give his or her name to the precinct election officer who has the precinct list of registered voters. This officer shall announce the name to the precinct election officer who has the copy of the inspector's poll book for that precinct. If the right of this voter to participate in the primary or election is not challenged, the voter must be issued a ballot or permitted to enter a voting booth or to operate a voting device. For a partisan primary in a jurisdiction using the physically separate ballot format, the voter must be issued a nonpartisan ballot and each party ballot. The number of the ballot or the voter must be recorded by the precinct election officers. If the right of the voter to participate is challenged, RCW 29A.08.810 and 29A.08.820 apply to that voter.</p> <p>(In effect at time of last update prior to 2005: 2004 c 271 § 136, eff. June 10, 2004)</p> <p>29A.44.210.</p> <p>Any person desiring to vote at any primary or election is required to sign his or her name on the appropriate precinct list of registered voters. If the voter registered using a mark, or can no longer sign his or her name, the election officers shall require the voter to be identified by another registered voter.</p> <p>The precinct election officers shall then record the voter's name.</p> <p>Effective date: July 1, 2004</p>	<p>Wash. Rev. Code § 29A.44.201 &amp; 29A.44.210</p>
West Virginia	Match Sig.	<p>(a) Any person desiring to vote in an election shall, upon entering the election room, clearly state his or her name and residence to one of the poll clerks who shall thereupon announce the same in a clear and distinct tone of voice. If that person is found to be duly registered as a voter at that precinct, he or she shall be required to sign his or her name in the space marked "signature of voter" on the pollbook prescribed and provided for the precinct. If that person is physically or otherwise unable to sign his or her name, his or her mark shall be affixed by one of the poll clerks in the presence of the other and the name of the poll clerk affixing the voter's mark shall be indicated immediately under the affixation. No ballot may be given to the person until he or she so signs his or her name on the pollbook or his or her signature is so affixed thereon.</p> <p>***</p> <p>(c) When the voter's signature is properly on the pollbook, the two poll clerks shall sign their names in the places indicated on the back of the official ballot and deliver the ballot to the voter to be voted by him or her without leaving the</p>	<p>W. Va. Code § 3-1-34 (a)</p>

		<p>election room. If he or she returns the ballot spoiled to the clerks, they shall immediately mark the ballot "spoiled" and it shall be preserved and placed in a spoiled ballot envelope together with other spoiled ballots to be delivered to the board of canvassers and deliver to the voter another official ballot, signed by the clerks on the reverse side required by this subsection. The voter shall thereupon retire alone to the booth or compartment prepared within the election room for voting purposes and there prepare his or her ballot using a ballpoint pen of not less than five inches in length or other indelible marking device of not less than five inches in length. In voting for candidates in general and special elections, the voter shall comply with the rules and procedures prescribed in section five, article six of this chapter.</p> <p>(In effect at time of last update prior to 2005: Acts 2003, c. 100, eff. 90 days after March 7, 2003)</p>	
Wisconsin	Give Name	<p>6.79(2)(a) Except as provided in sub. (6), where there is registration, each person, before receiving a voting number, shall state his or her full name and address. Upon the prepared registration list, after the name of each elector, the officials shall enter the serial number of the vote as it is polled, beginning with number one. Each elector shall receive a slip bearing the same serial number. A separate list shall be maintained for electors who are voting under s. 6.15, 6.29 or 6.55(2) or (3) and electors who are reassigned from another polling place under s. 5.25(5)(b). Each such elector shall have his or her full name, address and serial number likewise entered and shall be given a slip bearing such number.</p> <p>(In effect at time of last update prior to 2005: 2003 Act 327, § 4, eff. June 12, 2004)</p>	Wis. Stat. § 6.79
Wyoming	Give Name	<p>(a) Unless a voter is challenged pursuant to W.S. 22-15-101 through 22-15-109, no identification shall be required when:</p> <p>(i) Voting in person or by mail after having registered in person; or</p> <p>(ii) Voting in person or by mail after having registered by mail and having previously voted in a Wyoming federal election.</p> <p>(In effect at time of last update prior to 2005: Effective dates. -- Laws 2004, ch. 94, § 5, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 5, 2004.)</p>	Wyo. Stat. Ann. § 22-3-118

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

## Court Decisions

**Summary of Relevant Cases:****Challenges Prevailed:***American Civil Liberties Union of Minnesota v. Kiffmeyer, 2004*

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

*Greidinger v. Davis, 1993*

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

**Challenges Rejected:***League of Women Voters v. Blackwell, 2004.*

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

*Colorado Common Clause v. Davidson, 2004*

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

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

*McKay v. Thompson, 2000*

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

*Kemp v. Tucker, 1975*

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

*Perez v. Rhiddlehoover, 1966*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Current Litigation Concerning Voter ID Issues<sup>1</sup>**

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

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

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<sup>1</sup> As of January 2, 2006

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

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

The lawsuit alleges five separate violations of state and federal law. First, the complaint alleges that the identification requirements infringe on the right to vote guaranteed in the Georgia constitution (Compl. 32)<sup>2</sup>. In addition, the Plaintiffs claim violations of the Federal Civil Rights Act and Voting Rights Act. (Compl. 36,38). Finally, the lawsuit alleges violations of the Fourteenth and Twenty-Fourth amendments to the U.S. Constitution. The complaint claims that the ID requirements constitute an "undue burden" on the right to vote, in violation of the Equal Protection Clause of the Fourteenth Amendment (Compl. 34). The ID requirement does not apply to most absentee voters, and thus the requirement is also over-broad and not narrowly tailored to address the stated purpose of preventing voter fraud (Compl. 34). The complaint further alleges that the cost of obtaining a photo ID constitutes a poll tax, in violation of the Twenty-Fourth Amendment, and that the cost is also a violation of the Fourteenth Amendment because it applies to voters who choose to vote in person, and not to those who vote absentee (Compl. 34,35).

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

The Defendants appealed the motion for preliminary injunction to the Eleventh Circuit, and oral argument is scheduled for March 1, 2006. In addition, some news reports have claimed that the Georgia legislature is considering re-visiting the ID requirements in light of the on-going litigation.<sup>3</sup> As for the merits, in granting the preliminary injunction the District Court has already signaled its belief that the federal constitutional claims are likely meritorious. The Eleventh Circuit may have a different view, but for now the case looks to have a reasonable chance of success.

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

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

<sup>2</sup> Litigation documents are available at the Election Law @ Moritz website.  
<http://moritzlaw.osu.edu/electionlaw/litigation/index.php>

<sup>3</sup> GA Legislature May Revisit Voter ID Law, State Net Capitol Journal, Dec. 19, 2005.



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

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

The case is currently in the pre-trial phase, with both sides awaiting decisions on their respective motions for summary judgment.<sup>4</sup> The likelihood of success is bolstered by the fact that the Fourteenth amendment constitutional claims have already been found persuasive by at least one other Federal District Court. However, the Indiana law is notably different than its Georgia counterpart in that it provides free identification. While the plaintiffs make a solid argument that related costs still amount to a poll-tax, it is possible that the court could distinguish on this matter.

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

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<sup>4</sup> According to an AP article, the Plaintiffs filed some type of brief on December 21—however it is not yet up on the Moritz website and I am unsure how to access it otherwise.

## Appendix C

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### Analysis of Effects of Voter Identification Requirements on Turnout

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May 16, 2006

#### Introduction

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

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

#### Types of voter identification requirements

Based on research by the Moritz College of Law, states had one of five types of requirements in place on Election Day 2004. Upon arrival at polling places, voters had to either: state their names (10 states); sign their names (13 states and the District of Columbia); match their signature to a signature on file with the local election board (seven states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (five states).<sup>5</sup> It was then possible to code the states according to these requirements, and test the assumption that voter identification requirements would pose an increasingly demanding requirement in this order: stating one's name, signing one's name, matching one's signature to a signature on file, providing a form of identification, and providing a form of photo identification.

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<sup>5</sup> Oregon conducts elections entirely by mail. Voters sign their mail-in ballots, and election officials match the signatures to signatures on file. For the purposes of this analysis, Oregon is classified as a state that requires a signature match.

But election laws in numerous states offer exceptions to these requirements if individuals lack the necessary form of identification, and laws in those states set a minimum standard that a voter must meet in order to vote using a regular ballot (as opposed to a provisional ballot). Thus it is also possible to categorize states based on the minimum requirement for voting with a regular ballot. In 2004 the categories were somewhat different compared to the maximum requirement, in that none of the states required photo identification as a minimum standard for voting with a regular ballot. Four states, however, required voters to swear an affidavit as to their identity (Florida, Indiana, Louisiana, and North Dakota). The five categories for minimum requirements were: state name (12 states), sign name (14 states and the District of Columbia), match one's signature to a signature on file (six states), provide a non-photo identification (14 states), or swear an affidavit (four states). For the purposes of this analysis I also tested the array of minimum identification requirements to assess whether they posed increasing levels of demand on the voter: state name, sign name, match signature, provide non-photo identification, and, given the potential legal consequences for providing false information, swearing an affidavit.

### **Estimating turnout among citizens in the voting-age population**

This report examines turnout among U.S. citizens of voting age in both the aggregate- and the individual-level data. Determining citizenship status in the individual-level data simply involved restricting the analyses to individuals who identified themselves as citizens in the November 2004 Current Population Survey. (Those who said they were not citizens did not have the opportunity to answer the supplemental voting questions contained in the Current Population Survey.)

In the aggregate data, determining the percentage of the voting-age population that has U.S. citizenship posed a methodological challenge. The Census Bureau gathers information on the citizenship status of adults ages 18 and older only during the decennial census. While the Census Bureau provides annual estimates of the population to account for changes between decennial censuses, the bureau does not offer estimates for the proportion of the adult population who are citizens as part of the annual estimates. To address this issue I estimated the 2004 citizen voting-age population for each county using a method reported in the analysis of the 2004 Election Day Survey conducted for the U.S. Election Assistance Commission (U.S. Election Assistance Commission, 2005). I calculated the percentage of the 2000 voting-age population who were citizens in 2000, and applied that percentage to the July 1, 2004 estimates for voting-age population in each county. In other words, I assumed that the percentage of the voting-age population that had U.S. citizenship in 2004 was similar to the percentage of the voting-age population who were citizens in 2000.<sup>6</sup>

### **Analysis of aggregate data**

If one treats maximum voter identification requirements as a continuous variable, with photo identification as the most demanding requirement, one finds some statistical support for the premise that as the level of required proof increases, turnout declines. Averaging across counties in each state, statewide turnout is negatively correlated with maximum voter

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<sup>6</sup> McDonald and Popkin (2001) recommend an even more stringent approach to voter turnout calculations. They point out that voting-age population estimates include adults who are ineligible to vote (such as convicted felons), and the estimates overlook eligible citizens living overseas. While estimates of the voting-eligible population are available at the state level, I was unable to find such estimates for individual counties, which provide the unit of analysis for the aggregate data analyzed here.

identification requirements ( $r = -.30, p < .05$ ). In considering the array of minimum requirements, with affidavit as the most demanding requirement, however, the correlation between voter identification and turnout is negative, but it is not statistically significant ( $r = -.20, p = .16$ ). This suggests that the relationship between turnout rates and minimum requirements may not be linear. Breaking down the turnout rates by type of requirement reveals in greater detail the relationship between voter identification requirements and voter turnout.

[Table 1 here]

The aggregate data show that 60.9 percent of the estimated citizen voting age population voted in 2004. Differences in voter turnout at the state level in 2004 varied based on voter identification requirements. Taking into account the maximum requirements, an average of 64.2 percent of the voting age population turned out in states that required voters to state their names, compared to 58.1 percent in states that required photo identification. A similar trend emerged when considering minimum requirements. Sixty-three percent of the voting age population turned out in states requiring voters to state their names, compared to 60.1 percent in states that required an affidavit from voters. Given the lack of a clear, consistent linear relationship between turnout and minimum identification requirements, however, I opted to treat the voter identification requirements as a series of dichotomous variables in subsequent analyses.<sup>7</sup>

Voter identification requirements alone do not determine voter turnout. Multivariate models that take into account other predictors of turnout can paint a more complete picture of the relationship between voter identification requirements and turnout. I estimated the effects of voter identification requirements in multivariate models that also took into account the electoral context in 2004 and demographic characteristics of the population in each county.

I coded the voter identification requirements as a series of dummy variables, coding each variable as one if the requirement existed in a given state, and zero otherwise. This yielded five dichotomous variables for maximum requirements (state name, sign name, match signature, non-photo identification, or photo identification), and five dichotomous variables for minimum requirements (state name, sign name, match signature, non-photo identification, or providing an affidavit). I omitted the variable for stating one's name so that it could serve as the reference category in comparison with the other four identification requirements in each of the statistical analyses.

To capture electoral context I included whether the county was in a presidential battleground state (any state in which the margin of victory for the winning candidate was five percent or less), and whether the county was in a state with a competitive race for governor and/or the U.S. Senate (also using the threshold of a margin of victory of five percent or less). Another contextual factor to consider is voter registration requirements, such as the deadline for registration. As states set the deadline farther away from Election Day, the task of remembering to register to vote becomes more challenging. Thus I added a variable to reflect the number of days between each state's registration deadline and the election.<sup>8</sup>

<sup>7</sup> Treating maximum voter identification requirements as a continuous variable yielded results in which voter identification requirements were negatively related to aggregate turnout. Those results can be found in Table A-1 in the Appendix to this report.

<sup>8</sup> For states that had Election Day registration or no registration requirement (North Dakota), I assigned a value of zero to this variable.

Drawing from U.S. Census projections for 2003, I included the percentage of the voting-age population in each county that was Hispanic or African-American to control for ethnicity and race. I controlled for age using the 2003 Census projection for the percentage of county residents age 65 and older, and I controlled for socioeconomic status by including the median household income for 2002 in each county.<sup>9</sup>

I estimated a series of random effects models to account for the likelihood that data from counties were correlated within each state (for further explanation of random effects and other multilevel models, see Bryk and Raudenbush 1992, Luke 2004, Singer 1998).<sup>10</sup> I allowed the median income variable to have both fixed and random effects in each state to take into account variation in the cost of living in each state. The dependent variable in each model was voter turnout at the county level, with turnout calculated as the percentage of the estimated citizen voting-age population that voted in the 2004 election.

[Table 2 here]

Turning first to an analysis using the maximum identification requirements, two of the four requirements had a small and negative effect on turnout in 2004: matching one's signature and providing a non-photo identification. Taking into account the reference variable of stating one's name, the results indicate that turnout was lower in states that required signature matches or a non-photo identification than in states that required voters to simply state their name, holding constant the electoral context and demographic variables.

Two contextual factors -- whether the county was in a state that was a battleground state and whether that state had a competitive race for governor and/or U.S. Senate-- increased voter turnout. The time between the closing date for registration and the election had a slight negative effect on turnout. As the percentage of Hispanics in the county's population increased, turnout declined. The percentage of senior citizens in the county and household median income had positive effects on turnout. The percentage of African-Americans in the county did not have a significant effect.

The effects of the minimum voter identification requirements were non-existent. None of the dummy variables for voter identification requirements were statistically significant. Being a battleground state and having a competitive statewide race were significant and positive, as was the percentage of senior citizens in the county and household median income. The percentage of Hispanics in the county's population continued to have a negative effect on turnout, as did the number of days between the closing date for registration and the election.

I then sought to test the hypothesis that voter identification requirements dampen turnout among minorities, a claim voiced by some critics of the requirements. To test this idea I incorporated a series of interactions between the maximum and minimum voter identification requirements and the percentage of African-Americans and Hispanics living in the counties. In each case the interactions did not improve the fit of the models to the data. A chi-square test of the difference in the deviance for each model (represented by -2 log likelihood in Table 2),

<sup>9</sup> To bring the income figures into a scale comparable to those of the other variables, I used the natural log of median household income.

<sup>10</sup> The data analyses provided evidence that there was, indeed, a clustering of data within each state. The intraclass correlation, bounded by 0 and 1, measures the variation between the states. A random intercept model using only the intercept as a predictor generated an intraclass correlation of .43, indicating considerable variation between the states.

showed no significant improvement by including the interactions ( $p > 0.05$ ). I report the coefficients for the models with the interactions in the Appendix in tables A-2 and A-3.

Analysis of the aggregate data at the county level generates some support for the hypothesis that as the identification requirements for voting vary, so does turnout. Specifically, in terms of the maximum requirements, the results suggest that requiring a signature match or non-photo identification is negatively related to turnout compared to requiring that a voter state his or her name. But the analysis showed that adding interactions between identification requirements and the percentage of the county that was African-American or Hispanic did not improve the fit of the model to the data.

Aggregate data, however, cannot fully capture the individual demographic factors that may figure into the decision to turn out to vote. For example, previous research has found that education is a powerful determinant of turnout (Wolfinger and Rosenstone 1980, but see also Nagler 1991).<sup>11</sup> Married individuals also are more likely to vote than those who are not married (Alvarez and Ansolabehere 2002; Alvarez, Nagler and Wilson 2004; Fisher, Kenny, and Morton 1993). To fully explore the effects of voter identification requirements on turnout, it is important to examine individual-level data as well.

### Individual-level analysis

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

One of the advantages of the CPS is the sheer size of the sample. The survey's Voting and Registration Supplement consisted of interviews, either by telephone or in person, with 96,452 respondents.<sup>12</sup> The large sample size permits analyses of smaller groups, such as Black or Hispanic voters or voters with less than a high school education. The analyses reported here are based on reports from self-described registered voters. I omitted those who said they were not registered to vote. I also excluded those who said they cast absentee ballots because the identification requirements for absentee ballots may differ from those required when one votes in person. In addition, I eliminated from the sample respondents who said they were not U.S. citizens because the questionnaire design skipped those individuals past the voter registration and turnout questions in the survey.

The dependent variable in these analyses is whether a respondent said he or she voted in the November 2004 election.<sup>13</sup> As in the analysis of aggregate data, I coded the voter

<sup>11</sup> A reviewer for an earlier version of this paper recommended adding an education variable to the aggregate model. One version of the aggregate model not reported here included the percentage of adults in the county who had at least a college degree. The measure was highly collinear with the percentage of residents living below the poverty line, necessitating removal of the college degree variable from the model.

<sup>12</sup> It is important to note that the Census Bureau allows respondents to answer on behalf of themselves and others in the household during the interview. While proxy reporting of voter turnout raises the possibility of inaccurate reports concerning whether another member of the household voted, follow-up interviews with those for whom a proxy report had been given in the November 1984 CPS showed 99 percent agreement between the proxy report and the information given by the follow-up respondent (U.S. Census Bureau 1990).

<sup>13</sup> The U.S. Census Bureau reported, based on the November 2004 CPS, that 89 percent of those who identified themselves as registered voters said they voted in 2004 (U.S. Census Bureau 2005). Previous research has shown

identification requirements as a series of dummy variables, coding each variable as one if the requirement existed in a given state, and zero otherwise. This yielded five dichotomous variables for maximum requirements (state name, sign name, match signature, non-photo identification, or photo identification), and five dichotomous variables for minimum requirements (state name, sign name, match signature, non-photo identification, or providing an affidavit). I omitted the variable for stating one's name so that it could serve as the reference category in comparison with the other four identification requirements in each of the statistical analyses.<sup>14</sup>

In addition to the voter identification requirements, the models include two other state-level factors that might have influenced turnout in 2004: whether the state was considered a battleground state in the presidential election, and whether there was a gubernatorial and/or U.S. Senate race in the state (see Alvarez and Ansolabehere 2002, Alvarez et al. 2004, and Kenny et al. 1993 for similar approaches). As in the aggregate data analysis, the threshold that determined whether the state was a battleground state or had a competitive statewide race was a margin of victory of five percent or less.<sup>15</sup> At the individual level, I controlled for gender, household income, and dummy variables for race/ethnicity, age and education. In terms of race and ethnicity, I created dummy variables to represent whether a voter was Black/non-Hispanic, Hispanic, or Asian (with white/non-Hispanic/other voters as the omitted category for reference purposes). I separated education into five dummy variables: less than high school, high school diploma, some college, college graduate, and graduate training. I omitted the "less than high school" variable from the model for reference purposes. Regarding age, I created four dummy variables to represent 18 to 24 years of age, 29 to 44, 45 to 64, and 65 years and older. I omitted the 18-to-24 category as the reference variable in the model.

Drawing on previous research on voting behavior, I also controlled for whether an individual was employed, or at least a member of the workforce (as opposed to being a full-time student, a homemaker, or retired). Both employment and workforce membership have been shown to be positive predictors of turnout (see Mitchell and Wlezien 1995). Marital status, whether one is a native-born citizen and residential mobility also have emerged as significant predictors of turnout (Alvarez and Ansolabehere 2002, Alvarez et al. 2004, Kenney et al. 1993, Wolfinger and Rosenstone 1980). I included in the model variables for whether a respondent was married (coded 1 if yes, 0 otherwise), and whether one was a native-born citizen (coded 1 if yes, 0 otherwise). I measured residential mobility by coding for whether the respondent had moved to a new address in the six months prior to the interview (coded 1 if yes, 0 otherwise).

## Results

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that, generally speaking, some survey respondents overstate their incidence of voting. Researchers speculate that over-reports may be due to the social desirability that accompanies saying one has done his or her civic duty, or a reluctance to appear outside the mainstream of American political culture (U.S. Census Bureau 1990). It is also possible that voting is an indication of civic engagement that predisposes voters to agree to complete surveys at a higher rate than non-voters (Flanigan and Zingale 2002). Hence the voter turnout rates reported in the CPS tend to be up to 10 percentage points higher than the actual turnout rate for the nation (Flanigan and Zingale 2002). Even with this caveat, however, the CPS serves as a widely accepted source of data on voting behavior.

<sup>14</sup> Earlier versions of this paper included an individual-level analysis that included the five maximum voter identification requirements combined into a continuous variable. The results of that analysis, which found that voter identification requirements had a negative relationship with turnout, can be found in table A-4 in the Appendix.

<sup>15</sup> Given that the individual-level analysis focused on registered voters (as opposed to the citizen voting-age population in the aggregate analysis), I did not include the closing date for registration as a predictor of turnout in the individual-level analysis.

The dependent variable is whether a respondent said he or she voted in the November 2004 election (coded 1 for yes, 0 for no). I estimated models using probit analysis, which calculates the effects of independent variables on the probability that an event occurred – in this case whether a respondent said he or she voted. I estimated the models using robust standard errors to control for correlated error terms for observations from within the same state.

[Table 3 here]

The two models in Table 3 use either the maximum or minimum voter identification requirements in each state. The two models generate similar results. In each model, three of the voter identification requirements exert a statistically significant, negative effect on whether survey respondents said they had voted in 2004. In other words, compared to states that require voters only to state their names, the requirements to sign one's name, provide a non-photo identification, photo identification in the maximum requirements or affidavit in the minimum requires exert a negative influence on turnout.

Of the other state factors, only the competitiveness of the presidential race had a significant effect on turnout. In terms of demographic influences, African-American voters were more likely than white voters or other voters to say they had cast a ballot, while Asian-Americans were less likely than white or other voters to say they had turned out. Hispanic voters were not statistically different from white or other voters in terms of reported turnout. Consistent with previous research, income, and marital status all were positive predictors of voting. Women also were more likely to say they voted than men. Among the age categories, those ages 45 to 64 and 65 and older were more likely than those ages 18 to 24 to say they voted. Respondents who had earned a high school diploma, attended some college, graduated from college or attended graduate school were all more likely to say they voted than those who had finished high school. Respondents who had moved within six months before the interview were less likely to say they had voted.

While the probit models provide statistical support for the influence of voter identification requirements and other variables on turnout, probit coefficients do not lend themselves to intuitive interpretation. Another common approach in studies of election requirements is to examine how the predicted probability of voter turnout would vary as election requirements vary. I used the probit coefficients to calculate the predicted probability of voting at each level of voter identification requirements while holding all other independent variables in the models at their means.<sup>16</sup> I calculated the probabilities taking into account both maximum and minimum requirements.

[Table 4 here]

Taking into account that signature matches were not a predictor of turnout, the differences in predicted probability appear to decline from stating one's name to providing a photo identification or affidavit. Voters in states that required photo identification were 2.7 percent less likely to vote than voters in states where individuals had to give their names.<sup>17</sup> In terms of the

<sup>16</sup> In the case of dichotomous independent variables, holding them at their mean amounted to holding them at the percentage of the sample that was coded 1 for the variable (Long 1997).

<sup>17</sup> The voter turnout percentages may seem disproportionately high compared to the turnout rates reported in the aggregate data analysis. It is important to consider that the turnout rates in the aggregate data were a proportion of



minimum requirement, voters in states that required an affidavit at minimum were 4 percent less likely to turn out than voters in states where they had to give their names.

The differences were more pronounced for those lower in education. Constraining the model to show predicted probabilities only for those with less than a high school diploma, the probability of voting was 5.1 percent lower in states that required photo identification as the maximum requirement and 7 percent lower in states that required an affidavit as the minimum requirement compared to states where stating one's name was the maximum or minimum requirement.

Race and ethnicity have generated particular interest in the debate over voter identification requirements. But incorporating dummy variables for Hispanics, African-Americans, and Asian-Americans into one model carries the implicit assumption that the remaining variables, including education and income, will influence each of these groups in a similar manner in terms of deciding whether to vote. These assumptions are not always born out by the data (see Leighley and Vedlitz, 1999.) To isolate the effects of voter identification and other variables on voter turnout within specific racial and ethnic groups, I divided the sample into sub-samples and re-ran the probit models.

[Table 5 here]

The effects of voter identification requirements were similar for white voters compared to the entire sample, which was not surprising given that white voters comprised 81 percent of the sample. Voters in states where the maximum requirement involved signing one's name, providing a non-photo identification or photo identification were less likely to vote than those in a state that required voters to give their names. Taking into consideration the minimum requirements, this was true only for voters in states that require a non-photo identification or an affidavit. White voters in photo identification states were 3.7 percent less likely to vote than were white voters in states where respondents gave their names. The difference in probability was 4.4 percent for voters in states where an affidavit was the minimum requirement.

Voter identification requirements also influenced turnout among Black voters, but to a lesser extent relative to white voters.

[Table 6 here]

Of the maximum voter identification requirements, only the non-photo identification requirement reduced turnout compared to turnout in states that required voters to state their names. The predicted probability of voting was 5.7 percent lower for Black respondents in states that required non-photo identification. In terms of age, only African-Americans age 65 and older were more likely to vote than respondents in the 18 to 24 referent group. Respondents in all levels of education were more likely to vote than respondents without a high school diploma. Gender, income, living in a battleground state, being a part of the workforce and having been born in the United States also were positive predictors. Recent mobility tended to lower the probability of voting. None of the minimum identification requirements had a significant effect on voting, while most of the remaining variables had effects similar to those in the maximum requirement model.

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all citizens of voting-age population, while the turnout rates for the individual-level data are the proportion of only registered voters who said they voted.

Hispanic voters also were less likely to vote in states that required non-photo identification as opposed to stating one's name.

[Table 7 here]

Using the coefficients from Table 7 to calculate predicted probabilities, for both the maximum and minimum requirements, Hispanic voters were 10 percent less likely to vote in non-photo identification states compared to states where voters only had to give their name. Hispanic voters ages 45 to 64 and 65 and over were more likely to vote than their 18-to-24-year-old counterparts. Education and income also were positive predictors of voting. Interestingly, being a native-born citizen lowered the probability of voting, while native-born citizenship was a positive predictor for African-American voters and was not a predictor at all for white voters. It may be that naturalized citizens of Hispanic descent are more conscious of the value of voting rights than other groups.

Varying voter identification requirements influenced Asian-American voters as well. As with Hispanic and Black voters, Asian-American voters were less likely to turn out in states with non-photo identification requirements than in states where voters gave their names.

[Table 8 here]

Using the probit coefficients to calculate predicted probabilities, Asian-American voters were 8.5 percent less likely to vote in states that required non-photo identification compared to states that require voters to state their names under the maximum requirements, and they were 6.1 percent less likely to vote where non-photo identification was the minimum requirement. Asian-American voters also were 2.2 percent less likely to vote when signatures were the maximum requirement compared to stating one's name.

In terms of other predictors, there were no significant differences in terms of age or income. In contrast to Hispanic voters, where one was a naturalized or natural-born citizen did not affect the probability of voting. Those with high school or college diplomas or graduate training were more likely to turn out than those with less than a high school diploma. Women and married voters also were more likely to turn out than men and voters who were not married.

## **Discussion and conclusion**

The results presented here provide evidence that as voter identification requirements vary, voter turnout does as well. This point emerged from both the aggregate data and the individual-level data, although not always for both the maximum and minimum sets of requirements. The overall effect for all registered voters was fairly small, but still statistically significant.

In the aggregate data, requirements that voters match signatures on file, provide a non-photo identification or photo identification had negative effects on turnout compared to requiring that voters state their names. Interactions with specific groups – African-Americans and Hispanics – did not improve the fit of the aggregate data to the models. But differences emerged among specific groups in the individual-level data. The signature, non-photo identification and photo identification requirements all had negative effects compared to the requirement that voters simply state their names. These effects translated into reduced probabilities of voting of about 3 to 4 percent for the entire sample, with larger differences for specific subgroups. For

example, the predicted probability that Hispanics would vote in states that required non-photo identification was about 10 percentage points lower than in states where Hispanic voters gave their names. The difference was about 6 percent for African-Americans and Asian-Americans, and about 2 percent for white voters (the gap widened to 3.7 percent for white voters when comparing photo identification to simply stating one's name).

That the non-photo identification requirement was the most consistent in terms of statistical significance across the groups is intriguing given the intense debates surrounding photo identification requirements. This begs the question as to why photo identification requirements did not have a greater influence in 2004. It may have been due to the fact that photo identification was a maximum requirement in only five states, and each of those states accepted another type of identification as a minimum requirement.

In examining the effects of voter identification requirements on turnout, there is still much to learn. The data examined in this project could not capture the dynamics of how identification requirements might lower turnout. If these requirements dampen turnout, is it because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements?<sup>18</sup> Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day? The CPS data do not include measures that can answer this question. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for election judges to handle questions about, and potential disputes over, voter identification requirements.

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<sup>18</sup> The individual-level data offer some insight here. If advance knowledge of the voter identification requirements were to dampen turnout, it is reasonable to expect that advance knowledge of those requirements also could discourage some individuals from registering to vote. I ran the same probit models using the November 2004 Current Population Survey data and voter registration as the dependent variable (coded 1 if the respondent said he or she was registered, and 0 if the respondent was not registered). Of all of the voter identification requirements, only requiring signatures or matching signatures had a significant effect on whether a respondent said he or she was registered to vote in 2004. In each instance the effect was negative.

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<b>Table 1 – Variation in 2004 State Turnout Based on Voter Identification Requirements</b>			
<b>Maximum Requirement</b>		<b>Minimum Requirement</b>	
<b>Voter Identification Required in the States</b>	<b>Mean Voter Turnout for States in that Category</b>	<b>Voter Identification Required in the States</b>	<b>Mean Voter Turnout for States in that Category</b>
<b>State Name</b>	64.2 %	<b>State Name</b>	63.0 %
<b>Sign Name</b>	61.1 %	<b>Sign Name</b>	60.8 %
<b>Match Signature</b>	60.9 %	<b>Match Signature</b>	61.7 %
<b>Provide Non-Photo ID</b>	59.3 %	<b>Provide Non-Photo ID</b>	59.0 %
<b>Provide Photo ID</b>	58.1 %	<b>Swear Affidavit</b>	60.1 %
<b>Average Turnout for All States</b>	60.9 %		

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

Variable	Maximum Requirements		Minimum Requirements	
	Unstandardized Estimate	Standard Error	Unstandardized Estimate	Standard Error
Intercept	-1.34**	0.14	-1.36**	0.4
Sign Name	-0.01	0.012	0.002	0.02
Match Signature	-0.03*	0.014	-0.001	0.02
Non-photo ID	-0.04**	0.013	-0.01	0.02
Photo Identification	-0.02	0.019	----	----
Affidavit	----	---	-0.01	0.02
Battleground State	0.04**	0.01	0.04**	0.01
Competitive Senate/Governor's Race	0.04**	0.01	0.04*	0.02
Registration Closing Date	-0.002**	0.0005	-0.003**	0.001
% African-American	0.02	0.01	0.02	0.01
% Hispanic	-0.05**	0.01	-0.05**	0.01
% Age 65 or older	0.82**	0.03	0.82**	0.03
Median Household Income	0.18**	0.01	0.18**	0.01
-2 Log Likelihood	-8953.8		-8946.9	

Coefficients are restricted maximum likelihood estimates. N = 3,111. \* p < .05 \*\* p < .01 (one-tailed tests)

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Table 3. Probit model of voter turnout.				
Variable	Maximum Requirements		Minimum Requirements	
	Unstandardized Estimate	Standard Error	Unstandardized Estimate	Standard Error
Sign name	-0.11*	0.05	-0.08*	0.04
Match signature	-0.04	0.05	-0.03	0.05
Non-photo ID	-0.16**	0.06	-0.15**	0.05
Photo ID	-0.17**	0.07	---	---
Affidavit	---	---	-0.23**	0.06
Hispanic	-0.08	0.05	-0.08	0.05
African-American	0.24**	0.04	0.24**	0.04
Asian-American	-0.37**	0.07	-0.38**	0.07
Age 25-44	0.004	0.02	0.003	0.02
Age 45-64	0.26**	0.03	0.26**	0.03
Age65+	0.43**	0.03	0.43**	0.03
High School	0.31**	0.02	0.31**	0.02
Some college	0.57**	0.03	0.57**	0.03
College	0.88**	0.04	0.88**	0.04
Graduate School	0.98**	0.05	0.98**	0.05
Household income	0.03**	0.003	0.03**	0.003
Married	0.23**	0.02	0.23**	0.02
Female	0.10**	0.01	0.10**	0.01
Battleground state	0.17**	0.04	0.18**	0.04
Competitive race	0.05	0.06	0.05	0.05
Employed	0.05	0.05	0.05	0.05
Member of workforce	-0.05	0.05	-0.05	0.05
Native-born citizen	0.02	0.04	0.02	0.04
Moved within past 6 months	-0.29**	0.03	-0.29**	0.03
Constant	-0.09	0.10	-0.09	0.09
Pseudo-R-Squared	0.09		0.10	

Notes: N = 54,973 registered voters

p < .05\* p < .01\*\* (one-tailed tests)

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

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



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<b>Table 4. Predicted probability of voter turnout – full model</b>		
	<b>Maximum requirement</b>	<b>Minimum requirement</b>
<b>State name</b>	0.917	0.915
<b>Sign name</b>	0.899	0.902
<b>Match signature</b>	(N.S.)	(N.S.)
<b>Non-photo ID</b>	0.890	0.890
<b>Photo ID</b>	0.888	---
<b>Affidavit</b>	---	0.875
<b>Total difference from “state name” to “photo identification” or “affidavit”</b>	0.029	0.040
<b>N</b>	54,973	
<p>Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies stating one's name to providing photo identification or an affidavit, with all other variables held constant. N.S. = nonsignificant coefficient in the probit model.</p> <p>Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.</p>		

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**Table 5. Probit model of turnout for White voters.**

Variable	Maximum Requirements		Minimum Requirements	
	Unstandardized Estimate	Standard Error	Unstandardized Estimate	Standard Error
Sign name	-0.10*	0.05	-0.07	0.04
Match signature	-0.04	0.05	-0.01	0.06
Non-photo ID	-0.14**	0.06	-0.14**	0.06
Photo ID	-0.22**	0.08	---	---
Affidavit	---	---	-0.26**	0.05
Age 25-44	-0.01	0.03	-0.01	0.03
Age 45-64	0.25**	0.03	0.25**	0.03
Age 65+	0.44**	0.04	0.44**	0.04
High School	0.36**	0.03	0.36**	0.03
Some college	0.64**	0.03	0.64**	0.03
College	0.95**	0.04	0.96**	0.04
Graduate School	1.05**	0.05	1.05**	0.05
Household income	0.03**	0.004	0.03**	0.003
Married	0.27**	0.02	0.27**	0.02
Female	0.09**	0.01	0.09**	0.01
Battleground state	0.16**	0.04	0.16**	0.04
Competitive race	0.07	0.07	0.07	0.06
Employed	0.08	0.05	0.08	0.05
Member of workforce	0.0003	0.05	0.003	0.05
Native-born citizen	0.08	0.08	0.08	0.08
Moved within past 6 months	-0.28**	0.03	-0.28**	0.03
Constant	-0.23*	0.11	-0.24**	0.10
Pseudo-R-Squared	.10		.10	

Notes: N = 44,760 registered voters

p < .05\* p < .01\*\* (one-tailed tests)

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

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

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**Table 6. Probit model of turnout for African-American voters.**

Variable	Maximum Requirements		Minimum Requirements	
	Unstandardized Estimate	Standard Error	Unstandardized Estimate	Standard Error
Sign name	-0.13	0.09	-0.08	0.13
Match signature	-0.05	0.10	-0.17	0.13
Non-photo ID	-0.24**	0.07	-0.14	0.12
Photo ID	-0.10	0.12	---	---
Affidavit	---	---	-0.05	0.19
Age 25-44	-0.004	0.09	-0.004	0.09
Age 45-64	0.12	0.09	0.13	0.09
Age65+	0.30**	0.12	0.31**	0.12
High School	0.24**	0.06	0.25**	0.06
Some college	0.40**	0.07	0.40**	0.07
College	0.69**	0.08	0.68**	0.08
Graduate School	0.99**	0.19	0.98**	0.19
Household income	0.04**	0.01	0.05**	0.008
Married	0.11	0.07	0.11	0.07
Female	0.14**	0.04	0.14**	0.04
Battleground state	0.13*	0.07	0.21**	0.08
Competitive race	-0.10	0.07	-0.16	0.10
Employed	-0.09	0.11	-0.09	0.10
Member of workforce	-0.32**	0.12	-0.31**	0.11
Native-born citizen	0.31**	0.11	0.28**	0.12
Moved within past 6 months	-0.32**	0.06	-0.32**	0.06
Constant	0.16	0.18	0.12	0.17
<b>Pseudo-R-Squared</b>	0.09		0.09	

Notes: N = 5,013 registered voters

p < .05\* p < .01\*\* (one-tailed tests)

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

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

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**Table 7. Probit model of turnout for Hispanic voters.**

Variable	Maximum Requirements		Minimum Requirements	
	Unstandardized Estimate	Standard Error	Unstandardized Estimate	Standard Error
Sign name	-0.20	0.20	-0.19	0.11
Match signature	-0.12	0.20	-0.18	0.12
Non-photo ID	-0.40*	0.20	-0.38**	0.13
Photo ID	-0.13	0.23	----	----
Affidavit	----	----	-0.25	0.16
Age 25-44	0.11	0.09	0.11	0.09
Age 45-64	0.35**	0.10	0.36**	0.10
Age65+	0.38**	0.11	0.40**	0.11
High School	0.18**	0.08	0.19*	0.08
Some college	0.46**	0.07	0.46**	0.07
College	0.63**	0.11	0.64**	0.11
Graduate School	0.72**	0.13	0.73**	0.13
Household income	0.03**	0.01	0.03**	0.01
Married	0.05	0.06	0.05	0.06
Female	0.09*	0.04	0.09*	0.04
Battleground state	0.31**	0.06	0.36**	0.07
Competitive race	-0.06	0.13	-0.05	0.13
Employed	0.13	0.12	0.14	0.12
Member of workforce	0.07	0.13	0.08	0.13
Native-born citizen	-0.18**	0.07	-0.20**	0.07
Moved within past 6 months	-0.38**	0.08	-0.39**	0.08
Constant	0.22	0.27	0.21	0.20
Pseudo-R-Squared	0.08		0.08	

Notes: N = 2,860 registered voters

p < .05\* p < .01\*\* (one-tailed tests)

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

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

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**Table 8. Probit model of turnout for Asian-American voters.**

Variable	Maximum Requirements		Minimum Requirements	
	Unstandardized Estimate	Standard Error	Unstandardized Estimate	Standard Error
Sign name	-0.37**	0.20	-0.26	0.17
Match signature	-0.17	0.22	-0.01	0.21
Non-photo ID	-0.40**	0.21	-0.28*	0.16
Photo ID	-0.30	0.21	---	---
Affidavit	---	---	0.12	0.30
Age 25-44	-0.11	0.23	-0.10	0.23
Age 45-64	0.06	0.26	0.08	0.26
Age65+	0.14	0.36	0.17	0.34
High School	0.54**	0.21	0.55**	0.21
Some college	0.36	0.31	0.36	0.31
College	0.67**	0.22	0.66**	0.23
Graduate School	0.57*	0.25	0.55*	0.26
Household income	0.01	0.01	0.01	0.01
Married	0.34**	0.13	0.34**	0.13
Female	0.16*	0.09	0.16*	0.08
Battleground state	0.29*	0.14	0.23	0.16
Competitive race	0.33*	0.19	0.27	0.22
Employed	-0.24	0.33	-0.25	0.33
Member of workforce	-0.54	0.35	-0.55	0.35
Native-born citizen	0.14	0.12	0.16	0.11
Moved within past 6 months	-0.38*	0.17	-0.39*	0.17
Constant	0.36	0.52	0.29	0.51
Pseudo-R-Squared	0.08		0.08	

Notes: N = 912 registered voters

p < .05\* p < .01\*\* (one-tailed tests)

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

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

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Appendix

<b>Table A-1. Predictors of 2004 turnout at the county level taking into account maximum voter identification requirements treated as a continuous variable.</b>		
<b>Variable</b>	<b>Unstandardized Estimate</b>	<b>Standard Error</b>
<b>Intercept</b>	-1.33**	0.14
<b>Voter Identification Requirements</b>	-0.01**	0.004
<b>Battleground State</b>	0.04**	0.01
<b>Competitive Senate/Governor's Race</b>	0.04**	0.01
<b>% African-American</b>	0.02	0.01
<b>% Hispanic</b>	-0.05**	0.01
<b>% Age 65 or older</b>	0.82**	0.03
<b>Median Household Income</b>	0.18**	0.01
<b>Registration Closing Date</b>	-0.002**	0.001
<b>-2 Log Likelihood</b>	-8970.1	
Coefficients are restricted maximum likelihood estimates. N = 3,111. * p < .05 ** p < .01 (one-tailed tests).		

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<b>Table A-2. Predictors of 2004 turnout at the county level taking into account maximum voter identification requirements and interactions.</b>		
<b>Variable</b>	<b>Unstandardized Estimate</b>	<b>Standard Error</b>
<b>Intercept</b>	-1.39**	0.14
<b>Sign Name</b>	-0.02	0.013
<b>Match Signature</b>	-0.03*	0.02
<b>Non-photo ID</b>	-0.05**	0.01
<b>Photo Identification</b>	-0.05**	0.02
<b>Battleground State</b>	0.04**	0.01
<b>Competitive Senate/Governor's Race</b>	0.04**	0.01
<b>% African-American</b>	-0.02	0.03
<b>% Hispanic</b>	-0.22**	0.10
<b>% Age 65 or older</b>	0.8**	0.03
<b>Median Household Income</b>	0.18**	0.01
<b>Registration Closing Date</b>	-0.002**	0.001
<b>Signature*African-American</b>	0.02	0.04
<b>Match Signature*African-American</b>	0.16**	0.07
<b>Non-photo ID*African-American</b>	0.03	0.03
<b>Photo ID*African-American</b>	0.20**	0.05
<b>Signature*Hispanic</b>	0.14	0.09
<b>Match Signature*Hispanic</b>	-0.01	0.11
<b>Non-photo ID*Hispanic</b>	0.20**	0.09
<b>Photo ID*Hispanic</b>	0.03	0.11
<b>-2 Log Likelihood</b>	-8966.7	
Coefficients are restricted maximum likelihood estimates. N = 3,111.		
* p < .05 ** p < .01 (one-tailed tests).		

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<b>Table A-3. Predictors of 2004 turnout at the county level taking into account minimum voter identification requirements and interactions.</b>		
<b>Variable</b>	<b>Unstandardized Estimate</b>	<b>Standard Error</b>
<b>Intercept</b>	-1.39**	0.14
<b>Sign Name</b>	0.0003	0.016
<b>Match Signature</b>	-0.001	0.02
<b>Non-photo ID</b>	-0.02	0.02
<b>Affidavit</b>	-0.02	0.02
<b>Battleground State</b>	0.04**	0.01
<b>Competitive Senate/Governor's Race</b>	0.04**	0.02
<b>% African-American</b>	-0.02	0.02
<b>% Hispanic</b>	-0.19**	0.08
<b>% Age 65 or older</b>	0.82**	0.03
<b>Median Household Income</b>	0.18**	0.01
<b>Registration Closing Date</b>	-0.003**	0.001
<b>Signature*African-American</b>	-0.007	0.03
<b>Match Signature*African-American</b>	0.15**	0.05
<b>Non-photo ID*African-American</b>	0.04	0.03
<b>Affidavit*African-American</b>	0.18**	0.05
<b>Signature*Hispanic</b>	0.12	0.08
<b>Match Signature*Hispanic</b>	-0.03	0.11
<b>Non-photo ID*Hispanic</b>	0.17*	0.08
<b>Affidavit*Hispanic</b>	-0.04	0.10
<b>-2 Log Likelihood</b>	-8960.8	
Coefficients are restricted maximum likelihood estimates. N = 3,111.		
* p < .05 ** p < .01 (one-tailed tests).		



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**Table A-4. Probit model of voter turnout treating maximum voter identification requirements as a continuous variable.**

<b>Variable</b>	<b>Unstandardized Estimate</b>	<b>Standard Error</b>
<b>Voter Identification Requirements</b>	-0.04**	0.02
<b>Hispanic</b>	-0.09	0.05
<b>African-American</b>	0.24**	0.04
<b>Asian-American</b>	-0.38**	0.07
<b>Age 25-44</b>	0.005	0.02
<b>Age 45-64</b>	0.26**	0.03
<b>Age 65+</b>	0.43**	0.03
<b>High School</b>	0.31**	0.02
<b>Some college</b>	0.57**	0.03
<b>College</b>	0.87**	0.04
<b>Graduate School</b>	0.98**	0.05
<b>Household income</b>	0.03**	0.003
<b>Married</b>	0.23**	0.02
<b>Female</b>	0.10**	0.01
<b>Battleground state</b>	0.19**	0.04
<b>Competitive race</b>	0.04	0.05
<b>Employed</b>	0.05	0.05
<b>Member of workforce</b>	-0.05	0.05
<b>Native-born citizen</b>	0.02	0.04
<b>Moved within past 6 months</b>	-0.29**	0.03
<b>Constant</b>	-0.08	0.10
<b>Pseudo-R-Squared</b>	0.09	

Notes: N = 54,973 registered voters

p < .05\* p < .01\*\* (one-tailed tests)

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

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

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**APPENDIX D**

**Annotated Bibliography on Voter Identification Issues**

Law Journals

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

**Historical articles:**

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

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

**Marginally relevant/limited discussion of Voter ID issues**

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

**Political Science Literature**

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

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

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

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

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

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**Appendix E**

State Statutes and Regulations Affecting Voter Identification

Compiled by The Moritz College of Law, The Ohio State University

Available in electronic form

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For Review by the Standards Board and Board of Advisors

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

May 16, 2006

Submitted by

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

The Moritz College of Law, The Ohio State University

# FINAL DRAFT

For Review by the Standards Board and Board of Advisors

## The Research Team

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

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

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

### Project Management Team

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### **Peer Review Group**

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

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## **REPORT AND RECOMMENDATIONS TO THE EAC VOTER IDENTIFICATION ISSUES**

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### **Report Background**

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

This study provides information on voter identification practices in the 2004 election. It makes recommendations for best practices to evaluate future proposals for voter ID requirements, including the systematic collection and evaluation of information from the states. The research was conducted by the Eagleton Institute of Politics at Rutgers, the State University of New Jersey, and the Moritz College of Law at the Ohio State University under a contract with the EAC, dated May 24, 2005. The work included a review and legal analysis of state statutes, regulations and litigation concerning voter identification and provisional voting as well as a statistical analysis of the relationship of various requirements for voter identification to turnout in the 2004 election. This report is a companion to a report on Provisional Voting submitted to the EAC on November 28, 2005 under the same contract.

### **EXECUTIVE SUMMARY AND RECOMMENDATIONS**

#### Background and Methods

This report arrives at a time of considerable ferment over the issue of voter identification. The debate across the nation over requiring voters to produce a specific identification document before being permitted to cast a regular (as opposed to a provisional) ballot, has revealed supporters and opponents in polarized camps.

- Proponents of stricter identification requirements base their case on improving the security of the ballot by reducing opportunities for one kind of vote fraud --multiple voting or voting by those who are not eligible. The proponents argue that their goal is to ensure that only those legally entitled to vote do so, and do so only once at each election.

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- Opponents seek to forestall more stringent identification requirements, such as for government-issued photo ID, in order to ensure broad access to a regular ballot. They fear that some voters --such as, they argue, racial and ethnic minorities, the young, and elderly voters-- may lack convenient access to the required ID documents, or that such voters may be fearful of submitting their ID documents to official scrutiny and thus stay away from the polls.
- Both sides argue that their preferred policy will engender faith in the electoral process among citizens.

This report considers policy issues associated with the voter ID debate and investigates whether empirical study can suggest a way to estimate the effects of different voter ID requirements on turnout, and important first step in assessing tradeoffs between ballot security and ballot access. The aim is to contribute to the effort to raise the quality of the debate over this contentious topic. The tradeoffs between ballot security and ballot access are crucial. A voting system that requires voters to produce an identity document or documents may prevent the ineligible from voting. It may also prevent eligible voters from casting a ballot. If the ID requirement of a ballot protection system blocks ineligible voters from the polls at the cost of preventing eligible voters who lack the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit.

As part of the project's effort to analyze the relationship between Voter ID requirements, turnout, and their policy implications, a statistical analysis was conducted to examine the potential variation in turnout. This statistical study developed a model to illuminate the relationships between voter ID requirements and turnout. This model's findings and limitations suggest avenues for further research and analysis that may assist the EAC and the states as they explore policies to balance the goals of ballot integrity and ballot access.

The statistical analysis describes one possible way to estimate what might be the incremental effect on voters' access to the ballot of an increase in the rigor of voter identification requirements. We do not offer this statistical analysis as the last word, but rather as a preliminary word on the subject. Its findings must be regarded as tentative; the information that might permit greater certainty is simply not available. Indeed, as our recommendations indicate, the next step to improve understanding of the effects of stricter voter identification on turnout and on vote fraud is to collect more information on both topics systematically and regularly.



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Making a statistical estimate of the effect of voting regulations on turnout is difficult. The dynamics of turnout are complex, much studied, and only partially understood. Some agreement exists, however, that three factors that exert substantial influence on voter turnout are:<sup>1</sup> the socioeconomic status of the potential voter; legal requirements to vote; and the political context of the election. By focusing on how voters identify themselves at the polls, this report emphasizes legal requirements. The statistical analysis also considers some of the socioeconomic, racial, and age characteristics of the electorate, as well as the political context in 2004 (such as whether a state was a battleground in the presidential race).

Examining tradeoffs between ballot security and ballot access requires some measure of the effectiveness of voter ID requirements in reducing multiple voting or voting by ineligible voters. The existing evidence on the incidence of vote fraud, especially on the kind of vote fraud that could be reduced by requiring more rigorous voter identification, is not sufficient to evaluate those tradeoffs.<sup>2</sup> Assessing the effectiveness of voter ID as a way to protect the integrity of the ballot should logically include an estimate of the nature and frequency of vote fraud. This research does not include consideration of vote fraud, nor does it estimate the possible effectiveness of various voter ID regimes to counter attempts at vote fraud. Our analysis also cannot take into account how many potential voters who did not turn out under comparatively stricter voter ID requirements might have been ineligible or eligible to vote.

Despite these qualifications regarding the quality of the available data and the limitations of statistical analysis, however, although it used different statistical methods and two different sets of data on turnout in 2004 election, it points to the same general finding. As discussed at greater length in the appendix to this report, stricter voter identification requirements were correlated with reduced turnout in the models employed.<sup>3</sup> As explained below, these models find that a statistically significant relationship exists, even when controlling for other factors (such as whether the election was in a battleground state) that might affect turnout. Without knowing more about the effects of stricter voter ID on reducing multiple voting or voting by ineligible

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<sup>1</sup> See, for example, Tom William Rice and Patrick J. Kenney, "Voter Turnout in Presidential Primaries." 1985. *Political Behavior*, 7: 101-112. Identification requirements are not the only legal restrictions on voting. States also differ, for example, in their registration requirements (including how long before the election registration must take place and the identity documents required register).

<sup>2</sup> The EAC has contracted with other researchers to study vote fraud issues.

<sup>3</sup> Appendix C: Tim Vercellotti, Eagleton Institute of Politics, *Analysis of Effects of Voter Identification Requirements on Turnout*.

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voters, however, the tradeoffs between ballot security and ballot access cannot be assessed fully.

Methodology

The report includes detailed information on the nature of the statutory requirements across the country in 2004 and on the statutes and court decisions that provide the legal context for the voter ID debate. We gathered information on the requirements in effect in the 50 states and the District of Columbia in that year. Based on our interpretation of state statutes, supplemented in some cases by conversations with state election officials, we divided the states' ID requirements into five categories. We believe each category is more rigorous than the one preceding, based on the demands they make on voters.<sup>4</sup> The categories range from "Stating Name" which we judge to be somewhat less demanding than "Signing Name." "Signature Match" requires poll workers to examine the signature and compare it to a sample, which is slightly more demanding than the voter simply signing. "Present ID" requires voters to offer some documentary evidence of their identity, ranging from a utility bill to a passport. It is more demanding than the previous three categories because it requires that the voter remember to bring this documentation to the polls. (Even a simple ID, such as a utility bill, may not be available to some renters or, say, those in group housing.) We regard a government "Photo ID" as the most rigorous requirement. Such identity documents may not be uniformly and conveniently available to all voters.

For each state, we identified both the "maximum" and "minimum" identification requirements. The term "maximum" refers to the most that voters may be *asked* to do or show at the polling place (putting aside cases in which particular voter's eligibility may be questioned pursuant to a state challenge process). The term "minimum," on the other hand, refers to the most that voters can be *required* to do or show, in order to cast regular ballot (again leaving aside a state challenge process). We have included "maximum" requirements in our analysis, and not simply "minimum" requirements, because simply asking voters to produce particular identifying information may have a deterrent effect, even if voters are ultimately allowed to cast a regular ballot without that identification. For example, in a state where voters are asked to show photo ID at the polling place, but still allowed to vote by completing an affidavit confirming their eligibility, the "maximum" of being asked to show photo ID may deter some voters even though the "minimum" would allow them to vote without photo ID.

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<sup>4</sup> Even the most relaxed provisions for identification at the polls—anything stricter than the honor system used in North Dakota—will impose some burden on particular voters. Harvard Law Review 119:1146

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It is worth emphasizing that, at the time of the 2004 election, there was *no* state that had a “minimum” requirement of showing photo ID – in other words, there was no state that required voters to show photo ID in order to cast a regular ballot. For this reason, our report does not measure the impact of laws, like those recently enacted in Indiana and Georgia, which require voters to show photo ID in order to cast a regular ballot without an affidavit exception.

To examine the potential variation on turnout rates associated with each type of voter ID requirements in effect on Election Day 2004, the statistical analysis drew on two sets of data. These were, first, aggregate turnout data at the county level for each state and, second, the reports of individual voters collected in the November 2004 Current Population Survey by the U. S. Census Bureau. Using two different data sets makes it possible to check the validity of one analysis against the other. It also provides insights not possible using only one of the data sets. The aggregate analysis cannot provide valid estimates on the effects of different ID requirements on particular demographic groups (e.g., the old, the young, African-Americans, the poor, or high school graduates). The Current Population Survey data does permit that kind of analysis, although it has the disadvantage of relying on self-reports by respondents about their registration status and experience in the polling place.

To understand legal issues that have been raised in recent litigation over voter ID requirements, we collected and analyzed the few major cases that have been decided so far on this issue. The decisions so far provide some guidance on the constitutional and other constraints as to voter ID requirements.

Summary of Findings

As voter identification requirements vary, voter turnout varies as well. This finding emerged from both the statistical analysis's aggregate data and the individual-level data, although not always for both the maximum and minimum sets of requirements. The overall relationship between the stringency of ID requirements and turnout was fairly small, but still statistically significant.

In the model used with the aggregate data in the statistical analysis, the match signature requirement, the provide a non-photo ID requirement, and the photo ID requirement were all correlated with lower turnout compared to requiring that voters state their names. With the addition of the registration closing data to the aggregate analysis, photo id is no longer a

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significant predictor of turnout. Signature match and non-photo id remain significant and negative predictors in the model.

The reduction in turnout was not the same for all demographic groups in the citizen voting age population.

The non-photo identification requirement showed the most significant and consistent correlation with reduced turnout. This result may be surprising given the intense debates surrounding photo identification requirements. The effect of photo ID requirements cannot, however, be assessed from the data the statistical analysis examined, since none of the states had laws in 2004 that conditioned voting on presentation of photo ID. Each of the five states that had photo ID as a “maximum” requirement (i.e., the most that voters could be asked to show at the polls) accepted another type of identification or an affidavit as a “minimum” requirement in the 2004 election (i.e., they were allowed to cast a regular ballot with something less than photo ID).

Significant questions about the relationship of voter identification requirements to turnout remain unanswered. The data examined in this project could not capture the dynamics of how identification requirements might lower turnout. If ID requirements dampen turnout, is it because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements? Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day? Other factors that may also be correlated with stricter ID laws – such as less user-friendly voter registration systems – may actually be causing lower turnout. The CPS data do not include the information needed to answer this question. Knowing more about the “on the ground” experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for election judges to handle questions about, and potential disputes over, voter identification requirements.

Our analysis of litigation suggests that the courts will look more strictly at requirements that voters produce a photo ID in order to cast a regular ballot, than at non-photo ID laws. The courts have used a balancing test to weigh the legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for

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example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, a best practice for the states may be to limit requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

The current lack of understanding of precisely how voter ID requirements affect turnout could be ameliorated by requiring the collection and reporting of additional data, including the reasons potential voters are required to cast a provisional ballot and the reasons for rejecting provisional ballots during the 2006 and subsequent elections. Also useful would be the results of surveys of voters on their experiences in meeting voter ID requirements and on what type of ballot they cast.<sup>5</sup> And, of course, more information is needed on the incidence and varieties of vote fraud, but that inquiry is outside the scope of this report.

Recommendations for consideration and action by the EAC

The dynamics of Voter ID requirements –how more rigorous voter ID requirements may affect the decision by potential voters to go or stay away from the polls-- are not perfectly understood. This lack of understanding should be recognized in the policy process in the states. The debate over voter ID in the states would be improved by additional research sponsored by the EAC.

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

1. Encourage or sponsor further research to clarify the connection between Voter ID requirements and the number of potential voters actually able to cast a ballot that is actually counted.
2. Recommend as a best practice the publication of a "Voting Impact Statement" by states as they assess their voter ID requirements to protect the integrity of the ballot. The analysis will help ensure that efforts to increase ballot security have a neutral effect on electoral participation by eligible voters. The Voter Impact Statement would estimate the number and demographics of 1) eligible, potential voters that may be kept from the polls

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<sup>5</sup> Arizona held its first election with its new, stricter ID requirements on March 14, 2006. In at least one county (Maricopa) election officials handed a survey to voters that asked if they knew about the voter identification law and if they did, how they found out about it. Edythe Jensen, "New Voter ID Law Goes Smoothly in Chandler," *Arizona Republic*, March 15, 2006. More surveys of this kind can illuminate the dynamics of voter ID and voting in ways that are not possible now because of insufficient data.

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or permitted to cast a provisional ballot by a stricter ID requirement; and 2) and assess the number of ineligible voters who will be prevented from voting by the stricter ID requirements.

3. Encourage or require the states in the 2006 election and beyond, to collect and report reliable, credible information on the relationship between ballot access and ballot security. EAC should publish an analysis of this information to provide a sound factual basis for the states to consider as they estimate the incidence of the kinds of vote fraud that more stringent ID requirements may prevent. The analysis should describe the dynamics of the voter ID process in preserving the security of the ballot. EAC can also use this information to encourage the states to assess the effectiveness of programs to ensure that all eligible voters have required ID and are permitted to vote in future elections. Well-designed longitudinal studies in the states can show the results of changing voter ID requirements on electoral participation over time. The studies should include precinct-level data to provide the fine-grained analysis that can provide a solid foundation for policy.
  - I. Useful information could be supplied by state-sponsored surveys of voters by local election officials. It would make clear why those who cast a provisional ballot were found ineligible to cast a regular ballot. The answers would illuminate the frequency with which ID issues divert voters into the provisional ballot line.
  - II. Surveys to ask voters what they know about the voter id requirements would also provide useful context for evaluating the effect of various voter ID requirements on electoral participation.
  - III. Spot checks by state election officials on how the identification process works at polling places could provide information on how closely actual practice tracks statutory or regulatory requirements. Such reports should be available to the public.
4. Encourage states to examine the time period allowed for voters who cast a provisional ballot because they lacked required ID to return with their identification. In eleven states, voters who had to cast a provisional ballot because they lacked the ID required for a regular ballot were permitted to return later with their ID. Their provision of this ID is the critical step in evaluating the ballots. The length of the period in which the voter may return with ID is important. In setting the time period for return, which now varies among the states from the same day to about two weeks, states should consider three factors:

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the convenience of the voter, the total time allowed to evaluate ballots<sup>6</sup>, and the safe harbor provision in presidential elections.

5. Recommendations to the states from EAC should reflect current judicial trends.

Requirements that voters provide some identifying documentation have been upheld, where photo ID is *not* the only acceptable form. Whether laws requiring photo ID will be upheld is more uncertain.

## **SUMMARY OF RESEARCH**

### **Background and Approach of the Study**

Voter ID requirements are just one set of rules governing voting that may affect turnout. Social scientists have long studied how election rules affect participation in elections. The general view today is that the individual citizen makes the choice of whether to vote in a way similar to other decisions that a rational citizen makes, by comparing costs and benefits. The benefits of voting are fairly stable and hard to specify given the remote probability that any one vote will make a difference in an election. But whatever the benefit as perceived by an individual voter, as the costs of voting (for example, time, hassle, acquisition of information) increase, the likelihood that a citizen will vote decrease. Not all groups in the population calculate the cost of participation in the same way, so that election laws (such as registration or identification requirements) may affect different groups differently.

A short summary of some of the social science literature illustrates what may be a broad consensus that the rules of elections affect turnout, but note the important differences in the details of what groups may be most affected.

- Bowler, Brockington and Donovan in "Election Systems and Voter Turnout: Experiments in the United States". *The Journal of Politics*, 63:3 (August 2001) concluded that electoral systems help shape turnout by altering the benefits perceived by voters. For example, cumulative voting systems have 5% greater turnout than plurality systems
- The effect of registration systems has been the subject of many studies over the last 40 years. Kelley, Ayres, and Bowen in "Registration and Voting: Putting First Things First." *American Political Science Review*. 61:2 (June 1967) found that local variations in the

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<sup>6</sup> Our research on provisional voting reveals that states that provide more than a week to evaluate provisional ballots end up counting substantially more of those ballots than states that provide less than a week.

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rate of voting are most directly tied to variations in the rate of registering to vote, and that the rate of registering to vote in localities is most directly related to the laws and administration of the registration process. They concluded that the decline in voting over the past 80 years was due, in part, to the rise of registration laws.

- Brians and Grofman in "Election Day Registration's Effect on U.S. Voter Turnout." *Social Science Quarterly*. 82:1 (March 2001), found that relaxing registration laws produces higher turnout. In particular, they observed that relaxing registration laws is more likely to promote voter turnout among those with medium levels of income and education, rather than those at the lowest levels. Highton in "Easy Registration and Voter Turnout," *Journal of Politics*. 59:2 (May 1997), concluded similarly that registration laws affect voter turnout, but also observed that easier registration promotes turnout among those in lower socio-economic status.
  
- Mitchell and Wlezien. "The Impact of Legal Constraints on Voter Registration, Turnout, and the Composition of the American Electorate," *Political Behavior*. 17:2 (June 1995) agreed that easier registration promotes higher turnout, but also concluded that higher turnout from easier registration would be unlikely to change the composition of the electorate. Nagler in "The Effect of Registration Laws and Education on U.S. Voter Turnout." *American Political Science Review*. 85:4 (December 1991) found that registration laws decrease voter turnout by depressing the eligible electorate, but that lower educated people are not disproportionately impacted by these laws. But Rosenstone and Raymond E. Wolfinger in "The Effect of Registration Laws on Voter Turnout." *American Political Science Review*. 72:1 (March 1978) found that while registration laws did affect both voter turnout and the composition of the electorate, the sharpest effect of these restrictions was felt in the South and among the least educated.
  
- Squire, Wolfinger, and Glass in "Residential Mobility and Voter Turnout." *American Political Science Review*. 81:1 (March 1987) found that people who move constitute a major demographic group affected by registration laws. They estimated that altering laws to facilitate voting by recently moved people could increase turnout by 9%. Highton in "Residential Mobility, Community Mobility, and Voter Turnout." *Political Behavior*. 22:2 (June 2000) also found that people who move have lower turnout than stable residents, and estimated that the decline was more a result of registration laws than a loss of social connections.



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- Highton and Wolfinger in "Estimating the Effects of the National Voter Registration Act of 1993." *Political Behavior*. 20:2 (June 1998) concluded that the Motor Voter laws led to a significant increase in voting; that eliminating voter purges for not voting also increases voting; and that these effects are felt most heavily by the young (under 30) and the mobile (moved within past 2 years). Knack, in "Does 'Motor Voter' Work? Evidence from State-Level Data." *Journal of Politics*., 57:3 (August 1995), also found that motor voter does lead to increased registration and voting, but that other parts of NVRA of 1993, like mail-in registrations, agency-based registrations, and limitations on voter purges had not been as influential two years after the passage of the act.

While voter ID may not have been the subject of as much research as the registration process, establishing the eligibility of a person to vote has long been part of the electoral process. Voters may have to identify themselves twice in the electoral process: when registering to vote and then when casting a ballot. The pressures felt by the voter arising from the need to check ID, even so simple a check as a signature match, can be greater at the polls on Election Day than at the time of registration. Poll workers may feel under pressure when faced with long lines and limited time.

Voter ID requirements on Election Day

This analysis focuses on ID requirements on Election Day, but with an appreciation that the ID requirements at time of registration and on Election Day are inter-related.<sup>7</sup> The emphasis in this report is on Voter ID requirements on Election Day and afterwards as election judges evaluate provisional ballots. This is the critical period for the electoral system, the time when ballot access and ballot security are in the most sensitive balance.

The report looks at voter ID issues that go beyond the rather narrow identification requirements in HAVA. Much of the current debate in state legislatures over voter ID ranges beyond HAVA to require more rigorous documentation of identity for all would-be voters, not just those who had not registered in person and are casting a ballot for the first time. Current controversies in the states over voter ID seems to have been sparked in part by the HAVA requirements, but goes beyond those requirements, and sets the context for the analysis here.<sup>8</sup>

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<sup>7</sup> As the Carter-Baker Commission noted, photo ID requirements for in-person voting do little to address the problem of fraudulent registration by mail, especially in states that do not require third-party organizations that register voters to verify ID. Commission on Federal Election Reform, pp 46-47.

<sup>8</sup> Harvard Law Review 119:1127: "Legislators hoping to stiffen their state antifraud laws have taken their cue from identification provisions buried in HAVA."

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We recognize that the previously technical, rather dull subject of voter ID requirements has become fiercely partisan and divisive in many states. The polarization of the debate has raised the stakes over this issue, making dispassionate analysis both more valuable and more rare.<sup>9</sup> Voter ID is often described as the critical step in protecting the integrity of the ballot, the process to ensure that the potential voter is eligible and, if eligible, is permitted to cast one ballot and one ballot only. Truly protecting the integrity of the ballot, however, requires a perspective that takes in the entire voting process. It demands more than preventing the ineligible from voting, and should also ensure that all those who are eligible and want to vote can cast a ballot that counts. The protection effort must embrace all forms of voting, including absentee ballots, and consider each step in the process from registration through vote counting.

A voting system that requires voters to produce an identity document or documents may prevent the ineligible from voting. It may also prevent the eligible from casting a ballot. If the ID requirements block ineligible voters from the polls at the cost of preventing eligible voters who cannot obtain or have left at home the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit. Ultimately, a normative evaluation of whether a state should adopt a stricter voter ID requirement (and, if so, what particular form that new requirement should take) will weigh value judgments as well as available factual evidence. Nonetheless, this report has proceeded on the premise that increased understanding of the factual evidence relating to the imposition of voter ID requirements, based on available data and statistical analysis of that data, can help inform the policy process.

Assessing the effectiveness of voter ID as a way to protect the integrity of the ballot should logically include an estimate of the nature and frequency of vote fraud. The EAC has commissioned a separate analysis of the incidence of vote fraud. Consequently, this research does not include consideration of vote fraud nor the possible effectiveness of various voter ID regimes to counter attempts at vote fraud. As a result, our study of the possible effects of voter

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<sup>9</sup> "Of the various electoral procedure laws passed in the fifty states since the 2000 and 2004 presidential elections and those still being debated in state legislatures and local media, few arouse more potent partisan feelings than voter identification laws." *Harvard Law Review* 119:1144. John Fund's 2004 book, *Stealing Elections: How Voter Fraud Threaten Our Democracy*, cites (pages 16 – 17) a Rasmussen Research poll that asked respondents if they were more concerned with voting by ineligible participants or with disenfranchisement of eligible voters. Sixty-two percent of Kerry supporters, but only 18 percent of Bush supporters, worried more about *disenfranchisement*; 58 percent of Bush supporters, but only 19 percent of Kerry supporters were more concerned with *voter fraud*.

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ID requirements on turnout cannot take into account how many potential voters who did not turn out under comparatively stricter voter ID requirements might have been ineligible or eligible to vote.

In some states, voters lacking required ID, or who have ID that does not reflect their current address, are able to vote only by casting a provisional ballot.<sup>10</sup> Voter ID requirements that require voters to bring a document to the polls --rather than simply sign their names-- may divert more voters to the provisional ballot. Requiring poll workers to request and check ID, can put stress on the already demanding environment of the polling place. Scrutiny of ID can create lines at the polling places. Further delays can result when voters cast a provisional ballot and fill out the ballot envelope. Voters who cast a provisional ballot because they lack their ID on Election Day, and who then fail to return with the needed document or documents, will have their ballot rejected.<sup>11</sup> And, of course, the cost of processing provisional ballots is greater than the cost of regular ballots.

Each of these potential consequences of more elaborate voter identification processes can increase the chance of litigation. Long lines will, at best, discourage voters and at worst make voting seem a hassle, an impression that could keep more citizens (even those with ID) from the polls.

Evaluating the effect of different Voter ID regimes can be most effective when based on clear standards --legal, equitable, practical. The standards outlined here might be described as questions policy-makers should ask about Voter ID requirements. We suggest 7 questions that address important dimensions of the problem.

1. Is the Voter ID system designed on the basis of valid and reliable empirical studies of the incidence of the sorts of vote fraud it is designed to prevent?<sup>12</sup>

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<sup>10</sup> For example, the Florida voter ID law adopted after the 2004 election and pre-cleared by the Department of Justice, permits voters who cannot meet the ID requirements to sign an affidavit on the envelope of a provisional ballot, which will be counted if the signature matches that on the voter's registration form.

<sup>11</sup> The EAC's Election Day Study found "improper ID," to be the third most common reason for a provisional ballot to be rejected. "Improper ID" was cited by 7 states responding to the survey, compared to 14 mentions for voting in the wrong precinct. *Election Day Study*, Chapter 6, p. 5.

<sup>12</sup> "Often where the battle over voter identification is most heated, real evidence of voter fraud proves scarce: in Georgia, for example, the Secretary of State averred that she had never encountered a single instance of voter impersonation at the polls. State laws might sometimes impose tighter restrictions on in-person voting than on absentee ballots, which yield the greatest incidence of, and provide the easiest avenue for, voter fraud. . ." *Harvard Law Review* 127:1144 (2006)

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2. How effective is the ID requirement in increasing the security of the ballot? How well can it be coordinated with a statewide voter database?<sup>13</sup>
3. How practical is the requirement? (Can it be administered smoothly by the staff and budget likely to be made available? How much additional training of polling place workers might be required?) Is it simple enough or can it be defined with sufficient clarity that poll workers throughout the state can administer it uniformly and with a minimum of local interpretation made on the fly under the pressure of Election Day?<sup>14</sup>
4. How cost-effective is the system? Does it demonstrably increase the security of the ballot affordably, measured in both monetary and other costs? To improve understanding of the non-monetary component of the costs, conducting a voter impact study might be appropriate. The voter impact study would examine, before the adoption of the regulation, the cost of compliance by the voter (such as the cost in time and money of acquiring a photo ID card), any offsetting benefits to voters, and the possible disparate effects of the regulation on various groups of voters.<sup>15</sup> A thorough, objective impact statement that demonstrated the nexus between the identification regime and the integrity of the ballot could provide protection against inevitable legal challenges.
5. If a side effect of the Voter ID regulation is likely to reduce turnout, generally or among particular groups, is it possible to take other steps to ameliorate the adverse consequences?<sup>16</sup>
6. Does it comply with the letter and spirit of Voting Rights Act?
7. The seventh question is the most difficult to answer. How neutral is the effect of the Voter ID requirement on the composition of the qualified and eligible electorate? Might it,

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<sup>13</sup> See the final section of this report for a brief overview of possible effects of a statewide voter database on voter identification issues.

<sup>14</sup> In New York, in 2004, disparities in training and voting information were made apparent in a study finding elections officials had wildly varying interpretations of what the state's voter identification requirement actually was. Tova Wang, "Warning Bell in Ohio," December 5, 2005. Website, the Foundation for National Progress.

<sup>15</sup> "Absent clear empirical evidence demonstrating widespread individual voter fraud, legislatures need to fashion narrowly tailored voter identification provisions with an eye toward the inevitable and well-grounded constitutional challenges that will arise in the courts. Only as states grow more adept at administering elections will courts likely demonstrate greater willingness to uphold strict identification requirements." Harvard Law Review 127:1144 (2006)

<sup>16</sup> For example, the Carter-Baker Commission coupled its recommendation for a national voter ID card to a call for an affirmative effort by the states to reach out and register the unregistered, that is, to use the new Voter ID regime as a means to enroll more voters. Similarly, Richard Hasen has suggested combining a national voter ID with universal registration. See his "Beyond the Margin of Litigation: Reforming U.S. Election Administration to Avoid Electoral Meltdown," 62 Washington and Lee Law Review 937 (2005).

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intentionally or unintentionally, reduce the turnout of particular groups of voters or supporters of one party or another without an offsetting decrease in vote fraud?

**Voter ID and Turnout**

Based on research for this study by the Moritz College of Law, states had one of five types of maximum requirements in place on Election Day 2004. These are shown in Table 1, *Voter ID Requirements*. The five categories: at the polling place, voters were asked to either: state their names (10 states); sign their names (13 states and the District of Columbia); sign their names, to be matched to a signature on file (seven states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (five states).<sup>17</sup> Using this information made it possible to code the states according to these requirements, and examine the assumption that voter identification requirements would pose an increasingly demanding requirement in this order: stating one's name, signing one's name, matching one's signature to a signature on file, providing a form of identification, and providing a form of photo identification, however, in all "photo ID" states in 2004, voters without photo ID could cast a regular ballot after signing an affidavit concerning their identity and eligibility or provide other forms of ID). The report refers to this set of ID requirements as "maximum," the most rigorous ID the voter can be asked to present at the polling place in order to cast a regular ballot.<sup>18</sup>

Election laws in several states offer exceptions to these requirements if potential voters lack the necessary form of identification. Laws in those states set a minimum standard – that is the minimum requirement that a voter may be required to satisfy in order to vote using a regular ballot. States can be categorized based on the minimum requirement for voting with a regular ballot. In 2004 the categories were somewhat different compared to the maximum requirement, in that none of the states required photo identification as a minimum standard for voting with a regular ballot. That is, voters who lacked photo ID would still be allowed to vote in all states, if able to meet another requirement. Four states required voters to swear an affidavit as to their identity (Florida, Indiana, Louisiana, and North Dakota). The five categories for minimum requirements were: state name (12 states), sign name (14 states and the District of Columbia), match one's signature to a signature on file (six states), provide a non-photo identification (14 states), or swear an affidavit (four states). The analysis also examined this array of minimum

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<sup>17</sup> Oregon conducts elections entirely by mail. Voters sign their mail-in ballots, and election officials match the signatures to signatures on file. For the purposes of this analysis, Oregon is classified as a state that requires a signature match.

<sup>18</sup> As noted above, our analysis does not consider additional requirements that particular voters may be subjected to as part of an official challenge process, in the event that their eligibility is called into question.

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identification requirements to assess how they correlated with turnout: state name, sign name, match signature, provide non-photo identification, and, given the potential legal consequences for providing false information, swearing an affidavit. As noted above, *no* state had a “minimum” requirement of showing photo ID. This analysis therefore cannot estimate the effect of laws, such as those recently enacted in Indiana and Georgia that require voters to show photo ID in order to cast a regular ballot without an affidavit or other exception.

We recognize the difficulties in summarizing each state’s voter ID requirements. The problem is illustrated by the number of footnotes to Table 1 below. The variety of statutory and regulatory details among the states is complex.

Moving beyond the statutes and regulations, we also recognize that the assignment of each state to one category may fail to reflect actual practice at many polling places. As in any system run by fallible humans, the voter ID process is subject to variation in practice.<sup>19</sup> Voters may have been confronted with demands for identification different from the directives in state statutes or regulation. It seems reasonable to conclude, however, that while actual practices may vary, the variance is around each state’s legal requirement for ID. The analysis of the effect of state requirements on turnout must be viewed with some caution. We believe that the categories used in this report provide an acceptable level of discrimination among voter identification regimes.

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<sup>19</sup> One state election official told us that, “We have 110 election jurisdictions in Illinois, and I have reason to believe [the voter ID requirements] are administered little bit differently in each one. We wish it weren’t that way, but it probably is.”

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**TABLE 1 – Voter ID Requirements<sup>20</sup>**

State	Maximum Forms of ID Required 2004	Current ID Requirement for First-Time Voters	Current ID Requirements for All Other Voters	Verification Method for Provisional Ballots
Alabama	Provide ID	Provide ID	Provide ID	Address & Registration
Alaska	Provide ID	Provide ID	Provide ID	Signature
Arizona	Provide ID	Gov-issued Photo ID	Gov-issued Photo ID <sup>1</sup>	Address & Registration
Arkansas	Provide ID	Provide ID	Provide ID	Address & Registration
California	Sign Name	Sign Name	Sign Name	Signature
Colorado	Provide ID	Provide ID	Provide ID	Address & Registration
Connecticut	Provide ID	Provide ID	Provide ID	Affidavit
D.C.	Sign Name	Provide ID*	Sign Name	Address & Registration
Delaware	Provide ID	Provide ID	Provide ID	Affidavit
Florida	Photo ID <sup>2</sup>	Photo ID	Photo ID	Signature
Georgia	Provide ID	Gov. Issued Photo ID	Gov. Issued Photo ID	Affidavit
Hawaii	Photo ID <sup>^^</sup>	Photo ID	Photo ID <sup>^^</sup>	Affidavit
Idaho	Sign Name	Provide ID*	Sign Name	EDR
Illinois	Give Name	Provide ID*	Match Sig.	Affidavit
Indiana	Sign Name	Gov. Issued Photo ID	Gov. Issued Photo ID	Bring ID Later
Iowa	Sign Name	Provide ID*	Sign Name	Bring ID Later
Kansas	Sign Name	Sign Name	Sign Name	Bring ID Later
Kentucky	Provide ID	Provide ID	Provide ID	Affidavit
Louisiana	Photo ID	Photo ID	Photo ID <sup>^</sup>	DOB and Address
Maine	Give Name	Provide ID*	Give Name	EDR
Maryland	Sign Name	Provide ID*	Sign Name	Bring ID Later
Mass.	Give Name	Provide ID*	Give Name	Affidavit
Michigan	Sign Name	Provide ID*	Sign Name	Bring ID Later
Minnesota	Sign Name	Provide ID*	Sign Name	EDR
Mississippi	Sign Name	Provide ID*	Sign Name	Affidavit
Missouri	Provide ID	Provide ID*	Provide ID	Address & Registration
Montana	Provide ID	Provide ID*	Provide ID	Bring ID Later
Nebraska	Sign Name	Provide ID*	Sign Name	Affidavit
Nevada	Match Sig.	Provide ID*	Match Sig.	Affidavit
New Jersey	Match Sig.	Provide ID*	Match Sig.	Bring ID Later
New Mexico	Sign Name	Provide ID	Provide ID	Bring ID Later
New York	Match Sig.	Provide ID*	Match Sig.	Affidavit
NH	Give Name	Provide ID	Give Name	EDR
North Carolina	Give Name	Provide ID*	Give Name	Varies
North Dakota	Provide ID	Provide ID	Provide ID	No Registration
Ohio	Match Sig.	Provide ID	Provide ID	Address & Registration
Oklahoma	Sign Name	Provide ID*	Sign Name	Address & Registration
Oregon	Match Sig.	Provide ID*	Match Sig.	Signature
Penn.	Match Sig.	Provide ID*	Match Sig.	Address & Registration
Rhode Island	Give Name	Provide ID*	Give Name	Address & Registration

<sup>20</sup> See Appendix 1 for a more detailed summary, including citations and statutory language, of the identification requirements in each state.

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South Carolina	Photo ID <sup>b</sup>	Photo ID	Photo ID <sup>aa</sup>	Address & Registration
South Dakota	Photo ID <sup>b</sup>	Photo ID	Photo ID <sup>aa</sup>	Affidavit
Tennessee	Provide ID	Provide ID <sup>f</sup>	Provide ID	Affidavit
Texas	Provide ID	Provide ID <sup>g</sup>	Provide ID	Bring ID Later
Utah	Give Name	Provide ID	Give Name	Bring ID Later
Vermont	Give Name	Provide ID	Give Name	Affidavit
Virginia	Provide ID	Provide ID	Provide ID	Affidavit
Washington	Sign Name	Provide ID	Provide ID	Address & Registration
West Virginia	Match Sig.	Provide ID	Match Sig.	Address & Registration
Wisconsin	Give Name	Provide ID	Give Name	Bring ID Later
Wyoming	Give Name	Provide ID	Give Name	Affidavit

\* States applies only HAVA's ID requirement, applicable to first-time voters who registered by mail and did not provide applicable ID at the time of registration.

<sup>1</sup> Arizona voters who lack a photo ID may present 2 forms of ID with no photograph.

<sup>2</sup> Florida required a photo ID in 2004, but voters without that credential could sign an affidavit concerning their identity and eligibility and cast a regular ballot. Florida subsequently changed its law to require that voters present photo ID to cast a regular ballot, though voters without photo ID may still cast a provisional ballot by signing an affidavit, which ballot should ordinarily be counted.

<sup>3</sup> Louisiana required a photo ID in 2004. Voters without that credential could sign an affidavit concerning their identity and eligibility and cast a regular ballot.

<sup>4</sup> Pennsylvania requires ID of all first-time voters, whether they registered by mail or in-person.

<sup>5</sup> Voters lacking a photo ID could vote by providing another form of ID in 2004.

<sup>6</sup> Voters lacking a photo ID could vote by providing another form of ID in 2004.

<sup>7</sup> Tennessee voters must provide signature and address. In counties without computerized lists, the signature is compared to the registration card. In counties with computerized lists, the signature is compared to a signature on ID presented with the registration.

<sup>8</sup> Texas voters must present a current registration certificate. Those without a certificate can vote provisionally after completing an affidavit.

Relationship of Voter ID requirements to Turnout

The statistical analysis examined the potential variation in turnout rates based on the type of voter identification required in each state on Election Day 2004 using two sets of data: aggregate turnout data at the county level for each state, as compiled by the Eagleton Institute of Politics, and individual-level survey data included in the November 2004 Current Population Survey conducted by the U.S. Census Bureau.

The statistical analysis examined turnout among U.S. citizens of voting age in both the aggregate and the individual-level data. Determining citizenship status in the individual-level data simply involved restricting the analyses to individuals who identified themselves as citizens in the November 2004 Current Population Survey. (Those who said they were not citizens did not have the opportunity to answer the supplemental voting questions contained in the Current Population Survey.)



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Findings of the statistical analysis

The analysis looked at the voter identification requirements in two ways, as a continuous variable and as a series of discrete variables. As a continuous variable the maximum voter identification requirements are ranked according to how demanding they were judged to be, with photo ID as the most demanding requirement. As discrete variables, the statistical analysis assume that stating name is the least demanding ID requirement and compare each other requirement to it.

The analysis treating the requirements as a continuous variable offers some statistical support for the premise that as the level of required proof increases, turnout declines. Averaging across counties in each state, statewide turnout is negatively correlated with maximum voter identification requirements ( $r = -.30, p < .05$ ). In considering the array of minimum requirements, with affidavit as the most demanding requirement, however, the correlation between voter identification and turnout is negative, but it is not statistically significant ( $r = -.20, p = .16$ ). This suggests that the relationship between turnout rates and minimum requirements may not be linear. Breaking down the turnout rates by type of requirement reveals in greater detail the relationship between voter identification requirements and voter turnout.

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

Maximum Requirement		Minimum Requirement	
Voter Identification Required in the States	Mean Voter Turnout for States in that Category	Voter Identification Required in the States	Mean Voter Turnout for States in that Category
State Name	64.2 %	State Name	63.0 %
Sign Name	61.1 %	Sign Name	60.4 %
Match Signature	60.9 %	Match Signature	61.7 %
Provide Non-Photo ID	59.3 %	Provide Non-Photo ID	59.0 %
Provide Photo ID	58.1 %	Swear Affidavit	60.1 %
<i>Average Turnout (All States)</i>	<b>60.9 %</b>		

**This table displays the mean turnout using the aggregate county level data for each state in 2004.**

The aggregate data show that 60.9 percent of the estimated citizen voting age population voted in 2004. Differences in voter turnout at the state level in 2004 varied based on voter identification requirements. Taking into account the maximum requirements, an average of 64.6 percent of the voting age population turned out in states that required voters to state their names, compared to 58.1 percent in states that required photo identification. A similar trend

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emerged when considering minimum requirements. Sixty-three percent of the voting age population turned out in states requiring voters to state their names, compared to 60.1 percent in states that required an affidavit from voters. Given the lack of a clear, consistent linear relationship between turnout and minimum identification requirements, however, we opted to treat the voter identification requirements as a series of dichotomous variables in subsequent analyses.<sup>21</sup>

Voter identification requirements are just one factor that may affect voter turnout. Multivariate models that take into account other predictors of turnout can paint a more complete picture of the relationship between voter identification requirements and turnout. This analysis estimated the effects of voter identification requirements in multivariate models that also took into account the electoral context in 2004 and demographic characteristics of the population in each county. While the model takes account of several important variables, statistical models do not capture all the messiness of the real world. It is a simplification of a complex reality, and its results should be treated with appropriate caution.

The model also took into account such variables as:

- Was the county in a presidential battleground state?
- Was the county was in a state with a competitive race for governor and/or the U.S. Senate?
- Percentage of the voting-age population in each county that was Hispanic or African-American<sup>22</sup>
- Percentage of county residents age 65 and older
- Percentage of county residents below the poverty line

Another contextual factor to consider is voter registration requirements, such as the deadline for registration. As states set the deadline farther away from Election Day, the task of remembering to register to vote becomes more challenging. Thus our model takes into account the number of days between each state's registration deadline and the election.

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<sup>21</sup> The voter identification requirements are coded as a series of dummy variables, coding each variable as one if the requirement existed in a given state, and zero otherwise. This yielded five dichotomous variables for maximum requirements (state name, sign name, match signature, non-photo identification, or photo identification), and five dichotomous variables for minimum requirements (state name, sign name, match signature, non-photo identification, or providing an affidavit). Omitted is the variable for stating one's name so that it could serve as the reference category in comparison with the other four identification requirements in each of the statistical analyses.

<sup>22</sup> The U.S. Census projections for 2003 provided the data for the percentage of the voting-age population in each county that was Hispanic or African-American and for the percentage of county residents age 65 and older.

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The dependent variable in each model was voter turnout at the county level, with turnout calculated as the percentage of the citizen voting-age population that voted in the 2004 election.

The results of this modeling suggest that voter identification requirements such as signature matching, a non-photo ID or a photo ID are associated with lower turnout than in states that required voters to simply state their name, holding constant the electoral context and demographic variables.

Contextual factors, such as whether the county was in a battleground state or whether that state had a competitive race for governor and/or U.S. Senate, were associated with increased voter turnout. The time between the closing date for registration and the election was correlated with a slight negative effect on turnout. As the percentage of Hispanics in the county's population increased, turnout declined. The percentage of senior citizens in the county and household median income were associated with higher turnout. The percentage of African-Americans in the county did not have a significant effect in the model. The percentage of senior citizens in the county and household median income showed a positive correlation with turnout. In this aggregate model, the percentage of African-Americans in the county was not associated with a significant difference in turnout.

The relationship of the minimum voter identification requirements to turnout was not demonstrated. None of the dummy variables for voter identification requirements were statistically significant. Being a battleground state and having a competitive statewide race were significant and positive, as was the percentage of senior citizens in the county and household median income. The percentage of Hispanics in the county's population continued to be associated with reduced turnout, as was the number of days between the closing date for registration and the election.<sup>23</sup>

Analysis of the aggregate data at the county level generates some support for the hypothesis that stricter identification requirements are correlated with lower turnout. For the maximum

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<sup>23</sup> This test incorporated a series of interactions between the maximum and minimum voter identification requirements and the percentage of African-Americans and Hispanics living in the counties. In each case the interactions did not improve the fit of the models to the data. See tables A-1 and A-2 in the appendix of Vercellotti's paper in the appendices.

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requirements, a signature match, non-photo identification or photo identification were correlated with lower turnout in 2004, compared to requiring that voters simply state their names.

Aggregate data, however, cannot fully capture the individual demographic factors that may figure into the decision to turn out to vote.<sup>24</sup> Voter identification requirements could have a relationship to the turnout of particular groups of voters, in ways that county-level aggregate data on turnout would not capture. To explore the effects of voter identification requirements on turnout more completely, it is important to examine individual-level data as well.

#### Individual-level Analysis

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

One of the of the CPS is the sheer size of the sample. The survey's Voting and Registration Supplement consisted of interviews, either by telephone or in person, with 96,452 respondents.<sup>25</sup> The large sample size permits analyses of smaller groups, such as Black or Hispanic voters or voters with less than a high school education. The statistical analysis in relying on the CPS is based on reports from *self-described* registered voters. Omitted are those who said they were not registered to vote, as are those who said they cast absentee ballots because the identification requirements for absentee ballots may differ from those required when one votes in person. Eliminated from the sample are respondents who said they were not U.S. citizens; the questionnaire design skipped those individuals past the voter registration and turnout questions in the survey. In addition to the voter identification requirements, the models include other socioeconomic, demographic, and political environment factors that might have

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<sup>24</sup> For example, previous research has found that education is a powerful determinant of turnout (Wolfinger and Rosenstone 1980, but see also Nagler 1991).<sup>24</sup> Married people also are more likely to vote than those who are not married (Alvarez and Ansolabehere 2002; Alvarez, Nagler and Wilson 2004; Fisher, Kenny, and Morton 1993).

<sup>25</sup> It is important to note that the Census Bureau allows respondents to answer on behalf of themselves and others in the household during the interview. While proxy reporting of voter turnout raises the possibility of inaccurate reports concerning whether another member of the household voted, follow-up interviews with those for whom a proxy report had been given in the November 1984 CPS showed 99 percent agreement between the proxy report and the information given by the follow-up respondent (U.S. Census Bureau 1990).

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influenced turnout in 2004.<sup>26</sup> The dependent variable in these analyses is whether a respondent said he or she voted in the November 2004 election.<sup>27</sup>

In the model, three of the voter identification requirements have a statistically significant correlation with whether survey respondents said they had voted in 2004. That is, compared to states that require voters only to state their names, the requirement to sign one's name, provide a non-photo ID, or photo ID in the maximum requirements or affidavit in the minimum is associated with lower turnout.

Of the other state factors, only the competitiveness of the presidential race showed a significant, correlation with increased turnout. In terms of demographic influences, African-American voters were more likely than white voters or other voters to say they had cast a ballot, while Asian-Americans were less likely than white or other voters to say they had turned out. Hispanic voters were not statistically different from white or other voters in terms of reported turnout. Consistent with previous research, income, and marital status all were positive predictors of voting. Women also were more likely to say they voted than men. Among the age categories, those ages 45 to 64 and 65 and older were more likely than those ages 18 to 24 to say they voted. Respondents who had earned a high school diploma, attended some college, graduated from college or attended graduate school were all more likely to say they voted than those who had not finished high school.

While the probit models provide statistical evidence for the relationship of voter identification requirements and other variables to turnout, probit coefficients do not lend themselves to intuitive interpretation.<sup>28</sup> Table 3 below shows predicted probabilities (calculated from the probit coefficients) of voting for each level of voter identification requirements while holding all other independent variables in the models at their means.<sup>29</sup>

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<sup>26</sup> The models are estimated using probit analysis, which calculates the effects of independent variables on the probability that an event occurred – in this case whether a respondent said he or she voted and using robust standard errors to control for correlated error terms for observations from within the same state.

<sup>27</sup> The U.S. Census Bureau reported, based on the November 2004 CPS, that 89 percent of those who identified themselves as registered voters said they voted in 2004 (U.S. Census Bureau 2005). Previous research has shown that, generally speaking, some survey respondents overstate their incidence of voting. Researchers speculate that over-reports may be due to the social desirability that accompanies saying one has done his or her civic duty, or a reluctance to appear outside the mainstream of American political culture (U.S. Census Bureau 1990). It is also possible that voting is an indication of civic engagement that predisposes voters to agree to complete surveys at a higher rate than non-voters (Flanigan and Zingale 2002). Hence the voter turnout rates reported in the CPS tend to be up to 10 percentage points higher than the actual turnout rate for the nation (Flanigan and Zingale 2002). Even with this caveat, however, the CPS serves as a widely accepted source of data on voting behavior.

<sup>28</sup> A probit model is a popular specification of a generalized linear regression model, using the probit link function.

<sup>29</sup> In the case of dichotomous independent variables, holding them at their mean amounted to holding them at the percentage of the sample that was coded 1 for the variable (Long 1997).

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<b>Table 3. Predicted probability of voter turnout – all voters</b>		
	<b>Maximum requirement</b>	<b>Minimum requirement</b>
<b>State name</b>	91.7%	91.5%
<b>Sign name</b>	89.9%	90.2%
<b>Match signature</b>	Not significant	Not significant
<b>Non-photo ID</b>	89.0%	89.0%
<b>Photo ID</b>	88.8%	----
<b>Affidavit</b>	----	87.5%
<b>Total difference from “state name” to “photo ID” or “affidavit”</b>	<b>2.9%</b>	<b>4.0%</b>
<b>N</b>	54,973	
<p>Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies stating one’s name to providing photo identification or an affidavit, with all other variables held constant. N.S. = nonsignificant coefficient in the probit model.</p> <p>Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.</p>		

Taking into account that signature matches were not a predictor of turnout, the differences in predicted probability decline from stating one’s name to providing a photo identification or affidavit. Voters in states that required photo identification were 2.7 percent less likely to vote than voters in states where individuals had to give their names.<sup>30</sup> In terms of the minimum requirement, voters in states that required an affidavit at minimum were 4 percent less likely to turn out than voters in states where they had to give their names.

The differences were more pronounced for those lower in education. Constraining the model to show predicted probabilities only for those with less than a high school diploma, the probability of voting was 5.1 percent lower in states that required photo identification as the maximum requirement and 7 percent lower in states that required an affidavit as the minimum requirement compared to states where stating one’s name was the maximum or minimum requirement.

<sup>30</sup> The voter turnout percentages may seem disproportionately high compared to the turnout rates reported in the aggregate data analysis. It is important to consider that the turnout rates in the aggregate data were a proportion of all citizens of voting-age population, while the turnout rates for the individual-level data are the proportion of only registered voters who said they voted.

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Race and ethnicity have generated particular interest in the debate over voter ID requirements.<sup>31</sup> The analysis using the aggregate data shed no light on the association between voter ID requirements and turnout for African-American and Hispanic voters. But in the models using the individual data, some significant relationships emerged for African-American, Hispanic and Asian citizens. For the entire population, the signature, non-photo identification and photo identification requirements all were associated with lower turnout compared to the requirement that voters simply state their names. These correlations translated into reduced probabilities of voting of about 3 to 4 percent for the entire sample, with larger differences for specific subgroups. For example, the predicted probability that Hispanics would vote in states that required non-photo identification was about 10 percentage points lower than in states where Hispanic voters gave their names. The difference was about 6 percent for African-Americans and Asian-Americans, and about 2 percent for white voters.

The model also showed that Hispanic voters were less likely to vote in states that required non-photo identification as opposed to stating one's name. Hispanic voters were 10 percent less likely to vote in non-photo identification states compared to states where voters only had to give their name.

Varying voter identification requirements were associated with lower turnout rates for Asian-American voters as well. Asian-American voters were 8.5 percent less likely to vote in states that required non-photo identification compared to states that require voters to state their names under the maximum requirements, and they were 6.1 percent less likely to vote where non-photo identification was the minimum requirement.

Conclusions of the Statistical Analysis

The statistical analysis found that, as voter identification requirements vary, voter turnout varies as well. This finding emerged from both the aggregate data and the individual-level data, although not always for both the maximum and minimum sets of requirements. The overall relationship between ID requirements and turnout for all registered voters was fairly small, but still statistically significant.

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<sup>31</sup> Incorporating discrete variables for Hispanics, African-Americans, and Asian-Americans into one model carries the implicit assumption that the remaining variables, including education and income, will influence each of these groups in a similar manner in terms of deciding whether to vote. These assumptions are not always born out by the data (see Leighley and Vedlitz, 1999.) To isolate the effects of voter identification and other variables on voter turnout within specific racial and ethnic groups, the sample is divided into sub-samples and the model re-run to calculate the data discussed and shown in Tables 5, 6, and 7 in Appendix C.

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In the aggregate data, the match signature requirement, the provide a non-photo ID requirement, and the photo ID requirement were all correlated with lower turnout compared to requiring that voters state their names.

The signature, non-photo ID, and photo ID requirements were all correlated with lower turnout compared to the requirement that voters simply state their names. That the non-photo identification requirement was the most consistent in terms of statistical significance across the groups is intriguing given the intense debates surrounding photo identification requirements.

Significant questions about the relationship between voter identification requirements and turnout remain unanswered. The data examined in the statistical analysis could not capture the dynamics of how identification requirements might lower turnout, nor could they rule out that other attributes of a state's electoral system might explain the statistically significant correlations that the study found. If ID requirements dampen turnout, is it because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements? Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day , or forced to cast a provisional ballot that is not ultimately counted? The CPS data do not include measures that can answer this question. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for election judges to handle questions about, and potential disputes over, voter identification requirements.

#### **Litigation Over Voter ID Requirements**

A handful of cases have challenged identification requirements in court in recent years. In general, requirements that voters provide some identifying documentation have been upheld, where photo ID is *not* the only acceptable form. Whether laws requiring photo ID will be upheld is more doubtful. To date, only two cases have considered laws requiring voters to show photo ID (*Common Cause v. Billups* and *Indiana Democratic Party v. Rokita*). Cases challenging the mandatory disclosure of voters' Social Security numbers on privacy grounds have yielded mixed results.

*Non-photo identification.* For the most part, courts have looked favorably on requirements that voters present some form of identifying documents if the photo identification is not the



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

*Photo ID.* Since the 2004 election, two states have adopted laws requiring photo identification at the polls in order to have one's vote counted, without an affidavit exception: Georgia and Indiana.<sup>32</sup> Both these requirements were enacted in 2005 and both have been challenged in court. The Georgia law required voters attempting to cast a ballot in person present a valid form of photographic identification. O.C.G.A. § 21-2-417. On October 18, 2005, the District Court granted the plaintiffs' motion for a preliminary injunction, enjoining the application of the new identification requirements on constitutional grounds. In granting the injunction, the court held that plaintiffs' claims under both the Fourteenth Amendment (equal protection) and Twenty-Fourth Amendment (poll tax) had a substantial likelihood of succeeding on the merits at trial (*Common Cause v. Billups*, Prelim. Inj. 96, 104). In January 2006, Georgia enacted a modified version of its photo ID law, which the court has not yet ruled on. In the other state that has enacted a photo ID requirement (Indiana), legal challenges have also been filed. (*Indiana Democratic Party v. Rokita* and *Crawford v. Marion County Election Board*). On April 14, 2006, the district court granted defendants' motion for summary judgment, concluding that plaintiffs had failed to produce evidence showing that the state's ID law would have an adverse impact on voters. Another case of significance, for purposes of photo ID requirements, is *American Civil Liberties Union of Minnesota v. Kiffmeyer*, No. 04-CV-4653, 2004 WL

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<sup>32</sup> Indiana's law does allow voters without ID to cast provisional ballots, and then to appear before the county board of elections to execute an affidavit saying that they are indigent and unable to obtain the requisite ID without payment of a fee. But in contrast to other states, voters cannot cast a ballot that will be counted by submitting an affidavit at the polls, affirming that they are the registered voter and are otherwise eligible to vote.

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2428690, at \*1 (D. Minn. Oct. 28, 2004). In that case, the court enjoined a Minnesota law that allowed the use of tribal photo ID cards, only for an Indian who lived on the reservation. 2004 WL 2428690, at \*1. The Court found no rational basis for distinguishing based on whether or not the cardholder lives on the reservation. *Id.* at \*1, 3. These decisions indicate that courts are likely to carefully scrutinize the evidence regarding the impact of photo ID requirements.

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

These decisions suggest that the courts will carefully scrutinize the evidence, where states require that voters produce a photo ID in order to cast a regular ballot. The courts have used a balancing test to weigh the legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, these early decisions suggest that best practice may be to limit requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

**Developments since 2004**

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

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

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

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

#### State Voter Databases and Voter ID

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

Some states are wrestling now with these unresolved issues. In New Jersey, for example, pending legislation would require that voters must be able to confirm their registration through a secure access to the Statewide Voter Registration List. It also requires voters to present ID at

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the polls in order to cast a regular ballot if the numbers recorded on the registration have not been verified (or if no verifiable number appears on the registration). It recognizes the HAVA requirement that if the number provided by the voter has not been verified and if the voter does not present ID at the polls, that voter may cast a provisional ballot. The bill does not specify they have to provide ID within 48 hours in order for their vote to count, as is the case with first-time mail-in registrants.

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

**Conclusions**

The analysis of voter ID requirements is complex. It takes into account important values associated with an electoral process, such as ballot access and integrity. The continuing effort to understand how voter ID requirements may affect turnout and the integrity of the ballot could benefit from additional factual information, including statistical analyses. Our research includes a statistical study of this kind. It indicated that the level of voter turnout in a state is correlated with the stringency of the voter ID requirement imposed by that state. Additional empirical research of this nature, with additional data collected by or for the EAC, would further illuminate the relationship between stricter voter ID rules and turnout, perhaps explaining if awareness of a strict ID requirement tends to discourage would-be voters from going to the polls. Or, additional research may shed light on whether, if voters did go to the polls, stricter Voter ID requirements will divert more voters into the line for provisional ballots. The consequence of increased reliance on provisional ballots can be longer lines at the polls and confusion, without necessarily a clear demonstration that the security of the ballot is correspondingly increased.<sup>33</sup>

The debate over voter ID in the states would be improved by additional research sponsored by the EAC. That might include longitudinal studies of jurisdictions that have changed voter ID requirements, as well as precinct-level analyses that would allow more finely tuned assessment of the correlation between stricter identification requirements and turnouts. Further research could also identify methods to eliminate the need for voters to bring specific identity documents

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<sup>33</sup> In this connection, the Brennan Center's response to the Carter-Baker Commission report observes that, "while it might be true that in a close election "a small amount of fraud could make the margin of difference," it is equally true that the rejection of a much larger number of eligible voters could make a much bigger difference in the outcome." *Response to the Report of the 2005 Commission on Federal Election Reform*, The Brennan Center for Justice at NYU School of Law and Spencer Overton, On Behalf Of The National Network on State Election Reform, September 19, 2005

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with them to the polls, while assuring that each voter who casts a ballot is eligible and votes only once.

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Karen Lynn-Dyson/EAC/GOV  
04/28/2006 12:29 PM

To "Tom O'Neill" [REDACTED]@GSAEXTERNAL  
cc foley.33@osu.edu, john.weingart@rutgers.edu,  
lauracw@columbus.rr.com, tokaji.1@osu.edu  
bcc Juliet E. Thompson-Hodgkins/EAC/GOV  
Subject RE: Schedule for completion of Prov. Voting and Voter ID  
research

Tom-

It is my understanding that the EAC Executive Director and General Counsel are currently discussing processes regarding your project's close-out, particularly those related to formal presentations of the provisional voting and voter ID papers, at the June EAC public meeting.

I should have an answer to you on this by early next week.

Regards-

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

"Tom O'Neill" [REDACTED]



"Tom O'Neill" [REDACTED]

04/27/2006 03:40 PM

To klynndyson@eac.gov  
cc john.weingart@rutgers.edu, foley.33@osu.edu,  
lauracw@columbus.rr.com, tokaji.1@osu.edu  
Subject RE: Schedule for completion of Prov. Voting and Voter ID  
research

Thanks, Karen.

Just to be sure that our expectations are clear, I'll summarize the perspective behind the schedule we submitted for the recent extension.

#### A. Provisional Voting

1. We presented our Provisional Voting report to the commissioners several months ago, revised its organization and clarified findings and recommendations in line with the comments of staff and commissioners, and we researched Tom Wilkey's additional question of the effect of the time for review on the evaluation of provisional ballots, which will be included in the final revision.
2. The final draft will be completed by May 5 .
3. Based on discussions with you and the commissioners we look forward to presenting that revised, final report to the Advisory Board on May 24, following whatever additional review the Commission finds appropriate.
4. Our discussions with Commissioners and staff anticipated that we would make some

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presentation of the provisional voting work at the Commission's public meeting in June, a presentation that might include revisions occasioned by the comments of the Advisory Board.

B. Voter ID

1. We presented our Voter ID research to the Commissioners in April and are now revising it in line with their comments.
2. That revised research paper will be discussed in mid May by reviewers selected by the Commission. That date was set specifically to allow us to prepare a final report that would be ready for review by the Advisory Board on May 24.
3. We anticipate that the Commission will want the comments of its Advisory Board on the Voter ID report before it receives it in June. (Indeed, we were advised that the Advisory Board members would be most interested in the accuracy of observations or findings specific to their individual states.)
4. The appropriate conclusion for our work is a presentation of findings and recommendations for both Provisional Voting and Voter ID, 2 closely related topics, to the Commission at its public meeting in late June, just a week before the termination of our contract under the extended schedule.

I hope you'll share this outline of our expectations with the others at the Commission involved in assuring a successful completion of this research and analysis.

Tom O'Neill

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

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

**Sent:** Thursday, April 27, 2006 3:08 PM

**To:** [REDACTED] twilkey@eac.gov; jthompsonhodgkins@eac.gov

**Cc:** [REDACTED] lauracw@columbus.rr.com; [REDACTED]

**Subject:** RE: Schedule for completion of Prov. Voting and Voter ID research

Tom-

I am certain the provisional voting paper will be presented. The Chairman has asked that the Commissioners have an opportunity to review your corrected and final draft of that document prior to it being presented to the EAC Boards, preferably next week.

Because of the issues surrounding voter identification, I am less certain about the protocol that will be followed. I will ask Tom Wilkey and Julie Hodgkins to offer insights on that matter.

I will also ask them about the protocol to be followed regarding the formal submission and acceptance of both the papers.

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

010656

tel:202-566-3123

"Tom O'Neill"  
[REDACTED]

04/27/2006 10:26 AM

To: klynndyson@eac.gov  
[REDACTED]

lauracw@columbus.fr.com  
[REDACTED]

Subject: RE: Schedule for completion of Prov. Voting and Voter ID research

Karen,

Thanks for your quick reply.

Am I correct in understanding that the presentation to the Board of Advisors on May 24 will include both the Provisional Voting report and the Voter ID report?

If the Commissioners do not consider the reports at its June meeting, when will it take action to receive and record the reports?

Tom O'Neill

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

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

**Sent:** Thursday, April 27, 2006 9:50 AM

**To:** [REDACTED]

**Cc:** john.weingart@rutgers.edu

**Subject:** Re: Schedule for completion of Prov. Voting and Voter ID research

Tom-

Just had a good conversation with our folks in the legal department, who as you know, are responsible for coordinating our public meetings.

Original plans had slotted Eagleton for the presentation of its final reports on provisional voting and voter id, at a June public meeting. Those plans have been revised to have Eagleton, instead, present its findings to the EAC Board of Advisors and Standards Board on May 24th.

The details of the Board of Advisors and Standards Board meetings are being finalized this week.

010657



and early next. I will be certain to get your more details, as I learn of them.

Also, I will get you the details on who will provide the EAC peer review of the Voter ID work, as soon as I have them.

Regards-

( back Karen Lynn-Dyson  
Research Manager  
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Karen Lynn-Dyson/EAC/GOV

04/27/2006 03:59 PM

To Thomas R. Wilkey/EAC/GOV@EAC, Juliet E. Thompson-Hodgkins/EAC/GOV@EAC

cc

bcc

Subject Fw: Schedule for completion of Prov. Voting and Voter ID research

Tom and Julie-

Take a look and let me know how you would like me to respond to Tom O' Neill's requests.

Thanks

Karen Lynn-Dyson  
Research Manager  
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tel:202-566-3123

— Forwarded by Karen Lynn-Dyson/EAC/GOV on 04/27/2006 03:54 PM —



"Tom O'Neill"

04/27/2006 03:40 PM

To klynndyson@eac.gov

cc

lauracw@columbus.rr.com

Subject RE: Schedule for completion of Prov. Voting and Voter ID research

Thanks, Karen.

Just to be sure that our expectations are clear, I'll summarize the perspective behind the schedule we submitted for the recent extension.

#### A. Provisional Voting

1. We presented our Provisional Voting report to the commissioners several months ago, revised its organization and clarified findings and recommendations in line with the comments of staff and commissioners, and we researched Tom Wilkey's additional question of the effect of the time for review on the evaluation of provisional ballots, which will be included in the final revision.
2. The final draft will be completed by May 5 .
3. Based on discussions with you and the commissioners we look forward to presenting that revised, final report to the Advisory Board on May 24, following whatever additional review the Commission finds appropriate.
4. Our discussions with Commissioners and staff anticipated that we would make some presentation of the provisional voting work at the Commission's public meeting in June, a presentation that might include revisions occasioned by the comments of the Advisory Board.

#### B. Voter ID

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1. We presented our Voter ID research to the Commissioners in April and are now revising it in line with their comments.
2. That revised research paper will be discussed in mid May by reviewers selected by the Commission. That date was set specifically to allow us to prepare a final report that would be ready for review by the Advisory Board on May 24.
3. We anticipate that the Commission will want the comments of its Advisory Board on the Voter ID report before it receives it in June. (Indeed, we were advised that the Advisory Board members would be most interested in the accuracy of observations or findings specific to their individual states.)
4. The appropriate conclusion for our work is a presentation of findings and recommendations for both Provisional Voting and Voter ID, 2 closely related topics, to the Commission at its public meeting in late June, just a week before the termination of our contract under the extended schedule.

I hope you'll share this outline of our expectations with the others at the Commission involved in assuring a successful completion of this research and analysis.

Tom O'Neill

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

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

**Sent:** Thursday, April 27, 2006 3:08 PM

**To:** tom\_oneill@verizon.net; twilkey@eac.gov; jthompsonhodgkins@eac.gov

**Cc:** foley.33@osu.edu; john.weingart@rutgers.edu; lauracw@columbus.rr.com; tokaji.1@osu.edu

**Subject:** RE: Schedule for completion of Prov. Voting and Voter ID research

Tom-

I am certain the provisional voting paper will be presented. The Chairman has asked that the Commissioners have an opportunity to review your corrected and final draft of that document prior to it being presented to the EAC Boards, preferably next week.

Because of the issues surrounding voter identification, I am less certain about the protocol that will be followed. I will ask Tom Wilkey and Julie Hodgkins to offer insights on that matter.

I will also ask them about the protocol to be followed regarding the formal submission and acceptance of both the papers.

Karen Lynn-Dyson  
Research Manager  
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010660

"Tom O'Neill"  
[REDACTED]

04/27/2006 10:26 AM

To: klynndyson@eac.gov  
[REDACTED]

lauracw@columbus.rr.com

Subject: RE: Schedule for completion of Prov. Voting and Voter ID research

Karen,

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

**Sent:** Thursday, April 27, 2006 9:50 AM

**To:** [REDACTED]

**Cc:** [REDACTED]

**Subject:** Re: Schedule for completion of Prov. Voting and Voter ID research

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Also, I will get you the details on who will provide the EAC peer review of the Voter ID work, as soon as I have them.

010661

Regards-

( back Karen Lynn-Dyson  
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1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

010662

Karen Lynn-Dyson/EAC/GOV  
04/27/2006 03:07 PM

To "Tom O'Neill" <[REDACTED]@GSAEXTERNAL,  
Thomas R. Wilkey/EAC/GOV@EAC, Juliet E.  
Thompson-Hodgkins/EAC/GOV@EAC  
cc [REDACTED]  
bcc [REDACTED]  
Subject RE: Schedule for completion of Prov. Voting and Voter ID  
research

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"Tom O'Neill" <[REDACTED]>



"Tom O'Neill"

[REDACTED]  
04/27/2006 10:26 AM

To klynndyson@eac.gov  
cc [REDACTED]  
Subject RE: Schedule for completion of Prov. Voting and Voter ID  
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Tom O'Neill

010663

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

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

**Sent:** Thursday, April 27, 2006 9:50 AM

**To:** [REDACTED]

**Cc:** john.weingart@rutgers.edu

**Subject:** Re: Schedule for completion of Prov. Voting and Voter ID research

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Regards-

( back Karen Lynn-Dyson  
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010664

Karen Lynn-Dyson/EAC/GOV  
04/27/2006 09:50 AM

To "Tom O'Neill" [REDACTED]@GSAEXTERNAL  
cc [REDACTED]  
bcc Juliet E. Thompson-Hodgkins/EAC/GOV  
Subject Re: Schedule for completion of Prov. Voting and Voter ID  
research 

Tom-

Just had a good conversation with our folks in the legal department, who as you know, are responsible for coordinating our public meetings.

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Regards-

( back Karen Lynn-Dyson  
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010665



Karen Lynn-Dyson/EAC/GOV  
04/27/2006 09:10 AM

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

cc Thomas R. Wilkey/EAC/GOV@EAC

bcc

Subject Re: Schedule for completion of Prov. Voting and Voter ID  
research 

I think that a number of months ago we envisioned the Eagleton project culminating with a presentation of both of the papers at a public meeting. We had tentatively scheduled that presentation for the June public meeting. Also, we must provide for a review of these studies to EAC's Standards Board and Board of Advisors.

Clearly, plans have changed although we need to figure out how we have Eagleton present its final papers on Provisional Voting (already planned) and Voter Identification (still in process) to the EAC Standards and Advisory Boards.

Look forward to your suggestions on how best to proceed with wrapping up these two efforts.

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010666

Karen Lynn-Dyson/EAC/GOV  
04/26/2006 05:26 PM

To "Tom O'Neill" [REDACTED]@GSAEXTERNAL  
cc [REDACTED]  
bcc Juliet E. Thompson-Hodgkins/EAC/GOV  
Subject Re: Schedule for completion of Prov. Voting and Voter ID research

History: This message has been replied to.

Tom-

Thanks ever so much for getting back to me. I am going to speak with key staff in the legal department ( who arrange the public hearings) and with the Commissioners regarding your question about the June presentation and the Voter ID paper. I will get you a response on this in the next day or so.

I will also work diligently to pin down a date and time for the peer review of Tim's work by the end of this week.

Thanks

K  
Karen Lynn-Dyson  
Research Manager  
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1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

"Tom O'Neill" [REDACTED]



"Tom O'Neill"  
[REDACTED]  
04/26/2006 05:10 PM

To [REDACTED]  
cc [REDACTED]  
Subject Schedule for completion of Prov. Voting and Voter ID research

Karen,

John and I reviewed your recent email today, and he asked me to respond.

Important to us is a clear commitment now by the EAC to schedule a presentation of our Voter ID research at the May meeting of the Advisory Board, if its review is required before the paper is published and presented at the EAC's public meeting in June. Your email made no mention of that June public meeting. Our schedule (submitted with the request for the no-cost extension) —and our previous discussion with you—treats that meeting as the key event that will conclude our research under this contract. Therefore, we also look for an explicit understanding that a presentation of our reports will be included in the agenda for that public meeting.

We can deliver a final report on Provisional Voting by May 5 and will be prepared for whatever role we might play at the May 24 meeting of the Advisory Board.

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The team is looking forward to a discussion of Tim Vercellotti's revised statistical analysis of Voter ID with the academic reviewers you are in the process of identifying during the week of May 8. Knowing the specific date and time of that discussion in the next day or so would facilitate the participation of appropriate members of our Peer Review Group in that conversation.

Tom O'Neill

From: \* klynndyson@eac.gov [mailto:klynndyson@eac.gov]  
\*Sent: \* Tuesday, April 25, 2006 12:09 PM  
\*To: \* john.weingart@rutgers.edu  
\*Cc: \* tom\_oneill@verizon.net  
\*Subject: \* Re: Eagleton/Moritz Next Steps

John and Tom-

A couple of items related to timing over the next several weeks:

1. Is it possible to get your final report on Provisional Voting by COB May 5? If so, I can get this to the four Commissioners for final review and approval. It will then be ready to present to the EAC Board of Advisors and Standards Board at the May 24 meeting.

2. As we discussed I have been working to identify a small group of academics (three or so) who will be available to review the Voter ID paper the week of May 8. The focus of the review will be on Tim's research methodology and statistical analysis. I am fairly certain that this review can be done via conference call, preferably on May 11 or May 12. This would assume each of the reviewers will have spent time reviewing the paper, taking extensive notes and summarizing his or her comments. I expect that you all, Tim, Mike Alvarez and any others from your peer review panel, who have an expertise in research and statistics, will be available for the conference call, as well?

3. While I expect you will be able to have your final Voter ID paper to me sometime during the week of May 15, it is not clear whether or not the paper will be presented to the EAC Standards and Advisory Boards the following week. As you know, the paper contains some controversial information, so the Commissioners may elect to spend additional time reviewing the findings among themselves, and before it is formally presented to our Boards.

Let me know if this schedule works for you all.

Regards-

Karen Lynn-Dyson  
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Washington, DC 20005  
tel:202-566-3123

010668

**Deliberative Process  
Privilege**

Karen Lynn-Dyson/EAC/GOV

03/31/2006 03:09 PM

To: Paul DeGregorio/EAC/GOV@EAC, Raymundo  
Martinez/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC,  
Donetta L. Davidson/EAC/GOV@EAC, Thomas R.  
cc: Amie J. Sherrill/EAC/GOV@EAC, Adam  
Ambrogio/EAC/GOV@EAC, Sheila A.  
Banks/EAC/GOV@EAC, Elieen L. Collver/EAC/GOV@EAC,  
bcc:

Subject: Fw: Revised Voter ID Paper

See below. A revised version of the Eagleton paper to be discussed at Monday's meeting.

Regards-

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

— Forwarded by Karen Lynn-Dyson/EAC/GOV on 03/31/2006 02:03 PM —



"Tom O'Neill"

03/31/2006 08:42 AM

To: klynndyson@eac.gov  
cc:

Subject: Revised Voter ID Paper

Karen,

Attached is a new draft of the Voter ID paper, revised to take into account the comments you gave us on Tuesday as well as some points raised recently by other reviewers. We'll be bringing hard copies of this draft with us to Monday's briefing. If you could distribute the new "Executive Summary" (pages 1 – 5) in advance to those who will take part in the meeting on Monday, I think the discussion would be improved.

Our train is scheduled to get into Union Station at 10:30 on Monday. Barring Amtrak delays, we should arrive at your offices shortly before 11.

Tom O'Neill



VoterIDReport0330.doc

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## FINAL DRAFT REPORT AND RECOMMENDATIONS TO THE EAC VOTER IDENTIFICATION ISSUES

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### Report Background

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

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

### Executive Summary

#### Methods

To explore the effects of voter ID requirements on electoral participation in 2004, as measured by turnout, we gathered information on the requirements in effect in the 50 states and the District of Columbia in that year. We assigned each state to one of five categories based on its ID requirements. The five categories are progressively more rigorous based on the demands they make on both voters<sup>1</sup> (and, to some extent) on election workers. The categories range from “Stating Name” which we judge to be somewhat less demanding than “Signing Name.” “Signature Match” requires poll workers to examine the signature and compare it to a sample,

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<sup>1</sup> Even the most relaxed provisions for identification at the polls — anything stricter than the honor system used in North Dakota — will impose some burden on particular voters. *Harvard Law Review* 119:1146

## FINAL D R A F T

which is slightly more demanding than the voter simply signing. "Present ID" requires voters to offer some documentary evidence of their identity, ranging from a utility bill to a passport. It is more demanding than the previous three categories because it requires that the voter remember to bring this documentation to the polls. (Even a simple ID, such as a utility bill, may not be available to some renters or, say, those in group housing.) We regard a government "Photo ID" as the most rigorous requirement. Such identity documents are not uniformly and conveniently available to all voters.

We collected data on turnout in all counties to permit an estimate of the relationship between the rigor of the ID requirements and the level of turnout. This aggregate analysis is useful, but does not provide valid estimates on the effects of different kinds of ID requirements on particular demographic groups (e.g., the old, the young, African-Americans, the poor, or high school graduates.) To allow that analysis, we used the Census Bureau's Current Population Survey from November 2004, which asked a large sample of Americans about their experience in the election. It has the disadvantage of relying on self reports by respondents about their registration status, citizenship, and experience in the polling place, but it provides the demographic data needed to supplement the aggregate analysis.

To understand the legal issues raised by voter ID requirements, we collected and analyzed the few major cases that have been decided on this issue. The decisions so far suggest the constitutional and other constraints to policies on voter ID requirements.

### Findings

The form of Voter ID required of voters affects turnout. Lack of ID can keep voters from the polls. Or, when they go to the polls, it is reasonable to conclude that stricter Voter ID requirements will divert more voters into the line for provisional ballots. (This conclusion is a conjecture because we lack precise information on why voters must cast their ballots provisionally.) The result can be longer lines at the polls and confusion, without a clear demonstration that the security of the ballot is correspondingly increased.

Voter turnout at the state level in 2004 was lower in states where voter identification requirements were more demanding. While the trend is not perfectly linear, the data show a general movement toward lower turnout as requirements tend toward requiring greater levels of proof. An average of 63.1 percent of the voting age population turned out in states that required

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## FINAL D R A F T

voters to state their names, compared to 57.3 percent in states that required photo identification. Those figures, however, probably overstate the effect since the inclusion of other factors beyond voter ID requirements in the analysis diminishes the extent of influence of voter ID on turnout. After taking account of the other factors, the analysis still offers some support for the hypothesis that as the burden of voter identification requirements increases, turnout declines. The effect is particularly noticeable in counties with concentrations of Hispanic residents or people living below the poverty line.

Our analysis of litigation suggests that the courts will look strictly at requirements that voters produce a photo ID in order to cast a regular ballot. The courts have used a balancing test to weigh the legitimate interest in preventing election fraud against the citizen's right to privacy (protecting social security numbers from public disclosure, for example) and the reasonableness of requirements for identity documents. To provide both the clarity and certainty in administration of elections needed to forestall destabilizing challenges to outcomes, best practice for the states may be to limit requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

Evidence on the incidence of vote fraud, especially on the kind of vote fraud that could be reduced by requiring more rigorous voter identification is not now sufficient to evaluate the tradeoffs between ensuring ballot access and ensuring ballot integrity. The lack of full understanding of the dynamics of voter ID requirements on political participation can be remedied by requiring the collection and reporting of data on the reasons potential voters are required to cast a provisional ballot and the reasons for rejecting provisional ballots during the 2006 and subsequent elections. Also useful would be the results of exit polling of voters on their experiences in meeting voter ID requirements and on what type of ballot they cast.<sup>2</sup> And, of course, more information is needed on the incidence and varieties of vote fraud, but that inquiry is outside the scope of this report.

A voting system that requires voters to produce an identify document or documents may indeed prevent the ineligible from voting. It may also prevent eligible voters from casting a ballot. If the

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<sup>2</sup> Arizona held its first election with new, stricter ID requirements on March 14, 2006. In at least one county (Maricopa) election officials handed a survey to voters that asked if they knew about the voter identification law and if they did, how they found out about it. Edythe Jensen, "New Voter ID Law Goes Smoothly in Chandler," *Arizona Republic*, March 15, 2006. More surveys of this kind can illuminate the dynamics of voter ID and voting in ways not possible with the current lack of information on this subject.

## FINAL D R A F T

ID requirement of a ballot protection system blocks ineligible voters from the polls at the cost of preventing eligible voters who lack the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit.

### Recommendations for consideration and action by the EAC

The dynamics of Voter ID requirements –how more rigorous Voter ID requirements affect the decision by potential voters to go or stay away from the polls– are not well understood. This lack of understanding should be recognized in the policy process in the states. The debate over voter ID in the states would be improved by additional research sponsored by the EAC.

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

- Encourage or sponsor further research to clarify the connection between Voter ID requirements and the number of potential voters actually able to cast a ballot.
- Recommend as a best practice the publication of a “Voting Impact Statement” by states considering changing their voter ID requirements to protect the integrity of the ballot. The analysis will help ensure that efforts to increase ballot security have a neutral effect on electoral participation by eligible voters. The Voter Impact Statement would estimate the number and demographics of 1) eligible, potential voters that a proposed stricter ID requirement may keep away from the polls or be permitted to cast only a provisional ballot; and 2) and assess the number of ineligible voters who will be prevented from voting by the stricter ID requirements.
- Encourage or require the states in the 2006 election and beyond, to collect and report reliable, credible information on the relationship between ballot access and ballot security. EAC should analyze this publish an analysis of this information to provide a sound estimate of the incidence of the kinds of vote fraud that more stringent ID requirements may prevent. The analysis should describe the dynamics of the voter ID process in preserving the security of the ballot. The states should also be encouraged to use this information to increase the effectiveness of programs to ensure that all eligible voters have required ID and are permitted to vote in future elections.
  - Useful information could be supplied by exit polling or surveys of voters by local election officials. It would make clear why those who cast a provisional ballot



## FINAL D R A F T

were found ineligible to cast a regular ballot. The answers would illuminate the frequency with which ID issues divert voters into the provisional ballot line.

- Polling to ask voters what they know about the voter id requirements would also provide useful context for evaluating the effect of various voter ID requirements on electoral participation.
- Encourage states to examine the time period allowed for voters who cast a provisional ballot because they lacked required ID to return with their identification. In eleven states, voters who had to cast a provisional ballot because they lacked the ID required for a regular ballot were permitted to return later with their ID. Their provision of this ID is the critical step in evaluating the ballots. The length of the period in which the voter may return with ID is important. In setting the time period for return, which now varies among the states from the same day to about two weeks, states should consider three factors: the convenience of the voter, the total time allowed to evaluate ballots<sup>3</sup>, and the safe harbor provision in presidential elections.
- Recommendations to the states from EAC should reflect current judicial trends. Requirements that voters provide some identifying documentation have been upheld, where photo ID is *not* the only acceptable form. Whether laws requiring photo ID will be upheld is more doubtful. To date, only one court has considered a law requiring voters to show photo ID (*Common Cause v. Billups*), and that court concluded that this requirement is likely unconstitutional.

### **Background and Approach of the Study**

Establishing the eligibility of a person to vote has long been part of the electoral process. Voters may have to identify themselves twice in the electoral process: when registering to vote and then when casting a ballot. The stress on voters to provide required ID documents may be greater at the polls on Election Day than when registering. The pressures arising from the need to check ID, even so simple a check as a signature match, can be greater at the polls on Election Day than at the time of registration. Poll workers may be faced with long lines and limited time.

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<sup>3</sup> Our research on provisional voting reveals that states that provide more than week to evaluate provisional ballots end up counting substantially more of those ballots than states that provide less than a week.

## FINAL D R A F T

This analysis focuses on ID requirements on Election Day, but with an appreciation that the ID requirements at time of registration and on Election Day are inter-related.<sup>4</sup> The emphasis in this report is on Voter ID requirements on Election Day and afterwards as election judges evaluate provisional ballots. This is the critical period for the electoral system, the time when ballot access and ballot security are in the most sensitive balance.

The report looks broadly at voter ID issues and goes beyond the rather narrow identification requirements in HAVA. Much of the current debate in state legislatures on voter ID goes ranges beyond HAVA to require more rigorous documentation of identity for all would-be voters, not just those who had not registered in person and are casting a ballot for the first time. The controversy in the states over voter ID seems to have been sparked in part by the HAVA requirements, but goes beyond those requirements, and sets the context for the analysis here.<sup>5</sup>

We recognize that the previously technical, rather dull subject of voter ID requirements has become fiercely partisan and divisive in many states. The polarization of the debate has raised the stakes over this issue, making dispassionate analysis both more valuable and more rare.<sup>6</sup> Voter ID is often described as the critical step in protecting the integrity of the ballot, the process to ensure that the potential voter is eligible and , if eligible, is permitted to cast one ballot and one ballot only. Truly protecting the integrity of the ballot, however, requires a perspective that takes in the entire voting process. It demands more than preventing the ineligible from voting, and should also ensure that all those who are eligible and want to vote can cast a ballot that counts. The protection effort must embrace all forms of voting, including absentee ballots, and consider each step in the process from registration through vote counting.

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<sup>4</sup> As the Carter-Baker Commission noted, photo ID requirements for in-person voting do little to address the problem of fraudulent registration by mail, especially in states that do not require third-party organizations that register voters to verify ID. Commission on Federal Election Reform, pp 46-47.

<sup>5</sup> Harvard Law Review 119:1127: "Legislators hoping to stiffen their state antifraud laws have taken their cue from identification provisions buried in HAVA."

<sup>6</sup> "Of the various electoral procedure laws passed in the fifty states since the 2000 and 2004 presidential elections and those still being debated in state legislatures and local media, few arouse more potent partisan feelings than voter identification laws." *Harvard Law Review* 119:1144. John Fund's 2004 book, *Stealing Elections: How Voter Fraud Threaten Our Democracy*, cites (pages 16 – 17) a Rasmussen Research poll that asked respondents if they were more concerned with voting by ineligible participants or with disenfranchisement of eligible voters. Sixty-two percent of Kerry supporters, but only 18 percent of Bush supporters, worried more about *disenfranchisement*; 58 percent of Bush supporters, but only 19 percent of Kerry supporters were more concerned with *voter fraud*.

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A voting system that requires voters to produce an identity document or documents may prevent the ineligible from voting. It may also prevent the eligible from casting a ballot. If the ID requirements block ineligible voters from the polls at the cost of preventing eligible voters who cannot obtain or have left at home the required forms of identification, the integrity of the ballot may not have been improved; the harm may be as great as the benefit.

Assessing the effectiveness of voter ID as a way to protect the integrity of the ballot should logically include an estimate of the nature and frequency of vote fraud. The EAC has informed us that it has commissioned a separate analysis of the incidence of vote fraud. Consequently, this research does not include consideration of vote fraud nor the possible effectiveness of various voter ID regimes to counter attempts at vote fraud. As a result, our analysis of the effects of voter ID requirements on turnout cannot take into account how many potential voters who did not turn out under comparatively stricter voter ID requirements might have been ineligible or eligible to vote.

In some states, voters lacking required ID, or who have ID that does not reflect their current address, are able to vote only by casting a provisional ballot.<sup>7</sup> Voter ID requirements that require voters to bring a document to the polls --rather than simply sign their names-- can divert more voters to the provisional ballot. Requiring poll workers to request and check ID, can put stress on the already demanding environment of the polling place. Scrutiny of ID can create lines at the polling places. Further delays can result when voters cast a provisional ballot and fill out the ballot envelope. Voters who cast a provisional ballot because they lack their ID on Election Day, and who then fail to return with the needed document or documents, will have their ballot rejected.<sup>8</sup> And, of course, the cost of processing provisional ballots is greater than the cost of regular ballots.

Each of these potential consequences of more elaborate voter identification processes can increase the chance of litigation. Long lines will, at best, discourage voters and at worst make voting seem a hassle, an impression that could keep more citizens (even those with ID) from the

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<sup>7</sup> For example, the Florida voter ID law adopted after the 2004 election and pre-cleared by the Department of Justice, permits voters who cannot meet the ID requirements to sign an affidavit on the envelope of a provisional ballot, which will be counted if the signature matches that on the voter's registration form.

<sup>8</sup> The EAC's Election Day Study found "improper ID," to be the third most common reason for a provisional ballot to be rejected. "Improper ID" was cited by 7 states responding to the survey, compared to 14 mentions for voting in the wrong precinct. *Election Day Study*, Chapter 6, p. 5.

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polls. In conducting this analysis, we were sensitive to the observation that the problem with American elections may well be that too many people do not vote rather than that a few people may vote more than once.

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

1. Is the Voter ID system designed on the basis of valid and reliable, empirical studies of the incidence of the sorts of vote fraud it is designed to prevent?<sup>9</sup>
2. How effective is the ID requirement in increasing the security of the ballot? How well can it be coordinated with a statewide voter database?<sup>10</sup>
3. How practical is the requirement? Can it be administered smoothly by the staff and budget likely to be made available? How much additional training of polling place workers might be required? Is it simple enough or can it be defined with sufficient clarity that poll workers throughout the state can administer it uniformly and with a minimum of local interpretation made on the fly under the pressure of Election Day?<sup>11</sup>
4. How cost-effective is the system? Does it demonstrably increase the security of the ballot affordably, measured in both monetary and other costs? To improve understanding of the non-monetary component of the costs, conducting a voter impact study might be appropriate. The voter impact study would examine, before the adoption of the regulation, the cost of compliance by the voter (such as the cost in time and money of acquiring a photo ID card), any offsetting benefits to voters, and the possible disparate effects of the regulation on various groups of voters.<sup>12</sup> A thorough, objective

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<sup>9</sup> “Often where the battle over voter identification is most heated, real evidence of voter fraud proves scarce: in Georgia, for example, the Secretary of State averred that she had never encountered a single instance of voter impersonation at the polls. State laws might sometimes impose tighter restrictions on in-person voting than on absentee ballots, which yield the greatest incidence of, and provide the easiest avenue for, voter fraud. . .” Harvard Law Review 127:1144 (2006)

<sup>10</sup> See the final section of this report for a brief overview of possible effects of a statewide voter database on voter identification issues.

<sup>11</sup> In New York, in 2004, disparities in training and voting information were made apparent in a study finding elections officials had wildly varying interpretations of what the state’s voter identification requirement actually was. Tova Wang, “Warning Bell in Ohio,” December 5, 2005. Website, the Foundation for National Progress.

<sup>12</sup> “Absent clear empirical evidence demonstrating widespread individual voter fraud, legislatures need to fashion narrowly tailored voter identification provisions with an eye toward the inevitable and well-grounded constitutional challenges that will arise in the courts. Only as states grow more adept at

impact statement that demonstrated the nexus between the identification regime and the integrity of the ballot could provide protection against inevitable legal challenges.

5. If a side effect of the Voter ID regulation is likely to reduce turnout, generally or among particular groups, is it possible to take other steps to ameliorate the adverse consequences?<sup>13</sup>
6. Does it comply with the letter and spirit of Voting Rights Act?
7. The seventh question is the most difficult to answer. Does the Voter ID requirement have a neutral result on the composition of the qualified and eligible electorate? ID requirements should not be designed to, or unintentionally, reduce the turnout of particular groups of voters or supporters of one party or another. Whatever the requirement may be, can all citizens comply with it easily and at no or minimal cost?

### **Voter ID and Turnout**

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

This neat assignment in the following table and map of each state to one category no doubt fails to reflect actual practice at many polling places. Like any system run by fallible people, the voter ID process is subject to wide variation in practice. Voters may be confronted with demands for identification different from the directives in state statutes or regulation. Some voters may be waved through the process without a look at any document, no matter what the regulations say. Under the press of long lines and unfamiliar requirements, there is, in short, no sure way to report the wide variety of conditions voters actually encounter.

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administering elections will courts likely demonstrate greater willingness to uphold strict identification requirements." Harvard Law Review 127:1144 (2006)

<sup>13</sup> For example, the Carter-Baker Commission coupled its recommendation for a national voter ID card to a call for an affirmative effort by the states to reach out and register the unregistered, that is, to use the new Voter ID regime as a means to enroll more voters. Similarly, Richard Hasen Hasen's has suggested combining a national voter ID with universal registration. See his "Beyond the Margin of Litigation: Reforming U.S. Election Administration to Avoid Electoral Meltdown," 62 Washington and Lee Law Review 937 (2005).

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**TABLE 1 -- Voter ID Requirements**

State	Forms of ID Required 2004	Current ID Requirement for First-Time Voters	Current ID Requirements for All Other Voters	Verification Method for Provisional Ballots
Alabama	Provide ID	Provide ID	Provide ID	Address & Registration
Alaska	Provide ID	Provide ID	Provide ID	Signature
Arizona	Provide ID	Gov-issued Photo ID	Gov-issued Photo ID*	Address & Registration
Arkansas	Provide ID	Provide ID	Provide ID	Address & Registration
California	Sign Name	Sign Name	Sign Name	Signature
Colorado	Provide ID	Provide ID	Provide ID	Address & Registration
Connecticut	Provide ID	Provide ID	Provide ID	Affidavit
Delaware	Provide ID	Provide ID	Provide ID	Affidavit
D.C.	Sign Name	HAVA**	Sign Name	Address & Registration
Florida	Photo ID^	Photo ID	Photo ID^	Signature
Georgia	Provide ID	Gov. Issued Photo ID**	Gov. Issued Photo ID**	Affidavit
Hawaii	Photo ID^^	Photo ID	Photo ID^^	Affidavit
Idaho	Sign Name	HAVA	Sign Name	EDR
Illinois	Match Sig.	HAVA	Match Sig.	Affidavit
Indiana	Sign Name	Gov. Issued Photo ID	Gov. Issued Photo ID	Bring ID Later
Iowa	Sign Name	HAVA	Sign Name	Bring ID Later
Kansas	Sign Name	Sign Name	Sign Name	Bring ID Later
Kentucky	Provide ID	Provide ID	Provide ID	Affidavit
Louisiana	Photo ID^	Photo ID	Photo ID^	DOB and Address
Maine	Give Name	HAVA	Give Name	EDR
Maryland	Sign Name	HAVA	Sign Name	Bring ID Later
Mass.	Give Name	HAVA	Give Name	Affidavit
Michigan	Sign Name	HAVA	Sign Name	Bring ID Later
Minnesota	Sign Name	HAVA	Sign Name	EDR
Mississippi	Sign Name	HAVA	Sign Name	Affidavit
Missouri	Provide ID	HAVA	Provide ID	Address & Registration
Montana	Provide ID	HAVA	Provide ID	Bring ID Later
Nebraska	Sign Name	HAVA	Sign Name	Affidavit
Nevada	Match Sig.	HAVA	Match Sig.	Affidavit
NH	Give Name	HAVA	Give Name	EDR
New Jersey	Match Sig.	HAVA	Match Sig.	Bring ID Later
New Mexico	Sign Name	Provide ID	Provide ID	Bring ID Later
New York	Match Sig.	HAVA	Match Sig.	Affidavit
North Carolina	Give Name	HAVA	Give Name	Varies
North Dakota	Provide ID	Provide ID	Provide ID	No Registration
Ohio	Match Sig.	Provide ID	Provide ID	Address & Registration
Oklahoma	Sign Name	HAVA	Sign Name	Address & Registration
Oregon	Match Sig.	HAVA	Match Sig.	Signature
Penn.	Match Sig.	HAVA****	Match Sig.	Address & Registration
Rhode Island	Give Name	HAVA	Give Name	Address & Registration
South Carolina	Photo ID^^	Photo ID	Photo ID^^	Address & Registration
South Dakota	Photo ID^^	Photo ID	Photo ID^^	Affidavit
Tennessee	Provide ID	Provide ID*****	Provide ID	Affidavit
Texas	Provide ID	Provide ID*****	Provide ID	Bring ID Later

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Utah	Give Name	HAVA	Give Name	Bring ID Later
Vermont	Give Name	HAVA	Give Name	Affidavit
Virginia	Provide ID	HAVA	Provide ID	Affidavit
Washington	Sign Name	Provide ID	Provide ID	Address & Registration
West Virginia	Match Sig.	HAVA	Match Sig.	Address & Registration
Wisconsin	Give Name	HAVA	Give Name	Bring ID Later
Wyoming	Give Name	HAVA	Give Name	Affidavit

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

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

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

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

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

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

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

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

**Figure 1**



**Voter ID Requirements 2004**

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

### Effect of Voter ID requirements on Turnout

We categorized each state according to its voter ID requirements in 2004, as shown in Table 1 and analyzed turnout data for each county according to the voter identification requirements of its state. We also assessed self-reported turnout by the sample interviewed in the November 2004 Current Population Survey of the Census Bureau.<sup>14</sup>

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

The individual-level analysis, based on the CPS, produced a similar result. Voter identification requirements exert a statistically significant, negative effect on whether survey respondents said they had voted in 2004. The probability that a respondent to the survey voted dropped with each level of voter identification requirement, with a total drop of 2.5 percent across the five types of identification.

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

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<sup>14</sup> See Appendix \_\_\_ for the full report on voter ID and turnout.



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### Methods and Findings

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

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

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

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

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

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

The aggregate analysis for the maximum identification requirements revealed a small and negative effect on turnout in 2004 controlling for electoral context and demographic factors. If the state was a battleground voter turnout increased. As the percentage of senior citizens in the county increased, so did turnout. The percentage of African-Americans in the county had no effect, but the percentage of Hispanic adults reduced voter turnout, as did the percentage of individuals living below the poverty line. In general, analysis of the aggregate data at the county level provides some support for the hypothesis that as the burden of voter identification requirements increases, turnout declines, at least in the case of the maximum requirements. The decline in turnout is particularly noticeable in counties with concentrations of Hispanic residents or individuals who live below the poverty line. Determining if the reduction in turnout is, in fact, among the Hispanic or poor residents of those counties requires further research at the individual level.

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

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

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

Allowing the voter identification requirement to vary while holding constant all other variables in the model showed that the predicted probability of turnout ranged from 91.2 percent if all voters had to state their names to 88.7 percent if all voters had to provide photo identification. (Note that these turnout figures are higher than actual because of the factors involved in the CPS's self-reported survey, but that the difference in effect is reasonably related to the results obtained in the aggregate analysis.) In other words, the probability of voting dropped with each level of the maximum voter identification requirement, with a total drop of 2.5 percent across the five types of identification. When taking into account the minimum requirement for identification, the probability showed a similar decline, with a slightly larger total drop of 3.3 percent.

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

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

### Discussion and Conclusions of the Analysis

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

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

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- Self-reported registered voters who had not graduated from high school would be 6.7 percent less likely to vote if the maximum requirement is photo identification as opposed to stating one's name. When considering the minimum requirements, those with less than a high school education would be 7.4 percent less likely to say they voted if the requirement was an affidavit as opposed to stating one's name.
- Age was also a key factor, with voters ages 18 to 24 being 7.7 percent to 8.9 percent less likely to vote as the requirements ranged from stating one's name to providing a photo identification or affidavit.
- Two concerns aired by critics of voter identification requirements were not borne out by the results. African-American voters did not appear to be affected by voter identification requirements, according to both the aggregate data and individual-level data analyses. Also, the self-reports of elderly voters, while indicating that they would be slightly less likely to vote as ID requirements become stricter, do not show a dramatic effect.

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

It is important to note that the 2004 data do not allow us to draw conclusions about the effect of laws such as those recently passed in Georgia and Indiana, which require government-issued photo ID. No such laws were in place in 2004, and the five states that then required photo ID at the time allowed voters who signed an affidavit or provided another form of identification to cast a regular ballot.

**Litigation Over Voter ID Requirements**

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

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

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

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

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

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

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suggest that best practice may be to limit requirements for voter identification to the minimum needed to prevent duplicate registration and ensure eligibility.

### **Developments since 2004**

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

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

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

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

### **State Voter Databases and Voter ID**

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



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

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

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

### 6. Conclusions

The form of Voter ID required of voters affects turnout. Lack of ID can keep voters from the polls. Or, when they go to the polls, it is reasonable to conclude that stricter Voter ID requirements will divert more voters into the line for provisional ballots. (This conclusion is a conjecture because we lack good data on why voters must cast their ballots provisionally.) The result can be longer lines at the polls and confusion, without a clear demonstration that the security of the ballot is correspondingly increased.<sup>15</sup>

The dynamics of Voter ID requirements—how the more rigorous Voter ID requirements—affect the decision by potential voters to go or stay away from the polls are not well understood. This lack of understanding should be recognized in the policy process. The debate over voter ID in

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<sup>15</sup> In this connection, the Brennan Center's response to the Carter-Baker Commission report observes that, "while it might be true that in a close election "a small amount of fraud could make the margin of difference," it is equally true that the rejection of a much larger number of eligible voters could make a much bigger difference in the outcome." *Response to the Report of the 2005 Commission on Federal Election Reform*, The Brennan Center for Justice at NYU School of Law and Spencer Overton, On Behalf Of The National Network on State Election Reform, September 19, 2005

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the states would be improved by additional research sponsored by the EAC. So far as it may be necessary to reduce vote fraud made possible by inadequate voter ID, the research could identify methods to eliminate the need for voters to bring specific identity documents with them to the polls while assuring that each voter who casts a ballot is eligible and votes only once. One way to break the connection between the benefits of photo ID and the need for the voter to bring identification to the polling place, as recommended elsewhere by one of the authors of this report, Edward Foley: keep the information to verify a voter's identity in the records at the polling place. Other approaches could be developed.<sup>16</sup>

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<sup>16</sup> "A potential solution to this problem is to break the connection with the photo requirement and the obligation to produce identification at the polls. Eligible citizens could be required to provide a photograph at the time they *register* to vote, and poll workers would match this photograph with the image of the person standing in front of them. Given the availability of digital photography, the photos of registered voters could be stored in electronic poll books and easily "pulled up" with a click of a computer mouse when voters sign in to vote. . . Of course, to satisfy the concerns of liberals, a requirement to provide a digital photograph at time of registration would have to address the cost and accessibility issues identified earlier."

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### Appendices

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

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

#### Court Decisions

#### Summary of Relevant Cases:

#### Challenges Prevailed:

##### *American Civil Liberties Union of Minnesota v. Kiffmeyer, 2004*

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

##### *Greidinger v. Davis, 1993*

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

#### Challenges Rejected:

##### *League of Women Voters v. Blackwell, 2004.*

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

##### *Colorado Common Clause v. Davidson, 2004*

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

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

### *McKay v. Thompson, 2000*

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

### *Kemp v. Tucker, 1975*

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

### *Perez v. Rhiddlehoover, 1966*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Current Litigation Concerning Voter ID Issues<sup>17</sup>**

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

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

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<sup>17</sup> As of January 2, 2006



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

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

The lawsuit alleges five separate violations of state and federal law. First, the complaint alleges that the identification requirements infringe on the right to vote guaranteed in the Georgia constitution (Compl. 32)<sup>18</sup>. In addition, the Plaintiffs claim violations of the Federal Civil Rights Act and Voting Rights Act. (Compl. 36,38). Finally, the lawsuit alleges violations of the Fourteenth and Twenty-Fourth amendments to the U.S. Constitution. The complaint claims that the ID requirements constitute an "undue burden" on the right to vote, in violation of the Equal Protection Clause of the Fourteenth Amendment (Compl. 34). The ID requirement does not apply to most absentee voters, and thus the requirement is also over-broad and not narrowly tailored to address the stated purpose of preventing voter fraud (Compl. 34). The complaint further alleges that the cost of obtaining a photo ID constitutes a poll tax, in violation of the Twenty-Fourth Amendment, and that the cost is also a violation of the Fourteenth Amendment because it applies to voters who choose to vote in person, and not to those who vote absentee (Compl. 34,35).

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

The Defendants appealed the motion for preliminary injunction to the Eleventh Circuit, and oral argument is scheduled for March 1, 2006. In addition, some news reports have claimed that the Georgia legislature is considering re-visiting the ID requirements in light of the on-going litigation.<sup>19</sup> As for the merits, in granting the preliminary injunction the District Court has already signaled its belief that the federal constitutional claims are likely meritorious. The Eleventh Circuit may have a different view, but for now the case looks to have a reasonable chance of success.

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

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

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<sup>18</sup> Litigation documents are available at the Election Law @ Moritz website.  
<http://moritzlaw.osu.edu/electionlaw/litigation/index.php>

<sup>19</sup> GA Legislature May Revisit Voter ID Law, State Net Capitol Journal, Dec. 19, 2005.

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

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

The case is currently in the pre-trial phase, with both sides awaiting decisions on their respective motions for summary judgment.<sup>20</sup> The likelihood of success is bolstered by the fact that the Fourteenth amendment constitutional claims have already been found persuasive by at least one other Federal District Court. However, the Indiana law is notably different than its Georgia counterpart in that it provides free identification. While the plaintiffs make a solid argument that related costs still amount to a poll-tax, it is possible that the court could distinguish on this matter.

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

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<sup>20</sup> According to an AP article, the Plaintiffs filed some type of brief on December 21—however it is not yet up on the Moritz website and I am unsure how to access it otherwise.

APPENDIX

Annotated Bibliography on Voter Identification Issues

Law Journals

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

Historical articles:

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

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

### **Marginally relevant/limited discussion of Voter ID issues**

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

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

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Appendix

**Deliberative Process  
Privilege**

Karen Lynn-Dyson/EAC/GOV

03/16/2006 09:57 AM

To Paul DeGregorio/EAC/GOV@EAC, Raymundo  
Martinez/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC,  
Donetta L. Davidson/EAC/GOV@EAC  
cc Thomas R. Wilkey/EAC/GOV@EAC, Juliet E.  
Thompson-Hodgkins/EAC/GOV@EAC, Amie J.  
Sherrill/EAC/GOV@EAC, Adam Ambrogio/EAC/GOV@EAC,  
bcc

Subject Fw: Voter ID Paper --Final Draft

Commissioners-

Attached please find a copy of the draft Voter ID best practices paper which Eagleton submitted to me last evening.

I will confer with Tom regarding when you would like this put on your Commissioner meeting agenda.

Regards-

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

— Forwarded by Karen Lynn-Dyson/EAC/GOV on 03/16/2006 08:47 AM —



"Tom O'Neill"

03/15/2006 08:21 PM

To klynndyson@eac.gov  
cc "Tim Vercellotti" <[REDACTED]>

Subject Voter ID Paper --Final Draft

Karen,

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

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

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

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discuss them.

Tom O'Neill



ReportFinalDraft.doc

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# REPORT AND RECOMMENDATIONS TO THE EAC

## VOTER IDENTIFICATION ISSUES

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### 1. Introduction and Report Background

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

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

### 2. Voter Identification –Background and Approach of the Study

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

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

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

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

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

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

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



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

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

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

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

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

<sup>4</sup> See the final section of this report for a brief overview of possible effects of a statewide voter database on voter identification issues.

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

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

### Summary of findings and conclusions

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

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

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

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

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

### Recommendations for consideration and action by the EAC

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

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

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

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

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

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**3. Voter ID and Turnout**

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

**TABLE 1 -- Voter ID Requirements**

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

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

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

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

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

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

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

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

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

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

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

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

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

### Effect of Voter ID requirements on Turnout

#### Summary of Findings and Conclusions

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

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

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

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<sup>9</sup> See Appendix \_\_\_ for the full report on voter ID and turnout.

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

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

### Methods and Findings

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

### Discussion and Conclusions of the Analysis

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

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- Hispanic voters and the poor appear to be less likely to vote if the level of required identification becomes more demanding, according to both the aggregate and the individual-level data. In the individual-level data, for Hispanic voters, the probability of voting dropped by 9.7 percent across the various levels of minimum identification requirements. Survey respondents living in poor households would be 5.3 percent less likely to vote as the requirements vary from stating one's name to attesting to one's identity in an affidavit.
- Self-reported registered voters who had not graduated from high school would be 6.7 percent less likely to vote if the maximum requirement is photo identification as opposed to stating one's name. When considering the minimum requirements, those with less than a high school education would be 7.4 percent less likely to say they voted if the requirement was an affidavit as opposed to stating one's name.
- Age was also a key factor, with voters ages 18 to 24 being 7.7 percent to 8.9 percent less likely to vote as the requirements ranged from stating one's name to providing a photo identification or affidavit.
- Two concerns aired by critics of voter identification requirements were not borne out by the results. African-American voters did not appear to be affected by voter identification requirements, according to both the aggregate data and individual-level data analyses. Also, the elderly, while they would be slightly less likely to vote as requirements range from least to most demanding, would not necessarily be affected in the dramatic manner predicted by some opposed to photo identification requirements in particular.

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

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

**4. Litigation over Voter ID Requirements**

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

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

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

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

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

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

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



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### 5. Developments since 2004

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

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

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

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

#### State Voter Databases and Voter ID

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

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

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

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

### 6. Conclusions

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

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

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

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

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### Appendices

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

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

### Court Decisions

#### Summary of Relevant Cases:

#### Challenges Prevailed:

##### *American Civil Liberties Union of Minnesota v. Kiffmeyer, 2004*

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

##### *Greidinger v. Davis, 1993*

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

#### Challenges Rejected:

##### *League of Women Voters v. Blackwell, 2004.*

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

##### *Colorado Common Clause v. Davidson, 2004*

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

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

### *McKay v. Thompson, 2000*

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

### *Kemp v. Tucker, 1975*

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

### *Perez v. Rhiddlehoover, 1966*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

### **Current Litigation Concerning Voter ID Issues<sup>12</sup>**

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

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

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<sup>12</sup> As of January 2, 2006

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

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

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

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

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

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

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

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

<sup>14</sup> GA Legislature May Revisit Voter ID Law, State Net Capitol Journal, Dec. 19, 2005.

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

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

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

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

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

**APPENDIX**

**Annotated Bibliography on Voter Identification Issues**

Law Journals

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- George W. Grayson, *Registering and Identifying Voters: What the United States Can Learn From Mexico*, 3 ELECTION L.J. 513 (2004).
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- Robert A. Pastor, *Improving the U.S. Electoral System: Lessons from Canada and Mexico*, 3 ELECTION L.J. 584 (2004).
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- Brian Kim, *Recent Development: Help America Vote Act*, 40 HARV. J. ON LEGIS. 579 (Summer 2003).
  - Discussion of HAVA requirements and voter ID, problems in 2000
- Robert L. McCurley, *Legislative Wrap-Up: Election Law Changes*, 64 ALA. LAW. 364, Nov. 2003.
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  - Discusses challenging elections based on voter fraud & illegal votes
- Rebecca Barrett, *Election*, 18 GA. ST. U. L. REV. 114 (Fall 2001).
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**Historical articles:**

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  - Little bit of historical
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- Symposium, *Disability Law, Equality, and Difference: American Disability Law and the Civil Rights Model, Alabama Section*, 55 ALA. L. REV. 1167 (Summer 2004).
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- Bryan Mercurio, *Democracy in Decline: Can Internet Voting Save the Electoral Process*, 22 J. MARSHALL J. COMPUTER & INFO. L. 409 (Winter 2004).
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Appendix

Karen Lynn-Dyson/EAC/GOV

02/17/2005 04:02 PM

To Gracia Hillman/EAC/GOV@EAC, Paul  
DeGregorio/EAC/GOV@EAC, DeForest Soaries  
Jr./EAC/GOV@EAC, Raymundo Martinez/EAC/GOV@EAC  
cc Carol A. Paquette/EAC/GOV@EAC, Juliet E.  
Thompson/EAC/GOV@EAC

bcc

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

Commissioners-

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

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



Statement of Work - Provisional Voting, Voter ID.doc

Thank you for your help and attention to this matter.

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

010751

February 14, 2005

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

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

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

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

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

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

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

010752

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

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

#### 4.0 Specific Tasks

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

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

#### Provisional Voting

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



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

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

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

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

### Voter Identification Requirements

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

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

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

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

8.0 Schedule of Deliverables:

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

REMAINING STANDARD CONTRACT TERMS TO BE PROVIDED.

010756

**Deliberative Process  
Privilege**



"Rosemary Rodriguez"

03/14/2007 09:33 AM

To: jhodgkins@eac.gov, "Davidson, Donetta"  
<ddavidson@eac.gov>, ghillman@eac.gov,  
chunter@eac.gov  
cc: twilkey@eac.gov

bcc

Subject: Re: Edited version of the Voter ID statement

Is this the latest draft?

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

From: "jhodgkins@eac.gov" <jhodgkins@eac.gov>

To: "Davidson, Donetta" <ddavidson@eac.gov>; ghillman@eac.gov; chunter@eac.gov;

Cc: twilkey@eac.gov

Sent: Tuesday, March 13, 2007 6:06:46 PM

Subject: Edited version of the Voter ID statement

Commissioners,

I intended to get this out to you much earlier today, but the day got away from me. After our hearing last week before the House Appropriations Subcommittee and the requests that were made for the draft reports of the Eagleton and Voter Fraud studies, I think that we must take a different approach to addressing the quality of these reports. While it may or may not be our intention to release these documents publicly, we MUST respond to the request made from a Congressional Committee and cannot use FOIA exemptions as FOIA does not apply to them. I believe that it is safe to assume that if we provide these documents to the Committee, even with a letter explaining their predecisional nature, that these documents will be released into the public spectrum. As such, I feel that EAC needs to make a statement regarding the quality of these reports and why we are making (or have made) a decision not to adopt the draft reports that were produced by our contractors.

Thus, I edited the statement that Karen produced with comments that reflect why we will not adopt the Eagleton report. That document is attached below. I would suggest that we put similar statements regarding Eagleton's report and the Voter Fraud draft report into a letter that I am drafting to go to the Committee with the requested documents. I will edit that letter to include similar comments tonight/tomorrow morning and will circulate it to you.

Please let me know if you have any questions, concerns, comments, etc.

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

010757

---

No need to miss a message. Get email on-the-go  
with Yahoo! Mail for Mobile. Get started.

010758

**Deliberative Process  
Privilege**



"Rosemary Rodriguez "

03/12/2007 02:53 PM

To twilkey@eac.gov, klynndyson@eac.gov,  
ddavidson@eac.gov, ghillman@eac.gov, chunter@eac.gov  
cc jlayson@eac.gov, jhodgkins@eac.gov, "stephanie wolson"

bcc [REDACTED]

Subject Re: Next draft of the Voter ID statement

I would prefer to wait due to the fact that I do not have federal computer clearance, I cannot print, I cannot look at historical drafts, etc.

Re: Health--having just returned from death's door (that's what it felt like), I feel your pain. My problem was allergies.

It is 70 degrees in Denver and I am cleaning out my old office.

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

From: "twilkey@eac.gov" <twilkey@eac.gov>

To: klynndyson@eac.gov; ddavidson@eac.gov; ghillman@eac.gov; chunter@eac.gov;  
rosemaryrod2003 [REDACTED]

Cc: jlayson@eac.gov; jhodgkins@eac.gov; stephanie wolson [REDACTED]

Sent: Monday, March 12, 2007 10:24:29 AM

Subject: Re: Next draft of the Voter ID statement

Now I know where I got it from

-----  
Sent from my BlackBerry Wireless Handheld

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

From: Karen Lynn-Dyson

Sent: 03/12/2007 12:09 PM EDT

To: Donetta Davidson; Gracia Hillman; Caroline Hunter; rosemaryrod2003@yahoo.com

Cc: Jeannie Layson; Juliet Hodgkins; Thomas Wilkey; stephanie.wolson@gmail.com

Subject: Next draft of the Voter ID statement

Commissioners-

It appears that I may be the latest casualty of the EAC "bug". As such, I'm leaving early today and may or may not be in the office tomorrow.

Jeannie and I have spoken of her getting the next draft of the statement from the four of you and preparing the final edited draft for the tally vote.

I would imagine Tom's office can put together the tally vote for this document and get it to you all tomorrow, if you have been able to reach a consensus on the final document. If this is not seen as urgent

010759

and I am back in the office I will be happy to get the material together for Wednesday.

Thanks

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

---

Need Mail bonding?

Go to the [Yahoo! Mail Q&A](#) for great tips from Yahoo! Answers users.

010760



"Rosemary Rodriguez"

03/09/2007 02:04 PM

**Deliberative Process  
Privilege**

To klynndyson@eac.gov  
cc chunter@eac.gov, "Davidson, Donetta"  
<ddavidson@eac.gov>, ghillman@eac.gov,  
jhodgkins@eac.gov, jlayson@eac.gov  
bcc

Subject Re: Final EAC statement on Voter ID report

I will be in the office Tuesday afternoon. Thanks.

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

From: "klynndyson@eac.gov" <klynndyson@eac.gov>

To: [Redacted]

Cc: chunter@eac.gov; "Davidson, Donetta" <ddavidson@eac.gov>; ghillman@eac.gov;  
jhodgkins@eac.gov; jlayson@eac.gov

Sent: Friday, March 9, 2007 10:49:00 AM

Subject: Re: Final EAC statement on Voter ID report

Commissioners-

As requested, Jeannie Layson will take the attached statement and prepare a final version for Commissioner's review and tally vote on Monday.

Regards-

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

"Rosemary Rodriguez"

[Redacted]

03/08/2007 05:15 PM

To jhodgkins@eac.gov, klynndyson@eac.gov  
cc jlayson@eac.gov, ghillman@eac.gov, "Davidson, Donetta"  
<ddavidson@eac.gov>, chunter@eac.gov  
Subj Re: Final EAC statement on Voter ID report  
ect

010761



are we now in the 48 hour tally vote period?

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

From: "jhodgkins@eac.gov" <jhodgkins@eac.gov>

To: klynndyson@eac.gov

Cc: jlayson@eac.gov; ghillman@eac.gov; "Davidson, Donetta" <ddavidson@eac.gov>; chunter@eac.gov; [REDACTED]

Sent: Thursday, March 8, 2007 4:35:27 PM

Subject: Re: Final EAC statement on Voter ID report

Karen,

I started by adopting all of the changes made to the document that you sent me. Then I made edits. Because they are so extensive, I thought it best to note them in track changes. Once you have had a chance to read them over, you can get rid of the formatting problems by "accepting all changes" to the document.

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

Karen Lynn-Dyson/EAC/GOV

03/08/2007 12:47 PM

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

Subject Final EAC statement on Voter ID report

Julie/Jeannie-

Attached please find the final version of the EAC statement on the Voter ID report.

As indicated, the Commissioners have asked that you all review this statement for legal accuracy, grammar, syntax, etc, before it is sent to them for final review and approval.

If you could, go ahead and make the edits without track changes (as track changes seem to create printing problems)

Once you all have edited the statement I will send the final version on to them for the tally vote.

010762

Thanks

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

Don't get soaked. Take a quick peek at the forecast  
with the Yahoo! Search weather shortcut.

---

Food fight? Enjoy some healthy debate  
in the Yahoo! Answers Food & Drink Q&A.

010763



"Rosemary Rodriguez"

[Redacted]

03/08/2007 05:19 PM

To: jhodgkins@eac.gov

cc

bcc

Subject: Re: Final EAC statement on Voter ID report

**Deliberative Process  
Privilege**

okay. thanks.

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

From: "jhodgkins@eac.gov" <jhodgkins@eac.gov>  
To: rosemaryrod2003@yahoo.com  
Sent: Thursday, March 8, 2007 5:16:57 PM  
Subject: Re: Final EAC statement on Voter ID report

No. When we are ready to get started with that, I will send you a package with a date and time that the vote begins and ends. Possibly tomorrow. But, it could be Monday.

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

"Rosemary Rodriguez"

[Redacted]

03/08/2007 05:15 PM

To: jhodgkins@eac.gov, klynndyson@eac.gov  
cc: jlayson@eac.gov, ghillman@eac.gov, "Davidson, Donetta"  
<ddavidson@eac.gov>, chunter@eac.gov

Subj: Re: Final EAC statement on Voter ID report  
ect

are we now in the 48 hour tally vote period?

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

From: "jhodgkins@eac.gov" <jhodgkins@eac.gov>  
To: klynndyson@eac.gov  
Cc: jlayson@eac.gov; ghillman@eac.gov; "Davidson, Donetta" <ddavidson@eac.gov>;  
chunter@eac.gov; [Redacted]  
Sent: Thursday, March 8, 2007 4:35:27 PM

010764

Subject: Re: Final EAC statement on Voter ID report

Karen,

I started by adopting all of the changes made to the document that you sent me. Then I made edits. Because they are so extensive, I thought it best to note them in track changes. Once you have had a chance to read them over, you can get rid of the formatting problems by "accepting all changes" to the document.

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

Karen Lynn-Dyson/EAC/GOV

03/08/2007 12:47 PM

To Juliet E. Hodgkins/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC  
cc  
Subject Final EAC statement on Voter ID report

Julie/Jeannie-

Attached please find the final version of the EAC statement on the Voter ID report.

As indicated, the Commissioners have asked that you all review this statement for legal accuracy, grammar, syntax, etc, before it is sent to them for final review and approval.

If you could, go ahead and make the edits without track changes (as track changes seem to create printing problems)

Once you all have edited the statement I will send the final version on to them for the tally vote.

Thanks

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

010765

Washington, DC 20005  
tel:202-566-3123

Don't get soaked. Take a quick peek at the forecast  
with the Yahoo! Search weather shortcut.

---

Never miss an email again!

Yahoo! Toolbar alerts you the instant new Mail arrives. Check it out.

**Deliberative Process  
Privilege**



"Rosemary Rodriguez"

03/08/2007 05:15 PM

To jhodgkins@eac.gov, klynndyson@eac.gov  
cc jlayson@eac.gov, ghillman@eac.gov, "Davidson, Donetta"  
<ddavidson@eac.gov>, chunter@eac.gov  
bcc

Subject Re: Final EAC statement on Voter ID report

History This message has been replied to

are we now in the 48 hour tally vote period?

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

From: "jhodgkins@eac.gov" <jhodgkins@eac.gov>  
To: klynndyson@eac.gov  
Cc: jlayson@eac.gov; ghillman@eac.gov; "Davidson, Donetta" <ddavidson@eac.gov>;  
chunter@eac.gov; [REDACTED]  
Sent: Thursday, March 8, 2007 4:35:27 PM  
Subject: Re: Final EAC statement on Voter ID report

Karen,

I started by adopting all of the changes made to the document that you sent me. Then I made edits. Because they are so extensive, I thought it best to note them in track changes. Once you have had a chance to read them over, you can get rid of the formatting problems by "accepting all changes" to the document.

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

Karen Lynn-Dyson/EAC/GOV

03/08/2007 12:47 PM

To Juliet E. Hodgkins/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC  
cc  
Subject Final EAC statement on Voter ID report

Julie/Jeannie-

010767

Attached please find the final version of the EAC statement on the Voter ID report.

As indicated, the Commissioners have asked that you all review this statement for legal accuracy, grammar, syntax, etc, before it is sent to them for final review and approval.

If you could, go ahead and make the edits without track changes (as track changes seem to create printing problems)

Once you all have edited the statement I will send the final version on to them for the tally vote.

Thanks

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

---

Don't get soaked. Take a quick peek at the forecast  
with the Yahoo! Search weather shortcut.

010768

**Deliberative Process  
Privilege**



"Tom O'Neill"  
[Redacted]

05/22/2006 03:39 PM

To klynndyson@eac.gov

cc asherrill@eac.gov, jthompsonhodgkins@eac.gov

bcc

Subject RE: Presentations at the EAC Governing Boards

History

This message has been forwarded

Karen,

The PowerPoint presentations for the Standards Board and the Advisory Board are attached.  
See you tomorrow.

Tom O'Neill

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

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

**Sent:** Monday, May 22, 2006 3:18 PM

**To:** [Redacted]

**Cc:** asherrill@eac.gov; jthompsonhodgkins@eac.gov

**Subject:** RE: Presentations at the EAC Governing Boards

Hi Tom-

Just checking to see if your Power Point slides might be ready.

When they are, please send them on to me and hit Reply to All as Julie Hodgkins and Amie Sherrill (the Chairman's Special Assistant) would like copies before the presentation.

Thanks

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



tel:202-566-3123 BriefingPVADVBD524.ppt BriefingPVSTDBD523.ppt

010769



Briefing for

May 24 , 2006

010770



# Provisional Voting

## Findings and Recommendations

010771



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# EAGLETON INSTITUTE OF POLITICS

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Rutgers, The State University of New Jersey

**MORITZ COLLEGE OF LAW THE OHIO STATE UNIVERSITY**

010772

**Dr. Ruth B. Mandel, Director. Eagleton Institute of Politics**

Board of Governors Professor of Politics

Principal Investigator and Chair of the Project Management Team

**Edward B. Foley, Robert M. Duncan/Jones Day Designated Professor of Law**

The Moritz College of Law

Director of Election Law @ Moritz

**Ingrid Reed. Director of the New Jersey Project**

The Eagleton Institute of Politics

**Daniel P. Tokaji, Assistant Professor of Law**

The Moritz College of Law

**John Weingart, Associate Director**

The Eagleton Institute of Politics

**Thomas M. O'Neill, Consultant**

The Eagleton Institute of Politics

Project Director

## **QUESTIONS RAISED BY THE EAC**

- 1. How did states prepare for HAVA's provisional voting requirements?**
- 2. How did preparation and performance vary between states that had previously had some form of Provisional Ballot and those that did not?**
- 3. How did litigation affect the implementation of Provisional Voting?**
- 4. How effective was provisional voting in enfranchising qualified voters?**
- 5. Did State and local processes provide for consistent counting of provisional ballots?**
- 6. Did local election officials have a clear understanding of how to implement provisional voting?**

## **TO ANSWER THOSE QUESTIONS**

- Surveyed 400 local election officials**
- Reviewed the EAC's Election Day Survey**
- Analyzed states' experience with provisional voting:**
  - use of statewide registration database**
  - treatment of out-of-precinct ballots**
  - use of different approaches to voter ID**
  - consistency**
  - time period allowed for ballot evaluation**
- Collected provisional voting statutes and regulations**
- Analyzed litigation**

## **Variation among the states**

- In 2004 nationwide about 1.9 million provisional ballots cast, 1.2 million , or just over 63%, were counted.
- The percentage of provisional ballots in the total vote varied by a factor of 1,000 -- from a high of 7% in Alaska to Vermont's 0.006%.
- The portion of provisional ballots cast that were counted ranged from 96% in Alaska to 6% in Delaware.

## Some sources of variation among states

### Experience

Share of provisional ballots in the total vote was 6 times greater in states that had used provisional ballots before than in states where the provisional ballot was new.

### Administrative Arrangements

#### Time to evaluate ballots

- States that provided less than one week counted an average of 35.4% of their ballots.
- States that permitted more than 2 weeks counted 60.8%.

#### Voter registration data bases

- States with voter registration databases counted an average of 20% of the provisional ballots cast.
- States without databases counted 44%.]



## **Variation within states**

**Rate of counting provisional ballots varied by as much as 90% to 100% among counties in the same state.**

**Resources available to administer provisional voting varied considerably among and within states.**

**The Election Day Study found that staffing problems appeared to be particularly acute for jurisdictions in the lowest income and education categories.**

**1. How did states prepare for HAVA's provisional voting requirements?**

---

**Most election officials received provisional voting instructions from state government. The type and amount of instruction received varied widely across the states.**

**Almost all provided training or written instruction to precinct-level poll workers on how to administer provisional ballots.**

## **2. How did preparation and performance vary between states that had previously had some form of provisional ballot and those that did not?**

---

**18 states were new to provisional voting; 25 others had experience.**

**Local election officials in the “old” states felt more confident.**

**Provisional ballots in “old states” : more than 2% of the total vote, 4 times the proportion in “new” states.**

**Counting provisional ballots in the final vote, the “old” states averaged 58% nearly double the average (33%) in “new” states.**

### **Question 3: How did litigation affect the implementation of Provisional Voting?**

---

#### **Pre-election litigation clarified voters' rights to:**

- **Sue in federal court to remedy violations of HAVA**
- **Receive provisional ballots, even though they would not be counted**
- **Be directed to the correct precinct**
- **Most pre-election litigation occurred too late to influence how states implemented provisional voting.**

#### **4. How effective was provisional voting in enfranchising qualified voters?**

---

**Provisional ballots enfranchised 1.2 million voters, or 1.01% of turnout, who otherwise would have been turned away.**

**The number of voters who could be helped by provisional voting may be about 2.5 – 3 million. Provisional voting might be about 50% effective.**

**There is room for improvement.**

## **Question 5: Did State and local processes provide for consistent counting of provisional ballots?**

Little consistency existed among and within states.

“New” states with registration databases counted 20% of the ballots cast. Those without databases counted more than double that rate (44%).

States that allowed out-of-precinct ballots counted 56% of the provisional ballots, 42% for in-precinct states.

States that provide a longer the time to evaluate provisional ballots counted a higher proportion of those ballots.

Less than 1 week:	58.6%
1 – 2 weeks:	65.0%
More than 2 weeks:	73.8%.

**Question 6: Did local election officials have a clear understanding of how to implement provisional voting?**

---

**8 out of 10 county-level elections officials reported receiving instructions from their state government**

**4 out of 10 local election officials felt poll workers needed more training to understand their responsibilities**

**Objectively, how well did the process appear to be managed?**

**Lack of consistency among and within states indicates wide differences in understanding by election officials.**

**The number of states that have amended statutes on provisional voting to include poll worker training is a sign of dissatisfaction with the level of understanding in 2004.**

Margaret Sims/EAC/GOV  
01/19/2006 03:26 PM

To jthompson@eac.gov, Gavin S. Gilmour/EAC/GOV@EAC  
cc Karen Lynn-Dyson/EAC/GOV@EAC  
bcc  
Subject Extension Needed for Voting Fraud/Voter Intimidation Project  
Consultants

The estimated additional hours needed to bring the Voting Fraud/Voter Intimidation Project to a logical stopping point (without requiring a draft statement of work for any future RFPs on the topic) are:

Expert Interviews:

3 hours of scheduling  
17 hours conducting the interviews  
15 hours summarizing and analyzing the interviews

Subtotal: 35 hours

Nexis research, organization of research, summary of research (Tova): 180 hours  
Lexis research, organization of research, summary of research (Job): 180 hours  
Subtotal: 360 hours

Working Group preparation and meeting time: 20 hours

Final Report: 45 hours

Grand Total: 460

The sooner we find out if the Commissioners will accept this extension, the better. If the extension (or new contract for 3 additional months) is not accepted, we have to figure out what can be done in the limited time remaining. --- Peggy

010785



Margaret Sims /EAC/GOV  
11/30/2005 09:28 AM

To jthompson@eac.gov, Gavin S. Gilmour/EAC/GOV@EAC  
cc  
bcc

Subject Definition of Voting Fraud and Voter Intimidation

History:  This message has been replied to.

Attached discusses the definitions that Job and Tova would like to use. I have already taken issue with the exclusion of all voter registration shenanigans and the inclusion of administrative mistakes. Would be pleased to have your feedback and, if possible, your assistance for 15 minutes of a teleconference today (3:30 PM to 3:45 PM). --- Peggy



combined defining Fraud 11-18-05.doc

010786

“Fraud” should be defined as any illegal act that has a clear and direct distorting impact on the election results. It includes adding illegal votes and tampering with vote counts as well as actions such as voter intimidation and deceptive practices that serve to subtract legal votes. Illegally keeping certain voters from voting has the same distorting effect on election outcomes as ineligible voters casting ballots or some form of modern ballot box stuffing. Fraud may involve wrongdoing by individual voters, election workers or organized groups such as campaigns or political parties.

Vote fraud usually breaks down into three categories---intentional fraud, de facto fraud, and quasi-fraud. Research and investigation of fraud should focus on those forms of fraud that are known to have had true impacts on election outcomes.

"Intentional fraud" includes acts that are intentionally planned. Such forms of fraud include the following:

- Absentee/mail ballot fraud, e.g. coercing another voter's choice, use of a false or other voter's name and signature, destruction or misappropriation of an absentee or mail-in ballot
- Ex-felons knowingly and willingly casting illegal ballots
- Knowingly and willingly misleading an ex-felon about his or her right to vote
- Voting more than once
- Noncitizen voting
- Intimidating practices e.g. intimidating signs, inappropriate police presence, abusive/threatening treatment by poll workers or others that deter voters from voting
- Deceptive practices e.g. providing false information to voters about the voting process, such as when and/or where to vote, who is eligible to vote
- Fraud by election administrators in the handling or counting of ballots, misrepresentation of vote tallies
- Vote buying
- Addition or destruction of cast ballots by elections officials
- Intentional wrongful removal of eligible voters from voter registration lists
- Knowingly falsifying registration information pertinent to eligibility to cast a vote, e.g. residence, criminal status, etc.

The second type of fraud is de facto fraud. This occurs when the intent to commit fraud is lacking, but the party or parties' actions results in fraud nonetheless. De facto fraud more often is a result of a misapplication of election statutes or the application of a long established practice or tradition in a way that contradicts the intent of the statute. Examples of de facto fraud include the abusive use of challengers to voter registrations or to voters' eligibility at the polls and wrongful purging of voter lists.

The last form of fraud, "quasi-fraud," is the most difficult to classify as such because the correct law (case law or legislative act) is applied but the result is to deprive voters of their electoral rights. This type of fraud is also the most difficult to catch because it requires both legal electoral expertise and almost always occurs on the day of the election. One example of this is Arkansas supreme court case law making election

statutes mandatory before an election but discretionary after. The discretion is left up to the county board of election commissioners. These are not elected but are either the chairs of the two main political parties or a person elected by the county central committee should the chair decide not to serve. The result is that election statutes are never enforced after the election. It therefore permits past patterns of fraud to persist.

Two areas that are of major concern but do not come within the purview of fraud for the purposes of this type of research are registration forms in the name of another or fake person(s), which from the evidence do not usually result in illegal votes; and electronic vote machine tampering, for which there is as of now no definitive evidence has taken place in a U.S. election.

Subject Voter Fraud Contract

Karen/Tom,


Peggy held a meeting with voting fraud/intimidation contractors. In this meeting they noted that despite the fact that the contract requires them to perform legal research, they do not have the means to do so (no access to Westlaw, etc.). They noted that in discussions with the two of you, they were told that the EAC would provide them access to West Law and, possibly, a law clerk with office space. None of this is noted in the contract. They claim to have never seen the contract? Do we have their response to our RFP? We will all need to meet to clarify this.

GG

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

010789

**Margaret Sims /EAC/GOV**  
10/06/2005 01:53 PM

To Carol A. Paquette/EAC/GOV@EAC  
cc twilkey@eac.gov, Karen Lynn-Dyson/EAC/GOV@EAC,  
jthompson@eac.gov, Gavin S. Gilmour/EAC/GOV@EAC  
bcc  
Subject Re: Voter Fraud Contract 

Carol:


This updated version is helpful to me but may be problematic for our contractors, who do not have a final contract and (I think) are unaware of the deliverable dates listed in this version. Of course, I did not inform them of these deadlines because I did not have them until today.

Unfortunately, the delay in getting the signed contracts out to our selected contractors has already adversely impacted deliverable dates for the contracts to which I have been assigned. Most contractors cannot hire researchers or commit funds without having a contract in hand, so they have had to delay their work.

--- Peggy

Carol A. Paquette/EAC/GOV

**Carol A. Paquette/EAC/GOV**  
10/06/2005 01:07 PM

To klyndyson@eac.gov@EAC  
Gavin S. Gilmour/EAC/GOV@EAC, Juliet E.  
cc Thompson/EAC/GOV@EAC, Margaret  
Sims/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC  
Subject Re: Voter Fraud Contract 


The SOWs that Karen provides below were revised for these contracts. I have attached one of these for your information, since they are identical.



Wang consulting contract.doc

Carol A. Paquette  
U.S. Election Assistance Commission  
(202)566-3125 cpaquette@eac.gov  
Karen Lynn-Dyson/EAC/GOV

**Karen Lynn-Dyson/EAC/GOV**  
10/06/2005 12:28 PM

To Gavin S. Gilmour/EAC/GOV@EAC  
Carol A. Paquette/EAC/GOV@EAC, Juliet E.  
cc Thompson/EAC/GOV@EAC, Margaret  
Sims/EAC/GOV@EAC, Thomas R. Wilkey/EAC/GOV@EAC  
Subject Re: Voter Fraud Contract 

010790

Gavin-

A few answers to your questions:

They have not received contracts but did receive a Statement of Work about a month ago.

That Statement of Work does not reference use of Westlaw or a law clerk. I have no recollection of offering such services. I have, however, had many conversations with Tova and Job. At some point I may have said that because the EAC has Westlaw and legal interns, there may or may not be a way from Job and Tova to avail them of these services.

The Statements of Work developed (see draft attached) were used in place of an RFP. Tova and Job are to serve as consultants on a project that may or may not result in their developing an RFP on voting fraud and intimidation for the EAC.



Job Serebrov sow.doc Tova Wang sow.doc

K

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

Gavin S. Gilmour/EAC/GOV

Gavin S. Gilmour/EAC/GOV

10/06/2005 11:50 AM

To Karen Lynn-Dyson/EAC/GOV@EAC, Margaret  
Sims/EAC/GOV@EAC, Juliet E.  
Thompson/EAC/GOV@EAC, Thomas R.  
Wilkey/EAC/GOV@EAC  
cc Carol A. Paquette/EAC/GOV@EAC

Subject Voter Fraud Contract

Karen/Tom,

Peggy held a meeting with voting fraud/intimidation contractors. In this meeting they noted that despite the fact that the contract requires them to perform legal research, they do not have the means to do so (no access to Westlaw, etc..). They noted that in discussions with the two of you, they were told that the EAC would provide them access to West Law and, possibly, a law clerk with office space. None of this is noted in the contract. They claim to have never seen the contract? Do we have their response to our RFP? We will all need to meet to clarify this.

GG

Gavin S. Gilmour  
Associate General Counsel  
United States Election Assistance Commission

01079

1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

Gavin S. Gilmour/EAC/GOV  
09/20/2005 05:20 PM

To Jthomson@eac.gov  
cc  
bcc  
Subject Fw: Voting Fraud and Intimidation contract

Julie,

Per my previous e-mail,, I have some concerns about this concept and our roles as counsel. I would like to discuss the matter. Having counsel act as the COTR makes me uncomfortable (at least at first blush). Please do not feel like I am objecting to this matter, it just makes me uneasy. A brief conversation on the issue may alleviate my worries.

Gg

Thanks

-----  
Sent from my BlackBerry Wireless Handheld  
Karen Lynn-Dyson

**From:** Karen Lynn-Dyson  
**Sent:** 09/20/2005 04:57 PM  
**To:** Tova Wang" [REDACTED]@GSAEXTERNAL  
**Cc:** Thomas Wilkey; Gavin Gilmour; Carol Paquette  
**Subject:** Re: Voting Fraud and Intimidation contract

Tova-

The contracts are completed, although not formally signed by the Chair of the Commission ( a formality)

As discussed, the contract will be for six months-September 26- February 28 for a fixed contract fee of \$50,000 plus and additional \$5,000 for expenses.

\$10,000 has been set aside in the FY 05 EAC budget to cover working group costs.

Gavin Gilmour will be the EAC staff project manager, to whom you and Job will be reporting.

Gavin should be in touch in the next day or so, with more details and specifics related to getting the project started.

Thanks

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

"Tova Wang" [REDACTED]



"Tova Wang"  
[REDACTED]

To klynndyson@eac.gov, nmortellito@eac.gov

010793





09/20/2005 04:38 PM

cc  
Subject

Hi Karen and Nicole,

I know you guys have been swamped, but I wanted to check in because I haven't heard from you and I am getting all sorts of information from Job, second hand. I would rather not operate that way. Is it the case that the contracts have been finalized? Can you give me a hint about the terms? When might I be seeing a copy? Thanks so much.

Best wishes,

Tova

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

Visit our Web site, [www.tcf.org](http://www.tcf.org), for the latest news, analysis, opinions, and events.

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

010794

Gavin S. Gilmour/EAC/GOV  
10/31/2005 03:39 PM

To Juliet E. Thompson/EAC/GOV@EAC  
cc  
bcc  
Subject



Wang consulting contract 3.doc

We probably should have karen create a pay justification document as well.

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

010795

**EAC CONTRACT #05-66 Consulting Services to Assist EAC  
in the Development of a Voting Fraud and Voter Intimidation Project**

**Background**

Section 241 of HAVA lists a number of election administration topics on which the U.S. Election Assistance Commission may elect to do research. In particular, Section 241(b) (6) and (7) state the two topics regarding the identification, deterrance and investigation of voting fraud and voter intimidation in elections for Federal offices. The EAC Board of Advisors has recommended that the EAC make research on these topics a high priority.

The EAC seeks to obtain consulting services from an individual who can provide advice drawn from broad professional and technical experience in the area of voter fraud and intimidation. The EAC needs this consultant to conduct a preliminary examination of these topics to determine if a larger research project might be warranted. If so, the consultant would also be tasked to define the scope of the project and prepare a Statement of Work for the EAC to use for a subsequent competitive procurement. To promote a balanced and non-partisan approach to this effort, EAC is contracting with two consultants, who will work jointly to perform the work described below.

**Nature of the Appointment**

The EAC enters into this contract pursuant to its authority to contract for consultants under 5 U.S.C. §3109 (See 42 U.S.C. §15324(b)). As such this contract is for personal services and creates a limited employment relationship. (See 5 C.F.R. §304). As a result of this unique relationship, and pursuant to this agreement, you are required to follow all Federal laws and regulations as they related to conflicts of interest, the release of agency documents and information, travel and conduct. All research, information, documents and any other intellectual property, (including but not limited to policies, procedures, manuals, and other work created at the request or otherwise while laboring for the EAC) shall be owned exclusively by the EAC, including copyright. All such work product shall be turned over to the EAC upon completion of your appointment term or as directed by the EAC. The EAC shall have exclusive rights over this material. You may not release government information or documents without the express permission of the EAC.

**Supervision and Management.** The EAC Project Manager for this effort is Margaret Sims, EAC Research Specialist. Ms. Sims will provide taskings, and supervise, review and approve all work and performance.

**Period of Appointment, Compensation and Travel.**

The period of appointment under this contract is estimated at six months. The appointment shall constitute intermittent appointment (without a regularly scheduled tour of duty) per 5 C.F.R. §340.401(b). The consultant shall not incur overtime. The consultants shall **not** receive automatic adjustments of pay based upon 5 U.S.C. 5303.

- Deleted: of nationwide statistics and methods of
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- Deleted: EAC is limited Due to the unavailability of internal staff,
- Deleted: needs
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The consultants are not eligible for sick and annual leave, nor compensation for work performed on federal holidays. The Consultant is expected to work 450 hours during the estimated six month appointment period. These hours must be distributed evenly over the period so that the Consultant is working approximately, but no more than 20 hours per week. The consultant shall be paid at a rate of \$111 per hour. The dates of performance are flexible but shall be based upon the needs of the project and the EAC. The project at issue is sought to be completed within the sixth month period. The period of appointment shall continue until the project, outlined below, is completed.

Consultant's duty station shall be his/her home or place of business. The consultant has access to and shall supply common office equipment to include telecommunications, internet, a computer, office supplies, facsimile machine and common workplace software (including Microsoft Word and Excel). Other resources will be provided by the EAC as needed and at its discretion.

The Consultant is required to travel on a periodic, as needed basis, throughout the duration of their appointment. All travel must be pre-approved by the EAC per Federal Travel Regulations and EAC policy. The Consultant will be reimbursed, at the Federal government rates, for hotel and ground transportation costs, proper incidental expenses, and per diem while on official, pre-approved EAC travel.

**Areas of Responsibility**

1. Develop a comprehensive description of what constitutes voting fraud and voter intimidation in the context of Federal elections.
2. Using the description developed above, perform background research, including both Federal and State administrative and case law review, and a summation of current activities of key government agencies, civic and advocacy organizations regarding these topics. Deliver a written summary of this research and all source documentation.
3. Work in consultation with other EAC staff and the Commissioners to identify a working group of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation. The Working Group will be provided with the results of Tasks 1 and 2 as background information. The consultant will be responsible for developing a discussion agenda and convene the Working Group with the objective of identifying promising avenues for future research by EAC.
4. The consultant shall be responsible for creating a report summarizing the findings of this preliminary research effort and Working Group deliberations. This report should include any recommendations for future research resulting from this effort.
5. Should the EAC decide to pursue one or more of the recommendations made in the report noted above, the consultant will be responsible for defining the

**Deleted:** Tasks

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appropriate project scope(s) and preparing Statement(s) of Work sufficient for use in a competitive procurement.

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**Compensation Procedures**

Compensation shall be made for work done by submitting invoices. Invoices shall be submitted on a monthly basis. These invoices shall state the number of labor hours that have been expended. Invoices shall be delivered to Ms. Margaret Sims for review and Ms. Diana Scott, Administrative Officer, U.S. Election Assistance Commission, 1225 New York Avenue, N.W., Suite 1100, Washington DC 20005. Compensation for travel shall be submitted by travel voucher consistent with federal travel regulation and EAC requirements.

**Deleted: Special Considerations¶**

**¶ Work for Hire.** The services performed under the terms of this agreement are considered "work for hire," and any intellectual property or deliverables, including but not limited to research, policies, procedures, manuals, and other works submitted; or which are specified to be delivered; or which are developed or produced and paid for by EAC, shall be owned exclusively by EAC, including copyright. EAC or its assignees have the exclusive right to reproduce all work products from this agreement without further payment to the Contractor.¶

**Termination**

This consultant contract can be terminated without cause in advance of the current end date by two weeks' notice in writing by either of the parties.

**¶ Acceptance of Work Product.** The EAC Project Manager for this effort is Margaret Sims, EAC Research Specialist, who will review and approve all work.¶

**Estimated Project Timetable.**

**¶ Period of Performance and Compensation¶**

The period of performance for this contract is six months, with a cost ceiling of \$50,000 for labor. The Consultant is expected to work at least 450 hours during this period. These hours must be distributed evenly over the period so that the Consultant is working approximately, but no more than 20 hours per week at a rate of \$111 per hour. The period of performance and level of effort can be revised in writing by mutual agreement of the EAC and the consultant, if required. Contractor's duty station shall be his/her place of business.¶

Deliverable	Due Date
Project work plan	10 days after contract award
Progress reports	monthly
Description of voting fraud and voter intimidation	October 2005
Summary of background research and associated source documentation	January 2006
Convene working group	February 2006
Summary report describing findings and recommendations for future EAC research	March 2006
Statement(s) of Work for future research project(s)	TBD

¶ The Consultant is required to travel to the EAC Washington, D.C. offices on a periodic, as needed basis, throughout the duration of the contract. The Consultant will be reimbursed, at the Federal government rates, for hotel and ground transportation costs, other approved incidental expenses, and per diem costs while working on-site at the EAC offices. A total of \$5,000 has been allocated ... [1]

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**Deleted:** Deliverables and Timetable

**Special Considerations**

Work for Hire. The services performed under the terms of this agreement are considered "work for hire," and any intellectual property or deliverables, including but not limited to research, policies, procedures, manuals, and other works submitted; or which are specified to be delivered; or which are developed or produced and paid for by EAC, shall be owned exclusively by EAC, including copyright. EAC or its assignees have the exclusive right to reproduce all work products from this agreement without further payment to the Contractor.

Acceptance of Work Product. The EAC Project Manager for this effort is Margaret Sims, EAC Research Specialist, who will review and approve all work.

**Period of Performance and Compensation**

The period of performance for this contract is six months, with a cost ceiling of \$50,000 for labor. The Consultant is expected to work at least 450 hours during this period. These hours must be distributed evenly over the period so that the Consultant is working approximately, but no more than 20 hours per week at a rate of \$111 per hour. The period of performance and level of effort can be revised in writing by mutual agreement of the EAC and the consultant, if required. Contractor's duty station shall be his/her place of business.

The Consultant is required to travel to the EAC Washington, D.C. offices on a periodic, as needed basis, throughout the duration of the contract. The Consultant will be reimbursed, at the Federal government rates, for hotel and ground transportation costs, other approved incidental expenses, and per diem costs while working on-site at the EAC offices. A total of \$5,000 has been allocated for reimbursement for travel and other allowable expenses.

Calendar Entry

# Meeting

Notify me



Mark Private

Pencil In

**Subject** Teleconference with Voting Fraud Research Contractors

**Chair** Margaret Sims/EAC/GOV

**When**  
Starts Wed 10/05/2005 04:00 PM 1 hour  
Ends Wed 10/05/2005 05:00 PM

**Where** Location Peggy's Office

**Invitees**  
Required (to)  
Optional (cc) Gavin S. Gilmour/EAC/GOV@EAC

**Categorize**

**Description**

**Your Notes**

Margaret Sims /EAC/GOV  
10/05/2005 02:41 PM

To Gavin S. Gilmour/EAC/GOV@EAC  
cc  
bcc  
Subject Fw: Statement of Work to be circulated to the voting  
fraud/voter intimidation consultant candidates

----- Forwarded by Margaret Sims/EAC/GOV on 10/05/2005 02:42 PM -----

Karen Lynn-Dyson/EAC/GOV  
08/17/2005 04:29 PM

To Nicole Mortellito/CONTRACTOR/EAC/GOV@EAC  
Thomas R. Wilkey/EAC/GOV@EAC, Margaret  
cc Sims/EAC/GOV@EAC, Diana Scott/EAC/GOV@EAC, Juliet  
E. Thompson/EAC/GOV@EAC  
Subject Statement of Work to be circulated to the voting fraud/voter  
intimidation consultant candidates

Nicole-

Attached please find the Statement of Work which should be sent to each of the three candidates who are being considered for the consulting position:

Steve A.  
Tova W.  
Job S.

Please be certain they are sent separately and not collectively to all three and that it is sent by COB today.

Thanks so much for your help.

K



voterfraud project consultants.doc

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

010801



**EAC CONTRACT #05-66 Consulting Services to Assist EAC  
in the Development of a Voting Fraud and Voter Intimidation Project**

**Background**

Section 241 of HAVA lists a number of election administration topics on which the U.S. Election Assistance Commission may elect to do research. In particular, Section 241(b) (6) and (7) state the two topics of nationwide statistics and methods of identifying, deterring and investigating voting fraud in election for Federal offices; and identifying, deterring and investigating methods of voter intimidation. The EAC Board of Advisors has recommended that the EAC make research on these topics a high priority.

Due to the unavailability of internal staff, EAC needs to obtain consulting services to conduct a preliminary examination of these topics to determine if a larger research project might be warranted. If so, the consultant would also be tasked to define the scope of the project and prepare a Statement of Work for the EAC to use for a subsequent competitive procurement. To promote a balanced and non-partisan approach to this effort, EAC is contracting with two consultants, who will work jointly to perform the work described below and produce the required deliverables.

**Tasks**

1. Develop a comprehensive description of what constitutes voting fraud and voter intimidation in the context of Federal elections. Submit this description to the EAC for review and approval.
2. Using the description developed in Task 1, perform background research, including both Federal and State administrative and case law review, and a summation of current activities of key government agencies, civic and advocacy organizations regarding these topics. Deliver a written summary of this research and all source documentation.
3. In consultation with EAC, identify a working group of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation. Provide the Working Group with the results of Tasks 1 and 2 as background information. Develop a discussion agenda and convene the Working Group with the objective of identifying promising avenues for future research by EAC.
4. Prepare a report summarizing the findings of this preliminary research effort and Working Group deliberations. This report should include any recommendations for future research resulting from this effort.

010802

**Deliberative Process  
Privilege**

5. Should the EAC decide to pursue one or more of the Task 4 recommendations, Consultant shall define appropriate project scope(s) and prepare Statement(s) of Work sufficient to issue for competitive procurement.

### **Special Considerations**

Work for Hire. The services performed under the terms of this agreement are considered "work for hire," and any intellectual property or deliverables, including but not limited to research, policies, procedures, manuals, and other works submitted; or which are specified to be delivered; or which are developed or produced and paid for by EAC, shall be owned exclusively by EAC, including copyright. EAC or its assignees have the exclusive right to reproduce all work products from this agreement without further payment to the Contractor.

Acceptance of Work Product. The EAC Project Manager for this effort is Margaret Sims, EAC Research Specialist, who will review and approve all work.

### **Period of Performance and Compensation**

The period of performance for this contract is six months, with a fixed price ceiling of \$50,000 for labor. The Consultant is expected to work at least 450 hours during this period. The EAC suggests that these hours be distributed evenly over the period so that the Consultant is working approximately 20 hours per week. The period of performance and level of effort can be revised in writing by mutual agreement of the EAC and the consultant, if required.

The Consultant is required to travel to the EAC Washington, D.C. offices on a periodic, as needed basis, throughout the duration of the contract. The Consultant will be reimbursed, at the Federal government rates, for hotel and ground transportation costs, other approved incidental expenses, and per diem costs while working on-site at the EAC offices. A total of \$5,000 has been allocated for reimbursement for travel and other allowable expenses.

### **Invoicing**

Invoices may be submitted monthly in equal payments for labor. Expenses claimed for reimbursement shall be itemized with appropriate receipts provided. Invoices shall be delivered to Ms. Diana Scott, Administrative Officer, U.S. Election Assistance Commission, 1225 New York Avenue, N.W., Suite 1100, Washington DC 20005.

### **Contract Termination**

This contract can be terminated in advance of the current end date by two weeks' notice in writing by either of the parties.

**Deliverables and Timetable**

Deliverable	Due Date
Project work plan	10 days after contract award
Progress reports	monthly
Description of voting fraud and voter intimidation	October 2005
Summary of background research and associated source documentation	January 2006
Convene working group	February 2006
Summary report describing findings and recommendations for future EAC research	March 2006
Statement(s) of Work for future research project(s)	TBD

## **Statement of Work**

### **Assistance with developing an Election Assistance Commission (EAC) Voting Fraud and Voter Intimidation Project**

**(Job Serebrov)**

#### **Background**

Section 241 of HAVA enumerates a number of periodic studies of election administration issues in which the U.S. Election Assistance Commission may elect to engage. In general “On such periodic basis as the Commission may determine, the Commission shall conduct and make available to the public studies regarding the election administration issues described in subsection (b)”

Sections 241(b) (6) and (7) list the following election administration issues:

(6) Nationwide statistics and methods of identifying, deterring and investigating voting fraud in election for Federal offices.

(7) Identifying, deterring and investigating methods of voter intimidation.

Building on this HAVA reference to studies of voting fraud and voter intimidation, the EAC Board of Advisors has indicated that further study of these issues to determine how the EAC might respond to them is a high priority.

The U.S. Election Assistance Commission (EAC) seeks to identify one or more senior-level project consultants to develop various project activities and studies related to voting fraud and voter intimidation affecting Federal elections.

The consultant(s) must have knowledge of voting fraud and voter intimidation along with an understanding of the complexities, nuances and challenges which surround the topics. The EAC is particularly interested in candidates with experience in elections, with public policy and with the law. The consultant (s) must be able to demonstrate an ability to approach the issues of voting fraud and voter intimidation in a balanced, nonpartisan fashion.

## **Duties**

The consultant(s), whose contract would run for the period September-February, 2005, would be responsible for the following.

1. Identifying what constitutes voting fraud and voter intimidation affecting Federal elections.
2. Performing background research, including Federal and state-by state administrative and case law review related to voting fraud and voter intimidation, and a review of current voting fraud and voter intimidation activities taking place with key government agencies, civic and advocacy organizations. A written summary of this research, and a copy of any source documentation used, will be presented to EAC.
3. Identifying, in consultation with EAC, and convening a working group of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation. The working group's goals and objectives and meeting agendas will be vetted with key EAC staff.
4. Developing a project scope of work and a project work plan related to voting fraud and voter intimidation. The consultants (s) will develop a draft scope of work and project work plan for EAC's consideration based on research into the topics, the deliberations and findings of the working group, and the consultants' understanding of EAC's mission and agency objectives.
5. Authoring a report summarizing the key findings of this preliminary study of voting fraud and voter intimidation. The report will also include suggestions for specific activities that EAC may undertake to address these topics.

From this initial research and exploration of these topics the consultant (s) may be retained to help oversee follow-on research projects and contracts EAC may pursue on the topics of voting fraud and voter intimidation.

## **Special Considerations**

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### **Terms and Conditions**

The period of performance for this consulting contract is six months, with a fixed price ceiling of \$XXXXXX for labor. The consultant (s) is expected to work at least 200 hours in performing this work. The EAC estimates that the most efficient distribution of these hours would be as follows: XXXXXX. The period of performance and level of effort can be revised in writing by mutual agreement of the EAC and the consultant, as required.

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### **Deliverables and Timetable**

Deliverable	Due Date
Draft project work plan (Phase I)	ASAP after award
Progress Reports to Contracting Officer's Representative (COR)	Monthly
A written summary of background research on voting fraud and voter intimidation.	TBD
Identifying and convening a working group knowledgeable about voting fraud and voter intimidation.	TBD
Developing a project scope of work and project work plan ( Phase II)	TBD
Summary report describing key findings of this preliminary study of voting fraud and	TBD

voter intimidation	

## **Statement of Work**

### **Assistance with developing an Election Assistance Commission (EAC) Voting Fraud and Voter Intimidation Project**

**(Tova Wang)**

#### **Background**

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Summary report describing key findings of this preliminary study of voting fraud and	TBD

voter intimidation	

Gavin S. Gilmour/EAC/GOV  
10/06/2005 03:30 PM

To Margaret Sims/EAC/GOV@EAC  
cc  
bcc  
Subject Fw: Voter Fraud Contract

Peggy,

shall we set up a meeting... When, etc...

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

----- Forwarded by Gavin S. Gilmour/EAC/GOV on 10/06/2005 03:31 PM -----

Thomas R. Wilkey/EAC/GOV  
10/06/2005 11:57 AM

To Gavin S. Gilmour/EAC/GOV@EAC, Karen  
Lynn-Dyson/EAC/GOV, Margaret Sims/EAC/GOV, Juliet E.  
Thompson/EAC/GOV  
cc Carol A. Paquette/EAC/GOV  
Subject Re: Voter Fraud Contract

Please do

-----  
Sent from my BlackBerry Wireless Handheld  
Gavin S. Gilmour

**From:** Gavin S. Gilmour  
**Sent:** 10/06/2005 11:50 AM  
**To:** Karen Lynn-Dyson; Margaret Sims; Juliet Thompson; Thomas Wilkey  
**Cc:** Carol Paquette  
**Subject:** Voter Fraud Contract

Karen/Tom,

Peggy held a meeting with voting fraud/intimidation contractors. In this meeting they noted that despite the fact that the contract requires them to perform legal research, they do not have the means to do so (no access to Westlaw, etc..). They noted that in discussions with the two of you, they were told that the EAC would provide them access to West Law and, possibly, a law clerk with office space. None of this is noted in the contract. They claim to have never seen the contract? Do we have their response to our RFP? We will all need to meet to clarify this.

GG

Gavin S. Gilmour  
Associate General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005

010813

(202) 566-3100

010814

Gavin S. Gilmour/EAC/GOV  
10/06/2005 11:50 AM

To Karen Lynn-Dyson/EAC/GOV@EAC, Margaret  
Sims/EAC/GOV@EAC, Juliet E.  
Thompson/EAC/GOV@EAC, Thomas R.  
cc Carol A. Paquette/EAC/GOV@EAC

bcc

Subject Voter Fraud Contract

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GG

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

010815

Gavin S. Gilmour/EAC/GOV  
11/30/2005 10:19 AM

To Margaret Sims/EAC/GOV@EAC  
cc jthompson@eac.gov  
bcc  
Subject Re: Definition of Voting Fraud and Voter Intimidation 

Peggy,

Per our discussion, I have some initial concerns regarding the definitions that have been proposed.

1. Fraud is a legal term of art. Fraud is an intentional act or omission (i.e. actual fraud or constructive fraud) of misrepresentation or deceit. There is no such thing as defacto fraud or quasi fraud. Fraud must be intentional.... negligence alone is not fraud.

The general definition of voter fraud must concise and universally applicable (this in the challenging part). After this definition is created and intellectually tested, one can then create examples and explanations. These would 1) apply the definition to the entire election process (from beginning to end) and (2) apply it to action by voters, 3rd parties and election officials. Through this process a determination may be made regarding whether three definitions are needed or just one.

2. The document has no definition of voter intimidation. What is voter intimidation and how does it differ from voter fraud? I assume this would also be an intentional act.

3. Definitions need to be concise and tight. Such definitions need to be able to be broken down into elements. Each of these elements must have clear, applicable and enforceable meaning. This can be a challenge. For example use of the term "any illegal act" is unclear, begs the question and suggests that fraud only occurs in the course of committing a related crime.

These are just my initial thoughts.

GG  
Gavin S. Gilmour  
Associate General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
Margaret Sims/EAC/GOV

Margaret Sims /EAC/GOV  
11/30/2005 09:28 AM

To jthompson@eac.gov, Gavin S. Gilmour/EAC/GOV@EAC  
cc  
Subject Definition of Voting Fraud and Voter Intimidation

Attached discusses the definitions that Job and Tova would like to use. I have already taken issue with the exclusion of all voter registration shenanigans and the inclusion of administrative mistakes. Would be pleased to have your feedback and, if possible, your assistance for 15 minutes of a teleconference today (3:30 PM to 3:45 PM). --- Peggy

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combined defining Fraud 11-18-05.doc

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“Fraud” should be defined as any illegal act that has a clear and direct distorting impact on the election results. It includes adding illegal votes and tampering with vote counts as well as actions such as voter intimidation and deceptive practices that serve to subtract legal votes. Illegally keeping certain voters from voting has the same distorting effect on election outcomes as ineligible voters casting ballots or some form of modern ballot box stuffing. Fraud may involve wrongdoing by individual voters, election workers or organized groups such as campaigns or political parties.

Vote fraud usually breaks down into three categories---intentional fraud, de facto fraud, and quasi-fraud. Research and investigation of fraud should focus on those forms of fraud that are known to have had true impacts on election outcomes.

“Intentional fraud” includes acts that are intentionally planned. Such forms of fraud include the following:

- Absentee/mail ballot fraud, e.g. coercing another voter’s choice, use of a false or other voter’s name and signature, destruction or misappropriation of an absentee or mail-in ballot
- Ex-felons knowingly and willingly casting illegal ballots
- Knowingly and willingly misleading an ex-felon about his or her right to vote
- Voting more than once
- Noncitizen voting
- Intimidating practices e.g. intimidating signs, inappropriate police presence, abusive/threatening treatment by poll workers or others that deter voters from voting
- Deceptive practices e.g. providing false information to voters about the voting process, such as when and/or where to vote, who is eligible to vote
- Fraud by election administrators in the handling or counting of ballots, misrepresentation of vote tallies
- Vote buying
- Addition or destruction of cast ballots by elections officials
- Intentional wrongful removal of eligible voters from voter registration lists
- Knowingly falsifying registration information pertinent to eligibility to cast a vote, e.g. residence, criminal status, etc.

The second type of fraud is de facto fraud. This occurs when the intent to commit fraud is lacking, but the party or parties’ actions results in fraud nonetheless. De facto fraud more often is a result of a misapplication of election statutes or the application of a long established practice or tradition in a way that contradicts the intent of the statute. Examples of de facto fraud include the abusive use of challengers to voter registrations or to voters' eligibility at the polls and wrongful purging of voter lists.

The last form of fraud, "quasi-fraud," is the most difficult to classify as such because the correct law (case law or legislative act) is applied but the result is to deprive voters of their electoral rights. This type of fraud is also the most difficult to catch because it requires both legal electoral expertise and almost always occurs on the day of the election. One example of this is Arkansas supreme court case law making election

010818

statutes mandatory before an election but discretionary after. The discretion is left up to the county board of election commissioners. These are not elected but are either the chairs of the two main political parties or a person elected by the county central committee should the chair decide not to serve. The result is that election statutes are never enforced after the election. It therefore permits past patterns of fraud to persist.

Two areas that are of major concern but do not come within the purview of fraud for the purposes of this type of research are registration forms in the name of another or fake person(s), which from the evidence do not usually result in illegal votes; and electronic vote machine tampering, for which there is as of now no definitive evidence has taken place in a U.S. election.

# BEST PRACTICES

## **The importance of clarity**

EAC should emphasize the importance of clarity in the rules by which each state governs provisional voting. Does the provisional ballot system:

1. Distribute, collect, record, and tally provisional ballots with sufficient accuracy to be seen as procedurally legitimate by both supporters and opponents of the winning candidate?
2. Place administrative demands on local jurisdictions that are realistically related to the staff and other resources available?
3. Display variation within the state great enough to cause concern that the system may not be administered uniformly from county to county?

# **Lessons of litigation for achieving clarity**

Look to litigation from the 2004 election to shape new statutes or regulations that will increase the clarity of provisional voting procedures, increase predictability, and bolster confidence in the system.

1. Litigation clarified the right of voters to receive provisional ballots, even though the election officials were certain they would not be counted.
2. Lawsuits prompted election officials to take better care in instructing precinct officials on how to notify voters about the need to go to the correct precinct in order to cast a countable ballot.

## EAC should recommend to the states that they:

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

## Assess each stage of the provisional voting process

### Before the election

- Clear information for voters on websites and in sample ballots.
- Training materials in every jurisdiction make poll workers familiar with the options available to voters.

### At the polling place

- Design of provisional ballot
- Estimate supply of provisional ballots needed at polling places

### Evaluating provisional ballots

- Define and adopt a reasonable period for voters who lack ID or other eligibility information bearing to provide it.
- A voter's provisional ballot should count so long as the voter cast that ballot at the correct polling site even if at the wrong precinct within that location.
- Follow written procedure or checklist to record why a provisional ballot is rejected.

## **Assess each stage of the provisional voting process**

### **Post-election**

Best practice is for states to consider how to complete all steps in the evaluation of ballots and challenges to those determinations within the five weeks available in presidential elections.

Provide timely information to voters about the disposition of their provisional ballot.

- Are they now registered for future elections?
- If not, what they need to do to become registered?

### **Conclusion**

This systematic analysis constitutes a quality improvement program for provisional voting, one that holds promise for every state.



# U. S. Election Assistance Commission

May 2006

**Briefing for**

**May 23 , 2006**



# Provisional Voting

## Findings and Recommendations



---

# EAGLETON INSTITUTE OF POLITICS

---

Rutgers, The State University of New Jersey

**MORITZ COLLEGE OF LAW THE OHIO STATE UNIVERSITY**

**Dr. Ruth B. Mandel, Director. Eagleton Institute of Politics**

Board of Governors Professor of Politics

Principal Investigator and Chair of the Project Management Team

**Edward B. Foley, Robert M. Duncan/Jones Day Designated Professor of Law**

The Moritz College of Law

Director of Election Law @ Moritz

**Ingrid Reed, Director of the New Jersey Project**

The Eagleton Institute of Politics

**Daniel P. Tokaji, Assistant Professor of Law**

The Moritz College of Law

**John Weingart, Associate Director**

The Eagleton Institute of Politics

**Thomas M. O'Neill, Consultant**

The Eagleton Institute of Politics

Project Director

## **QUESTIONS RAISED BY THE EAC**

- 1. How did states prepare for HAVA's provisional voting requirements?**
- 2. How did preparation and performance vary between states that had previously had some form of Provisional Ballot and those that did not?**
- 3. How did litigation affect the implementation of Provisional Voting?**
- 4. How effective was provisional voting in enfranchising qualified voters?**
- 5. Did State and local processes provide for consistent counting of provisional ballots?**
- 6. Did local election officials have a clear understanding of how to implement provisional voting?**

## TO ANSWER THOSE QUESTIONS

- Surveyed 400 local election officials
- Reviewed the EAC's Election Day Survey
- Analyzed states' experience with provisional voting:
  - use of statewide registration database
  - treatment of out-of-precinct ballots
  - use of different approaches to voter ID
  - consistency
  - time period allowed for ballot evaluation
- Collected provisional voting statutes and regulations
- Analyzed litigation

## Variation among the states

In 2004 nationwide about 1.9 million provisional ballots cast, 1.2 million, or just over 63%, were counted.

The percentage of provisional ballots in the total vote varied by a factor of 1,000 -- from a high of 7% in Alaska to Vermont's 0.006%.

The portion of provisional ballots cast that were counted ranged from 96% in Alaska to 6% in Delaware.



## Some sources of variation among states

### Experience

Share of provisional ballots in the total vote was 6 times greater in states that had used provisional ballots before than in states where the provisional ballot was new.

### Administrative Arrangements

#### Time to evaluate ballots

- States that provided less than one week counted an average of 35.4% of their ballots.
- States that permitted more than 2 weeks counted 60.8%.

#### Voter registration data bases

- States with voter registration databases counted an average of 20% of the provisional ballots cast.
- States without databases counted 44%.]

## Variation within states

Rate of counting provisional ballots varied by as much as 90% to 100% among counties in the same state.

Resources available to administer provisional voting varied.

--The Election Day Study found that staffing problems appeared to be particularly acute for jurisdictions in the lowest income and education categories.

--Small, rural jurisdictions and large, urban jurisdictions reported higher rates of an inadequate number of poll workers

--Jurisdictions in poor areas reported more inactive voter registrations and more provisional ballots cast.

--Richer areas had more poll workers per polling place and reported lower rates of staffing problems per precinct.

**1. How did states prepare for HAVA's provisional voting requirements?**

---

**Most election officials received provisional voting instructions from state government. The type and amount of instruction received varied widely across the states.**

**Almost all provided training or written instruction to precinct-level poll workers on how to administer provisional ballots.**

- **Only about 1 in 10 made available to poll workers a voter registration database.**

- **Almost equally rare were training and written procedures for poll workers on the counting of provisional ballots.**

**2. How did preparation and performance vary between states that had previously had some form of provisional ballot and those that did not?**

---

**Local election officials in the “old” states felt more confident.**

**18 states were new to provisional voting; 25 others had experience.**

**“New” state officials felt:**

**-- Voters did not receive enough information about where to cast a provisional ballot in order to be counted.**

**-- More funding was needed to educate voters about their rights to cast a provisional ballot.**

**Provisional ballots in “old states” : more than 2% of the total vote, 4 times the proportion in “new” states.**

**Counting provisional ballots in the final vote, the “old” states averaged 58% nearly double the average (33%) in “new” states.**

### **Question 3: How did litigation affect the implementation of Provisional Voting?**

---

#### **Pre-election litigation clarified voters' rights to:**

- **Sue in federal court to remedy violations of HAVA**
- **Receive provisional ballots, even though they would not be counted**
- **Be directed to the correct precinct**
- **Most pre-election litigation occurred too late to influence how states implemented provisional voting.**

#### **4. How effective was provisional voting in enfranchising qualified voters?**

---

**Provisional ballots enfranchised 1.2 million voters, or 1.01% of turnout, who otherwise would have been turned away.**

**The number of voters who could be helped by provisional voting may be about 2.5 – 3 million. Provisional voting might be about 50% effective.**

**There is room for improvement.**

**Legislative activity gives evidence that states were not satisfied with the effectiveness of their provisional voting systems.**

**Those voting with provisional ballots in states with experience were enfranchised more frequently than those in the “new” states.**

**Question 5: Did State and local processes provide for consistent counting of provisional ballots?**

---

Little consistency existed among and within states.

The use of provisional ballots was not distributed evenly across the country. A few states accounted for most of the ballots cast.

Share of provisional ballots in the total vote was six times greater in experienced states than in new states.

More rigorous the state's Voter ID requirements the smaller the percentage of provisional ballots that were counted.

“New” states with registration databases counted 20% of the ballots cast. Those without databases counted more than double that rate (44%).

**Question 5: Did State and local processes provide for consistent counting of provisional ballots?**

**In-precinct versus out-of-precinct states had different outcomes.**

**States that allowed out-of-precinct ballots counted 56% of the provisional ballots.**

**States that recognized only ballots cast in the proper precinct counted an average of 42% of provisional ballots cast.**

**In “old” states, this difference was greater.**

**52% of ballots cast were counted in states requiring in-district ballots, 70% were counted in those allowing out-of-precinct ballots.**



## Question 5: Did State and local processes provide for consistent counting of provisional ballots?

States that provide a longer the time to evaluate provisional ballots counted a higher proportion of those ballots.

---

14 states permitted less than 1 week :	35.4%
15 states permitted 1 – 2 weeks:	47.1%
14 states permitted more than 2 week:	60.8%.

Effect felt most strongly in states where more than 1% of the overall turnout was of provisional ballots.

---

Less than 1 week:	58.6%
1 – 2 weeks:	65.0%
More than 2 weeks:	73.8%.

**Question 5: Did State and local processes provide for consistent counting of provisional ballots?**

**Conclusions**

**States have latitude in how they meet HAVA requirements.**

**A considerable degree of variation among the states is to be expected.**

**If that variation stems from differences in political culture among the states, it is likely to persist. If it reflects a learning curve for “new” states, consistency may increase more quickly.**

**Question 6: Did local election officials have a clear understanding of how to implement provisional voting?**

---

**8 out of 10 county-level elections officials reported receiving instructions from their state government**

**4 out of 10 local election officials felt poll workers needed more training to understand their responsibilities**

**Objectively, how well did the process appear to be managed?**

**Lack of consistency among and within states indicates wide differences in understanding by election officials.**

**The number of states that have amended statutes on provisional voting to include poll worker training is a sign of dissatisfaction with the level of understanding in 2004.**

# BEST PRACTICES

## **The importance of clarity**

EAC should emphasize the importance of clarity in the rules by which each state governs provisional voting. Does the provisional ballot system:

1. Distribute, collect, record, and tally provisional ballots with sufficient accuracy to be seen as procedurally legitimate by both supporters and opponents of the winning candidate?
2. Place administrative demands on local jurisdictions that are realistically related to the staff and other resources available?
3. Display variation within the state great enough to cause concern that the system may not be administered uniformly from county to county?

# **Lessons of litigation for achieving clarity**

Look to litigation from the 2004 election to shape new statutes or regulations that will increase the clarity of provisional voting procedures, increase predictability, and bolster confidence in the system.

1. Litigation clarified the right of voters to receive provisional ballots, even though the election officials were certain they would not be counted.
2. Lawsuits prompted election officials to take better care in instructing precinct officials on how to notify voters about the need to go to the correct precinct in order to cast a countable ballot.

## EAC should recommend to the states that they:

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

## EAC should recommend quality improvement

Begin a systematic quality improvement program by collecting data on the provisional voting process. Data collected should include:

- Specific reasons why provisional ballots were not counted
- Measures of variance among jurisdiction
- Time required to evaluate ballots by jurisdiction
- Provisional votes cast and counted by jurisdiction



## **Assess each stage of the provisional voting process**

### **Before the election**

- Clear information for voters on websites and in sample ballots.
- Training materials in every jurisdiction make poll workers familiar with the options available to voters.

### **At the polling place**

- Design of provisional ballot
- Estimate supply of provisional ballots needed at polling places

### **Evaluating provisional ballots**

- Define and adopt a reasonable period for voters who lack ID or other eligibility information bearing to provide it.
- A voter's provisional ballot should count so long as the voter cast that ballot at the correct polling site even if at the wrong precinct within that location.
- Follow written procedure or checklist to record why a provisional ballot is rejected.

## Assess each stage of the provisional voting process

### Post-election

Best practice is for states to consider how to complete all steps in the evaluation of ballots and challenges to those determinations within the five weeks available in presidential elections.

Provide timely information to voters about the disposition of their provisional ballot.

- Are they now registered for future elections?
- If not, what they need to do to become registered?

# U. S. Election Assistance Commission

May 2006

20060502

01081502



"Tom O'Neill"  
[REDACTED]

07/20/2005 11:33 AM

To jthompson@eac.gov

cc

bcc

Subject

Julie,

I just called Dan Tokaji at Moritz and found that he is traveling to a meeting in New Orleans today. I'll try to catch him by Blackberry to review your request for a presentation at the Pasadena meeting.

Below is the editorial from today's New York Times.

Tom

July 20, 2005

## Georgia's Undemocratic Voter Law

Georgia has passed a disturbing new law that bars people from voting without government-issued photo identification and seems primarily focused on putting up obstacles for black and poor voters. The Justice Department is now weighing whether the law violates the Voting Rights Act. Clearly it does, and it should be blocked from taking effect.

The new law's supporters claim that it is an attempt to reduce voter fraud, but Secretary of State Cathy Cox has said she cannot recall a single case during her tenure when anyone impersonated a voter.

In the same period, she says, there have been numerous allegations of fraud involving absentee ballots. But the Georgia Legislature has passed a law that focuses on voter identification while actually making absentee ballots more prone to misuse.

The new law will make it harder for elderly Georgians to vote as well. It has been estimated that

010853

more than 150,000 older Georgians who voted in the 2004 presidential election do not have driver's licenses, and are unlikely to have other acceptable forms of identification. According to census data, black Georgians are far less likely to have access to a car than white Georgians, so they are at a distinct disadvantage when driver's licenses have an important role in proving people's eligibility to vote.

Under the Voting Rights Act, Georgia's law must be cleared by the Justice Department before it can take effect. There can be little doubt that the law would have "the effect of denying or abridging the right to vote on account of race," and it therefore must be rejected. But in the current Justice Department, there is a real danger that this decision will be based on politics rather than law.

Georgia's new identification requirement is part of a nationwide drive to erect barriers at the polls. Indiana also recently passed a new photo-identification requirement, and several other states, including Ohio, are considering the addition of such requirements.

There are many steps states can take to reduce election fraud. But laws that condition voting on having a particular piece of identification that many eligible voters do not possess have no place in a democracy.

- Copyright 2005 The New York Times Company

Tom O'Neill



"Tom O'Neill"  
[REDACTED]

07/18/2005 12:29 PM

To jthompson@eac.gov

cc

bcc

Subject Voter ID in Arizonz

Julie,

The article below is an excellent summary of the current debate over Voter ID in Arizona. Reading it might make good preparation for the July 28 public meeting –it nails the issues in dispute very clearly.

Tom O'Neill

## Plan to set Prop. 200's vote rules draws fire

*Dispute involves how many, what type of ID*

**Elvia Díaz and Robbie Sherwood**

The Arizona Republic  
Jul. 18, 2005 12:00 AM

County election officials from across Arizona are speaking out against a new plan to comply with Proposition 200's voter-identification requirement, predicting it would result in long lines at the polls, create trouble recruiting workers and force some registered voters to be turned away.

Secretary of State Jan Brewer, a Republican, and Attorney General Terry Goddard, a Democrat, negotiated the new rules this month, but they still need approval from Gov. Janet Napolitano and the U.S. Justice Department.

Proposition 200 carried a vague requirement that voters produce identification to cast a ballot in person. But Brewer, Goddard and Napolitano have been bickering over how to implement the mandate. The agreement is an attempt to settle some of their differences.

The plan calls for voters to be given more ways to prove their identity than under previous proposals. But those lacking Proposition 200-compliant identification would not be able to cast even a provisional ballot, despite their names appearing on the voter registration list. Under the old rules, voters whose names were left off of the roster in their voting district were allowed to cast a provisional ballot without providing identification. Workers verified the votes before they were counted.

County election officials and Latino leaders say that voters whose names appear on the rolls, but who don't carry identification or who may have had it lost or stolen, should be given a provisional ballot at the polls so their identity can be verified later. That way, registered voters who may lack the proper ID would not be disenfranchised.

Under the proposed new rules, voters would need to show one piece of photo identification with a current address or at least two forms of non-photo ID containing a current address. Those could include utility and cellphone bills, tribal enrollment and Indian census cards, or bank and credit-union statements.

Pima County Recorder F. Ann Rodriguez said a plan that potentially could disenfranchise registered voters would be unconstitutional and could spark lawsuits. Rodriguez was among election officials from 10 of the state's 15 counties to express concerns or suggest changes to Brewer's proposal, according to documents obtained by *The Arizona Republic*.

"It's going to hurt people who tend to move a lot, young people who all live together with the utilities in just one

010855

name," Rodriguez said. "We have a few legislators who really don't know what we really do internally in conducting elections trying to create law where they don't know the total ramifications."

Rodriguez argued that any photo ID with a name and address, not just government-issued IDs, should be acceptable. And any mail delivered to a voter's registered address by the U.S. Postal Service should also be allowed to help prove a voter's identity.

Deputy Secretary of State Kevin Tyne, however, dismissed some of the criticisms as "mostly political."

"Some of them (county recorders) were opposed to Prop. 200 from the get-go," Tyne said. "This is a first draft. It's not a done deal."

## **Problems at the polls**

Coconino County Recorder Candy Owens concluded that even she would face problems meeting the voting provision.

"I approached this from a scientific method and looked at what I had in my own purse," Owens said in a letter to Brewer. "My driver's license is 1995 and has the wrong address on it, even though I have changed (it) in the system at DMV."

She added, "I have my voter- ID card and my checkbook and nothing else I have in my wallet has (an) address on it."

Rodriguez and other recorders also expressed anger that Brewer gave them only three working days to comment on the plan, unveiled June 30.

Rodriguez said the "unreasonably short time period" effectively excludes county officials from carefully considering and discussing the matter.

Others echoed Rodriguez's concerns, adding that the election procedures as outlined by Brewer would result in confusion among poll workers and ultimately deny many Arizona citizens the right to vote.

Penny L. Pew, Apache County elections director, said many of the 33,000 registered voters living on Native American lands could be disenfranchised under the proposed plan.

"In many instances, a person could travel over 50 miles to their polling place and not have proper ID and be turned away without voting," Pew said in a letter to Brewer.

## **Addressing the concerns**

Pew and others point to the difficulty of individuals in rural Arizona to obtain the type of ID that would be required. Also, many elderly citizens would be affected because they live with relatives and thus don't have identification with their names and address on it, Pew said. The solution? Let voters lacking proper ID cast a provisional ballot.

Goddard and Tyne said the proposed procedures are just a draft and that they are addressing the concerns raised by the county recorders.

"It's not the final draft," Goddard said, adding that Brewer made a good attempt to outline the initial guidelines. "We all want to see this done as quickly as possible so it can be tested."

The Proposition 200 provisions were supposed to go into effect before municipal elections earlier this year, but no agreement could be reached on how they would be carried out.

Approved by voters in November, Proposition 200 was designed to combat voting fraud, particularly among undocumented immigrants, and save the state millions annually by denying benefits to people in the country illegally.

So far, Arizonans have had to produce proof of citizenship only when registering to vote. They have not been required to present identification while voting in person.

## **Much work remains**

Goddard, Brewer and other key leaders worked out a plan but they agree much work remains to determine exactly what forms of ID cards will be acceptable to vote in person.

Goddard believes it is still possible to have the new guidelines in time for the Phoenix's Sept. 13 City Council elections so they could serve as a test run before the much larger elections next year.

But he acknowledged that the earliest voters could realistically be required to produce ID is during the November election when, for instance, Phoenix may have a runoff.

Rodriguez argued that Proposition 200 places no limitation on the types of acceptable photo identification. Limiting the forms of identification would affect the elderly, Native Americans and college students, she said.

For instance, many students and young adults live in apartments or college dorms with multiple tenants, and typically one person gets the utility bill, she said.

"Likewise, not all young adults choose to operate a car or obtain an DMV issued identification card," she said. "Those still living at home with their parents will not have any utilities issued in their names."

Ana Wayman-Trujillo, Yavapai County recorder, questions whether it would be necessary to do background checks on poll workers because they would have access to voters' personal information. It would be harder to recruit poll workers, usually hired to work just on Election Day.

"This obviously will slow down the process at the polls, with many constituents as well as poll workers getting frustrated and walking away from the polls," she said.

### **Latino leaders' concerns**

Arizona election officials aren't the only ones raising concerns about the voting requirements. Latino leaders say the requirements won't meet the federal voting rights laws because many eligible voters would be denied the right to cast a ballot.

"It going to be disastrous for Arizona," said Steve Reyes, an attorney with the Mexican American Legal Defense and Educational Fund. "It would disenfranchise the majority of Arizona voters regardless of race."

He suggests allowing provisional ballots. Reyes said those in charge of drafting the new rules have failed to seek the opinions of Arizonans in general and Latinos in particular.


Rep. Steve Gallardo, D-Phoenix, is also against the proposal, saying many elderly Arizonans, college students and Native Americans may lack the proper ID to vote.

"We all agree in protecting the integrity of our elections," said Gallardo, suggesting provisional ballots without ID are necessary to give eligible voters the chance to vote.

"The issue is how to do that without disenfranchising voters."



Gavin S. Gilmour/EAC/GOV  
01/22/2007 05:16 PM

To Bryan Whitener/EAC/GOV@EAC  
cc Jeannie Layson/EAC/GOV@EAC, Juliet E.  
Hodgkins/EAC/GOV@EAC, Karen  
Lynn-Dyson/EAC/GOV@EAC, Thomas R.  
bcc  
Subject Re: Response Requested - EAC voter ID report 

Is Eagleton submitting a report to the EAC or is Eagleton assisting us the development of an EAC report...? I suspect it is the latter. Any statement should reflect this... as should the "briefing."

GG

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

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Bryan Whitener/EAC/GOV

Bryan Whitener /EAC/GOV  
01/22/2007 04:55 PM

To Karen Lynn-Dyson/EAC/GOV@EAC  
cc Thomas R. Wilkey/EAC/GOV@EAC, Jeannie  
Layson/EAC/GOV@EAC, Juliet E.  
Hodgkins/EAC/GOV@EAC, Gavin S.  
Gilmour/EAC/GOV@EAC  
Subject Response Requested - EAC voter ID report

Karen,

We need to publish an FR notice early tomorrow regarding the next public meeting. In light of the recent matter regarding voter fraud, I want to be sure to accurately describe what's happening with the voter ID report item contained in the draft agenda. Please add some perspective about what will and will not be discussed and what, if any, action might be expected. The draft agenda says the following: "Presentation of Eagleton ID Report - "Best Practices to Improve Voter Identification Requirements," John Weingarten, Rutgers University (Time allotted 7-10 minutes; Q & A 5 min.)". What stage are we with this ? (preliminary, final, NOTA, etc.) Just trying to stay ahead of the curve,

Thanks,  
Bryan



Public Meeting, 2-08-07, Wash., Draft Agenda.doc

010858



## U.S. Election Assistance Commission Public Meeting Agenda

1225 New York Avenue, NW  
Suite 150  
Washington, DC  
Thursday, February 08, 2007  
10:00 AM – 1:00 PM EST

**Call to Order** (Chair Davidson) (1 minute)

**Pledge of Allegiance** (Chair Davidson) (1 minute)

**Roll Call** (1 minute)

**Adoption of Agenda** (Chair Davidson) (2 minutes)

**Welcoming Remarks** (Chair Davidson) (2-3 minutes)

### **OLD BUSINESS:**

- **Correction and Approval of Minutes from the December 07, 2006 Meeting** (Chair Davidson) (1-3 minutes)
- **Report of the Executive Director** (Thomas Wilkey) (5-15 minutes)

10:25 AM approximate time

### **NEW BUSINESS:**

- **Update on EAC/NIST Laboratory Accreditation Program**
  - Brian Hancock, EAC (Time allotted 7-10 minutes; Q & A 10 min.)
  - Mary Saunders, NIST (Time allotted 7-10 minutes; Q & A 10 min.)
- **Presentation of Eagleton ID Report – “Best Practices to Improve Voter Identification Requirements,”**
  - John Weingarten, Rutgers University (Time allotted 7-10 minutes; Q & A 5 min.)



**11:20 AM Break (10 minutes)**

- **EAC Audit Process**
  - **Curtis Crider, EAC Inspector General, (Time allotted 5-7 minutes; Q & A 5 min.)**
  - **Roger LaRouche, EAC Assistant Inspector General (Time allotted 5-7 minutes; Q & A 5 min.) Note: Curtis is asking Roger if he wants to participate since he has been at EAC so much longer.**
- **State Observations - EAC Program**
  - **Texas: Dan Glotzer, HAVA Grant Manager (Time allotted 7-10 minutes; Q & A 5 min.)**
  - **Awaiting recommendations by Curtis (Time allotted 7-10 minutes Q & A 5 min.)**


**Approximate time: 12:20 PM**

**Commissioners' Closing Remarks (Time allotted 20 minutes)**

**Adjournment (Approximately 12:45 PM)**

Attorney-Client  
Privilege

Gavin S. Gilmour/EAC/GOV  
11/28/2006 11:44 AM

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

that is how i read it...

gg

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

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Jeannie Layson/EAC/GOV

Jeannie Layson /EAC/GOV  
11/28/2006 11:22 AM

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

Per Peg's question, the answer would be no?

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

----- Forwarded by Jeannie Layson/EAC/GOV on 11/28/2006 11:21 AM -----

Margaret Sims/EAC/GOV

11/28/2006 11:19 AM

To Jeannie Layson/EAC/GOV@EAC  
cc ecortes@eac.gov  
Subject Re: FOIA Request [Link](#)

010861

Jeannie:

We should have copies of the personal services contracts between EAC and Tova Wang and Job Serebrov in our contract files. (Each had an agreement for FY05 and for FY06 --- four agreements altogether). I have written on my working file copies, so they would be no good. There were no RFPs.

I have scads of email with Tova and Job, and limited correspondence with project working group members. I will forward the little email I can access now via a separate email. I cannot access the vast majority of the emails right now because my computer crashes every time I try to access my archived documents. (I'll check with Henry to find out how long it will take to fix this problem.) Some of these emails include documents that comprise the final report submitted by Job and Tova, so this would be a back door way for the FOIA requester to obtain that report. Copies of the only letter sent to the working group members are attached.

Karen Lynn-Dyson may also have some communications with Job and Tova, as she started out as the project manager before I took over. She also has been the person who dealt with the Eagleton Institute of Politics on the voter ID study. There also is a letter from then Chair Hillman to Donsanto. If Sheila cannot locate it, I can make a copy from my work file copy tomorrow.

In your opinion, does this request include copies of emails between EAC staff persons?

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

Jeannie Layson/EAC/GOV

11/28/2006 10:27 AM

To EAC Personnel  
cc  
Subject FOIA Request

Hello everyone,

I need each of you to respond affirmatively or negatively to the FOIA request below. **If you have no documents in your possession related to this request, please reply to me with the words "no records."**

010862

If you have records, please identify them in an e-mail reply and attach them to the e-mail. If the document is not electronic, hand deliver them to me. Also, if you believe any of these related documents should be withheld, please provide a brief memo stating the reason for your position.










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

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

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

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

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

     
www.eac.gov Weinberg Ltr May 12.doc Amwine ltr May 12.doc Bauer ltr May 12.doc Donsanto ltr May 12.doc  
      
Ginsberg ltr May 12.doc Hearne ltr May 12.doc Perez ltr May 12.doc Rogers ltr May 12.doc Rokita ltr May 12.doc



Gracia Hillman/EAC/GOV

03/02/2006 01:57 PM

To klynn-dyson@eac.gov

cc Adam Ambrogi/EAC/GOV@EAC, Amie J.  
Sherrill/EAC/GOV@EAC, Bert A.  
Benavides/EAC/GOV@EAC, DeAnna M.

bcc

Subject Re: Eagleton close-out meeting 

I thought we were doing two separate time slots so that Eagleton would brief only two commissioners at a time?

010864




Gracia Hillman /EAC/GOV

03/02/2006 02:08 PM

To Karen Lynn-Dyson/EAC/GOV@EAC

cc Thomas R. Wilkey/EAC/GOV@EAC, pdegregorio@eac.gov,  
martinez@eac.gov, Ddavidson@eac.gov, sbanks@eac.gov,  
Juliet E. Thompson/EAC/GOV@EAC

bcc

Subject Re: Eagleton close-out meeting 

Nicole's email says the time is 2:30 to 4:30, making it sound like one meeting. I am not suggesting two separate days but inquiring about the need for there to be two separate sessions, per our GC's counsel.

010865



Thomas R. Wilkey/EAC/GOV  
11/09/2006 12:20 PM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
bcc

Subject Tova and Job

History:

 This message has been replied to.

Julie;

I had a call from Tova who had a call from Job on what are plans are for the report.

I think it would be a good idea for us to have a brief meeting with them early next week so that both understand what we are doing here.

I told her we had found some interesting things they has assembled...but I think it would be good to "clear the air " with both of them

Thanks

Tom

Thomas R. Wilkey  
Executive Director  
US Election Assistance Commission  
1225 New York Ave, NW - Suite 1100  
Washington, DC 20005  
(202) 566-3109 phone  
TWilkey@eac.gov

010866

Thomas R. Wilkey/EAC/GOV  
05/01/2006 03:00 PM

To Karen Lynn-Dyson/EAC/GOV@EAC, Juliet E.  
Thompson-Hodgkins/EAC/GOV

cc

bcc

Subject Re: E-mail to Voter ID peer reviewers

Did we resolve the contact issues on this?

-----  
Sent from my BlackBerry Wireless Handheld  
Karen Lynn-Dyson

**From:** Karen Lynn-Dyson  
**Sent:** 05/01/2006 02:58 PM  
**To:** Thomas Wilkey; Juliet Thompson-Hodgkins  
**Subject:** E-mail to Voter ID peer reviewers

Tom and Julie-

Please take a look at this draft e-mail and let me know if it captures all that it needs to.

Would like to get this out ASAP- appreciate your feedback..

Dear Jonathan Nagler  
Dear Jan Leighley  
Dear Adam Berinsky

On behalf of the U.S. Election Assistance Commission (EAC), thank you in advance for agreeing to assist us with the review of research conducted by the Eagleton Institute of Politics on voter identification. By **Friday, May 5, 2006**, you will receive, in electronic form, the research paper and relevant data analysis which supports the paper's findings. Through this independent review by a small group of experts familiar with elections data and research we are seeking feedback on:

- The research methodology which was used to support the paper's conclusions
- The specific statistical applications which were used to analyze the data and arrive at various conclusions

If there are alternate methodological and statistical approaches to analyzing the data on voter identification, and if there is other data on voter identification that you think should have been included in the analysis, please be certain to note this in your comments.

On **May 11, 2006** EAC will conduct a 60-90 minute phone call with key Eagleton Institute staff responsible for the research, members of Eagleton's peer review group and the EAC-identified reviewers who have been asked to consider the research. Through this dialogue EAC hopes to gather varying perspectives and insights on the research strategies and methods that were

010867

employed by Eagleton. As a result of this conversation, EAC anticipates that some revisions will be made to the Eagleton research paper. This paper is scheduled to be presented to EAC's Board of Advisors and Standards Boards in late May.


While EAC agency policy does not allow us to provide you with financial compensation for your review of this research we greatly appreciate your willingness to assist us with this important task. We believe that the research findings we will provide on voter identification are important and will most certainly be enhanced by your insights and expertise.

Sincerely,

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

**Deliberative Process  
Privilege**

Margaret Sims /EAC/GOV  
11/17/2006 02:48 PM

To Gavin S. Gilmour/EAC/GOV@EAC  
cc Juliet E. Hodgkins/EAC/GOV@EAC, Jeannie  
Layson/EAC/GOV@EAC  
bcc  
Subject Re: My Thoughts --PRIVILEGED COMMUNICATION 

Gavin:

This looks good to me. I just have a few questions/clarifications, both involving the **second paragraph**:

1. First sentence - Do you mean "intra-agency", rather than interagency?
2. Second sentence - If we plan to release an EAC report based on the material provided by the consultants, then can we avoid implying that we are ever going to release a report written by the consultants?
3. Sixth sentence - I was present at only one interview, not all of them; but I did facilitate and help schedule the interviews.

-- Peggy

Gavin S. Gilmour/EAC/GOV

Gavin S. Gilmour/EAC/GOV  
11/17/2006 01:39 PM

To Juliet E. Hodgkins/EAC/GOV@EAC, Jeannie  
Layson/EAC/GOV, Margaret Sims/EAC/GOV@EAC  
cc  
Subject My Thoughts --PRIVILEGED COMMUNICATION

Do Not Release



People for the American Way.doc

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

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

010869

The document you request on voter fraud is protected from release under FOIA. Specifically, the responsive information is protected by the Deliberative Process Privilege and exempted from release under 5 U.S.C. §552(b)(5). As you may know, the Deliberative Process Privilege protects intra-agency documents that are (1) predecisional in nature and (2) part of the deliberative process. In other words, the documents must be part of a process that recommends or presents opinions on a policy matter before that matter is adopted. Such documents are exempt from release (1) to encourage open and frank discussions on policy matters between agency subordinates and superiors, (2) to protect against premature disclosure of proposed policies and (3) to protect against public confusion that might result from disclosure of rationales that were not in fact the ultimate basis for agency action.

The report you have requested is an interagency document that is not yet complete and has not been reviewed and approved by the Commissioners (the relevant policy makers). The document was created by two contract employees with the support of EAC staff. The contract employees were hired pursuant EAC's authority to hire consultants and experts under 5 U.S.C. §3109 (See 42 U.S.C. §15324(b)). Individuals hired under this authority enter into an employment relationship with the EAC. The contract employees at issue were closely supervised by an EAC program director who participated directly in the project. For example, the supervisor participated in each interview conducted for the project. Further, the contract employees were provided research materials and other support from EAC law clerks and staff. Communications with contract employees are interagency communications for the purposes of FOIA.<sup>1</sup> Work continues to proceed on the draft.

Similarly, the document you have requested constitutes a recommendation on a policy matter. The purpose or subject of the draft report at issue is to make an EAC determination on how voter fraud should be studied by the Agency. This is to be done by (1) accessing the nature and quality of the information that presently exists on the subject matter (2) defining the terms and scope of EAC study as proposed under HAVA, (3) determining what is to be studied and (4) determining how it is to be studied. Clearly, EAC's interpretation of HAVA and its determination of what it will study and how it will use its resources to study it are matters of agency policy. This policy can only be made by the EAC's duly appointed commissioners. This has not yet been done. Thus, any draft created by staff is a proposal or recommendation on a policy matter and clearly both predecisional and deliberative.

For these reasons, the draft document you have requested is exempt from release. The release of an incomplete and unofficial document would serve only to confuse the public. We expect the report to be made final and approved by the Commission in December. It will be made public at that time. Upon its release you may obtain a copy of it on our Website.

---

<sup>1</sup> Department of the Interior v. Klamath Water Users Protective Association, 532 U.S. 1, 9-11 (2001) and Hertzberg v. Veneman, 273 F. Supp. 2d 67, 76 n.2 (D.D.C. 2003).

DRAFT

The EAC has decided to waive the processing fees for your request. If you interpret any portion of this response as an adverse action, you may appeal it to the Election Assistance Commission. Your appeal must be in writing and sent to the address noted on the above letterhead. Any appeal submitted, must be postmarked no later than 60 calendar days from the date of this letter. Please include your reasons for reconsideration and attach a copy of this letter.

Sincerely,

CONFIDENTIAL

010871

**Deliberative Process  
Privilege**

Margaret Sims /EAC/GOV  
11/17/2006 09:28 AM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
bcc

Subject Draft Voter Fraud/Voter Intimidation Report

History

This message has been replied to

Julie:

I really like the tone, focus, and organization of the paper. I also liked the way you interspersed the lists of Working Group members, interviewees, and reports reviewed with the text (drawing the reader's attention to the info, cutting down on the # of appendices, and giving the eye a break from regular text). Attached is your document with my comments, questions, and suggested changes. I did not do much to it.

Regarding your questions about the appendices:

I really did not prepare my summaries with an eye toward publication, but the consultants' summaries probably include incendiary info (particularly re DOJ interviews). As for the case law, we have multiple, voluminous charts, but no list. We can create a list from the charts, but that will take time. The Commissioners may want to see the consultants' or my summaries and the case law charts, but do we need to publish them?

Do we need to put short bios for Tova and Job in an appendix? --- Peggy



EAC VF-VI Report- rev 11-17-06.doc

010872

EAC REPORT ON VOTER FRAUD AND VOTER INTIMIDATION STUDY

Comment [M1]: HAVA §241(b)(6) refers to voting (rather than voter) fraud and 241(b)(7) refers to voter intimidation. Do we want to do a global change from voter fraud to voting fraud, or leave it as is?

**INTRODUCTION**

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

**PURPOSE AND METHODOLOGY OF THE EAC STUDY**

Section 241 of the Help America Vote Act of 2002 (HAVA) calls on the U.S. Election Assistance Commission (EAC) to research and study various issues related to the administration of elections. During Fiscal Year 2006, EAC began projects to research several of the listed topics. These topics for research were chosen in consultation with the EAC Standards Board and Board of Advisors. Voter fraud and voter intimidation, listed in §§241(b)(6) and (7), were topics ~~was a topic~~ that EAC as well as its advisory boards felt were important to study to help improve the administration of elections for federal office.

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

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



EAC consultants reviewed existing studies, articles, reports and case law on voter fraud and intimidation. In addition, EAC consultants conducted interviews with selected experts in the field. Last, EAC consultants and staff presented their study to a working group that provided feed back. The working group participants were:

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

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

**J.R. Perez**  
Guadalupe County Elections  
Administrator, Texas

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

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

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

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

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

*Technical Advisor:*

**Craig Donsanto**  
Director, Election Crimes Branch, U.S.  
Department of Justice

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

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

**Comment [M2]:** The consultants did not really summarize existing law.

## **EXISTING INFORMATION ABOUT FRAUD AND INTIMIDATION**

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

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

### **Reports and Studies of Voter Fraud and Intimidation**

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

#### **Articles and Reports**

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

- Alec Ewald, "A Crazy Quilt of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law," The Sentencing Project, November 2005.
- American Center for Voting Rights "Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election," August 2, 2005.
- The Advancement Project, "America's Modern Poll Tax: How Structural Disenfranchisement Erodes Democracy" November 7, 2001
- The Brennan Center and Professor Michael McDonald "Analysis of the September 15, 2005 Voter Fraud Report Submitted to the New Jersey Attorney General," The Brennan Center for Justice at NYU School of Law, December 2005.
- Democratic National Committee, "Democracy at Risk: The November 2004 Election in Ohio," DNC Services Corporation, 2005
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2002."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2003."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2004."
- Craig Donsanto, "The Federal Crime of Election Fraud," Public Integrity Section, Department of Justice, prepared for Democracy.Ru, n.d., at [http://www.democracy.ru/english/library/international/eng\\_1999-11.html](http://www.democracy.ru/english/library/international/eng_1999-11.html)
- People for the American Way, Election Protection 2004, Election Protection Coalition, at <http://www.electionprotection2004.org/edaynews.htm>
- Craig Donsanto, "Prosecution of Electoral Fraud under United State Federal Law," *IFES Political Finance White Paper Series*, IFES, 2006.
- General Accounting Office, "Elections: Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote," Report to Congressional Requesters, September 2005.

- Lori Minnite and David Callahan, "Securing the Vote: An Analysis of Election Fraud," Demos: A Network of Ideas and Action, 2003.
- People for the American Way, NAACP, Lawyers Committee for Civil Rights, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," December 2004.

#### Books

- John Fund, *Stealing Elections: How Voter Fraud Threatens Our Democracy*, Encounter Books, 2004.
- Andrew Gumbel, *Steal this Vote: Dirty Elections and the Rotten History of Democracy in American*, Nation Books, 2005.
- Tracy Campbell, *Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004*, Carroll & Graf Publishers, 2005.
- David E. Johnson and Jonny R. Johnson, *A Funny Thing Happened on the Way to the White House: Foolhardiness, Folly, and Fraud in the Presidential Elections, from Andrew Jackson to George W. Bush*, Taylor Trade Publishing, 2004.
- Mark Crispin Miller, *Fooled Again*, Basic Books, 2005.

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

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

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

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

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

**Comment [M3]:** The term "third-party" is often used for minor political parties. As most of the voter registration drive problems have involved major party operatives and advocacy groups, "nongovernmental" seems a better choice.

### Interviews with Experts

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

**Wade Henderson**  
Executive Director,  
Leadership Conference for Civil Rights

**Pat Rogers**  
Attorney, New Mexico

**Wendy Weiser**  
Deputy Director,  
Democracy Program, The Brennan  
Center

**Rebecca Vigil-Giron**  
Secretary of State, New Mexico

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

**Sarah Ball Johnson**  
Executive Director,  
State Board of Elections, Kentucky

**Lori Minnite**  
Barnard College, Columbia University

**Stephen Ansolobehere**  
Massachusetts Institute of Technology

**Neil Bradley**  
ACLU Voting Rights Project

**Chandler Davidson**  
Rice University

**Nina Perales**  
Counsel,  
Mexican American Legal Defense and  
Education Fund

**Tracey Campbell**  
Author, *Deliver the Vote*

**Douglas Webber**  
Assistant Attorney General, Indiana

**Heather Dawn Thompson**

Director of Government Relations,  
National Congress of American Indians

**Jason Torchinsky**  
Assistant General Counsel,  
American Center for Voting Rights

**Robin DeJarnette**  
Executive Director,  
American Center for Voting Rights

**Harry Van Sickle**  
Commissioner of Elections,  
Pennsylvania

**Joseph Sandler**  
Counsel  
Democratic National Committee

**John Ravitz**  
Executive Director  
New York City Board of Elections

**Sharon Priest**  
Former Secretary of State, Arkansas

**Kevin Kennedy**  
Executive Director  
State Board of Elections, Wisconsin

**Evelyn Stratton**  
Justice  
Supreme Court of Ohio

**Tony Sirvello**  
Executive Director  
International Association of Clerks,  
Recorders, Election Officials and  
Treasurers

**Joseph Rich**  
Former Director  
Voting Section, Civil Rights Division  
U.S. Department of Justice

**Craig Donsanto**  
Director, Public Integrity Section  
U.S. Department of Justice

**John Tanner**  
Director  
Voting Section, Civil Rights Division  
U.S. Department of Justice

These interviews in large part confirmed the conclusions that were gleaned from the articles, reports and books that were analyzed. For example, the interviewees largely agreed that absentee balloting is subject to the greatest proportion of fraudulent acts, followed by vote buying and voter registration fraud. They similarly pointed to voter registration drives by ~~third-party~~nongovernmental groups as a source of fraud, particularly when the workers are paid per registration. Many asserted that impersonation of voters is probably the least frequent type of fraud, citing as reasons that it was the most likely type of fraud to be discovered, ~~and that there are stiff penalties associated with this type of fraud, and that it was an inefficient method of influencing an election.~~

Interviewees differed on what they believe constitutes actionable voter intimidation. Law enforcement and prosecutorial agencies tend to look to the criminal definitions of voter intimidation which generally require some threat of physical or financial harm. On the other hand, voter rights advocates tended to point to activities such as challenger laws, voter identification laws, the location of polling places, and distribution of voting machines as activities that can constitute voter intimidation.

Those interviewed also expressed opinions on the enforcement of voter fraud and voter intimidation laws. States have varying authorities to enforce these laws. In some states, enforcement is left to the county or district attorney, and in others enforcement is managed by the state's attorney general. Regardless, voter fraud and voter intimidation are difficult to prove and require resources and time that local law enforcement and prosecutorial agencies do not have. Federal law enforcement and prosecutorial agencies have more time and resources but have limited jurisdiction. They can only prosecute election crimes related to elections with a federal candidate on the ballot and those committed by a public official under color of law involving federal candidates. Those interviewed differed on the effectiveness of the current system of enforcement. Some including those that allege that prosecutions are not sufficiently aggressive. Others and those that feel that the current laws are sufficient for prosecuting fraud and intimidation.

A summary of the each of the interviews conducted is attached as Appendix “\_\_\_”.

### **Case Law and Statutes**

Consultants reviewed over 40,000 cases that were identified using a series of search terms related to voter fraud and voter intimidation. The majority of these cases came from appeal courts. This is not a surprising situation, since most cases that are publicly reported come from courts of appeal. Very few cases that are decided at the district court level are reported for public review.

Very few of the identified cases were applicable to this study. Of those that were applicable, no apparent thematic pattern emerged. However, it did seem that the greatest number of cases reported on fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying and challenges to felon eligibility.

A listing of the cases reviewed in this study is attached as Appendix “\_\_\_”.

### **Media Reports**

EAC consultants reviewed thousands of media reports concerning a wide variety of potential voter fraud or voter intimidation, including:

- absentee ballot fraud,
- voter registration fraud,
- voter intimidation and suppression,
- deceased voters,
- multiple voting,
- felons voting,
- non-citizens voting,
- vote buying,
- deceptive practices, and

- fraud by election officials.

While these reports showed that there were a large number of allegations of voter fraud and voter intimidation, they provided much less information as to whether the allegations were ever formalized as complaints to law enforcement, whether charges were filed, whether prosecutions ensued, and whether any convictions were made. The media reports were enlightening as to the pervasiveness of complaints of fraud and intimidation throughout the country, the correlation between fraud allegations and the perception that the state was a “battleground” or “swing” state, and the fact that there were reports of almost all types of voter fraud and voter intimidation. However, these reports do not provide much data for analysis as to the number of complaints, charge and prosecutions of voter fraud and intimidation throughout the country.

## DEFINITION OF ELECTION CRIMES

From our study of available information on voter fraud and voter intimidation, we have learned that these terms mean many things to many different people. These terms are used casually to refer to anything from vote buying to refusing to register a voter to falsifying voter registration applications. Upon further inspection, however, it is apparent that there is no common understanding of what is and what is not “voter fraud” and “voter intimidation.” Some think of voter fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal and appropriate activities. In order to come up with a common definition and list of activities that can be studied, EAC assessed the appropriateness of the terminology that is currently in use and applied certain factors to limit the scope and reach of what can and will be studied by EAC in the future.

### New Terminology

The phrase “voter fraud” is really a misnomer for a concept that is much broader. “Fraud” is a concept that connotes an intentional act of deception, which may constitute either a criminal act or civil tort depending upon the willfulness of the act.

**Fraud, n. 1.** A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. • Fraud is **usu.** a tort, but in some cases (esp. when the conduct is willful) it may be a crime.

Comment [M4]: Sic? Or is this a typo?

Black’s Law Dictionary, Eighth Edition, p. 685.

A “voter” is a person who is eligible to and engages in the act of voting. Black’s Law Dictionary, Eighth Edition, p. 1608. Using these terms to form a definition of “voter fraud,” it means fraudulent or deceptive acts committed by the voter or in which the voter is the victim. Thus, a voter who intentionally provides false information on a voter registration application or intentionally impersonates another registered voter and attempts to vote for that person would be committing “voter fraud.” Similarly, a person



who knowingly provides false information to a voter about the location of the voter’s polling place commits fraud on the voter.

The phrase “voter fraud” does not capture a myriad of other criminal acts that are related to elections which are not perpetrated by the voter and/or do not involve an act of deception. For example, “voter fraud” does not capture actions or willful inaction by candidates and election workers. When an election official willfully and knowingly refuses to register to vote an otherwise legally eligible person it is a crime. This is a crime that involves neither the voter nor an act of deception.

To further complicate matters, the phrases “voter fraud” and “voter intimidation” are used to refer to actions or inactions that are criminal as well as those that are potentially civil wrongs and even those that are legal. Obviously, criminal acts and civil wrongs are pursued in a very different manner. Criminal acts are prosecuted by the local, state or federal government. Generally, civil wrongs are prosecuted by the individual who believes that they were harmed. In some cases, when civil rights are involved, the civil division of the Department of Justice may become involved.

The goal of this study was to develop a common definition of what is generically referred to as “voter fraud” and “voter intimidation” that would serve as the basis of for a future, comprehensive study of the existence of these problems. In order to meet that goal, we recognize that the current terminology does not accurately represent the spectrum of activities that we desire to study. Furthermore, we recognize that the resources, both financial and human capital, needed to study allegations and prosecutions of criminal acts, suits involving civil torts, and allegations of potential voter suppression through the use legal election processes are well beyond the resources available to EAC. As such, EAC has defined “election crimes,” a phrase that captures all crimes related to the voter registration and voting processes.

**What is an Election Crime for Purposes of this Study**

**Comment [M5]:** So this means that we will not look at civil actions involving Voting Rights Act violations, right?

Election crimes are intentional acts or willful failures to act, prohibited by state or federal law, that are designed to cause ineligible persons to participate in the election process, eligible persons to be excluded from the election process, ineligible votes to be cast in an election, eligible votes not to be cast or counted, or other interference with or invalidation of election results. Election crimes generally fall into one of four categories: acts of deception; acts of coercion; acts of damage or destruction; and failures or refusals to act.

Generally speaking, election crimes can be committed by voters, candidates, election officials, or any other members of the public that desire to criminally impact the result of an election. However, crimes that are based upon knowing or willful failure to act assume that a duty to act exists. Election officials have affirmative duties to act with regard to elections. By and large, other groups and individuals do not have such duties.

The victim of an election crime can be a voter, a group of voters, or the public, in general. Election crimes can occur during any stage of the election process, including but not limited to qualification of candidates; voter registration; campaigning; voting system preparation and programming; voting either early, absentee, or election day; vote tabulation; recounts; and recalls.

The following are examples of activities that may constitute election crimes. This list is not intended to be exhaustive, but is representative of what states ~~and~~ or the federal government consider criminal activity related to elections.

*Acts of Deception*

- Knowingly causing to be mailed or distributed, or knowingly mailing or distributing, literature that includes false information about the voter's precinct or polling place, regarding the date and time of the election or regarding a candidate;
- Possessing an official ballot outside the voting location, unless the person is an election official or other person authorized by law or local ordinance possess a ballot outside of the polling location;
- Making, or knowingly possessing, a counterfeit of an official election ballot;
- Signing a name other than his/her own to a petition proposing an initiative, referendum, recall, or nomination of a candidate for office;
- Knowingly signing more than once for the proposition, question, or candidate at one election;
- Signing a petition proposing an initiative or referendum when the signer is not a qualified voter.
- Voting or attempting to vote in the name of another person;
- Voting or attempting to vote more than once at the same election;
- Intentionally making a false affidavit, swearing falsely, or falsely affirming under an oath required by a statute regarding their voting status, including when registering to vote, requesting an absentee ballot or presenting to vote in person;
- Registering to vote without being entitled to register;
- Knowingly making a material false statement on an application for voter registration or re-registration; and
- Voting or attempting to vote in an election after being disqualified or when the person knows that he/she is not eligible to vote.

*Acts of Coercion*

- Using, threatening to use, or causing to be used force, coercion, violence, restraint, or inflicting, threatening to inflict, or causing to be inflicted damage harm, or loss, upon or against another person to induce or compel that person to vote or refrain from voting or to register or refrain from registering to vote;
- Knowingly paying, offering to pay, or causing to be paid money or other valuable thing to a person to vote or refrain from voting for a candidate or for or against an election proposition or question;

- Knowingly soliciting or encouraging a person who is not qualified to vote in an election;
- Knowingly challenging a person's right to vote without probable cause or on fraudulent grounds, or engaging in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voter from voting or delay the process of voting;
- As an employer, attempting by coercion, intimidation, threats to discharge or to lessen the remuneration of an employee, to influence his vote in any election, or who requires or demands an examination or inspection by himself or another of an employee's ballot;
- Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for signing or refraining from signing a petition proposing an initiative;
- Inducing or attempting to induce an election official to fail in the official's duty by force, threat, intimidation, or offers of reward;
- Directly or through any other person advancing, paying, soliciting, or receiving or causing to be advanced, paid, solicited, or received, any money or other valuable consideration to or for the use of any person in order to induce a person not to become or to withdraw as a candidate for public office; and
- Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for registering to vote.

***Acts of Damage or Destruction***

- Destroying completed voter registration applications that are necessary for the applicants to exercise their right to vote;
- Removing or destroying any of the supplies or other conveniences placed in the voting booths or compartments for the purpose of enabling the voter to vote his or her ballot;
- Removing, tearing down, or defacing election materials, instructions or ballots;
- Fraudulently altering or changing the vote of any elector, by which such elector is prevented from voting as he intended;
- Knowingly removing, altering, defacing or covering any political sign of any candidate for public office for a prescribed period prior to and following the election;
- Intentionally changing, attempting to change, or causing to be changed an official election document including ballots, tallies, and returns; and
- Intentionally delaying, attempting to delay, or causing to be delayed the sending of certificate, register, ballots, or other materials whether original or duplicate, required to be sent by jurisdictional law.

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***Failure or Refusal to Act***

- Intentionally failing to perform an election duty, or knowingly committing an unauthorized act with the intent to effect the election;
- Knowingly permitting, making, or attempting to make a false count of election returns;

- Intentionally concealing, withholding, or destroying election returns or attempts to do so;
- Marking a ballot by folding or physically altering the ballot so as to recognize the ballot at a later time;
- Attempting to learn or actually and unlawfully learning how a voter marked a ballot;
- Distributing or attempting to distribute election material knowing it to be fraudulent;
- Knowingly refusing to register a person who is entitled to register under the rules of that jurisdiction; and
- Knowingly refusing to allow an eligible voter to cast his/her ballot.

### What is not an Election Crime for Purposes of this Study

There are some actions or inactions that may constitute crimes or civil wrongs that we do not include in our definition of “election crimes.” All criminal es-or civil violations related to campaign finance contribution limitations and prohibitions, as well as reporting either at the state or federal level are not “election crimes” for purposes of this study and any future study conducted by EAC. The federal agency responsible for administering federal campaign finance law and monitoring the status of state campaign finance law is the Federal Election Commission (FEC).

**Comment [M6]:** Do we want to restrict our study to election crimes that affect federal elections only? HAVA §241(b)(6) specifically refers to Nationwide statistics and methods of identifying, detecting, and investigating voting fraud in elections for Federal office. [Emphasis added]. That would mean we would also stay away from election crimes affecting ballot issues and elections with no federal candidate on the ballot.

Similarly, criminal acts that are unrelated to elections, voting, or voter registration are not “election crimes,” even when those offenses occur in a polling place, voter registration office, or a candidate’s office or appearance. For example, an assault or battery that results from a fight in a polling place or at a candidate’s office is not an election crime. Similarly, violations of ethical provisions such as the Hatch Act are not “election crimes.” Last, actions that do not rise to the level of criminal activity, that is a misdemeanor, relative felony or felony, are not “election crimes.”

### RECOMMENDATIONS ON HOW TO STUDY ELECTION CRIMES

As a part of its study, EAC sought recommendations on ways that EAC can study the existence of election crimes. EAC consultants developed recommendations. In addition, the working group and some of the persons interviewed as a part of this study provided recommendations.

#### *Recommendation 1: Conduct More Interviews*

Future activity in this area should include conducting additional interviews. In particular, more election officials from all levels of government, parts of the country, and political parties should be interviewed. It would also be especially beneficial to talk to people in law enforcement, specifically federal District Election Officers (“DEOs”) and local district attorneys, as well as civil and criminal defense attorneys.

#### *Recommendation 2: Follow Up on Media Research*

The media search conducted for this phase of the research was based on a list of search terms agreed upon by EAC consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contain allegations of fraud or intimidation. Similarly, many of the articles contain information about investigations into such activities or even charges brought. Additional media research should be conducted to determine what, if any, resolutions or further activity there was in each case.

***Recommendation 3: Follow Up on Allegations Found in Literature Review***

Many of the allegations made in the reports and books that were analyzed and summarized by EAC consultants were not substantiated and were certainly limited by the date of publication of those pieces. Despite this, such reports and books are frequently cited by various interested parties as evidence of fraud or intimidation. Further research should include follow up on the allegations discovered in the literature review.

***Recommendation 4: Review Complaints Filed With “MyVote1” Voter Hotline***

During the 2004 election and the statewide elections of 2005, the University of Pennsylvania led a consortium of groups and researchers in conducting the MyVote1 Project. This project involved using a 1-800 voter hotline where voters could call for poll location, be transferred to a local hotline, or leave a recorded message with a complaint. In 2004, this resulted in over 200,000 calls received and over 56,000 recorded complaints.

Further research should be conducted using the MyVote1 data with the cooperation of the project leaders. While perhaps not a fully scientific survey given the self-selection of the callers, the information regarding 200,000 complaints may provide a good deal of insight into the problems voters experienced, especially those in the nature of intimidation or suppression.

***Recommendation 5: Further Review of Complaints Filed With U.S. Department of Justice***

Although according to a recent GAO report the Voting Section of the Civil Rights Division of the Department of Justice has a variety ~~in-of~~ ways it tracks complaints of voter intimidation. Attempts should be made to obtain relevant data, including the telephone logs of complaints and information from the Interactive Case Management (ICM) system. Further research should also include a review and analysis of the DOJ/OPM observer and monitor field reports from Election Day.

***Recommendation 6: Review Reports Filed By District Election Officers***

Further research should include a review of the reports that must be filed by every District Election Officer to the Public Integrity Section of the Criminal Division of the Department of Justice. The DEOs play a central role in receiving reports of voter fraud

and investigating and pursuing them. Their reports back to the Department would likely provide tremendous insight into what actually transpired during the last several elections. Where necessary, information could be redacted or made confidential.

***Recommendation 7: Attend Ballot Access and Voting Integrity Symposium***

Further activity in this area should include attending the next Ballot Access and Voting Integrity Symposium. At this conference, prosecutors serving as District Election Officers in the 94 U.S. Attorneys' Offices obtain annual training on fighting election fraud and voting rights abuses. These conferences are sponsored by the Voting Section of the Civil Rights Division and the Public Integrity Section of the Criminal Division, and feature presentations by Civil Rights officials and senior prosecutors from the Public Integrity Section and the U.S. Attorneys' Offices. By attending the symposium researchers could learn more about the following how District Election Officers are trained; how information about previous election and voting issues is presented; and how the Voting Rights Act, the criminal laws governing election fraud and intimidation, the National Voter Registration Act, and the Help America Vote Act are described and explained to participants

***Recommendation 8: Conduct Statistical Research***

EAC should measure voter fraud and intimidation using interviews, focus groups, and a survey and statistical analysis of the results of these efforts. The sample should be based on the following factors:

- o Ten locations that are geographically and demographically diverse where there have historically been many reports of fraud and/or intimidation;
- o Ten locations (geographically and demographically diverse) that have not had many reports of fraud and/or intimidation;

EAC should also conduct a survey of elections officials, district attorneys, and district election officers. The survey sample should be large in order to be able to get the necessary subsets. The sample must include a random set of counties where there have and have not been a large number of allegations

***Recommendation 9: Explore Improvements to Federal Law***

Future researchers should review federal law to explore ways to make it easier to impose either civil or criminal penalties for acts of intimidation that do not necessarily involve racial animus and/or a physical or economic threat.

***Recommendation 10: Use Observers to Collect Data on Election Day***

Use observers to collect data regarding fraud and intimidation at the polls in on Election Day. There may be some limitations to the ability to conduct this type of research, including difficulty gaining access to polling places for the purposes of observation, and

concerns regarding how the observers themselves may inadvertently or deliberately influence the occurrence of election crimes.

***Recommendation 11: Study Absentee Ballot Fraud***

Because absentee ballot fraud constitutes a large portion of election crimes, a stand-alone study of absentee ballot fraud should be conducted. Researchers should look at actual cases to see how absentee ballot fraud schemes are conducted in an effort to provide recommendations on more effective measures for preventing them.

***Recommendation 12: Use Risk Analysis Methodology to Study Fraud***

Conduct an analysis of what types of fraud people are most likely to commit. Researchers can use that risk analysis to rank the types of fraud based on the ease of commission and the impact of the fraud.

***Recommendation 13: Conduct Research Using Database Comparisons***

Researchers should compare information on databases to determine whether the voter rolls contain deceased persons and felons. In addition, the voter rolls can then be compared with the list of persons who voted to determine whether deceased voters or felons are noted as having actually-voted.

***Recommendation 14: Conduct a Study of Deceptive Practices***

The working group discussed the increasing use of deceptive practices, such as flyers with false and/or intimidating information, to suppress voter participation. A number of groups, such as the Department of Justice, the EAC, and organizations such as the Lawyers Committee for Civil Rights, keep phone logs regarding complaints of such practices. These logs should be reviewed and analyzed to see how such practices are being conducted and what can be done about them.

***Recommendation 15: Study Use of HAVA Administrative Complaint Procedure as Vehicle for Measuring Fraud and Intimidation***

EAC should study the extent to which states are actually utilizing the administrative complaint procedure mandated by HAVA. In addition, the EAC should study whether data collected through the administrative complaint procedure can be used as another source of information for measuring fraud and intimidation.

***Recommendation 16: Examine the Use of Special Election Courts***

Given that many state and local judges are elected, it may be worth exploring whether special election courts should be established to handle fraud and intimidation complaints before, during and after Election Day. Pennsylvania employs such a system and could investigate how well that system is working.

### Accepted Recommendations

There has never been a comprehensive national study that gathered data regarding all claims, charges and prosecutions of voting crimes. EAC feels that a comprehensive study is the most important research that it can offer the election community and the public. As such, EAC has adopted all or a part of six of the 16 recommendations made by EAC consultants and working group.

While several of the other recommendations could be used to obtain more anecdotal information regarding election crimes, EAC believes that what is needed is a comprehensive survey and study of the information available from investigatory agencies, prosecutorial bodies and courts on the number and types of complaints, charges and prosecutions of election crimes. Additional media reviews, additional interviews and the use of observers to collect information from voters on Election Day will only serve to continue the use of anecdotal data to report on election crimes. Hard data on complaints, charges and prosecutions exists and we should gather and use that data, rather than rely on the perceptions of the media or the members of the public as to what might be fraud or intimidation.

Some of the recommendations are beyond the scope of the current study. While election courts may be a reasonable conclusion to reach after we determine what volume and type of election crimes are being reported, charged or prosecuted, it is premature to embark on an analysis of that solution without more information. Last, some of the recommendations do not support a comprehensive study of election crimes. While a risk analysis might be appropriate in a smaller scale study, EAC desires to conduct a broader survey to avoid the existing problem of anecdotal and limited scope of information.

In order to further its goal of developing a comprehensive data set regarding election crimes and the laws and procedures used to identify and prosecute them, EAC intends to engage in the following research activities in studying the existence and enforcement of election crimes:

#### *Survey Chief Election Officers Regarding Administrative Complaints*

Likely sources of complaints concerning voting crimes are the administrative complaint processes that states were required to establish to as a part of complying with HAVA §402. These complaint procedures were required to be in place prior to a state receiving any funds under HAVA. Citizens are permitted to file complaints alleging violations of HAVA Title III provisions under these procedures with the state's chief election official and these complaints must be resolved within 60 days. The procedures also allow for alternative dispute resolution of claims. Some states have expanded this process to include complaints of other violations, such as election crimes.

In order to determine how many of these complaints allege the commission of election crimes, EAC will survey the states' chief election officers regarding complaints that have



been filed, investigated and resolved since January 1, 2004. EAC will use the definition of election crimes provided above in this report in its survey so that data regarding a uniform set of offenses can be collected.

*Survey State Election Crime Investigation Units Regarding Complaints Filed and Referred*

Several chief state election officials have developed investigation units focused on receiving, investigating and referring complaints of election crimes. These units were established to bolster the abilities of state and local law enforcement to investigate allegations of election crimes. California, New York and Florida are just three examples of states that have these types of units.

EAC will use a survey instrument to gather information on the numbers and types of complaints that have been received by, investigated and ultimately referred to local or state law enforcement by election crime investigation units since January 1, 2004. This data will help us understand the pervasiveness of perceived fraud, as well as the number of claims that state election officials felt were meritorious of being referred to local and state law enforcement or prosecutorial agencies for further action.

*Survey Law Enforcement and Prosecutorial Agencies Regarding Complaints and Charge of Voting Crimes*

While voters, candidates and citizens may call national hotlines or the news media to report allegations of election crimes, it is those complaints that are made to law enforcement that can be investigated and ultimately prosecuted. Thus, it is critical to the study of election crimes to obtain statistics regarding the number and types of complaints that are made to law enforcement, how many of those complaints result in the perpetrator being charged or indicted, and how many of those charges or indictments result in pleas or convictions.

Thus, EAC will survey law enforcement and prosecutorial agencies at the local, state and federal level to determine the number and types of complaints, charges or indictments, and pleas or convictions of election crimes since January 1, 2004. In addition, EAC will seek to obtain an understanding of why some complaints are not charged or indicted and why some charges or indictments are not prosecuted.

*Analyze Survey Data in Light of State Laws and Procedures*

Once a reliable data set concerning the existence and enforcement of election crimes is assembled, a real analysis of the effectiveness of fraud prevention measures can be conducted. For example, data can be analyzed to determine if criminal activities related to elections are isolated to certain areas or regions of the country. Data collected from the election official surveys can be compared to the data regarding complaints, charges and prosecutions gathered from the respective law enforcement and prosecutorial agencies in each jurisdiction. The effect and/or effectiveness of provisions such as voter

**Comment [M7]:** Need to include survey of laws and procedures used to ID and prosecute election crime.

**Comment [M8]:** Need to include survey of laws and procedures used to ID and prosecute election crime.

**Comment [M9]:** Would this include the verification of information about current federal and state laws and procedures that may be used to pursue violations? We would need this information in order to better understand the data we collect.

identification laws and challenger provisions can be assessed based on hard data from areas where these laws exist. Last, analyses such as the effectiveness of enforcement can be conducted in light of the resources available to the effort.

### CONCLUSION

Election crimes are nothing new to our election process. The pervasiveness of these crimes and the fervor with which they have been enforced has created a great deal of debate among academics, election officials, and political pundits. Past studies of these issues have been limited in scope and some have been riddled with bias. These are issues that deserve comprehensive and nonpartisan review. EAC through its clearinghouse role will collect and analyze data on election crimes throughout the country. These data not only will tell us what types of election crimes are committed and where fraud exists, but also inform us of what factors impact the existence, prevention and prosecution of election crimes.

Margaret Sims /EAC/GOV  
11/15/2006 04:02 PM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
bcc

Subject Re: Draft Voter Fraud/Voter Intimidation 

History:

 This message has been replied to.

Got it, and will get back to you by Friday AM. --- Peggy

010892

**Deliberative Process  
Privilege**

Margaret Sims /EAC/GOV  
10/19/2006 07:04 PM

To Juliet E. Hodgkins/EAC/GOV@EAC, Tamar  
Nedzar/EAC/GOV@EAC  
cc twilkey@eac.gov, Gavin S. Gilmour/EAC/GOV@EAC  
bcc

Subject Voter Fraud-Voter Intimidation Draft Report

Attached is a copy of the draft voter fraud-voter intimidation report that combines all of the pieces provided to me by the consultants, except for the voluminous Nexis research and case law charts. Tom wants to get this before the Commissioners ASAP, but I need some other eyes to look it over before we do. Although I've made some formatting changes to provide some consistency in presentation, and corrected a couple of glaring errors, I remain concerned about a number of issues:

- As you know, references to DOJ actions/responses have caused some concern at DOJ. But both consultants are adamantly opposed to EAC making substantive changes to their report. Perhaps using footnotes clearly labeled as EAC footnotes would be a method of addressing this issue?
- There are some recommendations regarding DOJ that we (the consultants and I) were told would not be supported by DOJ, and other references to DOJ, none of which have been reviewed by the department. I think we ought to give Craig Donsanto and John Tanner a chance to provide feedback on each of these sections.
- I am a little concerned about the naming of names, particularly in the section that addresses working group concerns. If we publish it as is, it might end up as fodder for some very negative newspaper articles.
- The report currently uses three different voices: third person, first person singular, first person plural. I think this looks really clumsy. If we are not actually making substantive changes, perhaps we could get away with making the presentation consistent in this regard.
- Because the consultants submitted the report in pieces, they did not include proper sequeways. I don't know if we should leave it as is, or insert them where needed.

Please let me know what you think. If it would help, we can schedule a teleconference. --- Peggy



VF-VI Final Rept-draft 10-19-06.doc

010893

**Voting Fraud and Voter Intimidation**

**Report to the  
U.S. Election Assistance Commission  
on  
Preliminary Research & Recommendations**

**DRAFT**  
**By**  
**Job Serebrov and Tova Wang**

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## **Introduction**

### **Charge Under HAVA**

Under the Help America Vote Act, Pub. L. No. 107-252, 116 Stat. 1666 (2002) (“HAVA”), the United States Election Assistance Commission is charged with developing national statistics on voter fraud and developing methods of deterring and investigating voter fraud. Also, the Commission is charged with developing methods of identifying, deterring, and investigating methods of voter intimidation.

### **Scope of Project**

The Commission employed a bipartisan team of legal consultants, Tova Wang and Job Serebrov to develop a preliminary overview work product to determine the quantity and quality of vote fraud and voter intimidation that is present on a national scale. The consultants’ work is neither comprehensive nor conclusive. This first phase of an envisioned two-phase project was constrained by both time and funding. The consultants’ conclusions and recommendations for phase II will be contained in this report.

The consultants, working without the aid of a support staff, divided most of the work. However, the final work product was mutually checked and approved. They agreed upon the steps that were taken needed and the method employed. For all of the documentary sources, the consultants limited the time period under review from January 1, 2001 to January 1, 2006. The research performed by the consultants included interviews, an extensive Nexis search, a review of existing literature, and case research.

**Interviews:** The consultants chose the interviewees by first coming up with a list of the categories of types of people they wanted to interview. Then the consultants separately, equally filled those categories with a certain number of people. Due to time and resource constraints, the consultants had to pare down this list substantially – for instance, they had to rule out interviewing prosecutors altogether – but still got a good range of people to talk to. The ultimate categories were academics, advocates, elections officials, lawyers and judges. Although the consultants were able to talk to most of the people they wanted to, some were unavailable and a few were not comfortable speaking to them, particularly judges. The consultants together conducted all of the interviews, either by phone or in person. Then the consultants split up drafting the summaries. All summaries were reviewed and mutually approved. Most of the interviews were extremely informative and the consultants found the interviewees to be extremely knowledgeable and insightful for the most part.

**Nexis:** Initially, the consultants developed an enormous list of possible Nexis search terms. It soon became obvious that it would be impossible to conduct the research that way. As a result, consultant Wang performed the Nexis search by finding search term combinations that would yield virtually every article on a particular subject from the last

five years. Consultant Serebrov approved the search terms. Then Wang created an excel spreadsheet in order to break down the articles in way in which they could be effectively analyzed for patterns. Each type of fraud is broken down in a separate chart according to where it took place, the date, the type of election it occurred in, what the allegation was, the publication it came from. Where there was a follow up article, any information that that suggested there had been some further action taken or some resolution to the allegation was also included. For four very complicated and long drawn out situations – Washington State, Wisconsin, South Dakota in 2004, and the vote buying cases in a couple of particular jurisdictions over the last several years –written summaries with news citations are provided.

***Existing Literature:*** Part of the selections made by the consultants resulted from consultant Wang's long-term familiarity with the material while part was the result of a joint web search for articles and books on vote fraud and voter intimidation and suggestions from those interviewed by the consultants. The consultants reviewed a wide range of materials from government reports and investigations, to academic literature, to reports published by advocacy groups. The consultants believe that they covered the landscape of available sources.

***Cases:*** In order to properly identify all applicable cases, the consultants first developed an extensive word search term list. A WestLaw search was performed and the first one hundred cases under each word search term were then gathered in individual files. This resulted in a total of approximately 44,000 cases. Most of these cases were federal as opposed to state and appellate as opposed to trial. Consultant Serebrov analyzed the cases in each file to determine if they were on point. If he found that the first twenty cases were inapplicable, Serebrov would sample forty to fifty other file cases at random to determine applicability. If the entire file did not yield any cases, the file would be discarded. All discarded word search terms were recorded in a separate file. Likewise, if the file only yielded a few applicable cases, it would also be discarded. However, if a small but significant number of cases were on point, the file was later charted. The results of the case search were stark because relatively few applicable cases were found.



## **Working Definition of Fraud and Intimidation**

*Note: The definition provided below is for the purposes of this EAC project. Most of the acts described come within the federal criminal definition of fraud, but some may not.*

Election fraud is any intentional action, or intentional failure to act when there is a duty to do so, that corrupts the election process in a manner that can impact on election outcomes. This includes interfering in the process by which persons register to vote; the way in which ballots are obtained, marked, or tabulated; and the process by which election results are canvassed and certified.

Examples include the following:

- falsifying voter registration information pertinent to eligibility to cast a vote, (e.g. residence, criminal status, etc).;
- altering completed voter registration applications by entering false information;
- knowingly destroying completed voter registration applications (other than spoiled applications) before they can be submitted to the proper election authority;
- knowingly removing eligible voters from voter registration lists, in violation of HAVA, NVRA, or state election laws;
- intentional destruction by election officials of voter registration records or balloting records, in violation of records retention laws, to remove evidence of election fraud;
- vote buying;
- voting in the name of another;
- voting more than once;
- coercing a voter's choice on an absentee ballot;
- using a false name and/or signature on an absentee ballot;
- destroying or misappropriating an absentee ballot;
- felons, or in some states ex-felons, who vote when they know they are ineligible to do so;
- misleading an ex-felon about his or her right to vote;
- voting by non-citizens who know they are ineligible to do so;
- intimidating practices aimed at vote suppression or deterrence, including the abuse of challenge laws;
- deceiving voters with false information (e.g.; deliberately directing voters to the wrong polling place or providing false information on polling hours and dates);
- knowingly failing to accept voter registration applications, to provide ballots, or to accept and count voted ballots in accordance with the Uniformed and Overseas Citizens Absentee Voting Act;
- intentional miscounting of ballots by election officials;
- intentional misrepresentation of vote tallies by election officials;
- acting in any other manner with the intention of suppressing voter registration or voting, or interfering with vote counting and the certification of the vote.

Voting fraud does not include mistakes made in the course of voter registration, balloting, or tabulating ballots and certifying results. For purposes of the EAC study, it also does not include violations of campaign finance laws.

DRAFT

## Summaries of Research Conducted

### Interviews

#### *Common Themes*

- There is virtually universal agreement that absentee ballot fraud is the biggest problem, with vote buying and registration fraud coming in after that. The vote buying often comes in the form of payment for absentee ballots, although not always. Some absentee ballot fraud is part of an organized effort; some is by individuals, who sometimes are not even aware that what they are doing is illegal. Voter registration fraud seems to take the form of people signing up with false names. Registration fraud seems to be most common where people doing the registration were paid by the signature.
- There is widespread but not unanimous agreement that there is little polling place fraud, or at least much less than is claimed, including voter impersonation, “dead” voters, noncitizen voting and felon voters. Those few who believe it occurs often enough to be a concern say that it is impossible to show the extent to which it happens, but do point to instances in the press of such incidents. Most people believe that false registration forms have not resulted in polling place fraud, although it may create the perception that vote fraud is possible. Those who believe there is more polling place fraud than reported/investigated/prosecuted believe that registration fraud does lead to fraudulent votes. Jason Torchinsky from the American Center for Voting Rights is the only interviewee who believes that polling place fraud is widespread and among the most significant problems in the system.
- Abuse of challenger laws and abusive challengers seem to be the biggest intimidation/suppression concerns, and many of those interviewed assert that the new identification requirements are the modern version of voter intimidation and suppression. However there is evidence of some continued outright intimidation and suppression, especially in some Native American communities. A number of people also raise the problem of poll workers engaging in harassment of minority voters. Other activities commonly raised were the issue of polling places being moved at the last moment, unequal distribution of voting machines, videotaping of voters at the polls, and targeted misinformation campaigns.
- Several people indicate – including representatives from DOJ -- that for various reasons, the Department of Justice is bringing fewer voter intimidation and suppression cases now and is focusing on matters such as noncitizen voting, double voting and felon voting. While the civil rights section continues to focus on systemic patterns of malfeasance, the public integrity section is focusing now on individuals, on isolated instances of fraud.
- The problem of badly kept voter registration lists, with both ineligible voters remaining on the rolls and eligible voters being taken off, remains a common concern. A few people are also troubled by voters being on registration lists in two states. They said that there was no evidence that this had led to double voting, but it opens the door to the possibility. There is great hope that full

implementation of the new requirements of HAVA – done well, a major caveat – will reduce this problem dramatically.

***Common Recommendations:***

- Many of those interviewed recommend better poll worker training as the best way to improve the process; a few also recommended longer voting times or voting on days other than election day (such as weekends) but fewer polling places so only the best poll workers would be employed
- Many interviewed support stronger criminal laws and increased enforcement of existing laws with respect to both fraud and intimidation. Advocates from across the spectrum expressed frustration with the failure of the Department of Justice to pursue complaints.
  - With respect to the civil rights section, John Tanner indicated that fewer cases are being brought because fewer are warranted – it has become increasingly difficult to know when allegations of intimidation and suppression are credible since it depends on one’s definition of intimidation, and because both parties are doing it. Moreover prior enforcement of the laws has now changed the entire landscape – race based problems are rare now. Although challenges based on race and unequal implementation of identification rules would be actionable, Mr. Tanner was unaware of such situations actually occurring and the section has not pursued any such cases.
  - Craig Donsanto of the public integrity section says that while the number of election fraud related complaints have not gone up since 2002, nor has the proportion of legitimate to illegitimate claims of fraud, the number of cases the department is investigating and the number of indictments the section is pursuing are both up dramatically. Since 2002, the department has brought more cases against alien voters, felon voters and double voters than ever before. Mr. Donsanto would like more resources so it can do more and would like to have laws that make it easier for the federal government to assume jurisdiction over voter fraud cases.
- A couple of interviewees recommend a new law that would make it easier to criminally prosecute people for intimidation even when there is not racial animus.
- Almost everyone hopes that administrators will maximize the potential of statewide voter registration databases to prevent fraud. Of particular note, Sarah Ball Johnson, Executive Director of Elections for Kentucky, emphasized that having had an effective statewide voter registration database for more than thirty years has helped that state avoid most of the fraud problems that have been alleged elsewhere, such as double voting and felon voting.
- Several advocate expanded monitoring of the polls, including some associated with the Department of Justice.
- Challenge laws, both with respect to pre-election day challenges and challengers at the polls, need to be revised by all states to ensure they are not used for purposes of wrongful disenfranchisement and harassment

- Several people advocate passage of Senator Barak Obama’s “deceptive practices” bill
- There is a split on whether it would be helpful to have nonpartisan election officials – some indicated they thought even if elections officials are elected nonpartisanly they will carry out their duties in biased ways nonetheless. However, most agree that elections officials pursuing partisan agendas is a problem that must be addressed in some fashion. Suggestions included moving election responsibilities out of the secretary of states’ office; increasing transparency in the process; and enacting conflict of interest rules.
- A few recommend returning to allowing use of absentee ballots “for cause” only if it were politically feasible.
- A few recommend enacting a national identification card, including Pat Rogers, an attorney in New Mexico, and Jason Torchinsky from ACVR, who advocates the scheme contemplated in the Carter-Baker Commission Report.
- A couple of interviewees indicated the need for clear standards for the distribution of voting machines

## **Nexis Research**

### ***Absentee Ballot Fraud***

According to press reports, absentee ballots are abused in a variety of ways:

- Campaign workers, candidates and others coerce the voting choices of vulnerable populations, usually elderly voters
- Workers for groups and individuals have attempted to vote absentee in the names of the deceased
- Workers for groups, campaign workers and individuals have attempted to forge the names of other voters on absentee ballot requests and absentee ballots and thus vote multiple times

It is unclear how often actual convictions result from these activities (a handful of articles indicate convictions and guilty pleas), but this is an area in which there have been a substantial number of official investigations and actual charges filed, according to news reports where such information is available. A few of the allegations became part of civil court proceedings contesting the outcome of the election.

While absentee fraud allegations turn up throughout the country, a few states have had several such cases. Especially of note are Indiana, New Jersey, South Dakota, and most particularly, Texas. Interestingly, there were no articles regarding Oregon, where the entire system is vote by mail.

### ***Voter Registration Fraud***

According to press reports, the following types of allegations of voter registration fraud are most common:

- Registering in the name of dead people
- Fake names and other information on voter registration forms
- Illegitimate addresses used on voter registration forms
- Voters being tricked into registering for a particular party under false pretenses
- Destruction of voter registration forms depending on the party the voter registered with

There was only one self evident instance of a noncitizen registering to vote. Many of the instances reported on included official investigations and charges filed, but few actual convictions, at least from the news reporting. There have been multiple reports of registration fraud in California, Colorado, Florida, Missouri, New York, North Carolina, Ohio, South Dakota and Wisconsin.

### ***Voter Intimidation and Suppression***

This is the area which had the most articles in part because there were so many allegations of intimidation and suppression during the 2004 election. Most of these remained allegations and no criminal investigation or prosecution ensued. Some of the cases did end up in civil litigation.

This is not to say that these alleged activities were confined to 2004 – there were several allegations made during every year studied. Most notable were the high number of allegations of voter intimidation and harassment reported during the 2003 Philadelphia mayoral race.

A very high number of the articles were about the issue of challenges to voters' registration status and challengers at the polling places. There were many allegations that planned challenge activities were targeted at minority communities. Some of the challenges were concentrated in immigrant communities.

However, the tactics alleged varied greatly. The types of activities discussed also include the following:

- Photographing or videotaping voters coming out of polling places.
- Improper demands for identification
- Poll watchers harassing voters
- Poll workers being hostile to or aggressively challenging voters
- Disproportionate police presence
- Poll watchers wearing clothes with messages that seemed intended to intimidate
- Insufficient voting machines and unmanageably long lines

Although the incidents reported on occurred everywhere, not surprisingly, many came from “battleground” states. There were several such reports out of Florida, Ohio and Pennsylvania.

### ***“Dead Voters and Multiple Voting”***

There were a high number of articles about people voting in the names of the dead and voting more than once. Many of these articles were marked by allegations of big numbers of people committing these frauds, and relatively few of these allegations turning out to be accurate according to investigations by the newspapers themselves, elections officials and criminal investigators. Often the problem turned out to be a result of administrative error, poll workers mis-marking of voter lists, a flawed registration list and/or errors made in the attempt to match names of voters on the list with the names of the people who voted. In a good number of cases, there were allegations that charges of double voting by political leaders were an effort to scare people away from the voting process.

Nonetheless there were a few cases of people actually being charged and/or convicted for these kinds of activities. Most of the cases involved a person voting both by absentee ballot and in person. A few instances involved people voting both during early voting and on Election Day, which calls into question the proper marking and maintenance of the voting lists. In many instances, the person charged claimed not to have voted twice on purpose. A very small handful of cases involved a voter voting in more than one county and there was one substantiated case involving a person voting in more than one state. Other instances in which such efforts were alleged were disproved by officials.

In the case of voting in the name of a dead person, the problem lay in the voter registration list not being properly maintained, i.e. the person was still on the registration list as eligible to vote, and a person taking criminal advantage of that. In total, the San Francisco Chronicle found 5 such cases in March 2004; the AP cited a newspaper analysis of five such persons in an Indiana primary in May 2004; and a senate committee found two people to have voted in the names of the dead in 2005.

As usual, there were a disproportionate number of such articles coming out of Florida. Notably, there were three articles out of Oregon, which has one hundred percent vote-by-mail.

### ***Vote Buying***

There were a surprising number of articles about vote buying cases. A few of these instances involved long-time investigations in three particular jurisdictions as detailed in the vote buying summary. There were more official investigations, indictments and convictions/pleas in this area. All of these cases are concentrated in the Midwest and South.

### ***Deceptive Practices***

In 2004 there were numerous reports of intentional disinformation about voting eligibility and the voting process meant to confuse voters about their rights and when and where to vote. Misinformation came in the form of flyers, phone calls, letters, and even people going door to door. Many of the efforts were reportedly targeted at minority communities. A disproportionate number of them came from key battleground states, particularly Florida, Ohio, and Pennsylvania. From the news reports found, only one of these instances was officially investigated, the case in Oregon involving the destruction of voter registration forms. There were no reports of prosecutions or any other legal proceeding.

### ***Non-citizen Voting***

There were surprisingly few articles regarding noncitizen registration and voting – just seven all together, in seven different states across the country. They were also evenly split between allegations of noncitizens registering and noncitizens voting. In one case charges were filed against ten individuals. In one case a judge in a civil suit found there was illegal noncitizen voting. Three instances prompted official investigations. Two cases, from this nexis search, remained just allegations of noncitizen voting.

### ***Felon Voting***

Although there were only thirteen cases of felon voting, some of them involved large numbers of voters. Most notably, of course, are the cases that came to light in the Washington gubernatorial election contest (see Washington summary) and in Wisconsin (see Wisconsin summary). In several states, the main problem has been the large number of ineligible felons that remained on the voting list.

### ***Election Official Fraud***

In most of the cases in which fraud by elections officials is suspected or alleged, it is difficult to determine whether it is incompetence or a crime. There are several cases of ballots gone missing, ballots unaccounted for and ballots ending up in a worker's possession. In two cases workers were said to have changed peoples' votes. The one instance in which widespread ballot box stuffing by elections workers was alleged was in Washington State. The judge in the civil trial of that election contest did not find that elections workers had committed fraud. Four of the cases are from Texas.

### ***Existing Research***

There are many reports and books that describe anecdotes and draw broad conclusions from a large array of incidents. There is little research that is truly systematic or scientific. The most systematic look at fraud is the report written by Lori Minnite. The most systematic look at voter intimidation is the report by Laughlin McDonald. Books



written about this subject seem to all have a political bias and a pre-existing agenda that makes them somewhat less valuable.

Researchers agree that measuring something like the incidence of fraud and intimidation in a scientifically legitimate way is extremely difficult from a methodological perspective and would require resources beyond the means of most social and political scientists. As a result, there is much more written on this topic by advocacy groups than social scientists. It is hoped that this gap will be filled in the “second phase” of this EAC project.

Moreover, reports and books make allegations but, perhaps by their nature, have little follow up. As a result, it is difficult to know when something has remained in the stage of being an allegation and gone no further, or progressed to the point of being investigated or prosecuted or in any other way proven to be valid by an independent, neutral entity. This is true, for example, with respect to allegations of voter intimidation by civil rights organizations, and, with respect to fraud, John Fund’s frequently cited book. Again, this is something that it is hoped will be addressed in the “second phase” of this EAC project by doing follow up research on allegations made in reports, books and newspaper articles.

Other items of note:

- There is as much evidence, and as much concern, about structural forms of disenfranchisement as about intentional abuse of the system. These include felon disenfranchisement, poor maintenance of databases and identification requirements.
- There is tremendous disagreement about the extent to which polling place fraud, e.g. double voting, intentional felon voting, noncitizen voting, is a serious problem. On balance, more researchers find it to be less of a problem than is commonly described in the political debate, but some reports say it is a major problem, albeit hard to identify.
- There is substantial concern across the board about absentee balloting and the opportunity it presents for fraud.
- Federal law governing election fraud and intimidation is varied and complex and yet may nonetheless be insufficient or subject to too many limitations to be as effective as it might be.
- Deceptive practices, e.g. targeted flyers and phone calls providing misinformation, were a major problem in 2004.
- Voter intimidation continues to be focused on minority communities, although the American Center for Voting Rights uniquely alleges it is focused on Republicans.

## Cases

After reviewing over 40,000 cases, the majority of which came from appeals courts, I have found comparatively very few which are applicable to this study. Of those that are applicable, no apparent thematic pattern emerges. However, it seems that the greatest areas of fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility. But because so few cases provided a picture of these current problems, I suggest that case research for the second phase of this project concentrate on state trial-level decisions.

## Methodology

The following is a summary of interviews conducted with a number of political scientists and experts in the field as to how one might undertake a comprehensive examination of voter fraud and intimidation. A list of the individuals interviewed and their ideas are available, and all of the individuals welcome any further questions or explanations of their recommended procedures.

- In analyzing instances of alleged fraud and intimidation, we should look to criminology as a model. In criminology, experts use two sources: the Uniform Crime Reports, which are all reports made to the police, and the Victimization Survey, which asks the general public whether a particular incident has happened to them. After surveying what the most common allegations are, we should conduct a survey of the general public that ask whether they have committed certain acts or been subjected to any incidents of fraud or intimidation. This would require using a very large sample, and we would need to employ the services of an expert in survey data collection. (Stephen Ansolobhere, MIT)
- Several political scientists with expertise in these types of studies recommended a methodology that includes interviews, focus groups, and a limited survey. In determining who to interview and where the focus groups should be drawn from, they recommend the following procedure:
  - Pick a number of places that have historically had many reports of fraud and/or intimidation; from that pool pick 10 that are geographically and demographically diverse, and have had a diversity of problems
  - Pick a number of places that have not had many reports of fraud and/or intimidation; from that pool pick 10 places that match the geographic and demographic make-up of the previous ten above (and, if possible, have comparable elections practices)

- Assess the resulting overall reports and impressions resulting from these interviews and focus groups, and examine comparisons and differences among the states and what may give rise to them.

In conducting a survey of elections officials, district attorneys, district election officers, they recommend that:

- The survey sample be large in order to be able to get the necessary subsets
- The survey must include a random set of counties where there have and have not been a large number of allegations

(Allan Lichtman, American University; Thad Hall, University of Utah; Bernard Grofman, UC – Irvine)

- Another political scientist recommended employing a methodology that relies on qualitative data drawn from in-depth interviews with key critics and experts on all sides of the debate on fraud; quantitative data collected through a survey of state and local elections and law enforcement officials; and case studies. Case studies should focus on the five or ten states, regions or cities where there has been a history of election fraud to examine past and present problems. The survey should be mailed to each state's attorney general and secretary of state, each county district attorney's office and each county board of elections in the 50 states. (Lorraine Minnite, Barnard College)
- The research should be a two-step process. Using LexisNexis and other research tools, a search should be conducted of news media accounts over the past decade. Second, interviews with a systematic sample of election officials nationwide and in selected states should be conducted. (Chandler Davidson, Rice University)
- One expert in the field posits that we can never come up with a number that accurately represents either the incidence of fraud or the incidence of voter intimidation. Therefore, the better approach is to do an assessment of what is most likely to happen, what election violations are most likely to be committed – in other words, a risk analysis. This would include an analysis of what it would actually take to commit various acts, e.g. the cost/benefit of each kind of violation. From there we could rank the likely prevalence of each type of activity and examine what measures are or could be effective in combating them. (Wendy Weiser, Brennan Center of New York University)
- Replicate a study in the United States done abroad by Susan Hyde of the University of California- San Diego examining the impact of impartial poll site observers on the incidence of election fraud. Doing this retrospectively would require the following steps:
  - Find out where there were federal observers
  - Get precinct level voting information for those places

- Analyze whether there was any difference in election outcomes in those places with and without observers, and whether any of these results seem anomalous.

Despite the tremendous differences in the political landscapes of the countries examined by Hyde in previous studies and the U.S., Hyde believes this study could be effectively replicated in this country by sending observers to a random sample of precincts. Rather than compare the incumbent's vote share, such factors such as voter complaints, voter turnout, number of provisional ballots used, composition of the electorate, as well as any anomalous voting results could be compared between sites with and without monitors.

For example, if intimidation is occurring, and if reputable monitors make intimidation less likely or voters more confident, then turnout should be higher on average in monitored precincts than in unmonitored precincts. If polling station officials are intentionally refusing to issue provisional ballots, and the polling station officials are more likely to adhere to regulations while being monitored, the average number of provisional ballots should be higher in monitored precincts than in unmonitored precincts. If monitors cause polling station officials to adhere more closely to regulations, then there should be fewer complaints (in general) about monitored than unmonitored precincts (this could also be reversed if monitors made voters more likely to complain).

Again, random assignment controls for all of the other factors that otherwise influence these variables.

One of the downsides of this approach is it does not get at some forms of fraud, e.g. absentee ballot fraud; those would have to be analyzed separately.

- Another political scientist recommends conducting an analysis of vote fraud claims and purging of registration rolls by list matching. Allegations of illegal voting often are based on matching of names and birth dates. Alleged instances of double voting are based on matching the names and birth dates of persons found on voting records. Allegations of ineligible felon (depending on state law), deceased, and of non-citizen voting are based on matching lists of names, birth dates, and sometimes addresses of such people against a voting records. Anyone with basic relational database skills can perform such matching in a matter of minutes.

However, there are a number of pitfalls for the unwary that can lead to grossly over-estimating the number of fraudulent votes, such as missing or ignored middle names and suffixes or matching on missing birth dates. Furthermore, there is a surprising statistical fact that a group of about three hundred people with the same first and last name are almost assured to share the exact same birth date, including year. In a large state, it is not uncommon for hundreds of Robert Smiths (and other common names) to have voted. Thus, allegations of vote fraud

or purging of voter registration rolls by list matching almost assuredly will find a large proportion of false positives: people who voted legally or are registered to vote legally.

Statistics can be rigorously applied to determine how many names would be expected to be matched by chance. A simulation approach is best applied here: randomly assign a birth date to an arbitrary number of people and observe how many match within the list or across lists. The simulation is repeated many times to average out the variation due to chance. The results can then be matched back to actual voting records and purge lists, for example, in the hotly contested states of Ohio or Florida, or in states with Election Day registration where there are concerns that easy access to voting permits double voting. This analysis will rigorously identify the magnitude alleged voter fraud, and may very well find instances of alleged fraud that exceed what might have otherwise happened by chance.

This same political scientist also recommends another way to examine the problem: look at statistics on provisional voting: the number cast might provide indications of intimidation (people being challenged at the polls) and the number of those not counted would be indications of "vote fraud." One could look at those jurisdictions in the Election Day Survey with a disproportionate number of provisional ballots cast and cross-reference it with demographics and number of provisional ballots discarded. (Michael McDonald, George Mason University)

- Spencer Overton, in a forthcoming law review article entitled *Voter Identification*, suggests a methodology that employs three approaches—investigations of voter fraud, random surveys of voters who purported to vote, and an examination of death rolls provide a better understanding of the frequency of fraud. He says all three approaches have strengths and weaknesses, and thus the best studies would employ all three to assess the extent of voter fraud. An excerpt follows:

#### *1. Investigations and Prosecutions of Voter Fraud*

Policymakers should develop databases that record all investigations, allegations, charges, trials, convictions, acquittals, and plea bargains regarding voter fraud. Existing studies are incomplete but provide some insight. For example, a statewide survey of each of Ohio's 88 county boards of elections found only four instances of ineligible persons attempting to vote out of a total of 9,078,728 votes cast in the state's 2002 and 2004 general elections. This is a fraud rate of 0.00000045 percent. The Carter-Baker Commission's Report noted that since October 2002, federal officials had charged 89 individuals with casting multiple votes, providing false information about their felon status, buying votes, submitting false voter registration information, and voting improperly as a non-citizen. Examined in the context of the 196,139,871 ballots cast between October 2002 and

August 2005, this represents a fraud rate of 0.0000005 percent (note also that not all of the activities charged would have been prevented by a photo identification requirement).

A more comprehensive study should distinguish voter fraud that could be prevented by a photo identification requirement from other types of fraud — such as absentee voting and stuffing ballot boxes — and obtain statistics on the factors that led law enforcement to prosecute fraud. The study would demand significant resources because it would require that researchers interview and pour over the records of local district attorneys and election boards.

Hard data on investigations, allegations, charges, pleas, and prosecutions is important because it quantifies the amount of fraud officials detect. Even if prosecutors vigorously pursue voter fraud, however, the number of fraud cases charged probably does not capture the total amount of voter fraud. Information on official investigations, charges, and prosecutions should be supplemented by surveys of voters and a comparison of voting rolls to death rolls.

## *2. Random Surveys of Voters*

Random surveys could give insight about the percentage of votes cast fraudulently. For example, political scientists could contact a statistically representative sampling of 1,000 people who purportedly voted at the polls in the last election, ask them if they actually voted, and confirm the percentage who are valid voters. Researchers should conduct the survey soon after an election to locate as many legitimate voters as possible with fresh memories.

Because many respondents would perceive voting as a social good, some who did not vote might claim that they did, which may underestimate the extent of fraud. A surveyor might mitigate this skew through the framing of the question (“I’ve got a record that you voted. Is that true?”).

Further, some voters will not be located by researchers and others will refuse to talk to researchers. Photo identification proponents might construe these non-respondents as improper registrations that were used to commit voter fraud.

Instead of surveying all voters to determine the amount of fraud, researchers might reduce the margin of error by focusing on a random sampling of voters who signed affidavits in the three states that request photo identification but also allow voters to establish their identity through affidavit—Florida, Louisiana, and South Dakota. In

South Dakota, for example, only two percent of voters signed affidavits to establish their identity. If the survey indicates that 95 percent of those who signed affidavits are legitimate voters (and the other 5 percent were shown to be either fraudulent or were non-responsive), this suggests that voter fraud accounts for, at the maximum, 0.1 percent of ballots cast.

The affidavit study, however, is limited to three states, and it is unclear whether this sample is representative of other states (the difficulty may be magnified in Louisiana in the aftermath of Hurricane Katrina's displacement of hundreds of thousands of voters). Further, the affidavit study reveals information about the amount of fraud in a photo identification state with an affidavit exception—more voter fraud may exist in a state that does not request photo identification.

### 3. *Examining Death Rolls*

A comparison of death rolls to voting rolls might also provide an estimate of fraud.

Imagine that one million people live in state A, which has no documentary identification requirement. Death records show that 20,000 people passed away in state A in 2003. A cross-referencing of this list to the voter rolls shows that 10,000 of those who died were registered voters, and these names remained on the voter rolls during the November 2004 election. Researchers would look at what percentage of the 10,000 dead-but-registered people who “voted” in the November 2004 election. A researcher should distinguish the votes cast in the name of the dead at the polls from those cast absentee (which a photo identification requirement would not prevent). This number would be extrapolated to the electorate as a whole.

This methodology also has its strengths and weaknesses. If fraudulent voters target the dead, the study might overestimate the fraud that exists among living voters (although a low incidence of fraud among deceased voters might suggest that fraud among all voters is low). The appearance of fraud also might be inflated by false positives produced by a computer match of different people with the same name. Photo identification advocates would likely assert that the rate of voter fraud could be higher among fictitious names registered, and that the death record survey would not capture that type of fraud because fictitious names registered would not show up in the death records. Nevertheless, this study, combined with the other two, would provide important insight into the magnitude of fraud likely to exist in the absence of a photo identification requirement.

**Recommendations for Further EAC Activity  
on Voting Fraud and Voter Intimidation**

**Consultants' Recommendations**

***Recommendation 1: Conduct More Interviews***

Time and resource constraints prevented the consultants from interviewing the full range of participants in the process. As a result, we recommend that any future activity in this area include conducting further interviews.

In particular, we recommend that more election officials from all levels of government, parts of the country, and parties be interviewed. These individuals have the most direct inside information on how the system works -- and at times does not work. They are often the first people voters go to when something goes wrong and are often responsible for fixing it. They are the ones who must carry out the measures that are designed to both prevent fraud and voter intimidation and suppression. They will most likely know what, therefore, is and is not working.

It would also be especially beneficial to talk to people in law enforcement, specifically federal District Election Officers ("DEOs") and local district attorneys, as well as civil and criminal defense attorneys.

The Public Integrity Section of the Criminal Division of the Department of Justice has all of the 93 U.S. Attorneys appoint Assistant U.S. Attorneys to serve as DEOs for two years. DEOs are required to

- screen and conduct preliminary investigations of complaints, in conjunction with the FBI and PIN, to determine whether they constitute potential election crimes and should become matters for investigation;
- oversee the investigation and prosecution of election fraud and other election crimes in their districts;
- coordinate their district's (investigative and prosecutorial) efforts with DOJ headquarters prosecutors;
- coordinate election matters with state and local election and law enforcement officials and make them aware of their availability to assist with election-related matters;
- issue press releases to the public announcing the names and telephone numbers of DOJ and FBI officials to contact on election day with complaints about voting or election irregularities and answer telephones on election day to receive these complaints; and
- supervise a team of Assistant U.S. Attorneys and FBI special agents who are appointed to handle election-related allegations while the polls are open on election day.<sup>1</sup>



Given the great responsibilities of the DEOs, and the breadth of issues they must deal with, they undoubtedly are great resources for information and insight as to what types of fraud and intimidation/suppression are occurring in their districts.

In many situations, however, it is the local district attorneys who will investigate election fraud and suppression tactics, especially in local elections. They will be able to provide information on what has gone on in their jurisdictions, as well as which matters get pursued and why.

Finally, those who defend people accused of election related crimes would also be useful to speak to. They may have a different perspective on how well the system is working to detect, prevent, and prosecute election fraud.

***Recommendation 2: Follow Up on Nexis Research***

The Nexis search conducted for this phase of the research was based on a list of search terms agreed upon by both consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contain allegations of fraud or intimidation. Similarly, many of the articles contain information about investigations into such activities or even charges brought. However, without being able to go beyond the agreed search terms, it could not be determined whether there was any later determination regarding the allegations, investigation or charges brought. This leaves a gaping hole: it is impossible to know if the article is just reporting on “talk” or what turns out to be a serious affront to the system.

As a result, we recommend that follow up Nexis research be conducted to determine what, if any, resolutions or further activity there was in each case. This would provide a much more accurate picture of what types of activities are actually taking place.

***Recommendation 3: Follow Up on Allegations Found in Literature Review***

Similarly, many allegations are made in the reports and books that we analyzed and summarized. Those allegations are often not substantiated in any way and are inherently time limited by the date of the writing. Despite this, such reports and books are frequently cited by various interested parties as evidence of fraud or intimidation.

Therefore, we recommend follow up to the literature review: for those reports and books that make or cite specific instances of fraud or intimidation, a research effort should be made to follow up on those references to see if and how they were resolved.

***Recommendation 4: Review Complaints File With MyVote1 Project Voter Hotline***

During the 2004 election and the statewide elections of 2005, the University of Pennsylvania led a consortium of groups and researchers in conducting the MyVote1 Project. This project involved using a 1-800 voter hotline where voters could call for poll location, be transferred to a local hotline, or leave a recorded message with a complaint.

In 2004, this resulted in over 200,000 calls received and over 56,000 recorded complaints.<sup>ii</sup> The researchers in charge of this project have done a great deal of work to parse and analyze the data collected through this process, including going through the audio messages and categorizing them by the nature of the complaint. These categories include registration, absentee ballot, poll access, ballot/screen, coercion/intimidation, identification, mechanical, provisional (ballot).

We recommend that further research include making full use of this data with the cooperation of the project leaders. While perhaps not a fully scientific survey given the self-selection of the callers, the information regarding 200,000 complaints should provide a good deal of insight into the problems voters experienced, especially those in the nature of intimidation or suppression.

***Recommendation 5: Further Review of Complaints Filed With U.S. Department of Justice***

Although according to a recent GAO report the Voting Section of the Civil Rights Division of the Department of Justice has a variety in ways it tracks complaints of voter intimidation,<sup>iii</sup> the Section was extremely reluctant to provide the consultants with useful information. Further attempts should be made to obtain relevant data. This includes the telephone logs of complaints the Section keeps and information from the database – the Interactive Case Management (ICM) system – the Section maintains on complaints received and the corresponding action taken. We also recommend that further research include a review and analysis of the observer and monitor field reports from Election Day that must be filed with the Section.

***Recommendation 6: Review Reports Filed By District Election Officers***

Similarly, the consultants believe it would be useful for any further research to include a review of the reports that must be filed by every District Election Officer to the Public Integrity Section of the Criminal Division of the Department of Justice. As noted above, the DEOs play a central role in receiving reports of voter fraud and investigating and pursuing them. Their reports back to the Department would likely provide tremendous insight into what actually transpired during the last several elections. Where necessary, information could be redacted or made confidential.

***Recommendation 7: Attend Ballot Access and Voting Integrity Symposium***

The consultants also believe it would be useful for any further activity in this area to include attendance at the next Ballot Access and Voting Integrity Symposium. According to the Department,<sup>iv</sup>

Prosecutors serving as District Election Officers in the 94 U.S. Attorneys' Offices are required to attend annual training conferences on fighting election fraud and voting rights abuses... These conferences are sponsored by the Voting Section of the Civil Rights Division and the Public Integrity

Section of the Criminal Division, and feature presentations by Civil Rights officials and senior prosecutors from the Public Integrity Section and the U.S. Attorneys' Offices. As a result of these conferences, there is a nationwide increase in Department expertise relating to the prosecution of election crimes and the enforcement of voting rights.

By attending the symposium researchers could learn more about the following:

- How District Election Officers are trained, e.g. what they are taught to focus their resources on, how they are instructed to respond to various types of complaints
- How information about previous election and voting issues is presented
- How the Voting Rights Act, the criminal laws governing election fraud and intimidation, the National Voter Registration Act, and the Help America Vote Act are described and explained to participants

***Recommendation 8: Employ Academic or Individual to Conduct Statistical Research***

Included in this report is a summary of various methodologies political scientists and others suggested to measure voter fraud and intimidation. While we note the skepticism of the Working Group in this regard, we nonetheless recommend that in order to further the mission of providing unbiased data, further activity in this area include an academic institution and/or individual that focuses on sound, statistical methods for political science research.

***Recommendation 9: Explore Improvements to Federal Law***

Finally, consultant Tova Wang recommends that future researchers review federal law to explore ways to make it easier to impose either civil or criminal penalties for acts of intimidation that do not necessarily involve racial animus and/or a physical or economic threat.

According to Craig Donsanto, long-time Director of the Election Crimes Branch, Public Integrity Section, Criminal Division of the U.S. Department of Justice:

As with other statutes addressing voter intimidation, in the absence of any jurisprudence to the contrary, it is the Criminal Division's position that section 1973gg-10(1) applies only to intimidation which is accomplished through the use of threats of physical or economic duress. Voter "intimidation" accomplished through less drastic means may present violations of the Voting Rights Act, 42 U.S.C. § 1973i(b), which are enforced by the Civil Rights Division through noncriminal remedies.<sup>v</sup>

Mr. Donsanto reiterated these points to us on several occasions, including at the working group meeting.

As a result, researchers should examine if there is some way in which current law might be revised or new laws passed that would reach voter intimidation that does not threaten the voter physically or financially, but rather threatens the voter's right to vote as a tangible value in itself. Such an amendment or law would reach all forms of voter intimidation, no matter if it is motivated by race, party, ethnicity or any other criteria. The law would then *potentially* cover, for example, letters and postcards with language meant to deter voters from voting and both pre-election and Election Day challengers that are clearly mounting challenges solely on illegitimate bases.

In the alternative to finding a way to criminalize such behavior, researchers might examine ways to invigorate measures to deter and punish voter intimidation under the civil law. For example, there might be a private right of action created for voters or groups who have been subjected to intimidation tactics in the voting process. Such an action could be brought against individual offenders; any state or local actor where there is a pattern of repeated abuse in the jurisdiction that such officials did not take sufficient action against; and organizations that intentionally engage in intimidating practices. As a penalty upon finding liability, civil damages could be available plus perhaps attorney's fees.

Another, more modest measure would be, as has been suggested by Ana Henderson and Christopher Edley,<sup>vi</sup> to bring parity to fines for violations under the Voting Rights Act. Currently the penalty for fraud is \$10,000 while the penalty for acts to deprive the right to vote is \$5,000.

### **Working Group Recommendations**

#### ***Recommendation 1: Employ Observers To Collect Data in the 2006 and/or 2008 Elections***

At the working group meeting, there was much discussion about using observers to collect data regarding fraud and intimidation at the polls in the upcoming elections. Mr. Ginsberg recommended using representatives of both parties for the task. Mr. Bauer and others objected to this, believing that using partisans as observers would be unworkable and would not be credible to the public.

There was even greater concern about the difficulties in getting access to poll sites for the purposes of observation. Most states strictly limit who can be in the polling place. In addition, there are already so many groups doing observation and monitoring at the polls, administrators might object. There was further concern that observers would introduce a variable into the process that would impact the outcome. The very fact that observers were present would influence behavior and skew the results.

Moreover, it was pointed out, many of the problems we see now with respect to fraud and intimidation does not take place at the polling place, e.g. absentee ballot fraud and deceptive practices. Poll site monitoring would not capture this activity. Moreover, with

increased use of early voting, poll site monitoring might have to go on for weeks to be effective, which would require tremendous resources.

Mr. Weinberg suggested using observers in the way they are utilized in international elections. Such observers come into a jurisdiction prior to the election, and use standardized forms at the polling sites to collect data.

***Recommendation 2: Do a Study on Absentee Ballot Fraud***

The working group agreed that since absentee ballot fraud is the main form of fraud occurring, and is a practice that is great expanding throughout the country, it would make sense to do a stand-alone study of absentee ballot fraud. Such a study would be facilitated by the fact that there already is a great deal of information on how, when, where and why such practices are carried out based on cases successfully prosecuted. Researchers could look at actual cases to see how absentee ballot fraud schemes are conducted in an effort to provide recommendations on more effective measures for preventing them.

***Recommendation 3: Use Risk Analysis Methodology to Study Fraud<sup>1</sup>***

Working group members were supportive of one of the methodologies recommended for studying this issue, risk analysis. As Mr. Bauer put it, based on the assumption that people act rationally, do an examination of what types of fraud people are most likely to commit, given the relative costs and benefits. In that way, researchers can rank the types of fraud that are the easiest to commit at the least cost with the greatest effect, from most to least likely to occur. This might prove a more practical way of measuring the problems than trying to actually get a number of acts of fraud and/or intimidation occurring. Mr. Greenbaum added that one would want to examine what conditions surrounding an election would be most likely to lead to an increase in fraud. Mr. Rokita objected based on his belief that the passions of partisanship lead people to not act rationally in an election.

***Recommendation 4: Conduct Research Using Database Comparisons***

Picking up on a suggestion made by Spencer Overton and explained in the suggested methodology section, Mr. Hearne recommended studying the issue using statistical database matching. Researchers should compare the voter roll and the list of people who actually voted to see if there are “dead” and felon voters. Because of the inconsistent quality of the databases, however, a political scientist would need to work in an appropriate margin of error when using such a methodology.

***Recommendation 5: Conduct a Study of Deceptive Practices***

The working group discussed the increasing use of deceptive practices, such as flyers with false and/or intimidating information, to suppress voter participation. A number of

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<sup>1</sup> See Appendix C, and section on methodology

groups, including the Department of Justice, the EAC, and organizations such as the Lawyers Committee for Civil Rights, keep phone logs regarding complaints of such practices, which may be available for review and analysis. This is also an area in which there is often tangible evidence, such as copies of the flyers and postcards themselves. All of this information should be reviewed and analyzed to see how such practices are being conducted and what can be done about them.

***Recommendation 6: Study Use of HAVA Administrative Complaint Procedure As Vehicle for Measuring Fraud and Intimidation***

The EAC should study the extent to which states are actually utilizing the administrative complaint procedure mandated by HAVA. In addition, the EAC should study whether data collected through the administrative complaint procedure can be used as another source of information for measuring fraud and intimidation.

***Recommendation 7: Examine the Use of Special Election Courts***

Given that many state and local judges are elected, it may be worth exploring whether special election courts that are running before, during, and after election day would be an effective means of disposing with complaints and violations in an expeditious manner. Pennsylvania employs such a system, and the EAC should consider investigating how well it is working to deal with fraud and intimidation problems.

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## Key Working Group Observations and Concerns

### Working Group Observations

1. ***The main problems today are structural barriers to voting and administrative error.*** Mr. Perez observed that, in accordance with the research, the biggest issues today are structural barriers to voting, not stealing votes. Election administrators share this view. Election fraud is negligible, and to the extent it occurs, it needs to be prosecuted with stronger criminal laws. The biggest problem is properly preparing people, which is the responsibility of election administrators.
2. ***Most fraud and intimidation is happening outside of the polling place.*** Mr. Greenbaum observed that with respect to both voter fraud and voter suppression, such as deceptive practices and tearing up voter registration forms, most of that is taking place outside of the polling place.
3. ***This issue cannot be addressed through one study or one methodology alone.*** Mr. Weinberg observed that since there is such a variety in types of fraud and intimidation, one solution will not fit all. It will be impossible to obtain data or resolve any of these problems through a single method.
4. ***The preliminary research conducted for this project is extremely valuable.*** Several of the working group members complimented the quality of the research done and although it is only preliminary, thought it would be useful and informative in the immediate future.
5. ***The Department of Justice is exploring expanding its reach over voter suppression activities.*** In the context of the conversation about defining voter intimidation, Mr. Donsanto pointed out that while voter intimidation was strictly defined by the criminal law, his section is beginning to explore the slightly different concept of vote suppression, and how to pursue it. He mentioned the phone-jamming case in New Hampshire as an initial success in this effort. He noted that he believes that vote suppression in the form of deceptive practices ought to be a crime and the section is exploring ways to go after it within the existing statutory construct. Mr. Bauer raised the example of a party sending people dressed in paramilitary outfits to yell at people as they go to the polls, telling them they have to show identification. Mr. Donsanto said that under the laws he has to work with today, such activity is not considered corrupt. He said that his lawyers are trying to “bend” the current laws to address aggravated cases of vote suppression, and the phone-jamming case is an example of that. Mr. Donsanto said that within the Department, the term vote “suppression” and translating it into a crime is a “work in progress.”

6. **Registration fraud does not translate into vote fraud.** Ms. Rogers, Mr. Donsanto and others stated that although phony voter registration applications turned in by people being paid by the form was a problem, it has not been found in their experience to lead to fraudulent voters at the polls. Ms. Rogers said such people were motivated by money, not defrauding the election.
7. **Handling of voter fraud and intimidation complaints varies widely across states and localities.** Ms. Rogers and others observed that every state has its own process for intake and review of complaints of fraud and intimidation, and that procedures often vary within states. The amount of authority secretaries of state have to address such problems also is different in every state. Mr. Weinberg stated he believed that most secretaries of state did not have authority to do anything about these matters. Participants discussed whether secretaries ought to be given greater authority so as to centralize the process, as HAVA has mandated in other areas.

### Working Group Concerns

1. Mr. Rokita questioned whether the purpose of the present project ought to be on assessing the level of fraud and where it is, rather than on developing methods for making such measurements. He believed that methodology should be the focus, “rather than opinions of interviewees.” He was concerned that the EAC would be in a position of “adding to the universe of opinions.”
2. Mr. Rokita questioned whether the “opinions” accumulated in the research “is a fair sampling of what’s out there.” Ms. Wang responded that one of the purposes of the research was to explore whether there is a method available to actually quantify in some way how much fraud there is and where it is occurring in the electoral process. Mr. Rokita replied that “Maybe at the end of the day we stop spending taxpayer money or it’s going to be too much to spend to find that kind of data. Otherwise, we will stop it here and recognize there is a huge difference of opinion on that issue of fraud, when it occurs is obtainable, and that would possibly be a conclusion of the EAC.” Ms. Sims responded that she thought it would be possible to get better statistics on fraud and there might be a way of “identifying at this point certain parts in the election process that are more vulnerable, that we should be addressing.”
3. Mr. Rokita stated that, “We’re not sure that fraud at the polling place doesn’t exist. We can’t conclude that.”
4. Mr. Rokita expressed concern about working with a political scientist. He believes that the “EAC needs to be very careful in who they select, because all the time and effort and money that’s been spent up to date and would be spent in the future could be invalidated by a wrong selection in the eyes of some group.”



**NEXIS Charts**

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**Case Charts**

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**Appendix 1**  
**List of Individuals Interviewed**

Wade Henderson, Executive Director, Leadership Conference for Civil Rights

Wendy Weiser, Deputy Director, Democracy Program, The Brennan Center

William Groth, attorney for the plaintiffs in the Indiana voter identification litigation

Lori Minnite, Barnard College, Columbia University

Neil Bradley, ACLU Voting Rights Project

Nina Perales, Counsel, Mexican American Legal Defense and Education Fund

Pat Rogers, attorney, New Mexico

Rebecca Vigil-Giron, Secretary of State, New Mexico

Sarah Ball Johnson, Executive Director of the State Board of Elections, Kentucky

Stephen Ansolobehere, Massachusetts Institute of Technology

Chandler Davidson, Rice University

Tracey Campbell, author, *Deliver the Vote*

Douglas Webber, Assistant Attorney General, Indiana, (defendant in the Indiana voter identification litigation)

Heather Dawn Thompson, Director of Government Relations, National Congress of American Indians

Jason Torchinsky, Assistant General Counsel, American Center for Voting Rights

Robin DeJarnette, Executive Director, American Center for Voting Rights

Joseph Rich, former Director of the Voting Section, Civil Rights Division, U.S. Department of Justice

Joseph Sandler, Counsel to the Democratic National Committee

John Ravitz, Executive Director, New York City Board of Elections

John Tanner, Director, Voting Section, Civil Rights Division, U.S. Department of Justice

Kevin Kennedy, Executive Director of the State Board of Elections, Wisconsin  
Evelyn Stratton, Justice, Supreme Court of Ohio

Tony Sirvello, Executive Director, International Association of  
Clerks, Recorders, Election Officials and Treasurers

Harry Van Sickle, Commissioner of Elections, Pennsylvania

Craig Donsanto, Director, Public Integrity Section, U.S. Department of Justice

Sharon Priest, former Secretary of State, Arkansas

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**Appendix 2**  
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Tracy Campbell, *Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004*, Carroll & Graf Publishers, 2005.

David E. Johnson and Jonny R. Johnson, *A Funny Thing Happened on the Way to the White House: Foolhardiness, Folly, and Fraud in the Presidential Elections, from Andrew Jackson to George W. Bush*, Taylor Trade Publishing, 2004.

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*Common Cause of Georgia vs. Billups*, U.S. District Court, Northern District of Georgia (Rome) 4:05-cv-00201-HLM U.S. Court of Appeals, 11<sup>th</sup> Circuit 05-15784

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### Appendix 3

## Excerpt from “Machinery of Democracy,” a Brennan Center Report

### APPENDIX C

#### **BRENNAN CENTER TASK FORCE ON VOTING SYSTEM SECURITY, LAWRENCE NORDEN, CHAIR**

Excerpted from pp. 8-19

#### **METHODOLOGY**

The Task Force concluded, and the peer review team at NIST agreed, that the best approach for comprehensively evaluating voting system threats was to: (1) identify and categorize the potential threats against voting systems, (2) prioritize these threats based upon an agreed upon metric (which would tell us how difficult each threat is to accomplish from the attacker's point of view), and (3) determine, utilizing the same metric employed to prioritize threats, how much more difficult each of the catalogued attacks would become after various sets of countermeasures are implemented.

This model allows us to identify the attacks we should be most concerned about (*i.e.*, the most practical and least difficult attacks). Furthermore, it allows us to quantify the potential effectiveness of various sets of countermeasures (*i.e.*, how difficult the least difficult attack is after the countermeasure has been implemented). Other potential models considered, but ultimately rejected by the Task Force, are detailed in Appendix B.

#### **IDENTIFICATION OF THREATS**

The first step in creating a threat model for voting systems was to identify as many potential attacks as possible. To that end, the Task Force, together with the participating election officials, spent several months identifying voting system vulnerabilities. Following this work, NIST held a Voting Systems Threat Analysis Workshop on October 7, 2005. Members of the public were invited to write up and post additional potential attacks. Taken together, this work produced over 120 potential attacks on the three voting systems. They are detailed in the catalogs annexed.<sup>20</sup> Many of the attacks are described in more detail at <http://vote.nist.gov/threats/papers.htm>.

The types of threats detailed in the catalogs can be broken down into nine categories: (1) the insertion of corrupt software into machines prior to Election Day; (2) wireless and other remote control attacks on voting machines on Election Day; (3) attacks on tally servers; (4) miscalibration of voting machines; (5) shut off of voting machine features intended to assist voters; (6) denial of service attacks; (7) actions by corrupt poll workers or others at the polling place to affect votes cast; (8) vote buying schemes; (9) attacks on ballots or VVPT. Often, the actual attacks



involve some combination of these categories. We provide a discussion of each type of attack in “Categories of Attacks,” *infra* at pp. 24–27.

**PRIORITIZING THREATS:  
NUMBER OF INFORMED PARTICIPANTS AS METRIC**

Without some form of prioritization, a compilation of the threats is of limited value. Only by prioritizing these various threats could we help election officials identify which attacks they should be most concerned about, and what steps could be taken to make such attacks as difficult as possible. As discussed below, we have determined the level of difficulty for each attack where the attacker is attempting to affect the outcome of a close statewide election.

There is no perfect way to determine which attacks are the least difficult, because each attack requires a different mix of resources – well-placed insiders, money, programming skills, security expertise, *etc.* Different attackers would find certain resources easier to acquire than others. For example, election fraud committed by local election officials would always involve well-placed insiders and a thorough understanding of election procedures; at the same time, there is no reason to expect such officials to have highly skilled hackers or first-rate programmers working with them. By contrast, election fraud carried out by a foreign government would likely start with plenty of money and technically skilled attackers, but probably without many conveniently placed insiders or detailed knowledge of election procedures.

Ultimately, we decided to use the “number of informed participants” as the metric for determining attack difficulty. An attack which uses fewer participants is deemed the easier attack.

We have defined “informed participant” as someone whose participation is needed to make the attack work, and who knows enough about the attack to foil or expose it. This is to be distinguished from a participant who unknowingly assists the attack by performing a task that is integral to the attack’s successful execution without understanding that the task is part of an attack on voting systems.

The reason for using the security metric “number of informed participants” is relatively straightforward: the larger a conspiracy is, the more difficult it would be to keep it secret. Where an attacker can carry out an attack by herself, she need only trust herself. On the other hand, a conspiracy that requires thousands of people to take part (like a vote-buying scheme) also requires thousands of people to keep quiet. The larger the number of people involved, the greater the likelihood that one of them (or one who was approached, but declined to take part) would either inform the public or authorities about the attack, or commit some kind of error that causes the attack to fail or become known.

Moreover, recruiting a large number of people who are willing to undermine the integrity of a statewide election is also presumably difficult. It is not hard to imagine two or three people agreeing to work to change the outcome of an election. It seems far less likely that an attacker could identify and employ hundreds or thousands of similarly corrupt people without being discovered.

We can get an idea of how this metric works by looking at one of the threats listed in our catalogs: the vote-buying threat, where an attacker or attackers pay individuals to vote for a particular candidate. This is Attack Number 26 in the PCOS Attack Catalog<sup>22</sup> (though this attack would not be substantially different against DREs or DREs w/ VVPT).<sup>23</sup> In order to work under our current types of voting systems, this attack requires (1) at least one person to purchase votes, (2) many people to agree to sell their votes, and (3) some way for the purchaser to confirm that the voters she pays actually voted for the candidate she supported. Ultimately, we determined that, while practical in smaller contests, a vote-buying attack would be an exceptionally difficult way to affect the outcome of a statewide election. This is because, even in a typically close statewide election, an attacker would need to involve thousands of voters to ensure that she could affect the outcome of a statewide race.<sup>24</sup>

For a discussion of other metrics we considered, but ultimately rejected, see Appendix C.

## **DETERMINING NUMBER OF INFORMED PARTICIPANTS**

### **DETERMINING THE STEPS AND VALUES FOR EACH ATTACK**

The Task Force members broke down each of the catalogued attacks into its necessary steps. For instance, Attack 12 in the PCOS Attack Catalog is “Stuffing Ballot Box with Additional Marked Ballots.”<sup>25</sup> We determined that, at a minimum, there were three component parts to this attack: (1) stealing or creating the ballots and then marking them, (2) scanning marked ballots through the PCOS scanners, probably before the polls opened, and (3) modifying the poll books in each location to ensure that the total number of votes in the ballot boxes was not greater than the number of voters who signed in at the polling place.

Task Force members then assigned a value representing the minimum number of persons they believed would be necessary to accomplish each goal. For PCOS Attack 12, the following values were assigned:<sup>26</sup>

**Minimum number required to steal or create ballots: 5 persons total.**<sup>27</sup>

**Minimum number required to scan marked ballots: 1 per polling place attacked.**

**Minimum number required to modify poll books: 1 per polling place attacked.**<sup>28</sup>

After these values were assigned, the Brennan Center interviewed several election officials to see whether they agreed with the steps and values assigned to each attack.<sup>29</sup> When necessary, the values and steps were modified. The new catalogs, including attack steps and values, were then reviewed by Task Force members. The purpose of this review was to ensure, among other things, that the steps and values were sound.

These steps and values tell us how difficult it would be to accomplish a *single attack in a single polling place*. They do not tell us how many people it would take to change the outcome of an election successfully – that depends, of course, on specific facts about the jurisdiction: how many votes are generally recorded in each polling

place, how many polling places are there in the jurisdiction, and how close is the race? For this reason, we determined that it was necessary to construct a hypothetical jurisdiction, to which we now turn.

**NUMBER OF INFORMED PARTICIPANTS NEEDED TO CHANGE STATEWIDE ELECTION**

We have decided to examine the difficulty of each attack in the context of changing the outcome of a reasonably close statewide election. While we are concerned by potential attacks on voting systems in any type of election, we are most troubled by attacks that have the potential to affect large numbers of votes. These are the attacks that could actually change the outcome of a statewide election with just a handful of attack participants.

We are less troubled by attacks on voting systems that can only affect a small number of votes (and might therefore be more useful in local elections). This is because there are many non-system attacks that can also affect a small number of votes (*i.e.*, sending out misleading information about polling places, physically intimidating voters, submitting multiple absentee ballots, *etc.*). Given the fact that these non-system attacks are likely to be less difficult in terms of number of participants, financial cost, risk of detection, and time commitment, we are uncertain that an attacker would target *voting machines* to alter a small number of votes.

In order to evaluate how difficult it would be for an attacker to change the outcome of a statewide election, we created a composite jurisdiction. The composite jurisdiction was created to be representative of a relatively close statewide election. We did not want to examine a statewide election where results were so skewed toward one candidate (for instance, the re-election of Senator Edward M. Kennedy in 2000, where he won 73% of the vote<sup>30</sup>), that reversing the election results would be impossible without causing extreme public suspicion. Nor did we want to look at races where changing only a relative handful of votes (for instance, the Governor's race in Washington State in 2004, which was decided by a mere 129 votes<sup>31</sup>) could affect the outcome of an election; under this scenario, many of the potential attacks would involve few people, and therefore look equally difficult.

We have named our composite jurisdiction "the State of Pennasota." The State of Pennasota is a composite of ten states: Colorado, Florida, Iowa, Ohio, New Mexico, Pennsylvania, Michigan, Nevada, Wisconsin and Minnesota. These states were chosen because they were the ten "battleground" states that Zogby International consistently polled in the spring, summer, and fall 2004.<sup>32</sup> These are statewide elections that an attacker would have expected, ahead of time, to be fairly close.

We have also created a composite election, which we label the "Governor's Race" in Pennasota. The results of this election are a composite of the actual results in the same ten states in the 2004 Presidential Election.

We have used these composites as the framework by which to evaluate the difficulty of the various catalogued attacks.<sup>33</sup> For instance, we know a ballot-box stuffing attack would require roughly five people to create and mark fake ballots, as

well as one person per polling place to stuff the boxes, and one person per polling place to modify the poll books. But, in order to determine how many informed participants would be needed to affect a statewide race, we need to know how many polling places would need to be attacked.

The composite jurisdiction and composite election provide us with information needed to answer these questions: *i.e.*, how many extra votes our attackers would need to add to their favored candidate's total for him to win, how many ballots our attackers can stuff into a particular polling place's ballot box without arousing suspicion (and related to this, how many votes are generally cast in the average polling place), how many polling places are there in the state, *etc.* We provide details about both the composite jurisdiction and election in the section entitled "Governor's Race, State of Pennasota, 2007," *infra* at pp 20-27.

#### LIMITS OF INFORMED PARTICIPANTS AS METRIC

Of the possible metrics we considered, we believe that measuring the number of people who know they are involved in an attack (and thus could provide evidence of the attack to the authorities and/or the media), is the best single measure of attack difficulty; as already discussed, we have concluded that the more people an attacker is forced to involve in his attack, the more likely it is that one of the participants would reveal the attack's existence and foil the attack, perhaps sending attackers to jail. However, we are aware of a number of places where the methodology could provide us with questionable results.

By deciding to concentrate on size of attack team, we mostly ignore the need for other resources when planning an attack. Thus, a software attack on DREs which makes use of steganography<sup>34</sup> to hide attack instruction files (see "DRE w/ VVPT Attack No.1a" discussed in greater detail, *infra* at pp. 62-65) is considered easier than an attack program delivered over a wireless network at the polling place (see discussion of wireless networks, *infra* at pp. 85-91). However, the former attack probably requires a much more technologically sophisticated attacker.

Another imperfection with this metric is that we do not have an easy way to represent how much choice the attacker has in finding members of his attack team.

Thus, with PCOS voting, we conclude that the cost of subverting a routine audit of ballots is roughly equal to the cost of intercepting ballot boxes in transit and substituting altered ballots (see discussion of PCOS attacks, *infra* at pp. 77-83).

However, subverting the audit team requires getting a specific set of trusted people to cooperate with the attacker. By contrast, the attacker may be able to decide which precincts to tamper with based on which people he has already recruited for his attack.

In an attempt to address this concern, we considered looking at the number of "insiders" necessary to take part in each attack. Under this theory, getting five people to take part in a conspiracy to attack a voting system might not be particularly difficult. But getting five well-placed county election officials to take part in the attack would be (and should be labeled) the more difficult of the two attacks. Because, for the most part, the low-cost attacks we have identified do not necessarily involve well placed insiders (but could, for instance, involve one of many people with access to commercial off the shelf software ("COTS") during development

or at the vendor), we do not believe that using this metric would have substantially changed our analysis.<sup>35</sup>

Finally, these attack team sizes do not always capture the logistical complexity of an attack. For example, an attack on VVPT machines involving tampering with the voting machine software and also replacing the paper records in transit requires the attacker to determine what votes were falsely produced by the voting machine and print replacement records in time to substitute them. While this is clearly possible, it raises a lot of operational difficulties – a single failed substitution leaves the possibility that the attack would be detected during the audit of ballots.

We have tried to keep these imperfections in mind when analyzing and discussing our least difficult attacks.

We suspect that much of the disagreement between voting officials and computer security experts in the last several years stems from a difference of opinion in prioritizing the difficulty of attacks. Election officials, with extensive experience in the logistics of handling tons of paper ballots, have little faith in paper and understand the kind of breakdowns in procedures that lead to traditional attacks like ballot box stuffing; in contrast, sophisticated attacks on computer voting systems appear very difficult to many of them. Computer security experts understand sophisticated attacks on computer systems, and recognize the availability of tools and expertise that makes these attacks practical to launch, but have no clear idea how they would manage the logistics of attacking a paper-based system. Looking at attack team size is one way to bridge this difference in perspective.

## **EFFECTS OF IMPLEMENTING COUNTERMEASURE SETS**

The final step of our threat analysis is to measure the effect of certain countermeasures against the catalogued attacks. How much more difficult would the attacks become once the countermeasures are put into effect? How many more informed participants (if any) would be needed to counter or defeat these countermeasures?

Our process for examining the effectiveness of a countermeasure mirrors the process for determining the difficulty of an attack: we first asked whether the countermeasure would allow us to detect an attack with near certainty. If we agreed that the countermeasure would expose the attack, we identified the steps that would be necessary to circumvent or defeat the countermeasure. For each step to defeat the countermeasure, we determined the number of additional informed participants (if any) that an attacker would need to add to his team. As with the process for determining attack difficulty, the Brennan Center interviewed numerous election officials to see whether they agreed with the steps and values assigned. When necessary, the values and steps for defeating the countermeasures were altered to reflect the input of election officials.

## **COUNTERMEASURES EXAMINED**

### **BASIC SET OF COUNTERMEASURES**

The first set of countermeasures we looked at is the “Basic Set” of countermeasures. This Basic Set was derived from security survey responses<sup>36</sup> we received

from county election officials around the country, as well as additional interviews with more than a dozen current and former election officials. Within the Basic Set of countermeasures are the following procedures:

### **Inspection**

The jurisdiction is not knowingly using any uncertified software that is subject to inspection by the Independent Testing Authority (often referred to as the “ITA”).<sup>37</sup>

### **Physical Security for Machines**

- Ballot boxes (to the extent they exist) are examined (to ensure they are empty) and locked by poll workers immediately before the polls are opened.
- Before and after being brought to the polls for Election Day, voting systems for each county are locked in a single room in a county warehouse.
- The warehouse has perimeter alarms, secure locks, video surveillance and regular visits by security guards.
- Access to the warehouse is controlled by sign-in, possibly with card keys or similar automatic logging of entry and exit for regular staff.
- Some form of “tamper evident” seals are placed on machines before and after each election.
- The machines are transported to polling locations five to fifteen days before Election Day.

### **Chain of Custody/Physical Security of Election Day Records**

- At close of the polls, vote tallies for each machine are totaled and compared with number of persons that have signed the poll books.
- A copy of totals for each machine is posted at each polling place on Election Night and taken home by poll workers to check against what is posted publicly at election headquarters, on the web, in the papers, or elsewhere.<sup>38</sup>
- All audit information (*i.e.*, Event Logs, VVPT records, paper ballots, machine printouts of totals) that is not electronically transmitted as part of the unofficial upload to the central election office, is delivered in official, sealed and hand-delivered information packets or boxes. All seals are numbered and tamper-evident.
- Transportation of information packets is completed by two election officials representing opposing parties who have been instructed to remain in joint custody of the information packets or boxes from the moment it leaves the precinct to the moment it arrives at the county election center.

- Each polling place sends its information packets or boxes to the county election center separately, rather than having one truck or person pick up this data from multiple polling locations.
- Once the sealed information packets or boxes have reached the county election center, they are logged. Numbers on the seals are checked to ensure that they have not been replaced. Any broken or replaced seals are logged. Intact seals are left intact.
- After the packets and/or boxes have been logged, they are provided with physical security precautions at least as great as those listed for voting machines, above. Specifically, for Pennasota, we have assumed the room in which the packets are stored have perimeter alarms, secure locks, video surveillance and regular visits by security guards and county police officers; and access to the room is controlled by sign-in, possibly with card keys or similar automatic logging of entry and exit for regular staff.

### Testing<sup>39</sup>

- An Independent Testing Authority has certified the model of voting machine used in the polling place.
- Acceptance Testing<sup>40</sup> is performed on machines at time, or soon after they are received by County.
- Pre-election Logic and Accuracy<sup>41</sup> testing is performed by the relevant election official.
- Prior to opening the polls, every voting machine and vote tabulation system is checked to see that it is still configured for the correct election, including the correct precinct, ballot style, and other applicable details.

### REGIMEN FOR AUTOMATIC ROUTINE AUDIT PLUS BASIC SET OF COUNTERMEASURES.

The second set of countermeasures is the Regimen for an Automatic Routine Audit Plus Basic Set of Countermeasures.

Some form of routine auditing of voter-verified paper records occurs in 12 states, to test the accuracy of electronic voting machines. They generally require between 1 and 10% of all precinct voting machines to be audited after each election. <sup>42</sup>

Jurisdictions can implement this set of countermeasures only if their voting systems produce some sort of voter-verified paper record of each vote. This could be in the form of a paper ballot, in the case of PCOS, or a voter-verified paper trail (“VVPT”), in the case of DREs.

We have assumed that jurisdictions take the following steps when conducting an Automatic Routine Audit (when referring to this set of assumptions “Regimen for an Automatic Routine Audit”):

### **The Audit**

- Leaders of the major parties in each county are responsible for selecting a sufficient number of audit-team members to be used in that county.<sup>43</sup>
- Using a highly transparent random selection mechanism (*see point ii, below*), the voter-verified paper records for between a small percentage of all voting machines in the State are selected for auditing.
- Using a transparent random selection method, auditors are assigned to the selected machines (two or three people, with representatives of each major political party, would comprise each audit team).
- The selection of voting machines, and the assignment of auditors to machines, occurs immediately before the audits take place. The audits take place as soon after polls close as possible – for example, at 9 a.m. the morning after polls close.
- Using a transparent random selection method, county police officers, security personnel and the video monitor assigned to guard the voter-verified records are chosen from a large pool of on-duty officers and employees on election night.
- The auditors are provided the machine tallies and are able to see that the county tally reflects the sums of the machine tallies before the start of the inspection of the paper.
- The audit would include a tally of spoiled ballots (in the case of VVPT, the number of cancellations recorded), overvotes, and undervotes.

### **Transparent Random Selection Process**

In this report, we have assumed that random auditing procedures are in place for both the Regimen for an Automatic Routine Audit and Regimen for Parallel Testing. We have further assumed procedures to prevent a single, corrupt person from being able to fix the results. This implies a kind of transparent and public random procedure.

For the Regimen for an Automatic Routine Audit there are at least two places where transparent, random selection processes are important: in the selection of precincts to audit, and in the assignment of auditors to the precincts they will be auditing.

Good election security can employ Transparent Random Selection in other places with good effect:

- the selection of parallel testers from a pool of qualified individuals.
- the assignment of police and other security professionals from on-duty lists, to monitor key materials, for example, the VVPT records between the time that they arrive at election central and the time of the completion of the ARA.



If a selection process for auditing is to be trustworthy and trusted, ideally:

- The whole process will be publicly observable or videotaped;<sup>44</sup>
- The random selection will be publicly verifiable, *i.e.*, anyone observing will be able to verify that the sample was chosen randomly (or at least that the number selected is not under the control of any small number of people); and
- The process will be simple and practical within the context of current election practice so as to avoid imposing unnecessary burdens on election officials.

There are a number of ways that election officials can ensure some kind of transparent randomness. One way would be to use a state lottery machine to select precincts or polling places for auditing. We have included two potential examples of transparent random selection processes in Appendix F. These apply to the Regimen for Parallel Testing as well.

#### **REGIMEN FOR PARALLEL TESTING PLUS BASIC SET OF COUNTERMEASURES**

The final set of countermeasures we have examined is “Parallel Testing” plus the Basic Set of countermeasures. Parallel Testing, also known as election-day testing, involves selecting voting machines at random and testing them as realistically as possible during the period that votes are being cast.

#### **Parallel Testing**

In developing our set of assumptions for Parallel Testing, we relied heavily upon interviews with Jocelyn Whitney, Project Manager for Parallel Testing in the State of California, and conclusions drawn from this Report.<sup>45</sup> In our analysis, we assume that the following procedures would be included in the Parallel Testing regimen (when referring to this regimen “Regimen for Parallel Testing”) that we evaluate:

- At least two of each DRE model (meaning both vendor and model) would be selected for Parallel Testing;
- At least two DREs from each of the three largest counties would be parallel tested;
- Counties to be parallel tested would be chosen by the Secretary of State in a transparent and random manner.
- Counties would be notified as late as possible that machines from one of their precincts would be selected for Parallel Testing;<sup>46</sup>
- Precincts would be selected through a transparent random mechanism;
- A video camera would record testing;
- For each test, there would be one tester and one observer;

- Parallel Testing would occur at the polling place;
- The script for Parallel Testing would be generated in a way that mimics voter behavior and voting patterns for the polling place;
- At the end of the Parallel Testing, the tester and observer would reconcile vote totals in the script with vote totals reported on the machine.

#### **Transparent Random Selection Process**

We further assume that the same type of transparent random selection process that would be used for the Regimen for Automatic Routine Audit would also be employed for the Regimen for Parallel Testing to determine which machines would be subjected to testing on Election Day.

### **APPENDIX C**

#### **ALTERNATIVE SECURITY METRICS CONSIDERED**

##### **Dollars Spent**

The decision to use the number of informed participants as the metric for attack level difficulty came after considering several other potential metrics. One of the first metrics we considered was the dollar cost of attacks. This metric makes sense when looking at attacks that seek financial gain – for instance, misappropriating corporate funds. It is not rational to spend \$100,000 on the misappropriation of corporate funds if the total value of those funds is \$90,000. Ultimately, we rejected this metric as the basis for our analysis because the dollar cost of the attacks we considered were dwarfed by both (1) current federal and state budgets, and (2) the amounts currently spent legally in state and federal political campaigns.

##### **Time of Attack**

The relative security of safes and other safety measures are often rated in terms of “time to defeat.” This was rejected as metric of difficulty because it did not seem relevant to voting systems. Attackers breaking into a house are concerned with the amount of time it might take to complete their robbery because the homeowners or police might show up. With regard to election fraud, many attackers may be willing to start months or years before an election if they believe they can control the outcome. As discussed *supra* at pp. 35–48, attackers may be confident that they can circumvent the independent testing authorities and other measures meant to identify attacks, so that the amount of time an attack takes becomes less relevant.

**Appendix 4**  
**Voting Fraud-Voter Intimidation Working Group**

**The Honorable Todd Rokita**

Indiana Secretary of State  
Member, EAC Standards Board and the Executive Board of the Standards Board

**Kathy Rogers**

Georgia Director of Elections, Office of the Secretary of State  
Member, EAC Standards Board

**J.R. Perez**

Guadalupe County Elections Administrator, Texas

**Barbara Arnwine**

Executive Director, Lawyers Committee for Civil Rights Under Law  
Leader of Election Protection Coalition

**Robert Bauer**

Chair of the Political Law Practice at the law firm of Perkins Coie, District of Columbia  
National Counsel for Voter Protection, Democratic National Committee

**Benjamin L. Ginsberg**

Partner, Patton Boggs LLP  
Counsel to national Republican campaign committees and Republican candidates

**Mark (Thor) Hearne II**

Partner-Member, Lathrop & Gage, St Louis, Missouri  
National Counsel to the American Center for Voting Rights

**Barry Weinberg**

Former Deputy Chief and Acting Chief, Voting Section, Civil Rights Division, U.S. Department of Justice

*EAC Invited Technical Advisor:*

**Craig Donsanto**

Director, Election Crimes Branch, U.S. Department of Justice

<sup>i</sup> Department of Justice's Activities to Address Past Election-Related Voting Irregularities, General Accounting Office, October 14, 2004, GAO-04-1041R

<sup>ii</sup> The MyVote1 Project Final Report, Fels Institute of Government, University of Pennsylvania, November 1, 2005, Pg. 12

<sup>iii</sup> Department of Justice's Activities to Address Past Election-Related Voting Irregularities, General Accounting Office, October 14, 2004, GAO-04-1041R, p. 4. This same report criticizes some of the procedures the Section used for these systems and urged the Department to improve upon them in time for the 2004 presidential election. No follow-up report has been done since that time to the best of our knowledge.

<sup>iv</sup> "Department Of Justice To Hold Ballot Access and Voting Integrity Symposium," U.S. Department of Justice press release, August 2, 2005

<sup>v</sup> Craig C. Donsanto, Prosecution of Electoral Fraud Under United States Federal Law," IFES Political Finance White Paper Series, 2006, p. 29

<sup>vi</sup> Ana Henderson and Christopher Edley, Jr., Voting Rights Act Reauthorization: Research-Based Recommendations to Improve Voting Access, Chief Justice Earl Warren Institute on Race, Ethnicity and Diversity, University of California at Berkeley, School of Law, 2006, p. 29

DRAFT

Raymundo  
Martinez/EAC/GOV  
06/22/2005 08:30 AM

To Karen Lynn-Dyson/EAC/GOV@EAC  
cc Thomas R. Wilkey/EAC/GOV@EAC, Juliet E.  
Thompson/EAC/GOV@EAC, Gracia  
Hillman/EAC/GOV@EAC, Paul  
bcc  
Subject Voter Fraud

Karen:

Per our discussion, I should have some names later today of possible academic researchers for the voter fraud/voter intimidation study. I assume you are collecting names from the other commissioners as well. Additionally, I ran across the article below in today's Seattle Times...

Wednesday, June 22, 2005, 12:00 A.M. Pacific

## 6 accused of casting multiple votes

By Keith Ervin  
*Seattle Times staff reporter*

Criminal charges have been filed against six more King County voters for allegedly casting more than one ballot under a variety of circumstances in last November's election, prosecutors said yesterday.

Two defendants, William A. Davis of Federal Way and Grace E. Martin of Enumclaw, were accused of casting absentee ballots in the names of their recently deceased spouses, Sonoko Davis and Lawrence Martin, respectively.

A mother and daughter were also charged with casting a ballot in the name of the mother's dead husband. The mother, Harline H.L. Ng, and her daughter, Winnie W.Y. Ng, both of Seattle, signed their names as witnesses to the "X" marked on the ballot of Jacob Ng, who had died in February 2004.

Jared R. Hoadley of Seattle was accused of casting a ballot in the name of Hans Pitzen, who had lived at the same Seattle address as Hoadley and who died last May.

Dustin S. Collings, identified as a homeless Seattle resident, was charged with casting two ballots, both using the alias of Dustin Ocoilain, a name that was listed twice on the voter-registration rolls.

The defendants are charged with repeat voting, a gross misdemeanor that carries possible jail time of up to one year and a fine of up to \$5,000.

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Election officials asked prosecutors to investigate the voters after news reporters and a blogger reported that they may have voted twice. The voters will be arraigned July 5 in King County District Court.

Two other voters previously received deferred sentences — and avoided jail time — after they pleaded guilty to charges of repeat voting.

The King County Sheriff's Office is investigating several other cases, prosecutors reported yesterday. The investigations resulted from the intense scrutiny surrounding the governor's election in which Democrat Christine Gregoire defeated Republican Dino Rossi by 129 votes after he narrowly won two earlier vote counts.

After the November election, prosecutors also successfully challenged the voter registrations of 648 felons whose right to vote had not been restored.

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**U.S. ELECTION ASSISTANCE COMMISSION**

**Status Report on the  
Voting Fraud-Voter Intimidation Research  
Project**

**May 17, 2006**

010944

## INTRODUCTION

Section 241 of the Help America Vote Act of 2002 (HAVA) requires EAC to conduct research on election administration issues. Among the tasks listed in the statute is the development of:

- nationwide statistics and methods of identifying, deterring, and investigating voting fraud in elections for Federal office [section 241(b)(6)]; and
- ways of identifying, deterring, and investigating methods of voter intimidation [section 241(b)(7)].

EAC's Board of Advisors recommended that the agency make research on these matters a high priority.

## FOCUS OF CURRENT RESEARCH

In September 2005, the Commission hired two consultants with expertise in this subject matter, Job Serebrov and Tova Wang, to:

- develop a comprehensive description of what constitutes voting fraud and voter intimidation in the context of Federal elections;
- perform background research (including Federal and State administrative and case law review), identify current activities of key government agencies, civic and advocacy organizations regarding these topics, and deliver a summary of this research and all source documentation;
- establish a project working group, in consultation with EAC, composed of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation;
- provide the description of what constitutes voting fraud and voter intimidation and the results of the preliminary research to the working group, and convene the working group to discuss potential avenues for future EAC research on this topic; and
- produce a report to EAC summarizing the findings of the preliminary research effort and working group deliberations that includes recommendations for future research, if any;

As of the date of this report, the consultants have drafted a definition of election fraud, reviewed relevant literature and reports, interviewed persons from government and private sectors with subject matter expertise, analyzed news reports of alleged election fraud, reviewed case law, and established a project working group.



## DEFINITION OF ELECTION FRAUD

The consultants drafted a definition of election fraud that includes numerous aspects of voting fraud (including voter intimidation, which is considered a subset of voting fraud) and voter registration fraud, but excludes campaign finance violations and election administration mistakes. This draft will be discussed and probably refined by the project working group, which is scheduled to convene on May 18, 2006.

## LITERATURE REVIEW

The consultants found many reports and books that describe anecdotes and draw broad conclusions from a large array of incidents. They found little research that is truly systematic or scientific. The most systematic look at fraud appears to be the report written by Lori Minnite, entitled "Securing the Vote: An Analysis of Election Fraud". The most systematic look at voter intimidation appears to be the report by Laughlin McDonald, entitled "The New Poll Tax". The consultants found that books written about this subject all seem to have a political bias and a pre-existing agenda that makes them somewhat less valuable.

Moreover, the consultants found that reports and books make allegations but, perhaps by their nature, have little follow up. As a result, it is difficult to know when something has remained in the stage of being an allegation and gone no further, or progressed to the point of being investigated or prosecuted or in any other way proven to be valid by an independent, neutral entity. This is true, for example, with respect to allegations of voter intimidation by civil rights organizations, and, with respect to fraud, John Fund's frequently cited book, "Stealing Elections".

Consultants found that researchers agree that measuring something like the incidence of fraud and intimidation in a scientifically legitimate way is extremely difficult from a methodological perspective and would require resources beyond the means of most social and political scientists. As a result, there is much more written on this topic by advocacy groups than social scientists.

Other items of note:

- There is as much evidence, and as much concern, about structural forms of disenfranchisement as about intentional abuse of the system. These include felon disenfranchisement, poor maintenance of databases and identification requirements.
- There is tremendous disagreement about the extent to which polling place fraud, e.g. double voting, intentional felon voting, noncitizen voting, is a serious problem. On balance, more researchers find it to be less of a problem than is commonly described in the political debate; but some reports say it is a major problem, albeit hard to identify.

- There is substantial concern across the board about absentee balloting and the opportunity it presents for fraud.
- Federal law governing election fraud and intimidation is varied and complex and yet may nonetheless be insufficient or subject to too many limitations to be as effective as it might be.
- Deceptive practices, e.g. targeted flyers and phone calls providing misinformation, were a major problem in 2004.
- Voter intimidation continues to be focused on minority communities, although the American Center for Voting Rights uniquely alleges it is focused on Republicans.

### **Recommendations**

The consultants recommend that subsequent EAC research include a follow up study of allegations made in reports, books and newspaper articles. They also suggest that the research should focus on filling the gap between the lack of reports based on methodical studies by social or political scientists and the numerous, but less scientific, reports published by advocacy groups.

### **INTERVIEWS**

The consultants jointly selected experts from the public and private sector for interviews. The consultants' analysis of their discussions with these members of the legal, election official, advocacy, and academic communities follows.

### **Common Themes**

- There is virtually universal agreement that absentee ballot fraud is the biggest problem, with vote buying and registration fraud coming in after that. The vote buying often comes in the form of payment for absentee ballots, although not always. Some absentee ballot fraud is part of an organized effort; some is by individuals, who sometimes are not even aware that what they are doing is illegal. Voter registration fraud seems to take the form of people signing up with false names. Registration fraud seems to be most common where people doing the registration were paid by the signature.
- There is widespread but not unanimous agreement that there is little polling place fraud, or at least much less than is claimed, including voter impersonation, "dead" voters, noncitizen voting and felon voters. Those few who believe it occurs often enough to be a concern say that it is impossible to show the extent to which it happens, but do point to instances in the press of such incidents. Most people believe that false registration forms have not resulted in polling place fraud,

although it may create the perception that vote fraud is possible. Those who believe there is more polling place fraud than reported/investigated/prosecuted believe that registration fraud does lead to fraudulent votes. Jason Torchinsky from the American Center for Voting Rights is the only interviewee who believes that polling place fraud is widespread and among the most significant problems in the system.

- Abuse of challenger laws and abusive challengers seem to be the biggest intimidation/suppression concerns, and many of those interviewed assert that the new identification requirements are the modern version of voter intimidation and suppression. However there is evidence of some continued outright intimidation and suppression, especially in some Native American communities. A number of people also raise the problem of poll workers engaging in harassment of minority voters. Other activities commonly raised were the issue of polling places being moved at the last moment, unequal distribution of voting machines, videotaping of voters at the polls, and targeted misinformation campaigns.
- Several people indicate that, for various reasons, DOJ is bringing fewer voter intimidation and suppression cases now, and has increased its focus on matters such as noncitizen voting, double voting, and felon voting. Interviews with DOJ personnel indicate that the Voting Section, Civil Rights Division, focuses on systemic patterns of malfeasance in this area. While the Election Crimes Branch, Public Integrity Section, continues to maintain an aggressive pursuit of systematic schemes to corrupt the electoral process (including voter suppression), it also has increased prosecutions of individual instances of felon, alien, and double voting.
- The problem of badly kept voter registration lists, with both ineligible voters remaining on the rolls and eligible voters being taken off, remains a common concern. A few people are also troubled by voters being on registration lists in two states. They said that there was no evidence that this had led to double voting, but it opens the door to the possibility. There is great hope that full implementation of the new requirements of HAVA – done well, a major caveat – will reduce this problem dramatically.

#### Common Recommendations:

- Many of those interviewed recommend better poll worker training as the best way to improve the process; a few also recommended longer voting times or voting on days other than election day (such as weekends) but fewer polling places so only the best poll workers would be employed.
- Many interviewed support stronger criminal laws and increased enforcement of existing laws with respect to both fraud and intimidation. Advocates from across the spectrum expressed frustration with the failure of the Department of Justice to pursue complaints.

- With respect to DOJ's Voting Section, Civil Rights Division, John Tanner indicated that fewer cases are being brought because fewer are warranted – it has become increasingly difficult to know when allegations of intimidation and suppression are credible since it depends on one's definition of intimidation, and because both parties are doing it. Moreover prior enforcement of the laws has now changed the entire landscape – race based problems are rare now. Although challenges based on race and unequal implementation of identification rules would be actionable, Mr. Tanner was unaware of such situations actually occurring and his office has not pursued any such cases.
- Craig Donsanto of DOJ's Election Crimes Branch, Public Integrity Section, says that while the number of election fraud related complaints have not gone up since 2002, nor has the proportion of legitimate to illegitimate claims of fraud, the number of cases DOJ is investigating and the number of indictments his office is pursuing are both up dramatically. Since 2002, in addition to pursuing systematic election corruption schemes, DOJ has brought more cases against alien voters, felon voters and double voters than ever before. Mr. Donsanto would like more resources so that his agency can do more and would like to have laws that make it easier for the federal government to assume jurisdiction over voter fraud cases.
- A couple of interviewees recommend a new law that would make it easier to criminally prosecute people for intimidation even when there is not racial animus.
- Several advocate expanded monitoring of the polls, including some associated with the Department of Justice.
- Almost everyone hopes that administrators will maximize the potential of statewide voter registration databases to prevent fraud.
- Challenge laws, both with respect to pre-election day challenges and challengers at the polls, need to be revised by all states to ensure they are not used for purposes of wrongful disenfranchisement and harassment.
- Several people advocate passage of Senator Barak Obama's "deceptive practices" bill.
- There is a split on whether it would be helpful to have nonpartisan election officials – some indicated they thought even if elections officials are elected as non partisan officials, they will carry out their duties in biased ways nonetheless. However, most agree that elections officials pursuing partisan agendas are a problem that must be addressed in some fashion. Suggestions included moving election responsibilities out of the secretary of states' office; increasing transparency in the process; and enacting conflict of interest rules.

- A few recommend returning to allowing use of absentee ballots "for cause" only if it were politically feasible.
- A few recommend enacting a national identification card, including Pat Rogers, an attorney in New Mexico, and Jason Torchinsky from ACVR, who advocates the proposal in the Carter-Baker Commission Report.
- A couple of interviewees indicated the need for clear standards for the distribution of voting machines

### **NEWS ARTICLES**

Consultants conducted a Nexis search of related news articles published between January 1, 2001 and January 1, 2006. A systematic, numerical analysis of the data collected during this review is currently being prepared. What follows is an overview of these articles provided by the consultants.

#### **Absentee Ballots**

According to press reports, absentee ballots are abused in a variety of ways:

- Campaign workers, candidates and others coerce the voting choices of vulnerable populations, usually elderly voters.
- Workers for groups and individuals have attempted to vote absentee in the names of the deceased.
- Workers for groups, campaign workers and individuals have attempted to forge the names of other voters on absentee ballot requests and absentee ballots and thus vote multiple times.

It is unclear how often actual convictions result from these activities (a handful of articles indicate convictions and guilty pleas), but this is an area in which there have been a substantial number of official investigations and actual charges filed, according to news reports where such information is available. A few of the allegations became part of civil court proceedings contesting the outcome of the election.

While absentee fraud allegations turn up throughout the country, a few states have had several such cases. Especially of note are Indiana, New Jersey, South Dakota, and most particularly, Texas. Interestingly, there were no articles regarding Oregon, where the entire system is vote by mail.

## **Voter Registration Fraud**

According to press reports, the following types of allegations of voter registration fraud are most common:

- Registering in the name of dead people;
- Fake names and other information on voter registration forms;
- Illegitimate addresses used on voter registration forms;
- Voters being tricked into registering for a particular party under false pretenses; and
- Destruction of voter registration forms depending on the party the voter registered with.

There was only one self evident instance of a noncitizen registering to vote. Many of the instances reported included official investigations and charges filed, but few actual convictions, at least from the news reporting. There have been multiple reports of registration fraud in California, Colorado, Florida, Missouri, New York, North Carolina, Ohio, South Dakota, and Wisconsin.

## **Voter Intimidation and Suppression**

This is the area which had the most articles, in part because there were so many allegations of intimidation and suppression during the 2004 election. Most of these remained allegations and no criminal investigation or prosecution ensued. Some of the cases did end up in civil litigation.

This is not to say that these alleged activities were confined to 2004 – there were several allegations made during every year studied. Most notable were the high number of allegations of voter intimidation and harassment reported during the 2003 Philadelphia mayoral race.

A very high number of the articles were about the issue of challenges to voters' registration status and challengers at the polling places. There were many allegations that planned challenge activities were targeted at minority communities. Some of the challenges were concentrated in immigrant communities.

However, the tactics alleged varied greatly. The types of activities discussed also include the following:

- Photographing or videotaping voters coming out of polling places;
- Improper demands for identification;

- Poll watchers harassing voters;
- Poll workers being hostile to or aggressively challenging voters;
- Disproportionate police presence;
- Poll watchers wearing clothes with messages that seemed intended to intimidate; and
- Insufficient voting machines and unmanageably long lines.

Although the incidents reported on occurred everywhere, not surprisingly, many came from "battleground" states. There were several such reports out of Florida, Ohio, and Pennsylvania.

#### **"Dead Voters and Multiple Voting"**

There were a high number of articles about people voting in the names of the dead and voting more than once. Many of these articles were marked by allegations of big numbers of people committing these frauds, and relatively few of these allegations turning out to be accurate according to investigations by the newspapers themselves, elections officials, and criminal investigators. Often the problem turned out to be a result of administrative error, poll workers mis-marking voter lists, a flawed registration list and/or errors made in the attempt to match names of voters on the list with the names of the people who voted. In a good number of cases, there were allegations that charges of double voting by political leaders were an effort to scare people away from the voting process.

Nonetheless there were a few cases of people actually being charged and/or convicted for these kinds of activities. Most of the cases involved a person voting both by absentee ballot and in person. A few instances involved people voting both during early voting and on Election Day, which calls into question the proper marking and maintenance of the voting lists. In many instances, the person charged claimed not to have voted twice on purpose. A very small handful of cases involved a voter voting in more than one county and there was one substantiated case involving a person voting in more than one state. Other instances in which such efforts were alleged were disproved by officials.

In the case of voting in the name of a dead person, the problem lay in the voter registration list not being properly maintained, i.e. the person was still on the registration list as eligible to vote, and a person took criminal advantage of that. In total, the San Francisco Chronicle found five such cases in March 2004; the AP cited a newspaper analysis of five such persons in an Indiana primary in May 2004; and a senate committee found two people to have voted in the names of the dead in 2005.

As usual, there were a disproportionate number of such articles coming out of Florida. Notably, there were three articles out of Oregon, which has one hundred percent vote-by-mail.

### **Vote Buying**

There were a surprising number of articles about vote buying cases. A few of these instances involved long-time investigations concentrated in three states (Illinois, Kentucky, and West Virginia). There were more official investigations, indictments and convictions/pleas in this area.

### **Deceptive Practices**

In 2004 there were numerous reports of intentional disinformation about voting eligibility and the voting process meant to confuse voters about their rights and when and where to vote. Misinformation came in the form of flyers, phone calls, letters, and even people going door to door. Many of the efforts were reportedly targeted at minority communities. A disproportionate number of them came from key battleground states, particularly Florida, Ohio, and Pennsylvania. From the news reports found, only one of these instances was officially investigated, the case in Oregon involving the destruction of completed voter registration applications. There were no reports of prosecutions or any other legal proceeding.

### **Non-citizen Voting**

There were surprisingly few articles regarding noncitizen registration and voting – just seven all together, in seven different states across the country. They were also evenly split between allegations of noncitizens registering and noncitizens voting. In one case, charges were filed against ten individuals. In another case, a judge in a civil suit found there was illegal noncitizen voting. Three instances prompted official investigations. Two cases, from this Nexis search, remained just allegations of noncitizen voting.

### **Felon Voting**

Although there were only thirteen cases of felon voting, some of them involved large numbers of voters. Most notably, of course, are the cases that came to light in the Washington gubernatorial election contest (see Washington summary) and in Wisconsin (see Wisconsin summary). In several states, the main problem was the large number of ineligible felons that remained on the voting list.

### **Election Official Fraud**

In most of the cases in which fraud by elections officials is suspected or alleged, it is difficult to determine whether it is incompetence or a crime. There are several cases of ballots gone missing, ballots unaccounted for and ballots ending up in a worker's possession. In two cases workers were said to have changed peoples' votes. The one



instance in which widespread ballot box stuffing by elections workers was alleged was in Washington State. The judge in the civil trial of that election contest did not find that elections workers had committed fraud. Four of the cases are from Texas.

### **Recommendation**

The consultants recommend that subsequent EAC research should include a Nexis search that specifically attempts to follow up on the cases for which no resolution is evident from this particular initial search.

## **CASE LAW RESEARCH**

After reviewing over 40,000 cases from 2000 to the present, the majority of which came from appeals courts, the consultants found comparatively few applicable to this study. Of those that were applicable, the consultants found that no apparent thematic pattern emerges. However, it appears to them that the greatest areas of fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility.

### **Recommendation**

Because so few cases provided a picture of these current problems, consultants suggest that subsequent EAC research include a review of state trial-level decisions.

## **PROJECT WORKING GROUP**

Consultants and EAC worked together to select members for the Voting Fraud-Voter Intimidation Working Group that included election officials and representatives of advocacy groups and the legal community who have an interest and expertise in the subject matter. (See Attachment A for a list of members.) The working group is scheduled to convene at EAC offices on May 18, 2006 to consider the results of the preliminary research and to offer ideas for future EAC activities concerning this subject.

## **FINAL REPORT**

After convening the project working group, the consultants will draft a final report summarizing the results of their research and the working group deliberations. This report will include recommendations for future EAC research related to this subject matter. The draft report will be reviewed by EAC and, after obtaining any clarifications or corrections deemed necessary, will be made available to the EAC Standards Board and EAC Board of Advisors for review and comment. Following this, a final report will be prepared.

**Attachment A**

**Voting Fraud-Voter Intimidation Project Working Group**

**The Honorable Todd Rokita**

Indiana Secretary of State

Member, EAC Standards Board and the Executive Board of the Standards Board

**Kathy Rogers**

Georgia Director of Elections, Office of the Secretary of State

Member, EAC Standards Board

**J.R. Perez**

Guadalupe County Elections Administrator, TX

**Barbara Arnwine**

Executive Director, Lawyers Committee for Civil Rights Under Law

Leader of Election Protection Coalition

*(To be represented at May 18, 2006 meeting by Jon M. Greenbaum, Director of the Voting Rights Project for the Lawyers Committee for Civil Rights Under Law)*

**Robert Bauer**

Chair of the Political Law Practice at the law firm of Perkins Coie, DC

National Counsel for Voter Protection, Democratic National Committee

**Benjamin L. Ginsberg**

Partner, Patton Boggs LLP

Counsel to national Republican campaign committees and Republican candidates

**Mark (Thor) Hearne II**

Partner-Member, Lathrop & Gage, St Louis, MO

National Counsel to the American Center for Voting Rights

**Barry Weinberg**

Former Deputy Chief and Acting Chief, Voting Section, Civil Rights Division, U.S.

Department of Justice

*EAC Invited Technical Advisor:*

**Craig Donsanto**

Director, Election Crimes Branch, U.S. Department of Justice

Thomas R. Wilkey/EAC/GOV  
04/20/2007 12:13 PM

To Juliet E. Hodgkins/EAC/GOV@EAC, Donetta L.  
Davidson/EAC/GOV@EAC, Gracia  
Hillman/EAC/GOV@EAC, Caroline C.  
cc Gavin S. Gilmour/EAC/GOV@EAC

bcc

Subject Re: Fraud Report 

I discussed this with Julie last evening and again this morning and agree with her comments. I believe both the IG review and our responses to Senator Finesteins letter covers a great deal of what we were asking them to do.

---

Sent from my BlackBerry Wireless Handheld

Juliet E. Hodgkins

----- Original Message -----

**From:** Juliet E. Hodgkins  
**Sent:** 04/20/2007 12:14 PM EDT  
**To:** Donetta Davidson; Gracia Hillman; Caroline Hunter; Rosemary Rodriguez;  
Thomas Wilkey; Margaret Sims; Jeannie Layson  
**Cc:** Gavin Gilmour  
**Subject:** Fw: Fraud Report

Commissioners & Tom,

After having received this request, reviewed it and discussed it with the Inspector General and Gavin, I believe that it is ill-advised to continue such a request in light of the pending investigation of this matter by the Inspector General. While I am certain that this was not the intent of this request, the inevitable appearance of this request would suggest that the Commission is seeking to influence an ongoing investigation of the IG. This appearance of inappropriate influence would arise because two employees, who will undoubtedly be contacted by and interviewed as a part of the ongoing IG investigation, are being asked to provide a statement to their supervisors prior to interviews of those persons by the IG. Furthermore, this situation could appear as an attempt by employees and/or the agency to collude on a statement prior to making a formal statement in the investigation of the IG.

This IG's investigation was requested to address issues of public perception. Thus, it is critical that this investigation proceed in a manner that leaves no room for question. As such, I believe that it is inappropriate to proceed with this request.

Juliet T. Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

----- Forwarded by Juliet E. Hodgkins/EAC/GOV on 04/20/2007 11:54 AM -----

Thomas R. Wilkey/EAC/GOV  
04/19/2007 05:03 PM

To Juliet E. Hodgkins/EAC/GOV@EAC, Margaret  
Sims/EAC/GOV@EAC  
cc "Jeannie Layson" <jlayson@eac.gov>

Subject Fraud Report

After much discussion today among the Commissioners would like you both to prepare an in depth

010956

overview of the work you did on this report.

This would include all of the details of your work on the both the draft report and the final report adopted by the Commissioners, Jeannie has offered to help you in any way.

I will discuss this further with each of you between now and tomorrow.

I have been at the damn conference all day and have not been able to go to a single session or spend time with people.

Thanks


Tom

---

Sent from my BlackBerry Wireless Handheld

010957

Margaret Sims /EAC/GOV  
04/17/2007 01:27 PM

To Jeannie Layson/EAC/GOV@EAC  
cc Juliet E. Hodgkins/EAC/GOV@EAC  
bcc  
Subject Re: Vote fraud report 

As far as I know, you are absolutely correct! Julie did the bulk of the rewrite and used my analyses of the preliminary info submitted by our contractors. I know that I had no contact with the administration regarding this study. --- Peggy

Jeannie Layson/EAC/GOV

Jeannie Layson /EAC/GOV  
04/17/2007 01:16 PM

To psims@eac.gov, Thomas R. Wilkey/EAC/GOV@EAC,  
jthompson@eac.gov  
cc  
Subject Vote fraud report

The St. Louis Post Dispatch wrote an editorial that said the administration edited our report. I am almost absolutely sure that is not true, but I wanted to confirm that with you before I request a correction. Thanks.

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

010958

Jeannie Layson /EAC/GOV  
04/17/2007 01:16 PM

To psims@eac.gov, Thomas R. Wilkey/EAC/GOV@EAC,  
jthompson@eac.gov

cc

bcc

Subject Vote fraud report

History:  This message has been replied to.

The St. Louis Post Dispatch wrote an editorial that said the administration edited our report. I am almost absolutely sure that is not true, but I wanted to confirm that with you before I request a correction. Thanks.

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

010956

Jeannie Layson /EAC/GOV

04/27/2007 04:54 PM

To EAC Personnel

cc

bcc

Subject Voter ID and Vote Fraud and Voter Intimidation IG Review Update

Hello everyone,

The chair wanted to distribute the attached memo from the IG, which contains guidance about how we proceed during the review of the voter ID and the vote fraud and voter intimidation research projects. She will continue to keep staff informed as this review moves forward, and she thanks everyone for their continued cooperation and hard work.



IG Memo to Chair on Review of Studies ( 4-27-07 ).pdf

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

010960



U.S. ELECTION ASSISTANCE COMMISSION  
OFFICE OF INSPECTOR GENERAL  
1225 New York Ave. NW - Suite 1100  
Washington, DC 20005

April 27, 2007

Memorandum

To: Donetta Davidson  
Chair, U.S. Elections Commission

From: Curtis Crider *Curtis Crider*  
Inspector General

Subject: U.S. Election Assistance Commission Activities Pending the Office of Inspector  
General Investigation of the Voting Fraud and Voter Intimidation Report

In your letter of April 23, 2007, you requested my comments concerning several activities that the Election Assistance Commission (EAC) was considering to undertake pending our review of the Voting Fraud and Voter Intimidation Study and on related questions. My responses to your proposed activities and questions follow:

1. The EAC would like to prepare a summary of the differences between the draft report prepared by the consultants and the final report adopted by the EAC.

Answer: We believe that such a summary will be helpful to our investigation. Please provide us with a copy of the summary of differences upon its completion.

2. Would there be any prohibition against the Director of Communications speaking with EAC employees, consultants or working group members when questions arise from members of the press or under the Freedom of Information Act?

Answer: We are not aware of any prohibition. However, we suggest that EAC not comment or limit its comments on this matter because of the ongoing investigation. Any FOIA requests should be promptly responded to stating that the matter is under investigation. Once the investigation is completed, appropriate information should be made available to the FOIA requester.

3. Would there be any prohibition against EAC briefing members of the EAC Standards Board and the EAC Board of Advisors.

Answer: We are not aware of any prohibition. Our preference, however, would be that EAC allow the investigation to be completed before conducting any briefings.

4. Would there be any prohibition against gathering information related to this project in order to respond to inquiries that have been made by members of Congress?

010961



Answer: We are not aware of any prohibition. As previously stated, our preference is that there are no public comments while the investigation is in process or that comments be limited. However, we appreciate the sensitivity of Congressional requests, EAC must decide how best to proceed in this matter. We ask that you share any proposed responses with us prior to their release and that you provide us with a copy of final responses and any attachments.

5. Would there be any prohibition against responding to an inquiry that the Commission has received from an attorney engaged by one of the consultants?

Answer: It is the EAC's decision whether to respond to the attorney for the consultant. We prefer that the consultants not be released from the confidentiality clause of their contracts until the OIG has completed its investigations.

We understand that EAC will want to respond to criticism of its handling of the Voter Fraud and Intimidation Study, and that management must ultimately decide how best to proceed. Our preference would be that you attempt to defer commenting until we have finished our investigation.

I appreciate you raising these matters to me before acting. Please feel free to contact me if you have any questions about this memorandum.



"John Weingart"

03/20/2007 05:32 PM

To klynndyson@eac.gov

cc jhodgkins@eac.gov  
twilkey@eac.gov, "Tim Vercellotti"

bcc

Subject Re: Review of Voter ID Statement

Karen - To further my earlier email, I want to make clear that only respondents who identified themselves as U.S. citizens were asked whether they were registered to vote for the November 2004 election. And only those who said they were registered to vote were asked whether they voted in the election.

John

klynndyson@eac.gov wrote:

>  
> Quick question related to The Voting Age Population estimates used to  
> estimate/calculate turnout rates (see footnote 2 in the statement)-  
>  
> When taking into account noncitizens in the calculation were the  
> noncitizens considered as part of the VAP or as the population as a  
> whole?  
>  
>  
> Thanks for clarifying this for me.  
>  
> Regards-  
>  
>  
> Karen Lynn-Dyson  
> Research Director  
> U.S. Election Assistance Commission  
> 1225 New York Avenue , NW Suite 1100  
> Washington, DC 20005  
> tel:202-566-3123

--

-- John Weingart, Associate Director  
Eagleton Institute of Politics  
(732)932-9384, x.290

010963



"John Weingart "

03/20/2007 02:44 PM

To klynndyson@eac.gov

cc jhodgkins@eac.gov, twilkey@eac.gov, "Tim Vercellotti"

bcc

Subject Re: Review of Voter ID Statement

Karen:

The estimate of citizens of voting-age population controls for the percentage of the voting-age population that might have been non-citizens in 2004. We calculated the citizens of voting-age population using the following approach (this is a direct quote from Appendix C to our final Voter Identification report to the EAC):

"In the aggregate data, determining the percentage of the voting-age population that has U.S. citizenship posed a methodological challenge. The Census Bureau gathers information on the citizenship status of adults ages 18 and older only during the decennial census. While the Census Bureau provides annual estimates of the population to account for changes between decennial censuses, the bureau does not offer estimates for the proportion of the adult population who are citizens as part of the annual estimates. To address this issue I estimated the 2004 citizen voting-age population for each county using a method reported in the analysis of the 2004 Election Day Survey conducted for the U.S. Election Assistance Commission (U.S. Election Assistance Commission, 2005). I calculated the percentage of the 2000 voting-age population who were citizens in 2000, and applied that percentage to the July 1, 2004 estimates for voting-age population in each county. In other words, I assumed that the percentage of the voting-age population that had U.S. citizenship in 2004 was similar to the percentage of the voting-age population who were citizens in 2000."

I hope this addresses the issue. If it doesn't, let us know and Tim Vercellotti or I will be happy to elaborate.

Thanks,

John

klynndyson@eac.gov wrote:

- >
- > Quick question related to The Voting Age Population estimates used to estimate/calculate turnout rates (see footnote 2 in the statement)-
- >
- > When taking into account noncitizens in the calculation were the noncitizens considered as part of the VAP or as the population as a whole?
- >
- >
- > Thanks for clarifying this for me.
- >
- > Regards-
- >
- >
- > Karen Lynn-Dyson

010964

> Research Director  
> U.S. Election Assistance Commission  
> 1225 New York Avenue , NW Suite 1100  
> Washington, DC 20005  
> tel:202-566-3123

--  
-- John Weingart, Associate Director  
Eagleton Institute of Politics  
(732)932-9384, x.290

010965

Karen Lynn-Dyson/EAC/GOV

To Juliet E. Hodgkins/EAC/GOV@EAC

03/20/2007 01:31 PM

cc twilkey@eac.gov

bcc

Subject Forwarding e-mail exchanges on the Voter ID statement

When you get a moment please send me copies of the various e-mail exchanges related to the voter ID statement ( between EAC staff and the Commissioners), that I may have missed since late last week.

I'll have these to file in my records.


Many thanks

K  
Karen Lynn-Dyson  
Research Director  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

010967

Karen Lynn-Dyson/EAC/GOV  
03/20/2007 01:27 PM

To [REDACTED]  
cc jhodgkins@eac.gov [REDACTED]  
[REDACTED] twilkey@eac.gov  
bcc [REDACTED]

Subject Re:Review of Voter ID Statement 

Quick question related to The Voting Age Population estimates used to estimate/calculate turnout rates (see footnote 2 in the statement)-

When taking into account noncitizens in the calculation were the noncitizens considered as part of the VAP or as the population as a whole?


Thanks for clarifying this for me.

Regards-

Karen Lynn-Dyson  
Research Director  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

010968


Juliet E. Hodgkins/EAC/GOV  
02/14/2007 02:53 PM

To Jeannie Layson/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Eagleton 

Is she sure that it was the voter ID stuff and not the provisional ballot stuff?

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
Jeannie Layson/EAC/GOV


Jeannie Layson /EAC/GOV  
02/14/2007 02:49 PM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
Subject Re: Eagleton 

Karen says we sent them to Tom Hicks and to Michael McDonald. Grrr...

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
www.eac.gov  
Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV  
02/14/2007 02:46 PM


To Jeannie Layson/EAC/GOV@EAC  
cc  
Subject Re: Eagleton 

I don't know that we sent the appendixes to people. I think what we did was tell Eagleton that they could use their research. I wrote some letters for Tom to send. We can pull them tomorrow.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
Jeannie Layson/EAC/GOV

010969

Jeannie Layson /EAC/GOV  
02/14/2007 02:34 PM

To Karen Lynn-Dyson/EAC/GOV@EAC  
cc jthompson@eac.gov, twilkey@eac.gov, ggilmour@eac.gov  
Subject Re: Eagleton 

After speaking with Karen, I was reminded that we sent the appendixes to several people. Does that mean I need to send those to anyone who submits a FOIA request for the draft Eagleton voter ID report?

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
www.eac.gov

Karen Lynn-Dyson/EAC/GOV

02/14/2007 02:18 PM

To Jeannie Layson/EAC/GOV@EAC  
cc jthompson@eac.gov, twilkey@eac.gov  
Subject Re: Eagleton Link

FYI-

This is a version of the paper which they presented at the APSA meeting this summer. As I recall we gave them permission to present this paper, because it was Counsel's belief that we could not prevent them from doing so.

Also, FYI- They cite/acknowledge the reviewers whom we gathered to review and react to the preliminary draft.

K

Karen Lynn-Dyson  
Research Director  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005

010970



tel:202-566-3123

Jeannie Layson /EAC/GOV

02/14/2007 02:07 PM

To jthompson@eac.gov, klyndyson@eac.gov, twilkey@eac.gov  
cc  
Subject Eagleton

Did we know that they have released a paper that includes the data they collected on our behalf?  
Electionline is working on a story about their data. Go here  
[http://www.eagleton.rutgers.edu/News-Research/VoterID\\_Turnout.pdf](http://www.eagleton.rutgers.edu/News-Research/VoterID_Turnout.pdf)

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

010971

Juliet E. Hodgkins/EAC/GOV

11/17/2006 12:56 PM

To DeAnna M. Smith/EAC/GOV@EAC

cc

bcc

Subject Draft Voter Fraud and Voter Intimidation Report

DeAnna,

Shortly, I will send the draft voter fraud/voter intimidation report to the Commissioners. I am not going to include the appendixes as they are quite lengthy. However, I am going to let them know that you have access to the appendixes and can give the appendixes to them if they want to read them.

I have created a subfolder in the General Counsel folder, called Voter Fraud and Intimidation Report. There you will find the report and four appendixes. If any of the commissioners ask for the appendixes or another copy of the report, you will have access to them all. You will note that there are two versions of appendixes 2 and 3. That is because we need to make a decision on whether to attach the summaries prepared by the consultants or the summaries prepared by Peggy. You will see clearly the difference -- as they are marked either "consultant" or "Peggy." I will explain this to the Commissioners in the email that I send to them. I will be sure to copy you on the email that I send to the Commissioners.

Let me know if you have any questions. I should have Blackberry service for a while, at least through to Paris.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

010972

**Deliberative Process  
Privilege**

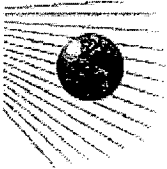
Juliet E. Hodgkins/EAC/GOV  
10/23/2006 09:22 AM

To DeAnna M. Smith/EAC/GOV@EAC  
cc  
bcc  
Subject Fw: Letter to Mr. Reynolds Re: Voter Fraud Report


Please make corrections.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

— Forwarded by Juliet E. Hodgkins/EAC/GOV on 10/23/2006 09:19 AM —



Paul DeGregorio /EAC/GOV  
10/22/2006 09:58 PM

To Amie J. Sherrill/EAC/GOV  
cc Juliet E. Thompson/EAC/GOV  
Subject Re: Fw: Letter to Mr. Reynolds Re: Voter Fraud Report 

Amie,

Mr. Reynolds letter inquires about the status of the report. He does not ask for it to be released, as the first line of our response to him suggests. Please have our draft response to him changed to reflect this fact.

Paul DeGregorio  
Chairman  
US Election Assistance Commission  
1225 New York Ave, NW  
Suite 1100  
Washington, DC 20005  
1-866-747-1471 toll-free  
202-566-3100  
202-566-3127 (FAX)  
pdegregorio@eac.gov  
www.eac.gov

Amie J. Sherrill/EAC/GOV



Amie J. Sherrill/EAC/GOV  
10/20/2006 04:26 PM

To Paul DeGregorio/EAC/GOV@EAC  
cc  
Subject Fw: Letter to Mr. Reynolds Re: Voter Fraud Report

Attached is a draft letter from Julie to Mr. Reynolds of the Comm. on Civ Rights. It contains the same

010973

language as the other letters we have sent. Please let me know if you would like for me to use your e-signature and get it faxed to them this afternoon.

Amie J. Sherrill  
Special Assistant to Chairman Paul S. DeGregorio  
U.S. Election Assistance Commission  
1225 New York NW - Suite 1100  
Washington, DC 20005  
(202) 566 3106

— Forwarded by Amie J. Sherrill/EAC/GOV on 10/20/2006 04:23 PM —



DeAnna M. Smith/EAC/GOV

10/20/2006 04:02 PM

To Amie J. Sherrill/EAC/GOV@EAC

cc

Subject Letter to Mr. Reynolds Re: Voter Fraud Report



draft letter to Mr Reynolds.doc

DeAnna M. Smith  
Paralegal Specialist  
Office of the General Counsel  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
Washington, D.C. 20005  
202-566-3117 (phone)  
202-566-1392 (fax)  
[www.eac.gov](http://www.eac.gov)

010974 0

October 20, 2006

Gerald A Reynolds  
Chairman, United States Commission on Civil Rights  
624 9<sup>th</sup> Street, NW  
Washington, DC 20425

**Via Facsimile Transmission ONLY**  
**202-376-7672**

RE: October 19, 2006 Letter

Dear Mr. Reynolds:

Your letter of October 19, 2006 requests the release of EAC's Voter Fraud and Intimidation Report. I would like to take this opportunity to clarify the purpose and status of this study.

In late 2005, EAC hired two consultants for the purpose of assisting EAC with two things: 1) developing a uniform definition of the phrase voter fraud, and 2) making recommendations on how to further study the existence, prosecution, and means of deterring such voter fraud. In May 2006, a status report on this study was given to the EAC Standards Board and EAC Board of Advisors during their public meetings. During the same week, a working group convened to react to and provide comment on the progress and potential conclusions that could be reached from the work of the two consultants.

The conversation at the working group meeting was lively on the very points that we were trying to accomplish as a part of this study, namely what is voter fraud and how do we pursue studying it. Many of the proposed conclusions that were suggested by the consultants were challenged by the working group members. As such, the consultants were tasked with reviewing the concerns expressed at the working group meeting, conducting additional research as necessary, and providing a draft report to EAC that took into account the working group's concerns and issues.

That draft report is currently being vetted by EAC staff. EAC will release a final report from this study after it has conducted a review of the draft provided by the consultants. However, it is important to remember the purpose of this study – finding a uniform definition of voter fraud and making recommendations on how to study the existence, prosecution and deterrence of voter fraud -- as it will serve as the basis of the EAC report on this study.

Thank you for your letter. You can be assured that as soon as a final report on the fraud and intimidation study is available, a copy will be made available to the public.

Sincerely,

Paul S. DeGregorio  
Chairman

010975


Juliet E.  
Thompson-Hodgkins/EAC/G  
OV

07/24/2006 09:49 AM

To "Cameron.Quinn@usdoj.gov"  
<Cameron.Quinn@usdoj.gov>@GSAEXTERNAL

cc

bcc

Subject Re: FW: The EAC- Tova Wang piece on voter fraud and  
intimidation 

I can't open this as it is a word perfect file. Can you send it in Word or PDF?

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

"Cameron.Quinn@usdoj.gov" <Cameron.Quinn@usdoj.gov>



"Cameron.Quinn@usdoj.gov"  
<Cameron.Quinn@usdoj.gov  
>

07/20/2006 09:56 PM

To "jthompsonhodgkins@eac.gov"  
<jthompsonhodgkins@eac.gov>

cc

Subject FW: The EAC- Tova Wang piece on voter fraud and  
intimidation

Julie - thought John had sent these to you.

---

From: Tanner, John K (CRT)  
Sent: Friday, July 07, 2006 4:37 PM  
To: Quinn, Cameron (CRT)  
Cc: Agarwal, Asheesh (CRT)  
Subject: The EAC- Tova Wang piece on voter fraud and intimidation

The EAC paper is ridiculous. I have a call in to Julie. Here are some notes



Tova Wang.wpd

010976

Juliet E.  
Thompson-Hodgkins/EAC/G  
OV

07/18/2006 04:35 PM

To "Cameron.Quinn@usdoj.gov"  
<Cameron.Quinn@usdoj.gov>@GSAEXTERNAL

cc

bcc

Subject Re: Voter Fraud/Voter Intimidation Research Project 

As we discussed, we do have concerns that the interviews with Mr. Donsanto and Mr. Tanner were not accurately reflected in the document. I have searched my emails and find no comments having been transmitted by Mr. Tanner. As we also discussed, I did not sit in on the interview with Mr. Tanner, thus, I cannot independently identify the changes that need to be made. If you will forward his comments to me, I will assure that they are incorporated in the final document.

As for the public availability of the document, EAC does not intend to publish or distribute the draft document about which your agency has concerns. However, if we receive a request under FOIA, we will have to examine whether the document is releasable under the parameters set forth in that law. A final document will be produced with EAC review and will be vetted through our standards board and board of advisors, as usual -- including input from the Department of Justice.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

"Cameron.Quinn@usdoj.gov" <Cameron.Quinn@usdoj.gov>



"Cameron.Quinn@usdoj.gov"  
<Cameron.Quinn@usdoj.gov  
>

07/17/2006 10:34 PM

To "jthompsonhodgkins@eac.gov"  
<jthompsonhodgkins@eac.gov>

cc

Subject Voter Fraud/Voter Intimidation Research Project

Julie - I'd like to officially send something to you to confirm the following from our conversation today, but wanted to give you a chance to react first, to be sure I was accurate in my understanding of our conversation:

(1) the "status report" issued by EAC to the Standards Board and Advisory Board in May was not something that EAC, institutionally, had necessarily intended for official public distribution, and certainly will not be further distributed, such that no additions/corrections to it make sense at this point;

(2) you acknowledge DOJ concerns that the "status report" at a minimum did not accurately reflect the conversations that Ms. Wang and Mr. Serebrov had with DOJ officials on at least two occasions, and that our concerns about the inaccurately reflected conversations are consistent with other information you received suggesting the characterization of the conversations was not entirely accurate;

(3) you are just getting in the draft material on this project from which, at some point, some kind of official document for public distribution is still contemplated, most likely before the end of the fiscal year; and

010977

(4) in light of our concerns about the previous inaccurate characterization of the conversations with DOJ officials in the "status report", you will ensure that at a minimum we have an opportunity to review the draft report and provide feedback about information attributed to DOJ officials prior to any draft report being circulated more publicly.

Will the entire reports of the various research projects be circulated for review among Standards Board and Advisory Board members prior to issuance by the EAC? I had understood, please correct me if I'm wrong, that the VVSG guidelines were so circulated last year, but am not sure what else, if anything, has been circulated/reviewed in the past.

Thanks, Julie, for your help in correcting this!

010978



Juliet E. Hodgkins/EAC/GOV  
11/03/2006 07:06 PM

To "Job Serebrov" [REDACTED]  
cc  
bcc  
Subject Re: Please send me the summary [REDACTED]

Thanks!

-----  
Sent from my BlackBerry Wireless Handheld

----- Original Message -----  
From: "Job Serebrov" [REDACTED]  
Sent: 11/03/2006 06:04 PM  
To: Juliet Hodgkins  
Subject: Re: Please send me the summary

Julie:

You should have these as existing literature summaries.


Job

--- jhodgkins@eac.gov wrote:

> Juliet Thompson Hodgkins  
> General Counsel  
> United States Election Assistance Commission  
> 1225 New York Ave., NW, Ste 1100  
> Washington, DC 20005  
> (202) 566-3100

010979

Juliet E. Thompson/EAC/GOV  
11/18/2005 02:34 PM

To "Job Serebrov"  
[REDACTED]@GSAEXTERNAL  
cc  
bcc  
Subject Re: Answer 

I would not include issues of discrimination under the civil jurisdiction , but would include election crimes that are enforced through DOJ's criminal division.

Juliet E. Thompson  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
"Job Serebrov" [REDACTED]



"Job Serebrov"  
[REDACTED]  
11/18/2005 01:34 PM

To jthompson@eac.gov  
cc  
Subject Answer


Julie:

Do you have an answer for me on the DOJ issue? We have a conference call in half an hour.

Job

010980

Juliet E. Thompson/EAC/GOV  
11/18/2005 09:47 AM

To "Job Serebrov" [REDACTED]@GSAEXTERNAL  
cc  
bcc  
Subject Re: Question 

As to paragraph 1, are you referring to criminal division actions or civil division actions ?

As to paragraph 2, I have talked to Karen. At this time, the anticipation is that the future project on this will be competitively let, and you and others will, of course, be able to respond to the solicitation. We are not sure what our needs will be for consultants/experts on this issue or other issues at this time.

Juliet E. Thompson  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
"Job Serebrov" [REDACTED]



"Job Serebrov"  
[REDACTED]  
11/18/2005 09:27 AM

To jthompson@eac.gov  
cc  
Subject Question

Julie:

I need clarification on something in the project before the conference call at 2:00 today between Peggy, Tova, and me. How much of what we are investigating should involve DOJ's jurisdictional matters under such things as the Voting Rights Act?

Also, did you have a chance to talk to Karen about a second project? I need to know because if there will not be one I will have to get a job with a local law firm until the 2006 elections.

Job

010981

Juliet E. Thompson/EAC/GOV  
11/03/2005 12:21 PM

To "Job Serebrov" [REDACTED]@GSAEXTERNAL  
cc  
bcc [REDACTED]  
Subject Re: Question

I will talk to Peggy. I have not been back to the office, so I don't know how far she's gotten on that.

Juliet E. Thompson  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
"Job Serebrov" [REDACTED]



"Job Serebrov"  
[REDACTED]  
11/03/2005 11:13 AM

To jthompson@eac.gov  
cc  
Subject Re: Question

Fax it to 501,682.5117. Anything about time for pay?

--- jthompson@eac.gov wrote:

> They are going to the Commissioners today for  
> approval. We will keep you posted. Do you have a  
> fax number that you would want the contract sent to?  
>  
> -----  
> Sent from my BlackBerry Wireless Handheld  
>  
>  
> ----- Original Message -----  
> From: "Job Serebrov" [REDACTED]  
> Sent: 11/03/2005 11:03 AM  
> To: psims@eac.gov; jthompson@eac.gov  
> Subject: Question  
>  
> Peggy and Julie:  
>  
> Were the contracts approved yet? Also, someone at  
> the  
> EAC was going to tell us how long it will take to  
> process our Oct 25 invoices.  
>  
> Job  
>  
>  
>

010982

Juliet E. Thompson/EAC/GOV  
11/03/2005 12:05 PM

To "Job Serebrov" [REDACTED]  
cc  
bcc  
Subject Re: Question

They are going to the Commissioners today for approval. We will keep you posted. Do you have a fax number that you would want the contract sent to?

-----  
Sent from my BlackBerry Wireless Handheld

----- Original Message -----

From: "Job Serebrov" [REDACTED]  
Sent: 11/03/2005 11:03 AM  
To: psims@eac.gov; jthompson@eac.gov  
Subject: Question


Peggy and Julie:

Were the contracts approved yet? Also, someone at the EAC was going to tell us how long it will take to process our Oct 25 invoices.

Job

010983

Juliet E. Thompson/EAC/GOV  
10/28/2005 10:55 AM

To "Job Serebrov" [REDACTED]@GSAEXTERNAL  
cc [REDACTED]  
bcc  
Subject Re: Contracts 

I am working on your contract today. I will get it to you as soon as possible.

Juliet E. Thompson  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

010984

Juliet E. Thompson/EAC/GOV  
10/25/2005 04:20 PM

To "Job Serebrov"  
cc [REDACTED]@GSAEXTERNAL  
bcc  
Subject Re: Fw: Invoice information

Both.

Juliet E. Thompson  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
"Job Serebrov" [REDACTED]



"Job Serebrov"  
[REDACTED]  
10/25/2005 04:18 PM

To jthompson@eac.gov  
cc  
Subject Re: Fw: Invoice information

Will do. I told you you need more personnel or a good cloning device.

Job

--- jthompson@eac.gov wrote:

> Go with what Peggy gave you. I was not in on the  
> initial conversations on  
> how this project would work. I asked Edgardo to put  
> together some  
> information that he distributed to other  
> contractors, as I thought it was  
> appropriate for their contracts. If this is not  
> appropriate for your  
> contract, that's fine. Again, I was not in on those  
> discussions. Go with  
> Peggy's instructions.  
>  
> Sorry that I can't talk to you right now, but I'm in  
> a meeting and  
> multi-tasking as others talk.  
>  
> Juliet E. Thompson  
> General Counsel  
> United States Election Assistance Commission  
> 1225 New York Ave., NW, Ste 1100  
> Washington, DC 20005  
> (202) 566-3100  
>  
>

010985

>  
> "Job Serebrov" <ser[REDACTED]>  
> 10/25/2005 04:07 PM  
>  
> To  
> jthompson@eac.gov  
> cc  
>  
> Subject  
> Re: Fw: Invoice information  
>  
>  
>  
>  
>  
>  
> Julie:  
>  
> For our conversation, this information directly  
> contradicts what Peggy and I just discussed. She  
> indicated that an invoice be in this form:  
>  
> Job Serebrov  
> Attorney at Law  
> 2110 S. Spring Street  
> Little Rock, AR 72206  
>  
> October 25, 2005  
>  
> INVOICE # 1  
>  
> \$8,333.33-Month One: Providing Consulting Services  
> in  
> the Development of a Voting Fraud and Voter  
> Intimidation Project.  
>  
> No expenses-Month One: Providing Consulting Services  
> in the Development of a Voting Fraud and Voter  
> Intimidation Project.  
>  
> Total=\$8,333.33  
>  
> Further, when we first started discussions on this  
> project with Karen, Tom and the gang we agreed that  
> time billing was not a valid option for either of  
> us.  
> That is why the invoice is simple. Peggy said were  
> to  
> send a supplemental e-mail to her each month listing  
> our monthly activities, again without time billing.  
>  
> It seems that the invoice described by Edgardo  
> better  
> fits a different project.  
>  
> Talk to you soon,  
>  
> Job  
>  
> --- jthompson@eac.gov wrote:  
>

010986



> > Here's the information you wanted. I don't have  
> > Tova's email. Can you  
> > forward this to her?  
> >  
> > Juliet E. Thompson  
> > General Counsel  
> > United States Election Assistance Commission  
> > 1225 New York Ave., NW, Ste 1100  
> > Washington, DC 20005  
> > (202) 566-3100  
> > ----- Forwarded by Juliet E. Thompson/EAC/GOV on  
> > 10/25/2005 03:49 PM -----  
> >  
> > Edgardo Cortes/EAC/GOV  
> > 10/25/2005 03:45 PM  
> >  
> > To  
> > Juliet E. Thompson/EAC/GOV@EAC  
> > cc  
> >  
> > Subject  
> > Re: Invoice information  
> >  
> >  
> >  
> > Julie, here are the notes you can send to Job and  
> > Tova (I don't have their  
> > email addresses). If they have any more  
> > questions,  
> > let me know and I will  
> > get the answer. Thanks.  
> > -Edgardo  
> >  
> >  
> >  
> > Here are some notes that may be useful in  
> > preparing  
> > for invoicing and  
> > reporting for your contracts.  
> >  
> > Invoices should include two main sections - direct  
> > and indirect costs.  
> >  
> > Under the direct costs, the total number of hours  
> > devoted to each task  
> > should be listed as well as the task. This does  
> > not  
> > have to be broken  
> > down by individual, only by task.  
> > You must maintain accurate time sheets for each  
> > person working on the  
> > project detailing how many hours were spent on  
> > each  
> > task. Time should be  
> > kept in quarter hour increments.  
> >  
> > Indirect costs include any subcontractor costs.  
> >  
> > Invoices should be submitted on a monthly basis.

> > Your Contracting  
> > Representative will review the invoice and  
> > supporting documentation and  
> > either approve the invoice or ask for additional  
> > information.  
> >  
> > You must provide written notice to the EAC project  
> > manager when 75% of the  
> > contract funds have been committed. This includes  
> > signing any sub  
> > contracts, etc. and does not necessarily coincide  
> > with when 75% of the  
> > money is disbursed.  
> >  
> > Federal contract records need to be available for  
> > seven (7) years for  
> > audit purposes. Please make sure to keep all  
> > pertinent records including  
> > receipts, time sheets, etc. in a secure place so  
> > that they can be accessed  
> > if the need arises.  
> >  
> > Edgardo Cortés  
> > Election Research Specialist  
> > U.S. Election Assistance Commission  
> > 1225 New York Ave. NW, Ste. 1100  
> > Washington, DC 20005  
> > 866-747-1471 toll free  
> > 202-566-3126 direct  
> > 202-566-3127 fax  
> > ecortes@eac.gov  
>  
>  
>

Juliet E. Thompson/EAC/GOV  
10/25/2005 04:13 PM

To "Job Serebrov" [REDACTED]@GSAEXTERNAL  
cc [REDACTED]  
bcc [REDACTED]  
Subject Re: Fw: Invoice information [PDF]

Go with what Peggy gave you. I was not in on the initial conversations on how this project would work. I asked Edgardo to put together some information that he distributed to other contractors, as I thought it was appropriate for their contracts. If this is not appropriate for your contract, that's fine. Again, I was not in on those discussions. Go with Peggy's instructions.

Sorry that I can't talk to you right now, but I'm in a meeting and multi-tasking as others talk.

Juliet E. Thompson  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
"Job Serebrov" [REDACTED]



"Job Serebrov" [REDACTED]  
10/25/2005 04:07 PM

To jthompson@eac.gov  
cc [REDACTED]  
Subject Re: Fw: Invoice information

Julie:

For our conversation, this information directly contradicts what Peggy and I just discussed. She indicated that an invoice be in this form:

Job Serebrov  
Attorney at Law  
2110 S. Spring Street  
Little Rock, AR 72206

October 25, 2005

INVOICE # 1

\$8,333.33-Month One: Providing Consulting Services in the Development of a Voting Fraud and Voter Intimidation Project.

No expenses-Month One: Providing Consulting Services in the Development of a Voting Fraud and Voter Intimidation Project.

Total=\$8,333.33

Further, when we first started discussions on this

010989

project with Karen, Tom and the gang we agreed that time billing was not a valid option for either of us. That is why the invoice is simple. Peggy said were to send a supplemental e-mail to her each month listing our monthly activities, again without time billing.

It seems that the invoice described by Edgardo better fits a different project.

Talk to you soon,

Job

--- jthompson@eac.gov wrote:

> Here's the information you wanted. I don't have  
> Tova's email. Can you  
> forward this to her?  
>  
> Juliet E. Thompson  
> General Counsel  
> United States Election Assistance Commission  
> 1225 New York Ave., NW, Ste 1100  
> Washington, DC 20005  
> (202) 566-3100  
> ----- Forwarded by Juliet E. Thompson/EAC/GOV on  
> 10/25/2005 03:49 PM -----  
>  
> Edgardo Cortes/EAC/GOV  
> 10/25/2005 03:45 PM  
>  
> To  
> Juliet E. Thompson/EAC/GOV@EAC  
> cc  
>  
> Subject  
> Re: Invoice information  
>  
>  
>  
>  
> Julie, here are the notes you can send to Job and  
> Tova (I don't have their  
> email addresses). If they have any more questions,  
> let me know and I will  
> get the answer. Thanks.  
> -Edgardo  
>  
>  
>  
> Here are some notes that may be useful in preparing  
> for invoicing and  
> reporting for your contracts.  
>  
> Invoices should include two main sections - direct  
> and indirect costs.  
>  
> Under the direct costs, the total number of hours  
> devoted to each task  
> should be listed as well as the task. This does not

010990

> have to be broken  
> down by individual, only by task.  
> You must maintain accurate time sheets for each  
> person working on the  
> project detailing how many hours were spent on each  
> task. Time should be  
> kept in quarter hour increments.  
>  
> Indirect costs include any subcontractor costs.  
>  
> Invoices should be submitted on a monthly basis.  
> Your Contracting  
> Representative will review the invoice and  
> supporting documentation and  
> either approve the invoice or ask for additional  
> information.  
>  
> You must provide written notice to the EAC project  
> manager when 75% of the  
> contract funds have been committed. This includes  
> signing any sub  
> contracts, etc. and does not necessarily coincide  
> with when 75% of the  
> money is disbursed.  
>  
> Federal contract records need to be available for  
> seven (7) years for  
> audit purposes. Please make sure to keep all  
> pertinent records including  
> receipts, time sheets, etc. in a secure place so  
> that they can be accessed  
> if the need arises.  
>  
> Edgardo Cortés  
> Election Research Specialist  
> U.S. Election Assistance Commission  
> 1225 New York Ave. NW, Ste. 1100  
> Washington, DC 20005  
> 866-747-1471 toll free  
> 202-566-3126 direct  
> 202-566-3127 fax  
> ecortes@eac.gov

Juliet E.  
Thompson/EAC/GOV  
08/26/2005 03:38 PM

To Karen Lynn-Dyson/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Kick off activities for the EAC Voting fraud/voter  
intimidation project

Wed i think chack with Nicole so as to avoid conflicting with the GAO meeting

---

Sent from my BlackBerry Wireless Handheld  
Karen Lynn-Dyson

**From:** Karen Lynn-Dyson  
**Sent:** 08/26/2005 03:32 PM  
**To:** sda@mit.edu; [REDACTED]  
**Cc:** Thomas Wilkey; Nicole Mortellito; Juliet Thompson  
**Subject:** Re: Kick off activities for the EAC Voting fraud/voter  
intimidation project

All-

Although Tom Wilkey and I are still working to process each of your contracts on this project, we would like to tentatively schedule an in-person meeting on September 12, here in Washington.

In the meantime, I'd like to propose that we all have a short teleconference call next Wednesday or Thursday at 1:00 PM to begin to talk through the scope of this project and the respective roles and responsibilities each of you might take on.

Could you let me know your availability for a 45 minute call on August 31 or September 1 at 1:00?

Thanks

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

010992

Juliet E. Hodgkins/EAC/GOV  
12/05/2006 03:12 PM

To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL  
cc serebrov@sbcglobal.net  
bcc  
Subject RE: fraud and intimidation report

Unfortunately, the issue is not whether either of you would/could release the document, but the fact that releasing it at all to non-EAC employees could be viewed as a waiver of our privilege.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
"Tova Wang" <wang@tcf.org>



"Tova Wang"  
[REDACTED]  
12/05/2006 09:09 AM

To jhodgkins@eac.gov  
[REDACTED]  
Subject RE: fraud and intimidation report

Thanks Julie. What if we both agreed to sign a confidentiality agreement, embargoing any discussion of the report until after it is released? Tova

Tova Andrea Wang, Democracy Fellow  
The Century Foundation  
1333 H Street, NW, Washington, D.C. 20005  
(202) 741-6263  
Visit our Web site, [www.tcf.org](http://www.tcf.org), for the latest news, analysis, opinions, and events.

-----Original Message-----

From: jhodgkins@eac.gov [mailto:jhodgkins@eac.gov]  
Sent: Monday, December 04, 2006 4:57 PM  
To: wang@tcf.org  
Cc: serebrov@sbcglobal.net  
Subject: Re: fraud and intimidation report

Tova & Job,

As you know, because the two of you are no longer under contract with the EAC, EAC is not afforded the same protections as if you were still functioning as EAC employees. As such, releasing the document to you would be the same as releasing it to any other member of the public.

Thus, EAC will not be able to release a copy of the proposed final report to you prior to its consideration and adoption by the Commission. The Commission will take up this report at its meeting on Thursday, Dec. 7. I

010993

will have a copy available for you immediately following their consideration - assuming that they do not change the report during their deliberations and voting on Dec. 7. If changes are made, I will have a copy available to you as soon as possible following that meeting.

In the final report, you will see that EAC took the information and work provided by the two of you and developed a report that summarizes that work, provides a definition for use in future study, and adopts parts or all of many of the recommendations made by you and the working group. In addition, you will note that EAC will make the entirety of your interview summaries, case summaries, and book/report summaries available to the public as appendixes to the report.

I know that you are anxious to read the report and that you may have questions that you would like to discuss following the release of the report. Please feel free to contact me with those questions or issues.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

wang@tcf.org

12/01/2006 02:07  
PM

jthompson@eac.gov

To

cc

"Job Serebrov"  


Subject

fraud and intimidation report

Julie,

I understand from Tom Wilkey that you are planning on releasing our report at the public meeting next Thursday, December 7. As we discussed, I respectfully request that Job and I be permitted to review what you are releasing before it is released. I would like us both to be provided with an embargoed copy as soon as possible so we have time to properly review it before Thursday. I can be contacted by email, cell phone at 917-656-7905, or office phone 202-741-6263. I hope to hear from you soon. Thanks.

Tova

010994



Juliet E. Thompson/EAC/GOV  
11/15/2005 06:20 PM

To "Tova Wang [REDACTED]>@GSAEXTERNAL  
cc Margaret Sims/EAC/GOV@EAC  
bcc  
Subject RE: contract

I believe that is correct. What I think you might also be concerned about is the timelines for completion. If you, Job and Peggy need to work out a revised completion schedule, then I would encourage you to do that. We recognize that our delays have impacted the original schedule and that adjustments should be noted accordingly.

Juliet E. Thompson  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
"Tova Wang" <wang@tcf.org>



"Tova Wang"  
[REDACTED]  
11/15/2005 06:17 PM

To jthompson@eac.gov  
cc psims@eac.gov  
Subject RE: contract

I guess for getting paid purposes it doesn't matter, it just matters with respect to the timeline for completion of the project. If that's right, I will sign and send the letter acknowledging receipt as is. Thanks so much.

Tova

-----Original Message-----

**From:** jthompson@eac.gov [mailto:jthompson@eac.gov]  
**Sent:** Tuesday, November 15, 2005 6:14 PM  
**To:** wang@tcf.org  
**Cc:** psims@eac.gov  
**Subject:** Re: contract

The invoice that you have submitted at this point is for work conducted in September, September 1 - 30.

The invoice that you will submit shortly, if you have not already is for work performed in October, 1 - 31.

I am not sure if we are semantically calling these by different names (i.e., you submitted the Septbmer invoice in October, and October's work in November).

Let me know if this clarifies the point or confuses it.

010995

Juliet E. Thompson  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

"Tova Wang" <[REDACTED]>

11/15/2005 01:33 PM

To psims@eac.gov, jthompson@eac.gov  
cc  
Subject contract

Just one question on the receipt of contract -- it says that the first invoice was for September, but it actually was for October when we really got started, right? Should this be adjusted to say October 1 to October 31?

Thanks.

Tova

-----Original Message-----

**From:** psims@eac.gov [mailto:psims@eac.gov]  
**Sent:** Thursday, November 10, 2005 3:28 PM  
**To:** [REDACTED] wang@tcf.org  
**Subject:** Letters Were Signed

Job and Tova:

The Chair signed your letters this afternoon. Diana Scott has them and plans to fax everything to you. Have a good weekend!

Peggy Sims  
Research Specialist  
U.S. Election Assistance Commission  
1225 New York Ave, NW - Ste 1100  
Washington, DC 20005  
Phone: 866-747-1471 (toll free) or 202-566-3120 (direct)  
Fax: 202-566-3127  
email: psims@eac.gov

010996

Juliet E. Thompson/EAC/GOV  
11/15/2005 06:13 PM

To "Tova Wang" [REDACTED]@GSAEXTERNAL  
cc Margaret Sims/EAC/GOV@EAC  
bcc  
Subject Re: contract [REDACTED]

The invoice that you have submitted at this point is for work conducted in September, September 1 - 30.

The invoice that you will submit shortly, if you have not already is for work performed in October, 1- 31.

I am not sure if we are semantically calling these by different names (i.e., you submitted the Septebmer invoice in October, and October's work in November).

Let me know if this clarifies the point or confuses it.

Juliet E. Thompson  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
"Tova Wang" [REDACTED]



"Tova Wang"  
[REDACTED]  
11/15/2005 01:33 PM

To psims@eac.gov, jthompson@eac.gov  
cc  
Subject contract

Just one question on the receipt of contract -- it says that the first invoice was for September, but it actually was for October when we really got started, right? Should this be adjusted to say October 1 to October 31?

Thanks.

Tova

-----Original Message-----

**From:** psims@eac.gov [mailto:psims@eac.gov]  
**Sent:** Thursday, November 10, 2005 3:28 PM  
**To:** s [REDACTED]; wang@tcf.org  
**Subject:** Letters Were Signed

Job and Tova:

The Chair signed your letters this afternoon. Diana Scott has them and plans to fax everything to you. Have a good weekend!

Peggy Sims  
Research Specialist

010997

U.S. Election Assistance Commission  
1225 New York Ave, NW - Ste 1100  
Washington, DC 20005  
Phone: 866-747-1471 (toll free) or 202-566-3120 (direct)  
Fax: 202-566-3127  
email: [psims@eac.gov](mailto:psims@eac.gov)

010998

Jeannie Layson /EAC/GOV  
12/13/2006 09:01 AM

To jthompson@eac.gov  
cc  
bcc  
Subject Tova

Wanted to make sure you saw this from yesterday's clips. This was posted on Rick Hasen's blog:

Tova Wang, who authored the draft report for the EAC, issued the following statement to me: "My co-consultant and I provided the EAC with a tremendous amount of research and analysis for this project. The EAC released what is their report yesterday."

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

010999



"Job Serebrov"

12/09/2006 10:19 AM

To jhodgkins@eac.gov

cc

bcc

Subject Fwd: Conclusions

Julie:

I sent this to Tova on Saturday to make it clear about my feelings and what my actions will be if she proceeds with her protest any further. I think it makes it clear that she would be fighting both of us. I know I am going to hear from her on this but the issue needs to be put to bed.

Job

--- Job Serebrov <serebrov@sbcglobal.net> wrote:

> Date: Sat, 9 Dec 2006 07:17:24 -0800 (PST)  
> From: Job Serebrov [REDACTED]  
> Subject: Conclusions [REDACTED]  
> To: Tova Wang <wang@tcf.org>  
>  
> Tova:  
>  
> I spoke to Julie late yesterday and she told me that  
> you sent a letter, as you said you would. I must ask  
> you to drop this if your request is denied. We were  
> never guaranteed that our report, paid for by the  
> EAC,  
> would be published in the form that we sent it or  
> with  
> the conclusions that we arrived at.  
>  
> As I told you, I am satisfied with the published  
> report from the EAC. I can live with the removal of  
> the Donsanto comment and the other alterations. What  
> I  
> am very concerned about is that further action on  
> your  
> part would cause the EAC, in defending its final  
> report, to criticize the report we submitted or to  
> attack our report out right as some how unusable,  
> even  
> if this is not the case. Should this occur, I will  
> defend both the final EAC report and our submission  
> which will leave you alone fighting a two front war.  
> I  
> think it is more important to preserve the integrity  
> of the over all project submission than to press the  
> issue over how it was used. I hope this will not be  
> necessary.  
>  
> Job  
>

011000



"Job Serebrov"

12/07/2006 01:18 PM

To jhodgkins@eac.gov

cc

bcc

Subject Report

Julie:

Well I see you left out the controversial Donsanto remark. I really think the report is well done. It should have served to satisfy both sides---but wait---there is the Tova on the war path factor. Tova is totally disgusted with the report. She especially hates the omission of the summaries of the various sections (interviews, case law, reports, literature, and interviews). She is really upset with the Donsanto omission. I can see her going to some of the members of Congress she knows and trying to get a hearing. I know she will be sending you a letter, asking or demanding that you retract this report and publish the original one we submitted.

I told her that I am satisfied with the report and that I will have nothing to do with her future actions---which I expect will be plentiful like Santa's Christmas gifts or like the bubonic plague. In any case, this is a Tova production.

Now for the I told you so---this would have been far better had we been able to stick to the original plan to have me do this project alone. I told you so!!!

Keep a stiff upper lip,

Job

011001



"Job Serebrov"

12/05/2006 03:14 PM

To jhodgkins@eac.gov

cc

bcc

Subject RE: fraud and intimidation report

History

This message has been replied to

Julie:

I was hoping that my e-mail reply to Tova would end all of this. On another note, Las Veas fell apart mostly due to timing issues. Unfortunately that leaves me, for now, looking for a job. Any ideas?

Job

--- jhodgkins@eac.gov wrote:

> Unfortunately, the issue is not whether either of  
> you would/could release  
> the document, but the fact that releasing it at all  
> to non-EAC employees  
> could be viewed as a waiver of our privilege.

>  
> Juliet Thompson Hodgkins  
> General Counsel  
> United States Election Assistance Commission  
> 1225 New York Ave., NW, Ste 1100  
> Washington, DC 20005  
> (202) 566-3100

>  
> "Tova Wang" <wang@tcf.org>  
> 12/05/2006 09:09 AM

> To  
> jhodgkins@eac.gov  
> cc

> Subject  
> RE: fraud and intimidation report

>  
> Thanks Julie. What if we both agreed to sign a  
> confidentiality agreement,  
> embargoing any discussion of the report until after  
> it is released? Tova

011002



> Tova Andrea Wang, Democracy Fellow  
> The Century Foundation  
> 1333 H Street, NW, Washington, D.C. 20005  
> (202) 741-6263  
> Visit our Web site, [www.tcf.org](http://www.tcf.org), for the latest  
> news, analysis, opinions,  
> and events.  
>  
>  
> -----Original Message-----  
> From: [jhodgkins@eac.gov](mailto:jhodgkins@eac.gov) [<mailto:jhodgkins@eac.gov>]  
> Sent: Monday, December 04, 2006 4:57 PM  
> To: [wang@tcf.org](mailto:wang@tcf.org)  
> Cc: [REDACTED]  
> Subject: Re: fraud and intimidation report  
>  
>  
> Tova & Job,  
>  
> As you know, because the two of you are no longer  
> under contract with the  
> EAC, EAC is not afforded the same protections as if  
> you were still  
> functioning as EAC employees. As such, releasing  
> the document to you  
> would  
> be the same as releasing it to any other member of  
> the public.  
>  
> Thus, EAC will not be able to release a copy of the  
> proposed final report  
> to  
> you prior to its consideration and adoption by the  
> Commission. The  
> Commission will take up this report at its meeting  
> on Thursday, Dec. 7. I  
> will have a copy available for you immediately  
> following their  
> consideration  
> - assuming that they do not change the report during  
> their deliberations  
> and  
> voting on Dec. 7. If changes are made, I will have  
> a copy available to  
> you  
> as soon as possible following that meeting.  
>  
> In the final report, you will see that EAC took the  
> information and work  
> provided by the two of you and developed a report  
> that summarizes that  
> work  
> , provides a definition for use in future study, and  
> adopts parts or all  
> of  
> many of the recommendations made by you and the  
> working group. In  
> addition,  
> you will note that EAC will make the entirety of  
> your interview summaries,  
> case summaries, and book/report summaries available

011003

> to the public as  
> appendixes to the report.  
>  
> I know that you are anxious to read the report and  
> that you may have  
> questions that you would like to discuss following  
> the release of the  
> report. Please feel free to contact me with those  
> questions or issues.

>  
> Juliet Thompson Hodgkins  
> General Counsel  
> United States Election Assistance Commission  
> 1225 New York Ave., NW, Ste 1100  
> Washington, DC 20005  
> (202) 566-3100

>  
>  
> wang@tcf.org  
>  
> 12/01/2006 02:07  
> To

>  
> PM  
> jthompson@eac.gov

>  
> cc

>  
> "Job  
> Serebrov"



>  
> Subject  
>  
> fraud and  
> intimidation report

>  
> Julie,  
>  
> I understand from Tom Wilkey that you are planning  
> on releasing our report  
> at the public meeting next Thursday, December 7. As  
> we discussed, I  
> respectfully request that Job and I be permitted to  
> review what you are  
> releasing before it is released. I would like us  
> both to be provided with  
> an embargoed copy as soon as possible so we have  
> time to properly review  
> it

> before Thursday. I can be contacted by email, cell  
> phone at 917-656-7905,  
> or  
> office phone 202-741-6263. I hope to hear from you  
> soon. Thanks.  
>  
> Tova  
>  
>  
>  
>  
>



"Job Serebrov"  
[REDACTED]

12/05/2006 09:43 AM

To "Tova Wang" [REDACTED]; jhodgkins@eac.gov

cc

bcc

Subject RE: fraud and intimidation report

Tova:

I don't want to go that far. I am fine with a Thursday release given the circumstances that we are under.

Job

*Tova Wang* <wang@tcf.org> wrote:

Thanks Julie. What if we both agreed to sign a confidentiality agreement, embargoing any discussion of the report until after it is released? Tova

Tova Andrea Wang, Democracy Fellow  
The Century Foundation  
1333 H Street, NW, Washington, D.C. 20005  
(202) 741-6263

Visit our Web site, [www.tcf.org](http://www.tcf.org), for the latest news, analysis, opinions, and events.

-----Original Message-----

From: jhodgkins@eac.gov [mailto:jhodgkins@eac.gov]

Sent: Monday, December 04, 2006 4:57 PM

To: wang@tcf.org  
[REDACTED]

Subject: Re: fraud and intimidation report

Tova & Job,

As you know, because the two of you are no longer under contract with the EAC, EAC is not afforded the same protections as if you were still functioning as EAC employees. As such, releasing the document to you would be the same as releasing it to any other member of the public.

Thus, EAC will not be able to release a copy of the proposed final report to you prior to its consideration and adoption by the Commission. The Commission will take up this report at its meeting on Thursday, Dec. 7. I will have a copy available for you immediately following their consideration

011006

- assuming that they do not change the report during their deliberations and voting on Dec. 7. If changes are made, I will have a copy available to you as soon as possible following that meeting.

In the final report, you will see that EAC took the information and work provided by the two of you and developed a report that summarizes that work, provides a definition for use in future study, and adopts parts or all of many of the recommendations made by you and the working group. In addition, you will note that EAC will make the entirety of your interview summaries, case summaries, and book/report summaries available to the public as appendixes to the report.

I know that you are anxious to read the report and that you may have questions that you would like to discuss following the release of the report. Please feel free to contact me with those questions or issues.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

wang@tcf.org

12/01/2006 02:07 To  
PM jthompson@eac.gov  
cc  
"Job Serebrov"

Subject  
fraud and intimidation report

Julie,

011007

I understand from Tom Wilkey that you are planning on releasing our report at the public meeting next Thursday, December 7. As we discussed, I respectfully request that Job and I be permitted to review what you are releasing before it is released. I would like us both to be provided with an embargoed copy as soon as possible so we have time to properly review it before Thursday. I can be contacted by email, cell phone at [REDACTED] or office phone [REDACTED]. I hope to hear from you soon. Thanks.

Tova

011008



"Job Serebrov"  
[REDACTED]  
11/18/2005 02:36 PM

To jthompson@eac.gov  
cc  
bcc  
Subject Re: Answer

Ok.

--- jthompson@eac.gov wrote:

> I would not include issues of discrimination under  
> the civil jurisdiction,  
> but would include election crimes that are enforced  
> through DOJ's criminal  
> division.

>  
> Juliet E. Thompson  
> General Counsel  
> United States Election Assistance Commission  
> 1225 New York Ave., NW, Ste 1100  
> Washington, DC 20005  
> (202) 566-3100

>  
>  
> "Job Serebrov" [REDACTED]  
> 11/18/2005 01:34 PM

>  
> To  
> jthompson@eac.gov  
> cc

>  
> Subject  
> Answer

>  
>  
>  
>  
>  
>  
>  
> Julie:

>  
> Do you have an answer for me on the DOJ issue? We  
> have  
> a conference call in half an hour.

>  
> Job  
>  
>  
>

011009



"Job Serebrov"

11/18/2005 01:34 PM

To jthompson@eac.gov

cc

bcc

Subject Answer

History

This message has been replied to.

Julie:

Do you have an answer for me on the DOJ issue? We have a conference call in half an hour.

Job

011010





"Job Serebrov"

11/18/2005 01:34 PM

To jthompson@eac.gov

cc

bcc

Subject Answer

Julie:

Do you have an answer for me on the DOJ issue? We have a conference call in half an hour.

Job

011011



"Job Serebrov" [REDACTED]

11/18/2005 10:10 AM

To jthompson@eac.gov

cc

bcc

Subject Re: Question

Both criminal and civil

--- jthompson@eac.gov wrote:

> As to paragraph 1, are you referring to criminal  
> division actions or civil  
> division actions?  
>  
> As to paragraph 2, I have talked to Karen. At this  
> time, the anticipation  
> is that the future project on this will be  
> competitively let, and you and  
> others will, of course, be able to respond to the  
> solicitation. We are  
> not sure what our needs will be for  
> consultants/experts on this issue or  
> other issues at this time.

>  
> Juliet E. Thompson  
> General Counsel  
> United States Election Assistance Commission  
> 1225 New York Ave., NW, Ste 1100  
> Washington, DC 20005  
> (202) 566-3100

>  
>  
> "Job Serebrov" [REDACTED]  
> 11/18/2005 09:27 AM

>  
> To  
> jthompson@eac.gov  
> cc

>  
> Subject  
> Question

>  
>  
>  
>  
>  
>  
> Julie:

>  
> I need clarification on something in the project  
> before the conference call at 2:00 today between  
> Peggy, Tova, and me. How much of what we are  
> investigating should involve DOJ's jurisdictional  
> matters under such things as the Voting Rights Act?  
>  
> Also, did you have a chance to talk to Karen about a  
> second project? I need to know because if there will

011012

> not be one I will have to get a job with a local law  
> firm until the 2006 elections.  
>  
> Job  
>  
>  
>



"Job Serebrov"

11/18/2005 09:27 AM

To jthompson@eac.gov

cc

bcc

Subject Question

History

This message has been replied to.

Julie:

I need clarification on something in the project before the conference call at 2:00 today between Peggy, Tova, and me. How much of what we are investigating should involve DOJ's jurisdictional matters under such things as the Voting Rights Act?

Also, did you have a chance to talk to Karen about a second project? I need to know because if there will not be one I will have to get a job with a local law firm until the 2006 elections.

Job

011014



"Job Serebroy"

11/03/2006 07:08 PM

To jhodgkins@eac.gov

cc

bcc

Subject Re: Please send me the summary





More





--- jhodgkins@eac.gov wrote:

- > Juliet Thompson Hodgkins
- > General Counsel
- > United States Election Assistance Commission
- > 1225 New York Ave., NW, Ste 1100
- > Washington, DC 20005

- > (202) 566-3100  GAO\_Report\_JS\_.doc  indiana\_litigation\_\_official.doc

 Section\_5\_Recommendation\_Memorandum\_summary.doc  Securing\_the\_Vote.doc  Shattering\_the\_Myth.doc

 South\_Dakota\_FINAL.doc  Steal\_this\_Vote\_Review\_final.doc  The\_Long\_Shadow\_of\_Jim\_Crow.doc  The\_New\_Poll\_Tax\_JS\_.doc

 Washington\_FINAL.doc  Wisconsin\_Audit\_Report.doc  Wisconsin\_FINAL.doc  Wisconsin\_Vote\_Fraud\_TF.doc

011015



"Job Serebrov"

11/03/2006 07:04 PM

To jhodgkins@eac.gov

cc

bcc

Subject Re: Please send me the summary

History: This message has been replied to and forwarded
















Julie:

You should have these as existing literature summaries.

Job

--- jhodgkins@eac.gov wrote:

- > Juliet Thompson Hodgkins
- > General Counsel
- > United States Election Assistance Commission
- > 1225 New York Ave., NW, Ste 1100
- > Washington, DC 20005

- >    (202) 566-3100 A\_Funny\_ThingReview.doc American\_Center\_Report\_FINAL.doc Americas\_Modern\_Poll\_Tax\_JS.doc
- >     Brennan\_Analysis\_Voter\_Fraud\_Report\_FINAL.doc cb\_summary.doc Chandler\_Davidson\_summary official.doc Crazy\_Quilt.doc
- >     Deliver\_the\_Vote\_Review.doc dnc\_ohio.doc DOJ\_Public\_Integrity\_Reports\_JS.doc Donsanto\_IFES\_FINAL.doc
- >     Election\_Protection\_stories.doc Existing\_Literature\_Reviewed.doc fooled\_again\_review.doc GA\_litigation\_summary2.doc

011016

## **Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote**

GAO Report

In 2002, the Help America Vote Act (HAVA) was enacted and, among other things, it requires states to implement provisional voting for elections for federal office. HAVA, in general, requires that individuals not listed as registered or whose eligibility is questioned by an election official must be notified about and permitted to cast a provisional ballot that is set aside for review by election officials at a later time so that they can determine whether the person is eligible to vote under state law. HAVA also requires that provisional ballots be provided to first-time voters who had registered to vote by mail on or after January 1, 2003, but were unable to show photo identification or another qualifying identification document when voting in person or by mail in a federal election. In addition, HAVA requires that election officials must provide access to information that permits voters to learn if their provisional ballot was counted, and, if not, why not.

This Report focuses on the efforts of local election officials in 14 jurisdictions within 7 states to manage the registration process, maintain accurate voter registration lists, and ensure that eligible citizens in those jurisdictions had the opportunity to cast ballots during the 2004 election. Specifically, for the 2004 election, the Report concentrates on election officials' characterization of their experiences with regard to (1) managing the voter registration process and any challenges related to receiving voter registration applications; checking them for completeness, accuracy, and duplication; and entering information into voter registration lists; (2) removing voters' names from voter registration lists and ensuring that the names of eligible voters were not inadvertently removed; and (3) implementing HAVA provisional voting and identification requirements and addressing any challenges encountered related to these requirements. The Report also provides information on motor vehicle agency (MVA) officials' characterization of their experiences assisting citizens who apply to register to vote at MVA offices and forwarding voter registration applications to election offices.

The Report analyzed information collected from elections and motor vehicle agency offices in seven states—Arizona, California, Michigan, New York, Texas, Virginia, and Wisconsin. These states take various approaches to administering elections. Within each of the seven states, using population data from the 2000 U.S. Census, two jurisdictions were selected: a local jurisdiction with a large population and a local jurisdiction with a small population. The 14 jurisdictions we selected were Gila and Maricopa Counties, Arizona; Los Angeles and Yolo Counties, California; City of Detroit and Delta Township, Michigan; New York City and Rensselaer County, New York; Bexar and Webb Counties, Texas; Albemarle and Arlington Counties, Virginia; and the cities of Franklin and Madison, Wisconsin.

Information was gathered for the Report in a number of ways. First, relevant laws, state reports, and documents related to the voter registration process in the seven states were reviewed. Second, state and local election officials in the 7 states and 14 jurisdictions

011017

were interviewed to obtain information on their registration processes and implementation of the HAVA requirements for provisional voting and voter identification. Third, a survey was sent to election officials in the 14 jurisdictions to gather information about their experiences with the November 2004 election. Finally, a survey was sent to state and local MVA officials in 6 of the 7 states and 12 of the 14 jurisdictions. The survey primarily asked questions about the MVA offices' experiences with (1) assisting citizens with completing voter registration applications, (2) forwarding the applications to election offices, and (3) responding to individuals and state or local election officials who contacted their offices about individuals who declared they had applied to register to vote at MVA offices but their names were not on voter registration lists when they went to vote in the November 2004 election.

Election officials representing all but one of the jurisdictions surveyed following the November 2004 election said they faced some challenges managing the voter registration process, including (1) receiving voter registration applications; (2) checking them for completeness, accuracy, and duplication; and (3) entering information into voter registration lists; when challenges occurred, election officials reported they took various steps to address them. Officials in 7 of the 14 jurisdictions reported that their staff faced challenges checking voter registration applications for completeness, accuracy, or duplicates. According to these officials, these challenges occurred for a variety of reasons, including problems contacting individuals to obtain complete and accurate information and insufficient staffing to check the applications. They reported that, among other things, their staff addressed these challenges by sending letters or calling applicants to obtain correct information. Finally, 6 of the 14 election officials reported that their staff faced challenges entering or scanning voter information into registration lists for reasons such as the volume of applications received close to Election Day and problems with the scanning equipment. To address these challenges, they reported that more staff were hired and staff worked overtime.

All but 1 of the jurisdictions reported removing names from registration lists during 2004 for various reasons, including that voters requested that their names be removed from the voter registration list; information from the U.S. Postal Service (USPS) showing that voters had moved outside the jurisdiction; felony records received from federal, state, or local governments identifying voters as ineligible due to felony convictions; and death records received from state or local vital statistics offices. When removing names from registration lists, election officials reported that they took various steps to ensure that the names of eligible voters were not inadvertently removed from voter registration lists. These steps included sending letters or postcards to registrants to verify that voters wanted their names removed; matching voters' identifying information with USPS data and sending voters identified by USPS as having moved outside the jurisdiction notices of removal; and matching voter registration records with felony records or death records to confirm it was the same person.

All of the jurisdictions reported that they permitted citizens to cast provisional ballots during the November 2004 election. In addition, 12 of the 14 jurisdictions to which this was applicable reported that they offered certain first-time voters who registered by mail



the opportunity to cast provisional ballots. Election officials in 13 of the 14 jurisdictions reported that 423,149 provisional ballots were cast, and 70 percent (297,662) were counted. Not all provisional votes were counted because, as election officials reported, not all provisional ballots met states' criteria for determining which ballots should be counted. Reasons that provisional ballots cast during the 2004 election were not counted, as reported by election officials, included, among others, that individuals did not meet the residency eligibility requirements, had not registered or tried to register to vote with the election office, had not submitted the voter registration applications at motor vehicle agency offices, or election officials did not have time to enter information from applicants into their voter registration lists because applications were received at the election offices very close to or after the state registration deadline.

Local election officials in 12 of the 13 jurisdictions 13 we surveyed reported that they set up mechanisms to inform voters—without cost—about the outcome of their provisional votes during the November 2004 election. These mechanisms included toll-free telephone numbers, Web sites, and letters sent to the voters who cast provisional ballots. Election officials also reported that provisional voters in their jurisdictions received written information at their polling places about how to find out the outcome of their provisional ballots, and provisional voters in 8 of the 13 jurisdictions had the opportunity to access information about the outcome of their ballots within 10 days after the election. Finally, election officials representing 8 of the 14 jurisdictions reported facing challenges implementing provisional voting for various reasons, including some poll workers not being familiar with provisional voting or, in one jurisdiction representing a large number of precincts, staff not having sufficient time to process provisional ballots. To address these challenges, the officials reported that they provided additional training to poll workers and hired additional staff to count provisional ballots.

## INDIANA ID LITIGATION SUMMARY

### **MEMORANDUM IN SUPPORT OF DEMOCRATS. MOTION FOR SUMMARY JUDGMENT**

Although the proponents of SEA 483 asserted that the law was intended to combat voter fraud, no evidence of the existence of such fraud has ever been provided. No voter has been convicted of or even charged with the offense of misrepresenting his identity for purposes of casting a fraudulent ballot in person, King Dep. 95-96; Mahern Aff. ¶¶ 2-3, though there have been documented instances of absentee ballot fraud. King Dep. 120. Indeed, no evidence of in person, on-site voting fraud was presented to the General Assembly during the legislative process leading up to the enactment of the Photo ID Law. Mahern Aff. ¶¶ 2-

The State cannot show any compelling justification for subjecting only voters who vote in person to the new requirements of the Photo ID Law, while exempting absentee voters who vote by mail or persons who live in state-certified residential facilities. On the other hand, absentee ballots are peculiarly vulnerable to coercion and vote tampering since there is no election official or independent election observer available to ensure that there is no illegal coercion by family members, employers, churches, union officials, nursing home administrators, and others.

The Law gives virtually unbridled discretion to partisan precinct workers and challengers to make subjective determinations such as (a) whether a form of photo identification produced by a voter conforms to what is required by the Law, and (b) whether the voter presenting himself or herself at the polls is in fact the voter depicted in the photo. Robertson Dep. 29-34, 45; King Dep. 86, 89. This is significant because any voter who is challenged under this Law will be required to vote by provisional ballot and to make a special trip to the election board's office in order to have his vote counted. Robertson Dep. 37; King Dep. 58.

The Photo ID Law confers substantial discretion, not on law enforcement officials, but on partisan precinct poll workers and challengers appointed by partisan political officials, to determine both whether a voter has presented a form of identification which conforms to that required by the Law and whether the person presenting the identification is the person depicted on it. Conferring this degree of discretion upon partisan precinct officials and members of election boards to enforce the facially neutral requirements of the Law has the potential for becoming a means of suppressing a particular point of view.

The State arguably might be justified in imposing uniform, narrowly-tailored and not overly-burdensome voter identification requirements if the State were able to show that there is an intolerably high incidence of fraud among voters misidentifying themselves at the polls for the purpose of casting a fraudulent ballot. But here, the State has utterly failed to show that this genre of fraud is rampant or even that it has ever occurred in the context of on-site, in-person voting (as opposed to absentee voting by mail) so as to justify these extra burdens, which will fall disproportionately on the poor and elderly.

In evaluating the breadth of the law and whether the State has used the least restrictive means for preventing fraud, the Court must take into account the other mechanisms the State currently employs to serve the statute's purported purposes, as well as other, less restrictive means it could reasonably employ. *Krislov*, 226 F.3d at 863. The State of Indiana has made it a felony for a voter to misrepresent his or her identity for purposes of casting a fraudulent ballot.

And where the State has already provided a mechanism for matching signatures, has made it a crime to misrepresent one's identity for purposes of voting, and requires the swearing out of an affidavit if the voter's identity is challenged, it already has provisions more than adequate to prevent or minimize fraud in the context of in-person voting, particularly in the absence of any evidence that the problem the Law seeks to address is anything more than the product of hypothesis, speculation and fantasy.

**MEMORANDUM OF THE STATE OF INDIANA, THE INDIANA SECRETARY OF STATE, AND THE CO-DIRECTORS OF THE INDIANA ELECTION DIVISION IN SUPPORT OF THEIR JOINT MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO THE MOTIONS FOR SUMMARY JUDGMENT FILED BY BOTH SETS OF PLAINTIFFS**

In-person voter-identity fraud is notoriously difficult to detect and investigate. In his book *Stealing Elections*, John Fund observes that actual in-person voter fraud is nearly undetectable without a voter photo-identification requirement because anybody who provides a name that is on the rolls may vote and then walk away with no record of the person's actual identity. *See generally* John Fund, *Stealing Elections* (2004). The problem is only exacerbated by the increasingly transient nature of society. Documentation of in-person voter fraud often occurs only when a legitimate voter at the polls hears a fraudulent voter trying to use her name, as happened to a woman in California in 1994. *See* Larry J. Sabato & Glenn R. Simpson, *Dirty Little Secrets* 292 (1996).

Regardless of the lack of extensive evidence of in-person voter fraud, the Commission on Federal Election Reform (known as the Baker-Carter Commission) recently concluded that "there is no doubt that it occurs." State Ex. 1, p. 18. Legal cases as well as newspaper and other reports confirm that in-person voter-identity fraud, including voter impersonation, double votes, dead votes, and fake addresses, plague federal and state elections. [The memorandum details several specific cases of various types of alleged voting fraud from the past several years]

Though they are largely unable to study verifiable data concerning in-person voter fraud, scholars are well aware of the conditions that foster fraudulent voting. *See* Fund, *supra*; Sabato & Simpson, *supra*, 321. In particular, fraud has become ever more likely as "it has become more difficult to keep the voting rolls clean of 'deadwood' voters who have moved or died" because such an environment makes "fraudulent voting easier and therefore more tempting for those so inclined." Sabato & Simpson, *supra*, 321. "In

general, experts believe that one in five names on the rolls in Indiana do not belong there.” State Ex. 25.

For this case, Clark Benson, a nationally recognized expert in the collection and analysis of voter-registration and population data, conducted his own examination of Indiana’s voter registration lists and concluded that they are among the most highly inflated in the nation.

The Crawford Plaintiffs cite the concessions by Indiana Election Division Co-Director King and the Intervenor-State that they are unaware of any historical in-person incidence of voter fraud occurring at the polling place (Crawford Brief, p. 23) as conclusive evidence that in-person voter fraud does not exist in Indiana. They also seek to support this conclusion with the testimony of two “veteran poll watchers,” Plaintiff Crawford and former president of the Plaintiff NAACP, Indianapolis Chapter, Roderick E. Bohannon, who testified that they had never seen any instances of in-person voter fraud.

*(Id.)*

At best, the evidence on this issue is in equipoise. While common sense, the experiences of many other states, and the findings of the Baker-Carter Commission all lead to the reasonable inferences that (a) in-person polling place fraud likely exists, but (b) is nearly impossible to detect without requiring photo identification, the State can cite to no confirmed instances of such fraud. On the other hand, the Plaintiffs have no proof that it does not occur.

At the level of logic, moreover, it is just reasonable to conclude that the lack of confirmed incidents of in-person voting fraud in Indiana is the result of an ineffective identification security system as it is to conclude there is no in-person voting fraud in Indiana. So while it is undisputed that the state has no proof that in-person polling place fraud has occurred in Indiana, there does in fact remain a dispute over the existence *vel non* of in-person polling place fraud.

It is also important to understand that the nature of in-person election fraud is such that it is nearly impossible to detect or investigate. Unless a voter stumbles across someone else trying to use her identity, *see* Sabato & Simpson, *supra*, 292, or unless the over-taxed poll worker happens to notice that the voter’s signature is different from her registration signature State Ext. 37, ¶ 9, the chances of detecting such in-person voter fraud are extremely small. Yet, inflated voter-registration rolls provide ample opportunity for those who wish to commit in-person voter fraud. *See* Fund, *supra*, 24, 65, 69, 138; Sabato & Simpson, *supra*, 321. And there is concrete evidence that the names of dead people have been used to cast fraudulent ballots. *See* Fund, *supra*, 64. Particularly in light of Indiana’s highly inflated voter rolls State Ex. 27, p. 9, Plaintiffs’ repeated claims that there has never been any in-person voter fraud in Indiana can hardly be plausible, even if the state is unable to prove that such fraud has in fact occurred.

Summary of the U.S Department of Justice Section 5 Recommendation Memorandum:  
August 25, 2005 regarding HB 244 – parts that pertain to the issue of voter fraud.

Overview: Five career attorneys with the civil rights department investigated and analyzed Georgia's election reform law. Four of those attorneys recommended objecting to Section 59, the voter identification requirement. The provision required all voters to present government issued photo identification in order to vote. The objection was based on the attorneys' findings that there was little to no evidence of polling place fraud, the only kind of fraud an ID requirement would address, and that the measure would disenfranchise many voters, predominantly minority voters, in violation of Section 5 of the Voting Rights Act.

Factual Analysis: The sponsor of the measure in the state legislature said she was motivated by the fact that she is aware of vote buying in certain districts; she read John Fund's book; and that "if there are fewer black voters because of this bill, it will only be because there is less opportunity for fraud. She said that when black voters in her black precincts are not paid to vote, they do not go to the polls."

A member of the Fulton County Board of Registrations and Elections said that prior to November 2004, Fulton County received 8,112 applications containing "missing or irregular" information. Only 55 of those registrants responded to BOE letters. The member concluded that the rest must be "bogus" as a result. He also stated that 15,237 of 105,553 precinct cards came back as undeliverable, as did 3,071 cards sent to 45,907 new voters. Of these 3,071, 921 voted.

Secretary of State Cathy Cox submitted a letter testifying to the absence of any complaints of voter fraud via impersonation during her tenure.

In the legal analysis, the attorneys state that if they determine that Georgia could have fulfilled its stated purpose of election fraud, while preventing or ameliorating the retrogression, an objection is appropriate. /They conclude that the state could have avoided retrogression by retaining various forms of currently accepted voter ID for which no substantiated security concerns were raised. Another non-retrogressive alternative would have been to maintain the affidavit alternative for those without ID, since "There is no evidence that penalty of law is an insufficient deterrent to falsely signing an affidavit of identity."

The attorneys point out that the state's recitation of a case upholding voter fraud in Dodge County does not support the purpose of the Act because that case involved vote buying and selling, not impersonation or voting under a false identity.

Securing the Vote: An Analysis of Election Fraud, by Lorraine Minnite

Professor Lori Minnite conducted a comprehensive survey and analysis of vote fraud in the United States. The methodology included doing nexis searches for all 50 states and surveying existing research and reports. In addition, Minnite did a more in-depth study of 12 diverse states by doing nexis searches, studying statutory and case law, and conducting interviews with election officials and attorneys general. Finally, the study includes an analysis of a few of the most high profile cases of alleged fraud in the last 10 years, including the Miami mayoral election (1997), Orange County congressional race (1996), and the general election in Missouri (2000). In these cases, Minnite shows that many allegations of fraud do not end up being meritorious.

Minnite finds that available evidence suggests that the incidence of election fraud is minimal and rarely affects election outcomes. Election officials generally do a very good job of protecting against fraud. Conditions that give rise to election fraud have steadily declined over the last century as a result of weakened political parties, strengthened election administration, and improved voting technology. There is little available evidence that election reforms such as the National Voter Registration Act, election day registration, and mail-in voting have resulted in increases in election fraud.

Election fraud appears also to be very rare in the 12 states examined more in-depth. Legal and news records turned up little evidence of significant fraud in these states or any indication that fraud is more than a minor problem. Interviews with state officials further confirmed this impression.

Minnite found that, overall, the absentee mail-in ballot process is the feature most vulnerable to voter fraud. There is not a lot of evidence of absentee ballot fraud but the potential for fraud is greatest in this area because of a lack of uniformly strong security measures in place in all states to prevent fraud.

Minnite suggest several reforms to prevent what voter fraud does take place. These include effective use of new statewide voter registration databases; identification requirements for first time voters who register by mail should be modified to expand the list of acceptable identifying documents; fill important election administration positions with nonpartisan professionals; strengthen enforcement through adequate funding and authority for offices responsible for detecting and prosecuting fraud; and establish Election Day Registration because it usually requires voter identification and authorization in person before a trained election worker, which reduces the opportunity for registration error or fraud.

Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections, People for the American Way, NAACP, Lawyers Committee for Civil Rights

Shattering the Myth is a description and analysis of the complaints and allegations of voting irregularities gathered by the Election Protection program during the 2004 presidential election. Election Protection was an effort involving hundreds of organizations and thousands of citizens to protect the voting rights of Americans across the country. The project included sending thousands of monitors to the polls and hosting a national toll free voters' rights hotline. EP mounted extensive field efforts in 17 states.

Election Protection received more than a thousand complaints of voter suppression or intimidation. Complaints ranged from intimidating experiences at polling places to coordinated suppression tactics. For example:

- Police stationed outside a Cook County, Illinois, polling place were requesting photo ID and telling voters if they had been convicted of a felony that they could not vote.
- In Pima, Arizona, voters at multiple polls were confronted by an individual, wearing a black tee shirt with "US Constitution Enforcer" and a military-style belt that gave the appearance he was armed. He asked voters if they were citizens, accompanied by a cameraman who filmed the encounters.
- There were numerous incidents of intimidation by partisan challengers at predominately low income and minority precincts
- Voters repeatedly complained about misinformation campaigns via flyers or phone calls encouraging them to vote on a day other than November 2, 2004 or of false information regarding their right to vote. In Polk County, Florida, for example, a voter received a call telling her to vote on November 3. Similar complaints were also reported in other counties throughout Florida. In Wisconsin and elsewhere voters received flyers that said:
  - "If you already voted in any election this year, you can't vote in the Presidential Election."
  - "If anybody in your family has ever been found guilty of anything you can't vote in the Presidential Election."
  - "If you violate any of these laws, you can get 10 years in prison and your children will be taken away from you."

There were also numerous reports of poll workers refusing to give voters provisional ballots.

The following is a summary of the types of acts of suppression and intimidation included in the report and a list of the states in which they took place. All instances of irregularities that were more administrative in nature have been omitted:

1. Improper implementation of voter identification rules, especially asking only African Americans for proof of identity: Florida, Ohio, Pennsylvania, Illinois, Missouri, Arkansas, Georgia, Louisiana

2. Individuals at the polls posing as some sort of law enforcement authority and intimidating and harassing voters: Arizona, Missouri
3. Intimidating and harassing challengers at the polls: Ohio, Michigan, Wisconsin, Missouri, Minnesota
4. Deceptive practices and disinformation campaigns, such as the use of flyers with intentional misinformation about voting rights or voting procedures, often directed at minority communities; the use of phone calls giving people misinformation about polling sites and other procedures; and providing verbal misinformation at the polls in a way that appears to have been intentionally misleading: Florida, Pennsylvania, Illinois, Wisconsin, Missouri, North Carolina, Arkansas, Texas
5. Refusal to provide provisional ballots to certain voters: Ohio, Pennsylvania, Illinois, Michigan, Colorado, Missouri, Texas, Georgia, Louisiana
6. Registration applications submitted through third parties that were not processed: Arizona, Michigan, Nevada (registration forms destroyed by Sproul Associates)
7. Improper removal from the voter registration list: Arizona
8. Individuals questioning voters' citizenship: Arizona
9. Police officers at the polls intimidating voters: Illinois, Michigan, Wisconsin, Missouri, North Carolina

The report does not provide corroborating evidence for the allegations it describes. However, especially in the absence of a log of complaints received by the Department of Justice, this report provides a very useful overview of the types of experiences some voters more than likely endured on Election Day in 2004.



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## Summary of South Dakota Election Irregularities in 2002 and 2004

### **2002**

In fall 2002, one of South Dakota's Senators, Democrat Tim Johnson, was up for re-election, and was engaged in a very close race with his Republican challenger, John Thune. Both parties were engaged in a massive voter registration effort, and registered over 24,000 new voters in the five months between the June primary and the November election, increasing the number of registered voters in the state from around 452,000 to 476,000.<sup>1</sup>

A month before the election, several counties reported irregularities in some of the voter registration documents they'd received. In response to these reports, South Dakota Attorney General, Mark Barnett, with the state US Attorney and the FBI, launched an investigation.<sup>2</sup> Because of the importance of the race in determining the partisan balance of power in the Senate, the voter registration discrepancies got a good deal of national press, including a number of editorials accusing American Indians of stuffing ballot boxes.<sup>3</sup> The following allegations were also picked up by out-of-state newssources, including Fox News and the Wall Street Journal:

- Supporters of Thune, who lost the election by 524 votes, collected 47 affidavits from poll watchers claiming voting irregularities.
- Allegations were made that three individuals were offered money by Johnson supporters to vote.

Barnett, who was alerted to the affidavits when he read an early media report that referred to them, stated that these allegations were either false or didn't warrant concern. "Most of the stuff that's in those other 47 affidavits are the kind of problems that we see in every election. People parking too close to the polling place with a sign in their window, people shooting their mouths off at the polling place. The kind of things that local election officials generally do a pretty good job of policing."<sup>4</sup> The allegations of voter bribery were false.

Though most of the allegations of fraud that were filed turned out to be false, Attorney General Barnett's investigation did uncover two cases of voter registration fraud:

- The most high-profile case was that of Becky Red Earth-Villeda. Ms. Red Earth-Villeda was hired by the state Democratic party to register voters on the American Indian reservations. She was charged with 19 counts of forgery. No fraudulent voting was associated with Ms. Red Earth-Villeda, nor was there any evidence

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<sup>1</sup> Kafka, Joe. "More people registered to vote." *Associated Press State and Local Wire*. October 29, 2002.

<sup>2</sup> Kafka, Joe. "Voter registration fraud being investigated." *Associated Press State and Local Wire*. October 11, 2002.

<sup>3</sup> "Barnett: No evidence that fraud affected vote." *Associated Press State and Local Wire*. Sioux Falls, South Dakota. November 21, 2002.

<sup>4</sup> Kafka, Joe. "Woman charged in voter-fraud case, other claims false." *Associated Press State and Local Wire*. Pierre, South Dakota. December 14, 2002.

that fraudulent voting occurred in the state.<sup>5</sup> All charges were dropped in January 2004, when, in court, it was determined by the state handwriting specialist that Ms. Red Earth-Villeda had not forged the signatures.<sup>6</sup>

- Lyle Nichols. Mr. Nichols was arrested for submitting five forged voter registration cards to his county office. He was working for an organization called the Native American Voter Registration Project, and was paid \$3 for each registration. The five charges were dropped after Mr. Nichols pleaded guilty to possession of a forgery, and was sentenced with 54 days in jail, which is how much time he'd already spent there because of the charges.<sup>7</sup>

## 2004

In October 2004, just before the general election, eight people working for a campus GOP Get-out-the-Vote organization resigned their positions after they were accused of submitting absentee ballot requests that had not been notarized properly. Because many of these ballot requests had already been processed and the ballots themselves had been cast, county auditors decided not to pursue the issue.<sup>8</sup>

Besides this incident, there were no reports of voter registration or voting irregularities in the run-up to the November 2004 election, as there were in 2002.<sup>9</sup> However, as with the primary and special elections in June 2004, there were complaints about voter intimidation from American Indians attempting to vote, as well as difficulties with the adoption of the state's new photo identification regulations (after the 2002 election, the state legislature passed more stringent requirements about the kind of identification voters would need to provide at the polls.)

### Incidents:

**Voter Intimidation:** The Four Directions Committee, an organization dedicated to helping American Indians register to vote and get to the polls, got a temporary restraining order on several Republican supporters who, they alleged, had been setting up video equipment outside of polling places on American Indian reservations and following around American Indians who voted early and recording their license plates.<sup>10</sup>

**Vote Buying:** A Republican election monitor from Virginia, Paul Brenner, claimed that Senator Tom Daschle's campaign was paying people to vote. Local county auditors

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<sup>5</sup> Kafka, Joe. "Woman charged in voter-fraud case, other claims false." *Associated Press State and Local Wire*. Pierre, South Dakota. December 14, 2002.

<sup>6</sup> Walker, Carson. "Charges dropped against woman accused of voter fraud." *Associated Press State and Local Wire*. Sioux Falls, South Dakota. January 28, 2004.

<sup>7</sup> "Rapid City man arrested for voter fraud." *Associated Press State and Local Wire*. Rapid City, South Dakota. October 18, 2002.

<sup>8</sup> Melmer, David. "Voting problems resurface in South Dakota." *Indian Country Today*. October 27, 2004.

<sup>9</sup> Melmer, David. "Election Day goes smoothly on Pine Ridge, S.D., reservation." *Indian Country Today*. November 10, 2004.

<sup>10</sup> Walker, Carson. "Observer alleges vote buying; worker says he never went to Pine Ridge." *Associated Press State and Local Wire*. October 31, 2004.

believe Brenner started the rumor himself. As there was no evidence for either side, the claims were not taken seriously.<sup>11</sup>

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<sup>11</sup> Walker, Carson. "Some problems and oddities reported on Election Day." *Associated Press State and Local Wire*. November 2, 2004.

Steal this Vote-Dirty Elections and the Rotten History of Democracy in America by Andrew Gumbel

The bulk of the book comprises stories from United States electoral history outside the scope of this project. However, these tales are instructive in showing how far back irregular and illegal voting practices go. Cases include the 1868 New York City elections; the Tilden-Hayes election; the impact of the introduction of the secret ballot; the 1981 consent decree; the 1990 Helms campaign; the 1960 presidential election controversy in Chicago; the rise of the voting machine business, including the introduction of punch card machines; and allegations by Republicans regarding NVRA.

Steal this Vote is heavily slanted in favor of Democrats focuses almost entirely on alleged transgressions by Republican, although at times it does include complaints about Democratic tactics. Gumbel's accusations, if credible, especially in the Bush-Gore election, would have indicated that there were a number of problems in key states in such areas as intimidation, vote counting, and absentee ballots. However, the most glaring problem with the accuracy and veracity of the text is due to its possible biases, lack of specific footnoting, and insufficient and corresponding lack of identification of primary source material, caution is strongly urged with respect to utilizing this book for assessing the amount and types of voter fraud and voter intimidation occurring. ~~Gumbel is either guilty of generally listing sources or interviews without identifying pages or making the interviews public. Because of this, Steal this Vote cannot be used as a credible research tool.~~

The Long Shadow of Jim Crow, People for the American Way and the National Association for the Advancement of Colored People

This report describes the pervasive and repeated practices of voter intimidation and vote suppression that have taken place in very recent years and during contemporary American history. The most recent cases included in the report are the incident in which Florida law enforcement questioned elderly African American voters in Orlando regarding the 2003 mayoral race, which had already been resolved, shortly before the 2004 election; the 2004 Florida felon purge list; the case of South Dakota in 2004 in which Native Americans were improperly and illegally required to show photo identification at the polls or denied the right to vote, and similar improper demands for ID from minorities in other parts of the country; the use of challengers in minority districts in many locations; the challenge to the right of African American students to vote in Texas in 2004; the presence of men looking like law enforcement challenging African American voters at the polls in Philadelphia in 2003; the distribution of flyers in Louisiana and elsewhere in a number of elections over the last few years in minority areas telling them to vote on the wrong day; and the FBI investigation into thousands of Native American voters in South Dakota in 2002, which resulted in no showing of wrongdoing.

The report also points out that, "Over the past two decades, the Republican Party has launched a series of 'ballot security' and 'voter integrity' initiatives which have targeted minority communities. At least three times, these initiatives were successfully challenged in federal courts as illegal attempts to suppress voter participation based on race.

It goes on to describe the numerous instances of voter intimidation and suppression during the 2000 election, the 1990s, the 1980s and back through the civil rights movement of the 1960s, putting current efforts in historical perspective. Describing the chronology of events in this way demonstrates the developing patterns and strategic underpinnings of the tactics used over the last forty years.

## **The New Poll Tax: Republican-Sponsored Ballot-Security Measures are Being Used to Keep Minorities from Voting**

By Laughlin McDonald

McDonald argues that “the discriminatory use of so-called ‘ballot security’ programs” has been a reoccurring scandal since the passage of the Voting Rights Act of 1965. These programs are deceptively presented as preventing voter fraud and thereby furthering good government. However, McDonald states “but far too often they [the ballot security programs] are actually designed to suppress minority voting -- and for nakedly partisan purposes.”

McDonald blames the federal government as well as the states for use of suspect ballot security programs. He cites the implementation of the U.S. Department of Justice’s in “Voting Integrity Initiative” in South Dakota as the worst example of a joint federal-state effort to prevent voter fraud. Alleged voter fraud only in counties with significant Native American populations was targeted. South Dakota Attorney General Mark Barnett “working with the FBI, announced plans to send state and federal agents to question almost 2,000 new Native-American registrants, many of whom were participating in the political process for the first time.” However, statistics show that these efforts only served to increase Native American voter participation. Native Americans “were targeted based on fraud allegations that proved to be grossly exaggerated; at the end of the investigation, only one Native American was even charged with a voting-rules violation.”

McDonald cites several other ballot security efforts that were really disguised attempts at minority voter suppression:

In Pine Bluff, Ark., Democrats accused Republican poll watchers of driving away voters in predominantly black precincts by taking photos of them and demanding identification during pre-election day balloting. Democrats in Michigan charged that a plan by Republicans to station hundreds of “spotters” at heavily Democratic precincts was an effort to intimidate black voters and suppress Democratic turnout. In South Carolina, a lawsuit filed the day before the election alleged that officials in Beaufort County had adopted a new and unauthorized policy allowing them to challenge voters who gave rural route or box numbers for their registration address. According to the complaint, a disproportionate number of those affected by the new rule would be African-American voters who lived in the rural areas of the county.

McDonald is also critical of the Help America Vote Act (HAVA). He states that HAVA “contains other provisions that may enhance the opportunities for harassment and intimidation of minorities through ballot-security programs.” McDonald specifically attacks the photo ID requirement for anyone who registered by mail but has not previously voted. McDonald argues that the ID requirement will suppress minority voting because minorities are less likely than non-minorities to have a photo ID, a photo ID is expensive to obtain and all the alternatives to photo ID present similar obstacles to minority voters. He also argues that there is no evidence that photo ID will combat voter



fraud but it only really provides “another opportunity for aggressive poll officials to single out minority voters and interrogate them.”

McDonald lists some classic past ballot security efforts by the Republicans that have been abused: the 1981 gubernatorial election anti-fraud initiative leading to the well known consent decree prohibiting the Republicans from repeating this, a similar Republican effort in Louisiana in 1986 in Senator John Breaux’s race which again resulted in prohibition by a state court judge, and a similar effort by Republicans in Senator Jesse Helms 1990 reelection. This time the Department of Justice sued the Republican Party and Helm’s reelection committee, resulting in another consent decree prohibiting future ballot security programs without court approval.

McDonald indicates that the crux of the problem is lax enforcement of federal voters rights laws. He states, “there is no record of the purveyors of any ballot-security program being criminally prosecuted by federal authorities for interfering with the right to vote.” The only positive case law McDonald cited was a decision by the United States Court of Appeals for the Eighth Circuit that affirmed “an award of damages ranging from \$500 to \$2,000, payable by individual poll officials to each of seven black voters who had been unlawfully challenged, harassed, denied assistance in voting or purged from the rolls in the town of Crawfordsville [Arkansas].”

McDonald concludes by stating that Congress and the states should adopt “nondiscriminatory, evenly applied measures to ensure the integrity of the ballot.”

## Summary of Election Irregularities in Washington State 2004

The 2004 Washington state gubernatorial election was decided by one of the narrowest margins in American electoral history; 261 votes – less than a millionth of the 2.8 million votes cast statewide - separated the leading candidate, Republican Dino Rossi, from his competitor, Democrat Christine Gregoire. The state law-mandated recount that followed brought the margin down to 42 votes, and the subsequent hand recount ordered by the state Democratic Party gave Gregoire the lead, with 129 more votes than Rossi.

The race was so close that the parties decided to go to court to dispute the tally – the Republicans wanted the election results set aside and to have a revote; the Democrats sought a court-legitimated win. Each side set out into the field to find a way to swing the election in their favor. The trial and accompanying investigation, which lasted through the spring of 2005, revealed a litany of problems with the state's election system:

- The process by which absentee ballots are matched to the voters who requested them led to discrepancies between the number of absentee ballots received and the number of votes counted.<sup>1</sup>
- After the final certification of the election results, King County discovered 96 uncounted absentee ballots, Pierce county found 64, and Spokane County found eight; all had been misplaced following the election, but there was no mechanism for reconciling the number of absentee ballots received with the number counted.<sup>2</sup>
- Hundreds of felons who were ineligible to vote were able to cast ballots because they were not aware that they needed to apply to have their voting rights re-instated.<sup>3</sup>
- The system for verifying the eligibility of voters who had cast provisional ballots was found to be questionable.<sup>4</sup>
- Due to poll worker error, about 100 provisional ballots were improperly cast, and a hundred more were counted, though they were not verified as having been cast by eligible voters.<sup>5</sup>

The trial also revealed that most of these problems were the result of understaffing and human error.<sup>6</sup> In total, 1,678 ballots were proven to have been cast illegally, but none of these votes was subtracted from the candidates' totals because no evidence was produced in court as to how each individual voted.<sup>7</sup> Further, despite the scrutiny that the election

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<sup>1</sup> Ervin, Keith. "County elections official demoted; 2004 balloting fallout – Chief predicts 'series of changes'." *The Seattle Times*. June 15, 2005. See also Postman, David. "Judge left to mull vote-fraud claim." *The Seattle Times*. June 5, 2005.

<sup>2</sup> Ervin, Keith. "Voters irked by uncounted ballots." *The Seattle Times*. June 17, 2005.

<sup>3</sup> Postman, David. "Judge left to mull vote-fraud claim." *The Seattle Times*. June 5, 2005.

<sup>4</sup> Roberts, Gregory. "GOP contrasts elections offices; Chelan County's work better than King's, judge in gubernatorial case told." *The Seattle Post-Intelligencer*. May 25, 2005.

<sup>5</sup> Ervin, Keith. "Prosecutors to challenge 110 voters; They are said to be felons – 2 counties discover uncounted ballots." *The Seattle Times*. April 29, 2005.

<sup>6</sup> Ervin, Keith. "King County ballot numbers don't add up; 4000 discrepancies – Review of records finds flaws at each stage of the election; voting, processing, counting." *The Seattle Times*. May 25, 2005.

<sup>7</sup> *Borders v. King County*. Court's Oral Decision. 6. June. 2005.

returns revealed, and the extensive discussion of voter fraud throughout the investigation, just eight cases of voter fraud were discovered:

- 4 people were accused of casting absentee ballots for their deceased spouses.<sup>8</sup>
- A mother and daughter were charged with the absentee ballot of the mother's husband who had died earlier in the year
- 1 man cast the ballot of the deceased prior resident of his home.
- A homeless resident of Seattle cast two ballots, one in the name of Dustin Ocoilain.<sup>9</sup>

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<sup>8</sup> Johnson, Gene. "Two plead guilty to voting twice in 2004 general election." *Associated Press*. June 2, 2005.

<sup>9</sup> Ervin, Keith. "6 accused of casting multiple votes; King County voters face criminal charges - Jail time, fines possible." *Seattle Times*. June 22, 2005.

An Evaluation: Voter Registration Elections Board: Wisconsin Audit Report 05-12:  
September 2005

The Joint Legislative Audit Committee of the Wisconsin Legislature required the Wisconsin Audit Report. The Report obviously does not include the 2006 statistics for statewide voter registration as required by HAVA. Wisconsin voter registration is required by statute in only 172 municipalities---those with populations of 5,000 or more. Another 167 smaller municipalities opted to maintain voter registration lists. Currently, 28.9 % of the voting-age population is not required to register before voting.

According to the Report, great variation was found in the implementation of existing voter registration laws. For example, 46 % of municipalities that responded to the survey did not send address verification cards to individuals who registered by mail or at the polls on Election Day in November 2004.

Further, only 85.3 % of survey respondents reported updating their voter registration lists to remove inactive voters, as required by law.

Current voter registration practices were determined to be insufficient to ensure the accuracy of voter registration lists used by poll workers or to prevent ineligible persons from registering to vote. The Report identified 105 instances of voting irregularities in six municipalities, including 98 ineligible felons who may have voted. The names of these individuals were forwarded to appropriate district attorneys for investigation.

Due to concerns about ineligible voting, stemming from the 2004 election, the Joint Legislative Audit Committee requested that voter registration procedures be evaluated. The following was investigated for this Report:

- \* voter registration requirements and the methods by which voters register, including requirements in other states;
- \* the address verification process, including the use of address verification cards to confirm the residency of those who register by mail or at the polls;
- \* procedures and practices for updating voter registration lists; and,
- \* the role of the Elections Board.

Wisconsin allows qualified electors to register in person, by mail, or with a special registration deputy before Election Day, and at the polls on Election Day. In municipalities where registration is required by statute, 20.3 % of Wisconsin voters registered at the polls on Election Day in November 2004. Municipal clerks rely on registrants to affirm their eligibility, including citizenship and age. However, requirements for providing identification or proof of residence vary depending on when an individual registers and by which method.

Address verification cards are the primary tool available to municipal clerks for verifying the residency of registered voters and detecting improper registrations by mail or at the polls. Statutes require that clerks send cards to everyone who registers by mail or on Election Day. However, only 42.7 % of the 150 municipalities surveyed sent cards to both groups, and 46 % did not send any address verification cards.

Statutes also require clerks to provide the local district attorney with the names of any Election Day registrants whose cards are undeliverable at the address provided. However, only 24.3 % of the clerks who sent cards also forwarded names from undeliverable cards to district attorneys. District attorneys surveyed indicated that they require more information than is typically provided to conduct effective investigations.

To ensure that voter registration lists contain only the names of qualified electors, municipal clerks are required by statute to remove or inactivate the names of individuals who have not voted in four years, to update registration information for individuals who move or change their names, and to remove or inactivate the names of deceased individuals. They are also required to notify registered voters before removing their names from registration lists. These statutory requirements are not consistently followed:

- \* 85.3 % of municipalities removed the names of inactive voters from their voter registration lists;
- \* 71.4 % sometimes or always notified registered voters before removing their names; and
- \* 54.0 % reported removing the names of ineligible felons.

Because of such inconsistencies, registration lists contain duplicate records and the names of ineligible individuals. For example, more than 348,000 electronic voter registration records from eight municipalities were reviewed, identifying 3,116 records that appear to show individuals who are registered more than once in the same municipality.

In six municipalities where sufficient information was available, there was 105 instances of potentially improper or fraudulent voting in the 2004 elections. These included: 98 ineligible felons who may have voted; 2 individuals who may have voted twice; 1 voter who may have been underage; and 4 absentee ballots that should not have been counted because the voters who cast them died before Election Day.

#### Recommendations:

- \* adjusting the early registration deadline to provide clerks more time to prepare registration lists;
- \* establishing more stringent requirements for special registration deputies, including prohibiting compensation based on the number of individuals registered;

- \* establishing uniform requirements for demonstrating proof of residence for all registrants;
- \* providing municipal clerks with more flexibility in the use of address verification cards;
- \* Authorizing civil penalties for local election officials and municipalities that fail to comply with election laws; and,
- \* implementing mandatory elections training requirements for municipal clerks.

The Report also recognized that the new HAVA registration procedures would help with existing registration problems.

## Summary of Wisconsin Voting Irregularities November 2004

### *Instances of Illegal Voting, Milwaukee:*

A probe led by U.S. Attorney Steve Biskupic and Milwaukee County District Attorney Michael McCann found about 200 cases of illegal felon voting and at least 100 cases of other forms of illegal voting in the city of Milwaukee. Of these, 14 were prosecuted:

10 were instances of felons voting while on probation or parole:

5 are awaiting trial. (one of them is DeShawn Brooks)<sup>1</sup>

1 has been acquitted<sup>2</sup>

1 has been found guilty in trial (Kimberly Prude)<sup>2</sup>

3 have reached plea agreements (Milo Ocasio<sup>3</sup>)

[names: Ethel M. Anderson, Correan F. Edwards, Jiyto L. Cox, Joseph J. Gooden<sup>4</sup>]

4 were instances of double voting:

1 produced a hung jury (Enrique Sanders)<sup>2</sup>

1 was found incompetent to stand trial and his case was dismissed

1 initially pleaded guilty but now wants a trial.<sup>5</sup>

1 is awaiting trial.

Two of those accused of double voting were driven to multiple polling places in a van, but the identity of the driver of the vehicle is not known, and the DA does not suspect conspiracy.<sup>6</sup>

In addition to these, four people were charged with felonies in the Milwaukee County Circuit Court; two cases were filed against people accused of sending in false registration cards under the auspices of the Association of Community Organizations for Reform Now; the other two were felons who voted illegally.<sup>7</sup>

### *Instances of Illegal Voting, Statewide:*

The Legislative Audit Bureau, a nonpartisan research agency, released its analysis of state-wide 2004 election results in September 2005. The agency reviewed the names, addresses, and birthdates of over 348,000 individuals credited with having voted in November 2004, from the electronic voter registration records of 6 cooperating municipalities, and compared them to lists from the Department of Corrections of felons serving sentences on election day, and to lists from the municipalities (to check up on

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<sup>1</sup> Barton, Gina. "Man acquitted in voter fraud trial; Felon had been under supervision at time." *Milwaukee Journal-Sentinel*. October 6, 2005.

<sup>2</sup> Schultze, Steve. "No vote fraud plot found. Inquiry leads to isolated cases, Biskupic says." *Milwaukee Journal-Sentinel*. December 5, 2005.

<sup>3</sup> "Felon says he voted illegally." *Milwaukee Journal-Sentinel*. September 17, 2005.

<sup>4</sup> Barton, Gina. "4 charged with voting illegally in November." *Milwaukee Journal-Sentinel*. August 17, 2005.

<sup>5</sup> Milwaukee J-S. December 5, 2005.

<sup>6</sup> Milwaukee J-S. December 5, 2005.

<sup>7</sup> Milwaukee J-S. December 5, 2005.

double-voting) and to lists from the US Social Security Administration. LAB's search revealed 105 "questionable" votes:

- 98 ballots cast by ineligible felons, 57 of which were in Madison, 2 in Waukesha, 15 in Eau Claire, 16 in Appleton, 1 in the Village of Ashwaubenon
- 2 instances of double-voting (one in Madison, one in Waukesha).
- 4 votes counted despite the voter's having died two weeks or less before the election.
- 1 case in which a 17-year-old voted in Madison.<sup>8</sup>

The LAB referred the names of these people to the appropriate District Attorney for prosecution, and several cases are awaiting trial.

It should be noted that this study is not a complete survey of election returns state-wide in Wisconsin; the LAB's analysis is based on the voting records of the six municipalities that provided the LAB with sufficient information to conduct this study.

It should also be noted that the LAB discovered significant error in the data provided them by these municipalities, including:

- 91 records in which the individual's birthdate was incorrectly recorded as later than November 2, 1986
- 97 cases in which a person was mistakenly recorded as having voted twice
- More than 15,000 records were missing birthdates, making it more difficult to determine voter eligibility by comparing these records to lists of felons and deceased persons.<sup>9</sup>

### *General Findings*

Both reports (the Legislative Audit Bureau's and the report of the Joint Task Force on Election Reform convened in Milwaukee) that did in-depth studies of the Wisconsin election returns in 2004 found that there was no evidence of systematic, wide-spread fraud.<sup>10</sup> As the above statistics indicate, there are very few cases in which an individual intentionally voted illegally, and the majority of the discovered instances of fraudulent voting involved felons who were unaware that they were committing a crime. Certainly the number of fraudulent votes, intentional and unintentional, is dwarfed by the amount of administrative error – and the amount of potential there was for fraud.

### *Registration Irregularities*

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<sup>8</sup> Borowski, Greg J. "State audit digs up wider vote problems; Thousands of voters on rolls more than once." *Milwaukee Journal-Sentinel*. September 17, 2005

<sup>9</sup> "An Evaluation: Voter Registration." *Legislative Audit Bureau*. Madison, Wisconsin. September 2005. Pg. 50-52.

<sup>10</sup> Brinkman, Phil. "Voting fraud in November not a problem in Madison; Nearly all suspect voters turn out to be people who moved or made innocent mistakes." *Wisconsin State Journal*. May 11, 2005.



**Duplicate Registrations:** In the data from the six participating municipalities, LAB found 3116 records for individuals who appear to be registered more than once in the same municipality (0.9% of the records they reviewed). These duplications were primarily the result of name changes, in which the registrar neglected to remove the old name from the registration list, previous addresses that were not deleted, and misspellings and other typographical errors.

**Deceased Voters:** the LAB study found 783 persons who were deceased, but whose records had not been eliminated from the registration lists. Most of the municipalities participating in the survey rely on obituaries and notifications from family members to purge their voter registration lists of deceased voters.

**Felons:** Comparing a list of felons from the Department of Corrections to their voter registration data lists, LAB found 453 felons who were registered to vote. This is largely because, although municipal clerks are informed of federal felony convictions, they have no way of obtaining records on state felony convictions.<sup>11</sup>

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<sup>11</sup> Legislative Audit Bureau Report: pg 43-47.

Preliminary Findings of Joint Task Force Investigating Possible Election Fraud: May 10, 2005

On January 26, 2005, the Milwaukee Police Department, Milwaukee County District Attorney's Office, Federal Bureau of Investigation, and the United States Attorney's Office formed a task force to investigate alleged voting irregularities during the November 2004 elections. The purpose of the task force was to determine whether evidence of criminal fraud existed in the irregularities and, if evidence of fraud was found, to pursue criminal prosecutions.

The task force has made the following specific determinations based on evidence examined to date:

- \* evidence of more than 100 individual instances of suspected double-voting, voting in names of persons who likely did not vote, and/or voting in names believed to be fake. Those investigations continue;
- \* more than 200 felons voted when they were not eligible to do so. In order to establish criminal cases, the government must establish willful violations in individual instances;
- \* persons who had been paid to register voters as "deputy registrars" falsely listed approximately 65 names in order to receive compensation for the registrations. The evidence does not indicate that these particular false registrations were later used to cast votes; and,
- \* the number of votes counted from the City of Milwaukee exceeds the number of persons recorded as voting by more than 4,500.

The investigation concentrated on the 70,000+ same-day registrations. It found that a large majority of the reported errors were the result of data entry errors, such as street address numbers being transposed. However, the investigation also found more than 100 instances where votes were cast in a manner suggesting fraud. These include:

- \* persons with the same name and date of birth recorded as voting more than once;
- \* persons who live outside Milwaukee, but who used non-existent City addresses to register and vote in the City;
- \* persons who registered and voted with identities and addresses that cannot in any way be linked to a real person;
- \* persons listed as voting under a name and identity of a person known to be deceased; and
- \* persons whose identities were used to vote, but who in subsequent interviews told task force investigators that they did not, in fact, vote in the City of Milwaukee.

The investigation found persons who were paid money to obtain registrations allegedly falsified approximately 65 names on registration forms, allegedly to obtain more money for each name submitted. There is no evidence gathered to date that votes were cast under these specific false names. Also found were more than 200 felons who were not eligible to vote in the 2004 election, but who are recorded as having done so.

An additional finding of the task force was that the number of votes cast far exceeds the total number of recorded voters. The day after the 2004 election, the City of Milwaukee reported the total number of votes as 277,344. In late November an additional 191 previously uncounted absentee ballots were added, for a total of 277,535 votes cast. Still later, an additional 30 ballots were added, bringing the total number of counted votes to 277,565. City records, however, have been unable to match this total to a similar number of names of voters who cast ballots – either at the polls (under a prior registration or same day registration) or cast absentee ballots. At present, the records show a total of 272,956 voter names – for a discrepancy of 4,609. This part of the investigation was hampered by widespread record keeping errors with respect to recording the number of voters.

In the 2004 election, same-day registrations were accepted in which the card had incomplete information that would help establish identity. For example: 48 original cards for persons listed as voting had no name; 548 had no address; 28 did not have signatures; and another 23 cards had illegible information. These were part of approximately 1,300 same-day registrations for which votes were cast, but which election officials could not authenticate as proper voters within the City. Included in this 1,300 were 141 same-day registrants from addresses outside the City of Milwaukee, but who voted within the City of Milwaukee. In several instances, the voter explicitly listed municipality names other than Milwaukee on the registration cards.

Another record keeping procedure hampering the investigation appears to be the post-election misfiling or loss of original green registration cards that were considered duplicates, but that in fact corresponded to additional votes. These cards were used to record votes, but approximately 100 cards of interest to investigators can no longer be located. In addition, other original green registration cards continue to be found.

A Funny Thing Happened on the Way to the White House by David E. Johnson & Jonny R. Johnson

A Funny Thing Happened adds almost nothing to the present study. It contains no footnotes and no references to primary source material, save what may be able to be gleaned from the bibliography. The Johnsons take a historical look at United States Presidential elections from Andrew Jackson to George Bush by providing interesting stories and other historical information. Unfortunately, there are only three pages out of the entire book that touches on vote fraud in the first Bush election.

The authors assert that the exit polls in Florida were probably correct. The problem was the pollsters had no way of knowing that thousands of votes would be invalidated. But the authors do not believe that fraud was the cause of the tabulation inaccuracy. The major cause was undervotes and overvotes which, if all counted, would have altered the result, compounded by the use of the butterfly ballot in some strategic counties. Additionally, Ralph Nader's votes were primarily a bleed off of needed Gore votes. The authors accused Katherine Harris, then Florida Secretary of State and co-chair of the Bush campaign in Florida for prematurely certifying the state vote. The authors also ridiculed United States Secretary of State James A. Baker III, for using the courts to block attempts to hand count votes. Finally, the authors indicated that a mob of Republican partisans descended on the vote counters in Dade County and effectively stopped the count.

## Vote Fraud, Intimidation & Suppression In The 2004 Presidential Election

### American Center for Voting Rights Report

According to its website," the American Center For Voting Rights Legislative Fund was founded in February 2005 on the belief that public confidence in our electoral system is the cornerstone of our democracy... ACVR Legislative Fund supports election reform that protects the right of all citizens to participate in the election process free of intimidation, discrimination or harassment and which will make it easy to vote but tough to cheat.

Using court records, police reports and news articles, ACVR Legislative Fund presented this Report documenting hundreds of reported incidents and allegations from around the country. ACVR Legislative Fund found that thousands of Americans were disenfranchised by illegal votes cast on Election Day 2004. For every illegal vote cast and counted on Election Day, a legitimate voter is disenfranchised. This report alleges a coordinated effort by members of some organizations to rig the election system through voter registration fraud, the first step in any vote fraud scheme that corrupts the election process by burying local officials in fraudulent and suspicious registration forms. ACVR Legislative Fund further found that, despite their heated rhetoric, paid Democrat operatives were far more involved in voter intimidation and suppression activities than were their Republican counterparts during the 2004 presidential election.

In addition to recommended changes and a zero-tolerance commitment by the political parties, ACVR Legislative Fund has identified five cities as "hot spots" which require additional immediate attention. These cities were identified based on the findings of this report and the cities' documented history of fraud and intimidation. These cities are: Philadelphia, PA, Milwaukee, WI, Seattle, WA, St. Louis/East St. Louis, MO/IL, and Cleveland, OH.

Without going into great detail in this review, this Report: refutes charges of voter intimidation and suppression made against Republican supporters, discusses similar charges against Democrats, details incidents vote fraud and illegal voting and finally discusses problems with vote fraud, voter registration fraud and election irregularities around the country. The majority of this Report is an attempt to redeem Republicans and vilify Democrats.

In terms of sheer numbers, the report most often alleges voter intimidation and voter registration fraud, and to a lesser degree absentee ballot fraud and vote buying.

The Report presented the following recommendations for future action:

\* Both national political parties should formally adopt a zero-tolerance fraud and intimidation policy that commits the party to pursuing and fully prosecuting individuals and allied organizations who commit vote fraud or who seek to deter any eligible voter from participating in the election through fraud or intimidation. No amount of legislative

reform can effectively deter those who commit acts of fraud if there is no punishment for the crime and these acts continue to be tolerated.

\* States should adopt legislation requiring government-issued photo ID at the polls and for any voter seeking to vote by mail or by absentee ballot. Government-issued photo identification should be readily available to all citizens without cost and provisions made to assure availability of government-issued identification to disabled and low-income citizens.

\* States should adopt legislation requiring that all polling places be fully accessible and accommodating to all voters regardless of race, disability or political persuasion and that polling locations are free of intimidation or harassment.

\* States should create and maintain current and accurate statewide voter registration databases as mandated by the federal Help America Vote Act (“HAVA”) and establish procedures to assure that the statewide voter roll is current and accurate and that the names of eligible voters on the roll are consistent with the voter roll used by local election authorities in conducting the election.

\* States should adopt legislation establishing a 30-day voter registration cutoff to assure that all voter rolls are accurate and that all registrants can cast a regular ballot on Election Day and the election officials have opportunity to establish a current and accurate voter roll without duplicate or fictional names and assure that all eligible voters (including all recently registered voters) are included on the voter roll at their proper precinct.

\* States should adopt legislation requiring voter registration applications to be delivered to the elections office within one week of being completed so that they are processed in a timely manner and to assure the individuals registered by third party organizations are properly included on the voter roll.

\* States should adopt legislation and penalties for groups violating voter registration laws, and provide the list of violations and penalties to all registration solicitors. Legislation should require those organizations obtaining a voter’s registration to deliver that registration to election officials in a timely manner and should impose appropriate penalties upon any individual or organization that obtains an eligible voter’s registration and fails to deliver it to election authorities.

\* States should adopt legislation prohibiting “bounty” payment to voter registration solicitors based on the number of registration cards they collect.

## America's Modern Poll Tax: How Structural Disenfranchisement Erodes Democracy

### Advancement Project

The thesis of the Report, America's Modern Poll Tax, written after the 2000 election, is that structural disenfranchisement—the effect of breakdowns in the electoral system, is the new poll tax. Structural disenfranchisement includes “bureaucratic blunders, governmental indifference, and flagrant disregard for voting rights.” The blame for structural disenfranchisement is laid squarely at the feet of states and localities that “shirk their responsibilities or otherwise manipulate election systems,” resulting in voters “either turned away from the polls or their votes are thrown out.”

The interlocking practices and mechanics that comprise structural disenfranchisement are referred to as “ballot blockers” in the report. Most ballot blockers involve the structural elements of electoral administration: “ill-trained poll workers, failures to process registration cards on time or at all, inaccurate registration rolls, overbroad purges of voter rolls, unreasonably long lines, inaccurate ballot translations and a shortage of translators to assist voters who have limited English language skills.” The Report argues that a culture of indifference overlays these issues that both tolerates and excuses widespread disenfranchisement. This culture of indifference is exemplified by legislatures that do not properly fund election systems, officials that send antiquated equipment into poor and minority areas, poorly translated ballots and polling places that are not wheelchair accessible.

The data and conclusions in the Report are taken from eight sample case studies of states and cities across the country and a survey of state election directors that reinforces the findings of the case studies. Examples of state and city problems were: New York City—in six polling places Chinese translations inverted the Democrats with the Republicans; Georgia—the state computer crashed two weeks before the election, dropping thousands of voters from the rolls; Virginia—registration problems kept an untold number from voting; Chicago—in inner-city precincts with predominately minority populations, almost four out of every ten votes cast for President (in 2000) were discarded; St. Louis—thousands of qualified voters were placed on inactive lists due to an overbroad purge; Florida—a voting list purge of voters whose name and birth date closely resembled those of people convicted of felonies; and, Texas—significant Jim Crow like barriers to minority voting.

The survey of state election directors found: election directors lack the resources to effectively do their jobs and some lack the “ability or will to force local election officials to fix serious problems”; election officials are highly under funded and legislatures refuse to grant their requests for more money; due to a lack of funds, election officials must use old and inferior equipment and can't improve training or meet structural needs; election officials are generally unaware of racial disparities in voting; only three of the 50 state election administrators are non-white.

The Report “concludes that affected communities and democracy advocates should mobilize to force change.” A number of recommendations are made to protect the

electoral franchise including: Federal policies that set nationwide and uniform election policies; federal guarantee of access to provisional ballots; enforcement of voter disability laws; automatic restoration of voting rights to those convicted of a crime after they have completed their sentence; a centralized data base of voters administered by non-partisan individuals; federal standards limiting precinct discarded vote rates to .25 %; federal requirements that jurisdiction provide voter education, including how to protect their right to vote; and laws that strengthen the ability of individuals to bring actions to enforce voting rights and anti-discrimination laws.



Analysis of the September 15, 2005 Voter Fraud Report Submitted to the New Jersey Attorney General

By The Brennan Center for Justice at NYU School of Law and Dr. Michael McDonald of George Mason University

General

A September 15, 2005 Report submitted to the New Jersey Attorney General included lists of purportedly illegitimate votes in New Jersey in the 2004 general election, including lists of 10,969 individuals who purportedly voted twice and lists of 4,756 voters who were purportedly dead or incarcerated in November 2004. For the present Analysis of the Report, the lists of voters submitted to the New Jersey Attorney General, as well as a copy of the New Jersey county voter registration files were obtained, and an initial investigation of the report's claims was conducted. The analysis shows that the lists submitted are substantially flawed.

The Analysis is based on methodology only: its authors did not gain access to original documents related to registration or original pollbook records; only recently were copies of the counties' original registration data files acquired and compiled, which contain some notable gaps; and the lists submitted to the Attorney General contain significant errors and little documentation, which complicated the analysis. Nonetheless, the analysts say that information collected is sufficient for generally assessing the quality of evidence presented to support the September 15 report. Analysis of the suspect lists reveals that the evidence submitted does not show what it purports to show: cause for concern that there is serious risk of widespread fraud given the state of the New Jersey voter registration rolls.

These suspect lists were compiled by attempting to match the first name, last name, and birth date of persons on county voter registration files. Entries that supposedly "matched" other entries were apparently deemed to represent the same individual, voting twice. This methodology was similar to the method used in compiling the notoriously inaccurate Florida "purge lists" of suspected ineligible felons in 2000 and 2004. As Florida's experience shows, matching names and birth dates in the voter registration context can easily lead to false conclusions – as was almost certainly the case here.

This Analysis reveals several serious problems with the methodology used to compile the suspect lists that compromise the lists' practical value. For example, the data used in the Report from one county appears to be particularly suspect and anomalous, and may have substantially skewed the overall results. In addition, middle initials were ignored throughout all counties, so that "J \_\_\_\_\_ A. Smith" was presumed to be the same person as "J \_\_\_\_\_ G. Smith." Suffixes were also ignored, so that fathers and sons – like "B \_\_\_\_\_ Johnson" and "B \_\_\_\_\_ Johnson, Jr." – were said to be the same person.

Underlying many of the entries on these lists, and similar lists compiled in Florida and elsewhere, is a presumption that two records with the same name and date of birth must

represent the same person. As *explained* in this analysis, this presumption is not consistent with basic statistical principles. Even when votes appear to have been cast in two different cities under the same name and birth date, statistics show that voter fraud is not necessarily to blame. With 3.6 million persons who voted in the 2004 election in New Jersey, the chance that some have the same name and birth date is not far-fetched.

#### Analysis of the Claim of Double Voting by 4,497 Individuals

Attempts to match data on one list to data on another list will often yield “false positives:” two records that at first appear to be a match but do not actually represent the same person. The natural incidence of “false positives” for a matching exercise of this scale – especially when, as here, conducted with relatively little attention to detail – readily explains the ostensible number of double votes.

1,803 of these 4,397 records of ostensibly illegal votes seem to be the product of a glitch in the compilation of the registration files. These records reflect two registration entries by the same person from the same address, with a notation next to each that the individual has voted. For example, 55-year-old W\_\_\_\_\_ A. Connors, living at 253 B\_\_\_\_\_ Ave. in a New York commuter suburb, is listed on the data files with an (erroneous) first registration date in 1901 and a second registration date in 1993; Mr. Connors is thus represented twice on the data files submitted. Each of these entries also indicates that W\_\_\_\_\_ A. Connors at 253 B\_\_\_\_\_ Ave voted in 2004. There is no credible indication, however, that Mr. Connors actually voted twice; indeed, given the clearly erroneous registration date on the files, it is far more likely that data error is to blame for the doubly logged vote as well.

More plausibly, the bulk of these 1,803 records may be traced to irregularities in the data processing and compilation process for one single county: the Middlesex County registration file accounts for only 10% of registered voters in the state but 78% of these alleged double votes. The suspect lists themselves contain an acknowledgment that the problem in Middlesex is probably not fraud: 99% of these Middlesex voters are labeled on the lists submitted to the Attorney General with a notation that the record is “less likely” to indicate an illegal double vote.

Another 1,257 entries of the 4,397 records probably represent similar data errors – also largely driven by a likely glitch in the Middlesex County file, which is also vastly over represented in this category. These records show ever-so-slight variations in records listed with the same date of birth at the same address: for example, the same first and last names, but different middle initials or suffixes (e.g., J\_\_\_\_\_ T. Kearns, Sr., and J\_\_\_\_\_ T. Kearns, Jr., both born the same day and living at the same address; or J\_\_\_\_\_ E. Allen and J\_\_\_\_\_ P. Allen, born the same day and living at the same address).

Approximately 800 of the entries on the list likely represent different people, with different addresses and different middle initials or suffixes. For example, W\_\_\_\_\_ S. Smith, living in a northern New Jersey town, and W\_\_\_\_\_ C. Smith, living in another town two hours away, share the same date of birth but are not the same person. Nor are

T\_\_\_\_\_ Brown, living in a New York commuter suburb, and T\_\_\_\_\_ H. Brown, Jr., living in a small town over an hour west, despite the fact that they also share the same birth date. About three-quarters of the entries in this category reveal data that affirmatively conflict – for example, a middle initial (“W\_\_\_\_\_ S.”) in one case, and a different middle initial (“W\_\_\_\_\_ C.”) in another, listed at different addresses. There is absolutely no good reason to conclude that these individuals are in fact the same, when the available evidence indicates the contrary.

For approximately 200 of the entries in this category, however, less information is available. These entries show a middle initial (“J\_\_\_\_\_ W. Davis”) in one case, and no middle initial (“J\_\_\_\_\_ Davis”) in another – again, at different addresses. The lack of the middle initial is ambiguous: it could mean that one of the J\_\_\_\_\_ Davis in question has no middle name, or it could mean that the middle initial was simply omitted in a particular registration entry. Although these entries involve less conclusive affirmative evidence of a false match than the entries noted above, there is still no good reason to believe that “J\_\_\_\_\_ W. Davis” and “J\_\_\_\_\_ Davis,” at different addresses, represent the same person.

Of the individuals remaining, there are serious concerns with the accuracy of the dates of birth. Seven voters were apparently born in January 1, 1880 – which is most likely a system default for registrations lacking date-of-birth information. For 227 voters, only the month and year of birth are listed: this means only that two voters with the same name were born in the same month and year, an unsurprising coincidence in a state of several million people.

That leaves approximately 289 votes cast under the same name and birth date – like votes cast by “P\_\_\_\_\_ S. Rosen,” born in the middle of the baby boom – but from two different addresses. It may appear strange, but there may be two P\_\_\_\_\_ S. Rosens, born on the same date in 1948 – and such coincidences are surprisingly common. For any one person, the odds of someone else having the same name and birth date is small. But because there are so many voters in New Jersey, a sizable number will have the same name and birth date simply by chance. In a group of just 23 people, it is more likely than not that two will share the same birthday. For 40 people, the probability is 90%. Many, if not most, of the 289 alleged double votes of persons registered at different addresses most likely reflect two separate individuals sharing a first name, last name, middle initial, and birth date.

The September 15 Report makes much of the raw potential for foul play based on the unsurprising fact that there are voters who appear on the New Jersey registration rolls more than once. As noted above, many of the names identified reflect two different individuals and not simply duplicate entries. But there is no doubt that there are duplicate entries on New Jersey’s registration rolls. It is well known that voter registration rolls contain “deadwood” – registration entries for individuals no longer living at a given address or deceased. There is no evidence, however, that these extra registrations are used for widespread illegal voting. Moreover, the problem of deadwood will soon be largely resolved: both the National Voter Registration Act of 1993 and the Help America

Vote Act of 2002 require states to implement several systems and procedures as of January 1, 2006, that will clean the voter rolls of duplicate or invalid entries while protecting eligible voters from unintended disfranchisement.

Building Confidence in U.S. Election, National Commission on Federal Election Reform  
("Carter/Baker Commission)

The impetus for the Carter-Baker Commission and its report was the sense of the members that not enough had been done to reform the system since the 2000 election and that Americans had lost confidence in elections. The report makes several observations about the current system and makes 87 recommendations. Several of those recommendations are meant to be implemented in conjunction with one another in order to be effective, so the report is really a push for a comprehensive overhaul of the system as it works today.

Among the observations made that are relevant to the EAC study of fraud and intimidation are the following:

- The November 2004 elections showed that irregularities and fraud still occur.
- Failure to provide voters with such basic information as their registration status and their polling site location raises a barrier to voting as significant as inconsistent procedures on provisional ballots or voter ID requirements.
- There is no evidence of extensive fraud in U.S. elections or of multiple voting, but both occur, and it could affect the outcome of a close election.
- The Commission is concerned that the different approaches to identification cards might prove to be a serious impediment to voting.
- Voter registration lists are often inflated by the inclusion of citizens who have moved out of state but remain on the lists. Moreover, under the National Voter Registration Act, names are often added to the list, but counties and municipalities often do not delete the names of those who moved. Inflated voter lists are also caused by phony registrations and efforts to register individuals who are ineligible. At the same time, inaccurate purges of voter lists have removed citizens who are eligible and are properly registered.
- Political party and nonpartisan voter registration drives generally contribute to the electoral process by generating interest in upcoming elections and expanding participation. However, they are occasionally abused. There were reports in 2004 that some party activists failed to deliver voter registration forms of citizens who expressed a preference for the opposing party.
- Vote by mail raises concerns about privacy, as citizens voting at home may come under pressure to vote for certain candidates, and it increases the risk of fraud.
- While election fraud is difficult to measure, it occurs. The U.S. Department of Justice has launched more than 180 investigations into election fraud since October 2002. These investigations have resulted in charges for multiple voting, providing false information on their felon status, and other offenses against 89 individuals and in convictions of 52 individuals. The convictions related to a variety of election fraud offenses, from vote buying to submitting false voter registration information and voting-related offenses by non-citizens. In addition to the federal investigations, state attorneys general and local prosecutors handle cases of election fraud. Other cases are never pursued because of the difficulty in

obtaining sufficient evidence for prosecution or because of the low priority given to election fraud cases.

- Absentee ballots remain the largest source of potential voter fraud
- Non-citizens have registered to vote in several recent elections
- The growth of "third-party" (unofficial) voter registration drives in recent elections has led to a rise in reports of voter registration fraud.
- Many states allow the representatives of candidates or political parties to challenge a person's eligibility to register or vote or to challenge an inaccurate name on a voter roll. This practice of challenges may contribute to ballot integrity, but it can have the effect of intimidating eligible voters, preventing them from casting their ballot, or otherwise disrupting the voting process.

Its pertinent recommendations for reform are as follows:

- Interoperable state voter databases are needed to facilitate updates in the registration of voters who move to another state and to eliminate duplicate registrations, which are a source of potential fraud.
- Voters should be informed of their right to cast a provisional ballot if their name does not appear on the voter roll, or if an election official asserts that the individual is not eligible to vote, but States should take additional and effective steps to inform voters as to the location of their precinct
- The Commission recommends that states use "REAL ID" cards for voting purposes.
- To verify the identity of voters who cast absentee ballots, the voter's signature on the absentee ballot can be matched with a digitized version of the signature that the election administrator maintains. While such signature matches are usually done, they should be done consistently in all cases, so that election officials can verify the identity of every new registrant who casts an absentee ballot.
- Each state needs to audit its voter registration files to determine the extent to which they are accurate (with correct and current information on individuals), complete (including all eligible voters), valid (excluding ineligible voters), and secure (with protections against unauthorized use). This can be done by matching voter files with records in other state agency databases in a regular and timely manner, contacting individuals when the matches are inconclusive, and conducting survey research to estimate the number of voters who believe they are registered but who are not in fact listed in the voter files.
- Each state should oversee political party and nonpartisan voter registration drives to ensure that they operate effectively, that registration forms are delivered promptly to election officials, that all completed registration forms are delivered to the election officials, and that none are "culled" and omitted according to the registrant's partisan affiliation. Measures should also be adopted to track and hold accountable those who are engaged in submitting fraudulent voter registrations. Such oversight might consist of training activists who conduct voter registration drives and tracking voter registration forms to make sure they are all accounted for. In addition, states should apply a criminal penalty to any activist who deliberately fails to deliver a completed voter registration form.

- Investigation and prosecution of election fraud should include those acts committed by individuals, including election officials, poll workers, volunteers, challengers or other nonvoters associated with the administration of elections, and not just fraud by voters.
- In July of even-numbered years, the U.S. Department of Justice should issue a public report on its investigations of election fraud. This report should specify the numbers of allegations made, matters investigated, cases prosecuted, and individuals convicted for various crimes. Each state's attorney general and each local prosecutor should issue a similar report.
- The U.S. Department of Justice's Office of Public Integrity should increase its staff to investigate and prosecute election-related fraud.
- In addition to the penalties set by the Voting Rights Act, it should be a federal felony for any individual, group of individuals, or organization to engage in any act of violence, property destruction (of more than \$500 value), or threatened act of violence that is intended to deny any individual his or her lawful right to vote or to participate in a federal election.
- To deter systemic efforts to deceive or intimidate voters, the Commission recommends federal legislation to prohibit any individual or group from deliberately providing the public with incorrect information about election procedures for the purpose of preventing voters from going to the polls.
- States should define clear procedures for challenges, which should mainly be raised and resolved before the deadline for voter registration. After that, challengers will need to defend their late actions. On Election Day, they should direct their concerns to poll workers, not to voters directly, and should in no way interfere with the smooth operation of the polling station.
- State and local jurisdictions should prohibit a person from handling absentee ballots other than the voter, an acknowledged family member, the U.S. Postal Service or other legitimate shipper, or election officials. The practice in some states of allowing candidates or party workers to pick up and deliver absentee ballots should be eliminated.
- All states should consider passing legislation that attempts to minimize the fraud that has resulted from "payment by the piece" to anyone in exchange for their efforts in voter registration, absentee ballot, or signature collection.
- Nonpartisan structures of election administration are very important, and election administrators should be neutral, professional, and impartial.
- No matter what institutions are responsible for conducting elections, conflict-of-interest standards should be introduced for all federal, state, and local election officials. Election officials should be prohibited by federal and/or state laws from serving on any political campaign committee, making any public comments in support of a candidate, taking a public position on any ballot measure, soliciting campaign funds, or otherwise campaigning for or against a candidate for public office. A decision by a secretary of state to serve as co-chair of his or her party's presidential election committee would clearly violate these standards.

## Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – Or Both?

By Chandler Davidson

As the author describes it, this Report focuses on vote suppression through “ballot security programs:”

These are programs that, in the name of protecting against vote fraud, almost exclusively target heavily black, Latino, or Indian voting precincts and have the intent or effect of discouraging or preventing voters in those precincts from casting a ballot. In some cases, these programs have been found by courts to be illegal. Still, they continue to exist in spite of strong criticism by leaders of minority communities, their allies, and voting rights lawyers.

There are several noteworthy characteristics of these programs. They focus on minority precincts almost exclusively. There is often only the flimsiest evidence that vote fraud is likely to be perpetrated in such precincts. In addition to encouraging the presence of sometimes intimidating Republican poll watchers or challengers who may slow down voting lines and embarrass potential voters by asking them humiliating questions, these programs have sometimes posted people in official-looking uniforms with badges and side arms who question voters about their citizenship or their registration. In addition, warning signs may be posted near the polls, or radio ads may be targeted to minority listeners containing dire threats of prison terms for people who are not properly registered—messages that seem designed to put minority voters on the defensive. Sometimes false information about voting qualifications is sent to minority voters through the mail.”

He further states that a most common theme of the programs over the last 50 years is that of sending white challengers to minority precincts. He says that the tactic of doing mailings, collecting returned materials, and using that as a basis for creating challenger lists and challenging voters at the polls, started in the 1950s and continues to today. The problem with this practice is that reasons for a mailing to be returned include a wrong address, out of date or inaccurate addresses, poor mail delivery in minority areas, and matching mistakes. Davidson also sets out to demonstrate through documentary evidence that the practices have been and are approved of or winked at by high ups in the party.

Davidson goes on to provide numerous examples from the last 50 years to demonstrate his thesis, going through the historical development of Republican ballot security programs from the 1950s through to the present. The author cites and quotes internal Republican letters and memoranda, primary sources and original documents, media



reports, scholarly works, as well as the words of judges' rulings in some of the cases that ended up in litigation to prove his argument.

In addition to describing how the schemes really were brought to the fore in the 1964 election, he describes more recent incidents such as 1981 in New Jersey, 1982 Dallas, Louisiana 1986, Houston 1986, Hidalgo 1988 Orange County 1988, North Carolina 1990, South Carolina 1980-1990, and South Dakota 2002. (Summaries of these examples are available)

Davidson concludes with an outline of some of the features of vote suppression efforts put forth by Republicans under the guise of ballot security programs, as described in the Report, from the 1950s to the present day:

1. An organized, often widely publicized effort to field poll watchers in what Republicans call "heavily Democratic," but what are usually minority, precincts;
2. Stated concerns about vote fraud in these precincts, which are occasionally justified but often are not;
3. Misinformation and fear campaigns directed at these same precincts, spread by radio, posted signs in the neighborhoods, newspapers, fliers, and phone calls, which are often anonymously perpetrated;
4. Posting "official-looking" personnel at polling places, including but not limited to off-duty police—sometimes in uniform, sometimes armed;
5. Aggressive face-to-face challenging techniques at the polls that can confuse, humiliate, and intimidate—as well as slow the voting process—in these same minority precincts;
6. Challenging voters using inaccurate, unofficial lists of registrants derived from "do-not-forward" letters sent to low-income and minority neighborhoods;
7. Photographing, tape recording, or videotaping voters; and
8. Employing language and metaphors that trade on stereotypes of minority voters as venal and credulous.

The report ends with some observations on the state of research on the incidence of fraud, which the author finds lacking. He suggests that vote suppression of qualified minority voters by officials and partisan poll-watchers, challengers, and uniformed guards should also be considered as included in any definition of election fraud. Davidson also offers a few recommendations for reform, noting that Democrats should not protest all programs aimed at ballot integrity, but rather work with Republicans to find solutions to problems that confront both parties and the system as a whole.

## A 'Crazy-Quilt' of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law

By Alec Ewald

"A Crazy-Quilt of Tiny Pieces" presents results from the first nationwide study to document the implementation of American felony disenfranchisement law. Data came from two main sources: a 33-state survey of state elections officials and telephone interviews with almost one hundred city, county, town, and parish officials drawn from 10 selected states. In the spring of 2004, a two-page survey consisting of questions regarding disqualification and restoration procedures was sent to the offices of the statewide elections director in each of the fifty states. Responses were collected through the summer and early fall of 2004. Thirty-three states responded. No state currently administers and enforces its criminal disqualification and restoration laws in an efficient, universally-understood and equitable way. Some do not appear to notify local elections officials of convictions, or do not do so in a clear and timely way; others risk "false positives" in disqualification, particularly with suspended sentences or offenses not subject to disenfranchisement; many ask local officials to handle disqualification and restoration with little or no guidance or supervision from the state; none have clear policies regarding new arrivals from other states with old convictions.

The report reaches seven major conclusions:

1. Broad variation and misunderstanding in interpretation and enforcement of voting laws:
  - More than one-third (37%) of local officials interviewed in ten states either described their state's fundamental eligibility law incorrectly, or stated that they did not know a central aspect of that law.
  - Local registrars differ in their knowledge of basic eligibility law, often within the same state. Differences also emerge in how they are notified of criminal convictions, what process they use to suspend, cancel, or "purge" voters from the rolls, whether particular documents are required to restore a voter to eligibility, and whether they have information about the criminal background of new arrivals to the state.
2. Misdemeanants disenfranchised in at least five states:
  - The commonly-used term "felon disenfranchisement" is not entirely accurate, since at least five states -- Colorado, Illinois, Michigan, South Carolina, and Maryland -- also formally bar some or all people convicted of misdemeanors from voting.
  - It is likely that misdemeanants in other states who do retain the formal right to vote could have difficulty exercising that right, given ignorance of their eligibility and the lack of clear rules and procedures for absentee voting by people in jail who have not been convicted of a felony.
  - Maryland excludes persons convicted of many misdemeanors, such as "Unlawful operation of vending machines," "Misrepresentation of tobacco leaf weight," and "Racing horse under false name."
3. Significant ambiguities in voting laws:
  - Disenfranchisement in Tennessee is dependent on which of five different time periods a felony conviction occurred between 1973 and the present.
  - In Oregon, disenfranchisement is determined not by conviction or imprisonment for a felony, but for being placed under Department of Corrections supervision. Since 1997, some persons

convicted of a felony and sentenced to less than 12 months' custody have been sent to county jails and hence, are eligible to vote.

4. Disenfranchisement results in contradictory policies within states:

- The "crazy-quilt" pattern of disenfranchisement laws exists even within states. Alabama and Mississippi have both the most and least restrictive laws in the country, a result which is brought about by the fact that certain felonies result in the loss of voting rights for life, while others at least theoretically permit people in prison to vote.
- Most felonies in Alabama result in permanent disenfranchisement, but drug and DUI offenses have been determined to not involve the "moral turpitude" that triggers the loss of voting rights.
- In Mississippi, ten felonies result in disenfranchisement, but do not include such common offenses as burglary and drug crimes.

5. Confusing policies lead to the exclusion of legal voters and the inclusion of illegal voters:

- The complexity of state disenfranchisement policies results in frequent misidentification of voter eligibility, largely because officials differ in their knowledge and application of disqualification and restoration law and procedures.

6. Significant variation and uncertainty in how states respond to persons with a felony conviction from other states:

- No state has a systematic mechanism in place to address the immigration of persons with a felony conviction, and there is no consensus among indefinite-disenfranchisement states on whether the disqualification is properly confined to the state of conviction, or should be considered in the new state of residence.
- Interpretation and enforcement of this part of disenfranchisement law varies not only across state lines, but also from one county to another within states. Local officials have no way of knowing about convictions in other states, and many are unsure what they would do if a would-be voter acknowledged an old conviction. Because there is no prospect of a national voter roll, this situation will continue even after full HAVA implementation.

7. Disenfranchisement is a time-consuming, expensive practice:

- Enforcement requires elections officials to gather records from different agencies and bureaucracies, including state and federal courts, Departments of Corrections, Probation and Parole, the state Board of Elections, the state police, and other counties' elections offices.

#### Policy Implications

1. Policies disenfranchising people living in the community on probation or parole, or who have completed a sentence are particularly difficult to enforce:

- States which disenfranchise only persons who are currently incarcerated appear able to enforce their laws more consistently than those barring non-incarcerated citizens from voting.

2. Given large-scale misunderstanding of disenfranchisement law, many eligible persons incorrectly believe they cannot vote, or have been misinformed by election officials:

- More than one-third of election officials interviewed incorrectly described their state's law on voting eligibility.
- More than 85% of the officials who misidentified their state's law either did not know the eligibility standard or specified that the law was more restrictive than was actually the case.

3. Occasional violation of disenfranchisement law by non-incarcerated voters not surprising:

- Given the complexity of state laws and the number of state officials who lack an understanding of restoration and disqualification procedures, it should come as no surprise that many voters are ignorant of their voting status, a fact that is likely to have resulted in hundreds of persons with a felony conviction registering and voting illegally in recent years.

4. Taken together, these findings undermine the most prominent rationale for disenfranchisement: that the policy reflects a strong, clear consensus that persons with a felony conviction are unfit to vote and constitute a threat to the polity:

- First, when significant numbers of the people who administer elections do not know important aspects of disenfranchisement law, it is hard to conclude that the restriction is necessary to protect social order and the “purity” of the ballot box.
- Second, because they are all but invisible in the sentencing process, “collateral” sanctions like disenfranchisement simply cannot accomplish the denunciatory, expressive purposes their supporters claim. We now know that disenfranchisement is not entirely “visible” even to the people running American elections.
- Third, deep uncertainty regarding the voting rights of people with felony convictions who move from one state to another indicates that we do not even know what purpose disenfranchisement is supposed to serve – whether it is meant to be a punishment, or simply a non-penal regulation of the franchise.

#### Recommendations

1. Clarify Policies Regarding Out-of-State Convictions:

- State officials should clarify their policies and incorporate into training programs the means by which a felony conviction in another state affects an applicant’s voting eligibility. For example, sentence-only disenfranchisement states should clarify that newcomers with old felony convictions from indefinite disenfranchisement states are eligible to vote. And those states which bar some people from voting even after their sentences are completed must clarify whether new arrivals with old felony convictions from sentence-only disenfranchisement states are automatically eligible, and must explain what procedures, if any, should be followed for restoration.

2. Train Election Officials:

- Clarify disenfranchisement policies and procedures for all state and local election officials through development of materials and training programs in each state. At a minimum, this should include distribution of posters, brochures and FAQ sheets to local and state elections offices.

3. Train Criminal Justice Officials:

- Provide training on disqualification and restoration policies for all correctional and criminal justice officials, particularly probation and parole staff. Correctional and criminal justice officials should also be actively engaged in describing these policies to persons under criminal justice supervision.

4. Review Voting Restrictions on Non-Incarcerated People:

- Given the serious practical difficulty of enforcing laws disqualifying people who are not incarcerated from voting – problems which clearly include both excluding eligible people from voting and allowing those who should be ineligible to vote -- state policymakers should review such policies to determine if they serve a useful public purpose.

Deliver the Vote: A History of Election Fraud, An American Political Tradition---1742-2004

by Tracy Campbell.

In Deliver the Vote, Campbell traces the historical persistence of voter fraud from colonial times through the 2004 Bush-Kerry election. From the textual information, it quickly becomes obvious that voter fraud was not limited to certain types of people or to certain political parties. Major American political figures fail to emerge unscathed. For instance, before independence, George Washington plied potential voters with drink as payment for their vote. This type of early vote buying succeeded in electing Washington to the Virginia Assembly over a heavily favored candidate. Both the Democrat and Republican Parties also participated in vote fraud. Finally, there were several regions of the country known for fraudulent voting problems such as Chicago, St. Louis, Texas, and Kentucky, especially Louisville.

Germane to the voter fraud project, Campbell indicates that in the Bush-Gore election, both camps committed major errors. Campbell contends that the central problem in that election was the 175,000 invalidated votes. It is evident that Florida was procedurally unprepared to deal with the voluminous questions that arose in determining valid from invalid votes. Campbell glosses over the Bush-Kerry election but does note from one who opposed Kerry, that there was something amiss with the Ohio final vote tally. This book is well researched and provided numerous citations to source material.

Democracy At Risk: The November 2004 Election in Ohio  
Democratic National Committee

In December 2004, the DNC announced a comprehensive investigative study and analysis of election administration issues arising from the conduct of the 2004 general election in Ohio. The DNC decided to undertake this study because of the many reports, made to the Democratic Party, appearing in the press and made to advocacy groups, immediately after the election, of problems in the administration of the election in that state—problems that prevented many Ohio citizens who showed up at the polls to be able to vote and to have their vote counted. This study was intended to address the legitimate questions and concerns that have been raised and to develop factual information that would be important and useful in crafting further necessary election reforms.

**Most Pertinent Findings**

- Overall, 28 percent of Ohio voters reported problems with their voting experience, including ballot problems, locating their proper polling place and/or intimidation.
- Twice as many African American voters as white voters reported experiencing problems at the polls (52 percent vs. 25 percent).
- Scarcity of voting machines caused long lines that deterred many people from voting. Three percent of voters who went to the polls left their polling places and did not return due to the long lines.
- Statewide, African American voters reported waiting an average of 52 minutes before voting while white voters reported waiting an average of 18 minutes.
- Overall, 20 percent of white Ohio voters reported waiting more than twenty minutes, while 44 percent of African American voters reported doing so.
- Of provisional voters in Cuyahoga County, 35 percent were African American, compared to 25 percent of non-provisional voters, matched by geography. African American voters were 1.2 times more likely than white voters to be required to vote provisionally.
- Under Ohio law, the only voters who should have been asked for identification were those voting in their first Federal election who had registered by mail but did **not** provide identification in their registration application. Although only 7 percent of all Ohio voters were newly registered (and only a small percentage of those voters registered by mail and failed to provide identification in their registration application), more than one third (37 percent) reported being asked to provide identification.—meaning large numbers of voters were illegally required to produce identification.
- African American voters statewide were 47 percent more likely to be required to show identification than white voters. Indeed, 61 percent of

African American men reported being asked to provide identification at the polls.

- 6 percent of all voters reported feelings of intimidation.
- Statewide, 16 percent of African Americans reported experiencing intimidation versus only 5 percent of white voters.

The report also includes a useful summary and description of the reports that came through Ohio Election Protection on Election Day, which included a wide variety of problems, including voter intimidation and discrimination.

### **Most Pertinent Recommendations**

- States should be encouraged to codify into law all required election practices, including requirements for the adequate training of official poll workers.
- States should adopt uniform and clear published standards for the distribution of voting equipment and the assignment of official pollworkers among precincts, to ensure adequate and nondiscriminatory access. These standards should be based on set ratios of numbers of machines and pollworkers per number of voters expected to turn out, and should be made available for public comment before being adopting.
- States should adopt legislation to make clear and uniform the rules on voter registration.
- States should be urged to implement statewide voter lists in accordance with the Help America Vote Act (“HAVA”), the election reform law enacted by Congress in 2002 following the Florida debacle.
- State and local jurisdictions should adopt clear and uniform rules on the use of, and the counting of, provisional ballots, and distribute them for public comment well in advance of each election day.
- States should not adopt requirements that voters show identification at the polls, beyond those already required by federal law (requiring that identification be shown only by first time voters who did not show identification when registering.)
- State Attorneys General and local authorities should vigorously enforce, to the full extent permitted by state law, a voter’s right to vote without showing identification.
- States should make voter suppression a criminal offense at the state level, in all states.
- States should improve the training of pollworkers.
- States should expend significantly more resources in educating voters on where, when and how to vote.
- Partisan officials who volunteer to work for a candidate should not oversee or administer any elections.

## DOJ Public Integrity Reports 2002, 2003, and 2004

### General Background

The Public Integrity Reports are submitted to Congress pursuant to the Ethics in Government Act of 1978, which requires the Attorney General to report annually to Congress on the operations and activities of the Justice Department's Public Integrity Section. The Report describes the activities of the Public Integrity Section. It also provides statistics on the nationwide federal effort against public corruption. The Public Integrity Section was created in 1976 in order to consolidate in one unit of the Criminal Division the Department's oversight responsibilities for the prosecution of criminal abuses of the public trust by government officials. Section attorneys prosecute selected cases involving federal, state, or local officials, and also provide advice and assistance to prosecutors and agents in the field regarding the handling of public corruption cases. In addition, the Section serves as the Justice Department's center for handling various issues that arise regarding public corruption statutes and cases. An Election Crimes Branch was created within the Section in 1980 to supervise the Department's nationwide response to election crimes, such as ballot fraud and campaign financing offenses. The Branch reviews all major election crime investigations throughout the country and all proposed criminal charges relating to election crime.

One of the Section's law enforcement priorities is its supervision of the Justice Department's nationwide response to election crimes. The purpose of Headquarters' oversight of election crime matters is to ensure that the Department's nationwide response to election crime is uniform, impartial, and effective. An Election Crimes Branch, headed by a Director and staffed by Section attorneys on a case-by-case basis, was created within the Section in 1980 to handle this supervisory responsibility.

The Election Crimes Branch oversees the Department's handling of all election crime allegations other than those involving civil rights violations, which are supervised by the Voting Section of the Civil Rights Division. Specifically, the Branch supervises four types of corruption cases: crimes that involve the voting process, crimes involving the financing of federal election campaigns, crimes relating to political shakedowns and other patronage abuses, and illegal lobbying with appropriated funds. Vote frauds and campaign-financing offenses are the most significant and also the most common types of election crimes.

### Divisions of the Election Crimes Branch

As affecting the present EAC study, the appropriate divisions of the Election Crimes Branch are:

Vote frauds-During 2002 the Branch assisted United States Attorneys' Offices in Alabama, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Nevada, North Carolina, Rhode Island, South Carolina, South Dakota, Texas, Utah, West Virginia, and



Wisconsin in handling vote fraud matters that occurred in their respective districts. This assistance included providing expertise in the evaluation of allegations to determine whether investigation would produce prosecutable federal criminal cases, helping to structure investigations, providing legal assistance with respect to the formulation of charges, and assisting in establishing task force teams of federal and state law enforcement officials to investigate vote fraud matters.

During 2003 the Branch assisted United States Attorneys' Offices in Alabama, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Jersey, Nevada, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Virgin Islands, West Virginia, and Wisconsin in handling vote fraud matters that occurred in their respective districts. This assistance included providing expertise in the evaluation of allegations to determine whether investigation would produce prosecutable federal criminal cases, helping to structure investigations, providing legal assistance with respect to the formulation of charges, and assisting in establishing task force teams of federal and state law enforcement officials to investigate vote fraud matters.

During 2004 the Branch assisted United States Attorneys' Offices in the following states in the handling of vote fraud matters that occurred in their respective districts: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New Mexico, Nevada, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, South Carolina, South Dakota, Texas, Utah, Virginia, West Virginia, Washington, and Wisconsin. This assistance included evaluating vote fraud allegations to determine whether investigation would produce a prosecutable federal criminal case, helping to structure investigations, providing legal advice concerning the formulation of charges, and assisting in establishing several task force teams of federal and state law enforcement officials to investigate vote fraud matters.

Litigation-The Branch Director or Section attorneys also prosecute selected election crimes, either by assuming total operational responsibility for the case or by handling the case jointly with a United States Attorney's Office. The Section also may be asked to supervise the handling of a case in the event of a partial recusal of the local office. For example, in 2002 the Branch continued to supervise the prosecution of a sheriff and his election attorney for using data from the National Crime Information Center regarding voters' criminal histories to wage an election contest.

District Election Officer Program-The Branch also assists in implementing the Department's long-standing District Election Officer (DEO) Program. This Program is designed to ensure that each of the 93 United States Attorneys' Offices has a trained prosecutor available to oversee the handling of election crime matters within the district and to coordinate district responses with Headquarters regarding these matters. The DEO Program involves the appointment of an Assistant United States Attorney in each federal district to serve a two-year term as a District Election Officer; the training of these

prosecutors in the investigation and prosecution of election crimes; and the coordination of election-related initiatives and other law enforcement activities between Headquarters and the field. In addition, the DEO Program is a crucial feature of the Department's nationwide Election Day Program, which occurs in connection with the federal general elections held in November of even-numbered years. The Election Day Program ensures that federal prosecutors and investigators are available both at the Department's Headquarters in Washington and in each district to receive and handle complaints of election irregularities from the public while the polls are open and that the public is aware of how these individuals can be contacted on election day. In 2002 the Department enhanced the DEO Program by establishing a Ballot Integrity Initiative.

Ballot Integrity Initiative-Beginning in September of 2002, the Public Integrity Section, acting at the request of the Attorney General, assisted in the implementation of a Ballot Integrity Initiative for the 2002 general election and subsequent elections. This initiative included increasing the law enforcement priority the Department gives to election crimes; holding a special day-long training event in Washington, DC for representatives of the 93 United States Attorneys' Offices; publicizing the identities and telephone numbers of the DEOs through press releases issued shortly before the November elections; and requiring the 93 U.S. Attorneys to communicate the enhanced federal prioritization of election crime matters to state and local election and law enforcement authorities. As part of Ballot Integrity Initiative, on October 8, 2002, the Public Integrity Section and the Voting Rights Section of the Department's Civil Rights Division co-sponsored a Voting Integrity Symposium for District Election Officers representing each of the 93 federal judicial districts. Topics discussed included the types of conduct that are prosecutable as federal election crimes and the federal statutes used to prosecute such cases. Attorney General John Ashcroft delivered the keynote address on the importance of election crime and ballot integrity enforcement. Assistant Attorney General of the Civil Rights Division Ralph Boyd and Assistant Attorney General of the Criminal Division Michael Chertoff also spoke to attendees on the protection of voting rights and the prosecution of election cases.

As part of Ballot Access and Voting Integrity Initiative, on September 23 and 24, 2003, the Public Integrity Section and the Voting Rights Section of the Department's Civil Rights Division co-sponsored a two-day Symposium for DEOs representing each of the 93 federal judicial districts. Topics discussed included the types of conduct that are prosecutable as federal election crimes and the federal statutes used to prosecute such cases. Assistant Attorney General of the Civil Rights Division Alexander Acosta and Assistant Attorney General of the Criminal Division Christopher A. Wray delivered the keynote addresses on the importance of protecting voting rights and the prosecution of election cases.

On July 20 and 21, 2004, the Public Integrity Section and the Voting Section of the Department's Civil Rights Division co-sponsored a two-day symposium for DEOs representing each of the 93 federal judicial districts. Topics discussed included the types of conduct that are prosecutable as federal election crimes and the federal statutes available to prosecute such cases, and the handling of civil rights matters involving

voting. Attorney General John Ashcroft delivered the keynote address on the importance of protecting voting rights and the prosecution of election fraud. In addition, Assistant Attorney General Christopher A. Wray of the Criminal Division and Assistant Attorney General R. Alexander Acosta of the Civil Rights Division addressed conference attendees on voting rights and election fraud enforcement issues respectively.

### Federal Election Crimes

During 2002 the Public Integrity Section continued its nationwide oversight role regarding the handling of election crime allegations. As part of a general Department effort to increase its effectiveness in this important area, the Section assisted in the planning and execution of the Department's 2002 Ballot Integrity Initiative. The purpose of this ongoing Initiative is to increase the Department's ability to deter, detect, and prosecute election crimes and voting abuses by prioritizing election crime cases. As a result of the Initiative, during 2002 the number of election crime matters opened by federal prosecutors throughout the country increased significantly, as did the Section's active involvement in election crime matters stemming from the Initiative. At the end of 2002, the Section was supervising and providing advice on approximately 43 election crime matters nationwide. In addition, as of December 31, 2002, 11 matters involving possible election crimes were pending in the Section.

During 2002 the Section closed two election crime matters and continued its operational supervision of the following election crime case: *United States v. Woodward and Jordan*, Northern District of Alabama. Jimmy Woodward, the former Sheriff of Jefferson County, Alabama, and Albert Jordan, an attorney from Birmingham, were indicted in 2000 for conspiring to obtain criminal history records from the National Crime Information Center (NCIC) for use in an election contest, for converting NCIC records, and for accessing government computers without authority. The indictment charged that Woodward and Jordan conspired to use Sheriff's office personnel to access NCIC computers to run criminal history checks on hundreds of voters in Jefferson County who had voted by absentee ballot in the 1998 general election, in the hopes they would find criminal histories they could use to challenge the qualifications of voters who cast votes for Woodward's opponent. The charges were dismissed in 2000 on procedural grounds. The Department appealed the dismissal of the charges. In 2001 the case was argued before the Eleventh Circuit Court of Appeals by the Appellate Section of the Criminal Division. The Court of Appeals subsequently reversed the trial court's dismissal of the charges and remanded the case for retrial. The former United States Attorney for the Northern District of Alabama was recused from the case. The case is being prosecuted by an Assistant United States Attorney under the supervision of the Public Integrity Section.

The following cases are the result of an extensive federal investigation into vote-buying in the May 1998 primary election in Knott County, Kentucky, an Appalachian county in the Eastern District of Kentucky. The primary was contested by two slates of candidates. The ballot included the race for the position of Knott County Judge Executive, which controls local government hiring, contracting, and services. The ballot also included a primary contest for the office of United States Senator, conferring federal jurisdiction

over vote buying in the election even though the electoral corruption was directed at local races.

The following cases are being handled jointly by the Section and the United States Attorney's Office for the Eastern District of Kentucky:

*United States v. Calhoun.* On March 28, 2003, a federal grand jury indicted Jimmy Calhoun on two counts of vote-buying. On August 19, 2003, Calhoun pled guilty to two counts of vote-buying on behalf of a slate of candidates headed by Donnie Newsome, the successful candidate for County Judge Executive in the May 1998 Knott County, Kentucky primary election. Calhoun paid two persons to vote by absentee ballot. On April 7, 2004, Calhoun was sentenced to six months in prison and two years of supervised release. Calhoun pled guilty to two counts of vote-buying on behalf of a slate of candidates headed by Donnie Newsome, the successful candidate for County Judge Executive in the May 1998 Knott County, Kentucky primary election. Calhoun paid two persons to vote by absentee ballot.

*United States v. Conley.* On March 28, 2003, a federal grand jury indicted Jimmy Lee Conley on five counts of vote-buying and one count of making a false statement in a matter within federal jurisdiction. Conley was charged with paying five persons to vote by absentee ballot for a slate of candidates headed by Donnie Newsome, the successful candidate for County Judge Executive. During the investigation, Conley allegedly made false statements to an agent of the FBI. A jury acquitted Conley on June 19, 2003.

*United States v. Johnson.* On April 24, 2003, a federal grand jury indicted Newton Johnson on four counts of vote-buying, one count of making a false statement in a matter within federal jurisdiction, and two counts of obstructing justice. On June 2, 2003, Johnson pled guilty pursuant to a plea agreement to one count of vote-buying, and one count of obstructing justice. Johnson paid four persons to vote by absentee ballot in the May 1998 Knott County, Kentucky primary election. Johnson paid the voters to vote for a slate of candidates headed by Donnie Newsome, the successful candidate for County Judge Executive. During the investigation of this vote-buying, Johnson made a false statement to an agent of the FBI, and pressured grand jury witnesses to falsely deny that he bought their votes. Pursuant to his plea agreement, Johnson pled guilty to paying one of the voters for her vote, and to endeavoring to obstruct the grand jury investigation by urging her to lie under oath. Johnson agreed to cooperate with the government. On October 6, 2003, Johnson was sentenced to three years of probation. Johnson had previously testified at the trial of Donnie Newsome to the nature and extent of the broader conspiracy to approach and pay numerous impoverished, handicapped, illiterate, or otherwise impaired persons to vote for the slate of candidates headed by Newsome. Newsome offered Johnson a road improvement and a county job in exchange for participation in the conspiracy. Johnson, who is impoverished, illiterate, and unable to leave his remote mountain hollow without the road improvement, agreed and purchased the votes of four persons. A jury convicted Newsome on all counts.

*United States v. Madden.* On March 28, 2003, a federal grand jury indicted Patrick Wayne Madden on three counts of vote-buying and one count of making a false statement in a matter within federal jurisdiction. On October 6, 2003, Madden pled guilty to one count of vote-buying. Madden paid three persons to vote by absentee ballot for a slate of candidates headed by Donnie Newsome, the successful candidate for County Judge Executive in the May 1998 Knott County, Kentucky primary election. During the investigation of this vote-buying, Madden made a false statement to an agent of the FBI. On February 2, 2004, Madden was sentenced to 20 months in prison and two years of supervised release. Madden pled guilty to one count of vote-buying. Madden paid three persons to vote by absentee ballot for a slate of candidates headed by Newsome.

*United States v. Newsome, Pigman, and Smith.* On April 24, 2003, a federal grand jury indicted sitting County Judge Executive Donnie Newsome and two of his supporters, Willard Smith and Keith Pigman, on one count of conspiracy to commit vote-buying. The grand jury further charged five substantive counts of vote-buying, one count charging Newsome, two counts charging Smith, one count charging Smith and Pigman, and one count charging all three defendants. Newsome, Pigman, and Smith, working together and with other conspirators, approached and paid numerous impoverished, handicapped, illiterate, or otherwise impaired persons to vote for Newsome by absentee ballot, resulting in a large increase in the rate of absentee voting, and long lines at the County Clerk's Office. Newsome won the election to remain the County Judge Executive.

On July 8, 2003, Pigman pled guilty pursuant to a plea agreement to conspiracy to commit vote-buying, and one count of vote-buying. Pigman cooperated with the government following his plea, and provided substantial assistance by testifying against Newsome and Smith. Pigman explained the nature and extent of the broader conspiracy to approach and pay numerous impoverished, handicapped, illiterate, or otherwise impaired persons to vote for the slate of candidates headed by Newsome. Pigman further explained that such voters were purposefully chosen because they would present severe credibility problems for the government in any investigation and prosecution of their conspiracy. Newsome offered and ultimately gave Pigman a county job in exchange for Pigman's participation in the conspiracy. On October 30, 2003, Pigman was sentenced to four months of imprisonment, four months of community confinement, and two years of supervised release. On October 1, 2003, a jury convicted both Newsome and Smith on all counts. Newsome, while in office as a Kentucky State Representative, became a candidate for County Judge Executive. Newsome, Pigman, and Smith, working together and with other conspirators, approached and paid numerous persons to vote for Newsome and certain other candidates by absentee ballot, resulting in a large increase in the rate of absentee voting, and long lines at the County Clerk's Office. Newsome, who won the primary election and subsequent elections, was ordered detained pending sentencing, together with Smith, in light of threats to government witnesses during the trial.

On March 16, 2004, Newsome, the former County Judge Executive for Knott County, Kentucky, was sentenced to 26 months of in prison, a \$20,000 fine, and three years of supervised release. Smith was sentenced to 24 months in prison, a \$5,000 fine, and three

years of supervised release. A jury previously convicted Newsome and Smith on all counts of an indictment that charged them with conspiracy to buy votes and five counts of vote-buying. Pigman, previously pled guilty to the conspiracy charge, and was sentenced to four months in prison, four months of community service, and two years of supervised release.

*United States v. Ronnie Slone and Brady Slone.* On March 28, 2003, a federal grand jury indicted Ronnie Neal Slone and Brady Warren Slone (who are brothers) on three counts of vote-buying, and on one count each of making a false statement in a matter within federal jurisdiction. The Slones allegedly paid three persons to vote by absentee ballot for a slate of candidates headed by Donnie Newsome. During the investigation of this vote-buying, each of the Slones allegedly made a false statement to an agent of the FBI. On August 15, 2003, a jury acquitted both defendants.

*United States v. Phillip Slone.* On March 28, 2003, a federal grand jury indicted Phillip Slone (who is not directly related to Ronnie and Brady Slone) on seven counts of vote-buying and one count of making a false statement in a matter within federal jurisdiction. On June 4, 2003, Slone pled guilty pursuant to a plea agreement to one count of vote-buying. Slone paid seven persons to vote for a slate of candidates headed by Homer Sawyer, the unsuccessful incumbent candidate for County Judge Executive in the May 1998 Knott County, Kentucky primary election. During the investigation of this vote-buying, Slone made a false statement to an agent of the FBI. On October 15, 2003, Slone was sentenced to ten months in prison and two years supervised release. Slone appealed his sentence and the district court's jurisdiction, and that appeal is pending.

## Prosecution Of Electoral Fraud Under United States Federal Law

By Craig Donsanto

In Prosecution of Electoral Fraud, Donsanto discusses what sort of conduct is currently considered to be actionable as vote fraud, the historical background for the role of the criminal prosecutor in this area, and the various federal laws and juridical precedents governing the prosecution of vote fraud. It is a very useful document for understanding the current Department of Justice's view of its mission in this area, its interpretation of the federal laws governing its work, and how the Department has and has not been able to utilize applicable provisions.

Donsanto stresses that because electoral administration is primarily a state rather than a federal matter, the federal government usually only has authority over electoral issues where: federal candidates are standing for election; a corrupt act occurs; a federal instrumentality is employed in the fraud; the fraud involves the participation of public officials "acting under color of law" in such a manner that the constitutional right to Due Process and/or Equal Protection is violated; and/or the fraud is motivated by an intent to deprive a class of voters who's rights have been specifically guaranteed by the United States Constitution.

Donsanto defines election fraud as "a substantive irregularity relating to the voting act--- such as bribery, intimidation, or forgery---which has the potential to taint the election itself." Specifically, this includes:

- \* Preventing voters from participating in elections where a federal candidate is on the ballot, or when done "under color of law" in any election—18 U.S.C. sections 241 & 242.
- \* Vote buying, 42 U.S.C. section 1973i(c).
- \* Voting more than once, 42 U.S.C. section 1973i(e).
- \* Fraudulent voting, 42 U.S.C. sections 1973i(c), 1973i(e) & 1973gg-10.
- \* Intimidating voters through physical duress in any election, 18 U.S.C. section 245(b)(1)(A), or through physical or economic threats in connection with their registering to vote or their voting in federal elections, 42 U.S.C. section 1973gg-10, or to vote for a federal candidate, 18 U.S.C. section 594.
- \* Malfeasance by election officials acting "under color of law" for actions such as ballot-box stuffing, falsely tabulating votes, or preventing valid voter registrations or votes from being given effect in any election, 18 U.S.C. sections 241 & 242, as well as in elections where federal candidates are on the ballot, 42 U.S.C. sections 1973i(c), 1973i(e) & 1973gg-10.

- \* Submitting fictitious names on voter registration roles, 42 U.S.C. sections 1973i(c) & 1973gg-10.
- \* Knowingly procuring eligibility to vote for federal office by persons who are not entitled to vote under applicable state law, 42 U.S.C. sections 1973i(c) & 1973gg-10 (criminal voting—prohibited in approximately 40 states) and 42 U.S.C. sections 1973i(c), 1972gg-10, 18 U.S.C. 1015(f) & 611 (non-citizen voting).
- \* Knowingly making a false claim of United States citizenship to register to vote in any election, 18 U.S.C. section 1015(f), or falsely claiming United States citizenship for registering or voting in any election, 18 U.S.C. section 911.
- \* Providing false information concerning a person's name, address or period of residence in a district in order to establish that person's eligibility to register or to vote in a federal election, 42 U.S.C. sections 1973i(c) & 1973gg-10.
- \* Causing the production of voter registrations that qualify alleged voters to vote for federal candidates, or the production of ballots in federal elections, that the actor knows are materially defective under applicable state law, 42 U.S.C. section 1973gg-10.
- \* Using the United States mails, or interstate wire facilities, to obtain the salary and emoluments of an elected official through any of the activities mentioned above, 18 U.S.C. sections 1341 & 1343.
- \* Ordering, keeping or having under one's authority or control any troops or armed men at any polling place in any election. The actor must be an active civilian or military officer or an employee of the United States government, 18 U.S.C. section 592.
- \* Intimidating or coercing a federal employee to induce or discourage "any political activity" by that employee, 18 U.S.C. section 610.

#### Other Points of Interest

- Most election fraud is aimed at corrupting elections for local offices, which control or influence patronage positions. Election fraud occurs most frequently where there are fairly equal political factions, and where the stakes involved in who controls public offices are weighty -- as is often the case where patronage jobs are a major source of employment, or where illicit activities are being protected from law enforcement scrutiny
- Vote buying offenses have represented a sizable segment of the federal election crime docket in modern times.
- Voter intimidation requires proof of a difficult element: the existence of physical or economic intimidation that is intended by the defendant and felt by the victim. The crime of voter "intimidation" normally requires evidence of threats, duress, economic coercion, or some other aggravating factor which tends to improperly induce conduct on the part of the victim. If such evidence is lacking, an



alternative prosecutive theory may apply to the facts, such as multiple voting in violation of 42 U.S.C. ' 1973i(e). As with other statutes addressing voter intimidation, in the absence of any jurisprudence to the contrary, it is the Criminal Division's position that section 1973gg-10(1) applies only to intimidation that is accomplished through the use of threats of physical or economic duress. Voter "intimidation" accomplished through less drastic means may present violations of the Voting Rights Act, 42 U.S.C. § 1973i(b), which are enforced by the Civil Rights Division through noncriminal remedies.

- Section 1973gg-10(2) is a specific intent offense. This means that the offender must have been aware that citizenship is a requirement for voting and that the registrant did not possess United States citizenship. In most instances, proof of the first element is relatively easy because the citizenship requirement is stated on the voter registration form, and the form requires that the voter check a box indicating that he or she is a citizen. Proof of the second element, however, may be more problematic, since the technicalities of acquiring United States citizenship may not have existed in the culture of the registrant's country of birth, or otherwise been evident to him, and because the registrant may have received bad advice concerning the citizenship requirement. These issues can also usually be overcome by the fact that all voter registration forms now require a registrant to certify that he or she is a citizen. Section 611 is a relatively new statute that creates an additional crime for voting by persons who are not United States Citizens .It applies to voting by non-citizens in an election where a federal candidate is on the ballot, except when: (1) non-citizens are authorized to vote by state or local law on non-federal candidates or issues, and (2) the ballot is formatted in a way that the non-citizen has the opportunity to vote solely for the non-federal candidate or issues on which he is entitled to vote under state law. Unlike section 1015(f), section 611 is directed at the act of voting, rather than the act of lying. But unlike section 1015(f), Section 611 is a strict liability offense in the sense that the prosecution must only prove that the defendant was not a citizen when he registered or voted. Section 611 does not require proof that the offender be aware that citizenship is a prerequisite to voting.

## Election Protection 2004

By the Election Protection Coalition

### **Election Protection – the Program**

Election Protection 2004 was the nation's most far-reaching effort to protect voter rights before and on Election Day. The historic nonpartisan program included:

- A toll-free number, 1-866-OUR-VOTE, with free, immediate and multi-lingual assistance to help voters with questions about registration and voting, and assist voters who encounter barriers to the ballot box.
- Distribution of more than five million "Voters' Bills of Rights" with state-specific information
- 25,000 volunteers, including 6,000 lawyers and law students, who watched for problems and assisted voters on the spot at more than 3,500 predominantly African-American and Latino precincts with a history of disenfranchisement in at least 17 states.
- Civil rights lawyers and advocates represented voters in lawsuits, preserved access to the polls, exposed and prevented voter intimidation, worked with election officials to identify and solve problems with new voting machines, technology and ballot forms, and protected voter rights in advance and on Election Day.

### **Voter Intimidation and Suppression Stories (Abridged)**

- An Associated Press story noted Election Protection's exposure of reported voter suppression tactics in Colorado: Officials with the Election Protection Coalition, a voter-rights group, also said some voters in a predominantly black neighborhood north of Denver found papers on their doorsteps giving them the wrong address for their precinct
- Election Protection received a report from Florissant County, Missouri from a voter who lives in predominantly white neighborhood. While waiting in line to vote, a Republican challenger challenged the black voters by requesting more proof of identification, residence, and signature match, while asking nothing from white voters. Also, the same voter reportedly asked a few questions about voting but an election officials refused to provide any meaningful answer, insisting that "it's very simple", but provided white voters with information when requested. There was one other black voter in line who was also singled out for same treatment while white voters were not.
- Election Protection received a report from Boulder County, Colorado that a poll worker made racist comments to Asian American voter and then told her she was not on the list and turned her away. The voter saw others filling out provisional ballots and asked for one but was denied. Another Asian American woman behind

her in line was also given trouble by the same poll worker (he questioned her nationality and also turned her away).

- The Election Protection hotline received reports from Pinellas County, Florida that individuals purporting to be from the Kerry campaign are going door-to-door handing out absentee ballots, and asking voters to fill them out, and then taking the ballots from them, saying "Vote here for Kerry. Don't bother going to the polls."
- The Election Protection Coalition received a report from a woman whose sister lives in Milwaukee and is on government assistance. Her sister was reportedly told by her "case manager" that if she voted for Kerry, she would stop receiving her checks.
- An illiterate, older and disabled voter in Miami-Dade asked for assistance reading the ballot and reported that a poll worker yelled at him and refused to assist him and also refused to allow him to bring a friend into the booth in order to read the ballot to him.
- The Election Protection Coalition have gathered reports that flyers are circulating in a black community in Lexington, South Carolina claiming they those who are behind on child support payments will be arrested as the polls.
- Minority voters from Palm Beach County, Florida reported to the hotline that they received middle-of-the-night, live harassing phone calls warning them away from the polls.
- A volunteer for Rock the Vote reported that two illiterate voters in Michigan requested assistance with their ballots but were refused and reportedly mocked by poll workers.
- The hotline received a call from a radio DJ in Hillsborough County, Florida, who stated that he has received many calls (most of which were from African-Americans) claiming that poll workers were turning voters away and not "letting" them vote.
- The hotline received a call from Pima County, Arizona, indicating that Democratic voters received calls throughout Monday evening, providing incorrect information about the precinct location. Voters have had to be transported en masse in order to correct the problem.
- A caller from Alabama claims that he was told at his polling place that he could vote there for everything but the President and that he would have to go elsewhere in order to vote for a presidential candidate.

- Poll monitors in Philadelphia reports groups of lawyers, traveling in threes, who pull voters out of line and challenge them to provide ID, but when challenged themselves, they hop into waiting cars or vans and leave. Similar activity by Republican lawyers in Philadelphia was reported in the 2002 election.
- In Cuyahoga, Ohio, a caller reported that all black voters are being asked to show ID, while white voters are not. Caller report that he is black and had to show ID while his girlfriend is white and did not have to show ID.
- Two months ago, suspicious phone calls to newly registered Democrats —telling them they weren't, in fact, registered to vote — were traced to the Republican headquarters in the Eastern Panhandle. On Monday, Democrats there said the calls have started again, even after the Berkeley County Clerk — a Republican — sent the party a cease-and-desist letter. The Berkeley prosecutor, who also is county Democratic chairman, has called on the U.S. attorney to investigate.
- In Tuscon, Arizona a misleading call informing voters that they should vote on November 3 has been traced back to the state GOP headquarters. The FBI is investigating.
- A man driving around in a big van covered in American flags and a big picture of a policeman was reportedly parked in front of a polling place; he then got out and moved within the 75 ft limit, until he was asked to leave; he then was found inside the polling place and was again asked to leave. Election Protection volunteers contacted officials and the man was eventually removed.
- The Election Protection hotline has received a report from individuals who claim to have received recorded telephone message coming from Bill Clinton and ACT and reminding them to vote on Nov. 3rd.
- In Massachusetts, the EP Hotline has received a report that a radio station (WILD) is broadcasting that voters will be arrested on the spot if they have outstanding parking tickets.
- In Richland, South Carolina Election Protection has received a report of a poll manager turning away individuals who do not have photo ID issued to the county or a driver's license; an EP lawyer spoke with the Poll Manager at 8:20 am and told her that people with other forms of ID should be allowed to vote by provisional ballot.
- In Greenville, a caller reported that a white poll worker was asking Blacks for multiple form of I.D. Fortunately, the voter who reported the problem did have a second I.D. but reported that some others were turned away. Election Protection attorneys have alerted election officials.

- In Allegheny County, Pennsylvania, an official looking flyer advises Democratic voters to "create a peaceful voting environment" by voting on Wednesday, November 3
- The week before the election, flyers were circulated in Milwaukee under the heading "Milwaukee Black Voters League" with some "warnings for election time." The flyer listed false reasons for which you would be barred from voting (such as a traffic ticket) and then warned that "If you violate any of these laws you can get ten years in prison and your children will get taken away from you."
- There is a Jefferson County flyer which tells voters "See you at the Poles![sic]"... on November 4.

## Existing Literature Reviewed

### **Reports**

The Long Shadow of Jim Crow, People for the American Way and the NAACP

The New Poll Tax, Laughlin McDonald

Wisconsin Audit Report, Voter Registration Elections Board

Preliminary Findings, Milwaukee Joint Task Force Investigating Possible Election Fraud

Building Confidence in U.S. Elections, National Commission on Federal Election Reform (Carter/Baker Report)

Response to the Report of the 2005 Commission on Federal Election Reform (Carter/Baker Report), The Brennan Center and Professor Spencer Overton

Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – or Both?, Chandler Davidson

A Crazy Quilt of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law, Alec Ewald

Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election, American Center for Voting Rights

America's Modern Poll Tax, The Advancement Project

Analysis of the September 15, 2005 Voter Fraud Report Submitted to the New Jersey Attorney General, The Brennan Center and Professor Michael McDonald

Democracy at Risk: The November 2004 Election in Ohio, Democratic National Committee

Department of Justice Public Integrity Reports 2002, 2003, 2004

Prosecution of Election Fraud under United States Federal Law, Craig Donsanto

Election Protection 2004, Election Protection Coalition

The Federal Crime of Election Fraud, Craig Donsanto

Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote, General Accounting Office

Securing the Vote: An Analysis of Election Fraud, Lori Minnite

Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections, People for the American Way, NAACP, Lawyers Committee for Civil Rights

**Books**

Stealing Elections, John Fund

Steal this Vote: Dirty Elections and the Rotten History of Democracy in American, Andrew Gumbel

Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004, Tracey Campbell

A Funny Thing Happened on the Way to the White House, David E. Johnson and Jonny R. Johnson

Fooled Again, Mark Crispin Miller

**Legal**

*Indiana Democratic Party vs. Rokita*

*Common Cause of Georgia vs. Billup*

U.S. Department of Justice Section 5 Recommendation Memorandum (Georgia voter identification)

Fooled Again, Mark Crispin Miller

Fooled Again sets out to show that the 2004 election was won by Bush through nefarious means, and indicts the news media for not taking anomalies, irregularities, and alleged malfeasance in the process seriously enough.

Miller identifies a number of statistical anomalies based on polling and turnout results that he alleges puts the validity of the 2004 election in doubt. He accuses Republicans of committing crimes and improprieties throughout the country. These include deliberate disparities in voting machine distribution and long lines in Democratic jurisdictions; misinterpretation of voting laws by elections officials to the detriment of Democratic voters; dirty tricks and deceptive practices to mislead Democratic and minority voters about voting times, places and conditions; machine irregularities in Democratic jurisdictions; relocating polling sites in Democratic and minority areas; suspicious mishandling of absentee ballots; refusing to dispense voter registration forms to certain voter registration groups; intimidation of students; suspicious ballot spoilage rates in certain jurisdictions; "strategic distribution of provisional ballots," and trashing of provisional ballots; harassment of Native American voters; a Republican backed organization engaging in voter registration efforts throughout the country that allegedly destroyed the voter registration forms of Democrats; illegitimate challenges at the polls by Republican poll watchers; improper demands for identification in certain areas; Republican challenges to the voter registration status of thousands of voters before the election, and the creation of lists of voters to challenge at the polls; wrongful purging of eligible voters from voting rolls; partisan harassment; the selective placement of early voting sites; and the failure to send out absentee ballots in time for people to vote.

Miller details what he says was the inappropriate use of the Federal Voter Assistance Program that made voting for the military easy while throwing up obstacles for civilians overseas in their efforts to vote by absentee ballot, leading many of them to be disenfranchised. Miller says that most of the military voters would be Republicans and most of the overseas civilians Kerry voters.

In this book, Miller clearly tries to prove the Republican Party won the 2004 through illegitimate means. This must be kept strongly in mind in making any use of this work. However, the book is well sourced, and individual instances of alleged malfeasance discussed may be worth looking at.



## Summary and Relevant Excerpts From Georgia Voter ID Litigation

### Complaint For Declaratory And Injunctive Relief

The Secretary of State, as the Chief Election Officer in Georgia, informed the General Assembly before the passage of Act 53 in a letter (attached hereto as Exhibit A), and also informed the Governor in a letter (attached hereto as Exhibit B) before he signed the bill into law, that there had been no documented cases of fraudulent voting by persons who obtained ballots unlawfully by misrepresenting their identities as registered voters to poll workers reported to her office during her nine years as Secretary of State .

Although the Secretary of State had informed the members of the General Assembly and the Governor prior to the enactment of Act 53, that her office had received many complaints of voter fraud involving absentee ballots and no documented complaints of fraud that involve ballots that were cast in person at the polls, the General Assembly ignored this information and arbitrarily chose instead to require only those registered voters who vote in person to present a Photo ID as a condition of voting, but deliberately refused to impose the same requirement on absentee voters

### The Stated Purpose Of The Photo ID Requirement Fraud Is A Pretext

According to a press release prepared by the Communications Office of the Georgia House of Representatives, the purpose of Act 53 is:

... to address the issue of voter fraud by placing tighter restrictions on voter identification procedures. Those casting ballots will now be required to bring a photo ID with them before they will be allowed to vote.

Al Marks, Vice Chairman for Public Affairs and Communication of the Hall County GOP told the Gainesville Times:

I don't think we need it for voting, because I don't think there's a voter fraud problem. Gainesville Times, "States Voters Must Present Picture IDs" (September 15, 2005) ([www.gainesvilletimes.com](http://www.gainesvilletimes.com)).

There is no evidence that the existing provisions of Georgia law have not been effective in deterring and preventing imposters from fraudulently obtaining and casting ballots at the polls by misrepresenting their true identities to election officials and passing themselves off as registered voters whose names appear on the official voter registration list.

The pretextual nature of the purported justification for the burden which the Photo ID requirement imposes on the right to vote is shown by the following facts:

(a) Fraudulent voting was already prohibited by existing Georgia law without unduly burdening the right of a citizen to vote.

(i) Fraudulent voting was already prohibited as a crime under O.C .G.A. §§ 21-2-561, 21-2-562, 21-2-566, 21-2-571, 21-2-572 and 21-2-600, punishable by a fine of up to \$10,000 or imprisonment for up to ten years, or both.

(ii) Voter registration records are updated periodically by the Secretary of State and local election officials to eliminate people who have died, have moved, or are no longer eligible to vote in Georgia for some other reason.

(iii) Existing Georgia law also required election officials in each precinct to maintain a list of names and addresses of registered voters residing in that precinct, and to check off the names of each person from that official list as they cast their ballots.

(iv) Registered voters were also required by existing Georgia law to present at least one of the seventeen forms of documentary identification to election officials who were required, before issuing the voter a ballot, to match the name and address shown on the document to the name and address on the official roll of registered voters residing in the particular precinct. O .C .G.A.§ 21-2-417 .

(b) There is no evidence that the existing Georgia law has not been effective in deterring or preventing fraudulent in-person voting by impersonators - the only kind of fraudulent voting that might be prevented by the Photo ID requirement. To the contrary, the Secretary of State, who, as the Superintendent of Elections, is the highest election official in Georgia, informed both the General Assembly (Exhibit A) and the Governor (Exhibit B) in writing that there had been no documented cases of fraudulent in person voting by imposters reported to her during her nine years in office .

(c) If the true intention of the General Assembly had been to prevent fraudulent voting by imposters, the General Assembly would have imposed the same restrictions on the casting of absentee ballots - particularly after the Secretary of State had called to their attention the fact that there had been many documented instances of fraudulent casting of absentee ballots reported to her office.

(d) Fraudulent in-person voting is unlikely, would be easily detected if it had occurred in significant numbers, and would not be likely to have a substantial impact on the outcome of an election:

(i) Many people vote at a local neighborhood polling place where they are likely to be known to and recognized by neighbors or poll workers.

(ii) Voters were required by existing Georgia law (O .C.G.A. § 21-2-417), to provide one of the seventeen means of identification to election officials.

(iii) Election officials are required, before issuing the ballot to the voter, to check off the name of either voter from an up-to-date list of the names and addresses of every registered voter residing in the precinct. If an imposter arrived at a poll and was successful in fraudulently obtaining a ballot before the registered voter arrived at the poll, a registered voter, who having taken the time to go to the polls to vote, would undoubtedly complain to elections officials if he or she were refused a ballot and not allowed to vote because his or her name had already been checked off the list of registered voters as having voted. Likewise, if an imposter arrived at the polls after the registered voter had voted and attempted to pass himself off as someone he was not, the election official would instantly know of the attempted fraud, would not issue the imposter a ballot or allow him to vote, and presumably would have the imposter arrested or at least investigate the attempted fraud and report the attempt to the Secretary of State as Superintendent of Elections.

## EXHIBIT B

### Letter from Secretary of State Cathy Cox to Governor Sonny Purdue, April 8, 2005

One of the primary justifications given by the Legislature for the passage of the photo identification provisions of House Bill 244 - the elimination of voter ID fraud at the polls is an unfounded justification I cannot recall one documented case of voter fraud during my tenure as Secretary of State or Assistant Secretary of State that specifically related to the impersonation of a registered voter at voting polls. Our state currently has several practices and procedures in existence to ensure that such cases of voter fraud would have been detected if they in fact occurred, and at the very least, we would have complaints of voters who were unable to vote because someone had previously represented himself or herself as such person on that respective Election Day. As a practical matter, there is no possibility that vote fraud of this type would have gone undetected if it had in fact occurred because there is a list of registered voters at each polling place that is checked off as each person votes. If the impersonator voted first and the legitimate voter came to the polling place later in the day and tried to vote, he or she would be told that they had already voted and would not be allowed to vote a second time in the same day. It is reasonable to suspect that a voter who cared enough to show up at the polls to cast a ballot would almost certainly have complained - but there have been no such complaints. If the opposite occurred, and the legitimate person came to the polls first and cast his ballot, the impersonator who showed up later would not be allowed to vote for the same reason and the attempted fraud would have been prevented.

In addition, this slate has adopted severe criminal sanctions for the type of vote impersonation that is purportedly of concern and it is evident that such penalties have been a sufficient deterrent. In essence, there is no voter fraud problem currently in existence that House Bill 244 addresses.

In contrast to the lack of voter fraud relating to impersonation of voters at polls during my tenure the State Election Board has reviewed numerous cases of voter fraud relating to the use of absentee ballots.

### State Defendants' Initial Brief In Opposition To Plaintiffs' Motion For Preliminary Injunction

There are 159 counties and an even larger number of municipalities in Georgia that conduct elections. Neither the Secretary of State nor her staff can be physically present at the polling places for those elections and therefore could not possibly be aware of all in-person voter fraud that might occur. (Cox Decl. ¶ 6.)

Under the prior law before enactment of HB 244, it is beyond argument that in person voter fraud could have taken place. (Id. ¶ 5.) The Secretary of State's view of the scenario in which voter fraud would occur is when an imposter votes at the polling place and the actual voter shows up later and is unable to cast a ballot. (Id. ¶ 5.) However, the Secretary of State agrees that the scenario she describes is only one instance of potential voter

fraud, and both her scenario and others were possible under the law as it existed prior to the enactment of HB 244. (Id.) As stated by the Director of Elections for the Forsyth County Board of Elections, the typical case of in-person voter fraud would be committed by identifying persons who do not typically vote and then having other individuals vote as those persons. (Smith Decl. ¶ 4.)

The Executive Director of the Richmond County Board of Elections has been aware of such complaints, but has been unable to gather evidence to prove the violations because the nature of the conduct makes such evidence hard to develop. (Bailey Decl. ¶ 9.) Indeed, past incidents of fraudulent registrations in Forsyth County and Fulton County were reported to the District Attorneys' offices in those respective counties. (Smith Decl. ¶ 6; MacDougald Decl. ¶ 4.) In Fulton County, the fraudulent registrations were also reported to the United States Attorney for the Northern District of Georgia, and he has opened an investigation of the fraudulent registrations. (MacDougald Decl. ¶ 4.)

#### Order for a Preliminary Injunction

As part of the order, Judge Murphy describes the testimony of Harry MacDougald, a member of the Fulton County Board of Registration and Election. Mr. MacDougald had stated he had observed voter registration fraud, which he referred to the U.S. Attorney and the District Attorney. In addition, since some precinct cards the Board sent out in 2004 were returned as undeliverable, MacDougald believes they were not eligible voters, yet they were allowed to vote.

Although the Secretary of State said she knew of no incidents of impersonation at the polls, she and her staff are not physically present in every polling site. Secretary Cox stated local officials are in the best position to know of such incidents. The State Election Board has received a number of complaints of irregularities with respect to absentee ballots. Cox is also aware of a case of vote buying of absentee ballots. She is also aware of efforts to submit fraudulent registrations.

According to Secretary of State Cox, Georgia has procedures and practices in place to detect voter fraud. Those procedures include verifying the voter's correct address, as well as the voter's name, during the check-in process for in-person voters. Georgia also imposes criminal penalties for voter impersonation. Most violations of Georgia election laws are punishable as felonies. No evidence indicates that the criminal penalties do not sufficiently deter in-person voter fraud.

The integrity of the voter list also is extremely important in preventing voter fraud. The Atlanta Journal Constitution published an article indicating that Georgia had experienced 5,412 instances of voter fraud during a twenty-year period. Secretary of State Cox's office undertook an investigation in response to that article. The investigation revealed that the specific instance of voter fraud outlined in the Atlanta Journal-Constitution, involving a report that Alan J. Mandel had voted after his death, actually did not occur. Instead, an individual with a similar name, Alan J. Mandle, had voted at the polls, and the poll worker had marked Alan J. Mandel's name rather than marking Alan J. Mandle, the name of the individual who actually voted. Secretary of State Cox's office compared the

signature on the voter certificate to the voter registration card of the living individual, and concluded that the living individual, Alan J. Mandle, rather than the deceased Alan J. Mandel, had voted.

The Secretary of State's Office subsequently attempted to ensure that voter records were maintained and up to date. The Secretary of State's Office sends information concerning dead voters to local elections officials on a monthly basis, and now has the authority to remove the names of deceased voters from the voter rolls if the local elections officials fail to do so in a timely manner. Secretary of State Cox is not aware of any reports of dead individuals voting since her office received authority to remove the names of deceased individuals from the voter rolls.

There seems to be little doubt that the Photo ID requirement fails the strict scrutiny test: accepting that preventing voter fraud is a legitimate and important State concern, the statute is not narrowly drawn to prevent voter fraud. Indeed, Secretary of State Cox pointed out that, to her knowledge, the State had not experienced one complaint of in-person fraudulent voting during her tenure. In contrast, Secretary of State Cox indicated that the State Election Board had received numerous complaints of voter fraud in the area of absentee voting. Furthermore, the Secretary of State's Office removes deceased voters from the voting rolls monthly, eliminating the potential for voter fraud noted by the Atlanta Journal-Constitution article alleging that more than 5,000 deceased people voted during a twenty—year period.

Further, although Defendants have presented evidence from elections officials of fraud in the area of voting, all of that evidence addresses fraud in the area of voter registration, rather than in-person voting. The Photo ID requirement does not apply to voter registration, and any Georgia citizen of appropriate age may register to vote without showing a Photo ID. Indeed, individuals may register to vote by producing copies of bank statements or utility bills, or without even producing identification at all. The Photo ID law thus does nothing to address the voter fraud issues that conceivably exist in Georgia.



"Job Serebrov"

11/15/2005 07:23 PM

To jthompson@eac.gov

cc

bcc

Subject Re: Question

History This message has been replied to

Hey Julie, go home---you just got out of bed from being sick! The other project mentioned was the creation of an RFP for some large organization to develop a solution to the problem. My feeling is that we can do that without the need to farm out an RFP.

Job

--- jthompson@eac.gov wrote:

- > Job,
- >
- > I am afraid that I don't have an answer to this
- > question, as I am not sure
- > what the follow up contract would be for. I will
- > speak with Karen about
- > whatever follow up work there would be to this
- > project and get back with
- > you.
- >
- > Juliet E. Thompson
- > General Counsel
- > United States Election Assistance Commission
- > 1225 New York Ave., NW, Ste 1100
- > Washington, DC 20005
- > (202) 566-3100
- >
- >
- >
- > "Job Serebrov" [redacted]
- > 11/15/2005 05:02 PM
- >
- > To
- > jthompson@eac.gov
- > cc
- >
- > Subject
- > Question
- >
- >
- >
- >
- >
- >
- >
- > Julie:
- >
- > With everything worked out, this may be too early to
- > ask but I need some idea as soon as
- > possible---everyone mentioned that there may be
- > another six month contract to follow this one. What

> do  
> you see as the chances of that?  
>  
> Job  
>  
>  
>



"Job Serebrov"

11/15/2005 05:02 PM

To jthompson@eac.gov

cc

bcc

Subject Question

History

This message has been replied to and forwarded.

Julie:

With everything worked out, this may be too early to ask but I need some idea as soon as possible---everyone mentioned that there may be another six month contract to follow this one. What do you see as the chances of that?

Job

011090





"Job Serebrov"

11/10/2005 06:28 PM

To jthompson@eac.gov

cc wang@tcf.org

bcc

Subject Contract

History

This message has been forwarded

Julie:

I just read my contract and it is fine except for the termination clause. I have two issues with it. First, I am concerned with a short-term contract for personal services like this that can be terminated without cause. That really makes this no contract at all. Second, I am just as concerned with the two week notice provision. We are paid every thirty days. Termination should require thirty days. Of course, the second point is moot if termination is for cause only.

Please let me know what you think.

Job

011091



"Job Search"

10/31/2005 03:26 PM

To jthompson@eac.gov

cc psims@eac.gov

bcc

Subject Addition

Julie/Peggy:

In addition to my question about completion of our contracts---I am wondering whether you had a chance to address the working group issue and the law clerk issue?

Also, Peggy have you been able to get a response from DOJ?

Regards,

Job

011092



"Job Serebrov"

[Redacted]

10/19/2005 12:18 PM

To jthompson@eac.gov

cc

bcc

Subject Working Group List

Julie:

Here is my working group list. I still have not heard from two people but due to the size limitations I am sending what I have now:

- Cleta Mitchell (DC)
- Patrick Rogers (NM)
- Mark (Thor) Hearne II (MO)
- Mark Braden (DC)
- David Norcross (DC)
- Ben Ginsberg (DC)
- Todd Roketa, Sec of State, Indiana (IN)

I recommend that since we are limited to three Republicans and three Democrats that we pick Roketa, Rogers, and Hearne. We can use the rest for interviews.

Also, got an e-mail from Peggy but no info on what is needed for invoices. I assume our contracts will be signed in time to get us paid for this month.

Regards,



Job Cleta Mitchell Bio.doc W0528922.DOC Benjamin L Ginsberg.doc E. Mark Braden.doc TER.official.shortbio.7.15.05.doc




David A Norcross.doc Thor\_Hearne\_Resume\_5\_05.pdf

Dear Job Serebrov

Some additional information: I have put together and run election day / ballot security programs in Oklahoma and North Carolina; I testified before the House Judiciary Committee on HAVA and also worked closely with Sen. Kit Bond's office & staff on the drafting of the Senate version of the legislation. I now serve as outside counsel to the National Republican Senatorial Committee and have been putting together the preliminary outline of the ballot security program for the 2006 election cycle, working with the Office of Public Integrity of the Dept of Justice on this very topic. Let me know if you want/need more information.  
Thanks! Cleta

Cleta Mitchell

Washington, D.C.

  
P 202.295.4081

Cleta Mitchell  
Partner

Cleta Mitchell is a partner in the Washington, D.C. office of Foley & Lardner LLP as a member of the firm's Public Affairs Practice Group. Ms. Mitchell has more than 30 years of experience in law, politics and public policy. She advises corporations, nonprofit organizations, candidates, campaigns, and individuals on state and federal election and campaign finance law, and compliance issues related to lobbying, ethics and financial disclosure. Ms. Mitchell practices before the Federal Election Commission and similar federal and state enforcement agencies.

Ms. Mitchell was a member of the Oklahoma House of Representatives from 1976-1984 where she chaired the House Appropriations and Budget Committee. She served on the executive committee of the National Conference of State Legislatures.

Ms. Mitchell was in private law practice in Oklahoma City in litigation and administrative law until 1991 when she became director and general counsel of the Term Limits Legal Institute in Washington, D.C. She litigated cases in state and federal courts nationwide on congressional term limits. She served as co-counsel with former U.S. Attorney General Griffin Bell in the U.S. Supreme Court case on

011094

term limits for members of Congress.

Ms. Mitchell represents numerous Republican candidates, campaigns and members of Congress, including Senator Elizabeth Dole (R-NC), Sen. Jim Inhofe (R-OK) Sen. David Vitter (R-LA), Rep. Roy Blunt (R-MO) and Rep. Tom Cole (R-OK), among others. She is legal counsel to the National Republican Senatorial Committee. Ms. Mitchell served as co-counsel for the National Rifle Association in the Supreme Court case involving the 2002 federal campaign finance law.

Ms. Mitchell has testified before Congress several times and is a frequent speaker and guest commentator on election law and politics. In 1999, she authored *The Rise of America's Two National Pastimes: Baseball and the Law*, published by the *University of Michigan Law Review*.

Ms. Mitchell received her B.A. (high honors, 1973) and J.D. (1975) from the University of Oklahoma. She is admitted to practice in the District of Columbia, the State of Oklahoma, the Supreme Court of the United States and federal district and appellate courts.

# **PATRICK J. ROGERS**

## **PROFESSIONAL EMPLOYMENT**

1988-Present	Partner/Shareholder, Modrall, Sperling, Roehl, Harris and Sisk, P.A., Albuquerque, New Mexico
1993-1995	Executive Committee, Modrall, Sperling, Roehl, Harris & Sisk, P.A., Albuquerque, New Mexico
1983-1988	Associate Attorney, Modrall, Sperling, Roehl, Harris and Sisk, P.A., Albuquerque, New Mexico
1981-1983	Legislative Assistant to U.S. Senator Harrison H. Schmitt
1976-1981	Land Law Examiner, Bureau of Land Management, Santa Fe, New Mexico and Washington, D.C.

## **EDUCATION**

J.D.	GEORGETOWN UNIVERSITY SCHOOL OF LAW, Washington, D.C. - December, 1981 Dean's List, Law Fellow
B.A.	UNIVERSITY OF NEW MEXICO, December, 1976 Magna Cum Laude Major - Political Science/Economics

## **PROFESSIONAL ORGANIZATIONS/ACTIVITIES**

1997-2002	Mountain States Legal Foundation, Litigation Board of Directors
1991-2003	General Counsel to the New Mexico Republican Party, Executive Committee Member
1993-2000	Counsel to the Bernalillo County Republican Party, Executive Committee Member
1983-Present	Albuquerque Bar Association
1983-Present	New Mexico Bar Association
1983-Present	American Bar Association, Litigation and Trial Sections
1988	Law Day Chairman, State Bar of New Mexico

## **COMMUNITY ACTIVITIES**

2000-2003	Dismas House Board of Directors
1997-2000	Economic Forum Board of Directors
1990-1995	Governor's Organized Crime Prevention Commission
1989-Present	Kiwanis
1985-1998	YABL Basketball Coach; NWRG - Alameda Soccer Coach
1987-1991	Special Assistant District Attorney, Bernalillo County
1989-1991	Metropolitan Court Judicial Selection Committee

## **PRACTICE AREAS (AV Rated Martindale-Hubbell)**

Commercial, Administrative and Constitutional Litigation  
Lobbying: (Representative clients: Newmont Mining Company, Duke Energy North America and Verizon Wireless)

## **PUBLICATIONS**

Survey of the New Mexico Privacy and Related Claims against the Media for the National Libel Research Defense Counsel

Reporters Committee for Freedom of the Press: New Mexico Open Records, Open Meetings and Related Constitutional Issues

New Mexico Reporter=s Handbook on Media Law

Reporters Committee for Freedom of the Press: ATapping Officials= Secrets@

### **ELECTION LAW EXPERIENCE**

*The Coalition to Expose Ballot Deception, et al v. Judy N. Chavez, et al*; Second Judicial District Court of Bernalillo County, New Mexico (2005); represented plaintiffs challenging petition procedures.

*Miguel Gomez v. Ken Sanchez and Judy Chaves*; Second Judicial District Court of Bernalillo County, New Mexico (2005); residency challenge.

*Moises Griego, et al v. Rebecca Vigil-Giron v. Ralph Nader and Peter Miguel Camejo*, Supreme Court for the State of New Mexico (2004); represented Ralph Nader and Peter Camejo, ballot access issues.

*Larry Larrañaga, et al v. Mary E. Herrera and Rebecca Vigil-Giron*, Supreme Court of New Mexico (2004); voter identification and fraudulent registration issues.

*Decker, et al v. Kunko, et al*; District Court of Chaves County, New Mexico (2004); voter identification and fraudulent registration issues.

*Kunko, et al v. Decker, et al*; Supreme Court of New Mexico (2004); voter identification and fraudulent registration issues.

*In the Matter of the Security of Ballots Cast in Bernalillo County in the 2000 General Election*; Second Judicial District Court of Bernalillo County, New Mexico (2000); voting and counting irregularities and fraud.

*Larrogoite v. Vigil-Giron and Archuletta*; First Judicial District Court of Santa Fe County, New Mexico (1990); petition challenge, U.S. House of Representatives

Benjamin L. Ginsberg represents numerous political parties, political campaigns, candidates, members of Congress and state legislatures, Governors, corporations, trade associations, vendors, donors and individuals participating in the political process.

In both the 2004 and 2000 election cycles, Mr. Ginsberg served as national counsel to the Bush-Cheney presidential campaign; he played a central role in the 2000 Florida recount. He also represents the campaigns and leadership PACs of numerous members of the Senate and House, as well as the Republican National Committee, National Republican Senatorial Committee and National Republican Congressional Committee. He serves as counsel to the Republican Governors Association and has wide experience on the state legislative level from directing Republican redistricting efforts nationwide following the 1990 Census and being actively engaged in the 2001—2002 round of redistricting.

In addition to advising on election law issues, particularly those involving federal and state campaign finance laws, ethics rules, redistricting, communications law, and election recounts and contests, Mr. Ginsberg represents clients before Congress and state legislatures.

Before entering law school, he spent five years as a newspaper reporter on The Boston Globe, Philadelphia Evening Bulletin, The Berkshire (Mass.) Eagle, and The Riverside (Calif.) Press-Enterprise. He has been adjunct professor of law at the Georgetown University Law Center lecturing on law and the political process.

**Education**

- Georgetown University Law Center, J.D., 1982
- University of Pennsylvania, A.B., 1974

**Bar Admissions**

- District of Columbia

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**E. Mark Braden**

Of Counsel

mbraden@bakerlaw.com

**Education:**

J.D., Washington and Lee University School of Law, 1976

B.A., Washington and Lee University, 1973

**Bar Admissions:**

U.S. Supreme Court, 1983

U.S. District Court, District of Columbia, 2002

District of Columbia, 1989

Ohio, 1976

**Summary:**

E. Mark Braden concentrates his work principally on election law and governmental affairs. This field includes work with Congress, the Federal Election Commission, state campaign finance agencies, public integrity issues, political broadcast regulation, contests, recounts, the Voting Rights Act, initiatives, referendums and redistricting. Each is an area in which he has substantial knowledge and unusual experience.

Mr. Braden spent ten years as Chief Counsel to the Republican National Committee prior to joining Baker & Hostetler. He has worked intimately with many elected officials, the major national political consultants and pollsters providing successful, and often highly innovative, legal guidance. For example, in campaign finance, he can rightly claim to be the father of "soft money" as now used in national political campaigns. In redistricting, he has argued successfully at the U.S. Supreme Court and has been involved in litigation across the nation. In addition to his experience in the area of federal election law, Mr. Braden is widely recognized as an authority on state election laws, having served as Chief Counsel to the Ohio Elections Commission and Election Counsel for the Secretary of State in Ohio. He has been a principal lawyer in many of the largest recounts in our political history.

Mr. Braden was a key negotiator for the site city agreements and many of the other contracts for four Republican National Conventions and has been special counsel to the House Administration Committee. He has also worked with many nonprofit organizations on government affairs issues.

Mr. Braden has testified before congressional committees and the Federal

Election Commission on numerous occasions. His experience in these areas has been recognized by numerous invitations to be a guest lecturer at universities and institutes across the nation.

Mr. Braden is a member of the adjunct faculty of George Washington University and a former Captain of the United States Army Reserve.

Washington, D.C. Office

202.861.1504 - phone

202.861.1783 - fax



## SECRETARY OF STATE STATE OF INDIANA

**TODD ROKITA**  
SECRETARY OF STATE

### **Indiana Secretary of State Todd Rokita Biographical Information**

At the age of 35, Secretary Rokita is the second youngest Secretary of State in the country. First elected to the third highest office in state government in 2002, Secretary Rokita served for a year as the youngest Secretary of State in the nation.

As Indiana's chief election official, Secretary Rokita continues to work on reforming Indiana's election practices to ensure Indiana's elections are as fair, accurate and accessible as possible. By embracing technology and accountability, Secretary Rokita is leading the effort to make Indiana a 21<sup>st</sup> century election administration model. Rokita serves on the nine-member Executive Board of the Election Assistance Commission Standards Board, charged by federal law to address election reform issues. Secretary Rokita has testified about Indiana's voting reform efforts before the United States Congress.

Secretary Rokita also serves as Indiana's chief securities fraud investigator. Secretary Rokita's office has uncovered investor fraud scams and helped secure numerous felony convictions and thousands of dollars in restitution.

In his role as the head of Indiana's Business Services Division, Secretary Rokita has continued making Indiana a pioneer in e-government initiatives.

As Secretary of State, Rokita visits each of Indiana's 92 counties at least once each year. Rokita continues to serve as a precinct committeeman during each election, and was recently named as one of the "40 under 40" by the Indianapolis Business Journal.

A native of Munster, he holds a law degree from Indiana University School of Law-Indianapolis and a Bachelor of Arts degree from Wabash College. At Wabash, Rokita earned distinction as an Eli Lilly Fellow. After law school, Secretary Rokita worked as a practicing attorney.

Rokita began serving in the Secretary of State's office in 1997. As the Deputy Secretary of State and in other positions, Rokita helped implement user-friendly e-government services, provided tougher securities enforcement, and championed significant election reforms.

Secretary Rokita is active in the National Association of Secretaries of State, having served in 2004 as the Chair of the Voter Participation Committee and serving in 2005 as the Vice Chair of the organization's Securities Committee.

Secretary Rokita is a member of the Director's Circle of the Indiana Council for Economic Education, the state and local bar Associations, the Knights of Columbus, and the National Rifle Association. A commercial-rated pilot, Secretary Rokita volunteers his time by flying people in need of non-emergency medical care to hospitals and clinics throughout the Midwest for treatment.

Secretary Rokita lives in Indianapolis with his wife, Kathy and they are members of St. Thomas More Parish.

###

**David A. Norcross**

**Present:**

National Committeeman, New Jersey Republican State Committee  
elected March 14, 1992

Attorney at Law, Blank Rome LLP, Trenton NJ, Washington D.C.  
Senior Principal, Blank Rome Government Relations LLC

**Previous:**

Chairman, New Jersey Republican State Committee, 1977 – 1981

General Counsel, Republican National Committee, 1993 – 1997

General Counsel, International Republican Institute

Counsel, The Center for Democracy

Vice Chairman, Commission on Presidential Debates

Executive Director, New Jersey Election Law Enforcement Commission

Member, Twentieth Century Fund Task Force on the Presidential Debate Process

**RNC:**

RNC Northeastern State Chairmen's Association, 1977 – 1981;  
Chairman, 1980 – 1981

Counsel, RNC Chairman Frank Fahrenkopf, 1983 – 1989

Counsel, Republican National Convention, 1988

RNC Committee on Arrangements, Republican National Convention, 1996

RNC Special Task Force on Primaries and Caucuses, 1996

Chairman, RNC Campaign Finance Task Force, 1997

Delegate, Republican National Convention, 1980, 1992, 1996, 2000, 2004

RNC Committee on Rules and Order of Business, Republican National Convention,  
1992, 1996, 2000; 2004

Chairman, RNC Committee on Arrangements, Republican National Convention, 2004

RNC Committee on Rules and Order of Business, 1992 -  
Chairman, 2005 -

**Personal:**

Spouse: Laurie L. Michel

Children: Spencer, Victoria

Education: B.S., University of Delaware; L.L.B. University of Pennsylvania

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Home - [REDACTED]  
Cell - [REDACTED]

## MARK F. (THOR) HEARNE, II

---

### Professional

1997 - Current Partner - Member Saint Louis, Missouri  
**Lathrop & Gage, L.C.**

- **General Counsel to Closely Held Businesses:** Clients concentrated in real estate and technology. As general counsel represented clients in negotiating complex commercial transactions, advised clients in general corporate matters including succession-planning, tax matters and litigation. Manage and supervise other counsel assisting in this representation. Counsel clients in public policy matters and the formation and management of private foundations, trusts, faith-based organizations and philanthropic enterprises. Lead litigation counsel in state and federal court (trial and appellate) and oversaw and managed litigation in state and federal court. Experienced in overseeing and managing significant state and federal litigation in Missouri, Michigan, Ohio, Florida, New Mexico, Wisconsin, Minnesota, Pennsylvania, Nevada, California, Georgia, Indiana, Iowa and other states.
- **Constitutional Law, Election Law and Government Relations:** General Counsel to various federal, state and local candidates, political parties and campaigns. State and national litigation counsel to candidates for state and federal office. Expertise in compliance with state and federal campaign finance regulation, matters concerning the conduct of an election and litigation concerning these issues. Advise businesses on compliance with state and federal campaign finance regulation and political activity. Representation of clients in matters concerning compliance with regulatory action by Federal Election Commission and the Missouri Ethics Commission. Village Attorney and Prosecutor, Town of Grantwood Village, Missouri (1995 - Present). Representation of clients in various municipal law matters and related litigation. Regional counsel to major national wireless-PCS telecommunications firm on matters of federal Telecommunications Act and state and local government litigation and regulation. Committee Member to Help America Vote Act committee appointed by Missouri Secretary of State Matt Blunt to advise on implementation of Help America Vote Act and related state legislation and rulemaking.
- **Real Estate, Banking and Property Rights:** Counsel to Federal and State financial institutions in complex real estate transactions and related financings involving governmental approvals, tax, environmental or other regulatory complexities. Successfully negotiated numerous multi-million dollar real estate transactions and represented clients in related real estate development, land use proceedings and litigation involving zoning and takings cases. Lead counsel to

## Mark F. (Thor) Hearne, II – cont.

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class of property owners in landmark federal Rails-to-Trails takings cases in U.S. Court of Claims.

- **Recent Professional Accomplishments:** Counsel to Republican National Committee, National Counsel to American Center for Voting Rights, National election counsel to Bush-Cheney, '04. Testified before U.S. House Administration Committee hearings into conduct of Ohio presidential election. Academic Advisor to Commission on Federal Election Reform (Baker-Carter Commission), General Counsel to Missouri Governor Matt Blunt and Missourians for Matt Blunt, Congressman Kenny Hulshof and Congressman Todd Akin. Advice campaigns on various matters of campaign finance (state and federal), litigation before Missouri Ethics Commission and campaign communication and political advertising. Counsel for successful intervenors in *Hawkins v. Blunt* federal litigation concerning Missouri provisional ballot procedures and the Help America Vote Act. Counsel for Bush-Cheney-2000 in *Bush-Cheney, 2000, Inc. v. Baker* 34 S.W.3d 410 (Mo. App, 2000), successful emergency appeal quashing Circuit Court order holding polls open beyond legal closing hour. Counsel for Plaintiffs in *Corbett v. Sullivan*, St. Louis County redistricting litigation (federal civil rights action) in U.S. District Court. Successful redistricting on behalf of Republican plaintiffs and NAACP intervenors. Counsel for Missouri Senator Bill Alter in successfully defending victory in 2005 Missouri Senate Special Election recount, Counsel to U.S. Congressmen Todd Akin in *Akin v. McNary*, successful defense of Congressman Akin's primary election recount. Counsel for Town of Grantwood Village in successful Fifth Amendment takings case in U.S. Court of Claims, *Grantwood Village v. United States*, 45 Fed Cl. 771 (Cl. Ct. 2000), (consolidated for partial summary judgment sub nomina *Glosemeyer v. United States*). Counsel for plaintiff in *Lowe v. American Standard*, federal jury trial in February 2005. Jury returned verdict for Plaintiff in full amount of claim in excess of \$500,000.

**1988–1997                      Partner - Principal Saint Louis, Missouri**  
**Ziercher & Hocker, P.C.**

- **General Counsel Closely Held Businesses** (see *description above*)  
Additionally, significant real estate related environmental experience including federal Clean Water Act – Wetlands issues.
- **Constitutional Law and Government Relations:** Village Attorney, Town of Grantwood Village (1995 –Present).

## Mark F. (Thor) Hearne, II - cont.

---

### Political Experience

- **2005:** National counsel to American Center for Voting Rights, Academic-Advisor to Commission on Federal Election Reform (Baker-Carter Commission), Counsel to Republican National Committee, counsel to Missouri Governor Matt Blunt and Missourians for Blunt. Campaign counsel to Congressman Kenny Hulshof, and Congressman Todd Akin. Testified before U.S. House Administration Committee in hearings into conduct of Ohio presidential election.
- **2004:** National election counsel to Bush-Cheney '04. Advised campaign on issues of national election law and litigation strategy and recruited and organized local counsel and oversaw election litigation in all battleground states. Delegate to Republican National Convention, Missouri State Republican Convention and Chairman of Missouri Republican Platform Committee and member of National Republican Platform Committee. General Counsel to Missouri Governor-elect Matt Blunt, Congressman Kenny Hulshof, and Congressman Todd Akin.
- **2003 - 2004:** Vice-President and Director of Election Operations for Republican National Lawyers Association, Chair of National Election Law School and Seminar, Orange County, California, August 2003 and Milwaukee, Wisconsin in July 2004. Advisor to California State Party counsel on Governor Arnold Schwarzenegger campaign and California recall election on Election Day operations and litigation.
- **2000 - 2002:** Republican National Lawyers Association, Vice-President-Director Election Operations, Counsel to Bush-Cheney - 2000, Inc., Coordinated Missouri Election Day Legal Team and counsel in *Bush-Cheney, 2000, Inc. v. Baker* (see above), Broward County, Florida Recount Team - Observer, Counsel to U.S. Congressman Todd Akin and Missouri Republican Party, Missouri State Republican Convention - Alternate - Clayton Township
- **1988:** Republican Candidate U.S. Congress, Missouri 3<sup>rd</sup> Cong. Dist - Successfully raised in excess of \$200,000 and received campaign fundraising support from former Secretary of Interior, Don Hodel, former U.S. Senator Bill Armstrong and former U.S. Congressman Tom Curtis, Chairman.
- **1986-1987** - Reagan Administration - U.S. Department of Education, Office for Civil Rights, Attorney-Advisor-Law Clerk.
- **1984 -1980** - Missouri Republican Convention, Alternate
- **1976** - National & Missouri Republican Convention, Page

### Professional Memberships

Admitted to practice before: U.S. Supreme Court, Michigan Supreme Court, Missouri Supreme Court, U.S. Court of Appeals - 8<sup>th</sup> Circuit, U.S. Court of International Trade, U.S. Court of Claims, U.S. Court of Appeals for the Federal Circuit, U.S. Court of Appeals for the Second Circuit. Member: Michigan Bar Association (tax, aviation and real estate law committees), Missouri Bar Association, Bar Association of Metropolitan St. Louis, American Bar Association; Named as one "Up and Coming Young Attorneys," St. Louis Business Journal. Named one of top ten attorneys in 2004 by Missouri Lawyers Weekly. Member, Republican National Lawyers Association.



## Mark F. (Thor) Hearne, II – cont.

---

### **Education**

**Washington University, School of Law** – St. Louis, Missouri -- 1986, *Juris Doctorate*

**Washington University** – St. Louis, Missouri – 1983, B.A. Biology - Psychology

**University of Tulsa** – Tulsa Oklahoma -- 1979 – 1980, Biology – Psychology

### **Interests**

FAA Licensed Pilot, Sunshine Mission – former member Board of Directors (faith-based inner-city ministry) and current advisory board member, Member Philanthropy Roundtable, National Public Radio – Political Commentator St. Louis Affiliate KWMU, Republican National Lawyers Association, former vice-president and board member, Westminster Christian Academy – former member Board of Directors.



"Job Serebrov"

10/18/2005 05:37 PM

To jthompson@eac.gov

cc

bcc

Subject Lists

Julie:

I just got an e-mail from Tova. She does expect me to add Republicans to the interview list. Tova and I are going to talk tomorrow. I think that making the final interview list will take some time as we need to see who is vetted off or removed from the working group list due to funding issues or other issues.

I do not intend to mention anything we discussed in my conversation with Tova. Please let me know how the Commissioner's discussion with the complaining party went.

Job

011108



"Job Serebroy"

10/18/2005 05:15 PM

To jthompson@eac.gov

cc

bcc

Subject Add to Tova's Working Group List

Julie:

Tova added this name to her list a few days ago.

Donna Brazile

Donna Brazile is Founder and Managing Director of Brazile and Associates, LLC. Brazile, Chair of the Democratic National Committee's Voting Rights Institute (VRI) and an Adjunct Professor at Georgetown University, is a senior political strategist and former Campaign Manager for Gore-Lieberman 2000 - the first African American to lead a major presidential campaign.

Prior to joining the Gore campaign, Brazile was Chief of Staff and Press Secretary to Congresswoman Eleanor Holmes Norton of the District of Columbia where she helped guide the District's budget and local legislation on Capitol Hill.

Brazile is a weekly contributor and political commentator on CNN's Inside Politics and American Morning. In addition, she is a columnist for Roll Call Newspaper and a contributing writer for Ms. Magazine.

A veteran of numerous national and statewide campaigns, Brazile has worked on several presidential campaigns for Democratic candidates, including Carter-Mondale in 1976 and 1980, Rev. Jesse Jackson's first historic bid for the presidency in 1984, Mondale-Ferraro in 1984, U.S. Representative Dick Gephardt in 1988, Dukakis-Bentsen in 1988, and Clinton-Gore in 1992 and

011109

1996.

In addition to working on political campaigns, Brazile has served as a senior lecturer and adjunct professor at the University of Maryland and a fellow at Harvard's Institute of Politics.

Brazile is the recipient of numerous awards and honors, including Washingtonian Magazine's 100 Most Powerful Women in Washington, D.C. and the Congressional Black Caucus Foundation's Award for Political Achievement.

Brazile, a native of New Orleans, Louisiana earned her undergraduate degree from Louisiana State University in Baton Rouge.



"Job Serebrov"

[REDACTED]  
10/18/2005 05:12 PM

To jthompson@eac.gov

cc

bcc

Subject Meeting

Julie:

As we just discussed, at this time and in light of the recent inquiry, I think it prudent to postpone our meeting in DC until the first or second week of November in order to:

1. Finalize the Working Group list (I am still waiting to hear from Kay James and Governor Barbour);
2. Finalize the Interview list;
3. Finish the search on existing voter fraud research;
4. Assure participation from the Department of Justice; and,
5. Get everyone on the same page and assure all outside parties that this will not be a radical venture

What do you think and can we get agreement on this with Peggy?

Regards,

Job

011111



"Job Serebrov"



10/18/2005 04:50 PM

To jthompson@eac.gov

cc

bcc

Subject lists



Democrat Working Group List.doc



interview\_list.doc

Bob Bauer, Perkins Coie, Democratic attorney  
Cathy Cox, Secretary of State, Georgia  
Barbara Arnwine, Lawyers Committee for Civil Rights under Law  
Daniel Tokaji, Moritz College of Law, The Ohio State University  
Wade Henderson, Leadership Conference for Civil Rights  
Laughlin McDonald, ACLU Voting Rights Project  
Wendy Weiser, Brennan Center

011113

## **TW List of Experts to Interview**

Bob Bauer, Perkins Coie, Democratic attorney  
Cathy Cox, Secretary of State, Georgia  
Barbara Arnwine, Lawyers Committee for Civil Rights under Law  
Daniel Tokaji, Moritz College of Law, The Ohio State University  
Wade Henderson, Leadership Conference for Civil Rights  
Laughlin McDonald, ACLU Voting Rights Project  
Wendy Weiser, Brennan Center  
Donna Brazile, Brazile and Associates, LLC  
Christopher Edley, Dean, Boalt Hall School of Law  
Joseph Sandler, Sandler, Reif & Young  
Chandler Davidson, Rice University  
Jay Eads, Deputy Secretary of State, Mississippi  
Allan Lichtman, American University  
Miles Rapoport, Demos  
Jonah Goldman, Lawyers Committee  
Ralph Neas, PFAW  
David Orr, Clerk, Cook County (Chicago)  
Connie McCormick, Los Angeles County Registrar  
John Ravitz, Board of Elections, New York City  
Dan Seligson, Electionline  
Lorri Minnite, Barnard College  
Kevin Kennedy, Director of Elections, Wisconsin  
Lisa Artison, Milwaukee Director of Elections  
Barbara Burt, Common Cause  
Sam Reed, Secretary of State, Washington  
Alaina Beverly, NAACP  
Hilary Shelton, NAACP  
Glenda Hood, Secretary of State, Florida  
Ned Foley, Ohio State University  
Ellick Hsu, Deputy Secretary of State, Nevada  
Harry VanSickle, Commissioner of Elections, Pennsylvania  
Chris Nelson, Secretary of State, South Dakota  
Heather Dawn Thompson, Native American Bar Association  
Nina Perales, MALDEF  
Margaret Fung, AALDEF  
Pam Karlan, Stanford Law  
Bill Lann Lee, former head of the Civil Rights Division, DOJ  
Deval Patrick, former head of the Civil Rights Division, DOJ  
Joseph Rich, former head of the Voting Section, DOJ  
Jeffrey Toobin, The New Yorker  
Mike Alvarez, Caltech  
Steve Ansolobhere, MIT



Local prosecutors where there were serious allegations of voter fraud and/or intimidation/deceptive practices



"Job Serebrov"

09/06/2005 11:46 AM

To twilkey@eac.gov, klynndyson@eac.gov, sda@mit.edu,  
wang@tcf.org, jthompson@eac.gov

cc

bcc

Subject Once again

I neglected to send the last attachment as a .doc.  
Please ignore it.



Job Task Contractor Sch.doc

011116

<b>Task</b>	<b>Contractor Deadline</b>	<b>EAC Response</b>	<b>Contractor Cure Time</b>
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<b>Project Plan</b>	<b>10 days after contracts signed</b>	<b>5 business days</b>	<b>5 business days</b>
---------------------	---------------------------------------	------------------------	------------------------

<b>Case research Search terms For law clerk</b>	<b>1 week after contracts signed</b>		
---	--------------------------------------	--	--

<b>First meeting</b>	<b>within 3 weeks of approved project plan</b>		
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<b>Defining fraud expert testimony</b>	<b>30-60 days after first meeting</b>		
--	---------------------------------------	--	--

<b>Defining fraud listing types</b>	<b>1 week after testimony</b>	<b>5 business days</b>	<b>5 business days</b>
---	-------------------------------	------------------------	------------------------

<b>Case research by law clerk</b>	<b>60 days: to begin when the project plan is approved</b>		
---------------------------------------	--	--	--

<b>Case division and analysis</b>	<b>30 days</b>		
---------------------------------------	----------------	--	--

<b>Assemble working group</b>	<b>60 days after project plan is approved</b>	<b>5 business days</b>	<b>10 business days</b>
-----------------------------------	---	------------------------	-------------------------

<b>Meet with working group</b>	<b>within 3 weeks after working group is assembled</b>		
------------------------------------	--	--	--

<b>Set up secure blog</b>	<b>within 1 week after working group meets</b>		
-------------------------------	--	--	--

<b>Finalizing the</b>			
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**issue**                      **30 days after meeting with the working group**

---

**Division of  
labor for  
summary report  
and drafting of  
report including  
possible solutions**

**within 45 days of  
meeting with the  
working group**

**10 business days 5 business days**

---



"Job Serebrov"

09/06/2005 11:42 AM

To twilkey@eac.gov, klynndyson@eac.gov, sda@mit.edu,  
wang@tcf.org, jthompson@eac.gov

cc

bcc

Subject Draft Schedule Proposal for Vote Fraud Group

I have attached a draft proposed schedule of events for our discussion today. Please keep in mind that this is only a proposal but I thought that we needed somewhere to start from.

Regards,



Job Task Contractor Deadline EAC

011119



"Job Serebrov"

08/26/2005 03:35 PM

To klyndyson@eac.gov, sda@mit.edu, wang@tcf.org

cc twilkey@eac.gov, nmortellito@eac.gov, jthompson@eac.gov

bcc

Subject Re: Kick off activities for the EAC Voting fraud/voter intimidation project

Karen:

Either day is fine for me.

Job


--- klyndyson@eac.gov wrote:

> All-  
>  
> Although Tom Wilkey and I are still working to  
> process each of your  
> contracts on this project, we would like to  
> tentatively schedule an  
> in-person meeting on September 12, here in  
> Washington.  
>  
> In the meantime, I'd like to propose that we all  
> have a short  
> teleconference call next Wednesday or Thursday at  
> 1:00 PM to begin to talk  
> through the scope of this project and the respective  
> roles and  
> responsibilities each of you might take on.  
>  
> Could you let me know your availability for a 45  
> minute call on August 31  
> or September 1 at 1:00?  
>  
> Thanks  
>  
> Karen Lynn-Dyson  
> Research Manager  
> U.S. Election Assistance Commission  
> 1225 New York Avenue , NW Suite 1100  
> Washington, DC 20005  
> tel:202-566-3123  
>

011120

**Deliberative Process  
Privilege**

Margaret Sims/EAC/GOV  
11/03/2006 07:38 PM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Job and Tova 

History

 This message has been replied to

I can review them over the weekend and attempt to summarize what they tell us.— Peggy

-----  
Sent from my BlackBerry Wireless Handheld  
Juliet E. Hodgkins  
----- Original Message -----

**From:** Juliet E. Hodgkins  
**Sent:** 11/03/2006 06:14 PM  
**To:** Margaret Sims  
**Subject:** Re: Job and Tova

I think we should use the content of those articles or some summary of them as a background of what we know about VF and VI. I just didn't want to have to read all of those articles to be able to make some generalized statements about their contents.

-----  
Sent from my BlackBerry Wireless Handheld  
Margaret Sims  
----- Original Message -----

**From:** Margaret Sims  
**Sent:** 11/03/2006 06:11 PM  
**To:** Juliet Hodgkins  
**Subject:** Re: Job and Tova

Julie:

All of the summaries received are in the shared drawer under T:\RESEARCH IN PROGRESS\VOTING FRAUD-VOTER INTIMIDATION\Research Summaries. There are too many of them to append to this message, or I would do it. The researchers did not propose to include these summaries in the report. Are you considering adding them?

If you want, I can cross reference each of these with the list of articles and ID any missing summaries. I could do that over the weekend. -- Peggy

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV  
11/03/2006 05:42 PM

To Margaret Sims/EAC/GOV@EAC  
cc  
Subject Job and Tova

I spoke to Job about the documents that I need. He will send me his summary of the articles/books that he read. However, he said that Tova also summarized some of those articles/books. I don't have a contact number/email for Tova. Could you contact her and ask her to provide us with any summary of the

011121

articles/books that she read as they are listed in Appendix 2?

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

011122



Margaret Sims/EAC/GOV  
11/03/2006 07:11 PM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Job and Tova

History

This message has been replied to

Julie:

All of the summaries received are in the shared drawer under T:\RESEARCH IN PROGRESS\VOTING FRAUD-VOTER INTIMIDATION\Research Summaries. There are too many of them to append to this message, or I would do it. The researchers did not propose to include these summaries in the report. Are you considering adding them?

If you want, I can cross reference each of these with the list of articles and ID any missing summaries. I could do that over the weekend. --- Peggy

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV  
11/03/2006 05:42 PM


To Margaret Sims/EAC/GOV@EAC  
cc  
Subject Job and Tova

I spoke to Job about the documents that I need. He will send me his summary of the articles/books that he read. However, he said that Tova also summarized some of those articles/books. I don't have a contact number/email for Tova. Could you contact her and ask her to provide us with any summary of the articles/books that she read as they are listed in Appendix 2?

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

011123


Margaret Sims/EAC/GOV  
11/02/2006 01:45 PM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
bcc  
Subject Re: did job and tova ever send us their working papers 

I'll have to send him an email to find out. I never heard from Tova on that subject. --- Peggy

Juliet E. Hodgkins/EAC/GOV


Juliet E. Hodgkins/EAC/GOV  
11/02/2006 12:37 PM

To Margaret Sims/EAC/GOV@EAC  
cc  
Subject Re: did job and tova ever send us their working papers 

I thought what he was talking about was pretty comprehensive, like all the cases they read, etc. It's been at least a month or more since we had that conversation, probably 2 months.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
Margaret Sims/EAC/GOV

Margaret Sims/EAC/GOV  
11/02/2006 12:33 PM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
Subject Re: did job and tova ever send us their working papers 

I'm not sure what he means by working papers. Job has already provided his spreadsheets on the case law reviewed and participated with Tova in drafting the pieces of the report they submitted. If he means his notes, and they were delivered during my absence, they might be in my in box. Job was moving from Arkansas to Nevada and may not have wanted to take them with him. How long ago did he ask about this? --- Peggy

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV  
11/01/2006 11:39 AM

To Margaret Sims/EAC/GOV@EAC  
cc  
Subject did job and tova ever send us their working papers


011124

Job called me once and asked me about how to send in the working papers. Did you receive those?

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

011125

Margaret Sims /EAC/GOV  
11/02/2006 01:33 PM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
bcc  
Subject Re: did job and tova ever send us their working papers 

History:  This message has been replied to

I'm not sure what he means by working papers. Job has already provided his spreadsheets on the case law reviewed and participated with Tova in drafting the pieces of the report they submitted. If he means his notes, and they were delivered during my absence, they might be in my in box. Job was moving from Arkansas to Nevada and may not have wanted to take them with him. How long ago did he ask about this? --- Peggy

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV  
11/01/2006 11:39 AM

To Margaret Sims/EAC/GOV@EAC  
cc  
Subject did job and tova ever send us their working papers

Job called me once and asked me about how to send in the working papers. Did you receive those?

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

011126



"Tova Wang" <wang@tcf.org>

01/10/2007 12:06 PM

To jhodgkins@eac.gov

cc

bcc

Subject RE:

I believe I have everything I need already, but will let you know if I discover that's not the case. Thank you!

Tova Andrea Wang, Democracy Fellow

**The Century Foundation**

1333 H Street, NW, Washington, D.C. 20005

(202) 741-6263

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---

**From:** jhodgkins@eac.gov [mailto:jhodgkins@eac.gov]

**Sent:** Wednesday, January 10, 2007 12:03 PM

**To:** wang@tcf.org

**Subject:** RE:

Based on your answer, I assume then that you are not asking us for any documents. Please confirm that this is correct.

Juliet Thompson Hodgkins

General Counsel

United States Election Assistance Commission

1225 New York Ave., NW, Ste 1100

Washington, DC 20005

(202) 566-3100

"Tova Wang" <wang@tcf.org>

01/10/2007 12:00 PM

To jhodgkins@eac.gov

cc twilkey@eac.gov, "Tova Wang" <wang@tcf.org>

Subject RE:

011127

Thanks Julie. Actually, I ended up doing all of the Nexis research myself on The Century Foundation's account. Using one of your interns to do it never worked out, as Job can also tell you. I assume that takes care of that issue. Thanks again. Tova

Tova Andrea Wang, Democracy Fellow  
**The Century Foundation**  
1333 H Street, NW, Washington, D.C. 20005  
(202) 741-6263  
Visit our Web site, [www.tcf.org](http://www.tcf.org), for the latest news, analysis, opinions, and events.

---

**From:** jhodgkins@eac.gov [mailto:jhodgkins@eac.gov]  
**Sent:** Wednesday, January 10, 2007 11:50 AM  
**To:** wang@tcf.org  
**Cc:** twilkey@eac.gov; 'Tova Wang'  
**Subject:** Re:

Tova,

I see no reason why we cannot allow you to have the research for your use. The one caveat to that is that this research was obtained on our Westlaw/Nexis accounts. Therefore, we would have to have an agreement from you that you would not reproduce or distribute those copyrighted materials. I will have one of my law clerks work on getting the information burned to a CD and drafting an agreement concerning the use of these documents.

I will be in touch with you next week to let you know when we will have these documents and agreement available.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

"Tova Wang" <wang@tcf.org>

01/08/2007 09:24 AM

To twilkey@eac.gov, jhodgkins@eac.gov  
CC "Tova Wang" <wang@tcf.org>  
Subject

011128

Dear Tom and Julie,

Happy New Year. I hope you both enjoyed the holidays.

As you know, I am well aware that the research Job and I produced belongs to the EAC. Nonetheless, I was wondering whether there might be some way I can use just the Nexis material solely for my own further research purposes. Anything I might publish using that underlying data as enhanced by my further research would be in my name and my name only, not that of the EAC. I put a tremendous amount of work into collecting and organizing that data and I would like the opportunity to continue this research on an ongoing basis. It would be a shame if it was not put to some further use.

Is there something we might arrange in this regard? Thanks so much.

Tova Andrea Wang, Democracy Fellow  
The Century Foundation  
1333 H Street, NW, Washington, D.C. 20005  
(202) 741-6263

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011129



"Tova Wang" <wang@tcf.org>

01/10/2007 12:00 PM

To jhodgkins@eac.gov

cc twilkey@eac.gov, "Tova Wang" <wang@tcf.org>

bcc

Subject RE:

History

This message has been replied to and forwarded

Thanks Julie. Actually, I ended up doing all of the Nexis research myself on The Century Foundation's account. Using one of your interns to do it never worked out, as Job can also tell you. I assume that takes care of that issue. Thanks again. Tova

Tova Andrea Wang, Democracy Fellow

**The Century Foundation**

1333 H Street, NW, Washington, D.C. 20005

(202) 741-6263

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---

**From:** jhodgkins@eac.gov [mailto:jhodgkins@eac.gov]

**Sent:** Wednesday, January 10, 2007 11:50 AM

**To:** wang@tcf.org

**Cc:** twilkey@eac.gov; 'Tova Wang'

**Subject:** Re:

Tova,

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I will be in touch with you next week to let you know when we will have these documents and agreement available.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

"Tova Wang" <wang@tcf.org>

011136



01/08/2007 09:24 AM

To [twilkey@eac.gov](mailto:twilkey@eac.gov), [jhodgkins@eac.gov](mailto:jhodgkins@eac.gov)

cc "Tova Wang" <[wang@tcf.org](mailto:wang@tcf.org)>

Subject

Dear Tom and Julie,

Happy New Year. I hope you both enjoyed the holidays.

As you know, I am well aware that the research Job and I produced belongs to the EAC. Nonetheless, I was wondering whether there might be some way I can use just the Nexis material solely for my own further research purposes. Anything I might publish using that underlying data as enhanced by my further research would be in my name and my name only, not that of the EAC. I put a tremendous amount of work into collecting and organizing that data and I would like the opportunity to continue this research on an ongoing basis. It would be a shame if it was not put to some further use.

Is there something we might arrange in this regard? Thanks so much.

Tova Andrea Wang, Democracy Fellow  
The Century Foundation  
1333 H Street, NW, Washington, D.C. 20005  
(202) 741-6263

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011131



"Tova Wang" <wang@tcf.org>

To twilkey@eac.gov, jhodgkins@eac.gov

01/08/2007 09:24 AM

cc "Tova Wang" <wang@tcf.org>

bcc

Subject

History

 This message has been replied to

Dear Tom and Julie,

Happy New Year. I hope you both enjoyed the holidays.

As you know, I am well aware that the research Job and I produced belongs to the EAC. Nonetheless, I was wondering whether there might be some way I can use just the Nexis material solely for my own further research purposes. Anything I might publish using that underlying data as enhanced by my further research would be in my name and my name only, not that of the EAC. I put a tremendous amount of work into collecting and organizing that data and I would like the opportunity to continue this research on an ongoing basis. It would be a shame if it was not put to some further use.

Is there something we might arrange in this regard? Thanks so much.

Tova Andrea Wang, Democracy Fellow  
The Century Foundation

1333 H Street, NW, Washington, D.C. 20005  
(202) 741-6263

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011132



"Tova Wang" <wang@tcf.org>

To jhodgkins@eac.gov

12/05/2006 09:09 AM

cc [REDACTED]

bcc

Subject RE: fraud and intimidation report

History:

This message has been replied to

Thanks Julie. What if we both agreed to sign a confidentiality agreement, embargoing any discussion of the report until after it is released? Tova

Tova Andrea Wang, Democracy Fellow  
The Century Foundation  
1333 H Street, NW, Washington, D.C. 20005  
(202) 741-6263  
Visit our Web site, [www.tcf.org](http://www.tcf.org), for the latest news, analysis, opinions, and events.

-----Original Message-----

From: jhodgkins@eac.gov [mailto:jhodgkins@eac.gov]  
Sent: Monday, December 04, 2006 4:57 PM  
To: wang@tcf.org  
Cc: serebrov@sbcglobal.net  
Subject: Re: fraud and intimidation report

Tova & Job,

As you know, because the two of you are no longer under contract with the EAC, EAC is not afforded the same protections as if you were still functioning as EAC employees. As such, releasing the document to you would be the same as releasing it to any other member of the public.

Thus, EAC will not be able to release a copy of the proposed final report to you prior to its consideration and adoption by the Commission. The Commission will take up this report at its meeting on Thursday, Dec. 7. I will have a copy available for you immediately following their consideration - assuming that they do not change the report during their deliberations and voting on Dec. 7. If changes are made, I will have a copy available to you as soon as possible following that meeting.

In the final report, you will see that EAC took the information and work provided by the two of you and developed a report that summarizes that work, provides a definition for use in future study, and adopts parts or all of many of the recommendations made by you and the working group. In addition, you will note that EAC will make the entirety of your interview summaries, case summaries, and book/report summaries available to the public as appendixes to the report.

I know that you are anxious to read the report and that you may have questions that you would like to discuss following the release of the report. Please feel free to contact me with those questions or issues.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission

011133

1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

wang@tcf.org

12/01/2006 02:07  
PM

jthompson@eac.gov

To

CC

"Job Serebrov"  


Subject  
fraud and intimidation report

Julie,

I understand from Tom Wilkey that you are planning on releasing our report at the public meeting next Thursday, December 7. As we discussed, I respectfully request that Job and I be permitted to review what you are releasing before it is released. I would like us both to be provided with an embargoed copy as soon as possible so we have time to properly review it before Thursday. I can be contacted by email, cell phone at 917-656-7905, or office phone 202-741-6263. I hope to hear from you soon. Thanks.

Tova

011134



"Tova Wang" <wang@tcf.org>

11/09/2006 04:54 PM

To bbenavides@eac.gov, [REDACTED]

cc twilkey@eac.gov, jhodgkins@eac.gov

bcc

Subject RE: Conference call

Sounds good. I will come by the EAC since its literally a few feet from my office. I look forward to seeing you. Tova

Tova Andrea Wang, Democracy Fellow  
**The Century Foundation**  
1333 H Street, NW, Washington, D.C. 20005

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---

**From:** bbenavides@eac.gov [mailto:bbenavides@eac.gov]  
**Sent:** Thursday, November 09, 2006 4:21 PM  
**To:** wang@tcf.org; [REDACTED]  
**Cc:** twilkey@eac.gov; jhodgkins@eac.gov; bbenavides@eac.gov  
**Subject:** Conference call

Tova, Job – I have scheduled 6:00 PM EST on Wednesday, November 15 for a conference call with Tom Wilkey and Julie Thompson-Hodgkins.

Conference call in # is 866-222-9044, Passcode 63114#

Bert A. Benavides  
Special Assistant to the Executive Director  
U. S. Elections Assistance Commission  
1225 New York Avenue, NW  
Suite 1100  
Washington, DC 20005  
202-566-3114

011135



"Tova Wang" <wang@tcf.org>

To jthompson@eac.gov

cc

11/18/2005 09:45 AM

bcc

Subject FW:

I understand Job asked you a question about including voting rights violations. This was my reply to his last email, just so you know where I'm coming from. Thanks.

-----Original Message-----

**From:** Tova Wang

**Sent:** Friday, November 18, 2005 9:44 AM

**To:** Job Serebrov

**Subject:**

The name of our project is voter fraud and voter intimidation. When its intimidation practices, that's us. I agree that we're not going to get into stuff like not having sufficient language materials at the polls, but nasty treatment of minorities clearly qualifies as part of our mandate.

**Tova Andrea Wang**

Senior Program Officer and Democracy Fellow

**The Century Foundation**

41 East 70th Street - New York, NY 10021

phone: 212-452-7704 fax: 212-535-7534

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---

[Click here](#) to receive our weekly e-mail updates.

011136



"Tova Wang" <wang@tcf.org>

09/07/2005 05:14 PM

To klynndyson@eac.gov, twilkey@eac.gov

cc jthompson@eac.gov, nmortellito@eac.gov, sda@mit.edu,  
"Job Serebrov" [REDACTED], wang@tcf.org

bcc

Subject work plan

Hi Karen and Tom,

As we discussed yesterday, attached is a preliminary work plan/division of labor for your review. Please let us know if this is sufficient for the present and if you have any comments or questions.

In terms of hours dedicated to the project, Job and Tova are able to commit to 15-20 hours per week assuming that includes reimbursed periodic travel. Steve can do approximately 2 hours per week. We have tentatively scheduled to meet at your offices in DC, if that is convenient for you, on September 20. We will be able to confirm that within the next day or so.

All of us are very eager to get started on this important work as soon as possible. However, because we also have other work related responsibilities, we are a bit reluctant to do so before having an opportunity to review our contracts. We look forward to receiving them so we can get going right away.

Thanks so much. Speak to you soon.

Tova, Job and Steve

-----Original Message-----

**From:** klynndyson@eac.gov [mailto:klynndyson@eac.gov]

**Sent:** Friday, September 02, 2005 3:19 PM

**To:** klynndyson@eac.gov; nmortellito@eac.gov

**Cc:** jthompson@eac.gov; nmortellito@eac.gov; sda@mit.edu; Job Serebrov; twilkey@eac.gov; wang@tcf.org

**Subject:** Re: Kick off activities for the EAC Voting fraud/voter intimidation project

All-

In anticipation of our 45-minute conference call scheduled for Tuesday, September 6 at 4:00 PM, I would ask the three consultants ( Steve, Job and Tova) to come prepared to talk about the following:

The major topics and issues which you see as needing immediate attention, definition, delineation, etc.

Rough timelines and timeframes for addressing these major issues and topics

Your major roles and responsibilities and the timelines you envision for meeting your major deliverables

We all realize that this conversation is just a start; I look forward to this beginning and to framing the tasks that lie ahead of us between now and September 30.

Have a wonderful holiday!!

011137

K  
Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005



tel:202-566-3123 tw plan 0907.doc

011138



To: Karen Lynn-Dyson and Tom Wilkey  
From: Tova Wang, Job Serebrov, Stephen Ansolabehere  
Re: Preliminary Work Plan  
Date: September 7, 2005

The following is a preliminary work plan and division of labor for the project on voter fraud and voter intimidation:

MONTH ONE (beginning the date contracts are finalized):

- I. Defining Fraud/Intimidation
  - a. In person meeting and discussion among consultants to:
    - i. Determine what we believe the parameters of the terms fraud and intimidation should be for our research purposes. (All)
    - ii. Create a list of state and local officials, third party representatives, attorneys, scholars, etc. to interview and/or survey to assist in this process of definition (All)
  - b. Interviews of individuals identified as having expertise (Job and Tova)
  - c. Analysis of existing research (Job and Tova)
- II. Obtaining research assistance (e.g. interns, law clerks) (All)

MONTH TWO:

- III. Examining the Feasibility of Quantifying the Level of Incidence of Different Types of Fraud
  - a. Looking at how we can develop a statistically sound research instrument
    - i. Discussion with political and social scientists, legal scholars in the field (Tova and Steve)
  - b. Determination as to information that would be required for a potential survey; identification of potential survey states to ensure a fair representation of different systems (All)
  - c. Preliminary survey of case law of recent prosecutions for fraud/intimidation (Job)
  - d. Interviews with state and local officials, third party groups, election lawyers to assess what they believe are the most prevalent problems (All)

MONTH THREE:

- IV. Preliminary assessment of the federal, state and local legal capacity to handle fraud and intimidation cases
  - a. Case law research (Job)
  - b. Survey of current state election codes (Tova and Job)
  - c. Analysis of Department of Justice Civil Rights and Criminal Divisions work in this area (Tova)

011139

- d. Survey and assessment of who has enforcement responsibility and accountability in each state and the extent to which that entity exercises that authority (All)

**MONTH FOUR:**

- V. Report of Preliminary Findings (Tova and Job)
- VI. Assembling the Working Group
  - a. Developing a list of potential members (All)
  - b. Development of a work plan and set of issues for examination for the working group (All)

**Potential Working Group Members – Initial Suggestions:**

Lori Minnite, Barnard College  
Allan Lichtman, American University  
David Orr, Cook County Clerk (Chicago)  
Judith Browne, The Advancement Project  
Cathy Cox, Secretary of State, Georgia  
Jonah Goldman, Lawyers Committee for Civil Rights  
Christopher Edley, Dean, Berkeley School of Law  
Daniel Tokaji, Moritz College of Law, The Ohio State University  
Spencer Overton, George Washington School of Law



"Cameron.Quinn@usdoj.gov"  
<Cameron.Quinn@usdoj.gov  
>

07/20/2006 09:56 PM

To "jthompsonhodgkins@eac.gov"  
<jthompsonhodgkins@eac.gov>

cc

bcc

Subject FW: The EAC- Tova Wang piece on voter fraud and  
intimidation

History:

 This message has been replied to.

Julie - thought John had sent these to you.

---

From: Tanner, John K (CRT)  
Sent: Friday, July 07, 2006 4:37 PM  
To: Quinn, Cameron (CRT)  
Cc: Agarwal, Asheesh (CRT)  
Subject: The EAC- Tova Wang piece on voter fraud and intimidation

The EAC paper is ridiculous. I have a call in to Julie. Here are some notes



Tova Wang.wpd

011141

Tova Wang/EAC

p 5. 2d bullet ..DOJ is bringing fewer intimidation and suppression cases now...

This clearly is a myth. The Department has brought two 11(b) cases, one of the two in this Administration. The focus of DOJ activity has shifted, in fact, to voter suppression as there are fewer cases over voter dilution (challenges to at-large election systems, etc.) being brought by anyone as the number of jurisdictions with at-large election systems has shrunk dramatically. This Administration has, in fact, brought far more voter-suppression cases in this Administration than ever in the past, including a majority of all cases under Sections 203 and 208 of the Act, and such key recent Section 2 cases as US v. City of Boston and US v. Long County, Georgia.

The Voting Section brings cases involving "systemic" discrimination because federal voting statutes focus on discriminatory action by local governments. It is criminal statutes that involve malfeasance by individuals. The difference is fundamental and key to understanding law enforcement

3d bullet.

The Voting Section of DOJ has taken action to address badly kept voter lists with recent lawsuits in Missouri and Indiana.

4<sup>th</sup> bullet

The Voting Section of DOJ has, by a large margin, included mandatory training of poll workers in avoiding discriminatory practices in more cases in this Administration than in its entire previous history.

Page 6 - first bullet

This is not true. Ms. Wang repeatedly declined to define intimidation, so that her questions were vague and unhelpful in defining or identifying problems. The facts:

The Voting Section is bringing more cases involving discrimination and violation of minority voters rights at the polls on election day than ever in its history - than in its entire history combined. That is indisputable.

The credibility of allegations depends on their specificity and corroboration. Questions as to intimidation and vote suppression are meaningless in the absence of a definition of discrimination.

Prior enforcement has indeed changed the landscape, especially in the Southeast; however, the fact that we are bringing record numbers of cases clearly shows that discrimination is not rare.


Challenges based on race and unequal implementation of ID rules are indeed actionable and we have brought lawsuits, such as in Boston and Long County; we have not identified instances of

011142

such discrimination in which we have not taken action.


**Deliberative Process  
Privilege**

Donetta L.  
Davidson/EAC/GOV  
12/11/2006 04:14 PM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Fw: Draft response to Tova Wang 

I am also fine with the changes made to the letter.  
Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV  
12/11/2006 03:50 PM

To Paul DeGregorio/EAC/GOV@EAC  
cc "Davidson, Donetta" <ddavidson@eac.gov>, Gracia  
Hillman/EAC/GOV@EAC  
Subject Re: Fw: Draft response to Tova Wang 

Commissioners,

Consistent with the changes requested by both Commissioners DeGregorio and Hillman, I have revised the draft response. Please take one more look at the letter. If possible, it would be nice to get this out today.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

Paul DeGregorio/EAC/GOV

12/11/2006 03:40 PM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc "Davidson, Donetta" <ddavidson@eac.gov>, Gracia Hillman/EAC/GOV@EAC  
Subject Re: Fw: Draft response to Tova Wang [Link](#)

Julie,

I am ok with the edits Commissioner made to the letter; however, I do think that because of the tone of

011144

Tova's letter, which is likely to be supplied to others (as was their report to us). that we need a paragraph in the letter that makes it clear that the process used in producing this final report was consistent with the process we have used in all the reports and studies we have issued to date. What she needs to know (in writing) is that while we review the work of our researchers and consultants on a topic closely to draw various conclusions, our staff and the commissioners themselves have input into the final product that becomes the public report issued by a majority vote of the EAC. Since I've been on the EAC, we have consistently questioned statistics, statements and conclusions drawn by those doing work for the EAC. We have also drawn upon our collect resources and wisdom to produce the best report possible. I think that was true in this case as it has been with all the other reports we have issued. In the end, it is the EAC--and the commissioners in particular--who are held accountable for what we adopt and release; not our paid consultants or organizations we contract with to do studies.

Paul DeGregorio  
Chairman  
US Election Assistance Commission  
1225 New York Ave, NW  
Suite 1100  
Washington, DC 20005  
1-866-747-1471 toll-free  
202-566-3100  
202-566-3127 (FAX)  
pdegregorio@eac.gov  
www.eac.gov

Juliet E. Hodgkins/EAC/GOV

12/11/2006 11:40 AM

To "Davidson, Donetta" <ddavidson@eac.gov>, Paul DeGregorio/EAC/GOV@EAC

cc Gracia Hillman/EAC/GOV@EAC

Subject Fw: Draft response to Tova Wang

commisisoners,

See below edits that Gracia has offered to the letter. Let me know if you agree. I would like to send this out today. Also, in response to Gracia's question below, I believe that since her letter was addressed to the Commissioners that the Commissioners should respond (either collectively or through the Chairman). Please let me know if you agree with the edits. It would be nice to get this out today.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005

011145

(202) 566-3100

— Forwarded by Juliet E. Hodgkins/EAC/GOV on 12/11/2006 11:37 AM —

Gracia Hillman/EAC/GOV

12/11/2006 11:26 AM

To Juliet E. Hodgkins/EAC/GOV@EAC, jlayson@eac.gov

cc

Subject Re: Draft response to Tova Wang [Link](#)

Julie and Jeannie:

Thank you for the quick turn around on drafting a response to Tova Wang.

I have made substantial edits because I think the first draft offered too much information, which is not germane to Tova's complaint. Additionally, too much verbiage masks the strength of our good report and seemed to obscure the main points in our response.

I hope you will find the attached helpful.

BTW, who will sign the letter ?

[attachment "Tova Wang, Dec06.doc" deleted by Paul DeGregorio/EAC/GOV]

Gracia M. Hillman  
Commissioner  
U.S. Election Assistance Commission  
1225 New York Avenue, NW, Suite 1100  
Washington, DC 20005  
Tel: 202-566-3100  
Fax: 202-566-1392  
[www.eac.gov](http://www.eac.gov)

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tova wang response 121106.doc

011146



December 11, 2006

Ms. Tova Wang  
c/o The Century Foundation  
1333 H Street NW, 10<sup>th</sup> Floor  
Washington, DC 20005

**Via U.S. Mail and Facsimile Transmission**  
**202-483-9430**

Dear Ms. Wang:

We are writing in response to your December 7, 2006 memorandum. As you know, the U.S. Election Assistance Commission (EAC) issued its first report on election crimes last week, based in large part on the work that was done for EAC by Job and you. The report contains the full and complete summaries of every interview conducted as well as every book, article, report or case that was reviewed. Rather than provide the synopsis of these interviews, EAC provided the individual summaries so readers could reach their own conclusions about the substance of the interviews.

As the agency responsible for these final reports, it is incumbent upon EAC to assure that the information contained in the reports is accurate and fairly presented. With each of the reports, best practices documents, quick start guides, and other documents that EAC publishes, EAC makes changes as needed to make certain that our constituents are receiving the best and most complete information. This due diligence process is observed regardless of whether the document was created in-house or was created by consultants or contractors.

Upon reviewing initial information about the Department of Justice interviews contained in the status report that was provided to the EAC Standards Board and EAC Board of Advisors and the information provided at the working group meeting in May 2006, those persons interviewed at the Department of Justice did not agree with certain characterizations of their statements contained in these materials. Therefore, EAC exercised its responsibility to make clarifying edits. The Department of Justice is an important prosecutorial agency engaged in enforcing Federal anti-fraud and anti-intimidation laws. Thus, it was important to EAC to assure that the summary of their comments did not lend confusion to an already complex and hotly-debated topic.

011147

The report on voting fraud and voter intimidation will stand as adopted on December 7, 2006. Again, we thank you for the contributions you made to the EAC's initial research of these important issues.

Sincerely,

Paul DeGregorio  
Chairman

Donetta Davidson  
Commissioner

Gracia Hillman  
Commissioner

011148

Margaret Sims /EAC/GOV  
11/13/2006 10:27 AM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
bcc  
Subject VF-VI Another DOJ Objection

Julie:

I just remembered that there was one other DOJ objection. It was about the way the consultants described the Election Crimes Branch focus on cases. In the interview with Donsanto (the only interview I attended), he made reference to the fact that the Election Crimes Branch used to only go after conspiracies, not individuals. Now, however, they had begun prosecuting individuals for noncitizen and felon voting. The consultants heard an unexpressed "instead", which would mean that DOJ had dropped pursuing conspiracies in favor of going after individuals. Based on my previous experience, I heard and unexpressed "in addition", meaning that DOJ was not just prosecuting conspiracies, the department also had begun to prosecute individuals.

I had lengthy discussions with the consultants over this issue as well. Donsanto confirmed that he meant "in addition", and the lists of cases he provided indicates that the department continues to pursue conspiracies. (It doesn't make sense any other way, unless you believe that the government is out to get the little guy.) --- Peggy

**Deliberative Process  
Privilege**

Margaret Sims /EAC/GOV  
11/12/2006 08:45 PM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
bcc  
Subject VF-VI Interviews

Sorry this is later than expected. I was missing the notes of one interview and had several computer crashes when I tried to retrieve archived email to determine if I had failed to file it after one of the consultants sent it. I finally gave up looking for it in favor of summarizing what I had.

Attached is a summary of points raised in the interviews. I found it more difficult to extract lessons learned from the interview notes, so I used a summary format. (The interview notes make it appear that the focus of the interviews differed from one person to another, perhaps because consultants were seeking different information from interviewees). I've also attached a list of interviewees with pertinent interview notes. (Some of the interview notes dealt with irregularities other than voting fraud and voter intimidation.) ---  
Peggy



EAC-Summary of Info from Interviews 11-06.doc EAC-Experts Interviewed Notes 11-06.doc

011150

SUMMARY OF INFO FROM INTERVIEWS  
PRELIMINARY VOTING FRAUD-VOTER INTIMIDATION STUDY

---

**Voter Suppression & Intimidation:**

- Voter suppression efforts are sometimes racially based, and sometimes based on partisan considerations
- Hard to know how much vote suppression and intimidation is taking place because it depends on one's definition of the terms – they are used very loosely by some people. Many instances of what some people refer to as voter intimidation are more unclear now (e.g.; photographing voters at the polls has been called intimidating, but now everyone is at the polls with a camera). It is hard to know when something is intimidation and it is difficult to show that it was an act of intimidation
- The fact that both parties are engaging in these tactics now makes it more complicated. It makes it difficult to point the finger at any one side.
- Some advocates assert that, given the additional resources and latitude given to the DOJ enforcement of acts such as double voting and noncitizen voting, there should be an equal commitment to enforcement of acts of intimidation and suppression cases.
- Examples:
  - spreading of false information, such as phone calls, flyers, and radio ads that intentionally mislead as to voting procedures, such as claiming that if you do not have identification, you cannot vote, and providing false dates for the election
  - Observers with cameras, which people associate with potential political retribution or even violence
  - Intimidating police presence at the polls
  - open hostility by poll workers toward minorities (racial and language), or poll workers asking intimidating questions;
  - groups of officious-looking poll watchers at the poll sites who seem to be some sort of authority looking for wrongdoing;
  - challenges
    - There are cases where challenger laws have been beneficial and where they have been abused (Brennan is currently working on developing a model challenger law)
    - No way to determine whether a challenge is in good or bad faith, and there is little penalty for making a bad faith challenge. The fact that there are no checks on the challenges at the precinct level, or even a requirement of concurrence from an opposing party challenger leads to the concern that challenge process will be abused. The voter on the other hand, will need to get majority approval of county election board members to defeat the challenge.
    - Especially in jurisdictions that authorize challenges, the use of challenge lists and challengers goes beyond partisanship to racial suppression and intimidation
  - instances where civic groups and church groups intimidate members to vote in a specific manner, not for reward, but under threat of being ostracized or even telling them they will go to hell.(AR, KY)
  - moving poll sites
  - having Indians vote at polling places staffed by non-Indians often results in incidents of disrespect towards Native voters, judges aren't familiar with Indian last names and are more dismissive of solving discrepancies with native voters
  - intimidation at the poll sites in court houses. Many voters are afraid of the county judges or county employees and therefore will not vote. They justifiably believe their ballots will be opened by these employees to see who they voted for, and if they voted against the county people, retribution might ensue. (AR)

**Fraud in Voting:**

*NOTE: Many interviewees appear to have made claims regarding the quantity and type of voting fraud based on incomplete data, their personal experience, or their impressions (e.g.; voting fraud*

SUMMARY OF INFO FROM INTERVIEWS  
PRELIMINARY VOTING FRAUD-VOTER INTIMIDATION STUDY

---

*has been confined to absentee ballots; there is no in person assumption of others' voter identities to vote).*

- The most commonly cited example of voting fraud mentioned was absentee ballot fraud (e.g.; vote selling involving absentee ballots, the filling out of absentee ballots en masse, people at nursing homes filling out the ballots of residents, and union leaders getting members to vote a certain way by absentee ballot).
- Many assert that impersonation, or polling place fraud, is probably the least frequent type because:
  - impersonation fraud is more likely to be caught and is therefore not worth the risk
  - unlike in an absentee situation, actual poll workers are present to disrupt impersonation fraud, for instance, by catching the same individual voting twice
  - if one votes in the name of another voter, and that voter shows up at the polls, the fraud will be discovered
  - one half to one quarter of the time the person will be caught (there is a chance the pollworker will have personal knowledge of the person, Georgia Secretary of State Cathy Cox has mentioned that there are many opportunities for discovery of in person fraud as well).
  - deterrent is that it's a felony, and that one person voting twice is not an effective way to influence an election. One would need to get a lot of people involved for it to work
- Vote buying still occurs and, in some cases, it is hard to distinguish between intimidation and vote buying.
- Tampering with ballots in transit between poll and election office is a concern (AR)

**Voter Registration:**

- Some assert that registration fraud is the major issue (esp unsupervised voter registration drives by political parties and advocacy groups that pay workers to register voters)
- Some assert that various groups abuse the existence of list deadwood to make claims about fraudulent voting.
- Some assert that when compiling such lists and doing comparisons, which are used as the basis for challenges, sound statistical methods must be utilized, and often are not. Matching protocols without faulty assumptions will have a 4 percent to 35 percent error rate—that's simply the nature of database work. Private industry has been working on improving this for years.
- If someone is on a voter list twice, that does not mean that voter has voted twice.
- Many problems will be addressed by the statewide database required under HAVA

**Enforcement:**

- States vary in their authority to intervene in and track voter intimidation-voter suppression and voting fraud cases (e.g.; in AR, enforcement is the responsibility of counties, in IN it is responsibility of State AG).
- Voter fraud and intimidation is difficult to prove. It is very hard to collect the necessary factual evidence to make a case, and doing so is very labor-intensive
- Some believe that voter suppression matters are not pursued formally because often they involve activities that current law does not reach.
- Only two interviewees assert that current state and federal codes seem sufficient for prosecuting fraud, and are not under-enforced (no need for additional laws).
- Some advocacy groups assert that the government does not engage in a sustained investigation of voter suppression matters or pursue any kind of resolution to them. There is a perception that the Department of Justice has never been very aggressive in pursuing cases of vote suppression, intimidation and fraud, and that choices DOJ has made with respect to where they have brought claims do not seem to be based on any systematic analysis of where the biggest problems are.
- Some advocates point out that, once the election is over, civil litigation becomes moot.

SUMMARY OF INFO FROM INTERVIEWS  
PRELIMINARY VOTING FRAUD-VOTER INTIMIDATION STUDY

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- The development of a pre-election challenge list targeted at minorities (some claim this has never been pursued, yet Mr. Tanner said the DOJ was able to informally intervene in challenger situations in Florida, Atkinson County, Georgia and in Alabama), long lines due to unequal distribution of voting machines based on race, list purges based on race, unequal application of voter ID rules, and refusal to offer a provisional ballot on the basis of race would be VRA violations.
- DOJ asserts there is a big gap between complaints and what can be substantiated
- DOJ Voting Rights Section - Federal Voting Rights Act only applies to state action, so the section only sues State and local governments – it does not have any enforcement power over individuals. Most often, the section enters into consent agreements with governments that focus on poll worker training, takes steps to restructure how polls are run, and deals with problems on Election Day on the spot. When deciding what to do with the complaint, the section errs on the side of referring it criminally because they do not want civil litigation to complicate a possible criminal case
- DOJ Election Crimes Branch – DOJ is permitted to prosecute whenever there is a candidate for federal office, but can't prosecute everything. Deceptive practices that are committed by individuals and would be a matter for the Public Integrity Section; local government would have to be involved for the voting section to become involved. The problem is asserting federal jurisdiction in non-federal elections. (In U.S. v. McNally, the court ruled that the mail fraud statute does not apply to election fraud. It was through the mail fraud statute that the department had routinely gotten federal jurisdiction over election fraud cases. 18 USC 1346, the congressional effort to "fix" McNally, did not include voter fraud.)
- It is preferable for the federal government to pursue these cases for the following reasons:
  - federal districts draw from a bigger and more diverse jury pool;
  - the DOJ is politically detached; local district attorneys are hamstrung by the need to be re-elected;
  - DOJ has more resources – local prosecutors need to focus on personal and property crimes—fraud cases are too big and too complex for them;
  - DOJ can use the grand jury process as a discovery technique and to test the strength of the case.
- Some assert that election crimes are not high on the priority list of either district attorneys or grand juries; therefore, complaints of election crime very rarely are prosecuted or are indicted by the grand jury.
- Political parties have devoted extraordinary resources into 'smoking out' fraudulent voters

**Recommendations Re Laws & Procedures:**

- It is important to keep clear who the perpetrators of the fraud are and where the fraud occurs because that effects what the remedy should be.
- Support Senator Barak Obama's bill for combating voter harassment and deceptive practices. (Many jurisdictions do not currently have laws prohibiting voter harassment and deceptive practices.)
- Support a new law that allows the DOJ to bring civil actions for suppression that are not race based, for example, deceptive practices or wholesale challenges to voters in jurisdictions that tend to vote heavily for one party.
- Support a new federal law that allows federal prosecution whenever a federal instrumentality is used, e.g. the mail, federal funding, interstate commerce (DOJ has drafted such legislation, which was introduced but not passed in the early 1990s.)
- Put stronger teeth in the voter fraud laws; step up enforcement against fraud and provide stiffer penalties as current penalties make the risk of committing fraud relatively low
- There should be increased resources dedicated to expanded DOJ monitoring efforts. This might be the best use of resources since monitors and observers act as a deterrent to fraud and intimidation.
- Some advocate that all election fraud and intimidation complaints should be referred to the State Attorney General's Office to circumvent the problem of local political prosecutions. The

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Attorney General should take more responsibility for complaints of fraud because at the local level, politics interferes

- Some advocate greater resources for district attorneys. In addition, during election time, there should be an attorney in the DA's office who is designated to handle election prosecution
- Would be useful to have recommendations for prosecutors investigating fraudulent activity
- Better trained poll workers
- Polling places should be open longer, run more professionally but there needs to be fewer of them so that they are staffed by only the best, most professional people (Voting Centers).
- Move elections to weekends. This would involve more people acting as poll workers who would be much more careful about what was going on.
- A day should be given off of work without counting as a vacation day so that better poll workers are available.
- Early voting at the clerk's office is good because the people there know what they are doing. People would be unlikely to commit fraud at the clerk's office. This should be expanded to other polling places in addition to that of the county clerk.
- Many assert that the best defense against fraud will be better voter lists.
  - States should be urged to implement statewide voter lists in accordance with the Help America Vote Act ("HAVA"), the election reform law enacted by Congress in 2002 following the Florida debacle
  - Linking voter registration databases across states may be a way to see if people who are registered twice are in fact voting twice
  - New legislation or regulations are needed to provide clear guidance and standards for generating voter lists and purging voters, otherwise states could wrongfully disenfranchise eligible voters; purging must be done in a manner that uses the best databases, and looks at only the most relevant information
  - The process for preventing ineligible ex-felons from casting ballots needs to be improved
  - statewide registration databases should be linked to social service agency databases
- Challenge laws need to be reformed, especially ones that allow for pre-election mass challenges with no real basis. There is no one size fits all model for challenger legislation, but some bad models involving hurdles for voters lead to abuse and should be reformed. There should be room for poll workers to challenge fraudulent voters, but not for abuse. (KY has list of defined reasons for which they can challenge a voter, such as residency, and the challengers must also fill out paperwork to conduct a challenge) Last minute challenges should not be permitted
- False information campaigns should be combated with greater voter education, the media could do more to provide information about what is legal and what is illegal
- Improve the protective zone around polling places: the further vote suppressers can keep people away from the polls, the better.
- States should be encouraged to:
  - codify into law uniform and clear published standards for voter registration, challenges, voter ID, poll worker training, use and counting of provisional votes, the distribution of voting equipment and the assignment of official pollworkers among precincts, to ensure adequate and nondiscriminatory access
  - standardize forms
  - modify forms and procedures based on feedback from prosecutors
- Ensure good security procedures for the tabulation process and more transparency in the vote counting process
- Conduct post-election audits
- Many advocate eliminating "no excuse" absentee voting.
- Some recommend reducing partisanship in election administration, but others are skeptical of the feasibility of this



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- Some strongly recommend requiring voter ID, while others strongly oppose it as a voter suppression tactic, asserting that states should not adopt requirements that voters show identification at the polls, beyond those already required by federal law (requiring that identification be shown only by first time voters who did not show identification when registering.) and that states could use signature comparisons.
- Political parties should monitor the processing of voter registrations and purging of registered by local election authorities on an ongoing basis to ensure the timely processing of registrations and changes, including both newly registered voters and voters who move within a jurisdiction or the state, and the Party should ask state Attorneys General to take action where necessary to force the timely updating of voter lists or to challenge, unlawful purges and other improper list maintenance practices.

**Future Study Recommendations:**

- Just because there was no prosecution, does not mean there was no vote fraud; very hard to come up with a measure of voter fraud short of prosecution
- EAC should conduct a survey of the general public that asks whether they have committed certain acts or been subjected to any incidents of fraud or intimidation. This would require using a very large sample, and we would need to employ the services of an expert in survey data
- EAC should work with the Census Bureau to have them ask different, additional questions in their Voter Population Surveys
- EAC should talk to private election lawyers

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Wade Henderson, Executive Director, Leadership Conference for Civil Rights

Data Collection

Mr. Henderson had **several recommendations as to how to better gather additional information and data on election fraud and intimidation in recent years. He suggested interviewing the following individuals who have been actively involved in Election Protection and other similar efforts:**

- Jon Greenbaum, Lawyers Committee for Civil Rights
- Tanya Clay, People for the American Way
- Melanie, Campbell, National Coalition for Black Political Participation
- Larry Gonzalez, National Association of Latino Election Officers
- Jacqueline Johnson, National Congress of American Indians
- Chellie Pingree, Common Cause
- Jim Dickson, disability rights advocate
- Mary Berry, former Chair of the US Commission on Civil Rights, currently at the University of Pennsylvania
- Judith Browne and Eddie Hailes, Advancement Project (former counsel to the US Commission on Civil Rights)
- Robert Rubin, Lawyers Committee for Civil Rights – San Francisco Office
- Former Senator Tom Daschle (currently a fellow at The Center for American Progress)

He also recommended we **review the following documents and reports:**

- The 2004 litigation brought by the Advancement Project and SEIU under the 1981 New Jersey Consent Decree
- Forthcoming LCCR state-by-state report on violations of the Voting Rights Act
- Forthcoming Lawyers Committee report on violations of the Voting Rights Act (February 21)

Types of Fraud and Intimidation Occurring

Mr. Henderson said he believed that the kinds of **voter intimidation and suppression tactics employed over the last five years are ones that have evolved over many years. They are sometimes racially based, sometimes based on partisan motives. He believes the following types of activity have actually occurred, and are not just a matter of anecdote and innuendo, and rise to the level of either voter intimidation or vote suppression:**

- **Flyers with intentional misinformation, such as ones claiming that if you do not have identification, you cannot vote, and providing false dates for the election**
- **Observers with cameras, which people associate with potential political retribution or even violence**
- **Intimidating police presence at the polls**
- **Especially in jurisdictions that authorize challenges, the use of challenge lists and challengers goes beyond partisanship to racial suppression and intimidation**
- **Unequal deployment of voting equipment, such as occurred in Ohio. Also, he has seen situations in which historically Black colleges will have one voting machine while other schools will have more.**

Mr. Henderson **believes that these matters are not pursued formally because often they involve activities that current law does not reach. For example, there is no law prohibiting a Secretary of State from being the head of a political campaign, and then deploying voting machines in an uneven manner. There is no way to pursue that. Also, once the election is over, civil litigation becomes moot. Finally, sometimes upon reflection after the campaign, some of the activities are not as sinister as believed at the time.**

Mr. Henderson believes **government does not engage in a sustained investigation of these matters or pursue any kind of resolution to**

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Privilege

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them. LCCR has filed a FOIA request with both the Civil Rights Division and the Criminal Division of the Department of Justice to examine this issue.

Election Protection activities will be intensified for the 2006 elections, although the focus may shift somewhat given the implementation of new HAVA requirements.

Recommendations for Reform

There was tremendous concern after the 2004 election about conflicts of interest – the “Blackwell problem” – whereby a campaign chair is also in charge of the voting system. We need to get away from that.

He also supports Senator Barak Obama’s bill regarding deceptive practices, and is opposed to the voter identification laws passing many state legislatures.

- States should adopt **election-day registration**, in order to boost turnout as well as to allow eligible voters to immediately rectify erroneous or improperly purged registration records
- **Expansion of early voting & no-excuse absentee voting**, to boost turnout and reduce the strain on election-day resources.
- **Provisional ballot reforms:**
  - Should be **counted statewide** – if cast in the wrong polling place, votes should still be counted in races for which the voter was eligible to vote (governor, etc.)
  - Provisional ballots should also **function as voter registration applications**, to increase the likelihood that voters will be properly registered in future elections
- Voter ID requirements: **states should allow voters to use signature attestation to establish their identity**
- The **Department of Justice should increase enforcement of Americans with Disabilities Act and the accessibility requirements of the Help America Vote Act**
- **Statewide registration databases should be linked to social service agency databases**
- **Prohibit chief state election officials from simultaneously participating in partisan electoral campaigns** within their states
- Create and enforce **strong penalties for deceptive or misleading voting practices**

Wendy Weiser, Deputy Director, Democracy Program, The Brennan Center

Brennan Center findings on fraud

The Brennan Center's primary work on fraud is their report for the Carter Baker Commission with commissioner Spencer Overton, written in response to the Commission's ID recommendations. Brennan reviewed all existing reports and election contests related to voter fraud. They believe the contests serve as an especially good record of whether or not fraud exists, as the parties involved in contested elections have a large incentive to root out fraudulent voters. Yet despite this, the incidence of voter impersonation fraud discovered is extremely low—something on the order 1/10000<sup>th</sup> of a percentage of voters. See also the brief Brennan filed on 11<sup>th</sup> circuit in Georgia photo ID case which cites sources in Carter Baker report and argues the incidence of voter fraud too low to justify countermeasures.

Among types of fraud, they found impersonation, or polling place fraud, is probably the least frequent type, although other types, such as absentee ballot fraud are also very infrequent. Weiser believes this is because impersonation fraud is more likely to be caught and is therefore not worth the risk. Unlike in an absentee situation, actual poll workers are present to disrupt impersonation fraud, for instance, by catching the same individual voting twice. She believes perhaps one half to one quarter of the time the person will be caught. Also, there is a chance the pollworker will have personal knowledge of the person. Georgia Secretary of State Cathy Cox has mentioned that there are many opportunities for discovery of in person fraud as well. For example, if one votes in the name of another voter, and that

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**voter shows up at the polls, the fraud will be discovered.**

Weiser believes court proceedings in election contests are especially useful. Some are very extensive, with hundreds of voters brought up by each side and litigated. In both pre-election challenges and post-election contests, **parties have devoted extraordinary resources into 'smoking out' fraudulent voters.** Justin Leavitt at Brennan scoured such proceedings for the Carter Baker report, which includes these citations. Contact him for answers to particular questions.

Countermeasures/statewide databases

Brennan has also considered what **states are doing to combat impersonation fraud besides photo ID laws**, although again, it seems to be the rarest kind of fraud, beyond statistically insignificant. In the **brief Brennan filed in the Georgia case, the Center detailed what states are already doing to effectively address fraud.** In another **on the web site includes measures that can be taken that no states have adopted yet.** Weiser adds that an effort to look at strategies states have to prevent fraud, state variations, effectiveness, ease of enforcement would be very useful.

Weiser believes the **best defense against fraud will be better voter lists**—she argues the fraud debate is actually premature because states have yet to fully implement the HAVA database requirement. This should eliminate a great deal of 'deadwood' on voter rolls and undermine the common argument that fraud is made possible by this deadwood. This was the experience for Michigan, which was able to remove 600,000 names initially, and later removed almost 1 million names from their rolls. It is fairly easy to cull deadwood from lists due to consolidation at the state level—most deadwood is due to individuals moving within the state and poor communication between jurisdictions. (Also discuss with Chris Thomas, who masterminded the Michigan database for more information and a historical perspective.)

Regarding the question of whether the effect of this maintenance on fraud in Michigan can be quantified, Weiser would caution against drawing direct lines between list problems and fraud. **Brennan has found various groups abusing the existence of list deadwood to make claims about fraudulent voting.** This is analyzed in greater detail in the Brennan Center's critique of a purge list produced by the NJ Republican party, and was illustrated by the purge list produced by the state of Florida. **When compiling such lists and doing comparisons, sound statistical methods must be utilized, and often are not.**

The NJ GOP created a list and asked NJ election officials to purge names of ineligible voters on it. Their list assumed that people appearing on the list twice had voted twice. Brennan found their assumptions **shoddy and based on incorrect statistical practices, such as treating individuals with the same name and birthdays as duplicates**, although this is highly unlikely according to proper statistical methods. **Simply running algorithms on voter lists creates a number of false positives, does not provide an accurate basis for purging, and should not be taken as an indicator of fraud.**

Regarding the Florida purge list, **faulty assumptions caused the list to systematically exclude Hispanics while overestimating African Americans. Matching protocols required that race fields match exactly, despite inconsistent fields across databases.**

The kinds of list comparisons that are frequently done to allege fraud are unreliable. Moreover, **even if someone is on a voter list twice, that does not mean that voter has voted twice. That, in fact, is almost never the case.**

Ultimately, **even matching protocols without faulty assumptions will have a 4 percent to 35 percent error rate—that's simply the nature of database work.** Private industry has been working on improving this for years. Now that HAVA has introduced a matching requirement, **even greater skepticism is called for in judging the accuracy of list maintenance.**

Intimidation and Suppression

Brennan does not have a specific focus here, although they do come across it and have provided assistance on bills to prevent suppression and intimidation. They happen to have **an extensive paper file of intimidating fliers and related stories from before the 2004 election.** (They can supply copies after this week).

Challengers

**Brennan has analyzed cases where challenger laws have been beneficial and where they have been abused. See the decision and record**

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from the 1982 NJ vs. RNC case for some of the history of these laws. **Brennan is currently working on developing a model challenger law. Weiser believes challenge laws with no requirement that the challenger have any specific basis for the challenge or showing of ineligibility are an invitation to blanket harassing challenges and have a range of pitfalls.** State laws are vague and broad and often involve arcane processes such as where voters are required to meet a challenge within 5 days. **There are incentives for political abuse, potential for delaying votes and disrupting the polls, and they are not necessarily directed toward the best result.** Furthermore, **when a voter receives a mailer alleging vote fraud with no basis, even the mere fact of a challenge can be chilling.** A voter does not want to have to go through a quasi-court proceeding in order to vote.

**Brennan recommends challenge processes that get results before election, minimize the burden for voters, and are restricted at polling place to challenges by poll workers and election officials, not voters.** They believe limitless challenges can lead to pandemonium—that once the floodgates are open they won't stop.

Recommendations

- **Intimidation— Weiser believes Sen. Barak Obama's bill is a good one for combating voter harassment and deceptive practices. Many jurisdictions do not currently have laws prohibiting voter harassment and deceptive practices.**
- **Fraud— Current state and federal codes seem sufficient for prosecuting fraud. Weiser doesn't consider them under-enforced, and sees no need for additional laws.**
- **Voter lists— New legislation or regulations are needed to provide clear guidance and standards for generating voter lists and purging voters, otherwise states could wrongfully disenfranchise eligible voters.**
- **Challengers—Challenge laws need to be reformed, especially ones that allow for pre-election mass challenges with no real basis. There is no one size fits all model for challenger legislation, but some bad models involving hurdles for voters lead to abuse and should be reformed. There should be room for poll workers to challenge fraudulent voters, but not for abuse.**

**Also useful would be recommendations for prosecutors investigating fraudulent activity, How should they approach these cases? How should they approach cases of large scale fraud/intimidation? While there is sufficient legislative cover to get at any election fraud activity, questions remain about what proper approaches and enforcement strategies should be.**

William Groth, attorney for the plaintiffs in the Indiana voter identification litigation

Fraud in Indiana

**Indiana has never charged or prosecuted anyone for polling place fraud. Nor has any empirical evidence of voter impersonation fraud or dead voter fraud been presented.** In addition, there is no record of any credible complaint about voter impersonation fraud in Indiana. State legislators signed an affidavit that said there had never been impostor voting in Indiana. At the same time, the Indiana Supreme Court has not necessarily required evidence of voter fraud before approving legislative attempts to address fraud.

**The state attorney general has conceded that there is no concrete fraud in Indiana, but has instead referred to instances of fraud in other states.** Groth filed a detailed motion to strike evidence such as John Fund's book relating to other states, arguing that none of that evidence was presented to the legislature and that it should have been in the form of sworn affidavits, so that it would have some indicia of verifiability.

Photo ID law

**By imposing restrictive ID measures, Groth contends you will discourage 1,000 times more legitimate voters than illegitimate voters you might protect against.** He feels the implementation of a REAL ID requirement is an inadequate justification for the law, as it will not affect the upcoming 2006 election where thousands of registered voters will be left without proper ID. In addition, he questions whether REAL ID will be

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implemented as planned in 2008 considering the backlash against the law so far. **He also feels ID laws are unconstitutional because of inconsistent application.**

Statewide database as remedy

Groth believes **many problems will be addressed by the statewide database required under HAVA.** To the extent that the rolls in Indiana are bloated, it is because state officials have not complied with NVRA list maintenance requirements. Thus, it is somewhat disingenuous for them to use bloated voter rolls as a reason for imposing additional measures such as the photo ID law. Furthermore, the state has ceded to the counties the obligation to do maintenance programs, which results in a hit or miss process (see discussion in reply brief, p 26 through p. 28).

Absentee fraud

**To the extent that there has been an incidence of fraud, these have all been confined to absentee balloting.** Most notably the East Chicago mayoral election case where courts found absentee voting fraud had occurred. See: Pabey vs. Pastrick 816 NE 2<sup>nd</sup> 1138 Decision by the Indiana Supreme Court in 2004.

Intimidation and vote suppression

**Groth is only aware of anecdotal evidence supporting intimidation and suppression activities.** While he considers the sources of this evidence credible, it is still decidedly anecdotal. Instances he is aware of include **police cars parked in front of African American polling places.** However, **most incidents of suppression which are discussed occurred well in the past.** Trevor Davidson claims a fairly large scale intimidation program in Louisville.

Challengers

There was widespread information that the state Republican Party had planned a large scale challenger operation in Democratic precincts for 2004, but abandoned the plan at the last minute.

Last year the legislature made a crucial change to election laws which will allow partisan challengers to be physically inside the polling area next to members of the precinct board. **Previously, challengers at the polling place have been restricted to the 'chute,'** which provides a buffer zone between voting and people engaging in political activity. That change will make **it much easier to challenge voters.** As there is no recorded legislative history in Indiana, it is difficult to determine the justification behind this change. As both chambers and the governorship are under single-party control, the challenger statute was passed under the radar screen.

Photo ID and Challengers

Observers are especially concerned **about how this change will work in conjunction with the photo ID provision.** Under the law, there are at least two reasons why a member of the precinct board or a challenger can raise object to an ID: whether a presented ID conforms to ID standards, and whether the photo on an ID is actually a picture of the voter presenting it. The law does not require bipartisan agreement that a challenge is valid. **All it takes is one challenge to raise a challenge to that voter, and that will lead to the voter voting by provisional ballot.**

**Provisional ballot voting means that voter must make a second trip to the election board (located at the county seat) within 13 days to produce the conforming ID or to swear out an affidavit that they are who they claim to be.** This may pose a considerable burden to voters. For example, Indianapolis and Marion County are coterminous—anyone challenged under the law will be required to make second trip to seat of government in downtown Indianapolis. If the voter in question did not have a driver's license in the first place, they will likely need to arrange transportation. Furthermore, in most cases the election result will already be known.

The law is **vague about acceptable cause for challenging a voter's ID.** Some requirements for valid photo ID include being issued by state or fed gov't, w/ expiration date, and the names must conform exactly. **The League of Women Voters is concerned about voters with hyphenated names, as the Indiana DMV fails to put hyphens on driver's licenses potentially leading to a basis for challenge.** Misspelling of names would also be a problem. The other primary mode of challenge is saying the photo doesn't look like the voter, which could be happen in a range of instances. Essentially, the law gives unbridled discretion to challengers to decide what conforms and what does not.

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Furthermore, there is **no way to determine whether a challenge is in good or bad faith, and *there is little penalty for making a bad faith challenge.*** The fact that there are no checks on the challenges at the precinct level, or even a requirement of concurrence from an opposing party challenger leads to the concern that challenge process will be abused. The voter on the other hand, will need to get majority approval of county election board members to defeat the challenge.

Groth suggests the political situation in Indianapolis also presents a temptation to abuse this process, as electoral margins are growing increasingly close due to shifting political calculus.

Other cases

Groth's other election law work has included a redistricting dispute, a dispute over ballot format, NVRA issues, and a case related to improper list purging, but nothing else related to fraud or intimidation. The purging case involved the election board attempting to refine its voter list by sending registration postcards to everyone on the list. When postcards didn't come back they wanted to purge those voters. Groth blames this error more on incompetence, than malevolence, however, as the county board is bipartisan. (The Indiana Election Commission and the Indiana election division are both bipartisan, but the 92 county election boards which will be administering photo id are controlled by one political party or the other—they are always an odd number, with the partisan majority determined by who controls the clerk of circuit court office.)

Recommendations

- **Supports nonpartisan administration of elections.**
- Indiana specific recommendations including a longer voting day, time off for workers to vote, and an extended registration period.
- He views the central problem of the Indiana photo ID law is that the list of acceptable forms of ID is too narrow and provides no fallback to voters without ID. At the least, he believes the state **needs to expand the list so that most people will have at least one.** If not, **they should be allowed to swear an affidavit regarding their identity, under penalty of perjury/felony prosecution. This would provide sufficient deterrence for anyone considering impersonation fraud. He believes absentee ballot fraud should be addressed by requiring those voters to produce ID as well, as under HAVA.**
- His personal preference would be **signature comparison.** Indiana has never encountered an instance of someone trying to forge a name in the poll book, and while this leaves open the prospect of dead voters, that danger will be substantially diminished by the statewide database. But if we are going to have some form of ID, he believes we should apply it to everyone and avoid disenfranchisement, provided they swear an affidavit.

Lori Minnite, Barnard College, Columbia University

Securing the Vote

In Securing the Vote, Ms. Minnite found very little evidence of voter fraud because the historical conditions giving rise to fraud have weakened over the past twenty years. She stated that for fraud to take root a conspiracy was needed with a strong local political party and a complicit voter administration system. Since parties have weakened and there has been much improvement in the administration of elections and voting technology, the conditions no longer exist for large scale incidents of polling place fraud. Ms. Minnite concentrates on fraud committed by voters not fraud committed by voting officials. She has looked at this issue on the national level and also concentrated on analyzing certain specific states. Ms. Minnite stressed that it is important to keep clear who the perpetrators of the fraud are and where the fraud occurs because that effects what the remedy should be. Often, voters are punished for fraud committed by voting officials.

Other Fraud Issues

Ms. Minnite found no evidence that NVRA was leading to more voter fraud. She supports non-partisan election administration. Ms.

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Minnite has found evidence that there is absentee ballot fraud. She can't establish that there is a certain amount of absentee ballot fraud or that it is the major kind of voter fraud.

Recommendations

- Assure there are accurate voter records and centralize voter databases
- Reduce partisanship in electoral administration.

Neil Bradley, ACLU Voting Rights Project

Voter Impersonation Cases (issue the Georgia ID litigation revolves around)

Mr. Bradley asserted that Georgia **Secretary of State Cox** stated in the case at issue: that she clearly would know if there had been any instances of voter impersonation at the polls; that she works very closely with the county and local officials and she **would have heard about voter impersonation** from them if she did not learn about it directly; and that she said that she had not heard of "any incident"---which includes acts that did not rise to the level of an official investigation or charges.

Mr. Bradley said that it is also **possible to establish if someone has impersonated another voter at the polls. Officials must check off the type of voter identification the voter used. Voters without ID may vote by affidavit ballot. One could conduct a survey of those voters to see if they in fact voted or not.**

The type of **voter fraud that involves impersonating someone else is very unlikely to occur.** If someone wants to steal an election, it is **much more effective to do so using absentee ballots.** In order to change an election outcome, one must steal many votes. Therefore, one would have to have lots of people involved in the enterprise, meaning there would be many people who know you committed a felony. It's simply not an efficient way to steal an election.

Mr. Bradley is not aware of any instance of voter impersonation anywhere in the country except in local races. He does not believe it occurs in statewide elections.

Voter fraud and intimidation in Georgia

Georgia's **process for preventing ineligible ex-felons from casting ballots has been improved** since the Secretary of State now has the power to create the felon purge list. When this was the responsibility of the counties, there were many difficulties in purging felons because local officials did not want to have to call someone and ask if he or she was a criminal.

The **State Board of Elections has a docket of irregularity complaints. The most common involve an ineligible person mailing in absentee ballots on behalf of another voter.**

In general, Mr. Bradley **does not think voter fraud and intimidation is a huge problem in Georgia** and that people have confidence in the vote. The biggest problems are the new ID law; misinformation put out by elections officials; and **advertisements that remind people that vote fraud is a felony, which are really meant to be intimidating. Most fraud that does occur involves an insider, and that's where you find the most prosecutions. Any large scale fraud involves someone who knows the system or is in the courthouse.**

Prosecution of Fraud and Intimidation

Mr. Bradley stated that **fraud and intimidation are hard to prosecute.** However, Mr. Bradley made contradictory statements. When asked whether the decision to prosecute on the county level was politically motivated, he first said "no." Later, Mr. Bradley reversed himself stating the opposite.

Mr. Bradley also stated that **with respect to US Attorneys, the message to them from the top is that this is not a priority. The Georgia ACLU has turned over information about violations of the Voting Rights Act that were felonies, and the US Attorney has done nothing with the information. The Department of Justice has never been very aggressive in pursuing cases of vote suppression, intimidation**



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and fraud. But, the Georgia ACLU has not contacted Craig Donsanto in DC with information of voter fraud. Mr. Bradley believes that **voter fraud and intimidation is difficult to prove. It is very hard to collect the necessary factual evidence to make a case, and doing so is very labor-intensive.**

Recommendations

In Georgia, the Secretary of State puts a lot of work into training local officials and poll workers, and much of her budget is put into that work. **Increased and improved training of poll workers**, including training on how to respectfully treat voters, is the most important reform that could be made. Mr. Bradley also suggested that **increased election monitoring** would be helpful.

Nina Perales, Counsel, Mexican American Legal Defense and Education Fund

Ms. Perales did not seem to have a sense of the overall electoral issues in her working region (the southwest) effecting Hispanic voters and did not seem to want to offer her individual experiences and work activities as necessarily a perfect reflection of the challenges Hispanic voters face.

Largest Election Problems Since 2000

- Santa Anna County, New Mexico-2004-intimidated voters by video taping them.
- San Antonio-One African American voter subjected to a racial slur.
- San Antonio-Relocated polling places at the last minute without Section 5 pre-clearance.
- San Antonio-Closed polls while voters were still in line.
- San Antonio-2003-only left open early voting polls in predominantly white districts.
- San Antonio-2005-racially contested mayoral run-off election switched from touch screen voting to paper ballots.

Voter Fraud and Intimidation

In Texas, the counties are refusing to open their records with respect to Section 203 compliance (bilingual voting assistance), and those that did respond to MALDEF's request submitted incomplete information. Ms. Perales believes this in itself is a form of voter intimidation.

Ms. Perales said it is hard to say if the obstacles minorities confront in voting are a result of intentional acts or not because the county commission is totally incompetent. There have continuously been problems with too few ballots, causing long lines, especially in places that had historically lower turnout. There is no formula in Texas for allocating ballots – each county makes these determinations.

When there is not enough language assistance at the polls, forcing a non-English speaker to rely on a family member to vote, that can suppress voter turnout.

Ms. Perales is not aware of deceptive practices or dirty tricks targeted at the Latino community.

There have been no allegations of illegal noncitizen voting in Texas. Indeed, the sponsor of a bill that would require proof of citizenship to vote could not provide any documentation of noncitizen voting in support of the bill. The bill was defeated in part because of the racist comments of the sponsor. In Arizona, such a measure was passed. Ms. Perales was only aware of one case of noncitizen voting in Arizona, involving a man of limited mental capacity who said he was told he was allowed to register and vote. Ms. Perales believes proof of citizenship requirements discriminate against Latinos.

Recommendations

Ms. Perales feels the laws are adequate, but that her organization does not have enough staff to do the monitoring necessary. This could be done by the federal government. However, even though the Department of Justice is focusing on Section 203 cases now, they have not even begun to scratch the surface. Moreover, the choices DOJ has made with respect to where they have brought claims do not seem to be based on any systematic analysis of where the biggest problems are. This may be because the administration is so ideological and partisan.

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Ms. Perales does not believe making election administration nonpartisan would have a big impact. In Texas, administrators are appointed in a nonpartisan manner, but they still do not always have a nonpartisan approach. Each administrator tends to promote his or her personal view regardless of party.

Pat Rogers, attorney, New Mexico

Major issues in NM w/ regard to vote fraud

**Registration fraud seems to be the major issue**, and while the legislature has taken some steps, Rogers is skeptical of the effect they will have, considering the history of unequal application of election laws. He also believes there are **holes in the 3<sup>rd</sup> party registration requirement deadlines**.

Rogers **views a national law requiring ID as the best solution to registration problems**. Rather than imposing a burden he contends it will enhance public confidence in the simplest way possible.

Registration Fraud in 2004 election

It came to light that **ACORN had registered a 13 year old**. The father was an **APD officer and received the confirmation**, but it was sent to the next door address, a vacant house. They traced this to an **ACORN employee and it was established that this employee had been registering others under 18**.

Two weeks later, in a crack cocaine bust of Cuban nationals, one of those raided said his job was registering voters for ACORN, and the police found signatures in his possession for fictitious persons.

**In a suspicious break-in at an entity that advertised itself as nonpartisan, only GOP registrations were stolen.**

In another instance, a college student was allegedly fired for registering too many Republicans.

Rogers said he **believed these workers were paid by the registration rather than hourly**.

There have been **no prosecution or convictions related to these incidents**. In fact, there have been no prosecutions for election fraud in New Mexico in recent history. However, Rogers is skeptical that much action can be expected considering the positions of Attorney General, Governor, and Secretary of State are all held by Democrats. Nor has there been any interest from the U.S. attorney—**Rogers heard that U.S. attorneys were given instruction to hold off until after the election in 2004 because it would seem too political**.

As part of the case against the Secretary of State regarding the identification requirement, the parties also sued ACORN. At a hearing, the head of ACORN, and others aligned with the Democratic Party called as witnesses, took the 5<sup>th</sup> on the stand as to their registration practices.

Other incidents

**Very recently, there have been reports of vote buying in the town of Espanola. Originally reported by the Rio Grande Sun, a resident of a low-income housing project is quoted as saying it has been going on for 10-12 years. The Albuquerque Journal is now reporting this as well. So far the investigation has been extremely limited.**

In 1996, there were some prosecutions in Espanola, where a state district judge found registration fraud.

In 1991, the chair of Democratic Party of Bertolino County was convicted on fraud. Yet she was pardoned by Clinton on same day as Marc Rich.

Intimidation/Suppression

Rogers believes the most notable example of intimidation in the 2004 election was the discovery of a DNC Handbook from Colorado advising Democratic operatives to widely report intimidation regardless of confirmation in order to gain media attention.

In-person polling place fraud

There have **only been isolated instances of people reporting that someone had voted in their name, and Rogers doesn't believe there is any large scale conspiracy**. Yet he contends that **perspective misses the larger point of voter confidence**. Although there has been a large

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public outcry for voter ID in New Mexico, it has been deflected and avoided by Democrats.

In 2004, there were more Democratic lawyers at the polls than there are lawyers in New Mexico. Rogers believes these lawyers had a positive impact because they deterred people from committing bad acts.

Counting Procedures

The **Secretary of State has also taken the position that canvassing of the vote should be done in private**. In NM, they have a 'county canvass' where they review and certify, after which all materials—machine tapes, etc.—are centralized with the Secretary of State who does a final canvass for final certification. Conducting this in private is a serious issue, especially considering the margin in the 2000 presidential vote in New Mexico was only 366 votes. **They wouldn't be changing machine numbers, but paper numbers are vulnerable.**

On a related note, NM has adopted state procedures that will ensure their reports are slower and very late, considering the 2000 late discovery of ballots. In a close race, potential for fraud and mischief goes up astronomically in the period between poll closing and reporting. Rogers believes these changes are going to cause national embarrassment in the future.

Rogers attributes other harmful effects to what he terms the Secretary of State's incompetence and inability to discern a nonpartisan application of the law. **In the 2004 election, no standards were issued for counting provisional ballots.** Furthermore, the Secretary of State spent over \$1 million of HAVA money for 'voter education' in blatant self-promotional ads.

Recommendations

- Rogers believes it would be unfeasible to have nonpartisan election administration and favors transparency instead. To make sure people have confidence in the election, there must be transparency in the whole process. Then you don't have the 1960 vote coming down to Illinois, or the Espanola ballot or Dona Anna County (ballots found there in the 2000 election). HAVA funds should also be restricted when you have an incompetent, partisan Secretary of State.
- There should be national standards for reporting voting results so there is less opportunity for fraud in a close race. Although he is not generally an advocate of national laws, he does agree there should be more national uniformity into how votes are counted and recorded.

Rebecca Vigil-Giron, Secretary of State, New Mexico

Complaints of election fraud and intimidation are filed with the SOS office. She then decides whether to refer it to the local district attorney or the attorney general. Because the complaints are few and far between, the office does not keep a log of complaints; however, they do have all of the written complaints on file in the office.

Incidents of Fraud and Intimidation

During the **2004 election**, there were a couple of complaints of polling place observers telling people outside the polling place who had just voted, and then **the people outside were following the voters to their cars and videotaping them**. This happened in areas that are mostly **second and third generation Latinos**. The Secretary sent out the sheriff in one instance of this. The perpetrators moved to a different polling place. This was the **only incident of fraud or intimidation Vigil-Giron was aware of in New Mexico**.

There have **not been many problems on Native reservations because, unlike in many other states, in New Mexico the polling place is on the reservation and is run by local Native Americans**. Vigil-Giron said that it does not make sense to have non-Natives running those polls because it is necessary to have people there who can translate. Because most of the languages are unwritten, the HAVA requirement of accessibility through an audio device will be very helpful in this regard. Vigil-Giron said she was surprised to learn while testifying at the Voting Rights Act commission hearings of the lack of sensitivity to these issues and the common failure to provide assistance in language minority areas.

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In 2004 the U.S. Attorney, a Republican, suddenly announced he was launching an investigation into voter fraud without consulting the Secretary of State's office. After all of that, there was maybe one prosecution. Even the allegations involving third party groups and voter registration are often misleading. People doing voter registration drives encourage voters to register if they are unsure if they are already registered, and the voter does not even realize that his or her name will then appear on the voter list twice. The bigger problem is where registrations do not get forwarded to election administrators and the voter does not end up on the voting list on Election Day. This is voter intimidation in itself, Vigil-Giron believes. It is very discouraging for that voter and she wonders whether he or she will try again.

Under the bill passed in 2004, third parties are required to turn around voter registration forms very quickly between the time they get them and when they must be returned. If they fail to return them within 48 hours of getting them, they are penalized. This, Vigil-Giron believes, is unfair. She has tried to get the Legislature to look at this issue again.

Regarding allegations of vote buying in Espanola, Vigil-Giron said that the Attorney General is investigating. The problem in that area of New Mexico is that they are still using rural routes, so they have not been able to properly district. There has, as a result, been manipulation of where people vote. Now they seem to have pushed the envelope too far on this. The investigation is not just about vote buying, however. There have also been allegations of voters being denied translators as well as assistance at the polls.

Vigil-Giron believes there was voter suppression in Ohio in 2004. County officials knew thirty days out how many people had registered to vote, they knew how many voters there would be. Administrators are supposed to use a formula for allocation of voting machines based on registered voters. Administrators in Ohio ignored this. As a result, people were turned away at the polls or left because of the huge lines. This, she believes, was a case of intentional vote suppression.

A few years ago, Vigil-Giron heard that there may have been people voting in New Mexico and a bordering town in Colorado. She exchanged information with Colorado administrators and it turned out that there were no cases of double voting.

Recommendations

- Vigil-Giron believes that linking voter registration databases across states may be a way to see if people who are registered twice are in fact voting twice.
- The key to improving the process is better trained poll workers, who are certified, and know what to look for on Election Day. These poll workers should then work with law enforcement to ensure there are no transgressions.
- There should be stronger teeth in the voter fraud laws. For example, it should be more than a fourth degree felony, as is currently the case.

Sarah Ball Johnson, Executive Director of the State Board of Elections, Kentucky

Procedures for Handling Fraud

Fraud complaints are directed first to the state Board of Elections. Unlike boards in other states, Kentucky's has no investigative powers. Instead, they work closely with both the Attorney General and the U.S. Attorney. Especially since the current administration took office, they have found the U.S. Attorney an excellent partner in pursuing fraud cases, and have seen many prosecutions in the last six years. She believes that there has been no increase in the incidence of fraud, but rather the increase in prosecutions is related to increased scrutiny and more resources.

Major Types of Fraud and Intimidation

Johnson says that vote buying and voter intimidation go hand in hand in Kentucky. While historically fraud activity focused on election day, in the last 20 years it has moved into absentee voting. In part, this is because new voting machines aren't easy to manipulate in the way

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that paper ballots were open to manipulation in the past, especially in distant rural counties. For this reason, she is troubled by the proliferation of states with early voting, but notes that there is a difference between absentee ballot and early voting on machines, which is far more difficult to manipulate.

Among the cases of absentee ballot fraud they have seen, **common practice involves a group of candidates conspiring together to elect their specific slate. Nursing homes are an especially frequent target.** Elderly residents request absentee ballots, and then workers show up and 'help' them vote their ballots. **Though there have been some cases in the Eastern district of election day fraud, most have been absentee.**

Johnson argues that it is **hard to distinguish between intimidation and vote buying.** They have also **seen instances where civic groups and church groups intimidate members to vote in a specific manner, not for reward, but under threat of being ostracized or even telling them they will go to hell.**

While she is **aware of allegations of intimidation by the parties regarding minority precincts in Louisville, the board hasn't received calls about it and there haven't been any prosecutions.**

Challengers

**Challengers are permitted at the polls in Kentucky.** Each party is allowed two per location, and they must file proper paperwork. **There is a set list of defined reasons for which they can challenge a voter, such as residency, and the challengers must also fill out paperwork to conduct a challenge.**

As for allegations of challengers engaging in intimidation in minority districts, Johnson notes that challengers did indeed register in Jefferson County, and filed the proper paperwork, although they ultimately did not show up on election day.

She finds that **relatively few challengers end up being officially registered, and that the practice has grown less common in recent years.** This is due more to a change of fashion than anything. **And after all, those wishing to affect election outcomes have little need for challengers in the precinct when they can target absentee voting instead.**

**In the event that intimidation is taking place, Kentucky has provisions to remove disruptive challengers, but this hasn't been used to her knowledge.**

Prosecutions

**Election fraud prosecutions in Kentucky have only involved vote buying.** This may be because that **it is easier to investigate, by virtue of a cash and paper trail which investigators can follow.** It is **difficult to quantify any average numbers about the practice from this, due in part to the five year statute of limitations on vote buying charges.** However, **she does not believe that vote-buying is pervasive across the state, but rather confined to certain pockets.**

Vote-hauling Legislation

**Vote hauling is a common form of vote buying by another name.** Individuals are **legally paid to drive others to the polls, and then divide that cash in order to purchase votes.** Prosecutions have confirmed that vote hauling is used for this purpose. While the Secretary of State has been committed to legislation which would ban the practice, it has failed to pass in the past two sessions.

Paying Voter Registration Workers Legislation

**A law forbidding people to pay workers by the voter registration card or for obtaining cards with registrations for a specific party was passed this session.** Individuals working as part of a registration campaign may still be paid by hour. Kentucky's experience in the last presidential election illustrates the problems arising from paying individuals by the card. That contest included a constitutional amendment to ban gay marriage on the ballot, which naturally attracted the attention of many national groups. **One group paying people by the card resulted in the registrar being inundated with cards, including many duplicates in the same bundle, variants on names, and variants on addresses.** **As this practice threatens to overwhelm the voter registration process, Kentucky views it as constituting malicious fraud.**

Deceptive practices

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Other than general reports in the news, Johnson hasn't received any separate confirmation or reports of deceptive practices, i.e., false and misleading information being distributed to confuse voters.

Effect of Kentucky's Database

Johnson believes Kentucky's widely praised voter registration database is a key reason why the state doesn't have as much fraud as it might, especially the types alleged elsewhere like double and felon voting. While no database is going to be perfect, the connections with other state databases such as the DMV and vital statistics have been invaluable in allowing them to aggressively purge dead weight and create a cleaner list. When parties use their database list they are notably more successful. Johnson wonders how other states are able to conduct elections without a similar system.

Some factors have made especially important to their success.

- When the database was instituted in 1973, they were able to make everyone in the state re-register and thus start with a clean database. However, it is unlikely any state could get away with this today.
- She is also a big supporter of a full Social Security number standard, as practiced in Kentucky. The full Social Security, which is compared to date of birth and letters in the first and last name, automatically makes matching far more accurate. The huge benefits Kentucky has reaped make Johnson skeptical of privacy concerns arguing for an abbreviated Social Security number. Individuals are willing to submit their Social Security number for many lesser purposes, so why not voting? And in any event, they don't require a Social Security number to register (unlike others such as Georgia). Less than a percent of voters in Kentucky are registered under unique identifiers, which the Board of Elections then works to fill in the number through cross referencing with the DMV.

Recommendations

- Johnson believes the backbone of effective elections administration must be standardized procedures, strong record keeping, and detailed statutes. In Kentucky, all counties use the same database and the same pre election day forms. Rather than seeing that as oppressive, county officials report that the uniformity makes their jobs easier.
- This philosophy extends to the provisional ballot question. While they did not have a standard in place like HAVA's at the time of enactment, they worked quickly to put a uniform standard in place.
- They have also modified forms and procedures based on feedback from prosecutors. Johnson believes a key to enforcing voting laws is working with investigators and prosecutors and ensuring that they have the information they need to mount cases.
- She also believes public education is important, and that the media could do more to provide information about what is legal and what is illegal. Kentucky tries to fulfill this role by information in polling places, press releases, and high profile press conferences before elections. She notes that they deliberately use language focusing on fraud and intimidation.
- Johnson is somewhat pessimistic about reducing absentee ballot fraud. Absentee ballots do have a useful function for the military and others who cannot get to the polling place, and motivated individuals will always find a way to abuse the system if possible. At a minimum, however, she recommends that absentee ballots should require an excuse. She believes this has helped reduce abuse in Kentucky, and is wary of no-excuse practices in other states.

Stephen Ansolobehere, Massachusetts Institute of Technology

Chandler Davidson, Rice University

Methodology suggestions

In analyzing instances of alleged fraud and intimidation, we should look to criminology as a model. In criminology, experts use two sources:

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the Uniform Crime Reports, which are all reports made to the police, and the Victimization Survey, which asks the general public whether a particular incident has happened to them. After surveying what the most common allegations are, we should conduct a survey of the general public that asks whether they have committed certain acts or been subjected to any incidents of fraud or intimidation. This would require using a very large sample, and we would need to employ the services of an expert in survey data collection. Mr. Ansolobehere recommended Jonathan Krosnick, Doug Rivers, and Paul Sniderman at Stanford; Donald Kinder and Arthur Lupia at Michigan; Edward Carmines at Indiana; and Phil Tetlock at Berkeley. In the alternative, Mr. Ansolobehere suggested that the EAC might work with the Census Bureau to have them ask different, additional questions in their Voter Population Surveys.

Mr. Chandler further suggested it is important to talk to private election lawyers, such as Randall Wood, who represented Ciro Rodriguez in his congressional election in Texas. Mr. Ansolobehere also recommended looking at experiments conducted by the British Election Commission.

Incidents of Fraud and Intimidation

Mr. Davidson's study for the Lawyers Committee for Civil Rights on the Voting Rights Act documented evidence of widespread difficulty in the voting process. However, he did not attempt to quantify whether this was due to intentional, malevolent acts. In his 2005 report on ballot security programs, he found that there were many allegations of fraud made, but not very many prosecutions or convictions. He saw many cases that did go to trial and the prosecutors lost on the merits.

In terms of voter intimidation and vote suppression, Mr. Davidson said he believes the following types of activities do occur:

- videotaping of voters' license plates;
- poll workers asking intimidating questions;
- groups of officious-looking poll watchers at the poll sites who seem to be some sort of authority looking for wrongdoing;
- spreading of false information, such as phone calls, flyers, and radio ads that intentionally mislead as to voting procedures.

Mr. Ansolobehere believes the biggest problem is absentee ballot fraud. However, many of these cases involve people who do not realize what they are doing is illegal, for example, telling someone else how to vote. Sometimes there is real illegality occurring however.

For example:

- vote selling involving absentee ballots,
- the filling out of absentee ballots en masse,
- people at nursing homes filling out the ballots of residents, and
- there are stories about union leaders getting members to vote a certain way by absentee ballot.

This problem will only get bigger as more states liberalize their absentee ballot rules. Mr. Chandler agreed that absentee ballot fraud was a major problem.

Recommendations

- Go back to "for cause" absentee ballot rules, because it is truly impossible to ever ensure the security of a mail ballot. Even in Oregon, there was a study showing fraud in their vote by mail system.
- False information campaigns should be combated with greater voter education. Los Angeles County's voter education program should be used as a model.

Tracey Campbell, author, *Deliver the Vote*

While less blatant than in previous eras, fraud certainly still occurs, and he mentions some examples in his book. The major trend of the past 60-70 years has been that these tactics have grown more subtle.

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While he hasn't conducted any scientific study of the current state of fraud, his sense as a historian is that it is seems naive, after generations of watching the same patterns and practices influence elections, to view suspect election results today as merely attributable to simple error.

Vote-buying and absentee fraud

Campbell sees fraud by absentee ballot and vote buying as the greatest threats to fair elections today. He says vote fraud is like real estate: location, location, location—the closer you can keep the ballots to the courthouse the better. **Absentee ballots create a much easier target for vote brokers who can manage voting away from the polling place, or even mark a ballot directly, in exchange for, say, \$50— or even more if an individual can bring their entire family.** He has noted some small counties where absentee ballots outnumber in-person ballots.

However, few people engaged in this activity would call it 'purchasing' a vote. Instead, it is candidate Jones' way of 'thanking' you for a vote you would have cast in any event. The issue is what happens if candidate Smith offers you more. Likewise, the politicians who engage in vote fraud don't see it as a threat to the republic but rather as a game they have to play in order to get elected.

Regional patterns

Campbell suggests such practices are more prevalent in the South than the Northern states, and even more so compared to the West. The South has long been characterized as particularly dangerous in intimidation and suppression practices—throughout history, one can find routine stories of deaths at the polls each year. While he maintains that fraud seems less likely in the Western states, he sees the explosion of mail in and absentee ballots there as asking for trouble.

Poll site closings as a means to suppress votes

Campbell points to a long historical record of moving poll sites in order to suppress votes. Polling places in the 1800s were frequently set-up on rail cars and moved further down the line to suppress black votes. He would include door-to-door canvassing practices here, as well as voting in homes, which was in use in Kentucky until only a few years ago. All of these practices have been justified as making polling places 'more accessible' while their real purpose has been to suppress votes.

Purge lists

Purge lists are, of course, needed in theory, yet Campbell believes the authority to mark names off the voter rolls presents extensive opportunity for abuse. For this reason, purging must be done in a manner that uses the best databases, and looks at only the most relevant information. When voters discover their names aren't on the list when they go to vote, for example, because they are "dead," it has a considerable demoralizing effect. **Wrongful purging takes place both because of incompetence and as a tool to intentionally disenfranchise.**

Campbell believes transparency is the real issue here. An hour after the polls close, we tend to just throw up our hands and look the other way, denying voters the chance to see that discrepancies are being rectified. He believes the cost in not immediately knowing election outcomes is a small price to pay for getting results rights and showing the public a transparent process.

Deceptive practices

Today's deceptive practices have are solidly rooted in Reconstruction-era practices—i.e. phony ballots, the Texas 'elimination' ballot. The ability to confuse voters is a powerful tool for those looking to sway elections.

Language minorities

Campbell argues there is a fine line between offering help to non-English speakers and using that help against them. A related issue, particularly in the South, is taking advantage of the illiterate.

Current intimidation

Another tactic Campbell considers an issue today is polling place layout: the further vote suppressers can keep people away from the



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polls, the better. Practices such as **photographing people leaving a polling place** may also tie into **vote-buying**, where photos are used to **intimidate and validate purchased votes**. A good way to combat such practices is by **keeping electioneering as far from the polls as possible**.

Recommendations

- Specific voting administration recommendations Campbell advocates would include **reducing the use of absentee ballots and improving the protective zone around polling places**.
- Campbell would also like to see **enforcement against fraud stepped up and stiffer penalties enacted, as current penalties make the risk of committing fraud relatively low**. He compares the risk in election fraud similar to steroid use in professional sports—the potential value of the outcome is far higher than the risk of being caught or penalized for the infraction, so it is hard to prevent people from doing it. People need to believe they will pay a price for engaging in fraud or intimidation. Moreover, we need to have the will to kick people out of office if necessary.
- He is **skeptical of the feasibility of nonpartisan election administration**, as he believes it would be difficult to find people who care about politics yet won't lean one way or the other—such an attempt would be unlikely to get very far before accusations of partisanship emerged. He **considers the judiciary the only legitimate check on election fraud**.

Douglas Webber, Assistant Attorney General, Indiana, (defendant in the Indiana voter identification litigation)

Litigation

Status of litigation in Indiana: On January 12 the briefing was completed. The parties are waiting for a decision from the U.S. district judge. The judge understood that one of the parties would seek a stay from the 7<sup>th</sup> Circuit Court of Appeals. The parties anticipate a decision in late March or early April. Mr. Webber did the discovery and depositions for the litigation. Mr. Webber feared the plaintiffs were going to state in their reply brief that HAVA's statewide database requirement would resolve the problems alleged by the state. However, the plaintiffs failed to do so, relying on a Motor Voter Act argument instead. **Mr. Webber believes that the voter ID at issue will make the system much more user-friendly for the poll workers**. The Legislature passed the ID legislation, and the state is defending it, on the basis of the problem of the *perception* of fraud.

Incidents of fraud and intimidation

Mr. Webber thinks that **no one can put his or her thumb on whether there has been voter fraud in Indiana**. For instance, if **someone votes in place of another, no one knows about it**. **There have been no prosecuted cases of polling place fraud in Indiana. There is no recorded history of documented cases, but it does happen**. In the litigation, he used articles from around the country about instances of voter fraud, but even in those examples there were ultimately no prosecutions, for example the case of Milwaukee. He also stated **in the litigation that there are all kinds of examples of dead people voting---totaling in the hundreds of thousands of votes across the country**.

One interesting **example of actual fraud in Indiana occurred when a poll worker, in a poll using punch cards, glued the chads back and then punched out other chads for his candidate**. But this would not be something that would be addressed by an ID requirement.

He also believes that the perception that the polls are loose can be addressed by the legislature. The legislature does not need to wait to see if the statewide database solves the problems and therefore affect the determination of whether an ID requirement is necessary. When he took the deposition of the Republican Co-Director, he said he thought Indiana was getting ahead of the curve. That is, there have been problems around the country, and confidence in elections is low. Therefore Indiana is now in front of getting that confidence back.

Mr. Webber stated that the **largest vote problem in Indiana is absentee ballots. Absentee ballot fraud and vote buying are the most documented cases**. It used to be the law that applications for absentee ballots could be sent anywhere. **In one case absentee votes were**

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exchanged for "a job on election day"---meaning one vote for a certain price. The election was contested and the trial judge found that although there was vote fraud, the incidents of such were less than the margin of victory and so he refused to overturn the election. Mr. Webber appealed the case for the state and argued the judge used the wrong statute. The Indiana Supreme Court agreed and reversed. **Several people were prosecuted as a result – those cases are still pending.**

Process

In Indiana, voter complaints first come to the attorney for the county election board who can recommend that a hearing be held. If criminal activity was found, the case could be referred to the county prosecutor or in certain instances to the Indiana Attorney General's Office. In practice, the Attorney General almost never handles such cases.

Mr. Webber has had experience training county of election boards in preserving the integrity and security of the polling place from political or party officials. Mr. Webber stated that the Indiana voter rolls need to be culled. He also stated that in Southern Indiana a large problem was vote buying while in Northern Indiana a large problem was based on government workers feeling compelled to vote for the party that gave them their jobs.

Recommendations

- Mr. Webber believes that all election fraud and intimidation complaints should be referred to the Attorney General's Office to circumvent the problem of local political prosecutions. The Attorney General should take more responsibility for complaints of fraud because at the local level, politics interferes. At the local level, everyone knows each other, making it harder prosecute.
- Indiana currently votes 6 am to 6 pm on a weekday. Government workers and retirees are the only people who are available to work the polls. Mr. Webber suggested that the biggest change should be to move elections to weekends. This would involve more people acting as poll workers who would be much more careful about what was going on.
- Early voting at the clerk's office is good because the people there know what they are doing. People would be unlikely to commit fraud at the clerk's office. This should be expanded to other polling places in addition to that of the county clerk.
- Finally, Mr. Webber believes polling places should be open longer, run more professionally but that there needs to be fewer of them so that they are staffed by only the best, most professional people.

Heather Dawn Thompson, Director of Government Relations, National Congress of American Indians

Recent trends

Native election protection operations have intensified recently for several reasons. While election protection efforts in Native areas have been ongoing, leaders realized that they were failing to develop internal infrastructure or cultivate locally any of the knowledge and expertise which would arrive and leave with external protection groups.

Moreover, in recent years partisan groups have become more aware of the power of the native vote, and have become more active in native communities. This has partly resulted in an extreme increase in voter intimidation tactics. **As native communities are easy to identify, easy to target, and generally dominated by a single party, they are especially vulnerable to such tactics.**

Initially, reports of intimidation were only passed along by word of mouth. But it became such a problem in the past 5 to 6 years that tribal leaders decided to raise the issue to the national level. Thompson points to the Cantwell election in 2000 and the Johnson election in South Dakota in 2002 as tipping points where many began to realize the Indian vote could matter in Senate and national elections.

Thompson stressed that Native Vote places a great deal of importance on being nonpartisan. While a majority of native communities vote Democratic, there are notable exceptions, including communities in Oklahoma and Alaska, and they have both parties engaging in aggressive tactics. However, she believes the most recent increase in suppression and intimidation tactics have come from Republican Party organizations.

Nature of Suppression/Intimidation of Native Voters

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Thompson categorizes suppression into judge related and poll-watcher related incidents, both of which may be purposeful or inadvertent, as well as longstanding legal-structural constraints.

Structural problems

One example of inadvertent suppression built into the system stems from the fact that many Indian communities also include significant numbers of non-Indians due to allotment. Non-Indians tend to be most active in the state and local government while Indians tend to be more involved in the tribal government. Thus, the individuals running elections end up being non-Indian. Having Indians vote at polling places staffed by non-Indians often results in incidents of disrespect towards Native voters (Thompson emphasized the considerable racism which persists against Indians in these areas). Also, judges aren't familiar with Indian last names and are more dismissive of solving discrepancies with native voters.

Structural problems also arise from laws which mandate that the tribal government cannot run state or local elections. In places like South Dakota, political leaders used to make it intentionally difficult for Native Americans to participate in elections. For example, state, local and federal elections could not be held in the same location as tribal elections, leading to confusion when tribal and other elections are held in different locations. Also, it is common to have native communities with few suitable sites, meaning that a state election held in a secondary location can suddenly impose transportation obstacles.

Photo ID Issues

Thompson believes both state level and HAVA photo ID requirements have a considerable negative impact. For a number of reasons, many Indian voters don't have photo ID. Poor health care and poverty on reservations means that many children are born at home, leading to a lack of birth certificates necessary to obtain ID. Also, election workers and others may assume they are Hispanic, causing additional skepticism due to citizenship questions. There is a cultural issue as well—historically, whenever Indians register with the federal government it has been associated with a taking of land or removal of children. Thus many Indians avoid registering for anything with the government, even for tribal ID.

Thompson also offered examples of how the impact of ID requirements had been worsened by certain rules and the discriminatory way they have been carried out. In the South Dakota special election of 2003, poll workers told Native American voters that if they did not have ID with them and they lived within sixty miles of the precinct, the voter had to come back with ID. The poll workers did not tell the voters that they could vote by affidavit ballot and not need to return, as required by law. This was exacerbated by the fact that the poll workers didn't know the voters—as would be the case with non-Indian poll workers and Indian voters. Many left the poll site without voting and did not return.

In Minnesota, the state tried to prohibit the use of tribal ID's for voting outside of a reservation, even though Minnesota has a large urban Native population. Thompson believes this move was very purposeful, and despite any reasonable arguments from the Secretary of State, they had to file a lawsuit to stop the rule. They were very surprised to find national party representatives in the courtroom when they went to deal with lawsuit, representatives who could only have been alerted through a discussion with the Secretary of State.

Partisan Poll-Monitoring

Thompson believes the most purposeful suppression has been perpetrated by the party structures on an individual basis, of which South Dakota is a great example.

Some negative instances of poll monitoring are not purposeful. Both parties send in non-Indian, non-Western lawyers, largely from the East Coast, which can lead to uncomfortable cultural clashes. These efforts display a keen lack of understanding of these communities and the best way to negotiate within in them. But while it may be intimidating, it is not purposeful.

Yet there are also many instances of purposeful abuse of poll monitoring. While there were indeed problems during the 2002 Johnson election, it was small compared to the Janklow special election. Thompson says Republican workers shunned cultural understanding outreach, and had an extensive pamphlet of what to say at polls and were very aggressive about it. In one tactic, every time a voter

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would come up with no ID, poll monitors would repeat "You can't vote" over and over again, causing many voters to leave. This same tactic appeared across reservations, and eventually they looked to the Secretary of State to intervene. In another example, the head of poll watchers drove from poll to poll and told voters without IDs to go home, to the point where the chief of police was going to evict him from the reservation. In Minnesota, on the Red Lake reservation, police actually did evict an aggressive poll watcher—the fact that the same strategies are employed several hundred miles apart points to standardized instructions.

None of these incidents ever went to court. Thompson argues this is due to few avenues for legal recourse. In addition, it is inherently difficult to settle these things, as they are he said-she said incidents and take place amidst the confusion of Election Day. Furthermore, poll watchers know what the outline of the law is, and they are careful to work within those parameters, leaving little room for legal action.

Other seeming instances of intimidation may be purely inadvertent, such as when, in 2002, the U.S. Attorney chose Election Day to give out subpoenas, and native voters stayed in their homes. In all fairness, she believes this was a misunderstanding.

The effect of intimidation on small communities is especially strong and is impossible to ultimately measure, as the ripple effect of rumors in insular communities can't be traced. In some communities, they try to combat this by using the Native radio to encourage people to vote and dispel myths.

She has suggestions for people who can describe incidents at a greater level of detail if interested.

#### Vote Buying and Fraud

They haven't found a great deal of evidence on vote-buying and fraud. When cash is offered to register voters, individuals may abuse this, although Thompson believes this is not necessarily unique to the Native community, but a reflection of high rates of poverty. This doesn't amount to a concerted effort at conspiracy, but instead represents isolated incidents of people not observing the rules. While Thompson believes looking into such incidents is a completely fair inquiry, she also believes it has been exploited for political purposes and to intimidate. For example, large law enforcement contingents were sent to investigate these incidents. As Native voters tend not to draw distinctions between law enforcement and other officials, this made them unlikely to help with elections.

#### Remedies

- As far as voter suppression is concerned, Native Vote has been asking the Department of Justice to look into what might be done, and to place more emphasis on law enforcement and combating intimidation. They have been urging the Department to focus on this at least much as it is focusing on enforcement of Section 203. Native groups have complained to DOJ repeatedly and DOJ has the entire log of handwritten incident reports they have collected. Therefore, Thompson recommends more DOJ enforcement of voting rights laws with respect to intimidation. People who would seek to abuse the process need to believe a penalty will be paid for doing so. Right now, there is no recourse and DOJ does not care, so both parties do it because they can.
- Certain states should rescind bars on nonpartisan poll watchers on Election Day; Thompson believes this is contrary to the nonpartisan, pro-Indian presence which would best facilitate voting in Native communities.
- As discussed above, Thompson believes ID requirements are a huge impediment to native voters. At a minimum, Thompson believes all states should be explicit about accepting tribal ID on Election Day.
- Liberalized absentee ballot rules would also be helpful to Native communities. As many Indian voters are disabled and elderly, live far away from their precinct, and don't have transportation, tribes encourage members to vote by absentee ballot. Yet obstacles remain. Some voters are denied a chance to vote if they have requested a ballot and then show up at the polls. Thompson believes South Dakota's practice of tossing absentee ballots if a voter shows up at the ED would serve as an effective built-in protection. In addition, she believes there should be greater scrutiny of GOTV groups requesting absentee ballots without permission. Precinct location is a longstanding issue, but Thompson recognizes that states have limited resources. In the

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**absence of those resources, better absentee ballot procedures are needed.**

- **Basic voter registration issues and access** are also important in native communities and **need to be addressed.**
- Thompson is **mixed on what restrictions should be placed on poll watcher behavior, as she believes open elections and third party helpers are both important.** However, she would be **willing to explore some sort of stronger recourse and set of rules concerning poll watchers' behavior.** **Currently, the parties are aware that no recourse exists, and try to get away with what they will.** This is not unique to a single party—both try to stay within law while shaking people up. The existing VRA provision is 'fluffy'—unless you have a consent decree, you have very little power. Thompson thinks a **general voter intimidation law that is left a bit broad but that nonetheless makes people aware of some sort of kickback could be helpful.**

Jason Torchinsky, Assistant General Counsel, American Center for Voting Rights

Regarding the August 2005 Report

**ACVR has not followed up on any of the cases it cited in the 2005 report to see if the allegations had been resolved in some manner.** Mr. Torchinsky stated that **there are problems with allegations of fraud in the report and prosecution---just because there was no prosecution, does not mean there was no vote fraud.** He believes that it is **very hard to come up with a measure of voter fraud short of prosecution.** Mr. Torchinsky does not have a good answer to resolve this problem.

P. 35 of the Report indicates that there were coordinated efforts by groups to coordinate fraudulent voter registrations. P. 12 of the Ohio Report references a RICO suit filed against organizations regarding fraudulent voter registrations. Mr. Torchinsky does not know what happened in that case. He stated that there was a drive to increase voter registration numbers regardless of whether there was an actual person to register. He stated that when you have an organization like ACORN involved all over the place, there is reason to believe it is national in scope. When it is the same groups in multiple states, this leads to the belief that it is a concerted effort.

Voting Problems

Mr. Torchinsky stated **there were incidents of double voting---ex. a double voter in Kansas City, MO.** If the statewide voter registration database requirement of HAVA is properly implemented, he believes it will stop multiple voting in the same state. He supports the HAVA requirement, if implemented correctly. Since Washington State implemented its statewide database, the Secretary of State has initiated investigations into felons who voted. In Philadelphia the major problem is permitting polling places in private homes and bars – even the homes of party chairs.

Mr. Torchinsky believes that **voter ID would help, especially in cities in places like Ohio and Philadelphia, PA.** The ACVR legislative fund supports the Real ID requirements suggested by the Carter-Baker Commission. Since federal real ID requirements will be in place in 2010, any objection to a voter ID requirement should be moot.

Mr. Torchinsky stated that there are two major poll and absentee voting problems---(1) **fraudulent votes-ex. dead people voting in St. Louis and (2) people voting who are not legally eligible-ex. felons in most places.** He also believes that **problems could arise in places that still transport paper ballots from the voting location to a counting room.** However, he does not believe this is as widespread a problem now as it once was.

Suggestions

**Implement the Carter-Baker Commission recommendations because they represent a reasonable compromise between the political parties.**

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Robin DeJarnette, Executive Director, American Center for Voting Rights

[NO SUMMARY FOUND]

Joseph Rich, former Director of the Voting Section, Civil Rights Division, U.S. Department of Justice

Data Collection and Monitoring

- The **(Voting) section developed a new database before the 2004 election to log complaint calls and what was done to follow up on them. They opened many investigations as a result of these complaints, including one on the long lines in Ohio (see DOJ letter on website, as well as critical commentary on the DOJ letter's analysis). DOJ found no Section 2 violation in Ohio. John Tanner should be able to give us this data. However, the database does not include complaints that were received by monitors and observers in the field.**
- **All attorney observers in the field are required to submit reports after Election Day to the Department. These reports would give us a very good sense of the scope and type of problems that arose on that day and whether they were resolved on the spot or required further action.**
- **The monitoring in 2004 was the biggest operation ever. Prior to 2000, only certain jurisdictions could be observed – a VRA covered jurisdiction that was certified or a jurisdiction that had been certified by a court, e.g. through a consent decree. Since that time, and especially in 2004, the Department has engaged in more informal "monitoring." In those cases, monitors assigned to certain jurisdictions, as opposed to observers, can only watch in the polling place with permission from the jurisdiction. The Department picked locations based on whether they had been monitored in the past, there had been problems before, or there had been allegations in the past. Many problems that arose were resolved by monitors on the spot.**

Processes for Cases not Resolved at the Polling Site

- **If the monitor or observer believes that a criminal act has taken place, he refers it to the Public Integrity Section (PIN). If it is an instance of racial intimidation, it is referred to the Civil Rights Criminal Division. However, very few such cases are prosecuted because they are very hard to prove. The statutes covering such crimes require actual violence or the threat of violence in order to make a case. As a result, most matters are referred to PIN because they operate under statutes that make these cases easier to prove. In general, there are not a high number of prosecutions for intimidation and suppression.**
- **If the act is not criminal, it may be brought as a civil matter, but only if it violated the Voting Rights Act – in other words, only if there is a racial aspect to the case. Otherwise the only recourse is to refer it to PIN.**
- **However, PIN tends not to focus on intimidation and suppression cases, but rather cases such as alleged noncitizen voting, etc. Public Integrity used to only go after systematic efforts to corrupt the system. Now they focus on scattered individuals, which is a questionable resource choice. Criminal prosecutors over the past 5 years have been given more resources and more leeway because of a shift in focus and policy toward noncitizens and double voting, etc.**
- **There have been very few cases brought involving African American voters. There have been 7 Section 2 cases brought since 2001 – only one was brought on behalf of African American voters. That case was initiated under the Clinton administration. The others have included Latinos and discrimination against whites.**

Types of Fraud and Intimidation Occurring

- **There is no evidence that polling place fraud is a problem. There is also no evidence that the NVRA has increased the opportunity for fraud. Moreover, regardless of NVRA's provisions, an election official can always look into a voter's registration if he or she believes that person should no longer be on the list. The Department is now suing Missouri because of its poor registration list.**

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- The **biggest problem is with absentee ballots**. The photo ID movement is a **vote suppression strategy**. This type of suppression is a bigger problem than intimidation. There has been an increase in vote suppression over the last five years, but it has been indirect, often in the way that laws are interpreted and implemented. Unequal implementation of ID requirements at the polls based on race would be a VRA violation.
- The **most common type of intimidation occurring is open hostility by poll workers toward minorities**. It is a judgment call whether this is a crime or not – **Craig Donsanto of PIN decides if it rises to a criminal matter**.
- **Election Day challenges at the polls could be a VRA violation but such a case has never been formally pursued**. Such cases are often resolved on the spot. Development of a pre-election challenge list targeted at minorities would be a VRA violation but this also has never been pursued. These are choices of current enforcement policy.
- **Long lines due to unequal distribution of voting machines based on race, list purges based on race and refusal to offer a provisional ballot on the basis of race would also be VRA violations**.

Recommendations

- Congress should **pass a new law that allows the Department to bring civil actions for suppression that is NOT race based, for example, deceptive practices or wholesale challenges to voters in jurisdictions that tend to vote heavily for one party**.
- **Given the additional resources and latitude given to the enforcement of acts such as double voting and noncitizen voting, there should be an equal commitment to enforcement of acts of intimidation and suppression cases**.
- There should also be increased **resources dedicated to expanded monitoring efforts**. This might be the best use of resources since **monitors and observers act as a deterrent to fraud and intimidation**.

Joseph Sandler, Counsel to the Democratic National Committee

2004-Administrative Incompetence v. Fraud

Sandler believes the **2004 election was a combination of administrative incompetence and fraud**. Sandler stated there was a deliberate effort by the Republicans to disenfranchise voters across the country. This was accomplished by **mailing out cards to registered voters and then moving to purge from the voters list those whose cards were returned**. Sandler indicated that **in New Mexico there was a deliberate attempt by Republicans to purge people registered by third parties**. He stated that there were intentional efforts to disenfranchise voters by election officials like Ken Blackwell in Ohio.

The problems with machine distribution in 2004 were not deliberate. However, Sandler believes that a large problem exists in the states because there are no laws that spell out a formula to allocate so many voting machines per voter.

Sandler was asked how often names were intentionally purged from the voter lists. He responded that there will be a lot of names purged as a result of the creation of the voter lists under HAVA. However, Sandler stated **most wrongful purging results from incompetence**.

Sandler also said there was not much intimidation at the polls because most such efforts are deterred and that the last systematic effort was in Philadelphia in 2003 where Republicans had official looking cars and people with badges and uniforms, etc.

Sandler stated that **deliberate dissemination of misinformation was more incidental, with individuals misinforming and not a political party**. Disinformation did occur in small Spanish speaking communities.

Republicans point to instances of voter registration fraud but Sandler believes it did not occur, except for once in a blue moon. Sandler did not believe non-citizen voting was a problem. He also does not believe that there is voter impersonation at the polls and that Republicans allege this as a way of disenfranchising voters through restrictive voter identification rules.

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Fraud and Intimidation Trends

- Sandler stated that **over the years there has been a shift from organized efforts to intimidate minority voters through voter identification requirements, improper purging, failure to properly register voters, not allocating enough voting machines, failure to properly use the provisional ballot, etc., by voter officials as well as systematic efforts by Republicans to deregister voters.**
- At the federal level, **Sandler said, the voting division has become so politicized that it is basically useless now on intimidation claims. At the local level, Sandler does not believe politics prevents or hinders prosecution for vote fraud.**

Sandler's Recommendations:

- Moving the voter lists to the state level is a good idea where carefully done
- Provisional ballots rules should follow the law and not be over-used
- No voter ID
- Partisanship should be taken out of election administration, perhaps by giving that responsibility by someone other than the Secretary of State. There should at least be conflict of interest rules
- Enact laws that allow private citizens to bring suit under state law

All suggestions from the DNC Ohio Report:

1. The Democratic Party must continue its efforts to monitor election law reform in all fifty states, the District of Columbia and territories.
2. **States should be encouraged to codify into law all required election practices, including requirements for the adequate training of official poll workers.**
3. **States should adopt uniform and clear published standards for the distribution of voting equipment and the assignment of official pollworkers among precincts, to ensure adequate and nondiscriminatory access. These standards should be based on set ratios of numbers of machines and pollworkers per number of voters expected to turn out, and should be made available for public comment before being adopting.**
4. **States should adopt legislation to make clear and uniform the rules on voter registration.**
5. The Democratic Party should monitor the processing of voter registrations by local election authorities on an ongoing basis to ensure the timely processing of registrations and changes, including both newly registered voters and voters who move within a jurisdiction or the state, and the Party should ask state Attorneys General to take action where necessary to force the timely updating of voter lists.
6. **States should be urged to implement statewide voter lists in accordance with the Help America Vote Act ("HAVA"), the election reform law enacted by Congress in 2002 following the Florida debacle.**
7. **State and local jurisdictions should adopt clear and uniform rules on the use of, and the counting of, provisional ballots, and distribute them for public comment well in advance of each election day.**
8. The Democratic Party should monitor the purging and updating of registered voter lists by local officials, and the Party should challenge, and ask state Attorneys General to challenge, unlawful purges and other improper list maintenance practices.
9. **States should not adopt requirements that voters show identification at the polls, beyond those already required by federal law (requiring that identification be shown only by first time voters who did not show identification when registering.)**
10. **State Attorneys General and local authorities should vigorously enforce, to the full extent permitted by state law, a voter's right to vote without showing identification.**
11. Jurisdictions should be encouraged to use precinct-tabulated optical scan systems with a computer assisted device at each precinct, in preference to touchscreen ("direct recording equipment" or "DRE") machines.



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12. Touchscreen (DRE) machines should not be used until a reliable voter verifiable audit feature can be uniformly incorporated into these systems. In the event of a recount, the paper or other auditable record should be considered the official record.
13. Remaining punchcard systems should be discontinued.
14. **States should ask state Attorneys General to challenge unfair or discriminatory distribution of equipment and resources where necessary, and the Democratic Party should bring litigation as necessary.**
15. Voting equipment vendors should be required to disclose their source code so that it can be examined by third parties. No voting machine should have wireless connections or be able to connect to the Internet.
16. Any equipment used by voters to vote or by officials to tabulate the votes should be used exclusively for that purpose. That is particularly important for tabulating/aggregating computers.
17. States should adopt "no excuse required" standards for absentee voting.

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18. States should make it easier for college students to vote in the jurisdiction in which their school is located.
19. States should develop procedures to ensure that voting is facilitated, without compromising security or privacy, for all eligible voters living overseas.
20. **States should make voter suppression a criminal offense at the state level, in all states.**
21. **States should improve the training of pollworkers.**
22. **States should expend significantly more resources in educating voters on where, when and how to vote.**
23. **Partisan officials who volunteer to work for a candidate should not oversee or administer any elections.**

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John Ravitz, Executive Director, New York City Board of Elections

Process

If there is an allegation of fraud or intimidation, the commissioners can rule to act on it. For example, in 2004 there were allegations in Queens that people had registered to vote using the addresses of warehouses and stores. The Board sent out teams of investigators to look into this. The Board then developed a challenge list that was to be used at the polls if any of the suspect voters showed up to vote. If the allegation rises to a criminal level, the Board will refer it to the county district attorney. If a poll worker or election official is involved, the Board may conduct an internal investigation. That individual would be interviewed, and if there is validity to the claim, the Board would take action.

Incidences of Fraud and Intimidation

Mr. Ravitz says there have been **no complaints about voter intimidation since he has been at the Board**. There have been instances of over-aggressive poll workers, but nothing threatening. Voter fraud has also generally not been a problem.

**In 2004, the problem was monitors from the Department of Justice intimidating voters. They were not properly trained, and were doing things like going into the booth with voters.** The Board had to contact their Department supervisors to put a stop to it.

**Charges regarding "ballot security teams" have generally just been political posturing.**

**The problem of people entering false information on voter registration forms is a problem. However, sometimes a name people allege is false actually turns out to be the voter's real name. Moreover, these types of acts do not involve anyone actually casting a fraudulent ballot.**

**With respect to the issue of voters being registered in both New York and Florida, the Board now compares its list with that of Florida and other places to address the problem. This will be less of an issue with the use of statewide voter registration databases, as information becomes easier to share.** Despite the number of people who were on the voter registration lists of both jurisdictions, there was no one from those lists who voted twice.

**Most of the problems at the polls have to do with poll workers not doing what they are supposed to do, not any sort of malfeasance. This indicates that improved training is the most important measure we can take.**

**There have been instances in which poll workers ask voters for identification when they shouldn't. However, the poll workers seem to do it when they cannot understand the name when the voter tells it to them. The Board has tried to train them that no matter what, the poll worker cannot ask for identification in order to get the person's name.**

**Absentee ballot fraud has also not been a problem in New York City. This is likely because absentee ballots are counted last – eight days after election day. This is so that they can be checked thoroughly and verified. This is a practice other jurisdictions might consider.**

**New York City has not had a problem with ex-felons voting or with ex-felons not knowing their voting rights. The City has not had any problems in recent years with deceptive practices, such as flyers providing misinformation about voting procedures.**

Recommendations

**Better poll worker training**

John Tanner, Director, Voting Section, Civil Rights Division, U.S. Department of Justice

Mr. Tanner would not give us any information about or data from the section's election complaint in-take phone logs; data or even general information from the Interactive Case Management (ICM) system-its formal process for tracking and managing work activities in pursuing complaints and potential violations of the voting laws; and would give us only a selected few samples of attorney-observer reports,

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reports that every Voting Section attorney who is observing elections at poll sites on Election Day is required to submit. **He would not discuss in any manner any current investigations or cases the section is involved in.** He also did not believe it was his position to offer us recommendations as to how his office, elections, or the voting process might be improved.

Authority and Process

The Voting Section, in contrast to the Public Integrity section as Craig Donsanto described it, typically looks only at systemic problems, not problems caused by individuals. Indeed, the section never goes after individuals because it does not have the statutory authority to do so. In situations in which individuals are causing problems at the polls and interfering with voting rights, the section calls the local election officials to resolve it.

Federal voting laws only apply to state action, so the section only sues local governments – it does not have any enforcement power over individuals. Most often, the section enters into consent agreements with governments that focus on poll worker training, takes steps to restructure how polls are run, and deals with problems on Election Day on the spot. Doing it this way has been most effective – for example, while the section used to have the most observers in the South, systematic changes forced upon those jurisdictions have made it so now the section does not get complaints from the South.

The section can get involved even where there is no federal candidate on the ballot if there is a racial issue under the 14<sup>th</sup> and 15<sup>th</sup> Amendments.

When the section receives a complaint, attorneys first determine whether it is a matter of individuals or systemic. When deciding what to do with the complaint, the section errs on the side of referring it criminally because they do not want civil litigation to complicate a possible criminal case.

When a complaint comes in, the attorneys ask questions to see if there are even problems there that the complainant is not aware are violations of the law. For example, in the Boston case, the attorney did not just look at Spanish language cases under section 203, but also brought a Section 2 case for violations regarding Chinese and Vietnamese voters. When looking into a case, the attorneys look for specificity, witnesses and supporting evidence.

Often, lawsuits bring voluntary compliance.

Voter Intimidation

Many instances of what some people refer to as voter intimidation are more unclear now. For example, photographing voters at the polls has been called intimidating, but now everyone is at the polls with a camera. It is hard to know when something is intimidation and it is difficult to show that it was an act of intimidation.

The fact that both parties are engaging in these tactics now makes it more complicated. It makes it difficult to point the finger at any one side.

The inappropriate use of challengers on the basis of race would be a violation of the law. Mr. Tanner was unaware that such allegations were made in Ohio in 2004. He said there had never been an investigation into the abusive use of challengers.

Mr. Tanner said a lot of the challenges are legitimate because you have a lot of voter registration fraud as a result of groups paying people to register voters by the form. They turn in bogus registration forms. Then the parties examine the registration forms and challenge them because 200 of them, for example, have addresses of a vacant lot.

However, Mr. Tanner said the Department was able to informally intervene in challenger situations in Florida, Atkinson County, Georgia and in Alabama, as was referenced in a February 23 Op-Ed in USA Today. Mr. Tanner reiterated the section takes racial targeting very seriously.

Refusal to provide provisional ballots would be a violation of the law that the section would investigate.

Deceptive practices are committed by individuals and would be a matter for the Public Integrity Section. Local government would have to be involved for the voting section to become involved.

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Unequal implementation of ID rules, or asking minority voters only for ID would be something the section would go after. Mr. Tanner was unaware of allegations of this in 2004. He said this is usually a problem where you have language minorities and the poll workers cannot understand the voters when they say their names. The section has never formally investigated or solely focused a case based on abuse of ID provisions. However, implementation of ID rules was part of the Section 2 case in San Diego. Mr. Tanner reiterated that the section is doing more than ever before.

When asked about the section's references to incidents of vote fraud in the documents related to the new state photo identification requirements, Mr. Tanner said the section only looks at retrogression, not at the wisdom of what a legislature does. In Georgia, for example, everyone statistically has identification, and more blacks have ID than whites. With respect to the letter to Senator Kit Bond regarding voter ID, the section did refer to the perception of concern about dead voters because of reporting by the Atlanta Journal-Constitution. It is understandable that when you have thousands of bogus registrations that there would be concerns about polling place fraud. Very close elections make this even more of an understandable concern. Putting control of registration lists in the hands of the states will be helpful because at this higher level of government you find a higher level of professionalism.

It is hard to know how much vote suppression and intimidation is taking place because it depends on one's definition of the terms – they are used very loosely by some people. However, the enforcement of federal law over the years has made an astounding difference so that the level of discrimination has plummeted. Registration of minorities has soared, as can be seen on the section's website. Mr. Tanner was unsure if the same was true with respect to turnout, but the gap is less. That information is not on the section's website.

The section is not filling as many Section 2 cases as compared to Section 203 cases because many of the jurisdictions sued under Section 2 in the past do not have issues anymore. Mr. Tanner said that race based problems are rare now.

NVRA has been effective in opening up the registration process. In terms of enforcement, Mr. Tanner said they do what they can when they have credible allegations. There is a big gap between complaints and what can be substantiated. Mr. Tanner stated that given the high quality of the attorneys now in the section, if they do not investigate it or bring action, that act complained of did not happen.

Recommendations

Mr. Tanner did not feel it was appropriate to make recommendations

Kevin Kennedy, Executive Director of the State Board of Elections, Wisconsin

Complaints of fraud and intimidation do not usually come to Kennedy's office. Kennedy says that complainants usually take their allegations to the media first because they are trying to make a political point.

Election Incidents of Fraud

The investigations into the 2004 election uncovered some cases of double voting and voting by felons who did not know they were not eligible to vote, but found no concerted effort to commit fraud. There have been a couple of guilty pleas as a result, although not a number in the double digits. The task force and news reports initially referred to 100 cases of double voting and 200 cases of felon voting, but there were not nearly that many prosecutions. Further investigation since the task force investigation uncovered that in some instances there were mis-marks by poll workers, fathers and sons mistaken for the same voter, and even a husband and wife marked as the same voter. The double votes that are believed to have occurred were a mixture of absentee and polling place votes. It is unclear how many of these cases were instances of voting in two different locations.

In discussing the case from 2000 in which a student claimed – falsely – that he had voted several times, Kennedy said that double voting can be done. The deterrent is that it's a felony, and that one person voting twice is not an effective way to influence an election. One would need to get a lot of people involved for it to work.

The task force set up to investigate the 2004 election found a small number of illegal votes but given the 7,000 alleged, it was a relatively small number. There was no pattern of fraud.

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The one case Kennedy could recall of an organized effort to commit fraud was in the spring of 2003 or 2004. A community service agency had voters request that absentee ballots be sent to the agency instead of to the voters and some of those ballots were signed without the voters' knowledge. One person was convicted, the leader of the enterprise.

In Milwaukee, the main contention was that there were more ballots than voters. However, it was found that the 7,000 vote disparity was tied to poll worker error. The task force found that there was no concerted effort involved. Kennedy explained that there are many ways a ballot can get into a machine without a voter getting a number. These include a poll worker forgetting to give the voter one; someone does Election Day registration and fills out a registration form but does not get a number because the transaction all takes place at one table; and in Milwaukee, 20,000 voters who registered were not put on the list in time and as a short term solution the department sent the original registration forms to the polling places to be used instead of the list to provide proof of registration. This added another element of confusion that might have led to someone not getting a voter number.

The Republican Party used this original list and contracted with a private vendor to do a comparison with the U.S. postal list. They found initially that there were 5,000 bad addresses, and then later said there were 35,000 illegitimate addresses. When the party filed a complaint, the department told them they could force the voters on their list to cast a challenge ballot. On Election Day, the party used the list but found no one actually voting from those addresses. Kennedy suspects that the private vendor made significant errors when doing the comparison.

In terms of noncitizen voting, Kennedy said that there is a Russian community in Milwaukee that the Republican Party singles out every year but it doesn't go very far. Kennedy has not seen much in the way of allegations of noncitizen voting.

However, when applying for a drivers license, a noncitizen could register to vote. There is no process for checking citizenship at this point, and the statewide registration database will not address this. Kennedy is not aware of any cases of noncitizen voting as a result, but it might have happened.

Kennedy said that the biggest concern seemed to be suspicions raised when groups of people are brought into the polling site from group homes, usually homes for the disabled. There are allegations that these voters are being told how to vote.

#### Incidents of Voter Intimidation

In 2004, there was a lot of hype about challenges, but in Wisconsin, a challenger must articulate a basis under oath. This acts as a deterrent, but at the same time it creates the potential that someone might challenge everyone and create long lines, keeping people from voting. In 2004, the Republican Party could use its list of suspect addresses as a legitimate basis for challenges, so there is the potential for abuse. It is also hard to train poll workers on that process. In 2004, there were isolated cases of problems with challengers.

In 2002, a flyer was circulated only in Milwaukee claiming that you had vote by noon. This was taken as an intimidation tactic by the Democrats.

#### Reforms

Wisconsin has had difficulty with its database because 1) they have had a hard time getting a good product out of the vendor and 2) until now there was no registration record for one-quarter of the voters. Any jurisdiction with fewer than 5000 voters was not required to have a registration list.

In any case, once these performance issues are worked out, Kennedy does believe the statewide voter registration database will be very valuable. In particular, it will mean that people who move will not be on more than one list anymore. It should also address the double voting issue by identifying who is doing it, catching people who do it, and identifying where it could occur.

#### Recommendations

- Better trained poll workers
- Ensure good security procedures for the tabulation process and more transparency in the vote counting process

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EAC SUMMARY OF EXPERT INTERVIEWS FOR  
VOTING FRAUD-VOTER INTIMIDATION RESEARCH

- **Conduct post-election audits**

Evelyn Stratton, Justice, Supreme Court of Ohio

The 2004 Election

Justice Stratton stated that usually in the period right before an election, filings die down due to the Ohio expedited procedures for electoral challenges. However, the 2004 election was unusual because there were motions and cases decided up to the day of the election. Justice Stratton believed that most of the allegations were knee-jerk reactions without any substance. For example, without any factual claims, suit was brought alleging that all voter challengers posed a threat to voters. Thematically, allegations were either everyday voting problems or "conspiracies" depending on where the complaint came from. The major election cases in 2004 revolved around Secretary of State Blackwell.

Justice Stratton made a point that the Ohio Supreme Court bent over backwards in the 2004 election to be fair to both sides. There was never any discussion about a ruling helping one political party more than the other.

Justice Stratton cited **two cases that summarize and refute the 2004 complaints---819 NE 2d 1125 (Ohio 2004) and 105 Ohio St. 3d 458 (2004).**

General Election Fraud Issues

Justice Stratton has **seen very few fraud cases in Ohio.** Most challenges are for technical statutory reasons. She remembered one instance where a man who assisted handicapped voters marked the ballot differently than the voter wanted. Criminal charges were brought against this man and the question that the Ohio Supreme Court had to decide was whether ballots could be opened and inspected to see how votes were cast.

Justice Stratton claimed she **knew of isolated incidences of fictitious voter registration but these were not prosecuted.** She has not seen any evidence of ballots being stuffed, dead people voting, etc.

Suggestions for Changes in Voting Procedures

- The Ohio Supreme Court is very strict about laches---if a person sits on their rights too long, they lose the right to file suit. The Ohio expedited procedures make election challenges run very smooth. Justice Stratton does not remember any suits brought on the day of the election.
- lower courts need to follow the rules for the expedited procedures. Even given the anomalies with lower courts permitting late election challenges in 2004, the Ohio Supreme Court does not want to make a new rule unless this pattern repeats itself in 2008.
- last minute challenges should not be permitted
- supports a non-partisan head of state elections.

Tony Sirvello, Executive Director, International Association of Clerks, Recorders, Election Officials and Treasurers

Incidents of Election Fraud

Sirvello stated that one problem with election crimes is that they are not high on the priority list of either district attorneys or grand juries. Therefore, complaints of election crime very rarely are prosecuted or are indicted by the grand jury. In 1996 in Harris County, 14 people voted twice but the grand jury refused to indict. One woman voted twice, once during early voting and once on Election Day. She said she thought there were two elections. The jury believed her. Sirvello believes none of the people intentionally voted more than once. He said that he believes double voting is not as big of an issue as people make it out to be.

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EAC SUMMARY OF EXPERT INTERVIEWS FOR  
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In 1986, it was found that there were 300 more ballots than voter signatures. It was clear that the elections officials stuffed the ballot boxes. The case was brought before a grand jury, but there was no indictment because all of the defendants were friends and relatives of each other and none would admit what had been done.

Sirvello stated that there have been isolated circumstances where a voter would show up at the poll and his name had already been signed and he had voted.

Finally, Sirvello indicated that some people who worked in Houston but did not live in Harris County were permitted to vote.

Specific Absentee Ballot/Vote By Mail Issues

Sirvello said that mail voting presents the largest problem. With mail voting there is too much opportunity to influence voters or to fraudulently request a ballot. If one applied for an absentee ballot, their name and address was made available to candidates and political consultants who would often send people to collect the ballot. Many did not want to give up the ballot but wanted to mail it personally. The result was to discourage voting.

In Texas, a person could only apply for an absentee ballot if over 65 years of age. Parties, candidates and consultants would get the list of voters over 65 and send them a professional mail piece telling them they could vote by mail and a ballot with everything filled out except the signature. Problems ensued -- for example, voters would print their names rather than sign them, and the ballot was rejected. In other cases, the elderly would give their absentee ballot to someone else.

If a person applied for an absentee ballot but then decided not to cast it but to vote in person, that person had to bring the non-voted absentee ballot to the poll and surrender it. If they did not they would not be permitted to vote at the polling place.

Incidents of Voter Intimidation

Sirvello only reported isolated cases of intimidation or suppression in Harris County. These mostly occurred in Presidential elections. Some people perceived intimidation when being told they were not eligible to vote under the law. Sirvello stated that the big issue in elections now is whether there should be a paper trail for touch screen voting.

Recommendations

- District attorneys need to put more emphasis on election crime so people will not believe that it goes unpunished.
- There should be either a national holiday for Election Day or a day should be given off of work without counting as a vacation day so that better poll workers are available and there can be more public education on election administration procedures.

Harry Van Sickle, Commissioner of Elections, and Deputy Chief Counsel to the Secretary of State Larry Boyle, Pennsylvania

Fraud and Intimidation

Neither Van Sickle nor Boyle was aware of any fraud of any kind in the state of Pennsylvania over the last five years. They are not aware of the commission of any deceptive practices, such as flyers that intentionally misinform as to voting procedures. They also have never heard of any incidents of voter intimidation. With respect to the mayoral election of 2003, the local commission would know about that.

Since the Berks County case of 2003, where the Department of Justice found poll workers who treated Latino voters with hostility among other voting rights violations, the Secretary's office has brought together Eastern Pennsylvania election administrators and voting advocates to discuss the problems. As a result, other counties have voluntarily chosen to follow the guidance of the Berks County federal court order.

Regarding the allegations of fraud that surrounded the voter identification debate, Mr. Boyle said was not aware of any instances of fraud involving identity. He believes this is because Pennsylvania has laws in place to prevent this. For example, in 2002 the state legislature passed an ID law that is stricter than HAVA's -- it requires all first time voters to present identification. In addition, the SURE System --

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**the state's statewide voter registration database – is a great anti-fraud mechanism.** The system will be in place statewide in the May 2006 election.

In addition, the state took many steps before the **2004** election to make sure it would be smooth. They had **attorneys in the counties to consult on problems as well as staff at the central office to take calls regarding problems.** In addition, in 2004 the state used provisional ballots for the first time. This resolved many of the problems that used to occur on Election Day.

Mr. Boyle is **not aware of any voter registration fraud.** This is because **when someone registers to vote, the administrator does a duplicate check.** In addition, under new laws a person registering to vote must provide their drivers license or Social Security number which are verified through the Department of Motor Vehicles and the Social Security Administration. Therefore, it would be unlikely that someone would be able to register to vote falsely.

Process

**Most problems are dealt with at the local level and do not come within the review of the Secretary of State's office.** For instance, if there is a complaint of intimidation, this is generally dealt with by the county courts which are specially designated solely to election cases on Election Day. **The Secretary does not keep track of these cases.** Since the passage of NVRA and HAVA counties will increasingly call the office when problems arise.

Recommendations

Mr. Boyle suggested we review the recommendations of the Pennsylvania Election Reform Task Force which is on the Secretary's website. Many of those recommendations have been introduced in the legislature.

Craig Donsanto, Director, Public Integrity Section, U.S. Department of Justice

Questions

*How are Prosecution Decisions Made?*

**Craig Donsanto must approve all investigations that go beyond a preliminary stage, all charges, search warrant applications and subpoenas and all prosecutions. The decision to investigate is very sensitive because of the public officials involved. If a charge seems political, Donsanto will reject it.** Donsanto gives possible theories for investigation. **Donsanto and Noel Hillman will decide whether to farm out the case to an AUSA. Donsanto uses a concept called predication.** In-other-words, there must be enough evidence to suggest a crime has been committed. The method of evaluation of this evidence depends on the type of evidence and its source. There are two types of evidence---factual (antisocial behavior) and legal (antisocial behavior leading to statutory violations). **Whether an indictment will be brought depends on the likelihood of success before a jury. Much depends on the type of evidence and the source.** Donsanto said he "knows it when he sees it." Donsanto will only indict if he is confident of a conviction assuming the worst case scenario – a jury trial.

A person under investigation will first receive a target letter. Often, a defendant who gets a target letter will ask for a departmental hearing. The defendant's case will be heard by Donsanto and Hillman. On occasion, the assistant attorney general will review the case. The department grants such hearings easily because such defendants are likely to provide information about others involved.

**The Civil Rights Division, Voting Rights Section makes its own decisions on prosecution.** The head of that division is John Tanner. There is a lot of cooperation between

Does the Decision to Prosecute Incorporate Particular Political Considerations within a State Such as a One Party System or a System in which the Party in Power Controls the Means of Prosecution and Suppresses Opposition Complaints?

Yes. Before, the department would leave it to the states. Now, if there is racial animus involved in the case, there is political bias involved, or the prosecutor is not impartial, the department will take it over.

Does it Matter if the Complaint Comes from a Member of a Racial Minority?

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No. But if the question involves racial animus, that has also always been an aggravating factor, making it more likely the Department will take it over

What Kinds of Complaints Would Routinely Override Principles of Federalism?

Federalism is no longer big issue. DOJ is permitted to prosecute whenever there is a candidate for federal office.

Are There Too Few Prosecutions?

DOJ can't prosecute everything.

What Should Be Done to Improve the System?

- The problem is asserting federal jurisdiction in non-federal elections. It is preferable for the federal government to pursue these cases for the following reasons:
  - federal districts draw from a bigger and more diverse jury pool;
  - the DOJ is politically detached; local district attorneys are hamstrung by the need to be re-elected;
  - DOJ has more resources – local prosecutors need to focus on personal and property crimes---fraud cases are too big and too complex for them;
  - DOJ can use the grand jury process as a discovery technique and to test the strength of the case.
- In *U.S. v. McNally*, the court ruled that the mail fraud statute does not apply to election fraud. It was through the mail fraud statute that the department had routinely gotten federal jurisdiction over election fraud cases. 18 USC 1346, the congressional effort to “fix” *McNally*, did not include voter fraud.
- As a result, the department needs a new federal law that allows federal prosecution whenever a federal instrumentality is used, e.g. the mail, federal funding, interstate commerce. The department has drafted such legislation, which was introduced but not passed in the early 1990s..

Other Information

The Department has held four symposia for DEOs and FBI agents since the initiation of the Ballot Access and Voting Integrity Initiative. In 2003, civil rights leaders were invited to make speeches, but were not permitted to take part in the rest of the symposium. All other symposia have been closed to the public. (Peg will be sending us the complete training materials used at those sessions. These are confidential and are the subject of FOIA litigation).

There are two types of attorneys in the division:

- prosecutors, who take on cases when the jurisdiction of the section requires it; the US Attorney has recused him or herself; or when the US Attorney is unable to handle the case (most frequent reason) and
- braintrust attorneys who analyze the facts, formulate theories, and draft legal documents.

Cases:

Donsanto provided us with three case lists: Open cases (still being investigated) as of January 13, 2006 – confidential; election fraud prosecutions and convictions as a result of the Ballot Access and Voting Integrity Initiative October 2002-January 13, 2006 and cases closed for lack of evidence as of January 13, 2006

If we want more documents related to any case, we must get those documents from the states. The department will not release them to us.

**Although the number of election fraud related complaints have not gone up since 2002, nor has the proportion of legitimate to illegitimate complaints of fraud, the number of cases that the department is investigating and the number of indictments the department is pursuing are both up dramatically.**

**Since 2002, the department has brought more cases against alien voters, felon voters, and double voters than ever before. Previously, cases were only brought when there was a pattern or scheme to corrupt the process. Charges were not brought against individuals – those**

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cases went un-prosecuted. **This change in direction, focus, and level of aggression was by the decision of the Attorney General. The reason for the change was for deterrence purposes.**

The department is currently undertaking three pilot projects to determine what works in developing the cases and obtaining convictions and what works with juries in such matters to gain convictions:

- **Felon voters in Milwaukee.**
- **Alien voters in the Southern District of Florida.** FYI – under 18 USC 611, to prosecute for “alien voting” there is no intent requirement. Conviction can lead to deportation. Nonetheless, the department feels compelled to look at mitigating factors such as was the alien told it was OK to vote, does the alien have a spouse that is a citizen.
- **Double voters in a variety of jurisdictions.**

The department does not maintain records of the complaints that come in from DEOs, U.S attorneys and others during the election that are not pursued by the department. Donsanto asserted that U.S. attorneys never initiate frivolous investigations.

Sharon Priest, former Secretary of State, Arkansas

Process:

**When there is an allegation of election fraud or intimidation, the county clerk refers it to the local district attorney. Most often, the DA does not pursue the claim.** There is little that state administrators can do about this because in Arkansas, county clerks are partisanly elected and completely autonomous. Indeed, county clerks have total authority to determine who is an eligible voter.

Data:

There is **very little data collected in Arkansas on fraud and intimidation cases.** Any information there might be stays at the county level. This again is largely because the clerks have so much control and authority, and will not release information. **Any statewide data that does exist might be gotten from Susie Storms from the State Board of Elections.**

Most Common Problems

**The perception of fraud is much greater than the actual incidence of fraud.**

- **The DMV does not implement NVRA** in that it does not take the necessary steps when providing the voter registration forms and does not process them properly. **This leads to both ineligible voters potentially getting on the voting rolls (e.g. noncitizens, who have come to get a drivers license, fill out a voter registration form having no intention of actually voting) and voter thinking they are registered to vote to find they are not on the list on Election Day.** Also, some people think they are automatically registered if they have applied for a drivers license.
- **Absentee ballot fraud is the most frequent form of election fraud.**
- **In Arkansas, it is suspected that politicians pay ministers to tell their congregations to vote for them**
- **In 2003, the State Board documented 400 complaints against the Pulaski County Clerk for engaging in what was at least borderline fraud, e.g. certain people not receiving their absentee ballots. The case went to a grand jury but no indictment was brought.**
- **Transportation of ballot boxes is often insecure making it very easy for insiders to tamper with the ballots or stuff the ballot boxes.** Priest has not actually witnessed this happen, but believes it may have.
- **Intimidation at the poll sites in court houses. Many voters are afraid of the county judges or county employees and therefore will not vote. They justifiably believe their ballots will be opened by these employees to see who they voted for, and if they voted against the county people, retribution might ensue.**

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VOTING FRAUD-VOTER INTIMIDATION RESEARCH


- **Undue challenges to minority language voters at the poll sites**
- **Paid registration collectors fill out phony names, but these individuals are caught before anyone is able to cast an ineligible ballot.**

Suggested Reforms for Improvement:

- **Nonpartisan election administration**
- **Increased prosecution of election crimes through greater resources to district attorneys.** In addition, during election time, there should be an attorney in the DA's office who is designated to handle election prosecution.
- There should be **greater centralization of the process, especially with respect to the statewide database.** Arkansas has a "bottom up" system. This means the counties still control the list and there is insufficient information sharing. For example, **if someone lives in one county but dies in another, the county in which the voter lived – and was registered to vote – will not be notified of the death.**

**Deliberative Process  
Privilege**

Margaret Sims /EAC/GOV  
11/07/2006 11:29 AM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
bcc  
Subject Re: VF and VI study 

OK, I will get started on the interview summaries today.

DOJ (Donsanto and Tanner) raised objections to the consultants' description of their interviews, which state that DOJ officials agreed they were bringing fewer intimidation and suppression cases. An advocacy group is going after DOJ, accusing the agency of doing just that for political reasons, so this is something DOJ wants corrected.

Apart from the consultants pre-existing bias that "the feds aren't doing enough", a big part of the problem appears to have been a misunderstanding over terminology. When our consultants used the term "intimidation", they included all sorts of suppression activities. When Craig Donsanto used the term "intimidation", he was using the definition under federal criminal vote fraud statutes, which requires the action be accompanied by threat of physical or economic harm. (He told me he has had only one such case in 30 years.) His office is actively pursuing voter suppression activities under statutes other than federal voter intimidation laws (e.g.; the recent case in NH where a campaign operative conspired to block election day GOTV telephone lines of the opposing party). A copy of Tanner's comments on the interview summary in the status report for the Standards and Advisory Boards meetings is attached.

I had many long discussions with Tova and Job about this. I was able to get them to soften their description (see 4th bullet on page 7 of the draft report), but not entirely to my satisfaction. Also, at the Working Group meeting, it was agreed that the consultants would add a note to their definition to clarify that the working definition for purposes of the research includes activities that do not meet the federal definition of voter intimidation. The resulting note on page 5 of the draft report is too vague.

DOJ has not seen everything the consultants put in the draft final report, so they may have additional concerns. For example, the consultants' recommendations include the following:

**Attend the Department of Justice's Ballot Access and Voting Integrity Symposium** . The consultants also believe it would be useful for any further activity in this area to include attendance at the next Ballot Access and Voting Integrity Symposium. According to the Department, DEOs are required to attend annual training conferences centered on combating election fraud and voting rights abuses. These conferences sponsored by the Voting Section of the Civil Rights Division and the Public Integrity Section of the Criminal Division, feature presentations by civil rights officials and senior prosecutors from the Public Integrity Section and the U.S. Attorneys' Offices. According to the Department, DEOs are required to attend annual training conferences centered on combating election fraud and voting rights abuses. These conferences sponsored by the Voting Section of the Civil Rights Division and the Public Integrity Section of the Criminal Division, feature presentations by civil rights officials and senior prosecutors from the Public Integrity Section and the U.S. Attorneys' Offices.

**Footnote:**

By attending the symposium researchers could learn more about the following: How *DEOs* are trained, e.g. what they are taught to focus their resources on; How they are instructed to respond to various types of complaints; How information about previous elections and voting issues is presented; and, How the Voting Rights Act, the criminal laws governing election fraud and intimidation, the National Voter Registration Act, and the Help America Vote Act are described and explained to participants.

DOJ has stated that this is an internal meeting, involving only DOJ officials, US Attorneys and FBI. EAC researchers cannot be admitted without opening the meeting to other outsiders. DOJ does not want to do this, probably for two reasons: (1) confidential information on current enforcement cases may be

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discussed; and (2) making enforcement strategies public could give unscrupulous individuals a virtual "how to" manual for circumventing such strategies when committing election crimes.

We may also have a hard time gaining access to the DOE reports and the Voting Section records of complaints, as they probably aren't considered public documents.

-- Peggy



DOJ-TannerComments-TWInterviewSummary.doc

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV

11/07/2006 09:47 AM

To Margaret Sims/EAC/GOV@EAC

cc

Subject Re: VF and VI study

that would be great. I am also interested in identifying the points of contention between DOJ and the consultants.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
Margaret Sims/EAC/GOV

Margaret Sims/EAC/GOV

11/07/2006 09:45 AM

To Juliet E. Hodgkins/EAC/GOV@EAC

cc

Subject Re: VF and VI study

Yes (at T:\RESEARCH IN PROGRESS\VOTING FRAUD-VOTER INTIMIDATION\Interviews\Interview Summaries). Do you want me to do the same with those as I did with the literature summaries? -- Peggy

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV

11/07/2006 09:33 AM

To Margaret Sims/EAC/GOV@EAC

cc

Subject VF and VI study

011194



Did Tova and Job provide us with summaries or notes of their interviews?

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

Margaret Sims/EAC/GOV  
11/07/2006 09:45 AM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
bcc  
Subject Re: VF and VI study

History: This message has been replied to.

Yes (at T:\RESEARCH IN PROGRESS\VOTING FRAUD-VOTER INTIMIDATION\Interviews\Interview Summaries). Do you want me to do the same with those as I did with the literature summaries? — Peggy

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV  
11/07/2006 09:33 AM


To Margaret Sims/EAC/GOV@EAC  
cc  
Subject VF and VI study

Did Tova and Job provide us with summaries or notes of their interviews?

Juliet Thompson Hodgkins  
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011190

Margaret Sims/EAC/GOV  
11/06/2006 06:36 PM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
bcc  
Subject Re: VF\_VI Literature Review 

Julie:


Happy to help, especially as I have to assume the blame for the report turned in by the consultants. I think you were aware that I was disappointed that it was not a more professional product. As I was not clear what the Commission's position is on editing such reports after receipt of the final, and as the consultants insisted that their work not be changed, I felt a bit stymied. Let me know what else I can do.

In the meantime, I'm revisiting some drafts received on the Vote Count-Recount best practices to see if I can encourage more improvements before submission of the final. We're still waiting for the state-by-state summary of practices, originally delayed by the subcontractor's nonperformance, which could affect goes into the best practices. I think some of the emphasis I see in the drafts on post election audits and proper recordkeeping will help respond to some of the issues raised in the literature review for the voting fraud-voter intimidation study.

— Peggy

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV  
11/06/2006 05:18 PM


To Margaret Sims/EAC/GOV@EAC  
cc  
Subject Re: VF\_VI Literature Review 

Peggy,

I wanted to let you know that I had a chance to review your summaries today. I think that these are some excellent conclusions that we can definitely use in our report. Thank you for doing such a detailed and thorough job. If tomorrow goes quietly, hopefully I will have some time to write.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
Margaret Sims/EAC/GOV

Margaret Sims/EAC/GOV  
11/06/2006 11:07 AM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
Subject Re: VF\_VI Literature Review 

Julie:

I have not received the outline, but went ahead with reviewing the literature researched. Attached are my perspectives on what we learned and a listing of the literature with portions of the analysis for each. Both of these documents are on the shared drive under T:\RESEARCH IN PROGRESS\VOTING FRAUD-VOTER INTIMIDATION\Research Summaries. Hope these help. Let me know what else you need from me. --- Peggy



EAC-Learned from Lit Review 11-6-06.doc EAC Lit Review Notes 11-5-06.doc

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV

11/03/2006 06:41 PM

To Margaret Sims/EAC/GOV@EAC

cc

Subject Re: Job and Tova 

I appreciate it. I will send you a copy of the outline that I am working from. It is somewhat subject to change as I am still trying to gel in my mind what goes first, second ....

-----  
Sent from my BlackBerry Wireless Handheld

Margaret Sims

----- Original Message -----

**From:** Margaret Sims  
**Sent:** 11/03/2006 06:38 PM  
**To:** Juliet Hodgkins  
**Subject:** Re: Job and Tova

I can review them over the weekend and attempt to summarize what they tell us.--- Peggy

-----  
Sent from my BlackBerry Wireless Handheld

Juliet E. Hodgkins

----- Original Message -----

**From:** Juliet E. Hodgkins  
**Sent:** 11/03/2006 06:14 PM  
**To:** Margaret Sims  
**Subject:** Re: Job and Tova

I think we should use the content of those articles or some summary of them as a background of what we know about VF and VI. I just didn't want to have to read all of those articles to be able to make some generalized statements about their contents.

-----  
Sent from my BlackBerry Wireless Handheld

Margaret Sims

----- Original Message -----

**From:** Margaret Sims  
**Sent:** 11/03/2006 06:11 PM  
**To:** Juliet Hodgkins

011198

**Subject:** Re: Job and Tova

Julie:

All of the summaries received are in the shared drawer under T:\RESEARCH IN PROGRESS\VOTING FRAUD-VOTER INTIMIDATION\Research Summaries. There are too many of them to append to this message, or I would do it. The researchers did not propose to include these summaries in the report. Are you considering adding them?

If you want, I can cross reference each of these with the list of articles and ID any missing summaries. I could do that over the weekend. --- Peggy

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV

To Margaret Sims/EAC/GOV@EAC

11/03/2006 05:42 PM

cc

Subject Job and Tova

I spoke to Job about the documents that I need. He will send me his summary of the articles/books that he read. However, he said that Tova also summarized some of those articles/books. I don't have a contact number/email for Tova. Could you contact her and ask her to provide us with any summary of the articles/books that she read as they are listed in Appendix 2?

Juliet Thompson Hodgkins  
General Counsel  
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**1. Everyone does not define voting fraud and voter intimidation the same way.**

In some cases, what may have been honest administrative mistakes or errors due to poor poll worker training are lumped together with genuine voter suppression efforts and labeled as voter intimidation or voting fraud. Examples: (1) many authors consider certain voter suppression tactics to be voter intimidation that do not rise to the definition used in criminal enforcement of election crimes; (2) some charge that a DOJ ballot integrity measure in South Dakota was voter intimidation; and (3) some mistakes made in the maintenance of voter registration lists are labeled as fraud.

**2. There seems to be no systematic *nationwide* study that reports all (or most) verified instances of voting fraud and voter intimidation or suppression efforts in a particular election or a particular period in U.S. history.**

Some sources focus on certain areas of the country, which can bias the study if these areas are more or less susceptible to fraud and suppression. Some focus on the alleged (but not necessarily verified) misdeeds of one political party or another. Still others focus on unverified allegations reported to a toll-free phone line. In some cases, it is not clear if the incidents were intentional voter suppression or genuine poll worker mistakes (e.g.; not providing provisional ballots or in appropriately asking voters for ID). Minnite's study is as close as they get to a systematic study.

**3. There are a number of obstacles to gathering compete data on voting fraud and voter intimidation/suppression nationwide in any election.**

Authors often have limited resources (time and money) to collect such information. Investigation and prosecution of voting fraud and voter intimidation or suppression occurs at different levels of government (Federal, state and local). These investigations and prosecutions are not reported to and recorded by a central authority. Some voting fraud is inherently more difficult to identify and to prove than others (e.g.; impersonation of another voter at the polls is more difficult, due to the transient nature of some jurisdictions and the fact that impersonators not identified as a fraud at the polls are hard to identify later, than voter registration, vote buying, and absentee ballot fraud). At least some voting fraud and voter intimidation appears to go unreported and uninvestigated, and some prosecutions are unsuccessful due to local politics and law enforcement affiliations and the lack of sufficient resources at the Federal, state, and local levels to support the labor intensive effort.

**4. Most sources seem to agree that voter registration and absentee balloting fraud are the most common forms of voting fraud. Absentee ballot fraud often is accompanied by vote buying or voter coercion. Also frequently alleged were instances of ineligible voters (usually felons, but sometime non-citizens, under aged individuals, or non-residents) that voted. But not all agree that these are the only common forms of fraud.**

Some contend that voting in the name of another at the polling place is common, but that such instances are extremely hard to prove. Most instances of ineligible voters voting were linked to improper voter list maintenance or confusion on the part of local election officials as to state law on felon disenfranchisement.

**5. A number of sources have identified numerous instances of attempted voter suppression, but no instances of voter intimidation that could be prosecuted under Federal criminal laws is alleged.**

Examples of voter suppression efforts include: (1) phone calls and mailings deliberately directing targeted voters to vote on the wrong day or to go to the wrong polling place, or that provide incorrect and threatening information about the voter qualifications and legal consequences of voting; (2) targeted, inappropriate challenges to voters at the polls or shortly before election day; (3) people posing as law enforcement agents at targeted polling places. When such tactics target minority communities, they may be attacked through civil action by DOJ under Voting Rights Act provisions, but they do not qualify for criminal penalties under Federal voter intimidation law. Currently, there is no Federal election law providing criminal penalties for voter suppression efforts. When the suppression adversely affects a political party, but does not have a racial component, DOJ may be hard pressed to pursue the matter unless other Federal criminal law has been violated (e.g.; suppression of phone banks in New Hampshire).

**6. Unsupervised voter registration drives by political parties and advocacy groups are a primary source of fraudulent voter registration applications and missing (perhaps deliberately) voter registration applications.**

The practice of paying persons to man voter registration drives (particularly, but not only, when the person is paid by the head) is a frequent source of fraudulent voter registration applications. Partisan drives have resulted in applications from persons of “the wrong party” being held back or destroyed. Therefore, while the applicant believes they have registered, the election official has no record of that registration.

**7. Many authors contend that proper implementation of the National Voter Registration Act of 1993 (NVRA) and the Help America Vote Act of 2002 (HAVA) will reduce or at least not increase the potential for fraud and voter suppression, but some argue that provisions in these laws increase the likelihood of fraud or voter suppression.**

Many argue that proper implementation of the list maintenance and fail-safe voting provisions of the NVRA and HAVA’s requirements for the statewide voter registration list, voter ID for certain first-time voters, and provisional voting will reduce the potential for voting fraud and voter intimidation. Others argue that the list maintenance provisions of NVRA cause “dead wood” to be left on the voter rolls, providing opportunity for fraud, or that HAVA’s voter ID and list matching requirements can be used as voter suppression tactics.

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- 8. Proper recordkeeping and post-election auditing is an important key to identifying and preventing voting fraud, and for subsequent prosecution of such activities; but is not being done consistently.**
- 9. Poll worker recruitment and training is a key component to combating actions that are perceived as suppressing or intimidating voters.**
- 10. Both sides on election reform debates are using incomplete data to bolster their arguments.**



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**Articles**

People for the American Way and the NAACP, "The Long Shadow of Jim Crow," December 6, 2004.

This report describes the pervasive and repeated practices of voter intimidation and vote suppression that have taken place in very recent years and during contemporary American history. It goes on to describe the numerous instances of voter intimidation and suppression during the 2000 election, the 1990s, the 1980s and back through the civil rights movement of the 1960s, putting current efforts in historical perspective.

Describing the chronology of events in this way demonstrates the developing patterns and strategic underpinnings of the tactics used over the last forty years. **Examples** include:

- Florida law enforcement questioned elderly African American voters in Orlando regarding the 2003 mayoral race, which had already been resolved, shortly before the 2004 election;
- the 2004 Florida felon purge list;
- the case of South Dakota in 2004 in which Native Americans were improperly and illegally required to show photo identification at the polls or denied the right to vote, and similar improper demands for ID from minorities in other parts of the country;
- the use of challengers in minority districts in many locations;
- the challenge to the right of African American students to vote in Texas in 2004;
- the presence of men looking like law enforcement challenging African American voters at the polls in Philadelphia in 2003;
- the distribution of flyers in Louisiana and elsewhere in a number of elections over the last few years in minority areas telling them to vote on the wrong day; and
- the FBI investigation into thousands of Native American voters in South Dakota in 2002.

Laughlin McDonald, "The New Poll Tax," *The American Prospect* vol. 13 no. 23, December 30, 2002.

Argues that "the discriminatory use of so-called 'ballot security' programs" has been a reoccurring scandal since the passage of the Voting Rights Act of 1965. These programs are deceptively presented as preventing voter fraud and thereby furthering good government. However, McDonald states "but far too often they [the ballot security programs] are actually designed to suppress minority voting -- and for nakedly partisan purposes." Blames the federal government as well as the states for use of suspect ballot security programs. McDonald cites several ballot security efforts that were really disguised attempts at minority voter suppression:

- SD-DOJ "voting integrity initiative".
- AR - poll watchers driving away voters in predominantly black precincts by taking photos of them and demanding identification during pre-election day balloting.
- MI - "spotters" at heavily Democratic precincts was an effort to intimidate black voters and suppress Democratic turnout
- SC - one county's officials instituted a new and unauthorized policy allowing them to challenge voters who gave rural route or box numbers for their registration address (disproportionately affecting African Americans).
- the 1981 gubernatorial election anti-fraud initiative leading to the well known consent decree prohibiting the Republicans from repeating this, a similar Republican effort in Louisiana in 1986 in Senator John Breaux's race which again resulted in prohibition by a state court judge, and a similar effort by Republicans in Senator Jesse Helms 1990 reelection.

States that HAVA "contains provisions that may enhance the opportunities for harassment and intimidation of minorities through ballot-security

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**programs** (especially voter ID). Indicates that the crux of the problem is **law enforcement of federal voters rights laws** ("there is no record of the purveyors of any ballot-security program being criminally prosecuted by federal authorities for interfering with the right to vote." The only positive case law McDonald cited was a decision by the United States Court of Appeals for the Eighth Circuit that affirmed "an award of damages ranging from \$500 to \$2,000, payable by individual poll officials to each of seven black voters who had been unlawfully challenged, harassed, denied assistance in voting or purged from the rolls in the town of Crawfordville [Arkansas].")

Recommends that Congress and the states should adopt "nondiscriminatory, evenly applied measures to ensure the integrity of the ballot."

Wisconsin Legislative Audit Bureau, "An Evaluation: Voter Registration Elections Board" Report 05-12, September, 2005.

Current voter registration practices were determined to be insufficient to ensure the accuracy of voter registration lists used by poll workers or to prevent ineligible persons from registering to vote. **In six municipalities where sufficient information was available, there was 105 instances of potentially improper or fraudulent voting in the 2004 elections. These included: 98 ineligible felons who may have voted; 2 individuals who may have voted twice; 1 voter who may have been underage; and 4 absentee ballots that should not have been counted because the voters who cast them died before Election Day** (all but dead voters were forwarded to appropriate district attorneys for investigation). Statutes require that clerks send cards to everyone who registers by mail or on Election Day. However, only 42.7 % of the 150 municipalities surveyed sent cards to both groups, and 46 % did not send any address verification cards to those registering to vote on Election Day in November 2004. Statutes also require clerks to provide the local district attorney with the names of any Election Day registrants whose cards are undeliverable at the address provided. However, only 24.3 % of the clerks who sent cards also forwarded names from undeliverable cards to district attorneys. District attorneys surveyed indicated that they require more information than is typically provided to conduct effective investigations. To ensure that voter registration lists contain only the names of qualified electors, municipal clerks are required by statute to remove or inactivate the names of individuals who have not voted in four years, to update registration information for individuals who move or change their names, and to remove or inactivate the names of deceased individuals. They are also required to notify registered voters before removing their names from registration lists. These statutory requirements are not consistently followed:

- 85.3 % of municipalities removed the names of inactive voters from their voter registration lists;
- 71.4 % sometimes or always notified registered voters before removing their names; and
- 54.0 % reported removing the names of ineligible felons.
- registration lists contain duplicate records and the names of ineligible individuals (e.g.; more than 348,000 electronic voter registration records from eight municipalities were reviewed, identifying 3,116 records that appear to show individuals who are registered more than once in the same municipality).

Recommendations:

- adjust the early registration deadline to provide clerks more time to prepare registration lists;
- establish more stringent requirements for special registration deputies, including prohibiting compensation based on the number of individuals registered;
- establish uniform requirements for demonstrating proof of residence for all registrants;
- provide municipal clerks with more flexibility in the use of address verification cards;
- Authorize civil penalties for local election officials and municipalities that fail to comply with election laws; and
- implement mandatory elections training requirements for municipal clerks.

Report also recognized that the new **HAVA registration procedures would help with existing registration problems.**

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Milwaukee Police Department, Milwaukee County District Attorney's Office, Federal Bureau of Investigation, United States Attorney's Office "Preliminary Findings of Joint Task Force Investigating Possible Election Fraud," May 10, 2005.

On January 26, 2005, the Milwaukee Police Department, Milwaukee County District Attorney's Office, Federal Bureau of Investigation, and the United States Attorney's Office formed a task force to investigate alleged voting irregularities during the November 2004 elections. The task force has made the following specific determinations based on evidence examined to date:

- **evidence of more than 100 individual instances of suspected double-voting, voting in names of persons who likely did not vote, and/or voting in names believed to be fake.**
- **more than 200 felons voted when they were not eligible to do so. (In order to establish criminal cases, the government must establish willful violations in individual instances);**
- **persons who had been paid to register voters as "deputy registrars" falsely listed approximately 65 names in order to receive compensation for the registrations. (The evidence does not indicate that these particular false registrations were later used to cast votes); and,**
- **the number of votes counted from the City of Milwaukee exceeds the number of persons recorded as voting by more than 4,500. (Evidence indicates widespread record keeping errors with respect to recording the number of voters)**

The investigation concentrated on the 70,000+ same-day registrations. It found that a large majority of the reported errors were the result of data entry errors, such as street address numbers being transposed. However, the investigation also found more than 100 instances where votes were cast in a manner suggesting fraud. These include:

- persons with the same name and date of birth recorded as voting more than once;
- persons who live outside Milwaukee, but who used non-existent City addresses to register and vote in the City (141 of them were same day registrants; in several instances, the voter explicitly listed municipality names other than Milwaukee on the registration cards);
- persons who registered and voted with identities and addresses that cannot in any way be linked to a real person;
- persons listed as voting under a name and identity of a person known to be deceased;
- persons whose identities were used to vote, but who in subsequent interviews told task force investigators that they did not, in fact, vote in the City of Milwaukee.

Investigation also found:

- **persons who were paid money to obtain registrations allegedly falsified approximately 65 names on registration forms, allegedly to obtain more money for each name submitted.**
- **more than 200 felons who were not eligible to vote in the 2004 election, but who are recorded as having done so.**
- **same-day registrations were accepted in which the card had incomplete information that would help establish identity. For example: 48 original cards for persons listed as voting had no name; 548 had no address; 28 did not have signatures; and another 23 cards had illegible information (part of approximately 1,300 same-day registrations for which votes were cast, but which election officials could not authenticate as proper voters within the City).**
- **the post-election misfiling or loss of original green registration cards that were considered duplicates, but that in fact corresponded to additional votes. These cards were used to record votes, but approximately 100 cards of interest to investigators can no longer be located. In addition, other original green registration cards continue to be found.**

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National Commission on Federal Election Reform, "Building Confidence in U.S. Elections," Center for Democracy and Election Management, American University, September 2005.

Among the observations made that are relevant to the EAC study of fraud and intimidation are the following:

- The November 2004 elections showed that irregularities and fraud still occur.
- Failure to provide voters with such basic information as their registration status and their polling site location raises a barrier to voting as significant as inconsistent procedures on provisional ballots or voter ID requirements.
- There is no evidence of extensive fraud in U.S. elections or of multiple voting, but both occur, and it could affect the outcome of a close election.
- The Commission is concerned that the different approaches to identification cards might prove to be a serious impediment to voting.
- **Voter registration lists are often inflated by the inclusion of citizens who have moved out of state but remain on the lists.** Moreover, under the National Voter Registration Act, names are often added to the list, but counties and municipalities often do not delete the names of those who moved. Inflated voter lists are also caused by phony registrations and efforts to register individuals who are ineligible. At the same time, inaccurate purges of voter lists have removed citizens who are eligible and are properly registered.
- Political party and nonpartisan voter registration drives generally contribute to the electoral process by generating interest in upcoming elections and expanding participation. However, they are occasionally abused. **There were reports in 2004 that some party activists failed to deliver voter registration forms of citizens who expressed a preference for the opposing party.**
- **Vote by mail raises concerns about privacy**, as citizens voting at home may come under pressure to vote for certain candidates, and it increases the risk of fraud.
- **While election fraud is difficult to measure, it occurs.** The U.S. Department of Justice has launched more than 180 investigations into election fraud since October 2002. These investigations have resulted in **charges for multiple voting, providing false information on their felon status, and other offenses** against 89 individuals and in convictions of 52 individuals. The convictions related to a **variety of election fraud offenses, from vote buying to submitting false voter registration information and voting-related offenses by non-citizens.** In addition to the federal investigations, **state attorneys general and local prosecutors handle cases of election fraud. Other cases are never pursued because of the difficulty in obtaining sufficient evidence for prosecution or because of the low priority given to election fraud cases.**
- **Absentee ballots remain the largest source of potential voter fraud**
- **Non-citizens have registered to vote in several recent elections**
- **The growth of "third-party" (unofficial) voter registration drives in recent elections has led to a rise in reports of voter registration fraud.**
- **Many states allow the representatives of candidates or political parties to challenge a person's eligibility to register or vote or to challenge an inaccurate name on a voter roll. This practice of challenges may contribute to ballot integrity, but it can have the effect of intimidating eligible voters, preventing them from casting their ballot, or otherwise disrupting the voting process.**

Its pertinent recommendations for reform are as follows:

- **Interoperable state voter databases** are needed to facilitate updates in the registration of voters who move to another state and to eliminate duplicate registrations, which are a source of potential fraud.
- **Voters should be informed of their right to cast a provisional ballot** if their name does not appear on the voter roll, or if an election official asserts that the individual is not eligible to vote, but **States should take additional and effective steps to inform voters as to the location of their precinct**
- The Commission recommends that states use **"REAL ID" cards for voting purposes.**
- **To verify the identity of voters who cast absentee ballots, the voter's signature on the absentee ballot can be matched with a digitized**

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**version of the signature that the election administrator maintains.** While such signature matches are usually done, they should be done consistently in all cases, so that election officials can verify the identity of every new registrant who casts an absentee ballot.

- Each **state needs to audit its voter registration files** to determine the extent to which they are accurate (with correct and current information on individuals), complete (including all eligible voters), valid (excluding ineligible voters), and secure (with protections against unauthorized use). This can be done by matching voter files with records in other state agency databases in a regular and timely manner, contacting individuals when the matches are inconclusive, and conducting survey research to estimate the number of voters who believe they are registered but who are not in fact listed in the voter files.
- Each **state should oversee political party and nonpartisan voter registration drives** to ensure that they operate effectively, that registration forms are delivered promptly to election officials, that all completed registration forms are delivered to the election officials, and that none are "culled" and omitted according to the registrant's partisan affiliation. Measures should also be adopted to track and hold accountable those who are engaged in submitting fraudulent voter registrations. Such oversight might consist of training activists who conduct voter registration drives and tracking voter registration forms to make sure they are all accounted for. In addition, states should apply a criminal penalty to any activist who deliberately fails to deliver a completed voter registration form.
- **Investigation and prosecution of election fraud should include those acts committed by individuals, including election officials, poll workers, volunteers, challengers or other nonvoters associated with the administration of elections, and not just fraud by voters.**
- **In July of even-numbered years, the U.S. Department of Justice should issue a public report on its investigations of election fraud.** This report should specify the numbers of allegations made, matters investigated, cases prosecuted, and individuals convicted for various crimes. **Each state's attorney general and each local prosecutor should issue a similar report.**
- **The U.S. Department of Justice's Office of Public Integrity should increase its staff to investigate and prosecute election-related fraud.**
- In addition to the penalties set by the Voting Rights Act, **it should be a federal felony for any individual, group of individuals, or organization to engage in any act of violence, property destruction (of more than \$500 value), or threatened act of violence that is intended to deny any individual his or her lawful right to vote or to participate in a federal election.**
- **To deter systemic efforts to deceive or intimidate voters, the Commission recommends federal legislation to prohibit any individual or group from deliberately providing the public with incorrect information about election procedures for the purpose of preventing voters from going to the polls.**
- **States should define clear procedures for challenges, which should mainly be raised and resolved before the deadline for voter registration.** After that, challengers will need to defend their late actions. **On Election Day, they should direct their concerns to poll workers, not to voters directly, and should in no way interfere with the smooth operation of the polling station.**
- **State and local jurisdictions should prohibit a person from handling absentee ballots other than the voter, an acknowledged family member, the U.S. Postal Service or other legitimate shipper, or election officials.** The practice in some states of allowing candidates or party workers to pick up and deliver absentee ballots should be eliminated.
- All states should **consider passing legislation that attempts to minimize the fraud that has resulted from "payment by the piece" to anyone in exchange for their efforts in voter registration, absentee ballot, or signature collection.**
- Nonpartisan structures of election administration are very important, and **election administrators should be neutral, professional, and impartial.**
- No matter what institutions are responsible for conducting elections, **conflict-of-interest standards should be introduced for all federal, state, and local election officials.** Election officials should be prohibited by federal and/or state laws from serving on any political campaign committee, making any public comments in support of a candidate, taking a public position on any ballot measure, soliciting campaign funds, or otherwise campaigning for or against a candidate for public office. A decision by a secretary of state to serve as co-chair of his or her party's presidential

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election committee would clearly violate these standards.

The Brennan Center for Justice at NYU School of Law and Spencer Overton, Commissioner and Law Professor at George Washington University School of Law "Response to the Report of the 2005 Commission on Federal Election Reform," September 19, 2005.

### Recommendation on Voter Identification -

- Report premises its burdensome identification proposals on the need to ensure ballot integrity and on the existence of or potential for widespread fraud. However, the **Report admits that there is simply "no evidence" that the type of fraud that could be solved by stricter voter identification** – individual voters who misrepresent their identity at the polls – is a widespread problem.
- The photo ID proposal guards against only one type of fraud: individuals arriving at the polls to vote using false information, such as the name of another registered voter, or a recent but not current address. Since the costs of this form of fraud are extremely high (federal law provides for up to five years' imprisonment), and the benefits to any individual voter are extremely low, it is highly unlikely that this will ever occur with any frequency. **The limited types of fraud that could be prevented by a Real ID requirement are extremely rare and difficult.**
- In the most comprehensive survey of alleged election fraud to date, Professor Loraine Minnite and David Callahan have shown that the **incidence of individual voter fraud at the polls is negligible**. A few prominent examples support their findings. In Ohio, a statewide survey found four instances of ineligible persons voting or attempting to vote in 2002 and 2004, out of 9,078,728 votes cast – a rate of 0.00004%. Earlier this year, Georgia Secretary of State Cathy Cox stated that she could not recall one documented case of voter fraud relating to the impersonation of a registered voter at the polls during her ten-year tenure as Secretary of State or Assistant Secretary of State.
- The Report attempts to support its burdensome identification requirements on four specific examples of purported fraud or potential fraud. **None of the Report's cited examples of fraud stand up under closer scrutiny**. This response report goes through each instance of fraud raised by the Commission report and demonstrates that in each case the allegation in fact turned out later not to be true or the fraud cited was not of the type that would be addressed by a photo identification requirement.
- The Report fails to provide a good reason to create greater hurdles for voters who vote at the polls than for those who vote absentee. Despite the fact that **absentee ballots are more susceptible to fraud than regular ballots**, the Report exempts absentee voters from its proposed Real ID and proof of citizenship requirements.

Other points in ID requirement:

- **Report does not explain why the goals of improved election integrity will not be met through the existing provisions in the Help America Vote Act of 2002 (HAVA).**
- Report fails to consider alternative measures to advance its goals that are less restrictive to voters. To the extent that any limited fraud by **individuals at the polls does trickle into the system, it can be addressed by far less restrictive alternatives**. The first step is to recognize that only voters who appear on the registration list may vote a regular ballot. Proper cleaning of registration lists – and proper use of the lists at the poll–will therefore go a long way toward ensuring that every single ballot is cast by an eligible voter.
- In addition to the **better registration lists that full implementation will provide, better record keeping and administration at the polls will reduce the limited potential for voting by ineligible persons**. In the unlikely event that implementation of current law is not able to wipe out whatever potential for individual fraud remains, there are several effective and less burdensome alternatives to the Report's Real ID recommendation that received wholly insufficient consideration.
- Costs - If required as a precondition for voting, photo identification would operate as a de facto poll tax that could disenfranchise low-income voters. To alleviate this burden, the Report appropriately recommends that the "Real ID" card itself be issued free of charge. Nevertheless, the

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percentage of Americans without the documentary proof of citizenship necessary to obtain Real IDs is likely to remain high because the requisite documents are both expensive and burdensome to obtain. (Each of the documents an individual is required to show in order to obtain a "Real ID" card or other government-issued photo ID card costs money or presumes a minimal level of economic resources. Unless the federal and all state governments waive the cost of each of these other forms of identification, the indirect costs of photo IDs will be even greater than their direct costs. In addition, since government-issued IDs may only be obtained at specified government offices, which may be far from voters' residences and workplaces, individuals seeking such IDs will have to incur transportation costs and the costs of taking time off from work to visit those offices during often-abbreviated business hours.)

- Since voting generally depends on the voter's address, and since many states will not accept IDs that do not bear an individual's current voting address, an additional 41.5 million Americans each year will have ID that they may not be able to use to vote.
- The burden would fall disproportionately on the elderly, the disabled, students, the poor, and people of color.
- The ID recommendations reduce the benefits of voter registration at disability and other social service agencies provided by the National Voter Registration Act of 1993. Individuals who seek to register at those offices—which generally do not issue IDs Census data demonstrate that African Americans and Latinos are more than three times more likely than whites to register to vote at a public assistance agency, and that whites are more likely than African Americans and Latinos to register when seeking a driver's license. Accordingly, the voter registration procedure far more likely to be used by minorities than by whites will no longer provide Americans with full eligibility to vote.
- The Report's proposal to use Real ID as a condition of voting is so excessive that it would prevent eligible voters from proving their identity with even a valid U.S. passport or a U.S. military photo ID card. The Report's proposal to use Real ID as a condition of voting is so excessive that it would prevent eligible voters from proving their identity with even a valid U.S. passport or a U.S. military photo ID card

**Recommendation on Database Information Sharing Across States -serious efficacy, privacy, and security concerns raised by a nationally distributed database of the magnitude it contemplates.** These problems are exacerbated by the Report's recommendation that an individual's Social Security number be used as the broadly disseminated unique voting identifier.

**Recommendation on Voting Rights of Ex-Felons - This recommendation would set a standard more generous than the policies of the most regressive thirteen states in the nation but more restrictive than the remaining thirty-seven. The trend in the states is toward extension of the franchise.**

Chandler Davidson, Tanya Dunlap, Gale Kenny, and Benjamin Wise, "Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – or Both?" A Report to the Center for Voting Rights & Protection, September, 2004.

Focuses on **vote suppression through "ballot security programs"** (programs that, in the name of protecting against vote fraud, almost exclusively target heavily black, Latino, or Indian voting precincts and have the intent or effect of discouraging or preventing voters in those precincts from casting a ballot). Noteworthy **characteristics of these programs:**

- **focus on minority precincts almost exclusively**
- **is often on only the flimsiest evidence that vote fraud is likely to be perpetrated in such precincts;**
- **in addition to encouraging the presence of sometimes intimidating white Republican poll watchers or challengers who may slow down voting lines and embarrass potential voters by asking them humiliating questions, these programs have sometimes posted people in official-looking uniforms with badges and side arms who question voters about their citizenship or their registration**
- **warning signs may be posted near the polls, or radio ads may be targeted to minority listeners containing dire threats of prison terms for people who are not properly registered—messages that seem designed to put minority voters on the defensive.**
- **sometimes false information about voting qualifications is sent to minority voters through the mail."**
- **doing mailings, collecting returned materials, and using that as a basis for creating challenger lists and challenging voters at the polls,**

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started in the 1950s and continues to today (problem with this practice is that reasons for a mailing to be returned include a wrong address, out of date or inaccurate addresses, poor mail delivery in minority areas, and matching mistakes)

Provide numerous examples from the last 50 years to demonstrate his thesis, going through the historical development of Republican ballot security programs from the 1950s through to the present (including more recent incidents, such as 1981 in New Jersey, 1982 Dallas, Louisiana 1986, Houston 1986, Hidalgo 1988 Orange County 1988, North Carolina 1990, South Carolina 1980-1990, and South Dakota 2002). Author cites and quotes internal Republican letters and memoranda, primary sources and original documents, media reports, scholarly works, as well as the words of judges' rulings in some of the cases that ended up in litigation to prove his argument. author cites and quotes internal Republican letters and memoranda, primary sources and original documents, media reports, scholarly works, as well as the words of judges' rulings in some of the cases that ended up in litigation to prove his argument.

**Some of the features of vote suppression efforts put forth by Republicans under the guise of ballot security programs:**

1. **An organized, often widely publicized effort to field poll watchers in what Republicans call "heavily Democratic," but what are usually minority, precincts;**
2. **Stated concerns about vote fraud in these precincts, which are occasionally justified but often are not;**
3. **Misinformation and fear campaigns directed at these same precincts, spread by radio, posted signs in the neighborhoods, newspapers, fliers, and phone calls, which are often anonymously perpetrated;**
4. **Posting "official-looking" personnel at polling places, including but not limited to off-duty police—sometimes in uniform, sometimes armed;**
5. **Aggressive face-to-face challenging techniques at the polls that can confuse, humiliate, and intimidate—as well as slow the voting process—in these same minority precincts;**
6. **Challenging voters using inaccurate, unofficial lists of registrants derived from "do-not-forward" letters sent to low-income and minority neighborhoods;**
7. **Photographing, tape recording, or videotaping voters; and**
8. **Employing language and metaphors that trade on stereotypes of minority voters as venal and credulous.**

The report ends with some observations on the state of research on the incidence of fraud, which the author finds lacking. He **suggests that vote suppression of qualified minority voters by officials and partisan poll-watchers, challengers, and uniformed guards should also be considered as included in any definition of election fraud.** Recommends Democrats should not protest all programs aimed at ballot integrity, but rather work with Republicans to find solutions to problems that confront both parties and the system as a whole.

Alec Ewald, "A Crazy Quilt of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law," The Sentencing Project, November 2005.

Presents results from the first nationwide study to document the implementation of American felony disenfranchisement law. Data came from two main sources: a 33-state survey of state elections officials (spring 2004) and telephone interviews with almost one hundred city, county, town, and parish officials drawn from 10 selected states.

### Major Conclusions:

1. **Broad variation and misunderstanding in interpretation and enforcement of voting laws** (more than one-third [37%] of local officials interviewed in ten states either described their state's fundamental eligibility law incorrectly, or stated that they did not know a central aspect of that law. / Local registrars differ in their knowledge of basic eligibility law, often within the same state. Differences also emerge in how they are notified of criminal convictions, what process they use to suspend, cancel, or "purge" voters from the rolls, whether particular documents are required to restore a voter to eligibility, and whether they have information about the criminal background of new arrivals to the state.)
2. **Misdemeanants disenfranchised in at least five states** (the commonly-used term "felon disenfranchisement" is not entirely accurate, since at



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least five states – Colorado, Illinois, Michigan, South Carolina, and Maryland -- also formally bar some or all people convicted of misdemeanors from voting [ it is likely that misdemeanants in other states who do retain the formal right to vote could have difficulty exercising that right, given ignorance of their eligibility and the lack of clear rules and procedures for absentee voting by people in jail who have not been convicted of a felony / Maryland excludes persons convicted of many misdemeanors, such as “Unlawful operation of vending machines,” “Misrepresentation of tobacco leaf weight,” and “Racing horse under false name.”)

3. **Significant ambiguities in voting laws (disenfranchisement in Tennessee is dependent on which of five different time periods a felony conviction occurred between 1973 and the present /** in Oregon, disenfranchisement is determined not by conviction or imprisonment for a felony, but for being placed under Department of Corrections supervision / since 1997, some persons convicted of a felony and sentenced to less than 12 months’ custody have been sent to county jails and hence, are eligible to vote.
4. **Disenfranchisement results in contradictory policies within states (the “crazy-quilt” pattern of disenfranchisement laws exists even within states /** Alabama and Mississippi have both the most and least restrictive laws in the country, a result which is brought about by the fact that certain felonies result in the loss of voting rights for life, while others at least theoretically permit people in prison to vote / most felonies in Alabama result in permanent disenfranchisement, but drug and DUI offenses have been determined to not involve the “moral turpitude” that triggers the loss of voting rights / in Mississippi, ten felonies result in disenfranchisement, but do not include such common offenses as burglary and drug crimes.
5. **Confusing policies lead to the exclusion of legal voters and the inclusion of illegal voters:** The complexity of state disenfranchisement policies results in frequent misidentification of voter eligibility, largely because officials differ in their knowledge and application of disqualification and restoration law and procedures.
6. **Significant variation and uncertainty in how states respond to persons with a felony conviction from other states:** No state has a systematic mechanism in place to address the immigration of persons with a felony conviction, and there is no consensus among indefinite-disenfranchisement states on whether the disqualification is properly confined to the state of conviction, or should be considered in the new state of residence. Interpretation and enforcement of this part of disenfranchisement law varies not only across state lines, but also from one county to another within states. Local officials have no way of knowing about convictions in other states, and many are unsure what they would do if a would-be voter acknowledged an old conviction. Because there is no prospect of a national voter roll, this situation will continue even after full HAVA implementation.
7. **Disenfranchisement is a time-consuming, expensive practice:** Enforcement requires elections officials to gather records from different agencies and bureaucracies, including state and federal courts, Departments of Corrections, Probation and Parole, the state Board of Elections, the state police, and other counties’ elections offices.

### Policy Implications

1. **Policies disenfranchising people living in the community on probation or parole, or who have completed a sentence are particularly difficult to enforce:** States which disenfranchise only persons who are currently incarcerated appear able to enforce their laws more consistently than those barring non-incarcerated citizens from voting.
2. **Given large-scale misunderstanding of disenfranchisement law, many eligible persons incorrectly believe they cannot vote, or have been misinformed by election officials:** More than one-third of election officials interviewed incorrectly described their state’s law on voting eligibility. More than 85% of the officials who misidentified their state’s law either did not know the eligibility standard or specified that the law was more restrictive than was actually the case.
3. **Occasional violation of disenfranchisement law by non-incarcerated voters not surprising:** Given the complexity of state laws and the number of state officials who lack an understanding of restoration and disqualification procedures, it should come as no surprise that many voters are ignorant of their voting status, a fact that is likely to have resulted in hundreds of persons with a felony conviction registering and voting illegally in recent years.

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4. Taken together, these findings undermine the most prominent rationale for disenfranchisement: that the policy reflects a strong, clear consensus that persons with a felony conviction are unfit to vote and constitute a threat to the polity: First, when significant numbers of the people who administer elections do not know important aspects of disenfranchisement law, it is hard to conclude that the restriction is necessary to protect social order and the "purity" of the ballot box. Second, because they are all but invisible in the sentencing process, "collateral" sanctions like disenfranchisement simply cannot accomplish the denunciatory, expressive purposes their supporters claim. We now know that disenfranchisement is not entirely "visible" even to the people running American elections. Third, deep uncertainty regarding the voting rights of people with felony convictions who move from one state to another indicates that we do not even know what purpose disenfranchisement is supposed to serve – whether it is meant to be a punishment, or simply a non-penal regulation of the franchise.

### Recommendations

1. **Clarify Policies Regarding Out-of-State Convictions:** State officials should clarify their policies and incorporate into training programs the means by which a felony conviction in another state affects an applicant's voting eligibility. For example, sentence-only disenfranchisement states should clarify that newcomers with old felony convictions from indefinite disenfranchisement states are eligible to vote. And those states which bar some people from voting even after their sentences are completed must clarify whether new arrivals with old felony convictions from sentence-only disenfranchisement states are automatically eligible, and must explain what procedures, if any, should be followed for restoration.
2. **Train Election Officials:** Clarify disenfranchisement policies and procedures for all state and local election officials through development of materials and training programs in each state. At a minimum, this should include distribution of posters, brochures and FAQ sheets to local and state elections offices.
3. **Train Criminal Justice Officials:** Provide training on disqualification and restoration policies for all correctional and criminal justice officials, particularly probation and parole staff. Correctional and criminal justice officials should also be actively engaged in describing these policies to persons under criminal justice supervision.
4. **Review Voting Restrictions on Non-Incarcerated People:** Given the serious practical difficulty of enforcing laws disqualifying people who are not incarcerated from voting – problems which clearly include both excluding eligible people from voting and allowing those who should be ineligible to vote -- state policymakers should review such policies to determine if they serve a useful public purpose.

American Center for Voting Rights "Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election," August 2, 2005.

Using court records, police reports and news articles, ACVR Legislative Fund presented this Report documenting hundreds of reported incidents and allegations from around the country. The report **most often alleges voter intimidation and voter registration fraud, and to a lesser degree absentee ballot fraud and vote buying.** This report alleges a coordinated effort by members of some organizations to rig the election system through voter registration fraud, the first step in any vote fraud scheme that corrupts the election process by burying local officials in fraudulent and suspicious registration forms. paid Democrat operatives were far more involved in voter intimidation and suppression activities than were their Republican counterparts during the 2004 presidential election. Identified five cities as "hot spots" which require additional immediate attention, based on the findings of this report and the cities' documented history of fraud and intimidation: Philadelphia, PA, Milwaukee, WI, Seattle, WA, St. Louis/East St. Louis, MO/IL, and Cleveland, OH. Refutes charges of voter intimidation and suppression made against Republican supporters, discusses similar charges against Democrats, details incidents vote fraud and illegal voting and finally discusses problems with vote fraud, voter registration fraud and election irregularities around the country. Recommends:

- **Both national political parties should formally adopt a zero-tolerance fraud and intimidation policy that commits the party to pursuing and fully prosecuting individuals and allied organizations who commit vote fraud or who seek to deter any eligible voter from participating in the election through fraud or intimidation.** No amount of legislative reform can effectively deter those who commit acts of fraud if there is no punishment for the crime and these acts continue to be tolerated.

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- States should adopt legislation requiring government-issued photo ID at the polls and for any voter seeking to vote by mail or by absentee ballot. Government-issued photo identification should be readily available to all citizens without cost and provisions made to assure availability of government-issued identification to disabled and low-income citizens.
- States should adopt legislation requiring that all polling places be fully accessible and accommodating to all voters regardless of race, disability or political persuasion and that polling locations are free of intimidation or harassment.
- States should create and maintain current and accurate statewide voter registration databases as mandated by the federal Help America Vote Act (“HAVA”) and establish procedures to assure that the statewide voter roll is current and accurate and that the names of eligible voters on the roll are consistent with the voter roll used by local election authorities in conducting the election.
- States should adopt legislation establishing a 30-day voter registration cutoff to assure that all voter rolls are accurate and that all registrants can cast a regular ballot on Election Day and the election officials have opportunity to establish a current and accurate voter roll without duplicate or fictional names and assure that all eligible voters (including all recently registered voters) are included on the voter roll at their proper precinct.
- States should adopt legislation requiring voter registration applications to be delivered to the elections office within one week of being completed so that they are processed in a timely manner and to assure the individuals registered by third party organizations are properly included on the voter roll.
- States should adopt legislation and penalties for groups violating voter registration laws, and provide the list of violations and penalties to all registration solicitors. Legislation should require those organizations obtaining a voter’s registration to deliver that registration to election officials in a timely manner and should impose appropriate penalties upon any individual or organization that obtains an eligible voter’s registration and fails to deliver it to election authorities.
- States should adopt legislation prohibiting “bounty” payment to voter registration solicitors based on the number of registration cards they collect.

The Advancement Project, “America’s Modern Poll Tax: How Structural Disenfranchisement Erodes Democracy” November 7, 2001

Written after the 2000 election, thesis of report is that **structural disenfranchisement**—the effect of breakdowns in the electoral system, is the new poll tax. Structural disenfranchisement includes “bureaucratic blunders, governmental indifference, and flagrant disregard for voting rights.” Blame for structural disenfranchisement is laid squarely at the feet of **states and localities that “shirk their responsibilities or otherwise manipulate election systems,” resulting in voters “either turned away from the polls or their votes are thrown out.”** Data and conclusions in the Report are taken from **eight sample case studies** of states and cities across the country and a survey of state election directors that reinforces the findings of the case studies (New York City—in six polling places Chinese translations inverted the Democrats with the Republicans; Georgia—the state computer crashed two weeks before the election, dropping thousands of voters from the rolls; Virginia—registration problems kept an untold number from voting; Chicago—in inner-city precincts with predominately minority populations, almost four out of every ten votes cast for President (in 2000) were discarded; St. Louis—thousands of qualified voters were placed on inactive lists due to an overbroad purge; Florida—a voting list purge of voters whose name and birth date closely resembled those of people convicted of felonies; and, Texas—significant Jim Crow like barriers to minority voting.) Most ballot blockers involve the structural elements of electoral administration: “ill-trained poll workers, failures to process registration cards on time or at all, inaccurate registration rolls, overbroad purges of voter rolls, unreasonably long lines, inaccurate ballot translations and a shortage of translators to assist voters who have limited English language skills.”

### Findings:

- election directors lack the resources to effectively do their jobs and some lack the “ability or will to force local election officials to fix serious

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problems”;

- election officials are highly under funded and legislatures refuse to grant their requests for more money;
- due to a lack of funds, election officials must use old and inferior equipment and can't improve training or meet structural needs;
- election officials are generally unaware of racial disparities in voting; only three of the 50 state election administrators are non-white.

### Recommendations:

- federal policies that set nationwide and uniform election policies;
- federal guarantee of access to provisional ballots;
- enforcement of voter disability laws;
- automatic restoration of voting rights to those convicted of a crime after they have completed their sentence;
- a centralized data base of voters administered by non-partisan individuals;
- federal standards limiting precinct discarded vote rates to .25 %;
- federal requirements that jurisdiction provide voter education, including how to protect their right to vote; and laws that strengthen the ability of individuals to bring actions to enforce voting rights and anti-discrimination laws.

The Brennan Center and Professor Michael McDonald “Analysis of the September 15, 2005 Voter Fraud Report Submitted to the New Jersey Attorney General,” The Brennan Center for Justice at NYU School of Law, December 2005.

A September 15, 2005 Report submitted to the New Jersey Attorney General included lists of purportedly illegitimate votes in New Jersey in the 2004 general election, including lists of 10,969 individuals who purportedly voted twice and lists of 4,756 voters who were purportedly dead or incarcerated in November 2004. **Analysis of the suspect lists reveals that the evidence submitted does not show what it purports to show: cause for concern that there is serious risk of widespread fraud given the state of the New Jersey voter registration rolls.** These suspect lists were compiled by attempting to match the first name, last name, and birth date of persons on county voter registration files. **Analysis reveals several serious problems with the methodology used to compile the suspect lists that compromise the lists' practical value.** For example, middle initials were ignored throughout all counties, so that “J\_\_\_\_\_ A. Smith” was presumed to be the same person as “J\_\_\_\_\_ G. Smith.” Suffixes were also ignored, so that fathers and sons – like “B\_\_\_\_\_ Johnson” and “B\_\_\_\_\_ Johnson, Jr.” – were said to be the same person. **A presumption that two records with the same name and date of birth must represent the same person is not consistent with basic statistical principles.**

Re Claim of Double Voting by 4,497 Individuals:

- 1,803 of these 4,397 records of ostensibly illegal votes seem to be the product of a glitch in the compilation of the registration files (far more likely that data error is to blame for the doubly logged vote - to irregularities in the data processing and compilation process for one single county);
- another 1,257 entries of the 4,397 records probably represent similar data errors;
- approximately 800 of the entries on the list likely represent different people, with different addresses and different middle initials or suffixes;
- for approximately 200 of the entries in this category, however, less information is available (lack of or differences in middle initial or middle name);
- 7 voters were apparently born in January 1, 1880 – which is most likely a system default for registrations lacking date-of-birth information;
- for 227 voters, only the month and year of birth are listed: this means only that two voters with the same name were born in the same month and year, an unsurprising coincidence in a state of several million people;
- leaves approximately 289 votes cast under the same name and birth date – like votes cast by “P\_\_\_\_\_ S. Rosen,” born in the middle of the baby boom – but from two different addresses. It may appear strange, but there may be two P\_\_\_\_\_ S. Rosens, born on the same date in 1948 – and

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such coincidences are surprisingly common. . In a group of just 23 people, it is more likely than not that two will share the same birthday. For 40 people, the probability is 90%. Many, if not most, of the 289 alleged double votes of persons registered at different addresses most likely reflect two separate individuals sharing a first name, last name, middle initial, and birth date.

But there is **no doubt that there are duplicate entries on New Jersey's registration rolls**. It is well known that voter registration rolls contain "deadwood" – registration entries for individuals no longer living at a given address or deceased. There is no evidence, however, that these extra registrations are used for widespread illegal voting. Moreover, **the problem of deadwood will soon be largely resolved: both the National Voter Registration Act of 1993 and the Help America Vote Act of 2002 require states to implement several systems and procedures as of January 1, 2006, that will clean the voter rolls of duplicate or invalid entries while protecting eligible voters from unintended disfranchisement.**

Democratic National Committee, "Democracy at Risk: The November 2004 Election in Ohio," DNC Services Corporation, 2005

Study re 2004 election in Ohio. Findings considered related to EAC study:

- **Statewide, 6 % of all voters reported feelings of intimidation: 16 percent of African Americans reported experiencing intimidation versus only 5 % of white voters.**
- **African American voters were 1.2 times more likely than white voters to be required to vote provisionally.** Of provisional voters in Cuyahoga County, 35% were African American, compared to 25% of non-provisional voters, matched by geography.
- Under Ohio law, the only voters who should have been asked for identification were those voting in their first Federal election who had registered by mail but did **not** provide identification in their registration application. **Although only 7% of all Ohio voters were newly registered (and only a small percentage of those voters registered by mail and failed to provide identification in their registration application), more than one third (37% reported being asked to provide identification.—meaning large numbers of voters were illegally required to produce identification. African American voters statewide were 47% more likely to be required to show identification than white voters. Indeed, 61% of African American men reported being asked to provide identification at the polls.**
- **Scarcity of voting machines caused long lines that deterred many people from voting: 3% of voters who went to the polls left their polling places and did not return due to the long lines; statewide, African American voters reported waiting an average of 52 minutes before voting while white voters reported waiting an average of 18 minutes; overall, 20% of white Ohio voters reported waiting more than twenty minutes, while 44% of African American voters reported doing so.**

The report also includes a useful summary and description of the reports that came through Ohio Election Protection on Election Day, which included a wide variety of problems, including voter intimidation and discrimination.

Pertinent recommendations:

- **codify into law all required election practices**, including requirements for the adequate training of official poll workers
- **adopt legislation to make clear and uniform the rules on voter registration.**
- **adopt uniform and clear published standards for the distribution of voting equipment and the assignment of official pollworkers among precincts**, to ensure adequate and nondiscriminatory access
- **improve training of official poll workers**
- **adopt clear and uniform rules on the use of, and the counting of, provisional ballots**, and distribute them for public comment well in advance of each election day
- **not adopt requirements that voters show identification at the polls, beyond those already required by federal law; vigorously enforce, to the full extent permitted by state law, a voter's right to vote without showing identification.**

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- **make voter suppression a criminal offense at the state level**, in all states
- **implement statewide voter lists** in accordance with the Help America Vote Act ("HAVA")
- **expend significantly more resources in educating voters on where, when and how to vote.**
- **partisan officials who volunteer to work for a candidate should not oversee or administer any elections.**

Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2002."

Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2003."

Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2004."

**Supervision of the Justice Department's nationwide response to election crimes:**

Election Crimes Branch oversees the Department's handling of all election crime allegations other than those involving civil rights violations, which are supervised by the Voting Section of the Civil Rights Division. Specifically, the Branch supervises four types of corruption cases: crimes that involve the voting process, crimes involving the financing of federal election campaigns, crimes relating to political shakedowns and other patronage abuses, and illegal lobbying with appropriated funds. Vote frauds and campaign-financing offenses are the most significant and also the most common types of election crimes. The purpose of Headquarters' oversight of election crime matters is to ensure that the Department's nationwide response to election crime is uniform, impartial, and effective. An Election Crimes Branch, headed by a Director and staffed by Section attorneys on a case-by-case basis, was created within the Section in 1980 to handle this supervisory responsibility.

**Voting Fraud:**

During **2002** the Branch assisted United States Attorneys' Offices in Alabama, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Nevada, North Carolina, Rhode Island, South Carolina, South Dakota, Texas, Utah, West Virginia, and Wisconsin in handling vote fraud matters that occurred in their respective districts. During **2003** the Branch assisted United States Attorneys' Offices in Alabama, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Jersey, Nevada, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Virgin Islands, West Virginia, and Wisconsin in handling vote fraud matters that occurred in their respective districts. During **2004** the Branch assisted United States Attorneys' Offices in the following states in the handling of vote fraud matters that occurred in their respective districts: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New Mexico, Nevada, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, South Carolina, South Dakota, Texas, Utah, Virginia, West Virginia, Washington, and Wisconsin. This assistance included evaluating vote fraud allegations to determine whether investigation would produce a prosecutable federal criminal case, helping to structure investigations, providing legal advice concerning the formulation of charges, and assisting in establishing several task force teams of federal and state law enforcement officials to investigate vote fraud matters.

**Litigation:**

The Branch Director or Section attorneys also prosecute selected election crimes, either by assuming total operational responsibility for the case or by handling the case jointly with a United States Attorney's Office. The Section also may be asked to supervise the handling of a case in the event of a partial recusal of the local office. For example, in 2002 the Branch continued to supervise the prosecution of a sheriff and his election attorney for using data from the National Crime Information Center regarding voters' criminal histories to wage an election contest.

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### **District Election Officer Program:**

The Branch also assists in implementing the Department's long-standing District Election Officer (DEO) Program. This Program is designed to ensure that each of the 93 United States Attorneys' Offices has a trained prosecutor available to oversee the handling of election crime matters within the district and to coordinate district responses with Headquarters regarding these matters. The DEO Program involves the appointment of an Assistant United States Attorney in each federal district to serve a two-year term as a District Election Officer; the training of these prosecutors in the investigation and prosecution of election crimes; and the coordination of election-related initiatives and other law enforcement activities between Headquarters and the field. In addition, the DEO Program is a crucial feature of the Department's nationwide Election Day Program, which occurs in connection with the federal general elections held in November of even-numbered years. The Election Day Program ensures that federal prosecutors and investigators are available both at the Department's Headquarters in Washington and in each district to receive and handle complaints of election irregularities from the public while the polls are open and that the public is aware of how these individuals can be contacted on election day. In 2002 the Department enhanced the DEO Program by establishing a Ballot Integrity Initiative.

### **Ballot Integrity Initiative:**

**Beginning in September of 2002**, the Public Integrity Section, acting at the request of the Attorney General, assisted in the implementation of a Ballot Integrity Initiative for the 2002 general election and subsequent elections. This initiative included increasing the law enforcement priority the Department gives to election crimes; holding a special day-long training event in Washington, DC for representatives of the 93 United States Attorneys' Offices; publicizing the identities and telephone numbers of the DEOs through press releases issued shortly before the November elections; and requiring the 93 U.S. Attorneys to communicate the enhanced federal prioritization of election crime matters to state and local election and law enforcement authorities. As part of Ballot Integrity Initiative, on October 8, 2002, the Public Integrity Section and the Voting Rights Section of the Department's Civil Rights Division co-sponsored a Voting Integrity Symposium for District Election Officers representing each of the 93 federal judicial districts. Topics discussed included the types of conduct that are prosecutable as federal election crimes and the federal statutes used to prosecute such cases. Attorney General John Ashcroft delivered the keynote address on the importance of election crime and ballot integrity enforcement. Assistant Attorney General of the Civil Rights Division Ralph Boyd and Assistant Attorney General of the Criminal Division Michael Chertoff also spoke to attendees on the protection of voting rights and the prosecution of election cases. As part of Ballot Access and Voting Integrity Initiative, on September 23 and 24, 2003, the Public Integrity Section and the Voting Rights Section of the Department's Civil Rights Division co-sponsored a two-day Symposium for DEOs representing each of the 93 federal judicial districts. Topics discussed included the types of conduct that are prosecutable as federal election crimes and the federal statutes used to prosecute such cases. Assistant Attorney General of the Civil Rights Division Alexander Acosta and Assistant Attorney General of the Criminal Division Christopher A. Wray delivered the keynote addresses on the importance of protecting voting rights and the prosecution of election cases. On July 20 and 21, 2004, the Public Integrity Section and the Voting Section of the Department's Civil Rights Division co-sponsored a two-day symposium for DEOs representing each of the 93 federal judicial districts. Topics discussed included the types of conduct that are prosecutable as federal election crimes and the federal statutes available to prosecute such cases, and the handling of civil rights matters involving voting. Attorney General John Ashcroft delivered the keynote address on the importance of protecting voting rights and the prosecution of election fraud. In addition, Assistant Attorney General Christopher A. Wray of the Criminal Division and Assistant Attorney General R. Alexander Acosta of the Civil Rights Division addressed conference attendees on voting rights and election fraud enforcement issues respectively.

As a result of the Initiative, during 2002 the number of election crime matters opened by federal prosecutors throughout the country increased significantly, as did the Section's active involvement in election crime matters stemming from the Initiative. At the end of 2002, the Section was supervising and providing advice on approximately 43 election crime matters nationwide. In addition, as of December 31, 2002, 11 matters involving possible election crimes were pending in the Section. During 2002 the Section closed two election crime matters and continued its operational supervision of 8 voting fraud cases (conspiracy to illegally obtain criminal history records to use to challenge voters (AL) and 7 cases of vote buying involving 10 defendants (KY).



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Craig Donsanto, "The Federal Crime of Election Fraud," Public Integrity Section, Department of Justice, prepared for Democracy.Ru, n.d., at [http://www.democracy.ru/english/library/international/eng\\_1999-11.html](http://www.democracy.ru/english/library/international/eng_1999-11.html)

Addresses the role of the United States Department of Justice in matters of election fraud, specifically: what sort of election-related conduct is potentially actionable as a federal crime; what specific statutory theories apply to frauds occurring in elections lacking federal candidates on the ballot, what federalism; procedural, and policy considerations impact on the federalization of this type of case; and how Assistant United States Attorneys should respond to this type of complaint. As a general rule, the federal crime of voter fraud embraces only organized efforts to corrupt of the election process itself: i.e., the registration of voters, the casting of ballots, and the tabulation and certification of election results. Moreover, this definition excludes all activities that occur in connection with the political campaigning process, unless those activities are themselves illegal under some other specific law or prosecutorial theory. This definition also excludes isolated acts of individual wrongdoing that are not part of an organized effort to corrupt the voting process. Mistakes and other gaffs that inevitably occur are not included as voter fraud. Prosecuting election fraud offenses in federal court is further complicated by the constitutional limits that are placed on federal power over the election process. The conduct of elections is primarily a state rather than a federal activity.

### **Four situations where federal prosecution is appropriate:**

1. Where the objective of the conduct is to corrupt the outcome of a federal elective contest, or where the consequential effect of the corrupt conduct impacts upon the vote count for federal office;
2. Where the object of the scheme is to discriminate against racial, ethnic or language minority groups, the voting rights of which have been specifically protected by federal statutes such as the Voting Rights Act, 42 U.S.C. section 1973 et seq.;
3. Where federalization is required in order to redress longstanding patterns of electoral fraud, either at the request of state or local authorities, or in the face of longstanding inaction by state authorities who appear to be unwilling or unable to respond under local law; and,
4. Where there is a factual basis to believe that fraudulent registration or voting activity is sufficiently connected to other forms of criminal activity that perusing the voter fraud angle will yield evidence useful in the prosecution of other categories of federal offense

### **Four advantages to federal prosecution:**

1. Voter fraud investigations are labor intensive - local law enforcement agencies often lack the manpower and the financial resources to take these cases on;
2. Voter fraud matters are always politically sensitive and very high profile endeavors at the local level - local prosecutors (who are usually themselves elected) often shy away from prosecuting them for that reason; the successful prosecution of voter fraud cases demands that critical witnesses be examined under oath before criminal charges based on their testimony are filed.
3. Many states lack the broad grand jury process that exists in the federal system; and
4. The defendants in voter fraud cases are apt to be politicians - or agents of politicians - and it is often impossible for either the government or the defendant to obtain a fair trial in a case that is about politics and is tried to a locally-drawn jury. The federal court system provides for juries to be drawn from broader geographic base, thus often avoiding this problem.

Several prosecutorial theories used by United States Attorneys to federalize election frauds are discussed.

### **Four questions used by prosecutors in evaluating the credibility of election complaints:**

1. does the substance of the complaint assuming it can be proven through investigation - suggest a potential crime;
2. is the complaint sufficiently fact-specific that it provides leads for investigators to pursue;
3. is there a federal statute that can be used to federalize the criminal activity at issue; and,
4. is there a special federal interest in the matter that warrants federalization rather than deferral to state law enforcement.

All federal election investigations must avoid the following: non-interference in elections unless absolutely necessary to preserve evidence; interviewing voters during active voting periods; seizing official election documentation; investigative activity inside open polls; and prosecutors must adhere to 18 U.S.C. section 592, prohibiting the stationing of armed men at places where voting activity is taking place.



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Election crimes based on race or language minority status are treated as civil rights matters under the Voting Rights Act.

People for the American Way, Election Protection 2004, Election Protection Coalition, at <http://www.electionprotection2004.org/edaynews.htm>

Election Protection 2004 was the nation's most far-reaching effort to protect voter rights before and on Election Day. The historic nonpartisan program included: (1) a toll-free number, 1-866-OUR-VOTE, with free, immediate and multi-lingual assistance to help voters with questions about registration and voting, and assist voters who encounter barriers to the ballot box; (2) distribution of more than five million "Voters' Bills of Rights" with state-specific information; (3) 25,000 volunteers, including 6,000 lawyers and law students, who watched for problems and assisted voters on the spot at more than 3,500 predominantly African-American and Latino precincts with a history of disenfranchisement in at least 17 states; and (4) civil rights lawyers and advocates represented voters in lawsuits, preserved access to the polls, exposed and prevented voter intimidation, worked with election officials to identify and solve problems with new voting machines, technology and ballot forms, and protected voter rights in advance and on Election Day.

### **Voter Intimidation and Suppression Stories (Abridged):**

- An Associated Press story noted Election Protection's exposure of reported voter suppression tactics in **Colorado**: Officials with the Election Protection Coalition, a voter-rights group, also said **some voters in a predominantly black neighborhood north of Denver found papers on their doorsteps giving them the wrong address for their precinct.**
- Election Protection received a report from Boulder County, **Colorado** that a **poll worker made racist comments to Asian American voter and then told her she was not on the list and turned her away.** The voter saw others filling out provisional ballots and asked for one but was denied. Another Asian American woman behind her in line was also given trouble by the same poll worker (he questioned her nationality and also turned her away).
- Election Protection received a report from Florissant County, **Missouri** from a voter who lives in predominantly white neighborhood. While waiting in line to vote, a **Republican challenger challenged the black voters by requesting more proof of identification, residence, and signature match, while asking nothing from white voters.** Also, the same voter reportedly asked a few questions about voting but an election officials refused to provide any meaningful answer, insisting that "it's very simple", but provided white voters with information when requested. There was one other black voter in line who was also singled out for same treatment while white voters were not.
- The Election Protection hotline received reports from Pinellas County, **Florida** that individuals purporting to be from the Kerry campaign are going door-to-door handing out absentee ballots, and asking voters to fill them out, and then taking the ballots from them, saying "Vote here for Kerry. Don't bother going to the polls."
- The Election Protection Coalition received a report from a woman whose sister lives in **Milwaukee** and is on government assistance. Her sister was reportedly told by her "case manager" that if she voted for Kerry, she would stop receiving her checks.
- An illiterate, older and disabled voter in Miami-Dade asked for assistance reading the ballot and reported that a poll worker yelled at him and refused to assist him and also refused to allow him to bring a friend into the booth in order to read the ballot to him.
- The Election Protection Coalition have gathered reports that flyers are circulating in a black community in Lexington, **South Carolina** claiming they those who are behind on child support payments will be arrested as the polls.
- **Minority voters from Palm Beach County, Florida** reported to the hotline that they received middle-of-the-night, live harassing phone calls warning them away from the polls.
- A volunteer for Rock the Vote reported that two illiterate voters in **Michigan** requested assistance with their ballots but were refused and reportedly mocked by poll workers.
- The hotline received a call from a radio DJ in Hillsborough County, **Florida**, who stated that he has received many calls (most of which were from African-Americans) claiming that poll workers were turning voters away and not "letting" them vote.

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- The hotline received a call from **Pima County, Arizona**, indicating that **Democratic voters received calls throughout Monday evening, providing incorrect information about the precinct location**. Voters have had to be transported en masse in order to correct the problem.
- A caller from **Alabama** claims that he was told at his polling place that he could vote there for everything but the President and that he would have to go elsewhere in order to vote for a presidential candidate.
- Poll monitors in **Philadelphia** reports groups of lawyers, traveling in threes, who pull voters out of line and challenge them to provide ID, but when challenged themselves, they hop into waiting cars or vans and leave. Similar activity by Republican lawyers in Philadelphia was reported in the 2002 election.
- In **Cuyahoga, Ohio**, a caller reported that all black voters are being asked to show ID, while white voters are not. Caller report that he is black and had to show ID while his girlfriend is white and did not have to show ID.
- Two months ago, **suspicious phone calls to newly registered Democrats —telling them they weren't, in fact, registered to vote —** were traced to the Republican headquarters in the **Eastern Panhandle**. On **Monday, Democrats there said the calls have started again, even after the Berkeley County Clerk — a Republican — sent the party a cease-and-desist letter**. The Berkeley prosecutor, who also is county Democratic chairman, has called on the U.S. attorney to investigate.
- In **Tuscon, Arizona** a **misleading call informing voters that they should vote on November 3** has been traced back to the state GOP headquarters. The FBI is investigating.
- **A man driving around in a big van covered in American flags and a big picture of a policeman was reportedly parked in front of a polling place; he then got out and moved within the 75 ft limit, until he was asked to leave; he then was found inside the polling place and was again asked to leave**. Election Protection volunteers contacted officials and the man was eventually removed.
- The Election Protection hotline has received a report from **individuals who claim to have received recorded telephone message coming from Bill Clinton and ACT and reminding them to vote on Nov. 3rd**.
- In **Massachusetts**, the EP Hotline has received a report that a **radio station (WILD) is broadcasting that voters will be arrested on the spot if they have outstanding parking tickets**.
- In **Richland, South Carolina** Election Protection has received a report of a **poll manager turning away individuals who do not have photo ID issued to the county or a driver's license**; an EP lawyer spoke with the Poll Manager at 8:20 am and told her that people with other forms of ID should be allowed to vote by provisional ballot.
- In **Greenville**, a caller reported that a **white poll worker was asking Blacks for multiple form of I.D**. Fortunately, the voter who reported the problem did have a second I.D. but reported that some others were turned away. Election Protection attorneys have alerted election officials.
- In **Allegheny County, Pennsylvania**, an official looking **flyer advises Democratic voters to "create a peaceful voting environment" by voting on Wednesday, November 3**
- The week before the election, **flyers were circulated in Milwaukee under the heading "Milwaukee Black Voters League" with some "warnings for election time." The flyer listed false reasons for which you would be barred from voting (such as a traffic ticket) and then warned that "If you violate any of these laws you can get ten years in prison and your children will get taken away from you."**
- There is a **Jefferson County flyer which tells voters "See you at the Poles[sic]"... on November 4**.

Craig Donsanto, "Prosecution of Electoral Fraud Under United State Federal Law," *IFES Political Finance White Paper Series*, IFES, 2006.

[NO SUMMARY FOUND] This is summary of federal role in prosecuting election crimes.

General Accounting Office, "Elections: Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote,"

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Report to Congressional Requesters, September 2005.

**[SUMMARY FAILS TO NOTE ELECTION OFFICIALS' RESPONSEs THAT LITTLE VOTING FRAUD OR VOTER INTIMIDATION WAS DETECTED. DETECTED VOTING FRAUD WAS RELATED TO SUBMISSION OF FALSE/MATERIALLY INCORRECT VOTER REGISTRATION APPLICATIONS AND TO ABSENTEE BALLOT FRAUD. VOTER SUPPRESSION EFFORTS OCCUR.]**

This Report focuses on the efforts of local election officials in 14 jurisdictions within 7 states to manage the registration process, maintain accurate voter registration lists, and ensure that eligible citizens in those jurisdictions had the opportunity to cast ballots during the 2004 election. The Report concentrates on election officials' characterization of their experiences with regard to (1) managing the voter registration process and any challenges related to receiving voter registration applications; checking them for completeness, accuracy, and duplication; and entering information into voter registration lists; (2) removing voters' names from voter registration lists and ensuring that the names of eligible voters were not inadvertently removed; and (3) implementing HAVA provisional voting and identification requirements and addressing any challenges encountered related to these requirements. The Report also provides information on motor vehicle agency (MVA) officials' characterization of their experiences assisting citizens who apply to register to vote at MVA offices and forwarding voter registration applications to election offices. The Report analyzed information collected from elections and motor vehicle agency offices in seven states—Arizona, California, Michigan, New York, Texas, Virginia, and Wisconsin. The 14 jurisdictions we selected were Gila and Maricopa Counties, Arizona; Los Angeles and Yolo Counties, California; City of Detroit and Delta Township, Michigan; New York City and Rensselaer County, New York; Bexar and Webb Counties, Texas; Albemarle and Arlington Counties, Virginia; and the cities of Franklin and Madison, Wisconsin.

Election officials representing all but one of the jurisdictions surveyed following the November 2004 election said they faced some challenges managing the voter registration process, including (1) receiving voter registration applications; (2) checking them for completeness, accuracy, and duplication; and (3) entering information into voter registration lists; when challenges occurred, election officials reported they took various steps to address them. All but 1 of the jurisdictions reported removing names from registration lists during 2004 for various reasons, including that voters requested that their names be removed from the voter registration list; information from the U.S. Postal Service (USPS) showing that voters had moved outside the jurisdiction; felony records received from federal, state, or local governments identifying voters as ineligible due to felony convictions; and death records received from state or local vital statistics offices. All of the jurisdictions reported that they permitted citizens to cast provisional ballots during the November 2004 election. In addition, 12 of the 14 jurisdictions to which this was applicable reported that they offered certain first-time voters who registered by mail the opportunity to cast provisional ballots. Local election officials in 12 of the 13 jurisdictions 13 we surveyed reported that they set up mechanisms to inform voters—without cost—about the outcome of their provisional votes during the November 2004 election. These mechanisms included toll-free telephone numbers, Web sites, and letters sent to the voters who cast provisional ballots. Election officials representing 8 of the 14 jurisdictions reported facing challenges implementing provisional voting for various reasons, including some poll workers not being familiar with provisional voting or, in one jurisdiction representing a large number of precincts, staff not having sufficient time to process provisional ballots.

Lori Minnite and David Callahan, "Securing the Vote: An Analysis of Election Fraud," Demos: A Network of Ideas and Action, 2003.

A comprehensive survey and analysis of vote fraud in the United States. The methodology included doing nexis searches for all 50 states and surveying existing research and reports. In addition, Minnite did a more in-depth study of 12 diverse states by doing nexis searches, studying statutory and case law, and conducting interviews with election officials and attorneys general. Finally, the study includes an analysis of a few of the most high profile cases of alleged fraud in the last 10 years, including the Miami mayoral election (1997), Orange County congressional race (1996), and the general election in Missouri (2000). In these cases, **Minnite shows that many allegations of fraud do not end up being meritorious.** Minnite finds that **available evidence suggests that the incidence of election fraud is minimal and rarely affects election outcomes.** Election officials generally do a very good job of protecting against fraud. **Conditions that give rise to election fraud have steadily declined over the last century as a result of weakened political parties, strengthened election administration, and improved voting technology.** **There is little available evidence that election reforms such as the National Voter Registration Act, election day registration, and mail-in voting have resulted in increases in election fraud.** Election

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fraud appears also to be very rare in the 12 states examined more in-depth. Legal and news records turned up little evidence of significant fraud in these states or any indication that fraud is more than a minor problem. Interviews with state officials further confirmed this impression. Minnite found that, **overall, the absentee mail-in ballot process is the feature most vulnerable to voter fraud.** There is not a lot of evidence of absentee ballot fraud but the potential for fraud is greatest in this area because of a lack of uniformly strong security measures in place in all states to prevent fraud.

### **Suggested reforms to prevent what voter fraud does take place:**

1. effective use of new statewide voter registration databases;
2. identification requirements for first time voters who register by mail should be modified to expand the list of acceptable identifying documents;
3. fill important election administration positions with nonpartisan professionals;
4. strengthen enforcement through adequate funding and authority for offices responsible for detecting and prosecuting fraud; and
5. establish Election Day Registration because it usually requires voter identification and authorization in person before a trained election worker, which reduces the opportunity for registration error or fraud.
- 6.

People for the American Way, NAACP, Lawyers Committee for Civil Rights, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," December 2004.

A description and analysis of the complaints and allegations of voting irregularities gathered by the Election Protection program during the 2004 presidential election. Election Protection received more than a thousand complaints of voter suppression or intimidation. Complaints ranged from intimidating experiences at polling places to coordinated suppression tactics. For example:

- Police stationed outside a Cook County, Illinois, polling place were requesting photo ID and telling voters if they had been convicted of a felony that they could not vote.
- In Pima, Arizona, voters at multiple polls were confronted by an individual, wearing a black tee shirt with "US Constitution Enforcer" and a military-style belt that gave the appearance he was armed. He asked voters if they were citizens, accompanied by a cameraman who filmed the encounters.
- There were numerous incidents of intimidation by partisan challengers at predominately low income and minority precincts
- Voters repeatedly complained about misinformation campaigns via flyers or phone calls encouraging them to vote on a day other than November 2, 2004 or of false information regarding their right to vote. In Polk County, Florida, for example, a voter received a call telling her to vote on November 3. Similar complaints were also reported in other counties throughout Florida. In Wisconsin and elsewhere voters received flyers that said:
  - "If you already voted in any election this year, you can't vote in the Presidential Election."
  - "If anybody in your family has ever been found guilty of anything you can't vote in the Presidential Election."
  - "If you violate any of these laws, you can get 10 years in prison and your children will be taken away from you."

There were also numerous reports of poll workers refusing to give voters provisional ballots.

The following is a summary of the types of acts of suppression and intimidation included in the report and a list of the states in which they took place. All instances of irregularities that were more administrative in nature have been omitted:

1. **Improper implementation of voter identification rules, especially asking only African Americans for proof of identity:** Florida, Ohio, Pennsylvania, Illinois, Missouri, Arkansas, Georgia, Louisiana
2. **Individuals at the polls posing as some sort of law enforcement authority and intimidating and harassing voters:** Arizona, Missouri
3. **Intimidating and harassing challengers at the polls:** Ohio, Michigan, Wisconsin, Missouri, Minnesota
4. **Deceptive practices and disinformation campaigns, such as the use of flyers with intentional misinformation about voting rights or voting procedures, often directed at minority communities; the use of phone calls giving people misinformation about polling sites and**

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other procedures; and providing verbal misinformation at the polls in a way that appears to have been intentionally misleading: Florida, Pennsylvania, Illinois, Wisconsin, Missouri, North Carolina, Arkansas, Texas

5. **Refusal to provide provisional ballots to certain voters:** Ohio, Pennsylvania, Illinois, Michigan, Colorado, Missouri, Texas, Georgia, Louisiana
6. **Registration applications submitted through third parties that were not processed:** Arizona, Michigan, Nevada (registration forms destroyed by Sproul Associates)
7. **Improper removal from the voter registration list:** Arizona
8. **Individuals questioning voters' citizenship:** Arizona
9. **Police officers at the polls intimidating voters:** Illinois, Michigan, Wisconsin, Missouri, North Carolina

The report does not provide corroborating evidence for the allegations it describes. However, especially in the absence of a log of complaints received by the Department of Justice, this report provides a very useful overview of the types of experiences some voters more than likely endured on Election Day in 2004.

### Books

John Fund, *Stealing Elections: How Voter Fraud Threatens Our Democracy*, Encounter Books, 2004.

Focuses almost entirely on alleged transgressions by Democrats. Fund's accusations, if credible, would indicate that fraud such as voter registration fraud, absentee ballot fraud, dead people voting, and felon voting is prevalent throughout the country. However, due to its possible biases, lack of specific footnoting, and insufficient identification of primary source material, caution is strongly urged with respect to utilizing this book for assessing the amount and types of voter fraud and voter intimidation occurring.

Fund says that "Election fraud, whether its phony voter registrations, illegal absentee ballots, shady recounts or old-fashioned ballot-box stuffing, can be found in every part of the United States, although it is probably spreading because of the ever-so-tight divisions that have polarized the country and created so many close elections lately. Fund argues that fraud **has been made easier by the passage of the National Voting Rights Act** because it allows ineligible voters to remain on the voter rolls, allowing a voter to vote in the name of someone else. He claims dead people, people who have moved, and people in jail remain on the voting list. He believes because of NVRA illegal aliens have been allowed to vote.

**Absentee balloting makes it even worse:** someone can register under false names and then use absentee ballots to cast multiple votes. Groups can get absentee ballots for the poor and elderly and then manipulate their choices.

Provides a number of examples of alleged voter fraud, mostly perpetrated by Democrats. For example, he claims much fraud in St. Louis in 2000, including illegal court orders allowing people to vote, **felons voting, people voting twice, dead people voting, voters were registered to vacant lots, election judges were not registered and evidence of false registrations.** Another case he pays a great deal of attention to are the alleged transgressions by Democrats in Indian Country in South Dakota 2002, including **voter registration fraud, suspicious absentee ballot requests, vote hauling, possible polling place fraud, abusive lawyers at polling sites, and possible vote buying.**

Andrew Gumbel, *Steal this Vote: Dirty Elections and the Rotten History of Democracy in American*, Nation Books, 2005.

Bulk of the book comprises stories from United States electoral history outside the scope of this project; however, tales are instructive in showing how far back irregular and illegal voting practices go. Focuses almost entirely on alleged transgressions by Republican, although at times it does include complaints about Democratic tactics. Gumbel's accusations, if credible, especially in the Bush-Gore election, would indicate there were a number of problems in key states in such areas as **intimidation, vote counting, and absentee ballots.** However, due to its possible biases, lack of specific footnoting, and insufficient identification of primary source material, caution is strongly urged with respect to utilizing this book for assessing the amount

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and types of voter fraud and voter intimidation occurring.
Tracy Campbell, <i>Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004</i> , Carroll & Graf Publishers, 2005.
Traces the historical persistence of voter fraud from colonial times through the 2004 Bush-Kerry election. From the textual information, it quickly becomes obvious that voter fraud was not limited to certain types of people or to certain political parties. [SKIMPY SUMMARY-DOES NOT SAY MUCH.]
David E. Johnson and Jonny R. Johnson, <i>A Funny Thing Happened on the Way to the White House: Foolhardiness, Folly, and Fraud in the Presidential Elections, from Andrew Jackson to George W. Bush</i> , Taylor Trade Publishing, 2004.
<b>Adds almost nothing to the present study.</b> It contains no footnotes and no references to primary source material, save what may be able to be gleaned from the bibliography. Takes a historical look at United States Presidential elections from Andrew Jackson to George Bush by providing interesting stories and other historical information. There are only three pages out of the entire book that touches on vote fraud in the first Bush election. The authors assert that the exit polls in Florida were probably correct. The problem was the pollsters had no way of knowing that thousands of votes would be invalidated. But the authors do not believe that fraud was the cause of the tabulation inaccuracy.
Mark Crispin Miller, <i>Fooled Again</i> , Basic Books, 2005.
Sets out to show that the 2004 election was won by Bush through nefarious means, and indicts the news media for not taking anomalies, irregularities, and <b>alleged malfeasance</b> in the process seriously enough. However, book is well sourced, and individual instances of alleged malfeasance discussed may be worth looking at. He accuses Republicans of committing crimes and improprieties throughout the country, including: <ol style="list-style-type: none"> <li>1. <b>deliberate disparities in voting machine distribution and long lines in Democratic jurisdictions;</b></li> <li>2. <b>misinterpretation of voting laws by elections officials to the detriment of Democratic voters;</b></li> <li>3. <b>dirty tricks and deceptive practices to mislead Democratic and minority voters about voting times, places and conditions;</b></li> <li>4. <b>machine irregularities in Democratic jurisdictions;</b></li> <li>5. <b>relocating polling sites in Democratic and minority areas;</b></li> <li>6. <b>suspicious mishandling of absentee ballots;</b></li> <li>7. <b>refusing to dispense voter registration forms to certain voter registration groups;</b></li> <li>8. <b>intimidation of students;</b></li> <li>9. <b>suspicious ballot spoilage rates in certain jurisdictions;</b></li> <li>10. <b>“strategic distribution of provisional ballots,” and trashing of provisional ballots;</b></li> <li>11. <b>harassment of Native American voters;</b></li> <li>12. <b>a Republican backed organization engaging in voter registration efforts throughout the country that allegedly destroyed the voter registration forms of Democrats;</b></li> <li>13. <b>illegitimate challenges at the polls by Republican poll watchers;</b></li> <li>14. <b>improper demands for identification in certain areas;</b></li> <li>15. <b>Republican challenges to the voter registration status of thousands of voters before the election, and the creation of lists of voters to challenge at the polls;</b></li> <li>16. <b>wrongful purging of eligible voters from voting rolls;</b></li> <li>17. <b>partisan harassment;</b></li> <li>18. <b>the selective placement of early voting sites; and</b></li> <li>19. <b>failure to send out absentee ballots in time for people to vote.</b></li> </ol> <p>Details what he says was the inappropriate use of the Federal Voter Assistance Program that made voting for the military easy while throwing up obstacles</p>

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for civilians overseas in their efforts to vote by absentee ballot, leading many of them to be disenfranchised.

### Legal

*Indiana Democratic Party vs. Rokita*, U.S. District Court Southern District of Indiana (Indianapolis) 1:05-cv-00634, U.S. Court of Appeals, 7<sup>th</sup> Circuit 06-2218

Although the proponents of SEA 483 asserted that the law was intended to combat voter fraud, no evidence of the existence of such fraud has ever been provided. No voter has been convicted of or even charged with the offense of misrepresenting his identity for purposes of casting a fraudulent ballot in person, King Dep. 95-96; Mahern Aff. ¶¶ 2-3, though there have been documented instances of absentee ballot fraud. King Dep. 120. Indeed, no evidence of in person, on-site voting fraud was presented to the General Assembly during the legislative process leading up to the enactment of the Photo ID Law. Mahern Aff. ¶¶ 2-

The State cannot show any compelling justification for subjecting only voters who vote in person to the new requirements of the Photo ID Law, while exempting absentee voters who vote by mail or persons who live in state-certified residential facilities.

On the other hand, absentee ballots are peculiarly vulnerable to coercion and vote tampering since there is no election official or independent election observer available to ensure that there is no illegal coercion by family members, employers, churches, union officials, nursing home administrators, and others.

Law gives virtually unbridled discretion to partisan precinct workers and challengers to make subjective determinations such as (a) whether a form of photo identification produced by a voter conforms to what is required by the Law, and (b) whether the voter presenting himself or herself at the polls is in fact the voter depicted in the photo Robertson Dep. 29-34, 45; King Dep. 86, 89. This is significant because any voter who is challenged under this Law will be required to vote by provisional ballot and to make a special trip to the election board's office in order to have his vote counted. Robertson Dep. 37; King Dep. 58.

The Photo ID Law confers substantial discretion, not on law enforcement officials, but on partisan precinct poll workers and challengers appointed by partisan political officials, to determine both whether a voter has presented a form of identification which conforms to that required by the Law and whether the person presenting the identification is the person depicted on it. Conferring this degree of discretion upon partisan precinct officials and members of election boards to enforce the facially neutral requirements of the Law has the potential for becoming a means of suppressing a particular point of view.

The State arguably might be justified in imposing uniform, narrowly-tailored and not overly-burdensome voter identification requirements if the State were able to show that there is an intolerably high incidence of fraud among voters misidentifying themselves at the polls for the purpose of casting a fraudulent ballot. But here, the State has utterly failed to show that this genre of fraud is rampant or even that it has ever occurred in the context of on-site, in-person voting (as opposed to absentee voting by mail) so as to justify these extra burdens, which will fall disproportionately on the poor and elderly.

And where the State has already provided a mechanism for matching signatures, has made it a crime to misrepresent one's identity for purposes of voting, and requires the swearing out of an affidavit if the voter's identity is challenged, it already has provisions more than adequate to prevent or minimize fraud in the context of in-person voting, particularly in the absence of any evidence that the problem the Law seeks to address is anything more than the product of hypothesis, speculation and fantasy.

In-person voter-identity fraud is notoriously difficult to detect and investigate. In his book *Stealing Elections*, John Fund observes that actual in-person voter fraud is nearly undetectable without a voter photo-identification requirement because anybody who provides a name that is on the rolls may vote and then walk away with no record of the person's actual identity. The problem is only exacerbated by the increasingly transient nature of society. Documentation of in-person voter fraud often occurs only when a legitimate voter at the polls hears a fraudulent voter trying to use her name, as happened to a woman in California in 1994. See Larry J. Sabato & Glenn R. Simpson, *Dirty Little Secrets* 292 (1996).

Regardless of the lack of extensive evidence of in-person voter fraud, the Commission on



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Federal Election Reform (known as the Baker-Carter Commission) recently concluded that "there is no doubt that it occurs." State Ex. 1, p. 18.1 **Legal cases as well as newspaper and other reports confirm that in-person voter-identity fraud, including voter impersonation, double votes, dead votes, and fake addresses, plague federal and state elections. [The memorandum details several specific cases of various types of alleged voting fraud from the past several years]**

**Though they are largely unable to study verifiable data concerning in-person voter fraud, scholars are well aware of the conditions that foster fraudulent voting. See Fund, *supra*; Sabato & Simpson, *supra*, 321. In particular, fraud has become ever more likely as "it has become more difficult to keep the voting rolls clean of 'deadwood' voters who have moved or died" because such an environment makes "fraudulent voting easier and therefore more tempting for those so inclined." Sabato & Simpson, *supra*, 321. "In general, experts believe that one in five names on the rolls in Indiana do not belong there." State Ex. 25.**

For this case, Clark Benson, a nationally recognized expert in the collection and analysis of voter-registration and population data, conducted his own examination of **Indiana's voter registration lists and concluded that they are among the most highly inflated in the nation.**

The Crawford Plaintiffs cite the **concessions** by Indiana Election Division Co-Director King and the Intervenor-State that they are **unaware of any historical in-person incidence of voter fraud occurring at the polling place (Crawford Brief, p. 23) as conclusive evidence that in-person voter fraud does not exist in Indiana.** They also seek to support this conclusion with the testimony of two "veteran poll watchers," Plaintiff Crawford and former president of the Plaintiff NAACP, Indianapolis Chapter, Roderick E. Bohannon, who testified that they had never seen any instances of in-person voter fraud.

(*id.*)

While common sense, the **experiences of many other states, and the findings of the Baker-Carter Commission all lead to the reasonable inferences that (a) in-person polling place fraud likely exists, but (b) is nearly impossible to detect without requiring photo identification, the State can cite to no confirmed instances of such fraud. On the other hand, the Plaintiffs have no proof that it does not occur.**

At the level of logic, moreover, it is **just reasonable to conclude that the lack of confirmed incidents of in-person voting fraud in Indiana is the result of an ineffective identification security system as it is to conclude there is no in-person voting fraud in Indiana.** So while it is undisputed that the state has no proof that in-person polling place fraud has occurred in Indiana, there does in fact remain a dispute over the existence *vel non* of in-person polling place fraud.

It is also important to understand that the **nature of in-person election fraud is such that it is nearly impossible to detect or investigate. Unless a voter stumbles across someone else trying to use her identity, see Sabato & Simpson, *supra*, 292, or unless the over-taxed poll worker happens to notice that the voter's signature is different from her registration signature State Ext. 37, ¶ 9, the chances of detecting such in-person voter fraud are extremely small. Yet, inflated voter-registration rolls provide ample opportunity for those who wish to commit in-person voter fraud. See Fund, *supra*, 24, 65, 69, 138; Sabato & Simpson, *supra*, 321. And there is concrete evidence that the names of dead people have been used to cast fraudulent ballots. See Fund, *supra*, 64. Particularly in light of Indiana's highly inflated voter rolls State Ex. 27, p. 9, Plaintiffs' repeated claims that there has never been any in-person voter fraud in Indiana can hardly be plausible, even if the state is unable to prove that such fraud has in fact occurred.**

*Common Cause of Georgia vs. Billups*, U.S. District Court, Northern District of Georgia (Rome) 4:05-cv-00201-HLM U.S. Court of Appeals, 11<sup>th</sup> Circuit 05-15784

The Secretary of State, as the Chief Election Officer in Georgia, informed the General Assembly before the passage of Act 53 in a letter (attached hereto as Exhibit A), and also informed the Governor in a letter (attached hereto as Exhibit B) before he signed the bill into law, that **there had been no documented cases of fraudulent voting by persons who obtained ballots unlawfully by misrepresenting their identities as registered voters to poll workers reported to her office during her nine years as Secretary of State .**

Although the Secretary of State had informed the members of the General Assembly and the Governor prior to the enactment of Act 53, that her office had



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received many complaints of voter fraud involving absentee ballots and no documented complaints of fraud that involve ballots that were cast in person at the polls, the General Assembly ignored this information and arbitrarily chose instead to require only those registered voters who vote in person to present a Photo ID as a condition of voting, but deliberately refused to impose the same requirement on absentee voters.

The Stated Purpose Of The Photo ID Requirement Fraud Is A Pretext.

According to a press release prepared by the Communications Office of the Georgia House of Representatives, the purpose of Act 53 is: to address the issue of voter fraud by placing tighter restrictions on voter identification procedures. Those casting ballots will now be required to bring a photo ID with them before they will be allowed to vote.

Al Marks, Vice Chairman for Public Affairs and Communication of the Hall County GOP told the Gainesville Times: I don't think we need it for voting, because I don't think there's a voter fraud problem. Gainesville Times, "States Voters Must Present Picture IDs" (September 15, 2005) ([www.gainesvilletimes.com](http://www.gainesvilletimes.com)).

**There is no evidence that the existing provisions of Georgia law have not been effective in deterring and preventing imposters from fraudulently obtaining and casting ballots at the polls by misrepresenting their true identities to election officials and passing themselves off as registered voters whose names appear on the official voter registration list.**

The pretextual nature of the purported justification for the burden which the Photo ID requirement imposes on the right to vote is shown by the following facts:

(a) Fraudulent voting was already prohibited by existing Georgia law without unduly burdening the right of a citizen to vote.

(i) Fraudulent voting was already prohibited as a crime under O.C.G.A. §§ 21-2-561, 21-2-562, 21-2-566, 21-2-571, 21-2-572 and 21-2-600, punishable by a fine of up to \$10,000 or imprisonment for up to ten years, or both.

(ii) Voter registration records are updated periodically by the Secretary of State and local election officials to eliminate people who have died, have moved, or are no longer eligible to vote in Georgia for some other reason.

(iii) Existing Georgia law also required election officials in each precinct to maintain a list of names and addresses of registered voters residing in that precinct, and to check off the names of each person from that official list as they cast their ballots.

(iv) Registered voters were also required by existing Georgia law to present at least one of the seventeen forms of documentary identification to election officials who were required, before issuing the voter a ballot, to match the name and address shown on the document to the name and address on the official roll of registered voters residing in the particular precinct. O.C.G.A. § 21-2-417.

(b) There is no evidence that the existing Georgia law has not been effective in deterring or preventing fraudulent in-person voting by impersonators - the only kind of fraudulent voting that might be prevented by the Photo ID requirement. To the contrary, the Secretary of State, who, as the Superintendent of Elections, is the highest election official in Georgia, informed both the General Assembly (Exhibit A) and the Governor (Exhibit B) in writing that there had been no documented cases of fraudulent in person voting by imposters reported to her during her nine years in office.

(c) If the true intention of the General Assembly had been to prevent fraudulent voting by imposters, the General Assembly would have imposed the same restrictions on the casting of absentee ballots - particularly after the Secretary of State had called to their attention the fact that there had been many documented instances of fraudulent casting of absentee ballots reported to her office.

(d) Fraudulent in-person voting is unlikely, would be easily detected if it had occurred in significant numbers, and would not be likely to have a substantial impact on the outcome of an election:

(i) Many people vote at a local neighborhood polling place where they are likely to be known to and recognized by neighbors or poll workers.

(ii) Voters were required by existing Georgia law (O.C.G.A. § 21-2-417), to provide one of the seventeen means of identification to election officials.

(iii) Election officials are required, before issuing the ballot to the voter, to check off the name of either voter from an up-to-date list of the names and addresses of every registered voter residing in the precinct. If an imposter arrived at a poll and was successful in fraudulently obtaining a ballot before

## EAC SUMMARY OF LITERATURE REVIEW FOR VOTING FRAUD-VOTER INTIMIDATION RESEARCH

the registered voter arrived at the poll, a registered voter, who having taken the time to go to the polls to vote, would undoubtedly complain to elections officials if he or she were refused a ballot and not allowed to vote because his or her name had already been checked off the list of registered voters as having voted. Likewise, if an imposter arrived at the polls after the registered voter had voted and attempted to pass himself off as someone he was not, the election official would instantly know of the attempted fraud, would not issue the imposter a ballot or allow him to vote, and presumably would have the imposter arrested or at least investigate the attempted fraud and report the attempt to the Secretary of State as Superintendent of Elections.

U.S. Department of Justice Section 5 Recommendation Memorandum (regarding HB 244), August 25, 2005 at <http://www.votingrights.org/news/downloads/Section%205%20Recommendation%20Memorandum.pdf>


**Overview:** Five career attorneys with the civil rights department investigated and analyzed Georgia's election reform law. Four of those attorneys recommended objecting to Section 59, the voter identification requirement. The provision required all voters to present government issued photo identification in order to vote. The objection was based on the attorneys' findings that there was little to no evidence of polling place fraud, the only kind of fraud an ID requirement would address, and that the measure would disenfranchise many voters, predominantly minority voters, in violation of Section 5 of the Voting Rights Act.

**Factual Analysis:** The sponsor of the measure in the state legislature said she was motivated by the fact that she is aware of vote buying in certain districts; she read John Fund's book; and that "if there are fewer black voters because of this bill, it will only be because there is less opportunity for fraud. She said that when black voters in her black precincts are not paid to vote, they do not go to the polls."

A member of the Fulton County Board of Registrations and Elections said that prior to November 2004, Fulton County received 8,112 applications containing "missing or irregular" information. Only 55 of those registrants responded to BOE letters. The member concluded that the rest must be "bogus" as a result. He also stated that 15,237 of 105,553 precinct cards came back as undeliverable, as did 3,071 cards sent to 45,907 new voters. Of these 3,071, 921 voted.

**Secretary of State Cathy Cox submitted a letter testifying to the absence of any complaints of voter fraud via impersonation during her tenure.** In the legal analysis, the attorneys state that if they determine that Georgia could have fulfilled its stated purpose of election fraud, while preventing or ameliorating the retrogression, an objection is appropriate. They conclude that the state could have avoided retrogression by retaining various forms of currently accepted voter ID for which no substantiated security concerns were raised. Another non-retrogressive alternative would have been to maintain the affidavit alternative for those without ID, since "There is no evidence that penalty of law is an insufficient deterrent to falsely signing an affidavit of identity." The attorneys point out that the state's recitation of a case upholding voter fraud in Dodge County does not support the purpose of the Act because that case involved vote buying and selling, not impersonation or voting under a false identity.

Margaret Sims/EAC/GOV  
11/06/2006 12:21 PM


To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
bcc  
Subject Re: VF\_VI Literature Review 

History:  This message has been replied to

Is this an outline of an EAC staff report to accompany the consultants' report, or has there been a decision not to publish the consultants' report at all? (Just curious, as I have been a little out of the loop.) --- Peg

**Deliberative Process  
Privilege**

Margaret Sims/EAC/GOV  
11/06/2006 11:07 AM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
bcc  
Subject Re: VF\_VI Literature Review 

History

 This message has been replied to

Julie:


I have not received the outline, but went ahead with reviewing the literature researched. Attached are my perspectives on what we learned and a listing of the literature with portions of the analysis for each. Both of these documents are on the shared drive under T:\RESEARCH IN PROGRESS\VOTING FRAUD-VOTER INTIMIDATION\Research Summaries. Hope these help. Let me know what else you need from me. --- Peggy



EAC-Learned from Lit Review 11-6-06.doc EAC Lit Review Notes 11-5-06.doc

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV  
11/03/2006 06:41 PM

To Margaret Sims/EAC/GOV@EAC  
cc  
Subject Re: Job and Tova 

I appreciate it. I will send you a copy of the outline that I am working from. It is somewhat subject to change as I am still trying to gel in my mind what goes first, second ....

-----  
Sent from my BlackBerry Wireless Handheld  
Margaret Sims  
----- Original Message -----

**From:** Margaret Sims  
**Sent:** 11/03/2006 06:38 PM  
**To:** Juliet Hodgkins  
**Subject:** Re: Job and Tova

I can review them over the weekend and attempt to summarize what they tell us.--- Peggy

-----  
Sent from my BlackBerry Wireless Handheld  
Juliet E. Hodgkins  
----- Original Message -----

**From:** Juliet E. Hodgkins  
**Sent:** 11/03/2006 06:14 PM  
**To:** Margaret Sims  
**Subject:** Re: Job and Tova

I think we should use the content of those articles or some summary of them as a background of what we know about VF and VI. I just didn't want to have to read all of those articles to be able to make some generalized statements about their contents.

011230

-----  
Sent from my BlackBerry Wireless Handheld  
Margaret Sims  
----- Original Message -----

**From:** Margaret Sims  
**Sent:** 11/03/2006 06:11 PM  
**To:** Juliet Hodgkins  
**Subject:** Re: Job and Tova

Julie:

All of the summaries received are in the shared drawer under T:\RESEARCH IN PROGRESS\VOTING FRAUD-VOTER INTIMIDATION\Research Summaries. There are too many of them to append to this message, or I would do it. The researchers did not propose to include these summaries in the report. Are you considering adding them?

If you want, I can cross reference each of these with the list of articles and ID any missing summaries. I could do that over the weekend. --- Peggy

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV  
11/03/2006 05:42 PM

To Margaret Sims/EAC/GOV@EAC  
cc

Subject Job and Tova

I spoke to Job about the documents that I need. He will send me his summary of the articles/books that he read. However, he said that Tova also summarized some of those articles/books. I don't have a contact number/email for Tova. Could you contact her and ask her to provide us with any summary of the articles/books that she read as they are listed in Appendix 2?

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

011231

**Deliberative Process  
Privilege**

Margaret Sims /EAC/GOV  
10/19/2006 07:04 PM

To Juliet E. Hodgkins/EAC/GOV@EAC, Tamar  
Nedzar/EAC/GOV@EAC  
cc twilkey@eac.gov, Gavin S. Gilmour/EAC/GOV@EAC  
bcc

Subject Voter Fraud-Voter Intimidation Draft Report

Attached is a copy of the draft voter fraud-voter intimidation report that combines all of the pieces provided to me by the consultants, except for the voluminous Nexis research and case law charts. Tom wants to get this before the Commissioners ASAP, but I need some other eyes to look it over before we do. Although I've made some formatting changes to provide some consistency in presentation, and corrected a couple of glaring errors, I remain concerned about a number of issues:

- As you know, references to DOJ actions/responses have caused some concern at DOJ. But both consultants are adamantly opposed to EAC making substantive changes to their report. Perhaps using footnotes clearly labeled as EAC footnotes would be a method of addressing this issue?
- There are some recommendations regarding DOJ that we (the consultants and I) were told would not be supported by DOJ, and other references to DOJ, none of which have been reviewed by the department. I think we ought to give Craig Donsanto and John Tanner a chance to provide feedback on each of these sections.
- I am a little concerned about the naming of names, particularly in the section that addresses working group concerns. If we publish it as is, it might end up as fodder for some very negative newspaper articles.
- The report currently uses three different voices: third person, first person singular, first person plural. I think this looks really clumsy. If we are not actually making substantive changes, perhaps we could get away with making the presentation consistent in this regard.
- Because the consultants submitted the report in pieces, they did not include proper sequeways. I don't know if we should leave it as is, or insert them where needed.

Please let me know what you think. If it would help, we can schedule a teleconference. --- Peggy



VF-VI Final Rept-draft 10-19-06.doc

011232

**Deliberative Process  
Privilege**

# **Voting Fraud and Voter Intimidation**

## **Report to the U.S. Election Assistance Commission on Preliminary Research & Recommendations**

**By**

**Job Serebrov and Tova Wang**

011233

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## Introduction

### **Charge Under HAVA**

Under the Help America Vote Act, Pub. L. No. 107-252, 116 Stat. 1666 (2002) (“HAVA”), the United States Election Assistance Commission is charged with developing national statistics on voter fraud and developing methods of deterring and investigating voter fraud. Also, the Commission is charged with developing methods of identifying, deterring, and investigating methods of voter intimidation.

### **Scope of Project**

The Commission employed a bipartisan team of legal consultants, Ilova Wang and Job Serebrov to develop a preliminary overview work product to determine the quantity and quality of vote fraud and voter intimidation that is present on a national scale. The consultants’ work is neither comprehensive nor conclusive. This first phase of an envisioned two-phase project was constrained by both time and funding. The consultants’ conclusions and recommendations for phase II will be contained in this report.

The consultants, working without the aid of a support staff, divided most of the work. However, the final work product was mutually checked and approved. They agreed upon the steps that were taken needed and the method employed. For all of the documentary sources, the consultants limited the time period under review from January 1, 2001 to January 1, 2006. The research performed by the consultants included interviews, an extensive Nexis search, a review of existing literature, and case research.

**Interviews:** The consultants chose the interviewees by first coming up with a list of the categories of types of people they wanted to interview. Then the consultants separately, equally filled those categories with a certain number of people. Due to time and resource constraints, the consultants had to pare down this list substantially – for instance, they had to rule out interviewing prosecutors altogether – but still got a good range of people to talk to. The ultimate categories were academics, advocates, elections officials, lawyers and judges. Although the consultants were able to talk to most of the people they wanted to, some were unavailable and a few were not comfortable speaking to them, particularly judges. The consultants together conducted all of the interviews, either by phone or in person. Then the consultants split up drafting the summaries. All summaries were reviewed and mutually approved. Most of the interviews were extremely informative and the consultants found the interviewees to be extremely knowledgeable and insightful for the most part.

**Nexis:** Initially, the consultants developed an enormous list of possible Nexis search terms. It soon became obvious that it would be impossible to conduct the research that way. As a result, consultant Wang performed the Nexis search by finding search term combinations that would yield virtually every article on a particular subject from the last

five years. Consultant Serebrov approved the search terms. Then Wang created an excel spreadsheet in order to break down the articles in way in which they could be effectively analyzed for patterns. Each type of fraud is broken down in a separate chart according to where it took place, the date, the type of election it occurred in, what the allegation was, the publication it came from. Where there was a follow up article, any information that that suggested there had been some further action taken or some resolution to the allegation was also included. For four very complicated and long drawn out situations – Washington State, Wisconsin, South Dakota in 2004, and the vote buying cases in a couple of particular jurisdictions over the last several years –written summaries with news citations are provided.

**Existing Literature:** Part of the selections made by the consultants resulted from consultant Wang's long-term familiarity with the material while part was the result of a joint web search for articles and books on vote fraud and voter intimidation and suggestions from those interviewed by the consultants. The consultants reviewed a wide range of materials from government reports and investigations, to academic literature, to reports published by advocacy groups. The consultants believe that they covered the landscape of available sources.

**Cases:** In order to properly identify all applicable cases, the consultants first developed an extensive word search term list. A WestLaw search was performed and the first one hundred cases under each word search term were then gathered in individual files. This resulted in a total of approximately 44,000 cases. Most of these cases were federal as opposed to state and appellate as opposed to trial. Consultant Serebrov analyzed the cases in each file to determine if they were on point. If he found that the first twenty cases were inapplicable, Serebrov would sample forty to fifty other file cases at random to determine applicability. If the entire file did not yield any cases, the file would be discarded. All discarded word search terms were recorded in a separate file. Likewise, if the file only yielded a few applicable cases, it would also be discarded. However, if a small but significant number of cases were on point, the file was later charted. The results of the case search were stark because relatively few applicable cases were found.

## **Working Definition of Fraud and Intimidation**

*Note: The definition provided below is for the purposes of this EAC project. Most of the acts described come within the federal criminal definition of fraud, but some may not.*

Election fraud is any intentional action, or intentional failure to act when there is a duty to do so, that corrupts the election process in a manner that can impact on election outcomes. This includes interfering in the process by which persons register to vote; the way in which ballots are obtained, marked, or tabulated; and the process by which election results are canvassed and certified.

Examples include the following:

- falsifying voter registration information pertinent to eligibility to cast a vote, (e.g. residence, criminal status, etc).;
- altering completed voter registration applications by entering false information;
- knowingly destroying completed voter registration applications (other than spoiled applications) before they can be submitted to the proper election authority;
- knowingly removing eligible voters from voter registration lists, in violation of HAVA, NVRA, or state election laws;
- intentional destruction by election officials of voter registration records or balloting records, in violation of records retention laws, to remove evidence of election fraud;
- vote buying;
- voting in the name of another;
- voting more than once;
- coercing a voter's choice on an absentee ballot;
- using a false name and/or signature on an absentee ballot;
- destroying or misappropriating an absentee ballot;
- felons, or in some states ex-felons, who vote when they know they are ineligible to do so;
- misleading an ex-felon about his or her right to vote;
- voting by non-citizens who know they are ineligible to do so;
- intimidating practices aimed at vote suppression or deterrence, including the abuse of challenge laws;
- deceiving voters with false information (e.g.; deliberately directing voters to the wrong polling place or providing false information on polling hours and dates);
- knowingly failing to accept voter registration applications, to provide ballots, or to accept and count voted ballots in accordance with the Uniformed and Overseas Citizens Absentee Voting Act;
- intentional miscounting of ballots by election officials;
- intentional misrepresentation of vote tallies by election officials;
- acting in any other manner with the intention of suppressing voter registration or voting, or interfering with vote counting and the certification of the vote.

Voting fraud does not include mistakes made in the course of voter registration, balloting, or tabulating ballots and certifying results. For purposes of the EAC study, it also does not include violations of campaign finance laws.

DRAFT

## Summaries of Research Conducted

### Interviews

#### *Common Themes*

- There is virtually universal agreement that absentee ballot fraud is the biggest problem, with vote buying and registration fraud coming in after that. The vote buying often comes in the form of payment for absentee ballots, although not always. Some absentee ballot fraud is part of an organized effort; some is by individuals, who sometimes are not even aware that what they are doing is illegal. Voter registration fraud seems to take the form of people signing up with false names. Registration fraud seems to be most common where people doing the registration were paid by the signature.
- There is widespread but not unanimous agreement that there is little polling place fraud, or at least much less than is claimed, including voter impersonation, “dead” voters, noncitizen voting and felon voters. Those few who believe it occurs often enough to be a concern say that it is impossible to show the extent to which it happens, but do point to instances in the press of such incidents. Most people believe that false registration forms have not resulted in polling place fraud, although it may create the perception that vote fraud is possible. Those who believe there is more polling place fraud than reported/investigated/prosecuted believe that registration fraud does lead to fraudulent votes. Jason Torchinsky from the American Center for Voting Rights is the only interviewee who believes that polling place fraud is widespread and among the most significant problems in the system.
- Abuse of challenger laws and abusive challengers seem to be the biggest intimidation/suppression concerns, and many of those interviewed assert that the new identification requirements are the modern version of voter intimidation and suppression. However there is evidence of some continued outright intimidation and suppression, especially in some Native American communities. A number of people also raise the problem of poll workers engaging in harassment of minority voters. Other activities commonly raised were the issue of polling places being moved at the last moment, unequal distribution of voting machines, videotaping of voters at the polls, and targeted misinformation campaigns.
- Several people indicate – including representatives from DOJ -- that for various reasons, the Department of Justice is bringing fewer voter intimidation and suppression cases now and is focusing on matters such as noncitizen voting, double voting and felon voting. While the civil rights section continues to focus on systemic patterns of malfeasance, the public integrity section is focusing now on individuals, on isolated instances of fraud.
- The problem of badly kept voter registration lists, with both ineligible voters remaining on the rolls and eligible voters being taken off, remains a common concern. A few people are also troubled by voters being on registration lists in two states. They said that there was no evidence that this had led to double voting, but it opens the door to the possibility. There is great hope that full

implementation of the new requirements of HAVA – done well, a major caveat – will reduce this problem dramatically.

***Common Recommendations:***

- Many of those interviewed recommend better poll worker training as the best way to improve the process; a few also recommended longer voting times or voting on days other than election day (such as weekends) but fewer polling places so only the best poll workers would be employed
- Many interviewed support stronger criminal laws and increased enforcement of existing laws with respect to both fraud and intimidation. Advocates from across the spectrum expressed frustration with the failure of the Department of Justice to pursue complaints.
  - With respect to the civil rights section, John Tanner indicated that fewer cases are being brought because fewer are warranted – it has become increasingly difficult to know when allegations of intimidation and suppression are credible since it depends on one’s definition of intimidation, and because both parties are doing it. Moreover prior enforcement of the laws has now changed the entire landscape – race based problems are rare now. Although challenges based on race and unequal implementation of identification rules would be actionable, Mr. Tanner was unaware of such situations actually occurring and the section has not pursued any such cases.
  - Craig Donsanto of the public integrity section says that while the number of election fraud related complaints have not gone up since 2002, nor has the proportion of legitimate to illegitimate claims of fraud, the number of cases the department is investigating and the number of indictments the section is pursuing are both up dramatically. Since 2002, the department has brought more cases against alien voters, felon voters and double voters than ever before. Mr. Donsanto would like more resources so it can do more and would like to have laws that make it easier for the federal government to assume jurisdiction over voter fraud cases.
- A couple of interviewees recommend a new law that would make it easier to criminally prosecute people for intimidation even when there is not racial animus.
- Almost everyone hopes that administrators will maximize the potential of statewide voter registration databases to prevent fraud. Of particular note, Sarah Ball Johnson, Executive Director of Elections for Kentucky, emphasized that having had an effective statewide voter registration database for more than thirty years has helped that state avoid most of the fraud problems that have been alleged elsewhere, such as double voting and felon voting.
- Several advocate expanded monitoring of the polls, including some associated with the Department of Justice.
- Challenge laws, both with respect to pre-election day challenges and challengers at the polls, need to be revised by all states to ensure they are not used for purposes of wrongful disenfranchisement and harassment

- Several people advocate passage of Senator Barak Obama’s “deceptive practices” bill
- There is a split on whether it would be helpful to have nonpartisan election officials – some indicated they thought even if elections officials are elected nonpartisanly they will carry out their duties in biased ways nonetheless. However, most agree that elections officials pursuing partisan agendas is a problem that must be addressed in some fashion. Suggestions included moving election responsibilities out of the secretary of states’ office; increasing transparency in the process; and enacting conflict of interest rules.
- A few recommend returning to allowing use of absentee ballots “for cause” only if it were politically feasible.
- A few recommend enacting a national identification card, including Pat Rogers, an attorney in New Mexico, and Jason Torchinsky from ACVR, who advocates the scheme contemplated in the Carter-Baker Commission Report.
- A couple of interviewees indicated the need for clear standards for the distribution of voting machines

## **Nexis Research**

### ***Absentee Ballot Fraud***

According to press reports, absentee ballots are abused in a variety of ways:

- Campaign workers, candidates and others coerce the voting choices of vulnerable populations, usually elderly voters
- Workers for groups and individuals have attempted to vote absentee in the names of the deceased
- Workers for groups, campaign workers and individuals have attempted to forge the names of other voters on absentee ballot requests and absentee ballots and thus vote multiple times

It is unclear how often actual convictions result from these activities (a handful of articles indicate convictions and guilty pleas), but this is an area in which there have been a substantial number of official investigations and actual charges filed, according to news reports where such information is available. A few of the allegations became part of civil court proceedings contesting the outcome of the election.

While absentee fraud allegations turn up throughout the country, a few states have had several such cases. Especially of note are Indiana, New Jersey, South Dakota, and most particularly, Texas. Interestingly, there were no articles regarding Oregon, where the entire system is vote by mail.

### ***Voter Registration Fraud***

According to press reports, the following types of allegations of voter registration fraud are most common:

- Registering in the name of dead people
- Fake names and other information on voter registration forms
- Illegitimate addresses used on voter registration forms
- Voters being tricked into registering for a particular party under false pretenses
- Destruction of voter registration forms depending on the party the voter registered with

There was only one self evident instance of a noncitizen registering to vote. Many of the instances reported on included official investigations and charges filed, but few actual convictions, at least from the news reporting. There have been multiple reports of registration fraud in California, Colorado, Florida, Missouri, New York, North Carolina, Ohio, South Dakota and Wisconsin.

### ***Voter Intimidation and Suppression***

This is the area which had the most articles in part because there were so many allegations of intimidation and suppression during the 2004 election. Most of these remained allegations and no criminal investigation or prosecution ensued. Some of the cases did end up in civil litigation.

This is not to say that these alleged activities were confined to 2004 – there were several allegations made during every year studied. Most notable were the high number of allegations of voter intimidation and harassment reported during the 2003 Philadelphia mayoral race.

A very high number of the articles were about the issue of challenges to voters' registration status and challengers at the polling places. There were many allegations that planned challenge activities were targeted at minority communities. Some of the challenges were concentrated in immigrant communities.

However, the tactics alleged varied greatly. The types of activities discussed also include the following:

- Photographing or videotaping voters coming out of polling places.
- Improper demands for identification
- Poll watchers harassing voters
- Poll workers being hostile to or aggressively challenging voters
- Disproportionate police presence
- Poll watchers wearing clothes with messages that seemed intended to intimidate
- Insufficient voting machines and unmanageably long lines



Although the incidents reported on occurred everywhere, not surprisingly, many came from “battleground” states. There were several such reports out of Florida, Ohio and Pennsylvania.

### ***“Dead Voters and Multiple Voting”***

There were a high number of articles about people voting in the names of the dead and voting more than once. Many of these articles were marked by allegations of big numbers of people committing these frauds, and relatively few of these allegations turning out to be accurate according to investigations by the newspapers themselves, elections officials and criminal investigators. Often the problem turned out to be a result of administrative error, poll workers mis-marking of voter lists, a flawed registration list and/or errors made in the attempt to match names of voters on the list with the names of the people who voted. In a good number of cases, there were allegations that charges of double voting by political leaders were an effort to scare people away from the voting process.

Nonetheless there were a few cases of people actually being charged and/or convicted for these kinds of activities. Most of the cases involved a person voting both by absentee ballot and in person. A few instances involved people voting both during early voting and on Election Day, which calls into question the proper marking and maintenance of the voting lists. In many instances, the person charged claimed not to have voted twice on purpose. A very small handful of cases involved a voter voting in more than one county and there was one substantiated case involving a person voting in more than one state. Other instances in which such efforts were alleged were disproved by officials.

In the case of voting in the name of a dead person, the problem lay in the voter registration list not being properly maintained, i.e. the person was still on the registration list as eligible to vote, and a person taking criminal advantage of that. In total, the San Francisco Chronicle found 5 such cases in March 2004; the AP cited a newspaper analysis of five such persons in an Indiana primary in May 2004; and a senate committee found two people to have voted in the names of the dead in 2005.

As usual, there were a disproportionate number of such articles coming out of Florida. Notably, there were three articles out of Oregon, which has one hundred percent vote-by-mail.

### ***Vote Buying***

There were a surprising number of articles about vote buying cases. A few of these instances involved long-time investigations in three particular jurisdictions as detailed in the vote buying summary. There were more official investigations, indictments and convictions/pleas in this area. All of these cases are concentrated in the Midwest and South.

### ***Deceptive Practices***

In 2004 there were numerous reports of intentional disinformation about voting eligibility and the voting process meant to confuse voters about their rights and when and where to vote. Misinformation came in the form of flyers, phone calls, letters, and even people going door to door. Many of the efforts were reportedly targeted at minority communities. A disproportionate number of them came from key battleground states, particularly Florida, Ohio, and Pennsylvania. From the news reports found, only one of these instances was officially investigated, the case in Oregon involving the destruction of voter registration forms. There were no reports of prosecutions or any other legal proceeding.

### ***Non-citizen Voting***

There were surprisingly few articles regarding noncitizen registration and voting – just seven all together, in seven different states across the country. They were also evenly split between allegations of noncitizens registering and noncitizens voting. In one case charges were filed against ten individuals. In one case a judge in a civil suit found there was illegal noncitizen voting. Three instances prompted official investigations. Two cases, from this nexis search, remained just allegations of noncitizen voting.

### ***Felon Voting***

Although there were only thirteen cases of felon voting, some of them involved large numbers of voters. Most notably, of course, are the cases that came to light in the Washington gubernatorial election contest (see Washington summary) and in Wisconsin (see Wisconsin summary). In several states, the main problem has been the large number of ineligible felons that remained on the voting list.

### ***Election Official Fraud***

In most of the cases in which fraud by elections officials is suspected or alleged, it is difficult to determine whether it is incompetence or a crime. There are several cases of ballots gone missing, ballots unaccounted for and ballots ending up in a worker's possession. In two cases workers were said to have changed peoples' votes. The one instance in which widespread ballot box stuffing by elections workers was alleged was in Washington State. The judge in the civil trial of that election contest did not find that elections workers had committed fraud. Four of the cases are from Texas.

### ***Existing Research***

There are many reports and books that describe anecdotes and draw broad conclusions from a large array of incidents. There is little research that is truly systematic or scientific. The most systematic look at fraud is the report written by Lori Minnite. The most systematic look at voter intimidation is the report by Laughlin McDonald. Books

written about this subject seem to all have a political bias and a pre-existing agenda that makes them somewhat less valuable.

Researchers agree that measuring something like the incidence of fraud and intimidation in a scientifically legitimate way is extremely difficult from a methodological perspective and would require resources beyond the means of most social and political scientists. As a result, there is much more written on this topic by advocacy groups than social scientists. It is hoped that this gap will be filled in the “second phase” of this EAC project.

Moreover, reports and books make allegations but, perhaps by their nature, have little follow up. As a result, it is difficult to know when something has remained in the stage of being an allegation and gone no further, or progressed to the point of being investigated or prosecuted or in any other way proven to be valid by an independent, neutral entity. This is true, for example, with respect to allegations of voter intimidation by civil rights organizations, and, with respect to fraud, John Fund’s frequently cited book. Again, this is something that it is hoped will be addressed in the “second phase” of this EAC project by doing follow up research on allegations made in reports, books and newspaper articles.

Other items of note:

- There is as much evidence, and as much concern, about structural forms of disenfranchisement as about intentional abuse of the system. These include felon disenfranchisement, poor maintenance of databases and identification requirements.
- There is tremendous disagreement about the extent to which polling place fraud, e.g. double voting, intentional felon voting, noncitizen voting, is a serious problem. On balance, more researchers find it to be less of a problem than is commonly described in the political debate, but some reports say it is a major problem, albeit hard to identify.
- There is substantial concern across the board about absentee balloting and the opportunity it presents for fraud.
- Federal law governing election fraud and intimidation is varied and complex and yet may nonetheless be insufficient or subject to too many limitations to be as effective as it might be.
- Deceptive practices, e.g. targeted flyers and phone calls providing misinformation, were a major problem in 2004.
- Voter intimidation continues to be focused on minority communities, although the American Center for Voting Rights uniquely alleges it is focused on Republicans.

## Cases

After reviewing over 40,000 cases, the majority of which came from appeals courts, I have found comparatively very few which are applicable to this study. Of those that are applicable, no apparent thematic pattern emerges. However, it seems that the greatest areas of fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility. But because so few cases provided a picture of these current problems, I suggest that case research for the second phase of this project concentrate on state trial-level decisions.

## Methodology

The following is a summary of interviews conducted with a number of political scientists and experts in the field as to how one might undertake a comprehensive examination of voter fraud and intimidation. A list of the individuals interviewed and their ideas are available, and all of the individuals welcome any further questions or explanations of their recommended procedures.

- In analyzing instances of alleged fraud and intimidation, we should look to criminology as a model. In criminology, experts use two sources: the Uniform Crime Reports, which are all reports made to the police, and the Victimization Survey, which asks the general public whether a particular incident has happened to them. After surveying what the most common allegations are, we should conduct a survey of the general public that ask whether they have committed certain acts or been subjected to any incidents of fraud or intimidation. This would require using a very large sample, and we would need to employ the services of an expert in survey data collection. (Stephen Ansolobhere, MIT)
- Several political scientists with expertise in these types of studies recommended a methodology that includes interviews, focus groups, and a limited survey. In determining who to interview and where the focus groups should be drawn from, they recommend the following procedure:
  - Pick a number of places that have historically had many reports of fraud and/or intimidation; from that pool pick 10 that are geographically and demographically diverse, and have had a diversity of problems
  - Pick a number of places that have not had many reports of fraud and/or intimidation; from that pool pick 10 places that match the geographic and demographic make-up of the previous ten above (and, if possible, have comparable elections practices)

- Assess the resulting overall reports and impressions resulting from these interviews and focus groups, and examine comparisons and differences among the states and what may give rise to them.

In conducting a survey of elections officials, district attorneys, district election officers, they recommend that:

- The survey sample be large in order to be able to get the necessary subsets
- The survey must include a random set of counties where there have and have not been a large number of allegations

(Allan Lichtman, American University; Thad Hall, University of Utah; Bernard Grofman, UC – Irvine)

- Another political scientist recommended employing a methodology that relies on qualitative data drawn from in-depth interviews with key critics and experts on all sides of the debate on fraud; quantitative data collected through a survey of state and local elections and law enforcement officials; and case studies. Case studies should focus on the five or ten states, regions or cities where there has been a history of election fraud to examine past and present problems. The survey should be mailed to each state's attorney general and secretary of state, each county district attorney's office and each county board of elections in the 50 states. (Lorraine Minnite, Barnard College)
- The research should be a two-step process. Using LexisNexis and other research tools, a search should be conducted of news media accounts over the past decade. Second, interviews with a systematic sample of election officials nationwide and in selected states should be conducted. (Chandler Davidson, Rice University)
- One expert in the field posits that we can never come up with a number that accurately represents either the incidence of fraud or the incidence of voter intimidation. Therefore, the better approach is to do an assessment of what is most likely to happen, what election violations are most likely to be committed – in other words, a risk analysis. This would include an analysis of what it would actually take to commit various acts, e.g. the cost/benefit of each kind of violation. From there we could rank the likely prevalence of each type of activity and examine what measures are or could be effective in combating them. (Wendy Weiser, Brennan Center of New York University)
- Replicate a study in the United States done abroad by Susan Hyde of the University of California- San Diego examining the impact of impartial poll site observers on the incidence of election fraud. Doing this retrospectively would require the following steps:
  - Find out where there were federal observers
  - Get precinct level voting information for those places

- Analyze whether there was any difference in election outcomes in those places with and without observers, and whether any of these results seem anomalous.

Despite the tremendous differences in the political landscapes of the countries examined by Hyde in previous studies and the U.S., Hyde believes this study could be effectively replicated in this country by sending observers to a random sample of precincts. Rather than compare the incumbent's vote share, such factors such as voter complaints, voter turnout, number of provisional ballots used, composition of the electorate, as well as any anomalous voting results could be compared between sites with and without monitors.

For example, if intimidation is occurring, and if reputable monitors make intimidation less likely or voters more confident, then turnout should be higher on average in monitored precincts than in unmonitored precincts. If polling station officials are intentionally refusing to issue provisional ballots, and the polling station officials are more likely to adhere to regulations while being monitored, the average number of provisional ballots should be higher in monitored precincts than in unmonitored precincts. If monitors cause polling station officials to adhere more closely to regulations, then there should be fewer complaints (in general) about monitored than unmonitored precincts (this could also be reversed if monitors made voters more likely to complain).

Again, random assignment controls for all of the other factors that otherwise influence these variables.

One of the downsides of this approach is it does not get at some forms of fraud, e.g. absentee ballot fraud; those would have to be analyzed separately.

- Another political scientist recommends conducting an analysis of vote fraud claims and purging of registration rolls by list matching. Allegations of illegal voting often are based on matching of names and birth dates. Alleged instances of double voting are based on matching the names and birth dates of persons found on voting records. Allegations of ineligible felon (depending on state law), deceased, and of non-citizen voting are based on matching lists of names, birth dates, and sometimes addresses of such people against a voting records. Anyone with basic relational database skills can perform such matching in a matter of minutes.

However, there are a number of pitfalls for the unwary that can lead to grossly over-estimating the number of fraudulent votes, such as missing or ignored middle names and suffixes or matching on missing birth dates. Furthermore, there is a surprising statistical fact that a group of about three hundred people with the same first and last name are almost assured to share the exact same birth date, including year. In a large state, it is not uncommon for hundreds of Robert Smiths (and other common names) to have voted. Thus, allegations of vote fraud

or purging of voter registration rolls by list matching almost assuredly will find a large proportion of false positives: people who voted legally or are registered to vote legally.

Statistics can be rigorously applied to determine how many names would be expected to be matched by chance. A simulation approach is best applied here: randomly assign a birth date to an arbitrary number of people and observe how many match within the list or across lists. The simulation is repeated many times to average out the variation due to chance. The results can then be matched back to actual voting records and purge lists, for example, in the hotly contested states of Ohio or Florida, or in states with Election Day registration where there are concerns that easy access to voting permits double voting. This analysis will rigorously identify the magnitude alleged voter fraud, and may very well find instances of alleged fraud that exceed what might have otherwise happened by chance.

This same political scientist also recommends another way to examine the problem: look at statistics on provisional voting: the number cast might provide indications of intimidation (people being challenged at the polls) and the number of those not counted would be indications of "vote fraud." One could look at those jurisdictions in the Election Day Survey with a disproportionate number of provisional ballots cast and cross-reference it with demographics and number of provisional ballots discarded. (Michael McDonald, George Mason University)

- Spencer Overton, in a forthcoming law review article entitled *Voter Identification*, suggests a methodology that employs three approaches—investigations of voter fraud, random surveys of voters who purported to vote, and an examination of death rolls provide a better understanding of the frequency of fraud. He says all three approaches have strengths and weaknesses, and thus the best studies would employ all three to assess the extent of voter fraud. An excerpt follows:

#### 1. *Investigations and Prosecutions of Voter Fraud*

Policymakers should develop databases that record all investigations, allegations, charges, trials, convictions, acquittals, and plea bargains regarding voter fraud. Existing studies are incomplete but provide some insight. For example, a statewide survey of each of Ohio's 88 county boards of elections found only four instances of ineligible persons attempting to vote out of a total of 9,078,728 votes cast in the state's 2002 and 2004 general elections. This is a fraud rate of 0.00000045 percent. The Carter-Baker Commission's Report noted that since October 2002, federal officials had charged 89 individuals with casting multiple votes, providing false information about their felon status, buying votes, submitting false voter registration information, and voting improperly as a non-citizen. Examined in the context of the 196,139,871 ballots cast between October 2002 and

August 2005, this represents a fraud rate of 0.0000005 percent (note also that not all of the activities charged would have been prevented by a photo identification requirement).

A more comprehensive study should distinguish voter fraud that could be prevented by a photo identification requirement from other types of fraud — such as absentee voting and stuffing ballot boxes — and obtain statistics on the factors that led law enforcement to prosecute fraud. The study would demand significant resources because it would require that researchers interview and pour over the records of local district attorneys and election boards.

Hard data on investigations, allegations, charges, pleas, and prosecutions is important because it quantifies the amount of fraud officials detect. Even if prosecutors vigorously pursue voter fraud, however, the number of fraud cases charged probably does not capture the total amount of voter fraud. Information on official investigations, charges, and prosecutions should be supplemented by surveys of voters and a comparison of voting rolls to death rolls.

## *2. Random Surveys of Voters*

Random surveys could give insight about the percentage of votes cast fraudulently. For example, political scientists could contact a statistically representative sampling of 1,000 people who purportedly voted at the polls in the last election, ask them if they actually voted, and confirm the percentage who are valid voters. Researchers should conduct the survey soon after an election to locate as many legitimate voters as possible with fresh memories.

Because many respondents would perceive voting as a social good, some who did not vote might claim that they did, which may underestimate the extent of fraud. A surveyor might mitigate this skew through the framing of the question (“I’ve got a record that you voted. Is that true?”).

Further, some voters will not be located by researchers and others will refuse to talk to researchers. Photo identification proponents might construe these non-respondents as improper registrations that were used to commit voter fraud.

Instead of surveying all voters to determine the amount of fraud, researchers might reduce the margin of error by focusing on a random sampling of voters who signed affidavits in the three states that request photo identification but also allow voters to establish their identity through affidavit—Florida, Louisiana, and South Dakota. In



South Dakota, for example, only two percent of voters signed affidavits to establish their identity. If the survey indicates that 95 percent of those who signed affidavits are legitimate voters (and the other 5 percent were shown to be either fraudulent or were non-responsive), this suggests that voter fraud accounts for, at the maximum, 0.1 percent of ballots cast.

The affidavit study, however, is limited to three states, and it is unclear whether this sample is representative of other states (the difficulty may be magnified in Louisiana in the aftermath of Hurricane Katrina's displacement of hundreds of thousands of voters). Further, the affidavit study reveals information about the amount of fraud in a photo identification state with an affidavit exception—more voter fraud may exist in a state that does not request photo identification.

### 3. *Examining Death Rolls*

A comparison of death rolls to voting rolls might also provide an estimate of fraud.

Imagine that one million people live in state A, which has no documentary identification requirement. Death records show that 20,000 people passed away in state A in 2003. A cross-referencing of this list to the voter rolls shows that 10,000 of those who died were registered voters, and these names remained on the voter rolls during the November 2004 election. Researchers would look at what percentage of the 10,000 dead-but-registered people who "voted" in the November 2004 election. A researcher should distinguish the votes cast in the name of the dead at the polls from those cast absentee (which a photo identification requirement would not prevent). This number would be extrapolated to the electorate as a whole.

This methodology also has its strengths and weaknesses. If fraudulent voters target the dead, the study might overestimate the fraud that exists among living voters (although a low incidence of fraud among deceased voters might suggest that fraud among all voters is low). The appearance of fraud also might be inflated by false positives produced by a computer match of different people with the same name. Photo identification advocates would likely assert that the rate of voter fraud could be higher among fictitious names registered, and that the death record survey would not capture that type of fraud because fictitious names registered would not show up in the death records. Nevertheless, this study, combined with the other two, would provide important insight into the magnitude of fraud likely to exist in the absence of a photo identification requirement.

**Recommendations for Further EAC Activity**  
**on Voting Fraud and Voter Intimidation**

**Consultants' Recommendations**

***Recommendation 1: Conduct More Interviews***

Time and resource constraints prevented the consultants from interviewing the full range of participants in the process. As a result, we recommend that any future activity in this area include conducting further interviews.

In particular, we recommend that more election officials from all levels of government, parts of the country, and parties be interviewed. These individuals have the most direct inside information on how the system works -- and at times does not work. They are often the first people voters go to when something goes wrong and are often responsible for fixing it. They are the ones who must carry out the measures that are designed to both prevent fraud and voter intimidation and suppression. They will most likely know what, therefore, is and is not working.

It would also be especially beneficial to talk to people in law enforcement, specifically federal District Election Officers ("DEOs") and local district attorneys, as well as civil and criminal defense attorneys.

The Public Integrity Section of the Criminal Division of the Department of Justice has all of the 93 U.S. Attorneys appoint Assistant U.S. Attorneys to serve as DEOs for two years. DEOs are required to

- screen and conduct preliminary investigations of complaints, in conjunction with the FBI and PIN, to determine whether they constitute potential election crimes and should become matters for investigation;
- oversee the investigation and prosecution of election fraud and other election crimes in their districts;
- coordinate their district's (investigative and prosecutorial) efforts with DOJ headquarters prosecutors;
- coordinate election matters with state and local election and law enforcement officials and make them aware of their availability to assist with election-related matters;
- issue press releases to the public announcing the names and telephone numbers of DOJ and FBI officials to contact on election day with complaints about voting or election irregularities and answer telephones on election day to receive these complaints; and
- supervise a team of Assistant U.S. Attorneys and FBI special agents who are appointed to handle election-related allegations while the polls are open on election day.<sup>i</sup>

Given the great responsibilities of the DEOs, and the breadth of issues they must deal with, they undoubtedly are great resources for information and insight as to what types of fraud and intimidation/suppression are occurring in their districts.

In many situations, however, it is the local district attorneys who will investigate election fraud and suppression tactics, especially in local elections. They will be able to provide information on what has gone on in their jurisdictions, as well as which matters get pursued and why.

Finally, those who defend people accused of election related crimes would also be useful to speak to. They may have a different perspective on how well the system is working to detect, prevent, and prosecute election fraud.

***Recommendation 2: Follow Up on Nexis Research***

The Nexis search conducted for this phase of the research was based on a list of search terms agreed upon by both consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contain allegations of fraud or intimidation. Similarly, many of the articles contain information about investigations into such activities or even charges brought. However, without being able to go beyond the agreed search terms, it could not be determined whether there was any later determination regarding the allegations, investigation or charges brought. This leaves a gaping hole: it is impossible to know if the article is just reporting on “talk” or what turns out to be a serious affront to the system.

As a result, we recommend that follow up Nexis research be conducted to determine what, if any, resolutions or further activity there was in each case. This would provide a much more accurate picture of what types of activities are actually taking place.

***Recommendation 3: Follow Up on Allegations Found in Literature Review***

Similarly, many allegations are made in the reports and books that we analyzed and summarized. Those allegations are often not substantiated in any way and are inherently time limited by the date of the writing. Despite this, such reports and books are frequently cited by various interested parties as evidence of fraud or intimidation.

Therefore, we recommend follow up to the literature review: for those reports and books that make or cite specific instances of fraud or intimidation, a research effort should be made to follow up on those references to see if and how they were resolved.

***Recommendation 4: Review Complaints File With MyVote1 Project Voter Hotline***

During the 2004 election and the statewide elections of 2005, the University of Pennsylvania led a consortium of groups and researchers in conducting the MyVote1 Project. This project involved using a 1-800 voter hotline where voters could call for poll location, be transferred to a local hotline, or leave a recorded message with a complaint.

In 2004, this resulted in over 200,000 calls received and over 56,000 recorded complaints.<sup>ii</sup> The researchers in charge of this project have done a great deal of work to parse and analyze the data collected through this process, including going through the audio messages and categorizing them by the nature of the complaint. These categories include registration, absentee ballot, poll access, ballot/screen, coercion/intimidation, identification, mechanical, provisional (ballot).

We recommend that further research include making full use of this data with the cooperation of the project leaders. While perhaps not a fully scientific survey given the self-selection of the callers, the information regarding 200,000 complaints should provide a good deal of insight into the problems voters experienced, especially those in the nature of intimidation or suppression.

***Recommendation 5: Further Review of Complaints Filed With U.S. Department of Justice***

Although according to a recent GAO report the Voting Section of the Civil Rights Division of the Department of Justice has a variety in ways it tracks complaints of voter intimidation,<sup>iii</sup> the Section was extremely reluctant to provide the consultants with useful information. Further attempts should be made to obtain relevant data. This includes the telephone logs of complaints the Section keeps and information from the database – the Interactive Case Management (ICM) system – the Section maintains on complaints received and the corresponding action taken. We also recommend that further research include a review and analysis of the observer and monitor field reports from Election Day that must be filed with the Section.

***Recommendation 6: Review Reports Filed By District Election Officers***

Similarly, the consultants believe it would be useful for any further research to include a review of the reports that must be filed by every District Election Officer to the Public Integrity Section of the Criminal Division of the Department of Justice. As noted above, the DEOs play a central role in receiving reports of voter fraud and investigating and pursuing them. Their reports back to the Department would likely provide tremendous insight into what actually transpired during the last several elections. Where necessary, information could be redacted or made confidential.

***Recommendation 7: Attend Ballot Access and Voting Integrity Symposium***

The consultants also believe it would be useful for any further activity in this area to include attendance at the next Ballot Access and Voting Integrity Symposium. According to the Department,<sup>iv</sup>

Prosecutors serving as District Election Officers in the 94 U.S. Attorneys' Offices are required to attend annual training conferences on fighting election fraud and voting rights abuses... These conferences are sponsored by the Voting Section of the Civil Rights Division and the Public Integrity

Section of the Criminal Division, and feature presentations by Civil Rights officials and senior prosecutors from the Public Integrity Section and the U.S. Attorneys' Offices. As a result of these conferences, there is a nationwide increase in Department expertise relating to the prosecution of election crimes and the enforcement of voting rights.

By attending the symposium researchers could learn more about the following:

- How District Election Officers are trained, e.g. what they are taught to focus their resources on, how they are instructed to respond to various types of complaints
- How information about previous election and voting issues is presented
- How the Voting Rights Act, the criminal laws governing election fraud and intimidation, the National Voter Registration Act, and the Help America Vote Act are described and explained to participants

***Recommendation 8: Employ Academic or Individual to Conduct Statistical Research***

Included in this report is a summary of various methodologies political scientists and others suggested to measure voter fraud and intimidation. While we note the skepticism of the Working Group in this regard, we nonetheless recommend that in order to further the mission of providing unbiased data, further activity in this area include an academic institution and/or individual that focuses on sound, statistical methods for political science research.

***Recommendation 9: Explore Improvements to Federal Law***

Finally, consultant Tova Wang recommends that future researchers review federal law to explore ways to make it easier to impose either civil or criminal penalties for acts of intimidation that do not necessarily involve racial animus and/or a physical or economic threat.

According to Craig Donsanto, long-time Director of the Election Crimes Branch, Public Integrity Section, Criminal Division of the U.S. Department of Justice:

As with other statutes addressing voter intimidation, in the absence of any jurisprudence to the contrary, it is the Criminal Division's position that section 1973gg-10(1) applies only to intimidation which is accomplished through the use of threats of physical or economic duress. Voter "intimidation" accomplished through less drastic means may present violations of the Voting Rights Act, 42 U.S.C. § 1973i(b), which are enforced by the Civil Rights Division through noncriminal remedies.<sup>v</sup>

Mr. Donsanto reiterated these points to us on several occasions, including at the working group meeting.

As a result, researchers should examine if there is some way in which current law might be revised or new laws passed that would reach voter intimidation that does not threaten the voter physically or financially, but rather threatens the voter's right to vote as a tangible value in itself. Such an amendment or law would reach all forms of voter intimidation, no matter if it is motivated by race, party, ethnicity or any other criteria. The law would then *potentially* cover, for example, letters and postcards with language meant to deter voters from voting and both pre-election and Election Day challengers that are clearly mounting challenges solely on illegitimate bases.

In the alternative to finding a way to criminalize such behavior, researchers might examine ways to invigorate measures to deter and punish voter intimidation under the civil law. For example, there might be a private right of action created for voters or groups who have been subjected to intimidation tactics in the voting process. Such an action could be brought against individual offenders; any state or local actor where there is a pattern of repeated abuse in the jurisdiction that such officials did not take sufficient action against; and organizations that intentionally engage in intimidating practices. As a penalty upon finding liability, civil damages could be available plus perhaps attorney's fees.

Another, more modest measure would be, as has been suggested by Ana Henderson and Christopher Edley,<sup>vi</sup> to bring parity to fines for violations under the Voting Rights Act. Currently the penalty for fraud is \$10,000 while the penalty for acts to deprive the right to vote is \$5,000.

### **Working Group Recommendations**

#### ***Recommendation 1: Employ Observers To Collect Data in the 2006 and/or 2008 Elections***

At the working group meeting, there was much discussion about using observers to collect data regarding fraud and intimidation at the polls in the upcoming elections. Mr. Ginsberg recommended using representatives of both parties for the task. Mr. Bauer and others objected to this, believing that using partisans as observers would be unworkable and would not be credible to the public.

There was even greater concern about the difficulties in getting access to poll sites for the purposes of observation. Most states strictly limit who can be in the polling place. In addition, there are already so many groups doing observation and monitoring at the polls, administrators might object. There was further concern that observers would introduce a variable into the process that would impact the outcome. The very fact that observers were present would influence behavior and skew the results.

Moreover, it was pointed out, many of the problems we see now with respect to fraud and intimidation does not take place at the polling place, e.g. absentee ballot fraud and deceptive practices. Poll site monitoring would not capture this activity. Moreover, with

increased use of early voting, poll site monitoring might have to go on for weeks to be effective, which would require tremendous resources.

Mr. Weinberg suggested using observers in the way they are utilized in international elections. Such observers come into a jurisdiction prior to the election, and use standardized forms at the polling sites to collect data.

***Recommendation 2: Do a Study on Absentee Ballot Fraud***

The working group agreed that since absentee ballot fraud is the main form of fraud occurring, and is a practice that is great expanding throughout the country, it would make sense to do a stand-alone study of absentee ballot fraud. Such a study would be facilitated by the fact that there already is a great deal of information on how, when, where and why such practices are carried out based on cases successfully prosecuted. Researchers could look at actual cases to see how absentee ballot fraud schemes are conducted in an effort to provide recommendations on more effective measures for preventing them.

***Recommendation 3: Use Risk Analysis Methodology to Study Fraud<sup>1</sup>***

Working group members were supportive of one of the methodologies recommended for studying this issue, risk analysis. As Mr. Bauer put it, based on the assumption that people act rationally, do an examination of what types of fraud people are most likely to commit, given the relative costs and benefits. In that way, researchers can rank the types of fraud that are the easiest to commit at the least cost with the greatest effect, from most to least likely to occur. This might prove a more practical way of measuring the problems than trying to actually get a number of acts of fraud and/or intimidation occurring. Mr. Greenbaum added that one would want to examine what conditions surrounding an election would be most likely to lead to an increase in fraud. Mr. Rokita objected based on his belief that the passions of partisanship lead people to not act rationally in an election.

***Recommendation 4: Conduct Research Using Database Comparisons***

Picking up on a suggestion made by Spencer Overton and explained in the suggested methodology section, Mr. Hearne recommended studying the issue using statistical database matching. Researchers should compare the voter roll and the list of people who actually voted to see if there are “dead” and felon voters. Because of the inconsistent quality of the databases, however, a political scientist would need to work in an appropriate margin of error when using such a methodology.

***Recommendation 5: Conduct a Study of Deceptive Practices***

The working group discussed the increasing use of deceptive practices, such as flyers with false and/or intimidating information, to suppress voter participation. A number of

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<sup>1</sup> See Appendix C, and section on methodology

**Challenges:** Communications on this issue with the EAC have not been clear or timely. The PRG should be in place now to comment on our research design while there is still time to refine it. While we are confident in the quality of our work, the wisdom and perspective of the outstanding candidates we have proposed for membership would strengthen the analysis and reports of our work.

**Projections:** We have effectively brought these challenges to the attention of EAC staff and look forward to a resolution speedy enough to allow recruitment of the PRG's members before the end of the month. If we meet that goal, the work of the PRG will be about 2 weeks behind the milestones indicated in the work plan.

### COORDINATION AND INFORMATION MANAGEMENT

Collecting and merging information and data from myriad sources is a demanding requirement of this research. We have developed two principal mechanisms to facilitate the analysis of the material collected or created in the project: an information system and a website for easy access to drafts and reports.

#### INFORMATION SYSTEM

**Description:** The statutory data and reports prepared by the Moritz College of Law will be merged with the political and procedural data and analysis prepared by the Eagleton Institute of Politics to provide a cohesive final product to the EAC, which will include a compendium of case law and statutes regarding provisional voting and voter identification.

**Progress:** The Moritz team has provided Eagleton staff with samples of the work that they are performing. An Eagleton staff member will be reviewing the content and formats of data from all supporting research and (re-)formatting once the work has been completed. The researchers and staff at Eagleton have created a shared folder on the Institute's server for the safe storage of work and access for those staff members. All of this work is being reviewed by the project team to ensure that a broad survey is being performed.

**Challenges:** There are no evident challenges to this task at this time.

**Projections:** By the end of July 2005, much of the above referenced research will have been completed with respective materials and charts near completion. At that time, staff at Eagleton will review, combine and format all documents and materials in preparation for our final reporting to the EAC.

#### INTRANET

**Description:** A trial Intranet for the project became available during the week of June 26. The Intranet will facilitate the exchange of information and collaboration among project participants.

**Progress:** After meetings with staff members of Rutgers University Computer Services (RUCS) and subsequent submission of a proposal by RUCS for technical support and hosting of the Intranet and the evaluation of alternative commercial services, the project team decided at its June 28<sup>th</sup> meeting to publish the Intranet through [www.intranets.com](http://www.intranets.com),

011387



one of the leading commercial services. This decision was based on lower costs and earlier publication schedules than offered under the RUCS proposal. The Intranet services were evaluated during a free trial period, which demonstrated the ease of design and navigation of the proposed service.

**Challenges:** There are no immediate challenges to completion of this task by the timeframe specified below.

**Projections:** Design, testing and publication of initial content of the Intranet service is continuing, with all participants expected to be provided access by July 8, 2005.

#### FINANCIAL REPORT

The financial reporting for this project is supervised and prepared by the Division of Grant and Contract Accounting (DGCA) at Rutgers. Financial reporting on grant accounts is limited to actual expenses that have been incurred during the reporting period. Given that the report reflects the first month of the project, several procedures for payment of subcontractors on the project were initiated. Expenses related to those members of the team are not reflected in this report because they have not yet been incurred.

Our contact at DGCA is: Constance Bornheimer, (732) 932-0165, EXT. 2235.

A detail of expenses incurred from project inception through June 30, 2005, is attached.

Karen Lynn-Dyson/EAC/GOV  
05/01/2006 03:03 PM

To Thomas R. Wilkey/EAC/GOV@EAC  
cc Juliet E. Thompson-Hodgkins/EAC/GOV@EAC  
bcc  
Subject Re: E-mail to Voter ID peer reviewers

History

This message has been replied to.

It's my understanding that Julie thinks we are "good to go" as long as we don't pay them.

Correct?

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

Thomas R. Wilkey/EAC/GOV

Thomas R. Wilkey/EAC/GOV  
05/01/2006 03:00 PM

To Karen Lynn-Dyson/EAC/GOV@EAC, Juliet E.  
Thompson-Hodgkins/EAC/GOV  
cc  
Subject Re: E-mail to Voter ID peer reviewers

Did we resolve the contact issues on this?

-----  
Sent from my BlackBerry Wireless Handheld  
Karen Lynn-Dyson

**From:** Karen Lynn-Dyson  
**Sent:** 05/01/2006 02:58 PM  
**To:** Thomas Wilkey; Juliet Thompson-Hodgkins  
**Subject:** E-mail to Voter ID peer reviewers

Tom and Julie-

Please take a look at this draft e-mail and let me know if it captures all that it needs to.

Would like to get this out ASAP- appreciate your feedback..

Dear Jonathan Nagler  
Dear Jan Leighley  
Dear Adam Berinsky

011389

On behalf of the U.S. Election Assistance Commission (EAC), thank you in advance for agreeing to assist us with the review of research conducted by the Eagleton Institute of Politics on voter identification. By **Friday, May 5, 2006**, you will receive, in electronic form, the research paper and relevant data analysis which supports the paper's findings. Through this independent review by a small group of experts familiar with elections data and research we are seeking feedback on:

- The research methodology which was used to support the paper's conclusions
- The specific statistical applications which were used to analyze the data and arrive at various conclusions

If there are alternate methodological and statistical approaches to analyzing the data on voter identification, and if there is other data on voter identification that you think should have been included in the analysis, please be certain to note this in your comments.

On **May 11, 2006** EAC will conduct a 60-90 minute phone call with key Eagleton Institute staff responsible for the research, members of Eagleton's peer review group and the EAC-identified reviewers who have been asked to consider the research. Through this dialogue EAC hopes to gather varying perspectives and insights on the research strategies and methods that were employed by Eagleton. As a result of this conversation, EAC anticipates that some revisions will be made to the Eagleton research paper. This paper is scheduled to be presented to EAC's Board of Advisors and Standards Boards in late May.

While EAC agency policy does not allow us to provide you with financial compensation for your review of this research we greatly appreciate your willingness to assist us with this important task. We believe that the research findings we will provide on voter identification are important and will most certainly be enhanced by your insights and expertise.

Sincerely,

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

011390

Karen Lynn-Dyson/EAC/GOV

To Thomas R. Wilkey/EAC/GOV@EAC, Juliet E.  
Thompson-Hodgkins/EAC/GOV@EAC

05/01/2006 02:58 PM

cc

bcc

Subject E-mail to Voter ID peer reviewers

History

This message has been replied to.

Tom and Julie-

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Dear Jan Leighley

Dear Adam Berinsky

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011391

Sincerely,

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

011392

Karen Lynn-Dyson/EAC/GOV  
04/28/2006 12:44 PM

To "Tom O'Neill" [REDACTED]@GSAEXTERNAL  
cc [REDACTED]  
bcc Juliet E. Thompson-Hodgkins/EAC/GOV  
Subject Re: Voter ID Paper --Final Draft

History: This message has been forwarded.

Tim, Tom, John, et.al--

The EAC has identified three academics who are going to serve as peer reviewers of the Eagleton Voter ID paper and research.

They are Jonathan Nagler of New York University, Jan Leighley, University of Arizona, and Adam Berinsky of MIT.

They are ready to review the documents as soon as they are available.

I would like to them one week to review the material and then have a joint conference call on **Thursday, May 11**, in which we would all have an opportunity to discuss the research methodology and statistical analysis, along with general comments and suggestions.

If you are able to get to me the paper and the supporting data analysis, I will distribute to the documents ASAP.

Also let me know, if you would, your availability on May 11 to do this conference all.

I anticipate that it will last approximately 90 minutes.

Regards-

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

011393

Karen Lynn-Dyson/EAC/GOV

To Juliet E. Thompson-Hodgkins/EAC/GOV@EAC

03/28/2006 10:25 AM

cc

bcc

Subject Fw: Voter ID Paper --Final Draft

Let's discuss once you've had a chance to review. As stated, there are a number of their statistical manipulations which I question.

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

— Forwarded by Karen Lynn-Dyson/EAC/GOV on 03/28/2006 09:20 AM —



"Tom O'Neill"

03/16/2006 09:27 AM

To klynndyson@eac.gov

cc

Subject RE: Voter ID Paper --Final Draft

Karen,

Glad the paper arrived. Sorry it was a bit later than promised, but we reworked the statistical analysis on the basis of some insightful suggestions by the Peer Review Group. . .that took a few extra days (and nights). Looking back at my email to you, I realize the full statistical analysis was not attached as it should have been. It is appendix to the paper that will be of interest to those who want the details of our methodology. It is attached to this email.

I will be away, without access to email, until late Monday afternoon, but if you need to, you can reach me by cell phone at 908-794-1030.

Tom O'Neill

-----Original Message-----

**From:** klynndyson@eac.gov [mailto:klynndyson@eac.gov]

**Sent:** Thursday, March 16, 2006 9:00 AM

**To:** [REDACTED]

**Subject:** Re: Voter ID Paper --Final Draft

Tom-

Thanks for getting this to me. I've forwarded it on to the Commissioners.

Will try to see if I can get feedback next week.

011394

Regards-  
K

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005



tel:202-566-3123 Vercellotti314.doc

011395



Analysis of Effects of Voter Identification Requirements on Turnout  
Tim Vercellotti  
Eagleton Institute of Politics  
Rutgers University

## Introduction

A key area of disagreement in the policy debate over voter identification requirements concerns how such requirements affect voter turnout. Opponents of voter identification laws argue that they constitute an institutional barrier to voting, particularly among the poor, African-Americans, Hispanics, the elderly and people with disabilities (Baxter and Galloway 2005, Electionline.org 2002, Jacobs 2005, Young 2006). This argument holds that voter identification requirements create an extra demand on voters, and thus may discourage some of them from participating in elections. Further, critics argue that requiring voters to produce some form of government-issued photo identification on Election Day is more demanding than requiring, for example, that they state their names at the polling place because of the various steps needed to procure a photo identification card, ~~such as a driver's license~~. Supporters of voter identification requirements, on the other hand, argue that the requirements are necessary to combat voter fraud, safeguard the integrity of the electoral process, and engender faith in the electoral process among citizens (Young 2006).

This report examines the potential variation in turnout rates based on the type of voter identification requirement in place in each state on Election Day 2004. It draws on two sets of data – aggregate turnout data at the county level for each state, as compiled by the Eagleton Institute of Politics, and individual-level survey data included in the November 2004 Current Population Survey conducted by the U.S. Census Bureau. Classification of voter identification requirements comes from a review of state statutes conducted by the Moritz College of Law at the Ohio State University.

## Types of voter identification requirements

Each state is classified as having one of five types of identification requirements in place on Election Day 2004. Upon arrival at polling places, voters had to either: state their names (nine states); sign their names (13 states and the District of Columbia); match their signature to a signature on file with the local election board (eight states); provide a form of identification that did not necessarily include a photo (15 states); or provide a photo identification (five states).<sup>1</sup> It was then possible to code the states according to these requirements, and test the assumption that voter identification requirements would pose an increasingly demanding requirement in this order: stating one's name, signing one's name, matching one's signature to a signature on file, providing a form of identification, and providing a form of photo identification.

But election laws in numerous states offer exceptions to these requirements if individuals lack the necessary form of identification. Laws in those states set a minimum standard that a

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<sup>1</sup> Oregon conducts elections entirely by mail. Voters sign their mail-in ballots, and election officials match the signatures to signatures on file. For the purposes of this analysis, Oregon is classified as a state that requires a signature match.

voter must meet in order to vote using a regular ballot (as opposed to a provisional ballot). Thus it is also possible to categorize states based on the minimum requirement for voting with a regular ballot. In 2004 the categories were somewhat different compared to the maximum requirement, in that none of the states required photo identification as a minimum standard for voting with a regular ballot. Four states, however, required voters to swear an affidavit as to their identity (Florida, Indiana, Louisiana, and North Dakota). The five categories for minimum requirements were: state name (12 states), sign name (14 states and the District of Columbia), match one's signature to a signature on file (six states), provide a non-photo identification (14 states), or swear an affidavit (four states). This analysis treats the array of minimum identification requirements also in terms of increasing demand on the voter: state name, sign name, match signature, provide non-photo identification, and, given the potential legal consequences for providing false information, swearing an affidavit.

#### Analysis of aggregate data

If one treats maximum voter identification requirements as an ordinal variable, with photo identification as the most demanding requirement, one finds some statistical support for the premise that as the level of required proof increases, turnout declines. Averaging across counties in each state, statewide turnout is negatively correlated with voter identification requirements ( $r = -.21$ ,  $p < .0001$ ). In considering the array of minimum requirements, with affidavit as the most demanding requirement, voter identification also is negatively correlated with turnout ( $r = -.16$ ,  $p < .0001$ ). Breaking down the turnout rates by type of requirement reveals in greater detail the relationship between voter identification requirements and voter turnout.

[Table 1 here]

Differences in voter turnout at the state level in 2004 varied based on voter identification requirements.<sup>2</sup> Taking into account the maximum requirements, an average of 63.1 percent of the voting age population turned out in states that required voters to state their names, compared to 57.3 percent in states that required photo identification. A similar trend emerged when considering minimum requirements. Sixty-one percent of the voting age population turned out in states requiring voters to state their names, compared to 58.7 percent in states that required an affidavit from voters. While the trend is not perfectly linear, there is a general movement toward lower turnout as requirements tend toward requiring greater levels of proof.

Voter identification requirements alone, however, do not determine voter turnout. Multivariate models that take into account other predictors of turnout can place the effects of voter identification in a more accurate context. I estimated the effects of voter identification requirements in multivariate models that also took into account the electoral context in 2004 and demographic characteristics of the population in each county. To capture electoral context I

<sup>2</sup> Voter turnout is defined here as the percentage of the adult voting-age population that voted in November 2004, based on county vote totals reported by the states and U.S. Census population projections for the counties from 2003. McDonald and Popkin (2001) contend that using the voting-age population to calculate turnout understates turnout for a number of reasons. They point out that voting-age population estimates include adults who are ineligible to vote (such as convicted felons), and the estimates overlook eligible citizens living overseas. While estimates of the voting-eligible population are available at the state level, I was unable to find such estimates for individual counties, which provide the unit of analysis for the aggregate data analyzed here.

included whether the county was in a presidential battleground state (any state in which the margin of victory for the winning candidate was five percent or less), and whether the county was in a state with a competitive race for governor and/or the U.S. Senate (also using the threshold of a margin of victory of five percent or less). Drawing from U.S. Census projections for 2003, I included the percentage of the voting-age population in each county that was Hispanic or African-American to control for ethnicity and race. I controlled for age using the 2003 Census projection for the percentage of county residents age 65 and older, and I controlled for socioeconomic status by including the percentage of individuals who fell below the poverty line in each county in the 2000 Census.

I estimated a series of random intercept models to account for the likelihood that data from counties were correlated within each state (for further explanation of random intercept and other multilevel models, see Bryk and Raudenbush 1992, Luke 2004, Singer 1998).<sup>3</sup> The dependent variable in each model was voter turnout at the county level, with turnout calculated as the percentage of the voting-age population that voted in the 2004 election.

[Table 2 here]

Turning first to an analysis using the maximum identification requirements, those requirements had a small and negative effect on turnout in 2004 controlling for electoral context and demographic factors. Both contextual factors (whether the county was in a state that was a battleground state and whether that state had a competitive race for governor and/or U.S. Senate) increased voter turnout. As the percentage of senior citizens in the county increased, so did turnout. The percentage of African-Americans in the county had no effect, but the percentage of Hispanic adults exerted a negative effect on voter turnout, as did the percentage of individuals living below the poverty line.

I then sought to test the hypothesis that voter identification requirements dampen turnout among minorities and the poor, a claim voiced by some critics of the requirements. To test this idea I incorporated a series of interactions between the maximum voter identification requirements and the percentage of African-Americans, Hispanics, and poor individuals in the counties. The interaction involving African-Americans was not significant, but those involving Hispanics and poor individuals were significant.<sup>4</sup> Thus voter identification requirements have a greater effect for Hispanics and those living below the poverty line. A chi-square test of the difference in the deviance for each model (represented by -2 log likelihood in Table 2), shows that the model with interactions provides a better fit to the data ( $p = 0.0003$ ).

Comment [o1]

I also estimated the effects of the minimum voter identification requirements holding constant the effects of electoral context and the demographic variables.

<sup>3</sup> The data analyses provided evidence that there was, indeed, a clustering of data within each state. The intraclass correlation, bounded by 0 and 1, measures the variation between the states. A random intercept model using only the intercept as a predictor generated an intraclass correlation of .40, indicating considerable variation between the states.

<sup>4</sup> The interactions are labeled in Tables 2 and 3 as VID\*African-American, VID\*Hispanic, and VID\*Poverty. To calculate the effects of voter identification requirements for a specific group, one must add the estimates for voter identification, the group, and the interaction. Doing so for Hispanic adults results in an estimate of -0.36 [-0.04 (voter id) - 0.38 (Hispanic) + 0.06 (voter id X Hispanic)].

[Table 3 here]

The effects of the minimum requirements are not statistically significant ( $p = 0.15$ ). The battleground state variable continues to exert a positive influence on turnout, while the presence of a competitive race for governor and/or U.S. Senate has no statistically significant effect. As in the maximum identification requirements models, as the percentage of the population that is Hispanic or poor increases, turnout declines. As the percentage of elderly increases, so does turnout. The proportion of African-Americans in the population does not affect turnout. Adding interactive effects to the model results in a statistically significant and negative effect of minimum voter identification requirements on turnout. But one must interpret this estimate with caution. A chi-square test for the difference in fit between the two models shows no significant difference ( $p = 0.08$ ), and thus no improvement to the fit when adding the interactions between voter identification requirements and the percentages of the county that is Hispanic or lives below the poverty line.

Analysis of the aggregate data at the county level generates some support for the hypothesis that as the burden of voter identification requirements increases, turnout declines, at least in the case of the maximum requirements. This is particularly so for counties with concentrations of Hispanic residents or individuals who live below the poverty line. But aggregate data cannot fully capture the individual demographic factors that may figure into the decision to turn out to vote. For example, previous research has found that education is a powerful determinant of turnout (Wolfinger and Rosenstone 1980, but see also Nagler 1991). Married individuals also are more likely to vote than those who are not married (Alvarez and Ansolabehere 2002; Alvarez, Nagler and Wilson 2004; Fisher, Kenny, and Morton 1993). To fully explore the effects of voter identification requirements on turnout, it is important to examine individual-level data as well.

#### Individual-level analysis

Individual-level turnout data exists in the November 2004 Current Population Survey conducted by the U.S. Census Bureau. The Census Bureau conducts the CPS monthly to measure unemployment and other workforce data, but the bureau adds a battery of voter participation questions to the November survey in even-numbered years to coincide with either a presidential or midterm-Congressional election.

One of the advantages of the CPS is the sheer size of the sample. The survey's Voting and Registration Supplement consisted of interviews, either by telephone or in person, with 96,452 respondents.<sup>5</sup> The large sample size permits analyses of smaller groups, such as Black or Hispanic voters or voters with less than a high school education. The analyses reported here are based on reports from self-described registered voters. I omitted those who said they were not

<sup>5</sup> It is important to note that the Census Bureau allows respondents to answer on behalf of themselves and others in the household during the interview. While proxy reporting of voter turnout raises the possibility of inaccurate reports concerning whether another member of the household voted, follow-up interviews with those for whom a proxy report had been given in the November 1984 CPS showed 99 percent agreement between the proxy report and the information given by the follow-up respondent (U.S. Census Bureau 1990).

registered to vote. I also excluded those who said they cast absentee ballots because the identification requirements for absentee ballots may differ from those required when one votes in person. In addition, I eliminated from the sample respondents who said they were not U.S. citizens.

It is important to note here that the voter turnout rate for the CPS sample is much higher than the turnout rates presented in the aggregate data analysis. The U.S. Census Bureau reported that 89 percent of registered voters in the CPS sample said they voted (U.S. Census Bureau 2005). Turnout among the voting-age population was 58 percent in 2004, according to the aggregate data analysis. The difference is a result of several factors. One factor consists of the different denominators in calculating the turnout rate – registered voters versus the much larger voting-age population. Also, previous research has shown that, generally speaking, some survey respondents overstate their incidence of voting. Researchers speculate that over-reports may be due to the social desirability that accompanies saying one has done his or her civic duty, or a reluctance to appear outside the mainstream of American political culture (U.S. Census Bureau 1990). It is also possible that voting is an indication of a level of civic engagement that predisposes voters to agree to complete surveys at a higher rate than non-voters (Flanigan and Zingale 2002). Hence the voter turnout rates reported in the CPS tend to be much higher than the actual turnout rate for the nation (Flanigan and Zingale 2002). Even with this caveat, however, the CPS serves as a widely accepted source of data on voting behavior.

~~In addition, I eliminated from the sample respondents who said they were not U.S. citizens.~~

The dependent variable in these analyses is whether a respondent said he or she voted in the November 2004 election.<sup>6</sup> In addition to the voter identification requirements, the models include two other state-level factors that might have influenced turnout in 2004: whether the state was considered a battleground state in the presidential election, and whether there was a competitive gubernatorial and/or U.S. Senate race in the state (see Alvarez and Ansolabehere 2002, Alvarez et al. 2004, and Kenny et al. 1993 for similar approaches). As in the aggregate analysis, the threshold that determined whether the state was a battleground state or had a competitive statewide race was a margin of victory of five percent or less. At the individual level, I controlled for gender, age in years, education, household income, and dummy variables representing whether a voter was Black/non-Hispanic, Hispanic, or another non-white race (with white/non-Hispanic voters as the omitted category for reference purposes). Drawing on previous research on voting behavior, I also controlled for whether an individual was employed, or at least a member of the workforce (as opposed to being a full-time student, a homemaker, or retired). Both employment and workforce membership have been shown to be positive predictors of turnout (see Mitchell and Wlezien 1995). Marital status, whether one is a native-born citizen and residential mobility also have emerged as significant predictors of turnout (Alvarez and

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<sup>6</sup> The U.S. Census Bureau reported, based on the November 2004 CPS, that 89 percent of those who identified themselves as registered voters said they voted in 2004 (U.S. Census Bureau 2005). Previous research has shown that, generally speaking, some survey respondents overstate their incidence of voting. Researchers speculate that over-reports may be due to the social desirability that accompanies saying one has done his or her civic duty, or a reluctance to appear outside the mainstream of American political culture (U.S. Census Bureau 1990). It is also possible that voting is an indication of civic engagement that predisposes voters to agree to complete surveys at a higher rate than non-voters (Flanigan and Zingale 2002). Hence the voter turnout rates reported in the CPS tend to be up to 10 percentage points higher than the actual turnout rate for the nation (Flanigan and Zingale 2002). Even with this caveat, however, the CPS serves as a widely accepted source of data on voting behavior.

Ansolabehere 2002, Alvarez et al. 2004, Kenney et al. 1993, Wolfinger and Rosenstone 1980). I included in the model variables for whether a respondent was married (coded 1 if yes, 0 otherwise), and whether one was a native-born citizen (coded 1 if yes, 0 otherwise). I measured residential mobility by coding for whether the respondent had moved to a new address in the six months prior to the interview (coded 1 if yes, 0 otherwise).

## Results

The dependent variable is whether a respondent said he or she voted in the November 2004 election (coded 1 for yes, 0 for no). I estimated models using probit analysis, and estimated robust standard errors to control for correlated error terms for observations from within the same state.

[Table 4 here]

The two models in Table 4 use either the maximum or minimum voter identification requirements in each state. The two models generate virtually identical results. ~~Voter identification requirements exert a statistically significant negative effect on whether survey respondents said they had voted in 2004.~~ Of the other state factors, only the competitiveness of the presidential race had a significant effect on turnout. In terms of demographic influences, African-American voters were more likely than white voters to say they had cast a ballot, while those of other non-white races were less likely than white voters to say they had turned out. Hispanic voters were not statistically different from white voters in terms of reported turnout. Consistent with previous research, age, education, income, and marital status all were positive predictors of voting. Women also were more likely to say they voted than men. Those who had moved within six months before the interview were less likely to say they had voted.

While the probit models provide statistical support for the influence of voter identification requirements and other variables on turnout, probit coefficients do not lend themselves to intuitive interpretation. Another common approach in studies of election requirements is to examine how the predicted probability of voter turnout would vary as election requirements vary. I used the probit coefficients to calculate the predicted probability of voting at each level of voter identification requirements while holding all other independent variables in the models at their means.<sup>7</sup> I calculated the probabilities taking into account both maximum and minimum requirements, with photo identification serving as the most demanding of the maximum requirements and affidavits as the most demanding minimum requirement.

[Table 5 here]

Allowing the voter identification requirement to vary while holding constant all other variables in the model showed that the predicted probability of turnout ranged from 91.2 percent ~~0.912~~ if all voters had to state their names ~~for stating one's name~~ to 88.7 percent ~~0.887~~ if all voters had to

<sup>7</sup> In the case of dichotomous independent variables, holding them at their mean amounted to holding them at the percentage of the sample that was coded 1 for the variable (Long 1997).

provide for photo identification under the maximum requirements. In other words, the probability of voting dropped with each level of voter identification requirement, with a total drop of 0.25, or 2.5 percent, across the five types of identification. When taking into account the minimum requirement for identification, the probability showed a similar decline, with a slightly larger total drop of 3.3 percent.

Among the key variables of interest in the debate over voter identification requirements are race, age, income, and education. Given the large sample size (54,973 registered voters), it was possible to break the sample into sub-samples along those demographic lines to explore variation in predicted probability by group. I disaggregated the sample by the variable of interest (such as race, for example), omitting that variable while I re-ran the probit model with the remaining predictors of voter turnout, including the voter identification requirements.<sup>8</sup> If the analysis showed that the voter identification requirements had a statistically significant effect on turnout, I used the probit coefficients from the model to calculate the predicted probability of voting for each group across the five requirements while holding the other variables in the model constant.

[Table 6 here]

Both the maximum and minimum identification requirements had negative and statistically significant effects for white voters. Allowing the requirements to vary from stating one's name to providing photo identification or an affidavit showed drops of 2.5 percent and 3.3 percent, respectively, in the predicted probability of voting. The identification requirements had no effect on the probability of African-Americans voting, but the minimum identification requirements had a comparatively sizable effect on voter turnout among Hispanics. The predicted probability of Hispanics voting ranged from 87 percent if stating one's name would be the required form of identification to 77.3 percent if a voter would have to provide an affidavit in order to vote, a difference of 9.7 percent.

The effects of voter identification requirements also varied by age, with the greatest variation occurring among voters ages 18 to 24.

[Table 7 here]

Voters in that age group had a predicted probability of 83.9 percent if when the maximum requirement would be to state one's name, and the probability drops 8.9 percentage points if voters would have to provide photo identification. The range was from 83.1 percent to 75.4 percent under the minimum requirements. The gap in probability narrowed in older age groups (4.8 percent for the maximum requirements and 5.8 percent for the minimum requirements for those ages 25 to 44; 1.8 percent for the minimum requirements for those ages 45 to 64, and 2.4 percent for the minimum requirements for those ages 65 and older).

Comment [62]: The turnout figures shown in the analysis of the aggregate data range of 57.1% turnout to 63.1% turnout. When using the individual data based on self-reports, the turnout figures approach 90%. I think a couple of sentences explaining the difference in the data between the two different analyses would be helpful here, even for readers comfortable with the statistical techniques used.

<sup>8</sup> See Nagler 1991 for a similar approach in analyzing the effects of registration closing dates broken down by education levels.

Variation also emerged along the lines of income, with the effects of voter identification requirements varying to a greater extent for voters in households below the poverty line compared to those living above the poverty line.<sup>9</sup>

[Table 8 here]

While the maximum set of requirements did not have a statistically significant effect for voters living below the poverty line, the minimum set of requirements had a significant and negative effect. The probability of voting was .784 for poor voters if they would have to identify themselves by giving their name, and the probability declined to .731 if they would have to provide an affidavit attesting to their identity. Both the maximum and minimum sets of requirements had a significant and negative effect on voters living above the poverty line, but the difference in probability across the effects was narrower (2.3 percent for the maximum requirements and 3.1 percent for the minimum requirements).

The effects of voter identification requirements varied across education levels as well, with those lowest in education demonstrating the widest variation in probabilities as identification requirements ranged from least to most demanding.

[Table 9 here]

Registered voters who had less than a high school education had a 77.5 percent probability of voting if the maximum requirement would be stating one's name, and a 70.8 percent probability if they would have to provide photo identification under the maximum requirement, a difference of 6.7 percent. The difference from the lowest to the highest requirement among the minimum requirements was 7.4 percent. The difference in probabilities ranged from 3.3 percent for the maximum requirements to 4.5 percent for the minimum requirements for voters with a high school diploma. The range of effects of voter identification requirements was smaller among those with higher levels of education (and non-existent for one category—voters with some college education).

### Discussion and conclusion

The results presented here provide evidence that as the level of demand associated with voter identification requirements increases, voter turnout declines. This point emerged from both the aggregate data and the individual-level data, although not always for both the maximum and minimum sets of requirements. The overall effect for all registered voters was fairly small, but even a slight decline in turnout has the potential to alter the outcome of a close election.

The effects of voter identification requirements were more pronounced for specific subgroups. Hispanic voters and the poor appeared to be less likely to vote if the level of required identification becomes more demanding, according to both the aggregate and the individual-level data. In the individual-level data, for Hispanic voters, the probability of voting dropped by 9.7 percent across the various levels of minimum identification requirements. Survey

<sup>9</sup> I coded respondents as being above or below the U.S. Census Bureau's 2004 poverty line based on respondents' reported annual household income and size of the household.



respondents living in poor households would be 5.3 percent less likely to vote as the requirements varied from stating one's name to attesting to one's identity in an affidavit.

Effects of voter requirements also varied with education. Registered voters who had not graduated from high school would be 6.7 percent less likely to say they voted if the maximum requirement is photo identification as opposed to stating one's name as the maximum requirements ranged from stating one's name to providing photo identification. When considering the minimum requirements, those with less than a high school education would be 7.4 percent less likely to say they voted if the requirement was an affidavit as opposed to stating one's name. Age was also a key factor, with voters ages 18 to 24 being 7.7 percent to 8.9 percent less likely to vote as the requirements ranged from stating one's name to providing a photo identification or affidavit.

Two concerns aired by critics of voter identification requirements were not borne out by the results. African-American voters did not appear to be affected by voter identification requirements, according to both the aggregate data and individual-level data analyses. Also, the elderly, while they would be slightly less likely to vote as requirements ranged from least to most demanding, would not necessarily be affected in the dramatic manner predicted by some opposed to photo identification requirements in particular.

In examining the effects of voter identification requirements on turnout, there is still much to learn. The data examined in this project could not capture the dynamics of how identification requirements might lower turnout. If these requirements dampen turnout, is it because individuals are aware of the requirements and stay away from the polls because they cannot or do not want to meet the requirements?<sup>10</sup> Or, do the requirements result in some voters being turned away when they cannot meet the requirements on Election Day? The CPS data do not include measures that can answer these questions, pointing up the need for collection of additional data. Knowing more about the "on the ground" experiences of voters concerning identification requirements could guide policy-makers at the state and local level in determining whether and at what point in the electoral cycle a concerted public information campaign might be most effective in helping voters to meet identification requirements. Such knowledge also could help in designing training for poll workers, election judges to handle questions about, and potential disputes over, voter identification requirements.

<sup>10</sup> The individual-level data offer some insight here. If advance knowledge of the voter identification requirements were to dampen turnout, it is reasonable to expect that advance knowledge of those requirements also could discourage some individuals from registering to vote. I ran the same probit models using voter registration as the dependent variable (coded 1 if the respondent said he or she was registered, and 0 if the respondent was not registered). Neither the maximum nor minimum array of voter identification requirements had a statistically significant effect on the probability that a survey respondent was registered to vote.

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<b>Maximum Requirement</b>		<b>Minimum Requirement</b>	
<b>Voter Identification Required in the States</b>	<b>Mean Voter Turnout for States in that Category</b>	<b>Voter Identification Required in the States</b>	<b>Mean Voter Turnout for States in that Category</b>
<b>State Name</b>	63.1 %	<b>State Name</b>	61.3 %
<b>Sign Name</b>	58.6 %	<b>Sign Name</b>	60.4 %
<b>Match Signature</b>	62.1 %	<b>Match Signature</b>	59.2 %
<b>Provide Non-Photo ID</b>	57.8 %	<b>Provide Non-Photo ID</b>	57.6 %
<b>Provide Photo ID</b>	57.3 %	<b>Swear Affidavit</b>	58.7 %
<b>Average Turnout for All States</b>	59.6 %		

**Table 2. Predictors of 2004 turnout at the county level taking into account maximum voter identification requirements**

Variable	Basic Model		Model with Interactions	
	Unstandardized Estimate	Standard Error	Unstandardized Estimate	Standard Error
Intercept	0.64	0.01	0.70	0.02
Voter ID requirements	-0.02**	0.004	-0.04**	0.005
Battleground State	0.04*	0.02	0.04*	0.02
Competitive Senate/Governor's Race	0.04*	0.02	0.04*	0.02
% Age 65 and Older	0.50**	0.03	0.51**	0.03
% African-American	0.02	0.01	0.04	0.04
% Hispanic	-0.17**	0.01	-0.38**	0.05
% Below poverty line	-0.01**	0.0002	-0.01**	0.001
VID * African-American	----	----	-0.004	0.01
VID * Hispanic	----	----	0.06**	0.01
VID * Poverty	----	----	0.001**	0.0002
-2 Log Likelihood	-8234.5		-8253.5	

Coefficients are restricted maximum likelihood estimates. N = 3,112. \* p < .05 \*\* p < .01 (two-tailed tests)

**Table 3. Predictors of 2004 turnout at the county level taking into account minimum voter identification requirements**

Variable	Basic Model		Model with Interactions	
	Unstandardized Estimate	Standard Error	Unstandardized Estimate	Standard Error
Intercept	0.62	0.01	0.66	0.02
Voter ID requirements	-0.008	0.005	-0.02**	0.006
Battleground State	0.04**	0.01	0.04*	0.02
Competitive Senate/Governor's Race	0.03	0.02	0.03	0.02
% Age 65 and Older	0.50**	0.03	0.49**	0.03
% African-American	0.02	0.01	0.02	0.03
% Hispanic	-0.17**	0.01	-0.37**	0.05
% Below poverty line	-0.01**	0.0003	-0.01**	0.001
VID * African-American	----	----	-0.004	0.01
VID * Hispanic	----	----	0.06**	0.01
VID * Poverty	----	----	0.001**	0.0002
-2 Log Likelihood	-8222.7		-8229.4	

Coefficients are restricted maximum likelihood estimates. N = 3,112. \* p < .05 \*\* p < .01 (two-tailed tests)

011409

<b>Variable</b>	<b>Maximum requirements</b>		<b>Minimum requirements</b>	
	<b>Unstandardized Estimate</b>	<b>Standard Error</b>	<b>Unstandardized Estimate</b>	<b>Standard error</b>
<b>Voter ID requirements</b>	-0.04*	0.01	-0.05**	0.01
<b>Hispanic</b>	-0.06	0.05	-0.05	0.05
<b>Black</b>	0.22**	0.04	0.22**	0.04
<b>Other race</b>	-0.23**	0.04	-0.23**	0.04
<b>Age in years</b>	0.01**	0.001	0.01**	0.001
<b>Education</b>	0.12**	0.005	0.11**	0.005
<b>Household income</b>	0.03**	0.003	0.03**	0.003
<b>Married</b>	0.20**	0.02	0.20**	0.02
<b>Female</b>	0.09**	0.01	0.09**	0.01
<b>Battleground state</b>	0.18**	0.04	0.19**	0.04
<b>Competitive race</b>	0.05	0.05	0.05	0.05
<b>Employed</b>	0.05	0.04	0.05	0.04
<b>Member of workforce</b>	-0.04	0.05	-0.04	0.05
<b>Native-born citizen</b>	0.03	0.04	0.04	0.05
<b>Moved within past 6 months</b>	-0.27**	0.03	-0.27**	0.03
<b>Constant</b>	-4.48**	0.20	-4.46**	0.20
<b>Pseudo-R-Squared</b>	0.09		0.09	

Notes:

N = 54,973 registered voters

p < .05\*\* p < .01\*\* (two-tailed tests)

Models were estimated with robust standard errors to correct for correlated error terms within each state.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

<b>Table 5. Predicted probability of voter turnout – full model</b>		
	<b>Maximum requirement</b>	<b>Minimum requirement</b>
<b>State name</b>	0.912	0.911
<b>Sign name</b>	0.906	0.903
<b>Match signature</b>	0.900	0.895
<b>Non-photo ID</b>	0.894	0.887
<b>Photo ID</b>	0.887	----
<b>Affidavit</b>	----	0.878
<b>Total difference from lowest to highest</b>	0.025	0.033
<b>N</b>	54,973	
<p>Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant.</p> <p>Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.</p>		



**Table 6. Predicted probability of voter turnout – White and Hispanic voters**

	White voters		Hispanic voters
	Maximum requirement	Minimum requirement	Minimum requirement
State name	0.920	0.922	0.870
Sign name	0.915	0.915	0.849
Match signature	0.909	0.907	0.826
Non-photo ID	0.902	0.899	0.800
Photo ID	0.895	----	----
Affidavit	----	0.890	0.773
Total difference from lowest to highest	0.025	0.032	0.097
N	44,760		2,860

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum voter identification requirements were not a significant predictor of voting for Hispanic voters. Maximum and minimum voter identification requirements were not a significant predictor for African-American voters.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

Table 7. Predicted probability of voter turnout – Age groups						
	18 - 24		25 - 44		45 - 64	65 and older
	Maximum requirements	Minimum requirements	Maximum requirements	Minimum requirements	Minimum requirements	Minimum requirements
State name	0.839	0.831	0.831	0.831	0.936	0.916
Sign name	0.819	0.814	0.820	0.817	0.932	0.910
Match signature	0.797	0.759	0.808	0.803	0.927	0.904
Non-photo ID	0.774	0.775	0.796	0.788	0.923	0.898
Photo ID	0.750	----	0.783	----	----	----
Affidavit	----	0.754	----	0.773	0.918	0.892
Total difference – lowest to highest	0.089	0.077	0.048	0.058	0.018	0.024
N	5,065		20,066		20,758	9,084
<p>Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum voter identification requirements were not a significant predictor of voting for voters ages 45 to 64 and 65 and older.</p> <p>Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.</p>						

**Comment:** (b) Can you add something to this table to help explain why the difference between the minimum and maximum figures derived from the CPS respondents' responses and official measures of turnout which tend to be in the 10% to 15% range?

**Table 8. Predicted probability of voter turnout – Voters above and below the poverty line**

	Voters above the poverty line		Voters below the poverty line
	Maximum requirement	Minimum requirement	Minimum requirement
State name	0.920	0.922	0.784
Sign name	0.915	0.915	0.772
Match signature	0.909	0.907	0.758
Non-photo ID	0.903	0.899	0.745
Photo ID	0.897	----	----
Affidavit	----	0.891	0.731
Total difference from lowest to highest	0.023	0.031	0.053
N	49,935		5,038
<p>Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum voter identification requirements were not a significant predictor of voting for voters who were below the poverty line.</p> <p>Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.</p>			

**Table 9. Predicted probability of voter turnout – By education**

	Less than high school		High school		College		Graduate school	
	Maximum requirement	Minimum requirement	Maximum requirement	Minimum requirement	Maximum requirement	Minimum requirement	Maximum requirement	Minimum requirement
State name	0.775	0.779	0.866	0.869	0.960	0.959	0.977	0.979
Sign name	0.759	0.762	0.858	0.859	0.956	0.954	0.973	0.973
Match signature	0.743	0.743	0.850	0.848	0.951	0.950	0.968	0.967
Non-photo ID	0.725	0.724	0.842	0.836	0.945	0.945	0.963	0.959
Photo ID	0.708	----	0.833	----	0.939	----	0.957	----
Affidavit	-----	0.705	----	0.824	----	0.940	-----	0.950
Total difference -- lowest to highest	0.067	0.074	0.033	0.045	0.021	0.019	0.020	0.029
N	4,903		16,361		11,017		5,739	

Figures represent the predicted probability of registered voters saying they voted as the identification requirement varies from the lowest to the highest point in the scale, with all other variables held constant. Maximum and minimum voter identification requirements were not a significant predictor of voting for those with some college education.

Data source: U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, November 2004.

011415



Gracia Hillman/EAC/GOV  
10/23/2006 09:13 PM

To "Paul DeGregorio" <pdegregorio@eac.gov>, Thomas R. Wilkey/EAC/GOV@EAC, "Donetta Davidson" <Ddavidson@eac.gov>  
cc Juliet E. Thompson/EAC/GOV@EAC, "Jeannie Layson" <jlayson@eac.gov>

bcc

Subject The Fraud "Report"

I am recommending that we use Thursday's meeting, a public forum, to be on the record about this report.

My thought is that Tom should report the matter to us in his report. New Business?? Just stating the facts as they exist, including the nature of the study, how we have handled the numerous requests and inquiries that we have received, etc.

Please let me know what you think about this suggestion. Thanks.

-----  
Sent from my BlackBerry Wireless Handheld

011416



"Tom O'Neill"  
[Redacted]  
07/26/2005 07:44 PM

To "Kristin Smith" [Redacted]  
jthompson@eac.gov  
cc  
bcc  
Subject O'Neill Powerpoint for EAC

Kristin and Julie,

Attached is the Power Point I will use at Thursday's meeting. Thanks for you assistance in making arrangement to distribute and project the presentation.

Tom O'Neill

-----Original Message-----

**From:** Kristin Smith [Redacted]  
**Sent:** Tuesday, July 26, 2005 12:12 PM  
**To:** [Redacted]  
**Subject:** Powerpoint for EAC

Mr. O'Neill,

When you have the final version of the powerpoint presentation you are giving, could you please email it also to [Redacted] We will like to distribute it to the Commissioners.

Thank you,

Kristin Smith



Briefinfg72805.ppt

011417

**Briefing for**

**July 28, 2005**

011418

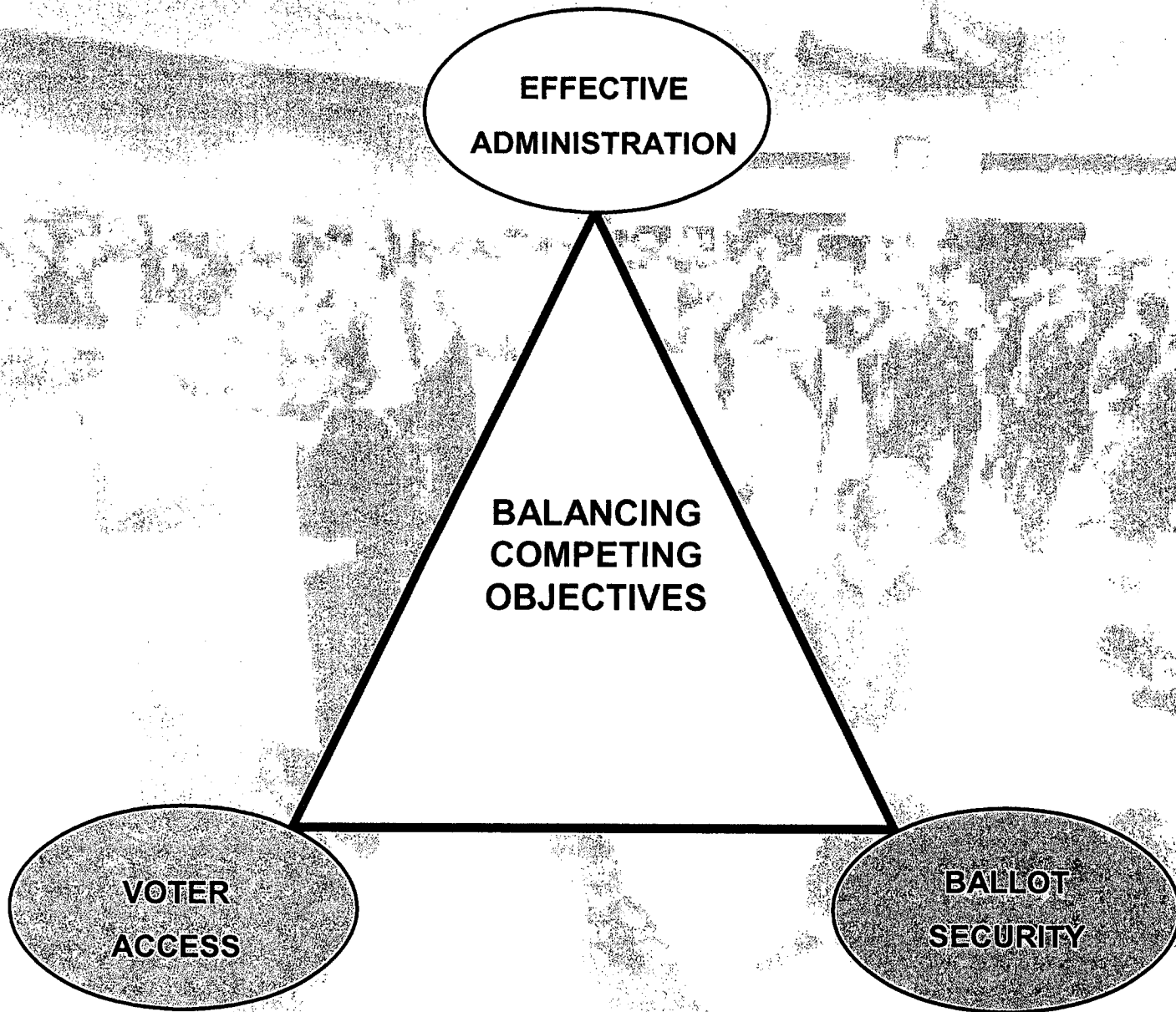
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PHOTOGRAPHY



011419





# Key Questions

1. How did the states prepare for the onset of the HAVA provisional ballot requirement?

**Review of statutes and regulations**

**State narratives**

2. How did this vary between states that had previously had some form of provisional ballot and those that did not?

**Survey of local election officials**

**State narratives**

3. How did litigation affect implementation?

**Survey of case law and regulations**  
**State narratives**

4. How effective was provisional voting in enfranchising qualified voters?

**Survey of litigation**  
**State narratives**  
**Survey of local election officials**

5. Did states and local processes provide for consistent counting of provisional ballots?

**State narratives**

**Survey of litigation**

**Survey of local election officials**

6. Did local election officials have a clear understanding of how to implement provisional voting?

**Survey of local election officials**

**State narratives**

## **OUTREACH**

**American Enterprise Institute**

**Brennan Center for Justice at NYU School of Law**

**Center for Digital Government**

**The Century Foundation**

**The Constitution Project**

**DEMOS-USA**

**The Election Center**

**Election Reform Information Project**

**Leadership Conference on Civil Rights**

**League of Women Voters**

**National Association of Secretaries of State National Association  
of State Election Directors**

**People for the American Way**

**+ Other organizations after consultation with U.S.E.A.C.**

# **PROVISIONAL VOTING**

## **Key Research Deliverables**

- 1. Summary of case law on Provisional Voting**
- 2. Compendium of states' legislation, regulations, and litigation.**
- 3. Analysis of how provisional voting was implemented around the country, which will be critiqued by Peer Review Group.**
- 4. Description of alternatives to existing practices and procedures**

# **VOTER IDENTIFICATION**

## **Key Research Deliverables**

- 1. Indexed database of major articles on Voter ID Requirements**
- 2. Summary of case law**
- 3. Compendium of states' legislation, procedures, and litigation.**
- 4. Analysis of voter participation and vote fraud under various Voter ID regimes to be reviewed by Peer Review Group.**
- 5. Alternative approaches**



## **Hearings on Guidance Documents**

**Consult with EAC to identify locations and venues**

**Hearings to take place 30 days after publication**

**Deliverables**

**Transcript**

**Summary and analysis of comments**

**Recommend revisions to GD based on hearing results and discuss with EAC**

**Deliver final Guidance Document to EAC**



# Project Status

## PROVISIONAL VOTING

**Task 3.4: Collect and analyze state legislation, administrative procedures, and court cases. Understand the disparities and similarities of how provisional voting was implemented around the country.**

---

- Initial legal, regulatory, and case law research for 44 states, is complete. Completion for all states by August 1.
- Compiling narrative description of experience in each state. Completion in first week in August.
- Surveying 400 county election officials actual practice in administering provisional voting. Completion mid-August.

# Project Status

## VOTER IDENTIFICATION

### Task 3.10: Legislation, regulations, and litigation

- Initial research complete (and statutes compiled) for 45 states. Questions answered include *"Who is required to present ID"*, *"Types of ID required"*, and *"Consequences of having no ID"*. Complete mid-September.
- Collecting information on the voter id debate in the states to monitor possible secondary effects of HAVA and to suggest alternative approaches. Complete first week of August.
- Statistical analysis to gauge the effect of a state's voter ID regime on turnout, especially turnout by minority and elderly voters. Complete late August.

**Briefing for**

**July 28, 2005**



"Tom O'Neill"

07/26/2005 10:39 AM

To jthompson@eac.gov

cc

bcc

Subject: Pasadena Meeting

History:

 This message has been replied to.

Julie: My plane arrives at LAX at about 5, and I should arrive in Pasadena after 7. I don't think we could meet until about 8 p.m. Does that fit your plans? I am staying at the Huntington, about a mile from the Cal Tech campus. You can always reach me by cell phone at 908-794-1030.

Dan and I have divided up our presentation this way: I will describe the overall research effort and the major questions to which we are seeking answers. I'll also outline the methods we are using to develop those answers and report on the current status of the work. Dan will describe in greater detail Moritz's research and compilation of the statutes, regulation and case law and describe some of the key matters of substance involved in developing our report.

The outline of my talk on Power Point is not yet complete, but the unfinished version is attached to give you a clearer impression of the presentation. I assume the meeting room will have a projector and screen. If that is not the case let me know and I'll print the Power Point slides and hand them out to the Commissioners.

Tom O'Neill

-----Original Message-----

**From:** jthompson@eac.gov [mailto:jthompson@eac.gov]

**Sent:** Tuesday, July 26, 2005 8:51 AM

**To:** [REDACTED]

**Subject:** Progress Report

Tom,

I'm so sorry for taking so long to get back to you. I am hoping that you have moved forward with your update presentation. My general thoughts are very simple, just a presentation on the research that you have done thus far, the plans that you have made for additional research, but not to include any preliminary conclusions at this point.

Is there a possibility that I could get a copy of what you guys are thinking of presenting prior to the meeting? I am sure that the Commissioners will want it in advance to prepare questions for you and Dan.

011431

Also, you and I had planned to get together on Wednesday. What time are you arriving? I plan to go over to the university and view the room just after I arrive (around 1:00). Would you have some time around 3:30 or 4:00?

Juliet E. Thompson  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005



(202) 566-3100 Briefing72805.ppt



"Tom O'Neill"  
[Redacted]  
07/20/2005 02:45 PM

To jthompson@eac.gov  
cc  
bcc

Subject July 28 Meeting

History: This message has been replied to

Julie:

I reached Dan Tokaji of Moritz, and he is happy to join me in making a presentation at the Pasadena meeting. As you develop further thoughts on what you would like us to cover, we'd be delighted to hear them.

Tom O'Neill



"Tom O'Neill"  
[Redacted]  
07/15/2005 10:01 AM

To jthompson@eac.gov  
cc klyndyson@eac.gov  
bcc

Subject July 28 hearing

History:  This message has been replied to.

Julie:

Can you fill me in on the current status of your planning for the hearing in Pasadena. Have invitations gone out to panelists? Are there tasks you would like us to undertake in preparation for the meeting?

Thanks,

Tom O'Neill



"Tom O'Neill"

07/11/2005 11:53 AM

To jthompson@eac.gov

cc

bcc

Subject RE: Status of agenda recommendations

Julie: The great strength that Doug Chapin would bring (as opposed to a historian) is that he could put the presentations from Mississippi and Wisconsin in national perspective. The debate over voter id, as you know, is taking place across the country. The terms of the debate everywhere are strikingly similar: voter access versus ballot security. Chapin could provide the context that would make it possible for the commissioners to appreciate the presentations of the two legislators as examples of a broader, national debate

A historian, as opposed to Chapin would provide a different sort of context. The historian would describe as a step in the evolution of the franchise.

The panel would be stronger if the two legislators' stories were put in context. The 10 – 15 minutes spent on context, whether current or historical, would, I think, be well worth it.

Tom

-----Original Message-----

**From:** jthompson@eac.gov [mailto:jthompson@eac.gov]

**Sent:** Monday, July 11, 2005 9:24 AM

**To:** [REDACTED]

**Subject:** Re: Status of agenda recommendations

Tom,

What are your thoughts about just having the legislators and not the historian. I am just thinking time-wise, we may be a bit tight. Do you think we can get the same sense of how these debates have come up and been resolved through the legislators?

Juliet E. Thompson  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

011435



"Tom O'Neill" <[REDACTED]>

07/08/2005 02:52 PM

Tojthompson@eac.gov

cc

SubjectRe: Status of agenda recommendations

Julie:

I have made a little progress on the search for a scholar of the history of voter registration and voter ID to present the historical perspective in the opening panel at the July meeting. But none of the 3 suggestions below are obviously preferable to Doug Chapin.

Three possibilities are:

Dayna L. Cunningham, author of "*Who Are to Be the Electors? A Reflection on the History of Voter Registration in the United States*," 9 Yale L. & Pol'y Rev. 370 (1991). She was Assistant Counsel in the Voting Rights Project of the NAACP Legal Defense and Educational Fund at the time she wrote the article. She was active as a pro bono lawyer on election issues in Florida in 2004, and is now with Lord-Ross Philanthropic Advisors in Boston. [dcunningham@lordross.org](mailto:dcunningham@lordross.org) (914) 907-8895

R. Michael Alvarez, author of "Voter Registration," among other articles on registration issues. Currently at Caltech. <http://www.hss.caltech.edu/~rma/home.html>. He is a candidate for our Peer Review Group. My sense is that his experience and interests are more in current issues than in the history of the development of voter registration and voter ID.

Alexander Keyssar, author of "The Right to Vote: The Contested History of Democracy in the United States." Currently at the Kennedy School of Government, but on leave. [http://ksgfaculty.harvard.edu/alexander\\_keyssar](http://ksgfaculty.harvard.edu/alexander_keyssar)

Let me know if you'd like me to explore further or explore the issue with one or more of these possible presenters.

011436



"Tom O'Neill"  
[REDACTED]  
07/08/2005 02:52 PM

To jthompson@eac.gov  
cc  
bcc  
Subject Re: Status of agenda recommendations

History

✉ This message has been replied to

Julie:

I have made a little progress on the search for a scholar of the history of voter registration and voter ID to present the historical perspective in the opening panel at the July meeting. But none of the 3 suggestions below are obviously preferable to Doug Chapin.

Three possibilities are:

Dayna L. Cunningham, author of "*Who Are to Be the Electors? A Reflection on the History of Voter Registration in the United States*," 9 Yale L. & Pol'y Rev. 370 (1991). She was Assistant Counsel in the Voting Rights Project of the NAACP Legal Defense and Educational Fund at the time she wrote the article. She was active as a pro bono lawyer on election issues in Florida in 2004, and is now with Lord-Ross Philanthropic Advisors in Boston. [dcunnigham@lordross.org](mailto:dcunnigham@lordross.org) (914) 907-8895

R. Michael Alvarez, author of "Voter Registration," among other articles on registration issues. Currently at Caltech. <http://www.hss.caltech.edu/~rma/home.html>. He is a candidate for our Peer Review Group. My sense is that his experience and interests are more in current issues than in the history of the development of voter registration and voter ID.

Alexander Keyssar, author of "The Right to Vote: The Contested History of Democracy in the United States." Currently at the Kennedy School of Government, but on leave.

[http://ksgfaculty.harvard.edu/alexander\\_keyssar](http://ksgfaculty.harvard.edu/alexander_keyssar)

Let me know if you'd like me to explore further or explore the issue with one or more of these possible presenters.

011437



"Tom O'Neill"  
[Redacted]  
07/06/2005 04:51 PM

To jthompson@eac.gov  
cc  
bcc

Subject Re: Status of agenda recommendations

History

✉ This message has been replied to and forwarded.

Julie:

We agree with your conception of the hearing as including 3 panels.

Panel 1 on the History of Voter ID and Experiences Adopting Voter ID Requirements.

We are looking for a scholar in this area as an alternative to Doug Chapin to speak to the historical perspective. The other panelists should represent Mississippi and Wisconsin, a pro voter ID speaker from one state and an opponent from the other. The choices, more detail on them is contained in my earlier memo on this topic, are:

Mississippi: Rep William Denny (pro) or Rep. Walter Robinson (con)  
Wisconsin: Sen. Joe Leibhan (pro) or Sen. Judith Robinson (con)

Panel 2 on Voter ID and HAVA.

Your suggestions ere (Andino of SC and Thompson of TN) look fine.

Panel 3 on Voter ID, Turnout and HACA

Minnite of Barnard and Samples of Cato.

On the subject of this hearing: in view of the change from Minneapolis to Pasadena, we would like to know if the commitment to the date and place is now certain enough that we should buy plane tickets. Affecting the travel decision will be the availability of a webcast of the event. Do you plan to offer that, as you did at the Columbus hearing?

Tom

----- Original Message -----

**From:** [jthompson@eac.gov](mailto:jthompson@eac.gov)  
[Redacted]

**Sent:** Wednesday, July 06, 2005 4:00 PM

**Subject:** Status of agenda recommendations

tom,

We are looking at the question that you posed on provisional voting states. That should be completed soon.

How are we coming on the recommendations for the July 28 meeting? I will need to get the commissioners to approve and get the invitations issued as soon as possible.

Juliet E. Thompson

011433

General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100



"Tom O'Neill"  
[Redacted]  
07/01/2005 02:00 PM

To jthompson@eac.gov  
cc  
bcc

Subject Provisional Voting in the states

History:  This message has been replied to and forwarded.

Julie: Nice to see you in New York yesterday. Here is the list of states categorized by whether provisional voting was new to them post HAVA or whether they had had some form of provisional ballot pre-HAVA. As we discussed, this list will be used in sampling and analyzing the survey of local election officials is that is about to begin. The EAC's review of the list would be helpful in ensuring that we have assigned states to the correct category.

Have a good 4th.

Tom

OLD PROVISIONAL VOTING STATES (27)

AK, AZ, AR, CA, DC, FL, IA, KS, MD, NM, NY, NC, OR, RI, SC,  
VA, WA, WV, CO, NE, NJ, OH, AL, KY, MI, MS, TX

NEW PROVISIONAL VOTING STATES (17)

CT, DE, GA, HI, IL, IN, LA, MA, MO, MT, NV, OK, PA, SD, TN, UT, VT

-----



"Tom O'Neill"  
[Redacted]  
06/29/2005 11:14 AM

To jthompson@eac.gov  
cc  
bcc  
Subject RE: July Meeting - California

Julie,

I'll study your suggested revisions to the panels with and discuss them with my colleagues.

The last I heard the date and place for the hearing was July 26 in Minneapolis? Is it now scheduled for July 28 in California?

Tom

-----Original Message-----

**From:** jthompson@eac.gov [mailto:jthompson@eac.gov]

**Sent:** Wednesday, June 29, 2005 10:40 AM  
[Redacted]

**Subject:** July Meeting - California

I have reviewed the agenda that your group proposed with regard to the meeting on Voter ID. The attached are some suggestions on a few changes. We have had Chris Thomas and Secretary Cortes speak at recent meetings of EAC. So, I have included a few other ideas of states that have and those that do have ID requirements. Please take a look at this. Perhaps we can chat about it on Tuesday, July 5.

Juliet E. Thompson  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

011441



"Tom O'Neill"  
[REDACTED]

06/08/2005 05:10 PM

To jthompson@eac.gov

cc

bcc

Subject June 30 Panel

Julie:

I am leaving my computer now to drive to a dinner meeting. If you have questions, concerns, or comments about the recommendation please call me on my cell phone (908) 794-1030. I'll check e mail next around 11 p.m.

Tom

011442



"Tom O'Neill"

06/08/2005 04:44 PM

To jthompson@eac.gov

cc

bcc

Subject June 30 Panel --comment OSU

Julie:

I have now heard from Ned Foley at OSU. He makes a useful observation and suggestion.

Ned cautions that there just might be residual animosity between the two Mississippi legislators that would become apparent at the hearing. (I have not talked to any of the panelists recommended, but by Mississippi informant, a legislative staffer, said that the debate while emotional cleared the air and left everyone feeling better.)

Ned suggests that since Wisconsin Indiana, Arizona and New Mexico have experienced much the same debate, the panel could be structured to include a "pro" view from one state, say Mississippi, and the "con" view from another one of the other four. I can't offer you a specific legislator from one of those other states at this minute, but if you elect to take that approach, finding one should not be difficult.

Tom

011443



Julie:

I should have a recommendation to you for the panels on Wednesday. Your recommendation of John Samples strikes me as very well chosen. He has opined on the topic of voter id and turnout for USA today --and he has a PhD from Rutgers.

Just to provide a preview of what I think our recommendation will be, I now envision two panels. The first would look at Voter ID requirements within the 4 corners of HAVA through presentations by election directors from two contrasting states (probably Michigan and Pennsylvania), perhaps supplemented by an analyst who can put the stories of these two states in a broader context.

The second panel would broaden the scope to include voter id issues that go beyond first-time mail registrants. This second panel would explore the debate between those who argue for tighter ID requirements to prevent fraud and those who caution that tighter requirements will depress turnout, especially among older voters, African Americans and immigrants. This panel could be composed of two Mississippi legislators (not the two we discussed a few days ago) and two analysts, possibly Samples and Lorraine Minnite, the Barnard political scientist who was the lead researcher on the Demos election fraud study (and who has a professional interest in immigrant voting patterns}.

The Eagleton team is meeting on this, among other topics, tomorrow morning. I'll then consult with our Moritz colleagues and make a few phone calls to identify the best candidates from Mississippi and put together a recommendation for you.

Your reaction to this plan as it takes shape would be welcome.

Tom



JUNE 30 HEARING RECOMMENDATIONS.doc

011445



"Tom O'Neill"  
[Redacted]  
06/06/2005 07:47 PM

To jthompson@eac.gov  
cc  
bcc  
Subject RE: Mississippi Legislators

History This message has been replied to.

Julie:

I should have a recommendation to you for the panels on Wednesday. Your recommendation of John Samples strikes me as very well chosen. He has opined on the topic of voter id and turnout for USA today --and he has a PhD from Rutgers.

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The Eagleton team is meeting on this, among other topics, tomorrow morning. I'll then consult with our Moritz colleagues and make a few phone calls to identify the best candidates from Mississippi and put together a recommendation for you.

Your reaction to this plan as it takes shape would be welcome.

Tom

011446



"Tom O'Neill"  
[REDACTED]  
06/06/2005 11:58 AM

To jthompson@eac.gov  
cc  
bcc  
Subject RE: Mississippi Legislators

History: This message has been replied to

Thank you, Julie.

Tom

-----Original Message-----

**From:** jthompson@eac.gov [mailto:jthompson@eac.gov]  
**Sent:** Monday, June 06, 2005 11:16 AM  
**To:** [REDACTED]  
**Subject:** RE: Mississippi Legislators

Some thoughts on a speaker (conservative) from the academic sector

Cameron Quinn - IFES - she was with the Commonwealth of Virginia as the State Board of Elections Director before going to IFES and has been appointed as an academic advisor to the Carter-Baker Commission

John Samples - Cato Institute - also an academic advisor to the Carter-Baker Commission

Juliet E. Thompson  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

"Tom O'Neill"  
[REDACTED]

06/03/2005 08:49 AM

To jthompson@eac.gov  
cc  
Subject RE: Mississippi Legislators

011447

Thanks, Julie.

Tom

-----Original Message-----

**From:** jthompson@eac.gov [mailto:jthompson@eac.gov]

**Sent:** Friday, June 03, 2005 8:32 AM

**To:** tom, [REDACTED]

**Subject:** Re: Mississippi Legislators

In light of information that Mr. Flemming may be an opponent to Senator Lott, it would not be wise for us to include Mr. Flemming on the panel. I am sure that there is another state rep or senator that would have the same opinion that would be able to be substituted.

Juliet E. Thompson  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

011448



"Tom O'Neill"  
[Redacted]  
06/03/2005 08:49 AM

To jthompson@eac.gov  
cc  
bcc  
Subject RE: Mississippi Legislators

History:  This message has been replied to

Thanks, Julie.

Tom

-----Original Message-----

**From:** jthompson@eac.gov [mailto:jthompson@eac.gov]  
**Sent:** Friday, June 03, 2005 8:32 AM  
**To:** [Redacted]  
**Subject:** Re: Mississippi Legislators

In light of information that Mr. Flemming may be an opponent to Senator Lott, it would not be wise for us to include Mr. Flemming on the panel. I am sure that there is another state rep or senator that would have the same opinion that would be able to be substituted.

Juliet E. Thompson  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

011449



"Tom O'Neill"

06/02/2005 05:58 PM

To jthompson@eac.gov

cc

bcc

Subject Mississippi Legislators

History:

 This message has been replied to.

Julie:

I neglected to attach the promised article about the 2 Mississippi legislators. Here it is.

Tom



Voter ID exposes raw emotions in House.doc

011450

Voter ID exposes raw emotions in House  
Lawmakers represent two Mississippis  
By: Emily Wagster Pettus, Associated Press 03/23/2004

JACKSON - Reps. Erik Fleming and Philip Gunn both live in Clinton and are close to the same age. Their state House districts twist and weave around one another in the metro Jackson suburbs.

But in some ways, the two state lawmakers represent two different Mississippis.

Fleming, 39, is a black Democrat. Gunn, 41, is a white Republican.

The day after an emotionally wrenching House debate over voter ID, Fleming and Gunn stayed at the Capitol to quietly discuss one of Mississippi's most racially divisive political issues: Should people be required to prove their identity at the polls?

Like many white legislators, Gunn supports voter identification. He says requiring a driver's license or other ID would prevent people from voting in others' names.

"It is not a racial issue for the younger members - the younger white members. There are legitimate problems with our process, and voter ID is one way to fix them," said Gunn, who was elected last year only after some precincts were revoted in a disputed Republican primary.

Like most black lawmakers, Fleming opposes voter ID. He points to Mississippi's history of racial strife designed to keep blacks from voting - from poll taxes to shootings.

"From the black perspective, it's all about inclusion. From the white perspective, it's all about fairness," Fleming said.

Last Thursday, a House debate on an affidavit-voting bill stretched more than three hours after Republican lawmakers offered voter ID amendments.

An amendment by Rep. Bill Denny, R-Jackson, would have required a voter to show anything from a driver's license to a pilot's license before casting an affidavit ballot. It was adopted 77-45, with solid opposition from blacks and a few whites and support from white Republicans and many white Democrats, including Speaker Billy McCoy.

That prompted speeches from more than three dozen of the 122 House members, for and against ID.

Several black lawmakers, including Rep. Tyrone Ellis, D-Starkville, told personal stories of being threatened for trying to exercise their constitutional rights.

"You get shot at, you get burned out, then someone puts this before you and you tell me

how you vote," Ellis said, his voice rising.

The Mississippi House is generally divided into three factions - white Republicans, black Democrats and rural white Democrats. During Thursday's debate, lawmakers say it became clear that the voter ID disagreement threatened the coalition of black and rural white Democrats that had brought McCoy into the speakership in January.

White Democrats who had voted for the ID amendment started going to the podium to urge defeat of the bill. Among them was Rep. Bo Eaton, D-Taylorville.

"I feel it was an issue that was going to divide the House, when we don't even have a balanced budget yet," Eaton said the next day.

Rep. Steve Holland, D-Plantersville, was on the verge of tears as he said he was switching his vote - from supporting ID to opposing passage of the bill.

The bill was defeated 47-72.

On Friday morning after most of their colleagues had left for the weekend, Fleming and Gunn sat on the last row of the House chamber and chatted about ID. They wondered aloud how they could find a solution palatable not only to their constituents but to the diverse state as a whole.

Gunn wondered if the U.S. Justice Department - which oversees changes in Mississippi's voting system to ensure fairness to minorities - would accept a bill requiring ID for younger people but not for older ones who had lived through the turbulent civil rights era.

"We have to respect the feelings of the older members of the Black Caucus," Gunn said. "You can't ask them to forget what they went through. You can't ask them to ignore it."

Fleming said he was encouraged when a white lawmaker walked back to his desk during the debate and said: "I know where you're coming from."

Fleming said he's "very optimistic" that lawmakers eventually will find a solution to address concerns about voting integrity and inclusion. A voter ID bill has passed the Senate and awaits consideration in a House committee - but it's not clear whether that bill will make it to the full House.

Gunn said last week's House debate gave members a chance to express their feelings without accusing each other of being stupid.

Fleming agreed and added: "I think this was a discussion or a come-to-Jesus meeting that was 40 years in the making."



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Erik Fleming (D)

601-366-9954 (o)

601-925-1740 (h)

Philip Gunn ®

601-355-8321 (o)

601-924-8438 (h)



"Tom O'Neill"

06/02/2005 05:30 PM

To jthompson@eac.gov

cc [REDACTED]; "Edward Foley" [REDACTED]

klynndyson@eac.gov

bcc

Subject June 30 Hearing Panelists

Julie:

Thanks for your call. Our conversation helped me crystallize further the recommendations we will make to the Commission about the material to be covered at the hearing.

I believe we will recommend two panels of 3 or 4 people each for the June 30 hearing. One will cover the relatively narrow HAVA Voter ID requirements with presentations by 2 state-level voting administrators with contrasting experiences. The contrast between Michigan and Pennsylvania might prove especially instructive because it would demonstrate the relationship between the quality of the data base and requirements for voter identification. Since the hearing is being held in Manhattan, perhaps inviting a speaker from New York instead of Pennsylvania would make sense. I'd appreciate your thoughts on that.

Two other speakers could address the issue of broader Voter ID requirements to reduce vote fraud by requiring some form of identification for each voter at the polling place. The experience in Mississippi over the past 5 years has been particularly dramatic, as illustrated by the attached news article from the local press last year. As we discussed, inviting the 2 legislators profiled in the article might make for powerful testimony.

The final 2 speakers we believe should be academics who have studied the relationship between Voter ID regimes, voter participation and vote fraud and who have conflicting evidence and conclusions to offer. We have found at least two university based researchers who can present the view that stricter Voter ID requirements do not reduce vote fraud and do dampen participation. We have not yet identified a researcher from the other end of the spectrum, but we are looking actively. Your suggestions would be most welcome.

Below is our current list of possibilities for your review.

Tom

JUNE 30 HEARING  
POSSIBLE PANELISTS OR TOPICS

Possible States to be represented by one or more panelists

**Mississippi**

Debate over voter id issues has been dramatic. The resonance of Mississippi on voting issues would lend

011454

interest to the testimony. Voter id legislation was not approved in the current legislative session and has been a source of contention at least since 1999.

### **Michigan**

Strong database state; lax Voter ID requirements don't seem to present as much of a problem (although one hears rumors about Detroit); interesting contrast to NY. With Pennsylvania would present contrasts in the importance of the Statewide Voter Data Base

### **New York**

Had a significant problem with provisional ballots, suggesting that their relatively lax ID rules might be problematic; also Tom Wilkey will have good contacts there. The hearing is there.

### **Pennsylvania**

Relatively lax ID rules and apparently quite a few problems with provisional ballots in 2004. Had start up problems with its data base and would offer comparisons between counties where the data base was well established and those where is new. Should be weighed against New York for inclusion as a contrast with Michigan

### **Wisconsin**

Governor Doyle vetoed the legislature's first attempt at tightening voter ID requirements, and instead offered a package to recruit and train more qualified poll workers and calls for improvements in voter registration procedures.

### Academics on Voter ID, Turnout, and Vote Fraud

#### **Spencer Overton**

Professor, GWU Law School. Has written op-eds arguing that the empirical research is insufficient to support the need for more ID to reduce fraud. He is working on a book on the topic.

#### **John Fortier**

Research Fellow at the American Enterprise Institute. Recommended by Norm Ornstein. Google revealed no publications on this topic by Fortier.

#### **Lorraine C. Minnite**

Assistant Professor of Political Science, Barnard College. Lead researcher of the Demos election fraud study and researcher in immigrant voting patterns. Found that the incidence of fraud perpetrated by individual voters in the United States was very low and had a minimal impact on election outcomes.

#### **Guy-UrielCharles**

Associate Professor of Law, Center for the Study of Political Psychology University of Minnesota. His areas of interest include Election Law and Election Law Disputes and African American Voting Concerns. He is a member of the National Research Commission on Elections and Voting of the Social Science Research Council



"Tom O'Neill"  
[Redacted]

06/02/2005 04:28 PM

To jthompson@eac.gov

cc

bcc

Subject RE: Arrangements for June 30 Meeting

Thanks, Julie. Having the physical arrangements for the conference already made by the Commission gives us a leg up. I hope we can talk today about content as well. Your knowledge of what's going on in the states and which analysts have the most to say would be very useful I'll call around 5 and hope to catch you.

Tom O'Neill  
908-794-1030

-----Original Message-----

**From:** jthompson@eac.gov [mailto:jthompson@eac.gov]

**Sent:** Thursday, June 02, 2005 12:27 PM

**To:** [Redacted]

**Cc:** klynndyson@eac.gov; cpaquette@eac.gov

**Subject:** Re: Arrangements for June 30 Meeting

Tom,

The following answers, I hope, your questions. I am happy to discuss this further.

1. Does the EAC have a preference for a venue for the meeting? Have any arrangements --preliminary or otherwise-- been made to secure that facility? If not, I assume EAC would prefer a public building or an academic setting such as the auditorium you used at the law school in Columbus.

EAC has a meeting location for this meeting and the hearing that will follow. The meeting and hearing will be held at the Marriot Marquis Hotel. I will have staff provide the address and room.

2. Has the EAC made arrangements for a transcriber to record the meeting of the Commissioners? If so, is it the EAC's intention that we will use the same transcriber for the panel? If not, should we arrange for a transcriber for the entire day? Are there federal rules on payments for transcription services that we should follow?

While EAC has not yet made arrangements for a transcriber, we will as we will need one for the meeting and the hearing.

3. Will EAC support staff attend the hearing to sign in those attending, issue name tags, etc., or are these duties that we should be prepared to carry out?

Yes, EAC will have staff available for this function.

4. Will the EAC issue the news release about the meeting and the panel?

011456

Yes.

5. What do federal regulation indicate that I may offer speakers we bring in from these states in terms of travel, accommodations, meals, etc? Will speakers have to pay for their travel and accommodations and then request reimbursement or can we pay their bills directly?

Federal travel regulations apply. However, once you have made recommendations on panelists and the Commission has approved those panelists, we will take care of their travel arrangements and accommodations.

Arizona, California, Mississippi, Michigan, New York, Pennsylvania, and Wisconsin.

I can imagine that the Commission will not want to use Arizona. There is a great deal of controversy around some proposed legislation that was introduced and passed by the Arizona legislature last year. EAC has not yet taken a position on that controversy, but may. Until such time as EAC has formalized its opinion on this, EAC will not want to invite a public debate on this issue.

I will call you later to discuss any questions or concerns. I am in a meeting from 1 - 3 (EDT)

Juliet E. Thompson  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

"Tom O'Neill" 

06/01/2005 10:47 PM

To [jthompson@eac.gov](mailto:jthompson@eac.gov)  
cc [klynndyson@eac.gov](mailto:klynndyson@eac.gov)  
Subject Arrangements for June 30 Meeting

Julie,

011457

Karen Lynn-Dyson suggested I consult directly with you about arrangements for the Commission's June 30 meeting in New York. As I understood our discussions in Washington last week, as your consultants we will be responsible for organizing the portion of the meeting that will cover the Voter Identification issue, while EAC staff will organize the regular meeting of the Commissioners. Is that understanding correct?

Because time is short, we know we must move quickly on the arrangements.

1. Does the EAC have a preference for a venue for the meeting? Have any arrangements --preliminary or otherwise-- been made to secure that facility? If not, I assume EAC would prefer a public building or an academic setting such as the auditorium you used at the law school in Columbus.

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4. Will the EAC issue the news release about the meeting and the panel?

5. What do federal regulation indicate that I may offer speakers we bring in from these states in terms of travel, accommodations, meals, etc? Will speakers have to pay for their travel and accommodations and then request reimbursement or can we pay their bills directly?

These are the states we are currently evaluating for the Voter ID presentations: Arizona, California, Mississippi, Michigan, New York, Pennsylvania, and Wisconsin. We may pick 4 of these, or fewer if we determine that one state should have two panelists representing different viewpoints: Karen tells me you have been working with several of these, and your counsel would sharpen the judgment we bring to bear on our selection. I am particularly interested in the Mississippi experience and would like to discuss that with you. . .perhaps by phone. The project team is aiming to agree on a panel of speakers to submit to the the EAC early next week. Panelists should receive their invitations at least two weeks in advance (more would be better), especially if we want to get onto their schedules.

I will be in a meeting tomorrow from 10:30 -- 1:00 p.m. but will be available the rest of the day for a phone conversation. My cell phone --on which you can

always reach me-- is [REDACTED]

Tom O'Neill



"Tom O'Neill"

06/01/2005 10:47 PM

To jthompson@eac.gov

cc klyndyson@eac.gov

bcc

Subject Arrangements for June 30 Meeting

History

This message has been replied to.

Julie,

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3. Will EAC support staff attend the hearing to sign in those attending, issue name tags, etc., or are these duties that we should be prepared to carry out?

4. Will the EAC issue the news release about the meeting and the panel?

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011460



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I will be in a meeting tomorrow from 10:30 -- 1:00 p.m. but will be available the rest of the day for a phone conversation. My cell phone --on which you can always reach me-- is [REDACTED]

Tom O'Neill

Juliet E. Thompson/EAC/GOV  
07/26/2005 12:49 PM

To "Tom O'Neill" <[REDACTED]>@GSAEXTERNAL  
cc  
bcc  
Subject Re: Pasadena Meeting 

that sounds fine. I do have a dinner engagement that will be earlier that evening. How about calling me when you get in? I can always sit and have a drink while you eat, or whatever works.

Also, thank you for the powerpoint. If you will send me the final via email, I will make sure that it is loaded onto the laptop and ready for your presentation.

Juliet E. Thompson  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

"Tom O'Neill" <[REDACTED]>



"Tom O'Neill"  
[REDACTED]  
07/26/2005 10:39 AM

To jthompson@eac.gov  
cc  
Subject Pasadena Meeting

Julie: My plane arrives at LAX at about 5, and I should arrive in Pasadena after 7. I don't think we could meet until about 8 p.m. Does that fit your plans? I am staying at the Huntington, about a mile from the Cal Tech campus. You can always reach me by cell phone a [REDACTED]

Dan and I have divided up our presentation this way: I will describe the overall research effort and the major questions to which we are seeking answers. I'll also outline the methods we are using to develop those answers and report on the current status of the work. Dan will describe in greater detail Moritz's research and compilation of the statutes, regulation and case law and describe some of the key matters of substance involved in developing our report.

The outline of my talk on Power Point is not yet complete, but the unfinished version is attached to give you a clearer impression of the presentation. I assume the meeting room will have a projector and screen. If that is not the case let me know and I'll print the Power Point slides and hand them out to the Commissioners.

Tom O'Neill

-----Original Message-----

011462

**From:** jthompson@eac.gov [mailto:jthompson@eac.gov]

**Sent:** Tuesday, July 26, 2005 8:51 AM

**To:** [REDACTED]

**Subject:** Progress Report

Tom,

I'm so sorry for taking so long to get back to you. I am hoping that you have moved forward with your update presentation. My general thoughts are very simple, just a presentation on the research that you have done thus far, the plans that you have made for additional research, but not to include any preliminary conclusions at this point.

Is there a possibility that I could get a copy of what you guys are thinking of presenting prior to the meeting? I am sure that the Commissioners will want it in advance to prepare questions for you and Dan.

Also, you and I had planned to get together on Wednesday. What time are you arriving? I plan to go over to the university and view the room just after I arrive (around 1:00). Would you have some time around 3:30 or 4:00?

Juliet E. Thompson  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005



(202) 566-3100 Briefing72805.ppt

011463

Juliet E. Thompson/EAC/GOV  
07/20/2005 02:54 PM

To "Tom O'neill" <[REDACTED]>@GSAEXTERNAL  
cc  
bcc  
Subject Re: July 28 Meeting

As soon as I have a few minutes to think clearly, I will definitely send you an email on that. Thanks for accommodating our request.

Juliet E. Thompson  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
"Tom O'neill" <[REDACTED]>



"Tom O'neill" <[REDACTED]>  
07/20/2005 02:45 PM

To jthompson@eac.gov  
cc  
Subject July 28 Meeting

Julie:

I reached Dan Tokaji of Moritz, and he is happy to join me in making a presentation at the Pasadena meeting. As you develop further thoughts on what you would like us to cover, we'd be delighted to hear them.

Tom O'Neill

011464

Juliet E. Thompson/EAC/GOV  
07/15/2005 11:24 AM

To "Tom O'neill" [REDACTED]>@GSAEXTERNAL  
cc  
bcc

Subject Re: July 28 hearing 

After much wrangling, the final agenda is attached. We have invited the speakers, but have not heard back from most. We will follow up on Monday.

All of the arrangements have been made. CalTech is letting us use the Baxter Lecture Hall in the Baxter Humanities building. We are still working on webcasting. CalTech cannot or will not host it on their site, but we are trying to get it done through another source.

We have a block of rooms at the Westin. We will likely have some extras if you would like to use them. I will confirm this in the next few days.



draft agenda - July public meeting v 3.doc

Juliet E. Thompson  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

"Tom O'neill" <[REDACTED]>



"Tom O'neill"

[REDACTED]  
07/15/2005 10:01 AM

To jthompson@eac.gov  
cc klynndyson@eac.gov  
Subject July 28 hearing

Julie:

Can you fill me in on the current status of your planning for the hearing in Pasadena. Have invitations gone out to panelists? Are there tasks you would like us to undertake in preparation for the meeting?

Thanks,

Tom O'Neill

011465



**U.S. Election Assistance Commission  
Public Meeting Agenda**

Thursday, July 28, 2005  
10:00 AM – 12:00 PM

**Call to Order (Chair Hillman)**

**Pledge of Allegiance (Chair Hillman)**

**Roll Call**

**Adoption of Agenda (Chair Hillman)**

**Correction & Approval of Minutes for June 30, 2005 Public Meeting  
(Chair Hillman)**

**Reports**

- Title II Requirements Payments Update
- Statewide Voter Registration List Guidance

**Presentations**

**The Interaction of Voter Identification with HAVA**

- Marci Andino, Executive Director, State Election Commission, South Carolina – Interaction between Voter ID and Voter Registration Databases
- Brook Thompson, Coordinator of Elections (Tennessee) -- Interaction between voter ID and provisional voting (TN had voter ID prior to HAVA but no provisional voting prior to HAVA)

**Voter ID under HAVA: Was it sufficient?**

- Senator Lawson C. Heinold (R, Indiana – Author of Indiana's Voter ID law)
- Senator Judith Robson (D, Wisconsin – Opposed bill to create voter ID requirement in Wisconsin)
- Lorraine C. Minnite, Assistant Professor, Columbia University
- John Samples, Director, Center for Representative Government, The Cato Institute

**Commissioners' Closing Remarks**

**Adjournment**

Juliet E. Thompson/EAC/GOV  
07/11/2005 11:58 AM

To "Tom O'Neill" [REDACTED]  
cc  
bcc  
Subject Re: Status of agenda recommendations

O.k. I will look at the historians. I am leaning away from Doug Chapin. I am trying to finalize this list for final approval by the Commissioners this afternoon. Will be back in touch later today.

-----  
Sent from my BlackBerry Wireless Handheld

----- Original Message -----

**From:** "Tom O'Neill" [REDACTED]  
**Sent:** 07/11/2005 11:53 AM  
**To:** Juliet Thompson  
**Subject:** RE: Status of agenda recommendations

Julie: The great strength that Doug Chapin would bring (as opposed to a historian) is that he could put the presentations from Mississippi and Wisconsin in national perspective. The debate over voter id, as you know, is taking place across the country. The terms of the debate everywhere are strikingly similar: voter access versus ballot security. Chapin could provide the context that would make it possible for the commissioners to appreciate the presentations of the two legislators as examples of a broader, national debate

A historian, as opposed to Chapin would provide a different sort of context. The historian would describe as a step in the evolution of the franchise.

The panel would be stronger if the two legislators' stories were put in context. The 10 – 15 minutes spent on context, whether current or historical, would, I think, be well worth it.

Tom

-----Original Message-----

**From:** jthompson@eac.gov [mailto:jthompson@eac.gov]  
**Sent:** Monday, July 11, 2005 9:24 AM  
**To:** [REDACTED]  
**Subject:** Re: Status of agenda recommendations

011467

Tom,

What are your thoughts about just having the legislators and not the historian. I am just thinking time-wise, we may be a bit tight. Do you think we can get the same sense of how these debates have come up and been resolved through the legislators?

Juliet E. Thompson  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

"Tom O'Neill" <[REDACTED]>

07/08/2005 02:52 PM

Tojthompson@eac.gov

cc

SubjectRe: Status of agenda recommendations

Julie:

I have made a little progress on the search for a scholar of the history of voter registration and voter ID to present the historical perspective in the opening panel at the July meeting. But none of the 3 suggestions below are obviously preferable to Doug Chapin.

Three possibilities are:

Dayna L. Cunningham, author of "*Who Are to Be the Electors? A Reflection on the History of Voter Registration in the United States*," 9 Yale L. & Pol'y Rev. 370 (1991). She was Assistant Counsel in the Voting Rights Project of the NAACP Legal Defense

011468



and Educational Fund at the time she wrote the article. She was active as a pro bono lawyer on election issues in Florida in 2004, and is now with Lord-Ross Philanthropic Advisors in Boston. [dcunningham@lordross.org](mailto:dcunningham@lordross.org) [REDACTED]

R. Michael Alvarez, author of "Voter Registration," among other articles on registration issues. Currently at Caltech. <http://www.hss.caltech.edu/~rma/home.html>. He is a candidate for our Peer Review Group. My sense is that his experience and interests are more in current issues than in the history of the development of voter registration and voter ID.

Alexander Keyssar, author of "The Right to Vote: The Contested History of Democracy in the United States." Currently at the Kennedy School of Government, but on leave. [http://ksgfaculty.harvard.edu/alexander\\_keyssar](http://ksgfaculty.harvard.edu/alexander_keyssar)  
Let me know if you'd like me to explore further or explore the issue with one or more of these possible presenters.

Juliet E. Thompson/EAC/GOV  
07/11/2005 09:24 AM

To "Tom O'Neill" [REDACTED]@GSAEXTERNAL  
cc  
bcc  
Subject Re: Status of agenda recommendations [REDACTED]

Tom,

What are your thoughts about just having the legislators and not the historian. I am just thinking time-wise, we may be a bit tight. Do you think we can get the same sense of how these debates have come up and been resolved through the legislators?

Juliet E. Thompson  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
"Tom O'Neill" [REDACTED]



"Tom O'Neill"  
[REDACTED]  
07/08/2005 02:52 PM

To jthompson@eac.gov  
cc  
Subject Re: Status of agenda recommendations

Julie:

I have made a little progress on the search for a scholar of the history of voter registration and voter ID to present the historical perspective in the opening panel at the July meeting. But none of the 3 suggestions below are obviously preferable to Doug Chapin.

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[REDACTED]

R. Michael Alvarez, author of "Voter Registration," among other articles on registration issues. Currently at Caltech. <http://www.hss.caltech.edu/~rma/home.html>. He is a candidate for our Peer Review Group. My sense is that his experience and interests are more in current issues than in the history of the development of voter registration and voter ID.

Alexander Keyssar, author of "The Right to Vote: The Contested History of Democracy in the

011470

United States." Currently at the Kennedy School of Government, but on leave.

[http://ksgfaculty.harvard.edu/alexander\\_keyssar](http://ksgfaculty.harvard.edu/alexander_keyssar)

Let me know if you'd like me to explore further or explore the issue with one or more of these possible presenters.

Juliet E. Thompson/EAC/GOV  
06/29/2005 11:18 AM

To [REDACTED]  
cc  
bcc

Subject Re: July Meeting - California

Yes. Long story short we could not work into the schedule that was already set for the NASS meeting in Minneapolis. We will be at CalTech -- Pasadena, CA

-----  
Sent from my BlackBerry Wireless Handheld

----- Original Message -----

**From:** "Tom O'Neill" [REDACTED]  
**Sent:** 06/29/2005 11:14 AM  
**To:** Juliet Thompson  
**Subject:** RE: July Meeting - California

Julie,

I'll study your suggested revisions to the panels with and discuss them with my colleagues.

The last I heard the date and place for the hearing was July 26 in Minneapolis? Is it now scheduled for July 28 in California?

Tom

-----Original Message-----

**From:** jthompson@eac.gov [mailto:jthompson@eac.gov]  
**Sent:** Wednesday, June 29, 2005 10:40 AM  
**To:** [REDACTED]  
**Subject:** July Meeting - California

I have reviewed the agenda that your group proposed with regard to the meeting on Voter ID. The attached are some suggestions on a few changes. We have had Chris Thomas and Secretary Cortes speak at recent meetings of EAC. So, I have included a few other ideas of states that have and those that do have ID requirements. Please take a look at this. Perhaps we can chat about it on Tuesday, July 5.

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General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

011472

Juliet E. Thompson/EAC/GOV  
06/08/2005 03:34 PM

To "Tom O'Neill" <[REDACTED]>@GSAEXTERNAL  
cc  
bcc  
Subject RE: Mississippi Legislators [REDACTED]

Just a gentle reminder that I need to get the names of the panelists to be able to present to the commissioners tomorrow morning.

Juliet E. Thompson  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
"Tom O'Neill" <[REDACTED]>



"Tom O'Neill"  
[REDACTED]  
06/06/2005 07:47 PM

To jthompson@eac.gov  
cc  
Subject RE: Mississippi Legislators

Julie:

I should have a recommendation to you for the panels on Wednesday. Your recommendation of John Samples strikes me as very well chosen. He has opined on the topic of voter id and turnout for USA today --and he has a PhD from Rutgers.

Just to provide a preview of what I think our recommendation will be, I now envision two panels. The first would look at Voter ID requirements within the 4 corners of HAVA through presentations by election directors from two contrasting states (probably Michigan and Pennsylvania), perhaps supplemented by an analyst who can put the stories of these two states in a broader context.

The second panel would broaden the scope to include voter id issues that go beyond first-time mail registrants. This second panel would explore the debate between those who argue for tighter ID requirements to prevent fraud and those who caution that tighter requirements will depress turnout, especially among older voters, African Americans and immigrants. This panel could be composed of two Mississippi legislators (not the two we discussed a few days ago) and two analysts, possibly Samples and Lorraine Minnite, the Barnard political scientist who was the lead researcher on the Demos election fraud study (and who has a professional interest in immigrant voting patterns).

The Eagleton team is meeting on this, among other topics, tomorrow morning. I'll then

011473

consult with our Moritz colleagues and make a few phone calls to identify the best candidates from Mississippi and put together a recommendation for you.

Your reaction to this plan as it takes shape would be welcome.

Tom

Juliet E. Thompson/EAC/GOV  
06/06/2005 05:37 PM

To "Tom O'Neill" [REDACTED]@GSAEXTERNAL  
cc  
bcc  
Subject RE: Mississippi Legislators [REDACTED]

Are we ready to submit this proposal to the commissioners, or am I waiting on something from you? If I am waiting, will I be able to have it for Thursday morning?

Juliet E. Thompson  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

"Tom O'Neill" [REDACTED]



"Tom O'Neill" [REDACTED]  
06/06/2005 11:58 AM

To jthompson@eac.gov  
cc  
Subject RE: Mississippi Legislators

Thank you, Julie.

Tom

-----Original Message-----

**From:** jthompson@eac.gov [mailto:jthompson@eac.gov]  
**Sent:** Monday, June 06, 2005 11:16 AM  
**To:** [REDACTED]  
**Subject:** RE: Mississippi Legislators

Some thoughts on a speaker (conservative) from the academic sector

Cameron Quinn - IFES - she was with the Commonwealth of Virginia as the State Board of Elections Director before going to IFES and has been appointed as an academic advisor to the Carter-Baker Commission

John Samples - Cato Institute - also an academic advisor to the Carter-Baker Commission

Juliet E. Thompson  
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Washington, DC 20005  
(202) 566-3100

011475

"Tom O'Neill" [REDACTED]

06/03/2005 08:49 AM

To jthompson@eac.gov

cc

Subject RE: Mississippi Legislators

Thanks, Julie.

Tom

-----Original Message-----

**From:** jthompson@eac.gov [mailto:jthompson@eac.gov]

**Sent:** Friday, June 03, 2005 8:32 AM

**To:** [REDACTED]

**Subject:** Re: Mississippi Legislators

In light of information that Mr. Flemming may be an opponent to Senator Lott, it would not be wise for us to include Mr. Flemming on the panel. I am sure that there is another state rep or senator that would have the same opinion that would be able to be substituted.

Juliet E. Thompson  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

011476



Juliet E. Thompson/EAC/GOV  
06/06/2005 11:16 AM

To "Tom O'Neill" [REDACTED]<[REDACTED]>@GSAEXTERNAL  
cc  
bcc  
Subject RE: Mississippi Legislators [REDACTED]

Some thoughts on a speaker (conservative) from the academic sector

Cameron Quinn - IFES - she was with the Commonwealth of Virginia as the State Board of Elections Director before going to IFES and has been appointed as an academic advisor to the Carter-Baker Commission

John Samples - Cato Institute - also an academic advisor to the Carter-Baker Commission

Juliet E. Thompson  
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United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
"Tom O'Neill" [REDACTED]



"Tom O'Neill"  
[REDACTED]  
06/03/2005 08:49 AM

To jthompson@eac.gov  
cc  
Subject RE: Mississippi Legislators

Thanks, Julie.

Tom

-----Original Message-----

**From:** jthompson@eac.gov [mailto:jthompson@eac.gov]  
**Sent:** Friday, June 03, 2005 8:32 AM  
**To:** [REDACTED]  
**Subject:** Re: Mississippi Legislators

In light of information that Mr. Flemming may be an opponent to Senator Lott, it would not be wise for us to include Mr. Flemming on the panel. I am sure that there is another state rep or senator that would have the same opinion that would be able to be substituted.

Juliet E. Thompson  
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United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

011477



Juliet E. Thompson/EAC/GOV

06/03/2005 08:31 AM

To "Tom O'Neill" [REDACTED]@GSAEXTERNAL

cc

bcc

Subject Re: Mississippi Legislators

In light of information that Mr. Flemming may be an opponent to Senator Lott, it would not be wise for us to include Mr. Flemming on the panel. I am sure that there is another state rep or senator that would have the same opinion that would be able to be substituted.

Juliet E. Thompson  
General Counsel  
United States Election Assistance Commission  
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Washington, DC 20005  
(202) 566-3100

011478

Juliet E. Thompson/EAC/GOV  
06/02/2005 12:27 PM

To "Tom O'Neill" <[REDACTED]>@GSAEXTERNAL  
cc Karen Lynn-Dyson/EAC/GOV@EAC, Carol A.  
Paquette/EAC/GOV@EAC  
bcc  
Subject Re: Arrangements for June 30 Meeting

Tom,

The following answers, I hope, your questions. I am happy to discuss this further.

1. Does the EAC have a preference for a venue for the meeting? Have any arrangements --preliminary or otherwise-- been made to secure that facility? If not, I assume EAC would prefer a public building or an academic setting such as the auditorium you used at the law school in Columbus.

EAC has a meeting location for this meeting and the hearing that will follow. The meeting and hearing will be held at the Marriot Marquis Hotel. I will have staff provide the address and room.

2. Has the EAC made arrangements for a transcriber to record the meeting of the Commissioners? If so, is it the EAC's intention that we will use the same transcriber for the panel? If not, should we arrange for a transcriber for the entire day? Are there federal rules on payments for transcription services that we should follow?

While EAC has not yet made arrangements for a transcriber, we will as we will need one for the meeting and the hearing.

3. Will EAC support staff attend the hearing to sign in those attending, issue name tags, etc., or are these duties that we should be prepared to carry out?

Yes, EAC will have staff available for this function.

4. Will the EAC issue the news release about the meeting and the panel?

Yes.

5. What do federal regulation indicate that I may offer speakers we bring in from these states in terms of travel, accommodations, meals, etc? Will speakers have to pay for their travel and accommodations and then request reimbursement or can we pay their bills directly?

Federal travel regulations apply. However, once you have made recommendations on panelists and the Commission has approved those panelists, we will take care of their travel arrangements and accommodations.

Arizona, California, Mississippi, Michigan, New York, Pennsylvania, and Wisconsin.

I can imagine that the Commission will not want to use Arizona. There is a great deal of controversy

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around some proposed legislation that was introduced and passed by the Arizona legislature last year. EAC has not yet taken a position on that controversy, but may. Until such time as EAC has formalized its opinion on this, EAC will not want to invite a public debate on this issue.

I will call you later to discuss any questions or concerns. I am in a meeting from 1 - 3 (EDT)

Juliet E. Thompson  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

"Tom O'Neill" [REDACTED]



"Tom O'Neill" [REDACTED]

06/01/2005 10:47 PM

To jthompson@eac.gov

cc klynndyson@eac.gov

Subject Arrangements for June 30 Meeting

Julie,

Karen Lynn-Dyson suggested I consult directly with you about arrangements for the Commission's June 30 meeting in New York. As I understood our discussions in Washington last week, as your consultants we will be responsible for organizing the portion of the meeting that will cover the Voter Identification issue, while EAC staff will organize the regular meeting of the Commissioners. Is that understanding correct?

Because time is short, we know we must move quickly on the arrangements.

1. Does the EAC have a preference for a venue for the meeting? Have any arrangements --preliminary or otherwise-- been made to secure that facility? If not, I assume EAC would prefer a public building or an academic setting such as the auditorium you used at the law school in Columbus.

2. Has the EAC made arrangements for a transcriber to record the meeting of the Commissioners? If so, is it the EAC's intention that we will use the same transcriber for the panel? If not, should we arrange for a transcriber for the entire day? Are there federal rules on payments for transcription services that we should follow?

3. Will EAC support staff attend the hearing to sign in those attending, issue name tags, etc., or are these duties that we should be prepared to carry out?

4. Will the EAC issue the news release about the meeting and the panel?

5. What do federal regulation indicate that I may offer speakers we bring in from these states in terms of travel, accommodations, meals, etc? Will speakers have to pay

011480

for their travel and accommodations and then request reimbursement or can we pay their bills directly?

These are the states we are currently evaluating for the Voter ID presentations: Arizona, California, Mississippi, Michigan, New York, Pennsylvania, and Wisconsin. We may pick 4 of these, or fewer if we determine that one state should have two panelists representing different viewpoints: Karen tells me you have been working with several of these, and your counsel would sharpen the judgment we bring to bear on our selection. I am particularly interested in the Mississippi experience and would like to discuss that with you. . .perhaps by phone. The project team is aiming to agree on a panel of speakers to submit to the the EAC early next week. Panelists should receive their invitations at least two weeks in advance (more would be better), especially if we want to get onto their schedules.

I will be in a meeting tomorrow from 10:30 -- 1:00 p.m. but will be available the rest of the day for a phone conversation. My cell phone --on which you can always reach me-- is [REDACTED]

Tom O'Neill

011481

groups, including the Department of Justice, the EAC, and organizations such as the Lawyers Committee for Civil Rights, keep phone logs regarding complaints of such practices, which may be available for review and analysis. This is also an area in which there is often tangible evidence, such as copies of the flyers and postcards themselves. All of this information should be reviewed and analyzed to see how such practices are being conducted and what can be done about them.

***Recommendation 6: Study Use of HAVA Administrative Complaint Procedure As Vehicle for Measuring Fraud and Intimidation***

The EAC should study the extent to which states are actually utilizing the administrative complaint procedure mandated by HAVA. In addition, the EAC should study whether data collected through the administrative complaint procedure can be used as another source of information for measuring fraud and intimidation.

***Recommendation 7: Examine the Use of Special Election Courts***

Given that many state and local judges are elected, it may be worth exploring whether special election courts that are running before, during and after election day would be an effective means of disposing with complaints and violations in an expeditious manner. Pennsylvania employs such a system, and the EAC should consider investigating how well it is working to deal with fraud and intimidation problems.

DRAFT

## Key Working Group Observations and Concerns

### Working Group Observations

1. ***The main problems today are structural barriers to voting and administrative error.*** Mr. Perez observed that, in accordance with the research, the biggest issues today are structural barriers to voting, not stealing votes. Election administrators share this view. Election fraud is negligible, and to the extent it occurs, it needs to be prosecuted with stronger criminal laws. The biggest problem is properly preparing people, which is the responsibility of election administrators.
2. ***Most fraud and intimidation is happening outside of the polling place.*** Mr. Greenbaum observed that with respect to both voter fraud and voter suppression, such as deceptive practices and tearing up voter registration forms, most of that is taking place outside of the polling place.
3. ***This issue cannot be addressed through one study or one methodology alone.*** Mr. Weinberg observed that since there is such a variety in types of fraud and intimidation, one solution will not fit all. It will be impossible to obtain data or resolve any of these problems through a single method.
4. ***The preliminary research conducted for this project is extremely valuable.*** Several of the working group members complimented the quality of the research done and although it is only preliminary, thought it would be useful and informative in the immediate future.
5. ***The Department of Justice is exploring expanding its reach over voter suppression activities.*** In the context of the conversation about defining voter intimidation, Mr. Donsanto pointed out that while voter intimidation was strictly defined by the criminal law, his section is beginning to explore the slightly different concept of vote suppression, and how to pursue it. He mentioned the phone-jamming case in New Hampshire as an initial success in this effort. He noted that he believes that vote suppression in the form of deceptive practices ought to be a crime and the section is exploring ways to go after it within the existing statutory construct. Mr. Bauer raised the example of a party sending people dressed in paramilitary outfits to yell at people as they go to the polls, telling them they have to show identification. Mr. Donsanto said that under the laws he has to work with today, such activity is not considered corrupt. He said that his lawyers are trying to “bend” the current laws to address aggravated cases of vote suppression, and the phone-jamming case is an example of that. Mr. Donsanto said that within the Department, the term vote “suppression” and translating it into a crime is a “work in progress.”

6. **Registration fraud does not translate into vote fraud.** Ms. Rogers, Mr. Donsanto and others stated that although phony voter registration applications turned in by people being paid by the form was a problem, it has not been found in their experience to lead to fraudulent voters at the polls. Ms. Rogers said such people were motivated by money, not defrauding the election.
7. **Handling of voter fraud and intimidation complaints varies widely across states and localities.** Ms. Rogers and others observed that every state has its own process for intake and review of complaints of fraud and intimidation, and that procedures often vary within states. The amount of authority secretaries of state have to address such problems also is different in every state. Mr. Weinberg stated he believed that most secretaries of state did not have authority to do anything about these matters. Participants discussed whether secretaries ought to be given greater authority so as to centralize the process, as HAVA has mandated in other areas.

### Working Group Concerns

1. Mr. Rokita questioned whether the purpose of the present project ought to be on assessing the level of fraud and where it is, rather than on developing methods for making such measurements. He believed that methodology should be the focus, “rather than opinions of interviewees.” He was concerned that the EAC would be in a position of “adding to the universe of opinions.”
2. Mr. Rokita questioned whether the “opinions” accumulated in the research “is a fair sampling of what’s out there.” Ms. Wang responded that one of the purposes of the research was to explore whether there is a method available to actually quantify in some way how much fraud there is and where it is occurring in the electoral process. Mr. Rokita replied that “Maybe at the end of the day we stop spending taxpayer money or it’s going to be too much to spend to find that kind of data. Otherwise, we will stop it here and recognize there is a huge difference of opinion on that issue of fraud; when it occurs is obtainable, and that would possibly be a conclusion of the EAC.” Ms. Sims responded that she thought it would be possible to get better statistics on fraud and there might be a way of “identifying at this point certain parts in the election process that are more vulnerable, that we should be addressing.”
3. Mr. Rokita stated that, “We’re not sure that fraud at the polling place doesn’t exist. We can’t conclude that.”
4. Mr. Rokita expressed concern about working with a political scientist. He believes that the “EAC needs to be very careful in who they select, because all the time and effort and money that’s been spent up to date and would be spent in the future could be invalidated by a wrong selection in the eyes of some group.”



NEXIS Charts

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Case Charts

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**Appendix 1**  
**List of Individuals Interviewed**

Wade Henderson, Executive Director, Leadership Conference for Civil Rights

Wendy Weiser, Deputy Director, Democracy Program, The Brennan Center

William Groth, attorney for the plaintiffs in the Indiana voter identification litigation

Lori Minnite, Barnard College, Columbia University

Neil Bradley, ACLU Voting Rights Project

Nina Perales, Counsel, Mexican American Legal Defense and Education Fund

Pat Rogers, attorney, New Mexico

Rebecca Vigil-Giron, Secretary of State, New Mexico

Sarah Ball Johnson, Executive Director of the State Board of Elections, Kentucky

Stephen Ansolobhere, Massachusetts Institute of Technology

Chandler Davidson, Rice University

Tracey Campbell, author, *Deliver the Vote*

Douglas Webber, Assistant Attorney General, Indiana, (defendant in the Indiana voter identification litigation)

Heather Dawn Thompson, Director of Government Relations, National Congress of American Indians

Jason Torchinsky, Assistant General Counsel, American Center for Voting Rights

Robin DeJarnette, Executive Director, American Center for Voting Rights

Joseph Rich, former Director of the Voting Section, Civil Rights Division, U.S. Department of Justice

Joseph Sandler, Counsel to the Democratic National Committee

John Ravitz, Executive Director, New York City Board of Elections

John Tanner, Director, Voting Section, Civil Rights Division, U.S. Department of Justice

Kevin Kennedy, Executive Director of the State Board of Elections, Wisconsin  
Evelyn Stratton, Justice, Supreme Court of Ohio

Tony Sirvello, Executive Director, International Association of  
Clerks, Recorders, Election Officials and Treasurers

Harry Van Sickle, Commissioner of Elections, Pennsylvania

Craig Donsanto, Director, Public Integrity Section, U.S. Department of Justice

Sharon Priest, former Secretary of State, Arkansas

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John Fund, *Stealing Elections: How Voter Fraud Threatens Our Democracy*, Encounter Books, 2004.

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David E. Johnson and Jonny R. Johnson, *A Funny Thing Happened on the Way to the White House: Foolhardiness, Folly, and Fraud in the Presidential Elections, from Andrew Jackson to George W. Bush*, Taylor Trade Publishing, 2004.

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*Common Cause of Georgia vs. Billups*, U.S. District Court, Northern District of Georgia (Rome) 4:05-cv-00201-HLM U.S. Court of Appeals, 11<sup>th</sup> Circuit 05-15784

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### **Appendix 3**

## **Excerpt from “Machinery of Democracy,” a Brennan Center Report**

### **APPENDIX C**

#### **BRENNAN CENTER TASK FORCE ON VOTING SYSTEM SECURITY, LAWRENCE NORDEN, CHAIR**

**Excerpted from pp. 8-19**

### **METHODOLOGY**

The Task Force concluded, and the peer review team at NIST agreed, that the best approach for comprehensively evaluating voting system threats was to: (1) identify and categorize the potential threats against voting systems, (2) prioritize these threats based upon an agreed upon metric (which would tell us how difficult each threat is to accomplish from the attacker's point of view), and (3) determine, utilizing the same metric employed to prioritize threats, how much more difficult each of the catalogued attacks would become after various sets of countermeasures are implemented.

This model allows us to identify the attacks we should be most concerned about (*i.e.*, the most practical and least difficult attacks). Furthermore, it allows us to quantify the potential effectiveness of various sets of countermeasures (*i.e.*, how difficult the least difficult attack is after the countermeasure has been implemented). Other potential models considered, but ultimately rejected by the Task Force, are detailed in Appendix B.

### **IDENTIFICATION OF THREATS**

The first step in creating a threat model for voting systems was to identify as many potential attacks as possible. To that end, the Task Force, together with the participating election officials, spent several months identifying voting system vulnerabilities. Following this work, NIST held a Voting Systems Threat Analysis Workshop on October 7, 2005. Members of the public were invited to write up and post additional potential attacks. Taken together, this work produced over 120 potential attacks on the three voting systems. They are detailed in the catalogs annexed.<sup>20</sup> Many of the attacks are described in more detail at <http://vote.nist.gov/threats/papers.htm>.

The types of threats detailed in the catalogs can be broken down into nine categories: (1) the insertion of corrupt software into machines prior to Election Day; (2) wireless and other remote control attacks on voting machines on Election Day; (3) attacks on tally servers; (4) miscalibration of voting machines; (5) shut off of voting machine features intended to assist voters; (6) denial of service attacks; (7) actions by corrupt poll workers or others at the polling place to affect votes cast; (8) vote buying schemes; (9) attacks on ballots or VVPT. Often, the actual attacks



involve some combination of these categories. We provide a discussion of each type of attack in “Categories of Attacks,” *infra* at pp. 24–27.

### **PRIORITIZING THREATS: NUMBER OF INFORMED PARTICIPANTS AS METRIC**

Without some form of prioritization, a compilation of the threats is of limited value. Only by prioritizing these various threats could we help election officials identify which attacks they should be most concerned about, and what steps could be taken to make such attacks as difficult as possible. As discussed below, we have determined the level of difficulty for each attack where the attacker is attempting to affect the outcome of a close statewide election.

There is no perfect way to determine which attacks are the least difficult, because each attack requires a different mix of resources – well-placed insiders, money, programming skills, security expertise, *etc.* Different attackers would find certain resources easier to acquire than others. For example, election fraud committed by local election officials would always involve well-placed insiders and a thorough understanding of election procedures; at the same time, there is no reason to expect such officials to have highly skilled hackers or first-rate programmers working with them. By contrast, election fraud carried out by a foreign government would likely start with plenty of money and technically skilled attackers, but probably without many conveniently placed insiders or detailed knowledge of election procedures.

Ultimately, we decided to use the “number of informed participants” as the metric for determining attack difficulty. An attack which uses fewer participants is deemed the easier attack.

We have defined “informed participant” as someone whose participation is needed to make the attack work and who knows enough about the attack to foil or expose it. This is to be distinguished from a participant who unknowingly assists the attack by performing a task that is integral to the attack’s successful execution without understanding that the task is part of an attack on voting systems.

The reason for using the security metric “number of informed participants” is relatively straightforward: the larger a conspiracy is, the more difficult it would be to keep it secret. Where an attacker can carry out an attack by herself, she need only trust herself. On the other hand, a conspiracy that requires thousands of people to take part (like a vote-buying scheme) also requires thousands of people to keep quiet. The larger the number of people involved, the greater the likelihood that one of them (or one who was approached, but declined to take part) would either inform the public or authorities about the attack, or commit some kind of error that causes the attack to fail or become known.

Moreover, recruiting a large number of people who are willing to undermine the integrity of a statewide election is also presumably difficult. It is not hard to imagine two or three people agreeing to work to change the outcome of an election. It seems far less likely that an attacker could identify and employ hundreds or thousands of similarly corrupt people without being discovered.

We can get an idea of how this metric works by looking at one of the threats listed in our catalogs: the vote-buying threat, where an attacker or attackers pay individuals to vote for a particular candidate. This is Attack Number 26 in the PCOS Attack Catalog<sup>22</sup> (though this attack would not be substantially different against DREs or DREs w/ VVPT).<sup>23</sup> In order to work under our current types of voting systems, this attack requires (1) at least one person to purchase votes, (2) many people to agree to sell their votes, and (3) some way for the purchaser to confirm that the voters she pays actually voted for the candidate she supported. Ultimately, we determined that, while practical in smaller contests, a vote-buying attack would be an exceptionally difficult way to affect the outcome of a statewide election. This is because, even in a typically close statewide election, an attacker would need to involve thousands of voters to ensure that she could affect the outcome of a statewide race.<sup>24</sup>

For a discussion of other metrics we considered, but ultimately rejected, see Appendix C.

## **DETERMINING NUMBER OF INFORMED PARTICIPANTS**

### **DETERMINING THE STEPS AND VALUES FOR EACH ATTACK**

The Task Force members broke down each of the catalogued attacks into its necessary steps. For instance, Attack 12 in the PCOS Attack Catalog is “Stuffing Ballot Box with Additional Marked Ballots.”<sup>25</sup> We determined that, at a minimum, there were three component parts to this attack: (1) stealing or creating the ballots and then marking them, (2) scanning marked ballots through the PCOS scanners, probably before the polls opened, and (3) modifying the poll books in each location to ensure that the total number of votes in the ballot boxes was not greater than the number of voters who signed in at the polling place.

Task Force members then assigned a value representing the minimum number of persons they believed would be necessary to accomplish each goal. For PCOS Attack 12, the following values were assigned:<sup>26</sup>

**Minimum number required to steal or create ballots: 5 persons total.<sup>27</sup>**

**Minimum number required to scan marked ballots: 1 per polling place attacked.**

**Minimum number required to modify poll books: 1 per polling place attacked.<sup>28</sup>**

After these values were assigned, the Brennan Center interviewed several election officials to see whether they agreed with the steps and values assigned to each attack.<sup>29</sup> When necessary, the values and steps were modified. The new catalogs, including attack steps and values, were then reviewed by Task Force members. The purpose of this review was to ensure, among other things, that the steps and values were sound.

These steps and values tell us how difficult it would be to accomplish a *single attack in a single polling place*. They do not tell us how many people it would take to change the outcome of an election successfully – that depends, of course, on specific facts about the jurisdiction: how many votes are generally recorded in each polling

place, how many polling places are there in the jurisdiction, and how close is the race? For this reason, we determined that it was necessary to construct a hypothetical jurisdiction, to which we now turn.

**NUMBER OF INFORMED PARTICIPANTS NEEDED TO CHANGE STATEWIDE ELECTION**

We have decided to examine the difficulty of each attack in the context of changing the outcome of a reasonably close statewide election. While we are concerned by potential attacks on voting systems in any type of election, we are most troubled by attacks that have the potential to affect large numbers of votes. These are the attacks that could actually change the outcome of a statewide election with just a handful of attack participants.

We are less troubled by attacks on voting systems that can only affect a small number of votes (and might therefore be more useful in local elections). This is because there are many non-system attacks that can also affect a small number of votes (*i.e.*, sending out misleading information about polling places, physically intimidating voters, submitting multiple absentee ballots, *etc.*). Given the fact that these non-system attacks are likely to be less difficult in terms of number of participants, financial cost, risk of detection, and time commitment, we are uncertain that an attacker would target *voting machines* to alter a small number of votes.

In order to evaluate how difficult it would be for an attacker to change the outcome of a statewide election, we created a composite jurisdiction. The composite jurisdiction was created to be representative of a relatively close statewide election. We did not want to examine a statewide election where results were so skewed toward one candidate (for instance, the re-election of Senator Edward M. Kennedy in 2000, where he won 73% of the vote<sup>30</sup>), that reversing the election results would be impossible without causing extreme public suspicion. Nor did we want to look at races where changing only a relative handful of votes (for instance, the Governor's race in Washington State in 2004, which was decided by a mere 129 votes<sup>31</sup>) could affect the outcome of an election; under this scenario, many of the potential attacks would involve few people, and therefore look equally difficult.

We have named our composite jurisdiction "the State of Pennasota." The State of Pennasota is a composite of ten states: Colorado, Florida, Iowa, Ohio, New Mexico, Pennsylvania, Michigan, Nevada, Wisconsin and Minnesota. These states were chosen because they were the ten "battleground" states that Zogby International consistently polled in the spring, summer, and fall 2004.<sup>32</sup> These are statewide elections that an attacker would have expected, ahead of time, to be fairly close.

We have also created a composite election, which we label the "Governor's Race" in Pennasota. The results of this election are a composite of the actual results in the same ten states in the 2004 Presidential Election.

We have used these composites as the framework by which to evaluate the difficulty of the various catalogued attacks.<sup>33</sup> For instance, we know a ballot-box stuffing attack would require roughly five people to create and mark fake ballots, as

well as one person per polling place to stuff the boxes, and one person per polling place to modify the poll books. But, in order to determine how many informed participants would be needed to affect a statewide race, we need to know how many polling places would need to be attacked.

The composite jurisdiction and composite election provide us with information needed to answer these questions: *i.e.*, how many extra votes our attackers would need to add to their favored candidate's total for him to win, how many ballots our attackers can stuff into a particular polling place's ballot box without arousing suspicion (and related to this, how many votes are generally cast in the average polling place), how many polling places are there in the state, *etc.* We provide details about both the composite jurisdiction and election in the section entitled "Governor's Race, State of Pennasota, 2007," *infra* at pp 20-27.

### LIMITS OF INFORMED PARTICIPANTS AS METRIC

Of the possible metrics we considered, we believe that measuring the number of people who know they are involved in an attack (and thus could provide evidence of the attack to the authorities and/or the media) is the best single measure of attack difficulty; as already discussed, we have concluded that the more people an attacker is forced to involve in his attack, the more likely it is that one of the participants would reveal the attack's existence and foil the attack, perhaps sending attackers to jail. However, we are aware of a number of places where the methodology could provide us with questionable results.

By deciding to concentrate on size of attack team, we mostly ignore the need for other resources when planning an attack. Thus, a software attack on DREs which makes use of steganography<sup>34</sup> to hide attack instruction files (*see* "DRE w/ VVPT Attack No.1a" discussed in greater detail, *infra* at pp. 62-65) is considered easier than an attack program delivered over a wireless network at the polling place (*see* discussion of wireless networks, *infra* at pp. 85-91). However, the former attack probably requires a much more technologically sophisticated attacker.

Another imperfection with this metric is that we do not have an easy way to represent how much choice the attacker has in finding members of his attack team.

Thus, with PCOS voting, we conclude that the cost of subverting a routine audit of ballots is roughly equal to the cost of intercepting ballot boxes in transit and substituting altered ballots (*see* discussion of PCOS attacks, *infra* at pp. 77-83). However, subverting the audit team requires getting a specific set of trusted people to cooperate with the attacker. By contrast, the attacker may be able to decide which precincts to tamper with based on which people he has already recruited for his attack.

In an attempt to address this concern, we considered looking at the number of "insiders" necessary to take part in each attack. Under this theory, getting five people to take part in a conspiracy to attack a voting system might not be particularly difficult. But getting five well-placed county election officials to take part in the attack would be (and should be labeled) the more difficult of the two attacks. Because, for the most part, the low-cost attacks we have identified do not necessarily involve well placed insiders (but could, for instance, involve one of many people with access to commercial off the shelf software ("COTS") during development

or at the vendor), we do not believe that using this metric would have substantially changed our analysis.<sup>35</sup>

Finally, these attack team sizes do not always capture the logistical complexity of an attack. For example, an attack on VVPT machines involving tampering with the voting machine software and also replacing the paper records in transit requires the attacker to determine what votes were falsely produced by the voting machine and print replacement records in time to substitute them. While this is clearly possible, it raises a lot of operational difficulties – a single failed substitution leaves the possibility that the attack would be detected during the audit of ballots.

We have tried to keep these imperfections in mind when analyzing and discussing our least difficult attacks.

We suspect that much of the disagreement between voting officials and computer security experts in the last several years stems from a difference of opinion in prioritizing the difficulty of attacks. Election officials, with extensive experience in the logistics of handling tons of paper ballots, have little faith in paper and understand the kind of breakdowns in procedures that lead to traditional attacks like ballot box stuffing; in contrast, sophisticated attacks on computer voting systems appear very difficult to many of them. Computer security experts understand sophisticated attacks on computer systems, and recognize the availability of tools and expertise that makes these attacks practical to launch, but have no clear idea how they would manage the logistics of attacking a paper-based system. Looking at attack team size is one way to bridge this difference in perspective.

## **EFFECTS OF IMPLEMENTING COUNTERMEASURE SETS**

The final step of our threat analysis is to measure the effect of certain countermeasures against the catalogued attacks. How much more difficult would the attacks become once the countermeasures are put into effect? How many more informed participants (if any) would be needed to counter or defeat these countermeasures?

Our process for examining the effectiveness of a countermeasure mirrors the process for determining the difficulty of an attack: we first asked whether the countermeasure would allow us to detect an attack with near certainty. If we agreed that the countermeasure would expose the attack, we identified the steps that would be necessary to circumvent or defeat the countermeasure. For each step to defeat the countermeasure, we determined the number of additional informed participants (if any) that an attacker would need to add to his team. As with the process for determining attack difficulty, the Brennan Center interviewed numerous election officials to see whether they agreed with the steps and values assigned. When necessary, the values and steps for defeating the countermeasures were altered to reflect the input of election officials.

## **COUNTERMEASURES EXAMINED**

### **BASIC SET OF COUNTERMEASURES**

The first set of countermeasures we looked at is the “Basic Set” of countermeasures. This Basic Set was derived from security survey responses<sup>36</sup> we received

from county election officials around the country, as well as additional interviews with more than a dozen current and former election officials. Within the Basic Set of countermeasures are the following procedures:

### **Inspection**

The jurisdiction is not knowingly using any uncertified software that is subject to inspection by the Independent Testing Authority (often referred to as the “ITA”).<sup>37</sup>

### **Physical Security for Machines**

- Ballot boxes (to the extent they exist) are examined (to ensure they are empty) and locked by poll workers immediately before the polls are opened.
- Before and after being brought to the polls for Election Day, voting systems for each county are locked in a single room in a county warehouse.
- The warehouse has perimeter alarms, secure locks, video surveillance and regular visits by security guards.
- Access to the warehouse is controlled by sign-in, possibly with card keys or similar automatic logging of entry and exit for regular staff.
- Some form of “tamper evident” seals are placed on machines before and after each election.
- The machines are transported to polling locations five to fifteen days before Election Day.

### **Chain of Custody/Physical Security of Election Day Records**

- At close of the polls, vote tallies for each machine are totaled and compared with number of persons that have signed the poll books.
- A copy of totals for each machine is posted at each polling place on Election Night and taken home by poll workers to check against what is posted publicly at election headquarters, on the web, in the papers, or elsewhere.<sup>38</sup>
- All audit information (*i.e.*, Event Logs, VVPT records, paper ballots, machine printouts of totals) that is not electronically transmitted as part of the unofficial upload to the central election office, is delivered in official, sealed and hand-delivered information packets or boxes. All seals are numbered and tamper-evident.
- Transportation of information packets is completed by two election officials representing opposing parties who have been instructed to remain in joint custody of the information packets or boxes from the moment it leaves the precinct to the moment it arrives at the county election center.

- Each polling place sends its information packets or boxes to the county election center separately, rather than having one truck or person pick up this data from multiple polling locations.
- Once the sealed information packets or boxes have reached the county election center, they are logged. Numbers on the seals are checked to ensure that they have not been replaced. Any broken or replaced seals are logged. Intact seals are left intact.
- After the packets and/or boxes have been logged, they are provided with physical security precautions at least as great as those listed for voting machines, above. Specifically, for Pennasota, we have assumed the room in which the packets are stored have perimeter alarms, secure locks, video surveillance and regular visits by security guards and county police officers; and access to the room is controlled by sign-in, possibly with card keys or similar automatic logging of entry and exit for regular staff.

#### Testing<sup>39</sup>

- An Independent Testing Authority has certified the model of voting machine used in the polling place.
- Acceptance Testing<sup>40</sup> is performed on machines at time, or soon after they are received by County.
- Pre-election Logic and Accuracy<sup>41</sup> testing is performed by the relevant election official.
- Prior to opening the polls, every voting machine and vote tabulation system is checked to see that it is still configured for the correct election, including the correct precinct, ballot style, and other applicable details.

#### REGIMEN FOR AUTOMATIC ROUTINE AUDIT PLUS BASIC SET OF COUNTERMEASURES.

The second set of countermeasures is the Regimen for an Automatic Routine Audit Plus Basic Set of Countermeasures.

Some form of routine auditing of voter-verified paper records occurs in 12 states, to test the accuracy of electronic voting machines. They generally require between 1 and 10% of all precinct voting machines to be audited after each election. <sup>42</sup>

Jurisdictions can implement this set of countermeasures only if their voting systems produce some sort of voter-verified paper record of each vote. This could be in the form of a paper ballot, in the case of PCOS, or a voter-verified paper trail (“VVPT”), in the case of DREs.

We have assumed that jurisdictions take the following steps when conducting an Automatic Routine Audit (when referring to this set of assumptions “Regimen for an Automatic Routine Audit”):

### **The Audit**

- Leaders of the major parties in each county are responsible for selecting a sufficient number of audit-team members to be used in that county.<sup>43</sup>
- Using a highly transparent random selection mechanism (*see* point ii, below), the voter-verified paper records for between a small percentage of all voting machines in the State are selected for auditing.
- Using a transparent random selection method, auditors are assigned to the selected machines (two or three people, with representatives of each major political party, would comprise each audit team).
- The selection of voting machines, and the assignment of auditors to machines, occurs immediately before the audits take place. The audits take place as soon after polls close as possible – for example, at 9 a.m. the morning after polls close.
- Using a transparent random selection method, county police officers, security personnel and the video monitor assigned to guard the voter-verified records are chosen from a large pool of on-duty officers and employees on election night.
- The auditors are provided the machine tallies and are able to see that the county tally reflects the sums of the machine tallies before the start of the inspection of the paper.
- The audit would include a tally of spoiled ballots (in the case of VVPT, the number of cancellations recorded), overvotes, and undervotes.

### **Transparent Random Selection Process**

In this report, we have assumed that random auditing procedures are in place for both the Regimen for an Automatic Routine Audit and Regimen for Parallel Testing. We have further assumed procedures to prevent a single, corrupt person from being able to fix the results. This implies a kind of transparent and public random procedure.

For the Regimen for an Automatic Routine Audit there are at least two places where transparent, random selection processes are important: in the selection of precincts to audit, and in the assignment of auditors to the precincts they will be auditing.

Good election security can employ Transparent Random Selection in other places with good effect:

- the selection of parallel testers from a pool of qualified individuals.
- the assignment of police and other security professionals from on-duty lists, to monitor key materials, for example, the VVPT records between the time that they arrive at election central and the time of the completion of the ARA.



If a selection process for auditing is to be trustworthy and trusted, ideally:

- The whole process will be publicly observable or videotaped;<sup>44</sup>
- The random selection will be publicly verifiable, *i.e.*, anyone observing will be able to verify that the sample was chosen randomly (or at least that the number selected is not under the control of any small number of people); and
- The process will be simple and practical within the context of current election practice so as to avoid imposing unnecessary burdens on election officials.

There are a number of ways that election officials can ensure some kind of transparent randomness. One way would be to use a state lottery machine to select precincts or polling places for auditing. We have included two potential examples of transparent random selection processes in Appendix F. These apply to the Regimen for Parallel Testing as well.

#### **REGIMEN FOR PARALLEL TESTING PLUS BASIC SET OF COUNTERMEASURES**

The final set of countermeasures we have examined is “Parallel Testing” plus the Basic Set of countermeasures. Parallel Testing, also known as election-day testing, involves selecting voting machines at random and testing them as realistically as possible during the period that votes are being cast.

#### **Parallel Testing**

In developing our set of assumptions for Parallel Testing, we relied heavily upon interviews with Jocelyn Whitney, Project Manager for Parallel Testing in the State of California, and conclusions drawn from this Report.<sup>45</sup> In our analysis, we assume that the following procedures would be included in the Parallel Testing regimen (when referring to this regimen “Regimen for Parallel Testing”) that we evaluate:

- At least two of each DRE model (meaning both vendor and model) would be selected for Parallel Testing;
- At least two DREs from each of the three largest counties would be parallel tested;
- Counties to be parallel tested would be chosen by the Secretary of State in a transparent and random manner.
- Counties would be notified as late as possible that machines from one of their precincts would be selected for Parallel Testing;<sup>46</sup>
- Precincts would be selected through a transparent random mechanism;
- A video camera would record testing;
- For each test, there would be one tester and one observer;

- Parallel Testing would occur at the polling place;
- The script for Parallel Testing would be generated in a way that mimics voter behavior and voting patterns for the polling place;
- At the end of the Parallel Testing, the tester and observer would reconcile vote totals in the script with vote totals reported on the machine.

### **Transparent Random Selection Process**

We further assume that the same type of transparent random selection process that would be used for the Regimen for Automatic Routine Audit would also be employed for the Regimen for Parallel Testing to determine which machines would be subjected to testing on Election Day.

## **APPENDIX C**

### **ALTERNATIVE SECURITY METRICS CONSIDERED**

#### **Dollars Spent**

The decision to use the number of informed participants as the metric for attack level difficulty came after considering several other potential metrics. One of the first metrics we considered was the dollar cost of attacks. This metric makes sense when looking at attacks that seek financial gain – for instance, misappropriating corporate funds. It is not rational to spend \$100,000 on the misappropriation of corporate funds if the total value of those funds is \$90,000. Ultimately, we rejected this metric as the basis for our analysis because the dollar cost of the attacks we considered were dwarfed by both (1) current federal and state budgets, and (2) the amounts currently spent legally in state and federal political campaigns.

#### **Time of Attack**

The relative security of safes and other safety measures are often rated in terms of “time to defeat.” This was rejected as metric of difficulty because it did not seem relevant to voting systems. Attackers breaking into a house are concerned with the amount of time it might take to complete their robbery because the homeowners or police might show up. With regard to election fraud, many attackers may be willing to start months or years before an election if they believe they can control the outcome. As discussed *supra* at pp. 35–48, attackers may be confident that they can circumvent the independent testing authorities and other measures meant to identify attacks, so that the amount of time an attack takes becomes less relevant.

**Appendix 4**  
**Voting Fraud-Voter Intimidation Working Group**

**The Honorable Todd Rokita**

Indiana Secretary of State  
Member, EAC Standards Board and the Executive Board of the Standards Board

**Kathy Rogers**

Georgia Director of Elections, Office of the Secretary of State  
Member, EAC Standards Board

**J.R. Perez**

Guadalupe County Elections Administrator, Texas

**Barbara Arnwine**

Executive Director, Lawyers Committee for Civil Rights Under Law  
Leader of Election Protection Coalition

**Robert Bauer**

Chair of the Political Law Practice at the law firm of Perkins Coie, District of Columbia  
National Counsel for Voter Protection, Democratic National Committee

**Benjamin L. Ginsberg**

Partner, Patton Boggs LLP  
Counsel to national Republican campaign committees and Republican candidates

**Mark (Thor) Hearne II**

Partner-Member, Lathrop & Gage, St Louis, Missouri  
National Counsel to the American Center for Voting Rights

**Barry Weinberg**

Former Deputy Chief and Acting Chief, Voting Section, Civil Rights Division, U.S. Department of Justice

*EAC Invited Technical Advisor:*

**Craig Donsanto**

Director, Election Crimes Branch, U.S. Department of Justice

<sup>i</sup> Department of Justice's Activities to Address Past Election-Related Voting Irregularities, General Accounting Office, October 14, 2004, GAO-04-1041R

<sup>ii</sup> The MyVote1 Project Final Report, Fels Institute of Government, University of Pennsylvania, November 1, 2005, Pg. 12

<sup>iii</sup> Department of Justice's Activities to Address Past Election-Related Voting Irregularities, General Accounting Office, October 14, 2004, GAO-04-1041R, p. 4. This same report criticizes some of the procedures the Section used for these systems and urged the Department to improve upon them in time for the 2004 presidential election. No follow-up report has been done since that time to the best of our knowledge.

<sup>iv</sup> "Department Of Justice To Hold Ballot Access and Voting Integrity Symposium," U.S. Department of Justice press release, August 2, 2005


<sup>v</sup> Craig C. Donsanto, Prosecution of Electoral Fraud Under United States Federal Law," IFES Political Finance White Paper Series, 2006, p. 29

<sup>vi</sup> Ana Henderson and Christopher Edley, Jr., Voting Rights Act Reauthorization: Research-Based Recommendations to Improve Voting Access, Chief Justice Earl Warren Institute on Race, Ethnicity and Diversity, University of California at Berkeley, School of Law, 2006, p. 29

DRAFT

**Deliberative Process  
Privilege**

Jeannie Layson /EAC/GOV  
11/15/2006 01:22 PM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Draft fraud and intimidation report 

Here's my suggestions...



Voter Fraud & Intimidation [l] edits.doc  
Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

011281

**EAC REPORT ON VOTER FRAUD AND VOTER INTIMIDATION STUDY****INTRODUCTION**

Voter fraud and intimidation is a phrase familiar to many voting-aged Americans. However, it means different things to different people. Voter fraud and intimidation is a phrase used to refer to crimes, civil rights violations, and, at times, even the correct application of state or federal laws to the voting process. Past study of this topic has been as varied as its perceived meaning. In an effort to help understand the realities of voter fraud and voter intimidation in our elections, the U.S. Election Assistance Commission (EAC) has begun this, phase one, of a comprehensive study on election crimes. In this phase of its examination, EAC has developed a definition of election crimes and adopted some research methodology on how to assess the true existence and enforcement of election crimes in this country.

**PURPOSE AND METHODOLOGY OF THE EAC STUDY**

Section 241 of the Help America Vote Act of 2002 (HAVA) calls on the U.S. Election Assistance Commission (EAC) to research and study various issues related to the administration of elections. During Fiscal Year 2006, EAC began projects to research several of the listed topics. These topics for research were chosen in consultation with the EAC Standards Board and Board of Advisors. Voter fraud and voter intimidation was a topic that the EAC as well as its advisory boards felt were important to study to help improve the administration of elections for federal office.

EAC began this study with the intention of identifying a common understanding of voter fraud and intimidation and devising a plan for a comprehensive study of these issues. This study was not intended to be a comprehensive review of existing voter fraud and voter intimidation actions, laws, or prosecutions. That To conduct that type of extensive research, a is well beyond the basic understanding that had to be first be established regarding what is commonly referred to as voter fraud and voter intimidation. Once that understanding was reached, a definition had to be crafted to refine and in some cases limit the scope of what reasonably can be researched and studied as evidence of voter fraud and voter intimidation. That definition will serve as the basis for recommending a plan for a comprehensive study of the area.

To accomplish these tasks, EAC employed two consultants, who worked with who along with EAC staff and interns to conducted the research that forms the basis of this report. Consultants were chosen based upon their experience with the topic. In addition, consultants were and to chosen to assure a bipartisan representation in this study. The consultants and EAC staff were charged (1) to research the current state of information on the topics of voter fraud and voter intimidation; (2) to develop a uniform definition of voter fraud and voter intimidation; and (3) to propose recommended strategies for researching this subject.

EAC consultants reviewed existing studies, articles, reports and case law on voter fraud and intimidation. ~~In addition, EAC consultants~~ and conducted interviews with selected experts in the field. ~~Last, EAC consultants and staff~~ then presented their ~~study~~ initial findings to a working group that provided feed-back. The working group participants were:

**The Honorable Todd Rokita**  
Indiana Secretary of State  
Member, EAC Standards Board and the  
Executive Board of the Standards Board

**Kathy Rogers**  
Georgia Director of Elections, Office of  
the Secretary of State  
Member, EAC Standards Board

**J.R. Perez**  
Guadalupe County Elections  
Administrator, Texas

**Barbara Arnwine**  
Executive Director, Lawyers Committee  
for Civil Rights under Law  
Leader of Election Protection Coalition

**Benjamin L. Ginsberg**  
Partner, Patton Boggs LLP  
Counsel to national Republican  
campaign committees and Republican  
candidates

**Robert Bauer**  
Chair of the Political Law Practice at the  
law firm of Perkins Coie, District of  
Columbia  
National Counsel for Voter Protection,  
Democratic National Committee

**Mark (Thor) Hearne II**  
Partner-Member, Lathrop & Gage, St  
Louis, Missouri  
National Counsel to the American  
Center for Voting Rights

**Barry Weinberg**  
Former Deputy Chief and Acting Chief,  
Voting Section, Civil Rights Division,  
U.S. Department of Justice

*Technical Advisor:*

**Craig Donsanto**  
Director, Election Crimes Branch, U.S.  
Department of Justice

Throughout the process, EAC staff assisted the consultants by providing statutes and cases on this subject as well as supervision on the direction, scope and product of this research.

The consultants drafted a report for EAC that included their summaries of existing laws, cases, studies and reports on voter fraud and intimidation as well as summaries of the interviews that they conducted. The draft report also provided a definition of voter fraud and intimidation and made certain recommendations developed by the consultants or by the working group on how to pursue further study of this subject. This document was vetted and edited by EAC staff to produce this final report.

## **EXISTING INFORMATION ABOUT FRAUD AND INTIMIDATION**

To begin our study of voter fraud and voter intimidation, EAC consultants reviewed the current body of information on voter fraud and intimidation. ~~What the world knows~~ The

information available about these issues comes largely from a very limited body of reports, articles, and books. There are volumes of case law and statutes in the various states that also impact our understanding of what actions or inactions are legally considered fraud or intimidation. Last, there is anecdotal information available through media reports and interviews with persons who have administered elections, prosecuted fraud, and studied these problems. All of these resources were used by EAC consultants to provide an introductory look at the available knowledge of voter fraud and voter intimidation.

### Reports and Studies of Voter Fraud and Intimidation

Over the years, there have been a number of studies conducted about the concepts of voter fraud and voter intimidation. EAC reviewed many of these studies and reports to develop a base-line understanding of the information that is currently available about voter fraud and voter intimidation. EAC consultants reviewed the following articles, reports and books, summaries of which are available in Appendix “\_\_”:

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#### Articles and Reports

- People for the American Way and the NAACP, “The Long Shadow of Jim Crow,” December 6, 2004.
- Laughlin McDonald, “The New Poll Tax,” *The American Prospect* vol. 13 no. 23, December 30, 2002.
- Wisconsin Legislative Audit Bureau, “An Evaluation: Voter Registration Elections Board” Report 05-12, September, 2005.
- Milwaukee Police Department, Milwaukee County District Attorney’s Office, Federal Bureau of Investigation, United States Attorney’s Office “Preliminary Findings of Joint Task Force Investigating Possible Election Fraud,” May 10, 2005.
- National Commission on Federal Election Reform, “Building Confidence in U.S. Elections,” Center for Democracy and Election Management, American University, September 2005.
- The Brennan Center for Justice at NYU School of Law and Spencer Overton, Commissioner and Law Professor at George Washington University School of Law “Response to the Report of the 2005 Commission on Federal Election Reform,” September 19, 2005.
- Chandler Davidson, Tanya Dunlap, Gale Kenny, and Benjamin Wise, “Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – or Both?” A Report to the Center for Voting Rights & Protection, September, 2004.



- Alec Ewald, "A Crazy Quilt of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law," The Sentencing Project, November 2005.
- American Center for Voting Rights "Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election," August 2, 2005.
- The Advancement Project, "America's Modern Poll Tax: How Structural Disenfranchisement Erodes Democracy" November 7, 2001
- The Brennan Center and Professor Michael McDonald "Analysis of the September 15, 2005 Voter Fraud Report Submitted to the New Jersey Attorney General," The Brennan Center for Justice at NYU School of Law, December 2005.
- Democratic National Committee, "Democracy at Risk: The November 2004 Election in Ohio," DNC Services Corporation, 2005
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2002."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2003."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2004."
- Craig Donsanto, "The Federal Crime of Election Fraud," Public Integrity Section, Department of Justice, prepared for Democracy.Ru, n.d., at [http://www.democracy.ru/english/library/international/eng\\_1999-11.html](http://www.democracy.ru/english/library/international/eng_1999-11.html)
- People for the American Way, Election Protection 2004, Election Protection Coalition, at <http://www.electionprotection2004.org/edaynews.htm>
- Craig Donsanto, "Prosecution of Electoral Fraud under United State Federal Law," *IFES Political Finance White Paper Series*, IFES, 2006.
- General Accounting Office, "Elections: Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote," Report to Congressional Requesters, September 2005.

- Lori Minnite and David Callahan, "Securing the Vote: An Analysis of Election Fraud," Demos: A Network of Ideas and Action, 2003.
- People for the American Way, NAACP, Lawyers Committee for Civil Rights, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," December 2004.

#### Books

- John Fund, *Stealing Elections: How Voter Fraud Threatens Our Democracy*, Encounter Books, 2004.
- Andrew Gumbel, *Steal this Vote: Dirty Elections and the Rotten History of Democracy in American*, Nation Books, 2005.
- Tracy Campbell, *Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004*, Carroll & Graf Publishers, 2005.
- David E. Johnson and Jonny R. Johnson, *A Funny Thing Happened on the Way to the White House: Foolhardiness, Folly, and Fraud in the Presidential Elections, from Andrew Jackson to George W. Bush*, Taylor Trade Publishing, 2004.
- Mark Crispin Miller, *Fooled Again*, Basic Books, 2005.

During our review of these documents, we learned a great deal about the type of research that has been conducted in the past concerning voter fraud and voter intimidation. None of the studies or reports was based on a comprehensive study, survey or review of all allegations, prosecutions or convictions of state or federal crimes related to voter fraud or voter intimidation. Most reports focused on a limited number of case studies or instances of alleged voter fraud or intimidation. For example, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," a report produced by the People for the American Way, focused exclusively on citizen reports of fraud or intimidation to the Election Protection (is this DOJ?) program during the 2004 presidential election. Similarly, reports produced annually by the Department of Justice, Public Integrity Division, deal exclusively with crimes reported to and prosecuted by the United States Attorneys and/or the Department of Justice through the Public Integrity Section.

It is also apparent from a review of these articles and books that there is no consensus on the pervasiveness of voter fraud and voter intimidation. Some reports, such as "Building Confidence in U.S. Elections," suggest that there is little or no evidence of extensive fraud in U.S. elections or of multiple voting. This conflicts directly with other reports, such as the "Preliminary findings of Joint Task Force Investigating Possible Election Fraud," produced by the Milwaukee Police Department, Milwaukee County District

Attorney's Office, FBI and U.S. Attorney's Office. That report cited evidence of more than 100 individual instances of suspected double-voting, voting in the name of persons who likely did not vote, and/or voting using a name believed to be fake.

Voter intimidation is also a topic of some debate. Generally, speaking, because there is little agreement on what constitutes actionable voter intimidation. Some studies and reports cover only intimidation that involves physical or financial threats, while others cover non-criminal intimidation, even legal practices, that they allege suppress suppression of the vote.

One point of agreement is that absentee voting and voter registration by third-party groups create opportunities for fraud. A number of studies cited circumstances in which voter registration drives have falsified voter registration applications or have destroyed voter registration applications of voters of a certain party. Others conclude that paying persons per voter registration application creates the opportunity and perhaps the incentive for fraud.

### Interviews with Experts

In addition to reviewing prior studies and reports on voter fraud and intimidation, EAC consultants interviewed a number of persons regarding their experiences and research of voter fraud and voter intimidation. Persons interviewed included:

**Wade Henderson**

Executive Director,  
Leadership Conference for Civil Rights

**Pat Rogers**

Attorney, New Mexico

**Wendy Weiser**

Deputy Director,  
Democracy Program, The Brennan  
Center

**Rebecca Vigil-Giron**

Secretary of State, New Mexico

**William Groth**

Attorney for the plaintiffs in the Indiana  
voter identification litigation

**Sarah Ball Johnson**

Executive Director,  
State Board of Elections, Kentucky

**Lori Minnite**

Barnard College, Columbia University

**Stephen Ansolobhere**

Massachusetts Institute of Technology

**Neil Bradley**

ACLU Voting Rights Project

**Chandler Davidson**

Rice University

**Nina Perales**

Counsel,  
Mexican American Legal Defense and  
Education Fund

**Tracey Campbell**

Author, *Deliver the Vote*

**Douglas Webber**

Assistant Attorney General, Indiana

**Heather Dawn Thompson**  
Director of Government Relations,  
National Congress of American Indians

**Kevin Kennedy**  
Executive Director  
State Board of Elections, Wisconsin

**Jason Torchinsky**  
Assistant General Counsel,  
American Center for Voting Rights

**Evelyn Stratton**  
Justice  
Supreme Court of Ohio

**Robin DeJarnette**  
Executive Director,  
American Center for Voting Rights

**Tony Sirvello**  
Executive Director  
International Association of Clerks,  
Recorders, Election Officials and  
Treasurers

**Harry Van Sickle**  
Commissioner of Elections,  
Pennsylvania

**Joseph Rich**  
Former Director  
Voting Section, Civil Rights Division  
U.S. Department of Justice

**Joseph Sandler**  
Counsel  
Democratic National Committee

**Craig Donsanto**  
Director, Public Integrity Section  
U.S. Department of Justice

**John Ravitz**  
Executive Director  
New York City Board of Elections

**John Tanner**  
Director  
Voting Section, Civil Rights Division  
U.S. Department of Justice

These interviews in large part confirmed the conclusions that were gleaned from the articles, reports and books that were analyzed. For example, the interviewees largely agreed that absentee balloting is subject to the greatest proportion of fraudulent acts, followed by vote buying and voter registration fraud. They similarly pointed to voter registration drives by third-party groups as a source of fraud, particularly when the workers are paid per registration. Many asserted that impersonation of voters is probably the least frequent type of fraud, ~~citing as reasons that~~ because it was the most likely type of fraud to be discovered and due to the stiff ~~that there are stiff~~ penalties associated with this type of fraud.

Interviewees differed on what they believe constitutes actionable voter intimidation. Law enforcement and prosecutorial agencies tend to look to the criminal definitions of voter intimidation, which generally require some threat of physical or financial harm. On the other hand, voter rights advocates tended to point to activities such as challenger laws, voter identification laws, ~~the location of polling place~~ locations, and distribution of voting machines as activities that can constitute voter intimidation.

Those interviewed also expressed opinions on the enforcement of voter fraud and voter intimidation laws. States have varying authorities to enforce these laws. In some states, enforcement is left to the county or district attorney, and in others enforcement is managed by the state’s attorney general. Regardless, voter fraud and voter intimidation are difficult to prove and require resources and time that many local law enforcement and prosecutorial agencies do not have. Federal law enforcement and prosecutorial agencies have more time and resources but have limited jurisdiction and. ~~They can only prosecute crimes related to elections involving federal candidates. Those interviewed differed on the effectiveness of the current system of enforcement, including those that who allege that prosecutions are not sufficiently aggressive and those that who feel that the current laws are sufficient for prosecuting fraud and intimidation.~~

A summary of the each of the interviews conducted is attached as Appendix “\_\_\_”.

### Case Law and Statutes

Consultants reviewed ~~over~~ more than 40,000 cases that were identified using a series of search terms related to voter fraud and voter intimidation. The majority of these cases came from appeal courts. This is not a ~~surprising situation~~, since most cases that are publicly reported come from courts of appeal. Very few cases that are decided at the district court level are reported for public review.

Very few of the identified cases were applicable to this study. Of those that were applicable, no apparent thematic pattern emerged. However, it did seem (WHY DID IT “SEEM” THIS WAY? IS THERE EVIDENCE?) that the greatest number of cases reported on fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility.

A listing of the cases reviewed in this study is attached as Appendix “\_\_\_”.

### Media Reports

EAC consultants reviewed thousands of media reports concerning a wide variety of potential voter fraud or voter intimidation, including:

- absentee ballot fraud,
- voter registration fraud,
- voter intimidation and suppression,
- deceased voters,
- multiple voting,
- felons voting,
- non-citizens voting,
- vote buying,
- deceptive practices, and

- fraud by election officials.

While these reports showed that there were a large number of allegations of voter fraud and voter intimidation, they provided much less information as to whether the allegations were ever formalized as complaints to law enforcement, whether charges were filed, whether prosecutions ensued, and whether any convictions were made. The media reports were enlightening as to the pervasiveness of complaints of fraud and intimidation throughout the country, the correlation between fraud allegations and the perception that the state was a “battleground” or “swing” state, and the fact that there were reports of almost all types of voter fraud and voter intimidation. However, these reports do not provide much data for analysis as to the number of complaints, charge and prosecutions of voter fraud and intimidation throughout the country.

## DEFINITION OF ELECTION CRIMES

From our study of available information on voter fraud and voter intimidation, we have learned that these terms mean many things to many different people. These terms are used casually to refer to anything from vote buying to refusing to register a voter to falsifying voter registration applications. Upon further inspection, however, it is apparent that there is no common understanding or agreement of what is and what is not constitutes “voter fraud” and “voter intimidation.” Some think of voter fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal and appropriate activities. In order to arrive come up with a common definition and list of activities that can be studied, EAC assessed the appropriateness of the terminology that is currently in use and applied certain factors to limit the scope and reach of what can and will be studied by EAC in the future.

### New Terminology

The phrase “voter fraud” is really a misnomer for a concept that is much broader. “Fraud” is a concept that connotes an intentional act of deception, which may constitute either a criminal act or civil tort depending upon the willfulness of the act.

**Fraud, n. 1.** A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. • Fraud is usu. a tort, but in some cases (esp. when the conduct is willful) it may be a crime.

Black’s Law Dictionary, Eighth Edition, p. 685.

A “voter” is a person who is eligible to and engages in the act of voting. Black’s Law Dictionary, Eighth Edition, p. 1608. Using these terms to form a definition of “voter fraud,” it means fraudulent or deceptive acts committed by the voter or in which the voter is the victim. Thus, a voter who intentionally provides false information on a voter registration application or intentionally impersonates another registered voter and attempts to vote for that person would be committing “voter fraud.” Similarly, a person

who knowingly provides false information to a voter about the location of the voter's polling place commits fraud on the voter.

The phrase "voter fraud" does not capture a myriad of other criminal acts that are related to elections which are not perpetrated by the voter and/or do not involve an act of deception. For example, "voter fraud" does not capture actions or willful inaction by candidates and election workers. When an election official willfully and knowingly refuses to register to vote a ~~non~~ otherwise-legally eligible person it is a crime. This is a crime that involves neither the voter nor an act of deception.

To further complicate matters, the phrases "voter fraud" and "voter intimidation" are used to refer to actions or inactions that are criminal as well as those that are potentially civil wrongs and even those that are legal. Obviously, criminal acts and civil wrongs are pursued in a very different manner. Criminal acts are prosecuted by the local, state or federal government. Generally, civil wrongs are prosecuted by the individual who believes that they were harmed. In some cases, when civil rights are involved, the civil division of the Department of Justice may become involved.

The goal of this study was to develop a common definition of what is generically referred to as "voter fraud" and "voter intimidation" that would serve as the basis of a future, comprehensive study of the existence of these problems. In order to meet that goal, we recognize that the current terminology does not accurately represent the spectrum of activities that we desire to study. Furthermore, we recognize that the resources, both financial and human capital, needed to study allegations and prosecutions of criminal acts, suits involving civil torts, and allegations of potential voter suppression through the use of legal election processes are well beyond the resources available to EAC. As such, EAC has defined "election crimes," a phrase that captures all crimes related to the voter registration and voting processes.

#### **What is an Election Crime for Purposes of this Study**

Election crimes are intentional acts or willful failures to act, prohibited by state or federal law, that are designed to cause ineligible persons to participate in the election process, eligible persons to be excluded from the election process, ineligible votes to be cast in an election, eligible votes not to be cast or counted, or other interference with or invalidation of election results. Election crimes generally fall into one of four categories: acts of deception, acts of coercion, acts of damage or destruction, and failures or refusals to act.

Generally speaking, election crimes can be committed by voters, candidates, election officials, or any other members of the public ~~that~~ who desire to criminally impact the result of an election. However, crimes that are based upon ~~knowing-intentional~~ or willful failure to act assume that a duty to act exists. Election officials have affirmative duties to act with regard to elections. By and large, other groups and individuals do not have such duties.

The victim of an election crime can be a voter, a group of voters, an election official, a candidate, or the public, in general. Election crimes can occur during any stage of the election process, including but not limited to qualification of candidates; voter registration; campaigning; voting system preparation and programming; voting either early, absentee, or election day; vote tabulation; recounts; and recalls.

The following are examples of activities that may constitute election crimes. This list is not intended to be exhaustive, but is representative of what states and the federal government consider criminal activity related to elections.

*Acts of Deception*

- Knowingly causing to be mailed or distributed, or knowingly mailing or distributing, literature that includes false information about the voter's precinct or polling place, ~~regarding the date and time of the election or regarding a candidate~~;
- Possessing an official ballot outside the voting location, unless the person is an election official or other person authorized by law or local ordinance ~~to possess a ballot outside of the polling location~~;
- Making, or knowingly possessing, a counterfeit of an official election ballot;
- Signing a name other than his/her own to a petition proposing an initiative, referendum, recall, or nomination of a candidate for office;
- Knowingly signing more than once for the proposition, question, or candidate at one election;
- Signing a petition proposing an initiative or referendum when the signer is not a qualified voter.
- Voting or attempting to vote in the name of another person;
- Voting or attempting to vote more than once ~~at during~~ the same election;
- Intentionally making a false affidavit, swearing falsely, or falsely affirming under an oath required by a statute regarding their voting status, including when registering to vote, requesting an absentee ballot or presenting to vote in person;
- Registering to vote without being entitled to register;
- Knowingly making a material false statement on an application for voter registration or re-registration; and
- Voting or attempting to vote in an election after being disqualified or when the person knows that he/she is not eligible to vote.

*Acts of Coercion*

- Using, threatening to use, or causing to be used force, coercion, violence, restraint, or inflicting, threatening to inflict, or causing to be inflicted damage harm, or loss, upon or against another person to induce or compel that person to vote or refrain from voting or to register or refrain from registering to vote;
- Knowingly paying, offering to pay, or causing to be paid money or other thing of valuable thing-e to a person to vote or refrain from voting for a candidate or for or against an election proposition or question;



- Knowingly soliciting or encouraging a person who is not qualified to vote in an election;
- Knowingly challenging a person's right to vote without probable cause or on fraudulent grounds, or engaging in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voter from voting or delay the process of voting;
- As an employer, attempting by coercion, intimidation, threats to discharge or to lessen the remuneration of an employee, to influence his/her vote in any election, or who requires or demands an examination or inspection by himself/herself or another of an employee's ballot;
- Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for signing or refraining from signing a petition proposing an initiative;
- Inducing or attempting to induce an election official to fail in the official's duty by force, threat, intimidation, or offers of reward;
- Directly or through any other person advancing, paying, soliciting, or receiving or causing to be advanced, paid, solicited, or received, any money or other valuable consideration to or for the use of any person in order to induce a person not to become or to withdraw as a candidate for public office; and
- Soliciting, accepting, or agreeing to accept money or other thing of valuable thing e in exchange for registering to vote.

***Acts of Damage or Destruction***

- Removing or destroying any of the supplies or other conveniences placed in the voting booths or compartments ~~for the purpose of enabling the voter to vote his or her ballot;~~
- Removing, tearing down, or defacing election materials, instructions or ballots;
- Fraudulently altering or changing the vote of any elector, by which such elector is prevented from voting as ~~h~~the person intended;
- Knowingly removing, altering, defacing or covering any political sign of any candidate for public office for a prescribed period prior to and following the election;
- Intentionally changing, attempting to change, or causing to be changed an official election document including ballots, tallies, and returns; and
- Intentionally delaying, attempting to delay, or causing to be delayed the sending of certificate, register, ballots, or other materials whether original or duplicate, required to be sent by jurisdictional law.

***Failure or Refusal to Act***

- Intentionally failing to perform an election duty, or knowingly committing an unauthorized act with the intent to effect the election;
- Knowingly permitting, making, or attempting to make a false count of election returns;
- Intentionally concealing, withholding, or destroying election returns or attempts to do so;

- Marking a ballot by folding or physically altering the ballot so as to recognize the ballot at a later time;
- Attempting to learn or actually and unlawfully learning how a voter marked a ballot;
- Distributing or attempting to distribute election material knowing it to be fraudulent;
- Knowingly refusing to register a person who is entitled to register under the rules of that jurisdiction; and
- Knowingly removing the eligibility status of a voter who is eligible to vote; and
- Knowingly refusing to allow an eligible voter to cast his/her ballot.

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### **What is not an Election Crime for Purposes of this Study**

There are some actions or inactions that may constitute crimes or civil wrongs that we do not include in our definition of “election crimes.” All crimes or civil violations related to campaign finance reporting either at the state or federal level are not “election crimes” for purposes of this study and any future study conducted by EAC. Similarly, criminal acts that are unrelated to elections, voting, or voter registration are not “election crimes,” even when those offenses occur in a polling place, voter registration office, or a candidate’s office or appearance. For example, an assault or battery that results from a fight in a polling place or at a candidate’s office is not an election crime. Similarly, violations of ethical provisions such as the Hatch Act are not “election crimes.” Last, and actions that do not rise to the level of criminal activity, ~~that such as is~~ a misdemeanor, relative felony or felony, are not “election crimes.”

### **RECOMMENDATIONS ON HOW TO STUDY ELECTION CRIMES**

As a part of its study, EAC sought recommendations on ways that EAC can study research the existence of election crimes. EAC consultants, the working groups and some of the persons interviewed developed recommendations. ~~In addition, the working group and some of the persons interviewed~~ as a part of this study provided the following recommendations.

#### ***Recommendation 1: Conduct More Interviews***

Future activity in this area should include conducting additional interviews. In particular, more election officials from all levels of government, parts of the country, and political parties should be interviewed. It would also be especially beneficial to talk to ~~people in~~ law enforcement officials, specifically federal District Election Officers (“DEOs”) and local district attorneys, as well as civil and criminal defense attorneys.

#### ***Recommendation 2: Follow Up on Media Research***

The media search conducted for this phase of the research was based on a list of search terms agreed upon by EAC consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contained allegations of fraud or intimidation.

Similarly, many of the articles contained information about investigations into such activities or even charges brought. (THIS SENTENCE CONTRADICTS WHAT WAS SAID EARLIER ABOUT THE LACK OF MEDIA ARTICLES ON FOLLOW UP.)

Additional media research should be conducted to determine what, if any, resolutions or further activity there was in each case.

***Recommendation 3: Follow Up on Allegations Found in Literature Review***

Many of the allegations made in the reports and books that were analyzed and summarized by EAC consultants were not substantiated and were certainly limited by the date of publication of those pieces. Despite this, such reports and books are frequently cited by various interested parties as evidence of fraud or intimidation. Further research should include follow up on the allegations discovered in the literature review.

***Recommendation 4: Review Complaints Filed With “MyVote1” Voter Hotline***

During the 2004 election and the statewide elections of 2005, the University of Pennsylvania led a consortium of groups and researchers in conducting the MyVote1 Project. This project involved using a ~~1-800~~toll-free voter hotline ~~where that~~ voters could call for poll locations, be transferred to a local hotline, or leave a recorded message with a complaint. In 2004, this resulted in ~~over~~more than 200,000 calls received and ~~over~~more than 56,000 recorded complaints.

Further research should be conducted using the MyVote1 data with the cooperation of the project leaders. While perhaps not a fully scientific survey given the self-selection of the callers, the information regarding ~~200,000~~56,000 complaints may provide ~~a good deal of~~ insight into the problems voters may have experienced, especially ~~those in the nature of~~issues regarding intimidation or suppression.

***Recommendation 5: Further Review of Complaints Filed With U.S. Department of Justice***

~~Although a~~According to a recent GAO report, the Voting Section of the Civil Rights Division of the Department of Justice has a variety in ways it tracks complaints of voter intimidation. Attempts should be made to obtain relevant data, including the telephone logs of complaints and information from the Interactive Case Management (ICM) system. Further research should also include a review and analysis of the DOJ/OPM observer and “monitor field reports” (NOT SURE WHAT THIS MEANS) from Election Day.

***Recommendation 6: Review Reports Filed By District Election Officers***

Further research should include a review of the reports that must be filed by every District Election Officer to the Public Integrity Section of the Criminal Division of the Department of Justice. The DEOs play a central role in receiving reports of voter fraud and investigating and pursuing them. Their reports back to the Department would likely

provide tremendous insight into what actually transpired during the last several elections. Where necessary, information could be redacted or made confidential.

***Recommendation 7: Attend Ballot Access and Voting Integrity Symposium***

Further activity in this area should include attending the next Ballot Access and Voting Integrity Symposium. At this conference, prosecutors serving as District Election Officers in the 94 U.S. Attorneys' Offices obtain annual training on fighting election fraud and voting rights abuses. These conferences are sponsored by the Voting Section of the Civil Rights Division and the Public Integrity Section of the Criminal Division, and feature presentations by Civil Rights officials and senior prosecutors from the Public Integrity Section and the U.S. Attorneys' Offices. By attending the symposium researchers could learn more about the following: how District Election Officers are trained; how information about previous election and voting issues is presented; and how the Voting Rights Act, the criminal laws governing election fraud and intimidation, the National Voter Registration Act, and the Help America Vote Act are described and explained to participants.

***Recommendation 8: Conduct Statistical Research***

EAC should measure voter fraud and intimidation using interviews, focus groups, and a survey and statistical analysis of the results of these efforts. The sample should be based on the following factors:

- Ten locations that are geographically and demographically diverse where there have historically been many reports of fraud and/or intimidation;
- Ten locations (geographically and demographically diverse) that have not had many reports of fraud and/or intimidation;

EAC should also conduct a survey of elections officials, district attorneys, and district election officers. (WHAT WOULD WE SURVEY THEM ABOUT?) The survey sample should be large in order to be able to get the necessary subsets, and it. The sample must include a random set of counties where there have and have not been a large number of allegations.

***Recommendation 9: Explore Improvements to Federal Law***

Future researchers should review federal law to explore ways to make it easier to impose either civil or criminal penalties for acts of intimidation that do not necessarily involve racial animus and/or a physical or economic threat.

***Recommendation 10: Use Observers to Collect Data on Election Day***

Use observers to collect data regarding fraud and intimidation at the polls in on Election Day. There may be some limitations to the ability to conduct this type of research, including difficulty gaining access to polling places for the purposes of observation.

***Recommendation 11: Study Absentee Ballot Fraud***

Because absentee ballot fraud constitutes a large portion of election crimes, a stand-alone study of absentee ballot fraud should be conducted. Researchers should look at actual cases to see how absentee ballot fraud schemes are conducted in an effort to provide recommendations on more effective measures for preventing them fraud when absentee ballots are used.

***Recommendation 12: Use Risk Analysis Methodology to Study Fraud***

Conduct an analysis of what types of fraud people are most likely to commit. Researchers ~~can~~ will use that risk analysis to rank the types of fraud based on the “ease of commission” (WHAT DOES THIS MEAN?) and the impact of the fraud.

***Recommendation 13: Conduct Research Using Database Comparisons***

Researchers should compare information on databases to determine whether the voter rolls contain deceased persons and felons. In addition, the voter rolls can then be compared with the list of persons who voted to determine whether a vote was recorded by someone who is deceased voters or if felons actually voted.

***Recommendation 14: Conduct a Study of Deceptive Practices***

The working group discussed the increasing use of deceptive practices, such as flyers and phone calls with false and/or intimidating information, to suppress voter participation. A number of groups, such as the Department of Justice, the EAC, and organizations such as the Lawyers Committee for Civil Rights, keep phone logs regarding complaints of such practices. These logs should be reviewed and analyzed to see how and where such practices are being conducted and what can be done about them.

***Recommendation 15: Study Use of HAVA Administrative Complaint Procedure as Vehicle for Measuring Fraud and Intimidation***

EAC should study the extent to which states are ~~actually~~ utilizing the administrative complaint procedure mandated by HAVA. In addition, the EAC should study whether data collected through the administrative complaint procedure can be used as another source of information for measuring fraud and intimidation.

***Recommendation 16: Examine the Use of Special Election Courts***

Given that many state and local judges are elected, it may be worth exploring whether special election courts should be established to handle fraud and intimidation complaints before, during, and after Election Day. Pennsylvania employs such a system and could investigate how well that system is working.

### Accepted Recommendations

There has never been a comprehensive study that gathered data regarding all claims, charges, and prosecutions of voting crimes. EAC feels that a comprehensive study is the most important research that it can offer the election community and the public. As such, EAC has adopted all or a part of six of the 16 recommendations made by EAC consultants and the working group.

While several of the other recommendations could be used to obtain more anecdotal information regarding election crimes, EAC believes that what is needed is a comprehensive survey and study of the information available from investigatory agencies, prosecutorial bodies and courts on the number and types of complaints, charges and prosecutions of election crimes. Additional media reviews, additional interviews and the use of observers to collect information from voters on Election Day will only serve to continue the use of anecdotal data to report on election crimes. Hard data on complaints, charges and prosecutions exists and we should gather and use that data, rather than rely on the perceptions of the media or the members of the public as to what might be fraud or intimidation.

Some of the recommendations are beyond the scope of the current study. While election courts may be a reasonable conclusion to reach after we determine what the volume and type of election crimes are being reported, charged or prosecuted, it is premature to embark on an analysis of that solution without more information. Last, some of the recommendations do not support a comprehensive study of election crimes. While a risk analysis might be appropriate in a smaller scale study, EAC desires to conduct a broader survey to avoid the existing problem of anecdotal and limited scope of information.

In order to further its goal of developing a comprehensive data set regarding election crimes, EAC intends to engage in the following research activities in studying the existence and enforcement of election crimes:

#### *Survey Chief Election Officers Regarding Administrative Complaints*

Likely sources of complaints concerning voting crimes are the administrative complaint processes that states were required to establish as a part of complying with HAVA. Those complaint procedures were required to be in place prior to a state receiving any funds under HAVA. Citizens are permitted to file complaints under those procedures with the state's chief election official, and those complaints must be resolved within 60 days. The procedures also allow for alternative dispute resolution of claims.

In order to determine how many of these complaints allege the commission of election crimes, EAC will survey the states' chief election officers regarding complaints that have been filed, investigated, and resolved since January 1, 2004. EAC will use the definition of election crimes provided above in this report in its survey so that data regarding a uniform set of offenses can will be collected.

***Survey State Election Crime Investigation Units Regarding Complaints Filed and Referred***

Several chief state election officials have developed investigation units focused on receiving, investigating, and referring complaints of election crimes. These units were established to bolster the abilities of state and local law enforcement to investigate allegations of election crimes. California, New York and Florida are just three examples of states that have these types of units.

EAC will use a survey instrument to gather information on the numbers and types of complaints that have been received by, investigated, and ultimately referred to local or state law enforcement by election crime investigation units since January 1, 2004. ~~This~~ These data will help us understand the pervasiveness of perceived fraud, as well as the number of claims that state election officials felt were meritorious of being referred to local and state law enforcement or prosecutorial agencies for further action.

***Survey Law Enforcement and Prosecutorial Agencies Regarding Complaints and Charge of Voting Crimes***

While voters, candidates and citizens may call national hotlines or the news media to report allegations of election crimes, it is those complaints that are made to law enforcement that can be investigated and ultimately prosecuted. Thus, it is critical to the study of election crimes to obtain statistics regarding the number and types of complaints that are made to law enforcement, how many of those complaints result in the perpetrator being charged or indicted, and how many of those charges or indictments result in pleas or convictions.

Thus, EAC will survey law enforcement and prosecutorial agencies at the local, state and federal level to determine the number and types of complaints, charges or indictments, and pleas or convictions of election crimes since January 1, 2004. In addition, EAC will seek to obtain an understanding of why some complaints are not charged or indicted and why some charges or indictments are not prosecuted.

***Analyze Survey Data in Light of State Laws and Procedures***


Once a reliable data set concerning the existence and enforcement of election crimes is assembled, a real analysis of the effectiveness of fraud prevention measures can be conducted. For example, data can be analyzed to determine if criminal activities related to elections are isolated to certain areas or regions of the country. Data collected from the election official surveys can be compared to the data regarding complaints, charges and prosecutions gathered from the respective law enforcement and prosecutorial agencies in each jurisdiction. The effect and/or effectiveness of provisions such as voter identification laws and challenger provisions can be assessed based on hard data from areas where these laws exist. Last, analyses such as the effectiveness of enforcement can be conducted in light of the resources available to the effort.

## CONCLUSION

Election crimes are nothing new to our election process. The pervasiveness of these crimes and the fervor with which they have been enforced has created a great deal of debate among academics, election officials, ~~and political pundits~~ and voters. Past studies of these issues have been limited in scope and some have been riddled with bias. These are issues that deserve comprehensive and nonpartisan review. EAC, through its clearinghouse role, will collect and analyze data on election crimes throughout the country. These data not only will tell us what types of election crimes are committed and where fraud exists, but also inform us of what factors impact the existence, prevention, and prosecution of election crimes.



Jeannie Layson /EAC/GOV  
10/19/2006 02:45 PM

To Margaret Sims/EAC/GOV@EAC  
cc bwhitener@eac.gov, ggilmour@eac.gov,  
jthompson@eac.gov, twilkey@eac.gov  
bcc  
Subject Re: Media inquiry RE: fraud research 

I think that distinction comes a little too late, as the commissioners have been referring to any future report as one that would be produced by EAC. Hence, the effort to explain the difference b/w data provided/produced by consultants.

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
www.eac.gov

Margaret Sims /EAC/GOV

10/19/2006 01:55 PM

To Jeannie Layson/EAC/GOV@EAC  
cc bwhitener@eac.gov, ggilmour@eac.gov, jthompson@eac.gov, twilkey@eac.gov  
Subject Re: Media inquiry RE: fraud research Link

I don't know that we can say that EAC will produce a report on the subject in the near future. We will have the consultants' report to EAC, which I don't believe constitutes an EAC report/statement. The consultants' report never was intended to be the definitive study of voting fraud/voter intimidation that the news media and others seem to be seeking. One of the primary goals of the report was to provide recommendations for future EAC action/direction of study. In order to do this, the consultants did some preliminary research to get an idea of what problems were occurring. I don't know how soon EAC will decide which recommendations, if any, to pursue. --- Peggy

Jeannie Layson /EAC/GOV

10/18/2006 11:09 AM

To twilkey@eac.gov, jthompson@eac.gov, psims@eac.gov, ggilmour@eac.gov  
cc bwhitener@eac.gov  
Subject Media inquiry RE: fraud research

011302

Hello everyone,

Brian Friel of the National Journal has posed the following questions regarding the fraud report. Since we know this is something everyone on the Hill will definitely read, I want to make sure everyone agrees with these responses. I need to get this info to him by noon tomorrow.

Tom -- do you want me to run this language by the commissioners?

1. Are there any plans to release voter fraud report since several groups have called for its release; or if there is some procedure that would be necessary for EAC to determine that it should be released? The status report created by EAC staff was presented to EAC's Board of Advisors and Standards Board to provide an update on the research project. This meeting was open to the public. As a small agency of only 23 employees, including four commissioners, it is necessary for EAC to contract with third parties and experts to conduct research. The information provided by third parties is used by staff to develop EAC final policy or reports. No documents, drafts, or recommendations presented to EAC by third parties constitute official EAC policy. Currently, EAC staff is reviewing the data presented regarding voter fraud and intimidation and will produce a final report in the near future.

Is the fourth position still vacant and does this impact the decision for release of the report. There is a vacancy on the commission, but the vacancy has not impacted the timeline for releasing the fraud report.

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Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

011302

Jeannie Layson /EAC/GOV  
10/18/2006 11:09 AM

To twilkey@eac.gov, jthompson@eac.gov, psims@eac.gov,  
ggilmour@eac.gov  
cc bwhitener@eac.gov

bcc

Subject Media inquiry RE: fraud research

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011303

Jeannie Layson /EAC/GOV  
10/18/2006 11:09 AM

To twilkey@eac.gov, jthompson@eac.gov, psims@eac.gov,  
ggilmour@eac.gov  
cc bwhitener@eac.gov

bcc

Subject Media inquiry RE: fraud research

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011304

Karen Lynn-Dyson/EAC/GOV  
09/02/2005 04:19 PM

To Karen Lynn-Dyson/EAC/GOV@EAC, Nicole  
Mortellito/CONTRACTOR/EAC/GOV@EAC  
cc jthompson@eac.gov, nmortellito@eac.gov  
"Job Serebrov"  
twilkey@eac.gov, wang@tcf.org

bcc

Subject Re: Kick off activities for the EAC Voting fraud/voter  
intimidation project

All-

In anticipation of our 45-minute conference call scheduled for Tuesday, September 6 at 4:00 PM, I would ask the three consultants ( Steve, Job and Tova) to come prepared to talk about the following:

The major topics and issues which you see as needing immediate attention, definition, delineation, etc.  
Rough timelines and timeframes for addressing these major issues and topics  
Your major roles and responsibilities and the timelines you envision for meeting your major deliverables

We all realize that this conversation is just a start; I look forward to this beginning and to framing the tasks that lie ahead of us between now and September 30.

Have a wonderful holiday!!

K  
Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

011305

Karen Lynn-Dyson/EAC/GOV

08/23/2005 05:44 PM

To Thomas R. Wilkey/EAC/GOV@EAC, sda@mit.edu,  
wang@tcf.org, [REDACTED]

cc Margaret Sims/EAC/GOV@EAC

bcc Juliet E. Thompson/EAC/GOV

Subject Kick off activities for the EAC Voting fraud/voter intimidation  
project

Greetings-

Tom Wilkey and I have just completed a series of very informative and productive conversations with each of you and are anxious to move to the next step of this process.

We hope to assemble our consultant team on this project, within the next three weeks and are presently awaiting final approval of your contracts from our Commissioners. We anticipate this will take place in the next week to ten days.

We would like to assemble the team- Steve Ansolabehere of MIT, Tova Wang from The New Century Foundation and Job Serebrov, who has worked extensively on these issues for the State of Arkansas, during the week of September 11. Please get back to us with some tentative dates during that week that might work with your schedule.

We look forward to working with all of you and appreciate your efforts on behalf of the EAC.

Regards-

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

01130

**Karen Lynn-Dyson/EAC/GOV**

08/17/2005 04:29 PM

**To Nicole Mortellito/CONTRACTOR/EAC/GOV@EAC**

**cc Thomas R. Wilkey/EAC/GOV@EAC, Margaret  
Sims/EAC/GOV@EAC, Diana Scott/EAC/GOV@EAC, Juliet  
E. Thompson/EAC/GOV@EAC**

**bcc**

**Subject Statement of Work to be circulated to the voting fraud/voter  
intimidation consultant candidates**

Nicole-

Attached please find the Statement of Work which should be sent to each of the three candidates who are being considered for the consulting position:

Steve A.  
Tova W.  
Job S.

Please be certain they are sent separately and not collectively to all three and that it is sent by COB today.

Thanks so much for your help.

K



voterfraud project consultants.doc

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

011307

## **Statement of Work**

### **Assistance with developing an Election Assistance Commission (EAC) Voting Fraud and Voter Intimidation Project**

#### **Background**

Section 241 of HAVA enumerates a number of periodic studies of election administration issues in which the U.S. Election Assistance Commission may elect to engage. In general "On such periodic basis as the Commission may determine, the Commission shall conduct and make available to the public studies regarding the election administration issues described in subsection (b)"

Sections 241(b) (6) and (7) list the following election administration issues:

(6) Nationwide statistics and methods of identifying, deterring and investigating voting fraud in election for Federal offices.

(7) Identifying, deterring and investigating methods of voter intimidation.

Building on this HAVA reference to studies of voting fraud and voter intimidation, the EAC Board of Advisors has indicated that further study of these issues to determine how the EAC might respond to them is a high priority.

The U.S. Election Assistance Commission (EAC) seeks to identify one or more senior-level project consultants to develop various project activities and studies related to voting fraud and voter intimidation affecting Federal elections.

The consultant(s) must of have knowledge of voting fraud and voter intimidation along with an understanding of the complexities, nuances and challenges which surround the topics. The EAC is particularly interested in candidates with experience in elections, with public policy and with the law. The consultant (s) must be able to demonstrate an ability to approach the issues of voting fraud and voter intimidation in a balanced, nonpartisan fashion.



## **Duties**

The consultant(s), whose contract would run for the period September-February, 2005, would be responsible for the following.

1. Identifying what constitutes voting fraud and voter intimidation affecting Federal elections.
2. Performing background research, including Federal and state-by state administrative and case law review related to voting fraud and voter intimidation, and a review of current voting fraud and voter intimidation activities taking place with key government agencies, civic and advocacy organizations. A written summary of this research, and a copy of any source documentation used, will be presented to EAC.
3. Identifying, in consultation with EAC, and convening a working group of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation. The working group's goals and objectives and meeting agendas will be vetted with key EAC staff.
4. Developing a project scope of work and a project work plan related to voting fraud and voter intimidation. The consultants (s) will develop a draft scope of work and project work plan for EAC's consideration based on research into the topics, the deliberations and findings of the working group, and the consultants' understanding of EAC's mission and agency objectives.
5. Authoring a report summarizing the key findings of this preliminary study of voting fraud and voter intimidation. The report will also include suggestions for specific activities that EAC may undertake to address these topics.

From this initial research and exploration of these topics the consultant (s) may be retained to help oversee follow-on research projects and contracts EAC may pursue on the topics of voting fraud and voter intimidation.

## **Special Considerations**

Work for Hire. The services performed under the terms of this agreement are considered "work for hire," and any intellectual property or deliverables, including but not limited to, research, policies, procedures, manuals, and other works submitted; or which are specified to be delivered; or which are developed or produced and paid for by EAC, shall be owned exclusively by EAC, including copyright. EAC or its assignees have the exclusive right to reproduce all work products from this agreement without further payment to the Contractor.

011309

## Terms and Conditions

The period of performance for this consulting contract is six months, with a fixed price ceiling of \$XXXXXX for labor. The consultant (s) is expected to work at least 200 hours in performing this work. The EAC estimates that the most efficient distribution of these hours would be as follows: XXXXX. The period of performance and level of effort can be revised in writing by mutual agreement of the EAC and the consultant, as required.

The Consultant is required to travel to the EAC Washington, D.C. offices on a periodic, as needed basis, throughout the duration of the contract. The Consultant will be reimbursed, at the Federal government rates, for hotel and ground transportation costs, other approved incidental expenses, and per diem costs while working on-site at the EAC offices. An estimated \$XXXXXX has been allocated for reimbursement for travel and other allowable expenses.

## Invoicing

Invoices may be submitted monthly in equal payments for labor. Expenses claimed for reimbursement shall be itemized with appropriate receipts provided. Invoices shall be delivered to Ms. Diana Scott, Administrative Officer, U.S. Election Assistance Commission, 1225 New York Avenue, N.W., Suite 1100, Washington DC 20005.

## Deliverables and Timetable

Deliverable	Due Date
Draft project work plan (Phase I)	ASAP after award
Progress Reports to Contracting Officer's Representative (COR)	Monthly
A written summary of background research on voting fraud and voter intimidation.	TBD
Identifying and convening a working group knowledgeable about voting fraud and voter intimidation.	TBD
Developing a project scope of work and project work plan ( Phase II)	TBD
Summary report describing key findings of this preliminary study of voting fraud and voter intimidation	TBD

Karen Lynn-Dyson/EAC/GOV

08/16/2005 02:52 PM

To Carol A. Paquette/EAC/GOV@EAC, Diana  
Scott/EAC/GOV@EAC, Margaret Sims/EAC/GOV@EAC  
cc Juliet E. Thompson/EAC/GOV@EAC, Nicole  
Mortellito/CONTRACTOR/EAC/GOV@EAC  
bcc

Subject Finishing touches on the Statement of Work for the Voter  
Fraud/Intimidation consultants

History  This message has been replied to

All-

This morning the Commissioners approved the Statement of Work for the Voter Fraud/Voter Intimidation project consultants, with the caveat that some additional language would be added and the SOW polished up.

Tom, Peg and I are scheduled to interview the first candidate tomorrow morning at 10:00 am and will need your edits to this SOW by COB today.

I am attaching the item again, just in case you don't have a copy. Since I have an appointment out of the office and will be leaving at 4:00 today, I ask that you get your changes and edits to Nicole so that she may enter them and get the revised copy to the candidate first thing in the morning .

Thanks for your input on this.



voterfraud project consultants.2.doc

K

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

011311

## **Statement of Work**

### **Assistance with developing an Election Assistance Commission (EAC) Voter Fraud and Voter Intimidation Project**

#### **Background**

Section 241 of HAVA enumerates a number of periodic studies of Election Administrations issues in which the U.S. Election Assistance Commission may elect to engage. In general “On such periodic basis as the Commission may determine, the Commission shall conduct and make available to the public studies regarding the election administration issues described in subsection (b), with the goal of promoting methods of voting and administering elections....”

Specifically, Section 241b 6 and 7 describes Election administration issues such as:

6. Nationwide statistics and methods of identifying, deterring and investigating voting fraud in election for Federal offices and
7. Identifying, deterring and investigation methods of voter intimidation.

Building on this HAVA reference to studies of voter fraud and voter intimidation, the EAC Board of Advisors has indicated a priority interest in further study of these issues to determine how the EAC might respond to them.

The U.S. Election Assistance Commission (EAC) seeks to identify senior-level project consultants to develop various project activities and studies related to U.S. election voter fraud and voter intimidation.

The consultant(s) must of have knowledge of voter fraud and intimidation along with an understanding of the complexities, nuances and challenges which surround the topics. The EAC is particularly interested in candidates with experience in elections, with public policy and the law. The consultant (s) must be able to demonstrate an ability to approach the issues of voter fraud and intimidation in a balanced, nonpartisan fashion.

## **Duties**

The consultant (s), whose contract would run for the period September-February, 2005, would be responsible for the following.

1. Performing background research, including a state-by state administrative and case law review related to voter fraud and intimidation, and a review of current voter fraud and intimidation activities taking place with key government agencies, civic and advocacy organizations. This review will be summarized and presented to the EAC.
2. Identifying and convening a working group of key individuals and organizations knowledgeable about the topics of voter fraud and intimidation. The list of working group members and the methods used to identify the groups members will be shared with EAC staff prior to the confirmation of the working group. The working group's goals and objectives and meeting agendas will be vetted with key EAC staff.
3. Developing a project scope of work and a project work plan related to voter fraud and intimidation. Based on research into the topics, the deliberations and findings of the working group, and the consultants' understanding of the EAC's mission and agency objectives, the consultants will develop a draft scope of work and project work plan for the EAC's consideration.
4. Authoring a report summarizing the key findings of this preliminary study of voter fraud and intimidation. The report will also include suggestions for specific activities the EAC may undertake around these topics.

From this initial research and exploration of these topics the consultant (s) may be retained to help oversee follow-on research projects and contracts EAC may develop on the topics of voter fraud and intimidation.

## **Special Considerations**

Work for Hire Agreement (insert language)

## **Terms and Conditions**

The period of performance for this consulting contract is six months, with a fixed price ceiling of \$XXXXXX for labor. The consultant (s) is expected to work at least 200 hours in performing this work. The EAC estimates that the most efficient distribution of these hours would be as follows: XXXXX. The period of performance and level of effort can be revised in writing by mutual agreement of the EAC and the consultant, as required.

Karen Lynn-Dyson/EAC/GOV

08/04/2005 05:01 PM

To: Thomas R. Wilkey/EAC/GOV@EAC, Carol A. Paquette/EAC/GOV@EAC, Diana Scott/EAC/GOV@EAC, Juliet E. Thompson/EAC/GOV@EAC  
cc: Nicole Mortellito/CONTRACTOR/EAC/GOV@EAC, Barbara A. Costopoulos/CONTRACTOR/EAC/GOV@EAC  
bcc:

Subject: Finalizing a Statement of Work for consultants working on a voter fraud and intimidation project

Greetings-

Tom Wilkey and I are working to schedule a series of conference calls with three consultants we have identified to work with us to help us develop the voter fraud and voter intimidation project.

We have tentatively scheduled a series of telephone interviews with these three consultants (all of whom would be hired to work on this project) for August 17, 18 and 19.

Attached you will find a draft of a Statement of Work that has been developed for these consultants. Dan Murphy's contract was used as a template for this.

I've sent this document to you all because I need your edits and corrections to this document, based on your expertise either in contracting, human resources or the subject area.

Since Tom and I will be interviewing the candidates in two weeks, I'm hoping you can react to the document and get to Tom and Nicole your changes by mid-week next week.

I will then ask Nicole to send the draft statement of work to the three candidates, so they might refer to it, prior to our interviews.

Thanks for your input and assistance.



K voterfraud project consultants.doc

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

011314

## **Statement of Work**

### **Assistance with developing an Election Assistance Commission (EAC) Voter Fraud and Voter Intimidation Project**

#### **Background**

Section 241 of HAVA enumerates a number of periodic studies of Election Administrations issues in which the U.S. Election Assistance Commission may elect to engage. Specifically, Section 241b 6 and 7 describe Election administration issues such as:

6. Nationwide statistics and methods of identifying, deterring and investigating voting fraud in election for Federal offices and
7. Identifying, deterring and investigation methods of voter intimidation.

Building on this reference to studies of voter fraud and voter intimidation, the EAC Board of Advisors has indicated a priority interest in further study of this issue to determine how the EAC might respond to it.

The U.S. Election Assistance Commission (EAC) seeks to identify senior-level project consultants to develop various project activities and studies related to U.S. election voter fraud and voter intimidation.

The consultant(s) must of have knowledge of voter fraud and intimidation along with an understanding of the complexities, nuances and challenges which surround the topics. The EAC is particularly interested in candidates with experience in elections, with public policy and the law. The consultant (s) must be able to demonstrate an ability to approach the issues of voter fraud and intimidation in a balanced, nonpartisan fashion.

#### **Duties**

The consultant (s), whose contract would run for the period September-February, 2005, would be responsible for the following.

1. Performing background research, including a state-by state administrative and case law review related to voter fraud and intimidation, and a review of current voter fraud and intimidation activities taking place with key government agencies, civic and advocacy organizations. This review will be summarized and presented to the EAC.

2. Identifying and convening a working group of key individuals and organizations knowledgeable about the topics of voter fraud and intimidation. The list of working group members and the methods used to identify the groups members will be shared with EAC staff prior to the confirmation of the working group. The working group's goals and objectives and meeting agendas will be vetted with key EAC staff.
3. Developing a project scope of work and a project work plan related to voter fraud and intimidation. Based on research into the topics, the deliberations and findings of the working group, and the consultants' understanding of the EAC's mission and agency objectives, develop a draft scope of work and project work plan for the EAC's consideration.
4. Authoring a report summarizing the key findings of this preliminary study of voter fraud and intimidation. The report will also include suggestions for specific activities the EAC may undertake around these topics.

From this initial research and exploration of these topics the consultant (s) may be retained to help oversee follow-on research projects and contracts EAC may develop on the topics of voter fraud and intimidation.

### **Special Considerations**

The Consultants will be required to sign a Non-Disclosure Agreement???

The Consultants are also required to sign a Conflict of Interest declaration???

### **Terms and Conditions**

The period of performance for this consulting contract is six months, with a fixed price ceiling of \$XXXXXX for labor. The consultant (s) is expected to work at least 200 hours in performing this work. The EAC estimates that the most efficient distribution of these hours would be as follows: XXXXX. The period of performance and level of effort can be revised in writing by mutual agreement of the EAC and the consultant, as required.



Karen Lynn-Dyson/EAC/GOV

06/21/2005 01:27 PM

To Raymundo Martinez/EAC/GOV@EAC

cc Gracia Hillman/EAC/GOV@EAC, Paul  
DeGregorio/EAC/GOV@EAC, Thomas R.  
Wilkey/EAC/GOV@EAC, Juliet E.

bcc

Subject Your recommendations for consultants to help frame EAC's  
work on voter fraud and intimidation

Ray-

As was discussed yesterday- you will get me the names of consultants and organizations who you think will be good for us to consider employing as consultants to help us frame our work around voter fraud and intimidation.

Once I have a list of names and resumes, I will work with Tom Wilkey to come up with a recommendation of a consultant or consultants to use on this project.

Thanks for your input.

K

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

011317

Karen Lynn-Dyson/EAC/GOV

05/25/2005 12:55 PM

To Paul DeGregorio/EAC/GOV@EAC, Raymundo  
Martinez/EAC/GOV@EAC

cc Juliet E. Thompson/EAC/GOV@EAC

bcc

Subject Job Description for a Voter Fraud Project Consultant

Commissioners-

Attached please find a first draft of a short job description outlining EAC's expectations for a project consultant on voter fraud.

As you are aware, Julie has shared with me the resume of someone with an interest in the position. Ray has indicated that he participates in a legal list-serve group that has recently focused on voter fraud issues. This list-serve is probably a good place to "advertise" the consultant opportunity.

Let me know your thoughts on next steps. I look forward to getting this project up and running.

Regards-

K



voterfraud project manager.doc  
Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

011318

**Job Description****U.S. Election Assistance Commission (EAC) Voter Fraud Project Consultant**

The U.S. Election Assistance Commission (EAC) seeks to identify a senior-level project consultant to assist with the oversight and development of a study and possible project examining U.S. election voter fraud.

The consultant must have a knowledge of voter fraud and an understanding of the complexities, nuances and challenges which surround the topic. The EAC is particularly interested in candidates with experience in elections, with public policy and the law. The consultant must be able to demonstrate an ability to approach the issue of voter fraud in a balanced, nonpartisan fashion.


This consultant, whose contract would run for the period June-November, 2005, would be responsible for conceptualizing a project scope of work around the issue and from that, developing a statement of work for a research project around the topic.

In consultation with EAC staff, EAC Commissioners, and other key EAC stakeholders, the consultant will develop a project plan around voter fraud. The consultant will recommend certain EAC project activities related to voter fraud and will develop a scope of work for an EAC research study on voter fraud. The consultant will oversee and manage various processes related to EAC contracts awarded for work related to voter fraud.

EAC's consultant fees are competitive and are awarded based on the candidates' relevant background and experience.

**Deliberative Process  
Privilege**

Margaret Sims/EAC/GOV  
11/26/2006 09:39 PM


To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Draft Voter Fraud/Voter Intimidation Report 

Julie:

I reviewed our materials and refreshed my memory. The DOJ issues appear to be the only potential pitfalls in the consultants' interview summaries. The only other issue that arose during the course of the work was Secretary Rokita's objection to EAC doing the research. I think you have taken care of that in your paper. --- Peggy

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV  
11/17/2006 04:05 PM

To Margaret Sims/EAC/GOV@EAC  
cc  
Subject Re: Draft Voter Fraud/Voter Intimidation Report 

Thanks so much for all of your help. Have a very Happy Thanksgiving.


-----  
Sent from my BlackBerry Wireless Handheld  
Margaret Sims  
----- Original Message -----

**From:** Margaret Sims  
**Sent:** 11/17/2006 02:54 PM  
**To:** Juliet Hodgkins  
**Subject:** Re: Draft Voter Fraud/Voter Intimidation Report

I'll need to refresh my memory. I'll take a look at them one more time and get back to you. Hope you enjoy your time out of the office, and have a happy turkey day. --- Peggy

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV  
11/17/2006 09:44 AM

To Margaret Sims/EAC/GOV@EAC  
cc  
Subject Re: Draft Voter Fraud/Voter Intimidation Report 

Thanks for your comments.

Last night, I took the case charts and assembled into one 200 -page document. So, that is compiled. I have also amended to include Job and Tova's bios as appendix "1". I have established both your summaries and theirs into alternative appendixes and will talk to the commissioners about that. One question that I have is whether we would need to go through and "clean up" their summaries? I have compiled them into a single document (that is one for interviews and one for literature). Other than the

011320


DOJ issue, are there any other "problems" that you recall?

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

011321

**Deliberative Process  
Privilege**

Margaret Sims /EAC/GOV  
11/17/2006 02:54 PM


To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Draft Voter Fraud/Voter Intimidation Report 

History:  This message has been replied to

I'll need to refresh my memory. I'll take a look at them one more time and get back to you. Hope you enjoy your time out of the office, and have a happy turkey day. --- Peggy

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV  
11/17/2006 09:44 AM

To Margaret Sims/EAC/GOV@EAC  
cc  
Subject Re: Draft Voter Fraud/Voter Intimidation Report 

Thanks for your comments.

Last night, I took the case charts and assembled into one 200 -page document. So, that is compiled. I have also amended to include Job and Tova's bios as appendix "1". I have established both your summaries and theirs into alternative appendixes and will talk to the commissioners about that. One question that I have is whether we would need to go through and "clean up" their summaries? I have compiled them into a single document (that is one for interviews and one for literature). Other than the DOJ issue, are there any other "problems" that you recall?

Juliet Thompson Hodgkins  
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(202) 566-3100

011322

Margaret Sims /EAC/GOV  
10/11/2006 02:37 PM

To Jeannie Layson/EAC/GOV@EAC  
cc twilkey@eac.gov, Juliet E. Hodgkins/EAC/GOV@EAC,  
bwhitener@eac.gov  
bcc  
Subject Re: Voting Fraud-Voter Intimidation Report

The answer is tricky. The working group met *after the written report was submitted* for the board meetings, but *before the status report was formally presented* (orally) at the board meetings. --- Peggy

Jeannie Layson/EAC/GOV

Jeannie Layson /EAC/GOV  
10/11/2006 02:27 PM

To Margaret Sims/EAC/GOV@EAC  
cc  
Subject Re: Voting Fraud-Voter Intimidation Report

So the answer is yes, they did meet after the status report was presented?

Jeannie Layson  
U.S. Election Assistance Commission  
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Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
www.eac.gov  
Margaret Sims/EAC/GOV

Margaret Sims /EAC/GOV  
10/11/2006 02:26 PM

To Jeannie Layson/EAC/GOV@EAC  
cc twilkey@eac.gov, Juliet E. Hodgkins/EAC/GOV@EAC,  
bwhitener@eac.gov  
Subject Re: Voting Fraud-Voter Intimidation Report

The status report was written on May 17, 2006 (the last day it could be submitted for the upcoming board meetings). The first and only meeting of the working group was May 18, 2006. --- Peggy

Jeannie Layson/EAC/GOV

Jeannie Layson /EAC/GOV  
10/11/2006 02:06 PM

To Margaret Sims/EAC/GOV@EAC  
cc  
Subject Re: Voting Fraud-Voter Intimidation Report

011323


Yes, that is what prompted my question. So the answer is no – they have not met since May 17?

Jeannie Layson  
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Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

011324




Margaret Sims /EAC/GOV  
10/11/2006 01:45 PM

To Jeannie Layson/EAC/GOV@EAC  
cc twilkey@eac.gov, Juliet E. Hodgkins/EAC/GOV@EAC,  
bwhitener@eac.gov  
bcc  
Subject Re: Voting Fraud-Voter Intimidation Report 

I would hope that we can refer to it as a status report on the research project (prepared by EAC staff based upon information available at the time from our consultants, Tova and Job). Calling it a preliminary report has given rise to some confusion. That confusion has led to complaints from project working group members and requests from outsiders, who mistakenly think that EAC has released the document written by our consultant that fully reports on the preliminary research into voting fraud and voter intimidation and makes recommendations for future EAC action. --- Peggy

Jeannie Layson/EAC/GOV

Jeannie Layson /EAC/GOV  
10/11/2006 12:33 PM

To Margaret Sims/EAC/GOV@EAC  
cc  
Subject Re: Voting Fraud-Voter Intimidation Report 

Thanks for the update. Per legal, the preliminary report is absolutely public information which is why we had to give it to the reporter when he asked for it.

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www.eac.gov

011325

Margaret Sims /EAC/GOV  
10/11/2006 12:34 PM

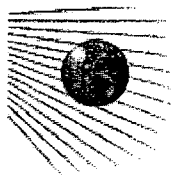
To Paul DeGregorio/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC, twilkey@eac.gov  
cc Amie J. Sherrill/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, Bryan Whitener/EAC/GOV@EAC, Tamar Nedzar/EAC/GOV@EAC  
bcc

Subject Re: Voting Fraud-Voter Intimidation Report 


Just a note to clarify that we are not releasing the preliminary report on voting fraud and voter intimidation (Tova & Job's report) because the draft report is going through EAC review. The only document we can offer at this time is the status report on the research project, which was delivered to our boards and which apparently is considered public information. The status report does not address any recommendations for future EAC action.

I am using some of my work at home time on the draft report. Hopefully, I can meet with Julie and Tamar next week. After that, we will have a better idea of when it will be ready for a Commissioner briefing. ---  
Peggy

Paul DeGregorio/EAC/GOV



Paul DeGregorio /EAC/GOV  
10/11/2006 10:20 AM

To Jeannie Layson/EAC/GOV@EAC  
cc Amie J. Sherrill/EAC/GOV@EAC, Margaret Sims/EAC/GOV@EAC  
Subject Re: Interview Request 

Find a time that works. There's a story in today's St Louis PD that points to over 1000 suspect voter registrations.

-----  
Sent from my BlackBerry Wireless Handheld

----- Original Message -----

**From:** Jeannie Layson  
**Sent:** 10/11/2006 10:15 AM  
**To:** Paul DeGregorio  
**Cc:** Amie Sherrill; Margaret Sims  
**Subject:** Interview Request

Mr. Chairman,

Will Lester of the Associated Press wants to interview you briefly via phone about the preliminary fraud report. I recommend you accomodate him, as he has dutifully covered EAC, and plans to include us in a story next week about the election lanscape. He has requested a copy of the preliminary report, which I am sending to him. He only needs a few minutes, and as we discussed, i think the message is that these are preliminary findings that we presented to our advisory boards to get their input. When the final report is

011326

complete, we will release it. You can also use some of the talking pts from your speech, such as the challenge related to the very definition of the term "fraud," as people define it differently. How about I set it up for noon?

The only question he asked that I don't know the answer to is when we expect the final report. Peg... please weigh in on this.

Jeannie Layson  
U.S. Election Assistance Commission  
1225 New York Ave., NW  
Suite 1100  
Washington, DC 20005  
Phone: 202-566-3100  
[www.eac.gov](http://www.eac.gov)

Margaret Sims /EAC/GOV  
09/27/2006 12:51 PM

To bwhitener@eac.gov  
cc Juliet E. Hodgkins/EAC/GOV@EAC, Karen  
Lynn-Dyson/EAC/GOV@EAC  
bcc  
Subject Status Report on Voting Fraud-Voter Intimidation Study

Bryan:

An electronic copy of the status report is attached, as requested for the USA Today inquiry. The status report includes the attachment listing the Working Group members. I suggest that you check to ensure that I have protected the copy against any manipulation, and protect it yourself if I have not, before sending it out to anyone. --- Peggy



EAC Boards VF-VI Status Report.doc

011328

**Deliberative Process  
Privilege**



**U.S. ELECTION ASSISTANCE COMMISSION**

**Status Report on the  
Voting Fraud-Voter Intimidation Research  
Project**

**May 17, 2006**

**011329**

## INTRODUCTION

Section 241 of the Help America Vote Act of 2002 (HAVA) requires EAC to conduct research on election administration issues. Among the tasks listed in the statute is the development of:

- nationwide statistics and methods of identifying, deterring, and investigating voting fraud in elections for Federal office [section 241(b)(6)]; and
- ways of identifying, deterring, and investigating methods of voter intimidation [section 241(b)(7)].

EAC's Board of Advisors recommended that the agency make research on these matters a high priority.

## FOCUS OF CURRENT RESEARCH

In September 2005, the Commission hired two consultants with expertise in this subject matter, Job Serebrov and Tova Wang, to:

- develop a comprehensive description of what constitutes voting fraud and voter intimidation in the context of Federal elections;
- perform background research (including Federal and State administrative and case law review), identify current activities of key government agencies, civic and advocacy organizations regarding these topics, and deliver a summary of this research and all source documentation;
- establish a project working group, in consultation with EAC, composed of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation;
- provide the description of what constitutes voting fraud and voter intimidation and the results of the preliminary research to the working group, and convene the working group to discuss potential avenues for future EAC research on this topic; and
- produce a report to EAC summarizing the findings of the preliminary research effort and working group deliberations that includes recommendations for future research, if any;

As of the date of this report, the consultants have drafted a definition of election fraud, reviewed relevant literature and reports, interviewed persons from government and private sectors with subject matter expertise, analyzed news reports of alleged election fraud, reviewed case law, and established a project working group.

## DEFINITION OF ELECTION FRAUD

The consultants drafted a definition of election fraud that includes numerous aspects of voting fraud (including voter intimidation, which is considered a subset of voting fraud) and voter registration fraud, but excludes campaign finance violations and election administration mistakes. This draft will be discussed and probably refined by the project working group, which is scheduled to convene on May 18, 2006.

## LITERATURE REVIEW

The consultants found many reports and books that describe anecdotes and draw broad conclusions from a large array of incidents. They found little research that is truly systematic or scientific. The most systematic look at fraud appears to be the report written by Lori Minnite, entitled "Securing the Vote: An Analysis of Election Fraud". The most systematic look at voter intimidation appears to be the report by Laughlin McDonald, entitled "The New Poll Tax". The consultants found that books written about this subject all seem to have a political bias and a pre-existing agenda that makes them somewhat less valuable.

Moreover, the consultants found that reports and books make allegations but, perhaps by their nature, have little follow up. As a result, it is difficult to know when something has remained in the stage of being an allegation and gone no further, or progressed to the point of being investigated or prosecuted or in any other way proven to be valid by an independent, neutral entity. This is true, for example, with respect to allegations of voter intimidation by civil rights organizations, and, with respect to fraud, John Fund's frequently cited book, "Stealing Elections".

Consultants found that researchers agree that measuring something like the incidence of fraud and intimidation in a scientifically legitimate way is extremely difficult from a methodological perspective and would require resources beyond the means of most social and political scientists. As a result, there is much more written on this topic by advocacy groups than social scientists.

Other items of note:

- There is as much evidence, and as much concern, about structural forms of disenfranchisement as about intentional abuse of the system. These include felon disenfranchisement, poor maintenance of databases and identification requirements.
- There is tremendous disagreement about the extent to which polling place fraud, e.g. double voting, intentional felon voting, noncitizen voting, is a serious problem. On balance, more researchers find it to be less of a problem than is commonly described in the political debate; but some reports say it is a major problem, albeit hard to identify.

- There is substantial concern across the board about absentee balloting and the opportunity it presents for fraud.
- Federal law governing election fraud and intimidation is varied and complex and yet may nonetheless be insufficient or subject to too many limitations to be as effective as it might be.
- Deceptive practices, e.g. targeted flyers and phone calls providing misinformation, were a major problem in 2004.
- Voter intimidation continues to be focused on minority communities, although the American Center for Voting Rights uniquely alleges it is focused on Republicans.

### **Recommendations**

The consultants recommend that subsequent EAC research include a follow up study of allegations made in reports, books and newspaper articles. They also suggest that the research should focus on filling the gap between the lack of reports based on methodical studies by social or political scientists and the numerous, but less scientific, reports published by advocacy groups.

### **INTERVIEWS**

The consultants jointly selected experts from the public and private sector for interviews. The consultants' analysis of their discussions with these members of the legal, election official, advocacy, and academic communities follows.

### **Common Themes**

- There is virtually universal agreement that absentee ballot fraud is the biggest problem, with vote buying and registration fraud coming in after that. The vote buying often comes in the form of payment for absentee ballots, although not always. Some absentee ballot fraud is part of an organized effort; some is by individuals, who sometimes are not even aware that what they are doing is illegal. Voter registration fraud seems to take the form of people signing up with false names. Registration fraud seems to be most common where people doing the registration were paid by the signature.
- There is widespread but not unanimous agreement that there is little polling place fraud, or at least much less than is claimed, including voter impersonation, "dead" voters, noncitizen voting and felon voters. Those few who believe it occurs often enough to be a concern say that it is impossible to show the extent to which it happens, but do point to instances in the press of such incidents. Most people believe that false registration forms have not resulted in polling place fraud,



although it may create the perception that vote fraud is possible. Those who believe there is more polling place fraud than reported/investigated/prosecuted believe that registration fraud does lead to fraudulent votes. Jason Torchinsky from the American Center for Voting Rights is the only interviewee who believes that polling place fraud is widespread and among the most significant problems in the system.

- Abuse of challenger laws and abusive challengers seem to be the biggest intimidation/suppression concerns, and many of those interviewed assert that the new identification requirements are the modern version of voter intimidation and suppression. However there is evidence of some continued outright intimidation and suppression, especially in some Native American communities. A number of people also raise the problem of poll workers engaging in harassment of minority voters. Other activities commonly raised were the issue of polling places being moved at the last moment, unequal distribution of voting machines, videotaping of voters at the polls, and targeted misinformation campaigns.
- Several people indicate that, for various reasons, DOJ is bringing fewer voter intimidation and suppression cases now, and has increased its focus on matters such as noncitizen voting, double voting, and felon voting. Interviews with DOJ personnel indicate that the Voting Section, Civil Rights Division, focuses on systemic patterns of malfeasance in this area. While the Election Crimes Branch, Public Integrity Section, continues to maintain an aggressive pursuit of systematic schemes to corrupt the electoral process (including voter suppression), it also has increased prosecutions of individual instances of felon, alien, and double voting.
- The problem of badly kept voter registration lists, with both ineligible voters remaining on the rolls and eligible voters being taken off, remains a common concern. A few people are also troubled by voters being on registration lists in two states. They said that there was no evidence that this had led to double voting, but it opens the door to the possibility. There is great hope that full implementation of the new requirements of HAVA – done well, a major caveat – will reduce this problem dramatically.

#### **Common Recommendations:**

- Many of those interviewed recommend better poll worker training as the best way to improve the process; a few also recommended longer voting times or voting on days other than election day (such as weekends) but fewer polling places so only the best poll workers would be employed.
- Many interviewed support stronger criminal laws and increased enforcement of existing laws with respect to both fraud and intimidation. Advocates from across the spectrum expressed frustration with the failure of the Department of Justice to pursue complaints.

- With respect to DOJ's Voting Section, Civil Rights Division, John Tanner indicated that fewer cases are being brought because fewer are warranted – it has become increasingly difficult to know when allegations of intimidation and suppression are credible since it depends on one's definition of intimidation, and because both parties are doing it. Moreover prior enforcement of the laws has now changed the entire landscape – race based problems are rare now. Although challenges based on race and unequal implementation of identification rules would be actionable, Mr. Tanner was unaware of such situations actually occurring and his office has not pursued any such cases.
- Craig Donsanto of DOJ's Election Crimes Branch, Public Integrity Section, says that while the number of election fraud related complaints have not gone up since 2002, nor has the proportion of legitimate to illegitimate claims of fraud, the number of cases DOJ is investigating and the number of indictments his office is pursuing are both up dramatically. Since 2002, in addition to pursuing systematic election corruption schemes, DOJ has brought more cases against alien voters, felon voters and double voters than ever before. Mr. Donsanto would like more resources so that his agency can do more and would like to have laws that make it easier for the federal government to assume jurisdiction over voter fraud cases.
- A couple of interviewees recommend a new law that would make it easier to criminally prosecute people for intimidation even when there is not racial animus.
- Several advocate expanded monitoring of the polls, including some associated with the Department of Justice.
- Almost everyone hopes that administrators will maximize the potential of statewide voter registration databases to prevent fraud.
- Challenge laws, both with respect to pre-election day challenges and challengers at the polls, need to be revised by all states to ensure they are not used for purposes of wrongful disenfranchisement and harassment.
- Several people advocate passage of Senator Barak Obama's "deceptive practices" bill.
- There is a split on whether it would be helpful to have nonpartisan election officials – some indicated they thought even if elections officials are elected as non partisan officials, they will carry out their duties in biased ways nonetheless. However, most agree that elections officials pursuing partisan agendas are a problem that must be addressed in some fashion. Suggestions included moving election responsibilities out of the secretary of states' office; increasing transparency in the process; and enacting conflict of interest rules.

- A few recommend returning to allowing use of absentee ballots “for cause” only if it were politically feasible.
- A few recommend enacting a national identification card, including Pat Rogers, an attorney in New Mexico, and Jason Torchinsky from ACVR, who advocates the proposal in the Carter-Baker Commission Report.
- A couple of interviewees indicated the need for clear standards for the distribution of voting machines

## **NEWS ARTICLES**

Consultants conducted a Nexis search of related news articles published between January 1, 2001 and January 1, 2006. A systematic, numerical analysis of the data collected during this review is currently being prepared. What follows is an overview of these articles provided by the consultants.

### **Absentee Ballots**

According to press reports, absentee ballots are abused in a variety of ways:

- Campaign workers, candidates and others coerce the voting choices of vulnerable populations, usually elderly voters.
- Workers for groups and individuals have attempted to vote absentee in the names of the deceased.
- Workers for groups, campaign workers and individuals have attempted to forge the names of other voters on absentee ballot requests and absentee ballots and thus vote multiple times.

It is unclear how often actual convictions result from these activities (a handful of articles indicate convictions and guilty pleas), but this is an area in which there have been a substantial number of official investigations and actual charges filed, according to news reports where such information is available. A few of the allegations became part of civil court proceedings contesting the outcome of the election.

While absentee fraud allegations turn up throughout the country, a few states have had several such cases. Especially of note are Indiana, New Jersey, South Dakota, and most particularly, Texas. Interestingly, there were no articles regarding Oregon, where the entire system is vote by mail.

## **Voter Registration Fraud**

According to press reports, the following types of allegations of voter registration fraud are most common:

- Registering in the name of dead people;
- Fake names and other information on voter registration forms;
- Illegitimate addresses used on voter registration forms;
- Voters being tricked into registering for a particular party under false pretenses; and
- Destruction of voter registration forms depending on the party the voter registered with.

There was only one self evident instance of a noncitizen registering to vote. Many of the instances reported included official investigations and charges filed, but few actual convictions, at least from the news reporting. There have been multiple reports of registration fraud in California, Colorado, Florida, Missouri, New York, North Carolina, Ohio, South Dakota, and Wisconsin.

## **Voter Intimidation and Suppression**

This is the area which had the most articles, in part because there were so many allegations of intimidation and suppression during the 2004 election. Most of these remained allegations and no criminal investigation or prosecution ensued. Some of the cases did end up in civil litigation.

This is not to say that these alleged activities were confined to 2004 – there were several allegations made during every year studied. Most notable were the high number of allegations of voter intimidation and harassment reported during the 2003 Philadelphia mayoral race.

A very high number of the articles were about the issue of challenges to voters' registration status and challengers at the polling places. There were many allegations that planned challenge activities were targeted at minority communities. Some of the challenges were concentrated in immigrant communities.

However, the tactics alleged varied greatly. The types of activities discussed also include the following:

- Photographing or videotaping voters coming out of polling places;
- Improper demands for identification;

- Poll watchers harassing voters;
- Poll workers being hostile to or aggressively challenging voters;
- Disproportionate police presence;
- Poll watchers wearing clothes with messages that seemed intended to intimidate; and
- Insufficient voting machines and unmanageably long lines.

Although the incidents reported on occurred everywhere, not surprisingly, many came from “battleground” states. There were several such reports out of Florida, Ohio, and Pennsylvania.

### **“Dead Voters and Multiple Voting”**

There were a high number of articles about people voting in the names of the dead and voting more than once. Many of these articles were marked by allegations of big numbers of people committing these frauds, and relatively few of these allegations turning out to be accurate according to investigations by the newspapers themselves, elections officials, and criminal investigators. Often the problem turned out to be a result of administrative error, poll workers mis-marking voter lists, a flawed registration list and/or errors made in the attempt to match names of voters on the list with the names of the people who voted. In a good number of cases, there were allegations that charges of double voting by political leaders were an effort to scare people away from the voting process.

Nonetheless there were a few cases of people actually being charged and/or convicted for these kinds of activities. Most of the cases involved a person voting both by absentee ballot and in person. A few instances involved people voting both during early voting and on Election Day, which calls into question the proper marking and maintenance of the voting lists. In many instances, the person charged claimed not to have voted twice on purpose. A very small handful of cases involved a voter voting in more than one county and there was one substantiated case involving a person voting in more than one state. Other instances in which such efforts were alleged were disproved by officials.

In the case of voting in the name of a dead person, the problem lay in the voter registration list not being properly maintained, i.e. the person was still on the registration list as eligible to vote, and a person took criminal advantage of that. In total, the San Francisco Chronicle found five such cases in March 2004; the AP cited a newspaper analysis of five such persons in an Indiana primary in May 2004; and a senate committee found two people to have voted in the names of the dead in 2005.

As usual, there were a disproportionate number of such articles coming out of Florida. Notably, there were three articles out of Oregon, which has one hundred percent vote-by-mail.

### **Vote Buying**

There were a surprising number of articles about vote buying cases. A few of these instances involved long-time investigations concentrated in three states (Illinois, Kentucky, and West Virginia). There were more official investigations, indictments and convictions/pleas in this area.

### **Deceptive Practices**

In 2004 there were numerous reports of intentional disinformation about voting eligibility and the voting process meant to confuse voters about their rights and when and where to vote. Misinformation came in the form of flyers, phone calls, letters, and even people going door to door. Many of the efforts were reportedly targeted at minority communities. A disproportionate number of them came from key battleground states, particularly Florida, Ohio, and Pennsylvania. From the news reports found, only one of these instances was officially investigated, the case in Oregon involving the destruction of completed voter registration applications. There were no reports of prosecutions or any other legal proceeding.

### **Non-citizen Voting**

There were surprisingly few articles regarding noncitizen registration and voting – just seven all together, in seven different states across the country. They were also evenly split between allegations of noncitizens registering and noncitizens voting. In one case, charges were filed against ten individuals. In another case, a judge in a civil suit found there was illegal noncitizen voting. Three instances prompted official investigations. Two cases, from this Nexis search, remained just allegations of noncitizen voting.

### **Felon Voting**

Although there were only thirteen cases of felon voting, some of them involved large numbers of voters. Most notably, of course, are the cases that came to light in the Washington gubernatorial election contest (see Washington summary) and in Wisconsin (see Wisconsin summary). In several states, the main problem was the large number of ineligible felons that remained on the voting list.

### **Election Official Fraud**

In most of the cases in which fraud by elections officials is suspected or alleged, it is difficult to determine whether it is incompetence or a crime. There are several cases of ballots gone missing, ballots unaccounted for and ballots ending up in a worker's possession. In two cases workers were said to have changed peoples' votes. The one

instance in which widespread ballot box stuffing by elections workers was alleged was in Washington State. The judge in the civil trial of that election contest did not find that elections workers had committed fraud. Four of the cases are from Texas.

### **Recommendation**

The consultants recommend that subsequent EAC research should include a Nexis search that specifically attempts to follow up on the cases for which no resolution is evident from this particular initial search.

## **CASE LAW RESEARCH**

After reviewing over 40,000 cases from 2000 to the present, the majority of which came from appeals courts, the consultants found comparatively few applicable to this study. Of those that were applicable, the consultants found that no apparent thematic pattern emerges. However, it appears to them that the greatest areas of fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility.

### **Recommendation**

Because so few cases provided a picture of these current problems, consultants suggest that subsequent EAC research include a review of state trial-level decisions.

## **PROJECT WORKING GROUP**

Consultants and EAC worked together to select members for the Voting Fraud-Voter Intimidation Working Group that included election officials and representatives of advocacy groups and the legal community who have an interest and expertise in the subject matter. (See Attachment A for a list of members.) The working group is scheduled to convene at EAC offices on May 18, 2006 to consider the results of the preliminary research and to offer ideas for future EAC activities concerning this subject.

## **FINAL REPORT**

After convening the project working group, the consultants will draft a final report summarizing the results of their research and the working group deliberations. This report will include recommendations for future EAC research related to this subject matter. The draft report will be reviewed by EAC and, after obtaining any clarifications or corrections deemed necessary, will be made available to the EAC Standards Board and EAC Board of Advisors for review and comment. Following this, a final report will be prepared.

**Attachment A**

**Voting Fraud-Voter Intimidation Project Working Group**

**The Honorable Todd Rokita**

Indiana Secretary of State

Member, EAC Standards Board and the Executive Board of the Standards Board

**Kathy Rogers**

Georgia Director of Elections, Office of the Secretary of State

Member, EAC Standards Board

**J.R. Perez**

Guadalupe County Elections Administrator, TX

**Barbara Arnwine**

Executive Director, Lawyers Committee for Civil Rights Under Law

Leader of Election Protection Coalition

*(To be represented at May 18, 2006 meeting by Jon M. Greenbaum, Director of the Voting Rights Project for the Lawyers Committee for Civil Rights Under Law)*

**Robert Bauer**

Chair of the Political Law Practice at the law firm of Perkins Coie, DC

National Counsel for Voter Protection, Democratic National Committee

**Benjamin L. Ginsberg**

Partner, Patton Boggs LLP

Counsel to national Republican campaign committees and Republican candidates

**Mark (Thor) Hearne II**

Partner-Member, Lathrop & Gage, St Louis, MO

National Counsel to the American Center for Voting Rights

**Barry Weinberg**

Former Deputy Chief and Acting Chief, Voting Section, Civil Rights Division, U.S.

Department of Justice

*EAC Invited Technical Advisor:*

**Craig Donsanto**

Director, Election Crimes Branch, U.S. Department of Justice



**Margaret Sims /EAC/GOV**  
09/27/2006 12:18 PM

To pdegregorio@eac.gov  
cc  
bcc Juliet E. Hodgkins/EAC/GOV  
Subject Last Submission from Vote Fraud-Voter Intimidation  
Consultants

Dear Mr. Chairman:

The last submission from the Vote Fraud-Voter Intimidation Study consultants is dated August 8. At this time, EAC staff are reviewing all items submitted for the report to the Commission with an eye toward the best way of presenting the information to the Commissioners for their consideration. There has been some delay in this staff review process, for which I take full responsibility.

Peggy Sims  
Election Research Specialist

011341

Attorney-Client  
Privilege

Deliberative Process  
Privilege


Margaret Sims/EAC/GOV  
09/25/2006 03:39 PM

To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
bcc  
Subject Fw: Definition of Voting Fraud and Voter Intimidation

I think this is the communication to which you referred this afternoon. --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 09/25/2006 03:39 PM ---

Gavin S. Gilmour/EAC/GOV  
11/30/2005 10:19 AM

To Margaret Sims/EAC/GOV@EAC  
cc jthompson@eac.gov  
Subject Re: Definition of Voting Fraud and Voter Intimidation 

Peggy,

Per our discussion, I have some initial concerns regarding the definitions that have been proposed.

1. Fraud is a legal term of art. Fraud is an intentional act or omission (i.e. actual fraud or constructive fraud) of misrepresentation or deceit. There is no such thing as defacto fraud or quasi fraud. Fraud must be intentional.... negligence alone is not fraud.

The general definition of voter fraud must concise and universally applicable (this in the challenging part). After this definition is created and intellectually tested, one can then create examples and explanations. These would 1) apply the definition to the entire election process (from beginning to end) and (2) apply it to action by voters, 3rd parties and election officials. Through this process a determination may be made regarding whether three definitions are needed or just one.

2. The document has no definition of voter intimidation. What is voter intimidation and how does it differ from voter fraud? I assume this would also be an intentional act.

3. Definitions need to be concise and tight. Such definitions need to be able to be broken down into elements. Each of these elements must have clear, applicable and enforceable meaning. This can be a challenge. For example use of the term "any illegal act" is unclear, begs the question and suggests that fraud only occurs in the course of committing a related crime.

These are just my initial thoughts.

GG  
Gavin S. Gilmour  
Associate General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
Margaret Sims/EAC/GOV

Margaret Sims/EAC/GOV

011342

**Deliberative Process  
Privilege**

11/30/2005 09:28 AM

To jthompson@eac.gov, Gavin S. Gilmour/EAC/GOV@EAC  
cc

Subject Definition of Voting Fraud and Voter Intimidation

Attached discusses the definitions that Job and Tova would like to use. I have already taken issue with the exclusion of all voter registration shenanigans and the inclusion of administrative mistakes. Would be pleased to have your feedback and, if possible, your assistance for 15 minutes of a teleconference today (3:30 PM to 3:45 PM). — Peggy



combined defining Fraud 11-18-05.doc

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## **Deliberative Process Privilege**

“Fraud” should be defined as any illegal act that has a clear and direct distorting impact on the election results. It includes adding illegal votes and tampering with vote counts as well as actions such as voter intimidation and deceptive practices that serve to subtract legal votes. Illegally keeping certain voters from voting has the same distorting effect on election outcomes as ineligible voters casting ballots or some form of modern ballot box stuffing. Fraud may involve wrongdoing by individual voters, election workers or organized groups such as campaigns or political parties.

Vote fraud usually breaks down into three categories---intentional fraud, de facto fraud, and quasi-fraud. Research and investigation of fraud should focus on those forms of fraud that are known to have had true impacts on election outcomes.

"Intentional fraud" includes acts that are intentionally planned. Such forms of fraud include the following:

- Absentee/mail ballot fraud, e.g. coercing another voter's choice, use of a false or other voter's name and signature, destruction or misappropriation of an absentee or mail-in ballot
- Ex-felons knowingly and willingly casting illegal ballots
- Knowingly and willingly misleading an ex-felon about his or her right to vote
- Voting more than once
- Noncitizen voting
- Intimidating practices e.g. intimidating signs, inappropriate police presence, abusive/threatening treatment by poll workers or others that deter voters from voting
- Deceptive practices e.g. providing false information to voters about the voting process, such as when and/or where to vote, who is eligible to vote
- Fraud by election administrators in the handling or counting of ballots, misrepresentation of vote tallies
- Vote buying
- Addition or destruction of cast ballots by elections officials
- Intentional wrongful removal of eligible voters from voter registration lists
- Knowingly falsifying registration information pertinent to eligibility to cast a vote, e.g. residence, criminal status, etc.

The second type of fraud is de facto fraud. This occurs when the intent to commit fraud is lacking, but the party or parties' actions results in fraud nonetheless. De facto fraud more often is a result of a misapplication of election statutes or the application of a long established practice or tradition in a way that contradicts the intent of the statute. Examples of de facto fraud include the abusive use of challengers to voter registrations or to voters' eligibility at the polls and wrongful purging of voter lists.


The last form of fraud, "quasi-fraud," is the most difficult to classify as such because the correct law (case law or legislative act) is applied but the result is to deprive voters of their electoral rights. This type of fraud is also the most difficult to catch because it requires both legal electoral expertise and almost always occurs on the day of the election. One example of this is Arkansas supreme court case law making election

statutes mandatory before an election but discretionary after. The discretion is left up to the county board of election commissioners. These are not elected but are either the chairs of the two main political parties or a person elected by the county central committee should the chair decide not to serve. The result is that election statutes are never enforced after the election. It therefore permits past patterns of fraud to persist.

Two areas that are of major concern but do not come within the purview of fraud for the purposes of this type of research are registration forms in the name of another or fake person(s), which from the evidence do not usually result in illegal votes; and electronic vote machine tampering, for which there is as of now no definitive evidence has taken place in a U.S. election.

**Deliberative Process  
Privilege**

Margaret Sims /EAC/GOV  
07/11/2006 12:05 PM

To Juliet E. Thompson-Hodgkins/EAC/GOV@EAC  
cc  
bcc  
Subject Re: Fraud and Intimidation Study 


I think it is this one. --- Peggy



EAC Boards VF-VI Status Report.doc

Juliet E. Thompson-Hodgkins/EAC/GOV

Juliet E.  
Thompson-Hodgkins/EAC/GOV  
07/11/2006 11:38 AM

To Margaret Sims/EAC/GOV@EAC  
cc  
Subject Re: Fraud and Intimidation Study 

Will you please send me a copy of the referenced report?

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
Margaret Sims/EAC/GOV

Margaret Sims /EAC/GOV  
07/11/2006 10:55 AM

To Juliet E. Thompson-Hodgkins/EAC/GOV@EAC  
cc "Tom Wilkey" <twilkey@eac.gov>  
Subject Re: Fraud and Intimidation Study

It sounds similar to the issues I had with the Donsanto interview. It was a classic example of the interviewers' interpreting what was said through their own biases.

It also is true that the original interview summaries failed to differentiate between the criminal definition of intimidation and the consultants use of the term.. The consultants have revised their definition to note that it goes beyond the legal definition, but we may need to repeat the statement where the DOJ interviews are referenced.

I have already brought the Donsanto matter to our contractors' attention. When they responded that they did not think they should redraft that section, I told them that the section will likely be edited. It appears that we will have to do the same with the reference to Tanner's interview.

Why don't we discuss this with Tanner (and Donsanto) after we have had a chance to review a

011346

consolidated draft of the final report? We can determine what clarifications or corrections are necessary at that time.

Peg

---

Sent from my BlackBerry Wireless Handheld  
Juliet E. Thompson-Hodgkins

**From:** Juliet E. Thompson-Hodgkins  
**Sent:** 07/11/2006 09:46 AM  
**To:** Margaret Sims  
**Subject:** Re: Fraud and Intimidation Study

His concerns are that there were inaccurate or false statements about DOJ on pages 5 and 6, that in his words demonstrated a lack of understanding of criminal law.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100  
Margaret Sims/EAC/GOV

Margaret Sims/EAC/GOV

07/11/2006 09:26 AM

To Juliet E. Thompson-Hodgkins/EAC/GOV@EAC

cc

Subject Re: Fraud and Intimidation Study

Perhaps he was looking at the report that was delivered to the EAC boards. Let's find out what his concerns are so that we can address them.

Peg

---

Sent from my BlackBerry Wireless Handheld  
Juliet E. Thompson-Hodgkins

**From:** Juliet E. Thompson-Hodgkins  
**Sent:** 07/10/2006 02:34 PM  
**To:** Margaret Sims  
**Subject:** Re: Fraud and Intimidation Study

Tanner said he got it from Cameron. And referred specifically to pp. 5 and 6. I don't remember that the summaries of interviews were laid out that way.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

011347

Margaret Sims/EAC/GOV

Margaret Sims/EAC/GOV

07/10/2006 02:29 PM

To Juliet E. Thompson-Hodgkins/EAC/GOV@EAC

cc

Subject Re: Fraud and Intimidation Study

I have not yet seen a draft final report. My best guess is that Tanner is concerned about the summary of his interview. I have already had discussions with our consultants about the description of the Donsanto interview, at which I was present. Wilkey knows that I won't let it go as is. I wasn't at the Tanner interview, but would be interested in hearing where he thinks the consultants went wrong.

It is possible that, due to my objections re the Donsanto interview, the consultants may have asked Tanner to review their description of his interview. I won't know for sure until I can contact them.

I gave you and Gavin a folder that included a summary of interviews, etc before the working group meeting. Also, the report delivered to the boards on this project is in the shared drawer under Research in Progress-Voting Fraud-Intimidation. That is everything I have at the moment.

Peg

---

Sent from my BlackBerry Wireless Handheld  
Juliet E. Thompson-Hodgkins

**From:** Juliet E. Thompson-Hodgkins  
**Sent:** 07/10/2006 10:55 AM  
**To:** Margaret Sims  
**Cc:** Thomas Wilkey  
**Subject:** Fraud and Intimidation Study

I received a call from John Tanner today who was upset with pages 5 and 6 of some draft paper that he had received regarding our Fraud and Intimidation Study. I am in a very uncomfortable situation in that I have not received a copy of this paper and the Office of General Counsel has not vetted this document and yet I am being questioned about why there are erroneous statements in this paper. Please provide me with a copy of this document and please explain to me how John Tanner got a copy of this document before I did.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
Washington, DC 20005  
(202) 566-3100

011348



**Deliberative Process  
Privilege**

Margaret Sims /EAC/GOV  
05/15/2006 03:51 PM

To pdegregorio@eac.gov, rmartinez@eac.gov,  
ddavidson@eac.gov, ghillman@eac.gov  
cc twilkey@eac.gov, jthompson@eac.gov, Gavin S.  
Gilmour/EAC/GOV@EAC, ecortes@eac.gov, Arnie J.  
Sherrill/EAC/GOV@EAC, Adam Ambrogi/EAC/GOV@EAC,  
bcc  
Subject Voting Fraud-Voter Intimidation Project Briefing

Dear Commissioners:

Attached is our consultants' analysis of the literature reviewed for the Voting Fraud-Voter Intimidation preliminary research project. It was not included in the information packets delivered to you on Friday, May 12, because we did not receive it until today. I thought you might be interested in having it. prior to tomorrow's briefing.

Peggy Sims  
Election Research Specialist



Literature-Report Review Summary.doc

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## Existing Research Analysis

There are many reports and books that describe anecdotes and draw broad conclusions from a large array of incidents. There is little research that is truly systematic or scientific. The most systematic look at fraud is the report written by Lori Minnite. The most systematic look at voter intimidation is the report by Laughlin McDonald. Books written about this subject seem to all have a political bias and a pre-existing agenda that makes them somewhat less valuable.

Researchers agree that measuring something like the incidence of fraud and intimidation in a scientifically legitimate way is extremely difficult from a methodological perspective and would require resources beyond the means of most social and political scientists. As a result, there is much more written on this topic by advocacy groups than social scientists. It is hoped that this gap will be filled in the “second phase” of this EAC project.

Moreover, reports and books make allegations but, perhaps by their nature, have little follow up. As a result, it is difficult to know when something has remained in the stage of being an allegation and gone no further, or progressed to the point of being investigated or prosecuted or in any other way proven to be valid by an independent, neutral entity. This is true, for example, with respect to allegations of voter intimidation by civil rights organizations, and, with respect to fraud, John Fund’s frequently cited book. Again, this is something that it is hoped will be addressed in the “second phase” of this EAC project by doing follow up research on allegations made in reports, books and newspaper articles.

Other items of note:

- There is as much evidence, and as much concern, about structural forms of disenfranchisement as about intentional abuse of the system. These include felon disenfranchisement, poor maintenance of databases and identification requirements.
- There is tremendous disagreement about the extent to which polling place fraud, e.g. double voting, intentional felon voting, noncitizen voting, is a serious problem. On balance, more researchers find it to be less of a problem than is commonly described in the political debate, but some reports say it is a major problem, albeit hard to identify.
- There is substantial concern across the board about absentee balloting and the opportunity it presents for fraud.
- Federal law governing election fraud and intimidation is varied and complex and yet may nonetheless be insufficient or subject to too many limitations to be as effective as it might be.

- Deceptive practices, e.g. targeted flyers and phone calls providing misinformation, were a major problem in 2004.
- Voter intimidation continues to be focused on minority communities, although the American Center for Voting Rights uniquely alleges it is focused on Republicans.

Margaret Sims /EAC/GOV  
05/04/2006 02:07 PM

To pdegregorio@eac.gov, rmartinez@eac.gov,  
ddavidson@eac.gov, ghillman@eac.gov  
cc twilkey@eac.gov, jthompson@eac.gov, Gavin S.  
Gilmour/EAC/GOV@EAC, Amie J. Sherrill/EAC/GOV@EAC,  
Adam Ambrogi/EAC/GOV@EAC, Elieen L.  
bcc  
Subject Voting Fraud-Voter Intimidation Working Group Meeting

Dear Commissioners:

This is to let you know that the Working Group for our Voting Fraud and Voter Intimidation preliminary research project is scheduled to meet in EAC's large conference room the afternoon of Thursday, May 18. I will provide more information about this meeting to you later.

Peggy Sims  
Election Research Specialist

011352

Margaret Sims /EAC/GOV  
01/19/2006 03:26 PM

To jthompson@eac.gov, Gavin S. Gilmour/EAC/GOV@EAC  
cc Karen Lynn-Dyson/EAC/GOV@EAC  
bcc  
Subject Extension Needed for Voting Fraud/Voter Intimidation Project  
Consultants

The estimated additional hours needed to bring the Voting Fraud/Voter Intimidation Project to a logical stopping point (without requiring a draft statement of work for any future RFPs on the topic) are:

**Expert Interviews:**

3 hours of scheduling

17 hours conducting the interviews

15 hours summarizing and analyzing the interviews

Subtotal: 35 hours

Nexis research, organization of research, summary of research (Tova): 180 hours

Lexis research, organization of research, summary of research (Job): 180 hours

Subtotal: 360 hours

Working Group preparation and meeting time: 20 hours

Final Report: 45 hours

Grand Total: 460

The sooner we find out if the Commissioners will accept this extension, the better. If the extension (or new contract for 3 additional months) is not accepted, we have to figure out what can be done in the limited time remaining. --- Peggy

011353

**Deliberative Process  
Privilege**

Margaret Sims/EAC/GOV  
11/30/2005 09:28 AM

To jthompson@eac.gov, Gavin S. Gilmour/EAC/GOV@EAC  
cc  
bcc  
Subject Definition of Voting Fraud and Voter Intimidation

Attached discusses the definitions that Job and Tova would like to use. I have already taken issue with the exclusion of all voter registration shenanigans and the inclusion of administrative mistakes. Would be pleased to have your feedback and, if possible, your assistance for 15 minutes of a teleconference today (3:30 PM to 3:45 PM). --- Peggy



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Vote fraud usually breaks down into three categories---intentional fraud, de facto fraud, and quasi-fraud. Research and investigation of fraud should focus on those forms of fraud that are known to have had true impacts on election outcomes.

"Intentional fraud" includes acts that are intentionally planned. Such forms of fraud include the following:

- Absentee/mail ballot fraud, e.g. coercing another voter's choice, use of a false or other voter's name and signature, destruction or misappropriation of an absentee or mail-in ballot
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- Knowingly and willingly misleading an ex-felon about his or her right to vote
- Voting more than once
- Noncitizen voting
- Intimidating practices e.g. intimidating signs, inappropriate police presence, abusive/threatening treatment by poll workers or others that deter voters from voting
- Deceptive practices e.g. providing false information to voters about the voting process, such as when and/or where to vote, who is eligible to vote
- Fraud by election administrators in the handling or counting of ballots, misrepresentation of vote tallies
- Vote buying
- Addition or destruction of cast ballots by elections officials
- Intentional wrongful removal of eligible voters from voter registration lists
- Knowingly falsifying registration information pertinent to eligibility to cast a vote, e.g. residence, criminal status, etc.

The second type of fraud is de facto fraud. This occurs when the intent to commit fraud is lacking, but the party or parties' actions results in fraud nonetheless. De facto fraud more often is a result of a misapplication of election statutes or the application of a long established practice or tradition in a way that contradicts the intent of the statute. Examples of de facto fraud include the abusive use of challengers to voter registrations or to voters' eligibility at the polls and wrongful purging of voter lists.

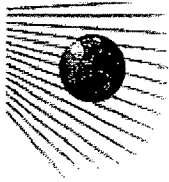
The last form of fraud, "quasi-fraud," is the most difficult to classify as such because the correct law (case law or legislative act) is applied but the result is to deprive voters of their electoral rights. This type of fraud is also the most difficult to catch because it requires both legal electoral expertise and almost always occurs on the day of the election. One example of this is Arkansas supreme court case law making election

statutes mandatory before an election but discretionary after. The discretion is left up to the county board of election commissioners. These are not elected but are either the chairs of the two main political parties or a person elected by the county central committee should the chair decide not to serve. The result is that election statutes are never enforced after the election. It therefore permits past patterns of fraud to persist.

Two areas that are of major concern but do not come within the purview of fraud for the purposes of this type of research are registration forms in the name of another or fake person(s), which from the evidence do not usually result in illegal votes; and electronic vote machine tampering, for which there is as of now no definitive evidence has taken place in a U.S. election.



**Deliberative Process  
Privilege**



Paul DeGregorio /EAC/GOV  
11/17/2005 10:18 AM

To Juliet E. Thompson/EAC/GOV  
cc  
bcc  
Subject Fw: RESPONSE REQUESTED-Working Group for Voting  
Fraud and Voter Intimidation Project

Fyi.  
Any recommendations?

-----  
Sent from my BlackBerry Wireless Handheld

----- Original Message -----

**From:** Margaret Sims  
**Sent:** 11/16/2005 01:12 PM  
**To:** Gracia Hillman; Paul DeGregorio; Raymundo Martinez;  
donetta.davidson@sos.state.co.us  
**Cc:** Sheila Banks; Amie Sherrill; Adam Ambrogi; Elieen Collver; Gavin Gilmour  
**Subject:** RESPONSE REQUESTED-Working Group for Voting Fraud and Voter  
Intimidation Project

Dear Commissioners:

The consultants' contracts for EAC's voting fraud and voter intimidation project require Tova Wang and Job Serebrov to work in consultation with EAC staff and the Commissioners "to identify a working group of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation". The contracts do not specify the number of working group members but, as EAC has to pay for the group's travel and we want the size of the group to be manageable, I recommend that we limit the number to 6 or 8. Please let me know if you think that this limit is too conservative .

Attached for your review and comment are two lists of potential working group members for this project. One list was submitted by Job, the other by Tova. Tova and Job have provided brief summaries of each candidate's relevant experience and have placed asterisks next to the names of the individuals whom they particularly recommend. I can provide more extensive biographies of these individuals, if you need them. If EAC agrees that the recommended working group members are acceptable, an equal number may be selected from each list in order to maintain a balanced perspective.

Absent from the attached lists is the name of a representative from the U.S. Department of Justice's Election Crimes Branch. At this time, I am working through the DOJ bureaucracy to determine to what degree Craig Donsanto will be permitted to participate. If he cannot be named as a working group member, we may still be able to use him as a resource.

Please provide your feedback to me no later than Monday , November 28. I am available to meet with you if you would like to discuss this matter further.

Peggy Sims  
Research Specialist

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Possible Working Group Members -Serebrov.doc



Possible Working Group Members- Wang.doc

**Possible Working Group Members - Serebrov**

I recommend the first four with an \*

\***Mark (Thor) Hearne II**-Counsel to Republican National Committee; National Counsel to American Center for Voting Rights; National election counsel to Bush-Cheney, '04; Testified before U.S. House Administration Committee hearings into conduct of Ohio presidential election; Academic Advisor to Commission on Federal Election Reform (Baker-Carter Commission).

\***Todd Rokita**-Secretary of State, Indiana; Secretary Rokita strives to reform Indiana's election practices to ensure Indiana's elections are as fair, accurate and accessible as possible; Secretary Rokita serves on the nine-member Executive Board of the Election Assistance Commission Standards Board, charged by federal law to address election reform issues.

\***Patrick J. Rogers**-Partner/Shareholder, Modrall, Sperling, Roehl, Harris and Sisk, P.A., Albuquerque, New Mexico; 1991-2003 General Counsel to the New Mexico Republican Party; Election cases: *The Coalition to Expose Ballot Deception, et al v. Judy N. Chavez, et al*; Second Judicial District Court of Bernalillo County, New Mexico (2005); represented plaintiffs challenging petition procedures; *Miguel Gomez v. Ken Sanchez and Judy Chaves*; Second Judicial District Court of Bernalillo County, New Mexico (2005); residency challenge; *Moises Griego, et al v. Rebecca Vigil-Giron v. Ralph Nader and Peter Miguel Camejo*, Supreme Court for the State of New Mexico (2004); represented Ralph Nader and Peter Camejo, ballot access issues; *Larry Larrañaga, et al v. Mary E. Herrera and Rebecca Vigil-Giron*, Supreme Court of New Mexico (2004); voter identification and fraudulent registration issues; *Decker, et al v. Kunko, et al*; District Court of Chaves County, New Mexico (2004); voter identification and fraudulent registration issues; *Kunko, et al v. Decker, et al*; Supreme Court of New Mexico (2004); voter identification and fraudulent registration issues; *In the Matter of the Security of Ballots Cast in Bernalillo County in the 2000 General Election*; Second Judicial District Court of Bernalillo County, New Mexico (2000); voting and counting irregularities and fraud.

\***David A. Norcross**- Partner, Blank Rome LLP, Trenton NJ, Washington D.C.; Chairman, New Jersey Republican State Committee, 1977 – 1981; General Counsel, Republican National Committee, 1993 – 1997; General Counsel, International Republican Institute; Counsel, The Center for Democracy; Vice Chairman, Commission on Presidential Debates; Executive Director, New Jersey Election Law Enforcement Commission

**Benjamin L. Ginsberg**-Served as national counsel to the Bush-Cheney presidential campaign; He played a central role in the 2000 Florida recount; He also represents the campaigns and leadership PACs of numerous members of the Senate and House, as well as the Republican National Committee, National Republican Senatorial Committee and

National Republican Congressional Committee; His expertise is more in campaign finance.

**Cleta Mitchell**-Partner in the Washington, D.C. office of Foley & Lardner LLP; She advises corporations, nonprofit organizations, candidates, campaigns, and individuals on state and federal election and campaign finance law, and compliance issues related to lobbying, ethics and financial disclosure; Ms. Mitchell practices before the Federal Election Commission and similar federal and state enforcement agencies; Her expertise is more in campaign finance law.

**Mark Braden**-Of counsel at Baker & Hostetler; He concentrates his work principally on election law and governmental affairs, including work with Congress, the Federal Election Commission, state campaign finance agencies, public integrity issues, political broadcast regulation, contests, recounts, the Voting Rights Act, initiatives, referendums and redistricting; His expertise is mainly outside of the voter fraud area.

**Deliberative Process  
Privilege**

To: Peggy Sims  
From: Tova Wang  
Re: Working Group Recommendations  
Date: November 12, 2005

\*Wendy R. Weiser, Associate Counsel in the Democracy Program at the Brennan Center for Justice at NYU School of Law and an expert in federal and constitutional law, has done a great deal of research, writing, speaking, and litigating on voting rights and election law issues. As part of the Brennan Center's wide ranging activities in the area of democracy, Ms. Weiser is currently overseeing an analysis and investigation of recent allegations of voter fraud throughout the country.

\*Barbara Arnwine is Executive Director of the Lawyers Committee for Civil Rights Under Law, an organization that for four decades has been at the forefront of the legal struggle to secure racial justice and equal access to the electoral process for all voters. Notably, Ms. Arnwine and the organization have led the Election Protection program for the last several years, a nationwide grassroots education and legal effort deploying thousands of volunteers and using a nationally recognized voter hotline to protect voters' rights on election day.

\*Daniel Tokaji, professor and associate director of the Election Law Center at the Moritz College of Law at the Ohio State University, is one of the nation's foremost experts in election law and reform and ensuring equality in the voting system. Professor Tokaji frequently writes and speaks on democracy related issues at academic and practitioner conferences, on such issues as voting technology, fraud, registration, and identification requirements, as well as the interplay between the election administration practices and voting rights laws.

Donna Brazile is Chair of the Democratic National Committee's Voting Rights Institute, the Democratic Party's major initiative to promote and protect the right to vote created in response to the irregularities of the 2000 election, and former Campaign Manager for Gore-Lieberman 2000 (the first African American to lead a major presidential campaign.) Brazile is a weekly contributor and political commentator on CNN's Inside Politics and American Morning, a columnist for Roll Call Newspaper and a contributing writer for Ms. Magazine.

Wade Henderson is the Executive Director of the Leadership Conference on Civil Rights (LCCR) and Counsel to the Leadership Conference on Civil Rights Education Fund (LCCREF), an organization at the forefront of defending voting rights for the last fifty years. Prior to his role with the Leadership Conference, Mr. Henderson was the Washington Bureau Director of the National Association for the Advancement of Colored People (NAACP)

Robert Bauer is the Chair of the Political Law Practice at the law firm of Perkins Coie, National Counsel for Voter Protection, Democratic National Committee, Counsel to the Democratic Senatorial and Congressional Campaign Committees and Co-Author, Report

of Counsel to the Senate Rules and Administration Committee in the Matter of the United States Senate Seat from Louisiana in the 105<sup>th</sup> Congress of the United States, (March 27, 1997). He is the author of *United States Federal Election Law*, and one of the foremost attorneys in the country in the area of federal/state campaign finance and election laws.

Laughlin McDonald has been the executive director of the Southern Regional Office of the ACLU since 1972 and as the Director of the ACLU Voting Rights Project, McDonald has played a leading role eradicating discriminatory election practices and protecting the gains in political participation won by racial minorities since passage of the 1965 federal Voting Rights Act. During the past two decades, McDonald has broken new ground by expanding ACLU voting rights cases to include representation of Native Americans in various western states, and written innumerable publications on voting rights issues.

Joseph E. Sandler is a member of the firm of Sandler, Reiff & Young, P.C., in Washington, D.C., concentrating in campaign finance and election law matters, and general counsel to the Democratic National Committee. As an attorney he has handled campaign finance and election law matters for Democratic national and state party organizations, Members of Congress, candidates and campaigns. He served as general co-counsel of the Association of State Democratic Chairs, as general counsel for the Democratic Governors' Association and as counsel to several state Democratic parties.

Cathy Cox is serving her second term as Georgia's Secretary of State, having first been elected in 1998. In 2002 she earned re-election with over 61 percent of the vote, winning 146 out of 159 counties. Because of Secretary Cox's efforts Georgia has become a national leader in election reform. Her initiative made Georgia the first state in America to deploy a modern, uniform electronic voting system in every county



Gracia Hillman/EAC/GOV  
08/19/2005 12:06 PM

To Thomas R. Wilkey/EAC/GOV@EAC  
cc "Paul DeGregorio" <pdegregorio@eac.gov>, "Ray Martinez"  
<rmartinez@eac.gov>, "Karen Lynn-Dyson"  
<klynn-dyson@eac.gov>, Juliet E.  
bcc

Subject Fw: Eagleton

Tom: Please put this on the agenda for discussion when we get together on Friday in Denver.

---

Sent from my BlackBerry Wireless Handheld  
Paul DeGregorio

**From:** Paul DeGregorio  
**Sent:** 08/19/2005 11:06 AM  
**To:** Gracia Hillman; Raymundo Martinez; Donetta Davidson;  
twilkey@nycap.rr.com; Juliet Thompson; Karen Lynn-Dyson; Carol Paquette  
**Subject:** Eagleton

In his note regarding the Eagleton contract, Hans has raised some of the same concerns I raised from the beginning of any discussions I had regarding this contract with our staff, and at our first formal meeting with Eagleton. In reviewing their work product from time to time, I continue to have concerns about a lack of balanced input and have repeatedly voiced them with staff and with Eagleton. I did this when the initial peer review group was proposed and again during their presentation at our meeting in Pasadena (the outreach slide in their public presentation showed outreach to seven groups, of which only one could be considered conservative-leaning). Now, as I have just had the opportunity to read their July progress report, it appears that Eagleton seems to be going into a larger analysis of the voter fraud issue than was authorized in the contract. My suspicion is that Dan Tokaji is injecting his views into this to dismiss or diminish the concerns some people may have about voter fraud. I could be wrong, but his previous writings lead me to believe otherwise.

I only found one mention of voter fraud in the contract with Eagleton. It is in Section 3.5 regarding provisional voting, where it discusses "minimizing opportunity for voter fraud." Yet, on page 4 of the July progress report from Eagleton, in describing their work plan for the next month it states: "we will expand upon vote fraud research and examine further the relationship between instances of vote fraud and ensuing election reforms." This clearly seems to be going beyond the mandate we gave them as I thought they were going to be looking at voter fraud relating to provisional voting (as the contract calls for), not voter fraud as it relates to election reforms. While voter fraud was never mentioned in the contract regarding the voter ID issue, page 5 of their July report indicates that their narratives "will include an appraisal of the prevalence and nature of vote fraud." In addition to this, page 6 describes a look into the "relationship between voter ID regime and vote fraud."

Voter fraud is clearly an issue that is perceived differently from the Right and from the Left. I have struggled with determining what a clear definition of voter fraud is myself, and therefore want to obtain various perspectives and good analysis on this issue before I formulate a solid conclusion in my mind. It has been my understanding all along that the whole voter fraud/voter intimidation issue is going to be studied by the EAC using a balanced group of consultants--not Eagleton and Moritz, who are likely to focus on just on the number of prosecutions of voter fraud, rather than the complaints made or the fact that many election officials are frustrated that some prosecutors don't take their complaints about voter fraud seriously. I am not convinced at this point that we will get a balanced and objective study from Eagleton/Moritz on voter fraud. I am puzzled on why they seem to be expending a significant portion of their time on this and would want to know if we somehow authorized them to do more research into the voter fraud issue.

On page 7 of their July report Eagleton indicates that communications with the EAC on the Peer Review

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Group "were not clear or timely." I would like to know what this refers to. Also, I may have missed it, but I do not recall seeing the final list of who is serving as the Peer Review group.

The August 15th copy of the July report that I received from Karen did not include the attachment of the financial report of expenses incurred. I would like to see that attachment.

Outside of our NIST work, this contract represents our largest single outside expenditure of our operational funds. Any single expenditure of \$500,000+ needs to be closely monitored. I, for one, am not going to sign off on any report that appears to have been written from a biased viewpoint, especially one that doesn't appear to be interested in hearing from conservative organizations or right-leaning researchers, or seems to minimize any input from them. I've already had questions from congressional staff and others on why we picked Eagleton and Moritz, as they are perceived by some as biased against Republicans. I assured the critics that we have insisted all along on an objective study from Eagleton. An unbalanced or biased study from them will not only hurt my credibility, but also that of the EAC. I'm not suggesting that we stop their work, but I do want Tom and Julie to inform them in no uncertain terms that we will not accept a report that does not seriously consider all viewpoints on provisional voting and the voter ID issue, and that any study or interpretations they present to us reflect a diversity of opinions on these subjects. We also need for staff to determine whether their considerable work into the voter fraud area is authorized in the contract. We should not be paying for and receiving work we did not authorize.

The contract clearly calls for "alternative approaches" on voter ID requirements and "alternatives" on provisional voting. I agreed to support this contract to Eagleton because I was assured that we would receive a variety of approaches from their work, and not just those from a liberal perspective.

**Paul DeGregorio**  
Vice Chairman  
US Election Assistance Commission  
1225 New York Ave, NW  
Suite 1100  
Washington, DC 20005  
1-866-747-1471 toll-free  
202-566-3100  
202-566-3127 (FAX)  
pdegregorio@eac.gov  
www.eac.gov

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Karen Lynn-Dyson/EAC/GOV

08/15/2005 04:43 PM

To Thomas R. Wilkey/EAC/GOV@EAC, Adam  
Ambrogio/EAC/GOV@EAC, Juliet E.  
Thompson/EAC/GOV@EAC  
cc Raymundo Martinez/EAC/GOV@EAC

bcc

Subject Fw: Eagleton Institute of Politics - July 2005 - Monthly  
Progress Report

FYI-

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

— Forwarded by Karen Lynn-Dyson/EAC/GOV on 08/14/2005 04:42 PM —



"Lauren Vincelli"

08/15/2005 03:01 PM

Please respond to

To klynndyson@eac.gov

cc "Tom O'Neill"

Subject Eagleton Institute of Politics - July 2005 - Monthly Progress  
Report

Ms. Dyson,

Attached please find the July 2005 Progress Report for the project entitled, "Contract to Provide Research Assistance to the EAC for the Development of Voluntary Guidance on Provisional Voting and Voter Identification Procedures." If you have any questions regarding any part of this document please contact Tom O'Neill at: [redacted] or [redacted]

The financial reporting for this project is performed by the Division of Grant and Contract Accounting at Rutgers University. A copy of this report was not made available to us in an electronic format. Hard copies of the Progress Report and Financial Report have been Fedex'ed to you this afternoon and should arrive to your attention tomorrow morning. Please let me know if you do not receive this package by tomorrow afternoon.

Thank you for your time, have a great evening.

Best,  
Lauren Vincelli

Lauren Vincelli  
Business Assistant, Eagleton Center for Public Interest Polling  
Eagleton Institute of Politics, Rutgers University  
Carriage House, 185 Ryders Lane

011365

New Brunswick, NJ 08901  
Phone: (732) 932-9384, ext. 237  
Fax: (732) 932-1551



ProgressReport\_JULY2005\_EagletonInst.pdf

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**EAGLETON INSTITUTE OF POLITICS**

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*Contract to Provide Research Assistance to The EAC  
For the Development of Voluntary Guidance on  
Provisional Voting and Voter Identification Procedures*

**MONTHLY PROGRESS REPORT  
JULY 2005**

**For**  
**UNITED STATES ELECTION ASSISTANCE COMMISSION**  
1225 New York Avenue N.W., Suite - 1100  
Washington, DC 20005

August 15, 2005

**Prepared by:**  
Eagleton Institute of Politics  
Rutgers, The State University of New Jersey  
191 Ryders Lane  
New Brunswick, NJ 08901-8557

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## OUTLINE

- Introduction
- Provisional Voting
  - Task 3.4
- Voter Identification Requirements
  - Task 3.10
  - Task 3.11
- Project Management
  - Task 3.1
- Financial Report

## INTRODUCTION

This report describes our progress from July 1 through July 31, 2005. It includes brief descriptions of key tasks; progress made; challenges encountered or anticipated; milestones reached; and projections for work to be completed in the coming month.

The effort this month continued to focus on research for the analysis and alternatives paper, including the compilation of Provisional Voting statutes, regulations, and litigation from the 50 states. We also prepared and delivered testimony at the EAC's regular monthly meeting in Pasadena on July 28.

The data collection, analysis, and compilation are all on schedule. Because of delays in agreeing on the composition of the Peer Review Group with EAC, however, the actual completion and submission of the analysis and alternatives paper to the EAC will most likely be delayed about a week beyond the target date in the work plan. We are scheduled to discuss the draft paper and guidance document prior to submission, with the EAC on September 6, and the final draft cannot be completed until several days after that date.

The document report is divided into 4 sections that cover: Provisional Voting, Voter Identification Requirements, Project Management, and the Financial Report. Each section references the specific tasks described in paragraph 3 of the contract.

Please direct any questions or comments about this report to Tom O'Neill at: tom\_oneill@verizon.net or (908) 794-1030.

## **PROVISIONAL VOTING**

Tasks 3.4 – 3.9 in our contract relate to provisional voting. Work on the first of these must be complete before proceeding to later tasks. Task 3.4 was completed this month.

**Task 3.4: Collect and analyze state legislation, administrative procedures, and court cases. Understand the disparities and similarities of how provisional voting was implemented around the country.**

### **LEGISLATION, REGULATIONS, AND LITIGATION**

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation. This information constitutes the compendium of legislation, administrative regulations, and case law called for under this task. It also will provide a base of understanding for the analysis of states' actual experience with provisional voting in 2004, for which the Eagleton team has lead responsibility.

**Description:** The Moritz team has created a 50-state chart to summarize information on provisional voting, compiled statutes, case law and administrative procedures regarding Provisional Voting.

**Progress:** The 50-state (plus District of Columbia) chart created to collect data on provisional voting is complete. We have collected the statutes for all states. State by state summaries of provisional voting have been written for 47 states and D.C. A memorandum summarizing provisional voting litigation is complete. The collection of the documents associated with the litigation is nearing completion.

**Challenges:** The variety in the form of provisional voting legislation from state to state makes creating a snap-shot view across states a challenge.

**Work Plan:** The remaining 3 state summaries of provisional voting will be completed by August 8. Analysis of all the information, data, and survey results concerning provisional voting data will be performed in August.

### **PREPARATION FOR AND EXPERIENCE WITH PROVISIONAL VOTING**

The Eagleton team has researched and compiled a narrative of each state's experience with provisional voting in 2004. At the end of July the survey of 400 local election officials was nearing its end, and – as of this writing – is now complete with an analysis and report in draft form. We will rely on the survey results to improve our understanding of actual practice in administering provisional voting, including the steps local officials took to prepare for the election.

### PROVISIONAL VOTING NARRATIVES

**Description:** To construct the narratives, a researcher examined newspaper accounts, state websites, and reports from third-party organizations to gather information on the experience with provisional voting in the 2004 election. To organize the information derived from this examination, we created an information system that catalogues information about the states (i.e. whether a state was new to provisional voting, the percentage of provisional votes counted, the method of notifying voters if their vote was counted, etc.) and combined it with Moritz's collection and analysis of statutes, regulations and litigation.

**Progress:** The state-by-state database is complete, as is a first draft of all state narratives. This work has been shared with the larger team and is being reviewed currently in preparation for constructing analysis and recommendation of alternative approaches for provisional voting required under Task 3.5.

**Work Plan:** In the next month, revisions of the narratives will be complete. In addition to this research, we will expand upon vote fraud research and examine further the relationship between instances of vote fraud and ensuing election reforms.

### SURVEY OF COUNTY ELECTION OFFICIALS

**Description:** The Center for Public Interest Polling (CPIP) at Eagleton conducted a national survey of county election officials to measure several aspects of provisional voting. The survey was designed to determine the following factors related to provisional voting at the county (or equivalent election jurisdiction) level:

- The content and quality of instructions provided to county officials by the states;
- The steps taken by county officials to pass information on to poll workers;
- Differences in experience between states new to provisional voting and those that had some form of provisional ballot before HAVA; and
- Recommendations to improve and/or reduce the need for provisional voting.

**Progress:** The fielding and initial analysis of the survey results are complete.

**Work Plan:** The information derived from the survey will be considered in drafting the analysis and alternatives document required under Task 3.5.

## VOTER IDENTIFICATION REQUIREMENTS

The contract lists 7 tasks (3.10 – 3.16) related to Voter Identification Requirements. During the reporting period, we have completed tasks 3.10 and 3.11. The research on Voter ID requirements is proceeding concurrently with our work on the experience of provisional voting.

### Task 3.10: Legislation, regulations, and litigation

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation with regard to Voter Identification Requirements. When complete, this information will constitute the compendium of legislation, administrative regulations, and case law called for under this task.

**Description:** The Moritz team has compiled statutes on Voter Identification, and will provide a summarized analysis of this research to the project team for review.

**Progress:** The chart created to collect data on voter identification is complete and is now being reviewed. Voter identification statutes are being collected.

**Challenges:** Identifying the relevant statutes has been challenging because of the different terminology used from state to state to codify voter identification issues, and because many states have scattered election law provisions throughout their codes. This variety from state to state makes creating a snap-shot view across states a challenge.

**Work Plan:** Review of the voter identification chart, the collection of the voter identification statutes, and the writing of the state by state summaries will be completed by the end of August.

### SUPPLEMENTS TO LEGAL ANALYSIS

To supplement the legal analysis, the Eagleton team is undertaking two research efforts: First, compiling information on the debate over voter ID in the states; and second, estimating the effect on turnout of voter ID requirements. Tracking the continuing political debate over voter identification reveals that the relatively narrow HAVA requirements for voter identification have apparently sparked in many states a broader concern with more rigorous identification requirements for all voters. We are following these developments both to monitor possible secondary effects of HAVA on voter ID, and to provide a rich collection of alternative approaches for consideration.

Individual narratives for the states with significant activity in voter ID will provide a resource for understanding the wide range of experience in the 2004 election. The narratives will include an appraisal of the prevalence and nature of vote fraud, a focus of the concern

with increasing the rigor of voter ID requirements. The next key milestones will be the completion of the state database and drafting the first narratives.

### VOTER ID AND TURNOUT ANALYSIS

The second supplemental analysis will provide objective information on a contentious feature of the debate over voter ID in the states: the effects of more rigorous voter ID regimes on voter turnout and the relationship between the voter ID regime and vote fraud. As part of this effort, Eagleton is undertaking a statistical analysis to gauge the effect of a state's voter ID regime on turnout, especially turnout by minority and elderly voters.

**Description:** We are creating a database and gathering statistics on the effects of state-level voter identification requirements on voter turnout at the county-level in the 2004 election.

**Progress:** The collection of data for the Voter ID-Turnout analysis is complete. The assembled database contains population demographic data, voter registration data and voter turnout data from all 50 states, 3113 Counties, and the District of Columbia. It also contains exit poll data from the 50 states, providing demographic data of voter turnout. The analysis of that data is well underway.

**Challenges:** The initial methodology that was devised to investigate the questions involved in this part of the study proved insufficient, as the necessary data was unobtainable (the Census Bureau has not yet released their 2004 data). After re-developing an appropriate methodology, the necessary data has been assembled, we have resumed the analysis of this data.

**Projection:** The analysis of the impact that voter identification requirements have upon voter turnout should be completed around mid-August.

### **Task 3.11 Public meeting on Voter Identification Requirements**

**Description:** In early July, we continued our efforts to identify specific Voter ID topics or issues and panelists who could shed light on them. We recommended a focus on the debate over Voter ID now underway in the states. To provide a vivid picture of the debate, we recommended that one panel include specific legislators on opposite sides of the issue from two different states, Mississippi and Wisconsin. We also discussed adding a researcher to the panel in order to place the debate in a national or historical context. We also recommended a panel of two academic researchers with contrasting points of view, to address the effects of Voter ID provisions under HAVA. In response to our suggestions, EAC staff recommended a panel of two state election directors to address the interaction of Voter ID with HAVA.

By mid-July, the EAC had decided which topics and speakers should be invited, however most of those speakers proved unable to attend.



**Progress:** Tom O'Neill and Dan Tokaji attended the EAC Public Meeting held in Pasadena on July 28. Their presentations at the meeting described the progress of the research and our developing perspective on how to assess the quality of the provisional voting process in the states and identify possible steps for improvement.

**Challenges:** The changes in the scheduling of the July meeting delayed and ultimately made it impossible to assemble a panel, from which we could derive substantive insight into voter identification issues as they are playing out in the states. Additionally, due to the date of the hearing, the information from the hearing was not available as early in the research process as contemplated in the contract.

**Projection:** Preparation of the hearing summary will likely be delayed, due to the team's focus on preparation of the analysis and alternatives paper.

## PROJECT MANAGEMENT

### PEER REVIEW GROUP

**Description:** A feature of our proposal was the creation of a Peer Review Group (PRG). The EAC indicated at our first meeting in May that it would review our recommendations for members of the PRG. Our initial vision of the PRG was a small group of scholars and representatives of advocacy organizations that would comment on the research design, review drafts of our analyses and reports, and, in general, identify areas of the research that should be strengthened and help us improve the breadth, depth and clarity of reports based on that research.

**Progress:** Upon reflection, the project team agreed that the PRG should not include representatives of advocacy groups. We concluded that as representatives they would feel obligated to act as advocates for positions already taken by their groups. While advocacy organizations might be consulted as stakeholders during the course of our work, they were unlikely to achieve the goals we had in mind for the PRG as a source of advice on research design, methodology, and analysis. We submitted a revised list of potential members, substantially comprised of academics, to the EAC for review.

The EAC responded with suggestions concerning both the balance of the PRG's membership and the creation of additional committees to review our work. We provided an analysis of the cost and time involved in adopting the EAC's suggestions as well as with suggestions for a balanced selection of academics for the Peer Review Group. In the end, the EAC determined that Eagleton should appoint a balanced Peer Review Group of its own choosing. Initial phone calls were made to all members of that group by the end of July, and written invitations and descriptions of the process have gone to all possible members who had indicated their interest in serving.

**Challenges:** Communications on this issue with the EAC were not clear or timely. The purpose of the PRG is to review our work, and to comment on our research design, which is well underway. We had planned to have the PRG in place early enough in the project to enable them to provide feedback, including the research design. While we are

confident in the quality of our work, the experience and perspective of the Peer Review Group will strengthen our analysis and recommendations as we find a way to receive its critique in the more limited time now available. The delay in creating the Peer Review Group will result in a delay in the completion of the final draft of the analysis and alternatives paper and in the preliminary guidance document.

**Projections:** The work of the PRG will be about 2 weeks behind the milestones indicated in the work plan.

### **COORDINATION AND INFORMATION MANAGEMENT**

Collecting and merging information and data from myriad sources is a demanding requirement of this research. We have developed two principal mechanisms to facilitate the analysis of the material collected or created in the project: an information system and an internal website for easy access to drafts and reports.

#### **INFORMATION SYSTEM**

**Description:** The statutory data and reports prepared by the Moritz College of Law will be merged with the political and procedural data and analysis prepared by the Eagleton Institute of Politics to provide a cohesive final product to the EAC, which will include a compendium of case law and statutes regarding provisional voting and voter identification.

**Progress:** The Moritz team has provided Eagleton staff with all completed work. An Eagleton staff member reviews the content and formats of data from all supporting research and will (re-)format once the work has been completed for the compendium and reports submitted to the EAC. The researchers and staff at Eagleton have created a shared folder on the Institute's server for the safe storage of work and access for those staff members. All of this work is being reviewed by the project team to ensure that a broad survey is being performed.

**Projections:** By the end of July 2005, much of the above referenced research has been completed. The entire project team has begun the process of reviewing all work, and will combine and format all documents and materials in preparation for our final reporting to the EAC.

#### **INTRANET**

**Description:** All project team members have signed on to the Intranet site. The Intranet facilitates the exchange of information and collaboration among project participants.

**Progress:** Project team members regularly post drafts, completed materials and spreadsheets online for internal review. The intranet has been extremely helpful to team members and serves as an internal website with announcements and important documents readily available to all team members.

## FINANCIAL REPORT

The financial reporting for this project is supervised and prepared by the Division of Grant and Contract Accounting (DGCA) at Rutgers. Financial reporting on grant accounts is limited to actual expenses that have been incurred during the reporting period. Our contact at DGCA is: Constance Bornheimer, (732) 932-0165, EXT. 2235.

A detail of expenses incurred from project inception through June 30, 2005, is attached.

Karen Lynn-Dyson/EAC/GOV

07/15/2005 04:16 PM

To Thomas R. Wilkey/EAC/GOV@EAC, Juliet E. Thompson/EAC/GOV@EAC  
cc Sheila A. Banks/EAC/GOV@EAC, Adam Ambrogi/EAC/GOV@EAC, Amie J. Sherrill/EAC/GOV@EAC  
bcc

Subject Fw: Eagleton Institute June 2005 Progress Report

Should any of you all need or want a sense of what Eagleton has done on provisional voting and voter identification in preparation for the Cal Tech meeting, attached is their June monthly report.

K

Karen Lynn-Dyson  
Research Manager  
U.S. Election Assistance Commission  
1225 New York Avenue , NW Suite 1100  
Washington, DC 20005  
tel:202-566-3123

— Forwarded by Karen Lynn-Dyson/EAC/GOV on 07/15/2005 03:57 PM —



"Lauren Vincelli "

[Redacted]

07/14/2005 04:43 PM

Please respond to [Redacted]

To klynndyson@eac.gov

cc "Tom O'Neill" [Redacted]

Subject Eagleton Institute June 2005 Progress Report

Ms. Dyson,

Attached please find the June 2005 Progress Report for the project entitled, "Contract to Provide Research Assistance to the EAC for the Development of Voluntary Guidance on Provisional Voting and Voter Identification Procedures." If you have any questions regarding any part of this document please direct them to Tom O'Neill at: [Redacted] (908)794-1030.

The financial reporting for this project is performed by the Division of Grant and Contract Accounting at Rutgers University. A copy of this report was not made available to us in an electronic format. Hard copies of the Progress Report and Financial Report have been Fedex'ed to you this afternoon and should arrive to your attention tomorrow morning. Please let me know if you do not receive this package by tomorrow afternoon.

Thank you for your time, have a great evening.

Best,  
Lauren Vincelli

Lauren Vincelli  
Business Assistant, Eagleton Center for Public Interest Polling  
Eagleton Institute of Politics, Rutgers University  
Carriage House, 185 Ryders Lane  
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Fax: (732) 932-1551



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EAGLETON INSTITUTE OF POLITICS

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*Contract to Provide Research Assistance to The EAC  
For the Development of Voluntary Guidance on  
Provisional Voting and Voter Identification Procedures*

**MONTHLY PROGRESS REPORT  
JUNE 2005**

For  
**UNITED STATES ELECTION ASSISTANCE COMMISSION**  
1225 New York Avenue N.W., Suite - 1100  
Washington, DC 20005

July 14, 2005

**Prepared by:**  
Eagleton Institute of Politics  
Rutgers, The State University of New Jersey  
191 Ryders Lane  
New Brunswick, NJ 08901-8557

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## OUTLINE

- Introduction
- Provisional Voting
  - Task 3.4
- Voter Identification Requirements
  - Task 3.10
  - Task 3.11
- Project Management
  - Task 3.1
- Financial Report

## INTRODUCTION

This report describes our progress from the start of the project on May 26 through June 30, 2005. It includes brief descriptions of key tasks; progress made; challenges encountered or anticipated; milestones reached; and projections for work to be completed in the coming month.

The objective of the contract is to assist the EAC in the collection, analysis and interpretation of information regarding HAVA provisional voting and voter identification requirements on which to base policy recommendations as guidance for the states in the conduct of the 2006 elections. The work has begun well, thanks to the clarity of the EAC's expectations and the strong collaboration by the scholars and staff at the Eagleton Institute of Politics at Rutgers, The State University of New Jersey, and the Moritz College of Law at the Ohio State University.

The document report is divided into 4 sections that cover: Provisional Voting, Voter Identification Requirements, Project Management, and the Financial Report. Each section references the specific tasks described in paragraph 3 of the contract.

Please direct any questions or comments about this report to Tom O'Neill at: [tom\\_oneill@verizon.net](mailto:tom_oneill@verizon.net) or (908) 794-1030.

## PROVISIONAL VOTING

Tasks 3.4 – 3.9 in our contract relate to provisional voting. Work on the first of these must be complete before proceeding to later tasks. The work plan provides for two months to complete Task 3.4. Work on this task is on schedule.

**Task 3.4: Collect and analyze state legislation, administrative procedures, and court cases. Understand the disparities and similarities of how provisional voting was implemented around the country.**

### LEGISLATION, REGULATIONS, AND LITIGATION

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation. When complete, this information will constitute the compendium of legislation, administrative regulations, and case law called for under this task. It also will provide a base of understanding for the analysis of states' actual experience with provisional voting in 2004, for which the Eagleton team has lead responsibility.

**Description:** The Moritz team includes faculty, an executive administrator, a reference librarian, and several research assistants. It began immediately to compile statutes, case law and administrative procedures regarding Provisional Voting. The team has created a 50 state chart to summarize information on provisional voting. Categories for which state statutes and administrative procedures are being reviewed include:

- *When did the state create a system compliant with the HAVA provisional ballot requirements?*
- *Who may be eligible to cast a provisional ballot? and*
- *What is the process for discovering whether your provisional ballot was counted in the election?*

**Progress:** Initial research for 27 states, including the collection of provisional voting statutes is complete. This phase of the work is on schedule for completion by August 1. By the beginning of the week of July 11, Moritz's full time research assistant will move from voter identification research to gathering and organizing case law on provisional voting.

**Challenges:** Identifying the relevant statutes has been challenging; states use different terminology to codify provisional voting issues. Many states have scattered election law provisions throughout their codes. This variation from state to state makes creating a snapshot view across states a challenge. The team is meeting this challenge, and the work is on schedule.



### PREPARATION FOR AND EXPERIENCE WITH PROVISIONAL VOTING

The Eagleton team is constructing a narrative description for each state of the 50 states and the District of Columbia. It is also surveying a stratified random sample of county election officials to improve its understanding of actual practice in administering provisional voting.

**Description:** To construct the narratives, a researcher is examining newspaper accounts, state websites, and reports from third-party organizations to determine what information is publicly available about these issues during the 2004 election. To organize the information derived from this examination, we are creating an information system that will make it possible to catalog the basic information about the states (i.e. whether a state was new to provisional voting, the percentage of provisional votes counted, the method of notifying voters if their vote was counted, etc.) and combine it with Moritz's collection and analysis of statutes, regulations and litigation. The information system will make it possible to provide answers to such topics of particular interest listed in the contract as: "How did preparation for provisional voting vary between states that had some form of provisional voting and those that did not?" and "How did litigation affect implementation?"

**Progress:** The researcher in this area has identified sources of information for every state and the collection process is well underway. Verified database entries for 24 states are complete, as are two state narrative summaries. This phase of the research is on schedule for completion by the end of July.

**Challenges:** A key challenge is determining just what states actually did in practice to verify and count provisional ballots. A second challenge has been determining the variations in policy within individual states. We are still wrestling with resolving this challenge, but the work is on schedule.

**Work Plan:** By the end of the July, the compilation of statutes, administrative regulations, and litigation will be complete and ready to be combined with the state-by-state narrative compiled by Eagleton. That will form the basis for the analysis and recommendation of alternative approaches for provisional voting required under Task 3.5.

### SURVEY OF COUNTY ELECTION OFFICIALS

This survey will help the research team understand more about such key topics of interest as:

- "How did the experience of provisional voting vary between states that previously had some form of provisional voting and those where provisional voting was new in 2004?"
- "Did state and local processes provide for consistent counting of provisional ballots?"
- "Did local officials have a clear understanding of how to implement provisional voting?"

The survey results will supplement the information on these topics from the compilation of statutes, regulations and cases and from the narrative we are constructing for each state.

**Description:** The Center for Public Interest Polling (CPIP) at Eagleton is conducting a national survey of county election officials to measure several aspects of provisional voting. The survey is designed to determine the following factors related to provisional voting at the county level:

- The content and quality of instructions provided to county officials by the states
- The steps taken by county officials to pass information on to poll workers;
- Differences in experience between states new to provisional voting and those that had some form of provisional ballot before HAVA; and
- Recommendations to improve and/or reduce the need for provisional voting

**Progress:** The survey instrument is complete. CPIP has compiled a list of election officials at the county level and at the municipal or regional level for states that do not assign the election responsibility to counties. It was forwarded to the call center, Schulman, Ronca & Bucuvalas Inc., (SRBI) the week of July 5, 2005. A sample will be drawn the week of July 12. Human Subjects Approval from Rutgers University was granted July 12. Pre-notification letters will be sent to election officials around July 12-13, 2005. The EAC has reviewed a draft of this letter, which we have now revised to make clear that the survey will increase our understanding of the provisional voting process, but is not being conducted on behalf of the EAC.

**Challenges:** We made special efforts to expedite Human Subject Approval to meet the schedule in the work plan. In the absence of an existing, reliable database of local election officials, we had to create one especially for this project. In order to provide a valid comparison between the states new to provisional voting with those that previously had some form of provisional ballot we doubled the sample size from 200 to 400. This increase will require an increase in the budget for the survey from \$15,000 to about \$24,000. We intend to reallocate costs within the existing budget to make this improvement possible, and will submit a letter describing the reallocation to the EAC in mid-July.

The sample has been, and will continue to represent the biggest challenge in this survey. Compiling the sample required substantial coordination and research to determine the accuracy of the identity and contact information for potential respondents. The difficulty in determining the appropriate contact is attributed to variation in county election officials' titles, jurisdiction types, and state and county election structures across the country. In addition to the potential pitfalls of reaching the appropriate county official, another factor in actually making contact with this special population will be dependent upon the hours that they keep, and may be hindered by the summer season.

**Work Plan:** This questionnaire will be pre-tested by July 15, and will field July 18 through August 5, 2005. This is somewhat later than projected in the revised work plan, but the information will arrive in time to be considered in drafting the analysis and alternatives document required under Task 3.5.

## VOTER IDENTIFICATION REQUIREMENTS

The contract lists 7 tasks (3.10 – 3.16) related to Voter Identification Requirements. During the reporting period, we have made substantial progress in the first two tasks, which constitute the information-gathering phase of the work on Voter ID. The research of Voter ID requirements is proceeding concurrently with our work on the experience of provisional voting.

### Task 3.10: Legislation, regulations, and litigation

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation. When complete, this information will constitute the compendium of legislation, administrative regulations, and case law called for under this task.

**Description:** A team of Election Law@Moritz faculty, executive administrator, a reference librarian, and several research assistants is compiling statutes on Voter Identification, and providing a summarized analysis of this research.

**Progress:** The Moritz team has created a 50-state chart to record data on voter identification. Categories for which state statutes and administrative regulations are being reviewed include: “*Who is required to present ID*”, “*Types of ID required*”, and “*Consequences of having no ID*”. We have completed the initial research for 45 states and have collected the voter identification statutes for those states. An *Election Law@Moritz* Fellow is conducting an academic literature review on voter identification. This literature review will help shape the analytical framework that will guide us when the compendium of statutes and administrative regulations is complete.

**Challenges:** Identifying the relevant statutes has been challenging because of the different terminology used from state to state to codify voter identification issues, and because many states have scattered election law provisions throughout their codes. This variety from state to state makes creating a snap-shot view across states a challenge.

**Projections:** At the current rate, a draft of the voter identification chart should be complete on schedule, by the end of July. Work on the literature review will continue into August, but will be available to inform the analysis of alternative approaches for voter identification called for by Task 3.12 of the contract.

### SUPPLEMENTS TO LEGAL ANALYSIS

To supplement the legal analysis, the Eagleton team is undertaking two research efforts: First, compiling information on the debate over voter in the states; and second, estimating the effect on turnout of voter id requirements. Tracking the continuing political debate over voter identification reveals that the relatively narrow HAVA requirements for voter identification have apparently sparked in many states a broader concern with more rigorous identification requirements for all voters. We are following these developments both to

monitor possible secondary effects of HAVA on voter ID, and to provide a rich collection of alternative approaches for consideration.

Individual narratives for the states with significant activity in voter ID will provide a resource for understanding the wide range of experience in the 2004 election. The narratives will include an appraisal of the prevalence and nature of vote fraud, a focus of the concern with increasing the rigor of voter ID requirements. This work is on schedule to be completed by the end of July. The next key milestones will be the completion of the state database and drafting the first narratives.

### VOTER ID AND TURNOUT ANALYSIS

The second supplemental analysis will provide objective information on a contentious feature of the debate over voter ID in the states: the effects of more rigorous voter ID regimes on voter turnout and the relationship between the voter ID regime and vote fraud. As part of this effort, Eagleton is undertaking a statistical analysis to gauge the effect of a state's voter ID regime on turnout, especially turnout by minority and elderly voters.

**Description:** We are creating a database and gathering statistics on the effects of state-level voter identification requirements on voter turnout at the county-level in the 2004 election. Analysis on the county-level will enable us to estimate the influence of ID requirements on various age groups, races, ethnicities and gender groups. We are compiling data from both the 2000 and 2004 Presidential elections to measure the effect that changes in ID requirements may have had on voter turnout through two national election cycles.

**Progress:** The structure of the database is complete. It contains demographic information from the Census, and turnout data from various sources. The researcher assigned to this task is devising the syntax that will be required to run the statistics when the dataset is complete. The methodology for this part of the study is complete, and the actual data collection will soon be finished.

**Projection:** We are waiting for the Census Bureau to release the 2004 County Demographic Estimates. We have ordered and await the arrival of 2 datasets that contain voter turnout and voter registration numbers on the county-level for both the 2000 and 2004 elections. Once these two sources of information are received, the researcher will insert this information into the existing database, clean up the dataset, and begin to run the statistics. By that point, the researcher will have separated the states into various ID-requirement groupings that have been determined by the team, which will require coordination with several other parts of the study. This work is on schedule. By the end of July, the researcher should have county-level and state-level statistics on the impact of each ID system upon turnout, analyzed through various demographic features on the county-level.

### Task 3.11 Public meeting on Voter Identification Requirements

**Description:** We are working closely with EAC staff, particularly the General Counsel, to plan a half day public meeting on Voter ID requirements. Presentations at the meeting will form an important part of the information we are compiling about Voter ID requirements and the strengths and shortcomings of a range of alternative approaches.

**Progress:** We have recommended a focus on the debate over Voter ID now underway in the states. To provide a vivid picture of the debate, we have recommended that one panel include legislators on opposite sides of the issue from two different states. Our research identified Mississippi and Wisconsin as two states to focus on, and we have recommended specific legislators from each. We have discussed with staff adding a researcher to the panel to put the debate in Wisconsin and Mississippi in either a national or historic context. We also recommended two researchers from contrasting points of view, to address the effects of Voter ID provisions under HAVA and broader provisions that are now the subject of national debate. EAC staff recommended a panel of two state election directors to address the interaction of Voter ID with HAVA. We are awaiting a decision on our recommendations from EAC staff. We have no reason not to believe that the work is on schedule to be completed in time to organize a productive meeting on July 28.

**Challenges:** The date and location of this hearing has been changed twice since the beginning of the project. It was originally scheduled to take place in late June, but was rescheduled for July to allow the June hearing to focus on voting machine technology. The regular meeting was rescheduled for July 26 in Minneapolis, and was recently changed to July 28 in Pasadena. The changes in the scheduling of the July meeting have complicated our choice of panelists. More seriously, the changes mean that information from the hearing will not be available as early in the research process as contemplated in the contract. This timeframe will now require the team to summarize the hearing events at the same time that we are drafting the analysis and alternatives paper in early August.

Additionally, while our contract states that the "Contractor shall be responsible for all aspects of planning and conducting this hearing in consultation with the EAC," we have been asked only to make recommendations of topics and panelists, and the arrangements for the organization of the hearing are in other hands. This lack of clarity has caused some confusion and has delayed invitations to panelists. Thanks to frequent communication with members of the EAC, the process now seems to be working smoothly.

**Projection:** We believe the work is on schedule for completion in time to recruit the panelists for the July 28 hearing. Preparation of the hearing summary will likely be delayed because of the need to complete the analysis and alternatives paper.

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## PROJECT MANAGEMENT

Immediately after announcement of the award of the contract, Eagleton and Moritz began supplementing the core group that had prepared to proposal to building a highly qualified team to undertake the work. That team was in place by mid June, just a few weeks after the contract award.

As described in the proposal, the direction of the project is the responsibility of a five-person committee of faculty and staff from Eagleton and Moritz, chaired by Dr. Ruth Mandel, Director of the Eagleton Institute of Politics. Project Director Thomas O'Neill, a consultant to Eagleton, reports to this team and provides day-to-day guidance and coordination for the research. A weekly meeting of all the researchers engaged in the project if the primary means of coordinating the work. We have recently added an internal website to facilitate the review and revision of written materials.

### Task 3.1 Update the Work Plan

The first task was completed on time with the submission of a detailed work plan and timeline. EAC staff requested that the work plan be supplemented with a Gantt chart created on MS Project, and we submitted that a few days later.

### PEER REVIEW GROUP

**Description:** A feature of our proposal was the creation of a Peer Review Group (PRG). The EAC indicated at our first meeting in May that it would review our recommendations for members of the PRG. Our initial vision of the PRG was a small group of scholars and representatives of advocacy organizations that would comment on the research design, review drafts of our analyses and reports, and, in general, identify areas of the research that should be strengthened and help us improve the breadth, depth and clarity of reports based on that research.

**Progress:** Upon reflection, the project team agreed that the PRG should not include representatives of advocacy groups. We concluded, as representatives they would feel obligated to act as advocates for positions already taken by their groups. While advocacy organizations should be consulted as stakeholders during the course of our work, they were unlikely to achieve the goals we had in mind for the PRG as a source of advice on research design, methodology, and analysis. We submitted a revised list of potential members, substantially comprised of academics, to EAC for review.

The EAC responded with suggestions concerning both the balance of the PRG's membership and the creation of additional committees to review our work. We answered with an analysis of the cost and time involved adopting the EAC's suggestions as well as with suggestions for a balanced selection of academics for the Peer Review Group. We have not received response on this correspondence from the EAC, and the recruitment of the group is on hold.

FOCUS - 8 of 21 DOCUMENTS  
CONGRESSIONAL RECORD -- SENATE

From  
Peg  
Lotgren only

Tuesday, October 15, 2002

107th Congress, 2nd Session

148 Cong Rec S 10412

**REFERENCE:** Vol. 148, No. 135

**SECTION:** Senate

**TITLE:** HELP AMERICA VOTE ACT OF 2002\_CONFERENCE REPORT

**SPEAKER:** Mr. DODD; Mr. McCONNELL; Mr. KOHL. ; Mr. WYDEN

**TEXT:** [\*S10412]

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of the conference report accompanying H.R. 3295, which the clerk will report.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 3295) to require States and localities to meet uniform and nondiscriminatory election technology and administration requirements applicable to Federal elections, to establish grant programs to provide assistance to States and localities to meet those requirements and to improve election technology and the administration of Federal elections, to establish the Election Administration Commission, and for other purposes, having met, have agreed that the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment, signed by a majority of the conferees on the part of both Houses.

The PRESIDING OFFICER. The Senate will proceed to the consideration of the conference report.

(The report is printed in the House proceedings of the Record of October 8, 2002.)

Mr. DODD. Mr. President, I am very pleased this afternoon to bring to the attention of the Senate the conference report agreement on legislation to reform our Nation's election laws. I anticipate we will not need the full time allocated. I would like to think Members are so interested they would like to come over and share their thoughts with us on this subject. But knowing there are no votes today, that is not likely to occur so we will probably use a lot less time than the 2 hours required.

I note the presence of my friend and colleague, Senator McConnell, the ranking member of the Rules Committee.

Before getting to the substance of my remarks, let me begin by thanking him and his staff, and the staff of Senator Bond as well, one of our conferees, and that of my own two conferees on the Democratic side, Senators Durbin and Schumer, and their staffs, not to mention my own staff, Kennie Gill and others, for the tremendous work done on the Senate side of this effort.

It is somewhat ironic. I understand we are going to get this done. It is a quiet afternoon after Columbus Day. Members are still back in their States having spent the weekend with their families before returning tomorrow when we will have some additional votes as we begin to wind up this 107th Congress. It is somewhat ironic in a sense that we are in this sort of quiet stillness of this Chamber with only two of us here to talk, when you consider what gave rise to this legislation—the fact that there was one of the most tumultuous elections in the history of [\*S10413] our country that galvanized the attention, not only of the people of this country but those throughout the world. For more than a month, every single news program, day in and day out, 24 hours a day, was of eyes peering through hanging chads and people bellowing at each other in a voting precinct in Florida, with courtrooms packed, around the corner from here, in the United States Supreme Court.

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The irony is all of that turmoil provoked us to step up and find out whether our election laws could do with some changing\_not that it all occurred in Florida or in just the 2000 election\_but today, as we approach the second anniversary of that election, we find ourselves in a quiet Chamber with a couple of Members talking about something that both of us believe is a rather historic piece of legislation.

When you consider that unlike other matters that come before this body, despite the fact that our colleagues may claim expertise in every subject matter that comes before them, this is truly one in which each Member who serves here is an expert because they would not have arrived here had they not been elected. To that extent, we have an appreciation of elections beyond the awareness of the average citizen in this country. So the fact that we\_as Democrats and Republicans, in a time when people question whether or not we can come to terms about some of the major issues of the day, can take a subject matter so rife with partisanship as an election, with all of the scars, the wounds, the admonitions, the rhetoric, the demagoguery, use whatever words you want\_were able in this Congress to craft legislation that passed the other body by a substantial margin, and passed this body 99 to 1, and then the conference report passed the House by a vote of 357-48, and we hope a substantial vote will occur here as well, is a tribute to the membership of this body, to the leadership of this body, and the other body as well\_that we were able to get this done.

If I may say so, I have been here 21 years. I have had proud moments when I have been involved in other legislative efforts. None exceeds the sense of pride I have over this particular accomplishment. Again, no one can ever claim that they were responsible in a legislative process for the final result. A lot of people can take legitimate credit for helping us achieve what we are asking our colleagues to support tomorrow when we vote before noon.

This agreement, as it said, represents many mouths of effort. That effort took place amid a steady stream of news reports that predicted the demise of election reform. While those reports bewailed the lack of progress in conference negotiations, they overlooked the fact that, instead of a lack of progress, conferees were making progress. Working quietly during early mornings, late nights, and long weekends, we crafted the conference agreement that is before the Senate this afternoon.

It is a bipartisan and bicameral agreement. It is one that, I believe, merits the support of our colleges in the Senate.

It is one that has already been approved by the other body by a vote of 357 to 48. And it is one that the Administration has said the President is prepared to sign.

Twenty-three months ago, our Nation was thrown into turmoil because we learned a painful reality: that our democracy does not work as well as we thought it did, or as it should. More than 100 million citizens went to the polls on election day 2000\_November 7. Four to six million of them\_for a variety of reasons\_never had their votes counted. Some were thwarted by faulty machinery. Some were victims of wrongful and illegal purges from voter lists. Others fell victim to poorly designed ballots. But all of them\_all\_were denied the right to effectively exercise their most fundamental right as American citizens: the right to vote.

Regardless of which candidate one supported, there is no disagreement that election day 2000 was not a proud day for our democracy.

It was a day of deep embarrassment for a nation rightly viewed by the rest of the world as a beacon light of self-government. But that day was also, in a very real sense, a gift. Had there never been a contested election like the election of 2000, the problems plaguing our Nation's elections would likely never have been addressed. So it was in a sense a gift. If you were to find a silver lining in what occurred that day, what we are producing and asking our colleagues to support may be it.

The legislation we present to the Senate today goes a long way toward fixing those problems and righting those wrongs. It does justice to the American voter. It breaks new ground. It is, I believe, the first civil rights legislation of the 21st century. It is not a perfect bill. But it will make our democracy work better and be stronger.

Two hundred and thirteen years ago at the Constitutional Convention in Philadelphia, the Framers decreed that the administration of federal elections is not the job of just the States, or just the Federal Government, but the job of both.

Until now, that vision of cooperation and partnership has largely been honored in the breach. The Federal Government has for the most part been an observer, not a partner, in the conduct of elections for Federal office.

Starting now, with this legislation, that pattern comes to an end. For the first time\_if you exclude the Voting Rights Act of 1965 in which the Federal Government told States what not to do\_they must not levy poll taxes, must not set literacy tests\_the National Government steps up to more fully meet its constitutional duty to uphold the soundness and



sancity of the ballot. This is the first time the Federal Government is saying what we must do together to make our elections stronger. With this bill, we move closer to the day when every vote cast will be a vote counted.

Our bill achieves this progress in three ways: with new rights, new responsibilities, and new resources.

First, new rights. The conference agreement establishes new voting rights for our citizens. These include:

The right starting in 2004 to cast a provisional ballot. With this right, no qualified voter can ever again be turned away from the polling place without being able to cast at least a provisional ballot. There are some States that are doing this already and have been for years. Many do not.

The right to check and correct one's ballot if the voter made a mistake. I know this is a radical idea. In this way, voters need never again leave a polling place haunted by the thought that they voted for the wrong candidate, or nullified their own vote by over-voting.

The right of all voters to cast a private and independent ballot. Today, millions of disabled Americans face two options on election day, both of them bad: they either vote with the assistance of a stranger, or they do not vote at all. In the 2000 elections alone, some 20 million of them took the second option because the barriers to the ballot box were just too daunting.

With this legislation, henceforth beginning in the year 2006 those days will come to an end. Starting with this bill, a disabled voter will have the same right to cast a private and independent ballot as any other voter.

That provision dealing with providing for accessibility improvements in voting systems may not be required to go into effect until 2006. Obviously, some States may do that before. There is something in this bill that says you cannot do that. But at the very least, by the year 2006.

The bill also creates the right to have, at each polling place, printed, posted information, including a sample ballot and a listing of voter rights and responsibilities. In this way, our bill will sharply reduce the risk of confusion and error on election day.

In addition, our bill requires states to develop "uniform and nondiscriminatory" standards for counting ballots because whether or not your ballot will count should never depend on the county or precinct where you happen to live and the economic circumstances there.

Second, our bill establishes new responsibilities for voters, for States, and for the Federal Government.

To address concerns about **FRAUD**, voters seeking to vote for the first time in a state will be responsible for producing some form of identification. Senator Bond was particularly instrumental in crafting these provisions. We thank him.

States will be responsible for producing statewide computerized lists of registered voters. Once these lists are up and running, it is our hope and expectation that the risk that individuals [\*S10414] may be voting multiple times in multiple jurisdictions will be minimized if not eliminated altogether.

Let me add, by the way, that when it comes to the computerized statewide lists, a voter may not have to register again. If you live in a State that provides for state-wide registration, or wants to provide for state-wide registration, this requirement will facilitate that so that if you move around in that State from one county to another, or from one community to the next, a statewide voter registration list means you don't have to register again. If you move from one community and one precinct to the other, with the statewide list, you register once. If you stay in that State, you may be registered forever in that State regardless of where you may live or move to under state-wide registration.

That is not an insignificant burden we are lifting for many people in this country who move. If they are renters who can't afford homes and who want to participate in the process, every time they move from one precinct to the next, they have to register to vote. That will be over with, under state law providing for state-wide registration once provisions on the statewide voter registration requirements of this bill become effective.

To ensure that the requirements of the bill are met, States will also be required to establish meaningful enforcement procedures to remedy voters' grievances. And at the federal level, the Department of Justice will be responsible for enforcing the provisions of the act.

011484

Third, this legislation would commit unprecedented new resources to improving and upgrading all aspects of our elections. It authorizes some \$3.9 billion over the next three years to help states replace and renovate voting equipment, train poll workers, educate voters, upgrade voter lists, and make polling places more accessible for the disabled.

I thought it worthwhile to note that since the elections of 2000, only three States\_maybe a couple more\_have made any effort at all to reform and update their election laws and requirements that voters use in the various States. It is always costly to do this. Frankly, as the Presiding Officer, a former Governor, can attest, when there are budget constraints and a lot of demands are being made, there has not been a great constituency out there advocating spending money to buy new voting equipment, or new voting machinery, or to train poll workers. There are many other demands on a State budget that have much larger constituencies than those who might say we ought to improve the voting systems of the country. The fact of matter is, despite a public outcry about all of this, there has been very little action over the years\_even in the wake of the 2000 elections.

So it seems clear to us that if we are truly going to command States, in a number of provisions, to do things differently, to suggest that they do so without providing the resources would be yet once again an unfunded mandate. We know how States feel about Federal requirements when there are not resources to support meeting those requirements.

This legislation provides \$3.9 billion\_some that will flow immediately, and others subject to development of state plans and submission of applications. I will not go into all the details this afternoon. But the idea is that the Federal Government is going to become a real partner financially in the conduct of these elections. It does not mean the conduct of elections is going to be fully supported by the Federal Government. Obviously, States, communities, and municipalities have to allocate resources for every election. But with these changes we are talking about, the costs, by and large, are going to be borne by the Federal Government. This is the first time we will become such an active participant in improving the election systems of our country.

Lastly, this legislation establishes a new commission\_the Election Assistance Commission\_to assist states and voters. I want to acknowledge Senator McConnell's pivotal role in conceiving of this commission. In coming years, it will serve as an important source of new ideas and support for states as they take steps to improve the caliber of their elections.

It allows us to have an ongoing relationship with election officials at the State and local level day in and day out rather than waiting for some crisis to occur or for some disastrous election result where we then go out and form some ad hoc commission to go back and look at what happened.

For the first time, we are going to have a permanent commission that doesn't have rulemaking authority, except to the extent provided under section 9(a) of "Motor-Voter," but sets voluntary standards and guidelines\_a source of information for people to access, as we will, I am sure, in the years to come with technology being what it is, and a demand for efficiencies by the American public to update and to simplify the process to make voting as user friendly as it can possibly be while simultaneously protecting against the abuses in which some may wish to engage.

We will now have a permanent venue where those ideas can be heard and recommendations can be made so that we will be involved on a continuing basis in a seamless way with the conduct of something as fundamental and as important as the elections in this country.

New rights, new responsibilities, new resources. And with them, a new day for our Nation's democracy.

Almost 2 years from the 2000 elections, this legislation will help America move beyond the days of hanging chads, butterfly ballots, and illegal purges of voters and accusations of voter **FRAUD**. It will make the central premise of our democracy\_that the people are sovereign\_ring even more truly in the years to come.

This legislation has the support of many individuals and organizations that have been critical to its success.

They include former Presidents Ford and Carter. We thank them for their work on the National Commission on Federal Election Reform. They met early on and crafted some recommendations and ideas. They held hearings around the country. Once again, it is a great tribute to President Ford and President Carter for their ongoing commitment to this country and for the allocation of time from their schedules to dedicate efforts to make recommendations on how we might improve the election process. I thank them.

The Congressional Black Caucus\_for whom this legislative effort was the number one priority\_I thank Eddie Bernice Johnson particularly as the Chair of the Black Caucus; John Conyers, my coauthor of this bill from the very

outset; and every other member of the Black Caucus who has been tremendously helpful in working with us on this legislation and lending support to this final product.

The National Association of Secretaries of State has been tremendously helpful. It is a bipartisan group that deals every day with the election laws in our country. They have to grapple with them. It is critically important. Everything we talked about on which they had some input to let us know whether or not these things will work obviously, many of them have not been tested yet, and time will only tell. But because they were involved here, we think the likelihood of things not working as well as one might normally expect will be minimized.

I particularly thank my secretary of state, Susan Bysewicz of Connecticut, who has done a remarkable job in our State, has been tremendously creative, and was a source of a lot of good solid information.

Secretary of State Kathy Cox of Georgia\_I want to commend Georgia, by the way, one of the three States that made significant changes on their own in the election laws of their own States. They did a tremendous job. And Kathy Cox deserves a lot of credit for stepping up and doing things early on.

I thank Secretary of State Chet Culver of Iowa, the youngest secretary of state in the country and the son of a former colleague of ours who is doing a fantastic job, for his input. Ninety-two percent of the people of Iowa are registered to vote. It is one of the highest in the country. They have 300,000 new registered voters in the last 3 1/2 or 4 years in Iowa. Seventy-two percent of the people of that State voted in the last election. It is really a remarkable result, and a lot of it, again, is the result of the creative work of the secretary of state of Iowa. [\*S10415]

The NAACP has been tremendously helpful; the AFL-CIO; the United Auto Workers; the National Federation of the Blind; the United Cerebral Palsy Association; the American Foundation of the Blind; and the National Association of Protection and Advocacy Systems, which represents persons with disabilities. I thank them for all of their tremendous help.

I ask unanimous consent that letters from these organizations and individuals in support of this legislation be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

The National Commission on

Federal Election Reform.

October 4, 2002.

Former Presidents Ford and Carter Welcome the Agreement Reached on Election Reform Legislation.

Today, former Presidents Gerald R. Ford and Jimmy Carter, along with Lloyd Cutler and Bob Michel, co-chairs of the National Commission on Federal Election Reform, welcomed the bipartisan agreement struck by the House and Senate Conference Committee on a bill to reform federal elections.

"The bill represents a delicate balance of shared responsibilities between levels of government," Ford and Carter said. "This comprehensive bill can ensure that America's electoral system will again be a source of national pride and a model to all the world." Indeed, all four of the co-chairs share the belief of Congressman John Lewis (D-GA) and others that, if passed by both Houses and signed by President Bush, this legislation can provide the most meaningful improvements in voting safeguards since the civil rights laws of the 1960s.

Washington Bureau,

NAACP,

Washington, DC, October 8, 2002.

Re Conference Report to H.R. 3295, the Help America Vote Act (election reform)

Members,

011486

U.S. Senate,

Washington, DC.

Dear Senator: The National Association for the Advancement of Colored People (NAACP), our nation's oldest, largest and most widely-recognized grassroots civil rights organization supports the conference report on H.R. 3295, the Help America Vote Act and we urge you to work quickly towards its enactment.

Since its inception over 90 years ago the NAACP has fought, and many of our members have died, to ensure that every American is allowed to cast a free and unfettered vote and to have that vote counted. Thus, election reform has been one of our top legislative priorities for the 107th Congress and we have worked very closely with members from both houses to ensure that the final product is as comprehensive and as nondiscriminatory as possible.

Thus we are pleased that the final product contains many of the elements that we saw as essential to addressing several of the flaws in our nation's electoral system. Specifically, the NAACP strongly supports the provisions requiring provisional ballots and statewide voter registration lists, as well as those ensuring that each polling place have at least one voting machine that is accessible to the disabled and ensuring that the voting machines allow voters to verify and correct their votes before casting them.

The NAACP recognizes that the actual effectiveness of the final version of H.R. 3295 will depend upon how the states and the federal government implement the provisions contained in the new law. Thus, the NAACP intends to remain vigilant and review the progress of this new law at the local and state levels and make sure that no provision, especially the voter identification requirements, are being abused to disenfranchise eligible voters.

Again, on behalf of the NAACP and our more than 500,000 members nation-wide, I urge you to support the swift enactment of the conference report on H.R. 3295, the Help America Vote Act. Thank you in advance for your attention to this matter; if you have any questions or comments I hope that you will feel free to contact me at (202) 638-2269.

Sincerely,

Hilary O. Shelton,

Director.

American Federation of Labor and Congress of Industrial Organizations

Washington, DC, October 8, 2002.

Dear Senator: The AFL-CIO supports the conference report on H.R. 3295, the Help America Vote Act.

This conference report will help improve our nation's election system in several important ways. It will allow registered individuals to cast provisional ballots even if their names are mistakenly excluded from voter registration lists at their polling places. It will require states to develop centralized, statewide voter registration lists to ensure the accuracy of their voter registration records. It will also require states to provide at least one voting machine per polling place that is accessible to the disabled and ensure that their voting machines allow voters to verify and correct their votes before casting them.

Since the actual number of individuals enfranchised or disenfranchised by the conference report on H.R. 3295 will depend on how the states and the federal government implement its provisions, the AFL-CIO will closely monitor the progress of this new law especially its voter identification requirements. We will also increase our voter education efforts to ensure that individuals know and understand their new rights and responsibilities.

Sincerely,

William Samuel,

Director, Department of Legislation.

Paralyzed Veterans

of America,

011487

Washington, DC, October 15, 2002.

Chairman

Christopher J. Dodd,

Ranking Member Mitch McConnell,

Senate Rules and Administration Committee, Russell Senate Office Building, Washington, DC.

Dear Senators: On behalf of the members of the Paralyzed Veterans of America (PVA), I want to congratulate you and your staff on the hard work that was done to bring forth a bipartisan Election Reform conference report. The House of Representatives passed the report overwhelmingly, recognizing the fact that our federal government, since the presidential election of 2000, needed to take steps to ensure the public that their votes do indeed count. This bill, the Help America Vote Act of 2002, does that.

The bill provides funds to states and local jurisdictions to recruit and train poll workers. It will allow for replacement of antiquated mechanisms, like punch card and lever voting machines, with machines that will allow voters to verify their vote before the ballot is cast, including voters with disabilities.

This legislation will charge the Architectural Transportation Barriers Compliance Board known as the Access Board to develop minimum standards of access at polling places and to consult with other organizations for research and improvements to voting technology.

This legislation will allow the Secretary of the Health and Human Services to make payments to eligible states and local jurisdictions for the purposes of making polling places accessible: including the paths of travel, entrances, exits, and voting areas of each polling facility. It will ensure sites are accessible to individuals with disabilities including those who are blind or visually impaired, in a manner that provides the same opportunity for access and participation including privacy and independence.

In addition the Secretary of Health and Human Services shall provide the Protection and Advocacy Systems of each State grant monies to ensure full participation in the electoral process for individuals with disabilities, including registering to vote, education in casting a vote and accessing polling places.

Again, PVA congratulates you on this legislation which, when implemented and fully funded, will provide tremendous access for PVA members and all people with disabilities in exercising their constitutional right to vote. PVA stands ready to work with you and your staff on implementation of this legislation which ensures confidence in our citizens and our democracy that indeed every ones vote cast will indeed count.

Sincerely,

Douglas K. Vollmer,

Associate Executive Director for Government Relations.

National Federation

of the Blind,

Baltimore, MD, October 9, 2002.

Hon. Robert Ney, Chairman,

Hon. Steny H. Hoyer, Ranking Minority Member,

Committee on House Administration, House of Representatives, Washington, DC.

Dear Mr. Chairman and Congressman Hoyer: I am writing to express the strong support of the National Federation of the Blind (NFB) for the Help America Vote Act of 2002. Thanks to your efforts and strong bipartisan support, this legislation includes provisions designed to guarantee that all blind persons will have equal access to voting procedures

and technology. We particularly endorse the standard set for blind people to be able to vote privately and independently at each polling place throughout the United States.

While the 2000 election demonstrated significant problems with our electoral system, consensus regarding the solution proved to be much more difficult to find. Part of that solution will now include installation of up-to-date technology for voting throughout the United States. This means that voting technology will change, and devices purchased now will set the pattern for decades to come.

With more than 50,000 members representing every state, the District of Columbia, and Puerto Rico, the NFB is the largest organization of blind people in the United States. As such we know about blindness from our own experience. The right to vote and cast a truly secret ballot is one of our highest priorities, and modern technology can now support this goal. For that reason, we strongly support the Help America Vote Act of 2002, and appreciate your efforts to enact this legislation.

Sincerely,

James Gashel,

Director of Governmental Affairs. [\*S10416]

United Cerebral Palsy

Associations,

Washington, DC, October 9, 2002.

Dear Senator Dodd: United Cerebral Palsy Association and affiliates support the conference report on H.R. 3295, the Help America Vote Act. We also take this opportunity to commend you for the work you did to ensure that all people with disabilities have equal access under this act.

This legislation, while not perfect, will go a long way in improving the ability of people with disabilities to exercise their constitutional right and responsibility to vote. The funding allocated for the multiple provisions of H.R. 3295 is critical, and we pledge to work with Congress to ensure that this funding is made available.

UCP stands ready to assist states' and local entities as they work toward compliance of this very important legislation. The changes outlined in the bill must be adopted swiftly, correctly and fairly, and it will be incumbent upon us all to help in this process.

Finally, UCP applauds you and your colleagues on your dogged determination to pass legislation that will make distinct improvements at the polls and in the lives of voters with disabilities.

Sincerely,

Patricia Sandusky,

Interim Executive Director.

American Foundation for the Blind, Governmental Relations Group,

Washington, DC, October 9, 2002.

The Hon. Christopher Dodd,

U.S. Senate, Russell Senate Office Building, Washington, DC.

Dear Senator Dodd: The American Foundation for the Blind supports the conference report for S. 565 and H.R. 3295. We are pleased that the conference report contains the disability provisions of the Senate bill.

Already this year, in some jurisdictions, blind and visually impaired voters have, for the first time, been able to cast a secret and independent ballot. We look forward to the day when all voters with visual impairment will have full and independent access to the electoral process.

The mission of the American Foundation for the Blind (AFB) is to enable people who are blind or visually impaired to achieve equality of access and opportunity that will ensure freedom of choice in their lives. AFB led the field of blindness in advocating the enactment of the Americans with Disabilities Act of 1990 (ADA). Today, AFB continues its work to protect the rights of blind and visually impaired people to equal access to employment, information, and the programs and services of state and local government.

Sincerely,

Paul W. Schroeder,

Vice President, Governmental Relations.

AARP,

National Headquarters,

Washington, DC, October 10, 2002.

The Hon. Christopher J. Dodd,

Chairman, Senate Rules and Administration Committee,

Senate Russell Office Building, Washington, DC.

The Hon. Mitch McConnell,

Ranking Member, Senate Rules and Administration Committee,

Senate Russell Office Building, Washington, DC.

Dear Senators: We are writing to express our support for the bipartisan election reform conference report on H.R. 3295. AARP recognizes that significant compromise was required by all parties to produce an agreement that would advance the process of effective and fair election reform. The Senate-House conference report contains a mix of provisions that both strengthen and hinder citizen ability to exercise the legal right to vote and have that vote counted. Despite its shortcomings, however, we believe the overall effect of the compromise agreement will be to reform and enhance the nation's voting system.

AARP is pleased that the compromise:

Requires states to develop and maintain centralized polling lists;

Requires polling sites in each jurisdiction to meet accessibility standards and provide user-friendly voting equipment for persons with disabilities;

Makes provisional ballots available to voters whose names may be erroneously absent from registration lists;

Permits voters to verify and correct their voting preferences before casting them;

Provides Federal funds to encourage state & local reforms; and

Provides for training of elections administration staff and polling site workers.

Unfortunately, the H.R. 3295 compromise report weakens some existing voting rights and contains certain provisions that AARP believes will increase the chances of a recurrence of the problems that plagued the 2000 Presidential Elections. The report:

Imposes voter identification requirements that discourage participation by low income, minority and foreign-born citizens;

Encourages purging of voter registration lists without current law assurances to prevent illegal purging of legal voters;

Permits the denial of registration if the registrant possesses either a driver's license or social security number but fails to write it on the registration form; and

Denies legal recourse for improper election administration, while lacking adequate enforcement provisions to ensure that the ballots of all legal voters are counted.

These provisions undermine existing voting protections, and provide technical loopholes that can discourage or intimidate potential legal voters\_ especially those who are low income, minority and foreign-born.

Ultimately, the success of this legislation in affording all eligible citizens the opportunity to vote and have that vote accurately counted depends on implementation by the states. AARP\_ through the advocacy and voter education efforts of our national and state offices\_ will work with states, election officials and other civil rights organizations to ensure that election reform implementation is fair and does not discourage citizen voter participation. We appreciate your leadership in bringing about these critically important advances. And, we look forward to working with you to further our most basic right as citizens\_ the vote. If you have any questions, please feel free to call me or have your staff contact Larry White of our Federal Affairs staff at [REDACTED]

Sincerely,

Christopher Hansen,

Director of Advocacy.

National Association of Protection & Advocacy systems,

October 9, 2002.

The Hon. Chris Dodd,

U.S. Senate, Russell Senate Office Building, Washington, DC.

Dear Senator Dodd: The Protection and Advocacy System (P&A) and the Client Assistance Programs (CAPs) comprise a federally mandated, nationwide network of disability rights agencies. Each year these agencies provide education, information and referral services to hundreds of thousands of people with disabilities and their families. They also provide individual advocacy and/or legal representation to tens of thousands of people in all the states and territories. The National Association for Protection and Advocacy Systems (NAPAS) is the membership organization for the P&A network. In that capacity, NAPAS want to offer its support for the passage of "The Help America Vote Act of 2002" (H.R. 3295).

NAPAS believes that the disability provisions in the bill go far to ensure that people with all types of disabilities\_ physical, mental, cognitive, or sensory\_ will have much improved opportunities to exercise their right to vote. Not only does this bill offer individuals with disabilities better access to voting places and voting machines, but it also will help provide election workers and others with the skills to ensure that the voting place is a welcome environment for people with disabilities. NAPAS is very pleased that P&A network will play an active role in helping implement the disability provisions in this bill.

NAPAS is well aware that there are still some concerns with certain provisions of the bill. We hope that these concerns can be worked out, if not immediately, then as the bill is implemented. It would be extremely unfortunate if people continued to face barriers to casting their ballot after this bill is signed into law.

Finally, We want to thank the bill's sponsors, Senators Dodd (D-CT) and McConnell (R-KY) and Representatives Ney (R-OH) and Hoyer (D-MD) for their hard work and perseverance. We look forward to working with each of them to ensure the swift and effective implementation of this important legislation.

Sincerely,

Bernadette Franks-Ongoy,

President.



[From News Common Cause, Oct. 8, 2002]

Common Cause President Praises Election Reform Agreement

Statement by Scott Harshbarger, president and chief executive officer of Common Cause, on the conference agreement on the election reform bill:

"The Help America Vote Act of 2002 is, as Senator Christopher Dodd (D-CT) has said, the first major piece of civil rights legislation in the 21st century. Nearly two years after we all learned that our system of voting had serious flaws, Congress will pass these unprecedented reforms.

"For the first time, the federal government has set high standards for state election officials to follow, while authorizing grants to help them comply. Billions of dollars will be spent across the country to improve election systems.

"This bill, while not perfect, will make those systems better. Registration lists will be more accurate. Voting machines will be modernized. Provisional ballots will be given to voters who encounter problems at the polling place. Students will be trained as poll workers.

"As Common Cause knows from a seven-year fight to pass campaign finance reform, compromise often comes slowly. We thank the bill's sponsors, Senators Dodd, Mitch McConnell (R-KY), Christopher Bond (R-MO), and Representatives Robert Ney (R-OH) and Steny Hoyer (D-MD) for their work. Their persistence\_ even when negotiations bogged down\_ brought this bill through.

"After the President signs the bill, states will need to act. Implementing this bill will require state legislators to change laws, election officials to adopt new practices, polling places to alter their procedures, and poll workers to be retrained.

"These far-reaching changes will not come easily. The bill's enforcement provisions are [\*S10417] not as strong as the 1993 Motor Voter law or the 1965 Voter Rights Act. Some states may lag behind and fail to implement these changes properly; some polling places will experience problems like in Florida this year; others may have problems implementing the new identification provisions.

"Common Cause and our state chapters will work with civil rights groups and other to ensure that states fully and fairly implement the new requirements. We will help serve as the voters' watchdogs: citizen vigilance can protect voters from non-compliant states.

"Voters can now look to marked improvements at the polls in the years ahead, thanks to the bipartisan leadership of the bill's sponsors."

National Association

of Secretaries of State,

Washington, DC, October 9, 2002.

Committee on House Administration,

Longworth Building,

Washington, DC.

Dear Chairman Ney and Ranking Member Hoyer: The National Association of Secretaries of State (NASS) congratulates you on the completion of H.R. 3295, the "Help America Vote Act." The bill is a landmark piece of bipartisan legislation, and we want to express our sincere thanks for your leadership during the conference negotiations. We also commend your Senate colleagues: Senators Chris Dodd, Mitch McConnell and Kit Bond.

The nation's secretaries of state, particularly those who serve as chief state election officials, consider this bill an opportunity to reinvigorate the election reform process. The "Help America Vote Act" serves as a federal response that stretches across party lines and provides a substantial infusion of federal money to help purchase new voting equipment

and improve the legal, administrative and educational aspects of elections. In fact, our association endorsed the original draft of H.R. 3295 in November 2001.

Specifically, the National Association of Secretaries of State (NASS) is confident that passage of the final version of H.R. 3295 will authorize significant funding to help states achieve the following reforms:

Upgrades to, or replacement of, voting equipment and related technology;

Creation of statewide voter registration databases to manage and update voter registration rolls;

Improvement of poll worker training programs and new resources to recruit more poll workers throughout the states;

Increases in the quality and scope of voter education programs in the states and localities;

Improvement of ballot procedures, whereby voters would be allowed to review ballots and correct errors before casting their votes;

Improved access for voters with physical disabilities, who will be allowed to vote privately and independently for the first time in many states and localities;

Creation of provisional ballots for voters who are not listed on registration rolls, but claim to be registered and qualified to vote.

We want to make sure the states will get the funding levels they've been promised, and that Congress will provide adequate time to enact the most substantial reforms. Please be assured that the nation's secretaries of state are ready to move forward once Congress passes H.R. 3295 and the President signs it.

If we can be of further assistance to you, your staff members, or your colleagues in the U.S. House of Representatives, please contact our office.

Best regards,

Dan Gwadosky,

NASS President,

Maine Secretary of State.

National Conference

of State Legislatures,

Washington, DC, October 7, 2002.

Hon. Robert Byrd,

Chairman, Senate Appropriations Committee,

Washington, DC.

Hon. Bill Young,

Chairman, House Appropriations Committee,

Washington, DC.

Dear Chairmen Byrd and Young: On behalf of the nation's state legislators, we urge you to make reform of our nation's election processes a reality by providing sufficient funding to implement H.R. 3295. The conference agreement announced today will provide an effective means for states and counties to update their election processes without federalizing election administration. NCSL worked closely with the conferees in the development of this legislation and is satisfied that it keeps election administration at the state and local level, limits the role of the U.S. Justice Department

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to enforcement, does not create a federal private right of action, and establishes an advisory commission that will include two state legislators to assist with implementation. NCSL commends the conferees for their work on this landmark legislation and is committed to implementing the provisions of H.R. 3295 to ensure every voter's right to a fair and accurate election.

To ensure proper implementation and avoid imposing expensive unfunded mandates on the states, it is critical that the federal government immediately deliver sufficient funding for states to implement the requirements of this bill. Neither of the existing versions of appropriations legislation provides sufficient funding for election reform. We urge you to fully fund H.R. 3295 at the authorized level of \$2.16 billion for FY 2003.

The Congressional Budget Office has estimated that it may cost states up to \$3.19 billion in one-time costs to begin implementing the provisions of this legislation. In this current fiscal environment, it will be extraordinarily difficult for states to implement the minimum standards in the bill without immediate federal financial support. States are already facing budget shortfalls for FY 2003 of approximately \$58 billion. Thirteen states have reported budget gaps in excess of 10 percent of their general fund budgets. To satisfy their balanced budget requirements, states are being forced to draw down their reserves, cut budgets, and even raise taxes.

We look forward to working with you to keep the commitment of the states and the federal government to implementing H.R. 3295. If we can be of assistance in this or any other matter, please contact Susan Parnas Frederick [REDACTED]; susan.frederick@ncsl.org) or Alysoun McLaughlin [REDACTED], alysoun.mclaughlin@ncsl.org) in NCSL's state-federal relations office in Washington, D.C.

Sincerely,

Senator Angela Z. Monson,

Oklahoma, President, NCSL.

Speaker, Martin R. Stephens,

Utah, President-elect, NCSL.

National Association

of State Election Directors,

Washington, DC, October 10, 2002.

Hon. Bob Ney,

Hon. Steny Hoyer,

House Administration Committee,

Washington, DC.

Dear Congressmen Ney and Hoyer: The National Association State Election Directors (NASED) congratulates you on the successful completion of the final conference report on H.R. 3295. This initiative will significantly affect the manner in which elections are conducted in the United States. On balance, H.R. 3295 represents improvements to the administration of elections. As administrators of elections in each state we express our appreciation to you and your staff for providing us access to the process and reaching out to seek our views and positions on how to efficiently and effectively administer elections.

As with all election legislation, H.R. 3295 is a compromise package, which places new challenges and opportunities before state and local election officials. We stand ready to implement H.R. 3295 once it is passed by Congress and signed into law by the President. Implementation of this bill will be impossible without the full \$3.9 billion appropriation that is authorized. The success of this bold congressional initiative rests in large measure upon the appropriation of sufficient funds to bring the bill's objectives to reality.

We found the bipartisan approach to this legislation refreshing and beneficial. Thank you again for including NASED in the congressional consideration the bill.

If we can be of further assistance, please contact our office.

Sincerely,

Brook Thompson,  
President, NASED.

National Association of Counties,

Washington, DC, October 9, 2002.

Hon. Christopher Dodd,

Chairman, Committee on Rules and Administration, U.S. Senate, Russell Senate Office Building, Washington, DC.

Hon. Mitch McConnell,

Ranking Minority Member, Committee on Rules and Administration, U.S. Senate, Russell Senate Office Building, Washington, DC.

Dear Chairman Dodd and Senator McConnell: We would like to congratulate you and thank you for your leadership, perseverance and hard work in reaching agreement in the House-Senate conference on the "Help American Vote Act of 2002." We believe the final bill is a balanced approach to reforming election laws and practices and to providing resources to help counties and states in improving and upgrading voting equipment. The National Association of Counties supports H.R. 3295 as it was approved by the House-Senate conference Committee.

We are very concerned about Congress providing the funds to implement the new law. While there is much confusion at this time about the appropriation process for FY2003, we strongly urge the leadership of the House and Senate and President Bush to support inclusion of \$2.16 billion in a continuing resolution. This is the amount authorized for FY2003 by the "Help American Vote Act." We believe that funding and improving voting practices in the United States is as important as our efforts to strengthen homeland security.

Thank you again for your continuing efforts to fund and implement this new law.

Sincerely,

Larry E. Naake,  
Executive Director.

Mr. DODD . Mr. President, I also would like to mention the tremendous assistance provided by the Leadership Conference on Civil Rights, the League of Women Voters, and People for the American Way.

Before I turn to my colleagues who wish to be heard, I would be remiss if I [\*S10418] did not publicly express my gratitude to my fellow conferees. I already mentioned Senator McConnell, Senator Bond, Senator Durbin, and Senator Schumer. I thank their staffs as well.

I want to take a moment as well to thank an individual I had never really met before\_ I may have met him before, but I did not certainly know him\_ and that is the chairman of the House Administration Committee, Bob Ney, from the State of Ohio, who serves in a tough job as chairman of that committee. He has been in the Congress, I think, about 8 or 10 years.

He worked very hard on this legislation. And I developed a great deal of respect and affection for Bob Ney. We are of different parties and, obviously, different States, not serving together in the House of Representatives.

But Bob Ney and his staff were tenacious, hard working, and determined to get a bill. I commend them for that. We were not sure we were going to be able to get it done in the end, as it appeared at several points this may not work. And because Bob Ney felt strongly that we had an obligation to try, we are here today with this product on which they had a successful vote in the other body. So I commend Bob Ney for his tremendous efforts and that of his staff.

Steny Hoyer is the ranking Democrat on the House Administration Committee. I have known Steny for years. Unlike Bob Ney, Steny and I have been good friends for a long time. Steny Hoyer has been as committed to election reform issues as anyone, as well as his commitment to the disabled.

He was one of the prime architects of legislation affecting the disabled. So while we talked about that a lot in this body during the consideration of our bill, we certainly need to extend credit to Steny Hoyer for his commitment to those issues as well.

So the team of Bob Ney and Steny Hoyer, putting together the product they did, deserves a great deal of credit and recognition for what we hope will be the adoption of this conference report tomorrow and the signing by the President of this, we think, historic piece of legislation.

On more occasions than I can recall, the three of us—Steny Hoyer, Bob Ney, and myself—along with staffs, spent a lot of late nights. I am looking around the Chamber at faces who were with me in those rooms in the wee hours of the morning, and long weekends, going back and forth. And I appreciate all of their efforts. We had some tough moments, but in any good piece of legislation there will be tension. And if people are committed to try to work things out, you can produce results such as we have in this legislation. So without their persistence and the patience of all involved, we would not be here. And I thank them.

Last but far from least, I thank John Conyers, the dean of the Congressional Back Caucus, for his stalwart support. The day we introduced a bill, that is not unlike what we are asking our colleagues to support here, I stood in a room with two people, in front of a bank of cameras, as we laid out this particular idea. And the two individuals with me in that room were John Conyers and John Sweeney of the AFL-CIO. And I thank both of them.

But John Conyers has been tireless. He has never given up on this. He knew that compromises would have to be struck, and he insisted we reach those compromises even though he would prefer, in some instances, that provisions of the bill not be included. But a great legislator, a good legislator, understands that when people gather for a conference, unfortunately, they arrive with their opinions, and you are not going to be able to get your own way all the time. So John Conyers was tremendously helpful. I began this journey with him a long time ago. And I could not end these remarks without extending my deep sense of appreciation to him and to his staff for their tremendous help.

In closing, I would like to add only this: Of all the many important issues considered by this Senate in this Congress, I do not think any others may argue this—but I do not think any are going to exceed this one in significance. I know we have had important debates on Iraq and other such questions, but I think what Mitch McConnell, Kit Bond, and my other conferees, Senator Durbin, Senator Schumer, and others who were involved in this—what we have achieved certainly ranks in the top echelons of accomplishments, I would say the best thing we have done in this Congress. We have not achieved a lot in this Congress, but I think this is one of the most significant things.

I think this is the kind of legislation you can talk to your grandchildren about or they will read about and say that even if we did not do anything else in this Congress, this is a significant accomplishment for the American people.

Thomas Paine, as I have quoted him over and over again over the last year and a half or so of this discussion, said 207 years ago:

The right to vote . . . is the primary right by which other rights are protected. To take away this right is to reduce a man to slavery, for slavery consists in being subject to the will of another, and he that has not a vote . . . is in this case.

So, Mr. President, I thank again my colleagues; for the bedrock principle in our Republic is simply this: the consent of the governed. We are a nation where the people rule, and they rule not with a bullet but with a ballot. That sacred, central premise of our Republic is given new power by this conference agreement. It can make America a more free and democratic Nation. That kind of opportunity comes our way only rarely, at most maybe once in a generation, on average. It is an opportunity that has emerged out of adverse circumstances—a close and controversial election for the Presidency of the United States.

By seizing that opportunity and passing this conference agreement, we in this body can transform a national moment of adversity into the promise of a future with the right to vote that will have new resonance for every citizen of America. I urge adoption of this conference report.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. Dayton). The Senator from Kentucky.

Mr. McCONNELL . Mr. President, first, let me say to my good friend from Connecticut, this is, indeed, something to celebrate on a bipartisan basis in a Congress that could use a celebration. This may have been the most unproductive and unsuccessful session of the Senate in my 18 years here: no energy bill; no terrorism insurance bill and until tomorrow, at least no appropriations bills; no budget; no homeland security bill; only 44 percent of President Bush's U.S. circuit court nominees confirmed.

A couple of items we did pass were at least in this Senator's judgment not very good: a flawed campaign finance reform bill and a bloated farm bill.

We could use a celebration. And the Senator from Connecticut and I would like to encourage all of our Senators to feel good about the piece of legislation that will be adopted tomorrow.

This is, indeed, a significant accomplishment, an important piece of legislation. Even if we had a very productive Congress, and a Senate that was passing landmark legislation on virtually a weekly basis even if that had been the case this year this legislation would have stood out as something important for the Nation and something well worth doing.

So, Mr. President, I rise today with a tremendous amount of pride and enthusiasm about this landmark legislation. Although the Senate, as I just suggested, has been mired in partisanship and virtually calcified over various pieces of legislation, and the confirmation of judges, the House-Senate conference committee on election reform has achieved an historic bipartisan, bicameral consensus.

Nearly 2 years ago, this Nation had a painful lesson on the complexities and complications State and local election officials face in conducting elections. In response, legislators on both sides of the Hill introduced legislation to address the problems exposed in the 2000 election. The various pieces of legislation ran the gamut in approach and emphasis, but all were unified in their goal of improving our Nation's election systems.

In December of 2000, Senator Torricelli and I introduced the first of what was to become four bipartisan compromise bills that I have sponsored or cosponsored. From the beginning, I have been committed to providing not [\*S10419] only financial assistance but also informational assistance to States and localities.

The best way to achieve both of these goals is by establishing an independent, bipartisan election commission. The commission will be a permanent repository for the best, unbiased, and objective election administration information for States and communities across America.

And that is really important because what happens I used to be a local official early in my political career is that you are confronted with vendors selling various kinds of election equipment, and there is really no way to make an objective analysis of what your needs are. On the other hand, this new commission will be a repository for expertise and unbiased advice to States and localities across America about what kind of equipment might best suit their situation.

This concept has been one of the cornerstones of each of the bills that I have sponsored. It was recommended by the Ford-Carter Commission, supported by the President, and has been perfected in this conference agreement. The commission will not micromanage the election process, but will instead serve as a tremendous resource for those across America who conduct elections.

This conference report will help make all elections more accurate, more accessible, and more honest, while respecting the primacy of States and localities in the administration of elections. For the first time ever, the Federal Government will invest significant resources to improve the process, roughly \$3.9 billion. Every State will receive funds under this legislation, and the smaller States are guaranteed a share of the pot. The funds will be used by the States in a manner they determine best suits their needs, rather than the Federal Government prescribing a one-size-fits-all system. Whether it is by replacing a punchcard or a lever voting system or educating and training poll workers, States are provided the flexibility to address their specific needs.

The mantra of this legislation, coined by the distinguished senior Senator from Missouri, Kit Bond, has been to "make it easier to vote and harder to cheat." We have achieved that balance in this conference agreement by setting standards for States to meet, standards which the Federal Government will pay 95 percent of the cost to implement. Voting systems will allow voters to verify their ballots and allow voters a second chance, if they make a mistake, while maintaining the sanctity of a private ballot.

Voting will become more accessible to people with disabilities, an issue admirably and vigorously championed by Senator Dodd. Provisional ballots will be provided to all Americans who show up at polling sites only to learn their

names are not on the poll books. Such a voter's eligibility will be verified, however, prior to the counting of the ballot to ensure that those who are legally entitled to vote are able to do so and do so only once; again, making it easier to vote and harder to cheat.

To protect the integrity of every election, this conference report makes significant advancements in rooting out vote **FRAUD**. Congress has acted properly to curtail **FRAUD**ulent voting and reduce duplicate registrations, both interstate found to be more than 720,000 nationwide and intrastate. The provisions of this bill are carefully drafted to address this impediment to fair and honest elections, and we provided the States with the means and the resources to address this problem.

First, States will establish secure, computerized Statewide voter registration databases that contain the name and information of each registered voter. The accuracy of the voter registration list is paramount to a fair and accurate election. The motor voter bill of 1993 has done grievous harm to the integrity of the system by junking up the voter rolls and making it extremely difficult to systematically ensure that only eligible voters are registered.

Second, every new registrant will be required to provide their driver's license number, if they have been issued one, or the last four digits of their Social Security number. If they have neither, the State will assign them a unique identifier. This information will be matched with the department of motor vehicles which will in turn match their data with the Social Security Administration. States which use the full nine-digit Social Security number for voter registration are given the option to avail themselves of this important new provision. Contrary to the assertions of some, the only thing this provision impedes is vote **FRAUD**.

Third, first-time voters who register by mail will have to confirm their identity at some point in the process by photo identification or other permissible identification. This provision was championed by Senator Bond, and its importance was once again highlighted just this past week in South Dakota where there is an ongoing joint Federal and State investigation of **FRAUD**ulent voter registrations.

According to press reports in South Dakota, people are registering weeks after they have died, and one eager voter even completed 150 voter registration cards. Is that an enthusiastic voter or what?

The South Dakota Attorney General succinctly summed up the problem:

It's pretty easy to register under a false name, have the registration confirmation sent back to your home, then send in by mail an absentee ballot request, get it and vote under the false name, send it back and get it counted.

Under this legislation, that is not going to be possible any longer. That is a step in the right direction for our democracy.

These three provisions will ensure that dogs such as Ritzy Mekler, Holly Briscoe, and other stars of "Animal Planet" will no longer be able to register and vote. These provisions will ensure that our dearly departed will finally achieve everlasting peace and will not be troubled with exercising their franchise every 2 years. And importantly, the provisions will ensure that voter rolls will be cleansed and protected against **FRAUD**ulent and duplicate registrations.

This conference report also provides remedial safeguards for every American's franchise. The Department of Justice will continue its traditional role of enforcing Federal law. In addition, each State will design and establish a grievance procedure available to any voter who believes a violation of law has occurred. States are best equipped to promptly address the concerns of its voters, and I compliment Senator Dodd for his foresight on this issue.

This legislation also makes significant improvements to protect the votes of those who have committed themselves to protecting all Americans, and that is our men and women in uniform.

I have touched upon just a few of the highlights of this historic piece of legislation. After nearly 2 years of discussions, negotiations, introductions and reintroductions of election reform bills, we now stand ready to vote on the most important piece of legislation before Congress in many years.

I thank, again, Senator Dodd for his steadfast leadership. He committed 110 percent of himself to this issue and worked tirelessly to bring us to this day. I also thank Senator Bond for all of his work to protect the integrity of the election process. I also congratulate my colleagues on the other side of the Hill for their significant achievement: Congressman Bob Ney of Ohio, chairman of the conference, did a superb job; and our good friend Steny Hoyer, ranking member, who was outstanding as well.

And to the staff people involved in this, my own staff on the Rules Committee: Tam Somerville; I particularly commend Brian Lewis, who was there from beginning to end in this process\_ as far as I am concerned, this will be known as the Brian Lewis bill around my office\_ and his able right hand, Leon Sequeira, and Chris Moore and Hugh Farrish, all of the Rules Committee staff.

For Senator Bond, Julie Dammann and Jack Bartling of Senator Bond's staff were superb. And for Senator Dodd, Kennie Gill, Shawn Maher, Ronnie Gillespie, we enjoyed working with them, and they, too, should feel about good about this. From Congressman Ney's staff, Paul Vinovich, Chet Kalis, Roman Buhler, Pat Leahy\_ they have a staffer named Pat Leahy, how about that\_ and Matt Petersen. And from Congressman Hoyer's staff, Bob Cable, Keith Abouchar and Len Shambon.

This is indeed a happy day, not just for Senator Bond and myself, but for [\*S10420] all Members of the Congress. This is a remarkable achievement we can all feel good about. We look forward to seeing it pass tomorrow by an overwhelming margin. I am sure the President at some point will want to sign this with appropriate flourish down at the White House.

Again, I thank my colleague from Connecticut and yield the floor.

weekend voting

Mr. KOHL. I thank the distinguished chairman of the Rules Committee for clarifying a provision in the bill. As the Senator knows, I am the sponsor of legislation moving Federal elections from the first Tuesday in November to the first weekend in November. It is my hope that moving Federal elections to the weekend will increase voter turnout by giving all voters ample opportunity to get to the polls without creating a national holiday. My proposal would also have the polls open the same hours across the continental United States, addressing the challenge of keeping results on one side of the country, or even a state, from influencing voting in places where polls are still open.

The Senate version of the election reform legislation before us included a provision sponsored by Senator Hollings and myself which directed the Election Administration Commission to study the viability of changing the day for congressional and presidential elections from the first Tuesday in November to a holiday or the weekend, with the possibility of looking at the first weekend in November. Unfortunately, during the conference on this bill, the studies section was refined to direct the Election Administration Commission to study the "feasibility and advisability of conducting elections for Federal office on different days, at different places, and during different hours, including the advisability of establishing a uniform poll closing time" with a legal public holiday mentioned as one option but no mention of weekend voting. Is it correct that there was no specific intent to leave out weekend voting as an option?

Mr. DODD. The Senator from Wisconsin is correct. The conferees intended that the new Election Administration Commission consider all options for election day, including the Senator's interesting proposal to move elections to the weekend. There was also no intent to limit the Election Administration Commission to considering just one day as an election day. It is my hope that the commission will examine all options, including the possibility of holding elections over two days as suggested in Senator Kohl's proposal.

Mr. KOHL. I thank the Senator from Connecticut for this clarification. I hope that the Election Administration Commission will seriously consider moving federal elections to the weekend. I will continue to advocate for weekend voting as a means of increasing voter turnout and addressing the need for uniform poll closing times in federal elections.

Mr. DODD . Mr. President, I yield 15 minutes to my colleague from Oregon, Senator Wyden.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN . Mr. President, let me join in the extraordinarily important comments that have been made by Senator Dodd and Senator McConnell. This has been a huge and arduous task that had to be bipartisan. The fact is, you can't get anything done that really is important without it being bipartisan.

I take a moment to thank Senator Dodd. He has been extraordinarily patient with me and with all of the Members of this body who come from States that have pioneered innovative approaches.

It is fair to say right now with millions of Americans essentially being early voters, there have been estimates that something along the lines of 15 percent of the American people are going to vote early.



The legislation that Senator Dodd and Senator McConnell brings to us today protects the wave of the future\_ this early voting\_ whether it be by absentee ballot or the pioneering vote-by-mail system.

What this legislation does is protect the early voters\_ the person we are seeing more and more of in the American political process\_ by, in effect, taking steps to discourage **FRAUD** at the front end when people register, and then making sure that people don't face unnecessary barriers and hassles when they actually participate in the fall of even-numbered years. So I commend Senators Dodd and McConnell for their work in this area.

Suffice it to say, at various stages in the discussion, I wasn't sure that we were going to make it. Look at how the debate began when this bill first came to the floor of the Senate. It seemed to me and others that millions of Americans would have been turned away from the polls because they didn't have with them a valid photo identification or a copy of a utility bill. It would have disenfranchised millions of Americans. I and others made that point to Chairman Dodd and Senator McConnell, and we began a very lengthy set of negotiations that involved Senators Dodd, McConnell, Bond, Cantwell, Schumer, and I. Together we were able to work out an agreement with respect to the photo identification provision. It protects fully the vote-by-mail system. In fact, it protects all Americans who want to vote early, as I have mentioned. It is outlined in section 303 of the conference report.

I thought I would take a minute to describe how this provision would work. Beginning in January 2004, anyone who registers to vote for the first time, let's say in Oregon, has the choice of registering by providing a driver's license number, the last four digits of their Social Security number, a copy of a current utility bill, bank statement, government document, or a valid photo identification. When they cast their ballot by mail, Oregon's State elections officials will verify the voter's eligibility consistent with State law by signature verification. Under our Oregon election law, an elections official determines voter eligibility by matching the signature on the registration with the signature on the mail-in ballot. Oregon's signature match system would not change.

My primary concern throughout this discussion has, of course, been to support our pioneering vote-by-mail system, which I think is the wave of the future. But as we have seen in recent days it is not just Oregon but a variety of other States are going to see millions of people saying they want to take the time, essentially through the fall when people are considering the candidates, to look at the statements put out and reflect on them in a way that is convenient for them.

We said at the beginning of this discussion that we wanted to discourage **FRAUD** and encourage voters. I think that is what the Dodd-McConnell legislation does. I am particularly pleased that it does so in a way that protects Oregon's pioneering system and all of those around this country who are going to be voting by mail.

Senator McConnell just mentioned that this is, in his view, just about as important as it gets for the Senate. I will reaffirm that statement. After all of the problems that we have seen in Florida, after you look at all of the challenges in terms of getting young people excited about politics and excited about the democratic process, what this legislation does is it reaches out and says: We understand those concerns. We understand that the American people feel more strongly about this subject than just about anything else because it is what we are about. It is about our values, our principles; it is what the Senate is all about. So I am very pleased that Senators Dodd and McConnell had the patience to work with some of us who, I am sure, were fairly prickly and difficult along the way. I don't know how many hours we had in negotiations just looking at the arcane details of some of the vote-by-mail States. But Senator Dodd said we are just not going to give up. We understand that you are doing something very exciting in the Pacific Northwest, and we encourage it.

In effect, what Senator Dodd has done is not just protect the Oregon system but allowed this country to build on something that I think is the wave of the future; that is, people voting essentially throughout the fall. We have seen\_ as reported recently in various States as they innovate with different kinds of systems\_ a variety of approaches that are being tried. My own sense is that it won't be very long before people start voting online in this country. [\*S10421]

So what Senator Dodd has done is made it clear that he is going to stand with all of us in the Senate who want to discourage **FRAUD**, and we are going to do it at the right time and in the right way, which is essentially at the front end when people come to sign up for the electoral process. But then, after we can ascertain they are who they say they are, they are not going to face innumerable hassles and barriers when they actually show up to vote.

So my thanks to Senator Dodd and his staff, Carole Grunberg, who is here. She has championed for us the Oregon vote-by-mail system. But with Senator Dodd in the Chamber, I want him to know how much I appreciate what he is doing. It means a tremendous amount to my constituents and also to this country and to the future of American voting.

I yield the floor.

Mr. DODD . Mr. President, before my colleague leaves the floor, I thank him and his staff as well for their tremendous contribution. One of the things we did in this bill\_ I say to my friend from Oregon that he is in large part responsible for this, I probably should give him more credit for this\_ we set Federal standards and rights that never have existed before in all Federal elections across the country, and we have enumerated the rights in this bill.

One of the things I fought very hard to preserve is that what constitutes a valid registration of a voter and what constitutes a valid vote is left up to the States. We don't federalize registration and we don't federalize how votes get counted. We have left that to the States. It would be overreaching to go that far.

I must say some of the most creative ideas on how to make this basic franchise accessible to the maximum number of people, the most creative ideas are occurring in our States across the country. There are differences in places, and States ought to have the flexibility of deciding what system works best for them.

I will tell my colleague, I have learned of some fascinating historical stories. Going back, people have said: Where in the Constitution does it say you have to be a citizen to vote? Well, it is the 14th and 15th amendments. The 14th amendment describes what a citizen is, and the 15th amendment says all citizens have the right to vote.

There was a time\_ and the Presiding Officer may find this interesting\_ when we discovered as part of our research that in the latter part of the 19th century, in certain areas of the upper Midwest, in efforts to attract immigrant populations to settle in some of the vast farmlands there, they actually said: We will allow you to vote in Federal elections\_ which they did. I cannot find the lawsuit that stopped it. I think it may have been by tradition, but it provided that the person who signed up made a promise that they would someday become a citizen. That was the condition that you had to fill out.

There are actually some jurisdictions in this country, by the way, not in Federal elections but local elections, where noncitizens, by municipal law, are allowed to vote.

The State of Oregon is, I think, on the cutting edge. I agree with my colleague on this. Maybe because I have a head of gray hair, but I like the idea of a community gathering at a polling place. There is a sense of community spirit about showing up.

In my town of East Haddam, CT\_ it is a small place with only a few thousand people and where I have lived for the last two decades\_ we all gather in the old townhall, literally around the potbellied stove. The folks I have known for the last two decades run the polling operations there. We like it that way. I am not suggesting there is a younger generation coming along who do not like the way they do it in Oregon\_ I suspect they might, and I suspect there will be States allowing people, in the not-too-distant future, to vote by Internet.

I thank him for bringing forward the Oregon and, we should add, the Washington experience, because they are similar experiences, to this debate. The fact we managed to accommodate the unique voting circumstances in their States gave rise to the idea there actually may be other States that may want to move in this direction. In fact, the provisions authored by my colleague and included in the conference report can be used by every state, and not just by Oregon and Washington. We thank Senator Wyden for his contribution and for making this a stronger and a better bill, and one that does maintain its sensitivity to the unique requirements and needs of people across this vast country of ours. I thank the distinguished Senator from Oregon for his contribution.

I note as well\_ it is somewhat an irony\_ I recall vividly the day Senator McConnell and I had announced we had reached an agreement, at least on the Senate version of this bill, our colleague who is now presiding over the Senate was presiding over the Senate that very day. He would not have known on that day a year and a half ago he would be presiding today as well. I thank him.

Mr. President, I wish to note because there are so many wonderful staff people and they do not get the credit they deserve\_ we get to stand here and give the speeches and our names go on the bills. There are literally dozens of people who work incredible hours to produce the kind of legislation we are endorsing today.

I mentioned already the Members on the House side, my colleagues, Bob Ney and Steny Hoyer, the principal House advocates. There was a long list of conferees, by the way, in the House. A number of committees of jurisdiction touched on matters in this bill, from the Ways and Means Committee to the Armed Services Committee\_ I will forget some\_ a lot of committees. So there were a lot more conferees from the other body on the conference committee. I thank them.

I extend my special appreciation for the invaluable expertise and contributions in negotiating this bill to final passage to Paul Vinovich, one of the principal staff people for Bob Ney, and Chet Kalis, who is a wonderful individual. Both of these men are remarkable people and did a fantastic job, not just for Bob Ney and the Republican side, but they always had the sense they wanted to get a bill done, and that is a big difference when you are in a conference. If you are looking across the table at people and if the negotiating is to stop something or to make something happen, what a difference it is when you talk to people who give you the sense they want something to happen. I thank them.

I thank Roman Buhler, a tough negotiator; Matthew Petersen; and Pat Leahy.

From the office of Steny Hoyer: Bill Cable. I have known Bill for all my years in Congress. When I served in the other body, Bill Cable was a terrific staff person then. He has a wonderful institutional memory about the Congress of the United States. Steny Hoyer is truly fortunate to have Bill Cable with him. I thank him for the long hours he put in on this legislation.

Keith Abouchar and Lenny Shambon were wonderful. They are knowledgeable people and have been very helpful on this. They understand the laws, and have a wonderful expertise in motor voter registration and how these proposals work.

I further thank John Conyers. I mentioned already my coauthor of this legislation initially, but I want to also thank his staff. I thank Perry Apelbaum, Ted Kalo, and Michone Johnson, who were just wonderful and tireless in their efforts. I thank them for their tremendous work. Along with John, they were a great source of information and guidance during some very delicate moments on how we ought to proceed.

Tom Daschle, our leader in the Senate, has been tremendously helpful through all of this. He asked me how long the original bill would take on the floor of the Senate when it came up. We had gotten through this, worked out the agreement, and there were a lot of demands for time on the floor. He looked at me and said: How long do you think it will take to debate the election reform bill?

I said: Mr. Leader, I think we can do it in 2 days.

Mr. President, if you look around, you can see the smiles on the faces of some of the floor staff. I think we were on the floor 9 days, had 46 amendments, and there were a hundred more, at least, proposed. I took some very healthy ribbing from the majority leader and others on the staff when they would look at me day after day [\*S10422] and say: How long did you say this bill would take? It took a lot longer than we anticipated.

I thank Andrea LaRue, Jennifer Duck, Michelle Ballantyne, Mark Childress, and Mark Patterson from the majority leader's staff for their patience and assistance.

With regard to Senator McConnell's staff, we spent a lot of time with Senator McConnell's staff. We spent more time with Senator McConnell's staff than with Senator McConnell, and he would be the first to say that. Tam Somerville, Brian Lewis, and Leon Sequeira are also very fine and hard-working staff members. Brian Lewis, poor Brian got saddled with more responsibilities. With all of this coming together, committee staff had to deal with campaign finance reform and election reform all at once. There were demands on their time, pulling them in two different directions, as we were trying to get this bill completed in the Senate so we could get to conference because we knew we had a long conference ahead of us. I express my gratitude to Brian. He is knowledgeable, worked hard, and made a significant contribution. I appreciate it very much.

Senator Schumer's staff: Polly Trottenberg, Christine Parker, Cindy Bauerly, and Sharon Levin were very helpful. I thank them.

Senator Bond: Julie Dammann and Jack Bartling. We had some real go-rounds with Senator Bond's staff on some of the provisions in this bill. I thank both of them for a lot of effort. Jack Bartling spent a lot of time during the Senate consideration, going back months and months ago, sitting up late nights in my conference room and going through what we wanted to do and how it might work. I occasionally would run into Jack off the Hill. Even in off hours in restaurants, we would end up being seated next to each other unintentionally by the maitre d'. We spent all day working on this legislation, and when I went out for an evening with my wife and child, who ended up sitting next to me but Jack Bartling, and here we go again carrying on conversations. I thank Jack.

I thank Jennifer Leach and Sara Wills on Senator Torricelli's staff. Senator Bob Torricelli offered some of the earliest versions of election reform. Early on he thought we ought to do something about election reform and worked

with Senator McConnell and others to craft legislation. He agreed to work with us on our bill when we developed it. I thank Senator Torricelli for working very hard on campaign election reform.

Senator McCain's staff: Ken LaSala. I offer a special appreciation for his invaluable expertise and contributions in negotiating and bringing this bill to final passage.

Senator Durbin's staff: Bill Weber was tremendously helpful to us. I thank him.

I thank Beth Stein and Caroline Fredrickson from Senator Cantwell's staff. I mentioned Oregon, Senator Wyden and his State, and the Senator from the State of Washington, Ms. Cantwell, had similar circumstances and were concerned about how the provisions of this bill would work in a State where a significant number of the people vote by mail. They wanted to be sure we were not doing anything here that was going to prohibit them from conducting their elections in the way they have done successfully for some time.

I mentioned Senator Wyden. I thank Carol Grunberg for her work as well.

The floor staff, again, were tremendously patient with this Member. I tied up the cloakroom for hours one Friday trying to get holds lifted on this bill.

The floor staff was tremendously helpful. Marty Paone, Lula Davis, Gary Myrick, members of the cloakroom staff, were tremendously supportive.

I apologize for going through all of this and mentioning these names. I could just submit them for the Record, but I want to say their names because just putting their names in the Record does not do justice to the amount of time and effort people have put in. So I beg the indulgence of the Chair and others as I go through this.

This may sound mundane or boring to those who are watching it, but I am someone who believes very strongly we ought to give more recognition to the people whose names never appear much around this place and yet who make incredible contributions to a product like this.

I want to thank the Office of Legislative Counsel. Let me explain what legislative counsel does. These are the people who actually write these bills. We tell them what we are thinking, these grand ideas of ours. A Senator has a grand idea. The staff tries to put language around the grand idea and then they go to legislative counsel, who then has to write it in a legalistic way so it can actually mean something because words have specific meaning.

So the legislative counsel's office was instrumental—we asked them to work around the clock on a few instances. Literally, they were up all night producing language because we were running up against the clock to get this bill done. So to Jim Scott and Jim Fransen of the Office of Senate Legislative Counsel, and Noah Wofsy, from the House legislative counsel, I want to express my deep sense of gratitude to them for their work. They sat down very objectively. Noah Wofsy is on the House side under the Republican leadership in the House. Jim Scott and Jim Fransen are in the Senate under the Democratic leadership of the Senate, but neither side was partisan in any way. I can honestly say if I sat them in a room and asked them for their views on how this ought to be written, I would never know from which party they had been chosen to do the job. They are that objective and that professional in how they do it.

Sometimes I wish America could watch this when they talk about laws. They could then see people such as these who are so dedicated and see to it that we can get it right. They did not bring political baggage to that discussion and debate.

I mentioned some history earlier about the upper Midwest and these other places. The Congressional Research Service, CRS, was the organization that provided me with some historical framework and background in the conduct of elections and also provided side-by-side versions of bills along the way. And we thank them: Kevin Coleman, who is an analyst in the American National Government; Eric Fischer, senior specialist in Science and Technology; L. Paige Whitaker, legislative attorney at the Congressional Research Service; David Huckabee, who is a specialist in American National Government; and Judith Fraizer, who is an information research specialist. They did a great job, and we are very grateful to them as well.

I wish to thank my own staff. Obviously, in my own heart and mind they come first, as one might expect, but my mother raised me to be polite so I mentioned other people first. I am particularly grateful to my own staff who worked very hard on this. Through my bellowing and barking, and doing all the things we do and wondering why we could not reach agreements earlier—I hope I was not too impatient with them—I want to thank Shawn Maher, who is my legislative director. He was tremendously patient and did a great job. Kennie Gill, who is the staff director and chief counsel of the

Rules Committee, is just one of the most knowledgeable people about this institution I have ever met in my 27 years in Congress. I have met Members who have great respect for the institution, its history, its traditions, what these buildings mean, and what membership means in the other body or this body. I have never met anybody, Member or non-Member, who has as much reverence for this institution as Kennie Gill, and I thank her.

Ronnie Gillespie, who is a terrific individual as well, is our counsel on the Rules Committee. She did a terrific job and I am very grateful to her, as well as my own staff, Sheryl Cohen, Marvin Fast, Alex Swartzel and Tom Lenard. Sheryl Cohen is my staff director, chief of staff of my office, and has to manage all of these things going around. She does a wonderful job, and I am very grateful to her. From the Rules Committee, Carole Blessington, Beth Meagher, Hasan Mansori, and Sue Wright also deserve some very special recognition. Chris Shunk, Jennifer Cusick, and Sam Young are non-designated staff on the Rules Committee staff, who kept the vouchers going during this time and they do wonderful work. There are some former members who were part of this effort who had to leave for various reasons before the completion of this bill, but the fact they are not here does not mean they should not be recognized. Stacy Beck, [\*S10423] Candace Chin, and Laura Roubicek are three people I want to thank.

That is 60 individuals I have mentioned. There may be others I have missed. If I have missed them, I apologize, but I want them to know that all of us, regardless of political persuasion or ideology, thank them, and millions of Americans ought to as well because we never would have achieved this conference report, been able to write this bill, had it not been for these 60 individuals and many more like them.

I have not mentioned the individuals on the outside that worked on this, the NAACP, the National Association of Secretaries of State, the AFL-CIO, the various disability groups. There are literally hundreds of people who are involved in this journey over the last year and a half to produce this conference report. I know normally we do not take as much time to talk about all of this, but I think Senator McConnell and I, and not because it is a pride of authorship, but we think we have done something very historically significant. We are changing America. We are changing the way America is going to be choosing its leadership. We want everyone to participate in this country. It is a source of significant embarrassment to me that there are individuals who cannot participate.

I served in the Peace Corps in Latin America back in the 1960s. So I am asked periodically to go and observe elections, particularly in Latin America, because I know the language and have knowledge of the area. I cannot say how moving it is to watch some of these desperately poor countries where the people who lack any formal education, or have very little of it, will literally stand in line all day, walk miles through blistering and difficult weather, intimidation, fear of literally being killed if they show up, and they vote. They look to us as a beacon of what it means as a free people to be able to choose who represents us, from the most insignificant office on the municipal or town level to the Presidency of the United States. The idea that each and every one of us can be a part of making those choices, and the fact that only 50 percent of our eligible population does so, ought to be a source of collective shame. While this bill is not going to eradicate all of that, when we consider how hard some people fight to be free, how blessed we are as a people and how little is asked of us to participate in the process which has historically distinguished us as a people, our sincere hope today, as we vote tomorrow on this bill, is we have made it easier for people to meet that obligation and made it more difficult for those who would like to scam it in some way. But the most important thing this legislation does is to make it easier for people to make that choice.

So all of those who have been involved in this have my profound sense of gratitude, and I am very confident that sense of gratitude is going to be expressed by millions of people for years to come because of what we have done in the wake of a tragedy in the year 2000, on November 7. We have responded to it with this legislation. Not in every sense, but on some of the core questions, this Congress has stepped up to the plate and responded to those issues. The leadership and Members of the other body, as well as the leadership here, can rightfully claim a proud moment when this bill passes the Senate tomorrow and President Bush signs this legislation as the permanent law of our land.

**SUBJECT:** ELECTION LAW (90%); CONFERENCES & CONVENTIONS (90%); CAMPAIGNS & ELECTIONS (90%); LEGISLATION (90%); ELECTION AUTHORITIES (90%);

**LOAD-DATE:** October 16, 2002

FOCUS - 11 of 21 DOCUMENTS

CONGRESSIONAL RECORD -- *HOUSE*

Thursday, October 10, 2002

107th Congress, 2nd Session

*148 Cong Rec H 7836*

**REFERENCE:** Vol. 148, No. 133

**SECTION:** House

**TITLE:** CONFERENCE REPORT ON H.R. 3295, HELP AMERICA VOTE ACT OF 2002

**SPEAKER:** Mr. NEY; Mr. HOYER; Mr. EHLERS; Mr. CONYERS; Mr. GONZALEZ; Mr. MENENDEZ; Mr. FATTAH; Mr. DAVIS of Florida; Ms. WATERS; Mr. PRICE of North Carolina; Mr. LANGEVIN; Ms. BROWN of Florida; Mrs. MALONEY of New York; Ms. KILPATRICK; Mrs. MEEK of Florida; Ms. DeLAURO; Ms. JACKSON-LEE of Texas; Ms. SCHAKOWSKY; Mr. DAVIS of Illinois; Ms. SOLIS; Mr. HOLT; Mr. BOEHLERT; Mrs. JONES of Ohio; Ms. McCARTHY of Missouri; Mr. VITTER; Mr. HASTINGS of Florida

**TEXT:** [\*H7836]

Mr. NEY . Mr. Speaker, pursuant to the order of the House of October 9, 2002, I call up the conference report on the bill ( H.R. 3295) to establish a program to provide funds to States to replace punch card voting systems, to establish the Election Assistance Commission to assist in the administration of Federal elections and to otherwise provide assistance with the administration of certain Federal election laws and programs, to establish minimum election administration standards for States and units of local government with responsibility for the administration of Federal elections, and for other purposes.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to the order of House of Wednesday, October 9, 2002, the conference report is considered as having been read.

(For conference report and statement, see proceedings of the House of October 8, 2002, at page H 7247.)

The SPEAKER pro tempore. The gentleman from Ohio (Mr. Ney) and the gentleman from Maryland (Mr. Hoyer) each will control 30 minutes.

The Chair recognizes the gentleman from Ohio (Mr. Ney).

General Leave

Mr. NEY . Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 3295.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. NEY . Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this has been a long, winding process that is about to conclude tonight, in what I think is going to be known as one of the most important votes that any Member of this body can cast, not only for this session but for the future, for decades to come, of the future of the voting process for the citizens of the United States. [\*H7837]

I am pleased to present to the House the conference report for H.R. 3295, the Help America Vote Act of 2002. This legislation will have a profound and positive impact on the way we conduct Federal elections in this country. At the heart of the bill are some fundamental principles:

One, that every eligible citizen shall have the right to vote.

Two, that no legal vote will be canceled by an illegal vote.

Three, that every vote will be counted equally and fairly, according to the law.

When this legislation goes into effect, the voting citizens in this country will have the right to a provisional ballot, so no voter will be turned away from a polling place, no voter will be disenfranchised, just because their name does not appear on a registration list.

Henceforth, instead of simply being told to go home, the voters will be able to cast a provisional ballot which will be counted according to State law.

Voters will now also be able to have the opportunity to check for errors and verify the accuracy of their ballot in privacy before it is cast. No more will voters have to wonder if their vote was properly recorded or not. By guaranteeing them the right to verify the accuracy of their ballot in privacy, voters will be able to leave the polling place confident and certain that their vote was cast and counted in complete secrecy as they intended it to be.

This bill contains tremendous advances for individuals with disabilities. This legislation requires that every polling place in the country have at least one voting system that is accessible to the disabled, meaning individuals with disabilities, including the blind and visually impaired. They will now have the right to cast a secret and secure ballot in the same manner as all other Americans do.

No longer will individuals with disabilities have to rely on an assistant, or compromise the secrecy of their ballot. They will be able to vote in a private and independent manner, the same way all their fellow citizens do, many for the first time in their lives.

The legislation establishes a maximum error rate for voting system performance. This error rate is a measure of the performance of voting system prototypes under laboratory conditions to determine that the system counts votes accurately in accordance with national standards stands in Section 3.2.1 of the Voting System Standards adopted by the FEC.

I will include Section 3.2.1. for the record.

At the heart of our elections system is the process of how we maintain our records on who is eligible to vote. Currently, thousands of election jurisdictions across the country manage these records independently. Some employ the latest technologies and database management techniques to ensure accuracy and reliability. Others need improvement.

This bill will require each State to develop a Statewide registration system. These systems will modernize, centralize and improve current methods for ensuring the accuracy of registration lists.

The current system in many States creates inefficiencies and duplications, as voters often move from one jurisdiction to another within a State without notifying the jurisdiction that they used to live in before they made the move. The result is that a single individual may appear on more than one registration list in a State.

These Statewide systems will make it possible for States to more effectively maintain voter registration information, as they should. States will have more accurate systems to protect voters from being mistakenly removed from the list, while ensuring that costly duplicates that invite voter **FRAUD** are quickly removed.

The lists maintained by the State will be the official list used to determine who is registered to vote on Election Day. Uniformity and integrity in the system will be assured as local election jurisdictions will no longer be able to maintain separate lists.

This bill contains important new guarantees for military and overseas voters. Military voters will be guaranteed assistance and information that they need from the Department of Defense so they can complete and return their ballots on time. The military is required to mark all ballots so it can be determined when they were mailed, so no valid military ballot will be rejected for lack of a postmark. All enlistees will receive a voter registration form upon enlistment. We all know how important that is for those who are serving their country and laying their lives on the line.

State election officials must establish a single office where military and overseas voters can get information on how to vote in that State. For the first time, they will be required to accept ballots mailed early from military personnel whose duties, for example, on a submarine, may prevent them from mailing ballots on a date close to the election. For the first time, we will have a report on the number of applications received and absentee ballots sent out to military and overseas voters, together with the number of those ballots that have been returned. Studies of these numbers may help us determine how to future improve participation and turnout among those voters.

Our election system is dependent on tens of thousands of election officials and 1.5 million volunteer poll workers in over 7,000 jurisdictions serving over 150 million voters across this great country. In the general election for Federal office, all of these people come together during a 24-hour period to chose our leaders. It is an incredibly complicated process that must be choreographed precisely to ensure its success. This means that education and training is critical to the success of our elections system. This legislation provides needed funds to complete that task across the United States.

A provision in this package that has been the subject, frankly, of some controversy is the voter ID provision that was included in the Senate-passed bill and is included in this conference report.

I want to emphasize this provision does not require voters to present an actual photo ID. In recognition of the fact that some citizens do not have such an ID, the bill allows a voter a number of options to identify themselves, including a bank statement, utility bill or government check. The provision applies only to first-time voters who register by mail. Language has been added to ensure it will be administered in a uniform and non-discriminatory manner, Mr. Speaker.

The voter ID provision is very important and will go a long way toward enhancing the integrity of our election process. People should not be permitted to register by mail and then vote by mail without ever having to demonstrate in some fashion they are the actual human being who is eligible to vote. I think this is at least the minimal we can ask.

This provision will help to end the practice of ghost voting, whereby people who do not exist are miraculously somehow able to vote. We should all keep in mind that a person whose vote is canceled out by an illegal vote has been disenfranchised every bit as much as an individual who has simply also been turned away from the polls. In either case, that is not the correct thing to do. This ID provision will protect against **FRAUD** of this type, and I am glad the conference saw fit to include it in the package.

Mr. Speaker, the election that took place in November of 2000 demonstrated there are serious problems in our election system. While the initial attention was focused on Florida, we have all learned over the past 2 years that the problems encountered were not unique but in fact were widespread. We just simply did not know it because there was not an election of the magnitude of the presidential that brought all of this to light through the national media.

While the problems varied from State to State, one common problem was a failure to devote sufficient resources to election infrastructure. Not surprising, when State and local officials are faced with the decision of how to spend their limited resources and have to choose between things citizens use every day, like roads and schools, or spend it on equipment that might get used only a couple of times a year, like election equipment, the latter has often come up short; and this bill will help to solve that.

This lack of resources has left States with old and unreliable voting equipment, inadequate training and education of voters and poll workers and, frankly, poor registration systems. [\*H7838]

While State and local governments have been charged with the responsibility of running elections for Federal office, they have simply received no assistance from the Federal Government. This bill changes that.

It is time for the Federal Government to provide some funding to make sure that the world's greatest democracy has an election system it can have pride and confidence in. And remember, when we take our thoughts of democracy across the waters and we try to monitor elections, we have to have our own house in order so that we have the confidence that other countries will see that our system is the best it can be.

The Help America Vote Act will provide Federal financial assistance to the tune of \$3.9 billion in authorized funding over the next 3 years. We can no longer ask State and local governments to bear all of the expense without any assistance from us.

I would also note that according to figures from the Congressional Research Service and the State Department, the United States has spent more than \$3 billion over the past 7 years to promote democracy abroad. I support that; I think



we need to be promoting democracy in other countries. I just believe we need to start spending some Federal dollars to bolster our own democracy here at home.

I would also note that meeting the requirements of this act will not be cheap. If we want and expect State and local governments to meet the requirements we are imposing on them, we will have to provide the funding that will make it possible for them to do so. If we do not, we have done nothing more than pass another unfunded mandate to the States, and we do not want to do that. This bill will cause States and localities to fundamentally restructure their election systems in a host of tremendous ways. We need to provide the funding to make sure that happens.

In addition to the funding it provides, the bill will assist the States with their election administration problems by creating a new Federal election assistance commission. This independent, bipartisan entity will be responsible for providing advice, guidance, and assistance to the States. It will act as a clearinghouse for information and make recommendations on best practices.

I want to stress that the name of the commission, the Election Assistance Commission, is not an accident. The commission's purpose is to assist States with solving their problems. It is not meant and does not have the power to dictate to States how to run their elections. This will not be a bill where Washington, D.C. turns around and says, this is the way you do it. It will not have rulemaking authority. The fundamental premise of the legislation on the commission was to have no rulemaking authority, and it cannot impose its will on the States; but I have to tell my colleagues, it has a heart to this commission, and it has the ability to make changes.

This commission was an important point the gentleman from Maryland (Mr. Hoyer) and I talked about when we devised the Ney-Hoyer bill, because we wanted to make sure it worked for local governments and we wanted to make sure that this would be carried out.

Historically, elections in this country have been administered at the State and local level. This system has had many benefits that have to be preserved. The dispersal responsibility for election administration has made it impossible for a single centrally controlled authority to dictate how elections will be run and thereby be able to control the outcome. This leaves the power of responsibility for running elections right where it needs to be: in the hands of the citizens of this country. Local control has the further added benefits of allowing for flexibility so that local authorities can tailor their procedures to meet demands and unique community needs.

Further, by leaving the responsibility for election administration in the hands of local authorities, if a problem arises, the citizens who live within their jurisdictions know whom to hold accountable. The local authorities who bear the responsibility cannot now and not in the future be able to point the finger of blame at some distant, unaccountable, centralized bureaucracy.

By necessity, elections must occur at the State and local level. One-size-fits-all solutions do not work and only lead to inefficiencies. States and locales must retain the power and the flexibility to tailor solutions to their own unique problems. This legislation will pose certain basic requirements that all jurisdictions will have to meet, but they will retain the flexibility to meet the requirements in the most effective manner.

State and local officials from every State in America will have a voice on this commission. While the commissioners will have expertise and experience with election issues and administration, they can still benefit from the advice and council of those who are on the ground, running elections around this country. State and local election officials in each State will ultimately bear the responsibility for carrying out the commission's recommendations so their voices must be heard as these guidelines and recommendations and best practices are developed.

The Help America Vote Act strikes the appropriate balance between local and Federal involvement. It provides for Federal assistance, acknowledging the responsibility we share to ensure that the elections that send all of us to Washington are conducted properly, without concentrating power in Washington in a manner that will prove at best ineffective, and at worst dangerous.

This conference report has received the support of a very diverse group of organizations that care about how elections are run in this country. I would like to introduce into the Record the statements of support from the following organizations: the National Commission on Federal Election Reform (Ford-Carter Commission), National Conference of State Legislatures, National Association of Secretaries of State, National Association of Counties, The Election Center, National Federation of the Blind, Common Cause, National Association of State Election Directors, United Auto Workers, AFL-CIO, NAACP, American Foundation for the Blind, National Association of Protection Advocacy Systems, and United Cerebral Palsy Association.

Mr. Speaker, let me also say that I have presented the thrust of the bill, I have presented the heart of the bill. We have a couple of speakers, and then I am going to conclude by also telling how this bill got here.

[Media release from the National Commission on Federal Election Reform]

Former Presidents Ford and Carter Welcome the Agreement Reached by the Congress on Election Reform Legislation

Oct. 4, 2002. Today, former Presidents Gerald R. Ford and Jimmy Carter, along with Lloyd Cutler and Bob Michel, co-chairs of the National Commission on Federal Election Reform, welcomed the bipartisan agreement struck by the House and Senate Conference Committee on a bill to reform federal elections.

"The bill represents a delicate balance of shared responsibilities between levels of government," Ford and Carter said. "This comprehensive bill can ensure that America's electoral system will again be a source of national pride and a model to all the world." Indeed, all four of the co-chairs share the belief of Congressman John Lewis (D-GA) and others that, if passed by both Houses and signed by President Bush, this legislation can provide the most meaningful improvements in voting safeguards since the civil rights laws of the 1960s.

For more information on the National Commission on Federal Election Reform, please contact Ryan Coonerty at [REDACTED] or Margaret Edwards at [REDACTED].

National Conference

of State Legislatures,

Washington, DC, October 7, 2002.

Hon. Robert Byrd,

Chairman, Senate Appropriations Committee, Capitol Building, Washington, DC.

Hon. Bill Young,

Chairman, House Appropriations Committee, Capitol Building, Washington, DC.

Dear Chairmen Byrd and Young: On behalf of the nation's state legislators, we urge to make reform of our nation's election processes a reality by providing sufficient funding to implement H.R. 3295. The conference agreement announced today will provide an effective means for states and counties to update their election processes without federalizing election administration. NCSL worked closely with the conferees in the development of this legislation and is satisfied that it keeps election administration at the state and local level, limits the role of the U.S. Justice Department to enforcement, does not create a federal private right of action, and establishes an advisory commission that will include two state legislators [\*H7839] to assist with implementation. NCSL commends the conferees for their work on this landmark legislation and is committed to implementing the provisions of H.R. 3295 to ensure every voter's right to a fair and accurate election.

To ensure proper implementation and avoid imposing expensive unfunded mandates on the states, it is critical that the federal government immediately deliver sufficient funding for states to implement the requirements of this bill. Neither of the existing versions of appropriations legislation provides sufficient funding for election reform. We urge you to fully fund H.R. 3295 at the authorized level of \$2.16 billion for FY 2003.

The Congressional Budget Office has estimated that it may cost states up to \$3.19 billion in one-time costs to begin implementing the provisions of this legislation. In this current fiscal environment, it will be extraordinarily difficult for states to implement the minimum standards in the bill without immediate federal financial support. States are already facing budget shortfalls for FY 2003 of approximately \$58 billion. Thirteen states have reported budget gaps in excess of 10 percent of their general fund budgets. To satisfy their balanced budget requirements, states are being forced to draw down their reserves, cut budgets, and even raise taxes.

We look forward to working with you to keep the commitment of the states and the federal government to implementing H.R. 3295. If we can be of assistance in this or any other matter, please contact Susan Parnas Frederick

(202-624-3566; susan.frederick@ncsl.org) or Alysoun McLaughlin ([REDACTED]; alysoun.mclaughlin@ncsl.org) in NCSL's state-federal relations office in Washington, D.C.

Sincerely,

Senator Angela Z. Monson, Oklahoma,

President, NSCL.

Speaker, Martin R. Stephens, Utah,

President-elect, NCSI.

National Association

of Secretaries of State,

Washington, DC, October 9, 2002.

Committee on House Administration,

Longworth Building,

Washington, DC.

Dear Chairman Ney and Ranking Member Hoyer: The National Association of Secretaries of State (NASS) congratulates you on the completion of H.R. 3295, the "Help America Vote Act." The bill is a landmark piece of bipartisan legislation, and we want to express our sincere thanks for your leadership during the conference negotiations. We also commend your Senate colleagues: Senators Chris Dodd, Mitch McConnell and Kit Bond.

The nation's secretaries of state, particularly those who serve as chief state election officials, consider this bill an opportunity to reinvigorate the election reform process. The "Help America Vote Act" serves as a federal response that stretches across party lines and provides a substantial infusion of federal money to help purchase new voting equipment and improve the legal, administrative and educational aspects of elections. In fact, our association endorsed the original draft of H.R. 3295 in November 2001.

Specifically, the National Association of State (NASS) is confident that passage of the final version of H.R. 3295 will authorize significant funding to help states achieve the following reforms:

Upgrades to, or replacement of, voting equipment and related technology;

Creation of statewide voter registration databases to manage and update voter registration rolls;

Improvement of poll worker training programs and new resources to recruit more poll workers throughout the states;

Increases in the quality and scope of voter education programs in the states and localities;

Improvement of ballot review procedures, whereby voters would be allowed to review ballots and correct errors before casting their votes;

Improved access for voters with physical disabilities, who will be allowed to vote privately and independently for the first time in many states and localities;

Creation of provisional ballots for voters who are not listed on registration rolls, but claim to be registered and qualified to vote.

We want to make sure the states will get the funding levels they've been promised, and that Congress will provide adequate time to enact the most substantial reforms. Please be assured that the nation's secretaries of state are ready to move forward once Congress passes H.R. 3295 and the President signs it.

If we can be of further assistance to you, your staff members, or your colleagues in the U.S. House of Representatives, please contact our office at [REDACTED].

Best regards,

Dan Gwadosky,

NASS President,

Maine Secretary of State.

National Association of Counties,

Washington, DC, October 9, 2002.

Hon. Bob Ney,

Chairman, House Administration Committee, House of Representatives, Longworth House Office Building, Washington, DC.

Hon. Steny Hoyer,

Ranking Democrat, House Administration Committee, House of Representatives, Longworth House Office Building, Washington, DC.

Dear Chairman Ney and Representative Hoyer: We would like to congratulate you and thank you for your leadership, perseverance and hard work in reaching agreement in the House-Senate conference on the "Help America Vote Act of 2002." We believe the final bill is a balanced approach to reforming election laws and practices and to providing resources to help counties and states in improving and upgrading voting equipment. The National Association of Counties supports H.R. 3295 as it was approved by the House-Senate conference Committee.

We are very concerned about Congress providing the funds to implement the new law. While there is much confusion at this time about the appropriation process for FY2003, we strongly urge the leadership of the House and Senate and President Bush to support inclusion of \$2.16 billion in a continuing resolution. This is the amount authorized for FY2003 by the "Help America Vote Act." We believe that funding and improving voting practices in the United States is as important as our efforts to strengthen homeland security.

Thank you again for your continuing efforts to fund and implement this new law.

Sincerely,

Larry E. Naake,

Executive Director.

Election Center,

Houston, TX, October 8, 2002.

Hon. Robert Ney,

Hon. Steny Hoyer,

Hon. Christopher Dodd,

Hon. Mitch McConnell,

House Administration Committee and Senate Rules Committee, Washington, DC.

Congressmen Ney and Hoyer and Senators Dodd and McConnell: On behalf of the elections community of America, I want to congratulate each of you for accomplishing what grizzled veterans said could not be done: you have produced bi-partisan legislation that will help America cure the worst of the problems discovered in Election 2000.

011511

The Election Center neither supports nor opposes legislation\_our members nationwide will do that on their own\_but we can state what we believe the impact of the legislation will do for American elections.

This bill is not perfect. Few pieces of legislation that deal with complex issues are. And I know that there have been public comments from some quarters that they dislike provisions contained in the legislation. I hope that we all can remember that agreements between the two parties are hard to satisfy when we talk about something as fundamental as the democratic process.

As leaders of the committees of jurisdiction in the U.S. House and the U.S. Senate you have fashioned legislation which does, however, address many of the serious problems discovered in Election 2000. You have found methods which reach and solve many of the real problems and provides a role for each level of government. Real progress is offered in your legislation in assuring Americans that they will be able to go exercise their right to vote and have those votes counted.

Finding the right balance of voter protections, integrity of the process, and yet not upsetting the ability of states and local governments to maintain responsibility for this process has not been an easy task. You have managed to reach consensus that protects the rights of minorities, extends new services to the blind and disabled, to military and overseas voters, and allows the states to help rebuild the infrastructure of elections. The months of delay waiting on bi-partisan legislation have developed a true compromise bill. While perfection may not have been reached, it is a good compromise for our democracy.

Congratulations on a job well done. This is responsible legislation.

Sincerely,

R. Doug Lewis,

Executive Director.

National Federation

of the Blind,

Baltimore, MD, October 9, 2002.

Hon. Robert Ney,

Chairman,

Hon. Steny H. Hoyer,

Ranking Minority Member,

Committee on House Administration, House of Representatives, Washington, DC

Dear Mr. Chairman and Congressman Hoyer: I am writing to express the strong support of the National Federation of the Blind (NFB) for the Help America Vote Act of 2002. Thanks to your efforts and strong bipartisan support, this legislation includes provisions designed to guarantee that all blind persons will have equal access to voting procedures and technology. We particularly endorse the standard set for blind people to be able to vote privately and independently at each polling place throughout the United States.

While the 2000 election demonstrated significant problems with our electoral system, consensus regarding the solution proved to be much more difficult to find. Part of that solution will now include installation of up-to-date technology for voting throughout the United States. This means that voting technology will change, and devices purchased now will set the pattern for decades to come.

With more than 50,000 members representing every state, the District of Columbia, and Puerto Rico, the NFB is the largest organization of blind people in the United States. As such we know about blindness [\*H7840]

from our own experience. The right to vote and cast a truly secret ballot is one of our highest priorities, and modern technology can now support this goal. For that reason, we strongly support the Help America Vote Act of 2002 and appreciate your efforts to enact this legislation.

Sincerely,

James Gashel,

Director of Governmental Affairs.

#### Common Cause President Praises Election Reform Agreement

Statement by Scott Harshbarger, president and chief executive officer of Common Cause, on the conference agreement on the election reform bill:

"The Help America Vote Act of 2002 is, as Senator Christopher Dodd (D-CT) has said, the first major piece of civil rights legislation in the 21st century. Nearly two years after we all learned that our system of voting had serious flaws, Congress will pass these unprecedented reforms.

"For the first time, the federal government has set high standards for state election officials to follow, while authorizing grants to help them comply. Billions of dollars will be spent to across the country improve election systems.

"This bill, while not perfect, will make those systems better. Registration lists will be more accurate. Voting machines will be modernized. Provisional ballots will be given to voters who encounter problems at the polling place. Students will be trained as poll workers.

"As Common Cause knows from a seven-year fight to pass campaign finance reform, compromise often comes slowly. We thank the bill's sponsors, Senators Dodd, Mitch McConnell (R-KY), Christopher Bond (R-MO), and Representatives Robert Ney (R-OH) and Steny Hoyer (D-MD) for their work. Their persistence\_ even when negotiations bogged down\_ brought this bill through.

"After the President signs this bill, states will need to act. Implementing this bill will require state legislatures to change laws, election officials to adopt new practices, polling places to alter their procedures, and poll workers to be retrained.

"These far-reaching changes will not come easily. The bill's enforcement provisions are not as strong as the 1993 Motor Voter law or the 1965 Voter Rights Act. Some states may lag behind and fail to implement these changes properly; some polling places will experience problems like in Florida this year; others may have problems implementing the new identification provisions.

"Common Cause and our state chapters will work with civil rights groups and others to ensure that states fully and fairly implement the new requirements. We will help serve as the voters' watchdogs: citizen vigilance can protect voters from non-compliant states.

"Voters can now look forward to marked improvements at the polls in the years ahead, thanks to the bipartisan leadership of the bill's sponsors."

National Association of

State Election Directors,

October 10, 2002.

Hon. Bob Ney,

Hon. Steny Hoyer,

House Administration Committee, Longworth House Office Building, Washington, DC.

Dear Congressmen Ney and Hoyer: The National Association of State Election Directors (NASSED) congratulates you on the successful completion of the final conference report on H.R. 3295. This initiative will significantly affect the manner in which elections are conducted in the United States. On balance, H.R. 3295 represents improvements to the

administration of elections. As administrators of elections in each state we express our appreciation to you and your staff for providing us access to the process and reaching out to seek our views and positions on how to efficiently and effectively administer elections.

As with all election legislation, H.R. 3295 is a compromise package, which places new challenges and opportunities before state and local election officials. We stand ready to implement H.R. 3295 once it is passed by Congress and signed into law by the President. Implementation of this bill will be impossible without the full \$3.9 billion appropriation that is authorized. The success of this bold congressional initiative rests in large measure upon the appropriation of sufficient funds to bring the bill's objectives to reality.

We found the bipartisan approach to this legislation refreshing and beneficial. Thank you again for including NASED in the congressional consideration of the bill.

If we can be of further assistance, please contact our office at [REDACTED]

Sincerely,

Brook Thompson,

President.

International Union, United Automobile, Aerospace & Agricultural Implement Workers of America,

Washington, DC, October 8, 2002.

Dear Senator Dodd: This week the Senate may take up the conference report on the election reform legislation (H.R. 3295, the Help America Vote Act). The UAW supports this important legislation and urges you to vote for this conference report.

In our judgment, the conference report on H.R. 3295 will make significant improvements in our nation's election system. In particular, this legislation will require the states to allow registered individuals to cast provisional ballots if their names are mistakenly excluded from voter registration lists at their polling places. It also requires the states to ensure that voting machines allow voters to verify and correct their votes before casting them. And it requires the states to develop centralized, statewide voter registration lists to ensure the accuracy of their voter registration records. The legislation authorizes substantial new federal funding to help the states implement these reforms.

The UAW urges Congress to closely monitor progress by the states and federal government in implementing the provisions of this legislation. We believe it is especially important to make sure that the voter identification requirements are not implemented in a manner that disenfranchises or discriminates against any group of voters.

Thank you for considering our views on this important legislation to reform our nation's election system.

Sincerely,

Alan Reuther,

Legislative Director.

American Federation of Labor and Congress of Industrial Organizations,

Washington, DC, October 8, 2002.

Dear Senator: The AFL-CIO supports the conference report on H.R. 3295, the Help America Vote Act.

This conference report will help improve our nation's election system in several important ways. It will allow registered individuals to cast provisional ballots even if their names are mistakenly excluded from voter registration lists at their polling places. It will require states to develop centralized, statewide voter registration lists to ensure the accuracy of their voter registration records. It will also require states to provide at least one voting machine per polling place that is accessible to the disabled and ensure that their voting machines allow voters to verify and correct their votes before casting them.

Since the actual number of individuals enfranchised or disenfranchised by the conference report on H.R. 3295 will depend on how the states and the federal government implement its provisions, the AFL-CIO will closely monitor the

progress of this new law\_ especially its voter identification requirements. We will also increase our voter education efforts to ensure that individuals know and understand their new rights and responsibilities.

Sincerely,

William Samuel,

Director,

Department of Legislation.

National Association for the

Advancement of Colored People,

Washington, DC, October 8, 2002.

Re conference report to H.R. 3295, the Help America Vote Act (election reform).

Dear Senators: The National Association for the Advancement of Colored People (NAACP), our Nation's oldest, largest and most widely-recognized grassroots civil rights organization supports the conference report on H.R. 3295, the Help America Vote Act and we urge you to work quickly towards its enactment.

Since its inception over 90 years ago the NAACP has fought, and many of our members have died, to ensure that every American is allowed to cast a free and unfettered vote and to have that vote counted. Thus, election reform has been one of our top legislative priorities for the 107th Congress and we have worked very closely with members from both houses to ensure that the final product is as comprehensive and as nondiscriminatory as possible.

Thus we are pleased that the final product contains many of the elements that we saw as essential to addressing several of the flaws in our Nation's electoral system. Specifically, the NAACP strongly supports the provisions requiring provisional ballots and statewide voter registration lists, as well as those ensuring that each polling place have at least one voting machine that is accessible to the disabled and ensuring that the voting machines allow voters to verify and correct their votes before casting them.

The NAACP recognizes that the actual effectiveness of the final version of H.R. 3295 will depend upon how the states and the federal government implement the provisions contained in the new law. Thus, the NAACP intends to remain vigilant and review the progress of this new law at the local and state levels and make sure that no provision, especially the voter identification requirements, are being abused to disenfranchise eligible voters.

Again, on behalf of the NAACP and our more than 500,000 members nation-wide, I urge you to support the swift enactment of the conference report on H.R. 3295, the Help America Vote Act. Thank you in advance for your attention to this matter; if you have any questions or comments I hope that you will feel free to contact me at (202) 638-2269.

Sincerely,

Hilary O. Shelton,

Director. [\*H7841]

American Foundation

for the Blind,

Washington, DC, October 2, 2002.

Hon. Christopher Dodd,

U.S. Senate, Russell Senate Office Building, Washington, DC.



Dear Senator Dodd: The American Foundation for the Blind supports the conference report for S. 565 and H.R. 3295. We are pleased that the conference report contains the disability provisions of the Senate bill.

Already this year, in some jurisdictions, blind and visually impaired voters have, for the first time, been able to cast a secret and independent ballot. We look forward to the day when all voters with visual impairments will have full and independent access to the electoral process.

The mission of the American Foundation for the Blind (AFB) is to enable people who are blind or visually impaired to achieve equality of access and opportunity that will ensure freedom of choice in their lives. AFB led the field of blindness in advocating the enactment of the Americans with Disabilities Act of 1990 (ADA). Today, AFB continues its work to protect the rights of blind and visually impaired people to equal access to employment, information, and the programs and services of state and local government.

Sincerely,

Paul W. Schroeder,

Vice President,

Governmental Relations.

United Cerebral

Palsy Associations,

Washington, DC, October 9, 2002.

Dear Senator Dodd: United Cerebral Palsy Association and affiliates support the conference report on H.R. 3295, the Help America Vote Act. We also take this opportunity to commend you for the work you did to ensure that all people with disabilities have equal access under this act.

This legislation, while not perfect, will go a long way in improving the ability of people with disabilities to exercise their constitutional right and responsibility to vote. The funding allocated for the multiple provisions of H.R. 3295 is critical, and we pledge to work with Congress to ensure that this funding is made available.

UCP stands ready to assist states' and local entities as they work toward compliance of this very important legislation. The changes outlined in the bill must be adopted swiftly, correctly and fairly, and it will be incumbent upon us all to help in this process.

Finally, UCP applauds you and your colleagues on your dogged determination to pass legislation that will make distinct improvements at the polls and in the lives of voters with disabilities.

Sincerely,

Patricia Sandusky,

Interim Executive Director.

National Association of

Protection & Advocacy Systems,

October 9, 2002.

Hon. Chris Dodd,

U.S. Senate, Russell Senate Office Building, Washington, DC.

Dear Senator Dodd: The Protection and Advocacy System (P&A) and the Client Assistance Programs (CAPs) comprised a federally mandated, nationwide network of disability rights agencies. Each year these agencies provide education, information and referral services to hundreds of thousands of people with disabilities and their families. They

also provide individual advocacy and/or legal representation to tens of thousands of people in all the states and territories. The National Association for Protection and Advocacy Systems (NAPAS) is the membership organization for the P&A network. In that capacity, NAPAS wants to offer its support for the passage of "The Help America Vote Act of 2002 (H.R. 3295).

NAPAS believes that the disability provisions in the bill go far to ensure that people with all types of disabilities \_physical, mental, cognitive, or sensory\_ will have much improved opportunities to exercise their right to vote. Not only does this bill offer individuals with disabilities better access to voting places and voting machines, but it also will help provide election workers and others with the skills to ensure that the voting place is a welcome environment for people with disabilities. NAPAS is very pleased that P&A network will play an active role in helping implement the disability provisions in this bill.

NAPAS is well aware that there are still some concerns with certain provisions of the bill. We hope that these concerns can be worked out, if not immediately, then as the bill is implemented. It would be extremely unfortunate if people continued to face barriers to casting their ballot after this bill is signed into law.

Finally, we want to thank the bill's sponsors, Senators Dodd (D-CT) and McConnell (R-KY) and Representatives Ney (R-OH) and Hoyer (D-MD) for their hard work and perseverance. We look forward to working with each of them to ensure the swift and effective implementation of this important legislation.

Sincerely,

Bernadette Franks-Ongoy,

President.

Federal Election Commission

voting system standards\_section 3.2.1

### 3.2.1 Accuracy Requirements

Voting system accuracy addresses the accuracy of data for each of the individual ballot positions that could be selected by a voter, including the positions that are not selected. For a voting system, accuracy is defined as the ability of the system to capture, record, store, consolidate and report the specific selections and absence of selections, made by the voter for each ballot position without error. Required accuracy is defined in terms of an error rate that for testing purposes represents the maximum number of errors allowed while processing a specified volume of data. This rate is set at a sufficiently stringent level such that the likelihood of voting system errors affecting the outcome of an election is exceptionally remote even in the closest of elections.

The error rate is defined using a convention that recognizes differences in how vote data is processed by different types of voting systems. Paper-based and DRE systems have different processing steps. Some differences also exist between precinct count and central count systems. Therefore, the acceptable error rate applies separately and distinctly to each of the following functions:

- a. For all paper-based systems: (1) Scanning ballot positions on paper ballots to detect selections for individual candidates and contests; and (2) conversion of selections detected on paper ballots into digital data.
- b. For all DRE systems: (1) Recording the voter selections of candidates and contests into voting data storage; and (2) independently from voting data storage, recording voter selections of candidates and contests into ballot image storage.
- c. For precinct-count systems (paper-based and DRE): Consolidation of vote selection data from multiple precinct-based systems to generate jurisdiction-wide vote counts, including storage and reporting of the consolidated vote data.
- d. For central-count systems (paper-based and DRE): Consolidation of vote selection data from multiple counting devices to generate jurisdiction-wide vote counts, including storage reporting of the consolidated vote data.

For testing purposes, the acceptable error rate is defined using two parameters: the desired error rate to be achieved, and the maximum error rate that should be accepted by the test process.

For each processing function indicated above, the system shall achieve a target error rate of no more than one in 10,000,000 ballot positions, with a maximum acceptable error rate in the test process of one in 500,000 ballot positions.

Mr. Speaker, I reserve the balance of my time.

Mr. HOYER . Mr. Speaker, I yield myself 3 minutes.

Twenty-three months ago, uncertainty gripped our great democracy. The United States of America, the wealthiest and most technologically advanced Nation in the world had failed, in my opinion, its most basic election duty: the duty to count every citizen's vote and count it accurately.

The votes of an estimated 4 million to 6 million Americans went uncounted in November of 2000. This national disgrace cried out for comprehensive Federal reform. Thus, I am proud today to strongly support the historic, bipartisan conference report before us, the first Civil Rights Act of the 21st century.

The Help America Vote Act of 2002 is the most comprehensive package of voting reforms since enactment of the Voting Rights Act of 1965. The conference report authorizes unprecedented Federal assistance: \$3.9 billion over 3 years to help States improve and upgrade every aspect of their election systems. This funding will replace outdated voting equipment, train poll workers, educate voters, upgrade voter lists, and make polling places accessible for the disabled.

Furthermore, this legislation prescribes an array of new voting rights and responsibilities. States will now be required to provide provisional ballot to ensure no voter is turned away at the polls. It requires that we give voters the opportunity to check for and correct ballot errors. It provides at least one voting machine per precinct that allows disabled voters, including those with visual impairments, to vote privately and independently; and it provides for an implementation of a computerized statewide voter registration database to ensure accurate lists.

In addition, the conference report will require States to set standards for counting ballots and to define what constitutes a vote. To ensure the integrity of our election system, first-time voters who register by mail will be required to produce some form of identification and States will be obligated to maintain accurate voting registration lists.

This legislation, Mr. Speaker, also establishes a bipartisan 4-member elections assistance commission which will issue voluntary guidelines regarding [\*H7842] voting systems, administer grants, and study election issues. To ensure compliance, the conference report requires States to set up administrative grievance procedures. The U.S. Department of Justice will also be responsible for Federal enforcement.

Finally, let me remind my colleagues that passage of this conference report does not finish the journey. We now have, in my opinion, Mr. Speaker, a moral opportunity to ensure that this authorization is fully funded. I urge my colleagues to support this conference report. It will strengthen the foundation of democracy and shore up public confidence in this most basic expression of American citizenship, the right to vote and to have one's vote counted.

Mr. Speaker, I reserve the balance of my time.

Mr. NEY . Mr. Speaker, I yield 5 minutes to the gentleman from Michigan (Mr. Ehlers).

Mr. EHLERS . Mr. Speaker, I rise to engage the chairman of the Committee on House Administration and sponsor of this legislation in a brief colloquy.

I commend the chairman's effort in crafting this important legislation and bringing it before us today. In particular, I wish to thank him and his staff for working so closely with me in incorporating provisions of H.R. 2275, which I introduced with the gentleman from Michigan (Mr. Barcia) and which was passed by the Committee on Science last year. My legislation established an independent commission charged with developing technical standards to ensure the usability, accuracy, security, accessibility, and integrity of voting systems. This concept is included in the conference report in section 221 in the form of the Technical Guidelines Development Committee.

The conference report charges this committee with the duty of developing voluntary voting system guidelines and then recommending these technical standards to the newly created election assistance commission.

I am seeking clarification from the chairman that it is his intent that these guidelines should include standards to ensure the usability, accuracy, security, accessibility, and integrity of voting systems, including those areas described in section 221(e)(2).

Mr. Speaker, I yield to the gentleman from Ohio (Mr. Ney), the chairman of the Committee on House Administration, to respond to this request.

Mr. NEY . Mr. Speaker, the gentleman's interpretation of the language in the conference agreement is correct.

Mr. EHLERS . Mr. Speaker, I thank the chairman for his assurance and for his hard work on this conference report.

Mr. Speaker, reclaiming my time, I rise in support of the conference agreement on H.R. 3295, the Help America Vote Act of 2002. I thank the gentleman from Ohio (Mr. Ney), the chairman, and the gentleman from Maryland (Mr. Hoyer), the ranking member, for their hard work on this. We have all worked very hard to produce this bill, but their leadership is what pulled it through.

For a month after the November 2000 election, we watched in disbelief as Florida's troubled election system became a national drama and fodder for the late-night talk shows. Polling station workers across Florida struggled to discern the true intent of a voter based on their interpretation of the now-infamous hanging chad. Because of Florida's problems, the most precious component of our democracy, the expression of the free will of individual voters, was turned into a battle between attorneys. After the dust settled, we put Florida's voting system under a microscope and analyzed the flaws that troubled citizens and legislators alike.

After the Florida voting problems occurred, I, as a scientist, quickly realized that we needed to improve the technical flaws in our voting systems before State and local officials made large investments of taxpayer dollars in new voting equipment that may, in fact, be substandard. Scientists at MIT and Cal Tech came to the same realization and launched a joint research project to uncover the technicals flaws in our voting systems and equipment. I thank them for their work and for their cooperation with us in this area.

After careful analysis of the problem and the MIT and Cal Tech study, I was appalled to discover many potential problems. For example, a high school computer hacker, or any other hacker, could sabotage some computer voting systems and make them display erroneous vote totals. In response to these problems, I drafted H.R. 2275 in conjunction with my colleague, the gentleman from Michigan (Mr. Barcia).

In analyzing flaws of voting equipment, one of the key issues I identified was that the FEC's standards for voting equipment had been woefully inadequate for many years. It was very clear that we needed legislation to improve the process for developing technical standards for voting equipment, and H.R. 2275 was designed to address this need.

The legislation before us today contains almost all of H.R. 2275's provisions. It will improve voting equipment, because while we can debate the particulars of how to administer an election or which voting equipment to buy, no one will disagree that any voting system should be based on the best possible standards to ensure the usability, accuracy, security, accessibility, and integrity of voting equipment.

I know that new technical standards do not capture the public's attention, but they are the very foundation upon which voting accuracy and reliability rests, just as all of our commerce rests on reliable universal standards.

This conference report takes the concepts from H.R. 2275 and corrects a glaring flaw in our existing technical standards development process by creating a new 14-member panel chaired by the director of the National Institute of Standards and Technology. This panel will develop and recommend voluntary technical standards to ensure the usability, accuracy, security, accessibility and integrity of voting systems. A newly created Election Assistance Commission will then determine whether or not to adopt these voluntary standards.

Finally, the Commission will publish a central list of systems that are certified as meeting the current Federal standards. Since these standards are voluntary, States are still free to choose voting systems that are not certified, but now State election officials will be able to use this list to guide the purchasing decisions. This is a relatively simple, straightforward process that will lead to great improvement throughout our voting system.

With these provisions, voters can rest assured that casting their vote on equipment that meets the new Federal standards will mean that their vote counts.

I would also like to point out the strong anti-FRAUD provisions in this legislation. We must not only guarantee that each vote counts, we must also ensure these votes are not diluted by FRAUDulent votes. This bill will guard against FRAUD of many different types and will ensure that votes will be recorded accurately. We certainly do not want a return to the Tammany Halls or the Boss Prendergasts of the past.

Once again, I thank the gentleman from Ohio (Chairman Ney) and the ranking member, the gentleman from Maryland (Mr. Hoyer), for working with me to incorporate my thoughts in this legislation. I believe our collaboration has made a good bill even better, and I urge all of my colleagues to support this bill.

Mr. Speaker, I rise in support of the conference agreement on H.R. 3295, the Help America Vote Act of 2002.

For a month after the November 2000 election, we watched in disbelief as Florida's troubled election system became a national drama and fodder for the late night network shows. Polling station workers across Florida struggled to discern the true intent of a voter based on their interpretation of the now infamous "hanging chad." Because of Florida's problems, the most precious component of democracy—the expression of the free will of individual voters—was turned into a battle between lawyers. After the dust settled, we put Florida's voting system under a microscope and analyzed the flaws that troubled citizens and legislators alike.

But the problems Florida faced weren't unique, nor were they new. **FRAUD**, outdated and inadequate voting equipment, poor access for handicapped voters, poor training of polling station workers, and voter disenfranchisement have occurred in local, state, and national elections for years. But it took Florida's elections to spur Congressional action to correct these flaws. We can be proud that the agreement before us today addresses, and takes [\*H7843] action to correct, each of these issues, among others.

After the Florida voting problems occurred, as a scientist I quickly realized that we needed to improve the technical flaws in our voting systems before state and local officials made large investments of taxpayer dollars in new voting equipment that may, in fact, be substandard. Scientists at MIT and Caltech came to the same realization and launched a joint research project to uncover the technical flaws in our voting systems and equipment. I thank them for their work and for their collaboration with me in this area.

After careful analysis of the problem and the MIT and Caltech study, I was appalled to discover many potential problems. For example, a high school computer hacker, or any other hacker could sabotage some computer voting systems and make them display erroneous vote totals. In response I drafted H.R. 2275, in conjunction with my colleague from Michigan, Mr. Barcia, to address the many problems we found. In analyzing the flaws in voting equipment, one of the key issues I identified was that the Federal Election Commission's standards for voting equipment have been woefully inadequate for many years. It was very clear that we needed legislation to improve the process for developing technical standards for voting equipment, and H.R. 2275 was designed to address this need. My legislation was reported out of the House Science Committee with the encouragement of Science Committee Chairman Boehlert.

The legislation before us today contains almost all of H.R. 2275's provisions. It will improve voting equipment because, while we can debate the particulars of how to administer an election or which voting equipment to buy, no one will disagree that any voting system should be based on the best possible standards to ensure the usability, accuracy, security, accessibility, and integrity of voting equipment. I know that new technical standards do not capture the public's attention, but they are the very foundation upon which voting accuracy and reliability rests, just as all our commerce rests on reliable, universal standards. From the moment that you walk into a voting booth until your vote is officially recorded, the adequacy of the standards underlying this process will help determine whether or not your vote is recorded correctly. For example, standards help ensure that new "touch screen" technology does not bias your vote for one candidate over another, that voting equipment will afford access to all individuals with disabilities, and that your vote will be transmitted securely and recorded correctly.

This conference report takes the concepts from H.R. 2275 and corrects a glaring flaw in our existing technical standards development process by creating a new 14-member panel, chaired by the Director of The National Institute of Standards and Technology (NIST). This panel will develop and recommend voluntary technical standards to ensure the usability, accuracy, security, accessibility, and integrity of voting systems. A newly created Election Assistance Commission will then determine whether or not to adopt these voluntary standards. Once the Commission adopts these standards, labs accredited by the Commission will be able to test voting equipment and certify that new equipment meets the federal standards. Finally, the Commission will publish a central list of systems that are certified as meeting the current federal standards. Since these standards are voluntary, states are still free to choose voting systems that are not certified, but now state election officials will be able to use this list to guide their purchasing decisions.

The legislation also includes a research and development program to support the standards development process and to develop better voting technology and systems. This is critical because research must underpin decisions that the standards development committee will be making. In addition, we need research to help improve our voting equipment and systems for future elections.

This is a relatively simple, straightforward process that will lead to great improvement throughout our voting system. With these provisions, voters can rest assured that casting their vote on equipment that meets the new federal standards will mean that their vote counts. I would also like to point out the strong anti-FRAUD provisions in this legislation. We must not only guarantee that each vote counts; we must also insure those votes are not diluted by FRAUDulent votes. While flawed voting equipment can undermine a person's right to have their vote recorded accurately, FRAUD can undermine our entire voting system. In my 25 years in elected office I have seen voting FRAUD in many different forms. It occurs more often than the American people know. The anti-FRAUD provisions in this legislation are common-sense measures that reasonable people will agree that we must have in order to preserve the integrity of our elections. We don't want any new Tammany Halls or Boss Preudergasts in the USA!

I want to thank Chairman Ney and Ranking Member Hoyer again for working with me to incorporate my thoughts on this legislation. I believe our collaboration has made a good bill even better, and I urge all of my colleagues to support the bill.

Mr. HOYER . Mr. Speaker, I yield 4 1/2 minutes to the gentleman from Michigan (Mr. Conyers), one of the most senior Members of this House, the ranking member of the Committee on the Judiciary, a giant in the civil rights movement of this country, whose voice is always heard on behalf of those who are dispossessed, downtrodden, or discriminated against. It is an honor to be his friend and an honor to serve with him in this House.

Mr. CONYERS . Mr. Speaker, I want to thank the manager, the gentleman from Maryland (Mr. Hoyer), for his kind introduction, but, more importantly for what he did to help us come here today; on February 28 for his bill; on March 27 for my bill. We have been working tirelessly, and I have come to know the gentleman from Iowa (Mr. Ney), the chairman of the committee that had jurisdiction. I commend him. We have come a long, long way together.

I am very grateful to the gentleman from Michigan (Mr. Ehlers) for his technological contributions.

To the gentlewoman from California (Ms. Waters), who headed the Election Reform Task Force for the Democratic Caucus, I praise her, whose study was a classic, along with that of the Commission on Civil Rights, the Carter-Ford Election Reform Commission, and more than a dozen other historic studies that have gone into this measure.

I am also pleased to have had and enjoy the support of the caucus of which I am a dean, the Congressional Black Caucus. I am very grateful to all of them for their work, not just in forming the legislation and contributing to the process, but going to Florida and going across the country and putting their time in.

I am looking at the gentlewoman from Florida (Ms. Brown) in particular, who I appreciate; and our other sister on the Committee on the Judiciary, the gentlewoman from Texas (Ms. Jackson-Lee); and the Chairperson of the caucus, the gentlewoman from Texas (Ms. Eddie Bernice Johnson), who was heroic in this matter.

So I stand here, Mr. Speaker, commending all of our friends. I cannot omit the chairman of the committee in the Senate, Chris Dodd, who worked tirelessly for 18 months to bring us to this point, a point that was brought to us by the fact that 6 million votes were thrown out in the last Presidential election. Forty-seven percent of the disabled encountered physical barriers at the voting place, and 10 times as many African American voters in Florida were likely to have had their ballot discarded in the last Presidential election. So we have worked on a bill with major standards.

What does this bill do?

One, nobody can spoil a ballot anymore in America when this bill becomes law, no way. If you vote, the machine selected by the State, or another apparatus, has to make sure that the voter has not spoiled his ballot or her ballot before they walk out of that booth.

Number two, there is provisional voting, so any election dispute is protected; that one is not sent to a phone number that nobody ever answers or a building where the office is closed. The vote is allowed in a separate stack, and then the determination that it be included or not is a permanent record kept to be re-examined by the voter or authorities.

Three, it says that that voting site must be accessible to the disabled.

Finally, we have provisions written about language requirements. Many people went to the polls and could not read the English language carefully or clearly enough.

Then, of course, there is \$3.9 billion of funds.

The last point, this is not a perfect bill. We fought against voter ID provisions, citizen check-offs, Social Security numbers. We are going to watch it carefully in the next Congress. If it requires correcting, everybody on this side of the aisle and the chairman of the subcommittee promises that we will take whatever corrective action is necessary.

I thank Congress for their efforts in this movement.

Mr. HOYER . Mr. Speaker, I yield myself such time as I may consume. [\*H7844]

Mr. Speaker, I thank the gentleman for his contribution; but not just tonight, I thank the gentleman for his contribution over a career of fighting for people and ensuring that their rights are observed and expanded.

Mr. Speaker, I yield 4 minutes to the gentleman from Texas (Mr. Gonzalez), the son of an extraordinary Member of this House who fought for the little people of America all the time and was a giant in this House; and his son, of which he would be supremely proud, promises to be equally committed to people.

Mr. GONZALEZ . Mr. Speaker, I thank the gentleman for yielding time to me.

To my esteemed colleague, the gentleman from Maryland, I thank him very much for those wonderfully kind words. Dad was incredibly unique for many, many reasons; and he is missed.

First, I would like to start off saying that I stand here today in opposition to this bill. It is a difficult time to stand here against a bill that does contain some very good language and make some giant strides in election reform. The drawbacks, though, basically will cancel out the true benefits of this bill.

I will start off by giving credit where credit is due, and that is for everyone who worked so hard out of this House to get out a decent bill that took the best parts of what the Senate had to offer to attempt a compromise, bring it in here in some form that would be acceptable to a majority of the Members. I know that took a lot of work, and there has been progress. I thank the Members for their efforts.

For the first time in the United States election history, an ID requirement is mandated. I attended hearings in Pennsylvania; missed a couple, I believe, in Illinois; was in Florida and Texas, California, because we had committees, we had commissions, that conducted hearings throughout this Nation. Not once, not once was there ever pointed out that there was a problem that would require a national ID requirement. This came out of the clear blue.

The Members that sit in this House tonight will tell us in their conversations, it did not emanate out of this House, not from Members of the House of Representatives.

What am I talking about? I will tell the Members what I am talking about: They have made voter registration, and the very act of voting, more difficult. As good as this bill is, it complicates the process, and it will disenfranchise individuals, individuals that live in my community, because all of the Members run for office. We know the registration process, and we know the voting process because we become part of it, and we are in those neighborhoods.

What this bill does for mail-in registration: no driver's license, no ballot; no utility bill, no ballot; no government check, no ballot; no bank statement, no ballot; no Social Security number, no ballot.

Now, Members may say, we will provide them provisional ballots. Those do not count. Those do not really count. We are talking about what happened in Florida. This gives some sort of a voting right, whatever a provisional ballot really is, because that vote truly is not going to be counted until something is cleared up.

On top of it, on top of it now, we are going to have a driver's license or a Social Security or a special four-digit assigned number. That is not just for mail-in ballots, Mr. Speaker, that is anybody, first-time registrants within a State. Even if they cross the county line, they still go through all of this. If they do not have a driver's license, they should give us the last four digits of their Social Security number. If they do not have that, we will assign them a number.

But if they do have a driver's license, if they do have a Social Security number and we use the last four digits, we need those verified. We are going to have those verified before we have a database system in place by 2004, because all this goes into effect. States will get waivers, move it to 2006. We will not even have the ability to do this.

If any Member has ever been part of a voter registration drive, they know how it is done. There is a deputy that goes up there, because no one can simply go and have something filled out and take it back. They will be asking for the driver's license. They do not have it? Then the Social Security.

But for a mail-in ballot, which a majority of the ballots in my community are submitted in this fashion, why? How long has it been since these Members have actually looked at the voter registration card in their counties? It is simple, it is unique, it is efficient. There has never been a problem that would mandate the type of requirement that we will be instituting on a nationwide basis. This will impact communities. It will impact the Latino communities.

I end by advising everybody that the Mexican American Legal Defense and Educational Fund, the NAACP Legal Defense and Educational Fund, the National Council of La Raza, the National Association of Latino Elected and Appointed Officials, and the National Puerto Rican Coalition all oppose this legislation.

Mr. NEY . Mr. Speaker, I yield 3 minutes to the gentleman from New Jersey (Mr. Menendez).

(Mr. MENENDEZ asked and was given permission to revise and extend his remarks.)

Mr. MENENDEZ . Mr. Speaker, I thank the distinguished chairman for yielding time to me, and I thank the ranking member.

Mr. Speaker, let me say, in this great country of ours democracy can only flourish when we make all our voices heard. That is why it is important to do all we can to ensure that no vote is nullified.

I want to commend the sponsors of the Help America Vote Act. Much hard work went into crafting this legislation that seeks to address the problems that plague our Nation's voting system; and when this bill was first debated on the House floor, I sought to offer an amendment to enhance the civil rights provisions of the bill, including ensuring accessibility of polling places, provision for provisional voting, and strengthening the National Voter Registration Act. I am pleased that some of these things were included in the final bill.

However, I want to join my colleague, the gentleman from Texas (Mr. Gonzalez), in our concerns about other provisions that were added in the conference report. While these new identification provisions may be offered to ensure that our voting system is free of error and **FRAUD**, I fear these provisions may lead to further disenfranchise many Latino voters.

Under this bill, a Federal requirement for voter identification is created. This will be the first time ever such a provision exists in our Nation's law. I fear this starts a dangerous precedent. States will be required to ask a voter registration applicant or a first-time voter for a current driver's license number or the last four digits of their Social Security number or have a new four-digit number created and assigned to this applicant.

At a time that we should be encouraging people to come and register and be part of the democratic process, these new requirements add burdensome responsibilities in the process of voter registration and ultimately discourage voters. These people are citizens, and they know that you have to be a citizen to register to vote, which is why this whole other provision of checkoff, of citizenship checkoff, further delays the process and causes the possibility for registrars who may not see that checkoff take place to delay the ability of that individual to ultimately vote.

Lastly, we speak from experience, through manipulation of voter laws and voter intimidation. Many parts of our community and many parts of this country, including in my home State of New Jersey, have had laws used against them to ensure that they cannot vote. So in our objection we are concerned about the implementation of laws as written, and we are raising concerns about the potential or unequal administration of the law. We have seen it happen in the past, and we hope it will not continue in the future.

It is not just Hispanics, by the way. When Wisconsin looked at making changes to their voting laws, they conducted a study that found over 120,000 Wisconsin residents who did not have a driver's license or photo identification cards. Well, individuals such as these have their voices and their votes ultimately will be heard. [\*H7845]

I intend to vote for the bill because clearly there are many good provisions in it, and it provides desperately needed resources so that all of our States can update their voting systems, but we want to wave our sabers now and let it be understood that we intend to follow this process every step of the way, through the regulatory process, through what is promulgated in that regard, through its implementation to make sure that no citizen, particularly citizens of Hispanic decent, enter this democratic process with greater difficulty or with the inability to have their vote and their voice considered.

Mr. HOYER . Mr. Speaker, I thank the gentleman from New Jersey (Mr. Menendez) for his comments. I think they were well taken, as the comments from the gentleman from Texas were well taken. And I will join him and I know the gentleman from Ohio (Mr. Ney) will as well to ensure that their fears are not realized.



Mr. Speaker, how much time remains on our side?

The SPEAKER pro tempore (Mr. Simpson). The gentleman from Maryland (Mr. Hoyer) has 18 1/2 minutes remaining. The gentleman from Ohio (Mr. Ney) has 6 1/2 minutes remaining.

Mr. HOYER . Mr. Speaker, I yield 1 minute to my distinguished colleague, the gentleman from Pennsylvania (Mr. Fattah), the next ranking Democrat on the committee who has been such a critical participant in forging this legislation.

Mr. FATTAH . Mr. Speaker, let me thank the managers of this bill for their work, not just here on the floor but more importantly in the conference committee. And also I add kudos to Senator Dodd, who has really worked hard with the gentleman from Ohio (Mr. Ney) and the gentleman from Maryland (Mr. Hoyer) and also to pay deference to the dean, the gentleman from Michigan (Mr. Conyers).

This is a good bill. It is not, as we now know, a perfect bill; but it is a bill that moves this process forward.

Mr. Speaker, I served as a teller here in the House, and I had to record the results from the Florida election and the Presidential race in the year 2000. And we know that not only were there votes not counted by many in the State of Florida, but throughout this country there are holes in our democracy. And this bill is an attempt to respond to that.

We have worked the will of the conference committee, merging ideas in the Senate and the House. There are things in this bill that I am sure your Senate colleagues would rather not be there and things we prefer not be a part of this bill, but there is a shared consensus of the conferees; and we would hope that it would receive an overwhelming favorable endorsement here in the House, and I think it will move our democracy toward a more perfect Union.

#### Announcement by the Speaker Pro Tempore

The SPEAKER pro tempore. The Chair would remind Members that it is not in order to cast reflections on the Senate, either positively or negatively on individual Senators.

Mr. HOYER . Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I know the Speaker of the House, the gentleman from Illinois (Mr. Hastert), is on the floor and he is about to leave. With him is his deputy chief of staff, Mr. Stokke. Before he leaves, I want to take the opportunity to thank him and Mr. Stokke. Both of these gentlemen were vitally interested in this legislation. Both were extraordinarily helpful in seeking its passage. The Speaker has committed to the gentleman from Ohio (Mr. Ney) and I that he will work with us to make sure that this obligation is not an unfunded mandate, but in fact that we give the States the resources necessary. I wanted to thank the Speaker before he leaves the floor and thank Mr. Stokke, as well.

Mr. NEY . Mr. Speaker, I reserve the balance of my time.

Mr. HOYER . Mr. Speaker, I yield 1 minute to the distinguished gentleman from Florida (Mr. Davis), a member of our committee who has been intimately involved throughout this consideration and was so important in making sure that we had a bill that we could pass.

Mr. DAVIS of Florida . Mr. Speaker, I wanted to commend the gentleman from Maryland (Mr. Hoyer) and the gentleman from Ohio (Mr. Ney) on their work.

Mr. Speaker, as a Floridian I need to provide a little more sober assessment as to where we are and where we need to go.

I painfully need to first point out that we began discussing this issue right after the November 2000 elections, and it has taken the verge of the next set of elections to revisit the issue. We should not just be talking about this issue at election time. This is a burden we all bear, Federal, State and local. The people that testified before the House Administration Committee pointed out to us that the legislation, if it was going to work, was not just about replacing machines. It was about making sure that we had qualified people who were trained to use the machines. And, unfortunately, once again in my home State of Florida we have provided another painful lesson as to just how right they were.

Let me also point out that tonight is only half the battle. This is an authorization bill; but the guts of the bill, apart from some of the issues that have been discussed earlier, have to do with some of the funding that needs to be provided. I want to urge the President for the first time to stand up and be counted on this and to release the funds that he has sequestered that would provide the first \$400 million in installment for this bill and to work with Democrats and

Republicans to fund this bill, because without funding, the bill will only be an expression. It will not be action by this Congress.

So this is the beginning tonight. I applaud the gentleman from Maryland (Mr. Hoyer) and the gentleman from Ohio (Mr. Ney), but we need to get to work on finishing the bill.

Mr. HOYER . Mr. Speaker, I yield 2 minutes to the gentlewoman from California (Ms. Waters), who chaired the special committee on election reform and held hearings all over this country and heard from literally hundreds of citizens on the issues confronting them at election time. "Revitalizing Our Nation's Election System" is a report issued by the Waters Commission, which was extraordinarily helpful to the gentleman from Ohio (Mr. Ney) and me in bringing this legislation to fruition. I thank her for that. I thank her for the contributions she has made. I am honored to serve with her.

Ms. WATERS . Mr. Speaker, I would like to thank the gentleman from Maryland (Mr. Hoyer) and the gentleman from Ohio (Mr. Ney) for the hard work they put in trying to get this election law passed so that we would not experience what we have experienced in Florida and other parts of this country.

Mr. Speaker, my ancestors could not vote. My ancestors were blocked from being able to vote with such tactics as forcing them to have to pay poll taxes and take literacy tests. And we saw some of the same kind of tactics used in Florida and some other parts of this country in the national election that basically stunned the world. And so when the Democratic House minority leader, the gentleman from Missouri (Mr. Gephardt), asked me to lead the Democratic Caucus Special Committee on election reform, I said, yes, I must do this.

The committee was given the responsibility to travel throughout America and examine our Nation's voting practices and equipment. Over a 6-month period, this committee held six public field hearings in Philadelphia, San Antonio, Chicago, Jacksonville, Cleveland, and Los Angeles. We heard from election experts.

We heard from election experts and hundreds of voters about what is right and wrong with our election system. I was overwhelmed about the outpouring of interest and the support we received from our Nation's voters.

The conference report before us today authorizes grants to test new voting equipment and increases access to polling places by voters with disabilities. The conference report establishes election standards that require States to allow voters to check and correct their ballots, provide access to disabled voters, allow provisional voting when there is question of an individual's eligibility.

This is not a perfect conference report, and I had to think long and hard about supporting it. I do not like any ID requirements. We do not have any in California. I do not like having to ask people for a driver's license or a Social Security number. [\*H7846]

But despite those things that I do not like and what I think is wrong with this bill, I am going to support it because we need to get started with correcting what is wrong with our election systems here in America. And hopefully, we will continue to work on this so that we can come up with perfect legislation to deal with those problems.

Mr. HOYER . Mr. Speaker, I thank the gentlewoman for her comments and again would pledge with the gentleman from Ohio (Mr. Ney) and myself and the gentleman from Michigan (Mr. Conyers) and others to continue to work with her towards those solutions.

Mr. Speaker, I yield 1 minute to the distinguished gentleman from North Carolina (Mr. Price). The gentleman has been involved with election reform as long as I can remember. He is an extraordinary leader on this bill and in this House on these issues.

Mr. PRICE of North Carolina . Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, I rise in strong support of the conference report on the Help America Vote Act. I want to congratulate the gentleman from Maryland (Mr. Hoyer), the gentleman from Ohio (Mr. Ney), the gentleman from Michigan (Mr. Conyers), and others who have relentlessly pursued this historic bipartisan agreement.

Mr. Speaker, the problems that Florida experienced at the polling places and its primaries again this year demonstrate that our last national election was not just a once-in-a-life-time phenomenon. The problems that plagued us 2 years ago will continue to occur if we do not take action to address them. This legislation takes that action.

It requires States to meet minimum Federal election standards. It authorizes funds to help implement those standards and to educate voters, improve equipment, train poll workers and improve access for disabled voters. It also incorporates key elements of legislation I helped author, the Voting Improvement Act, H.R. 775, to buy out unreliable and outdated punch card machines, the type of equipment that has the highest error rate.

Mr. Speaker, now more than ever we need to make sure that every American can participate fully in our democratic form of government. We must ensure that every vote is counted. I urge my colleagues to take a significant step towards achieving these goals by joining me in support of the conference report, H.R. 3295.

Mr. HOYER . Mr. Speaker, I yield 1 minute to the distinguished gentlewoman from Texas (Ms. Eddie Bernice Johnson), the distinguished chair of the Congressional Black Caucus, who has been involved since the very first day in demanding that we pass election reform, in focusing in on election reform and working towards the adoption of the bill; and I thank her for her efforts.

(Ms. EDDIE BERNICE JOHNSON of Texas asked and was given permission to revise and extend her remarks.)

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, I want to use this minute to say that I want to thank the gentleman from Ohio (Mr. Ney), whom I visited the very first day of the session to talk about this, and the gentleman from Maryland (Mr. Hoyer), who stayed the course, and Senator Dodd and the Senate who led the deliberations in the Senate.

There was such an overwhelming outcry from this Nation and internationally that came to the Black Caucus after January 6, 2001, that we knew we had to act.

This became the number one priority for the Congressional Black Caucus to do something about election reform.

The faith in the system had gone. Today hopefully it will start to restore it. This is not to say this is a perfect bill, but it is to say that it is a major, major step in the right direction; and we hope that the President will keep his word to me. He made it a public statement when he said he will support it, and he would see that the money would be in the budget.

We appreciate it; and, Mr. Speaker, this is the civil rights bill of the new millennium.

Mr. Speaker, I rise today in support of H.R. 3295, a bill that will restore integrity to our nation's voting system. I strongly urge my colleagues to support this legislation.

Mr. Speaker, today is a proud day for the Congressional Black Caucus. Throughout this Congress, election reform has been our number one legislative priority.

On January 6, 2001, our Members walked out of this chamber to protest the voting irregularities and intimidation that resulted in a President who was appointed by the Supreme Court, rather than elected by the people.

We said we would not rest until the right to vote of every American was protected.

Mr. Speaker, I am proud to say that after 21 months of floor speeches and field hearings, we are very, very close to delivering on our word.

Now, this legislation is not perfect. But it is a tremendous step forward. And, with the 2002 elections just a mere 26 days away, and the 2004 elections on the horizon, it's time to move the ball down the field.

It's time to implement the centralized voter registration and standardized balloting called for by this bill.

It's time that we fund training and technical assistance programs to educate poll workers and replace faulty voting machinery.

And it's time to implement provisional balloting, so that no voter will get turned away from the polls if their eligibility is challenged.

These provisions will all go a long way toward correcting the disenfranchisement that we witnessed in 2000.

However, because I believe that these regulations should be enacted quickly, I am concerned that this legislation gives states waivers to push back their deadlines for many of these protections.

I am also troubled that this legislation authorizes funding for these programs without appropriating the \$3.9 billion dollars that they will require.

Lastly, for far too long, we have seen voting regulations corrupted and used to deny the votes of millions of people, especially people of color.

We must remain vigilant that the voter protections in this legislation are implemented evenly and effectively. And we must ensure that they are enforced with the full weight of our justice system.

Our work is cut out for us. It is easy to see that this legislation is really only the beginning. But it is a good beginning.

Now, I must thank the Members of the Conference Committee from both Chambers for working many, many late nights to complete their work on this legislation.

In particular, I would like to thank the gentleman from Maryland, Mr. Hoyer, who has been battling to extend these important protections to our nation's voters. I would also like to commend Chairman Ney for his work in helping reach this compromise.

Finally, let me thank the Members of the Congressional Black Caucus for their extraordinary work. In particular, I must commend the gentleman from Michigan, Mr. Conyers, for his leadership in co-authoring one of the original House election reform bills and for working to ensure that this bill became a reality.

As I conclude, let me remind my colleagues: The time to improve our elections system is now. We must make sure all Americans can register to vote, remain on the rolls once registered, vote free from harassment, and have those votes counted. I believe that this bill achieves those goals.

I call upon my colleagues to vote in favor of this legislation today. Mr. Speaker, we must act before another day has passed.

Mr. HOYER . Mr. Speaker, I yield 1 minute to the gentleman from Rhode Island (Mr. Langevin), a freshman Member of this House, an extraordinary Member of this House, who has been very much involved in the adoption of this bill as former Secretary of State in the administration of elections and a person who has confronted the challenges of barriers to participation. His participation was critical to the passage of this measure.

(Mr. LANGEVIN asked and was given permission to revise and extend his remarks.)

Mr. LANGEVIN . Mr. Speaker, I thank the gentleman for yielding me the time.

Mr. Speaker, I am pleased to be here on this historic day to urge passage of H.R. 3295, the Help America Vote Act. The measure sets minimum standards for elections and provides States with the much-needed resources to upgrade voting equipment, improve election accuracy and provide voter education and poll worker training.

This legislation has rightly been called the first civil rights legislation of the 21st century because it will ensure that all Americans can participate fully in our democracy by being guaranteed the fundamental right to vote.

We would not be here without the leadership of the gentleman from Ohio (Mr. Ney) and the gentleman from Maryland (Mr. Hoyer), my good friends on the Committee on House Administration. Their diligent efforts to craft a [\*H7847] bipartisan election reform bill demonstrates the successes that we may enjoy by setting aside our differences and working for the good of the American people. I particularly appreciate their work to make our polling places and election equipment accessible to people with disabilities.

I encourage my colleagues to vote for this measure.

Mr. HOYER . Mr. Speaker, I yield 1 minute to the gentlewoman from Florida (Ms. Brown), who has stood on this floor, stood up in Florida and stood in every forum to demand that we do what we can to ensure that every person's vote counts.

(Ms. BROWN of Florida asked and was given permission to revise and extend her remarks.)

Ms. BROWN of Florida . Mr. Speaker, to the gentleman from Ohio (Mr. Ney), the gentleman from Maryland (Mr. Hoyer), Congressional Black Caucus, and I have got to say Senator Dodd, we would not be here today if it was not for their leadership.

I tell my colleagues this is a great day. I know this is not a perfect bill, but it is the perfect beginning. I say that over and over again because, as I stand here today, 27,000 of my constituents' votes were thrown out because of old equipment. Do my colleagues hear me? Twenty-seven thousand votes that have not been counted to date.

And I want to say to the young people, it does matter who is in charge. It matters who is in charge, and this is the first step that we have taken to correct that, the first step.

I know that all of the civil rights community is not happy with this bill. I am not happy with it. The reason why I am not happy with it is because it took so long to get here. I wanted it here for the midterm elections. It is not, but it will be for the 2004 election.

Mr. Speaker, this is not a perfect bill but, for me, it is the greatest accomplishment of the 107th Congress. The greatest thing we have done is to make sure that what happened in the 2000 election never happens again in this country.

Mr. Speaker, I am here today to say that it matters who is in charge.

To the young people, I want you to know that your vote does matter, and that every vote counts. And voting matters because the person in charge sets the agenda. In Florida, and here in Washington, it is very clear just who is in charge and who is setting the agenda. Clearly, the Republican party thinks it is much more important to cut taxes and send the Federal budget into deficit than to focus on issues like election reform, health care, Social Security, and education.

There is no perfect bill, but this bill is a beginning. It has been 628 days since the 2000 election, and here we are, nearly 2 years later, and have just passed an election reform bill. I am thrilled we finally have an election reform bill though: We now have a bill which gives over \$170 million to the State of Florida for election reform, and \$3.6 billion to the States overall. Not perfect, but a good start. This bill requires States to do things they should have done long, long ago: Provisional balloting, replacing outdated punch-card voting machines, properly trained poll workers, educating voters, and upgrading voter lists . . . and making polling places more accessible for the disabled.

Everyone in this country and throughout the world knows that the 2000 elections were a complete sham. In my district alone, Florida's Third Congressional District, 27,000 of my constituents' votes were thrown out. Let me repeat that: 27,000. Now I know who won the last election and it was not the person sitting in the White House right now who is guiding this country into war.

And the incredible thing is that since the 2000 elections, in the State of Florida, Governor Bush has only spent \$32 million to overhaul the voting system. So, Florida, with 16 million people, spent \$32 million, while our neighbor, Georgia, with only 8 million residents, spent \$54 million on election reform.

I guess we see where the Florida Governor's priorities lie. He, like the Republican party here in Washington, is mainly interested in tax cuts for the country club group. Election reform just isn't very high up on their list.

In fact, the Governor did not even allow enough time during the Florida primaries to hold mock elections to educate voters and poll workers before the primaries.

Now I know there is no perfect bill, and I know many in the civil rights community and many here tonight are not happy with this compromise. And I am disappointed it has taken so long to reach a compromise and get an election reform bill passed. And I'm unhappy the conference report today will not pass in time to affect the mid-term elections. But I am happy to see we are ending the 107th Congress with a bill, and that we are finally addressing the problem of elections in this country. No, Mr. Speaker, this bill is not perfect, but it is to me, the greatest accomplishment of the 107th Congress, and I urge my colleagues to vote "yes" on the conference report.

#### Announcement by the Speaker Pro Tempore

The SPEAKER pro tempore (Mr. Simpson). The Chair would remind all Members it is not in order to refer to individual Senators except as the sponsor of a measure.

Mr. HOYER . Mr. Speaker, I yield 1 minute to the gentlewoman from New York (Mrs. Maloney).

(Mrs. MALONEY of New York asked and was given permission to revise and extend her remarks.)

Mrs. MALONEY of New York . Mr. Speaker, I rise in support of the conference report and important civil rights bill that will make much-needed reforms in the way that we vote. For too long Americans had to deal with outdated

polling practices, alleged **FRAUD** and confusing voting equipment and inexperienced poll workers. While the bill is not perfect, with this legislation we will begin to make improvements that prevent election controversies that continue to emerge in different parts of the Nation.

I am pleased to see that two provisions that I offered along with the gentleman from New York (Mr. Reynolds), my friend and colleague, have been included in the legislation. The bill ensures that overseas voters who fill out an application for voter registration will automatically receive an absentee ballot for two Federal general elections following registration. Additionally, the bill establishes an office in each State to respond to overseas voters inquiries. Overseas voters deserve the same opportunities to cast their ballots in elections as those who are able to make it to their local polling place on election day.

This is a movement towards truly every vote counting, and I commend the great leadership of the gentleman from Maryland (Mr. Hoyer) and the gentleman from Ohio (Mr. Ney).

Overseas voters deserve the same opportunities to cast their ballots in elections as those who are able to make it to their local polling place on election day.

I have spoken with Ambassadors, members of the armed services, and other American citizens living abroad who have expressed their desire to establish a more effective voting process for those living overseas.

Our constituents deserve to be a part of the electoral process no matter where they live.

With the passage of this legislation, we will ensure that each citizen's vote truly does count.

I'd like to commend my colleagues Chairman Ney and Ranking Member Hoyer for their work on this issue and for bringing this bipartisan legislation to the floor.

I urge my colleagues to support this bill.

Mr. HOYER . Mr. Speaker, I yield 1 minute to the gentlewoman from Michigan (Ms. Kilpatrick).

(Ms. KILPATRICK asked and was given permission to revise and extend her remarks.)

Ms. KILPATRICK . Mr. Speaker, I thank the gentleman from Ohio (Mr. Ney), as well as the gentleman from Maryland (Mr. Hoyer) for yielding the time and bringing the bill to the floor, some 20 plus months after the worst catastrophe in American history happened in our country.

The right to vote and have that vote counted is the most sacred thing an American citizen can have, and this bill begins the process of rectifying the very bad past that we experienced in 2000.

I want to commend the work of the committee. I want to work with my colleagues to see it implemented properly. I like the emphasis on high school and college students and voter education.

On that, I want to work with the committee to see that literacy is addressed. Too many people in America cannot read or read between the 4th and 6th grade level. We have got to make sure that the election materials reach that population so that it can vote.

With that, Mr. Speaker, I will cast my vote for this bill and ask that we continue to do the things necessary so all people's vote count and all people who are registered can vote.

Mr. Speaker, I rise today in support of the conference report on H.R. 3295, the Help America Vote Act. I also want to commend [\*H7848] Chairman Ney and Ranking Member Hoyer for their hard work on this landmark legislation.

In the aftermath of the 2000 election and the ensuing controversy that prevailed, it became abundantly clear that it was essential for our Nation to overhaul election administration processes. Our consideration of this act could not occur at a more favorable time because the specter of possible voter **FRAUD**, voter disenfranchisement and ballot confusion remain.

H.R. 3295 authorizes \$3.9 billion over 3 years to help States replace punch card and lever voting machines to improve the administration of elections. As we prepare for mid-term elections, once again the political stakes are high.

H.R. 3295 is important legislation because its enactment will enable voters to check for and correct ballot errors in a private and independent manner. The act will also ensure that legitimate voters will not be turned away from the polls. Furthermore, H.R. 3295 requires that States maintain clean and accurate voter lists.

As the Representative for the 15th Congressional District in Michigan, I am acutely aware of the vital importance of empowering every prospective voter. In the recent past, numerous black voters were disenfranchised due to the imposition of insidious practices designed to prohibit voter participation. Literacy tests, poll taxes, and voter intimidation were employed successfully to thwart black voter participation. However, a new day has dawned and Americans can now look forward to the overhaul of election administration.

I do, however, want to alert my colleagues to a concern I have about voter literacy, a problem that affects American voters. The average American reads on a 4th to 6th grade level. Therefore, it is imperative that we take steps to ensure that voting instructions and materials accommodate the literacy level of the average American. I am pleased that the conference report includes provisions to make voting sites accessible to persons with disabilities, and it affirms the Voting Rights Act of 1965. Nonetheless, I continue to have reservations about the potential for voter disenfranchisement.

As a former educator, I recognize the importance of reading and comprehending written material. I refer my colleagues to the provision in the bill that authorizes a total of \$3 billion over fiscal year 2003 through fiscal year 2005 that can be used in part to provide voter education. It is my hope that some part of those resources will be used to address voter literacy.

I am pleased to support the conference report, and I am confident the provisions of the bill will usher in critical changes that will serve to enhance the legitimacy of our electoral process.

Mr. HOYER . Mr. Speaker, I yield 1 minute to the gentlewoman from Florida (Mrs. Meek), an extraordinary Member of this body who will be leaving this body and we will be poorer for it, who experienced firsthand the trauma of people coming to the ballot box and being unable to cast their vote and being assured that it counts.

(Mrs. MEEK of Florida asked and was given permission to revise and extend her remarks.)

Mrs. MEEK of Florida . Mr. Speaker, I want to thank the gentleman from Maryland (Mr. Hoyer), my good friend, for yielding me the time.

It was once said that all that is required for evil to triumph is for good people to do nothing. We had some very good people doing something on this: the gentleman from Maryland (Mr. Hoyer), the gentleman from Ohio (Mr. Ney), the gentlewoman from California (Ms. Waters), the Congressional Black Caucus, the gentlewoman from Florida (Ms. Brown) and the entire lot, they wanted to do something, not just say nothing could be done because of the problems. The problems were faced.

We do not have a perfect bill, but we have the very best we could get, and it could not have been done without the people that I just mentioned. So I am glad that I lived to see this bill happen, and we all are very emotional about it because of the fact this, to us, is an emancipation of some of the problems we have had with voting in this country, and I want to thank the writers of this bill and the people who participated in it.

For once, we will go forward to do something better for this country and so that everybody can be created equal.

Mr. Speaker, this Conference Report is an important milestone for democracy in America. I am thrilled that the election reform conferees have heeded the will of the Congress and the American people and reached an Election Reform Conference Agreement that takes enormous steps toward ensuring that every voter counts equally and that every vote cast is counted. Last week, when this House overwhelmingly approved my Motion to Instruct the Election Reform Conferees to produce a Conference Report by October 4, 2002, the prospects for election reform were still very much in doubt.

I congratulate my good friends Representative Steny Hoyer, Senator Chris Dodd, Chairman Bob Ney, Senator Mitch McConnell, Senator Charles Schumer, Senator Kit Bond, the Chair of the Congressional Black Caucus Representative Eddie Bernice Johnson, Representative John Conyers, Representative Maxine Waters, Representative Corrine Brown, Representative Alcee Hastings, my other CBC Colleagues, and my South Florida Democratic Colleagues Peter Deutsch and Robert Wexler on this outstanding achievement.

From the day of the 2000 Presidential election catastrophe in Florida and elsewhere to today, including last month's primary election fiasco in Florida, I vowed that I would not rest until the Congress passed and adequately funded a real election reform bill and the President signed it into law. The Conference Agreement is an important step toward achieving my goal. The next step is to honor our shared commitment to adequately fund the implementation of this legislation through our appropriations process so that we do not create an unfunded mandate for the states.

As many of you know, I had a problem myself in last month's primary election when I stopped by a library branch in my precinct to cast an early vote. I was delayed from voting for more than 30 minutes because the only computer available was not working and the election officials on duty said that they couldn't verify that I was an eligible voter. So the need for election reform is not some abstract matter to me. It is something real and very personal. When I said, "No more Florida voting problems", I meant it. It remains extremely important to me to achieve real election reform for my constituents before I conclude my congressional service.

Mr. Speaker, the Conference Report is an historic achievement, certainly the most important piece of election and voting rights legislation since the Voting Rights Act of 1965. It will mean millions of dollars in Federal assistance to Florida and every other state and will go a long way toward making voting rights problems, such as those that occurred in Florida, a thing of the past.

The Conference Report contains such important protections as provisional voting, 2nd-chance voting, privacy in voting for voters with disabilities, statewide computerized lists of registered voters, and uniform and nondiscriminatory standards for counting ballots so that your chance to have your vote counted will not depend on where you live. It also authorizes \$3.8 billion in funding over the next three years to help states replace and renovate voting equipment, train poll workers, educate voters, upgrade voter lists, and make polling places more accessible for the disabled.

When this Conference Report becomes law, no qualified voter can ever again be turned away from the polling place without first being offered the opportunity to cast a provisional ballot. Voters will be able to correct their ballots easily if they make a mistake and vote for the wrong candidate, or nullify their ballot by voting for too many candidates.

Mr. Speaker, this is not a perfect bill. Like virtually every Conference Agreement, the Conference Report is the product of negotiation and compromise. As a result, it contains some provisions from the Senate bill, like the voter ID requirements for first time voters and the related and redundant citizenship check-off declaration, that would not be in the bill if I alone had been able to draft it.

Some civil rights organizations have expressed their concerns that the voter ID provisions and the citizenship check-off requirement could have a discriminatory and disproportionate impact on those prospective voters, such as racial and ethnic minorities, students, the poor, and people with disabilities, who are substantially less likely to have photo identification than other voters. Given my commitment to voting rights, I take these concerns seriously, but, they do not affect my support for this Conference Report.

To address the concerns about voter ID, I urge the Election Assistance Commission to be established by this Conference Report to carefully monitor the implementation of the voter ID requirements by the states so that the Commission may make recommendations for further reform if it uncovers evidence that these requirements are interfering with the opportunity of any qualified voter to vote and have his vote counted.

Mr. Speaker, when the House and the Senate approve this Conference Report and the President signs it, and we fully fund its implementation, we will take an enormous step toward ensuring that all qualified voters receive an equal right to vote and to have their vote counted.

I urge all my Colleagues to support this Conference Report. [\*H7849]

Mr. HOYER . Mr. Speaker, I yield 1 minute to the gentlewoman from Connecticut (Ms. DeLauro), assistant Democratic leader, outspoken strong fighter for a citizen's right to vote, have that vote counted, an extraordinarily effective worker on behalf of the passage of this bill.

Ms. DeLAURO . Mr. Speaker, I rise in strong support of this legislation and thank those who have made it possible.

Not long ago we took our right to vote for granted, but what occurred in Florida 2 years ago and again last month reminded all Americans how very sacred that right is. The right to vote is a cornerstone of our democracy, the most basic and most essential expression of citizenship. When that right is put into doubt, when citizens cannot know that a



ballot cast is a ballot counted and that their unique voice has not been heard, it undermines confidence of our entire political system as well as the government formed on the foundation of our ballots.

People must simply have the confidence that their vote counts. That is what this legislation is about. It authorizes nearly \$4 billion during the next 3 years to modernize our equipment, poll worker training, voter education, improved voter lists, improved voter access, provisions that would alert voters to improperly marked ballots like those we saw during the last presidential election. It goes a long way toward restoring the integrity of our electoral system.

Our work is not done. We must make sure that the funds for this bill are not merely authorized but appropriated so that this historic legislation does not become just another empty promise. At a time when American leadership in the world is critical, following through reforming on our election system is simply too important to address halfheartedly.

I am proud to support it.

Mr. HOYER . Mr. Speaker, I yield 1 minute to the gentlewoman from Texas (Ms. Jackson-Lee), a member of the conference committee who succeeded Barbara Jordan in her seat, an extraordinary fighter for our Constitution and for our people, and she is following in that tradition.

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas . Mr. Speaker, I thank the distinguished gentleman from Maryland very much for yielding me the time.

The gentleman from Maryland (Mr. Hoyer) did stay the course and the gentleman from Ohio (Mr. Ney), the chairman and the gentleman from Michigan (Mr. Conyers), and to be admonished, I know I will be, Senator Dodd. The work that they all have done has brought us to this place.

When I went to Florida, I saw many people in the aftermath of the 2000 election as we sought the recount; and they were minorities, they were elderly, they were Jewish Americans, they were Hispanic Americans. They were Americans, and each of them said that their vote had not been counted.

Today, let me thank my colleagues because we do have the civil rights act of the millennium but, more importantly, the most historic piece of legislation since the Voter Rights Act of 1965 which helped create the seat that Barbara Jordan held in this United States Congress.

So I am very gratified that we will now have provisional balloting. We will now have State-wide registration. We will now have the ability for disabled individuals to access the voting place. We will now have the ability for funding so that we can get rid of punch cards and we can get rid of paper ballots if the communities desire to do so.

Might I say that I am very grateful as well that the thousands of people who have been purged from the rolls now will have language in this legislation that they must have notice before they are purged. I am grateful that that particular provision that I desired to get in in working with the advocacy groups, we were able to clarify it. Because thousands of persons were purged off the rolls without knowing in the State of Texas, and thousands were purged off in the State of Florida. We have much work to do.

I am opposed to the photo ID. I am opposed to discriminating against people because they are Hispanic or ethnic minorities. The photo ID, let us work on that.

This is a great bill, and I offer my support, but there is more work to be done.

Mr. Speaker, first, I would like to thank Mr. Hoyer, Mr. Conyers, Mr. Dodd in the Senate, Mr. Hall and Mr. Barcia of the Science Committee

I rise in support of the Help America Vote Act, although there are issues that should still be resolved. After the election debacles of the past two years, I had hoped that we could have produced a perfect solution to the problems that plague our voting systems. Unfortunately, we did not. But I feel that that should not keep us from passing this landmark piece of legislation. This is a major civil rights initiative of this century.

The bill we have before us takes a great stride toward giving the American people the fair and efficient system of voting that the American people deserve, but it should not be the final step. Even after this Act is signed into law, as I assume it will be, we must continue to be vigilant looking for obstacles that disenfranchise legal voters, and removing those obstacles.

As a Member of the Judiciary Committee and of the Science Committee, I have been actively involved in the development of this bill. Indeed, I served as a conferee on several parts of the legislation. In it, there is much in it to be pleased with. Voting is the cornerstone of any democracy, and must be above all suspicion. Every vote should be counted to ensure that every voter is being heard.

One excellent provision of this bill is that it follows the recommendation of the National Commission on Election Reform by taking full advantage of the expertise and experience at the National Institute of Standards and Technology (NIST). NIST has long been reporting on voting standards and technologies, and should be the perfect group to direct and coordinate efforts to develop performance-based standards for voting equipment. Such standards will improve the accuracy, integrity, and security of our polling systems.

When this bill first came out of conference, it included language that would have forced any state employing these standards to pay royalties to the company that developed it, although those standards were developed with taxpayers funds. Thanks to a well-coordinated, bipartisan effort by us conferees from the Science Committee, this language was removed. We also ensured that once standards are created, that NIST will also be charged with accrediting the labs that will certify election equipment, to make it more likely that smart plans will translate into real benefits.

Other victories have come in the field of purging of registered voter lists. Although purging of voter-rolls, may be a well-intentioned attempt to remove inappropriate votes from being cast, such purging has rarely, if ever, been done effectively and fairly. Done improperly, purging can be an expensive tool for discrimination or mistreatment. Consistently through the history of our nation, purging has been a mechanism for silencing minorities, and the socio-economically disadvantaged.

In Florida alone, thousands of eligible voters have been misidentified as being as felons who are unable to vote: 3,700 before election 1998, and 11,000 before election 2000. There is no reason to think that this is a Florida-specific problem. This means that perhaps hundreds of thousands of American citizens, living in the richest Democracy in the world, are having their fundamental right to vote stripped due to clerical errors. This is absolutely unacceptable. I have fought to preserve language in this bill that will ensure that voters are not unfairly purged from the voting rolls. In Texas thousands of voters were purged from the rolls without notice. The language I insisted on adding requires notice to be given to the voter and two federal elections to occur before that voter would be purged.

I know that this is a somewhat contentious piece of legislation. I had hoped that election reform would draw us all together in the name of reaffirming the principles of democracy. There are several groups, whose opinions I deeply respect, who feel we should reject this bill because it is not perfect. They are, as I am, concerned that some provisions, such as the reliance on driver's licenses and social security numbers and utility bills as forms of identification, could be used to disenfranchise the elderly, the disabled, the homeless, racial and ethnic minorities who might not have such documentation. This would bring about a disproportionate burden on voters who deserve to vote and have their vote counted.

We are also worried that simple errors in filling out registration forms, such as the failure to check a box, or to supply a driver's license number, could jeopardize a person's ability to vote. Such restrictions could significantly hamper the efforts of get-out-the-vote campaigns that enable hundreds of thousands of Americans to take part in the Democratic process each election year. There will always be a balancing-act between making it easy for people to vote, and making it difficult for people to commit voter-FRAUD. Although it is not perfect, I feel the present bill is a decent compromise. [\*H7850]

As the world's greatest Democracy, we must ensure that our elections meet the highest standards of integrity. Pushing the cause of Democracy is primary part of our foreign policy. The eyes of the world are upon us every two years as Americans go to the polls. It is a disservice, not only to the American people, but to all people around the world who aspire to our level of freedom, when we sink to the lows that were seen in Florida in 2000, and again this year.

The Help America Vote Act of 2002, will set the bar for our elections, and election-systems of the future. We should always seek to raise that bar as technology improves and obstacles are recognized. However, with elections upcoming, now is the perfect time to demonstrate our commitment to progress in making each vote count. Mr. Speaker, I support the Help America Vote Act, and urge my colleagues to do the same, and look forward to the bill being fully funded.

Mr. HOYER . Mr. Speaker, I yield 1 minute to the gentlewoman from Illinois (Ms. Schakowsky), a member of the Waters Commission on which I also had the opportunity to serve.

Ms. SCHAKOWSKY . Mr. Speaker, I want to congratulate the gentleman from Maryland (Mr. Hoyer) and the gentleman from Ohio (Mr. Ney) for succeeding in bringing forward an election reform bill that will help move our election system into the 21st century. I thank the gentleman from Maryland (Mr. Hoyer) for making this a top priority and relentlessly fighting for its passage.

I had the privilege of being one of the vice chairs of the Democratic Caucus Special Committee on Election Reform under the able leadership of our chairwoman, the gentlewoman from California (Ms. Waters), who tirelessly traveled the country holding many hearings. From young and old voters, people of color and with disabilities, we heard a clear message. Without minimum election standards and a commitment of Federal dollars, voters will continue to be disenfranchised and history doomed to repeat itself.

I am particularly pleased that this legislation includes a crucial proposal similar to legislation I introduced last year, the Provisional Voting Rights Act of 2001. Under provisional voting, duly registered voters can feel confident that if their name does not appear on the registration list they will be permitted to vote. They will not have to go to a police station or leave the polling place in order to get their provisional ballot.

Any meaningful election reform proposal must include this measure and the Help Americans Vote Act does.

It is not perfect, but it will bring us closer to ensuring that every citizen can vote and every vote will be counted.

Mr. HOYER . Mr. Speaker, I yield myself the balance of my time.

We come now to the end of this debate. It has been a short debate, too short a debate; but it has been a long road from November 2000 to today. It was a road taken by many people.

Paul Vinovich, the chief counsel of our committee, Chet Kalis, who has done an extraordinary job on this bill and was one of the anchors, in my opinion, as we worked through this bill. Roman Buehler, who had strong contributions to this bill and a great knowledge that he brought to the consideration of this bill. Pat Leahy, who did an extraordinary job himself. Matt Petersen, Maria Robinson, Keith Abouchar, Dr. Abouchar, of my staff, who from the very first of this bill has worked daily on its provisions. Len Shambon, Bill Cable, Matt Pinkus, Noah Wofsy, Bob Bean, Neil Volz, who are no longer with us; and Beth Stein, who now works in the Senate.

All of these staffers have played an extraordinary role.

Mr. Speaker, I acknowledged earlier the Speaker of the House. I want to acknowledge the gentleman from Missouri (Mr. Gephardt), who was steadfast in his support of this process and whose help was absolutely critical to the final product and who met with the gentleman from Ohio (Mr. Ney) and me when we requested him to do so to discuss how we could move this bill forward.

And then, Mr. Speaker, let me say to the gentleman from Florida (Mr. Young), who is on the floor here today, that the gentleman from the State of Florida, the chairman of the Committee on Appropriations, my dear and close friend, one of the giants of this institution, his commitment to funding this legislation was and is absolutely critical. He and the Speaker have been extraordinarily supportive. And now we come to a challenge to get the \$2 billion that we are going to need for this year and the \$1 billion after that and the \$1 billion after that to ensure that this is not an empty promise.

Mr. Speaker, there are two bills I think that when I end my career I will look back on as being the most important bills in which I was involved: one that I had the privilege of sponsoring, the Americans with Disabilities Act, and this bill I have had the privilege of cosponsoring with my friend, the gentleman from Ohio (Mr. Ney).

There was an article in the paper just a few days ago talking about the gentleman from Ohio and me and our relationship and how we worked together in a nonpartisan fashion. Not in a bipartisan fashion, but in a nonpolitical, nonpartisan fashion, knowing full well that Americans expect us to work together to make sure this institution works as well as it possibly can, with fairness to all 435 Members. I am blessed by the fact that the gentleman from Ohio is committed to that objective and he runs an open, fair, and effective committee. I am pleased and honored to be his colleague.

I want to say as well that I am honored to have served in this House that has come to this day in a bipartisan fashion. When the roll is called, we are going to see the overwhelming majority of Republicans and the overwhelming majority of Democrats vote to ensure that every American not only has the right to vote but will be assured that this greatest of democracies will ensure that every individual, high or low, black or white, rich or poor, will be assured that their vote will count.

Mr. NEY . Mr. Speaker, I yield myself the balance of my time.

It has been said that this bill will make it easier to vote and harder to cheat, and that is true; but this bill goes way beyond a simple phrase, and I want to thank everybody that has made this bill possible.

I want to thank the people who worked on the Ford-Carter Commission, obviously, Presidents Ford and Carter. Their commission performed a tremendous service and their recommendations had a profound effect. I had the pleasure 2 days ago to be able to talk personally to Presidents Ford and Carter, and they expressed their tremendous support for this measure and their thanks to the Congress for passing it.

I want to thank the members of the conference committee. First, of course, the gentleman from Maryland (Mr. Hoyer). If it were not for the gentleman from Maryland, and he came to me and he proposed the ideas and he had a vision, if it were not for him, we simply would not have had the product in the direction obviously out of the House to be where we are at today, and I want to thank him for his integrity. He is a distinguished ranking member. He heeded the call to make elections work, to restore the faith in our system; and without his persistence and gentle persuasion at critical moments, this bill would not have been possible. And I want to thank him for what he has done for his country and for the citizens.

I want to recognize the gentleman from Michigan (Mr. Ehlers), who provided invaluable support for the scientific end of it; the gentleman from New York (Mr. Reynolds), whose concern over the rights of military and overseas voters are strongly reflected in this bill; the gentleman from California (Mr. Doolittle), who insisted on strong anti-FRAUD and privacy protections; the gentleman from Arizona (Mr. Stump) and the gentleman from New York (Mr. McHugh), from the Committee on Armed Services, who helped to make this bill a landmark piece of legislation for military voters; the gentleman from Illinois (Mr. Kirk).

And although he is not a conferee, I want to especially mention the gentleman from Indiana (Mr. Buyer), whose detailed input on the military voting issue significantly improved the bill. The gentleman from California (Mr. Thomas) and the gentleman from Florida (Mr. Shaw), from the Committee on Ways and Means, should be given the credit for crafting the provisions to protect voter privacy. The gentleman from New York (Mr. Boehlert) [\*H7851] and the gentlewoman from Maryland (Mrs. Morella) made sure also that the voice of the scientific community came through.

I also want to pay special tribute to the gentleman from Missouri (Mr. Blunt), the chief deputy whip, whose advice and guidance through the process based on his experience as the Missouri Secretary of State was essential to the final compromise.

I also want to thank the Members on the minority side who served on the conference committee: the gentleman from Pennsylvania (Mr. Fattah), the gentleman from Florida (Mr. Davis), who are tremendous Members. We are very blessed on House Administration, on both sides of the aisle, to have such terrific members: the gentleman from Missouri (Mr. Skelton) and the gentleman from Michigan (Mr. Conyers), who gave advice and who was always willing to be there; the gentleman from Michigan (Mr. Barcia); the gentlewoman from Texas (Ms. Jackson-Lee); the gentleman from New York (Mr. Rangel); and the gentleman from Rhode Island (Mr. Langevin), whose support on the disabilities issue was tremendous; the gentlewoman from Texas (Ms. Eddie Bernice Johnson), who always was concerned through the whole process to be part of it; and many other Members, Mr. Speaker.

I especially wanted to thank also the gentleman from Missouri (Mr. Gephardt), who met with the gentleman from Maryland (Mr. Hoyer) and me, and also I want to thank the Speaker of the House, the gentleman from Illinois (Mr. Hastert), whose unwavering support through the past 2 years kept this process on track and has gotten us to where we are today. He had the commitment and the faith this could be done. And Mike Stokke, his staff member.

I want to thank the groups whose efforts and support made this possible: the National Association of Counties, including their staff, Ralph Tabour; the National Association of Secretaries of State, including our Secretary of State Ken Blackwell of Ohio, who picked up the phone on the first day after the gentleman from Maryland (Mr. Hoyer) and I got together and said he wanted to be a part of the process to help, through the Secretaries of State; Ron Thornburg, past president of NASS, Secretary of State for Kansas; also Sharon Priest, Secretary of State of Arkansas, valuable input, and their executive director, Leslie Reynolds.

The National Conference of State Legislatures, NCSL, including Speaker Marty Stephens from Utah and staff Susan Parnes-Frederick. The Election Center and their executive director, Doug Lewis. The National Federation of the

Blind, including their staff Jim McCarthy. The National Commission on Federal Election Reform, executive director Phillip Zelikow.

And I want to mention our staff for their extraordinary, and I mean extraordinary, efforts. People talk about conference committees. There were discussions and they started at 10 a.m. and they ended at 3:15 and then started the next day at 8 a.m. and they ended at 2:15. There was a great deal of time put in on a very technical bill.

But I want to thank, from the Committee on House Administration, Paul Vinovich, our staff director, Chet Kalis, Roman Buhler, Matt Petersen, Pat Leahy, Maria Robinson, Chris Krueger, and also Will Heaton, our chief of staff of our personnel office, who kept that going. Not with us today, Neil Volz, who was originally in the process, and Jim Forbes, who was press secretary then, and our current press secretary, Brian Walsh. All of them had an integral part in making this happen.

For the gentleman from Maryland (Mr. Hoyer) and the staff of the Committee on House Administration, Bill Cable, Keith Abouchar, Lenny Shambon, all were extremely valuable.

Mr. Speaker, I want to thank my wife, Liz, and my son, Bobby, and my daughter, Kayla, for putting up with me not spending enough time with them in the last couple of weeks.

Also the staff of Senator Chris Dodd: Kennie Gill and Ronnie Gillespie and Sean Marr. The staff of Senator Mitch McConnell: Brian Lewis and Leon Sequeria. For Senator Kit Bond: Julie Damman and Jack Bartling. And especially legislative counsel Noah Wofsy for the House and Jim Scott for the Senate.

From the Senate side, there is no question the integrity, the desire, the vision, the perseverance of Senator Dodd. If it were not for that, we also would not be here tonight. He has done something that will live on for a long time, also along with the other two Senators, Mitch McConnell and Kit Bond.

As I said at the beginning of this process, Mr. Speaker, so many months ago, that for this effort to succeed we would have to be doing it in a bipartisan manner. We are about to witness the realization and fulfillment of that prediction.

I am grateful to my friends on the other side of the aisle, as well as on the other side of the Capitol, for their willingness to put partisanship aside and work together to produce this much-needed piece of legislation for the American people.

The United States of America is the world's greatest democracy. We need an election system that is worthy of that legacy. This bill will give us an election system that all Americans can have pride in. Langston Hughes, the poet, wrote, "Dream your dreams, but be willing to pay the sacrifice to make them come true." Our veterans have sacrificed with their blood, from the beginning of this country through the revolution, to make sure we can be here tonight to debate and argue all these points that are important to us. And on top of that, people died to get the right to vote in this country. We cannot forget that.

So, therefore, this bill is important. This is the bill that is going to produce, long after we are gone, the results that we need to have faith in the system.

In closing, Mr. Speaker, we talk about what we can do for our constituency, and there are a lot of issues. We debate important issues, such as if we are going to go to war or not, and issues important to our domestic agenda. But people have to be here to be able to vote on those issues. They have to be elected at all levels throughout the United States. And the greatest gift we can give, as Members of this House tonight, the greatest gift we can give to our constituency is to vote for this measure and take back to our constituency the ability to have them have faith in the system; a knowledge that tonight America did her work on the floor of this House, as boards of elections do their work every single election across our great country.

And also Members can take the gift back to their people that tonight the body politic worked for the good of the people. The body politic did something that, again, long after we are gone, people will benefit from. Tonight America shines. We need everyone's vote and support.

Mr. DAVIS of Illinois . Mr. Speaker, I wish to express my support for the conference bill on election reform, H.R. 3295. Members of both parties have worked very hard to reach agreement on this measure over several months. Although I am concerned that some of the bill's provisions relating to voter identification will not make it easier for new

voters to cast their ballots, I believe this legislation represents significant progress in addressing the problems we witnessed in our last national election.

I am especially pleased that the language in this bill relating to the accessibility of voting systems for people with disabilities reflects the stronger provisions for participation outlined in Mr. Langevin's July 9 motion to instruct, which I and several of my colleagues cosponsored.

Thanks to Mr. Shimkus and Mr. Ehrlich for their help in making the conferees aware of the importance of these provisions. Their recognition that this bill must ensure people with disabilities will be able to exercise their fundamental right to cast a secret ballot demonstrates that full participation in the electoral process by all Americans is truly a bipartisan concern.

I commend the members of the conference committee for their work on this bill and I urge its passage.

Ms. SOLIS . Mr. Speaker, I rise to express my concerns about the Help America Vote Act Conference Report, H.R. 3295. I am pleased that this conference report includes provisions that help voters in the greater Los Angeles area. For example, it provides money for the upgrade of our voting system. This will greatly assist the Los Angeles County Registrar Recorder and County Clerk transition out of the punch-card voting system.

However, I'm disappointed that this conference agreement also includes provisions that can lead to the disproportionate disenfranchisement of our Nation's minority voters. It requires first-time voters who register by mail [\*H7852] to bring current photo identification to the polls or a copy of a current utility bill, bank statement, paycheck, or other government document that shows the name and current address of the voter. Our Federal courts have recognized that the use of a photo ID causes a disparate impact on ethnic and racial minority communities. Nevertheless, the photo ID requirement is still part of this bill.

Also problematic is the variation in consequences for failing to meet presumably equal voting prerequisites \_being a citizen and being over the age of 18. Unfortunately, this bill has harsher consequences for voters who inadvertently forget to check a box affirming their citizenship than for voters who forget to certify they are 18 or older. This may lead to the disenfranchisement of voters who are English language learners or new to the voting system, including Latinos and Asians.

In addition, I am concerned about the provision that restricts access to information about provisional ballots to the individual who cast that ballot. Unquestionably, the confidentiality of votes cast as well as personal information should be protected. But information about provisional ballots such as where they were issued, should not be hidden from commissions that review and ensure fair voting. Based on this provision, it is unclear if commissions would have full access to information that would help them determine any inconsistencies in the provisional voting process.

While this bill is called the Help America Vote Act, I am afraid it may not help the fastest growing population in America \_Latinos\_ vote.

Mr. HOLT . Mr. Speaker, I support the Help America Vote Act and applaud Representatives Hoyer and Ney for their good work on this legislation.

The turmoil surrounding the 2000 Presidential election showed our Nation that we need to improve the instruments of voting and the means of electing our office holders. Even the Supreme Court Justices spoke of the need for uniform voting procedures. This bill does much to advance democracy.

Many of the problems with our electoral process lie in the disparities of our voting system. For instance, while some counties have modern voting machines that leave little room for error, others use dated punch-card ballots that can lead to the now-famous hanging and dimpled chads. In fact, studies show that 18 percent of Americans vote using technology that prevailed around the time Thomas Edison invented the light bulb. And nearly 33 percent of Americans vote by punching out chads, a system implemented during the Johnson administration. Yet many States and localities continue to use these outdated systems because of the exorbitant cost to replace them.

This bill takes many important steps towards that much-needed electoral reform. The Help America Vote Act would create the Election Assistance Commission and authorizes studies to analyze issues ranging from ballot design to voter accessibility.

However, this legislation goes beyond studies and agencies. It would authorize over \$400 million to buyout existing punch card voting devices from states and counties. Moreover, this legislation will provide \$2.25 billion to establish and maintain more accurate voter registration lists.

The bill also establishes minimum standards for State election systems. These standards include uniform means for determining what constitutes a vote on different types of equipment, sets new standards to accommodate individuals with disabilities, gives voters the opportunity to correct voting errors, ensures that uniformed and overseas voters have their votes counted, and requires more accurate registration lists.

Moreover, this bill authorizes the Attorney General to monitor and enforce these standards.

I am happy to support this bill as a step ahead in civil and voting rights.

Mr. BOEHLERT . Mr. Speaker, I rise in strong support of the Help America Vote Act, a bill that is the product of many days and nights of hard work on both sides of the aisle and both Houses of Congress. It is the product, too, of the collaborative efforts of the Science Committee and the House Administration Committee.

This bill is a carefully constructed compromise. It expands the right to vote by requiring that states allow provisional voting. It includes commonsense measures to prevent FRAUD. And, by providing over \$3 billion to States to buy out antiquated voting machines, train poll workers, educate voters, and improve the administration of Federal elections, the bill helps ensure that fiscally strapped States and localities will still be able to meet the tough requirements the bill imposes.

But perhaps one of the most fundamental reforms taken from provisions passed by the Science Committee last year is the improvement the bill makes in the way technical standards are developed for voting equipment. Most Americans pay no attention to this arcane field of technical specifications, tolerances, and error rates and that's as it should be. For when it goes right, no one notices.

But when it goes wrong when the chads of punch card ballots don't align correctly, or when electronic voting machines automatically shut down before the polls are supposed to the entire world quickly becomes all too familiar with its technical vocabulary.

Strong technical standards will become even more important as the country strives to live up to the new requirements of this bill, especially the requirement that each state compile a computerized database of all its registered voters. Such lists will surely make vast improvements in how America votes, but if they are not also to expose us to the misdeeds of hackers and other cyber criminals, we must develop robust computer security standards to protect these systems.

I want to thank Mr. Ney, the chairman of the House Administration Committee, for his hard work on crafting this bill and his willingness to include provisions of the Science Committee's to strengthen the way critical, but often overlooked, voting equipment standards are developed.

I urge my colleagues to support this important bill.

Mrs. JONES of Ohio . Mr. Speaker, I rise to talk about a piece of legislation that, if passed, will remove the barriers that have blocked many American citizens' right to vote. If Congress agrees to the passage of H.R. 3295, the Help America Vote Act of 2002, antiquated machines will be replaced, adequate assistance will be provided for our Nation's elections, nondiscriminatory and uniform requirements would be enforced, improved military and overseas voters ballot access will be provided, and the opportunity for young Americans to be involved in the voting process will be established.

Without legislation that helps Americans to have their vote count, barriers of participation will continue to plague many of our communities, and; therefore, increase the growing number of outdated voting equipment, alleged intimidation by police and lack of translators, as mandated by law.

As recent as the last Presidential election, the National Association for the Advancement of Colored People, NAACP, requested an investigation into the voting practices. The 14th amendment, which ensures equal protection under the law, was the basis for the Supreme Court's decision not to allow recounting in Florida. Ironically, an amendment designed in 1866 to protect the rights of minorities was used to protect a system which disenfranchised them in 2000.

It is also interesting that in addition to the votes that were not counted in Florida, there were voting irregularities in the 11th Congressional District of Ohio. Thousands of voters on the mostly African American east side of Cleveland, OH, went to vote, only to be turned away. Because of a 1996 State law cutting Cleveland precincts by a quarter, their polling places had been changed. The Cuyahoga County Board of Elections said that it sent postcards to registered voters telling them of the switch. But of 85 African Americans who were asked about the postcards during 2 1/2 days of interviews done by the Los Angeles Times, only one said he received notification.

"I never got a card, never," said Francis Lundrum, an East Cleveland native. He said he bellowed at an election worker: "I am a veteran of the United States armed forces! I want to vote!"

It did no good.

Lundrum and the others who were turned away should have been given provisional ballots, to be certified later. Among those who did not get a voting ballot was Chuck Conway, Jr., who stated, "I think there was some stinky stuff going on."

As a U.S. Representative, it truly saddens me to hear of voting irregularities, not only with my constituency, but to all who were not afforded the right to have their vote count. I urge my colleagues to seriously consider what will happen to the future of our democratic process if we do not pass this sensible piece of legislation. It is my hope that for our next general election cycle, Americans can proudly say that every vote does count. I urge my colleagues to vote in favor of H.R. 3295.

Ms. McCARTHY of Missouri . Mr. Speaker, I rise in support of the conference report on H.R. 3295, the Help American Vote Act. I wholeheartedly endorse the meaningful collaboration of the bipartisan group, led by my colleagues Congressman Ney and Congressman Hoyer.

The Help American Vote Act corrects the mistakes with our election system that were highlighted in the aftermath of the 2000 election. I have seen firsthand the challenges inadequately equipped polling places and poorly trained poll workers pose to our communities. This measure will go far in ensuring everyone's right and access to a vote.

I introduced bipartisan election reform legislation to establish a federal grant program to provide assistance to States for modernizing [\*H7853] and enhancing voting procedures and administration. The substantive changes that my legislation proposes are contained in the detailed election reform conference report we will pass today. I applaud this bill because it provides states with both the standards and the funding to make real election reform happen. This legislation authorizes \$3.0 billion over 3 years for a grant program administered by the commission to help States meet election requirements, train poll workers, provide voter education, and administer elections.

The Help American Vote Act also requires States to abide by uniform and nondiscriminatory requirements, such as providing provisional ballots, implementing statewide voter registration databases and ensuring that each precinct has at least one machine that is accessible to the disabled. It also establishes an Election Assistance Commission, a bipartisan commission that will issue voluntary guidelines, issue grants, and administer research grants, and pilot projects.

Mr. Speaker, this bill would provide the most meaningful reform to our democratic election system since the civil rights laws were enacted in the 1960s. It is time to pass real election reform, time to Help American Vote. This legislation will restore the confidence of the American people in our election process and encourage all citizens to take part in one of the paramount processes that defines us as a nation. Strengthening our election system strengthens our democracy.

Mr. Speaker, I urge my colleagues to vote "yes" on this conference report.

Mr. VITTER . Mr. Speaker, I rise in support of the election reform conference report before us today.

I have strongly advocated election reform in my home State of Louisiana in the past and continue to do so here in Congress. I am pleased that this legislation is a strong step toward correcting many of the flaws in the current system.

Following the 2000 election, I was incensed that there would be any attempt by political operatives to disenfranchise our brave men and women in the Armed Services overseas. In response I introduced legislation to remedy the situation, and am pleased to see the conference report takes important measures similar to the ones I proposed to ensure military overseas ballots are counted. Our service personnel deserve no less.



I applaud the efforts of the conference to address the issue of voter FRAUD as well. Statewide voting lists, presenting identification when voting, purging names from lists for those that do not vote, and strengthening penalties for those convicted of voting FRAUD will all help States deal with the problem of vote FRAUD, which is an assault on our democratic system.

Lastly, I would like to commend the conferees for their work in helping ensure that the disabled have access to voting machines in each precinct. Voters should never be disenfranchised because of any sort of disability and I now hope Congress will follow through with funds.

I would like to commend Chairman Ney, who met with me on a number of occasions to work on a variety of election reform issues, as well as Ranking Member Hoyer and all the conferees that worked out this compromise.

I urge my colleagues to support the election reform conference report.

Mr. HASTINGS of Florida . Mr. Speaker, I rise in strong support of the conference report of H.R. 3295, the Help America Vote Act.

I begin by thanking my good friend from Maryland, Mr. Hoyer, for keeping this issue at the forefront of this body's agenda. Given the daunting task of bringing this conference report to the floor, the gentleman from Maryland has remained the voice of justice for the tens of thousands of Americans who had their right to vote stolen from them on Election Day 2000. I thank him for his work and leadership on this issue and so many others.

Additionally, I commend the chairman from Ohio, Mr. Ney, for his continued efforts to get this bill to the floor. Even while Members of the chairman's own party were fighting against this bill and the President still refuses to make election reform a priority, I have never doubted the chairman's sincerity and resolve to get this bill passed.

Mr. Speaker, 628 days have passed since Election Day 2000 and, until today, Congress has remained largely silent. Just last month, in Florida, my constituents reaped the first-hand benefits of Federal inaction. On November 5, voters throughout this country will be returning to the same broken election system of 2000 because it took Congress nearly 2 years to act.

So, while I will ultimately support this conference report, I cannot come to the floor today with the same jubilation and admiration for this bill that some of my colleagues have. Frankly, we should be ashamed of ourselves. While we improved our homeland security, we neglected the integrity of our democracy.

The conference report that the House is considering has many qualities that hold true to the title's implication. That is, the bill actually helps Americans vote. Improving voter accessibility, establishing statewide voter registration lists, determining what constitutes a vote, increasing voter education and poll worker training, and providing States with the dollars to meet these standards, are just a few of the good qualities of the report.

However, this bill is not perfect by any means. The ID provisions in the report drastically alter voter registration and absentee voting procedures. The inclusion of these provisions will ultimately discourage and intimidate first-time and veteran voters alike. Further, the opt-out until 2006 provisions provide States with an opportunity to delay reform until after the next Presidential election. After the last election, I expected these provisions to be removed. But they weren't.

Mr. Speaker, the passage of today's conference report is merely the first step in true election reform. Congress must now put its money where its mouth is and appropriate the \$3.9 billion authorized in this report. Unfunded mandates are just lip service, and States need our help. If Congress fails to fund election reform in 2003, 2004, and 2005, then we can count on many states opting out until 2006. This places the reliability of our election system in jeopardy for 4 more years.

As I have said so many times before, we must never again find ourselves questioning the methods by which we choose our elected officials. Hopefully, we never will. After all, help is on the way\_though it may take a few years to get there.

I urge my colleagues to support the conference report.

The SPEAKER pro tempore (Mr. Simpson). All time for debate has expired.

Without objection, the previous question is ordered on the conference report.

There was no objection.

The SPEAKER pro tempore. The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. HOYER . Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were \_yeas 357, nays 48, not voting 26, as follows:

[Rollcall Vote No. 462]

YEAS - 357

Abercrombie  
Ackerman  
Aderholt  
Akin  
Allen  
Andrews  
Armey  
Baca  
Bachus  
Baird  
Baker  
Baldacci  
Baldwin  
Ballenger  
Barcia  
Barrett  
Bartlett  
Barton  
Bass  
Bentsen  
Bereuter  
Berkley  
Berry  
Biggert  
Bilirakis  
Bishop  
Blumenauer  
Blunt  
Boehlert  
Boehner  
Bono  
Boozman  
Borski  
Boswell  
Boucher  
Boyd  
Brady (PA)  
Brady (TX)  
Brown (FL)  
Brown (OH)  
Brown (SC)  
Bryant

Burr  
Burton  
Buyer  
Calvert  
Camp  
Cantor  
Capito  
Capps  
Cardin  
Carson (IN)  
Carson (OK)  
Castle  
Chabot  
Chambliss  
Clay  
Clayton  
Clement  
Clyburn  
Combest  
Condit  
Conyers  
Costello  
Cox  
Cramer  
Crane  
Crenshaw  
Crowley  
Culberson  
Cummings  
Cunningham  
Davis (CA)  
Davis (FL)  
Davis (IL)  
Davis, Jo Ann  
Davis, Tom  
Deal  
DeFazio  
DeGette  
Delahunt  
DeLauro  
DeLay  
DeMint  
Deutsch  
Diaz-Balart  
Dingell  
Doggett  
Dooley  
Doolittle  
Doyle  
Dreier  
Dunn  
Edwards  
Ehlers  
Emerson  
Engel

English  
Eshoo  
Etheridge  
Evans  
Farr  
Fattah  
Ferguson  
Fletcher  
Foley  
Forbes  
Ford  
Fossella  
Frank  
Frelinghuysen  
Frost  
Gallegly  
Gekas  
Gephardt  
Gibbons  
Gilchrest  
Gillmor  
Gilman  
Gordon  
Goss  
Graham  
Granger  
Graves  
Green (TX)  
Green (WI)  
Greenwood  
Grucci  
Hall (TX)  
Hansen  
Harman  
Hart  
Hastings (FL)  
Hastings (WA)  
Hayes  
Hayworth  
Hefley  
Herger  
Hill  
Hilleary  
Hilliard  
Hinchey  
Hinojosa  
Hobson  
Hoeffel  
Holden  
Holt  
Honda  
Hooley  
Horn  
Hoyer  
Hulshof

011543

Hunter  
Hyde  
Inslee  
Isakson  
Israel  
Issa  
Jackson (IL)  
Jackson-Lee (TX)  
Jefferson  
John  
Johnson (CT)  
Johnson (IL)  
Johnson, E. B.  
Johnson, Sam  
Jones (OH)  
Kanjorski  
Kaptur  
Keller  
Kelly  
Kennedy (MN)  
Kennedy (RI)  
Kildee  
Kilpatrick  
Kind (WI)  
Kirk  
Kleczka  
Knollenberg  
Kolbe  
Kucinich  
LaFalce  
LaHood  
Lampson  
Langevin  
Lantos  
Larsen (WA)  
Larson (CT)  
Latham  
LaTourette  
Leach  
Lee  
Levin  
Lewis (CA)  
Lewis (GA)  
Lewis (KY)  
Linder  
LoBiondo  
Lofgren  
Lowey  
Lucas (KY)  
Luther  
Lynch  
Maloney (CT)  
Maloney (NY)  
Markey  
Mascara

Matheson  
McCarthy (MO)  
McCarthy (NY)  
McCollum  
McCrery  
McDermott  
McGovern  
McHugh  
McInnis  
McIntyre  
McKeon  
McKinney  
McNulty  
Meehan  
Meek (FL)  
Meeks (NY)  
Menendez  
Millender-McDonald  
Miller, Dan  
Miller, George  
Mollohan  
Moore [\*H7854]

[H8KS03049]YEAS Moran (VA)

Morella  
Myrick  
Nadler  
Nethercutt  
Ney  
Northup  
Norwood  
Nussle  
Oberstar  
Obey  
Olver  
Osborne  
Ose  
Owens  
Oxley  
Pallone  
Pascrell  
Payne  
Pelosi  
Pence  
Peterson (MN)  
Peterson (PA)  
Petri  
Phelps  
Pickering  
Pitts  
Platts  
Pombo  
Pomeroy  
Portman  
Price (NC)

Pryce (OH)  
Quinn  
Radanovich  
Rahall  
Ramstad  
Rangel  
Regula  
Rehberg  
Reynolds  
Riley  
Rivers  
Roemer  
Rogers (KY)  
Rogers (MI)  
Rohrabacher  
Ros-Lehtinen  
Ross  
Rothman  
Roybal-Allard  
Royce  
Rush  
Ryan (WI)  
Ryun (KS)  
Sanchez  
Sanders  
Sandlin  
Sawyer  
Saxton  
Schakowsky  
Schiff  
Schrock  
Scott  
Serrano  
Shadegg  
Shaw  
Shays  
Sherman  
Sherwood  
Shimkus  
Shows  
Shuster  
Simmons  
Simpson  
Skeen  
Skelton  
Slaughter  
Smith (NJ)  
Smith (TX)  
Smith (WA)  
Snyder  
Solis  
Spratt  
Stark  
Stearns  
Stenholm

Strickland  
Stupak  
Sullivan  
Sweeney  
Tancredo  
Tanner  
Tauscher  
Tauzin  
Taylor (MS)  
Terry  
Thompson (CA)  
Thompson (MS)  
Thune  
Thurman  
Tiahrt  
Tiberi  
Tierney  
Towns  
Turner  
Udall (CO)  
Upton  
Visclosky  
Vitter  
Walden  
Walsh  
Waters  
Watkins (OK)  
Watson (CA)  
Weiner  
Weldon (FL)  
Weldon (PA)  
Weller  
Wexler  
Wicker  
Wilson (NM)  
Wilson (SC)  
Wolf  
Woolsey  
Wu  
Wynn  
Young (FL)

NAYS - 48

Barr  
Becerra  
Bonilla  
Callahan  
Cannon  
Capuano  
Coble  
Collins  
Cubin  
Duncan  
Everett  
Filner



Flake  
Gonzalez  
Goode  
Goodlatte  
Gutknecht  
Hoekstra  
Hostettler  
Istook  
Jones (NC)  
Kerns  
Kingston  
Lucas (OK)  
Mica  
Miller, Jeff  
Moran (KS)  
Napolitano  
Otter  
Pastor  
Paul  
Putnam  
Rodriguez  
Sabo  
Schaffer  
Sensenbrenner  
Sessions  
Smith (MI)  
Souder  
Thomas  
Thornberry  
Toomey  
Udall (NM)  
Velazquez  
Wamp  
Watt (NC)  
Watts (OK)  
Whitfield

NOT VOTING - 26

Berman  
Blagojevich  
Bonior  
Cooksey  
Coyne  
Dicks  
Ehrlich  
Ganske  
Gutierrez  
Houghton  
Jenkins  
King (NY)  
Lipinski  
Manzullo  
Matsui  
Miller, Gary  
Murtha

Neal  
Ortiz  
Reyes  
Roukema  
Stump  
Sununu  
Taylor (NC)  
Waxman  
Young (AK)

Messrs. COBLE, COLLINS, JEFF MILLER of Florida, CANNON, OTTER, WAMP, FILNER, CAPUANO, WHITFIELD, SOUDER, HOEKSTRA, and Ms. VELAZQUEZ changed their vote from "yea" to "nay."

Messrs. SAWYER, PETRI, GREEN of Texas, and OBEY changed their vote from "nay" to "yea."

So the conference report was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore (Mr. Simpson). Without objection, the House insists on its disagreement to the Senate amendment to the title.

There was no objection.

**SUBJECT:** VOTERS & VOTING (91%); ELECTION LAW (90%); CONFERENCES & CONVENTIONS (90%); CAMPAIGNS & ELECTIONS (90%); LEGISLATION (90%); ELECTION AUTHORITIES (90%);

**LOAD-DATE:** October 14, 2002

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ROME DIVISION

FILED IN CLERK'S OFFICE  
U.S.D.C. rome

OCT 18 2005

Common Cause/Georgia,  
League of Women Voters of  
Georgia, Inc.,  
The Central Presbyterian  
Outreach and Advocacy Center,  
Inc.,  
Georgia Association of Black  
Elected Officials, Inc.,  
The National Association for the  
Advancement of Colored People (NAACP),  
Inc., through its Georgia State  
Conference of Branches,  
Georgia Legislative Black Caucus,  
Concerned Black Clergy of Metropolitan  
Atlanta, Inc., and the following  
qualified and registered voters under  
Georgia law:  
Mrs. Clara Williams,

LUTHER D. THOMAS, Clerk  
By: *[Signature]* Deputy Clerk

Plaintiffs,

v.

CIVIL ACTION FILE  
NO. 4:05-CV-0201-HLM

Ms. Evon Billups, Superintendent  
of Elections for the Board of  
Elections and Voter Registration  
for Floyd County and the City  
of Rome, Georgia,  
Ms. Tracy Brown, Superintendent  
of Elections of Bartow County,  
Georgia,  
Mr. Gary Petty, Ms. Michelle  
Hudson, Ms. Amanda Spencer, Mr.  
Ron McKelvey, and Ms. Nina  
Crawford, members of the Board  
of Elections and Registration of  
Catoosa County, Georgia,  
Judge John Payne, Superintendent  
of Elections of Chattooga County,  
Georgia,  
Ms. Shea Hicks, Superintendent of  
Elections for Gordon County,

Georgia,  
Ms. Jennifer A. Johnson,  
Superintendent of Elections for  
Polk County, Georgia,  
Mr. Sam Little, Superintendent of  
Elections for Whitfield County,  
Georgia, individually and in their  
respective official capacities as  
superintendents or members of the  
elections boards in their individual  
counties, and as class representatives  
under Federal Rule of Civil Procedure  
22(b)(1) and (b)(2) of a class  
consisting of all superintendents and  
members of city and county boards of  
elections throughout the State of  
Georgia, and  
Honorable Cathy Cox, individually and  
in her official capacities as  
Secretary of State of Georgia and  
Chair of the Georgia Elections Board,

Defendants.

ORDER

This case is an action to have the photo identification ("Photo ID") requirement in the 2005 amendment to O.C.G.A. § 21-2-417 (Act No. 53), declared unconstitutional both on its face and as applied, and to enjoin its enforcement on the ground that it imposes an unauthorized, unnecessary, and undue burden on the fundamental right to vote of hundreds of thousands of registered Georgia voters, in violation of article II, section 1, paragraph 2 of the Georgia Constitution, the Fourteenth and Twenty-Fourth Amendments to the federal Constitution, the Civil Rights Act of 1964 (42 U.S.C.A. § 1971(a)(2)(A) and (a)(2)(B)), and Section 2 of the

Voting Rights Act of 1965 (42 U.S.C.A. § 1973(a)). The case is before the Court on Plaintiffs' Motion for Preliminary Injunction [2] [23].

## **I. Background**

### **A. The Parties**

Plaintiff Common Cause/Georgia is a chapter of Common Cause, Inc. (Compl. ¶ 1(a).) Common Cause is a non-partisan citizen lobby organized as a not-for-profit corporation under the laws of the District of Columbia, and is devoted to causes such as electoral reform, ethics in government, and the protection and preservation of the rights of all citizens to vote in national, state, and local elections, including educating voters about voting rights and procedures. (Id.)

Plaintiff League of Women Voters of Georgia is a non-partisan Georgia non-profit corporation that was founded in 1920. (Compl. ¶ 1(b).) Plaintiff League of Women Voters of Georgia's purpose is to encourage the informed and active participation by citizens in government at all levels, including the protection of the right of all citizens to vote and the education of voters about voting rights and procedures. (Id.)

Plaintiff The Central Presbyterian Outreach and Advocacy Center, Inc. is a Georgia non-profit corporation that provides

support to people in poverty, including emergency services for basic human needs and assistance in achieving self-sufficiency, including assisting individuals in obtaining photo identification. (Compl. ¶ 1(c).)

Plaintiff Georgia Association of Black Elected Officials, Inc. is an unincorporated association of more than 700 elected officials throughout the State of Georgia who regularly conduct election campaigns and seek the votes of all registered, eligible voters. (Compl. ¶ 1(d).) It also promotes voter registration, education, and participation, preserves minority voting rights, and fights to ensure that no qualified voters are turned away on Election Day for failure to possess a Photo ID card in violation of their right to vote. (Id.)

Plaintiff the National Association for the Advancement of Colored People ("Plaintiff NAACP"), through its Georgia State Conference of Branches, is the nation's oldest civil rights organization. (Compl. ¶ 1(e).) Plaintiff NAACP was formed in 1909 by a multiracial group of activists, and has nationwide membership as well as members and offices in Georgia. (Id.) Plaintiff NAACP has advocated for the advancement and protection of voting rights for minorities, and, throughout its history, has fought for access to the ballot, for its members and for others. (Id.) It also has fought to ensure

that racial minorities, low income people, and economically disadvantaged people have access to the ballot box and an equal opportunity to participate in the political process.

(Id.)

Plaintiff Georgia Legislative Black Caucus ("Plaintiff GLBC") was formed in 1966 and consists of elected African-American members of the House and Senate of the Georgia General Assembly. (Compl. ¶ 1(f).) Plaintiff GLBC's members, as elected representatives, engage in election campaigns, seek votes of registered, eligible voters, and also seek to make certain that the right to vote of all eligible citizens is protected and that no eligible voters are discouraged or prevented from voting on election day for failure to possess a Photo ID card in violation of their right to vote. (Id.)

Plaintiff Concerned Black Clergy of Metropolitan Atlanta, Inc. is a non-partisan, interfaith religious organization of mostly African-American members and laity whose mission is to provide leadership, advocacy, and service to the poor, the homeless, and the helpless in the metropolitan Atlanta area, including protecting their rights as citizens to full participation in the democratic process, including the right to register and vote without undue interference. (Compl. ¶ 1(g).)

Plaintiff Clara Williams is an African-American and duly

qualified and registered voter residing in the City of Atlanta and Fulton County, Georgia. (Compl. ¶ 1(h)(ii).) Plaintiff Williams does not possess a Georgia driver's license, passport, or other form of government-issued Photo ID, and cannot readily obtain a Photo ID card from the State Department of Driver Services. (Id.)

Defendant Evon Billups is the Superintendent of Elections for the Board of Elections and Voter Registration for Floyd County, Georgia, and is charged with the duty of conducting elections in Floyd County, Georgia, and the City of Rome, Georgia. (Compl. ¶ 2(a)(i).) Plaintiffs have sued Defendant Billups in her individual and official capacities. (Id.)

Defendant Tracy Brown is the Superintendent of Elections for the Board of Elections and Voter Registration for Bartow County, Georgia, and is charged with the duty of conducting elections in Bartow County, Georgia. (Compl. ¶ 2(a)(ii).) Plaintiffs have sued Defendant Brown in her official and individual capacities. (Id.)

Defendants Gary Petty, Michelle Hudson, Amanda Spencer, Ron McKelvey, and Nina Crawford are members of the Board of Elections and Voter Registration for Catoosa County, Georgia, and are charged with the duty of conducting elections in Catoosa County, Georgia. (Compl. ¶ 2(a)(iii).) Plaintiffs have sued those Defendants in their official and individual



capacities. (Id.)

Defendant Judge John Payne is the Superintendent of Elections for the Board of Registrars for Chattooga County, Georgia, and is charged with the duty of conducting elections in Catoosa County, Georgia. (Compl. ¶ 2(a)(iv).) Plaintiffs have sued Defendant Payne in his official and individual capacities. (Id.)

Defendant Shea Hicks is the Superintendent of Elections for the Board of Elections and Registrations for Gordon County, Georgia, and is charged with the duty of conducting elections in Gordon County, Georgia. (Compl. ¶ 2(a)(v).) Plaintiffs have sued Defendant Hicks in her official and individual capacities. (Id.)

Defendant Jennifer A. Johnson is the Superintendent of Elections for the Board of Elections and Voter Registration for Polk County, Georgia, and is charged with the duty of conducting elections in Polk County, Georgia. (Compl. ¶ 2(a)(vi).) Plaintiffs have sued Defendant Johnson in her official and individual capacities. (Id.)

Defendant Sam Little is the Superintendent of Elections for the Board of Elections and Registration for Whitfield County, Georgia, and is charged with the duty of conducting elections in Whitfield County, Georgia. (Compl. ¶ 2(a)(vii).) Plaintiffs have sued Defendant Little in his official and

individual capacities. (Id.)

Defendant Cathy Cox is the Secretary of State for the State of Georgia, and is Chair of the State Election Board. (Compl. ¶ 2(a)(viii).) Defendant Cox has been designated as the Chief Election Official for purposes of the federal Help America Vote Act of 2002, and also is the Chief Election Official for purposes of the National Voter Registration Act of 1993. (Id.) Plaintiffs have sued Defendant Cox in her individual and official capacities. (Id.)

Plaintiffs allege that the superintendents and board members of the city and county boards of elections named in paragraphs 2(a)(i) through 2(a)(vii) of the Complaint are members of a class that consists of superintendents and members of city and county boards of elections in each of the 159 counties in Georgia, who are so numerous as to make their joinder impracticable. (Compl. ¶ 6.) Plaintiffs seek certification of a defendant class of all superintendents and members of all city and county boards of election in Georgia under Federal Rule of Civil Procedure 23(b)(1) and (b)(2). (Id. ¶ 7.)

**B. The Georgia Photo ID Requirement**

Prior to the 1998 elections, voters in Georgia, like registered voters in a majority of other states, were not required to present identification as a condition of voting.

(Compl. ¶ 8.) In 1997, the Georgia General Assembly adopted O.C.G.A. § 21-2-417, which required registered voters in Georgia to identify themselves by presenting one of seventeen forms of identification to election officials as a condition of being admitted to the polls and of being allowed to vote. (State Defs.' Initial Br. Opp'n Pls.' Mot. Prelim. Inj. Ex. 1.) Prior to its amendment in 1997, O.C.G.A. § 21-2-417 permitted, but did not require, registered voters to present a Georgia driver's license or other form of official photographic identification as a method of identification as a condition of voting. (Compl. ¶ 10.) Under the version of O.C.G.A. § 21-2-417 as amended in 1997, voters remained free to use any of eight other methods of identification for voting, including a birth certificate, a social security card, a copy of a current utility bill, a government check, a payroll check, or a bank statement showing the voter's name and address. (State Defs.' Initial Br. Opp'n Pls.' Mot. Prelim. Inj. Ex. 1.) Additionally, voters who did not have, or could not find, one of the seventeen forms of identification specified in former O.C.G.A. § 21-2-417(a), were entitled to be admitted to the polls, to be issued a ballot, and to be allowed to vote simply by signing a statement under oath swearing or affirming that he or she is the person identified on the elector's certificate. (Id.)

In 2005, the Georgia General Assembly adopted House Bill 244, or Act 53 ("HB 244"), which amended O.C.G.A. § 21-2-417 to require that all registered voters in Georgia who vote in person in all primary, special, or general elections for state, national, and local offices held on or after July 1, 2005, present a government-issued Photo ID to election officials as a condition of being admitted to the polls and before being issued a ballot and being allowed to vote. Plaintiffs have presented evidence indicating that the Georgia House of Representatives approved the Conference Committee Report on Act 53 by a vote of eighty-nine Republicans and two Democrats, while seventy-two Democrats and three Republicans voted against it. (Decl. of Ron D. Hockensmith ¶ 5 & Ex. 1.) The Senate adopted the Conference Committee Report on Act 53, with thirty-one Republicans and no Democrats voting in favor of the Act and eighteen Democrats and two Republicans voting against the Act. (Id.)

Plaintiffs have submitted the Declaration of Margaret S. Smothers, the former Executive Director of the League of Women Voters of Georgia. (Decl. of Margaret S. Smothers ¶ 2.) Ms. Smothers served as the League of Women Voters of Georgia's lobbyist during the 2005 session of the Georgia General Assembly, and worked on voting rights issues, including the proposals to require Photo ID. (Id. ¶¶ 2-3.) Ms. Smothers

observed:

4.

One of the objections opponents had to the photo id proposals was that the proposals included no funding for public education to inform registered voters of the new requirements that they present a photo id card in order to have their vote counted. In contrast, when Georgia shifted to electronic voting machines, the budget and staff of the Secretary of State's office was temporarily increased in order to engage in extensive public education efforts to prepare voters for that change. At the March 21, 2005 hearing on HB 244 before the Senate Committee on State and Local Governmental Operations (SLOGO), Randall Evans, who sponsored the bill and who is currently a member of the State Elections Board expressed the opinion that the Secretary of State's office had funds available from its current budget and that the state could rely on the public education efforts of such groups as the NAACP and AARP. Similar statements about the advocacy groups being sufficient to educate the public were made on the Senate floor during the March 29, 2005 debate on the photo id bill.

5.

Advocacy groups opposed to the legislation suggested the issue be studied prior to the next legislative session to determine if there were in fact a serious number of incidents of voter impersonation. At the SLOGO hearing on March 21, 2005 referred to above, Senator John Wiles, chair of the committee, asked if the groups would prefer the legislation to be enacted in the 2005 session, thus, in his view, providing a year for the groups to conduct public education. It was apparent from this comment that the chair was either unaware or was not concerned that municipal elections are conducted in odd years.

(Id. ¶¶ 4-5.)

Defendant Cathy Cox, Georgia's Secretary of State

("Secretary of State Cox"), wrote a memorandum to the members of the Georgia State Senate, asking that the senators consider the "staggering opportunities for voter fraud" that HB 244 would create. (Pls.' Br. Supp. Mot. Prelim. Inj. Ex. A at 1.)

Secretary of State Cox observed:

By allowing any person, at any time within 45 days before an election, to vote an absentee ballot by mail - with no ID requirement and no requirement to state one of the current conditions for voting absentee (O.C.G.A. § 21-2-380) - such as being out of town on election day, having a disability, being over 75 years old, etc.), you would be opening a gaping opportunity for fraud. At virtually every meeting of the State Elections Board during the past 10 years, we have dealt with cases involving fraud or election law violations in handling or voting absentee ballots. HB 244 removes all restrictions on voting by mail, and thus makes it quite simple for someone inclined to commit fraud to do so.

This completely contradicts the reasons stated for another measure contained in HB 244 - the Photo ID requirement. If the authors are indeed concerned about voter fraud, they would not likely authorize the easiest - and most prevalent form - of election law violations: unregulated voting by mail. In the past 9 years, neither my staff nor I can recall a single case or complaint of a voter impersonating another voter at the polls - the issue sought to be corrected by mandatory photo identification. And had this been occurring, some voter surely would have complained upon finding that someone else had voted under their name. It hasn't happened.

I urge you to fully consider all the changes proposed by HB 244. This bill started out as the "housekeeping" legislation proposed by my office, but other bills - HB 597 and SB 84 - have now been merged into it. The bill attempts to solve a problem that does not exist while expanding the opportunity for fraud in the area that has long

been the most vulnerable to this type of abuse - the mailed absentee ballot.

(Id. at 1-2.)

On April 8, 2005, Secretary of State Cox wrote a letter to Governor Perdue expressing reservations about the Photo ID requirement contained in HB 244, and urging Governor Perdue to veto the bill. In her April 8, 2005, letter, Secretary of State Cox observed:

It is my strong belief that the picture identification requirement in House Bill 244 is (1) unnecessary, (2) creates a very significant obstacle to voting on the part of hundreds of thousands of Georgians, including the poor, the infirm and the elderly who do not have drivers licenses because they are either too poor to own a car, are unable to drive [a] car, or have no need to drive a car, (3) very unlikely to receive pre-clearance under the Voting Rights Act by the Department of Justice, (4) violates Art. II, section I paragraph I of the Georgia Constitution by adding a condition on the right to vote that is not contained in the constitution and (5) imposes an undue burden on a fundamental right of all citizens, the right to vote, in violation of both the state and federal constitutions."

(Id. at 1.)

Secretary of State Cox also expressed her belief that the Photo ID requirements of House Bill 244 are unnecessary:

One of the primary justifications given by the Legislature for the passage of the photo identification provisions of House Bill 244 - the elimination of voter ID fraud at the polls - is an unfounded justification. I cannot recall one documented case of voter fraud during my tenure as Secretary of State or Assistant Secretary of State that specifically related to the impersonation of a registered voter at voting polls. Our state

currently has several practices and procedures in existence to ensure that such cases of voter fraud would have been detected if they in fact occurred, and at the very least, we would have complaints of voters who were unable to vote because someone had previously represented himself or herself as such person on that respective Election Day. As a practical matter, there is no possibility that vote fraud of this type would have gone undetected if it had in fact occurred because there is a list of registered voters at each polling place that is checked off as each person votes. If the impersonator voted first, and the legitimate voter came to the polling place later in the day and tried to vote, he or she would be told that they had already "voted" and would not be allowed to vote a second time in the same day. It is reasonable to suspect that a voter who cared enough to show up at the polls to cast a ballot would almost certainly have complained - but there have been no such complaints. If the opposite occurred, and the legitimate person came to the polls first and cast his ballot, the impersonator who showed up later would not be allowed to vote for the same reason and the attempted fraud would have been prevented.

In addition, this state has adopted severe criminal sanctions for the type of voter impersonation that is purportedly of concern and it is evident that such penalties have been a sufficient deterrent. In essence, there is no voter fraud problem currently in existence that House Bill 244 addresses. Additionally, the concern for this type of voter fraud has not prompted other states to approve legislation as restrictive as House Bill 244. Forty-two of those states provide for other valid forms of identification besides photo identification. Of the other seven states, not one is as restrictive as the legislation recently enacted in our state. If this type of voting fraud was a national trend, other states would likely be adopting legislation as restrictive as House Bill 244.

In contrast to the lack of voter fraud relating to impersonation of voters at polls during my tenure, the State Election Board has reviewed numerous



cases of voter fraud relating to the use of absentee ballots. However, the Legislature, in adopting House Bill 244 grossly expanded the opportunities for absentee voting by mail without any photographic identification requirement whatsoever, even though absentee ballots pose more of a threat of voting fraud than people voting in a polling location in their community. As a result, the type of voter fraud that has frequently occurred in our state is not addressed, and in fact is enhanced by the expansion of vote-by-mail opportunities. In sum, the justification for House Bill 244 is but a pretext.

(Pls.' Br. Supp. Mot. Prelim. Inj. Ex. B at 1-2.) Secretary of State Cox also observed that the Photo ID requirements created substantial obstacles to many Georgia voters:

Requiring someone who is otherwise registered and fully qualified to vote to present a government issued picture identification at the polling place as a condition of voting places a very real burden on many people, and especially upon the poor and elderly who do not own or cannot drive a car and therefore do not have drivers' licenses. It is estimated by the League of Women Voters and the AARP that an estimated 152,664 individuals over the age of 60 who voted in the 2004 presidential election do not have a Georgia driver's license and are likely not to have other photo identification. For such voters to obtain identification is often an unnecessarily burdensome task, particularly if such voters are in retirement communities and assisted living facilities, or live in rural areas.

In addition, for many of the poorest residents of our state, photographic identification is not just a matter of unnecessary documentation that has no direct bearing on their day to day lives (they often have no need to drive or travel, or otherwise engage in activities that require a license), but is a burden of cost, economy and time. Although seemingly nominal, the \$8.00 fee for an identification card may be a cost that many of our poor residents are unable to bear. Given the fact

that the United State[s] Supreme Court has held that a \$1.50 poll tax is an unconstitutional burden on the ability [of] an individual to vote (*Harper v. State Bd. of Elections*, 383 U.S. 663 (1966)), an \$8.00 fee for an identification card required by the state would also seemingly be unconstitutional, even if such fee may be waived by the state in the event that a voter swears that he or she is indigent. In fact, to require that someone swear and affirm they are indigent when they are above the level of indigence but nonetheless too poor to afford the cost of an identification card, is both an affront to that person as well as an unlawful requirement that he or she swear to something that is not true. In addition, there are other costs related to obtaining an identification [card] which the state does not have the ability to waive. For an individual working on an hourly wage, the time it takes to travel to a DMVS (which may be an unreasonable distance away from the resident[']s home or office), wait in the lengthy lines that result from only having 56 DMVS offices in the state (according to the list of locations posted on [www.dmv.ga.gov](http://www.dmv.ga.gov)) and then the return commute, results in actual lost wages. For the state to require this of our citizens, some of whom cannot afford to take such time off, is an unnecessary burden related to the exercise of that person's right to vote.

The geography of state DMVS offices poses a significant burden on many residents who would be required to obtain identification in order to vote. Given this state has only 56 DMVS offices, citizens without cars who reside in 103 of the 159 counties in Georgia must travel outside their home counties to obtain a state-issue[d] picture ID in order to vote. Nor is there a single location to obtain such an ID in the city of Atlanta.

(Id. at 2-3.) Additionally, Secretary of State Cox expressed her belief that HB 244 violated article II, section 1, paragraph 2 of the Georgia Constitution because it imposed a qualification on voters that was not listed in the Georgia

Constitution. (Id. at 4.) Finally, Secretary of State Cox expressed her belief that the Photo ID requirement imposed an undue burden on the fundamental right of citizens to vote:

Our federal and state courts have consistently recognized the right to vote as one of the most fundamental rights of our citizens. *Wesberry v. Sanders*, 376 U[.]S[.] 1 (1964). The right to vote is "preservative" of other rights, and is one that bears the strictest of scrutiny and it is the fundamental nature of this right which cannot be burdened by state actions. *Harper v. State Bd. of Elections*, 383 U.S. 663 (1966), *Reynolds v. Sims*, 377 U[.]S[.] 533 (1964). The United States Supreme Court, in *Dunn v. Blumstein*, 405 U.S. 330 (1972), recognized the close constitutional review required with respect to any restriction on the right to vote. In particular, the Supreme Court held in *Dunn* that "before the right [to vote] can be restricted, the purpose of the restriction and the assertedly overriding interests served by it must meet strict constitutional scrutiny." In addition, our state Supreme Court has also held that "substantive due process requires that state infringement on a fundamental right be narrowly tailored to serve a compelling state interest." *State of Ga. v. Jackson*, 269 Ga. 308 (1998). Our Supreme Court has also held that "when it is established that the legislation 'manifestly infringes upon a constitutional provision or violates the rights of the people' that the statute should be declared unconstitutional." *Cobb County School District v. Barker*, 271 Ga. 35 (1995). The intersection of those two precedents presents two clear questions. First, acknowledging that the right to vote is a fundamental right, is House Bill 244 narrowly tailored to serve a compelling state interest? Second, is it established that the photo identification requirements of House Bill 244 do not manifestly infringe upon the rights of the people? Based on the foregoing facts referenced above, the answer to both of these questions is no.

(Id. at 5.)

On April 22, 2005, Governor Sonny Perdue signed HB 244,

and the Photo ID requirement of HB 244 became effective on July 1, 2005, subject to pre-clearance by the United States Department of Justice. (Compl. ¶ 15.) The Photo ID requirement of HB 244 is codified in O.C.G.A. § 21-2-417, which now provides:

(a) Except as provided in subsection (c) of this Code section, each elector shall present proper identification to a poll worker at or prior to completion of a voter's certificate at any polling place and prior to such person's admission to the enclosed space at such polling place. Proper identification shall consist of any one of the following:

(1) A Georgia driver's license which was properly issued by the appropriate state agency;

(2) A valid identification card issued by a branch, department, agency, or entity of the State of Georgia, any other state, or the United States authorized by law to issue personal identification, provided that such identification card contains a photograph of the elector;

(3) A valid United States passport;

(4) A valid employee identification card containing a photograph of the elector and issued by any branch, department, agency, or entity of the United States government, this state, or any county, municipality, board, authority, or other entity of this state;

(5) A valid United States military identification card, provided that such identification card contains a photograph of the elector; or

(6) A valid tribal identification card containing a photograph of the elector.

(b) Except as provided in subsection (c) of this Code section, if an elector is unable to produce any of the items of identification listed in subsection (a) of this Code section, he or she shall be allowed to vote a provisional ballot pursuant to Code Section 21-2-418 upon swearing or affirming that the elector is the person identified in the elector's voter certificate. Such provisional ballot shall only be counted if the

registrars are able to verify current and valid identification of the elector as provided in subsection (a) of this Code section within the time period for verifying provisional ballots pursuant to Code Section 21-2-419. Falsely swearing or affirming such statement under oath shall be punishable as a felony, and the penalty shall be distinctly set forth on the face of the statement.

c) An elector who registered to vote by mail, but did not comply with subsection (c) of Code Section 21-2-220, and who votes for the first time in this state shall present to the poll workers either one of the forms of identification listed in subsection (a) of this Code section or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of such elector. If such elector does not have any of the forms of identification listed in this subsection, such elector may vote a provisional ballot pursuant to Code Section 21-2-418 upon swearing or affirming that the elector is the person identified in the elector's voter certificate. Such provisional ballot shall only be counted if the registrars are able to verify current and valid identification of the elector as provided in this subsection within the time period for verifying provisional ballots pursuant to Code Section 21-2-419. Falsely swearing or affirming such statement under oath shall be punishable as a felony, and the penalty shall be distinctly set forth on the face of the statement.

O.C.G.A. § 21-2-417.

On August 26, 2005, the Department of Justice granted pre-clearance to Georgia's Photo ID requirement. (State Defs.' Initial Br. Opp'n Pls.' Mot. Prelim. Inj. Ex. 3.)

At the same time that the General Assembly voted to require the presentation of a Photo ID for voting, the General Assembly also voted to amend O.C.G.A. § 40-5-103(a) to double

the minimum fee for a Photo ID card from \$10 to \$20 for a five-year Photo ID, and to authorize a new ten-year Photo ID card for \$35. (Compl. ¶ 16.) O.C.G.A. § 40-5-103(a) presently provides:

(a) Except as provided in subsections (b) and (c) of this Code section, the department shall collect a fee of \$20.00 for a five-year card and a fee of \$35.00 for a ten-year card, which fee shall be deposited in the state treasury in the same manner as other motor vehicle driver's license fees.

(b) The department shall collect a fee of \$5.00 for the identification card for all persons who are referred by a nonprofit organization which organization has entered into an agreement with the department whereby such organization verifies that the individual applying for such identification card is indigent. The department shall enter into such agreements and shall adopt rules and regulations to govern such agreements.

(c) The department shall not be authorized to collect a fee for an identification card from those persons who are entitled to a free veterans' driver's license under the provisions of Code Section 40-5-36.

(d) The department shall not be authorized to collect a fee for an identification card from any person:

- (1) Who swears under oath that he or she is indigent and cannot pay the fee for an identification card, that he or she desires an identification card in order to vote in a primary or election in Georgia, and that he or she does not have any other form of identification that is acceptable under Code Section 21-2-417 for identification at the polls in order to vote; and
- (2) Who produces evidence that he or she is registered to vote in Georgia.

This subsection shall not apply to a person who has

been issued a driver's license in this state.

(d) The commissioner may by rule authorize incentive discounts where identification cards are renewed by Internet, telephone, or mail.

O.C.G.A. § 40-5-103.

The Communications Office of Georgia prepared a press release as to HB 244 stating that after the effective date of HB 244, only the following forms of Photo ID will be acceptable: (1) a Georgia Driver's license; (2) a State Identity Card; (3) a passport; (4) a Government Employee ID card; (5) a military ID card; and (6) a tribal ID card. (Pls.' Br. Supp. Mot. Prelim. Inj. Ex. F.) According to the same press release, the following forms of previously acceptable identification will no longer be accepted by election officials as valid forms of voter identification: (1) a birth certificate; (2) a Social Security Card; (3) a Certified Naturalization Document; (4) a current utility bill; (5) a bank statement; (6) a government check or paycheck; or (7) other government documents. (Id.) The information also includes a statement from Senator Cecil Stanton indicating that the Legislature wanted to "protect the integrity of the [voting] process" when it enacted the Photo ID law. (Id. at 2.)

The new Photo ID requirement applies only to registered voters who vote in person. (Oct. 12, 2005, Hr'g Tr.) The

General Assembly imposed no similar Photo ID requirement on absentee voters, except those voting absentee for the first time after registering by mail. (Id.)

After adopting HB 244, Georgia became one of only two states that requires registered voters to present a Photo ID as an absolute condition of being admitted to the polls and being allowed to cast a ballot in federal, state, and local elections. (Compl. ¶ 17.) Thirty states do not require registered voters to present any form of identification as a condition of admission to the polls or to cast a ballot. (Id.) Twenty states require voters to present some form of identification of the polls. (Id.) Of those states requiring identification, only two states, Georgia and Indiana, require that voters present a Photo ID as the sole method of identification as a condition of voting. (Id.; Oct. 12, 2005, Hr'g Tr.)

**C. Obtaining a Photo ID Card**

The State of Georgia issues photo identification cards ("Photo ID cards") at its Department of Driver Services ("DDS") offices. (Decl. of Alan Watson ¶ 7 & Ex. C.) As of October 1, 2005, the DDS had fifty-six full-time customer service centers and two part-time customer service centers in Georgia. (Id.) Georgia has 159 counties, and individuals who reside in some counties, particularly counties in south and



middle Georgia, may have lengthy drives to their nearest DDS service centers. (Id. Ex. C.)

No DDS service center is located within the Atlanta, Georgia, city limits or within the Rome, Georgia, city limits. (Watson Decl. Ex. C.) Fulton and DeKalb counties, however, have DDS customer service centers located at (1) 2801 Candler Road, Decatur, Georgia 30034; (2) 537 Shannon Mall, Union City, Georgia 30291; (3) 8610 Roswell Road, Suite 710, Sandy Springs, Georgia 30350; and (4) 8040 Rockbridge Road, Lithonia, Georgia. (Id. ¶ 8.) Floyd County, where Rome, Georgia, is located, has a full-time DDS customer service center located at 3386 Martha Berry Highway. (Id. ¶ 9.)

Individuals who wish to renew a valid Georgia driver's license or Photo ID card may do so via the Internet. (Watson Aff. ¶ 18.) The DDS makes accommodations for disabled applicants who appear at a DDS service center to obtain a driver's license or Photo ID card. (Id. ¶ 17.) DDS policy directs that those applicants be brought to the front of the line, given a "Q-Matic" ticket, and provided with a seat. (Id.) The DDS employees then serve the disabled applicants in the order in which their number is called. (Id.)

DDS also has a mobile issuance bus known as the Georgia Licensing on Wheels ("GLOW") Bus. (Watson Decl. ¶ 10.) During September 2005, the GLOW Bus visited twenty-five

locations. (Id. ¶ 10 & Ex. D.) During those visits, the DDS issued a total of 122 free Photo ID cards for voting purposes, ninety-one five-year Photo ID cards, thirteen ten-year Photo ID cards, sixty-one five-year driver's licenses, nine ten-year driver's licenses, and nine veteran's driver's licenses, and also processed two address changes. (Id.) In addition to the schedule for the GLOW bus established by the DDS, any group may sponsor the GLOW bus for an appearance in a particular location or community by making arrangements with the DDS. (Id. ¶ 11.)

Plaintiffs have presented evidence indicating that DDS employees gave inconsistent information in response to inquiries concerning the locations and dates for an appearance of the GLOW bus at Turner Field in Atlanta and for an appearance of the GLOW bus in downtown Atlanta. (Aff. of Jennifer Owens ¶¶ 3-4.) Plaintiffs also have presented evidence indicating that the GLOW bus has steps for access and is not accessible for purposes of the Americans with Disabilities Act, and that individuals who are confined to wheelchairs cannot enter the bus. (Id. ¶ 6.) The photography and computer equipment on the GLOW bus is not mobile and cannot be removed from the bus to service individuals who cannot enter the bus. (Id.)

Defendants have presented evidence indicating that all

individuals who wish to obtain a Photo ID card must complete an application and pay an applicable fee. (Decl. of Alan Watson ¶ 3.) If an applicant wishes to obtain a Photo ID card for voting purposes but cannot afford the card, a DDS employee will provide an affidavit to the applicant to complete. (Id.) The affidavit requires the applicant to swear or affirm that: (a) he or she is eligible to receive the Photo ID card free of charge because he or she is indigent and cannot pay the fee for the Photo ID card; (b) he or she desires a Photo ID card to vote in a primary or election in Georgia; and (c) he or she does not have any other form of identification that is acceptable under O.C.G.A. § 21-2-417 for voter identification purposes; (d) he or she is registered to vote in Georgia or is applying to register as part of his or her application for a Photo ID card; and (e) he or she does not have a valid driver's license issued by the State of Georgia. (Id. ¶ 4 & Ex. A.)

Defendants have presented evidence indicating that the DDS "considers the policy regarding the issuance of a free identification card for voting purposes to be completely nondiscretionary: if the applicant completes the Affidavit, the applicant is automatically eligible for a free photographic identification [card] for voting purposes." (Watson Aff. ¶ 5.) Defendants' evidence indicates that the

DDS "makes no effort to verify the provisions of these completed affidavits relating to the applicant's eligibility for a free identification card for voting purposes and does not question the applicant." (Id.) According to Defendants, "[i]n short, any applicant who completes such an affidavit will receive a free photographic identification card for voting." (Id.)

After HB 244 passed, the DDS trained its district managers concerning the above policy and the process for issuing free Photo ID cards for voting purposes. (Watson Decl. ¶ 6.) In turn, district managers trained their employees in the field offices. (Id.) Additionally, DDS sent a written notice concerning the policy and procedure for issuing free Photo ID cards for voting to all of its employees. (Id. & Ex. B.) Since the DDS began issuing the Photo ID cards for voting purposes, the DDS has received no complaints that individuals who wished to obtain the cards, whether free or paid, were denied the cards. (Id. ¶ 12.)

Defendants have presented evidence that as of July 30 or July 31, 2005, 5,674,479 Georgians possessed unexpired driver's licenses and 731,600 Georgians possessed unexpired Photo ID cards. (Watson Aff. ¶ 13.) When applying for licenses or Photo ID cards at the DDS service centers, applicants also may choose to register to vote under Georgia's

"Motor Voter" law. (Id.)

In 2005, the fee for driver's licenses and Photo ID cards was \$15.00 for four years. (Watson Aff. ¶ 15.) In 2005, the Georgia legislature changed the law to set a \$20.00 fee for each driver's license and Photo ID card, and to provide that those driver's licenses and Photo ID cards would be valid for a term of five years. (Id.) The new law also provides that Georgians may purchase a ten-year driver's license or Photo ID card for \$35.00. (Id.) Prior to 2005, the Georgia legislature had not increased the fees for driver's licenses or Photo ID cards in thirteen years. (Id.)

Defendants have presented evidence indicating that the fee charged for driver's licenses and Photo ID cards is directly related to the costs of producing and issuing the driver's licenses and Photo ID cards. (Watson Aff. ¶ 16.) For the fiscal year ending June 30, 2004, the DDS conducted a total of 3,344,823 transactions involving producing and issuing driver's licenses and Photo ID cards, obtaining a total revenue of \$42,304,316.06 while spending \$47,018,808.73 of its budget for the fiscal year. (Id.)

The DDS's website explains how to apply for a Photo ID card. (Pls.' Br. Supp. Mot. Prelim. Inj. Ex. C.) The website states that applicants for a Photo ID card must furnish proof that they reside in Georgia and provide a valid Georgia

residence address by presenting one of the following: (1) a utility bill with a valid Georgia residence address; (2) a bank statement with a valid Georgia residence address; (3) a rental contract or receipt with a valid Georgia residence address; (4) an employer verification; or (5) a Georgia license issued to the applicant's parent, guardian, or spouse.

(Id.) The website further states that first-time applicants for a Photo ID card must provide an acceptable form of personal identification that includes the applicant's full name and month, day, and year of birth. (Id.) Acceptable forms of personal identification include: (1) "[o]riginal birth certificate (State issued) State Vital Statistics (Hospital birth certificates are not acceptable)"; (2) "[c]ertified copy of birth certificate (issued from Vital Statistics with affixed seal)"; (3) "[c]ertificate of birth registration"; (4) certified naturalization records; (5) an immigration ID card from Immigration and Naturalization; or (6) a valid passport. (Id.)

Plaintiffs also have submitted information from the Department of Vital Statistics' website concerning the process for obtaining a certified copy of a birth certificate. (Pls.' Br. Supp. Mot. Prelim. Inj. Ex. D.) To obtain a certified copy of a birth certificate, an applicant must provide "a photocopy of your valid photo ID, such as: driver's license,

state issued ID card, or employer issued photo ID." (Id. at 1.) An applicant must pay a \$10 search fee. (Id. at 2.)

The DDS and its predecessor, the Department of Motor Vehicles, only began collecting social security numbers three years ago, when they issued driver's licenses and Photo ID cards for four years. (Watson Aff. ¶ 19.) Consequently, DDS has collected only three-quarters of the social security numbers for individuals holding driver's licenses and social security cards. (Id.) Consequently, matching a list of social security numbers for registered voters with the DDS's list of social security numbers to determine the identity of registered voters who hold a driver's license or a Photo ID card is not possible.

**D. Declarations of Would-Be Voters**

Plaintiffs have submitted a number of declarations or affidavits of voters. The majority of the declarations state that the voters are not indigent, but do not have \$20 to spend for a Photo ID card that they do not need except for purposes of voting. (Decl. of Annie Johnson ¶ 6; Decl. of Betty Kooper ¶ 5; Decl. of Cheryl D. Simmons ¶ 5; Decl. of Clarence Harp ¶ 5; Decl. of Eva Jeffrey ¶ 4; Decl. of George Cliatt ¶ 6; Decl. of Katherine Jackson ¶ 5; Decl. of L. Dewberry ¶ 5; Decl. of Luanna S. Miller ¶ 5; Decl. of Mary Cliatt ¶ 6; Decl. of Norma Pechman ¶ 5; Decl. of Ronnie Gibson ¶ 5; Decl. of Rosa Brown

¶ 8; Decl. of Ruth L. Butler ¶ 5; Decl. of Willie Boye ¶ 5.) A number of the voters do not drive or cannot afford a car. (A. Johnson Decl. ¶ 6; B. Kooper Decl. ¶ 5; C. Simmons Decl. ¶ 5; C. Harp Decl. ¶ 5; Decl. of Eleanor Whittenburg ¶ 2; E. Jeffrey Decl. ¶ 4; Decl. of Irene Laster ¶ 6; K. Jackson Decl. ¶ 5; L. Dewberry Decl. ¶ 5; Decl. of Lawrence Dorn ¶ 5; L. Miller Decl. ¶ 5; M. Cliatt Decl. ¶ 5; Decl. of Minnie Bridges ¶ 5; Decl. of Patricia Lane ¶ 4; Decl. of Pearl Kramer ¶ 5; R. Gibson Decl. ¶ 5; R. Brown Decl. ¶ 7; R. Butler Decl. ¶ 5; T. Jackson Decl. ¶ 5; W. Boye Decl. ¶ 5.)

Most of the voters do not have a driver's license, passport, tribal Photo ID, or other form of government-issued ID because they have no need for one. (A. Johnson Decl. ¶ 4; B. Kooper Decl. ¶ 4; C. Simmons Decl. ¶ 4; Decl. of Clara Williams ¶ 6; C. Harp Decl. ¶ 4; E. Whittenburg Decl. ¶ 4; E. Jeffrey Decl. ¶ 3; Decl. of Exie Brown ¶ 4; G. Cliatt Decl. ¶ 4; I. Laster Decl. ¶ 4; Decl. of Jason Benford ¶ 3; K. Jackson Decl. ¶ 4; L. Dewberry Decl. ¶ 4; L. Dorn Decl. ¶ 4; L. Miller Decl. ¶ 4; M. Cliatt Decl. ¶ 4; M. Bridges Decl. ¶ 4; N. Pechman Decl. ¶ 4; P. Lane Decl. ¶ 4; P. Kramer Decl. ¶ 4; R. Gibson Decl. ¶ 4; R. Brown Decl. ¶ 4; R. Butler Decl. ¶ 4; T. Jackson Decl. ¶ 5; W. Boye Decl. ¶ 4.) Quite a few of the voters are African-American. (A. Johnson Decl. ¶ 4; C. Williams Decl. ¶ 4; G. Cliatt Decl. ¶ 5; I. Laster Decl. ¶ 5;



M. Cliatt Decl. ¶ 5; P. Lane Decl. ¶ 1; R. Brown Decl. ¶ 3.) Many of the voters are over sixty-five years old. (A. Johnson Decl. ¶ 1 (seventy-five years old); B. Kooper Decl. ¶ 1 (ninety years old); I. Laster Decl. ¶ 1 (eighty-eight years old); C. Williams Decl. ¶ 1 (sixty-eight years old); E. Brown Decl. ¶ 1 (eighty-two years old); G. Cliatt Decl. ¶ 1 (seventy-four years old); L. Miller Decl. ¶ 1 (eighty-four years old); M. Cliatt Decl. ¶ 1 (eighty-seven years old); M. Bridges Decl. ¶ 1 (eighty-five years old); N. Pechman Decl. ¶ 1 (eighty-four years old); P. Kramer Decl. ¶ 1 (eighty years old); R. Brown Decl. ¶ 1 (appears to be ninety-three years old); R. Butler Decl. ¶ 1 (eighty-nine years old).)

Several of the voters have physical or mental disabilities that make it difficult for them to travel to a DDS service center, to walk for long distances, or to stand in line. (A. Johnson ¶ 6 (physical disability); E. Whittenburg Decl. ¶ 2 (legally blind and uses walker to assist in walking); E. Brown Decl. ¶ 5 (confined to wheelchair); G. Cliatt Decl. ¶ 6 (poor health); I. Laster Decl. ¶ 6 (physical disability); J. Benford Decl. ¶ 5 (mental difficulties); L. Miller Decl. ¶ 5 (legally blind); M. Cliatt Decl. ¶ 6 (physical disability and confined to wheelchair); M. Bridges Decl. ¶ 5 (physical and visual impairment); P. Kramer Decl. ¶ 5 (physical impairment); R. Brown Decl. ¶ 7 (same).) Others

have to rely on family members or friends for transportation, or cannot obtain transportation to a DDS service center. (E. Whittenburg Decl. ¶ 2 (relies on family for transportation; closest family member lives thirty-five miles away); E. Brown ¶ 6 (closest DDS service center eleven miles away; family members rarely available to transport her); J. Benford Decl. ¶ 5 (cannot obtain transportation to DDS service center); L. Dorn Decl. ¶ 5 (same).) Another voter would have difficulty taking off from work to go to a DDS service center to obtain a Photo ID. (L. Dewberry Decl. ¶ 5.)

Other voters had problems obtaining necessary information, such as birth certificates or valid driver's licenses from other states, required for issuing a Photo ID card. (E. Whittenburg Decl. ¶ 5 (assisted living resident would have to arrange for transportation to health department and pay \$10 for birth certificate); I. Laster Decl. ¶ 6 (born in 1917 and it was not customary to deliver birth certificate in community at that time); P. Lane Decl. ¶¶ 5-6 (could not get Photo ID at four DDS service center because she lacked documentation from Virginia's Department of Motor Vehicles); R. Brown Decl. ¶ 6 (has no birth certificate).) One voter could not get a Photo ID card because the State of North Carolina could not find her birth certificate, but was issued a letter that was good enough to get a passport from the

federal government--yet not good enough to get a Photo ID card. (Decl. of Ruth White ¶¶ 5-7.) Other voters had problems because their legal names did not match the names they used for voter purposes or the names on their birth certificates. (Decl. of Amanda Clifton ¶ 4 (divorce decree does not state intent to change name); C. Williams Decl. ¶ 4 (informally adopted and birth certificate name does not match voter registration).)

A declaration from George H. Carley, an Associate Justice of the Georgia Supreme Court, describes a lengthy wait at a DDS service center to renew a driver's license. (Decl. of George H. Carley ¶ 2 (describing standing in line at DDS service center for more than three hours to renew driver's license).) Another judge, Henry M. Newkirk, described taking his parents, ages eighty-one and eighty-two, to a DDS service center and standing in line for two hours to hold their places. (Decl. of Henry M. Newkirk ¶¶ 2-3.) He indicated that his parents would not have been able to stand in the line for so long because of their physical ailments, and could not have negotiated the process successfully without assistance. (Id. ¶¶ 4-5.)<sup>1</sup> Martin Crafter, a candidate for the Ft.

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<sup>1</sup> During the October 12, 2005, preliminary injunction hearing, the Court overruled the State Defendants' objections to the declarations presented by Justice Carley and Judge Newkirk. The Court concluded that those declarations did not

Valley City Commission, described having to travel twenty miles to Warner Robbins to obtain a replacement driver's license, and stated that he had to request transportation from someone else to travel to the DDS service center. (Decl. of Marvin Crafter ¶¶ 2-4.)

**E. Census Data**

Plaintiffs have presented data from the 2000 Census to support their claim of vote denial. According to that data, 4.4 percent of African-American households in Georgia have a male householder and no wife present, with children under eighteen years old, as compared to 2.7 percent of Caucasian, non-Hispanic households in Georgia. (Pls.' Br. Supp. Mot. Prelim. Inj. Ex. E at 2.) Additionally, 30.1 percent of African-American households in Georgia have a female householder with no husband present and children under eighteen years old, as compared to 7.1 percent of Caucasian, non-Hispanic households in Georgia. (Id.)

According to the Census data, 18.5 percent of African-Americans in Georgia who are over age twenty-five have no high school diploma, as compared to 11.8 percent of Caucasian, non-Hispanic individuals over age twenty-five in Georgia. (Pls.' Br. Supp. Mot. Prelim. Inj. Ex. E at 3.) 9.0 percent of

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violate applicable ethical rules, and that Justice Carley likely would take the appropriate action if this case came before the Georgia Supreme Court at some point.

African-Americans in Georgia who are over age twenty-five have less than a ninth-grade education, as compared to 5.5 percent of Caucasian, non-Hispanic individuals in Georgia who are twenty-five years and older. (Id.) Further, according to the data, 17.7 percent of African-American households in Georgia have no vehicle, as compared to 4.4 percent of Caucasian, non-Hispanic households in Georgia. (Id. at 9.)

**F. Declarations of Georgia Elections Officials**

**1. Shea Hicks**

Shea Hicks is the Chairperson of the Gordon County Board of Elections and Voter Registration. (Decl. of Shea Hicks ¶ 2.) Ms. Hicks has served in that capacity since 1991. (Id.) In her capacity as Chairperson, she supervises all Gordon County elections, as well as elections for municipalities in Gordon County such as Fairmount, Ranger, Resaca, and Plainville. (Id.) The Gordon County Board of Elections also assists the City of Calhoun with its elections when the City of Calhoun requests such assistance. (Id.) The City of Calhoun has requested assistance from the Gordon County Board of Elections for the November 8, 2005, election. (Id.)

Ms. Hicks' office has not received complaints that voters cannot obtain the identification needed for in-person voting. (S. Hicks Decl. ¶ 3.) Ms. Hicks testified that the great majority of voters in Gordon County already use either a

driver's license or a State-issued identification card to identify themselves at the polls. (Id.)

After the Photo ID requirement passed and obtained preclearance from the Justice Department, the Gordon County Board of Elections ordered new election materials from the Elections Division of the Secretary of State's Office (the "Elections Division"). (S. Hicks Decl. ¶ 4.) Those materials included voter certificates, which list the proper forms of identification for in-person voting, and posters for the polling places listing the forms of acceptable identification for in-person voting. (Id.) The Gordon County Board of Elections also attended training sessions conducted by the Elections Division. (Id.) Those sessions included training on the new Photo ID requirement. (Id.) The Gordon County Board of Elections has scheduled poll manager and poll worker training sessions for various dates during the next two weeks. (Id. ¶ 6.)

The Gordon County Board of Elections has made efforts to educate the public concerning the Photo ID requirement by providing information to the newspaper. (S. Hicks Decl. ¶ 4.) That information appeared in the local newspaper during the past weekend. (Id.)

Gordon County has the following elections scheduled for November 8, 2005: (1) a county-wide Special Local Option Sales

Tax ("SPLOST") referendum; (2) a Fairmount city council election; and (3) elections for the Calhoun Board of Education and Calhoun City Council. (S. Hicks Decl. ¶ 5.) Ms. Hicks believes that issuing a preliminary injunction against the Photo ID requirement for the November 8, 2005, elections would cause tremendous confusion among election officials, poll workers, and voters. (Id. ¶ 7.) Ms. Hicks believes that the Gordon County Board of Elections cannot order and receive new voter certificates and poll posters in time for those elections, and states that the Gordon County Board of Elections does not have a sufficient supply of the certificates or posters reflecting the former identification requirements. (Id.) Additionally, Ms. Hicks believes that holding additional training for poll managers and poll workers would be necessary. (Id.)

Finally, Ms. Hicks opines that it would not be reasonable or feasible to require poll workers to compare the signatures on the voter certificates to the voter registration cards to verify the identity of voters. (S. Hicks Decl. ¶ 8.) According to Ms. Hicks, no such mechanism is in place and implementing one would be very costly. (Id.) Ms. Hicks also believes that such verification at the polls would be very time-consuming given the short amount of time available for verifying the signatures and the number of voters. (Id.)

## 2. Lynn Bailey

Lynn Bailey is the Executive Director of the Richmond County Board of Elections. (Decl. of Lynn Bailey ¶ 2.) Ms. Bailey has served in that capacity since 1993. (Id.) In her capacity as Executive Director, she supervises all Richmond County elections, as well as elections for municipalities in Richmond County such as Augusta, Blythe, and Hephzibah. (Id.)

The Richmond County Board of Elections held a special election on September 20, 2005, to fill the unexpired term of State Senator Charles Walker. (Bailey Aff. ¶ 3.) According to Ms. Bailey, the changes made by the Photo ID requirement were "a nonissue." (Id.) She recalled that voters did not seem confused and that poll workers seemed to administer the new procedures properly. (Id.) Ms. Bailey testified that most of the voters showed the type of identification that was shown most often under the previous law--a driver's license or a State-issued identification card. (Id.)

According to Ms. Bailey, 12,826 people voted at the polls during the September 20, 2005, special election. (Bailey Decl. ¶ 4.) 12,813 of those individuals produced Photo ID at the polls. (Id.) The thirteen voters who did not produce a Photo ID at the polls voted provisional ballots. (Id.) Only two of those thirteen voters returned with a Photo ID within forty-eight hours. (Id.) The Richmond County Board of



Elections does not know why the other eleven voters did not return, and it never heard anything else from those voters.

(Id.)

Before the September 20, 2005, election, the Richmond County Board of Elections ordered new election materials from the Elections Division. (Bailey Decl. ¶ 5.) Those materials included voter certificates, which list the proper forms of identification for in-person voting, and posters for the polling places listing the forms of acceptable identification for in-person voting. (Id.) The Richmond County Board of Elections also attended training sessions conducted by the Elections Division. (Id.) Those sessions included training on the new Photo ID requirement. (Id.) The Richmond County Board of Elections also conducted poll worker training prior to the September 20, 2005, election. (Id.) Finally, the Richmond County Board of Elections has scheduled additional poll worker training for October 17 through October 19, 2005.

(Id. ¶ 7.)

Before the September 20, 2005, election, the Richmond County Board of Elections made efforts to educate the public concerning the Photo ID requirement by speaking to neighborhood groups, by using the media, and by educating the candidates. (Bailey Decl. ¶ 5.) The Richmond County Board of Elections also booked the GLOW bus to allow voters to obtain

a Photo ID, and the GLOW bus was stationed in Richmond County on September 6 and 7, 2005. (Id.) The Richmond County Board of Elections has requested that the GLOW bus return to Richmond County before the November 8, 2005, election. (Id. ¶ 7.)

Richmond County has the following elections scheduled for November 8, 2005: (1) an election to fill the offices of Mayor and five City Commission positions for the City of Augusta; (2) an election to fill the post of Marshal for the Civil and Magistrate Court; (3) a special election to fill the unexpired term of State Representative Henry Howard, who recently died; (4) a special election to fill an unexpired term in Board of Education District 9; (5) a SPLOST vote; and (6) municipal elections for Blythe and Hephzibah. (Bailey Decl. ¶ 6.) Ms. Bailey believes that issuing a preliminary injunction against the Photo ID requirement for the November 8, 2005, elections would cause tremendous confusion among election officials, poll workers, and voters. (Id. ¶ 8.) Ms. Bailey believes that the Richmond County Board of Elections cannot order and receive new voter certificates and poll posters in time for those elections, and states that the Richmond County Board of Elections does not have a sufficient supply of the certificates or posters reflecting the former identification requirements. (Id.) Additionally, Ms. Bailey believes that

holding additional training for poll managers and poll workers would be necessary. (Id.) Finally, Ms. Bailey states that the Richmond County Board of Elections would have to re-educate the public concerning the former identification requirements. (Id.)

Ms. Bailey opines that it would not be reasonable or feasible to require poll workers to compare the signatures on the voter certificates to the voter registration cards to verify the identity of voters. (Bailey Decl. ¶ 10.) According to Ms. Bailey, no such mechanism is in place and implementing one would be very costly. (Id.) Ms. Bailey also believes that such verification at the polls would be very time-consuming given the short amount of time available for verifying the signatures and the number of voters. (Id.)

Finally, Ms. Bailey is aware of speculation that people voted as other people under the former law. (Bailey Decl. ¶ 9.) According to Ms. Bailey, the Richmond County Board of Elections has never found substantiated evidence to support that speculation. (Id.) In any event, Ms. Bailey believes that evidence of voter impersonation would be difficult to find, because there is no way to track an impersonator after the impersonator leaves the polling place. (Id.)

### 3. Gary Smith

Gary Smith is the Director of Elections for the Forsyth

County Board of Elections. (Decl. of Gary Smith ¶ 2.) Mr. Smith has served in that capacity since January 1, 2002. (Id.) In his capacity as Director of Elections, he supervises all Forsyth County elections, as well as elections for municipalities in Forsyth County such as Cumming. (Id.)

Mr. Smith opines that in-person voter impersonation would be easy to accomplish, as any person can buy a list of electors and determine who ordinarily does not vote. (Smith Decl. ¶ 4.) The imposter then can go to vote in place of someone who ordinarily does not vote. (Id.) According to Mr. Smith, without Photo ID or a reasonable method of comparing signatures on registration cards to signatures on voter certificate, there is no real opportunity to prevent such fraud. (Id.)

Mr. Smith states that he recently reported six fraudulent voter registrations to the Forsyth County District Attorney's Office. (Smith Decl. ¶ 6.) According to Mr. Smith, the Photo ID requirements assist the Forsyth County Board of Elections in preventing those voters who have registered fraudulently from voting. (Id.) Mr. Smith opines that the opportunity for fraud existed under the prior law. (Id. ¶ 7.) Mr. Smith observes that limiting the forms of acceptable identification is helpful to the Forsyth County Board of Elections poll workers. (Id. ¶ 8.) Mr. Smith notes that many of the poll

workers do not know the voters by sight. (Id. ¶ 9.)

Mr. Smith's office has not received complaints that voters cannot obtain the identification needed for in-person voting. (Smith Decl. ¶ 11.) Mr. Smith testified that the great majority of voters in Forsyth County already use either a driver's license or a State-issued identification card to identify themselves at the polls. (Id.)

Mr. Smith believes that issuing a preliminary injunction against the Photo ID requirement for the November 8, 2005, elections would cause tremendous confusion among election officials, poll workers, and voters. (Smith Decl. ¶ 10.) Mr. Hicks believes that the various Boards of Elections cannot order and receive new voter certificates and poll posters in time for those elections, and states that the Boards of Elections do not have time to hold additional training for poll managers and poll workers would be necessary. (Id.)

Mr. Smith opines that it would not be reasonable or feasible to require poll workers to compare the signatures on the voter certificates to the voter registration cards to verify the identity of voters. (Smith Decl. ¶ 5.) According to Mr. Smith, no such mechanism is in place and implementing one would be very costly. (Id.) Mr. Smith also believes that such verification at the polls would be very time-consuming given the short amount of time available for verifying the

signatures and the number of voters. (Id.)

**4. Lynn Ledford**

Lynn Ledford is the Elections Supervisor for Gwinnett County, Georgia, and has served in that capacity for three years. (Decl. of Lynn Ledford ¶ 2.) Gwinnett County is the second-largest county in Georgia and is one of the fastest-growing counties in the United States. (Id.) Gwinnett County has approximately 341,000 registered voters and has more municipalities than any other county in Georgia. (Id.)

In her capacity as Elections Supervisor, Ms. Ledford supervises all Gwinnett County elections, and also serves as the official registrar of voters for municipalities in Gwinnett County. (Ledford Decl. ¶ 3.)

After the Photo ID requirement passed and obtained preclearance from the Justice Department, Gwinnett County held a runoff election on September 27, 2005, to fill the unexpired term of Phyllis Miller. (Ledford Decl. ¶ 4.) That election involved seventeen voting precincts. (Id. ¶ 6.) According to Ms. Ledford, the changes resulting from Georgia's new Photo ID requirement were a "non-issue." (Id. ¶ 5.) Specifically, Ms. Ledford recalled that voters did not seem confused, and poll workers properly administered the new requirements. (Id.) According to Ms. Ledford, most voters showed the type of identification that they previously showed most often--a

driver's license or state-issued Photo ID card. (Id.) No voter cast a provisional ballot for lack of proper Photo ID. (Id.)

Prior to the September 27, 2005, election, Gwinnett County ordered new election materials, revised the manual used by poll officials, and sent e-mails and made telephone calls to poll managers to educate the poll managers and poll workers. (Ledford Decl. ¶ 6.)

Gwinnett County has elections scheduled for November 8, 2005. (Ledford Decl. ¶ 6.) Those elections involve twelve municipalities, including Auburn, Berkeley Lake, Braselton, Buford, Dacula, Duluth, Lawrenceville, Lilburn, Loganville, Norcross, Snellville, and Sugar Hill. (Id. ¶¶ 6-7.)

Gwinnett County already has obtained supplies of voter certificates, which list the proper forms of identification for in-person voting, and posters for the polling places listing the forms of acceptable identification for in-person voting for the November 8, 2005, election. (Ledford Decl. ¶ 8.) Gwinnett County has made efforts to educate the public concerning the Photo ID requirement by using media outlets and by speaking at public engagements. (Id.)

Ms. Ledford believes that issuing a preliminary injunction against the Photo ID requirement for the November 8, 2005, elections would cause tremendous confusion among

election officials, poll workers, and voters. (Ledford Decl. ¶ 9.) Ms. Ledford believes that Gwinnett County cannot order and receive new voter certificates and poll posters in time for those elections, and states that Gwinnett County does not have a sufficient supply of the certificates or posters reflecting the former identification requirements. (Id.) Additionally, Ms. Ledford believes that holding additional training for poll managers and poll workers would be necessary, and that it also would be necessary to re-educate the public concerning the change in the identification requirement. (Id.)

Ms. Ledford opines that it would not be reasonable or feasible to require poll workers to compare the signatures on the voter certificates to the voter registration cards to verify the identity of voters. (Ledford Decl. ¶ 10.) According to Ms. Ledford, no such mechanism is in place and implementing one would be very costly. (Id.) Ms. Ledford also believes that such verification at the polls would be very time-consuming given the short amount of time available for verifying the signatures and the number of voters. (Id.)

#### **5. Harry MacDougald**

Harry MacDougald is a member of the Fulton County Board of Registration and Election ("FBRE"). (Decl. of Harry MacDougald ¶ 1.) As a member of the FBRE, Mr. MacDougald



receives and reviews written reports from FBRE staff, information regarding voter fraud trends and indicia, complaints from voters who experience difficulty registering or voting, and reports of fraudulent voter registration and voting in Fulton County. (Id.) Fulton County is the largest county in Georgia, and has the largest number of registered voters. (Id. ¶ 2.) The FRBE is the superintendent of all Fulton County elections, and also administers elections under contract for several municipalities in Fulton County, including the City of Atlanta and the City of Roswell. (Id.)

Mr. MacDougald states that during his service on the FBRE, he has observed numerous problems with fraudulent voter registration applications. (MacDougald Decl. ¶ 3.) According to Mr. MacDougald, during the 2004 election cycle, numerous press accounts of fraudulent voter registration applications surfaced around the United States. (Id.) Mr. MacDougald states that he was aware of reports of fraudulent registration applications or investigations into fraudulent registration applications in at least eleven states, including Georgia, Florida, Ohio, Nevada, Colorado, Wisconsin, California, Oregon, Washington, Pennsylvania, and South Carolina. (Id.) Mr. MacDougald states that some of the same groups accused of registration fraud in other states were active in Georgia. (Id.)

According to Mr. MacDougald, the FBRE received a total of 2,456 voter registration applications submitted to the Secretary of State's office by an organization called The Georgia Coalition for the People's Agenda. (MacDougald Decl. ¶ 3.) The FBRE also received a smaller batch of voter registration applications from an organization called Head Count. (Id.) The transmittal from the Secretary of State's office noted that the applications were suspicious, and recommended that the FBRE use verification procedures. (Id.) The FBRE's staff examined the applications carefully and reported that all, or nearly all, of the applications appeared fraudulent. (Id.) Specifically, many of the applications were written in the same handwriting, had invalid social security numbers, or had invalid addresses. (Id.)

In 2004, the FBRE received 2,456 voter registrations that appeared to be fraudulent. (MacDougald Decl. ¶ 4.) The FBRE referred those matters to the Fulton County District Attorney, as well as to the United States Attorney for the Northern District of Georgia. (Id.) Although the Fulton County District Attorney apparently did not respond to the FBRE's referral, the United States Attorney's Office opened an investigation into the matter. (Id.)

FBRE also sent out "missing information" letters to 8,112 applicants for voter registration during 2004, including the

2,456 applications discussed in the preceding paragraph. (MacDougald Aff. ¶ 5.) The FBRE sends "missing information" letters to applicants for voter registration whose applications do not contain required information or whose applications contain "irregular" information. (Id.) In theory, applicants who receive the "missing information" will supply the missing information to the FBRE office, and will be duly registered to vote. (Id. ¶ 6.) If the FBRE receives no response to a "missing information" letter, the FBRE does not process the application. (Id.)

In response to its 8,112 "missing information" letters sent in 2004, the FBRE received only fifty-five responses sufficient to process the applications and add the voters to the rolls, for a response rate of 0.678 percent and a non-response rate of 99.32 percent. (MacDougald Decl. ¶ 7.) Ten of the responses received indicated fraud by stating that the individuals who received the "missing information" letters had never registered to vote. (Id.) The family of one of those individuals responded that the individual had died. (Id.) Meanwhile, the United States Postal Service returned 1,362 of the 8,112 "missing information" letters as undeliverable. (Id.) 6,685 of the individuals who received "missing information" letters never responded. (Id.)

According to Mr. MacDougald, another group of individuals

succeeded in registering to vote in the latter part of 2004, but likely were not valid voters. (MacDougald Decl. ¶ 8.) In 2004, the FBRE had a record number of new registrations and mailed out precinct cards to newly registered voters. (Id.) The FBRE had 45,907 new registrations between the deadline for registering to vote in the primary election and the deadline for registering to vote in the general election. (Id.) The FBRE mailed precinct cards to all of the 45,907 new registrants, and the United States Postal Service returned 3,071 of those cards as undeliverable. (Id.) 971 of those 3,071 registrants whose precinct cards were returned voted in the general election. (Id.)

Mr. MacDougald opined that in light of the above information indicating that the FBRE received 8,057 suspect registrations that it could not process because of missing information and that the FBRE received 3,071 precinct cards for newly registered voters returned as undeliverable, the FBRE received a total of 11,128 applications for voter registration that were suspect or problematic "in a serious way." (MacDougald Decl. ¶ 9.) The suspect or problematic voter applications constituted 6.71 percent of the total registration applications processed in Fulton County before the 2004 election. (Id.)

Mr. MacDougald is not aware of any complaints to the FBRE

made by voters who cannot obtain the Photo ID required to vote in person at the polls. (MacDougald Decl. ¶ 12.) According to Mr. MacDougald, the "great majority" of Fulton County voters already use a driver's license or state-issued Photo ID card to vote at the polls. (Id.)

**6. Declaration of Ann Hicks**

Ann Hicks serves as an Assistant Director in the Elections Division, and has worked in the Elections Division for twenty-six years. (Decl. of Ann Hicks ¶ 2.) Ms. Hicks' duties include supervising six employees, assisting the Director of the Elections Division with the Division's budget, revising and ordering printed election forms, ordering other election materials used by counties and municipalities for conducting elections, assisting counties with entry of election supply orders and with obtaining approval for shipment of those orders, entering election supply orders for most municipalities, assisting county and municipal elections officials and other parties with numerous election-related questions, and training county and municipal registrars concerning election procedures. (Id.) The Elections Division regularly assists county election officials and municipal election officials ("local election officials") with various tasks related to elections. (Id. ¶¶ 3-4.)

Local elections officials order election supplies,

including voter certificates and poll posters advising voters of the required forms of identification, through the Elections Division. (A. Hicks Decl. ¶ 5.) County elections officials order their supplies electronically, while municipalities that conduct their own elections must telephone in their supply orders, which are entered by Elections Division staff. (Id.) The Elections Division also regularly provides training sessions for local election workers who, in turn, train their poll workers prior to elections. (Id. ¶ 6.)

After the passage of HB 244, Elections Division staff immediately began training local elections officials throughout Georgia concerning the new law so that the local elections officials could train their poll workers before the elections scheduled for August 30, 2005, September 20, 2005, September 27, 2005, and November 8, 2005. (A. Hicks Decl. ¶ 7.) The training also included instruction concerning the new Photo ID requirement for in-person voting and the removal of restrictions for absentee voting. (Id.) Specifically, the Elections Division conducted the following training: (1) training for county elections officials through the Georgia Election Officials Association on May 1 through May 4, 2005, which included nearly 400 participants; (2) training for municipal elections officials in June 2005 and July 2005 at four sites around the states, which included nearly 600

participants; (3) an additional training session for municipal elections officials at the University of Georgia held on September 20, 2005; (4) training for voter registrars through the Voter Registrar's Association of Georgia on August 7 through August 10, 2005, which included over 400 participants; and (5) training for newly-created boards of election in September 2005. (Id. ¶ 8.) In total, the Elections Department trained 2,000 participants during the past four months. (Id.)

After the Justice Department granted preclearance of the Photo ID requirement, approximately thirty-four municipalities held elections on September 20, 2005. (A. Hicks Decl. ¶ 9.) Further, Gwinnett County held a runoff election on September 27, 2005. (Id.)

The Elections Division distributed new supplies, including voter certificates and poll posters, to all counties and municipalities that it knew would hold elections on September 20, 2005. (A. Hicks Decl. ¶ 10.) Because the Photo ID requirement did not receive preclearance until after business hours on Friday, August 26, 2005, the Elections Division was very concerned about its ability to provide new forms and posters to all of the local elections boards and municipalities that planned to hold elections on September 20, 2005. (Id.)

At least 350 Georgia counties and municipalities will hold elections on November 8, 2005. (A. Hicks Decl. ¶ 11.) According to Ms. Hicks, a preliminary injunction against the Photo ID requirement would cause confusion. (Id. ¶ 12.) Specifically, the Elections Division could not hold new training with local elections officials so that those officials, in turn, could train their poll workers. (Id.) According to Ms. Hicks, many local elections officials already have conducted their poll worker training for the November 8, 2005, election and would not have sufficient time to conduct more training. (Id.) Ms. Hicks believes that a preliminary injunction also would cause confusion among elections officials, poll workers, and voters, especially in jurisdictions that already have held elections using the Photo ID requirement. (Id. ¶ 14.)

The Elections Division also is in the process of distributing supplies to local elections officials who will hold elections on November 8, 2005. (A. Hicks Decl. ¶ 13.) According to Ms. Hicks, the Elections Division needs at least one month to process orders for elections supplies and to distribute those supplies. (Id.)

As of August 1, 2005, the Elections Division's records indicated that 4,816,904 individuals were registered to vote in Georgia. (A. Hicks Decl. ¶ 15 & Ex. D.)



**G. Testimony of Secretary of State Cox**

**a. Secretary of State Cox's Responsibilities**

Secretary of State Cox is Georgia's Secretary of State. (Decl. of Cathy Cox ¶ 2; Oct. 12, 2005, Hr'g Tr.; Dep. of Cathy Cox at 8.) Secretary of State Cox also serves as the Chair of the State Election Board. (Cox Decl. ¶ 2; Oct. 12, 2005, Hr'g Tr.; Cox. Dep. at 9.) The State Election Board consists of five members, including Secretary of State Cox, a representative from the Georgia Democratic Party, a representative from the Georgia Republican Party, a representative from the Georgia Senate, and a representative from the Georgia House of Representatives. (Oct. 12, 2005, Hr'g Tr.) Secretary of State Cox is the principal official in the State Government in charge of elections and for purposes of the Help America Vote Act ("HAVA") and the National Voter Registration Act. (Oct. 12, 2005, Hr'g Tr; Cox Dep. at 9.)

**b. Reports of Voter Fraud**

During the nine years in which Secretary of State Cox has been affiliated with the Secretary of State's Office, that office has not received a report of voter impersonation involving a scenario in which a voter appears at the polls and votes as another person, and the actual person later appears at the polls and attempts to vote as himself. (Cox Decl. ¶ 5; Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 14, 16, 47.) Secretary

of State Cox does not dispute that under the previous law, it was possible for the above voter impersonation scenario or another form of in-person voter fraud to occur. (Cox Decl. ¶ 5.)

Further, Secretary of State Cox and her staff are not physically present in all 159 counties and the various municipalities on election days. (Cox Decl. ¶ 5; Oct. 12, 2005, Hr'g Tr.) Secretary of State Cox therefore acknowledges that issues related to in-person voter fraud may arise that are not reported to her office. (Cox Decl. ¶ 5; Oct. 12, 2005, Hr'g Tr.) According to Secretary of State Cox, local election officials are in the best position to know of such incidents. (Cox Decl. ¶ 5; Oct. 12, 2005, Hr'g Tr.)

The State Election Board has received a number of complaints of irregularities with respect to absentee ballots. (Oct. 12, 2005, Hr'g Tr.) In fact, at most of its meetings, the State Election Board discusses complaints of fraud and irregularities in absentee voting. (Id.) Secretary of State Cox also is aware of a previous incident in Dodge County, Georgia, involving vote buying and selling of absentee ballots. (Id.) The Dodge County incident involved in-person absentee voting. (Id.)

According to Secretary of State Cox, Georgia has procedures and practices in place to detect voter fraud.

(Oct. 12, 2005, Hr'g Tr.) Those procedures include verifying the voter's correct address, as well as the voter's name, during the check-in process for in-person voters. (Id.) Georgia also imposes criminal penalties for voter impersonation. (Id.) Most violations of Georgia election laws are punishable as felonies. (Id.) No evidence indicates that the criminal penalties do not sufficiently deter in-person voter fraud. (Id.)

The integrity of the voter list also is extremely important in preventing voter fraud. (Oct. 12, 2005, Hr'g Tr.) The Atlanta Journal-Constitution published an article indicating that Georgia had experienced 5,412 instances of voter fraud during a twenty-year period. (Pls.' Ex. 11; Oct. 12, 2005, Hr'g Tr.) Secretary of State Cox's office undertook an investigation in response to that article. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 40.) The investigation revealed that the specific instance of voter fraud outlined in the Atlanta Journal-Constitution, involving a report that Alan J. Mandel had voted after his death, actually did not occur. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 41.) Instead, an individual with a similar name, Alan J. Mandle, had voted at the polls, and the poll worker had marked Alan J. Mandel's name rather than marking Alan J. Mandle, the name of the individual who actually voted. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 41.)

Secretary of State Cox's office compared the signature on the voter certificate to the voter registration card of the living individual, and concluded that the living individual, Alan J. Mandle, rather than the deceased Alan J. Mandel, had voted. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 41.)

The Secretary of State's Office subsequently attempted to ensure that voter records were maintained and up to date. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 43.) The Secretary of State's Office sends information concerning dead voters to local elections officials on a monthly basis, and now has the authority to remove the names of deceased voters from the voter rolls if the local elections officials fail to do so in a timely manner. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 43-44.) Secretary of State Cox is not aware of any reports of dead individuals voting since her office received authority to remove the names of deceased individuals from the voter rolls. (Cox Dep. at 45.)

**c. Concerns Regarding HB 244**

In her letter to the Georgia State Senate addressing HB 244, Secretary of State Cox expressed concerns that allowing individuals to vote absentee ballots without showing identification and removing the conditions previously required for obtaining absentee ballots opened a gaping opportunity for fraud. (October 12, 2005, Hr'g Tr.; Cox Dep. at 10-12.)

Secretary of State Cox indicated that concerns with respect to absentee ballots involved incidents of individuals picking up absentee ballots for other individuals without the required family relationship and individuals removing absentee ballots from voters' mailboxes. (Oct. 12, 2005, Hr'g Tr.) According to Secretary of State Cox, the only restrictions on absentee voting that tended to prevent fraud were the restrictions for obtaining an absentee ballot. (Oct. 12, 2005, Hr'g Tr.)

In her letter to Governor Purdue concerning HB 244, Secretary of State Cox stated her opinion that the Photo ID requirement for in-person voting was unnecessary, created a significant obstacle to voting for many voters, was unlikely to receive preclearance from the Justice Department, violated the Georgia Constitution, and unduly burdened the fundamental right to vote. (Oct. 12, 2005, Hr'g Tr.; Pls.' Ex. 2; Cox Dep. at 17.) The opinion that Secretary of State Cox expressed in her letter to Governor Purdue remains her personal opinion; however, Secretary of State Cox is obligated to enforce and carry out the Photo ID requirement in her official capacity until the law is declared invalid. (Oct. 12, 2005, Hr'g Tr.)

Secretary of State Cox also requested that Governor Purdue seek the opinion of the Attorney General before approving HB 244. (Oct. 12, 2005, Hr'g Tr.; Pls.' Ex. 2; Cox

Dep. at 20.) Secretary of State Cox is not aware that Governor Perdue has sought an opinion from the Attorney General concerning HB 244, and is not aware of any opinion issued by the Attorney General concerning the Photo ID requirement. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 20.)

**d. Voter Registration**

Secretary of State Cox is aware of efforts to submit fraudulent voter registrations. (Oct. 12, 2005, Hr'g Tr.) Those efforts occurred both before and after Georgia enacted its Photo ID requirement. (Id.)

Georgia currently has no requirement that a person seeking to register to vote present a Photo ID. (Oct. 12, 2005, Hr'g Tr.) HB 244 did not address voter registration. (Id.)

In 2004, however, Georgia made some changes to its voter registration law to bring the law into conformity with HAVA. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 26-27.) The law now provides that applicants should provide some type of identification when they register to vote. (Oct. 12, 2005, Hr'g Tr.) That identification may include one of the seventeen forms of identification required for in-person voting prior to July 1, 2005, and need not necessarily be a Photo ID. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 26.) First-time voters who have registered by mail must provide a Photo

ID to vote absentee. (Id.) Voters who registered by mail and provided some information concerning their identity, however, are not required to provide a Photo ID to vote absentee. (Id.) Additionally, if a voter does not present identification when registering by mail, but the State can verify certain information provided by the voter through a State database, such as the voter's date of birth, the voter need not present a Photo ID to vote absentee. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 26.)

**e. Absentee Ballots and Absentee Voting**

HB 244 expanded the opportunity for voters to obtain absentee ballots. (Oct. 12, 2005.) Prior to July 1, 2005, voters seeking to obtain absentee ballots had to aver that they met certain requirements. (Id.) After July 1, 2005, those requirements no longer apply for purposes of obtaining absentee ballots. (Id.)

To obtain an absentee ballot, a voter must send in a request to the local registrar providing his or her name, address, and an identifying number, or must appear in person at the registrar's office and provide such information. (Oct. 12, 2005, Hr'g Tr.) Local elections officials are supposed to compare the signature on the request to the signature on the voter's registration card. (Id.) If the signatures match, the local elections officials will send an absentee ballot to

the address listed on the voter's registration. (Id.) A voter who wishes to vote an absentee ballot need not provide a Photo ID unless that voter registered by mail, did not provide identification, and is voting for the first time by absentee ballot. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 27.)

After receiving an absentee ballot, the voter must complete the ballot and return it to the registrar, either by hand-delivery to the registrar's office by the voter or certain relatives of the voter, or by mail. (Oct. 12, 2005, Hr'g Tr.) Even if an absentee ballot contains a postmark indicating that the voter mailed it on an earlier date, elections officials will not count the absentee ballot if the ballot is not received in the registrar's office by 7:00 p.m. on the day of the applicable election. (Id.) Exceptions to this rule exist for voters who are members of the military or reside overseas. (Id.)

An absentee ballot that arrives in the registrar's office should be returned in two envelopes--an inner blank "privacy" envelope and an outer envelope that contains an oath signed by the voter. (Oct. 12, 2005, Hr'g Tr.) Local elections officials compare the signature on the oath contained on the outer envelope to the signature on the voter's registration card to verify the voter's identity. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 35.) The signature verification procedure is



the only safeguard currently in place in Georgia to prevent imposters from voting by using absentee ballots. (Oct. 12, 2005, Hr'g Tr.) The verification process is done manually. (Id.) Absentee ballots are submitted to the local registrars' offices over a forty-day period. (Id.) However, if fifty percent of voters decided to vote by absentee ballot in any given election, local elections officials would have a difficult time completing the necessary signature verifications. (Id.)

Once a voter returns an absentee ballot to the registrar's office, the voter cannot change that ballot. (Oct. 12, 2005, Hr'g Tr.) The voter, however, has the right to notify the registrar that the voter intends to cancel the absentee ballot and vote in person. (Id.)

In the November 2004 general election, 422,490, or approximately ten percent, of Georgia's 4,265,333 registered voters voted absentee ballots. (Pls' Ex. 4 at 1.) 46,734, or approximately seven percent, of Georgia's 697,420 registered African-American female voters voted absentee ballots, as compared with 189,143, or approximately twelve percent, of Georgia's 1,548,916 registered Caucasian female voters. (Id.) 26,144, or approximately six percent, of Georgia's 467,835 registered African-American male voters voted absentee ballots, as compared with 150,722, or approximately eleven

percent, of Georgia's 1,376,368 registered Caucasian male voters. (Id.)

**f. Signature Comparison for In-Person Voting**

Presently, elections officials do not compare signatures on voter certificates of in-person voters to signatures on voter registration cards. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 36-37.) The voter registration cards are not physically present at the polling places. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 36-37.) Secretary of State Cox testified that it would be possible to send voter registration cards to polling places, but that comparing signatures on voter certificates to signatures on voter registration cards for in-person voters would be time-consuming. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 37.)

**g. Voters Without Photo ID**

A number of Georgia voters are elderly, have no driver's licenses, and have no need for a state-issued Photo ID card other than for voting purposes. (Oct. 12, 2005, Hr'g Tr.) Further, a number of Georgia voters who are elderly or have low incomes do not have automobiles or use mass transit, and would have difficulty obtaining Photo ID to vote. (Id.) Secretary of State Cox does not have information concerning the number of Georgia voters who lack Photo ID. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 23.) Secretary of State Cox also

has received no correspondence concerning significant problems with the new Photo ID requirement or concerning significant numbers of voters who have not been allowed to vote because of the Photo ID requirement. (Id.)

An individual who votes in person but does not present a Photo ID may vote a provisional ballot. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 27-28.) Elections officials, however, will not count the provisional ballot unless the voter returns to the registrar's office within forty-eight hours and presents a Photo ID. (Oct. 12, 2005, Hr'g Tr.; Cox Dep. at 27-28.) Secretary of State Cox has no information indicating that voters have cast a significant number of provisional ballots in the elections conducted after the Photo ID requirement received preclearance. (Id.)

**h. Training by Elections Division**

After the Photo ID requirement received preclearance from the Justice Department, Secretary of State Cox ensured that the Elections Division conducted necessary training, distributed necessary supplies, and did everything possible to ensure that the Photo ID requirement was carried out in every election, including the elections held on August 26, 2005, September 20, 2005, September 27, 2005, and November 8, 2005. (Cox Decl. ¶ 7; Oct. 12, 2005, Hr'g Tr.) The Elections Division also provided information to the public concerning

the Photo ID requirement via the website for the Secretary of State's Office and through other public information efforts. (Cox Decl. ¶ 7; Oct. 12, 2005, Hr'g Tr.)

**i. Connection to Local Elections Officials**

Local elections officials for counties are connected to the Secretary of State's Office through a mainframe computer. (Oct. 12, 2005, Hr'g Tr.) The Secretary of State's Office has the capability of e-mailing information concerning a preliminary injunction order to the various county elections officials. (Id.) The Secretary of State's Office does not have that capacity for municipal elections officials; however, in many cases, county elections officials also manage elections for municipalities within their counties. (Id.)

**j. Effect of a Preliminary Injunction**

Secretary of State Cox believes that a preliminary injunction precluding Georgia from applying the Photo ID requirement in the November 8, 2005, elections likely would cause confusion for election officials, poll workers, and voters, especially in jurisdictions that already have conducted elections under the new law. (Cox Decl. ¶ 8; Oct. 12, 2005, Hr'g Tr.) Additionally, the Elections Division would have to reprint and distribute new election forms and materials for the jurisdictions conducting November 8, 2005, elections in a very short period of time. (Cox Decl. ¶ 8;

Oct. 12, 2005, Hr'g Tr.) Secretary of State Cox anticipates that such a preliminary injunction would result in some local election officials applying the Photo ID requirement, some local election officials applying the former law, and others applying a variation of the laws. (Cox Decl. ¶ 8.)

#### **H. Procedural Background**

On September 19, 2005, Plaintiffs filed this lawsuit. Plaintiffs assert that the Photo ID requirement violates the Georgia Constitution, is a poll tax that violates the Twenty-fourth Amendment and the Equal Protection Clause, unduly burdens the fundamental right to vote, violates the Civil Rights Act of 1964, and violates Section 2 of the Voting Rights Act.

On September 19, 2005, Plaintiffs requested that the Court schedule a preliminary injunction hearing. On that same day, the Court entered an Order scheduling a preliminary injunction hearing for October 12, 2005. (Order of Sept. 19, 2005.)

On October 6, 2005, Plaintiffs filed a formal Motion for Preliminary Injunction. On October 7, 2005, Secretary of State Cox filed a Motion to Dismiss Individual Capacity Claims. On October 11, 2005, individual Plaintiff Tony Watkins filed a Stipulation of Dismissal Without Prejudice of his claims. Finally, on October 12, 2005, Plaintiffs filed

their First Amendment to Complaint, which addresses the issue of standing for the organizational Plaintiffs.

On October 12, 2005, the Court held a hearing with respect to Plaintiffs' Motion for Preliminary Injunction. During the October 12, 2005, hearing, the parties presented evidence and arguments in support of their respective positions. The Court concludes that the Motion for Preliminary Injunction now is ripe for resolution by the Court.

## **II. Standing**

Defendants argue that Plaintiffs lack standing to pursue this lawsuit. The Court addresses the issue of standing before turning to the merits of Plaintiffs' Motion for Preliminary Injunction.

Article III of the federal Constitution limits the power of federal courts to adjudicating actual "cases" and "controversies." U.S. Const. art. III, § 2, cl. 1. "The most significant case-or-controversy doctrine is the requirement of standing." Nat'l Alliance for the Mentally Ill, St. Johns Inc. v. Bd. of County Comm'r's, 376 F.3d 1292, 1294 (11th Cir. 2004). "In essence the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues." Id. (quoting Warth v.

Seldin, 422 U.S. 490, 498 (1975)).

The party invoking federal jurisdiction has the burden of proving standing. Nat'l Alliance for the Mentally Ill, 376 F.3d at 1294. At least three different types of standing exist: taxpayer standing, individual standing, and organizational standing. Id. To establish those types of standing, a plaintiff must "demonstrate that he has suffered injury in fact, that the injury is fairly traceable to the actions of the defendant, and that the injury will likely be redressed by a favorable decision.'" Id. at 1295 (citing Bennett v. Spear, 520 U.S. 154, 162 (1997)) (internal quotation marks omitted). For purposes of this Order, the Court focuses on whether the organizational Plaintiffs have standing to pursue this action.<sup>2</sup>

"An association has standing to bring suit on behalf of its members when its members would otherwise have standing to sue in their own right, the interests at stake are germane to

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One of the individual Plaintiffs, Tony Watkins, dismissed his claims without prejudice prior to the October 12, 2005, hearing, apparently because he did not wish to submit to a deposition. Defendants argue that the remaining individual Plaintiff, Clara Williams, lacks standing because she has a MARTA card that would qualify as a Photo ID card under the new Photo ID requirement and because she could vote by absentee ballot. In light of the need to issue a ruling quickly, and in light of the Court's decision infra concerning Plaintiffs' Section 2 claims, the Court does not address Defendants' arguments pertaining to Plaintiff Williams at this point.

the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.'" Nat'l Alliance for the Mentally Ill, 376 F.3d at 1296 (quoting Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 120 S. Ct. 693, 704 (2000)). Here, Plaintiffs' First Amendment to Complaint adds a new paragraph 1(i) to their Complaint that states:

Common Cause, the League, the Central Presbyterian and Advocacy Center, Inc., Georgia Association of Black Elected Officials, Inc., The National Association for the Advancement of Colored People (NAACP), Inc., GLBC, and the Concerned Black Clergy of Metropolitan Atlanta, Inc., (in the aggregate, the "Non-Profit Plaintiffs"), are non-profit organizations composed of members who would have standing to sue in their individual right for the allegations set forth in the Complaint, the interests which each of the Non-Profit Plaintiffs and their members seek to protect in the Complaint are germane to the purpose of each of the Non-Profit Plaintiffs, and neither the claim or the relief sought requires participation by the individual members of the Non-Profit Plaintiffs.

(First Am. to Compl.) The Court concludes that Plaintiffs' allegations satisfy the organizational standing requirements, for purposes of Plaintiffs' Motion for Preliminary Injunction.

### **III. Plaintiffs' Motion for Preliminary Injunction**

To obtain a preliminary injunction, a movant must show: (1) a substantial likelihood of ultimate success on the merits; (2) the preliminary injunction is necessary to prevent



irreparable injury; (3) the threatened injury outweighs the harm the preliminary injunction would inflict on the non-movant; and (4) the preliminary injunction would serve the public interest. McDonald's Corp. v. Robertson, 147 F.3d 1301, 1306 (11th Cir. 1998). In the Eleventh Circuit, "[a] preliminary injunction is an extraordinary and drastic remedy not to be granted unless the movant clearly established the burden of persuasion' as to the four requisites."

Id. (quoting All Care Nursing Serv., Inc. v. Bethesda Mem'l Hosp., Inc., 887 F.2d 1535, 1537 (11th Cir. 1989)) (internal quotation marks omitted) (alterations in original).

A plaintiff seeking to enjoin enforcement of a state statute bears a particularly heavy burden. "[P]reliminary injunctions of legislative enactments--because they interfere with the democratic process and lack the safeguards against abuse or error that come with a full trial on the merits--must be granted reluctantly and only upon a clear showing that the injunction before trial is definitely demanded by the Constitution and by the other strict legal and equitable principles that restrain courts.'" Bankwest, Inc. v. Baker, 324 F. Supp. 2d 1333, 1343 (N.D. Ga. 2004) (quoting Northeastern Fla. Chapter of the Ass'n of Gen. Contractors of Am. v. City of Jacksonville, 896 F.2d 1283, 1285 (11th Cir. 1990)).

**A. Substantial Likelihood of Success on the Merits**

**1. Claims Under the Georgia Constitution**

Plaintiffs allege that the Photo ID requirement violates article II, section 1, paragraph 2 of the Georgia Constitution. Article II, section 1, paragraph 2 of the Georgia Constitution provides: "Every person who is a citizen of the United States and a resident of Georgia as defined by law, who is at least 18 years of age and not disenfranchised by this article, and who meets minimum residency requirements as provided by law shall be entitled to vote at any election by the people. The General Assembly shall provide by law for the registration of electors." Ga. Const. art. II, § 1, ¶ 2. Article II, section 1, paragraph 3 of the Georgia Constitution sets forth the following exceptions to the right to register to vote:

- (a) No person who has been convicted of a felony involving moral turpitude may register, remain registered, or vote except upon completion of the sentence.
- (b) No person who has been judicially determined to be mentally incompetent may register, remain registered, or vote unless the disability has been removed.

Ga. Const. art. II, § 1, ¶ 3.

Plaintiffs argue that the new Photo ID requirement violates the Georgia Constitution because it denies certain Georgia citizens the right to vote. According to Plaintiffs,

the Georgia Constitution lists only two grounds for denying a Georgia citizen who is registered to vote the right to vote: (1) having a conviction for a felony involving moral turpitude; or (2) having a judicial determination of being mentally incompetent to vote. Plaintiffs contend that the Georgia legislature simply has no power to regulate voting outside the areas of defining residency and establishing registration requirements.

Defendants argue that any claim that the State Defendants are violating Georgia law is barred by the Eleventh Amendment. Defendants quote Pennhurst State School & Hospital v. Halderman, 465 U.S. 89 (1984), for the proposition that the Eleventh Amendment bars federal courts from enforcing state law either prospectively or retroactively. According to Defendants, because Georgia state courts are the correct arbiters on the meaning of state law, "it would be a 'gross intrusion'" for this Court to grant a preliminary injunction on the basis of Plaintiffs' claims arising under the Georgia Constitution claims. (State Defs.' Br. Opp'n Pls.' Mot. Prelim. Inj at 56.)

Defendants also argue that even if Eleventh Amendment immunity does not exist, Plaintiffs cannot succeed because the constitutionality of a Georgia statute is presumed, and "'all doubts must be resolved in favor of its validity.'" (Id. at 57

(citations omitted).) According to Defendants, the General Assembly did not prescribe qualifications for voters when enacting the Photo ID law; instead, they were attempting to regulate the voting process itself. Defendant argue that the in-person Photo ID requirement is a "time, place, or manner" regulation, and that the Georgia Constitution does not require that citizens be permitted to vote in person nor does it state that citizens have an absolute right to be free from any regulation of in-person voting. (Id. at 59.)

Before the Court can consider Plaintiffs' claims regarding the Georgia Constitution, the Court must determine whether the Eleventh Amendment to the United States Constitution bars those claims. McClendon v. Ga. Dept. of Cmty. Health, 261 F.3d 1252, 1257 (11th Cir. 2001); Silver v. Baggiano, 804 F.3d 1211, 1213 (11th Cir. 1986).

The Eleventh Amendment to the Constitution provides that "[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. Const. amend. XI. The Supreme Court has made clear that this language also bars suits against a state by its own citizens. DeKalb County School Dist. v. Schrenko 109 F.3d 680, 687 (1997) (citing Hans v. Louisiana, 134 U.S. 1

(1890)). "In short, the Eleventh Amendment constitutes an 'absolute bar' to a state's being sued by its own citizens, among others." Id. (citing Monaco v. Mississippi, 292 U.S. 313, 329 (1934)).

"[A]bsent its consent, a state may not be sued in federal court unless Congress has clearly and unequivocally abrogated the state's Eleventh Amendment immunity by exercising its power with respect to rights protected by the Fourteenth Amendment." Id. at 688 (quoting Pennhurst State School & Hospital v. Halderman, 465 U.S. 89, 99 (1984) ("Pennhurst II")). "Congress may not nullify a state's immunity with respect to alleged violations of state law." Id. "For that reason, a federal court may not entertain a cause of action against a state for alleged violations of state law, even if that state claim is pendent to a federal claim which the district court could adjudicate. Id. (citing Pennhurst II, 465 U.S. at 117-23). In Pennhurst II, the United States Supreme Court explained that:

[a] federal court's grant of relief against state officials on the basis of state law, whether prospective or retroactive, does not vindicate the supreme authority of federal law. On the contrary, it is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law. Such a result conflicts directly with the principles of federalism that underlie the Eleventh Amendment.

Pennhurst II, 465 U.S. at 106.

Because Plaintiffs' suit is against State officials, rather than the State itself, a question arises as to whether the suit is actually a suit against the State of Georgia. "The Eleventh Amendment bars a suit against state officials when 'the state is the real, substantial party in interest.'" Id. at 101 (quoting Ford Motor Co. v. Dept. of Treasury, 323 U.S. 459, 464 (1945)). A state is the real party in interest when the judgment sought would "restrain the Government from acting, or compel it to act." Id. at 101 n.11 (quoting Dugan v. Rank, 372 U.S. 609, 620 (1963)) (internal quotation marks and citations omitted).

The injunction Plaintiffs seek here would restrain the State from attempting to enforce the Photo ID requirement imposed by HB 244. The Court therefore finds that the State of Georgia is the real party in interest. Further, the Court finds that Plaintiffs' claim--that the Act violates two sections of the Georgia Constitution--clearly is a cause of action against a state for alleged violations of state law. The Court therefore concludes that this portion of Plaintiffs' Complaint is barred by the Eleventh Amendment.<sup>3</sup>

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The Court notes that Plaintiffs' claims under the Georgia Constitution do not fall within the Ex Parte Young exception to the States' Eleventh Amendment immunity from suit. Ex Parte Young, 209 U.S. 123 (1908). The Young doctrine, as interpreted by later Supreme Court cases, provides that a suit for prospective relief that challenges a state official's

For the reasons discussed above, the Eleventh Amendment precludes the Court from entertaining Plaintiffs' claims asserted under the Georgia Constitution. The Court therefore concludes that Plaintiffs have failed to show a substantial likelihood of success with respect to those claims.<sup>4</sup>

## 2. Undue Burden on the Right to Vote

The Supreme Court has made it clear that voting is a fundamental right, Burdick v. Takushi, 504 U.S. 428, 433 (1992), under the Fourteenth Amendment in the context of equal protection, Kramer v. Union Free Sch. Dist. No. 15, 395 U.S. 621, 629 (1969). Indeed, in Wesberry v. Sanders, 376 U.S. 1 (1964), the Court observed:

No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we

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conduct as being contrary to the supreme authority of the United States is not a suit against the State and therefore is not barred by the Eleventh Amendment. Pennhurst, 465 U.S. at 102 (citing Young, 209 U.S. at 160; Edelman v. Jordan, 415 U.S. 651, 666-67 (1974)). Plaintiffs' claims under the Georgia Constitution, which challenge the enforcement of a state law as being contrary to a state constitution, do not implicate the supreme authority of the United States. Therefore, the Young exception to the Eleventh Amendment's bar on suits against a State does not apply to allow the Court to consider those claims.

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The Court will not dismiss Plaintiffs' claims arising under the Georgia Constitution in this Order because the case is not before the Court on a motion to dismiss those claims. The Court will address Secretary of State Cox's Motion to Dismiss Individual Capacity Claims in a separate Order to be issued at a later date.

must live. Other rights, even the most basic, are illusory if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right.

376 U.S. at 17-18. Similarly, in Reynolds v. Sims, 337 U.S. 533 (1964), the Court stated:

Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.

337 U.S. at 561-62.

"[A] citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction." Dunn v. Blumstein, 405 U.S. 330, 336 (1972). The equal right to vote, however, is not absolute. Id. at 336. Instead, states can impose voter qualifications and can regulate access to voting in other ways. Id. at 336. Under the United States Constitution, states may establish the time, place, and manner of holding elections for Senators and Representatives. U.S. Const. art. I, § 4, cl. 1. Those qualifications and access regulations, however, cannot unduly burden or abridge the right to vote. Tashjian, 479 U.S. at 217 ("[T]he power to regulate the time, place, and manner of elections does not justify, without more, the abridgment of fundamental rights, such as the right to vote." ) (citing



Wesberry v. Sanders, 376 U.S. 1 (1964)); Dunn, 405 U.S. at 359-60 (striking down Tennessee's durational residency requirement for voting of one year in state and three months in county); Beare v. Briscoe, 498 F.2d 244, 247-48 (5th Cir. 1974) (invalidating provisions of Texas Constitution and implementing statute requiring persons who wished to vote in any given year to register each year during registration period beginning on October 1 and ending on January 31 of following year) (per curiam). In particular, the Supreme Court has observed that the wealth or the ability to pay a fee is not a valid qualification for voting. Harper v. Va. State Bd. of Elections, 383 U.S. 663, 666-68 (1966) (citations omitted; footnote omitted).

A number of Supreme Court cases have set forth standards for determining whether a state statute or regulation concerning voting violates the Equal Protection clause. In Dunn, the Supreme Court stated that a court must examine: "the character of the classification in question; the individual interests affected by the classification; and the governmental interests asserted in support of the classification." Dunn, 405 U.S. at 335. Another Supreme Court case indicates that the Court should "'consider the facts and circumstances behind the law, the interests which the State claims to be protecting, and the interests of those who are disadvantaged

by the classification.'" Kramer, 395 U.S. at 626. Those cases apply strict scrutiny when examining state statutes or regulations that limit the right to vote. Id. at 627 ("[I]f a challenged state statute grants the right to vote to some bona fide residents of requisite age and citizenship and denies the franchise to others, the Court must determine whether the exclusions are necessary to promote a compelling state interest." ); see also Hill v. Stone, 421 U.S. 289, 298 (1975) ("in an election of general interest, restrictions on the franchise of any character must meet a stringent test of justification").

In a more recent line of cases, the Supreme Court has not necessarily applied the strict scrutiny test automatically to regulations that relate to voting. Burdick, U.S. at 433-34; Tashjian v. Republican Party, 479 U.S. 208, 213 (1986) (quoting Anderson v. Celebrezze, 460 U.S. 780, 789 (1983)). Indeed, the Supreme Court observed in Burdick:

Election laws will invariably impose some burden upon individual voters. Each provision of a code, "whether it governs the registration and qualifications of voters, the selection and eligibility of candidates, or the voting process itself, inevitably affects—at least to some degree—the individual's right to vote and his right to associate with others for political ends. Consequently, to subject every voting regulation to strict scrutiny and to require that the regulation be narrowly tailored to advance a compelling state interest, as petitioner suggests, would tie the hands of States seeking to assure that elections are operated equitably and efficiently.

Accordingly, the mere fact that a State's system "creates barriers . . . tending to limit the field of candidates from which voters might choose . . . does not of itself compel close scrutiny."

Instead, . . . a more flexible standard applies. A court considering a challenge to a state election law must weigh "the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate" against "the precise interests put forward by the State as justifications for the burden imposed by its rule," taking into consideration "the extent to which those interests make it necessary to burden the plaintiff's rights."

Under this standard, the rigorousness of our inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights. Thus, as we have recognized when those rights are subjected to "severe" restrictions, the regulation must be "narrowly drawn to advance a state interest of compelling importance." But when a state election law provision imposes only "reasonable, nondiscriminatory restrictions" upon the First and Fourteenth Amendment rights of voters, "the State's most important regulatory interests are generally sufficient to justify" the restrictions.

Burdick, 504 U.S. at 433-34 (citations omitted).

Defendants argue that the Photo ID requirement simply regulates the manner of voting, and that requiring a Photo ID for in-person voting is a reasonable means of achieving the legitimate state interest of regulating voting and preventing in-person vote fraud. According to Defendants, the Photo ID requirement is not a severe restriction on voting because it prevents no one from voting. Defendants argue that anyone may

vote by absentee ballot under HB 244's more relaxed absentee voting requirements. Defendants state that even voters who register by mail may vote for the first time via absentee ballot without showing a Photo ID, and that such voters simply must include a utility bill, a bank statement, or other form of identification permitted by HAVA with their absentee ballots as a means of voter identification. (Oct. 12, 2005, Hr'g Tr.)

According to Defendants, at most, the Photo ID requirement prevents some individuals who wish to vote in person from doing so until they obtain proper identification. Defendants also contend that those individuals without a Photo ID may obtain one free of charge from a State DDS Office, the State's GLOW Bus, or through certain organizations serving indigent clients merely by completing an Affidavit for Identification Card for Voting Purposes ("Affidavit"). Defendants note that although the Affidavit requires the applicant "to swear[] under oath that he or she is indigent and cannot pay the fee," (State Defs.' Initial Br. Opp'n Pls.' Mot. Prelim. Inj. at 48), anyone who desires a non-driver Photo ID card for voting purposes may complete the form and receive the free Photo ID card (Watson Decl. ¶ 5).

Defendants also point out that although opportunities for voter fraud via absentee ballot may exist, the legislature may

address one method of voting at a time. In this case, the legislature has chosen to address voting fraud via in-person voting first.

**a. Under Strict Scrutiny**

There seems to be little doubt that the Photo ID requirement fails the strict scrutiny test: accepting that preventing voter fraud is a legitimate and important State concern, the statute is not narrowly drawn to prevent voter fraud. Indeed, Secretary of State Cox pointed out that, to her knowledge, the State had not experienced one complaint of in-person fraudulent voting during her tenure. In contrast, Secretary of State Cox indicated that the State Election Board had received numerous complaints of voter fraud in the area of absentee voting. Furthermore, the Secretary of State's Office removes deceased voters from the voting rolls monthly, eliminating the potential for voter fraud noted by the Atlanta Journal-Constitution's article alleging that more than 5,000 deceased people voted during a twenty-year period.

Further, although Defendants have presented evidence from elections officials of fraud in the area of voting, all of that evidence addresses fraud in the area of voter registration, rather than in-person voting. The Photo ID requirement does not apply to voter registration, and any Georgia citizen of appropriate age may register to vote

without showing a Photo ID. Indeed, individuals may register to vote by producing copies of bank statements or utility bills, or without even producing identification at all. The Photo ID law thus does nothing to address the voter fraud issues that conceivably exist in Georgia.

Rather than drawing the Photo ID law narrowly to attempt to prevent the most prevalent type of voter fraud, the State drafted its Photo ID requirement to apply only to in-person voters and to apply only to absentee voters who had registered to vote by mail without providing identification who were voting absentee for the first time. By doing so, the State, in theory, left the field wide open for voter fraud by absentee voting. Under those circumstances, the Photo ID requirement simply is not narrowly tailored to serve its stated purposes--preventing voter fraud. See Dunn, 405 U.S. at 343 ("Statutes affecting constitutional rights must be drawn with 'precision,' and must be 'tailored to serve their legitimate objectives. And if there are other, reasonable ways to achieve those goals with a lesser burden on constitutionally protected activity, a State may not choose the way of greater interference. If it acts at all, it must choose 'less drastic means.'" (citations omitted). Further, the State has a number of significantly less burdensome alternatives available to prevent in-person voting fraud, such

as the voter identification requirements it previously used and numerous criminal statutes penalizing voter fraud, to discourage voters from fraudulently casting ballots or impersonating other voters.

For the reasons discussed above, the Court finds that the Photo ID requirement is not narrowly tailored to serve the State's interest in preventing voter fraud, and that a number of significantly less burdensome alternatives exist to address the State's interest. Consequently, the Court concludes that Plaintiffs have a substantial likelihood of succeeding on the merits of their Equal Protection Clause claim under a strict scrutiny analysis.

**b. Under Burdick**

Even if the Court applies the Burdick test, Plaintiffs still have a substantial likelihood of succeeding on the merits of their Equal Protection Clause claim. Specifically, "the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate" outweighs "the precise interests put forward by the State as justifications for the burden imposed by its rule," taking into consideration "the extent to which those interests make it necessary to burden the plaintiff's rights." Burdick, 504 U.S. at 433-34.

**i. The Asserted Injury**

For the reasons discussed below, the Court concludes that the character and magnitude of the asserted injury to the right to vote is significant. Many voters who do not have driver's licenses, passports, or other forms of photographic identification have no transportation to a DDS service center, have impairments that preclude them from waiting in often-lengthy lines to obtain licenses, or cannot travel to a DDS service center during the DDS's hours of operation because the voters cannot take off time from work. It is beyond dispute that the DDS service centers, particularly those in suburban areas near Atlanta, frequently have lengthy lines, and that obtaining a driver's license or Photo ID at a DDS service center often may require several hours of one's time. Many voters who are elderly, disabled, or have certain physical or mental problems simply cannot navigate the lengthy wait successfully--even if the DDS allows those voters to sit and wait until a DDS worker calls their numbers.

Further, DDS service centers are not located in every Georgia county. Some of the service centers, particularly in south and middle Georgia, are so widely spaced that the service centers may be a lengthy drive away from many of the citizens those centers service. Most of the DDS service centers are located in largely rural areas where mass transit



likely is not available, and registered voters who have no need for a driver's license but do not have another form of Photo ID simply may not be able to obtain transportation to a DDS service center.

The Court acknowledges that the DDS has a mobile licensing unit, the GLOW bus. The fact remains, however, that the DDS has only one GLOW bus and Georgia has 159 counties. It therefore is not reasonable to expect that the GLOW bus can travel to all of Georgia's counties and the communities contained within those counties to service a significant number of voters who lack Photo IDs prior to the November 8, 2005, elections. Further, unless some effort is made to notify the public that the GLOW bus will be in a particular area on a particular date, many voters simply would not know of the GLOW bus alternative or would not be able to make arrangements for transportation to take them to the GLOW bus. As Plaintiffs' evidence indicates, even calling the DDS to request information concerning the GLOW bus's schedule of appearances may result in a voter receiving inconsistent information.

In any event, Plaintiffs have presented evidence indicating that the GLOW bus has steps for entering the bus and is not wheelchair-accessible. Many of the voters who do not possess Photo IDs are elderly or disabled and are

wheelchair-bound or have difficulty walking or navigating steps. The GLOW bus simply is not a feasible alternative for those voters, as the voters cannot enter the GLOW bus and the GLOW bus's photographic and computer equipment apparently cannot be moved outside the bus to service the voters.

Still other voters do not have the \$20 or \$35 to pay for a Photo ID card, although they may not qualify as "indigent" for purposes of the fee waiver provision. Although Defendants contend that any voter who needs a Photo ID card for voting and who does not have another form of Photo ID may obtain a Photo ID card for free simply by completing an Affidavit, which the DDS does not question, the evidence fails to indicate that the State has made efforts to publicize the DDS's "no questions asked" policy to voters or that DDS employees tell DDS customers that policy. The Affidavit requires a voter to sign the following statement:

I hereby swear or affirm that I am eligible for a free identification card for voting purposes pursuant to O.C.G.A. §40-5-103(d). I am eligible for this card because:

1. I am indigent and cannot pay the fee for an identification card;
2. I desire an identification card in order to vote in a primary or election in Georgia;
3. I do not have any other form of identification that is acceptable under O.C.G.A. § 21-2-417 for identification at the polls in order to vote;
4. I am registered to vote in Georgia or I am applying to register to vote as part of my application for an identification card; and

5. I do not have a valid driver's license issued by the State of Georgia.

A voter who reads the Affidavit without knowing the DDS's "no questions asked" policy most likely would believe that he or she actually must be indigent and lack funds to pay for an Photo ID card before he or she could obtain a card for free. Such a voter might not even bother completing the Affidavit, for fear that signing a statement under oath that is not true and submitting the Affidavit to a State agency would result in penalties. Thus, the availability of free Photo ID cards simply does not reduce the burden that the Photo ID requirement imposes on the right to vote.<sup>5</sup>

The State Defendants argue that the Photo ID requirement does not deprive voters of the right to vote, as voters can vote via absentee ballot without producing any Photo ID at all in most instances. Most voters, however, likely are unaware that they can vote via absentee ballot without a Photo ID, and the State has not demonstrated that it has publicized the fact that a Photo ID is not necessary to vote via absentee ballot.

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In any event, the Court finds it ironic that the State seeks to prevent one type of lying--fraudulent in-person voting--yet the State points to a DDS policy that apparently allows voters who want Photo ID cards to "lie" about their financial status as support for its argument that the Photo ID requirement does not unduly burden the right to vote.

Further, HB 244 also changed the law governing absentee voting to eliminate the conditions previously required for obtaining an absentee ballot, which had been in effect for some time. Counsel for the State Defendants, in response to the Court's question concerning publication of the new absentee voting requirements, stated that the State has not publicized the new requirements for absentee voting any more or less than the State publicizes any other change in election law. Secretary of State Cox testified that the absentee voting rules in effect prior to the passage of HB 244 required voters to aver that they met one of several specified requirements to obtain an absentee ballot. Absent more information indicating that the State made an effort to inform Georgia voters concerning the new, relaxed absentee voting procedures, many Georgia voters simply may be unaware that the rules have changed. Those voters therefore still may believe that they must satisfy one of the former requirements to obtain an absentee ballot. Voters who cannot satisfy the former requirements likely will not even attempt to obtain an absentee ballot. Consequently, the Court simply cannot assume that Georgia voters who do not have a Photo ID will make the arrangements necessary to vote via the absentee voting process.

In any event, as Secretary of State Cox pointed out, an absentee ballot is only counted if it is received by the registrar in the voter's jurisdiction by 7:00 p.m. the day of the elections. Even absentee ballots postmarked by that date but delivered after 7:00 p.m. on election day are not counted. The only method voters have of ensuring that their vote is counted is to show up at their polling precinct on election day and vote in person or to hand-deliver their absentee ballot to the registrar in their jurisdiction before 7:00 p.m. on election day.<sup>6</sup>

The absentee voting process also requires that voters plan sufficiently enough ahead to request an absentee ballot, to have the ballot delivered from the registrar's office via the United States Postal Service, to complete the ballot successfully, and to mail the absentee ballot to the registrar's office sufficiently early to allow the United States Postal Service to deliver the absentee ballot to the registrar by 7:00 p.m. on election day. The majority of

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The second method assumes voters know that they may hand-deliver absentee ballots and that voters know where to deliver those ballots. Many voters simply may believe that they can hand-deliver their absentee ballots to a polling place, which is not a viable alternative. Furthermore, many absentee voters do not drive or otherwise lack transportation. Although many organizations provide free transportation to the polls on election day, the availability of free transportation to the registrar's office likely is limited or nonexistent.

voters--particularly those voters who lack Photo ID--would not plan sufficiently enough ahead to vote via absentee ballot successfully. In fact, most voters likely would not be giving serious consideration to the election or to the candidates until shortly before the election itself. Under those circumstances, it simply is unrealistic to expect that most of the voters who lack Photo IDs will take advantage of the opportunity to vote an absentee ballot.

For the reasons discussed above, the Court finds that absentee voting simply is not a realistic alternative to voting in person that is reasonably available for most voters who lack Photo ID. The fact that voters, in theory, may have the alternative of voting an absentee ballot without a Photo ID thus does not relieve the burden on the right to vote caused by the Photo ID requirement.<sup>7</sup>

Additionally, the State argues that voters who do not have Photo ID will not be "turned away" from the polls;

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Defendants argue that no constitutional right to vote in person exists, citing Oregon's policy of having elections conducted entirely by mail. Oregon's voting by mail structure differs significantly from Georgia's voting procedures. One major difference between Georgia's Photo ID requirement and Oregon's policy of conducting mail elections that is particularly noteworthy is that Oregon's policy places the same burden on every voter. Here, Georgia's Photo ID requirement places the burden of voting absentee on the very class of voters who will be least likely to navigate that method of voting successfully.

rather, those voters may vote a provisional ballot and return within forty-eight hours with a Photo ID. In support of this argument, the State points to the September 20, 2005, special election in Richmond County, where thirteen people without a Photo ID voted via provisional ballot and only two of those individuals returned with a Photo ID within the requisite forty-eight hour period to verify their identity and have their ballots counted. Given the difficulty of obtaining a Photo ID discussed above, it is highly unlikely that many of the voters who lack Photo ID and who would vote via provisional ballots could obtain a Photo ID card within the forty-eight hour period. Indeed, although many organizations are more than happy to transport individuals to polling places on election day, it is unlikely that those organizations or any other organization or individual would be able or willing to provide transportation to DDS service centers to allow voters of provisional ballots to obtain Photo ID cards. The ability to vote a provisional ballot thus is an illusion. Further, many voters may not even attempt to vote a provisional ballot in person because they do not have a Photo ID, and they believe that they cannot make the necessary arrangements to obtain a Photo ID within forty-eight hours after casting their votes.

The right to vote is a delicate franchise. Indeed, the Court notes that Plaintiff Watkins declined to pursue his claim when he was informed that Defendants planned to depose him.<sup>8</sup> Given the fragile nature of the right to vote, and the restrictions discussed above, the Court finds that the Photo ID requirement imposes "severe" restrictions on the right to vote. In particular, the Photo ID requirement makes the exercise of the fundamental right to vote extremely difficult for voters currently without acceptable forms of Photo ID for whom obtaining a Photo ID would be a hardship. Unfortunately, the Photo ID requirement is most likely to prevent Georgia's elderly, poor, and African-American voters from voting. For those citizens, the character and magnitude of their injury--the loss of their right to vote--is undeniably demoralizing and extreme, as those citizens are likely to have no other realistic or effective means of protecting their rights.

**ii. State Interest**

The State and the State Defendants assert that the Photo ID requirement is designed to curb voting fraud. Undoubtedly, this interest is an important one. Unfortunately, the fact

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Counsel for Plaintiff Watkins indicated during an October 5, 2005, telephone conference with the Court that Plaintiff Watkins likely would choose not to participate in this litigation if the Court did not grant a request for a protective order to prevent Defendants from deposing him.



that the interest asserted is important and is legitimate does not end the Court's inquiry.

**iii. Extent to Which the State's Interest  
In Preventing Voter Fraud Makes It  
Necessary to Burden the Right to  
Vote**

Finally, the Court must examine the extent to which the State's interest in preventing voter fraud makes it necessary to burden the right to vote. As discussed above, the Photo ID requirement is not narrowly tailored to the State's proffered interest of preventing voter fraud, and likely is not rationally based on that interest. Secretary of State Cox testified that her office has not received even one complaint of in-person voter fraud over the past eight years and that the possibility of someone voting under the name of a deceased person has been addressed by her Office's monthly removal of recently deceased persons from the voter roles. Further, the Photo ID requirement does absolutely nothing to preclude or reduce the possibility for the particular types of voting fraud that are indicated by the evidence: voter fraud in absentee voting, and fraudulent voter registrations. The State imposes no Photo ID requirement or absolute identification requirement for registering to vote, and has removed the conditions for obtaining an absentee ballot imposed by the previous law. In short, HB 244 opened the door wide to fraudulent voting via absentee ballots. Under those

circumstances, the State Defendants' proffered interest simply does not justify the severe burden that the Photo ID requirement places on the right to vote. For those reasons, the Court concludes that the Photo ID requirement fails even the Burdick test.

**c. Summary**

For the reasons discussed above, the Court finds that under either the strict scrutiny or Burdick test, Plaintiffs have a substantial likelihood of succeeding on the merits of their claim that the Photo ID requirement unduly burdens the right to vote. Consequently, this factor counsels in favor of granting a preliminary injunction.

**3. Poll Tax**

Plaintiffs next argue that the Photo ID requirement imposes a poll tax on Georgia voters. Plaintiffs point out that voters who do not have a Georgia driver's license, a passport, or another valid form of Government-issued identification must pay \$20 to obtain a five-year Photo ID card or \$35 to obtain a ten-year Photo ID card. Plaintiffs contend that even though the Photo ID requirement does not use the term "poll tax," the fee for the Photo ID card is a tax and is not a user fee. Even if the Photo ID card fee is not a tax as defined under Georgia law, Plaintiffs contend that the State cannot evade the requirements of the Fourteenth and

Twenty-Fourth Amendments by labeling something as a "fee" when, in reality, it is a tax on the right to vote.

The Twenty-Fourth Amendment to the United States Constitution provides: "The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax." U.S. Const. amend. XXIV. The Twenty-Fourth Amendment thus applies to elections for certain federal officials.

Plaintiffs contend that the \$20 fee for a five-year Photo ID card or the \$35 fee for a ten-year Photo ID is a poll tax because voters who do not have other acceptable forms of Photo ID must obtain the Photo ID card to cast their votes in person at the polls. Although Defendants point out that the DDS can waive the Photo ID card fee for voting under certain circumstances, Plaintiffs argue that this fee waiver provision is illusory. In any event, Plaintiffs argue that the possibility that a small number of voters can avoid paying the cost for a Photo ID card does not make the Photo ID scheme constitutionally permissible; it still places a burden on the right to vote.

For the following reasons, the Court finds that

Plaintiffs have a substantial likelihood of success on their poll tax claim. In Harman v. Forssenius, 380 U.S. 528 (1965), the Supreme Court struck down a Virginia requirement that a federal voter either pay the customary poll taxes as required for state elections or file a certificate of residence. The Supreme Court reasoned that the requirement to file a certificate of residence imposed a material requirement solely upon those who refused to surrender their right to vote in federal elections without paying the poll tax, and, consequently, the requirement violated the Twenty-Fourth Amendment. 380 U.S. at 541-42. The Supreme Court stated:

It has long been established that a State may not impose a penalty upon those who exercise a right guaranteed by the Constitution. "Constitutional rights would be of little value if they could be . . . indirectly denied," or "manipulated out of existence." Significantly, the Twenty-fourth Amendment does not merely insure that the franchise shall not be "denied" by reason of failure to pay the poll tax; it expressly guarantees that the right to vote shall not be "denied or abridged" for that reason. Thus, like the Fifteenth Amendment, the Twenty-fourth "nullifies sophisticated as well as simple-minded modes" of impairing the right guaranteed. "It hits onerous procedural requirements which effectively handicap exercise of the franchise" by those claiming the constitutional immunity.

Thus, in order to demonstrate the invalidity of § 24-17.2 of the Virginia Code, it need only be shown that it imposes a material requirement solely upon those who refuse to surrender their constitutional right to vote in federal elections without paying a poll tax. Section 24-17.2 unquestionably erects a real obstacle to voting in federal elections for those who assert their constitutional exemption

from the poll tax. As previously indicated, the requirement for those who wish to participate in federal elections without paying the poll tax is that they file in each election year, within a stated interval ending six months before the election, a notarized or witnessed certificate attesting that they have been continuous residents of the State since the date of registration (which might have been many years before under Virginia's system of permanent registration) and that they do not presently intend to leave the city or county in which they reside prior to the forthcoming election. Unlike the poll tax bill which is sent to the voter's residence, it is not entirely clear how one obtains the necessary certificate. . . . This is plainly a cumbersome procedure. In effect, it amounts to annual re-registration which Virginia officials have sharply contrasted with the "simple" poll tax system. For many, it would probably seem far preferable to mail in the poll tax payment upon receipt of the bill. In addition, the certificate must be filed six months before the election, thus perpetuating one of the disenfranchising characteristics of the poll tax which the Twenty-fourth Amendment was designed to eliminate. We are thus constrained to hold that the requirement imposed upon the voter who refuses to pay the poll tax constitutes an abridgement of his right to vote by reason of failure to pay the poll tax.

The requirement imposed upon those who reject the poll tax method of qualifying would not be saved even if it could be said that it is no more onerous, or even somewhat less onerous, than the poll tax. For federal elections, the poll tax is abolished absolutely as a pre-requisite to voting, and no equivalent or milder substitute may be imposed. Any material requirement imposed upon the federal voter solely because of his refusal to waive the constitutional immunity subverts the effectiveness of the Twenty-fourth Amendment and must fall under its ban.

380 U.S. at 540-42 (citations omitted; footnote omitted).

Similarly, in Harper v. Virginia State Board of Elections, 383 U.S. 664 (1966), the Supreme Court struck down

Virginia's poll tax requirement for state elections, finding that the poll tax violated the Equal Protection Clause. The Court stated:

We conclude that a State violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard. Voter qualifications have no relation to wealth nor to paying or not paying this or any other tax. Our cases demonstrate that the Equal Protection Clause of the Fourteenth Amendment restrains the States from fixing voter qualifications which invidiously discriminate. Thus without questioning the power of a State to impose reasonable residence restrictions on the availability of the ballot, we held . . . that a State may not deny the opportunity to vote to a bona fide resident merely because he is a member of the armed services. . . . Previously we had said that neither homesite nor occupation "affords a permissible basis for distinguishing between qualified voters within the State." We think the same must be true of requirements of wealth or affluence or payment of a fee.

383 U.S. at 666-67 (citations omitted). The Court further observed:

[W]e must remember that the interest of the State, when it comes to voting, is limited to the power to fix qualifications. Wealth, like race, creed, or color, is not germane to one's ability to participate intelligently in the electoral process. Lines drawn on the basis of wealth or property, like those of race, are traditionally disfavored. To introduce wealth or payment of a fee as a measure of a voter's qualifications is to introduce a capricious or irrelevant factor. The degree of the discrimination is irrelevant. In this context—that is, as a condition of obtaining a ballot—the requirement of fee paying causes an "invidious" discrimination that runs afoul of the Equal Protection Clause.

Id. at 668.

After the enactment of the Photo ID requirement, voters who do not have other acceptable forms of Photo ID must obtain Photo ID cards to be able to vote in person at the polls. Voters who choose not to obtain Photo ID cards, or who are unable to obtain Photo ID cards for one reason or another, are free to vote via absentee ballot. As discussed supra Part III.A.2., however, absentee voting is unavailable to many voters who do not have forms of Photo ID--either because those voters are unaware of their eligibility to vote via absentee ballot or because the voters are unable to navigate the absentee voting process successfully. As a practical matter, therefore, the majority of voters who do not have other acceptable forms of Photo ID must obtain a Photo ID card to cast their votes successfully and to ensure that their votes will be counted.

The fee for a Photo ID card is \$20 for a five-year card and \$35 for a ten-year card. Because, as a practical matter, most voters who do not possess other forms of Photo ID must obtain a Photo ID card to exercise their right to vote, even though those voters have no other need for a Photo ID card, requiring those voters to purchase a Photo ID card effectively places a cost on the right to vote. In that respect, the Photo ID requirement runs afoul of the Twenty-fourth Amendment

for federal elections and violates the Equal Protection Clause for State and municipal elections.<sup>9</sup>

Defendants argue that the DDS service centers will waive the fee for a Photo ID card if a voter who does not have another acceptable form of Photo ID needs the Photo ID card for voting purposes and if the voter completes an Affidavit. The Affidavit requires the voter to sign the following statement:

I hereby swear or affirm that I am eligible for a free identification card for voting purposes pursuant to O.C.G.A. §40-5-103(d). I am eligible for this card because:

1. I am indigent and cannot pay the fee for an identification card;
2. I desire an identification card in order to vote in a primary or election in Georgia;
3. I do not have any other form of identification that is acceptable under O.C.G.A. § 21-2-417 for identification at the polls in order to vote;
4. I am registered to vote in Georgia or I am applying to register to vote as part of my application for an identification card; and
5. I do not have a valid driver's license issued by the State of Georgia.

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See John Victor Berry, Take the Money and Run: Lame-Ducks "Quack" and Pass Voter Identification Provisions, 74 U. Det. Mercy L. Rev. 291, 304, 314 (1997) (noting that "[t]he Attorney General of Michigan made the observation [with respect to a Michigan voter identification law] that: 'Requiring purchased photo identification is a reprise of the notorious poll tax scheme used in the past to prevent voting;' " and that "the ability to obtain certain types of photo identification costs money, which is unconstitutional in light of Harper, as a qualification based on affluence . . . .").



(Watson Decl. Ex. A.) The DDS, however, instructs its employees not to investigate the truth of the representations made by voters who complete the Affidavit. Instead, DDS employees are to issue a Photo ID card to any voter who completes the Affidavit, without asking any questions. As discussed supra Part III.A.2., however, many voters may not be aware of that policy, and understandably may be reluctant to sign an Affidavit that requires them to state that they are "indigent and cannot pay the fee for an identification card" when such a statement is not true. Additionally, many voters simply may be too embarrassed over their inability to afford a Photo ID card to request and complete an Affidavit for a free card. Berry, supra note 9, at 307. Consequently, very few voters likely will take advantage of the fee waiver affidavit option. In any event, as Plaintiffs' counsel correctly observes, the fact that some individuals avoid paying the cost for the Photo ID card does not mean that the Photo ID card is not a poll tax.

Moreover, even if the Court accepts as true Defendants' argument that the fee waiver affidavit option is realistically available for any voter who wishes to use that option, the fee waiver affidavit still runs afoul of the Twenty-fourth Amendment. As the Supreme Court noted in Harman, any material requirement imposed upon a voter solely because of the voter's

refusal to pay a poll tax violates the Twenty-fourth Amendment. Harman, 380 U.S. at 542. A voter who does not have another acceptable form of Photo ID and who wishes to vote must, as a practical matter, obtain a Photo ID card. To obtain a Photo ID card, the voter must arrange for transportation to a DDS service center or the GLOW bus, if that option is available, and must navigate the lengthy waiting process successfully. The voter then must pay the \$20 fee or sign the fee waiver affidavit, which may require the voter to swear or affirm to facts that simply are not true in order to avoid paying the \$20 fee. Under those circumstances, the Court cannot determine that the fee waiver affidavit is not a material requirement, as discussed in Harman. Consequently, the Court finds that the Photo ID requirement imposes a poll tax.

For the reasons discussed above, the Court concludes that the Photo ID requirement constitutes a poll tax. The Photo ID requirement thus violates the Twenty-fourth Amendment with respect to federal elections and violates the Equal Protection Clause with respect to State and municipal elections. Under those circumstances, the Court concludes that Plaintiffs have a substantial likelihood of succeeding on the merits with respect to their poll tax claim.

#### 4. Civil Rights Act of 1964

Alternatively, Plaintiffs contend that Georgia's Photo ID requirement violates the Civil Rights Act of 1964, 42 U.S.C.A. § 1971 by applying different standards to absentee and in-person voters within the same county and by precluding voting due to an omission that is not material to the right to vote under Georgia law. Defendants argue that both of Plaintiffs' claims under § 1971 fail as a matter of law because § 1971 does not furnish a private right of action. Because that argument may dispose of Plaintiffs' § 1971 claims, the Court addresses that argument before turning to the particulars of Plaintiffs' claims.

Defendants rely on language in § 1971(c) stating that "the Attorney General may institute for the United States, or in the name of the United States, a civil action or other proper proceeding for preventative relief, including an application for a permanent or temporary injunction, restraining order, or other order." (State Defs.' Br. Opp'n Pls. Mot. Prelim. Inj. at 49 (citation omitted).) Defendants rely wholly on the quoted statutory language and cite two cases as additional support for their argument: Willing v. Lake Orion Community School Board of Trustees, 924 F. Supp. 815, 820 (E.D. Mich. 1996), and Good v. Roy, 459 F. Supp. 403, 405 (D. Kan. 1978). Defendants further contend that even if

§ 1971 affords Plaintiffs a private right of action, Plaintiffs' claims still fail because the Photo ID requirement does not discriminate on the basis of race, color, or previous condition.

The Eleventh Circuit directly addressed the issue of whether § 1971 could be enforced by a private right of action in Schwier v. Cox, 340 F.3d 1284 (11th Cir. 2003). In Schweir, the Eleventh Circuit reversed a district court ruling which relied on McKay v. Thompson, 226 F.3d 752 (6th Cir. 2000), which in turn relied entirely on Willing, which in turn relied entirely on Good--the two cases cited by Defendants. The Eleventh Circuit held that "the provisions of section 1971 of the Voting Rights Act may be enforced by a private right of action under § 1983." Schwier, 340 F. 3d at 1297. The Eleventh Circuit's holding is not limited to the fact pattern at issue in Schweir, regarding an individual's refusal to disclose his social security account number, and Judges Dubina, Black, and Ryskamp conducted a thorough analysis of the legislative history behind § 1971(c) and the Supreme Court's rationale behind holdings permitting private rights of action to enforce other sections of the Voting Rights Act. Id. at 1294-95. The Court is bound to apply Schweir, and the Court consequently finds as a matter of law that Plaintiffs

may assert a private right of action under § 1971 for the alleged voting rights violations at issue.

**a. 42 U.S.C.A. § 1971(a)(2)(A)**

First, Plaintiffs argue that Georgia's Photo ID requirement violates 42 U.S.C.A. § 1971(a)(2)(A) by applying different standards in determining whether individuals within the same county or other political subdivision are qualified to vote. 42 U.S.C.A. § 1971(a)(2)(A) provides that "[n]o person acting under color of state law shall," when "determining whether any individual is qualified under State law or laws to vote in any election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote." 42 U.S.C.A. § 1971(a)(2)(A).

Plaintiffs argue that the Photo ID requirement runs afoul of this subsection because the Photo ID requirement applies different standards to voters who reside in the same city or county who vote absentee than it applies to people who vote in person. Plaintiffs note that the Photo ID requirement applies only to voters who vote in person at the polls, while voters who vote absentee by mail do not have to comply with the Photo ID requirement unless they are registering to vote absentee,

or are voting absentee for the first time. Additionally, voters who registered by mail and are voting by absentee ballot for the first time may include a utility bill or bank statement with their absentee ballot as a means of voter identification. (Oct. 12, 2005, Hr'g Tr.)

Plaintiffs point out that although the stated purpose of the Photo ID requirement is to prevent voter fraud, the Photo ID requirement does nothing to address the largest sources of potential voter fraud--absentee voting and fraudulent voter registrations. In support of this argument, Plaintiffs cite to correspondence from Secretary of State Cox to Governor Perdue and the Georgia State Senate with respect to HB 244 indicating that over her tenure, she and her staff could not recall a single case or complaint of voter impersonation at the polls. In contrast, her office received numerous complaints of fraudulent absentee voting during the same time period. HB 244, in Secretary of State Cox's opinion, expanded opportunities for absentee voting by mail by eliminating the previous restrictions on obtaining an absentee ballot. Consequently, Plaintiffs contend that the Photo ID requirement, by its plain language, clearly violates 42 U.S.C.A. § 1971(a)(2)(A) because it imposes standards on voters in the same county or city that differ for absentee voters versus in-person voters.

Defendants contend that HB 244 does not apply different standards in determining whether any individual is qualified under State law to vote in person in any election. Defendants argue that individuals who choose to vote in person are all held to the same standard regardless of their race or color, and that individuals who choose to vote by absentee ballot are all held to the same standard regardless of their race or color.

Plaintiffs cited no case law and provided limited information in support of this claim at the preliminary injunction hearing. The Court therefore cannot determine at this point that Plaintiffs have a substantial likelihood of succeeding on the merits of this claim. Because Plaintiffs may be able to produce evidence and authority at a later stage of the proceedings that support this claim, the Court reserves a ruling on the merits of a claim for a later date.

**b. 42 U.S.C.A. § 1971(a)(2)(B)**

Second, Plaintiffs contend that Georgia's Photo ID requirement violates 42 U.S.C.A. § 1971(a)(2)(B), which prohibits a person acting under color of law from "deny[ing] the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining

whether such individual is qualified under State law to vote in such election." 42 U.S.C.A. § 1971(a)(2)(B).

Plaintiffs contend that to be qualified to vote in Georgia, a voter need only: (1) be a United States citizen; (2) be a legal resident of the county where he or she seeks to register; (3) be at least 18 years old; and (4) not be serving a sentence for a felony conviction involving moral turpitude or have been found mentally incompetent by a judge. Ga. Const. art. II, § 1. Plaintiffs observe that none of those requirements include presenting a Photo ID, and that a Photo ID therefore cannot be material to determining whether an individual is qualified under State law to vote. In any event, Plaintiffs argue that because the Photo ID requirement does not apply to most absentee voters, the Photo ID requirement cannot be said to be "material" for purposes of 42 U.S.C.A. § 1971(a)(2)(B).

Defendants contest these assertions and argue that Plaintiffs' claim must fail because the Photo ID requirement does not add any condition on voter qualifications and that there is no error or omission on any record that is being used to disqualify any potential voter. Further, Defendants point out that a legislature traditionally has been allowed to reform state law one step at a time and therefore, the General



Assembly may address one potential avenue for voter fraud at a time.

Plaintiffs cited no case law and provided limited information in support of this claim at the preliminary injunction hearing. At this point, the Court simply cannot determine whether Plaintiffs have a substantial likelihood of succeeding on the merits of this claim. Because Plaintiffs may be able to present sufficient evidence and authority to succeed on this claim at a later stage of the proceedings, the Court will not rule on the merits of the claim at this time.

#### **5. Voting Rights Act of 1965**

Finally, Plaintiffs argue that the Photo ID requirement violates Section 2 of the Voting Rights Act, 42 U.S.C.A. § 1973(a). That statute provides, in relevant part: "No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section." 42 U.S.C.A. § 1973(a). 42 U.S.C.A. § 1973(b) sets forth the requirements for establishing a violation of § 1973(a), and states:

A violation of subsection (a) of this section is established if, based on the totality of

circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

42 U.S.C.A. § 1973(b).

Plaintiffs assert a claim of vote denial under § 1973(a), rather than a claim of vote dilution. The Supreme Court, however, has observed that Section 2 of the Voting Rights Act prohibits all forms of voting discrimination, not simply vote dilution. Thornburg v. Gingles, 478 U.S. 30, 45 n.10 (1986). After the 1982 amendments to the Voting Rights Act, a plaintiff asserting a violation of Section 2 need not present "proof that the contested electoral practice or mechanism was adopted or maintained with the intent to discriminate against minority voters." Id. at 44. Instead, the plaintiff must show that "'as a result of the challenged practice or structure plaintiffs do not have an equal opportunity to participate in the political processes and to elect candidates of their choice.'" Id. The Supreme Court has observed:

In order to answer this question, a court must assess the impact of the contested structure or

practice on minority electoral opportunities "on the basis of objective factors." The Senate Report specifies factors which typically may be relevant to a § 2 claim: the history of voting-related discrimination in the State or political subdivision; the extent to which voting in the elections of the State or political subdivision is racially polarized; the extent to which the State or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts, majority vote requirements, and prohibitions against bullet voting; the exclusion of members of the minority group from candidate slating processes; the extent to which minority group members bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process; the use of overt or subtle racial appeals in political campaigns; and the extent to which members of the minority group have been elected to public office in the jurisdiction. The Report notes also that evidence demonstrating that elected officials are unresponsive to the particularized needs of the members of the minority group and that the policy underlying the State's or the political subdivision's use of the contested practice or structure is tenuous may have probative value. The Report stresses, however, that this list of typical factors is neither comprehensive nor exclusive. While the enumerated factors will often be pertinent to certain types of § 2 violations, particularly vote dilution claims, other factors may also be relevant and may be considered. Furthermore, the Senate Committee observed that "there is no requirement that any particular number of factors be proved, or that a majority of them point one way or the other." Rather, the Committee determined that "the question whether the political processes are 'equally open' depends upon a searching practical evaluation of the 'past and present reality,'" and on a "functional" view of the political process.

Id. at 44-45 (citations omitted; footnote omitted). "The essence of a § 2 claim is that a certain electoral law,

practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives." Id. at 47.

Similarly, in Johnson v. Governor of the State of Florida, 405 F.3d 1214 (11th Cir. 2005), the United States Court of Appeals for the Eleventh Circuit observed:

Vote denial occurs when a state employs a "standard, practice, or procedure" that results in the denial of the right to vote on account of race. To prevail, a plaintiff must prove that "under the totality of the circumstances, . . . the political processes . . . are not equally open to participation by [members of a protected class] . . . in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." In making this inquiry, courts consider a non-exclusive list of objective factors (the "Senate factors") detailed in a Senate Report accompanying the 1982 amendments.

405 F.3d at 1228 n.26 (citations omitted) (alterations and omissions in original).

Plaintiffs have presented declarations and Census data in support of their § 2 vote denial claim. Specifically, Plaintiffs point to socio-economic data from the 2000 Census indicating that in Georgia: (1) 17.3 percent of African-American households have an income of less than \$10,000, compared to 7.4 percent of Caucasian, non-Hispanic households; (2) an additional 16.0 percent of African-American households have incomes between \$10,000 and \$19,999, compared to 10.1

percent of Caucasian, non-Hispanic households; (3) 27.5 percent of African-Americans ages twenty-five or older have less than a high school education, including general equivalency degrees, as compared with 17.3 percent of Caucasian, non-Hispanics ages twenty-five or older; (4) 23.1 percent of African-Americans of all ages live below the poverty line, compared to 7.8 percent of Caucasian, non-Hispanic individuals; (5) 24.7 percent of African-Americans ages sixty-five through seventy-four live below the poverty line, as compared to 7.8 percent of Caucasian, non-Hispanic individuals in the same age group; (6) 32.1 percent of African-Americans aged seventy-five and over live below the poverty line, as compared to 12.9 percent of Caucasian, non-Hispanic individuals aged seventy-five or over; (7) 17.7 percent of African-American households have no vehicle available, as compared to 4.4 percent of Caucasian, non-Hispanic households; and (8) only one of the eight Georgia counties with the highest percentage of African-American residents--sixty percent or higher--has a DDS service center. Plaintiffs also plan to present data indicating that in Georgia, 11.0 percent of Caucasians, 26.0 percent of African-Americans, and 30.0 percent of Latinos live below the poverty line. Plaintiffs argue that this evidence is sufficient to show depressed political participation by minorities and to

demonstrate that the Photo ID requirement will discourage voting by minority voters.

At this point, however, the Court simply cannot agree with Plaintiffs that the evidence is sufficient to demonstrate that Plaintiffs have a substantial likelihood of succeeding on the merits with respect to their § 2 vote denial claim. The Court therefore is reluctant to grant preliminary injunctive relief to Plaintiffs based on their § 2 vote denial claim. Recognizing that Plaintiffs may be able to produce sufficient evidence at a later stage of the proceedings to support their § 2 vote denial claim, the Court reserves a final ruling on the merits of that claim for a later date.

**B. Irreparable Harm**

The Court next addresses the second factor for obtaining a preliminary injunction--whether Plaintiffs will suffer irreparable harm if the Court does not enter a preliminary injunction. For the reasons discussed supra Part III.A., the Court concludes that the Photo ID requirement unduly burdens the fundamental right to vote, and likely will cause a number of Georgia voters to be unable to cast a vote and to have their votes counted. The Court also concludes that the Photo ID requirement constitutes a poll tax.

Although Defendants argue that the Photo ID requirement will not deprive a single Georgia voter of the right to vote,

because voters without Photo IDs can vote absentee ballots, as a practical matter, a significant number of the registered Georgia voters who lack Photo IDs likely are unaware of that alternative or would not be able to navigate the absentee ballot voting process successfully. Voters who lack Photo IDs and are unaware of the absentee voting alternative, yet still desire to vote, must undertake the often difficult and burdensome process of obtaining a Photo ID card. Still others who can navigate this process successfully either must pay a fee for a Photo ID card or sign an Affidavit swearing that they are indigent and do not have the funds to pay for the card--whether or not that statement is true--to obtain a free Photo ID card. The Photo ID requirement thus has the likely effect of causing a significant number of Georgia voters to forego going to the polls or to forego obtaining and voting an absentee ballot. For the reasons discussed above, the Court finds that Plaintiffs have demonstrated that they or their constituents will suffer irreparable harm if the Court declines to enter a preliminary injunction. This factor therefore weighs in favor of granting Plaintiffs' Motion for Preliminary Injunction.

**C. Threatened Injury to Plaintiffs Weighed Against the Damage to the State Caused by a Preliminary Injunction**

Next, the Court must weigh the threatened injury to Plaintiffs against the damage to the State caused by a preliminary injunction. Defendants presented evidence that the entry of a preliminary injunction likely will result in confusion for voters, poll workers, and elections officials, and may result in an inconsistent application of the identification requirements. Defendants have pointed out that it will be extremely difficult for the Elections Division to produce new voter certificates and posters and for all local elections officials to receive sufficient numbers of voter certificates and posters for polling locations. Further, Defendants' evidence indicates that local elections officials lack sufficient time to conduct training for poll workers and to educate the public.

The Court certainly appreciates and understands the inconvenience and expense that entering a preliminary injunction may work upon the State and Defendants. The Court, however, is mindful that the right to vote is a fundamental right and is preservative of all other rights. Denying an individual the right to vote works a serious, irreparable injury upon that individual. Given the right at issue and the likely injury caused by not entering a preliminary injunction,



the Court finds that the potential injury to Plaintiffs outweighs the harm to the State and Defendants caused by entering a preliminary injunction. This factor therefore counsels in favor of entering a preliminary injunction.

**D. Public Interest**

Finally, the Court must determine whether issuing a preliminary injunction will serve the public interest. At the outset, the Court acknowledges that preventing voter fraud serves the public interest by ensuring that those individuals who have registered properly to vote are allowed to vote and to have their votes counted in any given election. As discussed supra Part III.A., however, the current Photo ID requirement simply is not targeted toward eliminating or preventing the only types of voter fraud that are supported by the evidence presented thus far: fraudulent voter registrations and fraudulent absentee voting. Rather, HB 244 opens the door wide for fraudulent absentee voting by removing the conditions for obtaining an absentee ballot. As discussed supra Parts III.A.2. and A.3., the Photo ID requirement unduly burdens the right of many properly registered Georgia voters to vote, is a poll tax, and has the likely effect of causing many of those voters to forego voting or of precluding those voters from voting at the polls. Because the right to vote is a fundamental right, removing the undue burdens on that right

imposed by the Photo ID requirement serves the public interest. This factor therefore counsels in favor of granting Plaintiffs' Motion for Preliminary Injunction.

**E. Summary**

In sum, the Court finds that the four factors for granting a preliminary injunction weigh in favor of Plaintiffs. In particular, the Court concludes that Plaintiffs have a substantial likelihood of success on the merits of their claim that the Photo ID requirement unduly burdens the right to vote and a substantial likelihood of success on the merits of their claim that the Photo ID requirement constitutes a poll tax. The Court also finds that Plaintiffs and their constituents will suffer irreparable harm if the Court does not grant a preliminary injunction, and that the threatened harm to Plaintiffs outweighs the injury to Defendants and the State that will result from issuing a preliminary injunction. Finally, the Court finds that entering a preliminary injunction will serve the public interest. Consequently, the Court grants Plaintiffs' Motion for Preliminary Injunction.

In reaching this conclusion, the Court observes that it has great respect for the Georgia legislature. The Court, however, simply has more respect for the Constitution. Because the Court finds that Plaintiffs have a substantial

likelihood of succeeding on their claims that the Photo ID requirement unduly burdens the right to vote and constitutes a poll tax, the Court must enter a preliminary injunction against the Photo ID requirement.<sup>10</sup>

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The Court acknowledges that its conclusion differs from the decisions reached in League of Women Voters v. Blackwell, 340 F. Supp. 2d 823 (N.D. Ohio 2004), Bay County Democratic Party v. Land, 347 F. Supp. 2d 404 (E.D. Mich. 2004), and Colorado Common Cause v. Davidson, No. 04CV7709, 2004 WL 2360485 (D. Colo. Oct. 18, 2004). All of those cases, however, involved identification requirements that allowed voters to show means of identification other than Photo IDs. Georgia's Photo ID requirement, however, applies to in-person voting and goes one step further than the laws challenged in Blackwell, Bay County Democratic Party, and Colorado Common Cause.

For instance, Blackwell involved a challenge to an Ohio law implementing HAVA that required individuals who registered to vote by mail and who did not submit acceptable documentary proof of identity with their voter applications to provide "acceptable documentary proof" of their identities prior to voting. 340 F. Supp. 2d at 826. Such proof could include "a current and valid photo identification," or "[a] copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows [the voter's] name and address." Id.

Bay County Democratic Party, in turn, involved a challenge to directives issued to Michigan local elections officials concerning casting and tabulating provisional ballots, as well as a directive pertaining to proof of identity for first-time voters who registered by mail. 347 F. Supp. 2d at 410-11. The directive concerning proof of identity for first-time in-person voters who registered by mail was revised to allow those voters to furnish the identification required by HAVA either at the polls or during a six-day period after election day. Id. at 434. The HAVA requirements, however, allowed individuals who registered by mail to present a current, valid Photo ID or "a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter." 42 U.S.C.A. § 15483.

Finally, Colorado Common Cause also involved

#### IV. Conclusion

ACCORDINGLY, the Court **GRANTS** Plaintiffs' Motion for Preliminary Injunction [2] [23], and **ENJOINS** and restricts Defendants individually and in their official capacities from enforcing or applying the 2005 amendment to O.C.G.A. § 21-2-417 (Act No. 53, Section 59), which requires voters to present a Photo ID as a pre-condition to in-person voting in Georgia, to deny Plaintiffs or any other registered voter in Georgia

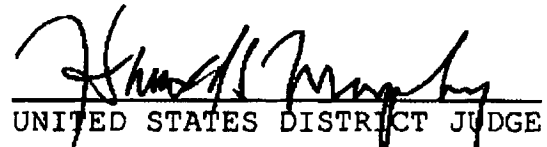
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identification requirements that permitted voters to show several forms of identification, including: (1) a valid Colorado driver's license; (2) a valid ID card from the Colorado Department of Revenue; (3) a valid United States passport; (4) a valid government employee Photo ID; (5) a valid pilot's license; (6) a valid United States military Photo ID; (7) a copy of a current utility bill, a bank statement, government check, paycheck, or other government document showing the voter's name and address; (8) a valid Medicaid or Medicare card; (9) a certified copy of a birth certificate; or (10) certified documentation of naturalization. 2004 WL 2360485, at \*6. The Colorado Common Cause court observed that the identification requirement was intended to reduce voter fraud, and concluded that the identification requirement was reasonably related to the interest proffered by the state and was not unduly burdensome. Id. at \*10.

The identification requirements used by Ohio, Michigan, and Colorado, however, are of little relevance to the case now before the Court because those requirements are much less stringent than Georgia's Photo ID-only requirement. Each of the requirements challenged in Blackwell, Bay County Democratic Party, and Colorado Common Cause allowed voters to produce alternative forms of identification as well as Photo IDs. If Georgia's voter identification law permitted use of such alternative means of identification for purposes of in-person voting, Plaintiffs likely would not have filed this case. In sum, given the unique nature of Georgia's Photo ID requirement, the Court finds Blackwell, Bay County Democratic Party, and Colorado Common Cause cases unpersuasive. The Court therefore declines to follow those cases.

admission to the polls, a ballot, or the right to cast their ballots and to have their ballots counted in any special, general, run off, or referenda election in the State of Georgia because of their failure or refusal to present a Photo ID.

IT IS SO ORDERED, this the 18<sup>th</sup> day of October, 2005.

  
UNITED STATES DISTRICT JUDGE



U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

**STATEMENT BY COMMISSIONER GRACIA HILLMAN  
OF THE U.S. ELECTION ASSISTANCE COMMISSION  
ON THE "EAC REPORT ON VOTING FRAUD AND VOTER INTIMIDATION"**

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**Washington, DC – December 7, 2006:** Today the U.S. Election Assistance Commission (EAC) voted on the findings of its preliminary study of voting fraud and voter intimidation and accepted recommendations to conduct a comprehensive study on election crimes. The findings and recommendations are in an EAC report, "Election Crimes: An Initial Review and Recommendations for Future Study," which is based largely on the research of two consultants and includes a working definition of election crimes that encompasses voting fraud and voter intimidation. This report and its appendices are available at [www.eac.gov](http://www.eac.gov).

Today's vote marks EAC's acceptance of the core recommendation that voting fraud and voter intimidation deserve more than just anecdotal assessment but rather a comprehensive, nationwide survey and study of the information that is available from election officials, investigatory agencies, prosecutorial bodies and the courts on the number and types of complaints lodged with the authorities and the disposition of those complaints.

With today's actions, EAC moves toward the next steps, which include the first nationwide, comprehensive study of election crimes based on hard data, with findings to be released to the public by the end of 2007.

It is my expectation that based on the findings of the comprehensive study, EAC will have useful data that can inform future discussions and debates about voting fraud, voter intimidation and other election crimes. It is my hope that based on the data, EAC will move forward early in 2008 to release suggested standards and/or best practices that will be useful to election officials and prosecuting authorities as they collect and assess claims and acts of election crimes, and bring offenders to justice. I also hope EAC will continue to collect and assess data on election crimes from future federal election cycles.

While I am pleased with the direction that we are taking on this important topic, I am also aware that some have voiced their concerns and raised questions about the delay EAC encountered in releasing this report. As we have explained, EAC's process to review the consultants' findings took far longer than anticipated. Hindsight is twenty-twenty vision and we at EAC now understand that we should have handled the delay differently. The resulting situation from the delay was both personally and professionally embarrassing for me. I truly hope this is the one and only time EAC will ever experience this type of difficult circumstance.

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*Committee on*  
**House Administration**

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## **Testimony By Mr. Paul Bettencourt**

### **Tax Assessor-Collector and Voter Registrar Harris County, Texas**

Mr. Chairman and members of the committee:

My name is Paul Bettencourt, and I am the elected Tax Assessor-Collector and Voter Registrar for Harris County, Texas, the county that includes the City of Houston. I am honored to have been asked to speak before you today on an issue of great importance to those of us charged with ensuring the accuracy and integrity of the nation's voter registration rolls, which totals 1,892,883 in Harris County alone.

My office collects approximately \$3.8 billion in taxes from Harris County residents every year. Most of my constituents aren't happy about parting with their hard-earned money, but it is in my role as voter registrar that I can hear from over 50,000 constituents in just one day.

Since my election in 1998, the Tax Office has emphasized upgrading voter technology and the training of our staff because we know that the "right to vote" is sacrosanct. As voter registrar for Harris County, I work constantly with my staff to try to maintain the most accurate voter roll possible by employing the most up-to-date technology available. This includes comparing our voter registration list with other known good governmental services, such as the Texas Department of Public Safety, the United States Postal Service's National Change of Address List, the Social Security Department's Deceased List, and the Secretary of State's Statewide Voter Roll. Our original efforts in 2000 found more than 50,000 registrations that had to be deleted or suspended under law just by comparing the voter roll to these other governmental databases.

The Harris County Voter Registration Office has been recognized by various groups for our efforts to guarantee an accurate voter roll, including the National Association of Latino Elected and Appointed Officials, the Texas Secretary of State's Office and other organizations. We work extremely hard to avoid even minor problems with the voter roll by staffing a large "cross-trained" Call Center on election days to answer questions from precinct judges and county voters. On Election Day 2004 alone, our Call Center answered more than 51,000 live calls, in addition to an automated call system ably

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supported by our County Clerk, Beverly Kaufman, who conducts elections in Harris County.

Illegal voting and registration by foreign nationals is difficult for my office to prevent without federal assistance. We have three main ways to try to identify illegal registrations; the first is reliance on the "honor system" from the public; secondly, U.S. Immigration and Customs Enforcement checks during the naturalization process; and thirdly, and most effectively, is through juror records maintained by Harris County District Clerk Charles Bacarisse. The District Clerk's office routinely submits lists of jurors who have been excused from jury duty for non-citizenship, and we compare that list against our records of registered voters and send written challenges to those individuals who have used this exemption from jury duty.

With the help of Congress, we can do far more. Passage of legislation such as the Federal Election Integrity Act of 2006 would help my office ensure that only U.S. citizens are allowed to vote in federal, state and local elections. I am aware that some municipalities allow foreign citizens to vote in local elections, but the State of Texas amended its Constitution in 1921 to require that voters be U.S. citizens. Voting should be a right of citizenship in the United States.

The extent of illegal voting by foreign citizens in my home county is impossible to determine, but we know that it has and will continue to occur. Harris County is the third most populous county in the United States, with nearly 3.7 million residents - nearly 1.9 million of whom are registered to vote. If you've ever been to Houston, you know it's a remarkably diverse city. More than 22 percent of our county residents - nearly 1 in 4 - were born outside the United States, and more than 500,000 of them are estimated to be non-U.S. citizens.

As it now stands, we have no real way to stop a foreign citizen from voting. If a foreign national sends in a voter registration application and checks off that he or she is a citizen of the United States, they will get a card - unless we have some prior knowledge that their information is false. There is no reliable database of which I am aware that we can check against for proof of citizenship, but there could be at the federal level.

Just last year, a reporter with the Houston Chronicle called me, asking how it was that a resident of suburban Houston, a Norwegian citizen, was able to vote in the November 2004 federal, state and local elections. The answer, of course, was that he was not legally allowed to vote.

Neither was the Brazilian citizen whose registration was canceled in 1996 after she acknowledged on a jury summons that she was not a U.S. citizen. She then reapplied in 1997, again claiming to be a U.S. citizen, and was again given a voter card, which was again canceled. Records show she was able to vote at least four times in general and



primary elections. With the Harris County Tax Office's modern voter registration system, this type of fraud can easily be detected in 2006 but not in 1997.

A review by my office in early 2005 turned up at least 35 cases in which foreign nationals either applied for or received voter's cards. Even in the nation's third-largest county, we regularly have elections decided by one, two, or just a handful of votes in any one of our more than 400 local government jurisdictions. Therefore, every vote truly counts.

The federal government could combine the 50 states list from their Department of Public Safety driver's license records that maintain photo identification records, many with proof of citizenship. These records could be compared to federal data like passport lists, ICE records, or Social Security numbers to confirm these records electronically. In a county larger than 22 states, my office regularly maintains 7.1 million database records annually that can change on a yearly basis, so I know from real-world experience that this effort is feasible both technically and operationally.

Is voting taken so lightly that we cannot require so little an effort as the production of a photo ID? We require such identification from those buying tobacco or alcohol, boarding an airplane or using a credit card. Those not having a photo ID can be provided one by government at no cost to the voter.

Without a federal remedy, local registrants can do little to stop foreign citizens from registering in any election. Requiring proof of citizenship at the time of registration or re-registration will stop this documented fraud. We are all aware of the argument that such a requirement is a barrier or an inconvenience to those attempting to vote, but with 21st century technology, the task can be easily done and almost transparent to the citizen voters of this nation.

Additional information on the Harris County Voter Registration department's efforts can be seen at our Web site, [hcvoter.net](http://hcvoter.net). Thank you again for your time and attention.

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Posted on Thu, Oct. 12, 2006

## Questions abound in voter push

ACORN's registration drive in the KC area generates 35,000 applications, but thousands of them appear to be duplicates or contain dubious data.

By RICK MONTGOMERY  
The Kansas City Star

A group seeking a boost in Missouri's minimum wage said Wednesday it helped 35,000 Kansas City area residents register to vote next month.

However, at least a few thousand "questionable" applicants are clogging the verification system and probably won't be added to voter rolls for the November balloting, election officials said.

Near the top of the fishy list would be a man named Mark who apparently registered seven times over a three-day period using his mother's home address and phone number. She told *The Star* that Mark hadn't lived there in six years.

Sharon Turner Buie, Kansas City's Democratic director of elections, said about 3,000 of the 16,000 applications examined so far bore discrepancies, including suspicious signatures, applicants being too young, and birth dates and Social Security numbers not jibing with state databases.

The new applications were collected in a massive registration drive organized by the Association of Community Organizations for Reform Now, known as ACORN.

Wednesday was the final day for Missourians to submit applications to vote Nov. 7.

ACORN leaders said they were excited by the number of applications — which, if all are valid, would increase the number of registered Kansas City voters by nearly 20 percent.

Brian Mellor, the national group's election counsel, said several factors could lead to bad forms, including illegible handwriting and typos in Social Security numbers.

A check of several questionable applications at the Kansas City election office turned up a variety of puzzles: four forms with identical data except for an applicant's middle name; three other forms with identical data except for an applicant's place of birth.

If it's not fraudulent, submitting sloppy or duplicate applications "is dangerous" because it slows the verification process, said Kansas City election director Ray James, a Republican.

"We're hearing from many, many innocent people who registered at their libraries and haven't gotten their notices from us yet," he said.

He said an attorney for the election board was reviewing the matter for prosecution.

Not only did ACORN recruit volunteers to register people, it also paid more than 40 workers to collect applications — always a concern to election officials. Missouri law prohibits those workers from being paid on a quota basis.

ACORN said it paid only an hourly wage, about \$8, to avoid encouraging phony forms. And it says it consults with election officials and has internal checks in an effort to cut down on duplications and fraud.

In St. Louis, elections officials called nearly 1,500 of the 15,000 registration cards collected by ACORN

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"potentially fraudulent," according to the St. Louis Post-Dispatch.

Similar ACORN drives have come under fire recently in Ohio, Pennsylvania and other states. But the group notes that investigations into fraud allegations stemming from its 2004 efforts turned up no wrongdoing.

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To reach Rick Montgomery, call [REDACTED] or send e-mail to [REDACTED].com

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<http://www.kansascity.com>

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## Absentee balloting fraught with risks, legal scholar says

Mark Reutter, Business and Law Editor

4/13/06

CHAMPAIGN, Ill. — The rising popularity of absentee voting, especially the use of “no-excuse” absentee ballots, poses a risk of vote tampering and election fraud, a University of Illinois legal scholar argues.

In the name of offering voters flexibility and saving the government money, more than 25 states, including California, Florida and Ohio, have enacted laws letting registered voters cast a ballot before Election Day without providing a reason.

In addition, 20 states permit early voting by mail, and about 15 states offer voters permanent absentee status, which lets them register to vote absentee for an indefinite period.

Jessica A. Fay writes that voting outside of the polling place on Election Day carries with it the danger that absentee ballots can be collected and turned in by partisans. Or that voters can be pressured by campaign workers or others in ways that are not possible when ballots are cast in secret at a polling booth.

“With a growing elderly population and insufficient absentee-ballot regulation, it may be only a short time before the public spotlight shifts from the remnants of the infamous butterfly-ballot debacle of the 2000 presidential election to the increasingly critical issue of absentee voter fraud,” she wrote in the *Elder Law Journal*, published by the University of Illinois College of Law.

In many states with large numbers of seniors, including Illinois, allegations of absentee-ballot fraud have been reported. In Chicago, for example, a man reportedly helped 35 seniors apply for absentee ballots at a senior housing center during the 2002 primary, then returned several weeks later to illegally punch their signed ballots.

Traditionally, according to Fay, absentee voting was permitted only for limited groups of people, including soldiers and other U.S. citizens stationed abroad, and for voters with disabilities that restricted their ability to come to polling stations. “Over the last 30 years, there has been a significant movement away from the traditional polling place, instead embracing the concept of ‘convenience voting,’” she wrote.

Several factors have triggered this change, most notably a concern about the low voter turnout rates in America and the belief that absentee voting was a good way to increase turnout.

Among elderly voters, the problem of campaign workers interfering with voting, especially in retirement and nursing homes, has been documented in a number of jurisdictions. Several states require election officials to oversee balloting if a certain number of absentee ballots are requested at a retirement or nursing home, but most states have no laws tailored to curb absentee-voter abuse.

Especially under the system of no-excuse absentee voting, the possibilities of coercion or other irregularities are numerous. "Once an elector has qualified to vote in absentia, or is permitted to do so based on a state enacted no-excuse absentee voting provision, he or she receives a ballot in the mail, makes his or her balloting choices, and returns the ballot to the proper authorities. But what happens while the ballot is in the hands of the voter is unknown to election officials," Fay wrote.

In 2002, Congress responded to the widespread flaws in the 2000 presidential election by requiring states to replace faulty punch-card systems. The federal Election Assistance Commission was set up to establish best practices for state and local voting systems.

The Illinois scholar calls on Congress to direct EAC to focus attention on absentee-voting procedures, with a goal of "establishing the foundation of a more uniform and effective system of absentee voting."

For example, the 2002 law requires that each state implement a "single, uniform, official, centralized, interactive computerized statewide voter registration list" that contains the name and registration information of every legally registered voter in the state.

By utilizing these databases, states could maintain accurate lists of absentee voters, thereby flagging irregularities in ballot submissions, such as unusual surges in the number of ballots cast in a particular jurisdiction.

Her article is titled, "Elderly Electors Go Postal: Ensuring Absentee Ballot Integrity for Older Voters."

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[http://obama.senate.gov/press/051108-on\\_election\\_day\\_obama\\_introduces\\_legislation\\_to\\_prevent\\_election\\_fraud/index.html](http://obama.senate.gov/press/051108-on_election_day_obama_introduces_legislation_to_prevent_election_fraud/index.html)

# *On Election Day, Obama Introduces Legislation to Prevent Election Fraud*

Tuesday, November 8, 2005

FOR IMMEDIATE RELEASE

Obama Contact: Robert Gibbs or Tommy Vietor, (202) 228-5511

Illinois Contact: Julian Green, (312) 886-3506

Date: November 8, 2005

## **On Election Day, Obama Introduces Legislation to Prevent Election Fraud**

WASHINGTON - U.S. Senator Barack Obama (D-IL) Tuesday introduced legislation to protect Americans from using tactics that intimidate voters and prevent them from exercising their rights on Election Day.

Obama's legislation, the Deceptive Practices and Voter Intimidation Prevention Act of 2005, would make it illegal for anyone to knowingly attempt to prevent others from exercising his or her right to vote by providing deceptive information and would require the Attorney General to fully investigate these allegations. The legislation would also require the Attorney General, in conjunction with the Election Assistance Commission, to provide accurate election information when allegations of deceptive practices are confirmed.

**"One of our most sacred rights as Americans is the right to make our voice heard at the polls," said Obama. "But too often, we hear reports of mysterious phone calls and mailers arriving just days before an election that seek to mislead and threaten voters to keep them from the polls. And those who engage in these deceptive and underhanded**

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**campaign tactics usually target voters living in minority or low-income neighborhoods. This legislation would ensure that for the first time, these incidents are fully investigated and that those found guilty are punished."**

As recently as the 2004 Presidential election there have been reports of tactics aimed at preventing rightful voters from exercising their right to cast a ballot. In Milwaukee some voters received fliers from the non-existent "Milwaukee Black Voters League," warning that voters risk imprisonment for voting if they were ever found guilty of any offense - even a traffic violation. In one county in Ohio, some voters received false mailings claiming that anyone registered to vote by the Kerry Campaign or the NAACP would be barred from voting. Similar reports were echoed in jurisdictions across the country and underscore the need for concerted action against such tactics. But many of these incidents are never investigated, and the culprit is never discovered.

Obama's legislation would provide a criminal penalty for deceptive practices, with penalties of up to \$100,000 or one year imprisonment, or both. The legislation would also require the Attorney General to work with the Federal Communications Commission and the Election Assistance Commission to determine the feasibility of using the public broadcasting system as a means of providing voters with full and accurate Election Day information.

Obama's legislation is supported by the National Association for the Advancement of Colored People, Common Cause, the Arc of the United States, the People for the American Way, the National Disability Rights Network, United Cerebral Palsy and the Lawyers' Committee for Civil Rights Under Law.

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**Testimony of**  
**Dr. Larry J. Sabato, Director**  
**University of Virginia Center for Governmental Studies**  
**Before**  
**The Committee on Rules and Administration**  
**United States Senate**

**June 27, 2001**

Mr. Chairman, Members of the Committee, thank you for this opportunity to speak with you today about election reform. I would like to talk specifically about the intertwined issues of voter registration and vote fraud in the United States.

Of course, this is a subject that has received considerable attention during the months since the ballots were cast in the 2000 Presidential election.

Let me begin my remarks by stating what all of us familiar with politics already know. Fraud and corruption in the American electoral system did not start with the 2000 Presidential election. In fact, evidence of corruption spans the entire history of our Republic. One example I cited in my book, Dirty Little Secrets: The Persistence of Corruption in American Politics, is the following: "For the 1844 election, New York City had a reasonably large voter pool of 41,000, but the turnout on Election Day was far more spectacular: 55,000, or 135 percent of the entire pool of voters! As one observer put it, 'the dead filled in for the sick,' and the city's dogs and cats must have been imbued with irresistible civic spirit, too (276)."

What could be unique at this point in our nation's history is the degree to which we, as a nation, can embark on a serious discussion of how to reform the system to limit the extent of electoral fraud and corruption.

The November 2000 election can serve as the catalyst for such a debate. By all means, we should toss out antiquated voting machines that poorly count properly cast ballots. But we ought simultaneously to spend sufficient resources to reduce vote fraud in several states.

When we look at the registration system and voting process in the U. S., we have to balance two conflicting values, two equally worthy objectives:

1. The goal of full and informed participation of the electorate.



2. The integrity 1. As Election 2000 demonstrated, the problems are numerous. I draw your attention to several of the most egregious instances of fraud that were encountered last year, and in other recent elections.

Last November, as reported by The Miami Herald, the votes of a 90-year-old woman and 21-year-old man were among more than 2,000 illegal ballots cast by Florida residents who swore they were eligible to vote, but in fact were not. The woman voted absentee and in person, while the man voted despite a felony drug conviction. These 2,000 illegal ballots were discovered in just 25 of Florida's 67 counties - this in a presidential race won by only 537 ballots in Florida.

These voters cast ballots even though their names were not on precinct voter registration lists, because all they had to do was sign an affirmation swearing they were eligible to vote.

Even though they were supposed to, poll workers never checked to see if these 2,000 people were actually registered. In addition to these 2,000, there were 1,200 instances of convicted Florida felons who no longer had the right to vote, but nevertheless managed to stay on the voting rolls and cast their ballot in the last election. There is also some indication that at least a few people who maintain two residencies cast ballots in two different states, one by absentee and the other in person.

Similarly, in Wisconsin, the Milwaukee Journal Sentinel found that at least 361 felons voted illegally last November 7th, breaking the state law that disqualifies felons from voting until they are off probation and parole. Like Florida, Wisconsin was the site of a very close Bush-Gore contest.

But it doesn't stop with Florida and Wisconsin, and as I suggested, fraud didn't just appear during the 2000 Presidential election.

Just a glance at the past decade shows many examples of electoral fraud. You don't even have to look very closely to find, as I did in my book Dirty Little Secrets: The Persistence of Corruption in American Politics:

Extensive absentee ballot fraud in Alabama.

Hundreds of phony registrations in California.

Nearly 1,000 illegal votes in New Jersey including some by people who were unregistered and others who were dead.

Significant absentee ballot fraud in Philadelphia.

Votes stolen from the elderly and infirm in Texas.

And the list goes on and on.

2. Voter fraud is not limited only to these examples. My strong suspicion - based on scores of investigated and unexplored tips from political observers and interviewees over the years - is that some degree of vote fraud can be found almost everywhere, and serious outbreaks can and do occur in every region of the country.

Whether fraud is Democratic or Republican, or located in the North or the South or the West, the effect on American democracy is similar. While electoral hanky-panky affects the outcome in only a small proportion of elections (mainly in very tight races), one fraudulent ballot is one too many for the integrity of the system and the confidence that the people have in the system.

The need for reform is urgent and clear. Voter turnout in the United States is traditionally too low, and cynicism among citizens too high, to permit the malodorous malady of election fraud to continue unchecked - or to spread.

The first best step is to ensure accurate lists of registered voters. Merely replacing one type of voting machine with another does nothing to address whether the voter is legally eligible and registered.

Just as with other areas of election reform, state action, not federal mandates, is the best fix of the system. I believe states should require that a photo identification card (of any sort) should be produced by each voter at the polls.

Second, voters should be asked at the time of registration to give a number unique to them - a social security number, a driver's license number - that can be prerecorded on the voter list provided each precinct's workers.

Third, every voter should have to sign his name on the voting rolls at the polls so that the signature can be compared to the one on the registration form to see if they match up. This comparison would probably be made only in the event the results of a close election were challenged, although again, the computer technology already exists for instantaneously scrolling, side by side, the poll signature and the registration signature.

Fourth, all potential voters ought to be advised at the polls, whether orally by an elections official or by means of a printed statement of the eligibility requirements for voting and the penalties for fraudulent voting. A similar warning should be prominently featured on all absentee and early-voting/mail-in ballots. These four overlapping safeguards, if adopted by the states, are not too burdensome for voters and poll workers, but they would go a long way toward discouraging fraud at the precinct stations on Election Day.

Fifth, no early-voting/mail-in and absentee ballot should ever be separated from its cover sheet and counted until the voter's signature has been carefully checked against the registration file signatures. Every envelope containing the marked absentee or early-voting/mail-in ballot should also be signed by an adult witness whose address should also be listed.

3. Finally, Mr. Chairman let me say that these regulations, even if adopted universally and followed to the letter, will be insufficient if:

(1) registrars and elections offices are not staffed and funded adequately;

(2) state statutes do not punish fraud severely - major felonies are required, not minor misdemeanors;

(3) law enforcement authorities do not make voter fraud a priority and press for substantial legal penalties against those found violating the fraud statutes; and

(4) the news media do not begin to look for evidence of voter fraud - a probable prerequisite to their finding it. A good first step would be for every news organization to establish and publicize an "election corruption hotline."

The examples I listed earlier, and others throughout the nation make it obvious that the solutions required for voter fraud must necessarily be adapted to each locality's culture and practice. But one imperative unites all the cases: While registration and voting should be as easy as possible, the process should also be as fraud-proof as possible.

As Congress moves to address these and other election reform issues, they must recognize and respect the needs of states and localities for flexibility. No two states are exactly alike—each has unique needs and challenges. While parameters tied to federal funding will provide necessary accountability for fund usage, Congress should stop well short of nationwide mandates on voting systems.

As I noted earlier, we must maximize the full and informed participation of the electorate while still preserving the integrity of our system. One can generally observe that our zealous focus on the full, but not necessarily informed, participation of the electorate may in fact challenge the integrity of our democratic process. Increasing informed participation must be our primary goal. For this reason, my Center for Governmental Studies at the University of Virginia has launched the Youth Leadership Initiative. This program helps schools to improve civic education, and it shows middle and high school students across America the value of informed participation.

Many of you on this committee have supported this program in the past. I applaud you for doing so and encourage you to continue to support the Youth Leadership Initiative and other programs like it that drive young people into our political process.

Informed participation combats fraud both by increasing salience and scrutiny, and by diminishing the proportional impact of fraudulent votes. Clearly, we must do all we can to improve the implementation of our registration and voting procedures. I believe the measures I have discussed today would move us in the right direction. However, I believe strongly that a focus on civic education must also be a part of any serious effort to revive confidence in our democracy.

Thank you Mr. Chairman.



# Securing the Vote

An Analysis of Election Fraud

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# Securing the Vote

An Analysis of Election Fraud

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# Preface

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When the Help America Vote Act (HAVA) was enacted last fall, a new era began in the history of electoral reform. The law provides sweeping guidance to the states on how to overhaul their voting systems and provides new funding for reform measures. Unfortunately, this major step forward has been shadowed by bitter partisan divisions over how best to prevent election fraud. As finally enacted, the new election law contains requirements for verifying the identity of voters that many critics worry will create obstacles to full voter participation.

As the states begin to implement HAVA, and as they consider other important electoral reforms such as election day registration, many claims and counterclaims are being heard about the problem of election fraud. In the absence of strong empirical research, anecdotal stories too often drive these debates. This report represents an important contribution to our understanding of the problem of election fraud. Based on an extensive research effort, it is the most in-depth examination of election fraud issues to date. The research, led by Barnard College professor Lori Minnite, used several approaches to analyzing the incidence of election fraud nationwide, as well as in a handful of major states. The report also examines claims about whether various electoral reforms—such as the National Voter Registration Act, mail-in voting, and election day registration—have led to increased fraud.

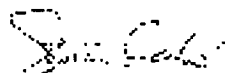
The overall conclusion of the report is that the incidence of election fraud in the United States is low and that fraud has had a minimal impact on electoral outcomes. The report also finds that the important electoral reforms of recent years have not led to increased election fraud and, in some cases, have helped reduce the potential for fraud. More generally, the report observes that the conditions that have historically led to election fraud have been on the decline for many years. Technological improvements in voting technology, stronger enforcement efforts, and changes in election administration can further reduce the likelihood of fraud.

Based upon these research findings, we strongly believe that the states should work to make registering and voting as accessible as possible to all Americans and can feel confident in doing so without increasing the chances of fraud. Dēmos is proud to be part of an energetic national network of reform groups that are seeking to maximize electoral participation.

We hope that public officials, reform advocates, and others will find this report to be a useful resource. Please do not hesitate to contact Dēmos for further information or assistance.



Miles Rapoport  
President, Dēmos



Steven Carbó  
Director, Democracy Program

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# Executive Summary

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Election fraud is a hotly contested topic in public debates about electoral reform. Debates over election fraud are not new. They have been a staple part of discussions about elections and democracy in the United States for more than a century. But in recent years, issues of fraud and voting integrity have increasingly come to the forefront of public policy discussions over the health of America's democracy.

Since the 2000 election, a historic effort has been underway to strengthen voting systems across the 50 U.S. states and also to address obstacles to broader electoral participation. However, at both the federal and state level, efforts to move forward a reform agenda have frequently been complicated by heated debates over issues of election fraud and the integrity of voting systems.

In Congress, disagreement over voter identification provisions in federal election reform legislation resulted in an acrimonious legislative process that delayed passage of the Help America Vote Act.

The 2002 election further underscored the salience of the issue in U.S. electoral politics. With control of the U.S. Senate hanging on the outcome of at least eight Senate races too close to call, the integrity of all ballots was viewed as a matter of grave importance. Allegations of fraudulent registration and balloting, as well as voter intimidation, were made in a number of states.

Opponents of efforts to make voting easier and more accessible often cite the potential for election fraud as a reason to oppose reforms, such as election day registration, aimed at addressing one of the most challenging issues facing our electoral system: low voter turnout.

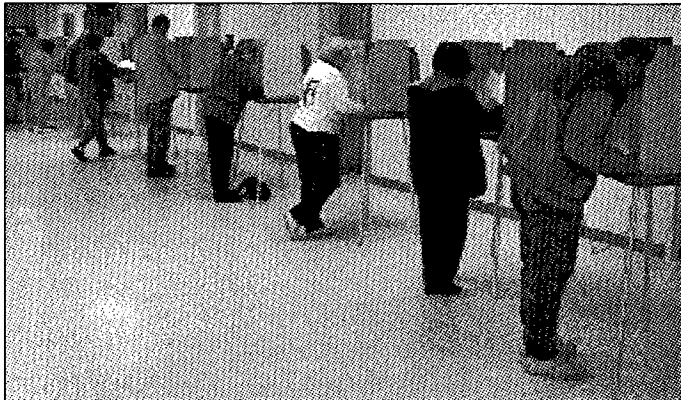
As federal and state officials consider future reform efforts, as well as the merits of existing reforms, and begin implementing the new Help America Vote Act, there is an acute need for better information and analysis about election fraud issues.

Yet to date *there have been no major studies of election fraud in the United States*. Too often, hearsay and anecdotal stories are put forth as fact during critical policy deliberations. This research report provides a new foundation of information and analysis to inform public discussions about the integrity of America's electoral system.

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## Approach

Election fraud is defined in this report as the corruption of the process by which votes are cast and counted. Fraud may involve wrongdoing by either individual voters or, as is more commonly the case, by organized groups such as campaigns or political parties. This report examines both kinds of fraud. Drawing on a wide range of sources, we address the following questions: How often does election fraud occur? How serious a problem is fraud, compared



to other problems with the election process, such as those that occurred in Florida in the 2000 election? What kinds of voting methods are most vulnerable to corruption? What administrative, technological, and legal steps can be taken to reduce the chances of election fraud while also expanding the opportunities to register and vote?

## Central Findings

Available evidence suggests that the incidence of election fraud is minimal across the 50 U.S. states and rarely affects election outcomes.

- Election officials generally do a very good job of protecting against fraud in the system and ensuring that election outcomes fairly reflect the intentions of voters.
- Conditions that give rise to election fraud have steadily declined over the last century as a result of weakened political parties, strengthened election administration, and improved voting technology.
- There is little available evidence that election reforms such as the National Voter Registration Act, election day registration, and mail-in voting have resulted in increases in election fraud.

- The disenfranchisement of voters through antiquated voting systems, system error, and improper management of registration databases, as occurred in Florida in the 2000 election, is a far bigger problem than traditional forms of election fraud.

Efforts to make it easier to register and vote are compatible with the prevention of election fraud. Fears of election fraud should not inhibit electoral reform efforts aimed at addressing the problem of low voter participation.

- States can reduce the potential for fraud by integrating and computerizing state voter registration records, as mandated by the new federal election law, the Help America Vote Act. These same reforms also reduce problems at the polls and make registration and voting easier.
- Reduced partisanship among election officials decreases the chances of fraud and also helps create more professionalized election administration.
- Election day registration (EDR), which has been proven to increase voter participation, also reduces the possibility for fraud as more registrations are handled by election officials.
- Vigorous signature-matching procedures can prevent fraud under mail-in voting election systems.

Best practices in select states show how to prevent fraud while keeping voting accessible.

- Ten states have very effective unified, computerized statewide records that are checked against other records, such as state death records and the National Change of Address database. Under the Help America Vote Act, all states must now develop similar registration databases, which will go a long way toward preventing opportunities to commit fraud.
- A number of states have voter identification requirements that allow a wide range of voter I.D., which can be used when implementing HAVA's I.D. requirements for certain first-time voters.
- A few states have made strides toward reducing partisan control of elections by having bipartisan state elections boards oversee elections. An even better practice would be the adoption of nonpartisan state elections boards.

## Policy Recommendations

- **Upgrade technology in the states.** The new Help America Vote Act, which mandates the creation of state-wide computerized registration systems and also provides states with money to upgrade voting machines, should be fully funded and effectively implemented in a uniform and nondiscriminatory manner. It is especially important that new state-of-the-art registration systems allow for interagency networking (for prompt and proper transmittal of registration information under NVRA) and local polling place access to systems (through laptops or other means).
- **Implement I.D. requirements that do not burden voters.** The new federal election law puts undue burdens on voters to prove their identity at the polls. The law should be modified to expand the list of acceptable identifying documents and to allow state or local officials discretion to incorporate or expand forms of identification currently in use. State officials should ensure the equal and non-discriminatory application of requirements.
- **Reduce partisan control of elections.** Important election administration positions should only be filled by nonpartisan professionals. Regular training and exchanges with elections administrators from other jurisdictions can increase officials' commitment to the professional administration of the democratic process itself, as opposed to party loyalty.
- **Strengthen enforcement.** The federal and state criminal penalties for election fraud are significant and serve as a powerful deterrent against fraud. All states should ensure adequate funding and authority for offices responsible for detecting and prosecuting fraud. In addition, all states should track allegations of election fraud, as well as the outcomes of criminal investigations, and make this data available to the public.
- **Establish election day registration (EDR).** EDR usually requires voter identification and authorization in person before a trained election worker, which reduces the opportunity for registration error or fraud.

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# I. Election Fraud in the United States

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## An Overview

Since the 2000 election, a historic effort has been underway to strengthen voting systems across the 50 U.S. states and to address obstacles to broader electoral participation. At both the federal and state level, however, efforts to move forward a reform agenda have frequently been complicated by heated debates over issues of election fraud and the integrity of voting systems. In Congress, disagreement over voter identification provisions in federal election reform legislation resulted in an acrimonious legislative process that delayed passage of the Help America Vote Act. Similarly emotional debates over I.D. provisions have occurred in the states, and these debates are likely to heat up as state governments begin work to implement the new federal election law.

The 2002 election further underscored the salience of the issue in U.S. electoral politics. With control of the U.S. Senate hanging on the outcome of at least eight Senate races that were too close to call, the integrity of all ballots was viewed as a matter of grave importance. In the wake of the election, fraudulent registrations and absentee balloting were alleged to have occurred in a hotly contested Senate race in South Dakota<sup>1</sup> and elsewhere. Allegations of voter intimidation were made in Arkansas and other states. Meanwhile, the specter of fraud played a major role in the defeat of ballot initiatives in California and Colorado that would have enacted election day registration into law, with opponents of the initiatives arguing that election day registration would increase the potential for fraud.<sup>2</sup>

Debates over election fraud are not new. They have been a staple of discussions about elections and democracy in the United States for more than a century. But in recent years, issues of fraud and voting integrity have increasingly come to the forefront of public policy discussions over the health of America's democracy. Even before the 2000 election, consistently low voter turnout rates and obstacles to participation motivated various efforts to increase voter registration and turnout—efforts that in turn raised questions about voting integrity. Critics of reforms—such as the institution of mail-in voting in Oregon, the loosening of guidelines for absentee ballot use, and, most notably, the National Voter Registration Act of 1993 (the “motor voter” act)—have charged that

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## While the issue of fraud is raised continually in discussions of election reform, to date there have been no major studies of election fraud in the United States.

these reforms increase the chances of voter fraud. Other frequently proposed reforms, such as election day registration, have been criticized on the same grounds.

As federal and state officials consider future reform efforts, as well as the merits of existing reforms, and begin implementing the new Help America Vote Act, there is an acute need for better information and analysis about election fraud issues. While the issue of fraud is raised continually in discussions of election reform, to date *there have been no major studies of election fraud in the United States*. Too often in this area, hearsay and anecdotal information are put forth as fact in important public policy debates. Many key questions about fraud remain unanswered, including: How often does election fraud occur? How serious a problem is fraud compared with other problems with the election process, such as those that occurred in Florida in the 2000 election? What kinds of voting methods are most vulnerable to corruption? What administrative, technological, and legal steps can be taken to reduce the chances of election fraud while also expanding opportunities to register and vote? This report seeks to provide some initial answers to these and other vital questions.

### What Is Fraud and Why Does It Matter?

Elections are the mechanisms by which people choose their representatives. Given that the integrity of this process is central to American democracy, there can be no compromise on the need for fair elections determined without the taint of fraud—whether on the part of voters, political parties, election administrators, or others.

A general definition of election fraud is the corruption of the process of casting and counting votes. Fraud may involve wrongdoing by either individual voters or, as is more often the case, by organized groups such as campaigns or political parties. This report focuses on fraud as it has traditionally been defined, and specifically on two common forms of fraud:

**Individual Fraud.** Voting in America is a two-stage process. In nearly all states, an eligible citizen who wants to vote must first register using his or her permanent home address. After successfully completing a voter registration application, the voter goes to the polls—or, in Oregon, receives voting materials through the mail—and casts his or her ballot. Voters may violate laws governing the registration process by misrepresenting themselves as eligible when they are not, or submit-

ting registration applications for fictitious people, dead people, or real people who can be ineligible or eligible to vote and who may or may not know of or consent to the fraud. Second, voters may commit fraud at the point of voting. A voter may vote multiple times using the name or names of another voter. In the case of a vote cast using the name of a real person, that person may or may not be eligible to vote and may or may not consent to the fraud. Voters consenting to the appropriation of their vote by another may do so because they do not plan to vote, have little interest in voting, or receive some kind of material benefit—a practice called vote buying.

**Organized Fraud.** Fraud is easier for organized groups to commit than it is for individual voters because such groups have resources and/or direct access to election machinery. In all but the most extraordinary of cases—for instance, when an election victory depends on a handful of votes—fraud must be committed through a conspiracy to have an impact on the outcome of an election. Existing systems for registration and voting provide considerable opportunity for organized fraud. Such fraud can take several forms. First, political parties, campaign organizations, or other groups can perpetrate organized fraud through filling out fraudulent absentee or mail-in ballots. Second, local election administrators or poll workers can commit clear-cut fraud by not counting or destroying ballots, allowing votes that should have been barred, and tampering with ballots. Third, interested groups can organize large-scale vote buying—for example, providing incentives for otherwise uninterested voters to go to the polls and vote in a certain way—or coordinate efforts to help large numbers of voters vote more than once.

Beyond these traditional conceptions of fraud, many people are concerned about official efforts to corrupt the election process or erect barriers to participation. For example, election officials can deliberately corrupt the election process by manipulating registration databases to remove the names of people likely to vote in a certain way so that these people are unable to cast ballots when they arrive at polling places. Corruption of this kind was widely alleged to have taken place in Florida and other states during the 2000 election. Deliberate disenfranchisement of voters may also occur because of other kinds of official misconduct: turning away voters already in line when polls close; intimidating or misinforming voters when they arrive the polls; producing misleading or poorly designed ballots; failing to provide bilingual

voting materials, as required by law; failing to upgrade or repair antiquated voting systems in specific election districts; and by other means.

Overall, the disenfranchisement of voters through antiquated voting systems, errors, mismanagement of registration bases, and intimidation or harassment is a far bigger problem today than traditional forms of election fraud. The problems in Florida in 2000, which determined the outcome of a presidential election, are dramatic evidence of this



point. These problems have been analyzed and highlighted in a number of studies and reports over the past two years.<sup>3</sup> Civil rights advocates have been particularly active in challenging official forms of election malfeasance as violating various provisions of the Voting Rights Act. This report does not focus on these issues. Rather, it looks exclusively at election fraud as the problem has commonly been discussed over the past century.

## Research Methodology

The administration of elections for all public offices in the United States, from county dogcatcher to the U.S. presidency, is controlled by state and local election officials. This makes election procedures radically different from state to state and, in many places, from county to county. Given this diffused reality, it is difficult to assess the overall integrity of U.S. election systems. While no other aspect of American politics has received as much scrutiny over the last fifty years as the behavior of the American electorate, the one area in this vast field of inquiry that has received very little attention by

scholars is election fraud. Remarkably, there are no definitive academic studies of election fraud in the contemporary period, nor are there studies of fraud by government agencies concerned with the administration of elections in this country.

The difficulty of gathering data on fraud explains much of this vacuum in analysis. Like many of the rules governing American elections, the rules dealing with election fraud and the state and local agencies assigned the responsibility of handling fraud claims vary widely from state to state and, in some cases, from locality to locality. In many states the secretary of state is the chief elections officer, and his or her office is the state office primarily responsible for maintaining election records and receiving complaints of fraud. In other states, complaints of election fraud are first received and investigated by the state attorney general. In still other states, neither the secretary of state nor the attorney general maintains voting and elections records or handles any matters related to fraud at all. Instead, those responsibilities are assigned to a state board of elections or other elections agency. Since so few fraud claims evidence criminal intent, law enforcement agencies are only occasionally involved in prosecuting cases. Finally, a number of states, especially those lacking a centralized voter registration or elections management system, allocate the responsibility for receiving and investigating complaints of election fraud to local or county boards of elections or district attorneys, with little to no responsibility or accountability vested in any state agency.

While the analysis of this report is limited by the lack of comprehensive and accessible statistical data on election fraud, the authors were able to develop an in-depth analysis of election fraud in the United States today by drawing on a wide range of sources.

- First, we conducted an analysis of the incidence of election fraud from 1992 to 2002 in 12 states that collectively represent about half of the electorate and are drawn from all of the major regions of the country. These states include: Alabama, California, Florida, Georgia, Illinois, Minnesota, Mississippi, New York, Oregon, Pennsylvania, Texas, and Wisconsin. For each of these states, we conducted Lexis-Nexis searches of news databases, as well as the statutory and case law for evidence of a record of prosecution of voter fraud. We also contacted selected state officials, including attorneys general and secretaries of state.

## Overall, the disenfranchisement of voters through errors, antiquated voting systems, and mismanagement of registration databases is a far bigger problem today than traditional forms of election fraud.

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- Second, we conducted a complete Nexis search on voter fraud throughout the United States since the 2000 election, supplemented by searches related to several high-profile cases of election fraud that occurred before 2000. The search produced close to 2,000 references, each of which was thoroughly examined.
- Third, we surveyed the academic literature, a wide variety of government documents, congressional testimony and research reports, law journal articles, and other sources on election reform from professional, research, and reform organizations.
- Fourth, we analyzed in considerable depth some of the highest-profile cases of real or alleged fraud in the United States over the past decade, including notable cases in Missouri, California, and Florida.
- Fifth, we conducted an extensive analysis of fraud issues that surround particular voting methods or reforms, such as the NVRA, election day registration, and absentee balloting. Drawing on state and federal reports, as well as news and legal databases, we evaluated the charges often made about fraud and these reforms.
- Finally, we examined “best practices” in the states aimed at balancing fraud prevention with increased opportunities for voting.

### A Framework for Understanding Fraud

While heated debates over election fraud have been going on for more than a century, the circumstances that surround voting and elections have changed dramatically over time and continue to evolve rapidly today. Elections remain as contested as ever, but the conditions conducive to election fraud have steadily declined. This trend is likely to continue in the foreseeable future. Three factors account for this change: declining political parties and machines, strengthened election administration, and improved voting technology. While some level of fraud, as traditionally defined, is likely to exist within any electoral system, current trends suggest that it is more possible than ever to further open

the process and facilitate voting without bringing about greater fraud. Exaggerated fears of fraud should not stand as an obstacle to reforms aimed at expanding participation.

**Declining Political Parties.** Historically, local political parties have played an important role in perpetrating election fraud. During the late 19th century and well into the 20th century, a key motive for fraud was the immense local patronage benefits afforded to winning parties. Under these conditions, parties, patronage, and fraud were intertwined. Election fraud was perpetrated by partisans acting together to steal elections. Local party organizations competed for voters and controlled votes through patronage. When elections were fully controlled by local party organizations, ballots were easily destroyed, miscounted, or falsely multiplied, and voters could be strongly influenced by bosses or local elites to vote in specific ways. Typically, cases of election fraud involved organized efforts by partisan election officials, party leaders, and politicians rather than by the voters themselves.<sup>4</sup> Today, local party organizations are relatively weak to nonexistent, in part because their access to patronage has all but disappeared. They no longer control lucrative franchises, run police and fire departments, set utility rates, or build large-scale public works. However, in many states key election officials are openly partisan and may also play an active role in partisan political campaigns, a conflict of interest that increases the potential for fraud.

**Strengthened Election Administration.** At the same time that political parties have weakened, modern election administration has become more sophisticated and fraud has become more difficult. The reforms put in place in the late 19th century and early 20th century required voters to register in advance of elections and election authorities to keep registration records. While some of these reforms reduced the opportunities for fraud, they also had a negative impact on democratic participation, making voting especially more difficult for poor and working-class people.<sup>5</sup> The NVRA, as well as the advent of election day registration in six states, has helped to reduce the obstacles to voting that accompanied voter registration requirements. In the wake of the 2000 election, considerable attention has been focused on ways to improve election administration to strengthen the integrity of the election process; a number of reform mea-



asures have already been passed in the states. Particular attention has been given to the need to create statewide computerization registration systems in all states, as now required by the Help America Vote Act. As further reforms are enacted, facilitated by new federal monies, election administration will continue to be strengthened as a bulwark against fraud. (See Section IV.)

**Improved Voting Technology.** Steadily improving voting technology has also served to reduce opportunities for election fraud, a trend that is likely to accelerate in the near future. Despite the many problems with voting systems that were spotlighted by the 2000 election, U.S. voting systems as a whole are substantially more reliable and ensure higher levels of voting integrity than was the case even a few decades ago. Since the 2000 election, a number of states have already moved to implement major technology upgrades in voting technology. Additional upgrades will certainly occur as federal funds for such improvements flow to the states as a result of the Help America Vote Act.

**Fewer Trade-Offs: Easier Balloting, Secure Balloting.** Some level of fraud has always been seen as inevitable and acceptable in the U.S. electoral system. In historical terms, there is less and less opportunity to commit fraud today in ways likely to decide elections. This makes it more possible than ever to facilitate voting without trading off the goal of secure elections. As this report shows, steps taken in the past decade to open the process have not resulted in increased fraud.

## Election Fraud Today

Based on the research and analysis for this report, we offer several conclusions about election fraud in America today:

- Election fraud appears to be very rare in the 12 states examined. Legal and news records turned up little evidence of significant fraud in these states or any indication that fraud is more than a minor problem. Interviews with state officials further confirmed this impression. An authoritative study undertaken in the largest U.S. state, California, by CalTech professor R. Michael Alvarez found little incidence of fraud during the period 1994–2001.<sup>6</sup>

- Notable election reforms of the past decade—such as the NVRA, more permissive absentee balloting rules, all mail-in voting in Oregon, and the enactment of election day registration in three new states—do not appear to have resulted in any significant increase in voter fraud. (See Section III.)
- Analysis of several cases of election fraud that have received significant attention in recent years suggests that some of the most notable allegations of fraud have proved to be baseless. (See Appendix.) While the 1997 primary mayoral election in Miami, Florida, was the most egregious fraud case in recent history, there are other noted cases where charges of significant vote fraud have been disproved, such as the 1996 Dornan/Sanchez contest for the House of Representatives in Orange County, California. There are yet other cases, such as the 2000 election in St. Louis, Missouri, in which politicians have made great hay, but charges of widespread fraud have not been substantiated.

The low level of election fraud in the United States today does not preclude the need for continued vigilance to ensure the integrity of election systems. But it does suggest that reforms aimed at simplifying registration and voting can be implemented without risking a significant corrupting of elections by fraud. Even if only partly implemented, the many technological and administrative reforms recommended by national and state commissions since the 2000 election, as well as other best practices discussed in this report, can go a long way toward enhancing election integrity. (See Section IV.) These same reforms can facilitate programs, such as election day registration, that are intended to make voting easier.

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## II. Election Fraud and the Law

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The opportunity to commit election fraud is constrained by a matrix of state and federal laws. Election fraud is a serious crime that can be prosecuted at the federal and state levels, where penalties carry fines, lengthy prison terms, and, in the case of illegal voting by non-citizens, deportation.<sup>7</sup> However, the effectiveness of laws depends on their enforcement and implementation.

### State Laws and Enforcement

The Constitution grants states broad jurisdiction over the elective process, though the authority of the states in these matters is not absolute.<sup>8</sup> The Fifteenth, Nineteenth, and Twenty-sixth Amendments prohibit states from restricting the franchise based on race or color, gender, or minimum age (18 years) of the voter, respectively. The Supreme Court has found that Congress is within its constitutional authority to pass laws governing the timing of federal elections, voter registration, access to the ballot for the elderly and disabled, and, perhaps most important, in the area of prohibitions against racially discriminatory voting practices.<sup>9</sup> However, within this framework, the states are granted wide powers to qualify voters and establish rules for conducting federal, state and local elections.

Within this framework for regulating the electoral process, the states have exhibited a full flowering of differences in the manner in which they administer elections. State election laws governing voting vary in their level of specificity, with many states granting localities considerable discretion in the way they run elections. For example, Oklahoma has standard election day procedures and a single voter registration and election management system, and it uses only one type of voting machine. In contrast, before a recent reform law was enacted, Pennsylvania's election law provided few statewide guidelines and near-autonomy to the state's 67 counties in the matter of election day procedures. Pennsylvania had 67 different election systems using a variety of voting machines.<sup>10</sup>

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## On election day in South Dakota, where the biggest story of alleged voter fraud in the 2002 election cycle took place, the statewide phone number set up by federal officials to report any voting irregularities received only one call.

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Federalism, and the authority over election procedures granted to states, also explains why laws criminalizing fraud differ across the states. All states have laws governing election crime. However, because of the historically parochial manner in which states administer elections, there is wide variability in how they handle the problem of criminal election fraud. All states prohibit voting by noncitizens (although some localities permit such voting in local elections); most states have various restrictions that bar voting by individuals convicted of felonies,<sup>11</sup> as well those who have been ruled mentally incompetent by a court. Most states have prohibitions against falsifying voter registration information, voting more than once in an election, impersonating another voter, intimidating or coercing voters, and bribing voters or buying votes. Most of these crimes are classified as felonies and carry fines and prison sentences. In some states, a person convicted of voter fraud can permanently lose his or her right to vote.

State election laws allocate the responsibility for ensuring fair elections to various agencies and officials, and it is their responsibility to administer and monitor the electoral process to ensure that it is free of corruption. Local election and law enforcement officials also play a role in enforcing election laws, although the familiarity of these officials with the ins and outs of election laws and the lines of enforcement authority varies considerably within states. While it is incumbent upon government officials to bring criminal charges where appropriate, all states also empower private citizens and organizations to bring civil suits to contest election results.<sup>12</sup> Likewise, the NVRA provides a private right of action to any person aggrieved by a violation of the Act.<sup>13</sup>

### Federal Laws and Enforcement

Despite state jurisdiction over election administration, there is a role for the federal government in prosecuting voter fraud when federal interests are at stake.

Historically, the federal role has extended to ensuring elections that are free of corruption and in eliminating discrimination against minority voters protected by the Voting Rights Act of 1965, as amended. The enforcement of the Voting Rights Act concerns civil offenses and is handled by

the Justice Department's Civil Division. Election-related crimes are handled by the Public Integrity Section of the Justice Department's Criminal Division. A manual for federal prosecutors of election crimes defines election fraud as "conduct that corrupts the process by which ballots are obtained, marked, or tabulated; the process by which election results are canvassed and certified; or the process by which voters are registered."<sup>14</sup>

Federal election law is an amalgamation of statutes. Some of them expressly apply to elections and voting, and others, such as statutes prohibiting mail fraud, have been used to prevent and punish voter fraud. Most federal statutes apply only to federal or mixed federal/state and local elections. In order for election crime to rise to the level of federal prosecution, "there must be some *substantive* irregularity in the voting act ... which has the potential to taint the election itself."<sup>15</sup> The Supreme Court has found a constitutionally guaranteed right to vote and Congress has passed legislation to protect this most fundamental of all rights. There remains debate, however, over whether or not the Constitution guarantees a right to vote in purely state and local contests—here the judicial record is inconsistent. Federal prosecutors, therefore, avoid investigating fraud allegedly committed in these elections.

Federal election law can be divided into two categories: *anti-intimidation* laws and *anti-trafficking* laws. Anti-intimidation laws make it a felony to conspire to "injure, oppress, threaten, or intimidate any inhabitant of any State, Territory, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States or because of his having exercised the same."<sup>16</sup> They also provide for criminal punishment of anyone who deprives another of federally secured rights to vote. Anti-trafficking laws, on the other hand, restrict a citizen's right to vote by prohibiting the offering, making, soliciting, or receiving of payments in return for voting or withholding a vote. Penalties include a fine of up to \$10,000 and five years imprisonment. The Justice Department, as a matter of practice, does not prosecute voters whose only involvement in voter fraud is in compromising their votes, nor does it prosecute isolated instances of vote buying, because "isolated incidents do not implicate federal interests sufficiently" to warrant federal interference in what is traditionally a state

function. It appears that the majority of vote buying schemes that are prosecuted involve small amounts of money and occur in low-income neighborhoods.<sup>17</sup>

On October 1, 2002, U.S. Attorney General John Ashcroft announced the Voting Access and Integrity Initiative, aimed at enhancing the Department of Justice’s “ability to deter discrimination and election fraud, and ... to prosecute violators vigorously whenever and wherever these offenses occur.”<sup>18</sup> The initiative



involved the creation of task forces of district election officers, assistant U.S. attorneys appointed by each of the U.S. Attorneys to serve in this new capacity for the 2002–2004 period, and FBI officials whose job it is was to coordinate “on-the-ground investigative and prosecutorial coordination” with state and local elections and law enforcement personnel to “deter and detect discrimination, prevent elec-

toral corruption, and bring violators to justice.”<sup>19</sup> Federal monitoring of elections has been around since the Reconstruction period, but most often it has been directed toward protecting the voting rights of minority groups at the polls. What is significant about the Justice Department’s involvement in the recent midterm elections is the linking of voting rights with protection from corruption of the electoral process by voter fraud, reflecting a new view that voter fraud deserves the same level of scrutiny from federal law enforcement officials historically required to guard against racial discrimination in voting. During the month of October 2002, the district election officers opened 16 cases into allegations of voter fraud.<sup>20</sup> Federal officials do not comment on the status of open investigations, but it is of interest to note that on election day in South Dakota, where the biggest story of alleged voter fraud in the 2002 election cycle took place, the statewide phone number set up by federal officials to report any voting irregularities received only one call.<sup>21</sup>

# III. The Impact of Election Reforms on Voting Integrity

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Proposals for election reform aimed at broadening participation have historically generated widespread concerns about increased fraud. In this section, we analyze issues of fraud in relation to three major reforms: the National Voter Registration Act, voting by mail, and election day registration. Examining available evidence, including federal and state studies, we discuss how these reforms have affected opportunities to commit election fraud.

## National Voter Registration Act of 1993

The NVRA, also known as the “motor voter” law, established national standards governing voter registration and voter roll purging. The law simplified voter registration by permitting mail-in registration; by increasing the locations where voters could register to include driver’s license offices, military recruiting offices, and welfare and other public agencies; and by requiring these agencies to send registration cards to county registrars. It also established safeguards for voters who move within their jurisdiction.

The NVRA has shifted some of the burden of expanding voter registration from voters to states and localities by requiring states and localities to comply with new voter list purging and reporting standards. As such, the act has presented challenges for keeping voter rolls up-to-date. Prior to the NVRA, states and localities established their own standards for purging voter files, and some removed voters from voting rolls for failure to vote. NVRA requires states to keep voter rolls up-to-date, but restricts their ability to purge voters, permitting purges only upon a voter’s request, death, felony conviction, mental incompetence, or upon relocation, provided the voter verifies the address change in writing.<sup>22</sup>

Despite a slow start, the NVRA is proving very successful in meeting its purpose of increasing the number of eligible citizens who register to vote in federal elections. Registration rolls have grown nationally by nearly 30 percent since its passage. Project Vote recently estimated that NVRA is responsible for more than 70 million new voter

## In their responses to the most recent FEC inquiries about the NVRA, no states raised the issue of voter fraud among their implementation problems.

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registrations.<sup>23</sup> Along with this increase in access to the franchise, however, has come the argument that greater access inevitably leads to more voter fraud. For example, Senator Christopher S. “Kit” Bond (R-Mo.) charged in a *Washington Post* opinion piece that the NVRA “not only caused sloppy voter rolls, it actually facilitated organized vote fraud” in the 2000 election in Missouri.<sup>24</sup> John Samples, the director of the Center for Responsive Government at the conservative Cato Institute, recently testified before the Senate Rules and Administration Committee that the NVRA has encouraged lax registration requirements (through the use of mail-in registration forms) that “have left the voter rolls in a shambles in many states,” breeding mistrust in the electoral process and “foment[ing] ‘the appearance of corruption,’ that has, fairly or not, done real damage to American government.” Because the NVRA “has made it difficult if not impossible to maintain clean registration rolls,” Samples said, the NVRA deserves the blame for part of the decline in trust in government observed by political scientists over the past four decades.<sup>25</sup> *The Wall Street Journal* wrote no fewer than four editorials in 2001 claiming voter fraud is out of control and lambasting the NVRA.<sup>26</sup>

One way that the NVRA has increased access to voter registration has been by increasing the number of physical sites where citizens may submit voter registration forms to include motor vehicle agencies and state agencies administering services to the indigent, elderly, and disabled. The NVRA also requires state officials at these sites to inform clients about voter registration opportunities. People who visit motor vehicle agencies, welfare offices, and the like more than once therefore have the opportunity to register to vote multiple times. Moreover, multiple registrations can occur if a registrant submits updated information using a new application form. Local election officials must spend time and resources verifying new registration applications for duplication. In fact, a recent GAO report on election administration found that 99 percent of voting jurisdictions nationwide checked for multiple registrations.<sup>27</sup> On the other hand, other election officials told the GAO they supported the motor vehicle authorities’ policy of encouraging citizens to reapply if they had any reason to believe they might not be registered.

Critics of the NVRA’s restrictions on list purges (and the costs now associated with purging) point to the considerable amount of “deadwood,” or ineligible voters, on voting rolls. Deadwood is presumed to be fodder for voter fraud—names of voters no longer living in a jurisdiction, dead, or otherwise ineligible to vote but available for identity theft by those who would commit fraud by voting in their name. Indeed, as the states have come into compliance with the NVRA’s list maintenance and anti-purging requirements, the number of “inactive” registrants has significantly increased, from 1.7 million in 1994 to more than 18 million in 2000, or 11 percent of the total number of registered voters.<sup>28</sup>

The NVRA permits the maintenance of inactive lists, or lists of voters who have failed to respond to an address verification notice sent by the voter registrar confirming a change of address. Inactive lists represent the churning of voter records that results from combining a voter registration system tied to territorially based eligibility criteria with high voter mobility.<sup>29</sup> Voters do not stay on inactive lists indefinitely; they may be deleted from inactive lists after failing to vote in two successive federal elections. In fact, many of the names of inactive voters on the current rolls will be deleted from the lists after the 2002 election.<sup>30</sup> “Inactive” voters, therefore, may be left on such lists for as little as two and a half years before they are purged entirely from the rolls. Contrary to popular opinion, this represents a *decrease* in the length of time a voter can remain inactive before being deleted entirely from the rolls in about half of the 40 states that utilized the purge for failure to vote prior to the enactment of the NVRA.<sup>31</sup> Moreover, the new requirements permit deletions from the rolls in eight states that did not purge for nonvoting before implementing the NVRA.<sup>32</sup> In the 1999–2000 cycle, five of those states purged 1,888,795 names from their new inactive lists—names that could have remained on state and local voter registries prior to 1993.<sup>33</sup> They removed an additional 719,761 voters from their active lists. In sum, the NVRA is responsible for significantly tightening up, not loosening, list maintenance requirements for deadwood in many states.

Another problem with the argument that an increase in the number of inactive registered voters opens the door to voter fraud is a misunderstanding of how states and localities manage those lists on election day. Only about half the states covered by the NVRA even allow inactive voters to vote on election day. When inactive voters are permitted to vote, it is

usually by affidavit or through the use of some form of provisional ballot subject to further verification of such voters' qualifications, which by no means guarantees a provisional vote will be counted. A number of high profile cases of voter fraud involving the manipulation of "deadwood" voter registration records, mostly through absentee ballot fraud, have given critics' arguments some weight. But mismanagement of voter registration lists involving the erroneous removal of voters from active lists used at the polls is a more significant problem. It emerged in the 2000 presidential election and was compounded by the failure of election officials to provide opportunities for those voters to vote, as mandated by the NVRA's fail-safe provisions.<sup>34</sup> (Under the new federal election law, all states must provide voters with the opportunity to cast provisional ballots.)

In its most recent report to Congress on the impact of the NVRA on election administration in federal elections, the Federal Elections Commission noted an increasing effort by the states to maintain accurate voter registration lists. While the NVRA permits states latitude in designing list maintenance programs that reflect local conditions and needs, most of the 12 states reporting improvements in list maintenance managed these improvements through upgraded statewide computer information systems. Improvements also came about through enhanced networking between localities supervising the registration process and state agencies generating records related to voter list management—for example, death and criminal conviction records. A number of states are leading the way in the use of computer technology to clean the voter registration lists. Oklahoma now requires voters to provide the last four digits of their social security number to help identify duplicate registrations, and North Carolina has introduced a barcode-scanning technology that automatically assigns voter status based on returned mail.

A number of states initially resisted the implementation of the NVRA by challenging the legislation's constitution-



ality and raising concerns about voter fraud. None of the federal courts hearing the challenges found the evidence of fraud convincing or the concerns legitimate.<sup>35</sup> Today, states reporting problems in maintaining accurate voter registration lists complain mostly about the high cost of complying with mailings under state implementation of the NVRA. In their responses to the most recent FEC inquiries about the NVRA, no states raised the issue of voter fraud among their implementation problems.

Properly implemented and adequately funded, the NVRA helps guard against the possibility of voter fraud. The NVRA requires the states to clean their voter registration rolls by deleting voters who have moved out of the jurisdiction or have died. It requires voters to sign their names attesting to their eligibility to vote under penalty of perjury, and deportation for noncitizens. The NVRA does not prohibit states from requiring mail-in registrants to vote in person the first time they vote, nor does it prohibit states from checking individuals' identification prior to registration, as some critics of the NVRA have alleged.<sup>36</sup> Finally, the NVRA strengthens enforcement provisions against fraud.<sup>37</sup>

## Voting By Mail

Mail-in voting is proving to be an increasingly popular method of voting in the United States. As a proportion of total votes cast, the use of mail-in or absentee ballots doubled between 1970 and 1990, and then doubled again over the last decade, so that fully 14 percent of all ballots cast nationwide in 2000 were cast by absentee ballot.<sup>38</sup> This represents an increase of approximately 4.2 million absentee votes cast over the previous presidential election. This increase in mail-in voting has led to concerns about the opportunities that exist for election fraud under such arrangements. Significant fraud in the 1997 Miami mayoral race—perpetrated using absentee ballots—helped to amplify these concerns.

All states and the District of Columbia permit mail-in absentee voting but differ on the rules that qualify registered voters to vote absentee.<sup>39</sup> With the exception of Maine and Wisconsin, all of the states in the midwestern, southern, and eastern half of the country require voters to provide a reason or excuse for why they cannot vote in person on election day. All the rest of the states, save Texas, Utah, and South Dakota, allow for no-excuse absentee voting. Where,

## As a proportion of total votes cast, the use of mail-in or absentee ballots doubled between 1970 and 1990, and then doubled again over the last decade.

when, and how registered voters apply for absentee ballots differ across the states, with the eastern and southern states generally more restrictive in their rules.

The states also differ widely in the manner in which they process absentee ballot applications, such as in deadlines for filing applications. And they differ in the level of assistance provided by election officials to absentee applicants. Differences also exist across states in the manner in which incomplete, illegible or confusing applications are reviewed and handled. Some states aggressively pursue clarification in order to qualify the application, and others fail even to notify applicants when there are problems with their forms. A number of states, such as Oklahoma and Texas, require that absentee ballots only be returned by mail; others, such as New York, allow the voter to return the ballot in person. Still other states, such as California, Michigan, and Illinois, allow a family member to return another's absentee ballot on election day or, in California's case, during the week before the election. Variations in state policies continue to carry over to the manner in which ballots are counted once election officials receive them. One-third of the states, for example, require notarization or witnessing of voter signatures on absentee ballots; others do not. Cut-off dates and times for submitting absentee ballots differ, as does the time frame for counting such ballots and the designation of local officials doing the counting.<sup>40</sup>

The GAO's survey of election officials found that while most states and jurisdictions have laws and procedures for addressing the potential for fraud in mail-in absentee voting, some officials remain concerned that fraud still can be committed. They worry about someone other than the qualified voter voting in his or her place, multiple voting by an absentee voter casting a ballot by mail and in person, and intimidation of an absentee voter casting his or her ballot at home, without the supervision of election officials. Overall, the absentee mail-in ballot process is the feature most vulnerable to voter fraud within the decentralized, patchwork U.S. electoral system, at least in theory. This is not to say that there is a lot of evidence of absentee ballot fraud but rather that the potential for fraud is greatest in this area because of a lack of uniformly strong security measures in place in all states to prevent fraud. For example, according to the GAO survey, only two-thirds (64 percent) of voting jurisdictions check absentee ballot applications against their records to

determine whether applicants have previously applied for a mail-in ballot for that election.<sup>41</sup> Nearly half (45 percent) of all jurisdictions do not verify a voter's signature on absentee ballots against signatures provided on voter registration forms. Seven states require that absentee ballots be notarized or signed in the presence of two witnesses,<sup>42</sup> and 38 states require no third-party witnessing at all.

### Election Day Registration

Most states require voters to register as early as one month before an election in which they wish to participate. However, one state, North Dakota, has no voter registration at all, and another six states allow voters to register on election day: Idaho, Maine, Minnesota, New Hampshire, Wisconsin, and Wyoming. Each of the six states that use EDR experience significantly higher voter turnout than the national mean—10 percent higher on average. Political scientists who have studied EDR assert that it has been a key factor in creating higher turnout rates in these states, and they also estimate that nationwide implementation of EDR would increase participation in presidential elections by 8.5 million voters.<sup>45</sup> As reformers press to implement EDR in a wider variety of states, they face strong opposition because of the perceived potential for fraud. However, according to election officials in the states with EDR, as well as other available evidence, these concerns appear to be largely unfounded.<sup>46</sup>

The GAO's postelection survey of local election officials found that some officials in states without EDR worried that the elimination of the time between voter registration cut-off deadlines and election day would introduce fraud because officials would not be able to verify an applicant's eligibility quickly enough. Indeed, EDR shifts the burden of the two-stage registration and voting process toward local election officials and away from voters. But all of the states that practice EDR have adopted administrative procedures that work; they all require citizens to verify their identification and residence and have a variety of methods for preventing fraud. Acceptable I.D. differs among the states, ranging from driver's licenses and passports to leases and utility bills.

Some EDR states require picture identification, while others do not. In Maine, election day registrants must either show proof of identity and residence or cast a challenged



ballot, which would be investigated in the case of a close election. Officials in most EDR states see active, ongoing involvement from administrators as a prerequisite to fraud-free elections. In Minnesota, for example, officials verify the residence of each new registrant with a nonforwardable postcard mailing, and after elections the counties record and validate all new registrations within thirty days.<sup>48</sup> In both Minnesota and Wisconsin, election officials distinguish voter fraud from erroneous registration, mistakes that can result from inattentive poll workers, or unintentional registration at the wrong polling place on the part of the applicant. Those

who do register erroneously are sent a warning card informing them of the penalties they face if they repeat their mistake.<sup>49</sup>

As a deterrent to fraud, election officials in EDR states also publicize the stiff penalties that accompany a fraud conviction. In Maine, knowingly attempting to vote more than once for the same election is a felony punishable by fines of up to \$5,000 and up to five years of imprisonment. Knowingly registering at more than one voting place without revealing the prior registration address is a felony punishable by fines of up to \$2,000 and up to one year of imprisonment. The state provides each municipality with

## Oregon and All-Mail Balloting

Oregon has been experimenting with voting by mail (VBM) for 20 years and in 2000 became the first state in the nation to conduct a presidential election entirely by mail. Available evidence indicates that voter fraud in Oregon is negligible, suggesting that with proper safeguards and ample time for voters to become accustomed to voting by mail, this method of casting ballots can increase participation while ensuring the integrity of the electoral process.

Fraud charges and fraud detection in Oregon begin at the local level with the clerks of Oregon's 36 county boards of elections. Oregon maintains a vigorous signature-matching process for qualifying mail-in ballots. Approximately two and a half weeks before election day, local registrars mail ballots, and instructions for returning them, to all registered voters in their jurisdictions. Ballots that are undeliverable are returned to the county elections office by the post office. Voters mark their ballots and place them in "secrecy" envelopes that are then sealed in return envelopes the voter signs. Ballots must be returned by mail to county election offices or delivered by 8 p.m. on election day to special secure drop boxes established by the county registrars. Teams of election workers verify each signature against computerized records of registered voters and pass to the county election clerk any ballots whose signatures do not match the files. Clerks review the problem ballots and take a number of actions to resolve the problem. If a signature is missing, the ballot is not counted. If a signature does not match the signature on file for the voter, the clerk may try to contact the voter to have him or her come into the office to re-sign the ballot in the presence of an election official. A signature for a voter who does not appear on the registration list is investigated by the clerk, who attempts to contact the voter, or, if the voter's county can be determined, the clerk forwards the ballot to the appropriate county. If the clerk determines that a voter has voted more than once, the voter is contacted, and if fraud is suspected the case is forwarded to the secretary of state's office, which then forwards cases to the attorney general for prosecution. A review of records maintained by the secretary of state's office shows that over the past 10 years 1,001 cases of multiple voting and 1,056 cases of signature-matching problems have been referred to that office for investigation, out of tens of millions of votes cast. Of the combined 2,057 cases, only 15 have been referred to the Oregon attorney general for possible prosecution.<sup>43</sup> Eight of the 15 cases are currently pending investigation; one person was acquitted; and the remaining six people were found guilty of voter fraud, contaminating approximately a dozen ballots.

Elections officials in Oregon believe that VBM and the way it has been implemented over the years in Oregon helps prevent fraud better than most procedures used in polling place elections. Oregon's rigorous signature-matching procedures are key to the state's success with VBM. Overall, the Oregon secretary of state's office argues that given the frequency of elections in Oregon, which is a referendum and initiative state, the state has the cleanest registration lists in the country. Because voters receive three or four unforwardable ballots a year, they are forced to keep their registration current and the county boards of elections are forced to clean the rolls.<sup>44</sup>

## Despite the lack of evidence that EDR increases the potential for fraud, fears of this kind helped to defeat EDR ballot initiatives in California and Colorado during the 2002 election.

“voting penalty posters” that must be posted in each voting place and each voter registration place. In Minnesota, where penalties are similarly high, the state’s registration law requires county attorneys to give immediate attention to fraud allegations.

In many ways, election day registration may reduce opportunities for fraud. Because EDR typically requires voter identification and authentication in person, it actually makes voter registration fraud more difficult than a voter registration system that only requires a signature on a mailed-in form (although this may change as the result of the new federal law). Also, most voter registrations in EDR states occur at polling places and thus come through the election system—as opposed to through agencies like the DMV that are mandated to offer registration. As a result, under EDR, voter registration is more tightly under the supervision of election officials.

Despite the lack of evidence that EDR increases the potential for fraud, fears of this kind helped to defeat EDR ballot initiatives in California and Colorado during the 2002 election. In both states, opponents of the initiatives argued that eliminating the waiting period for verifying voter eligibility would open up the voting process to ineligible people and fraud schemes. Elections officials in California worried that the state’s electoral administration was not technologically advanced enough to instantaneously check for duplicate registrations. In Colorado, EDR opponents warned that setting up the program would cost millions of dollars in new equipment and training, and worried that election judges, wary of lawsuits, would avoid vigorous questioning of the authenticity of voters’ identification documents. Opponents persuaded the electorate that making voting easier was not worth the potential price of making cheating easier.

### EDR Under Fire in Wisconsin

The election day registration system in Wisconsin came under significant attack following the 2000 election, amid claims of fraud in Milwaukee. On closer inspection, these claims have turned out to be groundless. A student at Marquette University told ABC News that he had registered under his own name and voted four times on election day, and a student survey found that 174 students claimed to have voted more than once. In addition, a Democratic campaign operative allegedly offered cigarettes to homeless people in exchange for their votes.<sup>50</sup> Both allegations sparked investigations by the Milwaukee County Attorney’s Office. In the first case, the county attorney inspected the registration lists, voter lists, and ballots in the precincts in question. After intensive investigation, no cases of fraudulent voting were found at the precincts at Marquette University. Weeks after the story broke on ABC News, the student who reported the story recanted. He stated that he had invented the story to bring attention to the fact that voter fraud could occur, not that it had.<sup>51</sup>

The second case was more disturbing. A Democratic party activist from New York offered cigarettes to homeless people if they would vote. However, the case involved absentee ballots, not polling place registration.<sup>52</sup> Apart from these cases, the Milwaukee County Attorney’s Office did find evidence of voter fraud involving election day registration in two cases in 2000. Both cases were individuals who were felons on parole and who voted even though they were not allowed to under state law. In neither case was the prosecution successful, because the parole boards failed to inform the individuals that they were not permitted to vote until the duration of their sentences had been served. According to the Milwaukee County and city election offices, the number of allegations of fraud in 2000 was unusual. The city and county of Milwaukee typically have one or two cases each election.<sup>53</sup> Nevertheless, opponents of EDR in the Wisconsin have aggressively trumpeted the 2000 allegations in an effort to repeal the EDR law. To date, these efforts have been unsuccessful.

## IV. Key Election Administration Issues and Fraud

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The 2000 election generated wide-ranging debates about how to strengthen the administrative, procedural, and technological infrastructure of elections. Issues of fraud have surfaced frequently in these debates. This section explores questions related to voter identification and fraud, as well issues of technical modernization and partisanship in election administration.

### Fraud and Voter Identification

The issue of identification requirements for registration and voting have become a contentious issue at both the state and national level. Those who favor more restrictive I.D. requirements argue that they are necessary to prevent voter fraud. Opponents counter that such procedures create discriminatory and potentially unconstitutional obstacles to the right to vote. The new federal election law, signed in October 2002 by President Bush, requires all voters to provide their driver's license number or the last four digits of their social security number when registering. Voters who have neither will have a number assigned to them. It also requires first-time voters who registered by mail to attest to their identity when they arrive at the polls with a driver's license, utility bill, or other proof of residence, including a bank statement, government check, paycheck, or other government document that shows the name and address of the voter.

The NVRA allows the states to conduct identity checks the first time a person votes if that person has registered by mail. It also allows states to require a person who has registered by mail to vote in person the first time they vote (eight states do). Until now, I.D. has generally not been a mandatory aspect of voting and registration in the states. Only 11 states presently require proof of identity to vote by law, and generally acceptable forms of I.D. differ widely, from driver's licenses to fishing licenses, leases, or utility bills.<sup>54</sup> The most common form of identification used at the polls is a signature: Thirty-eight states and the District of Columbia require voters to sign the poll book in order

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## Stiffer I.D. restrictions will likely disproportionately encumber low-income, disabled, and other minority group citizens as they seek to exercise their right to vote.

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to vote.<sup>55</sup> Some states, for example, compare a voter's signature with one on file, others with the signature on a piece of identification supplied by the voter. The states have widely differing rules for identifying absentee voters and for voters who show up to vote without any identification; some states give local poll workers, or other voters, the authority to vouch for the identity of a voter who shows up to vote without the requisite identification. As with nearly all of the rules for administering elections in the states, rules governing voter identification take many forms and range from lenient to restrictive. However, bills calling for more restrictive I.D. requirements have recently been introduced in a number of states and are gaining ground.<sup>56</sup>

There are potentially discriminatory consequences of requiring specific forms of identification to register and vote. For example, many low-income, elderly, disabled, urban, and out-of-state student voters do not have driver's licenses. As some judicial decisions have found, requiring such people to purchase another form of photo I.D. in order to vote could function as a poll tax—an unconstitutional abridgement of the right to vote. Proof of residency through other documents, such as utility bills or leases, is also potentially discriminatory, as racial and ethnic minorities who are disproportionately poor are less likely than whites to have them. (Indeed, many Americans live in domiciles as roommates, spouses, or relatives where their name is not on the lease or on utility bills.) Those who work in the service industry or perform domestic work and are paid in cash are less likely to have a government paycheck or other paycheck for proof of identity. And as advocates for the disabled point out, requiring photo identification makes it harder to vote absentee.<sup>57</sup>

When first-time voters are required to vote in person, the disabled and wheelchair-bound are unduly burdened, as nearly 70 percent of the nation's polling sites are not wheelchair accessible. Finally, voting rights advocates are concerned that a mandatory I.D. requirement might result in voter discrimination and harassment. According to the Asian American Legal Defense and Education Fund, during a recent municipal election, one in six Asian Americans in New York City, where only a signature is required to vote,

were illegally asked for I.D. at the polls.<sup>58</sup> Stiffer I.D. restrictions will likely disproportionately encumber low-income, disabled, and other minority group citizens as they seek to exercise their right to vote.

### Technical Modernization

Voter fraud is best prevented today by accurate record keeping on the part of election administrators. Accurate record keeping is greatly facilitated by computerization and centralization of voter lists. Unified voter databases, networked to state agencies providing voter registration services to eligible citizens so that new registration records can be instantly processed, can help keep voter lists clean by preventing duplicate registration and by keeping address information current. Voter databases can be also cross-checked with other relevant records, such as death records, criminal convictions, and postal address records, to verify voter eligibility and eliminate "deadwood." In addition, technology is increasingly available that can electronically record and transmit signatures as part of voter registration records.

Currently, there is wide variation across states in the technological sophistication for maintaining voter registration records.<sup>59</sup> Ten states, Michigan being the largest, maintain unified databases that permit information sharing and records management between state and local agencies. Thirteen states maintain statewide lists compiled from local lists. Localities reserve responsibility for their own records, using the statewide list to check for duplicates. In some states localities can choose to use the statewide list as their own. Fourteen other states compile local lists but do not provide direct access to localities for verification of duplicate records. These states perform the checks for duplicate records and may also match their lists with other state records, and then notify localities of their findings. Finally, 13 states maintain no statewide voter registration records at all.

Beginning with its first mandated reports to Congress on the implementation of the NVRA in the mid-1990s, the FEC has recommended that states that have not yet done so develop and implement statewide computerized voter registration databases; computerize all local election regis-

tration offices; and link their statewide computerized system, where feasible, with the computerized systems of the collateral public agencies relevant to the NVRA (motor vehicle offices, public assistance offices, etc.).<sup>60</sup> The FEC's recommendation, repeated in each of its biannual reports to Congress, has not gone unheeded, but meager resources in the states for technological upgrades have served as a barrier to implementation.

It is not easy to generalize about the costs involved in bringing all states online.<sup>61</sup> Costs vary across a wide range of circumstances, including the distribution of responsibility for administering elections between state and county governments, the state of the existing computer infrastructure in the relevant state and local agencies, the level of sophistication desired in a statewide voter registration system, and how fast a state wants its new system operational. The FEC estimates that costs to implement such systems over the past two decades have ranged from less than \$1 million to more than \$8 million. Michigan's database, the Qualified Voter File, a unified database considered one of the best systems in the country, cost the state \$7.6 million to develop and \$3 million for annual maintenance.<sup>62</sup>

Help should be on the way. The new federal election reform law would provide roughly \$3.9 billion in federal funds for the upgrading of voting equipment and procedures and the training of poll workers. The law would require the states to implement interactive computerized statewide voter registration lists that are accessible to each state and local election official. However, while funds to implement reform had been authorized as of this writing, these funds had not yet been appropriated.

## Partisanship in Election Administration

Partisan control of election administration has historically created greater potential for election fraud. Partisan control of local election administration is much less of a problem now than when fraud prevention measures were first introduced a century ago, but it nevertheless has the potential to compromise elections. In very decentralized election systems, as in Florida, it can be even more difficult to monitor

administrative arrangements and keep partisanship out of the process. Yet even in more centralized systems, effective oversight can be difficult and there is considerable latitude for discretionary actions by local board officials and the influence of dominant politicians.

The 2000 election in Florida vividly showed the perils of such partisanship in a close race. In particular, major questions were raised about the fairness and propriety of local election officials in Seminole and Martin Counties, where elections officials gave Republican Party employees special opportunities to add information to incomplete absentee ballot forms. Questions were also raised about the partisan ties of Secretary of State Katherine Harris, who was closely connected to the Bush presidential campaign and who made critical decisions about purging Florida voter lists in ways that disadvantaged Democrats. In addition, the image of partisan local election officials presiding over hand vote recounts in Palm Beach and elsewhere during the 2000 election further underscored the problematic nature of partisanship in elections.

In almost every state, final authority over election systems rests with state government—generally in the secretary of state's office. How those officials are chosen has important effects on the level of partisanship in elections. Thirty-six secretaries of state are elected statewide in partisan elections. In Alaska, Hawaii, and Utah, the lieutenant governor serves as the secretary of state. In Texas, the secretary of state is appointed by the governor without legislative approval. The legislatures of Maine, New Hampshire, and Tennessee elect the secretary of state. In other ways, election officials at the county and state level are dependent on dominant politicians and parties.<sup>63</sup>

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## V. Best Practices in the States

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As government officials and reformers grapple with the challenge of maximally expanding registration and voting opportunities—while constraining opportunities for fraud—they can learn from procedures and infrastructure already in place in various states aimed at successfully achieving this balance.

### Managing Voter Registration Records

The best available means of keeping accurate, continually updated records of voter registration are through statewide, unified registration systems, where the state and all localities share the same database. As a result of the new federal election law, such systems will be required of all states. Statewide coordination has a number of advantages over locally controlled databases. By integrating all local lists, duplicates are easier to identify and remove. States can more easily coordinate records with other state-held records, such as driver's licenses. Ten states currently employ unified systems. They are Alaska, Delaware, Hawaii, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, South Carolina, and Virginia. Unified databases are not enough, however, to facilitate accurate registration and voting. States are much better served by systems designed to link together election agencies with those agencies relevant to NVRA provisions, so that new applications are processed and recorded without delay. Ideally, poll workers should have laptops so that they can resolve registration problems that arise on election day. Currently, only ten states have statewide registration systems that allow voter information to be automatically transferred online to a central statewide database and updated immediately in “real time.” They are Alabama, Alaska, Delaware, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Oklahoma, and South Carolina. Of these, the systems in Kentucky and Michigan are generally seen as among the best.

- **Kentucky:** From local terminals, county election officials access a statewide database located in the statehouse, and state election officials regularly update the database by comparing voter lists with lists of those deemed ineligible for reasons of death, mental

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database by comparing voter lists with lists of those deemed ineligible for reasons of death, mental incompetence, felony conviction, relocation, or voter inactivity. Local election officials can update records and receive confirmation from state officials within a day. In the near future, they will be able to access the database at the precincts on election day via the Internet.

- **Michigan** : Michigan's Qualified Voter System is also an exemplary structure for accurate and efficient records management. Michigan's motor vehicle agencies are linked electronically to the electronic voter list, so new registrations are transmitted there directly and automatically, reducing the chance of losing registrations. The state matches its registration list against the U.S. Postal Service National Change of Address records, death records, and felony records.

### Voter Identification Requirements

In recent months, the issue of voter identification has been the subject of much legislative scrutiny, thanks to the I.D. requirements mandated by the new federal election reform law, the Help America Vote Act (HAVA). HAVA imposes I.D. requirements on first-time voters who register by mail. Many fear that the new requirement will depress voter participation, particularly among low-income voters, people of color, voters with disabilities, young voters, senior citizens, and others who are less likely to possess the necessary documents. Given these concerns, states should look to reduce the burden on voters by adopting a broad and flexible approach to identity and residence verification. The following states permit the use of a variety of I.D.s that voters are more likely to have.

- **Alaska** : Voters must present an I.D. at the polls, including a registration card, a driver's license, a birth certificate, a passport, a hunting or fishing license, or others prescribed by regulation. *The voter I.D. requirement is waived if an election official corroborates a voter's identity.*
- **Connecticut** : Voters must present an I.D. at the polls, including a social security card or other preprinted identification that includes name and either address, signature, or photograph. *Voters may sign an affirmation instead of presenting I.D.*

- **Georgia** : Voters must present an I.D. at the polls, including a driver's license, a government-issued I.D., an employee or student I.D. card with photo, a weapons' license, a pilot's license, a military I.D., a birth certificate, a social security card, court records showing adoption, name, or sex change, or naturalization documents. If the voter does not have I.D., he or she can sign an affidavit.
- **Virginia** : Voters must present a Virginia voter card, a driver's license, a social security card, a federal, state, or local government-issued I.D., or a photo I.D. issued by an employer in the course of regular business. Voters without I.D.s can sign a statement under oath. Voters who registered by mail are required to vote in person the first time they vote.

### Nonpartisan or Bipartisan Election Administration

Reducing partisanship in election administration is an important step toward ensuring the integrity of elections. While partisanship in election administration is the norm in the majority of states, it varies in intensity. Some states have devised different systems for choosing state election officers in ways that are either nonpartisan, or at least bipartisan. Among them are:

- **Illinois** : The Illinois State Board of Elections has eight bipartisan members, four appointed by the governor and four selected by the governor from a list of nominees submitted by the highest-ranking official of the opposite political party. Members serve staggered, four-year terms. The board provides a uniform manual of instructions for election judges; certifies ballots for all federal, state, and multi-county offices; and serves as the electoral board for objections to petitions for federal, state, and multi-county offices and statewide referenda.



- **Kentucky:** The State Board of Elections has six members, three from each of the two major parties, appointed for a four-year term by the governor. The secretary of state is chairman of the board and therefore the chief election official in the state. The board supervises voter registration, purgation of voters and the administration of election laws; supervises the county boards of election; prescribes voter registration forms; and furnishes county clerks with master lists of registered voters before each election.
- **North Carolina:** The State Board of Elections oversees administration of elections. Its five members are appointed by the governor, but its composition is bipartisan. The board issues and enforces rules and regulations binding on local officials; has power to remove local officials for fraud, neglect, or incompetence; prescribes form and content of ballots and other forms used in elections; investigates possible election irregularities; appoints members to county boards; approves all voting machines before use; and tabulates election returns, certifies the results, and sends the results to the secretary of state.

## VI. Policy Recommendations

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The guardians of America's election systems have two equally solemn responsibilities: on the one hand, to realize the promise of democracy and make voting as accessible as possible, and on the other hand, to ensure that elections are carried out with the utmost integrity and are not susceptible to malfeasant manipulation. This report suggests that election officials are already doing a good job of protecting against fraud in the system, as it had traditionally been defined. Yet while the incidence of fraud appears to be very low and to have little impact on election outcomes, many barriers to voting endure, and too much disenfranchisement occurs within an election system that is outdated, prone to error, and too partisan. Below, we build on the previous section on best practices and offer four core recommendations to help guarantee safe elections that are as open as possible.

- **Upgrade Technology in the States.** Computerized voter registration records and state-of-the art voting technology are critical components of election systems that both facilitate participation and reduce the potential for fraud. The new federal election law, which mandates the creation of statewide computerized registration systems and also aims to provide states with money to upgrade voting machines, will be an important step forward if it is fully funded and effectively implemented. It is especially important that new state-of-the-art registration systems allow for interagency networking (for prompt and proper transmission of registration information under NVRA) and local poll access to systems (through laptops or other means). We also endorse the CalTech/MIT Voting Technology Project recommendation for the establishment of a National Elections Research Lab that would continue to foster the development of better voting equipment and voting systems, so that as technological advances take place they can be harnessed to help provide systems that are increasingly secure and accessible.
- **I.D. Requirements That Do Not Burden Voters.** The new federal election law places undue burdens on voters to prove their identity at the polls. We recommend modifying the law in certain respects and following several guidelines: (1) expanding the list of

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At the very least, states and counties should strive to remove ambiguity and conflicts of interest from all aspects of election laws, from registration to postelection procedures.

acceptable identifying documents; (2) allowing state or local officials discretion to incorporate or expand forms of identification currently in use; (3) stipulating that all provisions should be uniformly applied; and (4) enforcing a voter's bill of rights that outlines acceptable forms of I.D.

- **Reduce Partisanship in Election Administration.** We recommend that state legislatures explore ways to make election administration free of partisan control. At the very least, states and counties should strive to remove ambiguity and conflicts of interest from all aspects of election laws, from registration to postelection procedures. The National Association of Counties (NACo) and the National Association of County Recorders, Election Officials, and Clerks (NACRC) have recommended professionalization as a way to curtail partisanship.<sup>64</sup> Regular training and exchanges with elections administrators from other jurisdictions may increase officials' commitment to the integrity of the democratic process itself, as opposed to party loyalty.
- **Strengthen Enforcement.** The federal and state criminal penalties for election fraud are significant and should serve as a powerful deterrent against fraud. However, this will not be the case if laws are poorly enforced, or enforced unevenly. All states should ensure adequate funding and authority for offices responsible for detecting and prosecuting fraud. In addition, all states should track allegations of election fraud, as well as the outcomes of criminal investigations, and make this data available to the public.
- **Establish Election Day Registration.** As some elections experts have pointed out, EDR may allow better forms of fraud prevention than other systems.<sup>65</sup> Under NVRA, election officials have lost some measure of control over registration. Most registrations now come through departments of motor vehicles, through registration drives, and through the mail. EDR requires voter identification and authorization in person before a trained election worker, which should reduce the opportunity for registration error or fraud.

# Appendix

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## Major Recent Cases of Alleged Election Fraud

### A. The 1997 Primary Mayoral Election, Miami, Florida

Perhaps the best-known contemporary case of uncontroverted absentee ballot fraud is the disputed 1997 primary mayoral election in Miami, Florida.<sup>66</sup> Running for reelection as mayor, Joe Carollo received 51.4 percent of the ballots cast at the polls, while his opponent, former mayor Xavier Suarez, received 61.5 percent of the absentee ballots, giving Suarez a slim lead (155 votes) over Carollo in total balloting. Because neither candidate received more than 50 percent of the vote, a run-off election was held, and Suarez narrowly won both the precinct and absentee ballots.<sup>67</sup>

Immediately after the November 4 election, Carollo challenged the results, claiming fraud in the absentee ballot vote that swung the election to Suarez, thus denying Carollo the majority support he received at the polls and forcing him into a run-off. A week after the election the Florida Department of Law Enforcement arrested two Suarez supporters for buying absentee ballots and falsely witnessing absentee ballots. The day after he lost the run-off election to Suarez, Carollo petitioned the Circuit Court for the Eleventh Judicial Circuit of Florida to overturn the results of the November 4 election on the grounds of voter fraud.

The trial was held in February 1998. For two and a half weeks, the trial court heard evidence and read depositions from 87 witnesses and examined 195 exhibits.<sup>68</sup> Its March 3 decision noted “a pattern of fraudulent, intentional and criminal conduct” in the extensive abuse of absentee ballot laws.<sup>69</sup> An expert documents examiner testified that 225 absentee ballots cast had forged signatures; there was evidence of 14 stolen ballots and 140 improperly witnessed ballots. Another 480 ballots were procured or witnessed by 29 “ballot brokers,” 27 of whom invoked their Fifth Amendment privilege against self-incrimination instead of testifying at trial. One such ballot broker was 92-year-old Alberto Russi, a campaign volunteer for Humberto Hernandez, a Suarez ally on the five-member City Commission. Within days of the November 4 election, Russi was arrested and charged with three counts of election fraud. Police traced Russi to the absentee ballot of a dead man whose ballot he witnessed. When police searched

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## In its zeal to address the embarrassing behavior of politicians in Miami, the Republican-controlled legislature passed a law that paved the way for one of the more underreported scandals of the 2000 election in Florida.

Russi's home they seized 75 absentee ballots already filled out and intended for the November 13 run-off, many of which were addressed to Russi's home in the names of other voters. A separate grand jury, convened to investigate the fraud allegations and make recommendations for improvements in the absentee ballot process, found that absentee ballots were stolen from mailboxes, that "unscrupulous individuals" had secured ballots for people under the guise of "helping the voter," and that voters had been coerced into voting for particular candidates in return for past favors done for them.<sup>70</sup>

At the center of what the trial court subsequently found to be "a massive, well-conceived and well-orchestrated absentee ballot voter fraud scheme" were a large number of absentee ballots—nearly 70 percent of the total—cast from Little Havana. Little Havana voters reinstated Commissioner Hernandez, the embattled Suarez ally who won reelection to the City Commission by a large majority after being removed from office by the governor following a 23-count indictment for bank fraud and money laundering.<sup>71</sup> An expert in statistical analysis testified at trial that the large number of absentee ballots from Little Havana were a statistical "outlier," the Little Havana absentee ballot rate an "aberrant case" so unlikely that it was "literally off the [statistical probability] charts."

The trial judge, Thomas S. Wilson Jr., concluded that "the evidence shows a pattern of fraudulent, intentional and criminal conduct that resulted in such an extensive abuse of the absentee ballot laws that it can fairly be said that the intent of these laws was totally frustrated.... This scheme to defraud, literally and figuratively stole the ballot from the hands of every honest voter in the city of Miami."<sup>72</sup> Judge Wilson overturned the results of the November 4 election and ordered a new election, but his remedy was overturned on appeal. The appellate court affirmed the finding of fraud but voided the remedy of a new election and remanded the case to the lower court with instructions to enter a final judgment that voided all of the absentee ballots, determining the outcome of the election by the machine total alone. This decision took victory out of Xavier Suarez's hands and gave it to Miami's new mayor, Joe Carollo.

The 1997 Miami mayor's race presents one of the most egregious cases of election fraud in recent memory. News coverage of the fraud scheme and trial was extensive and national and local leaders and residents loudly bemoaned the further tarnishing of the city's image as one steeped in political corruption. The state legislature acted quickly to pass a \$4 million election law reform package to root out voter fraud. But the law did much more than that. In its zeal to address the embarrassing behavior of politicians in Miami, the Republican-controlled legislature passed a law that paved the way for one of the more underreported scandals of the 2000 election in Florida: the massive disenfranchisement of Florida voters—most of them African American—whose names erroneously appeared on felony lists.<sup>73</sup>

In May 1998 the legislature added Section 98.0975 to Title IX, Chapter 98 of Florida's statutes. Section 98.0975 required the Division of Elections in the secretary of state's office to contract with a private company to compare the central voter file with databases of persons deceased, those with felony convictions, and those adjudicated mentally incompetent and to provide lists of matching names to the division. The division was required to provide the information to the county supervisors of elections who were to undertake their own verification process on local voter registration databases. Florida was the only state in the United States to require its local election officials to verify their voter rolls using data processed by a private firm.<sup>74</sup>

### B. The 1996 Sanchez/Dornan Contest for the U.S. House of Representatives, Orange County, California

Orange County, California, is the fourth largest county in the United States, with 2.8 million people, more than one-quarter of them Latino. The 46th Congressional district is nestled in the heart of Orange County and includes centers of Latino concentration, Santa Ana, the county seat, and most of Garden Grove and Anaheim, giving the 46th district a population that is nearly two-thirds Latino. Vast

growth and demographic change, along with careful redistricting by Democrats in California's state legislature, have facilitated political change in Orange County. Orange County was once a Republican stronghold, a core constituency for the Republican party in presidential elections because it could swing California to the party. As late as 1988, voters in the 46th district gave 62 percent of their votes to George Bush. By 2000, however, a 24 percent Republican margin in presidential elections had been replaced by a 12 percent Democratic margin when Al Gore won the 46th with 54



percent, to 42 percent for George W. Bush. The advancing ability of new immigrant and Latino voters to define Orange County politics and the transformation in party dominance toward the Democrats set the stage for an explosive case of alleged voter fraud in 1996.

The contested election between the nine-term Republican incumbent Robert K. Dornan and a little-known businesswoman named Loretta Sanchez involved a blizzard of allegations of registration fraud, noncitizen and illegal immigrant voting, double voting, voting from nonresidential addresses, illegal inducements to register and vote, voter intimidation, ballot box tampering and absentee ballot fraud, all under the canopy of a bitter and protracted partisan battle that quickly bled into national politics.

One day after the November 5, 1996, election, Dornan led Sanchez by 233 votes, but 12,000 absentee and provisional ballots had yet to be counted. A week later, when

about 3,000 ballots were still left to tally, the Associated Press called the election for Sanchez, who had moved into the lead with a 929-vote margin. As the count proceeded, Dornan repeatedly raised the issue of "noncitizen" voter fraud and vowed to take his reelection fight to the floor of the House of Representatives if he lost. He added that his Republican colleagues were looking for a case to use in challenging the recently implemented National Voter Registration Act, signaling the likely entry of national political forces into the fray.<sup>75</sup> Dornan specifically charged that a well-known Latino rights group and the Democratic Party signed up illegal voters in a drive he argued may have led to "the first case in history where a congressional election was decided by noncitizens."<sup>76</sup> His lawyer later called the case "what we think is the single largest example of voter fraud in a federal election in the last 50 years, and, yes, maybe in this century."<sup>77</sup>

On November 22, 1996, the Orange County Registrar of Voters certified Loretta Sanchez the winner by 984 votes,<sup>78</sup> and a 14-month battle to deny Sanchez a seat in the House was joined. State electoral and law enforcement agencies were the first to open investigations into the alleged election irregularities. Then, on December 26, 1996, Dornan filed a three-page Notice of Electoral Contest in the House of Representatives requesting an investigation of the election. This was within keeping of his prerogative and the constitutional authority of the House under Article 1, Section 5, Clause 1, which provides that each House of Congress shall be the judge of the "elections, returns and qualifications" of its members. Under the rules of the FCEA, the contest is first heard by the Committee on House Oversight, which conducts its own investigation, and then by the whole House, which disposes of the contest, by resolution or majority vote. In the 105th Congress, the eight-member committee was chaired by Rep. William M. Thomas, a Republican from Bakersfield, California, and dominated 5-to-3 by Republican members. Thomas created a three-person task force comprised of Rep. Vernon Ehlers (R-Mich.) and Rep. Robert Ney (R-Ohio), and, later, Rep. Steny Hoyer (D-Md.) to conduct the investigation and recommend a

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## The Dornan-Sanchez electoral dispute fits squarely in what political scientists Benjamin Ginsberg and Martin Shefter call “politics by other means.”

course action to the full committee. Along with the Orange County D.A. and secretary of state investigations, the House committee’s investigation took a year to complete and produced, in the end, a disputed finding of fraud that was too insubstantial to convince the Republican dominated House to upset or reverse Sanchez’s victory.<sup>79</sup> On February 12, 1998, the House voted 378-33 to dismiss Dornan’s contest.

The Dornan-Sanchez electoral dispute fits squarely in what political scientists Benjamin Ginsberg and Martin Shefter call “politics by other means.” Politics by other means involve the use of legal strategies and the courts, revelation, prosecution and investigation, and the media to win.<sup>80</sup> The fraud allegations and subsequent 14-month investigations by state, county, and federal government agencies cost American taxpayers well over \$1.4 million.<sup>81</sup> And in the end, very little voter fraud was convincingly substantiated. On April 29, 1998, California’s secretary of state announced that the people identified by the task force as illegal, noncitizen voters in the 46th congressional district election of 1996 would not be prosecuted for voter fraud, the secretary deciding that they had registered in error and not from criminal intent.<sup>82</sup>

### C. The 2000 Election, St. Louis, Missouri

Like most big cities, St. Louis has had its share of election fraud.<sup>83</sup> In the wake of the 2000 election, allegations of voter fraud in St. Louis were raised that included illegal registration; voting by deceased people, felons, and people whose addresses appear to be vacant lots; multiple voting; and unqualified election judges permitting unqualified voters to cast illegal ballots. All the facts are not yet in, but it appears that claims of a vast conspiracy on the part of the Democrats to undertake “a major criminal enterprise designed to defraud voters” are strongly exaggerated.<sup>84</sup>

The St. Louis case has gained national notoriety beyond what the available evidence of voter fraud would suggest, because the partisan conflict between a senior Missouri Republican senator and a newly elected St. Louis Democratic representative underlying it has erupted in congressional hearings and other public venues, giving the story a wider national audience than it would have had otherwise. As such, the

contemporary St. Louis case is a classic case of the conflict between forces promoting expanded access to the franchise and those that would contain them.

African-American leaders became concerned that the removal of more than 30,000 names from the registration rolls to an “inactive” list in St. Louis during the summer and fall before the election would create problems at the polls on election day. State Senator William Lacy Clay Jr., a candidate for a seat in the U.S. House of Representatives, gave a speech the day before the election in which he warned that if legal voters were prohibited from voting at the polls because of inaccurate registration records, lawsuits would be brought to keep the polls open past their legal closing time of 7 p.m.<sup>85</sup> In fact, that is exactly what happened. Late afternoon on election day, Lacy Clay’s campaign, the Gore-Lieberman campaign, and the Missouri State Democratic Committee filed suit in St. Louis City Circuit Court to keep the polls open until 10 p.m. A sympathetic judge issued an order to extend voting hours, but the Missouri Court of Appeals overruled her. The polls in St. Louis shut down at 7:45 p.m., with only an estimated 100 votes cast after the official 7 p.m. poll closing time.

As expected, the Democrats did very well in St. Louis, a heavily Democratic city, but they also did well statewide, electing a Democrat to the U.S. Senate and as governor. Within two days of the election, U.S. Senator Bond called for a federal investigation of voting in St. Louis, hinting at a conspiracy behind the Democrats’ efforts to extend polling place hours. “What I saw and heard on Tuesday night is an outrage,” he said, adding that the St. Louis Election Board and the Democratic Party should be investigated for “orchestrat[ing] a concerted scheme to deny all Missouri voters a valid count by keeping the polls open.”<sup>86</sup>

Postelection investigations by the newly elected Republican secretary of state, Matt Blunt, and the *St. Louis Post-Dispatch* suggest a marginal amount of voter fraud may have been committed in 2000. But most of the initial charges about criminal conspiracies and the defrauding of Missouri voters have been shown to be overblown. For example, the newly elected Republican circuit attorney, Jennifer Joyce, convened a St. Louis grand jury to investigate fraudulent voter registration cards delivered to the city board of elections on the last day of the voter regis-

tration period; three months later, the grand jury disbanded without issuing any indictments, though the case presumably is being investigated now by a federal grand jury looking into all the fraud issues. According to press reports, a third of the more than 3,000 cards under suspicion were clearly fraudulent—they appeared to be completed in the same handwriting and included at least three deceased aldermen, the deceased mother of a sitting alderman, a former deputy mayor, and a dog named Ritzy Mekler.<sup>87</sup> A number of these registrations, and then, upon further research, hundreds more, listed addresses that the board said were vacant lots. Bond and others jumped on this information to further fuel their fraud charges. The secretary of state's probe significantly reduced the number of vacant lot addresses to 79 voters, and subsequent investigations a year later by reporters at the *Post-Dispatch* discovered that “dozens of St. Louis voters are being wrongly accused of casting ballots from fraudulent addresses” in the 2000 election. The *Post-Dispatch* surveyed 1,000 supposedly vacant lots and found that 704 of them had buildings on them, some of them more than 50 years old.<sup>88</sup> Errors in the city's property records and methods for classifying vacant a multi-parcel address if only one of the parcels at the address is vacant account for the mistakes in the voter records. With no indictments in fraudulent voter registration and the problem of vacant lot addresses solved, Bond and Blunt focused on court orders permitting 1,233 people to vote. The court orders were issued by St. Louis City and St. Louis County election judges for reasons Blunt argued do not conform to Missouri law.

Most of the court orders appeared to be granted to people who acknowledged that they had failed to register by the October 11 deadline, although judges interviewed by the *St. Louis Post-Dispatch* said that they believed their court orders complied with state laws. St. Louis County judge Robert S. Cohen said that election officials first screened voters who believed they were eligible to vote but who were not on voter registration lists; voters then had to wait in long lines to have their cases reviewed by an election judge.<sup>89</sup> At this time, the alleged voter fraud scandal in St. Louis looks more like a case of managerial ineptitude and underfunding, and poor implementation of NVRA on the part of St. Louis and Missouri election officials.<sup>90</sup>

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# Notes

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1. Juliet Eilperin, "Voter Registrations Are Probed; In S.D., Irregularities Cloud Democrats' Outreach to Indians," *The Washington Post*, October 24, 2002: A9.
2. Kevin Fagan and Mark Simon, "Election-Day Registration Loses; Opponents Said Prop. 52 Would Have Opened Door to Fraud," *San Francisco Chronicle*, November 6, 2002: A5.
3. See for example: *Voting: What Is, What Could Be*, Caltech/MIT Voting Technology Project, July 2001; Democratic Investigative Staff, House Judiciary Committee, *How to Make a Million Votes Disappear: Electoral Sleight of Hand in the 2000 Presidential Election* (U.S. Congress, House Committee on the Judiciary, August 20, 2001).
4. Dayna Cunningham, "Who Are to Be Electors? A Reflection on the History of Voter Registration in the U.S.," *Yale Law and Policy Review* 9(2) (1991): 383.
5. *Ibid.*, 384, citing Joseph P. Harris, *Election Administration in the United States* (Washington, D.C.: The Brookings Institution, 1934); Frances Fox Piven and Richard A. Cloward, *Why Americans Don't Vote and Why Politicians Want It That Way* (Boston: Beacon Press, 2000): 25-6, 91-2.
6. R. Michael Alvarez, "How Widespread is Voting Fraud," Unpublished paper, September 2002. The paper analyzes data provided by the California Secretary of State's Election Fraud Investigation Unit.
7. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208), perhaps the most radical reform of U.S. immigrations laws ever, makes it much easier to deport otherwise lawful noncitizens for illegal voting in federal elections (see Title II).
8. U.S. General Accounting Office, *Elections: The Scope of Congressional Authority in Election Administration*, Report to the Congress (March 2001), GAO-01-470.
9. *Ibid.*, 4-7.
10. *Ibid.*, 11.
11. Elizabeth Simson, *Justice Denied: How Felony Disenfranchisement Laws Undermine American Democracy*, Americans for Democratic Action Education Fund, March 2002.
12. One critic of the NVRA has suggested in recent testimony before the Senate Committee on Governmental Affairs that the lack of an evidentiary record of voter fraud prosecutions should not be taken as indicative of a lack of voter fraud. This assumes that only the states can pursue fraud claims in court, which is not the case. See the testimony of Deborah Phillips, founder and chair of the Voting Integrity Project, who asserts without evidence that "Prosecutors do not like election fraud cases because they take precious resources from strained budgets needed for more serious crimes." U.S. Congress, Senate Committee on Governmental Affairs, *Hearing on Election Administration Reform*, 107th Cong., 2nd sess. (May 3, 2001).
13. Section 11(b). See below for a discussion of the NVRA and fraud.
14. United States Department of Justice, Criminal Division, Public Integrity Section, *Federal Prosecution of Election Offenses*, 21.
15. *Ibid.*, 22 (underlined in original).
16. 18 U.S.C., Section 241 (1988); see also Richard Craswell, "Comments: Federal Prosecution for Local Vote Fraud Under Section 241 of the Federal Criminal Code," *University of Chicago Law Review* 43 (1976), 542-572.
17. See *United States v. Daugherty*, 952 F.2d 969, 971 (8th Cir. 1991); *United States v. Saenz*, 747 F.2d 930, 935 (5th Cir. 1984); *United States v. Canales*, 744 F.2d 413, 416 (5th Cir. 1984).
18. Prepared Remarks of Attorney General John Ashcroft, Voting Integrity Symposium, U.S. Department of Justice, Washington, D.C., October 8, 2002 (<http://www.usdoj.gov:80/ag/speeches/2002/100802ballotintegrity.htm>).
19. *Ibid.*

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20. William Walker, "Deeply Divided America Heads to the Polls," *Toronto Star*, November 5, 2002: A1.
21. Chet Brokaw, "Voting Claims Still Under Investigation," *Yankton Press and Dakotan* On the Web, December 7, 2002 ([http://www.yankton.net/stories/120702/new\\_20021207027.shtml](http://www.yankton.net/stories/120702/new_20021207027.shtml)).
22. U.S. Congress, Committee on House Administration, *National Voter Registration Act of 1993*, 103rd Cong. 1st sess., H. Rept. 103-9 (February 2, 1993): 27. Officials in those states were concerned that the multiple registration sites required by the law would result in duplicate registrations, and that the costs of maintaining the quality of voter rolls would be prohibitive. At least six states sued to block implementation of the law. The states included California, Illinois, Louisiana, Michigan, South Carolina, and Virginia. See Jonathan E. Davis, "Comment: The National Voter Registration Act of 1993: Debunking States' Rights Resistance and the Pretense of Voter Fraud," *Temple Political and Civil Rights Law Review* 6 (Fall 1996-Spring 1997), 117, n20.
23. U.S. Congress, Senate Committee on Governmental Affairs, *Hearing on Federal Election Practices and Procedures, Part I*, 107th Cong., 2nd sess. (May 3, 2001) (testimony of Ralph O. Neas).
24. Christopher S. "Kit" Bond, "'Motor Voter' Out of Control," *Washington Post* (June 27, 2001): A25. This case is discussed below. According to Deborah M. Phillips of the Voting Integrity Project, a national organization concerned about voter fraud, and a critic of NVRA, "the National Voter Registration Act has tied the hands of election directors to protect the rights of legitimate voters from the dilution of vote fraud." U.S. Congress, Senate Committee on Rules and Administration, *Hearing on Election Reform*, 107th Cong., 2nd sess. (March 14, 2001) (testimony of Deborah M. Phillips).
25. U.S. Congress, Senate Committee on Rules and Administration, *Hearing on Election Reform* (testimony of John Samples). At the same hearing, Todd F. Gaziano, Senior Fellow in Legal Studies and director of the Center for Legal and Judicial Studies at the Heritage Foundation, testified that "Regardless of the intent of the Motor Voter law, it has helped create the most inaccurate voting rolls in our history. Citizens are registered in multiple jurisdictions at the same time, and very few states have effective procedures to ensure that those registered even are citizens...you can almost guarantee that illegal voting may provide the margin of victory in a close contest."
26. See *The Wall Street Journal*, "Blind To Voter Fraud" (March 2, 2001): 10; "The Voter Fraud Iceberg" (March 12, 2001): 22; "Manufacturing Votes" (May 8, 2001): 26; and "Too Easy To Steal" (December 11, 2001): 18.
27. U.S. General Accounting Office, *Elections: Perspectives on Activities and Challenges Across the Nation*, Report to Congressional Requesters (October 2001), GAO-02-3: 75.
28. Federal Elections Commission, *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 1999-2000*, 22 and Table 1.
29. According to the U.S. Census Bureau, nearly one in five Americans of voting age moves annually. See Jason Schachter, "Geographical Mobility: Population Characteristics, March 1999 to March 2000," Current Population Reports, U.S. Department of Commerce, Economics and Statistics Administration, U.S. Census Bureau (May 2001).
30. Federal Elections Commission, *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 1999-2000*: 22.
31. Steve Barber *et al.*, "The Purging of Empowerment: Voter Purge Laws and the Voting Rights Act," *Harvard Civil Rights-Civil Liberties Law Review* 23 (1988): 499 and Appendix A. The other states purging for failure to vote did so on an accelerated schedule, purging registered voters after two years of inactivity or for failure to vote in a single election.
32. Those states are Alabama, Connecticut, Kentucky, Maine, Massachusetts, Missouri, Nebraska, and Texas.
33. Federal Elections Commission, *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 1999-2000*, Table 3. Kentucky, Maine, and Nebraska have yet to delete any names from their inactive lists.
34. These provisions apply to voters assigned to inactive lists for failure to respond to notices asking for address confirmation, and are meant to secure the right of these voters to vote as long as they are eligible. While NVRA does not specifically require states to provide provisional ballots to voters disputing their denial to vote, the House Report on the Act recommended "it would be appropriate, and in compliance with the requirements of this Act, to require that such a person vote by some form of provisional ballot." See U.S. Congress, Committee on House Administration, *National Voter Registration Act of 1993*, 103rd Cong. 1st sess., H. Rept. 103-9 (February 2, 1993): Section 8. Moreover, a number of analyses of the 2000 elections have concluded that reforms should seek to expand the use of provisional balloting given the documented level of error in list management contributing to an estimated 3 million eligible voters being denied their right to vote. These numbers are drawn from the U.S. Census Bureau Current Population Survey's estimate that 7.4 percent of the 40 million nonvoters in 2000 did not vote due to registration problems.

35. See *ACORN v. Miller*, 129 F.3d 833 (6th Cir. 1997); *ACORN v. Edgar*, 56 F.3d 791 (7th Cir. 1995); *Voting Rights Coalition v. Wilson*, 60 F.3d 1411 (9th Cir. 1995); *Condon v. Reno*, 913 F. Supp. 946 (D.S.C. 1995); and Jonathan E. Davis, "The National Voter Registration Act of 1993: Debunking States' Rights Resistance and the Pretense of Voter Fraud," *Temple Political & Civil Rights Law Review* 6 (1997): n20 at 119, citing Human Serve and ACORN, "Legal Obstructions to the Implementation of the National Voter Registration Act Including Constitutional Challenges: An Update," (September 1995) at 2–8.
36. U.S. Congress, Senate Committee on Governmental Affairs, *Hearing on Federal Election Practices and Procedures, Part 2*, 107th Cong., 2nd sess., (May 9, 2001) (testimony of Hans A. von Spakovsky).
37. U.S. General Accounting Office, *Elections: Perspectives on Activities and Challenges Across the Nation*: 22.
38. *Ibid*; see also, J. Eric Oliver, "The Effects of Eligibility Restrictions and Party Activity on Absentee Voting and Overall Turnout," *American Journal of Political Science* 40(2) (May 1996): 498–513.
39. Thirty-nine states and the District of Columbia also permit in-person absentee or early voting.
40. Poll workers are given the responsibility of counting ballots in Alabama; in Florida, New Jersey, Oklahoma, and Maryland, county election boards count absentee ballots; an array of local judges are designated to count absentee ballots in Colorado, Minnesota, Ohio, and Vermont; finally, special absentee ballot committees or boards are set up to count ballots in North Dakota, Montana, Nevada, and Texas.
41. U.S. General Accounting Office, *Elections: Perspectives on Activities and Challenges Across the Nation*: 129.
42. Upon investigation it turned out that the vast majority of the remaining cases were cases of voter error. The secretary of state's Office sends letters to voters committing mistakes admonishing them of the rules. (E-mail correspondence to the author from Norma Buckno of the Oregon Secretary of State's Office, dated February 14, 2002. Data were compiled by Ms. Buckno.)
43. Phone interview by author with John Lindback, Elections Division, Oregon Secretary of State's Office (February 21, 2002).
44. Those states are Alaska, Alabama, Louisiana, Missouri, North Carolina, Oklahoma, and Rhode Island. An election for chief judge of the Alabama Supreme Court was recently overturned on a technical violation of the law after an 11-month court battle. A number of absentee ballots larger than the margin of victory for the presumed winner were thrown out by a federal court because they were unwitnessed. See, Lori A. Tarle, "Comment: Statutory Interpretation and the Alabama Absentee Ballot Controversy," *Cumberland Law Review* 26 (1995-1996): 197+.
45. Mark J. Fenster, "The Impact of Allowing Day of Registration Voting on Turnout in U.S. Elections from 1960 to 1992," *American Politics Quarterly*, 22(1): 84; Benjamin Highton, "Easy Registration and Voter Turnout," *Journal of Politics*, 59: 565–75; Craig Leonard Brians and Bernard Grofman, "Election Day Registration's Effect on U.S. Voter Turnout," *Social Science Quarterly* 82(1): 171–183.
46. National Conference of State Legislatures, *Voting in America: Final Report of the NCSL Elections Reform Task Force* (July 2001), <http://www.ncsl.org/programs/press/2001/electref0801.htm>.
47. U.S. General Accounting Office, *Elections: Perspectives on Activities and Challenges Across the Nation*: 71.
48. Prepared text by Joan Growe for the panel "Election Day Registration in Practice," *Symposium on Election Day Registration*, Brennan Center for Justice, New York City, November 30, 2001.
49. R. Michael Alvarez and Stephen Ansolabehere, *Expanding the Vote: Election Day Registration in California*, Dēmos, March 2002, 22.
50. Andrew Nieland, "In Milwaukee Activists Use New Tactics to Help Boost Voter Registration, Turnout," *The Wall Street Journal Interactive Edition*, December 18, 2000, <http://interactive.wsj.com/archive/retrieve.cgi?id=SB977098086874819675.djm>. Nieland offers the following observation about EDR and fraud by Milwaukee Mayor John Norquist: "To rig any significant number of ballots would just be an unimaginable pain in the butt."
51. A series of articles in the *Milwaukee Journal Sentinel* covered the case. See David Doege, "No Evidence Found of Multiple Voting: McCann concludes students misled Marquette newspaper," <http://www.jsonline.com/news/metro/dec00/vote21122000a.asp>.
52. "Cigarette case involves 15 to 25," *Milwaukee Journal Sentinel On Line*, November 14, 2000. <http://www.jsonline.com/news/metro/nov00/smokes15111400a.asp>.

53. Interview with Mike Mahoney, assistant attorney, Milwaukee County, February 6, 2002.
54. The states are Alaska, Connecticut, Delaware, Florida, Georgia, Kentucky, Louisiana, Missouri, South Carolina, Texas, and Virginia. See the Constitution Project, *Election Reform Briefing: Voter Identification* (April, 2002); and U.S. General Accounting Office, *Elections: Perspectives on Activities and Challenges Across the Nation*: 188–90.
55. U.S. General Accounting Office, *Elections: Perspectives on Activities and Challenges Across the Nation*: 189.
56. “Spotlight: Voter Identification Requirements,” *Democracy Dispatches*, Number 15 (February 15, 2002), Dēmos.
57. American Association of People With Disabilities, “Kill the Senate Election Reform Bill,” <http://www.aapd-dc.org/docs/votekill.html>.
58. “Groups Protest Senate Bill for Voter ID Checks; Say Will Make Many New Yorkers ‘Second Class Voters’” News release, the Citywide Coalition for Voter Participation, (April 3, 2002).
59. The Constitution Project, *Election Reform Briefing: Statewide Voter Registration Databases*, March 2002. See also: Demos, *An Overdue Reform: The Need for Statewide Computerized Voter Registration Systems*, February 2002.
60. Federal Election Commission, *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 1995-1996, A Report to the 105th Congress*, 39–41.
61. Federal Election Commission, *Developing a Statewide Voter Registration Database: Procedures, Alternatives, and General Models*, Autumn 1997: 9.
62. The Constitution Project, *Election Reform Briefing: Statewide Voter Registration Databases*: 2.
63. Ronald Hayduk, “The Weight of History: Electoral Reform in the Progressive Era and Today,” in Ronald Hayduk and Kevin Mattson, *Democracy’s Moment: Reforming the American Political System for the 21st Century* (Lanham, MD: Rowman and Littlefield, 2002): 40–41.
64. Report and Recommendations to Improve the American Elections System, NACO and NACRAC, May 20, 2001. <http://www.naco.org/programs/infotech/elections/election.pdf>.
65. Alvarez and Ansolabehere, *Expanding the Vote: Election Day Registration in California*: 14–16.
66. The City of Miami is not to be confused with Miami-Dade County government. Approximately 365,000 people live in the City of Miami, one of 30 municipal jurisdictions within Miami-Dade County where consolidated government represents the larger “Miami” community and performs most of the functions local government.
67. Suarez received 23,598 votes or 53.2 percent to Carollo’s 20,739 votes (46.8 percent). See “Former Mayor Wins an Upset in Miami Ballot,” *The New York Times* (November 14, 1997): A30.
68. William T. McCauley, “Florida Absentee Voter Fraud: Fashioning an Appropriate Judicial Remedy,” *University of Miami Law Review* 54 (2000): 627.
69. *In re Matter of Protest of Election Returns and Absentee Ballots in the November 4, 1997, Elections for the City of Miami, Dade County, Fla., No. 97-25596 CA 09* (Fla.. Dade County Ct. March 4, 1998).
70. “‘Outright Fraud’ Found in Miami Mayoral Elections,” *The Washington Post* (February 3, 1998): A4.
71. Hernandez was eventually convicted of attempting to cover-up the election fraud scheme and sentenced to one year in jail. Governor Chiles again removed him from office.
72. Mike Clary, “Miami Without Mayor as Judge Voids Election: Voting: ‘Massive ... Fraud’ in Absentee Forms Cited; New Balloting to Take Place Within 60 Days,” *Los Angeles Times* (March 5, 1998): A11; Donald P. Baker, “New Mayoral Election is Ordered for Miami; ‘Fraud and Abuse’ Prevalent, Judge Says,” *The Washington Post* (March 5, 1998): A2.
73. Florida is one of only seven states that permanently disenfranchises persons convicted of felony crimes. Its felony disenfranchisement laws are the harshest in the country, with about one third of all disenfranchised ex-felons in the U.S. reside in Florida. Human Rights Watch and the Sentencing Project, *Losing the Vote: The Impact of Felony Disenfranchisement Laws in the United States* (1998), <http://www.hrw.org/reports98/vote>.
74. Greg Palast, *The Best Democracy Money Can Buy* (Sterling, Virginia: Pluto Press, 2002): 16.
75. Peter M. Warren, “Dornan Vows Appeal to House if Lead is Lost,” *Los Angeles Times*, Orange County Ed. (November 12, 1996): A1.
76. *Ibid.*
77. Dexter Filkins, Peter M. Warren, and Jean O. Pasco, “Dornan, Sanchez Square Off Before House Task Force,” *Los Angeles Times*, Orange County Edition (April 20, 1997): A1.

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78. A recount requested by Dornan reduced the final margin by five votes.
79. See: U.S. Congress, House, Committee on House Oversight, Task Force for the Contested Election in the 46th Congressional District of California, *Dismissing the Election Contest Against Loretta Sanchez: Report of the Committee on House Oversight on H.R. 355, Together with Minority Views* (February 12, 1998), H. Rept. 105-416.
80. Benjamin Ginsberg and Martin Shefter, *Politics by Other Means: Politicians, Prosecutors and the Press from Watergate to Whitewater*, Revised and Updated Edition (New York: W.W. Norton & Company, 1999): 44.
81. Cost estimates are as follows: investigation by the House Oversight Committee (\$300,000); expenditures by the INS to conduct data analysis (\$500,000); reimbursement to Dornan for costs associated with his contest (\$320,000); reimbursement to Sanchez for her defense (\$250,000). These costs do not include the expenditures by the Orange County Registrar of Voters to conduct an internal review and assist the Committee in its investigation, the Orange County District Attorney's Office for its criminal investigation of Hermandad Mexicana Nacional, or the California Secretary of State's Office for its investigation of noncitizen voting in Orange County.
82. "California Won't Prosecute Noncitizen Voters," *The Washington Post* (March 1, 1998): A19.
83. Missouri, Office of the Secretary of State, *Mandate for Reform: Election Turmoil in St. Louis, November 7, 2000*, Report by Secretary of State Matt Blunt (July 24, 2001): 39-46.
84. Carolyn Tuft, "Bond Wants Federal Investigation of Problems at City Polls; He Accuses Democrats of 'Criminal Enterprise' in Keeping Polls Open Late; Democrats Criticize Election Board," *St. Louis Post-Dispatch* (November 10, 2000): A1.
85. Jo Mannies, "Vote Fraud Charges are Hogwash, Clay Says, But Bond Stands Firm," *St. Louis Post-Dispatch* (February 21, 2001): C2.
86. See Tuft. Bond's assumption of criminal intent behind the effort to clear out what all parties agree was a chaotic situation inside many St. Louis polling places, may have a personal dimension. Speaking of his successful run for governor in Missouri in 1972, Bond said, "They [St. Louis Democrats] tried the same stunt on me. This time was one too many"—referring to his belief that St. Louis Democrats intentionally kept the polls open until midnight in 1972 to prevent his election as the youngest governor in the state's history. See Mannies (February 11, 2001). One of the lawyers for the Democrats in 2000 was Douglas Dowd, the son of Ed Dowd Sr., the man Bond defeated in 1972.
87. Carolyn Tuft, "Grand Jury Looks at Voter Registration," *St. Louis Post-Dispatch* (February 14, 2001): A1; Stephanie Simon, "National Perspective: Politics: In St. Louis, Dead Are Causing Lively Debate With Their Votes," *Los Angeles Times* (February 28, 2001): Part A1, Page 5; Christopher S. "Kit" Bond, "'Motor Voter' Out of Control," *The Washington Post* (June 27, 2001): A25.
88. Jo Mannies and Jennifer LaFleur, "City Mislabeled Dozens as Voting From Vacant Lots; Property Records Appear to be in Error, Survey Finds; Just 14 Ballots Are Found Suspect," *St. Louis Post-Dispatch* (November 5, 2001): A1. Further investigation by the *Post-Dispatch* fully debunked the vacant lot claims. According to reporter Jo Mannies, "Basically, we checked every one of the 2,000-plus props [properties] listed as vacant lots with voters, and found virtually all had houses on them—had been misclassified by the assessor's office." (E-mail correspondence with the author, February 25, 2002.)
89. St. Louis County judge Robert S. Cohen said, "This process had taken them hours and hours. Some had babies with them; some had wheelchairs; some had taken off work. We were trying to accommodate people in a long line and get them in and out. We were erring on the side of allowing people to vote. Rejecting an American citizen at the poll who appears to have engaged in no fraud ... it's a difficult thing to turn that person away and say you cannot vote, you cannot participate in the democracy today." Jo Mannies, "Secretary of State Says Local Judges Erred in Election; 1,233 People Were Improperly Allowed to Vote, Report Says," *St. Louis Post-Dispatch* (July 25, 2001): A1.
90. In one of three recent reports on voting in St. Louis, Secretary of State Blunt called the communications between local polls and the St. Louis City Board of Elections on election day 2000 "grossly inadequate." One of his recommendations for improving election administration on election day was the providing of working cell phones to local poll workers and elections judges and the installation of more telephone lines at Board of Elections headquarters so that poll workers could more easily access the inactive voter files by calling in their inquiries. On election day 2000 in St. Louis, many cell phones at the local polls had no batteries and a new telephone system at the Board of Elections malfunctioned, preventing judges from checking whether voters were listed on the inactive file. Under such circumstances, Missouri voters must get a court order to vote, a partial explanation for why so many court orders were issued. Blunt's recommendations were heeded for the March 6, 2001, municipal primary election. See Missouri, Office of the Secretary of State, *Making Every Vote Count: A Report of Secretary of State Matt Blunt to the People of Missouri* (January 29, 2001).

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U.S. ELECTION ASSISTANCE COMMISSION  
1225 New York Ave. NW – Suite 1100  
Washington, DC 20005

Statement of Vice-Chair Rosemary E. Rodriguez Regarding  
Request by Tova Wang, Co-Author of the Draft Voter Fraud and Voter  
Intimidation Report for the Election Assistance Commission  
April 26, 2007

On April 16, 2007, Ms. Tova Wang, formerly a contract employee of the United States Election Assistance Commission (EAC), made the following request of the EAC: “to discuss with third parties any and all aspects of her work for the EAC and to release her research and other information relating to her work for the EAC and the draft report that she submitted to the EAC.”

Today, Ms. Wang issued a public statement restating her request to the EAC, pointing out that we have not yet responded to her April 16 request. As a member of the EAC, I am compelled to comment on her request. I cannot bind the Commission, as one member, but I believe that the EAC should immediately respond to Ms. Wang’s request. I further believe that releasing Ms. Wang to discuss her work for the EAC will be a positive step as we endeavor to operate with more transparency.

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**PRELIMINARY RESEARCH PROJECT ON VOTING FRAUD AND VOTER INTIMIDATION  
U.S. Election Assistance Commission's (EAC)**

Section 241 of the Help America Vote Act of 2002 (HAVA) requires EAC to conduct research on election administration issues. Among the issues listed in the statute are the development of:

- nationwide statistics and methods of identifying, deterring, and investigating voting fraud in elections for Federal office [section 241(b)(6)]; and
- methods of identifying, deterring, and investigating methods of voter intimidation [section 241(b)(7)].

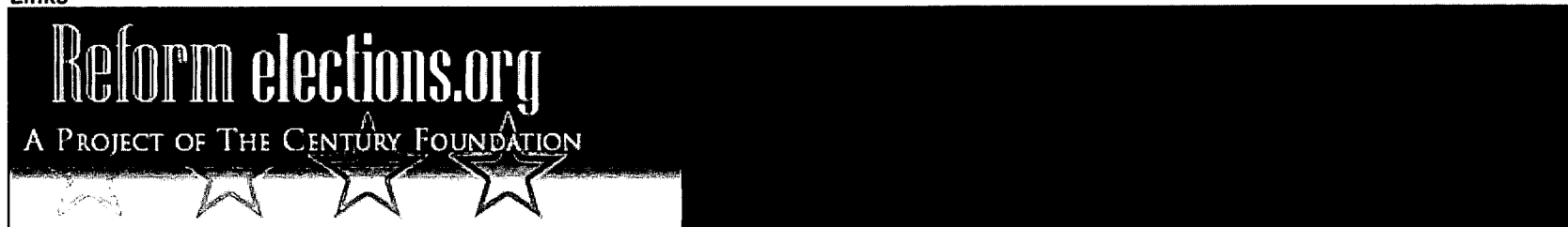
EAC's Board of Advisors recommended that EAC make research on these topics a high priority. Subsequently, the Commission contracted with two consultants (Tova Wang and Job Serebrov) to:

- develop a comprehensive description of what constitutes voting fraud and voter intimidation in the context of Federal elections;
- perform background research (including Federal and State administrative and case law review), identify current activities of key government agencies, civic and advocacy organizations regarding these topics, and deliver a summary of this research and all source documentation;
- establish a project working group, in consultation with EAC, composed of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation;
- provide the description of what constitutes voting fraud and voter intimidation and the results of the background research to the working group;
- convene the working group to discuss potential avenues for future EAC research on this topic; and
- produce a report to EAC summarizing the findings of the preliminary research effort and working group deliberations that includes recommendations for future research, if any;

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Links



## issues

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### Election Fraud

#### Questions and Answers

[How prevalent is voter fraud?](#)

[What best practices can states implement to combat voter fraud?](#)

[What kinds of voter suppression have occurred recently?](#)

[Are there criminal penalties?](#)

[Are they enforced?](#)

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### How prevalent is voter fraud?

There is very little systematic data to tell us how widespread voter fraud actually is; most evidence of individuals attempting to subvert the election system is anecdotal. For this reason, the debate surrounding voter fraud and its supposed remedy, voter identification, often gets mired in politically partisan rhetoric rather than facts.

Nonetheless, the evidence that exists suggests voter fraud at the polling place is a relatively minor problem in American elections. The historically close 2004 gubernatorial election in Washington state resulted in a long litigation that involved extensive investigation of voter fraud. Of the 1678 illegal votes uncovered in this investigation, about 1 percent were cast fraudulently, either as "double votes" or on behalf of deceased voters; the rest of the votes were improperly included in the ballot tally as a result of errors on the part of election officials. In addition, a survey produced by

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the Coalition on Homelessness and Housing and the League of Women Voters of Ohio's 88 counties showed four instances of fraudulent voting out of a total of nine million votes cast in the state's 2002 and 2004 general elections.

**Sources/More Information:**

[A Joint Report on Election Reform Activities](#)   
(Coalition on Homelessness and Housing in Ohio, League of Women Voters of Ohio) June 14, 2005

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### **What best practices can states implement to combat voter fraud?**

As a means of dealing with the perceived problem of voter fraud, many states are currently passing legislation requiring all voters to produce some form of identification—sometimes insisting upon government issued photo identification—when they go to vote. While these restrictive voter identification requirements can often disenfranchise eligible voters (for more on this topic see the [section on voter ID](#)) there are policies states can implement to guard against voter fraud that make the election system as a whole more secure without disenfranchising voters who lack standard forms of identification.

- **Technology:** Upgrading the linkages between local and state voter registration databases and the electronic databases of other state agencies can significantly cut down on the number of duplicate and ineligible registrations on the rolls. Providing access to these databases at the local polling places themselves (via laptop) can head off fraudulent voting at the polls as well.
  - **Enforcement:** Strengthening the prosecution of actual cases of fraud and enforcing voter fraud laws will help to deter potential fraud.
  - **Election Day Registration:** Although many people believe the myth that allowing voters to register to vote on Election Day increases voter fraud, Election Day Registration (EDR) actually can prevent fraud because it puts registration under the direct supervision of trained election officials, rather than allowing workers at the Department of Motor Vehicles and other sites to control voter registration. Studies show that states offering EDR report very few incidents of fraud, while their turnout is nearly ten points higher than average turnout in states that do not offer EDR.
  - **Absentee Ballot Security:** Many states consider absentee ballot fraud a more serious threat than polling place fraud. Some states, such as Oregon, which conducts its elections entirely by mail, have successfully implemented systems to prevent fraud. Absentee ballots cannot be forwarded, and each voter must sign an outside envelope that is later verified using a computer signature on record. The state requires ballot drop boxes, set up so voters can save on stamps by hand-delivering them, to be labeled as "official" if they have been set up by elections administrators and "unofficial" when they are set up by outside groups.
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## What kinds of voter suppression have occurred recently?

In the 2004 election there were many reports of voter suppression and intimidation, though incidents such as these have occurred throughout American history:

- **Challenges:** Making use of an obscure law allowing challenges to an individual's right to vote, the Republican Party in Ohio preemptively disputed the registrations of more than 35,000 first-time voters from predominantly Democratic and minority areas, requiring them to appear in court to defend their eligibility to vote just days before the election. The GOP also announced plans to dispatch people to polling sites to challenge registrations of pre-selected voters in person—these plans were the subject of several last-minute lawsuits. Similar challenges also occurred in a number of other states, including Florida and Wisconsin.
- **Voter Registration Suppression:** In Nevada, according to press reports, workers for a Republican funded private voter registration company that targeted registration efforts at Republicans destroyed forms filled out by Democrats. In Florida, several thousand students and other potential voters found that their party affiliations and addresses had been changed on their registration forms.
- **Deception:** In African-American neighborhoods of Milwaukee, a flier purportedly from the "Milwaukee Black Voters League" was distributed, reading,

SOME WARNINGS FOR ELECTION TIME

IF YOU'VE ALREADY VOTED IN ANY ELECTION THIS YEAR YOU CAN'T VOTE IN THE PRESIDENTIAL ELECTION.

IF YOU [OR ANYBODY IN YOUR FAMILY] HAVE EVER BEEN FOUND GUILTY OF ANYTHING, EVEN A TRAFFIC VIOLATION, YOU CAN'T VOTE IN THE PRESIDENTIAL ELECTION.

... IF YOU VIOLATE ANY OF THESE LAWS YOU CAN GET TEN YEARS IN PRISON AND YOUR CHILDREN WILL BE TAKEN AWAY FROM YOU.

Letters sent on fake NAACP letterhead warned African-American voters that they would be arrested if they tried to vote and had outstanding parking tickets or had not paid child support.

In Pennsylvania, leaflets were distributed on fake county letterhead in a mall, announcing that Republicans should vote on Tuesday, November 2, and Democrats should vote on Wednesday November 3. A similar incident occurred in Cleveland, where letters printed on fake Board of Elections letterhead warned that registrations through the Kerry campaign, America Coming Together, and the NAACP were invalid.

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**Sources/More Information:**

Color It Wrong

Steve Carbo (Demos) December 22, 2004

Election 2004: A Report Card

Tova Wang (The Century Foundation) January 4, 2005

Voter Suppression and Intimidation 

Panel Discussion Transcript (Voting in 2004: A Report to the Nation on America's Election Process) December 7, 2004

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**Are there criminal penalties?**

The Voting Rights Act of 1965 states that "no person [...] shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote." This legislation addresses some of the more outright forms of intimidation, but sometimes intimidation is difficult to distinguish from ordinary election-related activity. For example, in Florida, false allegations of voter fraud led to fruitless investigations that involved sending uniformed officers to the homes of African-American voters for questioning. Investigations such as these have the effect of intimidating voters, by invoking memories, especially for older African-Americans, of police persecution at the polls fifty years ago, but they do not necessarily fall under the Voting Rights Act unless it is clear that they were part of an intentional effort to intimidate voters.

**Sources/More Information:**

Efforts to Suppress the Vote: An Overview

Edward B. Foley and Amber Lea Gosnell (Election Law @ Moritz) September 2004

Text of Voting Rights Act of 1965

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**Are they enforced?**

There has been a limited effort to investigate allegations of intimidation and suppression, and to prosecute the responsible parties, especially after the 2004 election, in which there were widespread reports of such tactics. However, it is likely that these laws are under-enforced, both because

they are difficult to detect or difficult to prosecute.

**Sources/More Information:**

Nationwide Election Incidents Database  
(VoteProtect.org)

**UNDERSTANDING, DETECTING, AND PREVENTING ELECTION  
FRAUD:  
DOMESTIC AND INTERNATIONAL PERSPECTIVES**

**Book Prospectus**

July 19, 2006

R. Michael Alvarez, California Institute of Technology  
Thad E. Hall, University of Utah  
Susan Hyde, Yale University

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There has been much discussion of fraud in elections in the popular media since the 2000 election, but social scientists have been studying this phenomenon for a very long time. Historical accounts of election fraud—and the procedural mechanisms that administrators have attempted in order to combat it—illustrate the complexity and the myriad of ways in which fraud has been perpetrated. Procedures from the Australian ballot to voter registration, things that we take for granted today, are innovations that were put into place to address election fraud concerns.

However, while there have been many popular accounts of allegations of election fraud in recent elections, there has not been sufficient and systematic study of this question from the academic and policy research communities. Despite the recent efforts by a handful of scholars (most of whom are contributors to this project), researchers and policymakers do not have any consistent place to turn for discussion of academic research on election fraud, for discussion of the methodologies of fraud detection, nor for advice on how to best prevent the occurrence of election fraud.

Our goal in this project is to provide such a resource for the academic and policymaking community, and hopefully also for the interested public. By bringing together the top researchers and policymakers in this field, we will provide in a single reference an accumulation of what the research and policy community now knows about election fraud — the incidence of election fraud, the best methodological tools for studying election fraud, and methods of fraud prevention. The contributions contained in this volume are to be presented and discussed extensively at an upcoming workshop at the University of Utah in late September 2006.

The papers in this volume examine three facets of election fraud. First, we open the book with a chapter that overviews the extant literature on election fraud, both domestically and internationally. We then continue with this theme in the first section, which examines our understanding of election fraud in specific contexts and through different measurements. In the second section, we examine specific methodological means by which election fraud can be

detected. These methods use existing data to determine when election results may be problematic. The third section of the book considers policy recommendations and considerations for making elections fair, accurate, and secure. The book will conclude with a chapter from the editors, summarizing the perspectives offered in the book, and providing an outline of research questions that should frame the next stage of research on election fraud.

### **Project Timeline**

As noted above, the contributions to this project will be presented and discussed at a workshop in late September 2006. We will then allow the authors of each contribution approximately eight weeks to return to us edited and revised manuscripts (due at the end of November 2006). The editors anticipate that by end of January 2007 the complete manuscript will be finalized and submitted for final consideration. This would put this project on schedule for potential publication in early 2008, which will coincide with the beginning of the 2008 presidential election cycle.

## **Brief Book Description**

### **INTRODUCTION: THE IMPORTANCE OF UNDERSTANDING ELECTION FRAUD**

In this introduction the editors will present, briefly, the three basic themes of this project: what social scientists currently know about election fraud, what methodologies can be used to detect election fraud, and the mechanisms that can help prevent election fraud. In this introduction, the editors will provide a brief discussion of the contributions contained in the rest of the volume.

### **Section 1: Understanding Election Fraud**

GAMZE ÇAVDAR

*WHEN "IRREGULARITIES" BECOME REGULAR: ELECTION FRAUD IN IRAQ, EGYPT AND THE PALESTINIAN TERRITORIES*

Although the Middle East as a region has seen a rise in the number of elections over the last decade, these elections are far from being free and fair. Both local and international NGOs have often reported fraud as a widely-experienced phenomenon in such elections. This paper examines election fraud in three Middle Eastern cases, namely Iraq, Egypt and the Palestinian territories, by discussing its manifestations, pervasiveness and significance. These cases have been selected due to their significance. In each case, the recent parliamentary elections marked turning points with actual and potential repercussions for their respective countries as well as the region. Iraq held its first parliamentary elections on December 15, 2006, after the constitution was approved in a referendum following the collapse of Saddam's regime. In Egypt, the November 2005 elections challenged the ruling National Democratic Party's overwhelming majority in the parliament, leading the Muslim Brotherhood, a banned Islamist party, to control one-fifth of the seats. In January 2006, the voters of the Palestinian territories unexpectedly brought Hamas, a political party that has been on the U.S. terrorist list, to power. Although the extent of the fraud varies from one case to another, many types of fraud have been reported by the election monitors in these cases. These include: harassment of monitors and candidate agents, intimidation of voters, incidents of violence, lack of voter secrecy inside the polling station, polling centers opening late, inaccurate voters' lists, vote-buying and multiple voting, and violation of the secrecy of the ballot.

This paper first discusses general characteristics of elections in the region, with the aim of demonstrating how the electoral systems have been engineered there. Then, it discusses various manifestations of fraud in these cases by underlining their common characteristics as well as their peculiarities. Finally, it discusses the obstacles to holding free and fair elections in all these cases. The paper argues that the election fraud in the Middle East cannot be fully understood without understanding the political and economic context within which such elections take place. Restrictions on basic human rights such as the freedoms of expression and assembly in Egypt, and ongoing violence and foreign occupation in Iraq and Palestine, illustrate the point.

PETER ORDESHOOK AND MISHA MYAGKOV

011747



*THE FLOW OF VOTES IN RUSSIA: COHERENT VERSUS SUSPICIOUS PATTERNS*

In our earlier research we have developed a variety of methods of looking at official election returns for detecting and measuring the extent of election irregularities (fraud) in both Russia and Ukraine. We were able to show that evidence consistent with a rigged vote exists in official election returns. But we also showed that, naturally, the strength of such evidence depends heavily on quality of the data, and, most importantly on the level of aggregation of election returns that we use. The main aggregation units in our analysis were so-called "rayons" (counties). That fairly high level of aggregation combined with strong data homogeneity requirements limited our findings to cases of mostly "massive" election fraud, which were clearly present in both latest Russian and Ukrainian presidential elections. In this paper we will report results of a much more refined application of our methods using Russian and Ukrainian election data aggregated to the level of individual polling stations.

The unique dataset analyzed here is comprised of approx 100,000 observations from Russia and 30,000 observations from Ukraine. In addition we will be able to use the time series piece of our methodology (based on ecological inference) on the refined data set. We will use the new precinct level data that should be shortly available as a result on the upcoming parliamentary elections in Ukraine.

FRED BOEHMKE AND MICHAEL ALVAREZ

*CONTEMPORARY ELECTION FRAUD: A QUANTITATIVE ANALYSIS OF ELECTION FRAUD CASES IN CALIFORNIA*

Studies of electoral fraud have generally consisted of demonstrating the existence and pervasiveness of fraud in various contexts based on elite interviews, voter surveys, newspaper stories or case-study analysis. Yet none of these studies has yielded data with sufficient variation across time or space to permit systematic testing of hypotheses regarding the frequency of electoral fraud. In addition, many of these studies have gone where the fraud is by intentionally studying cases or countries where fraud is considered problematic. In this paper we conduct a quantitative analysis of election fraud using data from California's 58 counties between 1994-2003. Our data consist of all electoral fraud cases filed during this period and are disaggregated by allegation and resolution. We conduct event count regressions to test hypotheses about the timing and location of fraud cases, including measures of competitiveness, ideology, economics and demographics. Our results provide evidence that fraud allegations are associated with competitiveness, ideology, race and population density. Results are similar across a variety of specific violations as well as case outcomes.

MICHAEL ALVAREZ AND THAD E. HALL

*PERCEPTIONS OF ELECTION THREATS: WHAT DO VOTERS KNOW ABOUT ELECTION SECURITY AND DO THEY CARE?*

Since before the 2004 presidential election, we have been conducting periodic public opinion polls to assess the perceptions of Americans about the electoral system. We have asked questions specifically about the potential problems associated with electronic voting systems in three successive surveys, and more recently, we have asked respondents about their perceptions of general security threats to the electoral process. In this paper we present data from our

surveys, providing important information on the perceptions of Americans about the security of their electoral system.

DELIA BAILEY

*CAUGHT IN THE ACT: WHAT WE CAN LEARN FROM CRIMINAL ELECTION FRAUD CASES*

Although fraud regularly features in academic and media discussions of election reform, there are relatively few recorded cases of large-scale vote fraud in recent U.S. history. Of course, it is difficult to know whether the lack of cases is due to the small number of perpetrators of election fraud, or to the ability of many perpetrators to avoid detection. This paper utilizes recent election fraud cases, both those highly publicized in the media, and smaller federal cases prosecuted within the 2000-2005 period, to identify commonalities and suggest avenues for further research in this area.

THAD E. HALL AND TOVA WANG

*THE POLITICS OF IS: HISTORICAL RESEARCH ON VOTER IDENTIFICATION AND QUALIFICATION AT THE POLLS*

In addition to using quantitative social science research methodologies to study election fraud, we can also study this issue by examining election fraud's historical and political dimensions. Specifically, we can use data on voter identification requirements to determine whether recent laws requiring voters to present identification at the polls are neutral to voting platforms—that is, they treat early, absentee, and in-precinct voters equally—in their purported attempt to combat fraud. We also examine whether historically other reforms that seek to ensure the voter is qualified have been neutral, treating all voters equally. Finally, we assess whether the current reforms are likely to result in all voters being treated equally, regardless of their voting method. This analysis can help to inform us as to whether laws and procedures are designed to address fraud or to serve other political or symbolic needs.

## **Section 2: Detecting Election Fraud**

MICHAEL ALVAREZ & JONATHAN KATZ

*DETECTING ELECTORAL FRAUD: THE CAST OF THE 2002 GENERAL ELECTION IN GEORGIA*

Detecting election fraud is difficult for many reasons. Allegations of election fraud are widespread, but actual empirical evidence of election fraud is illusory. In our paper we focus on the specific case of the two statewide elections in Georgia's 2002 general election. Drawing upon a large body of social science research, which has for decades used statistical tools to study election outcomes, we undertake a variety of statistical studies of these two Georgia elections. Our analysis concludes that there is little direct evidence of fraud in these two elections, using the past history of electoral data from Georgia. Our analysis also provides a series of methodological tools that might be used in future situations where allegations of electoral fraud arise.

CHARLES H. FRANKLIN

*CAN EXIT POLLS EVER DETECT VOTE FRAUD?*

The exit polls were prominently used in 2004 to cast doubt on the vote count in Ohio. Regardless of the specific merits of the 2004 case, it is of interest to ask how exit polls may ever be used as checks on fraudulent vote counts, in the U.S. and elsewhere. The difficulty is that simple discrepancy between the exit polls and the official count can be due to error in either or both the polls or the counts. In this situation it is crucial that we have reliable estimates of the true variability in exit polls, their potential biases and the extent to which we can ever question a tabulated vote based on the exit polls.

In this paper I exploit archival data in which multiple exit polls are available for most of the 50 states to estimate the reliability of exit polls. This provides an independent estimate of the variability in exit poll estimates (beyond sampling theory alone), which in turn places constraints on how large fraud must be in an electoral district for the exit polls to cast credible doubt on the results. One aspect of this issue is that the exit poll need not be treated as the definitive source of evidence. It merely needs to be convincing enough to trigger a formal investigation of the vote count. Thus an exit poll need not have unattainably low variance to play a roll in the monitoring of elections. The level of variability, however, sets a limit below which exit polls will be useless as fraud alarms.

D. RODERICK KIEWIET, THAD E. HALL, R. MICHAEL ALVAREZ, AND JONATHAN N. KATZ  
*USING INCIDENT REPORTS TO DETECT ELECTION ANOMALIES AND IRREGULARITIES*

In this paper, we present research using incident reports from election jurisdictions, and demonstrate how these incident reports can be used to study election anomalies and irregularities. Much of the analysis in this paper will focus on the May 2006 primaries in Cuyahoga County, Ohio, and incident reports from that election.

DAN KNOEPFLE  
*THE POWER AND RELIABILITY OF STATISTICAL TECHNIQUES FOR DETECTION OF ELECTION FRAUD*

Both election error and outright fraud pose a number of significant threats to our democratic process, including the possibility of erroneous outcomes or even fixed or stolen elections. In addition, the specters of fraud and election mistakes provide a premise for partisan maneuvering, putting the power to determine close, contested elections in the hands of a small group of officials and derailing election reform legislation. Previous research on statistical detection of election abnormalities has focused on finding known errors in county-level election returns (e.g. Wand et al., 2001). Despite a number of successes in implicating areas independently known to have suffered abnormalities, the feasibility of such methods for identifying occurrences of common election anomalies has not been investigated. We analyze the ability of various statistical techniques to identify simulated errors added to real election data using Monte Carlo experiments. The experiments give estimates of the power and reliability of the methods and suggest reasonable bounds on the potential of these methods. We extend earlier technical work and give suggestions for real-world application.

WALTER MEBANE  
*USING BENFORD'S LAW AND RANDOMIZATION TO DETECT ELECTION FRAUD*

What can we do to detect corruption in election results using only the vote totals reported in one election? Being able to test for corruption using such limited information is important if we wish to implement fully automated, routine vetting of election returns. Such tests should not depend on any substantive assumptions peculiar to the particular election at hand. For example, ideas about party loyalties, ideological commitments or the contents of the given campaigns should play no role. Not using such assumptions may help obviate controversies about whether the substantive model is correct, controversies that not only may delay reaching a conclusion about the status of the current election but also may distract attention from the core issue of whether the vote tallies are valid.

Benford's Law may serve as the foundation for such tests. I show that a kind of mixture process that generally occurs in elections produces vote counts that have second digits that satisfy Benford's Law, at least when the counts are for totals at the level of precincts. Benford's Law may also hold for higher levels of aggregation, but the usefulness of examining higher levels is questionable when the goal is to detect vote fraud. At lower levels of aggregation, in particular for machine-level vote totals, I show that Benford's Law may not hold if multiple voting machines are used at each polling place and voters are randomly assigned to voting machines. The random assignment of voters to machines may eliminate a key feature of clustering among voters that is important for producing digits that satisfy Benford's Law. If machine-level totals and other important information about how the voting machines were used are available, a randomization test can be used to check for distortions in the vote counts. I use simulation exercises to assess how sensitive the tests are to various kinds of corruption, and I apply the tests to various collections of data from recent elections.

ALBERTO SIMPSE

*FRAUD TECHNOLOGY AND THE ESTIMATION OF ELECTION FRAUD*

How can election fraud be detected and measured? I use a simple model to show how information about the technology of electoral corruption together with voting data can be used to estimate the extent of electoral corruption when both treatment and control observations are available. I apply this model to a cross-section of subnational-level historical data from Mexico, using observations after the electoral reforms of the 1990s as controls for the pre-reform "treatment" observations on the same units.

### **Section 3: Preventing Election Fraud**

SUSAN HYDE

*INTERNATIONAL ELECTION OBSERVATION AND FRAUD*

The practice of international election observation spread rapidly throughout the world since the early 1990s, and few elections today take place without the presence of international election observers. How do international election observers influence election fraud?

One of the challenges for international election observers is that there are virtually limitless means of manipulating an election. This paper documents methods used by the leading international observer organizations to detect election fraud, including the parallel vote tabulation, voter registration audits, the expansion of long-term election observation, and coordination with domestic election observers. Each of these methodological innovations

makes it more likely that certain forms of election manipulation will be caught by international observers. By improving their abilities to detect certain forms of election fraud, international election observers have given potential election manipulators the incentive to engage in less direct and less traceable means of manipulating the election.

However, the record of elections in the past fifteen years has shown that despite all of the improvements in international election observation and the resulting increased likelihood that direct fraud will be caught, some leaders continue to engage in Election Day voting fraud. International election observers have witnessed and documented election fraud in a number of high profile elections in recent years. Can international observers also deter these more blatant forms of voting manipulation? The final portion of this paper presents evidence that international observers can deter election fraud. In some cases, the presence of foreign observers in polling stations makes it less likely that voting fraud will occur. By randomly assigning international observers throughout the country on Election Day, observers can detect election-day fraud even if it is well concealed in their presence, and can measure the degree to which they had a deterrent effect on Election Day fraud.

MICHAEL ALVAREZ, THAD E. HALL, KATHY ROGERS

*ADMINISTERING ELECTIONS TO DETER FRAUD: APPLYING CHAIN OF CUSTODY PROCEDURES TO ELECTIONS*

The social sciences not only provide us with methodological mechanisms for identifying fraud, but also with mechanisms for deterring fraud. In this paper, we use data from the EAC Vote Count Project to examine legal and procedural mechanisms that exist in the states for deterring fraud by promoting the maintenance of chains of custody of all critical election components. We review models of implementing such chains of custody, with special attention paid to models used in Georgia and Austin, Texas, as well as consideration given to holes that exist in current regulatory schemes in most states.

DOUG CHAPIN

*PROHIBITING VOTE FRAUD AND INTIMIDATION*

In addition to the social science literature on election fraud, there is also a formal legal and regulatory component to understanding and deterring fraud. This chapter complements the existing discussion in the previous chapter by providing a survey of prohibitions on vote fraud and intimidation at the federal, state, and (where appropriate) the local level. The formal practices for deterring fraud and intimidation are influenced by many factors, including a state's political and legal culture, as well as experience in elections. This chapter includes both empirical and normative considerations regarding how the law can help to mitigate and prevent fraud.

TED SELKER

*ERGONOMICS, TECHNOLOGY, AND FRAUD PREVENTION*

Many current and proposed technologies purport to reduce opportunities for voting fraud. But the unintended consequences for the end user's experience of "technical solutions" can themselves introduce or perpetuate opportunities for voting fraud. Fraud can occur at any stage

of a voting process from registering a bogus candidate to changing the reported count from an election. Every kind of voting fraud involves some aspect of the human experience in the electoral process. Understanding the limitations of voter's perceptual, cognitive, motor and psychological abilities can help researchers and election officials in their efforts to evaluate the opportunity, level of threat, and consequences of various kinds of voting fraud. While research on the voter's user experience is only at early stages, the research that has been done to date can shed light on better ways to understand and to prevent voting fraud.

This chapter will examine how the user experience can itself be critical in establishing the possibilities for voting fraud, and for preventing it. By understanding the ways in which voters interact with the process and technologies involved in elections, many approaches can be developed to prevent or to mitigate fraudulent registration and voting. Ballot design continues to be a source of great voter confusion, and is one area where improved design can reduce confusion and increase the odds that fraud is prevented. Also, the limitation of voter ability to verify their choices easily and accurately when they vote makes many existing vote verification systems vulnerable to fraud. The choice of personnel and their placement can greatly affect the voter's experience in a polling place, and can mitigate many forms of voting fraud. The polling place procedures, including voter check-in, instructions and ballot presentation, often present problems that can open the door for various types of fraud schemes. Access to and handling of voting machines has long been a source of voting problems and continues to be a major concern. Precinct close-down procedures are often carried out with inadequate supervision. Handling of the counting process is a typical place where procedures and supervision have been questionable.

The list of ways fraud can occur is not new; this chapter will show how perceptual, cognitive, motor and psychological evaluation of voting process and technology must be factored into any evaluation of potential fraud. Successful voting requires viewing the process as a set of user experiences that must be designed to respect the abilities of people and be done with successful checks for all human actions.

#### **Section 4: Conclusions and Implications**

In this chapter, the editors will summarize the conclusions of the project and provide some perspectives on a future research strategy. What is the current state of research on election fraud in social science? How can that research be improved? Are the existing methods sufficient, or is there a need for the development and application of new methodologies for studying election fraud? And finally, how can the social science community who studies this question best communicate their research to the election officials who are in a position to put that knowledge to use?

## Brief Biographical Sketches

### The Editors (in alphabetical order)

R. Michael Alvarez is professor of political science at Caltech, and has been associated with the Caltech/MIT Voting Technology project since its inception in 2000. He has written extensively on voting behavior, campaigns and elections, survey research, statistical methodology, and election administration.

Thad E. Hall is assistant professor of political science at the University of Utah. He is an expert on public administration, and has published widely on policymaking, election administration, voting technology and election reform.

Together the editors have collaborated on a number of significant projects since 2000, including a range of research papers and monographs, collaborating on foundation grant research and government contract research, and the publication of two books (*Point, Click and Vote: The Future of Internet Voting* [Brookings Institution Press, 2004] and *Paper or Vapor: The Debate Over Electronic Voting* [Princeton University Press, forthcoming]).

### Contributors (in alphabetical order)

Delia Bailey is a Ph.D. candidate at the California Institute of Technology, where she studies statistical methodology. She has studied methodological issues associated with the analysis of the reliability of voting technologies and election reforms.

Fred Boehmke is an assistant professor of political science at the University of Iowa, and currently is a Robert Wood Johnston fellow at the University of Michigan. He is an expert on state politics, the initiative and referendum process, and political methodology.

Gamze Çavdar is an assistant professor of political science at Colorado State University, where she studies Middle Eastern politics.

Doug Chapin is executive director of electionline.org, and has analyzed policy developments associated with election reform and voting technology since the inception of electionline.org in the wake of the 2000 election.

Charles Franklin is professor of political science at the University of Wisconsin, and is an expert on political behavior, statistical methodology, and survey research.

Susan Hyde is an assistant professor of political science at Yale University. Her research has focused on international election monitoring, and on fraud prevention.

Jonathan N. Katz is a professor of political science at the California Institute of Technology, and is a member of the Caltech/MIT Voting Technology Project. His research has focused on electoral institutions and electoral behavior, and he is a leading scholar of statistical methodology.

D. Roderick Kiewiet is a professor of political science at the California Institute of Technology, and is a collaborator on the Caltech/MIT Voting Technology Project. He has authored or co-authored articles on several subjects, including the effects of economic conditions upon voting behavior, congressional elections, legislative politics, Russian politics, ethnic politics in California, state and local government, public school finance, and American political history.

Dan Knoepfle is an undergraduate student at the California Institute of Technology, where he is majoring in Biology and Economics. He has been studying election fraud and anomaly detection since his freshman year at Caltech.

Walter Mebane is a professor of Government at Cornell University, and has written many seminal studies on elections and electoral behavior; his expertise also includes political and statistical methodology.

Misha Myagkov is an associate professor of political science at the University of Oregon. He has studied elections and politics in the former Soviet Union and current Eastern European states, and is a leading figure in research literature regarding those regions of the world.

Peter Ordeshook is a professor of political science at the California Institute of Technology, and is a leading scholar of formal political theory and game theory in political science. He has published seminal studies in virtually every subfield of political science, and recently has focused research efforts on the former Soviet Union and East European politics.

Kathy Rogers is the Director of Election Administration for the State of Georgia. In 2002, she oversaw the state's transition to electronic voting statewide and the development of regulations to support this new system.

Ted Selker is an associate professor at the MIT Media and Arts Technology Laboratory, and is co-director of the Caltech/MIT Voting Technology Project. His research on voting and elections has focused on usability, election administration procedures, and the development of innovative new voting and election management technology.

Alberto Simpser is an assistant professor in political science at the University of Chicago. He has completed his dissertation on democratic accountability and electoral corruption, and will begin in the fall of 2006.

Tova Wang is the Democracy Fellow at The Century Foundation, and has been studying and writing about elections and election reform issues there since 2001, when she served on the professional staff of the National Commission on Federal Election Reform. Currently she is undertaking a study of election fraud for the United States Election Assistance Commission.





## Report refutes fraud at poll sites

Updated 10/11/2006 12:32 PM ET

By Richard Wolf, USA TODAY

WASHINGTON — At a time when many states are instituting new requirements for voter registration and identification, a preliminary report to the U.S. Election Assistance Commission has found little evidence of the type of polling-place fraud those measures seek to stop.

USA TODAY obtained the report from the commission four months after it was delivered by two consultants hired to write it. The commission has not distributed it publicly.

**NEW LAWS:** Thousands of voters shut out | Read the preliminary report

At least 11 states have approved new rules for independent voter-registration drives or requirements that voters produce specific forms of photo ID at polling places. Several of those laws have been blocked in court, most recently in Arizona last week. The House of Representatives last month approved a photo-ID law, now pending in the Senate.

The bipartisan report by two consultants to the election commission casts doubt on the problem those laws are intended to address. "There is widespread but not unanimous agreement that there is little polling-place fraud, or at least much less than is claimed, including voter impersonation, 'dead' voters, non-citizen voting and felon voters," the report says.

The report, prepared by Tova Wang, an elections expert at the Century Foundation think tank, and Job Serebrov, an Arkansas attorney, says most fraud occurs in the absentee ballot process, such as through coercion or forgery. Wang declined to comment on the report, and Serebrov could not be reached for comment.

Others who reviewed the report for the election commission differ on its findings. Jon Greenbaum of the liberal Lawyers' Committee for Civil Rights Under Law says it was convincing. The committee wrote to the commission Friday seeking its release.

Conservatives dispute the research and conclusions. Thor Hearne, counsel to the American Center for Voting Rights, notes that the Justice Department has sued Missouri for having ineligible voters registered, while dead people have turned up on the registration rolls in Michigan. "It is just wrong to say that this isn't a problem," he says.

That's one reason the commission decided not to officially release the report. "There was a division of opinion here," Chairman Paul DeGregorio says. "We've seen places where fraud does occur."

The consultants found little evidence of that. Barry Weinberg, former deputy chief of the voting section in the Justice Department's civil rights division, reviewed their work. "Fraud at the polling place is generally difficult to pull off," he says. "It takes a lot of planning and a lot of coordination."

## **Published**

### ***Best Practices for Facilitating Military & Overseas Voting (Section 242)***

#### ***Human Factors (Section 243)***

The EAC, in consultation with the Director of NIST, studied and assessed the areas of human factor research, including usability and human-computer/machine interaction that could be applied to voting products and system design to ensure usability and accuracy.

#### ***Guidance for Statewide Voter Registration Lists***

#### ***Voluntary Voting System Guidelines***

## **Underway**

### ***Statewide Voter Registration Lists - Technology Issues***

#### ***Best Practices for Recruitment, Retention, and Training of Poll Workers***

Sections 241(a) and 242(b) of HAVA direct EAC to periodically “conduct and make available to the public studies regarding... methods of recruiting, training, and improving the performance of pollworkers.” I

#### ***Best Practices for Recruitment, Retention, and Training of College Poll Workers***

The overall objectives of the project are to: (1) collect information on relevant state requirements; issues and options in college poll worker and poll assistant recruitment, training, retention; and effective methods of recruiting, training, and retaining such election workers, including sample materials used in these efforts; (2) produce a user-friendly recruitment manual that includes marketing and training materials; (3) conduct a pilot program in conjunction with colleges or universities in a minimum of three election jurisdictions during the 2006 election cycle; and (4) based on the pilot programs, provide recommendations for revisions to the manual and for future activities to benefit efforts to recruit, train, and retrain college poll workers.

#### ***Election Management Guidelines***

On June 29, EAC published its proposed VVSG for public comment. These guidelines augmented and updated the 2002 Voting System Standards. The first set of standards was promulgated in 1990. While there have been three editions of guidelines for voting equipment in the past 15 years, there is no companion document that covers the election administration and management aspects of the voting process. It is well known that deficiencies in procedures have just as much impact on the enfranchisement of voters and the outcome of elections as the functioning of voting machines.

For many years, the Voting Systems Board of the National Association of State Election Directors (NASSED) has called for the development of a set of election management guidelines to complement the technical standards for voting equipment. The EAC

recognized the need to create election management procedures to accompany the 2005 guidelines, and in Fiscal Year 2005 awarded a contract to develop election management guidelines.

Activities will begin by assembling a working group of experienced state and local election officials to provide subject matter expertise and to assist the project managers with the development of the guidelines. The project will focus on developing procedures related to the use of voting equipment and procedures for all other aspects of the election administration process. The election management guidelines will be available to all election officials if they wish to incorporate these procedures at the local and state levels.

### ***Vote Counts and Recounts***

Section 241(b)(13) - The major tasks associated with vote count research include: (1) review and analyze data collected on definitions of what constitutes a vote for each state by voting system; (2) draft comprehensive report that includes the data analysis and the state-by-state summary of definitions of what constitutes a vote for each voting system; and (3) review literature for methodologies used to establish best practices, and develop definitions of what shall constitute a best practice with respect to vote counts.

The major tasks associated with recount research include: (1) Review and analyze states' recount procedures; (2) draft a comprehensive report that includes the data analysis and the state-by-state summary of recount and contest procedures; and (3) develop definitions of what shall constitute a best practice with respect to recounts and contests of determinations.

After conducting the research, EAC will provide election officials throughout the country with a set of best practices for both vote counts and recounts.

### ***Provisional Voting***

Provisional voting in federal elections was created as a response to people who believed that they were registered to vote in 2000 but were turned away from the polling places because their names did not appear on the poll lists. HAVA Section 303(b) mandates that any eligible voter who appears at the polls must be given a provisional ballot if their name does not appear on the poll list. Provisional voting was not a new concept for all states, but in those jurisdictions enacting provisional voting for the first time, there was a lot of confusion surrounding the issue. Therefore, EAC awarded a contract to research the provisional voting requirements in each state, U.S. territory and the District of Columbia. EAC will then create guidance about implementing this important HAVA mandate, and make this information available to elections officials before the 2006 elections.

### ***Voter Identification***

HAVA Section 303(b) mandates that first-time voters who register by mail for a federal election provide proof of identity before being allowed to cast a ballot. The law prescribes certain requirements concerning this section, but also leaves considerable discretion to the states for its implementation. In 2005, some states enacted new voter identification requirements in addition to what is required for federal elections, resulting

in many inquiries to EAC regarding the implications of these new state laws. To provide states with assistance when making decisions regarding voter identification laws, EAC is researching all of the relevant state laws and procedures relating to voter identification and produce related guidance, and make it available to elections officials before the 2006 elections.

#### ***Effective Designs for the Administration of Federal Elections***

Section 302(b) of HAVA requires the appropriate state or local election official to publicly post voting information at each polling place on the day of each election for federal office. Section 241(b) of HAVA describes ballot designs for elections for federal office as one of the election administration issues to be periodically studied to promote effective administration of federal elections. Therefore, EAC awarded a contract to develop best practices regarding the design of ballots and voter information posted in the polling place on Election Day. This effort will also include assistance with the redesign of the National Voter Registration Form to make it more accessible to all voters in terms of readability and usability.

#### ***Public Access Portal Design Conference***

Section 245(a) of HAVA mandates that EAC conduct a thorough study of issues and challenges presented by incorporating communications and internet technologies. Section 245(a)(2)(C) indicates that EAC may investigate the impact the new communications or internet technology systems for use in the electoral process could have on voter participation rates, voter education, and public accessibility. In addition, HAVA allows EAC to periodically study election administration issues, including methods of educating voters on all aspects of participating in elections.

One of the emerging technologies allowing voters to obtain information about voting that may affect participation rates and public accessibility is the public access portal, which is a website that disseminates voter education information. EAC conducted research to determine what information was available to voters during the last election cycle, and staff discovered that the information was duplicative, disorganized, and sometimes erroneous. Therefore, EAC will perform additional research on dissemination of information to voters, and then conduct a conference with election officials and technology experts to discuss the elements of implementing effective public access portals. EAC will then share the findings with election officials throughout the country to assist them in creating access portals that will serve their respective communities.

#### ***Language Minority Working Groups***

Section 241 of HAVA allows the EAC to carry out studies and other activities with the goal of promoting effective administration of federal elections. Effective administration methods are to be the most convenient, accessible, and easy to use for voters, including voters with limited proficiency with the English language. Section 241(b) (5) and (14) directly refer to conducting studies to address issues faced by voters with limited proficiency in the English language. To meet these requirements, in August EAC convened its first Hispanic Working Group meeting to provide guidance to the agency as it focuses on research to address language barriers to voting as well as input on the

readability and usability of the National Voter Registration Form, the National Mail-In Registration form and the updated List of Translated Election Terms. After conducting an initial assessment of these issues, the Working Group will assist the EAC in developing a Best Practices document containing methods of effective administration of federal elections affecting the Hispanic and Spanish-speaking communities.

Results and findings of all EAC research projects, best practices and guidance will be available to the public by accessing EAC's National Clearinghouse at [www.eac.gov](http://www.eac.gov).

#### ***Legal Resources Clearinghouse***

Section 241(b)(13) of HAVA allows EAC to study the laws and procedures used by each state that govern: recounts of ballots cast in elections for federal office; contests of determinations regarding whether votes are counted in such elections; and standards that define what will constitute a vote on each type of voting equipment used in the state to conduct elections for federal office. Consequently, EAC has awarded a contract to develop a legal resources clearinghouse. This web-based application will house a database containing statutes, regulations and rules as well as state and federal court decisions that impact the administration of elections for federal office under HAVA and/or the National Voter Registration Act. It will provide election officials, state legislators, government officials and the general public with a central location to conduct election administration research.

#### **To be Initiated This Year**

***A Study on the Effect of HAVA Voter Registration by Mail Requirements and a Study on the Use of Social Security Information in Voter Registration (Section 244)***

***Feasibility of Providing Free Absentee Ballot Postage (Section 246)***

### ***Legal Resources Clearinghouse***

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### ***Best Practices for Recruitment, Retention, and Training of Poll Workers***

Sections 241(a) and 242(b) of HAVA direct EAC to periodically “conduct and make available to the public studies regarding... methods of recruiting, training, and improving the performance of pollworkers.” In response to this mandate and to the many election officials who continue to have difficulty recruiting and retaining poll workers, the EAC awarded a contract to identify strategies to address the shortage of poll workers.

The project will include conducting research about the state rules and procedures regarding poll workers and the kinds of resources available in the states to maintain adequate number of poll workers. EAC will then produce a manual encompassing a collection of best practices in poll worker recruitment, training, and retention as well as specific steps required to implement effective poll worker programs.

### ***Best Practices for Recruitment, Retention, and Training of College Poll Workers***

Section 501 of HAVA requires EAC to develop the HAVA College Program. Further, HAVA Section 502 states that EAC shall “develop materials, sponsor seminars and workshops, engage in advertising targeted at students, make grants, and take such other actions as is considers appropriate” to implement this program.

In accordance with HAVA sections 501 and 502, EAC conducted a grant program in 2004 designed to “(1) encourage students enrolled at institutions of higher education to assist state and local governments in the administration of elections by serving as non-partisan poll workers or assistants; and (2) to encourage state and local governments to use the services of the students participating in the program.”

The 2004 Help America Vote College Program was extremely well received overall, but several issues, most notably a short implementation timeline, may have hindered the program’s success.

Consequently, in Fiscal Year 2005 EAC awarded a contract to identify and build upon aspects of this program that were successful, to identify successful methods employed in the U.S. for similar programs, and to allow for replication in as many jurisdictions as possible. This project will examine the differences among community colleges, public

institutions, and private universities. It will seek to determine if varying strategies for college poll worker recruitment are more effective at different types of educational institutions.

The overall objectives of the project are to: (1) collect information on relevant state requirements; issues and options in college poll worker and poll assistant recruitment, training, retention; and effective methods of recruiting, training, and retaining such election workers, including sample materials used in these efforts; (2) produce a user-friendly recruitment manual that includes marketing and training materials; (3) conduct a pilot program in conjunction with colleges or universities in a minimum of three election jurisdictions during the 2006 election cycle; and (4) based on the pilot programs, provide recommendations for revisions to the manual and for future activities to benefit efforts to recruit, train, and retrain college poll workers.

#### ***Vote Counts and Recounts***

Section 341(b)(13) of HAVA allows EAC to study the laws and procedures used by each state that govern: recounts of ballots cast in elections for federal office; contests of determinations regarding whether votes are counted in such elections; and standards that define what will constitute a vote on each type of voting equipment used in the state to conduct elections for federal office. Consequently, in Fiscal Year 2005 EAC awarded a contract to conduct research activities to develop best practices on vote count and recount procedures.

The major tasks associated with vote count research include: (1) review and analyze data collected on definitions of what constitutes a vote for each state by voting system; (2) draft comprehensive report that includes the data analysis and the state-by-state summary of definitions of what constitutes a vote for each voting system; and (3) review literature for methodologies used to establish best practices, and develop definitions of what shall constitute a best practice with respect to vote counts.

The major tasks associated with recount research include: (1) Review and analyze states' recount procedures; (2) draft a comprehensive report that includes the data analysis and the state-by-state summary of recount and contest procedures; and (3) develop definitions of what shall constitute a best practice with respect to recounts and contests of determinations.

After conducting the research, EAC will provide election officials throughout the country with a set of best practices for both vote counts and recounts.

#### ***Voting Fraud and Voter Intimidation Project***

Section 241 enumerates a number of periodic studies of election administration issues which the EAC may elect to conduct. "On such periodic basis as the Commission may determine, the Commission shall conduct and make available to the public studies regarding the election administration issues described in subsection (b)." Sections 241(b)(6) and (7) list the following election administration issues: nationwide statistics



and methods of identifying, deterring, and investigating voting fraud in election for federal office; and identifying, deterring, and investigating methods of voter intimidation.

Building on this reference to studies of voting fraud and voting intimidation, EAC awarded a contract to perform the following tasks: (1) identify what constitutes voting fraud and voter intimidation affecting federal elections; (2) perform background research, including federal and state-by-state administrative and case law review related to voting fraud and voter intimidation and a review of current voting fraud and voter intimidation activities taking place with key government agencies and civic and advocacy organizations; (3) identify, in consultation with EAC, and convene a working group of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation; and (4) author a report summarizing the key findings, including suggestions for specific activities that EAC may undertake to address these topics.

### ***Provisional Voting***

Provisional voting in federal elections was created as a response to people who believed that they were registered to vote in 2000 but were turned away from the polling places because their names did not appear on the poll lists. HAVA Section 303(b) mandates that any eligible voter who appears at the polls must be given a provisional ballot if their name does not appear on the poll list. Provisional voting was not a new concept for all states, but in those jurisdictions enacting provisional voting for the first time, there was a lot of confusion surrounding the issue. Therefore, EAC awarded a contract to research the provisional voting requirements in each state, U.S. territory and the District of Columbia. EAC will then create guidance about implementing this important HAVA mandate, and make this information available to elections officials before the 2006 elections.

### ***Voter Identification***

HAVA Section 303(b) mandates that first-time voters who register by mail for a federal election provide proof of identity before being allowed to cast a ballot. The law prescribes certain requirements concerning this section, but also leaves considerable discretion to the states for its implementation. In 2005, some states enacted new voter identification requirements in addition to what is required for federal elections, resulting in many inquiries to EAC regarding the implications of these new state laws. To provide states with assistance when making decisions regarding voter identification laws, EAC is researching all of the relevant state laws and procedures relating to voter identification and produce related guidance, and make it available to elections officials before the 2006 elections.

### ***Effective Designs for the Administration of Federal Elections***

Section 302(b) of HAVA requires the appropriate state or local election official to publicly post voting information at each polling place on the day of each election for federal office. Section 241(b) of HAVA describes ballot designs for elections for federal office as one of the election administration issues to be periodically studied to promote effective administration of federal elections. Therefore, EAC awarded a contract to develop best practices regarding the design of ballots and voter information posted in the

polling place on Election Day. This effort will also include assistance with the redesign of the National Voter Registration Form to make it more accessible to all voters in terms of readability and usability.

***Minority Language Working Groups***

Section 241 of HAVA allows the EAC to carry out studies and other activities with the goal of promoting effective administration of federal elections. Effective administration methods are to be the most convenient, accessible, and easy to use for voters, including voters with limited proficiency with the English language. Section 241(b) (5) and (14) directly refer to conducting studies to address issues faced by voters with limited proficiency in the English language. To meet these requirements, EAC convened meetings of its Hispanic Working Group and its Asian Working Group to provide guidance to the agency as it focuses on research to address language barriers to voting as well as input on the readability and usability of the National Voter Registration Form, the National Mail-In Registration form and the updated List of Translated Election Terms. After conducting an initial assessment of these issues, the Working Groups will assist the EAC in developing a Best Practices document containing methods of effective administration of federal elections affecting the Hispanic and Asian communities.

Results and findings of all EAC research projects, best practices and guidance will be available to the public by accessing EAC's National Clearinghouse at [www.eac.gov](http://www.eac.gov).

## **Alaska Report**

### **Think globally, protect the vote locally**

**December 7th, 2006**

By Paul Rogat Loeb - Just as local cities have adopted environmental and wage laws that exceed federal standards, maybe it's time for local initiatives protecting the sanctity of the vote. We've been seeing electoral abuses and manipulations since the Bush administration took power. So we need to ensure the Democrats make national electoral protection a priority. But we can also act on a local level.

Though the Democratic surge took back the Senate and House, some ugly actions quite likely shifted several close Congressional races. The poster race for this election's abuses, appropriately, is Katherine Harris's old Congressional district in Sarasota, FL. Whether through manipulation or error, electronic voting machines in that district logged 18,000 fewer votes in this neck-and-neck congressional race than for governor or senator, and fewer than wholly uncontroversial down-ballot races like the Sarasota Public Hospital Board. Whatever the causes, these votes disappeared in a county that Democrat Christine Jennings carried by 53 percent, and would have likely allowed her to defeat Republican Vern Buchanan.

Harris's district saw more than just voting machine problems. In the Jennings/Buchanan election as in over 50 key races throughout the country, Republicans called voters again and again with automated robocalls that led with the name of the Democratic candidate, and then followed with scurrilous attacks. Because voters tend to hang up on these harassing calls as soon as they begin, or delete them from answering systems, many assumed they were coming from the Democrats, so switched their votes in anger. Volunteers all over the country heard people say they'd never vote for Democratic candidates, they were so furious at the presumed source of this harassment. As a Venice, Florida, man wrote to the Sarasota Herald Tribune, "So Christine Jennings lost by 368 votes. I think I can tell her why. She should sit at home and have the telephone ring twice a day, at lunch and dinner time, for two or three weeks, and then decide if she should vote for the person doing the calling."

In Maryland, the Democrats won, but Republicans bused in homeless men from Philadelphia to hand out fliers in black neighborhoods featuring photographs of former Congressman Kweisi Mfume and Prince Georges County executive Jack Johnson. "Ehrlich-Steele Democrats," proclaimed the flier, and announced: "These are OUR

Choices," as if Mfume and Johnson had endorsed Republican gubernatorial and senatorial candidates, Robert Ehrlich and Michael Steele. Since both Mfume and Johnson unequivocally supported their fellow Democrats, it was a blatant lie, as were the accompanying fliers headlined "Democratic Sample Ballot" with boxes checked in red promoting Ehrlich and Steele.

These weren't the only abuses. Republican-linked calls in various states gave misleading information on polling locations or told legitimate voters that they were registered in other states so would be arrested if they voted. A letter to Latino voters in Orange County, CA threatened jail to all immigrants who voted, ignoring that many were naturalized citizens. In Tucson, the Mexican American Legal Defense and Educational Fund photographed armed men attempting to prevent Hispanic voters from entering polling places. In Texas, a federal judge stopped Republican Attorney General Greg Abbott from prosecuting 13 largely elderly Democrats who took sealed absentee ballots from their friends to place in mail boxes. The abuses probably weren't on the level of 2000 or 2004, in part because of major coordinated voter protection efforts where citizens monitored the polls and had lawyers on call for instant intervention. But they were substantial enough to have probably diminished the margin of their victory.

To prevent similar future abuses, Barack Obama's Deceptive Practices and Voter Intimidation Prevention Act would make it a felony to give deliberately misleading information on the time, date or location of elections, or about voter eligibility. New Jersey Congressman and former Princeton physicist Rush Holt has offered the Voter Confidence and Increased Accessibility Act, mandating a verifiable paper trail for all election machines, requiring random audits to ensure ballots are properly counted, and banning wireless connections to make machines less vulnerable to hacking. Holt's bill had a majority of House members supporting it even before the past election, and should have an irrefutable additional argument with the meltdown of the machines in the Jennings/Buchanan race (not to mention the inability of Republicans to do comprehensive recounts in states like Virginia, where most machines lacked a paper trail). An even stronger and more secure alternative would be Dennis Kucinich's HB 6200, mandating paper ballots hand counted at the precinct level.

The Democrats need to do all they can to pass this legislation. They also need to ensure that that new state and federal voter identification laws don't disenfranchise poor and minority voters, as seems to be their frequent intent, and that abuses like the misleading robocalls carry the maximum possible penalties (which might mean outlawing robocalls of all kinds). In the process, they can hold visible hearings on the entire Republican legacy of purged voters, tossed provisional ballots, and voting machines pulled from key

Democratic districts (perhaps building on the unofficial hearings convened by incoming House Judiciary Committee chair John Conyers about pervasive Republican-linked abuses in Ohio, during the 2004 election). If the Republicans filibuster or Bush vetoes these laws, citizens need to ensure the Democrats keep pressing the issue.

But just as local minimum wage and environmental ordinances often surpass federal standards, we don't have to rely entirely on national efforts to protect the vote. Because most of the areas targeted by voter suppression attempts are urban and minority communities, Democratic mayors, county executives and governors already control many of the key jurisdictions. They just need to act on the potential power that they have.

Where useful local laws already exist, elected officials can use them to hold the perpetrators of these abuses accountable for every instance. The New Hampshire Attorney General's office already threatened the National Republican Congressional Committee with prosecution under a state law mandating \$5,000 fines for each prerecorded calls to anyone on the national do-not-call list. Activists now need to convince the state to prosecute the NRCC for the 200,000 illegal calls they made before finally stopping a suit that would potentially bankrupt the NRCC if successful. Former Bush-Cheney New England coordinator James Tobin has already been convicted for an illegal phone-jamming operation during the 2002 New Hampshire Senate campaign. Other states may be able to sue the NRCC and their allies as well. Perhaps former Congressman Mfume and County Executive Johnson could even sue the Republican creators of the leaflets that featured their picture-arguing that this reckless disregard for the truth defames their good name by implying they endorse politicians they diametrically oppose. Whether or not these suits entirely succeed, they'd keep these profoundly antidemocratic actions in the public eye.

Passing tough new local laws to protect the vote could create an immediate check against voter suppression in a situation where the Bush administration is unlikely to prosecute its own political allies. California, Connecticut, Illinois, Minnesota, and Wisconsin already have laws with strong penalties. Since the election, elected officials in Missouri, Florida, Virginia, Pennsylvania, and Wisconsin have introduced bills to protect citizens from automated robocalls. Michigan already had a robocall bill on the agenda, and some Connecticut legislators are reportedly interested in addressing this as well. Statewide same-day registration laws, like those in Idaho, Maine, Minnesota, Wisconsin, and North Dakota can also counter the possibility of politically driven voter purges or refusals to accept people's registrations, not to mention encouraging voter participation in general. If state and local voter protection laws were enacted before 2008, they could prove a major

deterrent against the kinds of abuses we've seen in the past several elections, ensuring their perpetrators could be prosecuted no matter who won at the national level.

We still need strong national laws to safeguard elections in Republican controlled states- Florida, for instance, has continued its voter purges, and instituted draconian procedures and penalties that have made it virtually impossible for groups like the League of Women Voters to even begin major registration drives. But even in these situations, local initiatives can mitigate disenfranchisement. In the most recent election, California's since-defeated Republican Secretary of State Bruce McPherson tried to reject 40% of new registrants, primarily Democratic-leaning Hispanics, by claiming they didn't match state databases. In response, the office of Los Angeles mayor Antonio Villagrosa contacted those purged, verified their information, and got almost all of them back on the rolls. Local officials in Miami, Tampa, and Orlando could have done the same to challenge Jeb Bush and Catherine Harris when they gave Bush his 2000 victory by knocking out 94,000 largely Democratic and minority voters for supposedly being disenfranchised felons-a BBC follow-up found that 90 percent of those scrubbed were legitimate voters. Officials in Cleveland and Columbus might have countered Ken Blackwell's purging of 300,000 largely Democratic voters in 2004, his pulling of voting machines from key urban neighborhoods, and his refusal to count ballots cast in the wrong precincts. Strong local laws and aggressive citizen oversight can counter electoral manipulation even while the federal executive branch remains in the hands of a party that's benefiting from its use.

Imagine if the Republicans risked jail for making misleading Robocalls into Philadelphia or Cleveland, Houston, Miami, or Albuquerque, or for telling voters they'd be arrested for voting while being behind on their rent. Imagine if they ran this risk whether or not the Feds intervened. The stronger the local laws, the more they could set a federal standard. The recent election has created a window of opportunity to help protect the vote, for now and in the future. Linking national and local protection efforts could help ensure that this actually happens.

**Paul Rogat Loeb** is the author of *The Impossible Will Take a Little While: A Citizen's Guide to Hope in a Time of Fear*, named the #3 political book of 2004 by the History Channel and the American Book Association. His previous books include *Soul of a Citizen: Living With Conviction in a Cynical Time*. See [www.paulloeb.org](http://www.paulloeb.org) To receive his monthly articles email [sympa@lists.onenw.org](mailto:sympa@lists.onenw.org) with the subject line: subscribe paulloeb-articles

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## Analysis of the September 15, 2005 Voter Fraud Report Submitted to the New Jersey Attorney General

by

The Brennan Center for Justice at NYU School of Law

and

Dr. Michael McDonald of George Mason University

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December 2005

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According to a recent report submitted to the New Jersey Attorney General, 63-year-old K \_\_\_\_\_ Sullivan was so determined to vote in the November 2, 2004, election that she voted in person in Cape May and then drove to Bergen – or vice versa – traveling 161 miles across the length of the state so that she could vote in person a second time.

There is something bizarre afoot here, but it probably has little to do with Ms. Sullivan. Rather, the problem is with the report – a flawed partisan document stirring up the specter of voter fraud by listing thousands of allegedly illegitimate voters. Among other things, the report included lists of purportedly illegitimate votes in New Jersey in the 2004 general election, including lists of 10,969 individuals who purportedly voted twice and lists of 4,756 voters who were purportedly dead or incarcerated in November 2004. These lists were submitted to the Attorney General in mid-September, as exhibits to a report demanding that New Jersey counties purge their voter files based on the findings therein. The report's findings were widely publicized, in New Jersey and elsewhere.

We obtained the lists of voters submitted to the New Jersey Attorney General, as well as a copy of the New Jersey county voter registration files, and have conducted an initial investigation of the report's claims.

**Our analysis shows that the lists submitted to the New Jersey Attorney General are substantially flawed, and must not be used to interfere with New Jersey citizens' right to vote.**

These suspect lists were compiled by attempting to match the first name, last name, and birth date of persons on county voter registration files. Entries that supposedly "matched" other entries were apparently deemed to represent the same individual, voting twice. This methodology is similar to the method used in compiling the notoriously inaccurate Florida "purge lists" of suspected ineligible felons in 2000 and 2004. As Florida's experience shows, matching names and birthdates in the voter registration context is a tricky business, and can easily lead to false conclusions – as was almost certainly the case here.

Care and caution are required in any attempt to accurately match information in one data system with information in another, but special care must be taken when individual rights are at stake to make sure that unreliable matching results are not used to deprive individuals of their fundamental right to vote. Unfortunately, that level of care appears to be absent from the lists submitted to the Attorney General. As a result, neither these lists nor any that are compiled in a similar manner should form the basis of any decision that would impede any voter's registration status or access to the ballot.

Our review reveals several serious problems with the methodology used to compile the suspect lists that compromise the lists' practical value. For example, the data used in the report from one county appears to be particularly suspect and anomalous, and may have substantially skewed the overall results. In addition, middle initials were ignored throughout all counties, so that "J \_\_\_\_\_ A. Smith" was presumed to be the same person as "J \_\_\_\_\_ G. Smith."<sup>1</sup> Suffixes were also ignored, so that fathers and sons – like "B \_\_\_\_\_ Johnson" and "B \_\_\_\_\_ Johnson, Jr." – were said to be the same person.

More fundamentally, underlying many of the entries on these lists, and similar lists compiled in Florida and elsewhere, is a presumption that two records with the same name and date of birth must represent the same person. As we explain in this analysis, this presumption is not consistent with basic statistical principles. Even when votes appear to have been cast in two different cities under the same name and birth date, statistics show that voter fraud is not necessarily to blame. With 3.6 million persons who voted in the 2004 election in New Jersey, the chance that some have the same name and birth date is not far-fetched. Which is more reasonable: that there are two K \_\_\_\_\_ Sullivans born on July 5, or that one 63-year-old woman drove three hours across the state, from Cape May to Bergen, to make sure that she voted twice on Election Day?<sup>2</sup>

Individual examples like Ms. Sullivan's purported Election Day journey may seem trivial once they are caught and debunked. But the potential for harm is no laughing matter. Using flawed lists like these to purge the registration rolls would inevitably lead to disfranchisement of eligible voters and disruption at the polls when the eligible citizens arrive to vote in the next election. The voters deserve better. New Jersey should forswear use of the lists – and any list constructed with similarly flawed methods – to question the eligibility of voters of any political affiliation.

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<sup>1</sup> The names used in this report represent actual entries in datafiles submitted to the New Jersey Attorney General. In order to understand the methodological flaws involved in the compilation of the datafiles, it is important to cite particular examples. But in order to protect individual privacy, we have reprinted only the first initial of each voter's given name. A discussion of "John A. Doe" and "John B. Doe" therefore appears in this analysis as "J \_\_\_\_\_ A. Doe" and "J \_\_\_\_\_ B. Doe." In each instance comparing one voter to another, these abbreviations ("J \_\_\_\_\_" and "J \_\_\_\_\_") represent the same first name.

<sup>2</sup> This is, obviously, a rhetorical question highlighting a methodological flaw in the report. But the question also has a real answer: a quick telephone inquiry confirmed that two different New Jersey residents named K \_\_\_\_\_ Sullivan were born on the same date; each voted separately (and quite legally) in 2004.



## Background: The September 15, 2005 Report and Accompanying Lists

The following analysis documents several of the methodological flaws in the lists of voters included as exhibits to the voter fraud report submitted to the New Jersey Attorney General on September 15, 2005. The analysis is based on methodology only: we have not gained access to original documents related to registration or original pollbook records; we have only recently acquired and compiled copies of the counties' original registration datafiles, which contain some notable gaps; and the lists submitted to the Attorney General contain significant errors and little documentation, which complicates the analysis. Nonetheless, the information we have collected so far is sufficient for the purposes of generally assessing the quality of the evidence presented to support the September 15 report. Our review of the suspect lists reveals that the evidence submitted does not show what it purports to show: cause for concern that there is serious risk of widespread fraud given the state of the New Jersey voter registration rolls.

The suspect lists were apparently prepared by assembling and compiling voter registration files from New Jersey's counties. It is clear that these registration files were subjected to data processing to format the data uniformly, but no documentation was submitted with the files to explain how the processing was done. All that we have is the end product: several lists of New Jersey voters that allegedly reveal fraud or the potential for fraud.

Most of these lists were apparently constructed by attempting to find each citizen's registration and voting records – across counties and supplemented by external data – by matching the first name, last name, and date of birth associated with each record. For example, all registration and voting data for any “J \_\_\_\_\_ Smith” born on June 6, 1960 were apparently compiled and merged into one record, showing that such a J \_\_\_\_\_ Smith registered in one New Jersey town and voted there in 2004, and that such a J \_\_\_\_\_ Smith registered in a different New Jersey town and voted there in 2004.

The report submitted to the Attorney General analyzes these compiled records. It concludes – for example – that the J \_\_\_\_\_ Smith records above show not two “J \_\_\_\_\_ Smiths” born on the same day, but that a single individual voted twice. Indeed, the report claims, in similar fashion, that the data reveal widespread voter fraud in the 2004 general election, including approximately 4,397 individuals in New Jersey who allegedly voted twice. **These claims, however, are not supported by the evidence submitted.**

## Analysis of the Double-Voting Claim

Even a cursory examination of the lists suffices to show that the claims of widespread fraud are greatly exaggerated. For example, although the allegations of multiple voting are presented as though they are based on reliable evidence that the same person has voted more than once, 80% of the relevant records – 3,532 voters on the list – are labeled on the New Jersey double-voting list as “less likely” indications of a double-vote. This caveat appears nowhere in the accompanying report to the Attorney General or in the press reports of the report’s findings.

It is also curious that only 0.6% of the voters on the lists are alleged to have voted more than twice. Why would a miscreant committed to perpetrating voter fraud stop at just two votes, rather than voting again and again and again?

The simplest answer, of course, is that the lists do not show fraud at all, but reveal instead only methodological problems with the way in which they were constructed. Attempts to match data on one list to data on another list will often yield “false positives”: two records that at first appear to be a match but do not actually represent the same person. The natural incidence of “false positives” for a matching exercise of this scale – especially when, as here, conducted with relatively little attention to detail – readily explains the ostensible number of double votes. It also explains the extremely low incidence of individuals who appear to vote three or more times: it is relatively rare that three “false positives” will all be tied to each other, unless the data to be matched is extremely common. And that it is why it is also no surprise that among the 27 citizens labeled on the suspect lists as voting three or more times in 2004, we find individuals with extremely common names, like “P \_\_\_\_\_ Smith” or “R \_\_\_\_\_ Miller,” or “L \_\_\_\_\_ Wong.”

Common sense thus indicates that whatever is going on here is not a sudden wave of voter fraud. Digging a little deeper into the substance of the lists submitted to the New Jersey Attorney General yields even more reason to be skeptical of the double-voting claims. Consider, for example, a detailed analysis of the 4,397 individuals alleged to have voted multiple times in New Jersey in 2004.

1. *Probable data duplication error: same name, same birth date, same address*

1,803 of these 4,397 records of ostensibly illegal votes seem to be the product of a glitch in the compilation of the registration files. These records reflect two registration entries by the same person from the same address, with a notation next to each that the individual has voted. For example, 55-year-old W \_\_\_\_\_ A. Connors, living at 253 B \_\_\_\_\_ Ave. in a New York commuter suburb, is listed on the datafiles submitted to the Attorney General with an (erroneous) first registration date in 1901 and a second registration date in 1993; Mr. Connors is thus represented twice on the datafiles submitted. Each of these entries also indicates that W \_\_\_\_\_ A. Connors at 253 B \_\_\_\_\_ Ave voted in 2004.

There is no credible indication, however, that Mr. Connors actually *voted* twice; indeed, given the clearly erroneous registration date on the files, it is far more likely that data error is to blame for the doubly logged vote as well. To believe that Mr. Connors voted twice, we would have to believe that he walked into the polling place, signed the poll book in front of a pollworker, and voted – and then returned to the *same* polling place, again signed the poll book in front of the pollworker, in a spot precisely adjacent to the prior signature, and again voted – all without arousing suspicion. And we would have to believe that 1,802 other voters did precisely the same. We would have expected at least one poll worker to notice one of these 1,803 individuals attempting to sign a poll book under the same name at the same address in the same precinct more than once.<sup>3</sup>

There is, of course, a more plausible explanation. The bulk of these 1,803 records may be traced to irregularities in the data processing and compilation process for one single county: the Middlesex County registration file accounts for only 10% of registered voters in the state but 78% of these alleged double votes. This does not prove a massive double-voting scheme in Middlesex County. Rather, it indicates a data processing problem with the Middlesex County datafile: a far more likely explanation than voter fraud for the fact that 89% of the Middlesex voters on the suspect lists are listed as double-voting from the same address. Indeed, the suspect lists themselves contain an acknowledgment that the problem in Middlesex is probably not fraud: 99% of these Middlesex voters are labeled on the lists submitted to the Attorney General with a notation that the record is “less likely” to indicate an illegal double vote .

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<sup>3</sup> Eight of these records reflect registration addresses that are ostensibly different, but which on closer examination almost certainly reflect two records for the same person at the same physical address. Examples include records for individuals with the same name and birth date at “1/2 413 Summer St. 1” and “413 1/2 Summer St. 1”; “64 W. 10<sup>th</sup> St. 2” and “64 W. 10<sup>th</sup> St.”; and “602 Sooy Ln.” and “604 Sooy Ln.”

2. *Probable data entry errors: different name, same birth date, same address*

Another 1,257 entries of the 4,397 records probably represent similar data errors – also largely driven by a likely glitch in the Middlesex County file, which is also vastly overrepresented in this category. These records show ever-so-slight variations in records listed with the *same date of birth at the same address*: for example, the same first and last names, but different middle initials or suffixes (e.g., J \_\_\_\_\_ T. Kearns, Sr., and J \_\_\_\_\_ T. Kearns, Jr., both born the same day and living at the same address; or J \_\_\_\_\_ E. Allen and J \_\_\_\_\_ P. Allen, born the same day and living at the same address).

As above, it is extremely unlikely that two votes were actually cast here. Again, the files show errors: J \_\_\_\_\_ E. Allen is listed as registered in 1901, while J \_\_\_\_\_ P. Allen, born on the same day and living at the same address, is listed as registered in 2003. And again, to believe that Mr. Allen voted twice, it would be necessary to believe that he arrived twice at the polling place to sign his name in front of a pollworker in adjacent spaces on the poll books, without arousing any suspicion – and that 1,256 other voters did likewise.

Instead, it is far more likely that the listed votes represent a data error. Without access to the original registration records, it is impossible to determine where the mistake lies – for example, whether J \_\_\_\_\_ T. Kearns, Sr. and J \_\_\_\_\_ T. Kearns, Jr. were in fact born on different days, or whether the “Jr.” suffix is instead mistaken. A clue to the origin of the problem is that the original Middlesex County voter registration file does not list a birth date for any individual; we do not know how the authors of the September 15 report obtained birth date information for their matching purposes, or what errors may have been introduced during this process. What *is* clear is that the files do not establish a presumption that J \_\_\_\_\_ T. Kearns, Sr. and J \_\_\_\_\_ T. Kearns, Jr. represent one individual who fraudulently voted twice.<sup>4</sup>

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<sup>4</sup> Some records in the file submitted to the Attorney General contain three different entries of registration information, so that registration information for F \_\_\_\_\_ DeLuca, F \_\_\_\_\_ M. DeLuca, and F \_\_\_\_\_ C. DeLuca may all be conflated in one record. It is therefore possible for one record to reflect more than one type of the errors or irregularities discussed above.

*3. Probable different individuals: different name, same birth date, different address*

Approximately 800 of the entries on the list likely represent different people, with different addresses and different middle initials or suffixes. For example, W\_\_\_\_\_ S. Smith, living in a northern New Jersey town, and W\_\_\_\_\_ C. Smith, living in another town two hours away, share the same date of birth but are not the same person. Nor are T\_\_\_\_\_ Brown, living in a New York commuter suburb, and T\_\_\_\_\_ H. Brown, Jr., living in a small town over an hour west, despite the fact that they also share the same birth date.

About three-quarters of the entries in this category reveal data that affirmatively conflict – for example, a middle initial (“W\_\_\_\_\_ S.”) in one case, and a different middle initial (“W\_\_\_\_\_ C.”) in another, listed at different addresses. There is absolutely no good reason to conclude that these individuals are in fact the same, when the available evidence indicates the contrary.

For approximately 200 of the entries in this category, however, less information is available. These entries show a middle initial (“J\_\_\_\_\_ W. Davis”) in one case, and no middle initial (“J\_\_\_\_\_ Davis”) in another – again, at different addresses. The lack of the middle initial is ambiguous: it could mean that one of the J\_\_\_\_\_ Davises in question has no middle name, or it could mean that the middle initial was simply omitted in a particular registration entry. Although these entries involve less conclusive affirmative evidence of a false match than the entries noted above, there is still no good reason to believe that “J\_\_\_\_\_ W. Davis” and “J\_\_\_\_\_ Davis,” at different addresses, represent the same person. As explained in further detail below, the incidence of individuals sharing the same name and birth date is sufficiently common that no valid conclusion of a fraudulent vote can be drawn here.

*4. Unwarranted assumptions given errors in the listed date of birth*

Of the individuals remaining, there are serious concerns with the accuracy of the dates of birth. Seven voters were apparently born in January 1, 1880 – which is most likely a system default for registrations lacking date-of-birth information. For 227 voters, only the month and year of birth are listed: this means only that two voters with the same name were born in the same month and year, an unsurprising coincidence in a state of several million people.

5. *Unwarranted assumptions given the statistics of name-and-birthday matching*

That leaves approximately 289 votes cast under the same name and birth date – like votes cast by “P \_\_\_\_\_ S. Rosen,” born in the middle of the baby boom – but from two different addresses.<sup>5</sup> It may appear strange, but there may be two P \_\_\_\_\_ S. Rosens, born on the same date in 1948 – and such coincidences are surprisingly common. Of course, for any one person, the odds of someone else having the same name and birth date is small. But because there are so many voters in New Jersey, a sizable number will have the same name and birth date simply by chance.

In a modestly sized group, the probability that two people have the same birthday – day and month – is, for many observers, surprisingly high. In a group of just 23 people, it is more likely than not that two will share the same birthday. For 40 people, the probability is 90%. These statistics are known as the “Birthday Problem,” which is often used to introduce students to counterintuitive results in statistics and probability.

Applying the “Birthday Problem” to voter registration lists is fairly straightforward. By including the year (and thus the full birth date), the statistics change somewhat, but the threshold is still surprisingly small to many: given some reasonable assumptions about the average lifespan, the probability that at least two of 150 people have the same exact birth date – day, month, and year – is 50%. And in a group of 300 people, the probability that two share a birth date match is approximately 90%.

Imagine that our group contains all of the registered New Jersey voters with a given first name and last name – such as all of the 417 Robert Smiths who are listed on New Jersey records as voting in 2004. The probability that at least two of these 417 individuals have the same birth date – day, month, and year – approaches 100%. The fact that two Robert Smiths with the same birthday voted in 2004 thus indicates not voter fraud, but a straightforward application of the “Birthday Problem.”

Indeed, the probabilities above likely *underestimate* the chance that a group of voting Robert Smiths share the same birth date, because the above calculations assume that birthdays are randomly distributed when, in fact, they are not. Certain given names are more common in certain years (it would be unsurprising to find two Jessica Smiths born on the same day in 1985, or Lisa Smiths in 1965, or Mildred Smiths in 1925). Likewise, the prevalence of surnames will fluctuate with the immigration patterns of particular ethnicities, which vary from decade to decade. Because older individuals vote at higher rates than younger people, too, we would expect a clustering of voting “Robert Smiths” weighted toward years past. Finally, birth dates themselves are not evenly distributed, as obstetricians are more likely to induce labor during the work week.

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<sup>5</sup> Actually, we know only that these records share a first name, last name, and middle initial – but we cannot know from the lists submitted whether the same middle initial represents the same middle name. The “S.,” for example, could stand for “Stephen” or “Samuel” or “Stanley” or “Stuart,” or any other name beginning with “S,” or – famously following the sitting President – “S” could stand for nothing at all.

First Name	Last Name	Frequency
ROBERT	SMITH	417
JAMES	SMITH	368
WILLIAM	SMITH	365
JOHN	SMITH	321
MICHAEL	SMITH	256
ROBERT	JOHNSON	252
MARY	SMITH	249
ROBERT	BROWN	247
MARIA	RODRIGUEZ	242
ROBERT	MILLER	242
JOSE	RODRIGUEZ	241
THOMAS	SMITH	234
JAMES	BROWN	227
JOHN	MILLER	226
RICHARD	SMITH	223
JOHN	MURPHY	216
DAVID	SMITH	216
ROBERT	WILLIAMS	211
PATRICIA	SMITH	207
BARBARA	SMITH	204
JAMES	JOHNSON	204
WILLIAM	JOHNSON	202
JOHN	WILLIAMS	202
ROBERT	JONES	199
JOHN	KELLY	196

**25 Most Common Names of 2004 Voters  
from New Jersey Voter Registration Files**

To demonstrate the magnitude of potential birth date matches, we provide the 25 most common first and last names of persons with a record of voting in the 2004 general election, as recorded on the New Jersey voter registration rolls. For every one of these combinations, it is statistically more likely than not that at least two voters share the same exact birth date. Even for less common names, a shared birth date is less rare than one would intuit – and with almost 150,000 names listed at least twice on the voting rolls, it is not surprising to discover that more than a handful share the same birth date. Many, if not most, of the 289 alleged double votes of persons registered at different addresses most likely reflect two separate individuals sharing a first name, last name, middle initial, and birth date.<sup>6</sup> The suspect lists alone do not establish convincing, much less conclusive, evidence of widespread fraud.

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<sup>6</sup> Triple birth date matches are rare, but not impossible, given the frequency with which some names appear on the rolls. It is therefore telling that only 0.6% of the alleged fraudulent votes – rare, but not impossible – are attributed to more than three or more votes under one name.

## Implications for the Other Claims in the Sept. 15 Report

Similarly, the other claims asserted in the report to the Attorney General – that New Jersey votes cast in the 2004 election reflect the same name and birth date as deceased and incarcerated persons and people in other states – are more likely a statistical coincidence or the result of data errors than evidence of actual vote fraud. And there are methodological problems with the report's other claims beyond the issues addressed above. For example, the report's curious use of the country's *most* common names in attempting to match incarcerated individuals to 2004 votes actually *increases* the chance that the same name and the same birth date will be shared by two different individuals. We cannot fully evaluate these claims at this time since we do not currently have access to the lists of deceased individuals, prisoners, and voters in other states that were used as grist for the claims submitted, but if such lists or files are made available to us, we will review the claims thoroughly to determine their merit.

Finally, the September 15 report makes much of the raw potential for foul play based on the unsurprising fact that there are voters who appear on the New Jersey registration rolls more than once. As noted above, many of the names identified reflect two different individuals and not simply duplicate entries. But we have no doubt that there are duplicate entries on New Jersey's registration rolls. It is well-known that voter registration rolls contain "deadwood" – registration entries for individuals no longer living at a given address or deceased. There is no evidence, however, that these extra registrations are used for widespread illegal voting. Moreover, the problem of deadwood will soon be largely resolved: both the National Voter Registration Act of 1993 and the Help America Vote Act of 2002 require states to implement several systems and procedures as of January 1, 2006, that will clean the voter rolls of duplicate or invalid entries while protecting eligible voters from unintended disfranchisement.

Unlike the voter list maintenance systems envisioned by Congress, using lists compiled like the flawed lists here as a basis for purging the voter rolls affords voters no protections from erroneous disfranchisement. In their haphazard assessment of ostensible fraud, these lists are massively overinclusive, and if used improperly, are virtually guaranteed to exclude many eligible voters. The purges and challenges nearly implemented in Florida and Ohio in 2004 revealed the dangers of list management on the fly; we should learn from those mistakes.

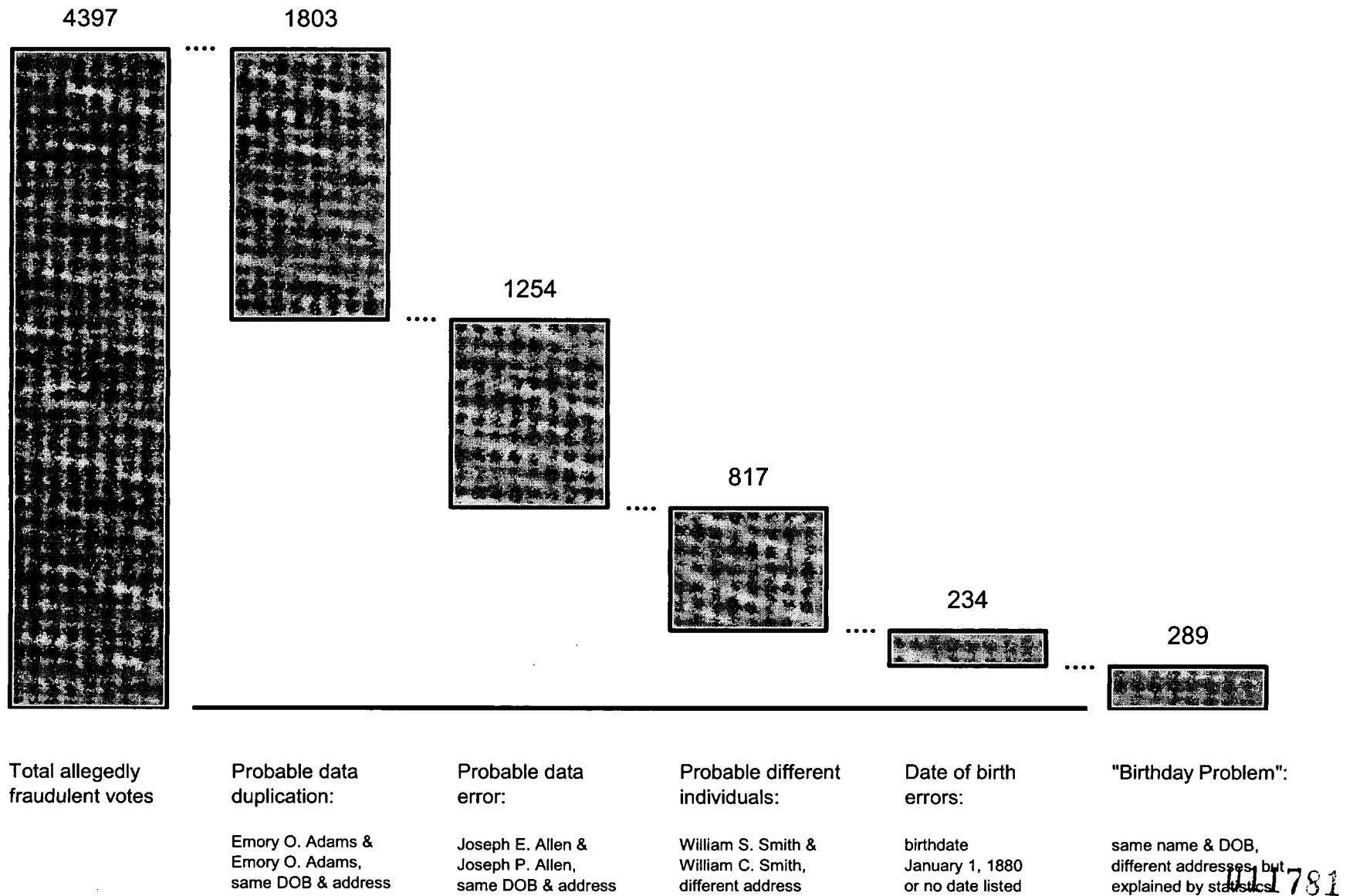


## Conclusion

It is certainly possible that of the 3.6 million New Jersey citizens voting in 2004, a handful managed to vote twice. Such cases can and should be investigated under existing law, and some of the information submitted to the Attorney General might prove to be helpful for that purpose. But the September 15 report and its accompanying lists of purportedly illegitimate voters simply fail to support the overall charge: an incidence of voter fraud sufficient either to cast doubt on the 2004 election or to provoke concern in elections to come. The vast majority of alleged irregularities identified in the report to the Attorney General and its accompanying lists do not stand up to even cursory analysis. One list, for example, was submitted with 80% of the entries specifically labeled in the datafile as “less likely” indicators of illegal activity. Middle names and suffixes were ignored; basic data compilation errors abound. And the report nowhere accounts for the basic statistical reality of the “Birthday Problem.”

The flaws in the data submitted to the Attorney General should preclude use of these lists – or the use of any similarly compiled file or list – as the basis for any purges of the voter files. Procedures established by HAVA and the NVRA, among others, when implemented with the safeguards contemplated by those statutes, will clean the registration rolls without the risk to eligible voters created by suspect lists like those submitted in the September 15 report. After a preliminary review of the evidence submitted, these lists simply do not prove what they purport to prove.

## Analysis of Alleged Double-Votes Reveals No Proof of Widespread Double Voting





The Web Site of The Sacramento Bee

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## **AG says GOP campaign linked to letter to Hispanic voters**

**- The Associated Press**

***Published 6:24 am PDT Thursday, October 19, 2006***

State investigators have linked a Republican campaign to letters sent to thousands of Orange County Hispanics warning them they could go to jail or be deported if they vote next month, a spokesman for the attorney general said.

"We have identified where we believe the mailing list was obtained," said Nathan Barankin, spokesman for Attorney General Bill Lockyer.

He declined to identify the specific Republican campaign Wednesday, citing the ongoing investigation. The Los Angeles Times and The Orange County Register both reported Thursday that the investigation appeared to be focused on the campaign of Tan D. Nguyen, a Republican challenger to Democratic U.S. Rep. Loretta Sanchez.

The letter, written in Spanish, tells recipients: "You are advised that if your residence in this country is illegal or you are an immigrant, voting in a federal election is a crime that could result in jail time."

In fact, immigrants who are naturalized U.S. citizens can vote.

Complaints about the letters this week prompted state and federal investigations, and Barankin said investigators had been questioning people in Orange County.

The two newspapers reported state investigators had found the location where the letters were printed and mailed to an

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estimated 14,000 Democratic voters in central Orange County. The Los Angeles Times, citing an unnamed source, said authorities had interviewed Nguyen at his office.

Nguyen did not return messages left by The Associated Press or either newspaper. Sanchez also did not return messages seeking comment.

In an interview on Univision Thursday morning, Sanchez said the sender should be punished for stating that immigrants can't vote.

She also said it would be unfortunate if the person responsible was another immigrant because many organizations and individuals have worked for years to encourage minorities to vote.

"What a shame, really, that this is still happening in the United States today," she said.

The owner of Huntington Beach-based Mailing Pros, Christopher West, told The Orange County Register that he didn't know any laws were being broken when the mailer was sent. He said he gave investigators the name of the person who hired him to do the mailings but declined to provide that the name to the newspaper.

"I'm the one that processed it, and I don't read Spanish," West said. "Until the investigator read it to me, I didn't know the content."

Scott Baugh, chairman of the Orange County Republican Party, condemned the letter as "an obnoxious, grotesque piece of work."

"Regardless of who did it - Republican or Democrat - if it's a crime, then whoever did it should be prosecuted," Baugh said.

A group of six Vietnamese-American political candidates running for offices in Orange County issued a joint statement saying: "The content of this mailer is offensive to the immigrant voters, regardless of their ethnicity."

The note's letterhead resembles that of an anti-illegal immigration group, California Coalition for Immigration Reform, but group leader Barbara Coe said she told investigators for the attorney general's office Wednesday that her group didn't authorize the letter and she didn't know who sent it.

"The letterhead was altered and I've never head of any Sergio Ramirez," the name signed to the letter, Coe said.

Numerous political leaders including Gov. Arnold Schwarzenegger have denounced the letter and called for the investigations.



## **CALTECH/MIT VOTING TECHNOLOGY PROJECT**

**A multi-disciplinary, collaborative project of  
the California Institute of Technology – Pasadena, California 91125 and  
the Massachusetts Institute of Technology – Cambridge, Massachusetts  
02139**

### **ELECTION FRAUD REFERENCES**

**SARAH HILL  
Caltech**

**Key words: *election fraud***

**VTP WORKING PAPER #50  
July 2006**

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PROHIBITING VOTE FRAUD AND INTIMIDATION:  
A SURVEY OF STATE STATUTES  
Doug Chapin<sup>1</sup>

The aim of this paper is straightforward – to assemble the existing set of state statutes dealing with vote fraud and voter intimidation currently on the books across the country.

Notwithstanding the considerable body of research on federal election crime statutes, similar research at the state level – the current center of gravity for election administration reform nationwide – is somewhat lacking.

Consequently, the hope associated with creating this list is that it will make it possible to follow through on a number of other useful research opportunities as a result.

Specifically, using this list of state statutes as a base, it should now be possible (among other things) to:

- Compare the definitions and penalties associated with such laws in order to identify common themes and trends in terminology, penalties, etc.
- Examine state prosecution of fraud and intimidation cases in order to assess their number and scope – as well as to gauge the relative incidence of voter fraud and intimidation across the country; and
- Identify the standards of proof and evidentiary requirements in such cases as an attempt to discover whether voter identification, proof of citizenship and other prophylactic measures are essential to the prevention of fraud and intimidation at the polls.

METHODOLOGICAL NOTE: The list which follows attempts to identify state statutes addressing voter fraud and voter intimidation as it is commonly understood in the policy arena; i.e., registration and voting by unqualified persons and actions intended to impede voters by threat or deception. The aim is to find any state law criminalizing activity whereby individuals:

1. register fraudulently;
2. vote fraudulently;
3. vote more than once (if identified separately);
4. vote for someone else without their consent;
5. buy or sell votes;
6. use threats, force, deception or other methods to prevent voters from registering or voting.

CITATION NOTE: All statutes were retrieved via the Internet; hence, none of the citations bear a date as would a printed reference.

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STATUTES ON VOTE FRAUD AND VOTER INTIMIDATION - ALABAMA

Ala. Code § 17-23-1

Illegal voting or attempting to vote.

Any person who votes more than once at any election held in this state, or deposits more than one ballot for the same office as his vote at such election, or knowingly attempts to vote when he is not entitled to do so, or is guilty of any kind of illegal or fraudulent voting, must, on conviction, be imprisoned in the penitentiary for not less than two nor more than five years, at the discretion of the jury.

Ala. Code § 17-23-3

Bribing or attempting to influence voter.

Any person who, by bribery or offering to bribe, or by any other corrupt means, attempts to influence any elector in giving his vote, or deter him from giving the same, or to disturb, or to hinder him in the free exercise of the right of suffrage, at any election, must, on conviction, be fined not less than \$50.00 nor more than \$500.00.

Ala. Code § 17-23-4

Buying votes.

Any person who buys or offers to buy any vote of any qualified elector at any election by the payment of money or the promise to pay the same at any future time, or by the gift of intoxicating liquors or other valuable thing, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than \$50.00 nor more than \$100.00.

Ala. Code § 17-23-5

Selling votes.

Any qualified elector at any election who takes or receives any money or other valuable thing, upon the condition that the same shall be paid at any future time, in exchange for the vote of such elector for any particular candidate, or the promise to vote for any particular candidate, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than \$50.00 nor more than \$500.00. No witness shall be prosecuted for any offense under this section as to which he testified before the grand jury.

Ala. Code § 17-23-8

Disturbing elector on election day.

Any person who, on election day, disturbs or prevents, or attempts to prevent, any elector from freely casting his ballot must, on conviction, be fined not less than \$500.00 nor more than \$1,000.00, and also sentenced to hard labor for the county, or imprisoned in the county jail for not less than six months nor more than one year.

Ala. Code § 17-23-12

Providing false information to register to vote.

Any person who knowingly provides false information in order to vote or register to vote in violation of Act 2003-313 shall be guilty of a Class A misdemeanor and upon conviction thereof shall be punished as provided by law.

STATUTES ON VOTE FRAUD AND VOTER INTIMIDATION – ALASKA

*AS 15.56.030. Unlawful Interference With Voting in the First Degree.*

- (a) A person commits the crime of unlawful interference with voting in the first degree if the person
- (1) uses, threatens to use, or causes to be used force, coercion, violence, or restraint, or inflicts, threatens to inflict, or causes to be inflicted damage, harm, or loss, upon or against another person to induce or compel that person to vote or refrain from voting in an election;
  - (2) knowingly pays, offers to pay, or causes to be paid money or other valuable thing to a person to vote or refrain from voting in an election; or
  - (3) solicits, accepts, or agrees to accept money or other valuable thing with the intent to vote for or refrain from voting for a candidate at an election or for an election proposition or question.
- (b) Violation of this section is a corrupt practice.
- (c) Unlawful interference with voting in the first degree is a class C felony.
- (d) For purposes of (a)(2) and (3) of this section, "other valuable thing"
- (1) includes
    - (A) an entry in a game of chance in which a prize of money or other present or future pecuniary gain or advantage may be awarded to a participant wherein the total of the prizes offered is greater than \$2 per participant with a maximum of \$100; and
    - (B) government employment or benefits;
  - (2) does not include
    - (A) materials having a nominal value bearing the name, likeness, or other identification of a candidate, political party, political group, party district committee, or organization, or stating a position on a ballot proposition or question;
    - (B) food and refreshments provided incidental to an activity that is nonpartisan in nature and directed at encouraging persons to vote, or incidental to a gathering in support of or in opposition to a candidate, political party, political group, party district committee, organization, or ballot question or proposition;
    - (C) care of the voter's dependents provided in connection with the absence of a voter from home for the purpose of voting;
    - (D) services provided by a person acting as a representative under AS 15.20.072 ;
    - (E) services provided by an election official as defined in AS 15.60.010; and
    - (F) transportation of a voter to or from the polls without charge.

*AS 15.56.035. Unlawful Interference With Voting in the Second Degree.*

- (a) A person commits the crime of unlawful interference with voting in the second degree if the person
- (1) has an official ballot in possession outside of the voting room unless the person is an election official or other person authorized by law or local ordinance, or by the director or chief municipal elections official in a local election;
  - (2) makes, or knowingly has in possession, a counterfeit of an official election ballot;
  - (3) knowingly solicits or encourages, directly or indirectly, a registered voter who is no longer qualified to vote under AS 15.05.010 , to vote in an election; or
  - (4) as a registration official
    - (A) knowingly refuses to register a person who is entitled to register under AS 15.07.030 ;
    - or
    - (B) accepts a fee from an applicant applying for registration.
- (b) Violation of (a)(3) of this section is a corrupt practice.
- (c) Unlawful interference with voting in the second degree is a class A misdemeanor.

*AS 15.56.040. Voter Misconduct in the First Degree.*

- (a) A person commits the crime of voter misconduct in the first degree if the person
- (1) votes or attempts to vote in the name of another person or in a name other than the person's own;
  - (2) votes or attempts to vote more than once at the same election with the intent that the person's vote be counted more than once;
  - (3) intentionally makes a false affidavit, swears falsely, or falsely affirms under an oath required by this title;

(4) knowingly votes or solicits a person to vote after the polls are closed with the intent that the vote be counted.

(b) Voter misconduct in the first degree is a class C felony.

*AS 15.56.050. Voter Misconduct in the Second Degree.*

(a) A person commits the crime of voter misconduct in the second degree if the person

(1) registers to vote without being entitled to register under AS 15.07.030;

(2) knowingly makes a material false statement while applying for voter registration or reregistration; or

(3) votes or attempts to vote in an election after being disqualified under AS 15.05.030.

(b) Voter misconduct in the second degree is a class A misdemeanor.

STATUTES ON VOTE FRAUD AND VOTER INTIMIDATION – ARIZONA

Ariz. Rev. Stat. § 16-1013. Coercion or intimidation of elector; classification

A. It is unlawful for a person knowingly:

1. Directly or indirectly, to make use of force, violence or restraint, or to inflict or threaten infliction, by himself or through any other person, of any injury, damage, harm or loss, or in any manner to practice intimidation upon or against any person, in order to induce or compel such person to vote or refrain from voting for a particular person or measure at any election provided by law, or on account of such person having voted or refrained from voting at an election.

2. By abduction, duress or any forcible or fraudulent device or contrivance whatever, to impede, prevent or otherwise interfere with the free exercise of the elective franchise of any voter, or to compel, induce or to prevail upon a voter either to cast or refrain from casting his vote at an election, or to cast or refrain from casting his vote for any particular person or measure at an election.

B. A person, whether acting in his individual capacity or as an officer or agent of a corporation, who violates a provision of this section is guilty of a class 1 misdemeanor.

Ariz. Rev. Stat § 16-1014. Corruption of electors; classification

A. It is unlawful for a person, directly or indirectly, by himself or through any other person knowingly:

1. To treat, give, pay, loan, contribute, offer or promise money or other valuable consideration, or to give, offer or promise an office, place or employment, or to promise or to procure or endeavor to procure an office, place or employment, to or for a voter, or to or for any other person, to induce the voter to vote or refrain from voting at an election for any particular person or measure, or to induce the voter to go to the polls, or remain away from the polls at an election, or on account of the voter having voted or refrained from voting for any particular person or measure, or having gone to the polls or remained away from the polls at an election.

2. To advance or pay or cause to be paid, money or other valuable consideration to or for the use of any other person with the intent that it, or any part thereof, be used for bribery at any election provided by law, or to knowingly pay or cause to be paid money or other valuable thing to any person in discharge or repayment of money, wholly or in part expended for bribery at any election.

3. To receive, agree or contract for, before, during or after an election provided by law, money, gifts, loans or other valuable consideration, office, place or employment for himself or other person, for voting or agreeing to vote, or for going or agreeing to go to the polls, or for refraining or agreeing to refrain from voting for a particular person or measure, or for inducing any person to vote or refrain from voting, or to vote or refrain from voting for a particular person or measure at an election.

B. A person violating any provision of this section is guilty of a class 2 misdemeanor.

Ariz. Rev. Stat § 16-1016. Illegal voting; pollution of ballot box; removal or destruction of ballot box, poll lists or ballots; classification

A person is guilty of a class 5 felony who:

1. Not being entitled to vote, knowingly votes.
2. Knowingly votes more than once at any election.
3. Knowingly gives to an election official two or more ballots folded together.
4. Knowingly changes or destroys a ballot after it has been deposited in the ballot box.

5. Knowingly adds a ballot to those legally cast at any election, by fraudulently introducing the ballot into the ballot box either before or after the ballots therein have been counted.
6. Knowingly adds to or mixes with ballots lawfully cast, other ballots, while they are being canvassed or counted, with intent to affect the result of the election, or to exhibit the ballots as evidence on the trial of an election contest.
7. Knowingly and unlawfully carries away, conceals or removes a poll list, ballot or ballot box from the polling place, or from possession of the person authorized by law to have custody thereof.
8. Knowingly destroys a polling list, ballot or ballot box with the intent to interrupt or invalidate the election.
9. Knowingly detains, alters, mutilates or destroys ballots or election returns.

Ariz. Rev. Stat § 16-1017. Unlawful acts by voters with respect to voting; classification

A voter who knowingly commits any of the following acts is guilty of a class 2 misdemeanor:

1. Makes a false statement as to the voter's inability to mark a ballot.
2. Interferes with a voter within the seventy-five foot limit of the polling place as posted by the election marshal or within seventy-five feet of the main outside entrance to an on-site early voting location established by a county recorder pursuant to section 16-542, subsection A.
3. Endeavors while within the seventy-five foot limit for a polling place or on-site early voting location to induce a voter to vote for or against a particular candidate or issue.
4. Prior to the close of an election defaces or destroys a sample ballot posted by election officers, or defaces, tears down, removes or destroys a card of instructions posted for the instruction of voters.
5. Removes or destroys supplies or conveniences furnished to enable a voter to prepare the voter's ballot.
6. Hinders the voting of others.
7. Votes in a county in which the voter no longer resides, except as provided in section 16-125.

STATUTES ON VOTE FRAUD AND VOTER INTIMIDATION – ARKANSAS

Ark. Code § 7-1-103. Miscellaneous misdemeanor offenses - Penalties.

(a) The violation of any of the following shall be deemed misdemeanors punishable as provided in this section:

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(11) No person applying for a ballot shall swear falsely to any oath administered by the election officials with reference to his or her qualifications to vote;

(12) No person shall willfully cause or attempt to cause his own name to be registered in any other election precinct than that in which he is or will be before the next ensuing election qualified as an elector;

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(19)(A) No person shall vote or offer to vote more than one (1) time in any election held in this state, either in person or by absentee ballot, or shall vote in more than one (1) election precinct in any election held in this state.

(B) No person shall cast a ballot or vote in the preferential primary of one (1) political party and then cast a ballot or vote in the general primary of another political party in this state;

(20) No person shall:

(A) Vote, knowing himself not to be entitled to vote;

(B) Vote more than once at any election, or knowingly cast more than one (1) ballot, or attempt to do so;

(C) Alter or attempt to alter any ballot after it has been cast;

(D) Add or attempt to add any ballot to those legally polled at any election either by fraudulently introducing it into the ballot box before or after the ballots have been counted or at any other time or in any other manner with the intent or effect of affecting the count or recount of the ballots;

(E) Withdraw or attempt to withdraw any ballot lawfully polled with the intent or effect of affecting the count or recount of the ballots; or

(F) In any manner interfere with the officials lawfully conducting the election or the canvass or with the voters lawfully exercising their right to vote at the election;

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(23) Any person, election official, county clerk, or deputy clerk who violates any provisions of the absentee voting laws, § 7-5-401 et seq., shall be punished as provided in this section.

(b)(1) Except as otherwise provided, the violation of any provision of this section shall be a Class A misdemeanor.

(2)(A) Any person convicted under the provisions of this section shall thereafter be ineligible to hold any office or employment in any of the departments in this state.

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(B)(i) If any person is convicted under the provisions of this section while employed by any of the departments of this state, he shall be removed from employment immediately.

(ii) If any person is convicted under the provisions of this section while holding public office, the conviction shall be deemed a misfeasance and malfeasance in office and shall subject the person to impeachment.

(c) Any violation of this act not covered by this section and § 7-1-104 shall be considered a Class A misdemeanor and shall be punishable as such.

Ark. Code § 7-1-104. Miscellaneous felonies - Penalties.

(a) The following offenses shall be deemed felonies punishable as provided in this section:

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(2) No public official or other person shall in any manner willfully or corruptly permit any person not entitled to register for the purpose of voting to register, nor shall a public official or other person forge or attempt to forge a registration;

(3) No person shall vote in any election in the state unless the person is a qualified elector of this state and has registered to vote in the manner provided by law;

(4) It shall be unlawful for any person to offer, accept, receive, or pay any person any money, goods, wares, or merchandise or solicit any money, goods, wares, or merchandise for the purpose of influencing his or her vote during the progress of any election in this state;

(5) It shall be unlawful for any person to make any threat or attempt to intimidate any elector or the family, business, or profession of the elector;

(6) It shall be unlawful for any person to prevent or to interfere with any qualified elector from voting at any election or to attempt to prevent or interfere with any qualified elector from voting at any election, provided that this subdivision (a)(6) shall not prohibit good faith challenges of ballots or voters according to law by candidates, authorized representatives of candidates, political parties, or ballot issues;

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(9) No person may cast a ballot in more than one (1) party primary election on the same day in this state or for candidates for more than one (1) political party;

(10) No person shall vote in any election more than one (1) vote;

(11) No person shall vote or attempt to vote other than his or her legal ballot;

(12) No election official shall knowingly permit any person to vote other than his or her legal ballot in any election;

(13) No election official or other person shall fraudulently permit any person to vote illegally, refuse the vote of any qualified elector, or cast up or make a false return of any election;

(14) No election official or other person shall willfully make a false count of any election ballots or falsely or fraudulently certify the returns of any election;

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(17) Any person who violates the provisions of § 7-5-702 or who shall disclose how any voter may have voted unless compelled to do so in a judicial proceeding shall be deemed guilty of a Class D felony and punished as provided in this section.

(b)(1) Any person convicted of a felony as defined in this section shall be guilty of a Class D felony.

(2)(A) Any person convicted of a felony as defined in this section shall be barred from holding public office or employment in any of the departments of the state from the date of his conviction.

(B)(i) If the person is employed by any of the departments of this state at the time of his conviction, he shall be removed from employment immediately.

(ii) If any person is convicted under the provisions of this section while holding public office, the conviction shall be deemed a misfeasance and malfeasance in office and shall subject the person to impeachment.

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STATUTES ON VOTE FRAUD AND VOTER INTIMIDATION – CALIFORNIA

Cal. Elec. Code §

Cal. Elec. Code § 18500. Any person who commits fraud or attempts to commit fraud, and any person who aids or abets fraud or attempts to aid or abet fraud, in connection with any vote cast, to be cast, or attempted to be cast, is guilty of a felony, punishable by imprisonment for 16 months or two or three years.

Cal. Elec. Code § 18501. Any public official who knowingly violates any of the provisions of this chapter, and thereby aids in any way the illegal casting or attempting to cast a vote, or who connives to nullify any of the provisions of this chapter in order that fraud may be perpetrated, shall forever be disqualified from holding office in this state and upon conviction shall be sentenced to a state prison for 16 months or two or three years.

Cal. Elec. Code § 18502. Any person who in any manner interferes with the officers holding an election or conducting a canvass, or with the voters lawfully exercising their rights of voting at an election, as to prevent the election or canvass from being fairly held and lawfully conducted, is punishable by imprisonment in the state prison for 16 months or two or three years.

Cal. Elec. Code § 18520. A person shall not directly or through another person give, offer, or promise any office, place, or employment, or promise to procure or endeavor to procure any office, place, or employment to or for any voter, or to or for any other person, in order to induce that voter at any election to:

- (a) Refrain from voting.
- (b) Vote for any particular person.
- (c) Refrain from voting for any particular person.

A violation of any of the provisions of this section shall be punishable by imprisonment in the state prison for 16 months or two or three years.

Cal. Elec. Code § 18521. A person shall not directly or through any other person receive, agree, or contract for, before, during or after an election, any money, gift, loan, or other valuable consideration, office, place, or employment for himself or any other person because he or any other person:

- (a) Voted, agreed to vote, refrained from voting, or agreed to refrain from voting for any particular person or measure.
- (b) Remained away from the polls.
- (c) Refrained or agreed to refrain from voting.
- (d) Induced any other person to:
  - (1) Remain away from the polls.
  - (2) Refrain from voting.
  - (3) Vote or refrain from voting for any particular person or measure.

Any person violating this section is punishable by imprisonment in the state prison for 16 months or two or three years.

Cal. Elec. Code § 18540.

(a) Every person who makes use of or threatens to make use of any force, violence, or tactic of coercion or intimidation, to induce or compel any other person to vote or refrain from voting at any election or to vote or refrain from voting for any particular person or measure at any election, or because any person voted or refrained from voting at any election or voted or refrained from voting for any particular person or measure at any election is guilty of a felony punishable by imprisonment in the state prison for 16 months or two or three years.

(b) Every person who hires or arranges for any other person to make use of or threaten to make use of any force, violence, or tactic of coercion or intimidation, to induce or compel any other person to vote or refrain from voting at any election or to vote or refrain from voting for any particular person or measure at any election, or because any person voted or refrained from voting at any election or voted or refrained from voting for any particular person or measure at any election is guilty of a felony punishable by imprisonment in the state prison for 16 months or two or three years.

Cal. Elec. Code § 18541.

(a) No person shall, with the intent of dissuading another person from voting, within 100 feet of a polling place, do any of the following:

- (1) Solicit a vote or speak to a voter on the subject of marking his or her ballot.
- (2) Place a sign relating to voters' qualifications or speak to a voter on the subject of his or her qualifications except as provided in Section 14240.
- (3) Photograph, videotape, or otherwise record a voter entering or exiting a polling place.

(b) Any violation of this section is punishable by imprisonment in a county jail for not more than 12 months, or in the state prison. Any person who conspires to violate this section is guilty of a felony.

(c) For purposes of this section, 100 feet means a distance of 100 feet from the room or rooms in which voters are signing the roster and casting ballots.

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Cal. Elec. Code § 18543.

(a) Every person who knowingly challenges a person's right to vote without probable cause or on fraudulent or spurious grounds, or who engages in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voters from voting or to delay the process of voting, or who fraudulently advises any person that he or she is not eligible to vote or is not registered to vote when in fact that person is eligible or is registered, or who violates Section 14240, is punishable by imprisonment in the county jail for not more than 12 months or in the state prison.

(b) Every person who conspires to violate subdivision (a) is guilty of a felony.

Cal. Elec. Code § 18544. (a) Any person in possession of a firearm or any uniformed peace officer, private guard, or security personnel or any person who is wearing a uniform of a peace officer, guard, or security personnel, who is stationed in the immediate vicinity of, or posted at, a polling place without written authorization of the appropriate city or county elections official is punishable by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment in the state prison for 16 months or two or three years or in a county jail not exceeding one year, or by both the fine and imprisonment.

(b) This section shall not apply to any of the following:

- (1) An unarmed uniformed guard or security personnel who is at the polling place to cast his or her vote.
- (2) A peace officer who is conducting official business in the course of his or her public employment or who is at the polling place to cast his or her vote.
- (3) A private guard or security personnel hired or arranged for by a city or county elections official.
- (4) A private guard or security personnel hired or arranged for by the owner or manager of the facility or property in which the polling place is located if the guard or security personnel is not hired or arranged solely for the day on which an election is held.

Cal. Elec. Code § 18545. Any person who hires or arranges for any other person in possession of a firearm or any uniformed peace officer, private guard, or security personnel or any person who is wearing a uniform of a peace officer, guard, or security personnel, to be stationed in the immediate vicinity of, or posted at, a polling place without written authorization of the appropriate elections official is punishable by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment in the state prison for 16 months or two or three years or in a county jail not exceeding one year, or by both the fine and imprisonment. This section shall not apply to the owner or manager of the facility or property in which the polling place is located if the private guard or security personnel is not hired or arranged solely for the day on which the election is held.

Cal. Elec. Code § 18560. Every person is guilty of a crime punishable by imprisonment in the state prison for 16 months or two or three years, or in county jail not exceeding one year, who:

- (a) Not being entitled to vote at an election, fraudulently votes or fraudulently attempts to vote at that election.
- (b) Being entitled to vote at an election, votes more than once, attempts to vote more than once, or knowingly hands in two or more ballots folded together at that election.
- (c) Impersonates or attempts to impersonate a voter at an election.

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Cal. Elec. Code § 18561. Every person is punishable by imprisonment in the state prison for 16 months or two or three years who:

- (a) Procures, assists, counsels, or advises another to give or offer his vote at any election, knowing that the person is not qualified to vote.
- (b) Aids or abets in the commission of any of the offenses mentioned in Section 18560.

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Cal. Elec. Code § 18578. Any person who applies for, or who votes or attempts to vote, an absent voter's ballot by fraudulently signing the name of a fictitious person, or of a regularly qualified voter, or of a person who is not qualified to vote, is guilty of a felony punishable by imprisonment in the state prison for 16 months or two or three years, or by fine not exceeding one thousand dollars (\$1,000) or by both the fine and imprisonment.

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STATUTES ON VOTE FRAUD AND VOTER INTIMIDATION – COLORADO

Colo. Rev. Stat. § 1-13-203. Procuring false registration.

It is unlawful for any person to procure his or her own name, or the name of any other person, to be registered in the registration book of a precinct in which such person is not, at the time of such registration, entitled to be registered or for any person to procure any fictitious name to be registered in the registration book of any precinct. Any person who violates any of the provisions of this section shall be punished by a fine of not more than five thousand dollars, or by imprisonment in the county jail for not more than eighteen months, or by both such fine and imprisonment. Each violation shall be considered a separate offense.

Colo. Rev. Stat. §1-13-704.5. Voting by persons not entitled to vote - penalty.

(1) Any person voting in any election provided by law knowing that he or she is not entitled to vote in such election commits a class 5 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

(2) This section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

Colo. Rev. Stat. § 1-13-705. Personating elector.

Any person who falsely personates any elector and votes at any election provided by law under the name of such elector shall be punished by a fine of not more than five thousand dollars or by imprisonment in the county jail for not more than eighteen months, or by both such fine and imprisonment.

Colo. Rev. Stat. §1-13-709. Voting in wrong precinct.

Any person who, at any election provided by law, knowingly votes or offers to vote in any election precinct in which he or she is not qualified to vote shall be punished by a fine of not more than five thousand dollars or by imprisonment in the county jail for not more than eighteen months, or by both such fine and imprisonment.

Colo. Rev. Stat. §1-13-709.5. Residence - false information - penalty.

Any person who votes by knowingly giving false information regarding the elector's place of present residence commits a class 6 felony and shall be punished as provided in section 18-1.3-401, C.R.S.

Colo. Rev. Stat. §1-13-710. Voting twice - penalty.

Any voter who votes more than once or, having voted once, offers to vote again or offers to deposit in the ballot box more than one ballot shall be punished by a fine of not more than five thousand dollars or by imprisonment in the county jail for not more than eighteen months, or by both such fine and imprisonment.

Colo. Rev. Stat. §1-13-713. Intimidation.

It is unlawful for any person directly or indirectly, by himself or by any other person in his behalf, to impede, prevent, or otherwise interfere with the free exercise of the elective franchise of any elector or to compel, induce, or prevail upon any elector either to give or refrain from giving his vote at any election provided by law or to give or refrain from giving his vote for any particular person or measure at any such election. Each such offense is a misdemeanor, and, upon conviction thereof, the offender shall be punished as provided in section 1-13-111.

Colo. Rev. Stat. §1-13-720. Unlawfully giving or promising money or employment.

(1) It is unlawful for any person, directly or indirectly, by himself or through any other person:

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(a) To pay, loan, or contribute, or offer or promise to pay, loan, or contribute, any money or other valuable consideration to or for any elector, or to or for any other person, to induce such elector to vote or refrain from voting at any election provided by law or to induce any elector to vote or refrain from voting at such election for any particular person or to induce such elector to go to the polls or remain away from the polls at such election or on account of such elector having voted or refrained from voting for any particular person or issue or having gone to the polls or remained away from the polls at such election; or

(b) To advance or pay, or cause to be paid, any money or other valuable thing to or for the use of any other person with the intent that the same, or any part thereof, shall be used in bribery at any election provided by law or to knowingly pay, or cause to be paid, any money or other valuable thing to any person in discharge or repayment of any money wholly or partially expended in bribery at any such election; or

(c) To give, offer, or promise any office, place, or employment or to promise, procure, or endeavor to procure any office, place, or employment to or for any elector, or to or for any other person, in order to induce such elector to vote or refrain from voting at any election provided by law or to induce any elector to vote or refrain from voting at such election for any particular person or issue.

(2) Each offense set forth in subsection (1) of this section is a misdemeanor, and, upon conviction thereof, the offender shall be punished as provided in section 1-13-111.

Colo. Rev. Stat. §1-13-721. Receipt of money or jobs.

(1) It is a misdemeanor for any person, directly or indirectly, by himself or through any other person:

(a) Before or during an election provided by law, to receive, agree to accept, or contract for any money, gift, loan, or other valuable consideration, office, place, or employment, for himself or any other person, for voting or agreeing to vote, or for going or agreeing to go to the polls, or for remaining away or agreeing to remain away from the polls, or for refraining or agreeing to refrain from voting, or for voting or agreeing to vote or refraining or agreeing to refrain from voting for any particular person or measure at any election provided by law;

(b) During or after an election provided by law, to receive any money or other valuable thing on account of himself or any other person for voting or refraining from voting at such election, or on account of himself or any other person for voting or refraining from voting for any particular person at such election, or on account of himself or any other person for going to the polls or remaining away from the polls at such election, or on account of having induced any person to vote or refrain from voting for any particular person or measure at such election.

STATUTES ON VOTE FRAUD AND VOTER INTIMIDATION - CONNECTICUT

**Conn. Gen. Stat. § 9-333x. Illegal practices.** The following persons shall be guilty of illegal practices and shall be punished in accordance with the provisions of section 9-333y:

(1) Any person who, directly or indirectly, individually or by another person, gives or offers or promises to any person any money, gift, advantage, preferment, entertainment, aid, emolument or other valuable thing for the purpose of inducing or procuring any person to sign a nominating, primary or referendum petition or to vote or refrain from voting for or against any person or for or against any measure at any election, caucus, convention, primary or referendum;

(2) Any person who, directly or indirectly, receives, accepts, requests or solicits from any person, committee, association, organization or corporation, any money, gift, advantage, preferment, aid, emolument or other valuable thing for the purpose of inducing or procuring any person to sign a nominating, primary or referendum petition or to vote or refrain from voting for or against any person or for or against any measure at any such election, caucus, primary or referendum;

(3) Any person who, in consideration of any money, gift, advantage, preferment, aid, emolument or other valuable thing paid, received, accepted or promised to the person's advantage or any other person's advantage, votes or refrains from voting for or against any person or for or against any measure at any such election, caucus, primary or referendum;

(4) Any person who solicits from any candidate any money, gift, contribution, emolument or other valuable thing for the purpose of using the same for the support, assistance, benefit or expenses of any club, company or organization, or for the purpose of defraying the cost or expenses of any political campaign, primary, referendum or election;

(5) Any person who, directly or indirectly, pays, gives, contributes or promises any money or other valuable thing to defray or towards defraying the cost or expenses of any campaign, primary, referendum or election to any person, committee, company, club, organization or association, other than to a campaign treasurer, except that this subdivision shall not apply to any expenses for postage, telegrams, telephoning, stationery, express charges, traveling, meals, lodging or photocopying incurred by any candidate for office or for nomination to office, so far as may be permitted under the provisions of this chapter;

(6) Any person who, in order to secure or promote the person's own nomination or election as a candidate, or that of any other person, directly or indirectly, promises to appoint, or promises to secure or assist in securing the appointment, nomination or election of any other person to any public position, or to any position of honor, trust or emolument; but any person may publicly announce the person's own choice or purpose in relation to any appointment, nomination or election in which the person may be called to take part, if the person is nominated for or elected to such office;

(7) Any person who, directly or indirectly, individually or through another person, makes a payment or promise of payment to a campaign treasurer in a name other than the person's own, and any campaign treasurer who knowingly receives a payment or promise of payment, or enters or causes the same to be entered in the person's accounts in any other name than that of the person by whom such payment or promise of payment is made;

(8) Any person who knowingly and willfully violates any provision of this chapter;

(9) Any person who offers or receives a cash contribution in excess of one hundred dollars to promote the success or defeat of any political party, candidate or referendum question;

(10) Any person who solicits, makes or receives a contribution that is otherwise prohibited by any provision of this chapter;

(11) Any department head or deputy department head of a state department who solicits a contribution on behalf of, or for the benefit of, any candidate for state, district or municipal office or any political party; or

(12) Any municipal employee who solicits a contribution on behalf of, or for the benefit of, any candidate for state, district or municipal office, any political committee or any political party, from (A) an individual under the supervision of such employee, or (B) the spouse or a dependent child of such individual.

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**Conn. Gen. Stat. § 9-357. Fraudulent registration.** Any person who fraudulently procures himself or another to be registered as an elector shall be fined not more than five hundred dollars or imprisoned not more than one year or be both fined and imprisoned.

**Conn. Gen. Stat. § 9-360. Fraudulent voting.** Any person not legally qualified who fraudulently votes in any town meeting, primary or election in which he is not qualified to vote, and any legally qualified person who, at such meeting, primary or election, fraudulently votes more than once at the same meeting, primary or election, shall be fined not less than three hundred dollars nor more than five hundred dollars and shall be imprisoned not less than one year nor more than two years and shall be disfranchised. Any person who votes or attempts to vote at any election, primary or town meeting by assuming the name of another who is registered or enrolled, as the case may be, shall be fined five hundred dollars and be imprisoned one year and shall be disfranchised.

**Conn. Gen. Stat. § 9-364. Influencing elector to refrain from voting.** Any person who influences or attempts to influence any elector to stay away from any election shall be fined not more than five hundred dollars and imprisoned not more than one year nor less than three months.

**Conn. Gen. Stat. § 9-364a. (Formerly Sec. 9-344). Acts prohibited in elections, primaries, referenda, caucuses and conventions. Penalties.** Any person who influences or attempts to influence by force or threat the vote, or by force, threat, bribery or corrupt means, the speech, of any person in a primary, caucus, referendum convention or election; or wilfully and fraudulently suppresses or destroys any vote or ballot properly given or cast or, in counting such votes or ballots, wilfully miscounts or misrepresents the number thereof; and any presiding or other officer of a primary, caucus or convention who wilfully announces the result of a ballot or vote of such primary, caucus or convention, untruly and wrongfully, shall be fined not more than one thousand dollars or imprisoned not more than one year or be both fined and imprisoned.

STATUTES ON VOTE FRAUD AND VOTER INTIMIDATION - DELAWARE

Del. Code § 2302. Wrongful registration; assault; riot; breach of peace; penalty.

Whoever causes or attempts to cause himself or herself to be registered in: (1) The name of any other person living or dead or under any fictitious name; or (2) any election district in this State, knowing that he or she has not the right to be registered; or (3) whoever, knowing himself or herself to be registered in any election district in this State, causes or attempts to cause himself or herself to be registered in any other election district in this State without having first caused his or her record to be removed from the Election District Record in which his or her original permanent registration record may have been previously entered; or (4) whoever, knowing himself or herself to be disqualified as a voter at the next following general election, causes or attempts to cause himself or herself to be entered in the Election District Record in any election district in this State as a registered voter therein or unlawfully interferes with any registrar, alternate registrar or assistant registrar in the discharge of his or her duties under this title; or (5) whoever makes any assault or commits any assault and battery or incites or creates any riot or breach of the peace at or near to any place of registration in this State during the sitting of any registration officers; shall be fined not less than \$50 or more than \$200 or imprisoned not less than 30 days or more than 2 years or both.

Del. Code §§ 5123. Intimidation, persuasion or bribery by election officer; penalty.

Whoever, being an election officer:

(1) In any manner attempts to influence, persuade, intimidate, bribe or coerce any voter in the marking of the voter's ballot, or in the making of the choice of the persons for whom the voter votes; or

(2) Discloses the manner in which any person has voted;

shall be deemed to have knowingly and wilfully violated his or her official duty, shall be guilty of wilful and deliberate perjury, and, in addition to the penalties and disabilities annexed to such crime, be fined not more than \$500 and may be imprisoned not more than 2 years.

Del. Code §§ 5128. Fraudulent voting; penalty.

Whoever, at any general or special election:

(1) Falsely personates any elector or other person and votes or attempts or offers to vote in or upon the name of such elector or other person; or

(2) Votes or attempts to vote in or upon the name of any other person whether living or dead or in or upon any false, assumed or fictitious name; or

(3) Knowingly, willfully or fraudulently votes more than once for any candidate at any election for the same office; or

(4) Votes or attempts or offers to vote in any election district without having a lawful right to vote therein, or to vote more than once or to vote in more than 1 election district; or

(5) Having once voted, votes or attempts or offers to vote again; or

(6) Fraudulently delivers or offers to an election officer more than a single ballot; or

(7) Knowingly, willfully or fraudulently does any unlawful act to secure an opportunity for himself or herself or for any other person to vote,



shall be fined not less than \$50 or more than \$200, or imprisoned not less than 30 days or more than 2 years, or both.

Del. Code § 5162. Intimidation of electors; penalty.

If any person, or corporation existing or doing business in this State, hinders, controls, coerces or intimidates or attempts to hinder, control, coerce or intimidate any qualified elector of this State from or in the exercise of the elector's right to vote at any general, special or municipal election held under the laws of this State, by means of bribery or by threats of depriving such elector of employment or occupation, absolutely or contingently, directly or indirectly, every elector so aggrieved may, in a civil action brought for that purpose, sue for and recover from the person or corporation so offending the sum of \$500.

011812

STATUTES ON VOTE FRAUD AND VOTER INTIMIDATION – DISTRICT OF COLUMBIA

**D.C. Code § 1-1001.14. Corrupt election practices.**

(a) Any person who shall register, or attempt to register, or vote or attempt to vote under the provisions of this subchapter and make any false representations as to his or her qualifications for registering or voting or for holding elective office, or be guilty of violating § 1-1001.07(d)(2)(D), § 1-1001.09, § 1-1001.12, or § 1-1001.13 or be guilty of bribery or intimidation of any voter at an election, or being registered, shall vote or attempt to vote more than once in any election so held, or shall purloin or secrete any of the votes cast in an election, or attempt to vote in an election held by a political party other than that to which he or she has declared himself or herself to be affiliated, or, if employed in the counting of votes in any election held pursuant to this subchapter, knowingly make a false report in regard thereto, and every candidate, person, or official of any political committee who shall knowingly make any expenditure or contribution in violation of Chapter 11 of this title, shall, upon conviction, be fined not more than \$10,000 or be imprisoned not more than 5 years, or both.

(b)(1) Any person who signs an initiative, referendum or recall petition with any other than his or her own name, or who signs a petition for an initiative, referendum or recall measure, knowing that he or she is not a registered qualified elector in the District of Columbia, or who makes a false statement as to his or her residency on any such petition, shall upon conviction be fined not more than \$10,000 or be imprisoned not more than 1 year, or both.

(2) Any public officer, involved in any part of the election process, who willfully violates any of the provisions of § 1-1001.16 or § 1-1001.17, shall be fined not more than \$10,000 or be imprisoned not more than 1 year, or both.

(3) Any person who: (A) For any consideration, compensation, gratuity, reward or thing of value or promise thereof, signs or promises to sign or declines to sign, or promises not to sign any initiative, referendum, or recall petition; or (B) pays or offers or promises to pay, or gives or offers or promises to give any consideration, compensation, gratuity, reward, or thing of value to any person to induce him or her to sign or not to sign, his or her signatures upon any initiative, referendum, or recall petition, or to vote for or against, or to abstain from voting on, any initiative, referendum, or recall measure; or (C) by any other corrupt means or practice, or by threats or intimidation, interferes with, or attempts to interfere with, the right of any qualified registered elector to sign or not to sign any initiative, referendum, or recall petition, or to vote for or against, or to abstain from voting on any initiative, referendum, or recall measure; or (D) makes any false statement to the Board concerning any initiative, referendum, or recall petition, or the signatures appended thereto shall be fined not more than \$10,000 or be imprisoned not more than 1 year, or both.

(4) Any proposer or circulator of an initiative, referendum, or recall petition who willfully violates any provision of §§ 1-1001.16 and 1-1001.17 shall, upon conviction thereof, be subject to a fine of not more than \$10,000 or to imprisonment of not more than 6 months, or both. Each occurrence of a violation of §§ 1-1001.16 and 1-1001.17 shall constitute a separate offense. Violations of §§ 1-1001.16 and 1-1001.17 shall be prosecuted in the name of the District of Columbia by the Corporation Counsel of the District of Columbia.

(c) The provisions of this section shall be supplemental to, and not in derogation of, any penalties under other laws of the District of Columbia.

STATUTES ON VOTE FRAUD AND VOTER INTIMIDATION - FLORIDA

**Fla. Stat. § 104.011 False swearing; submission of false voter registration information.--**

(1) A person who willfully swears or affirms falsely to any oath or affirmation, or willfully procures another person to swear or affirm falsely to an oath or affirmation, in connection with or arising out of voting or elections commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) A person who willfully submits any false voter registration information commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

**Fla. Stat. § 104.012 Consideration for registration; interference with registration; soliciting registrations for compensation; alteration of registration application.--**

(1) Any person who gives anything of value that is redeemable in cash to any person in consideration for his or her becoming a registered voter commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. This section shall not be interpreted, however, to exclude such services as transportation to the place of registration or baby-sitting in connection with the absence of an elector from home for registering.

(2) A person who by bribery, menace, threat, or other corruption, directly or indirectly, influences, deceives, or deters or attempts to influence, deceive, or deter any person in the free exercise of that person's right to register to vote at any time, upon the first conviction, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and, upon any subsequent conviction, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person may not solicit or pay another person to solicit voter registrations for compensation that is based upon the number of registrations obtained. A person who violates the provisions of this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) A person who alters the voter registration application of any other person, without the other person's knowledge and consent, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**Fla. Stat. § 104.041 Fraud in connection with casting vote.--**Any person perpetrating or attempting to perpetrate or aid in the perpetration of any fraud in connection with any vote cast, to be cast, or attempted to be cast, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**Fla. Stat. § 104.045 Vote selling.--**Any person who:

(1) Corruptly offers to vote for or against, or to refrain from voting for or against, any candidate in any election in return for pecuniary or other benefit; or

(2) Accepts a pecuniary or other benefit in exchange for a promise to vote for or against, or to refrain from voting for or against, any candidate in any election,

is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**Fla. Stat. § 104.061 Corruptly influencing voting.--**

(1) Whoever by bribery, menace, threat, or other corruption whatsoever, either directly or indirectly, attempts to influence, deceive, or deter any elector in voting or interferes with him or her in the free exercise of the elector's right to vote at any election commits a felony of the third degree, punishable as provided in s.

775.082, s. 775.083, or s. 775.084 for the first conviction, and a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, for any subsequent conviction.

(2) No person shall directly or indirectly give or promise anything of value to another intending thereby to buy that person's or another's vote or to corruptly influence that person or another in casting his or her vote. Any person who violates this subsection is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. However, this subsection shall not apply to the serving of food to be consumed at a political rally or meeting or to any item of nominal value which is used as a political advertisement, including a campaign message designed to be worn by a person.

**Fla. Stat. § 104.0615 Voter intimidation or suppression prohibited; criminal penalties.--**

(1) This section may be cited as the "Voter Protection Act."

(2) A person may not directly or indirectly use or threaten to use force, violence, or intimidation or any tactic of coercion or intimidation to induce or compel an individual to:

(a) Vote or refrain from voting;

(b) Vote or refrain from voting for any particular individual or ballot measure;

(c) Refrain from registering to vote; or

(d) Refrain from acting as a legally authorized election official or poll watcher.

(3) A person may not knowingly use false information to:

(a) Challenge an individual's right to vote;

(b) Induce or attempt to induce an individual to refrain from voting or registering to vote; or

(c) Induce or attempt to induce an individual to refrain from acting as a legally authorized election official or poll watcher.

(4) A person may not knowingly destroy, mutilate, or deface a voter registration form or election ballot or obstruct or delay the delivery of a voter registration form or election ballot.

(5) A person who violates subsection (2), subsection (3), or subsection (4) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**Fla. Stat. § 104.15 Unqualified electors willfully voting.--**Whoever, knowing he or she is not a qualified elector, willfully votes at any election is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**Fla. Stat. § 104.16 Voting fraudulent ballot.--**Any elector who knowingly votes or attempts to vote a fraudulent ballot, or any person who knowingly solicits, or attempts, to vote a fraudulent ballot, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**Fla. Stat. § 104.17 Voting in person after casting absentee ballot.--**Any person who willfully votes or attempts to vote both in person and by absentee ballot at any election is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**Fla. Stat. § 104.18 Casting more than one ballot at any election.--**Whoever willfully votes more than one ballot at any election is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

**Fla. Stat. § 104.24 Penalty for assuming name.**--A person may not, in connection with any part of the election process, fraudulently call himself or herself, or fraudulently pass by, any other name than the name by which the person is registered or fraudulently use the name of another in voting. Any person who violates this section is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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STATUTES ON VOTE FRAUD AND VOTER INTIMIDATION - GEORGIA

O.C.G.A § 21-2-561.

Any person who:

- (1) Registers as an elector knowing that such elector does not possess the qualifications required by law;
  - (2) Registers as an elector under any other name than the elector's own name; or
  - (3) Knowingly gives false information when registering as an elector
- shall be guilty of a felony.

O.C.G.A § 21-2-566.

Any person who:

- (1) Willfully prevents or attempts to prevent any poll officer from holding any primary or election under this chapter;
  - (2) Uses or threatens violence to any poll officer or interrupts or improperly interferes with the execution of his or her duty;
  - (3) Willfully blocks or attempts to block the avenue to the door of any polling place;
  - (4) Uses or threatens violence to any elector to prevent him or her from voting;
  - (5) Willfully prepares or presents to any poll officer a fraudulent voters certificate not signed by the elector whose certificate it purports to be;
  - (6) Knowingly deposits fraudulent ballots in the ballot box;
  - (7) Knowingly registers fraudulent votes upon any voting machine; or
  - (8) Willfully tampers with any electors list, voters certificate, numbered list of voters, ballot box, voting machine, direct recording electronic (DRE) equipment, or tabulating machine
- shall be guilty of a felony.

O.C.G.A § 21-2-570.

Any person who gives or receives, offers to give or receive, or participates in the giving or receiving of money or gifts for the purpose of registering as a voter, voting, or voting for a particular candidate in any primary or election shall be guilty of a felony.

O.C.G.A § 21-2-571.

Any person who votes or attempts to vote at any primary or election, knowing that such person does not possess all the qualifications of an elector at such primary or election, as required by law, or who votes or attempts to vote at any primary in violation of Code Section 21-2-223 or who knowingly gives false information to poll officers in an attempt to vote in any primary or election shall be guilty of a felony.

O.C.G.A § 21-2-572.

Any person who votes in more than one precinct in the same primary or election or otherwise fraudulently votes more than once at the same primary or election shall be guilty of a felony.

O.C.G.A § 21-2-573.

Any person who votes or attempts to vote by absentee ballot at any primary or election under Article 10 of this chapter and who is not qualified to vote shall be guilty of a misdemeanor.

STATUTES ON VOTE FRAUD AND VOTER INTIMIDATION – HAWAII

**Haw. Rev. Stat. §19-3 Election frauds.** The following persons shall be deemed guilty of an election fraud:

(1) Every person who, directly or indirectly, personally or through another, gives, procures, or lends, or agrees or offers to give, procure, or lend, or who endeavors to procure, any money or office or place of employment or valuable consideration to or for any elector, or to or for any person for an elector, or to or for any person in order to induce any elector to vote or refrain from voting, or to vote or refrain from voting for any particular person or party, or who does any such act on account of any person having voted or refrained from voting for any particular person at any election;

(2) Every person who advances or pays, or causes to be paid, any money to, or to the use of, any other person, with the intent that the money, or any part thereof, shall be expended in bribery at any election, or for any purpose connected with or incidental to any election; or who knowingly pays or causes to be paid any money to any person in the discharge or repayment of any money wholly or partly expended in bribery at any election, or for any purpose connected with or incidental to any election;

(3) Every elector who, before, during or after any election, directly or indirectly, personally or through another, receives, agrees, or contracts for any money, gift, loan, or valuable consideration, office, place, or employment for oneself or any other person for voting or agreeing to vote, or for refraining to vote or agreeing to refrain from voting, or for voting or refraining to vote for any particular person or party;

(4) Every person who, directly or indirectly, personally or through another, makes use of, or threatens to make use of, any force, violence, or restraint; or inflicts or threatens to inflict any injury, damage, or loss in any manner, or in any way practices intimidation upon or against any person in order to induce or compel the person to vote or refrain from voting, or to vote or refrain from voting for any particular person or party, at any election, or on account of the person having voted or refrained from voting, or voted or refrained from voting for any particular person or party; or who by abduction, distress, or any device or contrivance impedes, prevents, or otherwise interferes with the free exercise of the elective franchise;

(5) Every person who, at any election, votes or attempts to vote in the name of any other person, living or dead, or in some fictitious name, or who, having once voted, votes or attempts to vote again, or knowingly gives or attempts to give more than one ballot for the same office at one time of voting;

(6) Every person who, before or during an election, knowingly publishes a false statement of the withdrawal of any candidate at the election;

(7) Every person who induces or procures any person to withdraw from being a candidate at an election in consideration of any payment or gift or valuable consideration; or of any threat; and every candidate who withdraws from being a candidate in pursuance of such inducement or procurement;

(8) Every public officer by law required to do or perform any act or thing with reference to any of the provisions in any law concerning elections who wilfully fails, neglects, or refuses to do or perform the same, or who is guilty of any wilful violation of any of the provisions thereof;

(9) Any person wilfully tampering or attempting to tamper with, disarrange, deface, or impair in any manner whatsoever, or destroy any voting machine while the same is in use at any election, or who, after the machine is locked in order to preserve the registration or record of any election made by the same, tampers or attempts to tamper with any voting machine; and

(10) Every person who, directly or indirectly, personally or through another, wilfully designs, alters, accesses, or programs any electronic voting system to cause the system to inaccurately record, tally, or report votes cast on the electronic voting system.

STATUTES ON VOTE FRAUD AND VOTER INTIMIDATION – IDAHO

18-2302. FALSE SWEARING AS TO QUALIFICATIONS AS VOTER. Every person who, upon his right to vote being challenged at any election held under the laws of this state, wilfully, corruptly and falsely swears touching his qualifications as a voter, is guilty of perjury.

18-2304. PROCURING ILLEGAL VOTES. Every person who procures, aids, assists, counsels or advises another to give or offer his vote at any election, knowing that the person is not qualified to vote, is guilty of a misdemeanor.

18-2305. INTIMIDATION, CORRUPTION AND FRAUDS. Every person who, by force, threats, menaces, bribery, or any corrupt means, either directly or indirectly attempts to influence any elector in giving his vote, or to deter him from giving the same, or attempts by any means whatever, to awe, restrain, hinder or disturb any elector in the free exercise of the right of suffrage, or furnishes any elector wishing to vote, who can not read, with a ticket, informing or giving such elector to understand that it contains a name written or printed thereon different from the name which is written or printed thereon, or defrauds any elector at any such election, by deceiving and causing such elector to vote for a different person, for any office, than he intended or desired to vote for; or who, being officer, judge, or clerk of any election, while acting as such, induces, or attempts to induce, any elector, either by menace or reward, or promise thereof, to vote differently from what such elector intended or desired to vote, is guilty of a misdemeanor.

18-2306. ILLEGAL VOTING OR INTERFERENCE WITH ELECTION. Every person not entitled to vote, who fraudulently votes, and every person who votes more than once at any one election, or knowingly hands in two (2) or more tickets folded together, or changes any ballot after the same has been deposited in the ballot box, or adds, or attempts to add, any ballot to those legally polled at any election, either by fraudulently introducing the same into the ballot box before or after the ballots therein have been counted, or adds to or mixes with, or attempts to add to or mix with, the ballots lawfully polled, other ballots, while the same are being counted or canvassed, or at any other time, with intent to change the result of such election; or carries away or destroys, or attempts to carry away or destroy, any poll list, or ballots, or ballot box, for the purpose of breaking up or invalidating such election, or wilfully detains, mutilates, or destroys any election returns, or in any manner so interferes with the officers holding such election or conducting such canvass, or with the voters lawfully exercising their rights of voting at such election, as to prevent such election or canvass from being fairly held and lawfully conducted, is guilty of a felony.

18-2307. ATTEMPTING TO VOTE WHEN NOT QUALIFIED, OR TO REPEAT VOTING. Every person not entitled to vote, who fraudulently attempts to vote, or who, after being entitled to vote, attempts to vote more than once at any election, is guilty of a misdemeanor.

18-2319. ATTEMPT TO INFLUENCE VOTES. No person shall attempt to influence the vote of any elector by means of a promise or a favor, or by means of violence or threats of violence, or threats of withdrawing custom or dealing in business or trade, or enforcing the payment of a debt, or discharging from employment, or bringing a suit or criminal prosecution, or any other threat of injury to be inflicted by him, or by any other means.

18-2320. BRIBERY OF ELECTORS. No person shall in any way offer a bribe to an elector to influence his vote.

18-2322. ILLEGAL REGISTRATION BY VOTER. Any person who shall wilfully cause, or endeavor to cause, his name to be registered in any other election district than that in which he resides, or will reside prior to the day of the next ensuing election, except as herein otherwise provided, and any person who shall cause, or endeavor to cause, his name to be registered, knowing that he is not a qualified elector, and will not be a qualified elector on or before the day of the next ensuing election, in the election district in which he causes or endeavors to cause such registry to be made, and any person who shall induce, aid or abet anyone in the commission of either of the acts in this section enumerated and described, shall be fined not less than fifty dollars (\$50.00) nor more than one thousand dollars (\$1,000), or be confined in the county jail for not less than one (1) month nor more than six (6) months, or both.



## STATUTES ON VOTE FRAUD AND VOTER INTIMIDATION – ILLINOIS

10 ILCS 5/291. Vote buying. Any person who knowingly gives, lends or promises to give or lend any money or other valuable consideration to any other person to influence such other person to vote or to register to vote or to influence such other person to vote for or against any candidate or public question to be voted upon at any election shall be guilty of a Class 4 felony.

10 ILCS 5/29-2. Promise for vote. Any person who, in order to influence any other person to vote or register to vote or to vote for or against any candidate or public question to be voted upon at any election, knowingly promises to (a) cause or support the employment or appointment of any other person to any public office or public position or (b) perform or refrain from performing any official act, shall be guilty of a Class 4 felony.

10 ILCS 5/29-3. Selling of vote. Any person who votes for or against any candidate or public question in consideration of any gift or loan of money or for any other valuable consideration, or for any promise to cause or support the employment or appointment of any person to any public office or public position, shall be guilty of a Class 4 felony.

10 ILCS 5/29-4. Prevention of voting or candidate support. Any person who, by force, intimidation, threat, deception or forgery, knowingly prevents any other person from (a) registering to vote, or (b) lawfully voting, supporting or opposing the nomination or election of any person for public office or any public question voted upon at any election, shall be guilty of a Class 4 felony.

10 ILCS 5/29-5. Voting more than once. Any person who, having voted once, knowingly on the same election day where the ballot or machine lists any of the same candidates and issues listed on the ballot or machine previously used for voting by that person, (a) files an application to vote in the same or another polling place, or (b) accepts a ballot or enters a voting machine (except to legally give assistance pursuant to the provisions of this Code), shall be guilty of a Class 3 felony; however, if a person has delivered a ballot or ballots to an election authority as an absentee voter and due to a change of circumstances is able to and does vote in the precinct of his residence on election day, shall not be deemed to be in violation of this Code.

10 ILCS 5/29-18. Conspiracy to prevent vote - Liability. If 2 or more persons conspire to prevent by force, intimidation, threat, deception, forgery or bribery any person from registering to vote, or preventing any person lawfully entitled to vote from voting, or preventing any person from supporting or opposing, in a legal manner, the nomination or election of any person for public or political party office, or a proposition voted upon at any election, or to injure any person or such person's property on account of such vote, support or advocacy, and if one or more persons so conspiring do, attempt or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property or deprived of having or exercising any right, privilege or immunity secured by the Constitution or laws of the United States or the State of Illinois relating to the conduct of elections, voting, or the nomination or election of candidates for public or political party office, all persons engaged in such conspiracy shall be liable to the party injured or any person affected, in any action or proceeding for redress.

10 ILCS 5/29-19. False information – liability. Whoever knowingly or willfully gives false information as to his name, address, or period of residence in the voting district for the purpose of establishing his eligibility to register to vote, or conspires with another individual for the purpose of encouraging his false registration to vote or illegal voting, or pays or offers to pay or accepts payment either for registration to vote or for voting shall be liable to the party injured or any other person affected, in an action or proceeding for redress.

## STATUTES ON VOTE FRAUD AND VOTER INTIMIDATION - INDIANA

**IC 3-14-2-1**

**Fraudulent application for registration or absentee ballot; fraudulent voting**

Sec. 1. A person who knowingly does any of the following commits a Class D felony:

- (1) Conspires with an individual for the purpose of encouraging the individual to submit a false application for registration.
- (2) Conspires with an individual for the purpose of encouraging the individual to vote illegally.
- (3) Pays or offers to pay an individual for doing any of the following:
  - (A) Applying for an absentee ballot.
  - (B) Casting an absentee ballot.
  - (C) Registering to vote.
  - (D) Voting.
- (4) Accepts the payment of any property for doing any of the following:
  - (A) Applying for an absentee ballot.
  - (B) Casting an absentee ballot.
  - (C) Registering to vote.
  - (D) Voting.

**IC 3-14-2-2**

**Fraudulent application for registration or procurement of registration**

Sec. 2. A person who, knowing the person is not a voter and will not be a voter at the next election, applies for registration or procures registration as a voter commits a Class A misdemeanor.

**IC 3-14-2-2.5**

**Solicitation for fraudulent absentee ballot application**

Sec. 2.5. A person who does either of the following, knowing that an individual is ineligible to register to vote or to vote, commits absentee ballot fraud, a Class D felony:

- (1) Solicits the individual to complete an absentee ballot application.
- (2) Solicits the individual to submit an absentee ballot application to a county election board.

**IC 3-14-2-3**

**Fraudulent subscription of another person's name to affidavit of registration or absentee ballot application**

Sec. 3. A person who:

- (1) subscribes the name of another person to an affidavit of registration or application for an absentee ballot knowing that the application contains a false statement; or
  - (2) subscribes the name of another person to an affidavit of registration or application for an absentee ballot without writing on it the person's own name and address as an attesting witness;
- commits a Class D felony.

**IC 3-14-2-4**

**Registering to vote more than once**

Sec. 4. A person who recklessly registers or offers to register to vote more than once commits a Class A misdemeanor.

**IC 3-14-2-5**

**Destruction or failure to file or deliver registration form or absentee ballot application after execution**

Sec. 5. (a) A person who recklessly destroys or fails to deliver an absentee ballot application to the proper officer after the application has been executed by another individual in accordance with IC 3-11-4 commits a Class A misdemeanor.

(b) A person who recklessly destroys or fails to file or deliver to the proper officer a registration affidavit or form of registration after the affidavit or form has been executed commits a Class A misdemeanor.

**IC 3-14-2-6**

**Unauthorized release or removal of registration materials or information**

Sec. 6. A person who knowingly, intentionally, or recklessly releases or removes any registration materials or information contained in the computerized list maintained under IC 3-7-26.3 from the county voter registration office, except when release or removal is necessary:

(1) to comply with IC 3-7; or  
(2) for the destruction of the materials under IC 5-15-6;  
commits a Class A misdemeanor.

**IC 3-14-2-7**

**Withholding information or furnishing false information to poll taker; return of false names or names of deceased persons**

Sec. 7. A person who knowingly:

(1) upon the demand of a poll taker, withholds any information

from the poll taker with regard to the qualifications of a voter or person not entitled to vote;

(2) furnishes to a poll taker any false information with regard to the qualifications of any person for voting; or

(3) returns to the poll taker as voters any false names or the names of any persons who are dead or are not voters;

commits a Class A misdemeanor.

**IC 3-14-2-8**

**Return of names of ineligible, fictitious, or deceased persons by poll taker**

Sec. 8. A poll taker who knowingly returns:

(1) the name of a person who is not entitled to vote in the precinct for which the poll is taken at the next election;

(2) a fictitious name; or

(3) the name of a dead person;

commits a Class A misdemeanor.

**IC 3-14-2-9**

**Unregistered or unauthorized voting**

Sec. 9. A person who knowingly votes or offers to vote at an election when the person is not registered or authorized to vote commits a Class D felony.

**IC 3-14-2-10**

**Voting by ineligible persons**

Sec. 10. A person who recklessly votes at an election, unless the person is a registered voter under the requirements of IC 3-7 at the time of the election, commits a Class A misdemeanor.

**IC 3-14-2-11**

**Voting in other precincts**

Sec. 11. Except as provided by IC 3-10-10, IC 3-10-11, or IC 3-10-12, a person who knowingly votes or offers to vote in a precinct except the one in which the person is registered and resides commits a Class D felony.

**IC 3-14-2-12**

**Voting or applying to vote in false name and own name**

Sec. 12. A person who:

(1) knowingly votes or makes application to vote in an election in a name other than the person's own;

or

(2) having voted once at an election, knowingly applies to vote at the same election in the person's own name or any other name;

commits a Class D felony.

**IC 3-14-2-13**

**Hiring or soliciting an ineligible person to vote in a precinct**

Sec. 13. A person who knowingly hires or solicits another person to go into a precinct for the purpose of

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voting at an election at the precinct when the person hired or solicited is not a voter in the precinct commits a Class D felony.

#### **IC 3-14-2-14**

##### **Precinct officer or public official allowing ineligible voters or unauthorized procedure**

Sec. 14. A precinct election officer or public official upon whom a duty is imposed by this title who knowingly:

- (1) allows a person to vote who is not entitled to vote; or
- (2) allows a person to vote by use of an unauthorized procedure;

commits a Class D felony.

#### **IC 3-14-2-20**

##### **Deceptive registration of vote**

Sec. 20. A person who knowingly:

- (1) deceives a voter in registering the voter's vote under IC 3-11-8; or
- (2) registers a voter's vote in a way other than as requested by the voter;

commits a Class D felony.

#### **IC 3-14-3-18**

##### **Actions to unlawfully influence voter or candidate**

Sec. 18. (a) As used in this section, "candidate" includes an individual whom the person knows is considering becoming a candidate.

(b) A person who, for the purpose of influencing a voter or candidate, does any of the following commits a Class D felony:

- (1) Seeks to enforce the payment of a debt by force or threat of force.
- (2) Ejects or threatens to eject the voter or candidate from a house the voter or candidate occupies.
- (3) Begins a criminal prosecution.
- (4) Damages the business or trade of the voter or candidate.
- (5) Communicates a threat to commit a forcible felony (as defined in IC 35-41-1-11) against a voter or candidate with the intent that the voter or candidate:
  - (A) engage in conduct against the voter's or candidate's will; or
  - (B) be placed in fear of retaliation for a prior lawful act as a voter or candidate.

#### **IC 3-14-3-19**

##### **Inducing votes by gift or offer to compensate**

Sec. 19. A person who, for the purpose of inducing or procuring another person to:

- (1) apply for or cast an absentee ballot; or
- (2) vote or refrain from voting for or against a candidate or for or against a public question at an election or political convention;

gives, offers, or promises to any person any money or other property commits a Class D felony.

#### **IC 3-14-3-20**

##### **Acceptance or solicitation of compensation to induce or procure votes**

Sec. 20. A person who, for the purpose of inducing or procuring a voter to:

- (1) apply for or cast an absentee ballot; or
- (2) vote or refrain from voting for or against a candidate or for or against a public question at an election or political convention;

receives, accepts, requests, or solicits from any person any money or other property commits a Class D felony.

#### **IC 3-14-3-21.5**

##### **Voter intimidation**

Sec. 21.5. A person who knowingly or intentionally intimidates, threatens, or coerces an individual for:

- (1) voting or attempting to vote;
- (2) urging or aiding another individual to vote or attempt to vote; or
- (3) exercising any power or duty under this title concerning registration or voting;

commits voter intimidation, a Class D felony.

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STATUTES ON VOTE FRAUD AND VOTER INTIMIDATION – IOWA

39A.2 Election misconduct in the first degree.

1. A person commits the crime of election misconduct in the first degree if the person willfully commits any of the following acts:

*a. Registration fraud.* Produces, procures, submits, or accepts a voter registration application that is known by the person to be materially false, fictitious, forged, or fraudulent.

*b. Vote fraud.*

(1) Destroys, delivers, or handles an application for a ballot or an absentee ballot with the intent of interfering with the voter's right to vote.

(2) Produces, procures, submits, or accepts a ballot or an absentee ballot, or produces, procures, casts, accepts, or tabulates a ballot that is known by the person to be materially false, fictitious, forged, or fraudulent.

(3) Votes or attempts to vote more than once at the same election, or votes or attempts to vote at an election knowing oneself not to be qualified.

(4) Makes a false or untrue statement in an application for an absentee ballot or makes or signs a false certification or affidavit in connection with an absentee ballot.

(5) Otherwise deprives, defrauds, or attempts to deprive or defraud the citizens of this state of a fair and impartially conducted election process.

*c. Duress.* Intimidates, threatens, or coerces, or attempts to intimidate, threaten, or coerce, a person to do any of the following:

(1) To register to vote, to vote, or to attempt to register to vote.

(2) To urge or aid a person to register to vote, to vote, or to attempt to register to vote.

(3) To exercise a right under chapters 39 through 53 .

*d. Bribery.*

(1) Pays, offers to pay, or causes to be paid money or any other thing of value to a person to influence the person's vote.

(2) Pays, offers to pay, or causes to be paid money or any other thing of value to an election official conditioned on some act done or omitted to be done contrary to the person's official duty in relation to an election.

(3) Receives money or any other thing of value knowing that it was given in violation of subparagraph (1) or (2).

*e. Conspiracy.* Conspires with or acts as an accessory with another to commit an act in violation of paragraphs "a" through "d" .

2. Election misconduct in the first degree is a class "D" felony.

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STATUTES ON VOTE FRAUD AND VOTER INTIMIDATION - KANSAS

**25-2409. Election bribery.** Election bribery is conferring, offering or agreeing to confer, or soliciting, accepting or agreeing to accept any benefit as consideration to or from any person either to vote or withhold any person's vote, or to vote for or against any candidate or question submitted at any public election.

Election bribery is a severity level 7, nonperson felony.

**25-2415. Intimidation of voters.** (a) Intimidation of voters is: (1) intimidating, threatening, coercing or attempting to intimidate, threaten, or coerce any person for the purpose of interfering with the right of such person to vote or to vote as he may choose, or of causing such person to vote for, or not to vote for, any candidate for any office or question submitted at any election; or

(2) mailing, publishing, broadcasting, telephoning or transmitting by any means false information intended to keep one or more voters from casting a ballot or applying for or returning an advance voting ballot.

(b) Intimidation of voters is a severity level 7, nonperson felony.

**25-2416. Voting without being qualified.** Voting without being qualified is knowingly and willfully: (a) Voting or attempting to vote at any election when not a lawfully registered voter.

(b) Voting or offering to vote more than once at the same election.

(c) Inducing or aiding any person to vote more than once at the same election.

Voting without being qualified is a class A misdemeanor.

STATUTES ON VOTE FRAUD AND VOTER INTIMIDATION- - KENTUCKY

**119.025 Wrongful registration.**

Any person who knowingly or fraudulently causes himself to be registered in more than one (1) precinct, or to be registered more than once, or in a precinct other than the one in which he is a legal voter, or who registers under any name other than his real name, or who gives a false address, or who in any manner causes himself to be registered when he is not legally entitled to register, or who makes a false oath as to his ability to read or write, or who knowingly or fraudulently aids, abets, counsels or advises in the commission of any such act, shall be subject to the penalties prescribed for Class D felonies.

**119.155 Preventing voter from casting ballot -- Interfering with election.**

(1) Any person who unlawfully prevents or attempts to prevent any voter from casting his ballot, or intimidates or attempts to intimidate any voter so as to prevent him from casting his ballot, or who unlawfully interferes with the election officers in the discharge of their duties, shall be guilty of a Class D felony.

(2) Any person who, by himself or in aid of others, forcibly breaks up or prevents, or attempts to break up or prevent, or obstructs or attempts to obstruct, the lawful holding of an election, shall be guilty of a Class A misdemeanor.

**119.165 False personation of a voter -- Nonresident or unqualified person voting.**

(1) Any person who falsely personates a registered voter, and receives and casts a ballot by means of such personation, shall be guilty of a Class D felony. An attempt at such personation shall constitute a Class A misdemeanor.

(2) Any person who, by means other than falsely personating a registered voter, votes at an election in this state when he is a resident of another state or country, or votes more than once at an election, or votes by use of the naturalization papers of another person, shall be guilty of a Class D felony. Any person who knowingly votes or attempts to vote in a precinct other than the one in which he resides shall be guilty of a Class A misdemeanor, unless by voting in a precinct in which he does not live he is enabled to vote in a race or on a matter in which he could not vote in his proper precinct in which case he shall be guilty of a Class D felony. Any person who lends or hires his or another's naturalization papers to be used for the purpose of voting shall be subject to the same penalty.

(3) Any resident of this state who, by means other than falsely personating a registered voter, votes at a regular or special election before he has resided in this state thirty (30) days, or in the county and precinct where the election is held the time required by law, or before he has attained full age, or before he has become a citizen, shall be guilty of a Class B misdemeanor.

(4) Any person who, by means other than falsely personating a registered voter, votes in a primary election knowing that he is not qualified as provided in KRS 116.055, shall be guilty of a violation.

(5) Any person who applies for or receives a ballot at any voting place other than the one at which he is entitled to vote, under circumstances not constituting a violation of any of the provisions of subsections (1) to (4) of this section, shall be guilty of a Class A misdemeanor.



STATUTES ON VOTE FRAUD AND VOTER INTIMIDATION - LOUISIANA

§1461. Election offenses; penalties

A. No person shall knowingly, willfully, or intentionally:

- (1) Fail, refuse, or neglect to discharge any duty imposed upon him, either individually or in an official capacity, by any provision of this Title.
- (2) Being a commissioner, permit fraudulent votes to be cast, or knowingly count votes not entitled to be cast.
- (3) Have in his possession an official ballot in violation of any provision of this Title.
- (4) Offer, promise, solicit, or accept money or anything of present or prospective value to secure or influence a vote or registration of a person.
- (5) Forge, alter, add to, deface, take, destroy, or remove from proper custodial care any book, card, record, election return, nomination papers, withdrawals of candidacy, election supplies, election paraphernalia, or any affidavit or other document required or provided for under the provisions of this Title, unless required to be removed by a court of competent jurisdiction for inspection and photostatic copying for the court record.
- (6) Intimidate, deceive, or misinform, directly or indirectly, any voter or prospective voter in matters concerning voting or nonvoting or voter registration or nonregistration, including but not limited to any matter concerning the voluntary affiliation or nonaffiliation of a voter with any political party.
- (7) Vote or attempt to vote more than once at an election.
- (8) Offer money or anything of present or prospective value or use, directly or indirectly, any form of intimidation to influence the action or encourage inaction of any public official with regard to the duties of his office or to influence a commissioner or watcher in his decision to serve or not to serve as such or in the performance of his duties on election day.
- (9) Disobey any lawful instruction of the commissioners or a law enforcement officer assisting at the polls, or without lawful authority obstruct, hinder, or delay any voter on his way to or while returning home from any polling place where an election is being held or on his way to or while returning home from a place where he can legally exercise a vote concerning candidate representation of his party.
- (10) Vote or attempt to vote, knowing that he is not qualified, or influence or attempt to influence another to vote, knowing such voter to be unqualified or the vote to be fraudulent.
- (11) Register, vote, or attempt to register or vote in the name of another or in an assumed or fictitious name, or in any manner other than as provided in this Title.
- (12) Have in his possession the registration certificate of another with intent to violate any provision of this Title.
- (13) Supply a false answer or statement to an election official or in any document required by this Title, or execute an affidavit knowing it to contain false or incorrect information.
- (14) Forge the name of another or use a fictitious name on an affidavit or document required under this Title.

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(15) Unlawfully, directly or indirectly, possess, tamper with, break, impair, impede, or otherwise interfere with the maintenance, adjustment, delivery, use, or operation of any voting machine or part thereof or with any of the paraphernalia connected with or appertaining thereto.

(16) As a voter, commissioner, watcher, or person assisting a voter, allow a ballot to be seen, except as provided by law; announce the manner in which a person has cast his vote; place a distinguishing mark on a ballot with intent to make the ballot identifiable, or make a false statement concerning ability to mark a ballot without assistance.

(17) Give or offer to give, directly or indirectly, any money or thing of present or prospective value to any person who has withdrawn or who was eliminated prior or subsequent to the primary election as a candidate for public office, for the purpose of securing or giving his political support to any remaining candidates or to candidates for public office in the primary or general election.

(18) Being a physician, certify to the disability of a voter under R.S. 18:1304, or certify that a person will be hospitalized on election day, knowing such information to be false.

(19) Breach any mandatory provision of this Title.

(20) Procure or submit voter registration applications that are known by the person to be materially false, fictitious, or fraudulent.

(21) While in the voting booth assisting another person in voting, coerce, compel, or otherwise influence the assisted voter to cast his vote in a certain way.

(22) Being a commissioner, fail to identify an applicant to vote as required by this Title.

(23) Fail to submit to the parish registrar of voters a completed registration application collected through a registration drive within thirty days of receipt of the completed application from the applicant.

B. Whoever violates any provision of this Section shall be fined not more than one thousand dollars or be imprisoned for not more than one year, or both. On a second offense, or any succeeding offense, the penalty shall be a fine of not more than two thousand five hundred dollars or imprisonment for not more than five years, or both.

C.(1) Notwithstanding any other provision of law to the contrary and in addition to the penalties provided in Subsection B of this Section, any candidate who is elected to public office and is convicted of an election offense as provided in Paragraphs (A)(4), (6), (10), (13), (14), and (17) of this Section that is related to his campaign for such public office shall forfeit such public office. If such conviction becomes final prior to the candidate taking the oath of office for such public office, the candidate shall forfeit the public office and shall not be allowed to hold such public office and such public office shall be declared vacant at the time such conviction becomes final. If the conviction for such election offense does not become final until after such candidate has taken the oath of office for such public office, then, at the time such conviction becomes final, he shall forfeit such public office and shall be, ipso facto, removed from such public office and such public office shall be declared vacant.

(2) However, if such candidate held such public office at the time of the commission of the election offense, he shall be allowed to serve the remainder of the term he was then serving, but, at the time his conviction for the election offense becomes final, he shall forfeit the public office for the subsequent term. If he has taken the oath of office for the subsequent term, he shall, at the time the conviction for the election offense becomes final, forfeit such public office and shall be, ipso facto, removed from such public office and such public office shall be declared vacant.

(3) Any vacancy in a public office occurring as a result of the provisions of this Subsection shall be filled as in the case of ordinary vacancies and according to the constitution and laws of the state.

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§1461.1. Coercion; prohibited practices; penalties

A.(1) No person shall knowingly coerce or attempt to coerce another person to give or withhold a contribution to influence the nomination or election of a person to the office of president or vice president of the United States, presidential elector, delegate to a political party convention, United States senator, United States congressman, or political party office.

(2) No person based on an individual's contribution, promise to make a contribution, or failure to make a contribution to influence the nomination or election of a person to any of the offices listed in this Subsection shall directly or indirectly affect an individual's employment by means of:

(a) Denial or deprivation or the threat of the denial or deprivation of any employment or position.

(b) Denial or deprivation or the threat of the denial or deprivation of the loss of any compensation, payment, benefit, or other emolument derived from or related to such employment or position.

(c) Discharge, promotion, degradation, or change in any manner in rank, status, or classification, or the threat or promise to do so.

(3)(a) No person based on an individual's contribution, promise to make a contribution, or failure to make any contribution to influence the nomination or election of a person to any of the offices listed in this Subsection shall directly or indirectly affect an individual by means of:

(i) Denial or deprivation or the threat of the denial or deprivation of membership or participation in any organization.

(ii) Denial or deprivation or the threat of the denial or deprivation of the loss of any compensation, payment, benefit, or other emolument derived from or related to such membership or participation in any organization.

(iii) Discharge, promotion, degradation, or change in any manner in rank, status, or classification in any organization, or the threat or promise to do so.

(b)(i) No organization shall directly or indirectly have as a condition of membership or participation, the requirement that a person make a contribution to such organization which will be used by such organization for the purpose of supporting, opposing, or otherwise influencing the nomination or election of a person to any of the offices listed in this Subsection, for the purpose of supporting or opposing a proposition or question submitted to the voters, or for the purpose of supporting or opposing the recall of a public officer.

(ii) For the purposes of this Subparagraph, "contribution" shall have the same meaning as provided for in R.S. 18:1483(6) and shall also include any dues or membership fees of any organization.

(c) For the purposes of this Paragraph, "organization" shall mean a partnership, association, labor union, political committee, corporation, or other legal entity, including their subsidiaries.

(4) No political committee, candidate, or other person shall knowingly and willfully make a contribution or expenditure using funds which were obtained through any practice prohibited by this Section.

(5) Any contribution received by a candidate, political committee, or other person who makes expenditures or receives contributions which was obtained through practices prohibited in this Subsection shall escheat to the state and shall be paid over to the state by such candidate, political committee, or such other person.

(6) Penalties for violations of any of the provisions of this Section shall be as provided in R.S. 18:1461(B).

B. Terms used in this Section shall be defined as in Chapter 11 of this Title except that, for purposes of this Section:

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(1) "Candidate" shall mean a person who seeks nomination or election to the office of president or vice president of the United States, presidential elector, delegate to a political party convention, United States senator, United States congressman, or political party office. An individual shall be deemed to seek nomination or election to such office if he has, since prior participation in an election, if any, received and accepted a contribution or made an expenditure, or has given his consent for any other person or committee to receive a contribution or make an expenditure with a view to influencing his nomination or election to such office, or taken the action necessary under the laws of the state of Louisiana to qualify himself for nomination or election to such office.

(2) "Person who makes expenditures or receives contributions" shall mean any person, other than a candidate or a political committee, who makes any expenditure or who accepts a contribution, other than to or from a candidate or to or from a political committee, if either said expenditures or said contributions exceed five hundred dollars in the aggregate during the aggregating period provided in the Campaign Finance Disclosure Act which would be applicable to candidates as defined in this Subsection if they were candidates for purposes of the Campaign Finance Disclosure Act.

STATUTES ON VOTE FRAUD AND VOTER INTIMIDATION – MAINE

**§602. Bribery in official and political matters**

1. A person is guilty of bribery in official and political matters if:

A. He promises, offers, or gives any pecuniary benefit to another with the intention of influencing the other's action, decision, opinion, recommendation, vote, nomination or other exercise of discretion as a public servant, party official or voter;

B. Being a public servant, party official, candidate for electoral office or voter, he solicits, accepts or agrees to accept any pecuniary benefit from another knowing or believing the other's purpose to be as described in paragraph A, or fails to report to a law enforcement officer that he has been offered or promised a pecuniary benefit in violation of paragraph A; or

C. That person promises, offers or gives any pecuniary benefit to another with the intention of obtaining the other's signature on an absentee ballot under Title 21-A, chapter 9, subchapter IV, or referendum petition under Title 21-A, chapter 11, or that person solicits, accepts or agrees to accept any pecuniary benefit from another knowing or believing the other's purpose is to obtain that person's signature on an absentee ballot or referendum petition, or fails to report to a law enforcement officer that the person has been offered or promised a pecuniary benefit in violation of this paragraph.

2. As used in this section and other sections of this chapter, the following definitions apply.

A. A person is a "candidate for electoral office" upon his public announcement of his candidacy.

B. "Party official" means any person holding any post in a political party whether by election, appointment or otherwise.

C. "Pecuniary benefit" means any advantage in the form of money, property, commercial interest or anything else, the primary significance of which is economic gain; it does not include economic advantage applicable to the public generally, such as tax reduction or increased prosperity generally. "Pecuniary benefit" does not include the following:

(1) A meal, if the meal is provided by industry or special interest organizations as part of an informational program presented to a group of public servants;

(2) A meal, if the meal is a prayer breakfast or a meal served during a meeting to establish a prayer breakfast; or

(3) A subscription to a newspaper, news magazine or other news publication.

**§603. Improper influence**

1. A person is guilty of improper influence if he:

A. Threatens any harm to a public servant, party official or voter with the purpose of influencing his action, decision, opinion, recommendation, nomination, vote or other exercise of discretion;

B. Privately addresses to any public servant who has or will have an official discretion in a judicial or administrative proceeding any representation, argument or other communication with the intention of influencing that discretion on the basis of considerations other than those authorized by law; or

C. Being a public servant or party official, fails to report to a law enforcement officer conduct designed to influence him in violation of paragraphs A or B.

2. "Harm" means any disadvantage or injury, pecuniary or otherwise, including disadvantage or injury to any other person or entity in whose welfare the public servant, party official or voter is interested.

3. Improper influence is a Class D crime. ]

STATUTES ON VOTE FRAUD AND VOTER INTIMIDATION – MARYLAND

**§ 16-101. Offenses relating to registration.**

(a) In general.- A person may not willfully and knowingly:

- (1) impersonate a voter or other person in order to register or attempt to register in the name of the voter or other person;
- (2) register to vote more than once;
- (3) falsify residence in an attempt to register in the wrong location;
- (4) secure registration through any unlawful means;
- (5) cause by unlawful means the name of a qualified voter to be stricken from a registry of voters;
- (6) prevent, hinder, or delay a person having a lawful right to register from registering, through the use of force, threat, menace, intimidation, bribery, reward, or offer of reward;
- (7) falsify any name on a registration;
- (8) misrepresent any fact relating to registration; or
- (9) induce or attempt to induce a person to violate any prohibition in items (1) through (8) of this subsection.

(b) Penalty.- A person who violates this section is guilty of a misdemeanor and subject to a fine of not more than \$1,000 or imprisonment for not more than 5 years or both.

(c) A person who violates this section is subject to § 5-106(b) of the Courts Article.

**§ 16-201. Offenses relating to voting.**

(a) In general.- A person may not willfully and knowingly:

- (1) (i) impersonate another person in order to vote or attempt to vote; or  
(ii) vote or attempt to vote under a false name;
- (2) vote more than once for a candidate for the same office or for the same ballot question;
- (3) vote or attempt to vote more than once in the same election, or vote in more than one election district or precinct;
- (4) vote in an election district or precinct without the legal authority to vote in that election district or precinct; or
- (5) influence or attempt to influence a voter's voting decision through the use of force, threat, menace, intimidation, bribery, reward, or offer of reward.

(b) Penalties.- A person who violates this section is guilty of a misdemeanor and on conviction is subject to a fine of not more than \$2,500 or imprisonment for not more than 5 years or both.

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STATUTES ON VOTE FRAUD AND VOTER INTIMIDATION – MASSACHUSETTS

Chapter 56: Section 8. Illegal registration

Section 8. Whoever causes or attempts to cause his name to be registered, knowing that he is not a qualified voter in the place of such registration or attempted registration; whoever registers or attempts to register under a name other than his own; whoever represents or attempts to represent himself as some other person to an election commissioner, registrar or assistant registrar; whoever gives a false answer to an election commissioner, registrar, or assistant registrar respecting any matter relating to his registration or his right to vote; whoever otherwise illegally registers or attempts to register; or whoever aids or abets any other person in doing any of the acts above mentioned, shall be punished by a fine of not more than ten thousand dollars or by imprisonment for not more than five years, or both.

Chapter 56: Section 26. Illegal voting or attempt to vote

Section 26. Whoever, knowing that he is not a qualified voter in any place, wilfully votes or attempts to vote therein; whoever votes or attempts to vote more than once on his own name, his name having been registered more than once; whoever votes or attempts to vote in more than one voting precinct or town, his name having been registered in more than one voting precinct or town; whoever votes or attempts to vote in any name other than his own, or knowingly casts or attempts to cast more than one ballot at one time of balloting; or whoever votes or attempts to vote otherwise illegally, shall be punished by a fine of not more than ten thousand dollars or by imprisonment for not more than five years, or both.

Chapter 56: Section 28. Illegal voting; aiding or abetting

Section 28. Whoever, at a primary, caucus or election, aids or abets a person who is not entitled to vote, in voting or attempting to vote, or in voting or attempting to vote under a name other than his own, or in casting or attempting to cast more than one ballot, shall be punished by a fine of not more than ten thousand dollars or by imprisonment for not more than five years, or both.

Chapter 56: Section 29. Unlawful interference with voter

Section 29. Whoever wilfully and without lawful authority hinders, delays or interferes with, or aids in hindering, delaying or interfering with, a voter while on his way to a primary, caucus or election, while within the guard rail, while marking his ballot or while voting or attempting to vote, or endeavors to induce a voter, before depositing his ballot, to disclose how he marks or has marked it, shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than one year.

Chapter 56: Section 31. Illegal challenges

Section 31. Any person challenging a qualified voter for purposes of intimidation, or of ascertaining how he voted, or for any other illegal purpose, shall be punished by a fine of not more than one hundred dollars.

Chapter 56: Section 32. Bribery of voter

Section 32. No person shall, directly or indirectly, pay, give or promise to a voter, any gift or reward to influence his vote or to induce him to withhold his vote.

Violation of any provision of this section shall be punished by imprisonment for not more than one year.

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STATUTES ON VOTE FRAUD AND VOTER INTIMIDATION – MICHIGAN

**168.931 Prohibited conduct; violation as misdemeanor; “valuable consideration” defined.**

(1) A person who violates 1 or more of the following subdivisions is guilty of a misdemeanor:

(a) A person shall not, either directly or indirectly, give, lend, or promise valuable consideration, to or for any person, as an inducement to influence the manner of voting by a person relative to a candidate or ballot question, or as a reward for refraining from voting.

(b) A person shall not, either before, on, or after an election, for the person's own benefit or on behalf of any other person, receive, agree, or contract for valuable consideration for 1 or more of the following:

(i) Voting or agreeing to vote, or inducing or attempting to induce another to vote, at an election.

(ii) Refraining or agreeing to refrain, or inducing or attempting to induce another to refrain, from voting at an election.

(iii) Doing anything prohibited by this act.

(iv) Both distributing absent voter ballot applications to voters and receiving signed applications from voters for delivery to the appropriate clerk or assistant of the clerk. This subparagraph does not apply to an authorized election official.

(c) A person shall not solicit any valuable consideration from a candidate for nomination for, or election to, an office described in this act. This subdivision does not apply to requests for contributions of money by or to an authorized representative of the political party committee of the organization to which the candidate belongs. This subdivision does not apply to a regular business transaction between a candidate and any other person that is not intended for, or connected with, the securing of votes or the influencing of voters in connection with the nomination or election.

(d) A person shall not, either directly or indirectly, discharge or threaten to discharge an employee of the person for the purpose of influencing the employee's vote at an election.

(e) A priest, pastor, curate, or other officer of a religious society shall not for the purpose of influencing a voter at an election, impose or threaten to impose upon the voter a penalty of excommunication, dismissal, or expulsion, or command or advise the voter, under pain of religious disapproval.

(f) A person shall not hire a motor vehicle or other conveyance or cause the same to be done, for conveying voters, other than voters physically unable to walk, to an election.

(g) In a city, township, village, or school district that has a board of election commissioners authorized to appoint inspectors of election, an inspector of election, a clerk, or other election official who accepts an appointment as an inspector of election shall not fail to report at the polling place designated on election morning at the time specified by the board of election commissioners, unless excused as provided in this subdivision. A person who violates this subdivision is guilty of a misdemeanor, punishable by a fine of not more than \$10.00 or imprisonment for not more than 10 days, or both. An inspector of election, clerk, or other election official who accepts an appointment as an inspector of election is excused for failing to report at the polling place on election day and is not subject to a fine or imprisonment under this subdivision if 1 or more of the following requirements are met:

(i) The inspector of election, clerk, or other election official notifies the board of election commissioners or other officers in charge of elections of his or her inability to serve at the time and place specified, 3 days or more before the election.



(ii) The inspector of election, clerk, or other election official is excused from duty by the board of election commissioners or other officers in charge of elections for cause shown.

(h) A person shall not willfully fail to perform a duty imposed upon that person by this act, or disobey a lawful instruction or order of the secretary of state as chief state election officer or of a board of county election commissioners, board of city election commissioners, or board of inspectors of election.

(i) A delegate or member of a convention shall not solicit a candidate for nomination before the convention for money, reward, position, place, preferment, or other valuable consideration in return for support by the delegate or member in the convention. A candidate or other person shall not promise or give to a delegate money, reward, position, place, preferment, or other valuable consideration in return for support by or vote of the delegate in the convention.

(j) A person elected to the office of delegate to a convention shall not accept or receive any money or other valuable consideration for his or her vote as a delegate.

(k) A person shall not, while the polls are open on an election day, solicit votes in a polling place or within 100 feet from an entrance to the building in which a polling place is located.

(l) A person shall not keep a room or building for the purpose, in whole or in part, of recording or registering bets or wagers, or of selling pools upon the result of a political nomination, appointment, or election. A person shall not wager property, money, or thing of value, or be the custodian of money, property, or thing of value, staked, wagered, or pledged upon the result of a political nomination, appointment, or election.

(m) A person shall not participate in a meeting or a portion of a meeting of more than 2 persons, other than the person's immediate family, at which an absent voter ballot is voted.

(n) A person, other than an authorized election official, shall not, either directly or indirectly, give, lend, or promise any valuable consideration to or for a person to induce that person to both distribute absent voter ballot applications to voters and receive signed absent voter ballot applications from voters for delivery to the appropriate clerk.

(2) A person who violates a provision of this act for which a penalty is not otherwise specifically provided in this act, is guilty of a misdemeanor.

(3) A person or a person's agent who knowingly makes, publishes, disseminates, circulates, or places before the public, or knowingly causes directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in this state, either orally or in writing, an assertion, representation, or statement of fact concerning a candidate for public office at an election in this state, that is false, deceptive, scurrilous, or malicious, without the true name of the author being subscribed to the assertion, representation, or statement if written, or announced if unwritten, is guilty of a misdemeanor.

(4) As used in this section, "valuable consideration" includes, but is not limited to, money, property, a gift, a prize or chance for a prize, a fee, a loan, an office, a position, an appointment, or employment.

**68.932 Prohibited conduct; violation as felony.**

A person who violates 1 or more of the following subdivisions is guilty of a felony:

(a) A person shall not attempt, by means of bribery, menace, or other corrupt means or device, either directly or indirectly, to influence an elector in giving his or her vote, or to deter the elector from, or interrupt the elector in giving his or her vote at any election held in this state.

(b) A person not duly authorized by law shall not, during the progress of any election or after the closing of the polls and before the final results of the election have been ascertained, break open or

violate the seals or locks of any ballot box or voting machine used or in use at that election. A person shall not willfully damage or destroy any ballot box or voting machine. A person shall not obtain undue possession of that ballot box or voting machine. A person shall not conceal, withhold, or destroy a ballot box or voting machine, or fraudulently or forcibly add to or diminish the number of ballots legally deposited in the box or the totals on the voting machine. A person shall not aid or abet in any act prohibited by this subdivision.

(c) An inspector of election, clerk, or other officer or person having custody of any record, election list of voters, affidavit, return, statement of votes, certificates, poll book, or of any paper, document, or vote of any description, which pursuant to this act is directed to be made, filed, or preserved, shall not willfully destroy, mutilate, deface, falsify, or fraudulently remove or secrete any or all of those items, in whole or in part, or fraudulently make any entry, erasure, or alteration on any or all of those items, or permit any other person to do so.

(d) A person shall neither disclose to any other person the name of any candidate voted for by any elector, the contents of whose ballots were seen by the person, nor in any manner obstruct or attempt to obstruct any elector in the exercise of his or her duties as an elector under this act.

(e) A person who is not involved in the counting of ballots as provided by law and who has possession of an absent voter ballot mailed or delivered to another person shall not do any of the following:

(i) Open the envelope containing the ballot.

(ii) Make any marking on the ballot.

(iii) Alter the ballot in any way.

(iv) Substitute another ballot for the absent voter ballot that the person possesses.

(f) A person other than an absent voter; a person whose job it is to handle mail before, during, or after being transported by a public postal service, express mail service, parcel post service, or common carrier, but only during the normal course of his or her employment; a clerk or assistant of the clerk; a member of the immediate family of the absent voter including father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, grandparent, or grandchild; or a person residing in the absent voter's household shall not do any of the following:

(i) Possess an absent voter ballot mailed or delivered to another person, regardless of whether the ballot has been voted.

(ii) Return, solicit to return, or agree to return an absent voter ballot to the clerk of a city, township, village, or school district.

(g) A person who assists an absent voter who is disabled or otherwise unable to mark the ballot shall only render his or her assistance by showing the absent voter how to vote the ballot as the absent voter desires or by marking the ballot as directed by the absent voter. A person who assists an absent voter who is disabled or otherwise unable to mark the ballot shall not suggest or in any manner attempt to influence the absent voter on how he or she should vote or allow any other person to do so.

(h) A person present while an absent voter is voting an absent voter ballot shall not suggest or in any manner attempt to influence the absent voter on how he or she should vote.

(i) A person shall not plan or organize a meeting at which absent voter ballots are to be voted.

**168.932a Violations as felony; penalty.**

A person who does any of the following is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$2,000.00, or both:

(a) A person shall not, at an election, falsely impersonate another person, or vote or attempt to vote under the name of another person, or induce or attempt to induce a person to impersonate another person or to vote or attempt to vote under the name of another person.

(b) A person shall not assume a false or fictitious name to vote or to offer to vote by that name, enter or cause to be entered upon the registration book in a voting precinct a false or fictitious name, or induce or attempt to induce another person to assume a false or fictitious name in order to vote, by that name, vote, or offer to or enter or cause to be entered upon the registration book of a voting precinct, a false or fictitious name.

(c) A person who is not a qualified and registered elector shall not willfully offer to vote or attempt to vote at an election held in this state. A person shall not aid or counsel a person who is not a qualified and registered elector to vote or offer to vote at the place where the vote is given during an election.

(d) A qualified and registered elector shall not offer to vote or attempt to vote in a voting precinct in which the elector does not reside, except as otherwise provided in this act. A person shall not procure, aid, or counsel another person to go or come into a township, ward, or voting precinct for the purpose of voting at an election, knowing that the person is not qualified or registered to vote in that township, ward, or voting precinct.

(e) A person shall not offer to vote or attempt to vote more than once at the same election either in the same or in another voting precinct. A person shall not give 2 or more votes folded together.

**168.933 Perjury; definition.**

A person who makes a false affidavit or swears falsely while under oath under section 848 or for the purpose of securing registration, for the purpose of voting at an election, or for the purpose of qualifying as a candidate for elective office under section 558 is guilty of perjury.

STATUTES ON VOTE FRAUD AND VOTER INTIMIDATION – MINNESOTA

**211B.07 Undue influence on voters prohibited.**

A person may not directly or indirectly use or threaten force, coercion, violence, restraint, damage, harm, loss, including loss of employment or economic reprisal, undue influence, or temporal or spiritual injury against an individual to compel the individual to vote for or against a candidate or ballot question. Abduction, duress, or fraud may not be used to obstruct or prevent the free exercise of the right to vote of a voter at a primary or election, or compel a voter to vote at a primary or election. Violation of this section is a gross misdemeanor.

**211B.13 Bribery, treating, and solicitation.**

Subdivision 1. **Bribery, advancing money, and treating prohibited.** A person who willfully, directly or indirectly, advances, pays, gives, promises, or lends any money, food, liquor, clothing, entertainment, or other thing of monetary value, or who offers, promises, or endeavors to obtain any money, position, appointment, employment, or other valuable consideration, to or for a person, in order to induce a voter to refrain from voting, or to vote in a particular way, at an election, is guilty of a felony. This section does not prevent a candidate from stating publicly preference for or support of another candidate to be voted for at the same primary or election. Refreshments of food or nonalcoholic beverages having a value up to \$5 consumed on the premises at a private gathering or public meeting are not prohibited under this section.

Subd. 2. **Certain solicitations prohibited.** A person may not knowingly solicit, receive, or accept any money, property, or other thing of monetary value, or a promise or pledge of these that is a disbursement prohibited by this section or section 211B.15.

STATUTES ON VOTE FRAUD AND VOTER INTIMIDATION – MISSISSIPPI

**§ 23-15-17. Penalties for false registration.**

(1) Any person who shall knowingly procure his or any other person's registration as a qualified elector when the person whose registration is being procured is not entitled to be registered, or when the person whose registration is being procured is being registered under a false name, or when the person whose registration is being procured is being registered as a qualified elector in any other voting precinct than that in which he resides, shall be guilty of a felony and, upon conviction, be fined not more than Five Thousand Dollars (\$5,000.00) or imprisoned not more than five (5) years, or both. The same penalty shall apply to anyone who is disqualified for any cause and shall reregister before removal of such disqualification to avoid the same, and to all who shall in any way aid in such false registration.

(2) Any person who has reasonable cause to suspect that such a false registration has occurred may notify any authorized law enforcement officer with proper jurisdiction. Upon such notification, said law enforcement officer shall be required to conduct an investigation into the matter and file a report with the registrar and the appropriate district attorney. The registrar shall, within twenty-four (24) hours of receipt of the investigating officer's report, accept or reject the registration. Any person who so notifies an authorized law enforcement officer shall be presumed to be acting in good faith and shall be immune from any liability, civil or criminal, that might otherwise be incurred or imposed.

**§ 97-13-1. Bribery; influencing electors or election officers.**

If any elector, manager, clerk or canvasser at any election, or any executive officer attending the same, shall receive any gift, reward, or promise thereof or if any person shall offer such gift, reward, or promise thereof to influence any elector, clerk, canvasser, or any executive officer attending any election in his vote, opinion, action, or judgment in relation to such election, the person so offending shall, on conviction, be imprisoned in the penitentiary not more than two years or in a county jail not more than one year, or be fined one thousand dollars, or both.

**§ 97-13-35. Voting; by unqualified person, or at more than one place, or for both parties in same primary.**

**§ 97-13-36. Multiple voting; penalties.**

Any person who shall knowingly vote at any election in more than one (1) county or at more than one (1) place in any county, municipality or other political subdivision with the intent to have more than one (1) vote counted in any election shall be guilty of the crime of multiple voting and, upon conviction, shall be sentenced to pay a fine of not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or by imprisonment in the county jail for no more than one (1) year, or by both fine and imprisonment, or by being sentenced to the State Penitentiary for not less than one (1) year nor more than five (5) years.

**§ 97-13-37. Intimidating, boycotting, etc., elector to procure vote.**

Whoever shall procure, or endeavor to procure, the vote of any elector, or the influence of any person over other electors, at any election, for himself or any candidate, by means of violence, threats of violence, or threats of withdrawing custom, or dealing in business or trade, or of enforcing the payment of a debt, or of bringing a suit or criminal prosecution, or by any other threat or injury to be inflicted by him, or by his means, shall, upon conviction, be punished by imprisonment in the county jail not more than one year, or by fine not exceeding one thousand dollars, or by both.

STATUTES ON VOTE FRAUD AND VOTER INTIMIDATION - MISSOURI

**Class one election offense defined.**

115.175. Any person who knowingly or willfully gives any false information for the purpose of establishing his eligibility to register to vote or who conspires with another person for the purpose of encouraging his false registration or illegal vote, or who pays or offers to pay, accepts or offers to accept payment for registering to vote or for voting, or who otherwise willfully and fraudulently furnishes false information to a registration official for the purpose of causing a false or fictitious registration, or who registers to vote with the intention of voting more than once in the same election shall be guilty of a class one election offense.

**Class one election offenses.**

115.631. The following offenses, and any others specifically so described by law, shall be class one election offenses and are deemed felonies connected with the exercise of the right of suffrage. Conviction for any of these offenses shall be punished by imprisonment of not more than five years or by fine of not less than two thousand five hundred dollars but not more than ten thousand dollars or by both such imprisonment and fine:

(1) Willfully and falsely making any certificate, affidavit, or statement required to be made pursuant to any provision of sections 115.001 to 115.641 and sections 51.450\* and 51.460, RSMo, including but not limited to statements specifically required to be made "under penalty of perjury"; or in any other manner knowingly furnishing false information to an election authority or election official engaged in any lawful duty or action in such a way as to hinder or mislead the authority or official in the performance of official duties. If an individual willfully and falsely makes any certificate, affidavit, or statement required to be made under section 115.155, including but not limited to statements specifically required to be made "under penalty of perjury", such individual shall be guilty of a class C felony;

(2) Voting more than once or voting at any election knowing that the person is not entitled to vote or that the person has already voted on the same day at another location inside or outside the state of Missouri;

(3) Procuring any person to vote knowing the person is not lawfully entitled to vote or knowingly procuring an illegal vote to be cast at any election;

(4) Applying for a ballot in the name of any other person, whether the name be that of a person living or dead or of a fictitious person, or applying for a ballot in his own or any other name after having once voted at the election inside or outside the state of Missouri;

(5) Aiding, abetting or advising another person to vote knowing the person is not legally entitled to vote or knowingly aiding, abetting or advising another person to cast an illegal vote;

(6) An election judge knowingly causing or permitting any ballot to be in the ballot box at the opening of the polls and before the voting commences;

(7) Knowingly furnishing any voter with a false or fraudulent or bogus ballot, or knowingly practicing any fraud upon a voter to induce him to cast a vote which will be rejected, or otherwise defrauding him of his vote;

(8) An election judge knowingly placing or attempting to place or permitting any ballot, or paper having the semblance of a ballot, to be placed in a ballot box at any election unless the ballot is offered by a qualified voter as provided by law;

(9) Knowingly placing or attempting to place or causing to be placed any false or fraudulent or bogus ballot in a ballot box at any election;

(10) Knowingly removing any legal ballot from a ballot box for the purpose of changing the true and lawful count of any election or in any other manner knowingly changing the true and lawful count of any election;

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- (11) Knowingly altering, defacing, damaging, destroying or concealing any ballot after it has been voted for the purpose of changing the lawful count of any election;
- (12) Knowingly altering, defacing, damaging, destroying or concealing any poll list, report, affidavit, return or certificate for the purpose of changing the lawful count of any election;
- (13) On the part of any person authorized to receive, tally or count a poll list, tally sheet or election return, receiving, tallying or counting a poll list, tally sheet or election return the person knows is fraudulent, forged or counterfeit, or knowingly making an incorrect account of any election;
- (14) On the part of any person whose duty it is to grant certificates of election, or in any manner declare the result of an election, granting a certificate to a person the person knows is not entitled to receive the certificate, or declaring any election result the person knows is based upon fraudulent, fictitious or illegal votes or returns;
- (15) Willfully destroying or damaging any official ballots, whether marked or unmarked, after the ballots have been prepared for use at an election and during the time they are required by law to be preserved in the custody of the election judges or the election authority;
- (16) Willfully tampering with, disarranging, altering the information on, defacing, impairing or destroying any voting machine or marking device after the machine or marking device has been prepared for use at an election and during the time it is required by law to remain locked and sealed with intent to impair the functioning of the machine or marking device at an election, mislead any voter at the election, or to destroy or change the count or record of votes on such machine;
- (17) Registering to vote knowing the person is not legally entitled to register or registering in the name of another person, whether the name be that of a person living or dead or of a fictitious person;
- (18) Procuring any other person to register knowing the person is not legally entitled to register, or aiding, abetting or advising another person to register knowing the person is not legally entitled to register;
- (19) Knowingly preparing, altering or substituting any computer program or other counting equipment to give an untrue or unlawful result of an election;
- (20) On the part of any person assisting a blind or disabled person to vote, knowingly failing to cast such person's vote as such person directs;
- (21) On the part of any registration or election official, permitting any person to register to vote or to vote when such official knows the person is not legally entitled to register or not legally entitled to vote;
- (22) On the part of a notary public acting in his official capacity, knowingly violating any of the provisions of sections 115.001 to 115.627 or any provision of law pertaining to elections;
- (23) Violation of any of the provisions of sections 115.275 to 115.303, or of any provision of law pertaining to absentee voting;
- (24) Assisting a person to vote knowing such person is not legally entitled to such assistance, or while assisting a person to vote who is legally entitled to such assistance, in any manner coercing, requesting or suggesting that the voter vote for or against, or refrain from voting on any question, ticket or candidate.

**Class three election offenses.**

115.635. The following offenses, and any others specifically so described by law, shall be class three election offenses and are deemed misdemeanors connected with the exercise of the right of suffrage. Conviction for any of these offenses shall be punished by imprisonment of not more than one year or by fine of not more than two thousand five hundred dollars, or by both such imprisonment and fine:

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(1) Giving, lending, agreeing to give or lend, offering, promising, or endeavoring to procure, any money or valuable consideration, office, or place of employment, to or for any voter, to or for any person on behalf of any voter, or to or for any person, in order to induce any voter to vote or refrain from voting or corruptly doing any such act on account of such voter having already voted or refrained from voting at any election;

(2) Making use of, or threatening to make use of, any force, violence, or restraint, or inflicting or threatening to inflict any injury, damage, harm or loss upon or against any person, in order to induce or compel such person to vote or refrain from voting at any election;

(3) Impeding or preventing, or attempting to impede or prevent, by abduction, duress or any fraudulent device or contrivance, the free exercise of the franchise of any voter or, by abduction, duress, or any fraudulent device, compelling, inducing, or prevailing upon any voter to vote or refrain from voting at any election;

(4) Giving, or making an agreement to give, any money, property, right in action, or other gratuity or reward, in consideration of any grant or deputation of office;

(5) Bringing into this state any nonresident person with intent that such person shall vote at an election without possessing the requisite qualifications;

(6) Asking for, receiving, or taking any money or other reward by way of gift, loan, or other device or agreeing or contracting for any money, gift, office, employment, or other reward, for giving, or refraining from giving, his or her vote in any election;

(7) Removing, destroying or altering any supplies or information placed in or near a voting booth for the purpose of enabling a voter to prepare his or her ballot;

(8) Entering a voting booth or compartment except as specifically authorized by law;

(9) On the part of any election official, challenger, watcher or person assisting a person to vote, revealing or disclosing any information as to how any voter may have voted, indicated that the person had voted except as authorized by this chapter, indicated an intent to vote or offered to vote, except to a grand jury or pursuant to a lawful subpoena in a court proceeding relating to an election offense;

(10) On the part of any registration or election official, refusing to permit any person to register to vote or to vote when such official knows the person is legally entitled to register or legally entitled to vote;

(11) Attempting to commit or participating in an attempt to commit any class one or class two election offense.



STATUTES ON VOTE FRAUD AND VOTER INTIMIDATION – MONTANA

**45-7-101. Bribery in official and political matters.** (1) A person commits the offense of bribery if he purposely or knowingly offers, confers, or agrees to confer upon another or solicits, accepts, or agrees to accept from another:

(a) any pecuniary benefit as a consideration for the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter;

(b) any benefit as consideration for the recipient's decision, vote, recommendation, or other exercise of official discretion in a judicial or administrative proceeding; or

(c) any benefit as consideration for a violation of a known duty as a public servant or party official.

(2) It is no defense to prosecution under this section that a person whom the offender sought to influence was not qualified to act in the desired way whether because he had not yet assumed office or lacked jurisdiction or for any other reason.

(3) A person convicted of the offense of bribery shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed \$50,000, or both, and shall forever be disqualified from holding any public office in this state.

**45-7-102. Threats and other improper influence in official and political matters.** (1) A person commits an offense under this section if the person purposely or knowingly:

(a) (i) threatens harm to any person, the person's spouse, child, parent, or sibling, or the person's property with the purpose to influence the person's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter;

(ii) threatens harm to any public servant, to the public servant's spouse, child, parent, or sibling, or to the public servant's property with the purpose to influence the public servant's decision, opinion, recommendation, vote, or other exercise of discretion in a judicial or administrative proceeding;

(iii) threatens harm to any public servant or party official, the person's spouse, child, parent, or sibling, or the person's property with the purpose to influence the person to violate the person's duty or to prevent the public servant or party official from accepting or holding any public office;

(iv) privately addresses to any public servant who has or will have official discretion in a judicial or administrative proceeding any representation, entreaty, argument, or other communication designed to influence the outcome on the basis of considerations other than those authorized by law;

(v) as a juror or officer in charge of a jury receives or permits to be received any communication relating to any matter pending before the jury, except according to the regular course of proceedings; or

(b) injures the person or property of a public servant or injures the servant's spouse, child, parent, or sibling because of the public servant's lawful discharge of the duties of the office or to prevent the public servant from discharging the public servant's official duties.

(2) It is no defense to prosecution under subsections (1)(a)(i) through (1)(a)(iv) and (1)(b) that a person whom the offender sought to influence was not qualified to act in the desired way, whether because the person had not yet assumed office or lacked jurisdiction or for any other reason.

(3) A person convicted under this section shall be fined not to exceed \$50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

**13-35-207. Deceptive election practices.** A person is guilty of false swearing, unsworn falsification, or tampering with public records or information, as appropriate, and is punishable as provided in 45-7-202, 45-7-203, or 45-7-208, as applicable, whenever the person:

(1) falsely represents his name or other information required upon his registry card and causes registration with the card;

(2) signs a registry card knowingly witnessing any false or misleading statement;

(3) knowingly causes a false statement, certificate, or return of any kind to be signed;

(4) falsely makes a declaration or certificate of nomination;

(5) files or receives for filing a declaration or certificate of nomination knowing that all or part of the declaration or certificate is false;

(6) forges or falsely makes the official endorsement of a ballot;

(7) forges or counterfeits returns of an election purporting to have been held at a precinct, municipality, or ward where no election was in fact held;

(8) knowingly substitutes forged or counterfeit returns of election in place of the true returns for a precinct, municipality, or ward where an election was held;

(9) signs a name other than his own to a petition, signs more than once for the same measure, or signs a petition while not being a qualified elector of the state; or

(10) makes a false oath or affidavit where an oath or affidavit is required by law.

**13-35-209. Fraudulent registration.** (1) No person may knowingly cause, procure, or allow himself to be registered in the official register of any election district of any county knowing himself not to be entitled to such registration.

(2) No person may falsely personate another and cause the person so personated to be registered.

(3) When, on the trial of the person charged with any offense under the provisions of this section, it appears in evidence that the accused stands registered in the register of any county without being qualified for such registration, the court shall order such registration canceled.

**13-35-215. Illegal consideration for voting.** No person, directly or indirectly, by himself or by any other person in his behalf, may:

(1) before or during any election, for voting or agreeing to vote or for refraining or agreeing to refrain from voting at the election or for inducing another to do so:

(a) receive, agree, or contract for any money, gift, loan, liquor, valuable consideration, office, place, or employment for himself or any other person; or

(b) approach any candidate or agent or person representing or acting on behalf of any candidate and ask for or offer to agree or contract for any money, gift, loan, liquor, valuable consideration, office, place, or employment for himself or any other person;

(2) after an election, for having voted or refrained from voting or having induced any other person to vote or refrain from voting at the election:

(a) receive any money, gift, loan, valuable consideration, office, place, or employment; or

(b) approach any candidate or any agent or person representing or acting on behalf of any candidate and ask for or offer to receive any money, gift, loan, liquor, valuable consideration, office, place, or employment for himself or any other person.

**13-35-218. Coercion or undue influence of voters.** (1) No person, directly or indirectly, by himself or any other person in his behalf, in order to induce or compel a person to vote or refrain from voting for any candidate, the ticket of any political party, or any ballot issue before the people, may:

(a) use or threaten to use any force, coercion, violence, restraint, or undue influence against any person; or

(b) inflict or threaten to inflict, by himself or any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person.

(2) No person who is a minister, preacher, priest, or other church officer or who is an officer of any corporation or organization, religious or otherwise, may, other than by public speech or print, urge, persuade, or command any voter to vote or refrain from voting for or against any candidate, political party ticket, or ballot issue submitted to the people because of his religious duty or the interest of any corporation, church, or other organization.

(3) No person may, by abduction, duress, or any fraudulent contrivance, impede or prevent the free exercise of the franchise by any voter at any election or thereby compel, induce, or prevail upon any elector to give or to refrain from giving his vote at any election.

(4) No person may, in any manner, interfere with a voter lawfully exercising his right to vote at an election so as to prevent the election from being fairly held and lawfully conducted.

(5) No person on election day may obstruct the doors or entries of any polling place or engage in any solicitation of a voter within the room where votes are being cast or elsewhere in any manner which in any way interferes with the election process or obstructs the access of voters to or from the polling place.

STATUTES ON VOTE FRAUD AND VOTER INTIMIDATION – NEBRASKA

NRS 293.700 Bribery of elector. A person who bribes, offers to bribe, or uses any other corrupt means, directly or indirectly, to influence any elector in giving his vote or to deter him from giving it is guilty of a category D felony and shall be punished as provided in NRS 193.130.

NRS 293.710 Intimidation of voters.

1. It is unlawful for any person, in connection with any election or petition, whether acting himself or through another person in his behalf, to:

(a) Use or threaten to use any force, coercion, violence, restraint or undue influence;

(b) Inflict or threaten to inflict any physical or mental injury, damage, harm or loss upon the person or property of another;

(c) Expose or publish or threaten to expose or publish any fact concerning another in order to induce or compel such other to vote or refrain from voting for any candidate or any question;

(d) Impede or prevent, by abduction, duress or fraudulent contrivance, the free exercise of the franchise by any voter, or thereby to compel, induce or prevail upon any elector to give or refrain from giving his vote; or

(e) Discharge or change the place of employment of any employee with the intent to impede or prevent the free exercise of the franchise by such employee.

2. Unless a greater penalty is provided by law, any violation of this section is a gross misdemeanor.

NRS 293.780 Voting more than once at same election.

1. A person who is entitled to vote shall not vote or attempt to vote more than once at the same election. Any person who votes or attempts to vote twice at the same election is guilty of a category D felony and shall be punished as provided in NRS 193.130.

2. Notice of the provisions of subsection 1 must be given by the county or city clerk as follows:

(a) Printed on all sample ballots mailed;

(b) Posted in boldface type at each polling place; and

(c) Posted in boldface type at the office of the county or city clerk.

NRS 293.800 Acts concerning registration of voters; violations of laws governing elections; crimes by public officers.

1. A person who, for himself or another person, willfully gives a false answer or answers to questions propounded to him by the registrar or field registrar of voters relating to the information called for by the application to register to vote, or who willfully falsifies his application in any particular, or who violates any of the provisions of the election laws of this State, or knowingly encourages another person to violate those laws is guilty of a category E felony and shall be punished as provided in NRS 193.130.

2. A public officer or other person, upon whom any duty is imposed by this title, who willfully neglects his duty, or willfully performs it in such a way as to hinder the objects and purposes of the election laws of this State, except where another penalty is provided, is guilty of a category E felony and shall be punished as provided in NRS 193.130.

3. If the person is a public officer, his office is forfeited upon conviction of any offense provided for in subsection 2.

4. A person who causes or endeavors to cause his name to be registered, knowing that he is not an elector or will not be an elector on or before the day of the next ensuing election in the precinct or district in which he causes or endeavors to cause the registration to be made, and any other person who induces, aids or abets the person in the commission of either of the acts is guilty of a category E felony and shall be punished as provided in NRS 193.130.

5. A field registrar or other person who:

(a) Knowingly falsifies an application to register to vote or knowingly causes an application to be falsified;  
or

(b) Knowingly provides money or other compensation to another for a falsified application to register to vote,

is guilty of a category E felony and shall be punished as provided in NRS 193.130.

NRS 293.805 Compensation for registration of voters based upon number of voters or voters of a particular party registered.

1. It is unlawful for a person to provide compensation for registering voters that is based upon:

(a) The total number of voters a person registers; or

(b) The total number of voters a person registers in a particular political party.

2. A person who violates any provision of this section is guilty of a category E felony and shall be punished as provided in NRS 193.130.

NRS 293.810 Registration in more than one county at one time. It is unlawful for any person to be registered as a voter in more than one county at one time.

STATUTES ON VOTE FRAUD AND VOTER INTIMIDATION – NEW HAMPSHIRE

**659:34 Wrongful Voting; Penalties for Voter Fraud. –**

I. A person is subject to a civil penalty not to exceed \$5,000 if such person:

(a) When registering to vote; when obtaining an official ballot; or when casting a vote by official ballot, makes a false material statement regarding his or her qualifications as a voter to an election officer or submits a voter registration form, an election day registration affidavit, a citizenship affidavit, a domicile affidavit, or an absentee registration affidavit containing false material information regarding his or her qualifications as a voter;

(b) Votes more than once for any office or measure;

(c) Applies for a ballot in a name other than his or her own;

(d) Applies for a ballot in his or her own name after he or she has voted once;

(e) Votes for any office or measure at an election if such person is not qualified to vote as provided in RSA 654; or

(f) Gives a false name or answer if under examination as to his or her qualifications as a voter before the supervisors of the checklist or moderator.

II. A person is guilty of a class A misdemeanor if, at any election, such person purposefully or knowingly commits any of the acts listed in paragraph I.

III. The attorney general is authorized to impose a civil penalty under paragraph I.

(a) The attorney general may impose a civil penalty by providing written notice to the person:

(1) Setting forth the date, facts, and nature of each act or omission which makes the person liable to pay a civil penalty;

(2) Specifically identifying the particular provision or provisions of the law involved in each violation;

and

(3) Advising the person of each penalty that the attorney general imposes and its amount.

(b) The written notice shall be served in hand or sent by registered or certified mail to the last known address of such person. The person shall have 30 days to pay any civil penalty assessed under this section to the secretary of state for deposit into the election fund established pursuant to RSA 5:6-d.

IV. The decision of the attorney general to impose a civil penalty may be appealed to superior court. An appeal must be filed within 30 days of the date on which the person received it.

V. The attorney general is authorized to institute a civil action to collect a penalty imposed pursuant to this section. The attorney general shall have the exclusive power to compromise, mitigate, or remit such civil penalties.

**659:40 Bribing; Intimidation. –** No person shall directly or indirectly bribe or intimidate any voter not to vote or to vote for or against any question submitted to voters or to vote for or against any ticket or candidate for office at any election. Whoever violates the provisions of this section shall be guilty as provided in RSA 640:2 or RSA 640:3.

STATUTES ON VOTE FRAUD AND VOTER INTIMIDATION – NEW JERSEY

**19:34-11 Fraudulent voting; interference with election or canvass; third degree crime.**

19:34-11. Every person not entitled to vote who fraudulently votes, and every person who votes more than once at any one election; or knowingly hands in two or more ballots folded together; or changes any ballot after it has been deposited in the ballot box; or adds, or attempts to add, any ballot to those legally polled at any election, either by fraudulently introducing the same into the ballot box before or after the ballots therein have been counted; or adds to or mixes with, or attempts to add to or mix with, the ballots lawfully polled, other ballots while the same are being counted or canvassed, or at any other time, with intent to change the result of such election; or carries away or destroys, or attempts to carry away or destroy, any poll list, or ballots, or ballot box, for the purpose of breaking up or invalidating the election; or willfully detains, mutilates or destroys any election returns; or in any manner so interferes with the officers holding the election, or conducting the canvass, or with the voters lawfully exercising their rights of voting at the election, as to prevent the election or canvass from being fairly had and lawfully conducted, shall be guilty of a crime of the third degree.

Amended 1940, c.199, s.5; 1948, c.438, s.14; 2005, c.154, s.30.

**19:34-12 Attempt to cast illegal vote; third degree crime.**

19:34-12. Every person not entitled to vote who fraudulently attempts to vote, or who being entitled to vote attempts to vote more than once at any election, or who personates or attempts to personate a person legally entitled to vote, shall be guilty of a crime of the third degree.

**19:34-26 Perjury; subornation of perjury.**

19:34-26. If a person shall be guilty of willful and corrupt false swearing or affirming, or by any means shall willfully and corruptly suborn or procure a person to swear or affirm falsely, in taking any oath, affirmation or deposition prescribed or authorized by this title, he shall be deemed guilty of a crime of the third degree, and be deemed to be an incompetent witness thereafter for any purpose within this State, until such time as he shall have been pardoned.

Amended 2005, c.154, s.44.

**19:34-27 Improperly influencing or intimidating employees.**

19:34-27. An employer of any workman, or any agent, superintendent or overseer of any company or corporation employing workmen, or any person who shall directly or indirectly, by himself or by any other person in his behalf or by his direction, make use of or threaten to make use of any force, violence or restraint, or inflict or threaten to inflict by himself or by any other person any injury, damage, harm or loss against any person in his employ, in order to induce or compel such employee to vote or refrain from voting for any particular candidate at any election, or because of such employee having voted or refrained from voting for any particular candidate at any election, or who shall, by any duress, constraint or improper influence or by any fraudulent or improper device, contrivance or scheme, impede, hinder or prevent the free exercise of the franchise of any voter at any election, or shall thereby compel, induce or prevail upon any voter to vote for or against any particular candidate at any election, shall be guilty of a crime of the third degree.

Amended 2005, c.154, s.45.

**19:34-28. Threatening or intimidating voters**

No person shall, directly or indirectly, by himself or by any other person in his behalf, make use of, or threaten to make use of, any force, violence or restraint, or inflict or threaten the infliction, by himself or through any other person, of any injury, damage, harm or loss, or in any manner to practice intimidation upon or against any person, in order to induce or compel such person to vote or refrain from voting at any election, or to vote or refrain from voting for any particular person or persons at any election, or on account of such person having voted or refrained from voting at any election.

## STATUTES ON VOTE FRAUD AND VOTER INTIMIDATION – NEW MEXICO

### 1-20-3. Registration offenses.

Registration offenses consist of performing any of the following acts willfully and with knowledge and intent to deceive any registration officer or to subvert the registration requirements of the law or rights of any qualified elector:

- A. signing or offering to sign a certificate of registration when not a qualified elector;
- B. falsifying any information on the certificate of registration;
- C. soliciting, procuring, aiding, abetting, inducing or attempting to solicit, procure, aid, abet or induce any person to register or attempt to register with the name of any other person, whether real, deceased or fictitious; or
- D. destroying the certificate of registration of any qualified elector, or removing such certificate from its proper binder or file, except as provided in the Election Code [Chapter 1 NMSA 1978].

Whoever commits a registration offense is guilty of a fourth degree felony.

### 1-20-8. False voting.

False voting consists of:

- A. voting, or offering to vote, with the knowledge of not being a qualified elector;
- B. voting, or offering to vote, in the name of any other person;
- C. knowingly voting, or offering to vote, in any precinct except that in which one is registered;
- D. voting, or offering to vote, more than once in the same election;
- E. inducing, abetting or procuring, or attempting to induce, abet or procure, a person known to not be a qualified elector to vote; or
- F. inducing, abetting or procuring, or attempting to induce, abet or procure, a person who, having voted once in any election, to vote, or attempt to vote again at the same election.

Whoever commits false voting is guilty of a fourth degree felony.

### 1-20-11. Offering a bribe.

Offering a bribe consists of willfully advancing, paying, or causing to be paid, or promising, directly or indirectly, any money or other valuable consideration, office or employment, to any person for the following purposes connected with or incidental to any election:

- A. to induce such person, if a voter, to vote or refrain from voting for or against any candidate, proposition, question or constitutional amendment;
- B. to induce such person, if a precinct board member or other election official, to mark, alter, suppress or otherwise change any ballot that has been cast, any election return, or any certificate of election; or
- C. to induce such person to use such payment or promise to bribe others for the purposes specified in this section.

Whoever offers a bribe is guilty of a fourth degree felony.

### 1-20-12. Accepting a bribe.

Accepting a bribe consists of knowingly accepting any payment or promise of payment, directly or indirectly, of money, valuable consideration, office or employment for the unlawful purposes specified in Section 1-20-11 NMSA 1978.

**1-20-14. Intimidation.**

Intimidation consists of inducing or attempting to induce fear in any member of a precinct board, voter, challenger or watcher by use of or threatened use of force, violence, infliction of damage, harm or loss or any form of economic retaliation, upon any voter, precinct board member, challenger or watcher for the purpose of impeding or preventing the free exercise of the elective franchise or the impartial administration of the election or Election Code [Chapter 1 NMSA 1978].

Whoever commits intimidation is guilty of a fourth degree felony.



STATUTES ON VOTE FRAUD AND VOTER INTIMIDATION – NEW YORK

[All Cites to N.Y. Elec. Code]

§ 17-104. False registration. Any person who:

1. Registers or attempts to register as an elector in more than one election district for the same election, or more than once in the same election district; or,
2. Registers or attempts to register as an elector, knowing that he will not be a qualified voter in the district at the election for which such registration is made; or
3. Registers or attempts to register as an elector under any name but his own; or
4. Knowingly gives a false residence within the election district when registering as an elector; or
5. Knowingly permits, aids, assists, abets, procures, commands or advises another to commit any such act, is guilty of a felony.

§ 17-132. Illegal voting. Any person who:

1. Knowingly votes or offers or attempts to vote at any election, when not qualified; or,
2. Procures, aids, assists, counsels or advises any person to go or come into any election district, for the purpose of voting at any election, knowing that such person is not qualified; or,
3. Votes or offers or attempts to vote at an election, more than once; or votes or offers or attempts to vote at an election under any other name than his own; or votes or offers or attempts to vote at an election, in an election district or from a place where he does not reside; or,
4. Procures, aids, assists, commands or advises another to vote or offer or attempt to vote at an election, knowing that such person is not qualified to vote thereat; or,
5. Prompts a person, applying to vote, to falsely answer questions put to him by the inspectors concerning his identity or qualifications for voting; or,
6. Being an applicant for an absentee voter's ballot, makes a material false statement in his application, or a person who makes a material false statement in a medical certificate or an affidavit filed in connection with an application for an absentee voter's ballot; or,
7. Not being a qualified absentee voter, and having knowledge or being chargeable with knowledge of that fact, votes or attempts to vote as an absentee voter; or,
8. Fraudulently signs the name of another upon an absentee voter's envelope or aids in doing or attempting to do a fraudulent act in connection with an absentee vote cast or attempted to be cast; or,
9. Falsely pretends or represents to the inspectors of election or any of them that he is incapacitated to mark his ballot, for the purpose of obtaining assistance in voting under the provisions of this chapter,

Is guilty of a felony.

Any offer or attempt under this section shall be deemed to be the doing of any act made necessary by this chapter preliminary to the delivery of a ballot to an elector or the deposit of the ballot in the ballot box or his admission to the booth or voting machine enclosure.

§ 17-142. Giving consideration for franchise. Except as allowed by law, any person who directly or indirectly, by himself or through any other person:

1. Pays, lends or contributes, or offers or promises to pay, lend or contribute any money or other valuable consideration to or for any voter, or to or for any other person, to induce such voter or other person to vote or refrain from voting at any election, or to induce any voter or other person to vote or refrain from voting at such election for any particular person or persons, or for or against any particular proposition submitted to voters, or to induce such voter to come to the polls or remain away from the polls at such election or to induce such voter or other person to place or cause to be placed or refrain from placing or causing to be placed his name upon a registration poll record or on account of such voter or other person having voted or refrained from voting for or against any particular person or for or against any proposition submitted to voters, or having come to the polls or remained away from the polls at such election, or having placed or caused to be placed or refrained from placing or causing to be placed his or any other name upon the registry of voters; or,
2. Gives, offers or promises any office, place or employment, or promises to procure or endeavor to procure any office, place or employment to or for any voter, or to or for any other person, in order to induce such voter or other person to vote or refrain from voting at any election, or to induce any voter or other person to vote or refrain from voting at such election, for or against any particular person or for or against any proposition submitted to voters, or to induce any voter or other person to place or cause to be placed or refrain from placing or causing to be placed his or any other name upon a registration poll record; or,

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3. Gives, offers or promises any office, place, employment or valuable thing as an inducement for any voter or other person to procure or aid in procuring either a large or a small vote, plurality or majority at any election district or other political division of the state, for a candidate or candidates to be voted for at an election; or to cause a larger or smaller vote, plurality or majority to be cast or given for any candidate or candidates in one such district or political division than in another; or,

4. Makes any gift, loan, promise, offer, procurement or agreement as aforesaid to, for or with any person to induce such person to procure or endeavor to procure the election of any person or the vote of any voter at any election; or,

5. Procures or engages or promises or endeavors to procure, in consequence of any such gift, loan, offer, promise, procurement, or agreement the election of any person, or the vote of any voter, at such election; or,

6. Advances or pays or causes to be paid, any money or other valuable thing, to or for the use of any other person with the intent that the same, or any part thereof, shall be used in bribery at any election, or knowingly pays or causes to be paid any money or other valuable thing to any person in discharge or repayment of any money, wholly or in part expended in bribery at any election, is guilty of a felony.

§ 17-144. Receiving consideration for franchise. Except as allowed by law, any person who directly or indirectly, by himself or through any other person:

1. Receives, agrees or contracts for, before or during an election, any money, gift, loan or other valuable consideration, office place or employment for himself or any other person, for voting or agreeing to vote, or for coming or agreeing to come to the polls, or for remaining away or agreeing to remain away from the polls, or for refraining or agreeing to refrain from registering as a voter, or for refraining or agreeing to refrain from voting, or for voting or agreeing to vote, or for refraining or agreeing to refrain from voting for or against any particular person or persons at any election, or for or against any proposition submitted to voters at such election; or,

2. Receives any money or other valuable thing during or after an election on account of himself or any other person having voted or refrained from voting at such an election; or having registered or refrained from registering as a voter, or on account of himself or any other person having voted or refrained from voting for or against any particular person at such election, or for or against any proposition submitted to voters at such election, or on account of himself or any other person having come to the polls or remained away from the polls at such election, or having registered or refrained from registering as a voter, or on account of having induced any other person to vote or refrain from voting for or against any particular person at such election, or for or against any proposition submitted to voters at such election, is guilty of a felony.

§ 17-150. Duress and intimidation of voters. Any person or corporation who directly or indirectly:

1. Uses or threatens to use any force, violence or restraint, or inflicts or threatens to inflict any injury, damage, harm or loss, or in any other manner practices intimidation upon or against any person in order to induce or compel such person to vote or refrain from voting for or against any particular person or for or against any proposition submitted to voters at such election, or to place or cause to be placed or refrain from placing or causing to be placed his name upon a registry of voters, or on account of such person having voted or refrained from voting at such election, or having voted or refrained from voting for or against any particular person or persons, or for or against any proposition submitted to voters at such election, or having registered or refrained from registering as a voter; or,

2. By abduction, duress or any forcible or fraudulent device or contrivance whatever impedes, prevents or otherwise interferes with the free exercise of the elective franchise by any voter, or compels, induces or prevails upon any voter to give or refrain from giving his vote for or against any particular person at any election; or,

3. Being an employer pays his employees the salary or wages due in "pay envelopes," in which there is enclosed or upon which there is written or printed political motto, device or argument containing threats, express or implied, intended or calculated to influence the political opinions or actions of such employees, or within ninety days of a general election puts or otherwise exhibits in the establishment or place where his employees are engaged in labor, any handbill or placard containing any threat, notice or information, that if any particular ticket or candidate is elected or defeated, work in his place or establishment will cease, in whole or in part, his establishment will be closed up, or the wages of his employees reduced, or other threats, express or implied, intended or calculated to influence the political opinions or actions of his employees, is guilty of a misdemeanor, and, if a corporation, shall in addition forfeit its charter.

STATUTES ON VOTE FRAUD AND VOTER INTIMIDATION – NORTH CAROLINA

§ 163-271. Intimidation of voters by officers made misdemeanor.

It shall be unlawful for any person holding any office, position, or employment in the State government, or under and with any department, institution, bureau, board, commission, or other State agency, or under and with any county, city, town, district, or other political subdivision, directly or indirectly, to discharge, threaten to discharge, or cause to be discharged, or otherwise intimidate or oppress any other person in such employment on account of any vote such voter or any member of his family may cast, or consider or intend to cast, or not to cast, or which he may have failed to cast, or to seek or undertake to control any vote which any subordinate of such person may cast, or consider or intend to cast, or not to cast, by threat, intimidation, or declaration that the position, salary, or any part of the salary of such subordinate depends in any manner whatsoever, directly or indirectly, upon the way in which subordinate or any member of his family casts, or considers or intends to cast, or not to cast his vote, at any primary or election. A violation of this section is a Class 2 misdemeanor.

§ 163-273. Offenses of voters; interference with voters; penalty.

(a) Any person who shall, in connection with any primary or election in this State, do any of the acts and things declared in this section to be unlawful, shall be guilty of a Class 2 misdemeanor. It shall be unlawful:

- (1) For a voter, except as otherwise provided in this Chapter, to allow his ballot to be seen by any person.
- (2) For a voter to take or remove, or attempt to take or remove, any ballot from the voting enclosure.
- (3) For any person to interfere with, or attempt to interfere with, any voter when inside the voting enclosure.
- (4) For any person to interfere with, or attempt to interfere with, any voter when marking his ballots.
- (5) For any voter to remain longer than the specified time allowed by this Chapter in a voting booth, after being notified that his time has expired.
- (6) For any person to endeavor to induce any voter, while within the voting enclosure, before depositing his ballots, to show how he marks or has marked his ballots.
- (7) For any person to aid, or attempt to aid, any voter by means of any mechanical device, or any other means whatever, while within the voting enclosure, in marking his ballots.

(b) Election officers shall cause any person committing any of the offenses set forth in subsection (a) of this section to be arrested and shall cause charges to be preferred against the person so offending in a court of competent jurisdiction.

§ 163-274. Certain acts declared misdemeanors.

Any person who shall, in connection with any primary or election in this State, do any of the acts and things declared in this section to be unlawful, shall be guilty of a Class 2 misdemeanor. It shall be unlawful:

- (1) For any person to fail, as an officer or as a judge or chief judge of a primary or election, or as a member of any board of elections, to prepare the books, ballots, and return blanks which it is his duty under the law to prepare, or to distribute the same as required by law, or to perform any other duty imposed upon him within the time and in the manner required by law;

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- (1a) For any member, director, or employee of a board of elections to alter a voter registration application or other voter registration record without either the written authorization of the applicant or voter or the written authorization of the State Board of Elections;
- (2) For any person to continue or attempt to act as a judge or chief judge of a primary or election, or as a member of any board of elections, after having been legally removed from such position and after having been given notice of such removal;
- (3) For any person to break up or by force or violence to stay or interfere with the holding of any primary or election, to interfere with the possession of any ballot box, election book, ballot, or return sheet by those entitled to possession of the same under the law, or to interfere in any manner with the performance of any duty imposed by law upon any election officer or member of any board of elections;
- (4) For any person to be guilty of any boisterous conduct so as to disturb any member of any election board or any chief judge or judge of election in the performance of his duties as imposed by law;
- (5) For any person to bet or wager any money or other thing of value on any election;
- (5a) Repealed by Session Laws 1999-455, s. 21, applicable to elections held on or after January 1, 2000.
- (6) For any person, directly or indirectly, to discharge or threaten to discharge from employment, or otherwise intimidate or oppose any legally qualified voter on account of any vote such voter may cast or consider or intend to cast, or not to cast, or which he may have failed to cast;
- (7) For any person to publish in a newspaper or pamphlet or otherwise, any charge derogatory to any candidate or calculated to affect the candidate's chances of nomination or election, unless such publication be signed by the party giving publicity to and being responsible for such charge;
- (8) For any person to publish or cause to be circulated derogatory reports with reference to any candidate in any primary or election, knowing such report to be false or in reckless disregard of its truth or falsity, when such report is calculated or intended to affect the chances of such candidate for nomination or election;
- (9) For any person to give or promise, in return for political support or influence, any political appointment or support for political office;
- (10) For any chairman of a county board of elections or other returning officer to fail or neglect, willfully or of malice, to perform any duty, act, matter or thing required or directed in the time, manner and form in which said duty, matter or thing is required to be performed in relation to any primary, general or special election and the returns thereof;
- (11) For any clerk of the superior court to refuse to make and give to any person applying in writing for the same a duly certified copy of the returns of any primary or election or of a tabulated statement to a primary or election, the returns of which are by law deposited in his office, upon the tender of the fees therefor;
- (12) For any person willfully and knowingly to impose upon any blind or illiterate voter a ballot in any primary or election contrary to the wish or desire of such voter, by falsely representing to such voter that the ballot proposed to him is such as he desires; or
- (13) Except as authorized by G.S. 163-82.15, for any person to provide false information, or sign the name of any other person, to a written report under G.S. 163-82.15.

§ 163-275. Certain acts declared felonies.

Any person who shall, in connection with any primary, general or special election held in this State, do any of the acts or things declared in this section to be unlawful, shall be guilty of a Class I felony. It shall be unlawful:

- (1) For any person fraudulently to cause his name to be placed upon the registration books of more than one election precinct or fraudulently to cause or procure his name or that of any other person to be placed upon the registration books in any precinct when such registration in that precinct does not qualify such person to vote legally therein, or to impersonate falsely another registered voter for the purpose of voting in the stead of such other voter;
- (2) For any person to give or promise or request or accept at any time, before or after any such primary or election, any money, property or other thing of value whatsoever in return for the vote of any elector;
- (3) For any person who is an election officer, a member of an election board or other officer charged with any duty with respect to any primary or election, knowingly to make any false or fraudulent entry on any election book or any false or fraudulent returns, or knowingly to make or cause to be made any false statement on any ballot, or to do any fraudulent act or knowingly and fraudulently omit to do any act or make any report legally required of such person;
- (4) For any person knowingly to swear falsely with respect to any matter pertaining to any primary or election;
- (5) For any person convicted of a crime which excludes him from the right of suffrage, to vote at any primary or election without having been restored to the right of citizenship in due course and by the method provided by law;
- (6) For any person to take corruptly the oath prescribed for voters;
- (7) For any person with intent to commit a fraud to register or vote at more than one precinct or more than one time, or to induce another to do so, in the same primary or election, or to vote illegally at any primary or election;
- (8) For any chief judge or any clerk or copyist to make any entry or copy with intent to commit a fraud;
- (9) For any election official or other officer or person to make, certify, deliver or transmit any false returns of any primary or election, or to make any erasure, alteration, or conceal or destroy any election ballot, book, record, return or process with intent to commit a fraud;
- (10) For any person to assault any chief judge, judge of election or other election officer while in the discharge of his duty in the registration of voters or in conducting any primary or election;
- (11) For any person, by threats, menaces or in any other manner, to intimidate or attempt to intimidate any chief judge, judge of election or other election officer in the discharge of his duties in the registration of voters or in conducting any primary or election;
- (12) For any chief judge, judge of election, member of a board of elections, assistant, marker, or other election official, directly or indirectly, to seek, receive or accept money or the promise of money, the promise of office, or other reward or compensation from a candidate in any primary or election or from any source other than such compensation as may be provided by law for his services;
- (13) For any person falsely to make or present any certificate or other paper to qualify any person fraudulently as a voter, or to attempt thereby to secure to any person the privilege of voting;
- (14) For any officer to register voters and any other individual to knowingly and willfully receive, complete, or sign an application to register from any voter contrary to the provisions of G.S. 163-82.4; or

(15) Reserved for future codification purposes.

(16) For any person falsely to make the certificate provided by G.S. 163-229(b)(2) or G.S. 163-250(a).

(17) For any person, directly or indirectly, to misrepresent the law to the public through mass mailing or any other means of communication where the intent and the effect is to intimidate or discourage potential voters from exercising their lawful right to vote.

STATUTES ON VOTE FRAUD AND VOTER INTIMIDATION – NORTH DAKOTA

**12.1-14-02. Interference with elections.** A person is guilty of a class A misdemeanor if, whether or not acting under color of law, he, by force or threat of force or by economic coercion, intentionally:

1.

Injures, intimidates, or interferes with another because he is or has been voting for any candidate or issue or qualifying to vote, qualifying or campaigning as a candidate for elective office, or qualifying or acting as a poll watcher or other election official, in any primary, special, or general election.

2.

Injures, intimidates, or interferes with another in order to prevent him or any other person from voting for any candidate or issue or qualifying to vote, qualifying or campaigning as a candidate for elective office, or qualifying or acting as a poll watcher or other election official, in any primary, special, or general election.

**12.1-14-03. Safeguarding elections.** A person is guilty of a class A misdemeanor if, in connection with any election, he:

1.

Makes or induces any false voting registration;

2.

Offers, gives, or agrees to give a thing of pecuniary value to another as consideration for the recipient's voting or withholding his vote or voting for or against any candidate or issue or for such conduct by another;

3.

Solicits, accepts, or agrees to accept a thing of pecuniary value as consideration for conduct prohibited under subsection 1 or 2; or

4.

Otherwise obstructs or interferes with the lawful conduct of such election or registration therefor.

As used in this section, "thing of pecuniary value" shall include alcoholic beverages, by the drink or in any other container.

STATUTES ON VOTE FRAUD AND VOTER INTIMIDATION - OHIO

**§ 3599.01. Bribery.**

(A) No person shall before, during, or after any primary, convention, or election:

(1) Give, lend, offer, or procure or promise to give, lend, offer, or procure any money, office, position, place or employment, influence, or any other valuable consideration to or for a delegate, elector, or other person;

(2) Attempt by intimidation, coercion, or other unlawful means to induce such delegate or elector to register or refrain from registering or to vote or refrain from voting at a primary, convention, or election for a particular person, question, or issue;

(3) Advance, pay, or cause to be paid or procure or offer to procure money or other valuable thing to or for the use of another, with the intent that it or part thereof shall be used to induce such person to vote or to refrain from voting.

(B) Whoever violates this section is guilty of bribery, a felony of the fourth degree; and if he is a candidate he shall forfeit the nomination he received, or if elected to any office he shall forfeit the office to which he was elected at the election with reference to which such offense was committed.

**§ 3599.02. Bribery offenses concerning voters or potential voters.**

No person shall before, during, or after any primary, general, or special election or convention solicit, request, demand, receive, or contract for any money, gift, loan, property, influence, position, employment, or other thing of value for that person or for another person for doing any of the following:

(A) Registering or refraining from registering to vote;

(B) Agreeing to register or to refrain from registering to vote;



(C) Agreeing to vote or to refrain from voting;

(D) Voting or refraining from voting at any primary, general, or special election or convention for a particular person, question, or issue;

(E) Registering or voting, or refraining from registering or voting, or voting or refraining from voting for a particular person, question, or issue.

Whoever violates this section is guilty of bribery, a felony of the fourth degree, and shall be disfranchised and excluded from holding any public office for five years immediately following such conviction.

**§ 3599.11. False registration; election falsification.**

(A) No person shall knowingly register or make application or attempt to register in a precinct in which the person is not a qualified voter; or knowingly aid or abet any person to so register; or attempt to register or knowingly induce or attempt to induce any person to so register; or knowingly impersonate another or write or assume the name of another, real or fictitious, in registering or attempting to register; or by false statement or other unlawful means procure, aid, or attempt to procure the erasure or striking out on the register or duplicate list of the name of a qualified elector therein; or knowingly induce or attempt to induce a registrar or other election authority to refuse registration in a precinct to an elector thereof; or knowingly swear or affirm falsely upon a lawful examination by or before any registering officer; or make, print, or issue any false or counterfeit certificate of registration or knowingly alter any certificate of registration.

No person shall knowingly register under more than one name or knowingly induce any person to so register.

No person shall knowingly make any false statement on any form for registration or change of registration or upon any application or return envelope for an absent voter's ballot.

Whoever violates this division is guilty of a felony of the fifth degree.

(B) (1) No person who helps another person register outside an official voter registration place shall knowingly destroy, or knowingly help another person to destroy, any completed registration form.

Whoever violates this division is guilty of election falsification, a felony of the fifth degree.

(2) (a) No person who helps another person register outside an official voter registration place shall knowingly fail to return any registration form entrusted to that person to any board of elections or the office of the secretary of state within ten days after that registration form is completed, or on or before the thirtieth day before the election, whichever day is earlier, unless the registration form is received by the person within twenty-four hours of the thirtieth day before the election, in which case the person shall return the registration form to any board of elections or the office of the secretary of state within ten days of its receipt.

Whoever violates this division is guilty of election falsification, a felony of the fifth degree, unless the person has not previously been convicted of a violation of division (B)(2)(a), (B)(2)(b), (C)(1), or (C)(2) of this section, the violation of this division does not cause any person to miss any voter registration deadline with regard to any election, and the number of voter registration forms that the violator has failed to properly return does not exceed forty-nine, in which case the violator is guilty of a misdemeanor of the first degree.

(b) Subject to division (C)(2) of this section, no person who helps another person register outside an official registration place shall knowingly return any registration form entrusted to that person to any location other than any board of elections or the office of the secretary of state.

Whoever violates this division is guilty of election falsification, a felony of the fifth degree, unless the person has not previously been convicted of a violation of division (B)(2)(a), (B)(2)(b), (C)(1), or (C)(2) of this section, the violation of this division does not cause any person to miss any voter registration deadline with regard to any election, and the number of voter registration forms that the violator has failed to properly return does not exceed forty-nine, in which case the violator is guilty of a misdemeanor of the first degree.

(C) (1) No person who receives compensation for registering a voter shall knowingly fail to return any registration form entrusted to that person to any board of elections or the office of the secretary of state within ten days after that voter registration form is completed, or on or before the thirtieth day before the election, whichever is earlier, unless the registration form is received by the person within twenty-four hours of the thirtieth day before the election, in which case the person shall return the registration form to any board of elections or the office of the secretary of state within ten days of its receipt.

Whoever violates this division is guilty of election falsification, a felony of the fifth degree, unless the person has not previously been convicted of a violation of division (B)(2)(a), (B)(2)(b), (C)(1), or (C)(2) of this section, the violation of this division does not cause any person to miss any voter registration deadline with regard to any election, and the number of voter registration forms that the violator has failed to properly return does not exceed forty-nine, in which case the violator is guilty of a misdemeanor of the first degree.

(2) No person who receives compensation for registering a voter shall knowingly return any registration form entrusted to that person to any location other than any board of elections or the office of the secretary of state.

Whoever violates this division is guilty of election falsification, a felony of the fifth degree, unless the person has not previously been convicted of a violation of division (B)(2)(a), (B)(2)(b), (C)(1), or (C)(2) of this section, the violation of this division does not cause any person to miss any voter registration deadline with regard to any election, and the number of voter registration forms that the violator has failed to properly return does not exceed forty-nine, in which case the violator is guilty of a misdemeanor of the first degree.

(D) As used in division (C) of this section, "registering a voter" includes any effort, for compensation, to provide voter registration forms or to assist persons in completing or returning those forms.

**§ 3599.12. Illegal voting.**

(A) No person shall do any of the following:

(1) Vote or attempt to vote in any primary, special, or general election in a precinct in which that person is not a legally qualified elector;

(2) Vote or attempt to vote more than once at the same election by any means, including voting or attempting to vote both by absent voter's ballots under division (G) of section 3503.16 of the Revised Code and by regular ballot at the polls at the same election, or voting or attempting to vote both by absent voter's ballots under division (G) of section 3503.16 of the Revised Code and by absent voter's ballots under Chapter 3509. or armed service absent voter's ballots under Chapter 3511. of the Revised Code at the same election;

(3) Impersonate or sign the name of another person, real or fictitious, living or dead, and vote or attempt to vote as that other person in any such election;

(4) Cast a ballot at any such election after objection has been made and sustained to that person's vote;

(5) Knowingly vote or attempt to vote a ballot other than the official ballot.

(B) Whoever violates division (A) of this section is guilty of a felony of the fourth degree.

STATUTES ON VOTE FRAUD AND VOTER INTIMIDATION - OKLAHOMA

§26-16-102.

Any person who votes more than once at any election or who, knowing that he is not eligible to vote at an election, willfully votes at said election shall be deemed guilty of a felony.

§26-16-103.

Any person who swears or affirms a false affidavit in order to become eligible to vote shall be deemed guilty of a felony.

§26-16-106.

Any person who offers, solicits or accepts something of value intended to directly or indirectly influence the vote of the person soliciting or accepting same shall be deemed guilty of a felony.

§26-16-109.

Any person who, by means of coercion or any other method, knowingly attempts to prevent a qualified elector from becoming registered, or a registered voter from voting, shall be deemed guilty of a felony.

§26-16-113.

Any person who interferes with a registered voter who is attempting to vote, or any person who attempts to influence the vote of another by means of force or intimidation, or any person who interferes with the orderly and lawful conduct of an election shall be deemed guilty of a misdemeanor.

STATUTES ON VOTE FRAUD AND VOTER INTIMIDATION - OREGON

**260.665 Undue influence to affect registration, voting, candidacy; solicitation of money or other benefits.** (1) As used in this section, "undue influence" means force, violence, restraint or the threat of it, inflicting injury, damage, harm, loss of employment or other loss or the threat of it, or giving or promising to give money, employment or other thing of value.

(2) No person, acting either alone or with or through any other person, shall directly or indirectly subject any person to undue influence with the intent to induce any person to:

- (a) Register or vote;
- (b) Refrain from registering or voting;
- (c) Register or vote in any particular manner;
- (d) Be or refrain from or cease being a candidate;
- (e) Contribute or refrain from contributing to any candidate, political party or political committee;
- (f) Render or refrain from rendering services to any candidate, political party or political committee;
- (g) Challenge or refrain from challenging a person offering to vote; or
- (h) Apply or refrain from applying for an absentee ballot.

(3) No person shall solicit or accept money or other thing of value as an inducement to act as prohibited by subsection (2) of this section.

(4) This section does not prohibit:

- (a) The employment of persons to render services to candidates, political parties or political committees;
- (b) The public distribution by candidates, political parties or political committees of sample ballots or other items readily available to the public without charge, even though the distributor incurs costs in the distribution;
- (c) Public or nonpromissory statements by or on behalf of a candidate of the candidate's intentions or purposes if elected;
- (d) A promise by a candidate to employ any person as administrative assistant, secretary or other direct personal aide;
- (e) Free custody and care of minor children of persons during the time those persons are absent from those children for voting purposes;
- (f) Free transportation to and from the polls for persons voting; but no means of advertising, solicitation or inducement to influence the vote of persons transported shall be used with that transportation;
- (g) Individuals or political committees from providing refreshments incidental to a gathering in support of or in opposition to a candidate, political committee or measure; or

(h) The public distribution of registration cards by a person approved by the Secretary of State under ORS 247.171 to print, copy or otherwise prepare and distribute registration cards, even though the distributor incurs costs in the distribution.

**260.695 Prohibitions relating to voting in elections conducted by mail or at polling place.** (1) No person shall print or circulate an imitation of the ballot or sample ballot, or a portion of the ballot or sample ballot, which contains information which will not appear, or deletes information which will appear, on the ballot or sample ballot, or that portion of the ballot or sample ballot, unless the imitation of the ballot or sample ballot, or portion of the ballot or sample ballot, contains the following statement in bold type: "NOT FOR OFFICIAL USE." This subsection does not prohibit the printing or circulation of an imitation of a ballot which illustrates the manner in which a candidate's name may be written in for an office.

(2) No person, within any building in which a polling place is located or, in an election conducted by mail, after the date that ballots are mailed as provided in ORS 254.470, within any building in which ballots are issued, or within 100 feet measured radially from any entrance to the building, shall do any electioneering, including circulating any cards or hand bills, or soliciting signatures to any petition. No person shall do any electioneering by public address system located more than 100 feet from an entrance to the building but capable of being understood within 100 feet of the building. The electioneering need not relate to the election being conducted.

(3) No person shall obstruct an entrance of a building in which a polling place is located. In an election conducted by mail, from the date that ballots are mailed as provided in ORS 254.470 until the time designated by the county clerk for closure of the building on election day, no person shall obstruct an entrance of a building in which a place designated for the deposit of ballots under ORS 254.470 or any voting booth maintained under ORS 254.474 is located.

(4) No person shall vote or offer to vote in any election knowing the person is not entitled to vote.

(5) No person at a polling place, other than an election board member, shall deliver a ballot to an elector.

(6) No elector at a polling place shall knowingly receive a ballot from any other person than an election board member.

(7) No person shall make a false statement about the person's inability to mark a ballot.

(8) No person, except an elections official in performance of duties or other person providing assistance to an elector as described in ORS 254.445, shall ask a person at the polling place for whom that person intends to vote, or examine or attempt to examine the person's ballot.

(9) No person shall show the person's own marked or punched ballot to another person to reveal how it was marked or punched.

(10) No elections official, other than in the performance of duties, shall disclose to any person any information by which it can be ascertained for whom any elector has voted.

(11) No person, except an elections official in performance of duties, shall do anything to a ballot to permit identification of the person who voted.

(12) No elector at a polling place shall deliver a ballot to an election board member except the ballot the elector received from an election board member. Nothing in this subsection shall prohibit a person from delivering any absentee ballot or ballots to an election board member.

(13) No person at a polling place, except an election board member, shall receive from an elector other than an absent elector a marked or punched ballot.

(14) No elector shall willfully leave in the polling place anything that will show how the elector's ballot was marked or punched. In an election conducted by mail, no elector shall willfully leave at any place

designated for the deposit of ballots under ORS 254.470 or in any voting booth maintained under ORS 254.474, anything that will show how the elector's ballot was marked or punched.

(15) No person, except an elections official in performance of duties, shall remove a ballot from any polling place, any place designated for the deposit of ballots under ORS 254.470 or any voting booth maintained under ORS 254.474.

(16) No person, except an elections official in performance of duties or a person authorized by that official, shall willfully deface, remove, alter or destroy a posted election notice.

(17) No person, except an elections official in performance of duties, shall willfully remove, alter or destroy election equipment or supplies, or break the seal or open any sealed package containing election supplies.

(18) No person other than an elections official shall attempt to collect voted ballots within 100 feet measured radially from a location designated for deposit of ballots under ORS 254.470.

(19) No person, except an elections official in performance of duties, in an election conducted by mail, shall establish a location to collect ballots voted by electors unless the person prominently displays at the location a sign stating: "NOT AN OFFICIAL BALLOT DROP SITE."

**260.715 Prohibitions relating to voting and ballots.** (1) A person may not knowingly make a false statement, oath or affidavit when a statement, oath or affidavit is required under the election laws.

(2) A person may not request a ballot in a name other than the person's own name.

(3) A person may not vote or attempt to vote more than once at any election held on the same date.

(4) A person, except an elections official in performance of duties, may not willfully alter or destroy a ballot cast at an election or the returns of an election.

(5) A person may not willfully place a fraudulent ballot among the genuine ballots.

(6) A person may not falsely write anything purporting to be written by an election board member on the ballot or ballot stub.

(7) A person may not commit theft of a ballot or tally or return sheet, or willfully hinder or delay the delivery of the tally or return sheet to the county clerk, or fraudulently break open a sealed tally or return sheet of the election.

(8) A person may not manufacture or knowingly use a fraudulent ballot return identification envelope or secrecy envelope or sell, offer to sell, purchase or offer to purchase, for money or other valuable consideration, any official ballot, replacement ballot, ballot return identification envelope or secrecy envelope. As used in this subsection, "ballot return identification envelope" and "secrecy envelope" mean those envelopes used to return ballots to the county clerk by absent electors or in elections conducted by mail.



STATUTES ON VOTE FRAUD AND VOTER INTIMIDATION – PENNSYLVANIA

**§ 3533. Unlawful voting.**

Any person who votes or attempts to vote at any primary or election, knowing that he does not possess all the qualifications of an elector at such primary or election, as set forth in this act, shall be guilty of a misdemeanor of the first degree, and, upon conviction thereof, shall be sentenced to pay a fine not exceeding ten thousand (\$10,000) dollars, or to undergo an imprisonment of not more than five (5) years, or both, in the discretion of the court.

**§ 3535. Repeat voting at elections.**

If any person shall vote in more than one election district, or otherwise fraudulently vote more than once at the same primary or election, or shall vote a ballot other than the ballot issued to him by the election officers, or shall advise or procure another so to do, he shall be guilty of a felony of the third degree, and, upon conviction thereof, shall be sentenced to pay a fine not exceeding fifteen thousand (\$15,000) dollars, or to undergo an imprisonment of not more than seven (7) years, or both, in the discretion of the court.

**§ 3539. Bribery at elections.**

Any person who shall, directly or indirectly, give or promise or offer to give any gift or reward in money, goods or other valuable thing to any person, with intent to induce him to vote or refrain from voting for any particular candidate or candidates or for or against any constitutional amendment or other question at any primary or election; or who shall, directly or indirectly, procure for or offer or promise to procure for such person any such gift or reward with the intent aforesaid; or, who with the intent to influence or intimidate such person to give his vote or to refrain from giving his vote for any particular candidate or candidates or for or against any constitutional amendment or other question at any primary or election, shall give to or obtain for or assist in obtaining for or offer or promise to give to or obtain for or assist in obtaining for such person any office, place, appointment or employment, public or private, or threaten such person with dismissal or discharge from any office, place, appointment or employment, public or private, then held by him, shall be guilty of a felony of the third degree, and, upon conviction thereof, shall be sentenced to pay a fine not exceeding fifteen thousand (\$15,000) dollars, or to undergo an imprisonment of not more than seven (7) years, or both, in the discretion of the court.

**§ 3547. Prohibiting duress and intimidation of voters and interference with the free exercise of the elective franchise.**

Any person or corporation who, directly or indirectly--

(a) uses or threatens to use any force, violence or restraint, or inflicts or threatens to inflict any injury, damage, harm or loss, or in any other manner practices intimidation or coercion upon or against any person, in order to induce or compel such person to vote or refrain from voting at any election, or to vote or refrain from voting for or against any particular person, or for or against any question submitted to voters at such election, or to place or cause to be placed or refrain from placing or causing to be placed his name upon a register of voters, or on account of such person having voted or refrained from voting at such election, or having voted or refrained from voting for or against any particular person or persons or for or against any question submitted to voters at such election, or having registered or refrained from registering as a voter; or

(b) by abduction, duress or coercion, or any forcible or fraudulent device or contrivance, whatever, impedes, prevents, or otherwise interferes with the free exercise of the elective franchise by any voter, or compels, induces, or prevails upon any voter to give or refrain from giving his vote for or against any particular person at any election; or

(c) being an employer, pays his employes the salary or wages due in "pay envelopes" upon which or in which there is written or printed any political motto, device, statement or argument containing threats, express or implied, intended or calculated to influence the political opinions or actions of such employes, or within ninety days of any election or primary puts or otherwise exhibits in the establishment or place where

his employees are engaged in labor, any handbill or placard containing any threat, notice, or information that if any particular ticket or candidate is elected or defeated work in his place or establishment will cease, in whole or in part, his establishment be closed up, or the wages of his employees reduced, or other threats, express or implied, intended or calculated to influence the political opinions or actions of his employees,

shall be guilty of a misdemeanor of the second degree. Any person or corporation, convicted of a violation of any of the provisions of this section, shall be sentenced to pay a fine not exceeding five thousand (\$5,000) dollars, or such person or the officers, directors or agents of such corporation responsible for the violation of this section, shall be sentenced to undergo an imprisonment of not more than two (2) years, or both, in the discretion of the court.

STATUTES ON VOTE FRAUD AND VOTER INTIMIDATION – RHODE ISLAND

**§ 17-23-4 Fraudulent or repeat voting.** – Every person who, in any election, fraudulently votes or attempts to vote, not being qualified, notwithstanding that person's name may be on the voting list at the polling place where the person votes or attempts to vote; or who votes or attempts to vote in the name of some other person, whether that name is that of a person living or dead, or of a fictitious person; or having voted in one town, ward, senatorial district, representative district, or voting district, whether the person's vote in that case was legal or not, votes or attempts to vote in the same or in another town, ward, senatorial district, representative district, or voting district; or who fraudulently votes or attempts to vote in a town, ward, senatorial district, representative district, or voting district other than in the town, ward, senatorial district, representative district, or voting district in which the person has his or her "residence", as defined in § 17-1-3.1, at the time of his or her voting or attempting to vote; or who aids, counsels, or procures any other person to so vote or attempt to vote, shall be guilty of a felony, and no person after conviction of this offense, shall be permitted to vote in any election or upon any proposition pending before the people, or to hold any public office. Voting, for the purposes of this chapter, shall consist in the casting of a vote, or attempting to cast a vote, whether or not the vote has been cast.

**§ 17-23-5 Bribery or intimidation of voters – Immunity of witnesses in bribery trials.** – Every person who directly or indirectly gives, or offers to agree to give, to any elector or to any person for the benefit of any elector, any sum of money or other valuable consideration for the purpose of inducing the elector to give in or withhold that elector's vote at any election in this state, or by way of reward for having voted or withheld that elector's vote, or who uses any threat or employs any means of intimidation for the purpose of influencing the elector to vote or withhold that elector's vote for or against any candidate or candidates or proposition pending at an election, shall be guilty of a felony, and no person after conviction of this offense, shall be permitted to vote in any election or upon any proposition pending before the people, or to hold any public office; and no evidence given by any witness testifying upon the trial of any charge of bribery shall be used against the person giving the evidence.

STATUTES ON VOTE FRAUD AND VOTER INTIMIDATION – SOUTH CAROLINA

**SECTION 7-25-10.** False swearing in applying for registration.

It is unlawful for a person to falsely swear in making an application for registration under this chapter. A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined in the discretion of the court or imprisoned not more than three years, or both.

**SECTION 7-25-20.** Fraudulent registration or voting.

It is unlawful for a person to fraudulently:

- (1) procure the registration of a name on the books of registration;
- (2) offer or attempt to vote that name;
- (3) offer or attempt to vote in violation of this title or under any false pretense as to circumstances affecting his qualifications to vote; or
- (4) aid, counsel, or abet another in fraudulent registration or fraudulent offer or attempt to vote.

A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not less than one hundred dollars nor more than five hundred dollars or imprisoned not more than one year, or both.

**SECTION 7-25-30.** Repealed by 1984 Act No. 510 Section 19, eff June 28, 1984.

**SECTION 7-25-40.** Repealed by 1984 Act No. 510 Section 19, eff June 28, 1984.

**SECTION 7-25-50.** Bribery at elections; unlawful to accept bribery.

It is unlawful for a person to procure, by the payment, delivery, or promise of money or other article of value, another to vote for or against any particular candidate or measure at any election held within this State, whether general, special, or primary, for members of the Congress of the United States, members of the General Assembly of this State, sheriff, clerk, judge of probate or other county officer, mayor, and aldermen of any city or intendant and wardens of any incorporated town, or at any other election held within this State. It is also unlawful for a person to accept such procurements. The person promising and the person voting are each guilty of a felony and, upon conviction, for the first offense, must be fined not less than one hundred dollars nor more than five hundred dollars and imprisoned not more than five years. Upon conviction for a second or subsequent offense, the person must be fined not less than five hundred dollars nor more than five thousand dollars and imprisoned not more than ten years.

**SECTION 7-25-60.** Procuring or offering to procure votes by bribery.

(A) It is unlawful for a person at any election to:

- (1) procure, or offer or propose to procure, another, by the payment, delivery, or promise of money or other article of value, to vote for or against any particular candidate or measure; or
- (2) vote, offer, or propose to vote for or against any particular candidate or measure for the consideration of money or other article of value paid, delivered, or promised, vote or offer or propose to vote for or against any particular candidate or measure.

(B) A person who violates the provisions of this section is guilty of a felony. Upon conviction for a first offense, the person must be fined in the discretion of the court and imprisoned not more than five years.

Upon conviction for a second or subsequent offense, the person must be fined in the discretion of the court and imprisoned not more than ten years.

**SECTION 7-25-70.** Procuring or offering to procure votes by threats.

It is unlawful for a person, by threats or any other form of intimidation, to procure, offer, or promise to endeavor to procure another to vote for or against any particular candidate in any election. A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not less than one hundred dollars nor more than five hundred dollars or imprisoned not more than three years, or both.

**SECTION 7-25-80.** Threatening, intimidating, or abusing voters.

A person who, at any of the elections, general, special, or primary, in any city, town, ward, or polling precinct, threatens, mistreats, or abuses a voter with a view to control or intimidate him in the free exercise of his right of suffrage, is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both.

**SECTION 7-25-110.** Voting more than once at elections.

It is unlawful for a person qualified to vote at any general, special, or primary election for an office whether local, state, or federal to vote more than once at such election, for the same office. A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined in the discretion of the court or imprisoned not more than three years.

**SECTION 7-25-120.** Impersonating a voter.

It is unlawful for a person to impersonate or attempt to impersonate another person for the purpose of voting in a general, special, or primary election, whether municipal or State. A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than three years or fined not less than three hundred dollars nor more than twelve hundred dollars, or both. When a person who violates the provisions of this section is placed under bond, the bond may not be less than six hundred dollars nor more than twelve hundred dollars.

**SECTION 7-25-130.** Arrest of person who impersonates a voter.

If any manager of election of this State report to the sheriff or other peace officer that a person has violated Section 7-25-120 such peace officer shall arrest such person and have a proper warrant sworn out. Any sheriff or police officer refusing to make an arrest when demand is made by the proper authorities for any violation of Section 7-25-120 shall be subject to prosecution in the court of general sessions for malfeasance in office.

**SECTION 7-25-190.** Illegal conduct at elections generally.

A person who votes at any general, special, or primary election who is not entitled to vote, or who by force, intimidation, deception, fraud, bribery, or undue influence obtains, procures, or controls the vote of any voter to be cast for any candidate or measure other than as intended or desired by such voter, or who violates any of the provisions of this title in regard to general, special, or primary elections is guilty of a felony. Upon conviction, the person must be fined not less than one hundred nor more than one thousand dollars or imprisoned not more than five years, or both.

STATUTES ON VOTE FRAUD AND VOTER INTIMIDATION – SOUTH DAKOTA

- 12-26-7. Impersonation of registered voter as felony. A person who impersonates a registered voter and, as such, offers to vote at any election, is guilty of a Class 5 felony.
- 12-26-8. Voting more than once at any election as felony. A person who votes more than once at any election or who offers to vote after having once voted, either in the same or in another election precinct in South Dakota or elsewhere, is guilty of a Class 6 felony.
- 12-26-9. Good faith defense to prosecution for illegal voting. Upon any prosecution for procuring, offering, or casting an illegal vote, the accused may give in evidence any facts tending to show that he honestly believed upon good reason that the vote complained of was a lawful one; and the jury may take such facts into consideration in determining whether the acts complained of were knowingly done or not.
- 12-26-12. Persecution, threats, or intimidation to influence vote as misdemeanor--Obstruction of voter on way to polls. A person who directly or indirectly, intentionally, by force or violence, or by unlawful arrest, or by any abduction, duress, damage, harm, or loss, or by any forcible or fraudulent contrivance, or by threats to do or employ any of them, or by threats of bringing civil suit or criminal prosecution, withdrawal of customs or dealing in business or trade, or enforcing payment of debts, or by any kind of injury or threat of injury inflicted or to be inflicted on any voter or person to influence any voter, and attempted, done, or threatened, or caused to be attempted, done, or threatened by any person in his own behalf or in behalf of any other person or question voted upon or to be voted upon at any election, for the purpose of preventing, causing, or intimidating a voter to vote or refrain from voting for or against any person or question, or who does or causes to be done any of such things because of a voter having voted or refrained from voting on any such matter, or who intentionally and without lawful authority obstructs, hinders, or delays a voter on his way to any poll where an election is to be held, is guilty of a Class 2 misdemeanor.
- 12-26-15. Bribery of voter as misdemeanor--Acts constituting bribery. It is a Class 2 misdemeanor for any person, directly or indirectly, by himself or through any other person:
- (1) To pay, lend, contribute, or offer or promise to pay, lend, or contribute, any money or other valuable consideration, to or for any voter or to or for any other person, to induce such voter to vote or refrain from voting at any election or to induce any voter to vote or refrain from voting at such election for any particular person or to induce such voter to go to the polls or remain away from the polls at such election, or on account of such voter having voted, refrained from voting or having voted or refrained from voting for any particular person, or having gone to the polls or remained away from the polls at such election;
  - (2) To give, offer, or promise any office, place, or employment, or to promise to procure or endeavor to procure any office, place, or employment to or for any voter, or to or for any other person in order to induce such voter to vote or refrain from voting at such election for any particular person;
  - (3) To make any gift, loan, or promise, offer, procurement, or agreement as aforesaid to, for, or with any person in order to induce such person to procure or endeavor to procure the election of any person, or the vote of any voter at any election;
  - (4) To procure or engage, promise, or endeavor to procure, in consequence of any such gift, loan, offer, promise, procurement, or agreement, the election of any person or the vote of any voter at such election;
  - (5) To advance or pay, or cause to be paid, any money or other valuable thing to or for the use of any other person, with the intent that the same or any part thereof shall be used in bribery at any election, or to knowingly pay or cause to be paid any money or other valuable thing to any person in discharge or repayment of any money wholly or in part expended in bribery at any election.
- 12-26-15. Bribery of voter as misdemeanor--Acts constituting bribery. It is a Class 2 misdemeanor for any person, directly or indirectly, by himself or through any other person:

(1) To pay, lend, contribute, or offer or promise to pay, lend, or contribute, any money or other valuable consideration, to or for any voter or to or for any other person, to induce such voter to vote or refrain from voting at any election or to induce any voter to vote or refrain from voting at such election for any particular person or to induce such voter to go to the polls or remain away from the polls at such election, or on account of such voter having voted, refrained from voting or having voted or refrained from voting for any particular person, or having gone to the polls or remained away from the polls at such election;

(2) To give, offer, or promise any office, place, or employment, or to promise to procure or endeavor to procure any office, place, or employment to or for any voter, or to or for any other person in order to induce such voter to vote or refrain from voting at such election for any particular person;

(3) To make any gift, loan, or promise, offer, procurement, or agreement as aforesaid to, for, or with any person in order to induce such person to procure or endeavor to procure the election of any person, or the vote of any voter at any election;

(4) To procure or engage, promise, or endeavor to procure, in consequence of any such gift, loan, offer, promise, procurement, or agreement, the election of any person or the vote of any voter at such election;

(5) To advance or pay, or cause to be paid, any money or other valuable thing to or for the use of any other person, with the intent that the same or any part thereof shall be used in bribery at any election, or to knowingly pay or cause to be paid any money or other valuable thing to any person in discharge or repayment of any money wholly or in part expended in bribery at any election.

12-26-16. Acceptance of bribe by voter as misdemeanor--Acts constituting acceptance of bribe. It is a Class 2 misdemeanor for any person, directly or indirectly, by himself or through any other person:

(1) To receive, agree, or contract for, before or during any election, any money, gift, loan, or other valuable consideration, offer, place, or employment for himself or any other person, for voting or agreeing to vote, or for going or agreeing to go to the polls, or for remaining away or agreeing to remain away from the polls at any such election;

(2) To receive any money or other valuable thing during or after an election, for himself or any other person for having voted or refrained from voting at such election, or on account of himself or any other person having voted or refrained from voting for any particular person at such election, or on account of himself or any other person having gone to the polls or remained away from the polls at such election, or on account of having induced any other person to vote or refrain from voting, for any particular person at such election.

STATUTES ON VOTE FRAUD AND VOTER INTIMIDATION – TENNESSEE

**2-19-107. Illegal registration or voting.**

A person commits a Class E felony who:

(1) Intentionally and knowing that such person is not entitled to, registers or votes in any manner or attempts to register or vote in any manner where or when such person is not entitled to under this title, including voting more than once in the same election; or

(2) Votes in the primary elections of more than one (1) political party on the same day.

**2-19-115. Violence and intimidation to prevent voting.**

It is a Class A misdemeanor for any person, directly or indirectly, personally or through any other person:

(1) By force or threats to prevent or endeavor to prevent any elector from voting at any primary or final election;

(2) To make use of any violence, force or restraint, or to inflict or threaten the infliction of any injury, damage, harm or loss; or

(3) In any manner to practice intimidation upon or against any person in order to induce or compel such person to vote or refrain from voting, to vote or refrain from voting for any particular person or measure, or on account of such person having voted or refrained from voting in any such election.

**2-19-117. Procuring illegal vote.**

It is a Class E felony for any person to procure, aid, assist, counsel or advise another to vote in any convention, primary or final election, knowing such person is disqualified.



**2-19-126. Bribing voters.**

It is unlawful for any person, directly or indirectly, personally or through any other person to:

(1) Pay, loan, contribute, or offer or promise to pay, loan or contribute any money, property, or other valuable thing, to or for any voter, or to or for any other person, to induce such voter or any voter to vote or refrain from voting in any political convention, primary or final election of any kind or character, or to induce such voter or voters to vote or refrain from voting at any such convention, primary or final election for or against any particular person or measure, or on account of any voter having voted for or against any particular person or measure, or having gone to or remained away from the polls at any such convention, primary or final election;

(2) Give, offer, or promise any place, office or employment, or promise or procure any place, office or employment, to or for any voter, or to or for any other person, in order to induce such voter to vote or refrain from voting at any convention, primary or final election, or to induce any voter at such convention or primary or final election to vote or refrain from voting for any particular person or measure;

(3) Advance or pay or cause to be paid any money or other valuable thing to or for the use of any voter, or to or for the use of any other person, with the intent that the same or any part thereof shall be used in bribery at any primary or final election, or otherwise unlawfully used at, concerning, or in connection with any such primary or final election; or knowingly pay or cause to be paid any money or other valuable thing in discharge or repayment of money or other valuable thing wholly or in part expended in bribery or other unlawful use at or in connection with any such primary or final election; or

(4) Advance, pay or cause to be paid, as expenses or otherwise, to or for the use of any person, any money or other valuable thing in order to induce such person or any person to work for, solicit or seek to influence votes for or against any particular person or measure, at or in connection with any convention, primary or final election; or induce such person or persons to procure, solicit or influence any voter to attend, leave, or remain away from any such convention, primary or final election; or pay or cause to be paid any money or other valuable thing to or for the use or benefit of any person in discharge or payment of or for time, labor, expenses, or services alleged to have been spent, performed, incurred, or rendered for or against any person, at or in connection with any such convention, primary or final election; provided, that this shall not include payment of expenses for soliciting attendance of any person upon party conventions, primaries, or final elections; and provided further, that nothing herein shall be construed to prohibit expenditures otherwise allowed by law.

**2-19-127. Voter accepting bribe.**

It is unlawful for any person, directly or indirectly, personally or through any other person, to:

(1) Receive, agree to receive, or contract for, before or during any primary or final election or convention provided by law, any money, gift, loan, or other valuable consideration, or any office, place or employment for such person or for any other person, for voting or agreeing to vote, or for going to or remaining or agreeing to remain away from the polls, or refraining or agreeing to refrain from voting for any particular person or measure, at or in connection with any such convention, primary or election; or

(2) Receive any money or other valuable thing during or after any convention, primary or final election provided by law, on account of such person or any other person, for voting or refraining from voting for any person or measure, or for going to the polls or remaining away from the polls at any such convention, primary or final election, or on account of having induced any person to vote or refrain from voting for any particular person or measure at any such convention, primary or final election.

STATUTES ON VOTE FRAUD AND VOTER INTIMIDATION - TEXAS

Election code § 13.007. FALSE STATEMENT ON APPLICATION.

- (a) A person commits an offense if the person knowingly makes a false statement or requests, commands, or attempts to induce another person to make a false statement on a registration application.
- (b) An offense under this section is a Class B misdemeanor.
- (c) For purposes of this code, an offense under this section is considered to be perjury, but may be prosecuted only under this section.

Election code § 64.012. ILLEGAL VOTING.

- (a) A person commits an offense if the person:
  - (1) votes or attempts to vote in an election in which the person knows the person is not eligible to vote;
  - (2) knowingly votes or attempts to vote more than once in an election;
  - (3) knowingly impersonates another person and votes or attempts to vote as the impersonated person; or
  - (4) knowingly marks or attempts to mark another person's ballot without the consent of that person.
- b) An offense under this section is a felony of the third degree unless the person is convicted of an attempt. In that case, the offense is a Class A misdemeanor.

Penal Code § 36.02. BRIBERY.

- (a) A person commits an offense if he intentionally or knowingly offers, confers, or agrees to confer on another, or solicits, accepts, or agrees to accept from another:
  - (1) any benefit as consideration for the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter;
  - (2) any benefit as consideration for the recipient's decision, vote, recommendation, or other exercise of official discretion in a judicial or administrative proceeding;
  - (3) any benefit as consideration for a violation of a duty imposed by law on a public servant or party official; or
  - (4) any benefit that is a political contribution as defined by Title 15, Election Code, or that is an expenditure made and reported in accordance with Chapter 305, Government Code, if the benefit was offered, conferred, solicited, accepted, or agreed to pursuant to an express agreement to take or withhold a specific exercise of official discretion if such exercise of official discretion would not have been taken or withheld but for the benefit; notwithstanding any rule of evidence or jury instruction allowing factual inferences in the absence of certain evidence, direct evidence of the express agreement shall be required in any prosecution under this subdivision.
- (b) It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way whether because he had not yet assumed office or he lacked jurisdiction or for any other reason.
- (c) It is no defense to prosecution under this section that the benefit is not offered or conferred or that the benefit is not solicited or accepted until after:
  - (1) the decision, opinion, recommendation, vote, or other exercise of discretion has occurred; or
  - (2) the public servant ceases to be a public servant.
- (d) It is an exception to the application of Subdivisions (1), (2), and (3) of Subsection (a) that the benefit is a political contribution as defined by Title 15, Election Code, or an expenditure made and reported in accordance with Chapter 305, Government Code.
- (e) An offense under this section is a felony of the second degree.

Penal code § 36.03. COERCION OF PUBLIC SERVANT OR VOTER.

(a) A person commits an offense if by means of coercion he:

(1) influences or attempts to influence a public servant in a specific exercise of his official power or a specific performance of his official duty or influences or attempts to influence a public servant to violate the public servant's known legal duty; or

(2) influences or attempts to influence a voter not to vote or to vote in a particular manner.

(b) An offense under this section is a Class A misdemeanor unless the coercion is a threat to commit a felony, in which event it is a felony of the third degree.

(c) It is an exception to the application of Subsection

(a)(1) of this section that the person who influences or attempts to influence the public servant is a member of the governing body of a governmental entity, and that the action that influences or attempts to influence the public servant is an official action taken by the member of the governing body. For the purposes of this subsection, the term "official action" includes deliberations by the governing body of a governmental entity.

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STATUTES ON VOTE FRAUD AND VOTER INTIMIDATION – UTAH

**20A-1-601. Bribery in elections.**

- (1) It is unlawful for any person, directly or indirectly, by himself or through any other person to:
- (a) pay, loan, or contribute, or offer or promise to pay, loan, or contribute any money or other valuable consideration to or for any voter or to or for any other person:
    - (i) to induce the voter to vote or refrain from voting at any election provided by law;
    - (ii) to induce any voter to vote or refrain from voting at an election for any particular person or persons;
    - (iii) to induce a voter to go to the polls or remain away from the polls at any election;
    - (iv) because a voter voted or refrained from voting for any particular person, or went to the polls or remained away from the polls; or
    - (v) to obtain the political support or aid of any person at an election;
  - (b) give, offer, or promise any office, place, or employment, or to promise or procure, or endeavor to procure, any office, place, or employment, to or for any voter, or to or for any other person, in order to:
    - (i) induce a voter to vote or refrain from voting at any election;
    - (ii) induce any voter to vote or refrain from voting at an election for any particular person or persons; or
    - (iii) obtain the political support or aid of any person;
  - (c) advance or pay, or cause to be paid, any money or other valuable thing to, or for the use of, any other person with the intent that the money or other valuable thing be used in bribery at any election provided by law; or
  - (d) knowingly pay, or cause to be paid, any money or other valuable thing to any person in discharge or repayment of any money expended wholly or in part in bribery at any election.
- (2) In addition to the penalties established in Section 20A-1-609, any person convicted of any of the offenses established by this section shall be punished by a fine of not more than \$1,000, or by imprisonment in the state prison for not more than five years, or by both a fine and imprisonment.

**20A-1-602. Receiving bribe.**

- (1) It is unlawful for any person, for himself or for any other person, directly or indirectly, by himself or through any person, before, during or after an election to:
- (a) receive, agree to receive, or contract for any money, gift, loan, or other valuable consideration, office, place, or employment for voting or agreeing to vote, or for going or agreeing to go to the polls, or for remaining or agreeing to remain away from the polls, or for refraining or agreeing to refrain from voting, or for voting or agreeing to vote, or refraining or agreeing to refrain from voting for any particular person or measure at any election provided by law;
  - (b) receive any money or other valuable thing because the person induced any other person to vote or refrain from voting or to vote or refrain from voting for any particular person or measure at an election.
- (2) In addition to the penalties established in Section 20A-1-609, any person convicted of any of the offenses established by this section shall be punished by a fine of not more than \$1,000, or by imprisonment in the state prison for not more than five years, or by both a fine and imprisonment.

**20A-1-603. Fraud, interference, disturbance -- Tampering with ballots or records.**

- (1) It is unlawful for:
- (a) any person who is not entitled to vote to fraudulently vote; and
  - (b) any person to:
    - (i) vote more than once at any one election;
    - (ii) knowingly hand in two or more ballots folded together;
    - (iii) change any ballot after it has been deposited in the ballot box;
    - (iv) add or attempt to add any ballot to those legally polled at any election by fraudulently introducing the ballot into the ballot box either before or after the ballots have been counted;
    - (v) add to or mix, or attempt to add or mix, other ballots with the ballots lawfully polled while those ballots are being counted or canvassed, or at any other time;
    - (vi) willfully detain, mutilate, or destroy any election returns;
    - (vii) in any manner, interfere with the officers holding an election or conducting a canvass, or with the voters lawfully exercising their rights of voting at an election, so as to prevent the election or canvass from being fairly held or lawfully conducted;
    - (viii) engage in riotous conduct at any election or interfere in any manner with any election officer in the discharge of his duties;
    - (ix) induce any election officer, or officer whose duty it is to ascertain, announce, or declare the result of any election or to give or make any certificate, document, or evidence in relation to any election, to violate or

refuse to comply with his duty or any law regulating his duty;

(x) take, carry away, conceal, remove, or destroy any ballot, pollbook, or other thing from a polling place, or from the possession of the person authorized by law to have the custody of that thing; or  
(xi) aid, counsel, provide, procure, advise, or assist any person to do any of the acts specified in this section.

(2) In addition to the penalties established in Section 20A-1-609, any person convicted of any of the offenses established in this section shall be punished by a fine of not more than \$1,000, or by imprisonment in the state prison for not more than five years, or by both a fine and imprisonment.

**20A-2-401. Fraudulent registration -- Penalty.**

(1) It is unlawful for any person to willfully cause, procure, or allow himself to be registered to vote, knowing that he is not entitled to register to vote.

(2) It is unlawful for any person to willfully cause, procure, advise, encourage, or assist any other person to be registered to vote, knowing or believing that the person is not entitled to register to vote.

(3) Any person who violates this section is guilty of a class A misdemeanor.

**20A-3-502. Intimidation -- Undue influence.**

(1) (a) It is unlawful for any person, directly or indirectly, by himself or by any other person on his behalf, to make use of any force, violence, or restraint, or to inflict or threaten the infliction of, by himself or through any other person, any injury, damage, harm or loss, or in any manner to practice intimidation upon or against any person in order to induce or compel that person to:

(i) vote or refrain from voting for any particular person or measure at any election provided by law; or

(ii) vote or refrain from voting at any election.

(b) It is unlawful for any person by abduction or duress, or any forcible or fraudulent device or contrivance whatever, to impede, prevent, or otherwise interfere with the free exercise of the elective franchise of any voter, either in giving or refraining from giving his vote at any election, or in giving or refraining from giving his vote for any particular person at any election.

(c) It is unlawful for any employer, corporation, association, company, firm, or person to:

(i) enclose their employees' salary or wages in envelopes on which there is written or printed any political mottoes, devices, or arguments containing threats, express or implied, intended or calculated to influence the political opinion, views, or action of the employees; or

(ii) within 90 days of any election provided by law to put up, or otherwise exhibit, in its, their, or his factory, workshop, mine, mill, boarding house, office, or other establishment or place where employees may be working or be present in the course of employment, any handbill, notice, or placard containing any threat, notice, or information, that if any particular ticket or candidate is or is not elected:

(A) work in the establishment will cease in whole or in part;

(B) the establishment will be closed;

(C) wages of workmen be reduced; or

(D) other threats, express or implied, intended or calculated to influence the political opinions or actions of employees.

(2) Any person, whether acting in his individual capacity or as an officer or agent of any corporation, who violates any of the provisions of this section is guilty of a class B misdemeanor.

**20A-3-505. False impersonation -- Double voting.**

(1) (a) It is unlawful for any person to apply for a ballot in the name of some other person, whether it is that of a person living or dead, or of a fictitious person, or who, having voted once at a primary or election, applies at the same election for a ballot in his own name or any other name.

(b) Any person who violates this section is guilty of a felony and shall be punished by imprisonment in the state prison for not less than one nor more than three years.

(2) (a) It is unlawful for any person to aid, abet, counsel, or procure another person to commit the felony prohibited in Subsection (1).

(b) Any person who violates this subsection is guilty of a felony and shall be punished by imprisonment in the state prison for not less than one nor more than three years.

STATUTES ON VOTE FRAUD AND VOTER INTIMIDATION - VERMONT

**§ 1971. Casting more than one ballot.**

A legal voter who knowingly casts more than one ballot at any one time of balloting for the same office shall be fined not more than \$1,000.00, if the offense is committed at a general election, and not more than \$100.00, if committed in town meeting.

**§ 1973. Voting in more than one place.**

A person who, on the same day, votes in more than one town, district, or ward for the same office shall be fined not more than \$1,000.00.

**§ 2014. Unqualified person voting.**

A person, knowing that he is not a qualified voter, who votes at a town, village or school district meeting or a general election for an officer to be elected at such meeting or election shall be fined not more than \$100.00.

**§ 2015. Fraudulent voting.**

A person who personates another, living or dead and gives or offers to give a vote in the name of such other person or gives or offers to give a vote under a fictitious name at a town, village or school district meeting or a general election, for an officer to be elected at such meeting or election, shall be imprisoned not more than one year or fined not more than \$100.00, or both.

**§ 2016. Aiding unqualified voter to vote.**

A person who wilfully aids or abets a person who is not a duly qualified voter in voting or attempting to vote at a general election shall be fined not more than \$100.00.

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**§ 2017. Undue influence.**

A person who attempts by bribery, threats or any undue influence to dictate, control or alter the vote of a freeman about to be given at a general election shall be fined not more than \$200.00.



STATUTES ON VOTE FRAUD AND VOTER INTIMIDATION - VIRGINIA

§ 24.2-1004. Illegal voting and registrations.

A. Any person who (i) votes knowing that he is not qualified to vote where and when the vote is to be given, (ii) procures, assists, or induces another to vote, knowing that such person is not qualified to vote where and when the vote is to be given, or (iii) wrongfully deposits a ballot in the ballot container or casts a vote on any voting equipment, is guilty of a Class 1 misdemeanor.

B. Any person who intentionally (i) votes more than once in the same election, whether those votes are cast in Virginia or in Virginia and any other state or territory of the United States, or (ii) procures, assists, or induces another to vote more than once in the same election, whether those votes are cast in Virginia or in Virginia and any other state or territory of the United States, is guilty of a Class 6 felony.

C. Any person who intentionally (i) registers to vote at more than one residence address at the same time, whether such registrations are in Virginia or in Virginia and any other state or territory of the United States, or (ii) procures, assists, or induces another to register to vote at more than one address at the same time, whether such registrations are in Virginia or in Virginia and any other state or territory of the United States, is guilty of a Class 6 felony. This subsection shall not apply to any person who, when registering to vote, changing the address at which he is registered, transferring his registration, or assisting another in registering, changing his address, or transferring his registration, provides the information required by § 24.2-418 on the applicant's place of last previous registration to vote.

§ 24.2-1005. Bribery, intimidation, etc., of person receiving ballot.

Any person who (i) by threats, bribery, or other means in violation of the election laws, attempts to influence any person in giving his vote or ballot or by such means attempts to deter him from voting; (ii) furnishes a ballot to a person who he knows cannot understand the language in which the ballot is printed and misinforms him as to the content of the ballot with an intent to deceive him and induce him to vote contrary to his desire; or (iii) changes a ballot of a person to prevent the person from voting as he desired, shall be guilty of a Class 1 misdemeanor.

This section applies to any election and to any method used by a political party for selection of its nominees and for selection of delegates to its conventions and meetings.

§ 24.2-1007. Soliciting or accepting bribe to influence or procure vote.

No person shall solicit or accept directly or indirectly any money or any thing of value to influence his or another's vote in any election. Any person violating the provisions of this section shall be guilty of a Class 1 misdemeanor.

This section applies to any election and to any method used by a political party for selection of its nominees and for selection of delegates to its conventions and meetings.

STATUTES ON VOTE FRAUD AND VOTER INTIMIDATION - WASHINGTON

**RCW 29A.84.130**

**Voter violations.**

Any person who:

(1) Knowingly provides false information on an application for voter registration under any provision of this title;

(2) Knowingly makes or attests to a false declaration as to his or her qualifications as a voter;

(3) Knowingly causes or permits himself or herself to be registered using the name of another person;

(4) Knowingly causes himself or herself to be registered under two or more different names;

(5) Knowingly causes himself or herself to be registered in two or more counties;

(6) Offers to pay another person to assist in registering voters, where payment is based on a fixed amount of money per voter registration;

(7) Accepts payment for assisting in registering voters, where payment is based on a fixed amount of money per voter registration; or

(8) Knowingly causes any person to be registered or causes any registration to be transferred or canceled except as authorized under this title,

is guilty of a class C felony punishable under RCW 9A.20.021.

**RCW 29A.84.140**

**Unqualified registration.**

A person who knows that he or she does not possess the legal qualifications of a voter and who registers to vote is guilty of a class C felony.

**RCW 29A.84.620**

**Hindering or bribing voter.**

Any person who uses menace, force, threat, or any unlawful means towards any voter to hinder or deter such a voter from voting, or directly or indirectly offers any bribe, reward, or any thing of value to a voter in exchange for the voter's vote for or against any person or ballot measure, or authorizes any person to do so, is guilty of a class C felony punishable under RCW 9A.20.021.

**RCW 29A.84.630**

**Influencing voter to withhold vote.**

Any person who in any way, directly or indirectly, by menace or unlawful means, attempts to influence any person in refusing to give his or her vote in any primary or special or general election is guilty of a gross

misdemeanor punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021.

**RCW 29A.84.640**

**Solicitation of bribe by voter.**

Any person who solicits, requests, or demands, directly or indirectly, any reward or thing of value or the promise thereof in exchange for his or her vote or in exchange for the vote of any other person for or against any candidate or for or against any ballot measure to be voted upon at a primary or special or general election is guilty of a gross misdemeanor punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021.

**RCW 29A.84.650**

**Repeaters.**

(1) Any person who intentionally votes or attempts to vote in this state more than once at any election, or who intentionally votes or attempts to vote in both this state and another state at any election, is guilty of a class C felony.

(2) Any person who recklessly or negligently violates this section commits a class 1 civil infraction as provided in RCW 7.80.120.

**RCW 29A.84.655**

**Repeaters — Unqualified persons — Officers conniving with.**

Any precinct election officer who knowingly permits any voter to cast a second vote at any primary or general or special election, or knowingly permits any person not a qualified voter to vote at any primary or general or special election, is guilty of a class C felony punishable under RCW 9A.20.021.

**RCW 29A.84.660**

**Unqualified persons voting.**

Any person who knows that he or she does not possess the legal qualifications of a voter and who votes at any primary or special or general election authorized by law to be held in this state for any office whatever is guilty of a class C felony punishable under RCW 9A.20.021.

## STATUTES ON VOTE FRAUD AND VOTER INTIMIDATION – WEST VIRGINIA

### **§3-9-10. Disorder at polls; prevention; failure to assist in preventing disorder; penalties.**

Any person who shall, by force, menace, fraud or intimidation, prevent or attempt to prevent any officer whose duty it is by law to assist in holding an election, or in counting the votes cast thereat, and certifying and returning the result thereof, from discharging his duties according to law; or who shall, by violence, threatening gestures, speeches, force, menace or intimidation, prevent or attempt to prevent an election being held; or who shall in any manner obstruct or attempt to obstruct the holding of an election, or who shall, by any manner of force, fraud, menace or intimidation, prevent or attempt to prevent any voter from attending any election, or from freely exercising his right of suffrage at any election at which he is entitled to vote, shall be guilty of a misdemeanor, and, upon conviction, fined not more than one thousand dollars, or confined in the county jail for not more than one year, or both, in the discretion of the court.

Any person who, being thereto commanded by the commissioners of election, or either of them, shall fail or refuse to assist to the utmost of his power, in whatever may be necessary or proper to prevent intimidation, disorder or violence at the polls, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than ten nor more than one hundred dollars.

### **§3-9-13. Buying or selling vote unlawful; penalties.**

(a) It is unlawful for any person to offer or to pay money or any other thing of value to any person as consideration for the vote of the offeree or payee, as the case may be, to be cast for or against any candidate or issue in any election held in the state. Any person who violates the provisions of this subsection shall be guilty of a felony, and, upon conviction thereof, shall be fined not less than five thousand dollars or imprisoned for a period of not less than one year, nor more than five years, or both.

(b) It is likewise unlawful for any person to accept or agree to accept money or other thing of value as consideration for the vote of the acceptee, to be cast for or against any candidate or issue in any election held in the state. Any person who violates the provisions of this subsection shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars or imprisoned in the county jail not more than one year, or both.

### **§3-9-16. Receiving or soliciting bribes by voters; penalties.**

Any voter who shall, before or during any election, directly or indirectly, by himself, or by any other person on his behalf, solicit, demand, receive, agree or contract for any money, gift, loan, or valuable consideration, office, place of employment, or solicit any endorsement on a note or other paper, public or private, for himself or for any other person, for voting or agreeing to vote, or for voting for any person or candidate or object, or agreeing so to vote, or from refraining or agreeing to refrain from voting at any election; or any person who shall, after any election, directly or indirectly, by himself, or by any other person on his behalf, solicit, demand or receive any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or refrain from voting at any election, shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not more than one thousand dollars, or confined in jail for not more than one year, or both, in the discretion of the court.

### **§3-9-17. Illegal voting; deceiving voters; penalties.**

If any person knowingly votes when not legally entitled; or votes more than once in the same election; or knowingly votes or attempts to vote more than one ballot for the same office, or on the same question; or procures or assists in procuring an illegal vote to be admitted, or received, at an election, knowing the same to be illegal; or a legal vote to be rejected, knowing the same to be legal; or, with intent to deceive, alters the ballot of a voter by marking out the name of any person for whom such voter desires to vote; or, with like intent, writes the name of any person on such ballot other than those directed by the voter; or with like intent, makes any alteration thereof, whether such ballot be voted or not; or defrauds any voter at any election, by deceiving and causing him to vote for a different person for any office than he intended or desired to vote for, he shall be guilty of a misdemeanor, and, on conviction thereof, shall for each offense be fined not more than one thousand dollars or confined in the county jail for not more than one year, or both, in the discretion of the court.

## STATUTES ON VOTE FRAUD AND VOTER INTIMIDATION - WISCONSIN

**12.09 Election threats. (1)** No person may personally or through an agent make use of or threaten to make use of force, violence, or restraint in order to induce or compel any person to vote or refrain from voting at an election.

**(2)** No person may personally or through an agent, by abduction, duress, or any fraudulent device or contrivance, impede or prevent the free exercise of the franchise at an election.

**(3)** No person may personally or through an agent, by any act compel, induce, or prevail upon an elector either to vote or refrain from voting at any election for or against a particular candidate or referendum.

**12.11 Election bribery. (1)** In this section, "anything of value" includes any amount of money, or any object which has utility independent of any political message it contains and the value of which exceeds \$1. The prohibitions of this section apply to the distribution of material printed at public expense and available for free distribution if such materials are accompanied by a political message.

**(1m)** Any person who does any of the following violates this chapter:

**(a)** Offers, gives, lends or promises to give or lend, or endeavors to procure, anything of value, or any office or employment or any privilege or immunity to, or for, any elector, or to or for any other person, in order to induce any elector to:

1. Go to or refrain from going to the polls.
2. Vote or refrain from voting.
3. Vote or refrain from voting for or against a particular person.
4. Vote or refrain from voting for or against a particular referendum; or on account of any elector having done any of the above.

**(b)** Receives, agrees or contracts to receive or accept any money, gift, loan, valuable consideration, office or employment personally or for any other person, in consideration that the person or any elector will, so act or has so acted.

**(c)** Advances, pays or causes to be paid any money to or for the use of any person with the intent that such money or any part thereof will be used to bribe electors at any election.

**(2)** This section applies to any convention or meeting held for the purpose of nominating any candidate for any election, and to the signing of any nomination paper.

**(3) (a)** This section does not prohibit a candidate from publicly stating his or her preference for or support of any other candidate for any office to be voted for at the same election. A candidate for an office in which the person elected is charged with the duty of participating in the election or nomination of any person as a candidate for office is not prohibited from publicly stating or pledging his or her preference for or support of any person for such office or nomination.

**(b)** This section does not apply to money paid or agreed to be paid for or on account of authorized legal expenses which were legitimately incurred at or concerning any election.

**(c)** This section does not apply where an employer agrees that all or part of election day be given to its employees as a paid holiday, provided that such policy is made uniformly applicable to all similarly situated employees.

**(d)** This section does not prohibit any person from using his or her own vehicle to transport electors to or from the polls without charge.

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(e) This section does not apply to any promise by a candidate to reduce public expenditures or taxes.

**12.13 Election fraud. (1) ELECTORS.** Whoever intentionally does any of the following violates this chapter:

- (a) Votes at any election or meeting if that person does not have the necessary elector qualifications and residence requirements.
- (b) Falsely procures registration or makes false statements to the municipal clerk, board of election commissioners or any other election official whether or not under oath.
- (c) Registers as an elector in more than one place for the same election.
- (d) Impersonates a registered elector or poses as another person for the purpose of voting at an election.
- (e) Votes more than once in the same election.
- (f) Shows his or her marked ballot to any person or places a mark upon the ballot so it is identifiable as his or her ballot.
- (g) Procures an official ballot and neglects or refuses to cast or return it. This paragraph does not apply to persons who have applied for and received absentee ballots.
- (h) Procures, assists or advises someone to do any of the acts prohibited by this subsection.

**(2) ELECTION OFFICIALS.** (a) The willful neglect or refusal by an election official to perform any of the duties prescribed under chs. 5 to 12 is a violation of this chapter.

(b) No election official may:

1. Observe how an elector has marked a ballot unless the official is requested to assist the elector; intentionally permit anyone not authorized to assist in the marking of a ballot to observe how a person is voting or has voted; or disclose to anyone how an elector voted other than as is necessary in the course of judicial proceedings.
2. Illegally issue, write, change or alter a ballot on election day.
3. Permit registration or receipt of a vote from a person who the official knows is not a legally qualified elector or who has refused after being challenged to make the oath or to properly answer the necessary questions pertaining to the requisite requirements and residence; or put into the ballot box a ballot other than the official's own or other one lawfully received.
4. Intentionally assist or cause to be made a false statement, canvass, certificate or return of the votes cast at any election.
5. Willfully alter or destroy a poll or registration list.
6. Intentionally permit or cause a voting machine, voting device or automatic tabulating equipment to fail to correctly register or record a vote cast thereon or inserted therein, or tamper with or disarrange the machine, device or equipment or any part or appliance thereof; cause or consent to the machine, device or automatic tabulating equipment being used for voting at an election with knowledge that it is out of order or is not perfectly set and adjusted so that it will correctly register or record all votes cast thereon or inserted therein; with the purpose of defrauding or deceiving any elector, cause doubt for what party, candidate or proposition a vote will be cast or cause the vote for one party, candidate or proposition to be cast so it appears to be cast for another; or remove, change or mutilate a ballot on a voting machine, device or a ballot to be inserted into automatic tabulating equipment, or do any similar act contrary to chs. 5 to 12.
- 6m. Obtain an absentee ballot for voting in a nursing home or qualified retirement home or qualified community-based residential facility under s. 6.875 (6) and fail to return the ballot to the issuing officer.
7. In the course of the person's official duties or on account

of the person's official position, intentionally violate or intentionally cause any other person to violate any provision of chs. 5 to 12 for which no other penalty is expressly prescribed.

8. Intentionally disclose the name or address of any elector who obtains a confidential listing under s. 6.47 (2) to any person who is not authorized by law to obtain that information.

**(3) PROHIBITED ACTS.** No person may:

(a) Falsify any information in respect to or fraudulently deface or destroy a certificate of nomination, nomination paper, declaration of candidacy or petition for an election, including a recall petition or petition for a referendum; or file or receive for filing a certificate of nomination, nomination paper, declaration of candidacy or any such petition, knowing any part is falsely made.

(am) Fail to file an amended declaration of candidacy as provided in s. 8.21 with respect to a change in information filed in an original declaration within 3 days of the time the amended declaration becomes due for filing; or file a false declaration of candidacy or amended declaration of candidacy. This paragraph applies only to candidates for state or local office.

(b) Wrongfully suppress, neglect or fail to file nomination papers in the person's possession at the proper time and in the proper office; suppress a certificate of nomination which is duly filed.

(c) Willfully or negligently fail to deliver, after having undertaken to do so, official ballots prepared for an election to the proper person, or prevent their delivery within the required time, or destroy or conceal the ballots.

(d) Remove or destroy any of the supplies or conveniences placed in compartments or polling booths.

(e) Prepare or cause to be prepared an official ballot with intent to change the result of the election as to any candidate or referendum; prepare an official ballot which is premarked or which has an unauthorized sticker affixed prior to delivery to an elector; or deliver to an elector an official ballot bearing a mark opposite the name of a candidate or referendum question that might be counted as a vote for or against a candidate or question.

(f) Before or during any election, tamper with voting machines, voting devices or automatic tabulating equipment readied for voting or the counting of votes; disarrange, deface, injure or impair any such machine, device or equipment; or mutilate, injure or destroy a ballot placed or displayed on a voting machine or device, or to be placed or displayed on any such machine, device or automatic tabulating equipment or any other appliance used in connection with the machine, device or equipment.

(g) Falsify any statement relating to voter registration under chs. 5 to 12.

(h) Deface, destroy or remove any legally placed election campaign advertising poster with intent to disrupt the campaign advertising efforts of any candidate, or of any committee, group or individual under ch. 11, or alter the information printed thereon so as to change the meaning thereof to the disadvantage of the candidate or cause espoused. Nothing in this paragraph restricts the right of any owner or occupant of any real property, or the owner or operator of any motor vehicle, to remove campaign advertising posters from such property or vehicle.

(i) Falsely make any statement for the purpose of obtaining or voting an absentee ballot under ss. 6.85 to 6.87.

(j) When called upon to assist an elector who cannot read or write, has difficulty in reading, writing or understanding English,

(b) This section does not apply to money paid or agreed to be paid for or on account of authorized legal expenses which were legitimately incurred at or concerning any election.

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(c) This section does not apply where an employer agrees that all or part of election day be given to its employees as a paid holiday, provided that such policy is made uniformly applicable to all similarly situated employees.

(d) This section does not prohibit any person from using his or her own vehicle to transport electors to or from the polls without charge.

(e) This section does not apply to any promise by a candidate to reduce public expenditures or taxes.

**12.13 Election fraud. (1) ELECTORS.** Whoever intentionally does any of the following violates this chapter:

(a) Votes at any election or meeting if that person does not have the necessary elector qualifications and residence requirements.

(b) Falsely procures registration or makes false statements to the municipal clerk, board of election commissioners or any other election official whether or not under oath.

(c) Registers as an elector in more than one place for the same election.

(d) Impersonates a registered elector or poses as another person for the purpose of voting at an election.

(e) Votes more than once in the same election.

(f) Shows his or her marked ballot to any person or places a mark upon the ballot so it is identifiable as his or her ballot.

(g) Procures an official ballot and neglects or refuses to cast or return it. This paragraph does not apply to persons who have applied for and received absentee ballots.

(h) Procures, assists or advises someone to do any of the acts prohibited by this subsection.

**(2) ELECTION OFFICIALS.** (a) The willful neglect or refusal by an election official to perform any of the duties prescribed under chs. 5 to 12 is a violation of this chapter.

(b) No election official may:

1. Observe how an elector has marked a ballot unless the official is requested to assist the elector; intentionally permit anyone not authorized to assist in the marking of a ballot to observe how a person is voting or has voted; or disclose to anyone how an elector voted other than as is necessary in the course of judicial proceedings.

2. Illegally issue, write, change or alter a ballot on election day.

3. Permit registration or receipt of a vote from a person who the official knows is not a legally qualified elector or who has refused after being challenged to make the oath or to properly answer the necessary questions pertaining to the requisite requirements and residence; or put into the ballot box a ballot other than the official's own or other one lawfully received.

4. Intentionally assist or cause to be made a false statement, canvass, certificate or return of the votes cast at any election.

5. Willfully alter or destroy a poll or registration list.

6. Intentionally permit or cause a voting machine, voting device or automatic tabulating equipment to fail to correctly register or record a vote cast thereon or inserted therein, or tamper with or disarrange the machine, device or equipment or any part or appliance thereof; cause or consent to the machine, device or automatic tabulating equipment being used for voting at an election with knowledge that it is out of order or is not perfectly set and adjusted so that it will correctly register or record all votes cast thereon or inserted therein; with the purpose of defrauding or deceiving any elector, cause doubt for what party, candidate or proposition a vote will be cast or cause the vote for one party, candidate or proposition to be cast so it appears to be cast for another; or remove, change or mutilate a ballot on a voting machine, device



or a ballot to be inserted into automatic tabulating equipment, or do any similar act contrary to chs. 5 to 12.

6m. Obtain an absentee ballot for voting in a nursing home or qualified retirement home or qualified community-based residential facility under s. 6.875 (6) and fail to return the ballot to the issuing officer.

7. In the course of the person's official duties or on account of the person's official position, intentionally violate or intentionally cause any other person to violate any provision of chs. 5 to 12 for which no other penalty is expressly prescribed.

8. Intentionally disclose the name or address of any elector who obtains a confidential listing under s. 6.47 (2) to any person who is not authorized by law to obtain that information.

**(3) PROHIBITED ACTS.** No person may:

(a) Falsify any information in respect to or fraudulently deface or destroy a certificate of nomination, nomination paper, declaration of candidacy or petition for an election, including a recall petition or petition for a referendum; or file or receive for filing a certificate of nomination, nomination paper, declaration of candidacy or any such petition, knowing any part is falsely made.

(am) Fail to file an amended declaration of candidacy as provided in s. 8.21 with respect to a change in information filed in an original declaration within 3 days of the time the amended declaration becomes due for filing; or file a false declaration of candidacy or amended declaration of candidacy. This paragraph applies only to candidates for state or local office.

(b) Wrongfully suppress, neglect or fail to file nomination papers in the person's possession at the proper time and in the proper office; suppress a certificate of nomination which is duly filed.

(c) Willfully or negligently fail to deliver, after having undertaken to do so, official ballots prepared for an election to the proper person, or prevent their delivery within the required time, or destroy or conceal the ballots.

(d) Remove or destroy any of the supplies or conveniences placed in compartments or polling booths.

(e) Prepare or cause to be prepared an official ballot with intent to change the result of the election as to any candidate or referendum; prepare an official ballot which is premarked or which has an unauthorized sticker affixed prior to delivery to an elector; or deliver to an elector an official ballot bearing a mark opposite the name of a candidate or referendum question that might be counted as a vote for or against a candidate or question.

(f) Before or during any election, tamper with voting machines, voting devices or automatic tabulating equipment readied for voting or the counting of votes; disarrange, deface, injure or impair any such machine, device or equipment; or mutilate, injure or destroy a ballot placed or displayed on a voting machine or device, or to be placed or displayed on any such machine, device or automatic tabulating equipment or any other appliance used in connection with the machine, device or equipment.

(g) Falsify any statement relating to voter registration under chs. 5 to 12.

(h) Deface, destroy or remove any legally placed election campaign advertising poster with intent to disrupt the campaign advertising efforts of any candidate, or of any committee, group or individual under ch. 11, or alter the information printed thereon so as to change the meaning thereof to the disadvantage of the candidate or cause espoused. Nothing in this paragraph restricts the right of any owner or occupant of any real property, or the owner or operator of any motor vehicle, to remove campaign advertising posters from such property or vehicle.

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- (i) Falsely make any statement for the purpose of obtaining or voting an absentee ballot under ss. 6.85 to 6.87.
- (j) When called upon to assist an elector who cannot read or write, has difficulty in reading, writing or understanding English, or is unable to mark a ballot or depress a lever or button on a voting machine, inform the elector that a ballot contains names or words different than are printed or displayed on the ballot with the intent of inducing the elector to vote contrary to his or her inclination, intentionally fail to cast a vote in accordance with the elector's instructions or reveal the elector's vote to any 3rd person.
- (k) Forge or falsely make the official endorsement on a ballot or knowingly deposit a ballot in the ballot box upon which the names or initials of the ballot clerks, or those of issuing clerks do not appear.
- (L) When not authorized, during or after an election, break open or violate the seals or locks on a ballot box containing ballots of that election or obtain unlawful possession of a ballot box with official ballots; conceal, withhold or destroy ballots or ballot boxes; willfully, fraudulently or forcibly add to or diminish the number of ballots legally deposited in a ballot box; or aid or abet any person in doing any of the acts prohibited by this paragraph.
- (m) Fraudulently change a ballot of an elector so the elector is prevented from voting for whom the elector intended.
- (n) Receive a ballot from or give a ballot to a person other than the election official in charge.
- (o) Vote or offer to vote a ballot except as has been received from one of the inspectors.
- (p) Receive a completed ballot from a voter unless qualified to do so.
- (q) Solicit a person to show how his or her vote is cast.
- (r) Remove a ballot from a polling place before the polls are closed.
- (s) Solicit another elector to offer assistance under s. 6.82 (2) or 6.87 (5), except in the case of an elector who is blind or visually impaired to the extent that the elector cannot read a ballot.
- (t) Obtain an absentee ballot as the agent of another elector under s. 6.86 (3) and fail or refuse to deliver it to such elector.
- (u) Provide false documentation of identity for the purpose of inducing an election official to permit the person or another person to vote.
- (v) Corroborate any information offered by a proposed elector for the purpose of permitting the person to register to vote or to vote, knowing such information to be false.
- (w) Falsify a ballot application under s. 6.18.
- (x) Refuse to obey a lawful order of an inspector made for the purpose of enforcing the election laws; engage in disorderly behavior at or near a polling place; or interrupt or disturb the voting or canvassing proceedings.
- (y) After an election, break the locks or seals or reset the counters on a voting machine except in the course of official duties carried out at the time and in the manner prescribed by law; or disable a voting machine so as to prevent an accurate count of the votes from being obtained; or open the registering or recording compartments of a machine with intent to do any such act.
- (z) Tamper with automatic tabulating equipment or any record of votes cast or computer program which is to be used in connection with such equipment to count or recount votes at any election so as to prevent or attempt to prevent an accurate count of the votes from being obtained.
- (ze) Compensate a person who obtains voter registration forms from other persons at a rate that varies in relation to the number of voter registrations obtained by the person.

(zm) Willfully provide to a municipal clerk false information for the purpose of obtaining a confidential listing under s. 6.47 (2) for that person or another person.

(zn) Disclose to any person information provided under s. 6.47 (8) when not authorized to do so.

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STATUTES ON VOTE FRAUD AND VOTER INTIMIDATION - WYOMING

22-26-102. Registration offenses.

- (a) Registration offenses consist of performing any of the following acts with the intent to deceive a registration official or to subvert the registration requirements of the law or rights of a qualified elector:
- (i) Signing or offering to sign an application to register when not a qualified elector or to register under a false name;
  - (ii) Soliciting, procuring, aiding, abetting, inducing or attempting to solicit, procure, aid, abet or induce a person to register under the name of any other person, or a false name, or to register when not a qualified elector;
  - (iii) Destroying or altering a registration record when not authorized by law;
  - (iv) False swearing after being challenged.

22-26-106. False voting.

- (a) False voting consists of:
- (i) Voting, or offering to vote, with the knowledge of not being a qualified elector entitled to vote at the election;
  - (ii) Voting, or offering to vote, in the name of another person or under a false name;
  - (iii) Knowingly voting, or offering to vote, in a precinct other than that in which qualified to vote;
  - (iv) Voting, or offering to vote, more than once in an election.

22-26-109. Offering bribe.

- (a) Offering bribe consists of willfully advancing, paying, offering to pay or causing to be paid, or promising, directly or indirectly, any money or other valuable thing to a person, for any of the following purposes:
- (i) To induce a person to vote or refrain from voting for or against a candidate or ballot proposition or to sign or not sign a petition;
  - (ii) To induce an election official to mark, alter, suppress or change a ballot that has been cast, an election return, any certificate of election, or petition.

22-26-110. Accepting bribe.

Accepting a bribe consists of knowingly accepting any payment or promise of payment, directly or indirectly, of money or other valuable thing for any of the unlawful purposes specified in W.S. 22-26-109.

22-26-111. Intimidation.

- (a) Intimidation consists of:
- (i) Inducing, or attempting to induce, fear in an election official or elector by use of threats of force, violence, harm or loss, or any form of economic retaliation, for the purpose of impeding or preventing the free exercise of the elective franchise or the impartial administration of the Election Code; or
  - (ii) Soliciting the contribution of funds, other items of value or election assistance to the campaign of any candidate, candidate's committee, political action committee or sponsors of a ballot proposition, by use of threats of physical violence or any form of economic or official retaliation.
- (b) It is not a defense to a prosecution under this section that the defendant did not in fact possess the ability to carry out the threat made.

**Remarks by Paul DeGregorio  
Chairman, US Election Assistance Commission  
Voter Fraud/Intimidation Conference – Salt Lake City, Utah  
Center for Public Policy & Administration  
September 29, 2006**

Good afternoon, ladies and gentlemen. My name is Paul DeGregorio and I am the Chairman of the U.S. Election Assistance Commission. I would like to extend my thanks to Michael Alvarez, Thad Hall and Susan Hyde for organizing this conference and for inviting me to speak with you this afternoon.

My remarks today will focus on Voter Fraud and Voter Intimidation and how HAVA and the EAC address these issues.

The subject of voter fraud and voter intimidation can be a highly contentious issue. Since the 2004 election there has been a lot of discourse and writing about what constitutes election fraud and voter intimidation and how prevalent each may be in our society. While there are no clear numbers on the incidents of voter fraud and voter intimidation, what is clear is that the many groups are concerned about both issues and it is imperative that we continue to study and address them.

As you know, the EAC was created by The Help America Vote Act or "HAVA". HAVA represents the first major piece of federal legislation on national election reforms. Among other provisions, Section 241 of HAVA requires the EAC to conduct research on election administration issues. Among the tasks the EAC is to execute is the development of nationwide statistics and

methods of identifying, deterring, and investigating voting fraud and voter intimidation in elections for Federal office.

In September of 2005 the Commission hired consultants to begin a study of voting fraud and voter intimidation. This research project is charged with the development of a clear definition of what constitutes voting fraud and voter intimidation in Federal elections; identifying current activities of key government agencies, civic advocacy groups, and other organizations regarding these topics; the establishment of a working group of experts to discuss these issues; and production of a report to the EAC summarizing the findings that includes recommendations for future research if any. Our staff is reviewing the report that was submitted to the EAC last month and we expect to share our findings in the near future.

The lack of any solid statistics regarding voter fraud and intimidation can be attributed to two major factors. First is because there is wide disagreement about the definitions for the terms “fraud” and “intimidation.” Some only consider it fraud if it falls under the criminal definitions of fraud. While others consider any form of an ineligible voter attempting to vote as fraud. I have even had it suggested to me that election officials who allow voters to cast ballots on touch screen machines without a voter-verified paper trail is election fraud. If that’s the case, then we have a whole lot of fraud occurring out there.

The term intimidation is also wrought with ambiguity. Some only consider it intimidation if there is a physical or mental advantage of one party over the other, while others consider any difficulty in

the voting process as being intimidation. Because of these definitional differences there has been no clear way to study the amount of fraud or intimidation because everyone is using a different definition to help shape the statistics.

Also skewing the statistics about election fraud and voter intimidation is the political agenda or bias from both sides that accompanies much of the literature about the topic. Oftentimes we see fiery rhetoric on this issue that appears to me to want to “scare” people into voting or not voting. As a result of this political bias and the ambiguity that accompanies the terms “fraud” and “intimidation,” it is difficult to know when something has risen to the level to be considered fraud or simply is an accusation with no backing.

HAVA has several provisions that not only help to combat fraud but also make voting easier. Most notably section 303 of HAVA which requires each state to create “... a single, uniform, official, centralized, interactive, computerized statewide voter registration list...” This database is to be maintained at the state level and is to contain the name and registration information of every legally registered voter in the State.

The Statewide voter registration database is to serve as the single system for storing and managing the official list of registered voters throughout the state. It will be coordinated with other agencies databases within the state in order to insure the residence status of the voter.

The Statewide Voter Database serves a very important and specific function. It helps to prevent opportunities for fraud by allowing state election officials to check their registration information against the databases of other agencies in order to insure the status of the voters. Under HAVA, state election officials are given the right to remove those names that have been checked against state agency death records. Used correctly and efficiently, this would clearly help eliminate the problem of the use of a deceased person's name to vote or allow authorities to go after those who sign a dead person's name in the initiative or candidate petition process.

Also in section 303 of HAVA, State election officials are required to regularly update the registration list, removing only those individuals who are ineligible to vote in that election while updating the status of those eligible to vote. It is in this way that HAVA is helping to eliminate opportunities for fraud by eliminating ineligible voters from registration lists, while easing the process for those voters who are eligible.

One issue that has become particularly contentious is the issue of voter identification to combat voter fraud. As many of you know voter identification laws have lead to suits in Georgia, Indiana, Missouri, Ohio and Arizona with more to follow as states pass more identification laws.

In 2005-2006 the EAC commissioned research on voter identification practices in the 2004 election. To the surprise of no one the study found a lot of disagreement regarding the need for



voter identification laws and the way these laws should be applied.

Those in favor of voter identification laws argue that their goal is to ensure that only those legally entitled to vote do so, and do so only once at each election. They propose stricter voter identification requirements to prevent one form of voter fraud -- that being multiple voting or voting by those who are not eligible.

However, opponents argue that stricter ID laws interfere with legitimate voter's access to the ballot. They fear that some voters may lack convenient access to the required ID documents. Both sides assert that their policy will engender faith in the electoral process among citizens.

At the heart of this entire debate is the balance that needs to be struck between allowing those who are eligible to vote the ability to vote while preventing those who are not eligible to vote from voting.

From my own personal experience in traveling the world to improve the election process, especially in emerging democracies in Eastern Europe, Africa and Asia, I witnessed little, if any, resistance to ID requirements, including photo ID requirements. Indeed, I believe the Carter-Baker Commission has cited this phenomenon in their recommendations on this issue. In the recent Presidential election in Haiti, which is the poorest country in the Western Hemisphere, voters were required to show a photo ID to cast ballots. Statistics provided by IFES showed that over 3 million Haitian citizens, or about 80% of the voting age population,

registered to vote at centers that took their picture and fingerprints, and that produced the ID they used on Election Day. These IDs were paid for by the Organization of American States. On Election Day, 60% of the registered Haitians went to the polls, used their IDs, and cast ballots in the presidential election. By the way the 60% turnout matched the 2004 turnout in the US presidential election.

I cite this example and the Carter-Baker study to suggest that the first step that should be taken in order to find this balance is that more research needs to be conducted on the issue of voter identification. As was noted by the EAC's research, the amount of evidence available on how voter identification laws impacted both voter turnout and voter fraud is limited, at best. As more and more states implement these laws more information needs to be gathered in order to discover if these laws are preventing fraud, and what their impact is on voter turnout.

Courts have also greatly disagreed on the impact of voter identification laws. A recent decision in Georgia granted a preliminary injunction to enjoin the State of Georgia from requiring photo identification to be able to cast a ballot in person. The court in reaching its decision concluded that the injury to a voter who couldn't get the proper identification in time to vote was great and could not be tolerated. The court did point out that a State has a legitimate and important interest in attempting to combat voter fraud and in turn ensure the integrity of its elections.

This case is a perfect example of the struggle that legislatures, election officials, and courts are having with the issue of voter

fraud and voter identification. Most, if not all, recognize voter fraud as something that compromises the integrity of elections, but to what level are we willing to burden the legitimate voter to prevent this fraud from occurring?

Voter intimidation also has little valuable statistical information available. Again this is because “voter intimidation” is difficult to define and has rarely been prosecuted.

Many of the accusations of voter intimidation are brought against poll workers, most of whom are unaware of the possible intimidation taking place. For instance many of the accusations of intimidation by poll workers stem from poll workers making improper demands for identification, or poll workers questioning voters in what is a manner perceived as aggressive or intimidating. The solution to this problem is simple, proper poll worker training. Through proper training poll workers will know when and how ID or other verification documents are to be presented and the proper way to question voters at the polls. Also revisions to challenger laws can bring about more clarity about appropriate challenges and therefore less accusations of voter intimidation.

As more statistics are kept and the form and frequency of voter intimidation is better understood, states will be better prepared to prevent instances of voter intimidation and further improve the integrity of their elections. The EAC will continue work in this area so that we can hopefully see less rhetoric and more voter participation and trust in our elections.

Since I will be leaving the EAC in the not-too-distant future, I would like to take a few minutes to discuss the immense accomplishments of the EAC since I became a commissioner in December of 2003:

First, we distributed the 3 billion dollars that Congress appropriated to the states to improve their voting equipment and processes. This was truly an historic event in the field of American election administration.

Also, the EAC delivered the HAVA-mandated voluntary voting system guidelines (VVSG) within proscribed the 9-month deadline. As we develop future versions of the guidelines, we will be looking into the use of new technology and devices, as well as new software that is being created for current voting systems. Next Monday we will publish in the Federal Register the draft of our new Voting System Certification Program that we expect to finalize in December. I think you will find that this program will be a lot more rigorous and transparent than anything we have ever seen before. I encourage you to review it and give us your comments.

During the past 33 months we have issued guidance to states on statewide databases, accessibility requirements and how to use HAVA funds. And our new Inspector General and his staff are working vigorously to audit and account for the funds we distributed. On a daily basis we answer questions and offer guidance for election officials throughout the USA and indeed from all over the world.

In order to further support local election officials in this crucial election year we have released quick start guides on new voting systems, voting system security and testing, and poll worker recruitment and training. These guides provide a snapshot of processes and procedures for local election administrators to use when implementing new voting systems and security and testing older ones. It includes tips on receiving and testing equipment, poll worker training, security issues, and Election Day operations. In 2007, as part of our Clearinghouse responsibilities, we plan to distribute more comprehensive and detailed guides on these same important subjects.

In addition to the research projects that we have begun regarding election fraud and intimidation, we have several other research and data collection projects underway that will provide election officials and the public with valuable data to be used to improve the integrity of our elections. Already underway are studies on a number of topics including effective designs for ballots, polling places and websites; best practices for poll worker training, recruitment and retention, a study on vote count and recount procedures and the 2006 Election Day survey.

The HAVA College Poll Worker Program has awarded a total of almost \$1 Million in grants to help recruit a new generation of poll workers. Research is underway to find the best methods to recruit train and retain college poll workers.

We are also working hard to make sure the public is kept up to date on the future of elections and how it will affect the voting process. During tenure as Chairman we have held six public

meetings throughout the country. The topics that we have covered in these meetings include: How voting systems are certified, The National Voter Registration Act, Vote Count and Recount Procedures, Poll Workers, Effective management guidelines for voting systems, effective ballot and polling place designs, better ways to serve military and other overseas voters, voter information websites, and the EAC voting system certification program. As you can see, with a staff of just 23 people--and that number includes the Commissioners--we have accomplished a great deal in our short period of existence.

Twenty one years ago, I was probably the only one in this room who was heavily engaged as a professional election administrator. I have seen a lot of change since that time and no more so than in the past 5 years. Since the passage of HAVA, the nation has experienced significant changes in the electoral process. New voting systems have been purchased, replacing the antiquated systems that had been in place for decades. New statewide databases are in place. No one should be turned away at the polls anymore as provisional voting is the law of the land. Disabled voters, elderly voters and voter with language barriers have new tools that make it easier for them to cast their ballot.

Is America better off for all this change? You bet we are. Is the system perfect and free from errors, flaws, fraud and intimidation? Certainly not.

On November 7<sup>th</sup>, can voters have full trust and confidence in the election results that come out of all of these new devices, laws and procedures? In my view, they certainly can.

It's been an honor for me to have served at this historic time on this small but remarkable federal agency that touches the lives of every American. During my time on the commission, I have come to know many of you and of your deep conviction to help American improve and strengthen our system of democracy. And I want to thank you for your work and for the strong support you have given me and the commission since our start a mere 3 years ago.

You may know that during the 10 years preceding my appointment to the EAC, I worked as hard as I could to improve the election process in many emerging democracies throughout the globe. Whether it was in Congo or Cambodia, Russia or Romania, Slovakia or Sierra Leone, those 10 years were truly a wonderful opportunity that allowed me to touch the hearts and minds of many peoples, and experience firsthand the many similarities and few differences we actually have among each other in this world. I will be forever grateful to President George W. Bush for giving me the opportunity to do and experience the exact same thing in the United States of America while on the EAC. Thank you.



## **CALTECH/MIT VOTING TECHNOLOGY PROJECT**

**A multi-disciplinary, collaborative project of  
the California Institute of Technology – Pasadena, California 91125 and  
the Massachusetts Institute of Technology – Cambridge, Massachusetts  
02139**

### **ELECTION FRAUD REFERENCES**

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# ELECTION CRIMES BRANCH

## LIST OF DISTRICT ELECTION OFFICERS (DEOs) - 2006

<u>DISTRICT</u>	<u>DISTRICT ELECTION OFFICER</u>	<u>PHONE NUMBER</u>	<u>E-MAIL</u>
Alabama -Middle	Kent B. Brunson	334-223-7280	Kent.Brunson@usdoj.gov
Alabama-Northern	John P. "Pat" Meadows	205-244-2214	Pat.Meadows@usdoj.gov
Alabama-Southern	Vicki Davis	251-441-5845	Vicki.Davis@usdoj.gov
Alaska	Deborah M. Smith	907-271-5071	Deb.Smith@usdoj.gov
Arizona	Gary Restaino	602-514-7756	Gary.Restaino@usdoj.gov
Arkansas-Eastern	John Ray White	501-340-2621	John.White2@usdoj.gov
Arkansas-Western	Christopher Plumlee	479-783-5125	Christopher.D.Plumlee@usdoj.gov
California-Central	Dennis Mitchell	213-894-2484	Dennis.Mitchell@usdoj.gov
California-Eastern (Sacramento)	Debora Luther	916-554-2700/2720	Debora.Luther@usdoj.gov
California-Eastern (Fresno)	Stanley Boone	559-498-7442 D	Stanley.Boone@usdoj.gov
California-Northern	Michael Wang	415-436-6767	Michael.Wang@usdoj.gov
California-Southern	Christopher P. Tenorio	619-557-7843	Christopher.Tenorio@usdoj.gov
Colorado	Tom O'Rourke	303-454-0209	Thomas.O'Rourke@usdoj.gov
District of Columbia	Steve Bunnell	202-514-6988	Steve.Bunnell@usdoj.gov
Connecticut	Cal Kurimai	203-821-3700	Cal.Kurimai@usdoj.gov
Delaware	Leonard P. Stark	302-573-6277 x 106	Leonard.Stark@usdoj.gov
Florida-Middle	Robert Mosakowski	813-274-6129 813-274-6177	Robert.Mosakowski@usdoj.gov
Florida-Northern	Gregory Miller, USA	850-942-8430	Gregory.Miller@usdoj.gov
Florida-Southern	Karen Rochlin	305-961-9234	Karen.Rochlin@usdoj.gov
Georgia-Middle	Harry J. Fox	478-752-3511	Harry.Fox@usdoj.gov
Georgia-Northern	William Toliver	404-581-6069	William.Toliver@usdoj.gov
Georgia-Southern	Jay Weimer	706-724-0517	Jay.Weimer@usdoj.gov
Guam (Saipan)	Marivic P. David	671-472-7332 x 120	Marivic.David@usdoj.gov
Saipan	John Rice	670-236-2980	John.Rice@usdoj.gov
Hawaii	Ron Johnson	808-541-2850	Ron.Johnson@usdoj.gov
Idaho (Boise)	George Breitsameter	208-334-1211	George.Breitsameter@usdoj.gov
Idaho (Pocatello)	Jack Haycock	208-478-4166	Jack.Haycock@usdoj.gov
Idaho (Coeur d' Alene)	Nancy Cook	208-667-6568 208-676-7346 D	Nancy.Cook@usdoj.gov

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<u>DISTRICT</u>	<u>DISTRICT ELECTION OFFICER</u>	<u>PHONE NUMBER</u>	<u>E-MAIL</u>
Illinois-Central (Springfield)	Gregory Gilmore	217-492-4419/4450	Greg.Gilmore@usdoj.gov
Illinois-Central (Urbana)	David Hoff	217-373-5875	David.Hoff@usdoj.gov
Illinois-Central (Peoria & Rock Island)	Darilynn Knauss	309-671-7050 309-671-7357 D	Darilynn.Knauss@usdoj.gov
Illinois-Northern	Steve Heinze	312-886-1265	Stephen.Heinze@usdoj.gov
Illinois-Southern	Hal Goldsmith	618-628-3708/3700	Hal.Goldsmith@usdoj.gov
Indiana-Northern	Bernie Van Wormer	219-937-5500	Bernie.Van.Wormer@usdoj.gov
Indiana-Southern	Tim Morrison	317-226-6333	Tim.Morrison@usdoj.gov
Iowa-Northern (Cedar Rapids)	Daniel Tvedt	319-363-6333 D	Dan.Tvedt@usdoj.gov
Iowa-Northern (Sioux City)	Janet Petersen	712-255-6011	Janet.Petersen@usdoj.gov
Iowa-Southern	Robert Dopf	515-284-6280	Robert.Dopf@usdoj.gov
Kansas	Leon Patton	913-551-6730	Leon.Patton@usdoj.gov
Kentucky-Eastern	James A. Zerhusen	859-233-2661	Jim.Zerhusen@usdoj.gov
Kentucky-Western	Tom Dyke	502-582-5911	Tom.Dyke@usdoj.gov
Louisiana-Eastern	Irene Gonzalez	504-680-3077	Irene.Gonzalez@usdoj.gov
Louisiana-Middle	Richard Bourgeois	225-389-0443	Richard.Bourgeois@usdoj.gov
Louisiana-Western	William Flanagan	318-676-3624	William.Flanagan@usdoj.gov
Maine (Bangor)	Jim McCarthy	207-945-0373	James.McCarthy@usdoj.gov
Maine (Portland)	Rick Murphy	207-780-3257	Rick.Murphy@usdoj.gov
Maryland	Steven Dunne	301-344-4433	Steven.Dunne@usdoj.gov
Massachusetts	Brian Kelly	617-748-3197	Brian.Kelly@usdoj.gov
Michigan-Eastern	Pamela Thompson	313-226-9770	Pamela.Thompson@usdoj.gov
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Minnesota	Tricia Tingle	612-664-5600	Tricia.Tingle@usdoj.gov
Mississippi-Northern	John R. Hailman	662-238-7633	John.Hailman@usdoj.gov
Mississippi-Southern	Don Burkhalter	601-965-4480	Don.Burkhalter@usdoj.gov
Missouri-Eastern	John Bodenhausen	314-539-7613	John.Bodenhausen@usdoj.gov
Missouri-Western	Dan Stewart	816-426-4160	Dan.Stewart@usdoj.gov
Montana	Joshua S. VandeWetering	406-542-8851	Josh.Vandewetering@usdoj.gov
Nebraska (Lincoln)	Paul Boeshart	402-437-5241/5136	Paul.Boeshart@usdoj.gov
Nevada	Camille Damm	702-388-6223	Camille.Damm@usdoj.gov

New Hampshire	Peter Papps	603-225-1552	Peter.Papps@usdoj.gov
New Jersey	Susan Steele	973-645-2990/2700	Susan.Steele@usdoj.gov
New Mexico	Rumaldo Armijo	505-346-7274	Rumaldo.Armijo@usdoj.gov
New Mexico	Jonathon Gerson	505-346-7274	Jonathon.Gerson@usdoj.gov
<b><u>DISTRICT</u></b>	<b><u>DISTRICT ELECTION OFFICER</u></b>	<b><u>PHONE NUMBER</u></b>	<b><u>E-MAIL</u></b>
New York-Eastern	Pamela Chen	718-254-7575/7000	Pamela.Chen@usdoj.gov
New York-Northern	Robert P. Storch	518-431-0247	Robert.Storch@usdoj.gov
New York-Southern	Andrew Dember	212-637-2563	Andy.Dember@usdoj.gov
New York-Southern	Andrew Schilling	212-637-2721	Andrew.Schilling@usdoj.gov
New York-Western	Trini Ross	716-843-5700 x-805	Trini.E.Ross@usdoj.gov
North Carolina-Eastern	Bobby Higdon	919-856-4103	Bobby.Higdon@usdoj.gov
North Carolina-Middle	Benjamin H. White, Jr.	336-333-5351	Ben.White@usdoj.gov
North Carolina-Western (Asheville)	Richard Edwards	828-259-0651 D 828-271-4661	Richard.Edwards2@usdoj.gov
North Carolina-Western (Charlotte)	Mike Savage	704-344-6222 704-338-3166 D	Mike.Savage2@usdoj.gov
North Dakota	Rick Volk	701-530-2420	Rick.Volk@usdoj.gov
Ohio-Northern (Cleveland)	Ann C. Rowland	216-622-3847	Ann.Rowland@usdoj.gov
Ohio-Northern (Toledo)	David O. Bauer	419-241-0728 D	David.Bauer@usdoj.gov
Ohio-Southern (Columbus)	Gary Spartis	614-255-1610	Gary.Spartis@usdoj.gov
Ohio-Southern (Dayton)	J. Richard Chema	937-225-2910	Richard.Chema@usdoj.gov
Ohio-Southern (Cincinnati)	Ralph W. Kohnen	513-684-3711	Ralph.Kohnen@usdoj.gov
Oklahoma-Eastern	Dean Burris	918-684-5164	Dean.Burris@usdoj.gov
Oklahoma-Northern	Charles M. McLoughlin	918-581-6952	Charles.McLoughlin@usdoj.gov
Oklahoma-Western	David Walling	405-553-8848	Dave.Walling@usdoj.gov
Oregon	Dwight Holton	503-727-1128	Dwight.Holton@usdoj.gov
Pennsylvania-Eastern	Michael A. Schwartz	215-861-8923	Michael.Schwartz@usdoj.gov
Pennsylvania-Middle (Scranton)	Barbara Whitaker	570-348-2800	Barbara.Whitaker@usdoj.gov
Pennsylvania-Middle (Harrisburg)	Kim Daniel	717-221-4482	Kim.Daniel@usdoj.gov
Pennsylvania-Western	A. Elliott McLean	412-894-7401	A.Elliott.Mclean@usdoj.gov
Puerto Rico	Ernesto Lopez	787-766-5656	Ernesto.Lopez2@usdoj.gov
Rhode Island	Terrence Donnelly	401-709-5045	Terrence.Donnelly@usdoj.gov
South Carolina	Marshall Prince	803-929-3039	Marshall.Prince@usdoj.gov
South Dakota	Robert Mandel	605-342-7822 Ext:130	Robert.Mandel@usdoj.gov

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Tennessee-Eastern	Charles E. Atchley, Jr.	865-545-4167 Ext:328	Charles.Atchley@usdoj.gov
Tennessee-Middle	Steve Jordan	615-736-2083 D	Steve.Jordan@usdoj.gov
<b>Tennessee-Western</b>	<b>David Kustoff, USA,</b>		<b>WDTN</b>
Texas-Eastern	Michelle Englade	409-981-7928 D	Michelle.Englade@usdoj.gov
Texas-Northern (Dallas)	Mike Gill	214-659-8600	Mike.Gill@usdoj.gov
<b><u>DISTRICT</u></b>	<b><u>DISTRICT ELECTION OFFICER</u></b>	<b><u>PHONE NUMBER</u></b>	<b><u>E-MAIL</u></b>
Texas-Southern	Ruben Perez	713-567-9344	Ruben.Perez2@usdoj.gov
Texas-Western	Ray Jahn	210-384-7122	Ray.Jahn@usdoj.gov
Utah	Elizabethanne Stevens	801-524-5682	Elizabethanne.Stevens@usdoj.gov
Vermont	John Conroy	802-951-6725	John.Conroy@usdoj.gov
Virgin Islands	Alphonso Andrews	340-773-3920	Alphonso.Andrews@usdoj.gov
Virginia-Eastern (Alexandria)	James P. Gillis	703-299-3700	James.P.Gillis@usdoj.gov
Virginia-Eastern (Richmond)	Debra Prillaman	804-819-5482 D	Debra.Prillaman@usdoj.gov
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Virginia-Western	Sharon Burnham	540-857-2250	Sharon.Burnham@usdoj.gov
Washington-Eastern (Spokane)	Rolf H. Tangvald	509-353-2767	Rolf.Tangvald@usdoj.gov
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Washington-Western	Arlen Storm	253-428-3807 D	Arlen.Storm@usdoj.gov
West Virginia-Northern	Shawn Morgan	304-623-7030	Shawn.Morgan@usdoj.gov
West Virginia-Southern	Larry Ellis	304-345-2200	Larry.Ellis@usdoj.gov
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Detecting Attempted Election Theft: Vote Counts, Voting  
Machines and Benford's Law \*

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April 19, 2006

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Fraudulent elections and disputes about election outcomes are nothing new. Gumbel (2005) reviews the sorry history of deceit and electoral manipulation in America, going back to the dawn of the republic. Throughout the world, in old and new democracies alike, allegations of vote fraud frequently occur (Lehoucq 2003). One new element is voting technologies that make some familiar methods for physically verifying the accuracy of vote totals impossible to use. The advent of electronic voting machines means that often now there are no paper ballots to be recounted. To steal an election it is no longer necessary to toss boxes of ballots in the river, stuff the boxes with thousands of phony ballots, or hire vagrants to cast repeated illicit votes. All that may be needed nowadays is access to an input port and a few lines of computer code. To detect such manipulations is a difficult and urgent problem. In terms of legitimacy it is not clear whether the worse problem is that erroneous election outcomes may occur or that many may not believe that correct outcomes are valid.

This paper introduces statistical methods intended to help detect election fraud. Other methods, using regression-based techniques for outlier detection, have previously been proposed to help detect election anomalies (e.g. Wand, Shotts, Sekhon, Mebane, Herron, and Brady 2001; Mebane, Sekhon, and Wand 2001). The methods described here are distinctive in that they do not require that we have covariates to which we may reasonably assume the votes are related across political jurisdictions. For one set of methods I describe—methods based on tests of the distribution of the digits in reported vote counts—all that is needed are the vote counts themselves. I study the application of those methods to both precinct-level and voting machine-level vote tabulations. Part of the potential practical relevance of these methods is that situations in which little more than the vote counts are available may arise frequently in connection with actual election controversies.

The other set of methods I describe, which are based on testing whether votes are randomly assigned to the voting machines used for a voting precinct, require candidate vote totals disaggregated to the level of individual voting machines. More than that, these methods also require that a fair amount is known about how the voting machines were used. For instance, for voting machines used during early voting periods,<sup>1</sup> we need to know on which days particular

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<sup>1</sup>See Gronke, Bishin, Stevens, and Galanes-Rosenbaum (2005) for a discussion of early voting in Florida during the 2004 election.

machines were used, and at which early voting site. In fact it may be useful to know the exact time at which each vote was cast and on which machine. Such details are routinely available when some kinds of electronic voting machines are used, except that it may not be possible to tell when a particular vote was cast: transaction event logs maintained for each machine indicate when a vote was cast, but to help protect the secret ballot it is not possible to match an individual vote record (an individual ballot image) with a particular transaction.

Both methods depend in different ways on ideas about voter behavior. The methods that check whether votes are randomly assigned to machines assume that voters' choices between candidates do not depend on the particular voting machine they use. If a set of machines are all used in the same precinct during the same period of time, and yet the distribution of vote choices varies significantly across machines, then the idea is to attribute the variation to some kind of manipulation. Perhaps voters with different preferences were somehow directed to use different machines. Or perhaps some of the machines were hacked.

The methods that check the distribution of the digits in reported vote counts depend on ideas about voter choice behavior that differ substantially from the models usually used in research on political behavior. The digit-test methods are based on the expectation that the second digits of vote counts should satisfy Benford's Law (Hill 1995). Benford's Law specifies that the ten possible second digits should not occur with equal frequency. A fundamental question is why we should expect Benford's Law to apply to vote count data. Even though some have proposed to use the second-digit Benford's Law distribution to test for fraudulent votes (e.g., Pericchi and Torres 2004), prominent election monitors have strongly disputed such proposals (Carter Center 2005). I suggest that a behavioral focus on the individualized uncertainty in each person's vote choice may be inappropriate when thinking about vote counts for the purpose of trying to decide whether the counts are fraudulent. Indeed, leaving aside questions of vote fraud, to the extent that the familiar kinds of behavioral models cannot in general produce vote counts with second digits that follow the Benford's Law distribution—and, in general, they cannot—the fact that vote counts do often satisfy Benford's Law is strong evidence that the familiar behavioral models do not describe the votes people actually cast.

Even if Benford's Law typically describes vote count data, it does not follow that deviations from Benford's Law indicate election fraud. I present the results of some simulation exercises that



begin exploring what if any kinds of vote fraud a test based on the second-digit Benford's Law distribution can detect. In the limited range of simulations I have conducted so far, I find that the Benford's Law test is sensitive to some kinds of manipulation of vote counts but not to others. The test seems sensitive enough to warrant further exploration of its properties. I think it has an excellent chance of developing into a standard tool for forensically auditing elections.

I apply both the vote randomization test and the Benford's Law test to data from three Florida counties in the 2004 general election. The available data include ballot image and voting machine event log files for electronic early voting and electronic polling place votes in Broward, Miami-Dade and Pasco counties, including labels identifying the precinct and voting machine for each ballot.<sup>2</sup>

## A Randomization Test for Voting Machines

The first test addresses whether the distribution of the votes is the same on all of each precinct's voting machines. The idea is to assess whether the votes cast in each precinct were randomly and independently assigned to each machine used in the precinct. A manipulation of the vote that affected some machines but not others would probably cause the distribution of the votes among candidates to differ on the affected machines. Testing that the split of the votes is the same on all the machines used in a precinct is one way to check for such selective manipulation. Voter preferences vary substantially from precinct to precinct, but if a collection of machines is used to count the votes in a precinct, with all of the machines being used throughout the same period of time, and if each voter has the same probability of being assigned to each machine, then the split of the votes should be roughly the same on all of the precinct's machines.

To define the test, let  $\pi_{ijk}$  denote the probability that voter  $i$  in precinct  $j$  is assigned to vote using machine  $k$ , and let  $\rho_{ijkl}$  denote the probability that voter  $i$  in precinct  $j$  using machine  $k$  chooses candidate  $l$ . The number of voters in precinct  $j$  is  $n_j$ , the number of machines is  $m_j$ , and

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<sup>2</sup>The ballot image and event log file data were supplied by David Dill. Additional data regarding characteristics of the machines used in Miami-Dade were supplied by Martha Mahoney. For more information about data sources see the Data Note.

$\sum_{k=1}^{m_j} \pi_{ijk} = 1$ . The number of votes expected for candidate  $l$  in precinct  $j$  on machine  $k$  is

$$V_{jkl} = \sum_{i=1}^{n_j} \pi_{ijk} \rho_{ijkl},$$

and the expected vote share for candidate  $l$  in precinct  $j$  on machine  $k$  is

$$R_{jkl} = \left( \sum_{i=1}^{n_j} \pi_{ijk} \right)^{-1} V_{jkl}.$$

If the probability of being assigned to a machine is the same for each voter in precinct  $j$ , then  $\pi_{ijk} = \pi_{jk}$ . If neither the choice the voter makes nor the choice that is recorded depends on either the machine or on how other voters are assigned to machines, then  $\rho_{ijkl} = \rho_{ijl}$ . If both of these conditions hold, the number of votes expected for candidate  $l$  in precinct  $j$  on machine  $k$  is

$$\tilde{V}_{jkl} = \pi_{jk} \sum_{i=1}^{n_j} \rho_{ijl},$$

and the expected machine vote share is

$$\tilde{R}_{jkl} = \frac{\tilde{V}_{jkl}}{n_j \pi_{jk}} = n_j^{-1} \sum_{i=1}^{n_j} \rho_{ijl}.$$

In this case the vote share expected for candidate  $l$  is the same for all the machines in precinct  $j$ .

**Remark 1** For candidate  $l$  in precinct  $j$ , for all voters  $i = 1, \dots, n_j$  and all machines  $k = 1, \dots, m_j$ , suppose that (a) the probability of being assigned to a machine is the same for each voter ( $\pi_{ijk} = \pi_{jk}$ ) and (b) the vote choice does not depend on the machine or on how other voters are assigned to machines ( $\rho_{ijkl} = \rho_{ijl}$ ). Then the same vote share is expected for candidate  $l$  on every machine used to count votes in the precinct, i.e.,

$$\text{for all } k, k' = 1, \dots, m_j, \quad \tilde{R}_{jkl} = \tilde{R}_{jk'l} = n_j^{-1} \sum_{i=1}^{n_j} \rho_{ijl}. \quad (1)$$

If condition (1) holds, then the proportion of votes cast for candidate  $l$  on one machine in a precinct should not be systematically different from the proportion of votes cast for  $l$  on the other machines in the precinct. The proportion for  $l$  on the other machines should tend to be a good

predictor for the proportion observed on machine  $k$ . When computing these predictor proportions I add small constants to both the numerator and denominator counts in cases where candidate  $l$  receives no votes on some set of  $m_j - 1$  machines in a precinct, and I add small constants to the denominator counts in cases where candidate  $l$  receives all the votes on some set of  $m_j - 1$  machines. These adjustments avoid making excessively sharp predictions. Formally, let  $n_{jk}$  denote the number of votes observed in precinct  $j$  on each machine  $k$ , with  $n_{jkl}$  denoting the number of votes on that machine for candidate  $l$ . Let  $\delta_{kk'} = 1$  if  $k = k'$ , otherwise  $\delta_{kk'} = 0$ . Assuming  $m_j > 1$ , , define adjustment indicators  $z_{jl}$  and  $a_{jl}$ :

$$z_{jl} = \begin{cases} 1, & \text{if, for any } k = 1 \dots m_j, \sum_{k'=1}^{m_j} (1 - \delta_{kk'}) n_{jk'l} = 0 \\ 0, & \text{otherwise,} \end{cases}$$

$$a_{jl} = \begin{cases} 1, & \text{if, for any } k = 1 \dots m_j, \sum_{k'=1}^{m_j} (1 - \delta_{kk'}) n_{jk'l} = \sum_{k'=1}^{m_j} (1 - \delta_{kk'}) n_{jk'} \\ 0, & \text{otherwise.} \end{cases}$$

Assuming  $m_j > 1$ , the proportion of votes for  $l$  predicted for machine  $k$ , using the votes for  $l$  on the machines other than  $k$  in precinct  $j$ , is

$$\check{p}_{jkl} = \frac{\sum_{k'=1}^{m_j} (1 - \delta_{kk'}) (n_{jk'l} + z_{jl}/2)}{\sum_{k'=1}^{m_j} (1 - \delta_{kk'}) (n_{jk'} + z_{jl}/2 + a_{jl}/2)}, \quad (2)$$

The adjustment indicators cause the constant  $1/2$  to be added to all the counts for machines in a precinct if any machine in the precinct would otherwise be facing a predicted proportion of zero or one based on the votes recorded on the other machines in the precinct.

I use the Pearson chi-squared statistic to implement a randomization test of whether (1) holds for each precinct. For precinct  $j$  the test statistic is

$$X_{jl}^2 = \sum_{k=1}^{m_j} \frac{(n_{jkl} - n_{jk}\check{p}_{jkl})^2}{n_{jk}\check{p}_{jkl}}.$$

Remark 1's assumptions (a) and (b) imply that every distribution of the observed votes among each precinct's  $m_j$  machines is equally likely, subject to the constraint that the number of votes on each machine remains constant throughout the permutations of the votes. Hence we may test

for (1) by checking whether the value of  $X_{jl}^2$  obtained using the observed data is large compared to the values obtained over all possible permutations of the observed votes. We fix the machine totals  $n_{jk}$  and the total number of votes for candidate  $l$  across all of the machines but shuffle the votes among the machines to obtain new sets of counts, say  $n_{jkl}^*$ . The constraint that the total number of votes for candidate  $l$  across all of the machines is fixed means that

$\sum_{k=1}^{m_j} n_{jkl}^* = \sum_{k=1}^{m_j} n_{jkl}$ . For each set of shuffled votes we compute the chi-squared statistic,

$$X_{jl}^{2*} = \sum_{k=1}^{m_j} \frac{(n_{jkl}^* - n_{jk}\tilde{p}_{jkl}^*)^2}{n_{jk}\tilde{p}_{jkl}^*},$$

where  $\tilde{p}_{jkl}^*$  denotes the predicted proportion (2) computed using the shuffled data. Because the number of permutations of the votes is large even for moderate numbers of votes and machines, I use a Monte Carlo approach that involves randomly sampling permutations in order to approximate the probabilities of observing values of  $X_{jl}^{2*}$  as large as  $X_{jl}^2$  or larger given the hypothesis that Remark 1's assumptions (a) and (b) hold. That is, assuming that (a) and (b) of Remark 1 hold, I estimate

$$g_{jl} = \text{Prob} \left( X_{jl}^{2*} \geq X_{jl}^2 \mid m_j, \{n_{jk} : k = 1, \dots, m_j\}, \sum_{k=1}^{m_j} n_{jkl} \right).$$

Let  $\hat{g}_{jl}$  denote the Monte Carlo estimate of  $g_{jl}$ .

To combine the test results from the many precincts there are to assess from each county, I use the false discovery rate (FDR) (Benjamini and Hochberg 1995; Benjamini and Yekutieli 2005). The randomization method treats each precinct independently, so it is appropriate to use the form of the FDR that assumes independence. Benjamini and Hochberg (1995) define this FDR as follows. For candidate  $l$ , sort the values  $\hat{g}_{jl}$  from all  $J$  precincts from smallest to largest. Let  $\hat{g}_{(j)l}$  denote these ordered values, with  $\hat{g}_{(1)l}$  being the smallest. For a chosen test level  $\alpha$  (e.g.,  $\alpha = .05$ ), let  $d$  be the smallest value such that  $\hat{g}_{(d+1)l} > (d+1)\alpha/J$ . This number  $d$  is the number of tests *rejected* by the FDR criterion. If Remark 1's assumptions (a) and (b) hold for all machines in all precincts, then we should find  $d = 0$ .

A limitation of this method is that in precincts where all or all but one of the machines have very small counts  $n_{jkl}$  or  $n_{jk} - n_{jkl}$ , the number of distinct possible values of  $X_{jl}^2$  may be too

small for the test based on the smallest observed tail probability to have any power. For instance, if  $\alpha = .05$  and  $J = 757$  (roughly the number of precincts in Miami-Dade County), then  $\alpha/J \approx .000066$ . A tail probability that small cannot occur in a precinct having three machines with  $n_{jk}$  values (1, 3, 1) and  $n_{jkl}$  values (1, 0, 0), as occurs in the ballot image data with the votes for president in one Miami-Dade election-day precinct. To mitigate this problem, I include in the analysis only precincts for which there are at least two machines  $k$  for which for candidate  $l$  we have both  $\sum_{k'=1}^{m_j} (1 - \delta_{kk'}) n_{jk'l} > 1$  and  $\sum_{k'=1}^{m_j} (1 - \delta_{kk'}) (n_{jk'l} - n_{jk'l}) > 1$ .<sup>3</sup>

## Data

I apply the randomization test to voting data from the 2004 general election in three Florida counties: Broward, Miami-Dade and Pasco (see the Data Note for details on sources and contents of the data). Table 1 shows the number of precincts in each county. On election day, some machines were used to record votes from more than one precinct. This occurred in cases where more than one precinct shared a polling place. Most voting occurred on election day, November 2, 2004, but the data also include votes cast during the 15-day early voting period (October 18 through November 1, 2004). Table 1 also shows the number of early voting sites used in each county (earlyvoting.org 2004; Miami-Dade County 2004; Browning 2004). In Broward and Pasco counties, voters from all precincts could vote at any early voting site. In Miami-Dade county, voters from each precinct could vote only at selected early voting locations. At early voting sites each voting machine was used for voters from multiple precincts. The voting data for the early voting period do not directly indicate the voter's precinct but instead indicate which of several ballot styles the voter used. Table 1 shows the number of styles used during early voting for each county.

\*\*\* Table 1 about here \*\*\*

The randomization test is meaningful for precinct  $j$  only if at least in principle every voter is equally likely to use each of the machines. The realities of voting in the Florida counties present some challenges to this requirement.

The most obvious challenges concern early voting. For much the same reason that we separate

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<sup>3</sup>Probably it would be better to include only precincts where there are at least  $1/\alpha$  possible permutations of the votes for candidate  $l$ , subject to holding constant the machine totals  $(n_{j1}, \dots, n_{jm_j})$ .

the election day votes cast in different precincts from one another, we would also like to avoid grouping together votes cast at different early voting sites. Voters using different sites probably live in different places and are likely to have significantly different preferences. Moreover, in Miami-Dade, not every ballot style was available on every voting machine at each early voting site, so not every voter could use every machine. Unfortunately, neither the ballot nor the event log files contained any indication of the physical location where each voting machine was used. I used Personal Electronic Ballot (PEB)<sup>4</sup> codes recorded in the event log files to group machines together, the idea being that machines for which the same PEB was used must have been located at the same early voting site.<sup>5</sup>

Another concern with early voting is that not every voting machine was used every day during the early voting period. I used the event log files to identify the dates during the early voting period when each voting machine was used. I grouped machines together only if they were used on all the same days. The “site-days” entries in Table 1 show the number of unique combinations of the PEB-based location groupings with these date groupings in Broward and Pasco counties, and the “style-site-days” entry shows the number of unique combinations of the PEB-based location and ballot style groupings with the date groupings in Miami-Dade County. These serve as the “precincts”  $j$  for the early voting randomization tests. The “site-day-machines” and “s-s-d-machines” entries show the number of unique combinations of the site-days or style-site-days groupings with voting machines. These are the “machines”  $k$  for the early voting randomization tests.

Much as machines being used on different days is a concern during the early voting period, there is also a potential problem due to machines being used at different times during each day. Figure 1 illustrates several patterns of potential concern. The plots in the figure show the times at which votes were cast on each voting machine on election day in four Miami-Dade precincts. Each row of letters in each plot indicates the time at which a “vote cast” transaction occurs for a voting machine in the event log files, with a letter being plotted at each point when a vote was recorded. There is one row of letters for each voting machine used in each precinct. Times are shown using

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<sup>4</sup>For a description of how PEBs are used in Election Systems & Software “iVotronic” voting machines, see (Electronic Frontier Foundation 2004).

<sup>5</sup>For Miami-Dade County it was possible to supplement the PEB information with copies of files that showed the location of all but 88 of the machines used during early voting. See the Data Note for details.

a 24-hour clock and resolved to the second. In precinct 109, most of the machines were used throughout the day, but the machine labeled “e” was not used after 10am. A reasonable guess is that the machine was pulled from service at that time. In precinct 233, the machine labeled “c” was not used after 8am, and the machine labeled “f” was not used before 2pm. In precinct 322, the machine labeled “b” was used only between 11:30am and 2:30pm. In precinct 326, the machines labeled “g” and “m” were used only after 1pm. If some machines were not available for use during substantial parts of the day, then Remark 1’s assumption (a) is not satisfied.

Questions about this assumption also arise for other machines that exhibit irregular usage. For instance, in precinct 109 the machine labeled “k” was used much less often in the afternoon than in the morning, and in precinct 326 the machine labeled “p” was used heavily only after 6pm.

\*\*\* Figure 1 about here \*\*\*

Instead of trying to exclude machines for which usage during the day seems not to match the pattern of the other machines in a precinct, I construct a measure of how similar the patterns of time usage are for a precinct’s machines and examine whether the measure is related to the tail probability estimates  $\hat{g}_{jl}$ . Let  $t_{jki}$  denote the time (in seconds) at which vote  $i$  was cast on machine  $k$  in precinct  $j$ . For each machine  $k$  in precinct  $j$ , I compute

$$\tau_{jk} = \frac{1 + (n_j - n_{jk})^{-2} \sum_{k'=1}^{m_j} (1 - \delta_{kk'}) \sum_{i=1}^{n_{jk}} \sum_{i'=1}^{n_{jk'}} (1 - \delta_{kk'}) |t_{jki} - t_{jk'i'}|}{1 + (n_{jk})^{-2} \sum_{i=1}^{n_{jk}} \sum_{h=1}^{n_{jk}} |t_{jki} - t_{jkh}|}$$

The denominator measures the mean absolute difference among the times at which votes were cast on machine  $k$ , and the numerator measures the mean absolute difference between the times at which votes were cast on machine  $k$  and the times at which votes were cast on every other machine  $k'$  in precinct  $j$ . The ratio  $\tau_{jk}$  achieves the lower bound of 1.0 if the mean absolute difference among the voting times on machine  $k$  is the same as the mean absolute difference between the voting times on  $k$  and the voting times on the other machines. The ratio increases as the voting times on machine  $k$  tend to differ on average more from the times on the other machines than they differ from one another. To compute a summary measure for each precinct  $j$ , I compute the geometric mean of the ratios  $\tau_{jk}$ , namely,

$$\tau_j = \left( \prod_{k=1}^{m_j} \tau_{jk} \right)^{1/m_j}$$

For the four precincts shown in Figure 1,  $\tau_j$  has the values  $\tau_{109} = 1.06$ ,  $\tau_{233} = 1.09$ ,  $\tau_{322} = 1.02$  and  $\tau_{326} = 1.05$ . The largest values for a machine in each of those precincts is  $\max_k(\tau_{109k}) = 4.2$ ,  $\max_k(\tau_{233k}) = 33.8$ ,  $\max_k(\tau_{322k}) = 3.5$  and  $\max_k(\tau_{326k}) = 1.8$ .

We might expect  $\hat{g}_{jl}$  to decrease as the dissimilarity between machines—measured by either  $\tau_j$  or  $\max_k(\tau_{jk})$ —increases. A weakness of this approach is that because it not possible to tell which ballot image corresponds to which event log entry, it is not possible to customize the vote-time dissimilarity measure for each candidate. Over all the votes cast, however, we can be reasonably sure that the times recorded in the event log files do correspond to the votes recorded in the ballot image files. Table 2 shows that for the most part the total counts of voting events and of ballot images are the same for each voting machine.

\*\*\* Table 2 about here \*\*\*

## Randomization Test Results

I examine the votes cast for the Republican and Democratic candidates for president (George W. Bush and John F. Kerry) and for U.S. Senator (Mel Martinez and Betty Castor). I also examine the votes Yes or No for eight state constitutional amendments that appeared on the ballot in Florida in 2004. These amendments are described in Table 3. In all cases I consider the shares for each candidate or for each amendment voting option out of all ballots cast, including in the denominator ballots for which no vote choice was indicated for the referent office or amendment. I analyze the early voting data separately from the election day data.

\*\*\* Table 3 about here \*\*\*

Figure 2 shows a typical pattern for the distribution of the estimates  $\hat{g}_{jl}$ . The values depicted are for election day precincts in Miami-Dade County. Most of the values are much larger than the test level  $\alpha = .05$ .

\*\*\* Figure 2 about here \*\*\*

There is no tendency for  $\hat{g}_{jl}$  to decrease as the dissimilarity in vote times between the machines in a precinct increases. The  $\hat{g}_{jl}$  values are not significantly correlated across precincts with either  $\tau_j$  or  $\max_k(\tau_{jk})$ . Indeed, for the Miami-Dade County election day data only seven of the twenty product moment correlations with each dissimilarity measure are negative, and the most negative



value found is  $\text{cor}(\hat{g}_{jl}, \max_k(\tau_{jk})) = -0.06$ , for the Amendment 3 No votes.<sup>6</sup> Similar results are found for the correlations between  $\log(\hat{g}_{jl})$  and  $\log(\tau_j)$  and between  $\log(\hat{g}_{jl})$  and  $\log(\log(\tau_j))$ .

The FDR test results reported in Tables 4, 5 and 6 do not provide much support for the idea that the votes cast in each precinct were randomly and independently assigned to each machine used in the precinct. For all three counties, in both the election day and the early voting data, there are many rejections of the hypothesis that (1) holds. There are somewhat more rejections among the election day vote counts. Pasco County early voting has the fewest rejections, with one rejection each for the Amendment 5 Yes votes and for the Amendment 7 No votes. For early voting in Broward County there are four rejections, for four of the amendment options. Notwithstanding the attempt to compare only similar machine counts to one another in the Miami-Dade County early voting data, by separating votes that occur at different sites, on different days and using different ballot styles, there are rejections in those data for nine of the twenty candidate and amendment options. The election day results show rejections for ten of the twenty options in Miami-Dade, thirteen of the twenty options in Broward and five of the twenty options in Pasco County.

\*\*\* Tables 4, 5 and 6 about here \*\*\*

On balance it seems unlikely that voting time dissimilarities between the machines in each precinct can explain the pattern of rejections for the election day votes. We have already reviewed the pattern of insignificant  $\text{cor}(\hat{g}_{jl}, \tau_j)$  and  $\text{cor}(\hat{g}_{jl}, \max_k(\tau_{jk}))$  values for the Miami-Dade election day data. For the Broward County data, only five of the  $\text{cor}(\hat{g}_{jl}, \tau_j)$  values and only six of the  $\text{cor}(\hat{g}_{jl}, \max_k(\tau_{jk}))$  values are negative, and all of those correlations are very small. The largest in magnitude is  $\text{cor}(\hat{g}_{jl}, \max_k(\tau_{jk})) = -0.04$  for the Amendment 6 No vote. For the Pasco county data, six  $\text{cor}(\hat{g}_{jl}, \tau_j)$  values and nine  $\text{cor}(\hat{g}_{jl}, \max_k(\tau_{jk}))$  values are negative, but these correlations are again small. The largest in magnitude does occur for one of the FDR rejections, namely the Amendment 7 No votes, for which  $\text{cor}(\hat{g}_{jl}, \tau_j) = -0.11$ . But  $\text{cor}(\hat{g}_{jl}, \tau_j) = -0.10$  for the Amendment 7 Yes votes, and for those votes there are no FDR rejections. For the votes for Bush and Kerry, which each show more than one FDR rejection,  $\text{cor}(\hat{g}_{jl}, \tau_j) > 0$ . For these latter two votes the  $\text{cor}(\hat{g}_{jl}, \max_k(\tau_{jk}))$  values are negative but small, respectively  $-0.03$  and  $-0.02$ . There is no significant relationship between the correlations  $\text{cor}(\hat{g}_{jl}, \tau_j)$  or  $\text{cor}(\hat{g}_{jl}, \max_k(\tau_{jk}))$  and the

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<sup>6</sup>The largest positive correlation in the Miami-Dade data is 0.11 for  $\tau_j$ , for the Amendment 5 No votes.

number of FDR rejections for a particular candidate or amendment option.<sup>7</sup>

## Using Benford's Law to Test for Fraudulent Votes

One method that has been suggested for testing whether reported vote totals are fraudulent is to compare the digits occurring in the vote counts to the distribution of digits expected under Benford's Law. Benford's Law specifies that the different digits should not occur with equal frequency. That is, each of the nine possible first significant digits (1, 2, . . . , 9) should not each occur one-ninth of the time, each of the ten possible second significant digits (0, 1, . . . , 9) should not each occur one-tenth of the time, and so forth. Instead, according to Benford's Law the first and second significant digits should occur with the frequencies shown in Table 7. Tests against Benford's Law have been promoted for use to detect fraud in forensic financial accounting (Durtschi, Hillison, and Pacini 2004). In the realm of vote count data the relevance of Benford's Law has been controversial. Pericchi and Torres (2004) use tests of the second digits of vote counts against the Benford's Law distribution to raise the prospect of fraud in the Venezuelan recall referendum of August 15, 2004. This charge was specifically denied in the Carter Center report (Carter Center 2005, 132–133), based on technical analysis reported in Brady (2005) and Taylor (2005).

\*\*\* Table 7 about here \*\*\*

Why should Benford's Law apply to vote count data? A fundamental result is that Benford's Law does not in general hold for data that are simply random (Raimi 1976; Hill 1995). This property is one basis for its proposed use in financial fraud detection. If someone uses numbers taken directly from a table of random numbers to fill out faked financial records, the digits will occur with equal frequency. The positive case for using Benford's Law with financial data is not altogether perspicuous, however. Durtschi et al. (2004), for instance, rely on the supposedly complicated origins of financial data as the rationale for expecting Benford's Law to hold:

“Boyle (1994) shows that data sets follow Benford's Law when the elements result

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<sup>7</sup>In the Broward County data, a Poisson regression of the number of FDR rejections on the values of  $\text{cor}(\log(\hat{g}_{jt}), \log(\max_k(\tau_{jk})))$  shows a marginally significant positive relationship: the coefficient estimate is 9.6 with a standard error of SE=5.8. But in the Miami-Dade County data the same kind of analysis shows a significant negative relationship between the same variables: the coefficient estimate is -18.1 (SE=4.9). In the Pasco County data the corresponding analysis produces a coefficient estimate of -1.9 (SE=6.0).

from random variables taken from divergent sources that have been multiplied, divided, or raised to integer powers. This helps explain why certain sets of accounting numbers often appear to closely follow a Benford distribution. Accounting numbers are often the result of a mathematical process. A simple example might be an account receivable which is a number of items sold (which comes from one distribution) multiplied by the price per item (coming from another distribution).” (Durtschi et al. 2004, 20–21)

The complexity rationale runs afoul of the way behavioral political scientists usually think about voting data. Students of voting behavior have developed a repertoire of models built on the idea that each individual’s vote choice is essentially a coin flip (i.e., a stochastic choice). For some elections the coin may have more sides than two, and for different people the probabilities of the various outcomes are different. But the overall vote counts are seen as merely the sum of all the different coin flip outcomes. Such a sum of random coin flips lacks the complexity needed to produce the Benford’s Law pattern in the vote counts’ digits. Taking voter turnout decisions into account does not essentially change the basic coin flip idea. In this case, to produce the coin flip probabilities the probability that each person votes is multiplied by the conditional probability that the person makes a particular choice among the candidates or ballot initiative options.

One can see this standard behavioral perspective at work in the analysis used to support the conclusions reached about the Venezuelan referendum by the Carter Center. This is most explicit in the analysis reported by Taylor (2005). Taylor writes, “we use the multinomial model (4) of a ‘fair election’ and find that its significant digit distribution is virtually identical to the observed distribution, which is different than Benford’s Law” (Taylor 2005, 22). Taylor also generates data using a Poisson model. As a general matter these two models are essentially the same—as Taylor (2005, 9) observes, the multinomial arises upon conditioning on the total of a set of Poissons. Neither has the complexity needed to produce digits that follow Benford’s Law.

The kind of complexity that can produce counts with digits that follow Benford’s Law refers to processes that are statistical mixtures (e.g., Janvresse and de la Rue (2004)), which means that random portions of the data come from different statistical distributions. There are some limits that apply to the extent of the mixing, however. If the number of distinct distributions is large, then the result is likely to be well approximated by some simple random process that does not

satisfy Benford's Law. So if we are to believe that in general Benford's Law should be expected to describe the digits in vote counts, we need to have a behaviorally realistic process that involves mixing among a small number of distributions.

Another issue concerns whether Benford's Law should be expected to apply to all the digits in reported vote counts. In particular, for precinct-level data there are good reasons to doubt that the first digits of vote counts will satisfy Benford's Law. Brady (2005) develops a version of this argument. The basic point is that often precincts are designed to include roughly the same number of voters. If a candidate has roughly the same level of support in all the precincts, which means the candidate's share of the votes is roughly the same in all the precincts, then the vote counts will have the same first digit in all of the precincts. Imagine a situation where all precincts contain about 1,000 voters, and a candidate has the support of roughly fifty percent of the voters in every precinct. Then most of the precinct vote totals for the candidate will begin with the digits '4' or '5.' This result will hold no matter how mixed the processes may be that get the candidate to roughly fifty percent support in each precinct. For Benford's Law to be satisfied for the first digits of vote counts clearly depends on the occurrence of brittle accidents in the distribution of precinct sizes and in the alignment of precinct sizes with each candidate's support. It is difficult to see how there might be some connection to generally occurring political processes. So we may turn to the second significant digits of the vote counts, for which at least there is no similar knock down contrary argument.

For an example that illustrates these ideas, consider Table 8. This table reports Pearson chi-squared statistics for two kinds of tests. First is whether the distributions of the first digits of the precinct vote counts for the major party candidates for president and for U.S. Senator and for the eight constitutional amendments on election day 2004 in Miami-Dade County match the distribution specified by Benford's Law. Second is whether the first digits occur equally often. For the Benford's Law test, let  $q_{B_1i}$  denote the expected relative frequency with which the first significant digit is  $i$ . These  $q_{B_1i}$  values are the values shown in the first line of Table 7. Let  $d_{1i}$  be the number of times the first digit is  $i$  among the  $J$  precincts being considered, and set

$d_1 = \sum_{i=1}^9 d_{1i}$ . The statistic for the first-digit Benford's Law test is

$$X_{B_1}^2 = \sum_{i=1}^9 \frac{(d_{1i} - d_1 q_{B_1 i})^2}{d_1 q_{B_1 i}}.$$

For the test that first digits occur equally frequently, the test statistic is

$$X_{U_1}^2 = \sum_{i=1}^9 \frac{(d_{1i} - d_1/9)^2}{d_1/9}.$$

Assuming independence across precincts, these statistics may be compared to the  $\chi^2$ -distribution with 8 degrees of freedom.<sup>8</sup> That distribution has a critical value of 15.5 for a .05-level test. Since all of the statistics reported in Table 8 greatly exceed that value, the hypothesis that the first significant digits follow Benford's Law may be handily rejected, as may be the hypothesis that the nine values (1–9) occur equally often.

\*\*\* Table 8 about here \*\*\*

In contrast, consider Table 9, which reports Pearson chi-squared statistics for tests of the distribution of the vote counts' second significant digits. For  $q_{B_2 i}$  denoting the expected relative frequency with which the second significant digit is  $i$  (given by the second line in Table 7), and with  $d_{2i}$  being the number of times the second digit is  $i$  among the  $J$  precincts being considered and  $d_2 = \sum_{i=0}^9 d_{2i}$ , the statistic for the second-digit Benford's Law test is

$$X_{B_2}^2 = \sum_{i=0}^9 \frac{(d_{2i} - d_2 q_{B_2 i})^2}{d_2 q_{B_2 i}}.$$

For the test that second digits occur equally frequently, the test statistic is

$$X_{U_2}^2 = \sum_{i=0}^9 \frac{(d_{2i} - d_2/10)^2}{d_2/10}.$$

These statistics may be compared to the  $\chi^2$ -distribution with 9 degrees of freedom, which has a critical value of 16.9 for a .05-level test. The results, reported in the first two columns of Table 9, give little reason to doubt that Benford's Law applies. Two of the twenty statistics are larger

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<sup>8</sup>The consequences of dependence are unclear. It may develop that calibration is necessary to establish the correct distribution, especially when the number of precincts is not large. Similar comments apply to the  $X_{B_2}^2$  and  $X_{U_2}^2$  statistics introduced for second digits below.

than the critical value for a .05-level test. But if we consider the twenty tests to be independent, then with a single-test level of  $\alpha = .05$ , using the FDR gives no reason to be concerned unless we obtain a statistic larger than 25.46 (with a single-test level of .10, using the FDR establishes a 23.59 as the value beyond which we should be concerned).<sup>9</sup> The largest  $X_{B_2}^2$  value in the first column of Table 9 is 17.9. The results give reason to reject the assumption that the second digits are equally likely to take any of the ten possible values. The largest  $X_{U_2}^2$  value in the second column of Table 9 is 25.3.

\*\*\* Table 9 about here \*\*\*

The remaining columns of Table 9 show that what works for precincts need not work for voting machines. The middle columns report the results of applying the tests to the vote counts on the individual voting machines used on election day in Miami-Dade County. Acknowledging that some voting machines in Miami-Dade recorded votes from more than one precinct on election day, the last two columns show results from applying the tests to vote counts for each unique precinct-machine combination. Both forms of the analysis firmly reject the idea that Benford's Law describes the distribution of the second significant digits of the vote counts on election day voting machines in Miami-Dade County.

## Generating Vote Counts that Satisfy Benford's Law

Is there a family of processes that are behaviorally plausible from a political point of view and that are capable of producing precinct-level vote counts that satisfy Benford's Law for the second significant digits but not for the first significant digits? Can we explain why such a process would produce precinct counts that satisfy the second-digit Benford's Law but not machine counts that do so?

The second question has an answer that does not depend on the details of how the precinct counts may be generated, so let's consider it first. The point is to remember that a random process that is not a mixture does not in general produce digits that satisfy Benford's Law. Using that fact, we can explain the non-Benford machine counts in cases where votes are randomly assigned to the voting machines being used in each precinct. If the probability that each vote cast

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<sup>9</sup>For 20 independent tests and single-test level  $\alpha = .05$ , the FDR gives  $0.0025 = .05/20$  as the first tail probability to be concerned about, which for the  $\chi^2$ -distribution with 9 degrees of freedom corresponds to a critical value of 25.46. The value of 23.59 is obtained analogously.

in precinct  $j$  is assigned to machine  $k$  is  $\pi_{jk}$ , then conditioning on the total number of votes cast in each precinct, the distribution of votes among the machines in precinct  $j$  is multinomial with outcomes proportional to  $\pi_j = (\pi_{j1}, \dots, \pi_{jn_j})$ . If the probability vectors  $\pi_j$  or the total number of votes cast vary across precincts, these multinomial distributions may vary considerably from precinct to precinct, but having a collection of vectors of counts each generated by a different multinomial distribution does not in general give counts that satisfy Benford's Law.

So what can produce precinct-level vote counts that satisfy the second-digit Benford's Law? For a behaviorally realistic process that involves mixing among a small number of distributions, we can think about political parties, or more generally about the coalitions that come together at election time. Usually each candidate (or each side) has a collection of core supporters. These core supporters are virtually certain to vote for their side. Viewed as coins, we might say these core supporters always come up "heads." Note that this virtual certainty of support for one candidate need not imply any loyalty to the candidate that lasts longer than election day. But at the time the candidate votes, it is there. Any voter who is not such a core supporter for any side may possibly vote for any of the available alternatives.<sup>10</sup> Using the mean probability that such available voters vote for each candidate, we obtain a model where the total vote for a candidate in each precinct is a mixture of two distributions: the distribution of core supporters and the distribution of available voters.

The following **R** (R Development Core Team 2003) function generates vote counts for one candidate across a set of simulated precincts from such a model.

```
pbenf <- function(size, nprecincts=500, lsplit=.1, hsplit=.1, bfrac=1/2) {
  z <- sapply(1:nprecincts,
    function(x){
      p2 <- c(runif(1,0,lsplit),runif(1,(1-hsplit),1));
      pf <- c(rbeta(1,1,bfrac),rbeta(1,bfrac,1));
      partypm <- rpois(2,size*pf/sum(pf));
      sum(votes <- rpois(length(partypm), lambda=partypm*p2))
    })
}
```

For each of the `nprecincts` simulated precincts the vector `p2` contains two numbers. The first

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<sup>10</sup>I think it may be better to distinguish between those voters who have firmly made up their minds for whom they will vote when they arrive at the polls and those who have not. This would give a distinction between, say, "committed" and "undecided" voters. In future drafts of this paper I will likely shift to something like that usage.

number, drawn uniformly from the interval  $[0, \text{lsplit}]$ , represents the probability that available voters vote for the candidate. The second number, drawn uniformly from the interval  $[1 - \text{hsplit}, 1]$ , represents the probability that the candidate's core voters vote for the candidate. The vector `pf` represents the proportion of the voters in each precinct who are expected to be of each type. With the default argument value `bfrac = 1/2`, the first, Beta-distributed value in `pf` has a mean of  $2/3$  and the second value has a mean of  $1/3$ . The vector `partypm` contains the Poisson-distributed expected number of voters of each type. The vector `votes` contains the vote counts for the candidate from each type of voters in each precinct. These are summed to give the overall number of votes for the candidate in each precinct.<sup>11</sup>

Tables 10 and 11 show the results of a Monte Carlo simulation exercise using function `pbenf` to generate precinct vote counts for various choices of the function's arguments. The parameter denoted Size in the table refers to the `size` argument, which is the expected number of voters in each precinct. All the precincts generated by one invocation of `pbenf` have the same expected number of voters, although the actual number, which is Poisson distributed, varies over precincts. The parameter denoted Split in the table refers to the `lsplit` argument (the `hsplit` argument always has the value 0.1). The values in the Mean Votes column indicate the number of votes the candidate is expected to receive in each precinct given the corresponding parameter values.<sup>12</sup>

\*\*\* Tables 10 and 11 about here \*\*\*

In Table 10 one can see that in most cases the simulated vote counts satisfy the second-digit Benford's Law. In Table 11 the simulated vote counts satisfy the second-digit Benford's Law for small values of `lsplit` and Size values up to about Size=2000, and for for larger values of `lsplit` and Size=3000, but mostly not for Size values 2250, 2500 and 2750. These results suggest that the electoral coalition model that features two types of voters for each candidate can generate vote counts with second digits that satisfy Benford's Law for a wide variety of parametric

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<sup>11</sup>If the only goal is to produce counts whose second digits usually satisfy the second-digit Benford's Law, then it is not necessary to have the expected number of voters (`partypm`) and the vote counts (`votes`) be Poisson distributed. If the `pbenf` function is changed to use the assignments `partypm <- size*pf/sum(pf)` and `votes <- partypm*p2`, then we get second-digit Benford's Law results very similar to those obtained for the baseline model for the conditions considered in the Monte Carlo simulations reported in Tables 10 and 11. This alternative specification demonstrates that the essential feature that produces the second-digit Benford's Law pattern is the mixture of the core and available voting groups, not variation that may occur in the sizes of voting precincts. Using the Poisson-distributed values may impart greater realism, and it is noteworthy that doing so does not reduce the function's ability to produce counts with digits that satisfy the second-digit Benford's Law.

<sup>12</sup>The `bfrac` argument always equals the default value, `bfrac = 1/2`.



configurations, although clearly not for all possible parameter values. Hence the electoral coalition model (or improved versions of it) may possibly explain the patterns we see in real election data. By the way, the vote counts produced by the `pbenf` function do not have first significant digits that satisfy the first-digit Benford's Law.

### Can Benford's Law Detect Vote Fraud?

Applying the second-digit Benford's Law test to other vote count data from the 2004 election in Florida produces some results that suggest that Benford's Law applies to the data and other results that raise questions. Table 12 reports results based on data from early voting in Miami-Dade county. Applying the FDR of Benjamini and Hochberg (1995) to the twenty tests for site-style-days, the results look fine if we use a single-test level of  $\alpha = .05$ , since no  $X_{B_2}^2$  value is greater than 25.46, but the results are problematic if  $\alpha = .10$  ( $X_{B_2}^2$  for the Amendment 7 Yes votes is 24.6, which is greater than 23.6). The election day precinct results for Broward, shown in Table 13, are similar. They are fine using the FDR with  $\alpha = .05$  but problematic using  $\alpha = .10$ : two of the Amendment vote counts have  $X_{B_2}^2 > 23.6$ . The Broward early voting results for counts at the level of ballot styles are fine if the FDR is used. The largest  $X_{B_2}^2$  value among these early voting tests is  $X_{B_2}^2 = 21.4$ , for the votes for Kerry. The election day results for Pasco, shown in Table 14, have one value of  $X_{B_2}^2$  large enough to reject the hypothesis that Benford's law applies even using the FDR among the twenty tests with  $\alpha = .05$ . This is the value  $X_{B_2}^2 = 29.5$ , which occurs for the Amendment 7 Yes votes. Considered on their own and using the FDR for twenty tests, the early voting machine-precinct results for Pasco are fine.

\*\*\* Tables 12, 13 and 14 about here \*\*\*

The results for voting machines in Tables 12, 13 and 14 further illustrate that the second-digit Benford's Law property mostly does not apply to the vote counts on machines in these Florida counties. The case that comes closest to being an exception is the machine results for early voting in Broward County. Many of those  $X_{B_2}^2$  values are unproblematically small, but three are larger than the  $\chi_9^2$  critical value for a single test at level  $\alpha = .05$ , and two are large even when we use the FDR. For the Amendment 8 Yes votes we have  $X_{B_2}^2 = 27.9$ , which is larger than the critical value for the FDR for twenty tests with  $\alpha = .05$ , and for the Amendment 7 Yes votes we have  $X_{B_2}^2 = 44.0$ , which is very large by any standard.

The value  $X_{B_2}^2 = 29.5$  that occurs for the election day precinct data from Pasco County is large enough to count as a rejection of the second-digit Benford's Law hypothesis even using the FDR among all 60 of the election day tests, pooling across the three counties: the quantile of  $\chi_9^2$  corresponding to a tail probability of  $.05/60$  is 28.35. If we pool over all 120 of the election day precinct and early voting site-style-day, style and machine-precinct tests, the value  $X_{B_2}^2 = 29.5$  is not problematic according to the FDR with  $\alpha = .05$ , since the quantile of  $\chi_9^2$  corresponding to a tail probability of  $.05/120$  is 30.13. But using  $\alpha = .10$  we again have a problem even when pooling over all 120 tests, because using the FDR we again arrive at the  $\chi_9^2$  quantile of 28.35.

Do the relatively large  $X_{B_2}^2$  values for the precinct-level vote counts suggest the counts have been fraudulently manipulated? The simulations reported in Tables 10 and 11 suggest that an electorally intelligible and benign process can produce counts that often satisfy the second-digit Benford's Law. Suppose we take a process that we know usually produces such counts and perturb it in ways that mimic some ways vote fraud may occur. Does the Benford's Law test signal that there has been a distortion? If so, we might conclude that the relatively large  $X_{B_2}^2$  values suggest that maybe there has been fraud. Because we know the Benford's Law test can fail even when there is nothing like fraud in the data generating process, such a result can do no more than suggest the possibility of fraud. But if the Benford's Law test does not catch perturbations that we inject into otherwise pristine data, then of course the test is not useful for detecting vote fraud. In this case the mostly clean precinct-level results should not give us any comfort.

I simulate three variations of each of two kinds of vote manipulation. The two basic manipulations I describe as (1) adding repeaters and (2) proportionally increasing or decreasing vote totals. The variations apply each manipulation either to all precincts or to precincts in which the unmanipulated votes fall above or below specified thresholds.

My conception of repeaters harks back to the classic manipulation Gumbel (2005) describes as having been perfected by several American city political machines in the late nineteenth and early twentieth centuries. Repeaters in the nineteenth century's Tammany Hall were the primary referents of the familiar phrase, "vote early and often." As Gumbel writes, "The repeaters carried changes of clothing, including several sets of coats and hats, so they could plausibly come forward a second or third or fourth time in the guise of an entirely new person.... Many of the repeaters sported full beards at the beginning of the day, only to end it clean-shaven" (Gumbel 2005, 74).

Nowadays repeaters might simply be a few lines of computer code hidden in a PEB.

I implement repeaters by adding to a candidate's vote total a number equal to a specified fraction of the expected number of voters in each precinct. The number of votes added does not depend on the number of votes the candidate would otherwise receive, so the number added is not a function of the candidate's true support. To implement this idea, I replace the last line in the function that is applied to each precinct in the `pbenf` function with the following two lines,

```
votes <- sum(rpois(length(partypm), lambda=partypm*p2))
votes + sum(partypm)*frac;
```

The argument `frac` specifies the fraction of the expected voter number that is to be added.

The idea of proportionally increasing or decreasing vote totals is intended to represent two kinds of situations. One is where votes from a candidate are simply tossed out. A proportional decrease in a candidate's votes corresponds to the case where a fixed proportion of the candidate's votes are discarded in each precinct. The other situation is where votes are swapped from one candidate to another candidate. The candidate from whom the votes are taken could suffer proportional decreases, while the candidate who is receiving the votes is experiencing proportional increases. It may be that the Benford's Law tests can detect either the decreases or the increases, but not both. I implement this idea by replacing the last line in the function that is applied to each precinct in the `pbenf` function with the following two lines,

```
votes <- sum(rpois(length(partypm), lambda=partypm*p2))
votes <- ceiling(votes*frac);
```

The argument `frac` specifies the proportion by which the votes are to be increased or decreased.

There are increases if `frac > 1` and decreases if `frac < 1`.

I also consider variations of repeaters and proportional adjustments in which the manipulations are done only for a subset of the precincts. The subset to which the manipulations are applied depends on the votes the candidate is receiving before the manipulation is applied. The threshold for applying the changes is always the number of votes the candidate is expected to receive in each precinct. For the simulation function `pbenf`, that expectation may be computed using the **R** code

```
meanpbenf <-
```

$$\text{size}*(1/(1+\text{bfrac}))*(\text{lsplit}/2) + \text{size}*(\text{bfrac}/(\text{bfrac}+1))*(1+\text{hsplit})/2;$$

The “Mean Votes” column in Tables 10 and 11 reports these expected vote values for a number of combinations of parameter values. In the case I designate as “below threshold,” the manipulation is applied if the candidate is receiving fewer than `meanpbenf` votes. In the “above threshold” case the manipulation is applied if the candidate is receiving more than `meanpbenf` votes.

In each case I simulate these vote manipulations starting with vote counts produced by `pbenf`, using parameters that tended to produce counts that satisfied the second-digit Benford’s Law for a wide range of expected numbers of voters in each precinct. In particular, referring to Tables 10 and 11, I use `Split = 0.1` (which is `lsplit = .1`). Using that `Split` value produced small values of  $X_{B_2}^2$  for expected numbers of voters per precinct (i.e., “Size”) ranging from 500 to 2,000 and precincts numbering from 500 to 1,000. Over that range of sizes, the Monte-Carlo estimated expected value of  $X_{B_2}^2$  is always smaller than the expected value of  $X_{U_2}^2$ , and often the expected value of  $X_{U_2}^2$  is very large.

The results in Table 15 show that the second-digit Benford’s Law test can sometimes but not always detect distortions from repeaters acting the same way in all precincts. The column labeled `Add` in the table shows the value of `frac`, which indicates how many votes were added as a fraction of the expected number of voters in each precinct. For example, with `Size = 500` and `Add = 0.05`, 25 votes were added to the candidates vote total in each precinct. We ask whether each averaged  $X_{B_2}^2$  statistic shown in the table exceeds the critical value for  $\chi_9^2$  for a test at level  $\alpha = .05$ , which is 16.9. For `Size = 2000` and 1,000 precincts, the average  $X_{B_2}^2$  value is always larger than 16.9, which suggests the Benford’s Law test would usually detect the manipulation in such precincts. With `Size = 2000` and 500 precincts, the average  $X_{B_2}^2$  is greater than 16.9 only for `Add = 0.10` or larger. So in such precincts it appears the test would usually detect repeaters only if they were as numerous as ten percent of the bona fide voters. With `Size = 1500`, the test typically triggers only for `Add` greater than 0.20. With `Size = 1000` or 500, the test triggers irregularly for some of the larger values of `Add`.

\*\*\* Table 15 about here \*\*\*

The results in Table 16 show that the Benford’s Law test is somewhat better able to signal manipulation when the repeater manipulation occurs in the precincts where the candidate is

otherwise getting more votes than would be expected based on the uncontaminated process, but the test does not do as well when the repeater manipulation is happening in precincts where the candidate is otherwise receiving fewer votes than would be expected. The averaged  $X_{B_2}^2$  values shown in the Above Threshold columns are typically larger than the corresponding columns in Table 15, while the averaged  $X_{B_2}^2$  values shown in the Below Threshold columns are typically smaller.

\*\*\* Table 16 about here \*\*\*

The results in Table 17 suggest that the Benford's Law test has only very limited ability to detect proportional increases or decreases in a candidate's vote that happen throughout all precincts. The "Prop." values in the table indicate the value of `frac` that was used. The values used range from a twenty percent reduction in the candidate's vote (Prop. = 0.8) to a twenty percent increase (Prop. = 1.2). The only situations in which significantly large average values of  $X_{B_2}^2$  occur are for 1,000 precincts with Size = 2000 and Prop. equal to 1.1 or greater, or with Size = 500 and Prop. = 0.8. Since a proportional adjustment that affects all precincts the same way is indistinguishable from a candidate's simply receiving greater or lesser support throughout the electorate, it is perhaps not surprising that the Benford's Law test has little ability to detect such a manipulation.

\*\*\* Table 17 about here \*\*\*

The results in Table 18 show that the Benford's Law test is much more effective when there are proportional increases that occur in the precincts where the candidate is otherwise getting more votes than would be expected based on the uncontaminated process. With 1,000 precincts, the average  $X_{B_2}^2$  values are significantly large in three-quarters of the Above Threshold instances where Prop. is greater than 1. With 500 precincts the average  $X_{B_2}^2$  values are significantly large when Prop. is greater than 1 only for Size = 2000, with one exceptional case occurring for Size = 500 and Prop. = 1.15. The Benford's Law test is mostly not more effective at detecting the proportional adjustment manipulation when it is happening in precincts where the candidate is otherwise receiving fewer votes than would be expected based on the uncontaminated process. There are significantly large average  $X_{B_2}^2$  values in the Below Threshold columns with Size = 500 and Prop. > 1, but for the most part the average  $X_{B_2}^2$  values in the Below Threshold columns are not large.

\*\*\* Table 18 about here \*\*\*

While the Benford's Law test can detect proportional increases in a candidate's support in many situations where only some of the precincts are being affected, it is not very effective at detecting proportional reductions. In Table 18, the average  $X_{B_2}^2$  values for most of the instances where  $\text{Prop.} < 1$  are not large.

## Benford's Law and Voting Machine Vote Counts

Whatever we may conclude about the extent to which the second-digit Benford's Law distribution applies to the precinct-level vote counts from the three Florida counties in 2004, the results in Table 9 and in the other tables show that the Benford's Law distribution in general does not apply to the vote counts on voting machines in these counties. Notwithstanding the evidence from the randomization tests that there is not much support for the idea that the votes cast in each precinct were randomly and independently assigned to the machines used in the precinct, I conjectured that random assignment of votes to machines may explain the non-Benford machine counts. Ignoring for a moment the question of how votes actually were assigned to machines in the counties, I now consider whether a process that does assign the votes randomly and independently does produce second-digit distributions that do not match the second-digit Benford's Law.

First I consider a process that has precincts that contain the same number of voters as were in the Miami-Dade election day precincts, but has votes determined according to mixture processes like those simulated in Table 10. To implement such a process in **R**, I create a matrix, `precinct.data`, that has two rows and as many columns as there are election day precincts. The first row contains the number of votes cast on election day in each precinct, and the second row contains the number of voting machines used on election day to record votes for that precinct.<sup>13</sup> The **R** function that uses the `precinct.data` matrix to simulate randomly assigning votes to machines is defined as follows.

```
pbenfm <- function(lsplit=.1, hsplit=.1, bfrac=1/2) {  
  z <- apply(precinct.data, 2,  
    function(x){  
      p2 <- c(runif(1,0,lsplit),runif(1,(1-hsplit),1));
```

---

<sup>13</sup>The total number of machines referenced in the `precinct.data` matrix corresponds to the number of precinct-machines indicated in Table 1.

```

pf <- c(rbeta(1,1,bfrac),rbeta(1,bfrac,1));
size <- x[1];
partypm <- rpois(2,size*pf/sum(pf));
votes <- sum(rpois(length(partypm), lambda=partypm*p2))
nmachines <- x[2];
mach <- rep(0,nmachines);
# allocate votes at random to the nmachines machines
if (votes > 0) mach <- table(sample(1:nmachines, votes, replace=TRUE));
return( mach )
})

```

The `pbenfm` function does not constrain the total number of votes on each machine to correspond to the number actually recorded on the machine in the original election day data. In `pbenfm`, each vote is equally likely to be counted on each of each precinct's machines.

Running such a simulation with parameters taken from the previously reported simulations sometimes but not always produces a pattern matching what occurs in the actual data.<sup>14</sup> Results are reported in Table 19. For the chosen set of Split values, ranging from 0.1 to 0.7, the second-digit Benford's Law always describes the digits in the simulated precinct vote counts. For Split values larger than 0.4, the digits in the simulated machine counts do not follow the Benford's Law distribution, which matches the pattern in the original data. But for Split = 0.3 or smaller, the machine counts do satisfy Benford's Law. Random assignment of votes to machines does not necessarily annihilate the Benford's Law pattern.

\*\*\* Table 19 about here \*\*\*

Randomly assigning the votes actually cast on election day in Miami-Dade County comes close to reproducing the Benford's Law test results reported, for precinct-machines, in Table 9. The first row in Table 20 shows what happens if the votes cast for Bush and Kerry are randomly assigned to machines, using the same procedure as in `pbenfm`. That is, in that program, instead of using votes simulated using the statistical mixture process, the results for "actual precincts" in Table 20 use the original vote counts for the respective candidates. So the results for precincts in that row are simply taken from Table 9. For both Bush and Kerry, randomly assigning the votes produces average  $X_{B_2}^2$  values that are only slightly smaller than the ones computed for the original precinct-machine counts. For the vote counts that actually occurred on election day, it seems that the approximation to random assignment to machines that did happen then is a large

<sup>14</sup>Parameters `hsplit` and `bfrac` are left at their default values.

part of the reason the machine vote counts are non-Benford.

\*\*\* Table 20 about here \*\*\*

Randomly assigning vote counts produced by simulations calibrated to mimic the votes actually cast on election day in Miami-Dade County muddies the waters a bit. Such results are reported in the second and third lines in Table 20. To produce those simulations, I used `rgenoud` (Mebane and Sekhon 2005; Sekhon and Mebane 1998) to find values for the parameters of the version of `pbenf` (using the Miami-Dade precinct sizes) that minimize the discrepancy between the second digits of the votes expected for each candidate and the second digits of the actual vote counts. Specifically, I used `meanpbenf` with `size` set equal to the actual Miami-Dade election day precinct sizes to compute expected vote counts, then chose values for the `lsplit` and `hsplit` parameters to minimize a chi-squared statistic in which the distribution of the digits of the expected vote counts produced by `meanpbenf` provides the expected values. Results using this calibration appear in the second line of Table 20.<sup>15</sup> The results in the third line of Table 20 follow upon using a version of the vote simulating function in which four parameters are calibrated. The expected vote function in this case is the following

```
meanpbenfB <-  
  size*(1/(1+lbfrac))*(lsplit/2) + size*(hbfrac/(hbfrac+1))*(1+hsplit)/2
```

With `meanpbenfB` I used `rgenoud` to minimize discrepancies with both the second digits of the counts and the counts themselves.<sup>16</sup> Figure 3, which presents density plots to compare the calibrated simulations to the actual precinct vote counts, suggests the calibrated simulations provide a better fit to the votes for Bush than to the votes for Kerry. In any case, neither the two-parameter calibration nor the four-parameter calibration leads to machine vote counts that consistently deviate from the second-digit Benford's Law distribution.<sup>17</sup>

\*\*\* Figure 3 about here \*\*\*

All told, nearly random assignment of votes to voting machines may explain the non-Benford machine counts so frequently observed in the data from the three counties, but it is not

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<sup>15</sup>The calibration values for Bush are `lsplit = 0.1168443`, `hsplit = 0.5699924`. For Kerry the values are `lsplit = 0.1789472`, `hsplit = 0.6468790`.

<sup>16</sup>The calibration values for Bush are `lsplit = 0.1144489`, `hsplit = 0.9947601`, `lbfrac = 3.0359998`, `rbfrac = 2.6032223`. For Kerry the values are `lsplit = 0.4803455`, `hsplit = 0.9807219`, `lbfrac = 0.2774467`, `rbfrac = 2.1231147`.

<sup>17</sup>The calibrated simulation results presented in Table 20 use fixed precinct voter sizes; i.e., they use `partypm <- size*pf/sum(pf)` and `votes <- partypm*p2`.



appropriate to draw from that any wider message about how such randomization may affect Benford's Law tests. It is not clear what may be true in general.

## Discussion

Both the vote randomization test and the second-digit Benford's Law appear potentially useful for detecting election fraud. In both cases a number of issues remain unsettled.

The vote randomization test finds strong evidence that votes were not randomly and independently assigned to the various voting machines in use in precincts on election day in the three Florida counties. The test also suggests that votes were not randomly distributed among comparable machines during the early voting period. The principle question is why do the candidate and amendment option vote shares differ across machines. One innocent possibility is that we have not successfully grouped the machines into comparable sets. Differences in usage times during each day may explain the different vote shares. The measure  $\tau_{jk}$  may not be adequate, or my use of it may not be correct. There is also at least one distinction among voting machines that is not reflected in the tests reported in this paper. Some machines were specially equipped with audio capability to support independent voting by visually impaired voters. Perhaps the voters who used such machines had distinctive preferences. I did not separate out the audio-enabled machines principally because information to identify them all is lacking. I have information that identifies some of the audio-enabled machines in Miami-Dade County, but even for the machines designated as audio-enabled it is not clear from the records I have whether the audio capabilities were operating while the machines were being used.

Three classes of questions remain regarding the Benford's Law tests. First, this paper only suggests the range of mixture processes that might be behaviorally defensible and also tend to produce counts with digits that satisfy Benford's Law. Can processes with more heterogeneity in each precinct work? The simulations I have conducted so far to explore that suggest the situation is complicated. Second, how can we make sense of the fact that the mixture process produces counts that satisfy the second-digit Benford's Law for many but not all combinations of parameters? Third, what parameter values produce counts that closely match the counts that occur in real elections? The small calibration effort I attempted produced a pretty good

approximation to the counts for Bush on election day in Miami-Dade County but did not do as well for the counts for Kerry. Can calibration be elevated to become proper estimation? For instance, is there a rationale for treating the second digits of a set of counts as if they were sufficient statistics?

## Data Note

David Dill supplied ballot and event log files recovered from electronic voting machines in Broward, Miami-Dade and Pasco counties. The files were originally obtained by Martha Mahoney using open records requests funded by the Verified Voting Foundation. The ballot files indicate the choices made for each office by each voter and include labels identifying for each ballot the voting machine and the precinct (for election day ballots) or ballot style (for early voting ballots). The event log files show the time (resolved to the second) at which various transactions occurred on each machine, including the time at which each vote was recorded. It is not possible to match vote choices in the ballot files to voting events in the event log files.

Early voting polling site locations for many of the Miami-Dade machines was taken from a file supplied by Martha Mahoney (file "ev.xls," received by me on August 16, 2005). Of the 670 machines that recorded votes during early voting in Miami-Dade, 88 are not included in that file. Two files supplied by Martha Mahoney also were used to determine which Miami-Dade machines were operating with audio capability enabled. These are the "ev.xls" file and a file "Election.xls" (received by me on August 16, 2005) for the machines used on election day.

The data comprise files for electronic early voting and electronic polling place votes but do not include information about paper absentee votes.

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Table 1: Precinct, Machine and Ballot Statistics

Election Day	Broward	Miami-Dade	Pasco
Precincts	775	757	152
Machines	5,306	5,323	1,338
Precinct-machines	10,614	14,128	2,676
Ballots	431,488	435,902	127,526

Early Voting	Broward	Miami-Dade	Pasco
Sites	20	14	3
Styles	150	100	16
Site-days	110	—	4
Style-site-days	—	4,429	—
Machines	190	726	36
Site-day-machines	380	—	72
S-s-d-machines	—	24,374	—
Ballots	176,743	242,344	29,584

Table 2: Event Transaction Counts and Ballot Counts

	Early Voting			Election Day		
	Excess Ballots	Counts Match	Excess Events	Excess Ballots	Counts Match	Excess Events
Broward	0	190	0	15	5,290	1
Miami-Dade	2	724	0	14	5,309	0
Pasco	0	36	0	0	1,338	0

Note: Entries show the number of voting machines having each described relationship between the number of “Normal ballot cast” or “Super ballot cast” events in the event log files and the number of ballots in the ballot image files.

Table 3: Florida Constitutional Amendments on the Ballot in 2004

		Yes	No
Am. 1	Parental Notification of a Minor's Termination of Pregnancy	4,639,635	2,534,910
Am. 2	Constitutional Amendments Proposed by Initiative	4,574,361	2,109,013
Am. 3	The Medical Liability Claimant's Compensation Amendment	4,583,164	2,622,143
Am. 4	Authorizes Miami-Dade and Broward County Voters to Approve Slot Machines in Parimutuel Facilities	3,631,261	3,512,181
Am. 5	Florida Minimum Wage Amendment	5,198,514	2,097,151
Am. 6	Repeal of High Speed Rail Amendment	4,519,423	2,573,280
Am. 7	Patients' Right to Know About Adverse Medical Incidents	5,849,125	1,358,183
Am. 8	Public Protection from Repeated Medical Malpractice	5,121,841	2,083,864

Note: Yes and No vote counts show statewide results.

Table 4: Miami-Dade Machine Randomization False Discovery Rate Tests

item	Election Day			Early Voting		
	precincts	precinct- machines	rejects	style- site-days	s-s-day- machines	rejects
Bush	734	6,976	1	1,175	7,545	1
Kerry	735	6,991	4	1,180	7,564	0
Martinez	734	6,983	0	1,205	7,690	1
Castor	736	7,001	5	1,224	7,809	2
Am. 1 yes	743	7,034	6	1,302	8,159	0
Am. 1 no	737	7,010	4	1,272	8,039	0
Am. 2 yes	742	7,031	6	1,295	8,144	4
Am. 2 no	737	7,009	1	1,228	7,901	2
Am. 3 yes	740	7,019	8	1,290	8,078	1
Am. 3 no	741	7,027	0	1,290	8,072	0
Am. 4 yes	741	7,026	2	1,313	8,209	0
Am. 4 no	739	7,017	0	1,297	8,136	0
Am. 5 yes	736	6,994	0	1,168	7,587	1
Am. 5 no	727	6,928	0	1,082	7,139	0
Am. 6 yes	742	7,031	1	1,308	8,197	0
Am. 6 no	742	7,031	0	1,271	8,061	0
Am. 7 yes	732	6,983	0	1,144	7,522	0
Am. 7 no	720	6,906	0	1,018	6,906	1
Am. 8 yes	739	7,017	0	1,272	8,043	0
Am. 8 no	735	7,000	0	1,219	7,839	2

Note: Each statistic is based on 50,000 Monte Carlo replications to compute the tail probability estimate  $\hat{g}_{jl}$ .

Table 5: Broward Machine Randomization False Discovery Rate Tests

item	Election Day			Early Voting		
	precincts	precinct- machines	rejects	site-days	site-day- machines	rejects
Bush	764	5,286	1	30	110	0
Kerry	765	5,289	0	30	110	0
Martinez	765	5,289	7	30	110	0
Castor	764	5,286	5	30	110	0
Am. 1 yes	767	5,293	0	30	110	0
Am. 1 no	766	5,290	0	30	110	0
Am. 2 yes	764	5,286	0	30	110	0
Am. 2 no	763	5,283	0	30	110	0
Am. 3 yes	765	5,288	2	30	110	0
Am. 3 no	765	5,288	5	30	110	0
Am. 4 yes	766	5,292	6	30	110	0
Am. 4 no	766	5,292	1	30	110	0
Am. 5 yes	757	5,266	7	30	110	1
Am. 5 no	756	5,263	1	30	110	1
Am. 6 yes	764	5,287	1	30	110	0
Am. 6 no	764	5,287	0	30	110	0
Am. 7 yes	759	5,272	4	30	110	1
Am. 7 no	757	5,266	0	30	110	6
Am. 8 yes	761	5,278	1	30	110	0
Am. 8 no	760	5,275	3	30	110	0

Note: Each statistic is based on either 10,000 or 50,000 Monte Carlo replications to compute the tail probability estimate  $\hat{g}_{jl}$ .



Table 6: Pasco Machine Randomization False Discovery Rate Tests

item	Election Day			Early Voting		
	precincts	precinct- machines	rejects	site-days	site-day- machines	rejects
Bush	152	1,338	2	3	35	0
Kerry	152	1,338	4	3	35	0
Martinez	152	1,338	0	3	35	0
Castor	152	1,338	2	3	35	0
Am. 1 yes	152	1,338	1	3	35	0
Am. 1 no	152	1,338	0	3	35	0
Am. 2 yes	152	1,338	0	3	35	0
Am. 2 no	152	1,338	0	3	35	0
Am. 3 yes	152	1,338	0	3	35	0
Am. 3 no	152	1,338	0	3	35	0
Am. 4 yes	152	1,338	0	3	35	0
Am. 4 no	152	1,338	0	3	35	0
Am. 5 yes	152	1,338	0	3	35	1
Am. 5 no	152	1,338	0	3	35	0
Am. 6 yes	152	1,338	0	3	35	0
Am. 6 no	152	1,338	0	3	35	0
Am. 7 yes	152	1,338	0	3	35	0
Am. 7 no	152	1,338	1	3	35	1
Am. 8 yes	152	1,338	0	3	35	0
Am. 8 no	152	1,338	0	3	35	0

Note: Each statistic is based on 10,000 Monte Carlo replications to compute the tail probability estimate  $\hat{g}_{jl}$ .

Table 7: Frequency of Digits according to Benford's Law

digit	0	1	2	3	4	5	6	7	8	9
first	—	.301	.176	.124	.097	.079	.067	.058	.051	.046
second	.120	.114	.109	.104	.100	.097	.093	.090	.088	.085

Table 8: Miami-Dade Election Day First-digit Benford's Law Tests

item	Benf.	equal	item	Benf.	equal
Bush	29.3	292.5	Am. 4 Yes	144.8	367.0
Kerry	39.9	287.0	Am. 4 No	119.6	605.6
Martinez	35.6	273.8	Am. 5 Yes	115.4	122.2
Castor	22.0	304.7	Am. 5 No	27.6	623.4
Am. 1 Yes	86.2	290.5	Am. 6 Yes	98.8	395.0
Am. 1 No	80.5	636.2	Am. 6 No	84.0	532.9
Am. 2 Yes	95.6	362.5	Am. 7 Yes	130.3	112.7
Am. 2 No	60.0	722.7	Am. 7 No	49.9	582.8
Am. 3 Yes	60.5	401.3	Am. 8 Yes	123.0	210.6
Am. 3 No	51.5	496.5	Am. 8 No	102.6	831.1

Note:  $n = 757$  precincts. Each statistic is the Pearson chi-squared statistic, with eight degrees of freedom.

Table 9: Miami-Dade Election Day Second-digit Benford's Law Tests

item	precincts ( <i>n</i> = 757)		machines ( <i>n</i> = 5,326)		precinct- machines ( <i>n</i> = 7,064)	
	Benf.	equal	Benf.	equal	Benf.	equal
Bush	7.9	10.8	28.0	20.5	17.2	39.5
Kerry	9.5	14.4	61.8	10.0	44.0	13.1
Martinez	8.9	10.8	33.4	11.9	11.5	29.2
Castor	12.0	12.8	44.5	15.6	12.7	43.5
Am. 1 Yes	2.5	8.0	72.4	10.3	43.6	12.6
Am. 1 No	5.5	15.5	73.9	9.2	19.8	31.9
Am. 2 Yes	16.7	23.6	68.5	3.5	38.7	27.3
Am. 2 No	7.2	16.4	49.5	17.3	11.9	48.8
Am. 3 Yes	3.3	8.5	98.4	9.2	78.0	5.5
Am. 3 No	12.9	12.7	76.9	9.0	25.7	26.8
Am. 4 Yes	3.3	9.0	49.1	5.8	43.5	14.4
Am. 4 No	5.7	15.4	89.5	5.4	25.4	15.3
Am. 5 Yes	17.9	19.6	81.4	3.9	57.6	2.9
Am. 5 No	5.8	23.3	5.9	56.8	25.6	135.6
Am. 6 Yes	4.3	10.2	50.3	5.8	29.7	16.3
Am. 6 No	9.1	11.3	47.3	6.5	15.3	30.8
Am. 7 Yes	17.1	16.0	51.7	21.0	53.2	21.1
Am. 7 No	8.4	16.5	78.9	220.0	136.7	318.7
Am. 8 Yes	12.7	25.3	69.6	1.5	54.2	8.3
Am. 8 No	6.5	10.6	67.8	13.9	23.2	29.1

Note: Each statistic is the Pearson chi-squared statistic, with nine degrees of freedom.

Table 10: Second-digit Benford's Law Tests with Simulated Vote Counts

Size	Split	Mean Votes	500 precincts		750 precincts		1,000 precincts	
			Benf.	equal	Benf.	equal	Benf.	equal
250	0.1	54.2	14.6	31.9	17.8	43.7	20.0	54.0
	0.2	62.5	13.9	30.8	17.9	43.2	19.8	52.3
	0.3	70.8	14.8	32.1	17.9	42.5	20.7	54.0
	0.4	79.2	16.0	33.0	19.6	46.0	21.5	56.1
	0.5	87.5	17.4	34.3	20.0	44.7	23.8	56.4
	0.6	95.8	13.5	24.7	14.8	29.3	17.6	36.9
500	0.1	108.3	9.4	12.4	9.8	14.9	10.0	16.4
	0.2	125.0	9.2	15.2	8.9	15.8	8.8	18.4
	0.3	141.7	10.3	13.2	10.0	13.7	10.9	17.4
	0.4	158.3	10.8	10.1	11.4	10.6	12.2	12.2
	0.5	175.0	11.1	10.5	11.0	10.7	13.1	11.8
	0.6	191.7	12.3	10.5	13.1	9.8	14.4	10.1
750	0.1	162.5	10.3	11.0	10.8	11.6	11.0	12.0
	0.2	187.5	9.6	11.3	10.2	12.1	12.4	14.2
	0.3	212.5	11.8	9.9	11.4	10.1	14.3	10.4
	0.4	237.5	12.4	9.2	12.7	9.4	15.5	9.4
	0.5	262.5	12.2	8.6	14.7	9.3	17.2	9.5
	0.6	287.5	13.1	9.3	14.2	9.1	17.0	9.3
1000	0.1	216.7	10.4	11.4	10.6	11.9	12.8	13.0
	0.2	250.0	12.3	9.8	12.9	9.6	14.7	10.7
	0.3	283.3	12.2	9.7	15.5	9.6	17.1	9.4
	0.4	316.7	13.2	8.9	15.2	9.4	16.6	8.9
	0.5	350.0	13.4	8.6	16.4	8.4	18.9	9.4
	0.6	383.3	13.5	9.5	15.3	8.5	17.5	9.1
1250	0.1	270.8	9.8	15.7	10.5	18.2	10.1	23.1
	0.2	312.5	9.1	12.3	10.5	13.9	10.9	17.1
	0.3	354.2	10.1	11.3	11.2	14.3	12.0	16.1
	0.4	395.8	11.2	13.2	12.2	15.2	13.1	16.5
	0.5	437.5	11.6	14.4	12.7	18.1	14.1	19.2
	0.6	479.2	11.6	15.9	13.5	20.8	14.9	22.0
1500	0.1	325	9.7	17.0	8.9	19.8	9.8	25.7
	0.2	375	9.1	16.1	9.9	19.1	9.9	23.0
	0.3	425	9.3	16.9	10.0	21.4	10.7	26.5
	0.4	475	11.2	22.1	11.0	25.3	12.1	31.4
	0.5	525	14.7	29.9	18.6	42.6	21.0	52.0
	0.6	575	27.2	52.7	33.9	70.3	43.7	93.2

Note: Each statistic is the Pearson chi-squared statistic, with nine degrees of freedom, averaged over 100 Monte Carlo replications.

Table 11: Second-digit Benford's Law Tests with Simulated Vote Counts

Size	Split	Mean Votes	500 precincts		750 precincts		1,000 precincts	
			Benf.	equal	Benf.	equal	Benf.	equal
1750	0.1	379.2	9.2	18.0	9.7	23.6	10.2	28.1
	0.2	437.5	9.8	19.7	11.1	27.5	11.3	33.8
	0.3	495.8	12.8	28.1	14.8	38.1	15.6	44.1
	0.4	554.2	16.2	35.5	20.6	50.9	26.0	66.0
	0.5	612.5	27.0	54.6	35.9	77.3	41.0	94.1
	0.6	670.8	41.2	76.9	55.4	107.2	75.8	148.0
2000	0.1	433.3	10.3	21.1	11.3	28.0	12.2	34.9
	0.2	500.0	12.2	26.6	15.7	38.7	17.9	48.4
	0.3	566.7	15.0	33.8	20.5	50.2	24.3	63.9
	0.4	633.3	20.5	43.6	25.2	58.6	30.4	75.0
	0.5	700.0	26.3	53.1	34.9	74.7	45.2	99.8
	0.6	766.7	35.2	64.7	48.2	91.9	63.1	121.8
2250	0.1	487.5	14.9	31.8	17.3	43.2	23.0	60.0
	0.2	562.5	17.1	36.4	19.1	47.6	23.3	61.5
	0.3	637.5	17.9	39.1	21.4	51.5	27.2	68.8
	0.4	712.5	19.8	41.7	26.6	60.2	28.9	71.0
	0.5	787.5	23.5	47.5	31.0	67.5	42.8	93.1
	0.6	862.5	23.4	41.3	29.6	55.9	36.2	72.9
2500	0.1	541.7	17.4	37.0	20.0	48.3	25.9	64.1
	0.2	625.0	17.4	36.7	20.4	47.4	24.9	62.5
	0.3	708.3	17.2	35.2	20.5	47.4	28.2	66.3
	0.4	791.7	17.4	35.9	22.6	50.6	26.7	63.7
	0.5	875.0	18.7	36.6	23.9	50.5	28.8	64.5
	0.6	958.3	14.6	24.0	17.5	31.0	20.5	39.0
2750	0.1	595.8	14.9	30.7	18.4	41.5	21.4	50.8
	0.2	687.5	15.6	28.8	19.3	40.5	22.6	50.2
	0.3	779.2	16.3	30.2	18.3	37.4	21.2	47.3
	0.4	870.8	13.7	27.7	16.4	36.2	19.3	47.6
	0.5	962.5	12.6	21.4	15.9	30.6	19.5	38.7
	0.6	1054.2	11.0	14.8	12.3	18.7	13.9	21.1
3000	0.1	650	13.5	23.3	14.7	29.7	16.4	36.1
	0.2	750	12.2	19.7	14.6	27.5	16.2	32.4
	0.3	850	11.8	18.0	12.2	21.9	15.1	26.6
	0.4	950	10.6	19.5	11.4	23.9	11.4	29.1
	0.5	1050	12.0	17.0	11.4	18.6	11.6	21.0
	0.6	1150	11.1	12.6	11.5	13.4	11.7	16.0

Note: Each statistic is the Pearson chi-squared statistic, with nine degrees of freedom, averaged over 100 Monte Carlo replications.

Table 12: Miami-Dade Early Voting Second-digit Benford's Law Tests

item	site- style-days ( <i>n</i> = 5,186)		machines ( <i>n</i> = 727)		site-style- day-machines ( <i>n</i> = 33,126)	
	Benf.	equal	Benf.	equal	Benf.	equal
Bush	10.1	44.9	23.5	20.9	130.3	391.4
Kerry	17.3	60.4	61.7	12.1	115.5	387.3
Martinez	14.8	48.6	32.6	17.3	107.6	357.9
Castor	9.1	42.1	43.3	18.6	93.0	336.2
Am. 1 Yes	14.1	59.9	69.6	9.8	119.7	415.4
Am. 1 No	8.7	44.1	64.8	9.8	86.3	295.7
Am. 2 Yes	17.7	65.4	58.3	2.6	83.4	334.7
Am. 2 No	20.2	71.1	41.9	16.9	92.0	292.8
Am. 3 Yes	8.2	41.4	90.8	7.6	122.7	394.8
Am. 3 No	15.3	56.7	66.1	7.8	104.8	342.1
Am. 4 Yes	7.7	40.6	47.1	11.0	87.3	338.0
Am. 4 No	14.4	60.7	83.6	5.3	108.9	351.4
Am. 5 Yes	21.9	78.3	69.2	4.6	58.4	307.5
Am. 5 No	11.0	44.8	5.7	71.6	84.4	237.8
Am. 6 Yes	12.9	56.9	55.3	11.0	105.2	368.5
Am. 6 No	9.0	37.8	44.4	9.6	126.6	374.1
Am. 7 Yes	24.6	85.0	47.8	14.9	134.2	468.3
Am. 7 No	12.0	33.9	77.4	236.4	64.5	192.7
Am. 8 Yes	13.9	61.7	68.9	2.4	96.3	377.7
Am. 8 No	6.7	28.9	63.5	15.5	79.2	261.2

Note: Each statistic is the Pearson chi-squared statistic, with nine degrees of freedom.

Table 13: Broward Second-digit Benford's Law Tests

item	Election Day				Early Voting			
	precincts ( <i>n</i> = 775)		machines ( <i>n</i> = 5,307)		styles ( <i>n</i> = 150)		machines ( <i>n</i> = 190)	
	Benf.	equal	Benf.	equal	Benf.	equal	Benf.	equal
Bush	9.6	6.6	23.4	25.6	9.1	12.2	8.4	9.5
Kerry	21.2	12.4	79.7	6.5	21.4	24.8	10.5	17.6
Martinez	10.7	8.3	28.2	20.1	6.6	9.8	5.2	8.6
Castor	13.6	5.9	69.7	11.4	9.2	6.7	11.4	17.5
Am. 1 Yes	24.1	16.3	31.2	8.5	10.1	12.2	14.9	10.0
Am. 1 No	17.1	18.1	60.3	8.4	7.0	3.7	7.0	7.2
Am. 2 Yes	12.2	7.3	47.5	21.7	13.6	11.7	19.4	16.8
Am. 2 No	11.6	22.4	47.6	18.8	8.7	9.8	4.8	3.9
Am. 3 Yes	7.4	6.4	65.8	9.1	8.1	11.8	11.0	14.9
Am. 3 No	24.9	6.7	40.5	11.7	11.9	17.7	5.4	4.6
Am. 4 Yes	9.8	7.7	61.3	5.8	14.4	15.5	14.2	22.7
Am. 4 No	8.6	16.2	55.8	10.1	4.7	10.1	10.5	8.2
Am. 5 Yes	7.9	8.8	76.9	17.5	13.8	13.0	15.6	20.9
Am. 5 No	7.4	20.6	24.8	113.4	5.2	4.1	9.7	8.4
Am. 6 Yes	19.4	9.9	84.9	10.3	4.4	4.4	11.9	16.8
Am. 6 No	6.2	10.9	43.7	5.6	7.8	10.1	16.6	16.4
Am. 7 Yes	13.1	16.7	72.1	6.6	5.0	8.6	44.0	64.2
Am. 7 No	14.3	44.3	157.7	346.9	8.9	9.6	5.7	8.7
Am. 8 Yes	7.1	3.8	74.6	6.3	4.3	6.2	27.9	42.9
Am. 8 No	13.9	26.1	15.9	21.7	6.7	7.3	4.0	7.7

Note: Each statistic is the Pearson chi-squared statistic, with nine degrees of freedom. In Broward, on election day each machine recorded votes for only one precinct. In the early voting data the number of votes on each style-machine combination was too small (mean = 16.7, median = 2) to support analysis for those combinations.

Table 14: Pasco Second-digit Benford's Law Tests

item	Election Day				Early Voting	
	precincts ( <i>n</i> = 152)		machines ( <i>n</i> = 1,338)		machine- precincts ( <i>n</i> = 372)	
	Benf.	equal	Benf.	equal	Benf.	equal
Bush	6.9	5.6	16.4	16.2	14.6	23.8
Kerry	4.0	3.5	22.9	21.7	19.0	25.2
Martinez	6.5	3.7	30.6	6.4	13.4	24.3
Castor	11.2	10.5	40.5	7.7	14.7	20.7
Am. 1 Yes	9.0	10.4	24.1	11.3	5.4	10.5
Am. 1 No	7.0	5.1	9.8	5.0	18.6	28.3
Am. 2 Yes	5.4	4.8	28.6	10.3	9.6	16.2
Am. 2 No	8.6	12.7	15.8	1.9	10.4	17.7
Am. 3 Yes	10.4	9.3	34.6	11.0	12.5	18.6
Am. 3 No	8.5	4.4	10.1	16.2	13.1	19.2
Am. 4 Yes	6.0	8.4	20.7	2.8	8.6	14.7
Am. 4 No	8.6	5.2	19.8	9.3	21.5	33.4
Am. 5 Yes	3.6	9.4	16.6	8.2	11.9	20.9
Am. 5 No	3.8	6.4	10.2	19.1	10.3	17.2
Am. 6 Yes	12.8	15.5	33.5	7.7	10.5	18.7
Am. 6 No	4.4	4.7	20.1	10.0	14.4	16.4
Am. 7 Yes	29.5	43.3	20.5	18.3	14.1	22.3
Am. 7 No	5.1	7.2	19.9	10.7	5.2	6.9
Am. 8 Yes	8.0	13.8	16.5	7.7	6.3	8.6
Am. 8 No	8.0	14.6	29.9	6.6	11.1	18.1

Note: Each statistic is the Pearson chi-squared statistic, with nine degrees of freedom. In Pasco, on election day each machine recorded votes for only one precinct. In Pasco there were only 16 early voting "precincts," too few to support analysis for those units.



Table 15: Simulated Repeaters

Size	Add	500 precincts		1,000 precincts	
		Benf.	equal	Benf.	equal
500	0.05	9.1	12.0	8.7	12.3
	0.10	8.8	13.7	9.9	19.0
	0.15	9.2	18.0	9.9	28.0
	0.20	14.5	17.8	19.5	21.6
	0.25	29.6	16.2	43.4	18.9
1000	0.05	11.4	12.6	10.7	13.3
	0.10	11.5	7.9	16.7	10.3
	0.15	15.2	11.6	18.7	12.1
	0.20	12.3	10.9	13.3	11.4
	0.25	12.5	14.8	16.5	18.3
1500	0.05	9.7	17.8	10.6	24.7
	0.10	7.8	15.7	11.4	28.2
	0.15	9.8	21.2	13.4	35.7
	0.20	18.1	39.1	25.4	66.0
	0.25	26.4	54.0	52.7	111.9
2000	0.05	12.6	26.2	23.0	57.2
	0.10	18.3	39.4	31.0	74.8
	0.15	22.0	44.1	29.5	70.9
	0.20	21.2	41.8	31.8	71.1
	0.25	20.2	35.8	33.3	68.7

Note: Each statistic is the Pearson chi-squared statistic, with nine degrees of freedom, averaged over 25 Monte Carlo replications. Split = .1. For each size, the mean number of votes for the candidate before the repeaters are added is: 500, 108.3; 1000, 216.7; 1500, 325; 2000, 433.3.

Table 16: Simulated Repeaters with Thresholds

Size	Add	500 precincts				1,000 precincts			
		Below Threshold		Above Threshold		Below Threshold		Above Threshold	
		Benf.	equal	Benf.	equal	Benf.	equal	Benf.	equal
500	0.05	13.2	24.3	19.4	13.0	19.5	43.2	25.8	16.1
	0.10	17.5	30.5	18.9	13.4	25.9	53.5	34.4	22.3
	0.15	17.5	27.7	16.3	18.7	29.5	50.5	24.0	27.7
	0.20	14.6	15.3	8.6	12.3	18.9	20.1	9.5	17.5
	0.25	15.5	11.6	16.7	12.2	24.2	15.9	23.0	14.0
1000	0.05	12.8	15.3	13.0	11.5	18.1	22.3	17.6	16.3
	0.10	13.1	7.3	10.5	11.3	18.6	9.0	11.9	18.1
	0.15	12.3	8.4	13.8	15.1	19.6	9.6	20.0	26.5
	0.20	15.1	8.4	10.3	16.4	22.3	10.4	13.5	28.2
	0.25	15.2	10.5	15.2	21.8	19.7	12.8	21.9	36.4
1500	0.05	9.3	11.4	11.9	26.8	10.5	14.1	13.5	38.9
	0.10	11.0	12.6	11.0	25.6	10.7	13.2	16.3	44.0
	0.15	7.6	11.4	13.8	31.1	11.3	17.4	20.0	54.6
	0.20	9.4	13.3	22.4	47.7	8.4	16.6	42.6	96.2
	0.25	10.3	12.3	41.8	77.8	10.3	15.7	72.6	142.9
2000	0.05	9.5	19.0	15.8	34.7	10.8	26.6	24.3	60.8
	0.10	8.1	14.6	21.5	46.0	10.9	29.1	29.6	74.4
	0.15	8.8	17.6	24.5	48.2	11.7	29.4	38.4	87.1
	0.20	7.9	14.8	21.9	42.9	9.5	26.4	42.3	88.0
	0.25	11.4	20.9	23.1	42.4	10.3	25.5	38.7	75.9

Note: Each statistic is the Pearson chi-squared statistic, with nine degrees of freedom, averaged over 25 Monte Carlo replications. Split = .1. For each size, the mean number of votes for the candidate before the repeaters are added is: 500, 108.3; 1000, 216.7; 1500, 325; 2000, 433.3.

Table 17: Simulated Proportional Adjustments

Size	Prop.	500 precincts		1,000 precincts	
		Benf.	equal	Benf.	equal
500	0.8	12.9	18.0	18.0	29.5
	0.85	10.7	14.4	9.3	18.2
	0.9	7.7	13.0	7.7	16.0
	0.95	9.4	11.4	8.6	13.0
	1.05	10.4	11.1	10.1	14.8
	1.1	9.6	14.8	10.2	15.4
	1.15	9.7	10.3	13.7	13.2
	1.2	11.3	14.4	13.2	16.5
1000	0.8	16.2	18.0	15.6	19.6
	0.85	10.3	10.0	12.7	11.8
	0.9	10.9	10.7	11.3	10.1
	0.95	10.7	12.1	11.4	11.9
	1.05	9.9	10.6	10.9	11.7
	1.1	10.3	14.2	10.4	19.2
	1.15	11.0	14.6	10.6	15.2
	1.2	9.9	15.2	10.0	19.4
1500	0.8	10.5	15.0	13.7	27.7
	0.85	10.0	15.7	10.0	23.2
	0.9	9.5	17.0	10.0	24.1
	0.95	10.1	17.7	10.1	24.9
	1.05	9.2	16.9	8.1	23.1
	1.1	9.6	18.4	9.5	27.0
	1.15	10.6	19.5	9.1	25.6
	1.2	10.1	20.6	10.2	28.8
2000	0.8	10.5	20.5	11.1	29.7
	0.85	8.6	16.3	9.6	27.4
	0.9	9.5	20.0	12.3	31.2
	0.95	8.4	17.8	10.3	30.4
	1.05	12.9	26.8	16.0	45.2
	1.1	15.5	33.1	23.2	59.8
	1.15	16.8	34.3	27.3	69.2
	1.2	18.3	39.5	23.5	61.8

Note: Each statistic is the Pearson chi-squared statistic, with nine degrees of freedom, averaged over 25 Monte Carlo replications. Split = .1. For each size, the mean number of votes for the candidate before the repeaters are added is: 500, 108.3; 1000, 216.7; 1500, 325; 2000, 433.3.

Table 18: Simulated Proportional Adjustments with Thresholds

Size	Prop.	500 precincts				1,000 precincts			
		Below Threshold		Above Threshold		Below Threshold		Above Threshold	
		Benf.	equal	Benf.	equal	Benf.	equal	Benf.	equal
500	0.8	17.9	18.3	10.1	14.4	23.6	24.4	12.3	22.3
	0.85	10.7	10.4	7.1	11.5	11.3	10.6	8.4	16.8
	0.9	10.9	9.8	9.5	15.1	12.0	10.3	9.5	21.0
	0.95	12.5	10.2	11.3	15.4	17.3	13.5	10.5	19.0
	1.05	15.3	20.8	14.2	12.5	21.4	30.8	22.5	18.1
	1.1	22.3	33.0	15.5	11.6	33.7	53.8	26.0	18.3
	1.15	17.9	26.2	17.8	12.2	22.1	36.3	23.5	13.4
	1.2	21.5	31.1	16.6	10.7	33.6	52.0	26.5	15.4
1000	0.8	17.2	23.3	14.3	10.1	23.3	34.2	22.6	13.8
	0.85	11.9	14.1	11.5	9.5	16.0	22.2	17.9	11.9
	0.9	10.4	10.7	9.4	10.5	10.8	12.1	11.8	10.0
	0.95	9.1	9.7	10.3	9.8	10.9	12.0	13.0	11.3
	1.05	11.2	17.4	14.0	8.3	16.5	28.5	21.4	11.2
	1.1	14.5	23.1	11.9	8.4	19.1	35.9	20.7	12.4
	1.15	12.1	17.8	13.4	10.6	14.7	25.2	17.5	12.6
	1.2	14.0	21.8	11.7	10.9	17.2	29.3	17.4	14.4
1500	0.8	13.9	20.8	12.4	12.7	17.9	30.7	19.4	17.2
	0.85	11.3	15.6	11.9	14.1	12.9	20.5	14.9	20.7
	0.9	10.3	12.5	11.6	17.3	10.2	12.5	11.5	21.4
	0.95	10.0	10.9	8.7	13.2	11.4	15.2	11.6	22.2
	1.05	8.9	11.8	9.6	14.3	10.2	17.7	9.0	19.3
	1.1	9.8	13.2	8.3	14.3	11.6	18.2	11.9	24.6
	1.15	10.2	10.3	10.9	18.8	13.0	13.9	12.5	30.7
	1.2	10.8	11.2	12.8	22.9	14.3	12.1	15.4	36.6
2000	0.8	11.0	13.8	11.2	17.0	14.9	21.2	10.7	22.1
	0.85	11.3	13.2	10.4	19.1	11.7	14.5	12.4	25.4
	0.9	11.0	10.1	13.6	24.9	12.6	10.8	15.4	34.9
	0.95	12.2	9.8	10.7	20.3	11.4	10.6	13.4	32.7
	1.05	11.1	11.4	16.5	30.3	9.8	11.9	25.0	51.9
	1.1	10.3	11.1	21.4	39.1	9.5	11.2	34.6	68.6
	1.15	12.3	10.2	25.3	46.4	15.3	10.5	50.0	95.2
	1.2	12.4	12.8	23.2	42.7	8.7	9.2	38.2	76.9

Note: Each statistic is the Pearson chi-squared statistic, with nine degrees of freedom, averaged over 25 Monte Carlo replications. Split = .1. For each size, the mean number of votes for the candidate before the repeaters are added is: 500, 108.3; 1000, 216.7; 1500, 325; 2000, 433.3.

Table 19: Simulated Counts for Miami-Dade Precincts and Machines

Split	precincts		machines	
	Benf.	equal	Benf.	equal
0.1	9.5	14.5	9.5	69.5
0.2	9.4	14.3	10.3	61.0
0.3	9.6	15.9	12.6	45.2
0.4	9.1	13.5	16.8	35.1
0.5	8.8	12.6	21.8	26.6
0.6	11.1	12.3	29.2	25.0
0.7	9.4	13.1	33.0	18.9

Note: Each statistic is the Pearson chi-squared statistic, with nine degrees of freedom, averaged over 25 Monte Carlo replications.

Table 20: Calibrated Simulated Counts for Miami-Dade Precincts and Machines

Calibrated Parameters	Bush				Kerry			
	precincts		machines		precincts		machines	
	Benf.	equal	Benf.	equal	Benf.	equal	Benf.	equal
actual precincts	7.9	10.8	16.3	35.7	9.5	14.4	36.7	19.1
splits	10.4	18.2	19.4	109.3	9.2	18.6	16.0	103.0
splits and betas	9.8	15.2	11.1	48.6	9.4	14.8	12.2	49.1

Note: Each statistic is the Pearson chi-squared statistic, with nine degrees of freedom. The simulated statistics are averaged over 100 Monte Carlo replications.

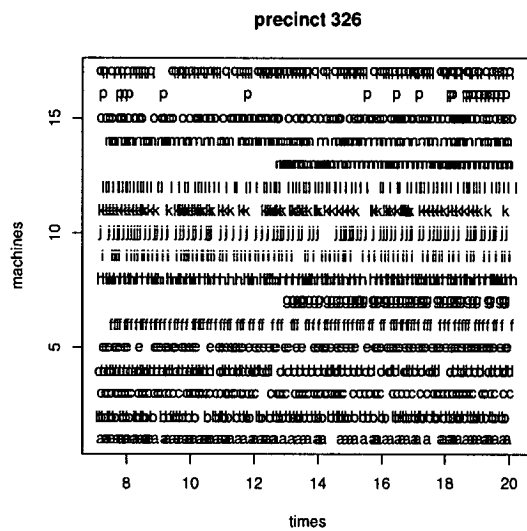
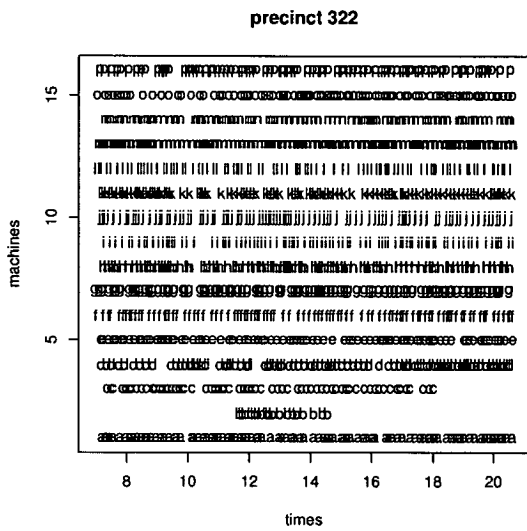
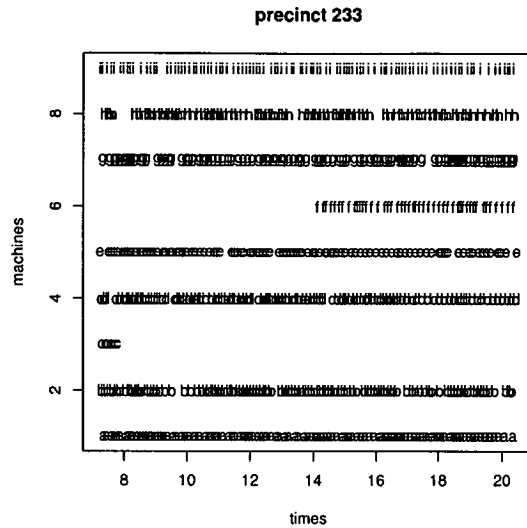
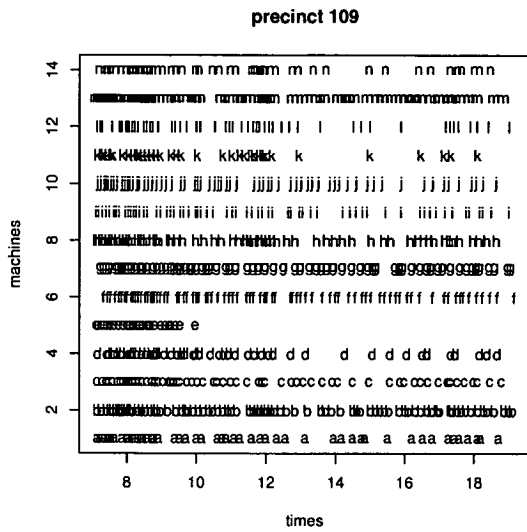


Figure 1: Times (Resolved to the Second and Shown on a 24-Hour Clock) When Votes Were Cast on Machines in Selected Precincts on Election Day, Miami-Dade County

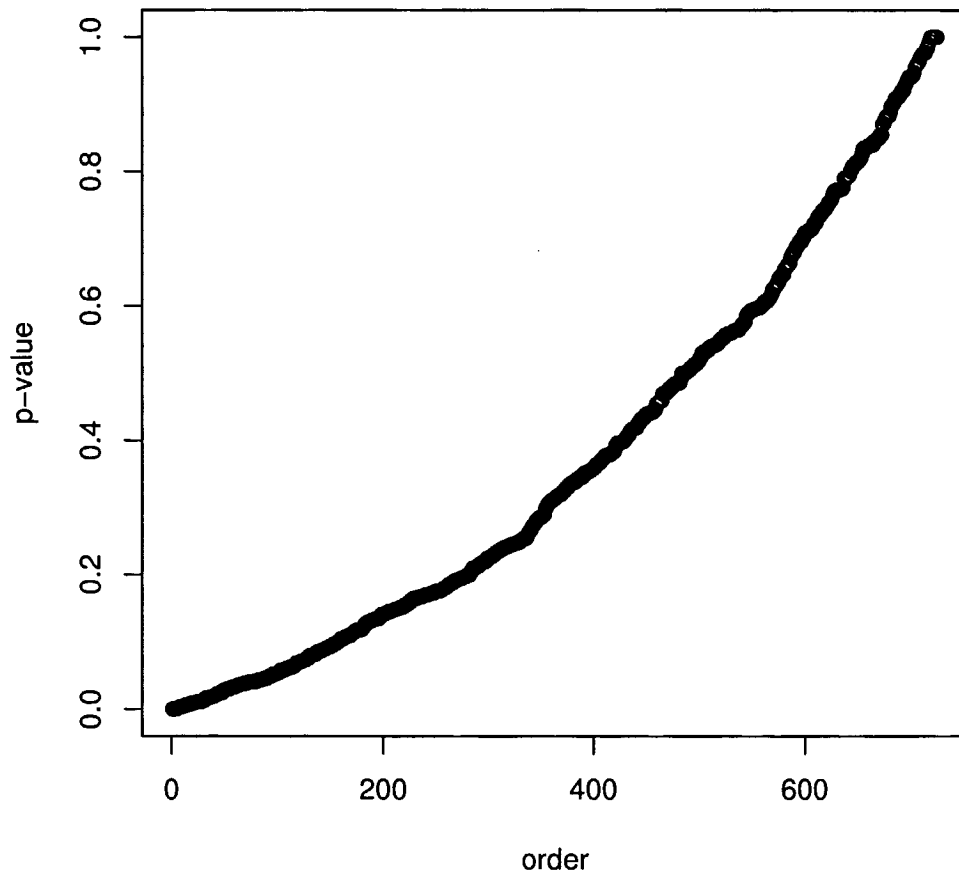


Figure 2: Miami-Dade Election Day Voting Machine Randomization Test Tail Probabilities

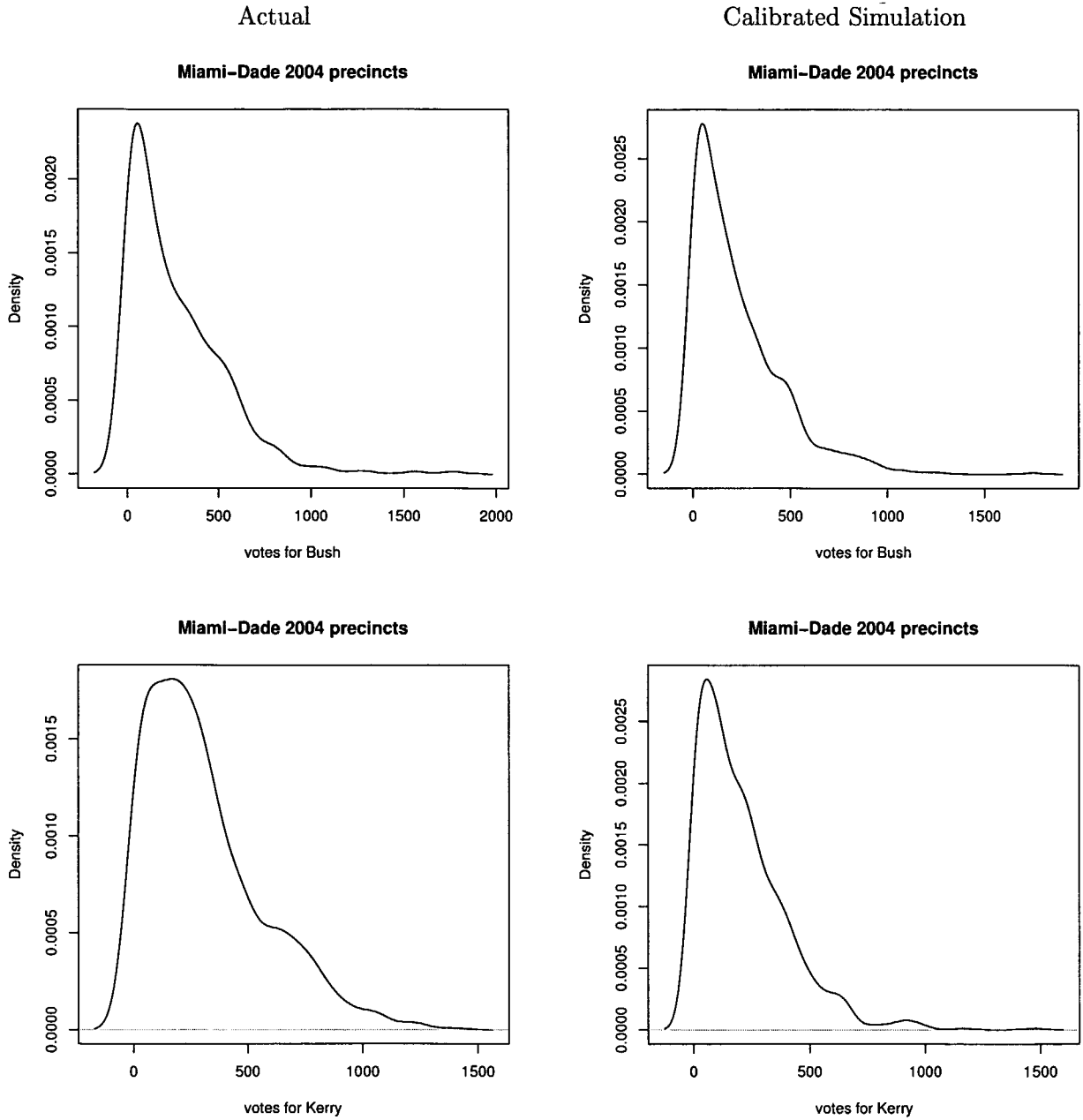


Figure 3: Miami-Dade Election Day Precinct Vote Count Distributions





# Department of Justice

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## **Justice Department Sends Election Observers to 22 States Across the Country in Unprecedented Monitoring Effort for a Midterm Election**

WASHINGTON – The Justice Department today announced that it is deploying an unprecedented number of federal personnel to monitor tomorrow's midterm election, sending more than 500 federal observers and more than 350 Justice Department personnel to 69 jurisdictions in 22 states – more than double the total sent on election day in 2002, which was the previous record for a midterm election.

Since the passage of the Voting Rights Act of 1965, the Justice Department has regularly sent observers and monitors around the country to protect election-related civil rights. This summer, President Bush signed the reauthorized Voting Rights Act, which protects the rights of Americans to participate in the electoral process without discrimination. Under the law, the Department of Justice is authorized to ask the Office of Personnel Management (OPM) to send federal observers to areas that have been certified for coverage by a federal court, or the Attorney General, pursuant to the Act. Federal OPM observers and/or Justice Department personnel will monitor polling place activities in 69 jurisdictions in 22 states throughout the country:

- Chambers County, Ala.
- Lee County, Ala.
- Tuscaloosa County, Ala.
- Apache County, Ariz.
- Cochise County, Ariz.
- Maricopa County, Ariz.
- Navajo County, Ariz.
- Pima County, Ariz.
- Pulaski County, Ark.
- Alameda County, Calif.
- Orange County, Calif.
- San Benito County, Calif.
- San Diego County, Calif.
- San Francisco, Calif.
- San Mateo County, Calif.

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- Santa Clara County, Calif.
- Ventura County, Calif.
- Adams County, Colo.
- Arapahoe County, Colo.
- Denver County, Colo.
- Broward County, Fla.
- Duval County, Fla.
- Hillsborough County, Fla.
- Osceola County, Fla.
- Palm Beach County, Fla.
- Cook County, Ill.
- Chicago, Ill.
- Ford County, Kan.
- Concordia Parish, La.
- New Orleans, La.
- St. Landry Parish, La.
- Boston, Mass.
- Springfield, Mass.
- Hamtramck, Mich.
- Noxubee County, Miss.
- Rosebud County, Mont.
- Colfax County, Neb.
- Bergen County, N.J.
- Essex County, N.J.
- Hudson County, N.J.
- Middlesex County, N.J.
- Salem County, N.J.
- Cibola County, N.M.
- Sandoval County, N.M.
- Kings County, N.Y.
- Queens County, N.Y.
- Richmond County, N.Y.
- Westchester County, N.Y.
- Cuyahoga County, Ohio
- Berks County, Pa.
- Bennett County, S.D.
- Buffalo County, S.D.
- Charles Mix County, S.D.
- Dewey County, S.D.
- Mellette County, S.D.
- Shannon County, S.D.
- Todd County, S.D.
- Ziebach County, S.D.
- Brazos County, Texas
- Ector County, Texas
- Fort Bend County, Texas
- Galveston County, Texas
- Hale County, Texas
- Medina County, Texas
- Travis County, Texas
- Williamson County, Texas
- Wilson County, Texas

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- King County, Wash.
- Pierce County, Wash.

The observers and monitors will watch and record activities during voting hours at select polling locations in the aforementioned cities and counties. Civil Rights Division personnel will coordinate the federal activities and maintain contact with local election officials. In addition, the Department has deployed observers and monitors who speak Spanish, as well as Arabic, and a variety of Asian and Native American languages.

The OPM observers and Department personnel will monitor whether certain counties and localities are complying with federal voting laws by, for example, determining whether any voters are challenged improperly on the basis of their race, color, or membership in a language minority group; complying with the language minority provisions of the Voting Rights Act; permitting voters who are blind, have disabilities, or unable to read or write assistance by a person of their choice; and permitting all eligible voters to cast a ballot, or at least a provisional ballot.

Voters will be able to file complaints online on the Voting Section home page at <http://www.usdoj.gov/crt/voting/index.htm>. Civil Rights Division personnel will be available at a specially staffed toll free number, 1-800-253-3931, to receive complaints, and on a dedicated TTY line for the hearing impaired, 1-888-305-3228.

More information about the Voting Rights Act and other federal voting laws is available on the Department of Justice's Web site at <http://www.usdoj.gov/crt/voting>.

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## **FACT SHEET: PROTECTING VOTING RIGHTS AND PREVENTING ELECTION FRAUD**

"Just one instance of fraud or one citizen who cannot exercise the power to vote .... is too many. Our work continues until every qualified citizen in every community in America has an equal chance to vote - and to have that vote count." - Attorney General Alberto R. Gonzales, October 4, 2005

For over 30 years, the Justice Department has had an Election Day program to ensure the right of eligible voters to cast their votes and help shape the nation's political leadership.

The Department of Justice has responsibility for enforcing federal civil rights laws guaranteeing voting rights and for prosecuting voter fraud. The Civil Rights and Criminal Divisions of the Department of Justice are involved in election matters to ensure both ballot access and ballot integrity.

The Criminal Division and the Department's 93 U.S. Attorneys are responsible for enforcing the election fraud laws passed by Congress and signed by the President.

The Civil Rights Division is charged with enforcing the Voting Rights Act of 1965 as well as the National Voter Registration Act, both of which are designed to guarantee access to the polls on Election Day.

In October 2002, the Department established a new law enforcement initiative, called the Ballot Access and Voting Integrity Initiative, to provide increased protections against election fraud and voting rights abuses. The Initiative mandated increased Department-wide efforts to enforce federal civil rights laws guaranteeing voting rights as well as to deter, and if necessary, investigate and prosecute voter fraud.

The Justice Department will have its Election Day program in place for the November 8, 2005 elections.

Election Day Program

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"Election crimes strike at the core of our representative system of government. Vigorous investigation and prosecution of those who commit election crimes thus serves two important goals: first, to punish those responsible for these crimes and to dismantle their corrupt machines, and, second, to assure the public that the integrity of the election process is one of the Department's highest priorities." - Assistant Attorney General of the Criminal Division Alice S. Fisher

"Protecting access to the ballot for all eligible voters on Election Day is a major priority of the Civil Rights Division. We are committed to safeguarding the voting rights of all Americans." - Acting Assistant Attorney General for Civil Rights Bradley J. Schlozman

On November 8, 2005, the Department of Justice will have in place its nationwide program to guarantee access to the polls, protect individual voting rights, and deter voter fraud and voter intimidation. In those districts where voting activity will take place, federal prosecutors, investigators, and Civil Rights Division attorneys will be readily available to the public for the purpose of receiving complaints and taking any appropriate action when the polls are open on Election Day. When the polls open, the resources of the Department of Justice - both in Washington, D.C. and in the states - will be available to handle complaints, ensure access, and open investigations.

#### Criminal Division:

The Criminal Division's Public Integrity Section has assigned attorneys to assist with potential voter fraud cases, as needed.

Lawyers with the Public Integrity Section will be on duty from the time the polls open on the East Coast until the time they close on the West Coast to provide consultation and coordination with the Department's District Election Officers.

Since the 2002 commencement of the Ballot Access and Voting Integrity Initiative, the Criminal Division and the U.S. Attorneys' Offices have opened nearly 200 criminal investigations of alleged election fraud or voter intimidation. Over 120 of these investigations are currently pending. In addition, since the Initiative began, over 95 persons have been charged with election fraud offenses, and over 55 of these defendants have been convicted.

The Justice Department will enforce the laws that prohibit:

voter intimidation; voting by ineligible individuals; bribery of voters; destruction of valid ballots or registrations; altering vote tallies; multiple voting; absentee ballot fraud; malfeasance by election officials; and ballot- box tampering or destruction.

#### Civil Rights Division:

On Election Day, Civil Rights Division personnel will be available at a toll free number to receive complaints.

Since the passage of the Voting Rights Act of 1965, the Justice Department has regularly sent observers around the country to protect the voting rights of all citizens, including minority and elderly voters. This year, the Civil Rights Division will once again have monitors and observers in cities and towns across the country to ensure access to the polls, and to enforce our nation's civil rights laws.

The Division has been engaged in a major outreach effort to minority groups and election officials to inform jurisdictions of their obligations under the Language Minority Provision of the Voting Rights Act. The Division will enforce the law that requires jurisdictions meeting certain criteria to provide bilingual access to elections.

The Division will enforce existing consent decrees.

Election Day Contact Information:

Voting Section [COMPLAINTS RELATED TO BALLOT ACCESS] Civil Rights Division  
950 Pennsylvania Avenue, NW Washington, D.C. 20530 800-253-3931

Public Integrity Section [COMPLAINTS RELATED TO BALLOT INTEGRITY] Criminal  
Division 950 Pennsylvania Avenue, NW Washington, D.C. 20530 202-514-1412

Office of Public Affairs [ALL MEDIA INQUIRIES] 950 Pennsylvania Avenue, NW  
Washington, DC 20530 202-514-2007

Background Information on the Justice Department's Mission to Protect Voting Rights  
and Prevent Election Fraud

The Ballot Access and Voting Integrity Initiative. In October 2002, then-Attorney General John Ashcroft ordered the creation of a Department-wide Ballot Access and Voting Integrity Initiative. The goals of this ongoing Initiative are to:

enhance the Department's ability to deter discrimination and voter fraud; and

prosecute violators vigorously whenever and wherever these offenses occur.

Civil Rights and Criminal Division Leaders Heading Initiative. To protect the vote of Americans, resources from across the Department of Justice have been committed to this effort. Acting Assistant Attorney General of the Civil Rights Division Bradley Schlozman and Assistant Attorney General of the Criminal Division Alice S. Fisher are leading this initiative.

Annual Voting Integrity Seminars. Each year since the start of the Initiative the Justice Department holds a training seminar in Washington, D.C., for District Election Officers of all 93 U.S. Attorneys' Offices. These annual two-day seminars provide comprehensive training to federal prosecutors on the handling of election fraud and voting rights violations. This year's conference was held on October 4-5.

Designating Federal Prosecutors to Address Voting Matters. The Attorney General directed all 93 U.S. Attorneys to designate a District Election Officer responsible for our efforts on Election Day. These officers are experienced Assistant U.S. Attorneys with knowledge of the laws that address election fraud, as well as laws that:

prohibit racial discrimination and voter intimidation;

govern absentee voting for uniformed and overseas citizens, the elderly, and citizens with disabilities; and

protect the voting rights of minority language Americans.

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District Election Officers. These officers are election experts in their districts, and implement the Department of Justice's response to election fraud and campaign financing crimes under the overall supervision of the Public Integrity Section pursuant to 9 U.S.A.M. 85.210.

State Coordination. Pursuant to the Initiative, District Election Officers meet before significant elections with state and local election and law enforcement officials to coordinate the handling of election matters and offer federal assistance in the investigation and prosecution of election-related crimes that may occur in their respective districts.

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The Justice Department will have its Election Day program in place for the November 8, 2005 elections.

#### Election Day Program

“Election crimes strike at the core of our representative system of government. Vigorous investigation and prosecution of those who commit election crimes thus serves two important goals: first, to punish those responsible for these crimes and to dismantle their corrupt machines, and, second, to assure the public that the integrity of the election process is one of the Department’s highest priorities.” - Assistant Attorney General of the Criminal Division Alice S. Fisher

“Protecting access to the ballot for all eligible voters on Election Day is a major priority of the Civil Rights Division. We are committed to safeguarding the voting rights of all Americans.” - Acting Assistant Attorney General for Civil Rights Bradley J. Schlozman

On November 8, 2005, the Department of Justice will have in place its nationwide program to guarantee access to the polls, protect individual voting rights, and deter voter fraud and voter intimidation. In those districts where voting activity will take place, federal prosecutors, investigators, and Civil Rights

Division attorneys will be readily available to the public for the purpose of receiving complaints and taking any appropriate action when the polls are open on Election Day. When the polls open, the resources of the Department of Justice - both in Washington, D.C. and in the states - will be available to handle complaints, ensure access, and open investigations.

#### Criminal Division:

The Criminal Division's Public Integrity Section has assigned attorneys to assist with potential voter fraud cases, as needed.

Lawyers with the Public Integrity Section will be on duty from the time the polls open on the East Coast until the time they close on the West Coast to provide consultation and coordination with the Department's District Election Officers.

Since the 2002 commencement of the Ballot Access and Voting Integrity Initiative, the Criminal Division and the U.S. Attorneys' Offices have opened nearly 200 criminal investigations of alleged election fraud or voter intimidation. Over 120 of these investigations are currently pending. In addition, since the Initiative began, over 95 persons have been charged with election fraud offenses, and over 55 of these defendants have been convicted.

The Justice Department will enforce the laws that prohibit:

voter intimidation; voting by ineligible individuals; bribery of voters; destruction of valid ballots or registrations; altering vote tallies; multiple voting; absentee ballot fraud; malfeasance by election officials; and ballot- box tampering or destruction.

#### Civil Rights Division:

On Election Day, Civil Rights Division personnel will be available at a toll free number to receive complaints.

Since the passage of the Voting Rights Act of 1965, the Justice Department has regularly sent observers around the country to protect the voting rights of all citizens, including minority and elderly voters. This year, the Civil Rights Division will once again have monitors and observers in cities and towns across the country to ensure access to the polls, and to enforce our nation's civil rights laws.

The Division has been engaged in a major outreach effort to minority groups and election officials to inform jurisdictions of their obligations under the Language Minority Provision of the Voting Rights Act. The Division will enforce the law that requires jurisdictions meeting certain criteria to provide bilingual access to elections.

The Division will enforce existing consent decrees.

Election Day Contact Information:

Voting Section [COMPLAINTS RELATED TO BALLOT ACCESS] Civil Rights Division 950 Pennsylvania Avenue, NW Washington, D.C. 20530 800-253-3931

Public Integrity Section [COMPLAINTS RELATED TO BALLOT INTEGRITY] Criminal Division 950 Pennsylvania Avenue, NW Washington, D.C. 20530 202-514-1412

Office of Public Affairs [ALL MEDIA INQUIRIES] 950 Pennsylvania Avenue, NW Washington, DC 20530 202-514-2007

Background Information on the Justice Department's Mission to Protect Voting Rights and Prevent Election Fraud

The Ballot Access and Voting Integrity Initiative. In October 2002, then-Attorney General John Ashcroft ordered the creation of a Department-wide Ballot Access and Voting Integrity Initiative. The goals of this ongoing Initiative are to:

enhance the Department's ability to deter discrimination and voter fraud; and

prosecute violators vigorously whenever and wherever these offenses occur.

**Civil Rights and Criminal Division Leaders Heading Initiative.** To protect the vote of Americans, resources from across the Department of Justice have been committed to this effort. Acting Assistant Attorney General of the Civil Rights Division Bradley Schlozman and Assistant Attorney General of the Criminal Division Alice S. Fisher are leading this initiative.

**Annual Voting Integrity Seminars.** Each year since the start of the Initiative the Justice Department holds a training seminar in Washington, D.C., for District Election Officers of all 93 U.S. Attorneys' Offices. These annual two-day seminars provide comprehensive training to federal prosecutors on the handling of election fraud and voting rights violations. This year's conference was held on October 4-5.

**Designating Federal Prosecutors to Address Voting Matters.** The Attorney General directed all 93 U.S. Attorneys to designate a District Election Officer responsible for our efforts on Election Day. These officers are experienced Assistant U.S. Attorneys with knowledge of the laws that address election fraud, as well as laws that:

prohibit racial discrimination and voter intimidation;

govern absentee voting for uniformed and overseas citizens, the elderly, and citizens with disabilities; and

protect the voting rights of minority language Americans.

**District Election Officers.** These officers are election experts in their districts, and implement the Department of Justice's response to election fraud and campaign financing crimes under

the overall supervision of the Public Integrity Section pursuant to 9 U.S.A.M. 85.210.

State Coordination. Pursuant to the Initiative, District Election Officers meet before significant elections with state and local election and law enforcement officials to coordinate the handling of election matters and offer federal assistance in the investigation and prosecution of election-related crimes that may occur in their respective districts.

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