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# HELP AMERICA VOTE ACT OF 2002

*Strengthening Partnerships to Improve the Process of  
Election Administration*



NATIONAL CONFERENCE  
of STATE LEGISLATURES



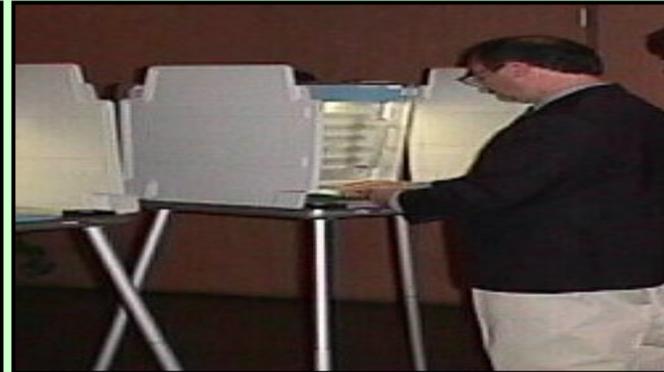
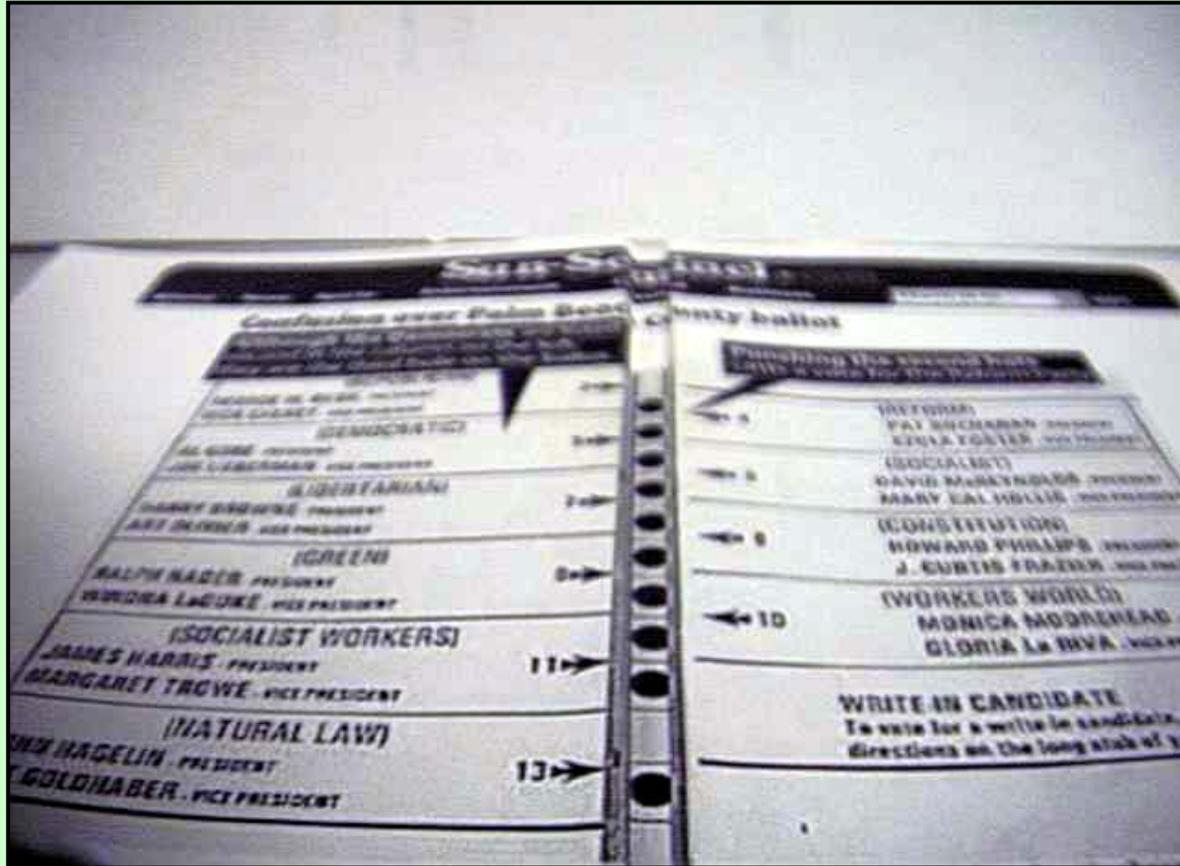
**Ray Martinez III**  
Commissioner  
U.S. Election Assistance Commission





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## Voter's Eye View--The Butterfly Ballot



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No punch ->

Clean ->

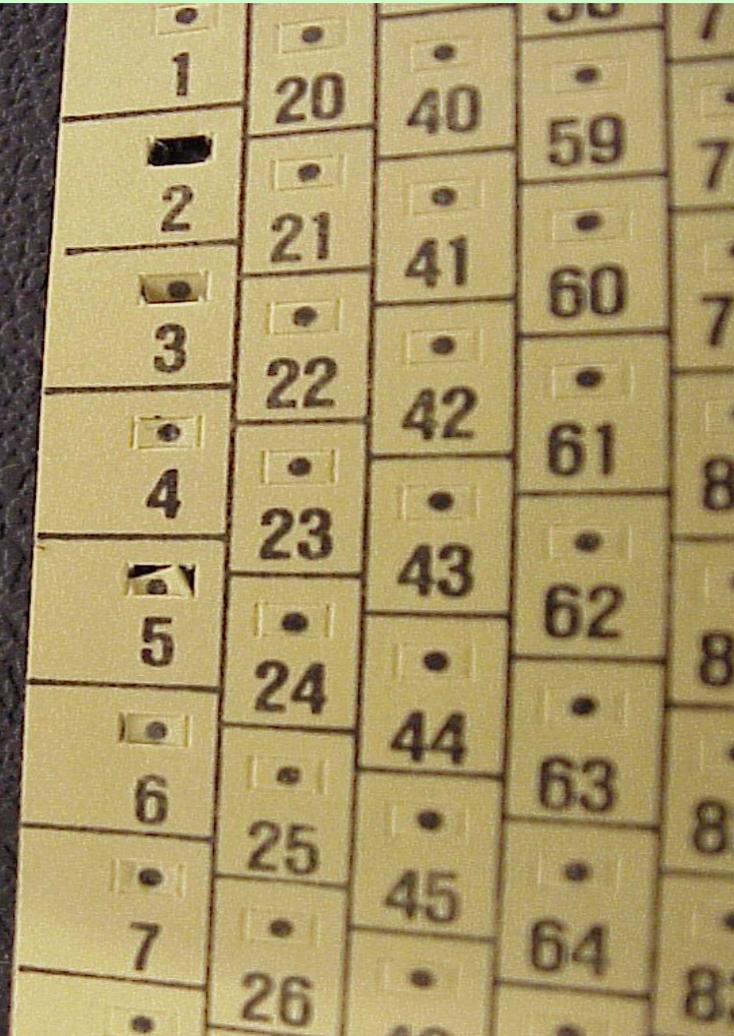
Hanging ->

Dimpled ->

Hanging ->

Pregnant ->

Dimpled ->





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## Voter Confidence in Accuracy of Election Results

*NBC News/Wall Street Journal* Poll (December 2004)

Do you feel that there has been a fair and accurate vote count in the presidential election, or do you worry that the vote count has been unfair?

**68% -- Fair and Accurate Vote Count**

**27% -- Worry that Vote Count Was Unfair**

**5% -- Not Sure**





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## ***VOTING EQUIPMENT – 2004***

	<u>Counties</u>	<u>Registered Voters</u>
• Punch Card	327 (10.5%)	12.3%
• Lever	264 (8.4%)	13.9%
• Optical Scan	1,429 (45.8%)	34.9%
• Electronic	623 (20.1%)	29.3%

•Source: *Election Data Services, Inc.* (Press Release 08/05/04)



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## *Use of Punch Card Voting Systems is Down...*

- November 2000: **572** Counties Used Punch Cards
- November 2002: **435** Counties Used Punch Cards
- November 2004: Approximately **327** Counties Used Punch Cards



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## *The U.S. Election System is the most decentralized in the world...*

- We have 51 laboratories of democracy who largely set their own rules when it comes to the voting process.
- Unlike most countries, elections in the U.S. are conducted by approximately 7000 local election officials, most of whom are elected by the voters.



The Help America Vote Act of 2002 (HAVA) was passed by Congress and signed into law on October 29, 2002...



President George W. Bush signs H.R. 3295, Help America Vote Act of 2002, into law in the Dwight D. Eisenhower Executive Office Building Tuesday, Oct. 29. The legislation authorizes 3.9 billion dollars for improvements in state and local election systems. "Each state will be required to maintain a clean and current and accurate state -- statewide list of registered voters, making it easier to register and easier to detect fraud," explained the President. *White House photo by Paul Morse.*

As a result of HAVA, States have enacted new laws, regulations and/or procedures which impact how they administer elections.



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## *HAVA Represents...*

- ...the first time in American history that the Federal government has agreed to provide Federal funds to States to help pay for the cost of administering Federal elections.
- ...a significant shift in the way elections have traditionally been run by giving States a set of uniform administrative requirements (Title III) but allowing broad discretion in how to implement these requirements.



## U.S. Election Assistance Commission...

- Independent, bipartisan agency;
- Serve as a “national clearinghouse” of information on administration of Federal elections;
- Administer and distribute “requirements payments” to States;
- Develop and adopt voluntary voting system guidelines;
- Develop and administer a national program for testing, certification and de-certification of voting systems;
- Provide guidance to States on the implementation of the uniform, non-discriminatory administrative requirements;
- Administer the National Voter Registration Act (NVRA);
- Make available information regarding military and overseas voting;
- Conduct studies to promote effective election administration.





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## Title II Requirements Payments to States...

*Conditions for receipt of requirements payments?*

- State has filed with the EAC a State Plan covering the fiscal year in which the State is requesting funding;
- State has implemented a uniform, nondiscriminatory administrative complaint procedure to allow voters to address possible HAVA violations;
- State is in compliance with various related Federal laws (i.e., ADA; VRA, etc.);
- If Requirements Payment will be used other than as required in Title III of HAVA, an explanation of such;
- State has appropriated a 5% match.

*How much has been appropriated by Congress for Title II payments and how much has been distributed by EAC?*

- ✓ Congress has appropriated approximately \$3.1 billion – EAC has thus far distributed in excess of \$2 billion to all 55 jurisdictions covered by HAVA.



# **Title III Administrative Requirements of HAVA**

- **Voting System Standards**  
**[January 1, 2006]**
- **Statewide Voter Registration List**  
**[January 1, 2006 – if State received waiver]**
- **Provisional Voting**  
**[January 1, 2004]**
- **Identification Requirements for First-Time Registrants**  
**[January 1, 2004]**
- **Voter Information Requirements**  
**[January 1, 2004]**



## **Title III Administrative Requirements of HAVA**

### **Voting System Standards (§301)**

No later than January 1, 2006, each voting system used in an election for Federal office shall:

- Permit voter to verify the votes selected before the ballot is cast and counted;
- Provide voter with opportunity to change or correct any error before the ballot is cast and counted;
- Notify the voter of an over-vote and the effect of casting an over-vote;
- Be accessible for individuals with disabilities in a manner that provides the same opportunity to vote as other voters (privacy and independence) – a State or jurisdiction can meet this accessibility requirement through use of at least one “DRE” voting system at each polling place (or other voting system equipped for individuals with disabilities);
- The voting system shall provide alternative language accessibility pursuant to the requirements of section 203 of the Voting Rights Act of 1965.



# EAC Implementation Action...

## Standards for Voting System Integrity and Accuracy

- Since 1990, the voluntary voting systems have been updated once – in 2002 – by the FEC;
- Needless to say, there have been rapid advancements in information and computer technologies in the past decade, so the need to update these voting system standards once again is required. EAC is doing so, in partnership with NIST;
- First set of revised voluntary voting system standards (called “guidelines” in HAVA) were delivered to the EAC on May 9, 2005 by NIST (after a nine-month development process). This process involved technical experts and election officials and has been both inclusive and transparent.



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# EAC Implementation Action...

## Proposed Voluntary Voting System Guidelines (VVSG)

- Released June 29, 2005 – 90 day public comment period ends September 30, 2005.
- Proposed VVSG augment and update the 2002 VSS.
- New material in VVSG is focused in two areas:
  - ❑ **Section 2: Human Factors and Privacy (regarding accessibility requirements for individuals with disabilities).**
  - ❑ **Section 6: Regarding Security concerns pertaining to wireless communications and voter verified paper audit trail (VVPAT).**



# EAC Implementation Action...

## Certification of Voting Systems

- Currently, at least 36 States require voting system vendors to certify their systems at national level ***before*** allowed to sell voting systems in the State;
- This national certification process will be transferred from the National Association of State Election Directors (NASED), which has voluntarily administered this process since 1990, to the EAC;
- EAC certification of voting systems represents ***first time*** that Federal government has been directly involved in ensuring the integrity and accuracy of our Nation's voting systems.



# Title III Administrative Requirements of HAVA

## Computerized Statewide Voter Registration List (§303)

Each State, acting through chief state election official, shall implement a “single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained and administered at the State level.”

- The computerized list shall serve as the “single system” for storing and managing the official list of registered voters throughout the State;
- The computerized list must contain the name and registration information of every legally registered voter in the State and assign a unique identifier;
- The computerized list shall be coordinated with “other agency databases within the State;”
- Voter registration information obtained by local election official shall be “electronically entered” into the statewide list on an “expedited basis;”
- Appropriate State or local official shall perform “list maintenance” on a regular basis (in accordance with NVRA provisions) and coordinate with death records and felony status;
- Appropriate State or local official shall provide “adequate technological security measures” to prevent unauthorized access to the statewide list;
- Verification of accuracy of information provided by applicants is required – via agreement between chief State election official and State motor vehicle authorities.



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# EAC Implementation Action...

## EAC Voluntary Guidance

- **What type of databases meet the requirements of HAVA to generate a single, uniform voter registration list?** Databases hosted on a single, central platform are most closely akin to the requirements of HAVA...although a database which gathers its information from local voter registration databases may also meet the requirement.
- **How frequently must the statewide voter registration list be synchronized with any local databases?** At a minimum, the statewide voter registration list should be synchronized with local voter registration databases at least once every 24 hours...and local election officials should have immediate electronic access.
- **How should the statewide voter registration list be coordinated with other agency databases?** States should coordinate the statewide voter registration list with other state agency databases (e.g., voter registration agencies as defined by NVRA) that may contain information relevant to the statewide voter registration list. Additionally, “regular coordination” between the statewide voter registration list and other government sources of information (e.g., death and felony records) should occur.



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# EAC Implementation Action...

## EAC Voluntary Guidance (Cont'd):

- **What about verification of applicants voter registration information?** HAVA requires States to match information received on voter registration forms for purposes of verifying the accuracy of information received. Moreover, such verification provides an exemption to the voter identification requirement for first-time registrants by mail.
- **Who should have immediate electronic access to the statewide voter registration list?** At a minimum, local election officials must have immediate electronic access to the list...local election official must have electronic access to the statewide list to process voter registrations, assist voters, input or change data. The level of access given to the user should be appropriate to the function of the user and should be established collaboratively by State and local election officials.



## Title III Administrative Requirements of HAVA

### Identification Requirements for First Time Registrants by Mail (§303)

- HAVA requires individual who registers to vote by mail and who has not previously voted in an election for Federal office in the State where that individual is voting to present certain identification documents either at the time of registration, or when the voter comes to the polls. If the voter does not have required identification, “fail safe” paragraph in HAVA allows such voter to cast a provisional ballot.
- If first-time registrant by mail lives in a jurisdiction that has a computerized, statewide voter registration list, and verification of information on registration application occurs, then identification requirement for such voter is no longer applicable.
- Under this section, a voter may show either a current and valid photo identification to the appropriate election official when voting in person 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.



## Title III Administrative Requirements of HAVA

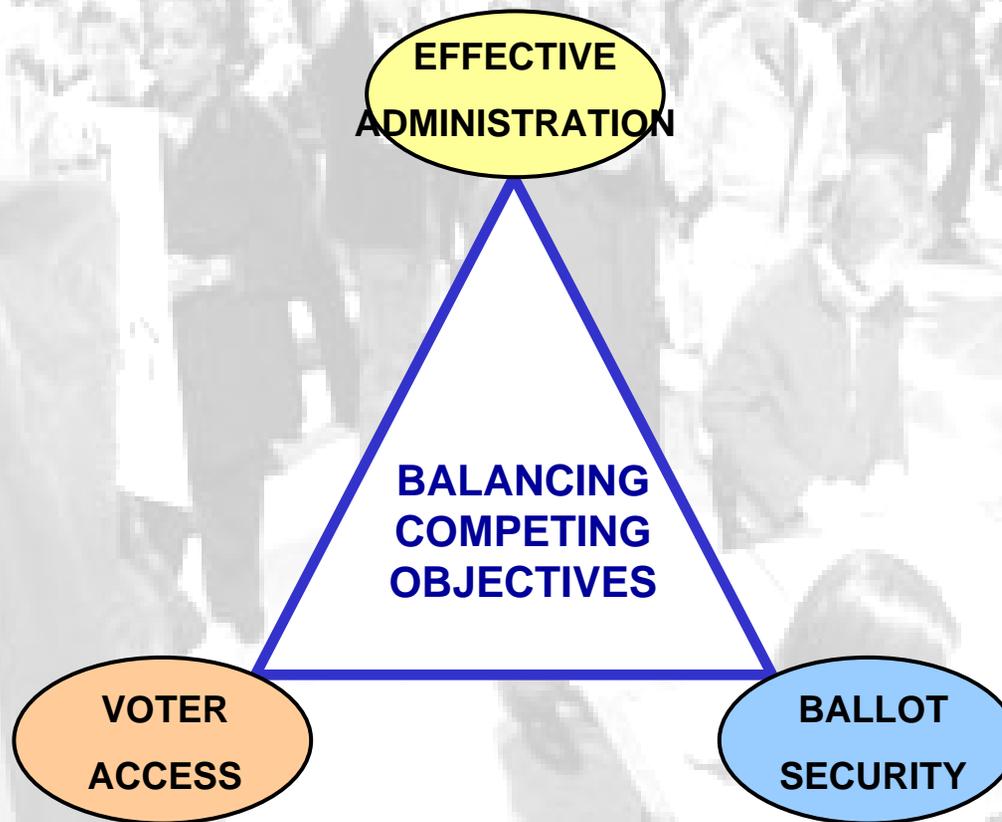
### Provisional Voting (§302)

- If an individual declares he is registered to vote in jurisdiction but name is not on the official list of eligible voters *or* if an election official asserts individual is not eligible to vote, the individual may cast a provisional ballot.
- Election official verifies after election whether individual is registered and eligible to vote in that jurisdiction, *in accordance with State law*.
- Election jurisdiction shall establish free access system (such as toll-free telephone number or an Internet website) so that individual who casts provisional ballot can determine whether it was counted or the reason why the provisional vote was not counted.

**At least 16 States had no form of provisional voting prior to HAVA.**

# EAGLETON INSTITUTE (RUTGER'S UNIVERSITY) MORITZ SCHOOL OF LAW (OHIO STATE UNIVERSITY)

## Research and Study – Provisional Voting



*Slide Courtesy of  
Eagleton Institute*



## 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 of provisional voting?

**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**



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# Title III Administrative Requirements of HAVA

## Voter Information Requirements

HAVA requires election officials to publicly post specific “voting information” at all polling places on the day of each Federal election, including:

- A sample version of the ballot that will be used for that election;
- Instructions on how to vote, including how to cast a vote and how to cast a provisional ballot;
- Instructions for mail-in registrants and first-time voters required to produce voter identification under section 303(b);
- General information on Federal and State laws regarding prohibitions on acts of fraud and misrepresentation.



## **EAC RESEARCH PROJECTS**

- **Voting System Management Guidelines (NASED)**
- **HAVA Mandated Studies:**
  - ❑ **UOCAVA Survey Report**
  - ❑ **Electronic (Internet) Voting Study**
  - ❑ **Free Absentee Ballot Postage Assessment**
- **NVRA Mandated Activities:**
  - ❑ **NVRA Survey Report**
  - ❑ **National Mail Voter Registration Form Update & Redesign**



## **EAC RESEARCH PROJECTS**

- **Other Research Projects:**

- Election Day Survey Report**
- Improving Election Data Collection**
- Effective Designs for Ballots & Polling Place Signage**
- Election Law Website**
- Study of Voter Fraud and Intimidation**

- **Title III Guidance:**

- Statewide Voter Registration Database**
- Provisional Voting**
- Voting System Standards [Section 301(a) Advisory Recently Issued by EAC]**



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## November 2, 2004 Snapshot:

- 200,000,000 eligible voters
- 120,000,000 voter turnout (60% of eligible voters)
- 1,500,000 polling station workers
- 400,000 voting devices used
- 193,000 polling stations
- 7,000 local election officials
- 55 State election officials





# ***QUESTIONS?***

***www.eac.gov***

***(202) 566-3100***

***rmartinez@eac.gov***



**Ray Martinez III**

**Commissioner**

**U.S. Election Assistance Commission**