To Jeannie Layson/EAC/GOV@EAC  
cc  
Subject reporter - Art Levine, Salon.com  

Art Levine  
Salon.com  
202.248.9320  
deadline today or tomorrow  

What exactly is the document USA Today refers to?  
Is it a report or just a staff document?  
Can I get full report submitted by Tova Wang?  
If not, why not?  

FYI  
Google search shows this on the DLC website  
http://www.dlc.org/ndol_ci.cfm?kaid=139&subid=275&contentid=253439  

Art Levine  
Senior Fellow  
Progressive Policy Institute  
3003 Van Ness St. NW, Apt. W-516  
Washington, D.C. 20008  
(202) 248-9320  

Also,  

Salon's shameful six  

There was Florida in 2000 and Ohio in 2004. Here are the six states where vote suppression could cost voters their voice -- and Democrats the election -- in 2006.  

Salon News  
By Art Levine  

Eva Steele has a son in the military who is supposed to be fighting for freedom in Iraq, but sitting in a wheelchair in her room in a Mesa, Ariz., assisted-living facility, she wonders why it's so hard for her to realize a basic freedom back here in America: the right to vote.
Arriving in Arizona in January from Kansas City, weakened by four heart attacks and degenerative disk disease, Steele, 57, discovered that without a birth certificate she can't register to vote. Under a draconian new Arizona law that supposedly targets illegal immigrants, she needs proof of citizenship and a state-issued driver's license or photo I.D. to register. But her van and purse were stolen in the first few weeks after she moved to Mesa, and with her disability checks going to rent and medicine, she can't afford the $15 needed to get her birth certificate from Missouri. Her wheelchair makes it hard for her to navigate the bus routes or the bureaucratic maze required to argue with state bureaucrats. She's unable to overcome the hurdles thrown in her way -- and in the way of as many as 500,000 other Arizona residents -- by the state’s Republican politicians.

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 02:25 PM ---

Tom, Per our conversation, attached is the update the Standards Bd. and Bd. of Adv. received at their May meeting. That's all it was -- a status report. And we clearly stated in our Fed. Register notice that we would deliver an update on our research projects. And this meeting was open to the public.

Take care, and let's get together soon. Let me know if you need anything else.

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

www.eac.gov VF-VI Study Status 5-17-06.pdf

Commissioners, Wendy Weiser of the Brennan Center has requested some of the information that was distributed to the Bd. of Adv. and the Standards Bd. at the May meeting. Her request is below. Attached is a draft letter that I
Fifth batch attached. More to come. --- Peggy Sims

Please do ask him. Thanks

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, April 03, 2006 4:14 PM
To: wang@tcf.org; psims@eac.gov
Subject: Fw: DOJ Training Materials

Devon's response is attached. Guess I'll add this to the list of questions going to Donsanto.
---Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/03/2006 05:12 PM -----
Devon E. Romig/EAC/GOV

Peggy,

The sections that you listed below are also empty in our copy. I have attached a copy of the complete table of contents with all of the section that are empty in our copy of the 2004 DOJ training binder.

Thanks,

Devon
Devon:

One of our consultants noted that there are several sections appear to be missing from the 2004 DOJ training binder. She wasn't sure if it is because of what DOJ sent over to EAC or a problem in the photocopying. From what she can see, some of the table of contents is missing and tabs 14, 15, 16, 17, 21, 23 and 26 are all empty. I think we must have provided the T of C because I don't see one in the binder. Can you please retrieve the binder and check this out for me?

Thanks! --- Peggy

Hi Peg,

I will call J.R. on Thursday to run it by him and let you know what he says. As for my availability on Wednesday, April 12, the answer is "yes". Morning is best for me, although I could be available in the afternoon. You choose a time and I will be here.

Thanks,

Tony

----- Original Message -----
Intimidation Working Group

Tony:

Which one do you think would be best? J.R. Perez, as Election Administrator, should have knowledge of voting fraud and voter intimidation in both voter registration and voting. I assume that, though Patricia is the voter registration supervisor, she also would have knowledge of voting fraud and voter intimidation in balloting. Would they be available in May for a meeting of the project working group? Who could best stand up to the DNC and RNC counsels?

On a related matter, would you be available for our consultants to interview you by telephone next Wednesday? If so, let me know a convenient time. I'll confirm the time with the two consultants, Job Serebrov and Tova Wang. Then, I'll get back to you with the toll-free line and pass code you will need to use for the teleconference.

Thanks!

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: psi@eac.gov

Good Afternoon Peg,

How about J. R. Perez, Elections Administrator, Guadalupe County or Patricia Benavides, Voting Registration Supervisor, Tarrant County, Texas?

Tony
Dear Tony,
Unfortunately both Javier and myself have to decline in being members of the working group from Texas. It is a bad time of the year where we have so many elections and would not be able to contribute enough time to doing research of any kind. Please keep us in mind for future meetings.

Helen Jamison

Helen, Javier,

Attached is the information from the EAC requesting your services as a member of the working group from Texas. Please let me know in a couple of days if one of you will be able to participate. If you need more information, call me and I will conference in with Peggy Sims, who can give you more details.

Thanks,

Tony

Tony:

Thanks for being willing to help me identify a qualified, nonpartisan local election official to serve on our Project Working Group for the preliminary research being conducted on voting fraud and voter intimidation.

Background
Section 241 of the Help America Vote Act of 2002 requires EAC to conduct research on election administration issues. Among the issues listed in the statute are the development of:

1. nationwide statistics and methods of identifying, deterring, and investigating voting fraud in elections for Federal office [section 241(b)(6)]; and
2. 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.

Preliminary EAC Research

Subsequently, the Commission contracted with two consultants (Tova Wang and Job Serebrov) to:

1. develop a comprehensive description of what constitutes voting fraud and voter intimidation in the context of Federal elections;
2. perform preliminary research on these topics (including Federal and State administrative and case law review), identify related activities of key government agencies and civic and advocacy organizations, and deliver a summary of this research and all source documentation;
3. convene a meeting of a project working group composed of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation, provide the results of the preliminary research to the working group, and record the working group's deliberations; and
4. produce a report to EAC summarizing the findings of the preliminary research effort and working group deliberations that includes recommendations for future EAC action, if any.

The Project Working Group will probably meet only once during this preliminary research effort (probably in late April) to review the consultants research and provide input. Other members of the Working Group are lawyers from advocacy groups and major political parties, two State election officials, and Barry Weinberg, former Deputy Chief of DOJ's Voting Section, Civil Rights Division. Craig Donsanto, Director of DOJ's Election Crimes Branch will serve as a technical advisor to the group.

I really appreciate any help you can offer in identifying a qualified individual to fill the slot on the Working Group that has been reserved for an experienced, nonpartisan local election official.

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

*Tony J. Sirvello III* <tjsthree@msn.com>

04/04/2006 02:17 PM To *Peggy Sims* <psims@eac.gov>
cc
Subj Fw: Nonpartisan Local Election Official Needed for Voting Fraud/Voter Intimidation ct Working Group

004145
Good Afternoon Peg,

How about J. R. Perez, Elections Administrator, Guadalupe County or Patricia Benavides, Voting Registration Supervisor, Tarrant County, Texas?

Tony

----- Original Message ----- 
From: Helen Jamison 
To: Tony J. Sirvello III 
Sent: Tuesday, April 04, 2006 11:46 AM 
Subject: RE: Nonpartisan Local Election Official Needed for Voting Fraud/Voter Intimidation Working Group

Dear Tony,

Unfortunately both Javier and myself have to decline in being members of the working group from Texas. It is a bad time of the year where we have so many elections and would not be able to contribute enough time to doing research of any kind. Please keep us in mind for future meetings.

Helen Jamison 

----- Original Message ----- 
From: Tony J. Sirvello III 
Sent: Monday, April 03, 2006 1:19 PM 
To: Helen Jamison; Javier Chacon 
Subject: Fw: Nonpartisan Local Election Official Needed for Voting Fraud/Voter Intimidation Working Group

Helen, Javier,

Attached is the information from the EAC requesting your services as a member of the working group from Texas. Please let me know in a couple of days if one of you will be able to participate. If you need more information, call me and I will conference in with Peggy Sims, who can give you more details.

Thanks,

Tony

----- Original Message ----- 
From: psims@eac.gov
To: 

Subject: Nonpartisan Local Election Official Needed for Voting Fraud/Voter Intimidation Working Group

Tony:

Thanks for being willing to help me identify a qualified, nonpartisan local election official to serve on our Project Working Group for the preliminary research being conducted on voting fraud and voter intimidation.

Background

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1. develop a comprehensive description of what constitutes voting fraud and voter intimidation in the context of Federal elections;
2. perform preliminary research on these topics (including Federal and State administrative and case law review), identify related activities of key government agencies and civic and advocacy organizations, and deliver a summary of this research and all source documentation;
3. convene a meeting of a project working group composed of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation, provide the results of the preliminary research to the working group, and record the working group's deliberations; and
4. produce a report to EAC summarizing the findings of the preliminary research effort and working group deliberations that includes recommendations for future EAC action, if any.

The Project Working Group will probably meet only once during this preliminary research effort (probably in late April) to review the consultants research and provide input. Other members of the Working Group are lawyers from advocacy groups and major political parties, two State election officials, and Barry Weinberg, former Deputy Chief of DOJ's Voting Section, Civil Rights Division. Craig Donsanto, Director of DOJ's Election Crimes Branch will serve as the technical advisor to the group.

I really appreciate any help you can offer in identifying a qualified individual to fill the slot on the Working Group that has been reserved for an experienced, nonpartisan local election official.

Peggy Sims
Election Research Specialist
U.S. Election Assistance Commission
1225 New York Ave, NW - Ste 1100
Washington, DC 20005
Tony:

How about scheduling the teleconference with our consultants for 10 AM CST/11 AM EST on Wednesday, April 12? — Peggy

No, except it means pushing everything back, ie the final report. I suppose we could, as we discussed, take a week or two off in May and tack it on to June. There's no way we could write a final report in ten days, obviously. That would be fine with me.

The Chairman and Vice Chairman are interested in attending the meeting. Due to schedule conflicts, they are asking us to look at the week of May 15. Does that pose a problem for either of you peggy

Sent from my BlackBerry Wireless Handheld
As I have alerted Nicole, the call is not working. Someone ought to get in touch with Kevin -- I do not have his contact information.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, April 10, 2006 8:45-PM
To: Tova Andrea Wang; Job Serebrov
Subject: Kennedy Interview

It appears that the teleconference with Kevin Kennedy is set for tomorrow, April 11, at 10:30 AM CST/11:30 AM EST. Use the usual phone number and passcode.

If you have trouble connecting, contact Nicole.

Peg

-------------
Sent from my BlackBerry Wireless Handheld

--- Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM ---

Nicole Mortellito/CONTRACTOR/EA C/GOV
04/10/2006 10:05 AM
To Margaret Sims/EAC/GOV@EAC
cc
Subject Re: Teleconference set up

You are set for the 12th at 11a

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
Margaret Sims/EAC/GOV
Nicole:
Could you please help me set up a teleconference for Wednesday, April 12 at 11 AM EST (for 1 hour)?
Please send me confirmation.
Peg

Sent from my BlackBerry Wireless Handheld

----- Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM -----
"Weinberg and Utrecht"
To psims@eac.gov
cc
Subject Re: Voting Fraud-Voter Intimidation Project

Peggy:
May looks pretty good right now. I will not be available May 1, or in the morning (before 12:30) on May 4 or May 11, or in the afternoon on May 10.
Barry

----- Original Message -----
From: psims@eac.gov
To:
Sent: Monday, April 03, 2006 3:15 PM
Subject: Voting Fraud-Voter Intimidation Project

Hi, Barry:

I'm trying to arrange a meeting of the Working Group for EAC's Voting Fraud-Voter Intimidation project. Would you please look at your schedule and let me know if there are any days during the first 2 weeks of May that you would NOT be available?

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
e-mail: psims@eac.gov
That's fine, just asking

-----Original Message-----
From: Job Serebrov
Sent: Wednesday, April 12, 2006 11:26 AM
To: Tova Wang; psims@eac.gov
Cc: 'Job Serebrov'; 'Nicole Mortellito'
Subject: Re: working group meeting

It was my understanding that the meeting would be on
the 15th or later.
Tova, Peggy is out of the office this week.

--- Tova Wang <wang@tcf.org> wrote:

> I cannot do it on May 5 now. Any update on a date?
> I will be in DC for
> other meetings May 4 - May 7 if that makes any
> difference (EAC would not
> have to pay my transportation if it was on, for
> example, Monday May 8 or
> possibly even the 9th) Thanks.
> 
> Tova Andrea Wang
> Democracy Fellow
> The Century Foundation
> 41 East 70th Street - New York, NY 10021
> phone: 212-452-7704  fax: 212-535-7534
> 
> www.tcf.org, for the latest news,
> analysis, opinions, and events.
>
> 
> <mailto:join-tcfmain@mailhost.groundspring.org>
> Click here to receive our
> weekly e-mail updates.
>
>
I didn’t have anything specific in mind yet, especially as I have not finished going through the voluminous documentation, but I will let you know.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, April 03, 2006 2:41 PM
To: wang@tcf.org;
Subject: Mentioning DOJ Training Guidance

Tova and Job:

Craig Donsanto responds that it is not possible for him to assess the level of public attribution that would be appropriate without seeing the substantive stuff in context. He does not foresee a problem; but recommends that I provide him with the draft text. He will review it to ensure we are not disclosing things we shouldn’t disclose.

Therefore, please provide the draft text to me ASAP, so that I can forward it to him for review. I suspect he will provide me with a prompt response, which I will forward to you.

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

That time is fine. A half hour earlier would be better. I also have a 12 CDT meeting.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Friday, April 07, 2006 12:27 PM
To: Kevin Kennedy  
Subject: Interview

Kevin:
I'm just following up on my request for your availability to be interviewed by our consultants for our voting fraud/voter intimidation project. Are you available Tuesday, April 11 at 11 AM CST?  

Peggy Sims

Sent from my BlackBerry Wireless Handheld

--- Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM ---

Margaret Sims/EAC/GOV  
04/03/2006 05:11 PM  

To: “Job Serebrov”  
  cc: “Job Serebrov”  

Subject: Re: Working Group Contact Info

Thanks, Job! --- Peggy

“Job Serebrov”  
04/03/2006 04:57 PM  

To: psims@eac.gov  
  cc: psims@eac.gov

Subject: Re: Working Group Contact Info

Norcross's assistant is Maria Rivers:  
Rivers@BlankRome.com

Rokita's assistant is:

Amy Miller  
Executive Assistant  
Indiana Secretary of State Todd Rokita  
317-232-6536  
assistant@sos.in.gov

--- psims@eac.gov wrote:

> Please review the attached and let me know of any  
> corrections that should  
> be made. Thanks! --- Peggy 
>
Lets discuss this in 10 minutes.

--- psims@eac.gov wrote:

> Tova and Job:
> Craig Donsanto responds that it is not possible for him to assess the level of public attribution that would be appropriate without seeing the substantive stuff in context. He does not foresee a problem; but recommends that I provide him with the draft text. He will review it to ensure we are not disclosing things we shouldn't disclose.
> Therefore, please provide the draft text to me ASAP, so that I can forward it to him for review. I suspect he will provide me with a prompt response, which I will forward to you.
> 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
Hi Peg,

Attached is a draft of an agenda for the working group. Let us know what you think. Thanks. Tova

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

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

Peggy:

Here is my situation. I am to go to work full time for the Governor at some time in June. I just don't know when and because we are having a special session right now, no one can give me any indications as to the date. The special session will last for at least two weeks. However, I had to arrange a job because the contract ends at the end of May. So---all of this said---if, for instance, I go to work for the Governor the first week of June, I will only be able to work on EAC matters after hours at night.

Job

--- psims@eac.gov wrote:

> The Chairman and Vice Chairman are interested in attending the meeting. Due to schedule conflicts, they are asking us to look at the week of May 15.
> Does that pose a problem for either of youpeggy
> --------------------------
> Sent from my BlackBerry Wireless Handheld
• 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)].

Please let me know if you have any questions. Thanks.

Peggy Sims
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Fax: 202-566-3127
email: psims@eac.gov

Please review the attached and let me know of any corrections that should be made. Thanks! --- Peggy

Thanks, Craig! --- Peggy
Sorry, you mean it's today. OK, thanks. Tova

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, April 10, 2006 8:45 PM
To: Tova Andrea Wang; Job Serebrov
Subject: Kennedy Interview

It appears that the teleconference with Kevin Kennedy is set for tomorrow, April 11, at 10:30 AM CST/11:30 AM EST. Use the usual phone number and passcode.

If you have trouble connecting, contact Nicole. Peg

Sent from my BlackBerry Wireless Handheld

Kevin:

Following up on yesterday’s conversation, would you be available next Tuesday (4/11) to be interviewed by phone by our consultants on the Voting Fraud-Voter Intimidation research project? The interview is likely to take less than an hour. You pick the time and I’ll confirm it with our consultants, Tova Wang and Job Serebrov. Then, I’ll send you an email with the toll-free number and pass code that you will need for the teleconference.

EAC is conducting this preliminary research to determine how best to meet HAVA requirements. Section 241 of the Help America Vote Act of 2002 requires EAC to conduct research on election administration issues. Among the issues listed in the statute are the development of:
As for your second question, it is not possible for me to assess the level of public attribution that would be appropriate without seeing the substantive stuff in context. I do not foresee a problem. So, I recommend that you get me a draft text and I will review it to ensure we are not disclosing things we shouldn't disclose.

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, April 03, 2006 3:13 PM
To: Donsanto, Craig
Subject: Re: Voting Fraud-Voter Intimidation Project

Craig:

I have 2 issues for you today.

First, I am trying to schedule a meeting of the project working group for EAC's Voting Fraud-Voter Intimidation research project. As a technical advisor on this project, your attendance is particularly important to me. Would you please look at your schedule and let me know if there are any days during the first 2 weeks of May that you would NOT be available?

Second, is it OK for our consultants to refer in their report to guidance provided in the DOJ training materials? I ask this because I understood that some materials in the materials are considered confidential and we do not want to violate your confidentiality provisions. If there is a compromis position, such as having you review that portion of the consultants' report, then let me know.

Thanks!

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
e-mail: psims@eac.gov

----- Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM -----

"Tova Wang"
<wang@tcf.org>
04/10/2006 11:04 AM

To psims@eac.gov
cc "Job Serebrov"
Subject small question for Donsanto

Could you please also ask him what the training materials are referring to when they discuss "ballot box stuffing?" Does this mean elections workers add extra votes? Thanks so much. Tova

Tova Andrea Wang
Craig is on the list because the Commission requested he serve as a technical advisory to the project. Although not a member of the project working group, I do need to check his availability for the meeting.

I tried to tell you on the phone that we still are trying to confirm the El Paso County, TX election official for the working group. (Several attempts have been made to contact the Election Director, but she has been out of town.) If we can't get her, we will try for her deputy (also Hispanic). Once I have a response that one of them is willing to serve, I'll update the contact info table and see if I can't get a bio for you two to review. --- Peggy

"Tova Wang" <wang@tcf.org>

Why is Craig Donsanto on the list? And what happened about the local election official? Thanks. Tova

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, April 03, 2006 3:33 PM
To: wang@tcf.org; 
Subject: Working Group Contact Info

Please review the attached and let me know of any corrections that should be made. Thanks! --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM -----
"Tova Wang"
<wang@tcf.org>
That gives us no time between interviews though, right? We've never been able to really limit it to 30 minutes.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, April 10, 2006 8:45 PM
To: Tova Andrea Wang; Job Serebrov
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Peg

--------------------------
Sent from my BlackBerry Wireless Handheld

--- Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM ---

Peggy:
The interviews are ok with me.

Tova:
I think I should write the review on the IFES white paper instead of the red book.

Job

--- psims@eac.gov wrote:

> Hi, Job and Tova:
Hi Peg,

I've just made it through the 2004 binder of materials and have two questions. First, I understand that these materials are confidential, but may we refer to guidance provided in them in our report? Otherwise they are of not much use to us. There's not that much in it that would add to what Donsanto and Tanner told us, but there are a few issues raised that I believe might be germane.

Second, there are several sections evidently missing from the 2004 binder and I'm not sure if that's because of what Donsanto sent over or a problem in the photocopying. From what I can see, some of the table of contents is missing and tabs 14, 15, 16, 17, 21, 23 and 26 are all empty. Can you please look into this?

Thanks and I look forward to speaking to you tomorrow. Tova

--- Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM ---

Margaret Sims/EAC/GOV
Tony:

Which one do you think would be best? J.R. Perez, as Election Administrator, should have knowledge of voting fraud and voter intimidation in both voter registration and voting. I assume that, though Patricia is the voter registration supervisor, she also would have knowledge of voting fraud and voter intimidation in balloting. Would they be available in May for a meeting of the project working group? Who could best stand up to the DNC and RNC counsels?

On a related matter, would you be available for our consultants to interview you by telephone next Wednesday? If so, let me know a convenient time. I'll confirm the time with the two consultants, Job Serebrov and Tova Wang. Then, I'll get back to you with the toll-free line and pass code you will need to use for the teleconference.

Thanks!

Peggy Sims
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U.S. Election Assistance Commission
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Phone: 866-747-1471 (toll free) or 202-566-3120 (direct)
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Good Afternoon Peg,

How about J. R. Perez, Elections Administrator, Guadalupe County or Patricia Benavides, Voting Registration Supervisor, Tarrant County, Texas?

Tony

----- Original Message -----
From: Helen Jamison
To: Tony J. Sirvello III
Sent: Tuesday, April 04, 2006 11:46 AM
Subject: RE: Nonpartisan Local Election Official Needed for Voting Fraud/Voter Intimidation Working Group

Dear Tony,
Unfortunately both Javier and myself have to decline in being members of the working group from Texas. It is a bad time of the year where we have so many elections and would not be able to contribute enough time to doing research of any kind. Please keep us in mind for future meetings.

Helen Jamison

-----Original Message-----
From: Tony J. Sirvello III [mailto:tjsthree@msn.com]
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To: Helen Jamison; Javier Chacon
Subject: Fw: Nonpartisan Local Election Official Needed for Voting Fraud/Voter Intimidation Working Group

Helen, Javier,

Attached is the information from the EAC requesting your services as a member of the working group from Texas. Please let me know in a couple of days if one of you will be able to participate. If you need more information, call me and I will conference in with Peggy Sims, who can give you more details.

Thanks,

Tony

----- Original Message -----  
From: psims@eac.gov
To: 
Sent: Thursday, March 16, 2006 10:29 AM
Subject: Nonpartisan Local Election Official Needed for Voting Fraud/Voter Intimidation Working Group

Tony:

Thanks for being willing to help me identify a qualified, nonpartisan local election official to serve on our Project Working Group for the preliminary research being conducted on voting fraud and voter intimidation.

Background

Section 241 of the Help America Vote Act of 2002 requires EAC to conduct research on election administration issues. Among the issues listed in the statute are the development of:
1. nationwide statistics and methods of identifying, deterring, and investigating voting fraud in elections for Federal office [section 241(b)(6)]; and
2. 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.

Preliminary EAC Research

Subsequently, the Commission contracted with two consultants (Tova Wang and Job Serebrov) to:

1. develop a comprehensive description of what constitutes voting fraud and voter intimidation in the context of Federal elections;
2. perform preliminary research on these topics (including Federal and State administrative and case law review), identify related activities of key government agencies and civic and advocacy organizations, and deliver a summary of this research and all source documentation;
3. convene a meeting of a project working group composed of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation, provide the results of the preliminary research to the working group, and record the working group's deliberations; and
4. produce a report to EAC summarizing the findings of the preliminary research effort and working group deliberations that includes recommendations for future EAC action, if any.

The Project Working Group will probably meet only once during this preliminary research effort (probably in late April) to review the consultants research and provide input. Other members of the Working Group are lawyers from advocacy groups and major political parties, two State election officials, and Barry Weinberg, former Deputy Chief of DOJ's Voting Section, Civil Rights Division. Craig Donsanto, Director of DOJ's Election Crimes Branch will serve as a technical advisor to the group.

I really appreciate any help you can offer in identifying a qualified individual to fill the slot on the Working Group that has been reserved for an experienced, nonpartisan local election official.

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
Good Afternoon Peg,

How about J. R. Perez, Elections Administrator, Guadalupe County or Patricia Benavides, Voting Registration Supervisor, Tarrant County, Texas?

Tony

----- Original Message ----- 
From: Helen Jamison
To: Tony J. Sirvello III
Sent: Tuesday, April 04, 2006 11:46 AM
Subject: RE: Nonpartisan Local Election Official Needed for Voting Fraud/Voter Intimidation Working Group

Dear Tony,
Unfortunately both Javier and myself have to decline in being members of the working group from Texas. It is a bad time of the year where we have so many elections and would not be able to contribute enough time to doing research of any kind. Please keep us in mind for future meetings.

Helen Jamison

----- Original Message ----- 
From: Tony J. Sirvello III
Sent: Monday, April 03, 2006 1:19 PM
To: Helen Jamison; Javier Chacon
Subject: Fw: Nonpartisan Local Election Official Needed for Voting Fraud/Voter Intimidation Working Group

Helen, Javier,

Attached is the information from the EAC requesting your services as a member of the working group from Texas. Please let me know in a couple of days if one of you will be able to participate. If you need more information, call me and I will conference in with Peggy Sims, who can give you more details.

Thanks,

Tony

----- Original Message ----- 
From: psims@eac.gov
To: [redacted]
Sent: Thursday, March 16, 2006 10:29 AM
Subject: Nonpartisan Local Election Official Needed for Voting Fraud/Voter Intimidation Working Group

Tony:

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EAC’s Board of Advisors recommended that EAC make research on these topics a high priority.

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Subsequently, the Commission contracted with two consultants (Tova Wang and Job Serebrov) to:

1. develop a comprehensive description of what constitutes voting fraud and voter intimidation in the context of Federal elections;
2. perform preliminary research on these topics (including Federal and State administrative and case law review), identify related activities of key government agencies and civic and advocacy organizations, and deliver a summary of this research and all source documentation;
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I really appreciate any help you can offer in identifying a qualified individual to fill the slot on the Working Group that has been reserved for an experienced, nonpartisan local election official.

Peggy Sims
Election Research Specialist
U.S. Election Assistance Commission
The fraud chapter has been published by IFES as part of their Money and Politics Program. It's on their website. I tinked the text a bit and presented it in Abjua. The rest of it is regretably not public at present.

Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

-----Original Message-----
From: psims@eac.gov <psims@eac.gov>
To: Donsanto, Craig <Craig.Donsanto@usdoj.gov>
Sent: Wed Apr 05 17:26:12 2006
Subject: Re: Voting Fraud-Voter Intimidation Project

Is there any way to get an advance copy? Our consultants will need to review it before you receive your printed versions. --- Peggy

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

04/05/2006 04:14 PM
To
psims@eac.gov

cc

Subject
Re: Voting Fraud-Voter Intimidation Project

The 7th edition is done and on its way to the printer. It is my hope to get it our in a couple months.

-----Original Message-----
From: psims@eac.gov <psims@eac.gov>
To: Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>
Sent: Wed Apr 05 13:05:15 2006
Subject: Voting Fraud-Voter Intimidation Project

Craig:

In reviewing the great materials you gave our consultants, we have not found an updated draft of your famous Prosecution of Election Offenses. Is that available for review? If you have a pdf version, I could pass that on to our consultants (noting any restrictions you may have on use).

Also, we noticed some gaps in the 2004 DOJ training binder. It appears that we are missing the Chris Herren information from Panel 3 and something titled "July 21, 2004" from Panel 4. If these were removed because we should not see them, just let me know.

I also have to check your availability the week of May15. I'm still trying to find a date that everyone will be available for the working group meeting.

Sorry to bug you. Hope all is going well.

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
Hi, Barry:

I'm trying to arrange a meeting of the Working Group for EAC's Voting Fraud-Voter Intimidation project. Would you please look at your schedule and let me know if there are any days during the first 2 weeks of May that you would NOT be available?

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
e-mail: psims@eac.gov

--- Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM ---

Margaret Sims/EAC/GOV
04/06/2006 03:33 PM

To Edgardo Cortes
cc
Subject Interview for Voting Fraud/Voter Intimidation Project

I've been trying to schedule an interview (by teleconference) among our two consultants, Tova Wang and Job Serebrov, and an election attorney, Colleen McAndrews (310/458-1405). I had to leave your name with her assistant, today, just in case she calls back when I am out of the office.

The EAC consultants are available for interviews next week before 4:30 AM EST on Monday (4/10) and in the afternoon on Wednesday (4/12). Email info on any teleconferences scheduled to Job (serebrov@sbcglobal.net) and Tova (wang@tcf.org). Job operates on CST; Tova on EST.

Thanks! --- Peggy

That time is fine for me. Thanks.

----- Original Message -----
Hi, Job and Tova:

Tony Sirvello (former election director for Harris County, TX and current Executive Director of the International Association of Clerks, Recorders, Election Officials and Treasurers) can make himself available for an interview next Wednesday morning (4/12). He is on CST. Is there a time that works well for the two of you? How about 10 AM CST/11 AM EST? I saw Kevin Kennedy at a meeting in our office this past Tuesday. We are trying to set up an interview with him next Tuesday (4/11).

I asked Donsanto about an updated version of his *Prosecution of Election Offenses*. He responded that it is at the printers and will not be available for a couple of months. In the interim, he referred me to the white paper he did for IFES, which I have attached. He said that the white paper includes the same information on the prosecution of election fraud that will be in the book. --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM ---

"Kennedy, Kevin"

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

cc

Subject RE: Interview

Thank you.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, April 10, 2006 11:02 AM
To: Kevin Kennedy
Subject: Re: Interview

I am trying to arrange the teleconference for 10:30 AM CST tomorrow, April 11. Will get back to you once confirmed.
Peggy

--------------------------------
Sent from my BlackBerry Wireless Handheld

----- Original Message ----- 
From: "Kennedy, Kevin" [Kevin.Kennedy@seb.state.wi.us]
Sent: 04/09/2006 11:13 AM
To: "psims@eac.gov" <psims@eac.gov>
Subject: RE: Interview

That time is fine. A half hour earlier would be better. I also have a 12 CDT
meeting.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Friday, April 07, 2006 12:27 PM
To: Kevin Kennedy
Subject: Interview

Kevin:
I'm just following up on my request for your availability to be interviewed
by our consultants for our voting fraud/voter intimidation project. Are you
available Tuesday, April 11 at 11 AM CST?
Peggy Sims

-------------
Sent from my BlackBerry Wireless Handheld

----- Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM -----
Nicole
Mortellito/CONTRACTOR/EA
C/GOV
04/11/2006 11:45 AM
To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL
cc psims@eac.gov
Subject conf call is up and running

all dial in info is the same!

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

----- Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM -----
Margaret Sims/EAC/GOV
04/03/2006 03:18 PM
To wang@tcf.org@GSAEXTERNAL
cc serebrov@sbcglobal.net
Subject Re: doj training materials

Tova:
I'm checking with Craig regarding reference in our report to the DOJ training materials. The 2004 DOJ
training materials did not have a table of contents. I think Devon added that to help you find your way
Hi Peg,

I've just made it through the 2004 binder of materials and have two questions. First, I understand that these materials are confidential, but may we refer to guidance provided in them in our report? Otherwise, they are of not much use to us. There's not that much in it that would add to what Donsanto and Tanner told us, but there are a few issues raised that I believe might be germane.

Second, there are several sections evidently missing from the 2004 binder and I'm not sure if that's because of what Donsanto sent over or a problem in the photocopying. From what I can see, some of the table of contents is missing and tabs 14, 15, 16, 17, 21, 23 and 26 are all empty. Can you please look into this?

Thanks and I look forward to speaking to you tomorrow. Tova
I just saw what you did. I should be out of hours at the end of May. I believe I will be working for the state in June which will make it difficult to find time to finish and could slow things down but I am not yet sure of that.

--- psims@eac.gov wrote:

> Attached is an updated invoice schedule for the FY 06 contracts for the Voting Fraud/Voter Intimidation project. --- Peggy

I know you preferred Friday, but Job is not available then. He also said he is not available next week. Do you have any time available this Wednesday? --- Peggy

I can't do it Friday but Wednesday is ok.

--- psims@eac.gov wrote:

> Tova and Job:
I've passed Tova's request on to Craig.

Also, Sarah Ball Johnson, KY, finally called back to say she would be available Wednesday through Friday this week and next week for the interview. Which day and time is best for you and Job?

--- Peggy

w@tcf.org
04/16/2006 11:39 AM
To
psims@eac.gov
cc
"Tova Wang" <wang@tcf.org>
Subject
donsanto again

Hi Peg,

Happy Easter!

Would it be possible to talk to Mr. Donsanto about this latest initiative, or somehow get more information? Thanks. Tova

http://www.fbi.gov/page2/april06/electioncrime041406.htm

----- Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM -----
Margaret Sims/EAC/GOV
04/17/2006 10:48 AM
To Job Serebrov, Tova Andrea Wang
cc
Subject Invoice Schedule

Attached is an updated invoice schedule for the FY 06 contracts for the Voting Fraud/Voter Intimidation project. --- Peggy
That's what I am concerned about. I think we need to end all interviews with Sarah Ball Johnson. With the literature reviews I am finishing, the case write up and the Tova's Nexis research that I need to read, I will have about 45 hours left for the Working Group meeting and final write up.

--- psims@eac.gov wrote:

> I have to check with Conny McCormack to see if things have settled down for her enough so that she would be available. I have had no response to my overtures to Colleen McAndrews' office. I can try again, but I have to be out of town again, from Wednesday through Friday this week, on another research contract and for EAC's public meeting in Seattle. Were you able to get through to Mike McCarthy?
> 
> Please remember to watch your time. We'll need to reserve some of your time for the working group meeting and the subsequent reports. --- Peggy
> 
> "Job Serebrov" <
> 04/17/2006 10:17 AM
> 
> To psims@eac.gov, wang@tcf.org
> cc
> 
> Subject Re: Follow up Donsanto and KY Interviews
> 
> Next week is out for me. I need to check my schedule this week. Is this the last interview that you were able to arrange?
--- psims@eac.gov wrote:

Tova and Job:

I've passed Tova's request on to Craig.

Also, Sarah Ball Johnson, KY, finally called back to say she would be available Wednesday through Friday this week and next week for the interview. Which day and time is best for you and Job?

--- Peggy

--- wang@tcf.org

04/16/2006 11:39 AM

To

psims@eac.gov

cc

"Tova Wang" <wang@tcf.org>

Subject

donsanto again


Hi Peg,

Happy Easter!

Would it be possible to talk to Mr. Donsanto about this latest initiative, or somehow get more information? Thanks. Tova

http://www.fbi.gov/page2/april06/electioncrime041406.htm

--- Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM ---

"Tova Wang" <wang@tcf.org>

04/17/2006 10:21 AM

To "Job Serebrov" <psims@eac.gov>

cc

Subject RE: Announcement of FBI Election Crimes Initiative
We could skim it

-----Original Message-----
From: Job Serebrov
Sent: Monday, April 17, 2006 9:13 AM
To: Tova Wang; psims@eac.gov
Subject: RE: Announcement of FBI Election Crimes Initiative

Tova-Do we have time to review this?

--- Tova Wang <wang@tcf.org> wrote:

> Is it possible to get the materials they are using
> for the trainings?
> Thanks Peg.

> -----Original Message-----
> From: psims@eac.gov [mailto:psims@eac.gov]
> Sent: Monday, April 17, 2006 9:08 AM
> To: wang@tcf.org
> Subject: Fw: Announcement of FBI Election Crimes Initiative
>
>
> See Donsanto response below.--- Peggy

> ----- Forwarded by Margaret Sims/EAC/GOV on
> 04/17/2006 10:07 AM -----
> "Donsanto, Craig" <Craig.Donsanto@usdoj.gov>
>
> 04/17/2006 09:56 AM
>
> To
> psims@eac.gov
> cc
>
> Subject
> RE: Announcement of FBI Election Crimes Initiative
>
>
> Peg --

> This is essentially FBI's equivalent of the
> Department's Ballot Access and
> Integrity Initiative. The news conference on
> Thursday announced that FBI
> was enhancing its prioritization of campaign
> financing offenses. The main
feature of this initiative, aside from enhancing the priority these cases will get in the Bureau, is that each of the Bureau's 57 Field Divisions will have at least one "Election Coordinator Agent" who will be the equivalent of the District Election Officer AUSAs. We have been training these new FBI-types: the week before last we had roughly 75 of them in Denver in a very well received two-day session in election law enforcement at which several FEC people spoke. On Wednesday, I head out to Portland, Oregon for more of the same.

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, April 17, 2006 9:00 AM
To: Donsanto, Craig
Subject: Fw: Announcement of FBI Election Crimes Initiative

Hi, Craig:

Tova noticed an article about an FBI initiative against election crimes (see attached email). Is this something new, or is it more of the same initiative that you addressed in your interview? If it is new, would you have time for a teleconference with Job and Tova to answer any questions they may have on the initiative?

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

----- Forwarded by Margaret Sims/EAC/GOV on 04/17/2006 08:56 AM -----
Hi Peg,

Happy Easter!

Would it be possible to talk to Mr. Donsanto about this latest initiative, or somehow get more information? Thanks. Tova

<http://www.fbi.gov/page2/april06/electioncrime041406.htm>

http://www.fbi.gov/page2/april06/electioncrime041406.htm

--- Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM ---

"Job Serebrov" To psims@eac.gov

cc

Subject Re: Invoice Schedule

Peggy:

This is incorrect. Our project ends May 31. This month's invoice is due on April 21 and is invoice number 3. Invoice number 4 is due at the end of May.

--- psims@eac.gov wrote:
Attached is an updated invoice schedule for the FY 06 contracts for the Voting Fraud/Voter Intimidation project. --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM ---

"Tova Wang" <wang@tcf.org>
04/17/2006 09:20 AM
To psims@eac.gov, cc
Subject RE: Follow up Donsanto and KY Interviews

Any time Friday is fine for me. Thanks

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, April 17, 2006 8:05 AM
To: wang@tcf.org;
Subject: Re: Follow up Donsanto and KY Interviews

Tova and Job:

I've passed Tova's request on to Craig.

Also, Sarah Ball Johnson, KY, finally called back to say she would be available Wednesday through Friday this week and next week for the interview. Which day and time is best for you and Job?

--- Peggy

wang@tcf.org
04/16/2006 11:39 AM
psims@eac.gov
To
"Tova Wang" <wang@tcf.org> cc
donsanto again Subject
Hi Peg,

Happy Easter!

Would it be possible to talk to Mr. Donsanto about this latest initiative, or somehow get more information? Thanks. Tova

http://www.fbi.gov/page2/april06/electioncrime041406.htm

---

Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM ---

"Job Serebrov"

To psims@eac.gov, wang@tcf.org

Subject: Re: Follow up Donsanto and KY Interviews

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---

psims@eac.gov wrote:

Tova and Job:

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--- Peggy

---

wang@tcf.org

04/16/2006 11:39 AM

To psims@eac.gov

cc "Tova Wang" <wang@tcf.org>

Subject donsanto again

---
Hi Peg,

Happy Easter!

Would it be possible to talk to Mr. Donsanto about this latest initiative, or somehow get more information? Thanks. Tova

http://www.fbi.gov/page2/april06/electioncrime041406.htm

Good Morning Peg,

That works for me....I will stay off the phone and wait on the call.

Have A Great Weekend,

Tony

----- Original Message ----- 
From: psims@eac.gov 
To:

Sent: Thursday, April 06, 2006 2:27 PM 
Subject: Re: Fw: Nonpartisan Local Election Official Needed for Voting Fraud/Voter Intimidation Working Group

Tony:

How about scheduling the teleconference with our consultants for 10 AM CST/11 AM EST on Wednesday, April 12? --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM ----- 
Margaret Sims/EAC/GOV 
04/17/2006 08:59 AM 

To Craig Donsanto 

cc

Subject Fw: Announcement of FBI Election Crimes Initiative
Hi, Craig:

Tova noticed an article about an FBI initiative against election crimes (see attached email). Is this something new, or is it more of the same initiative that you addressed in your interview? If it is new, would you have time for a teleconference with Job and Tova to answer any questions they may have on the initiative?

Peggy Sims
Election Research Specialist
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Phone: 866-747-1471 (toll free) or 202-566-3120 (direct)
Fax: 202-566-3127
email: psims@eac.gov

Hi Peg,

Happy Easter!

Would it be possible to talk to Mr. Donsanto about this latest initiative, or somehow get more information? Thanks. Tova

http://www.fbi.gov/page2/april06/electioncrime041406.htm

Good Afternoon Peg,

I will make the call as scheduled. I am still in shock about Ray.

Tony
----- Original Message -----
From: psims@eac.gov
To: Tony Sirvello
Sent: Monday, April 10, 2006 6:04 PM
Subject: Re: Fw: Nonpartisan Local Election Official Needed for Voting Fraud/Voter Intimidation Working Group

Tony:
We have set up your telephone interview with our consultants (Job Serebrov and Tova Wang) as a teleconference. Please call [phone number] (toll free) at around 10 AM CST on Wed 4/12. At the prompt for the passcode, enter [passcode]. Tova and Job will join you on the line. This works best if you use a land line, rather than a cell phone.

If you have trouble connecting, please call Nicole Mortellito at our office (866-747-7421. Thanks!
Peggy

--------------------------
Sent from my BlackBerry Wireless Handheld

----- Original Message ----- 
From: "Tony J. Sirvello III" 
Sent: 04/07/2006 08:52 AM 
To: Margaret Sims 
Subject: Re: Fw: Nonpartisan Local Election Official Needed for Voting Fraud/Voter Intimidation Working Group

Good Morning Peg,

That works for me....I will stay off the phone and wait on the call.

Have A Great Weekend,

Tony

----- Original Message ----- 
From: psims@eac.gov 
To: tjsirvello@faec.gov 
Sent: Thursday, April 06, 2006 2:27 PM 
Subject: Re: Fw: Nonpartisan Local Election Official Needed for Voting Fraud/Voter Intimidation Working Group

Tony:

How about scheduling the teleconference with our consultants for 10 AM CST/11 AM EST on Wednesday, April 12? --- Peggy
The 4th batch. More to come tomorrow.
Peg Sims

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:22 PM ---
Margaret Sims/EAC/GOV
05/09/2006 11:44 AM
To "Iob Serebrov"
@GSAEXTERNAL
cc

Subject Re: Working Group-Perez

OK, I get it. The text in the attachment follows:

EXCERPTS FROM TEXAS ELECTION CODE

SUBCHAPTER B. COUNTY ELECTIONS ADMINISTRATOR

***

§ 31.032. APPOINTMENT OF ADMINISTRATOR; COUNTY ELECTION COMMISSION.

(a) The position of county elections administrator is filled by appointment of the county election commission, which consists of:

(1) the county judge, as chair;
(2) the county clerk, as vice chair;
(3) the county tax assessor-collector, as secretary; and
(4) the county chair of each political party that made nominations by primary election for the last general election for state and county officers preceding the date of the meeting at which the appointment is made.

(b) The affirmative vote of a majority of the commission's membership is necessary for the appointment of an administrator.

(c) Each appointment must be evidenced by a written resolution or order signed by the number of commission members necessary to make the appointment. Not later than the third day after the date an administrator is appointed, the officer who presided at the meeting shall file a signed copy of the resolution or order with the county clerk. Not later than the third day after the date the copy is filed, the county clerk shall deliver a certified copy of the resolution or order to the secretary of state.

(d) The initial appointment may be made at any time after the adoption of the order creating the position.
§ 31.035. RESTRICTIONS ON POLITICAL ACTIVITIES.

(a) A county elections administrator may not be a candidate for a public office or an office of a political party, hold a public office, or hold an office of or position in a political party. At the time an administrator becomes a candidate or accepts an office or position in violation of this subsection, the administrator vacates the position of administrator.

(b) A county elections administrator commits an offense if the administrator makes a political contribution or political expenditure, as defined by the law regulating political funds and campaigns, or publicly supports or opposes a candidate for public office or a measure to be voted on at an election. An offense under this subsection is a Class A misdemeanor. On a final conviction, the administrator's employment is terminated, and the person convicted is ineligible for future appointment as county elections administrator.

--- psims@eac.gov wrote:

> Did you look at the attached excerpts from Texas Code? --- Peggy

---

The code attachment did not work that is what I meant by it did not come through.
We have the same set-up here in Arkansas. We hired a person just like Perez. However, given this, I would still like to know if he has a party affiliation and this brings up another issue. How is the county election commission chosen. In Arkansas it is the Chairmen of the Republican and Democrat Parties or if he/she does not want to serve a person is elected in his/her stead and a third member picked by the party with the most constitutional officers. Practically that has meant that the Democrats have controlled election commissions in Arkansas since the end of Reconstruction. This is why I want to know the situation in Texas.

--- psims@eac.gov wrote:

As you may recall, the Commissioners directed me to find a nonpartisan local election official to serve on the Working Group. The three of us discussed the desirability of having a Hispanic. I proposed that I find someone from Texas because of that State's colorful history of voting fraud and their innovative approaches to combat it. In those Texas counties that hire Election Administrators to run elections, rather than having elected officials do so (Tax Assessor for voter registration; County Clerk for balloting), the Election Administrator is hired by the County Election Commission and is supposed to perform his or her duties in a nonpartisan manner. (See attached excerpts from Texas Election Code regarding election administrator hiring and restrictions on partisan activity.) Any experienced Texas election official will be familiar with voting fraud and voter intimidation schemes used in that State.

Mr. Perez has over 13 years experience as a county Election Administrator in Texas. You won't find many news articles mentioning him because he has kept his nose clean. (The Texas press, as in many other parts of the country, prefers to report bad news.) Mr. Perez is plugged into the
association of Texas
> election officials and the two largest
> organizations
> of election officials
> in this country: the International Association of
> Clerks, Recorders,
> Election Officials and Treasurers (IACREOT); and
> The
> Election Center. He
> is a past President and past Chairman of the
> Legislative Committee for the
> Texas Association of Election Administrators. He
> currently serves on
> IACREOT's Election Officials Committee, which
> plans
> sessions for election officials that are conducted
> at that organization's
> conferences. His peers in IACREOT and The
> Election
> Center have selected
> his submissions on web presentations (IACREOT) and
> his professional
> practices papers (Election Center) for awards.
> Mr.
> Perez also has access
> to information from other States through his
> membership in IACREOT and The
> Election Center. He also has a sense of humor,
> which you will note if you
> access the staff web page on the Guadalupe County
> Elections web site and
> hear the Mission Impossible theme .. something
> that
> might be useful in the
> upcoming meeting.
> Guadalupe County is small but growing. In 2004,
> the
> county had over 65
> thousand registered voters (a number more than
doubled the number of
registered voters in 1988). A third of the
county's
population claims
Hispanic or Latino origin, according to the U.S.
Census Bureau. The county
is in south central Texas and is bordered by
Comal,
Hays, Cladwell,
Gonzales, Wilson, and Bexar counties. In the
1980s,
the county was
predominately a farming community; but in recent
years, many people have
moved from San Antonio (Bexar County) to Guadalupe
County, preferring to
live in Guadalupe County and work in Bexar County.

--- Peggy
Peggy:

What political party is Perez with? How political is he? Is the position in Texas neutral or political? Who appointed Perez?

As to Pat I will contact him but I can't promise anything. If Pat can't come, who is getting knocked off Tova's list?

Job

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:22 PM -----
--- psims@eac.gov wrote:

> Tova just sent me the summary you prepared of The Federal Crime of Election Fraud by Brian Donato. There is something wrong in the fourth paragraph (odd characters and missing text). Can you please send a replacement fourth paragraph? You can send it in an email and I will place it in the document. --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:22 PM ---

**Margaret Sims/EAC/GOV**

05/12/2006 10:19 AM

To: Tova Andrea Wang, Job Serebrov

cc

Subject: Fraud Definition

Would you please take a look at the attached? I combined both of your definitions, reformatted the list, removed a reference to the fraud having to have an actual impact on the election results (because fraud can be prosecuted without proving that it actually changed the results of the election), and taken out a couple of vague examples (e.g.; reference to failing to enforce state laws --- because there may be legitimate reasons for not doing so).

I have made contact with Ben Ginsberg's office and am waiting to hear if he accepts our invitation to join the working group. --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:22 PM ---

**Margaret Sims/EAC/GOV**

04/27/2006 09:24 AM

To: "Weinberg and Utrecht" @GSAEXTERNAL

cc

Subject: Re: Voting Fraud-Voter Intimidation Project

Thanks! I'Il get back to you. --- Peggy

"Weinberg and Utrecht"

04/27/2006 07:56 AM

To: psims@eac.gov

cc

Subject: Re: Voting Fraud-Voter Intimidation Project
Peggy:
You've hit the jackpot! I'm available, with 2 exceptions, every hour of every day from May 15 through May 19. I am not available Thursday morning, May 18, or Friday afternoon, May 19.

Barry

----- Original Message ----- 
From: psims@eac.gov 
To: Barry Weinberg 
Sent: Wednesday, April 26, 2006 8:28 PM 
Subject: Re: Voting Fraud-Voter Intimidation Project

----- Original Message ----- 
From: "Weinberg and Utrecht" [w] 
Sent: 04/04/2006 08:14 AM 
To: Margaret Sims 
Subject: Re: Voting Fraud-Voter Intimidation Project

Peggy:
May looks pretty good right now. I will not be available May 1, or in the morning (before 12:30) on May 4 or May 11, or in the afternoon on May 10.

Barry
Your response suggests that you do not care what the Commissioners may think about the effort. ---

Peggy

"Job Serebrov" <serebrov@sbcglobal.net>

Peggy:

Braden is ok also with me but please don't tell me not to "stir up" things. I assure you nothing will come back to bite me. I know these people well enough to say they will also want a balanced group. In fact, one of them was very unhappy with Tova's folks.

Job

--- psims@eac.gov wrote:

> According to the Commissioners, you and Tova each got to pick three members of the Working Group. The Commission guidance regarding this particular member follows:
> 4 people from the Academic, Legal and Advocacy sectors - 2 to be chosen by Tova and 2 to be chosen by Job.
> This issue of allowing a designee relates to Tova's pick.
> As I understand it, we are working on a replacement for Norcross. If Ginsberg is not viable, how about Mark Braden, who includes public integrity in his areas of specialization. I would not try and stir up other members of the Working Group, if I were you. The effort is likely to come back and bite you.
I really don't care if he represents the organization or not. What mixed race? The entire discussion was because Arnwine was African-American. If you are going to invite him without first having a replacement for my side, I may have to call Thor and Todd and discuss all of this.

--- psims@eac.gov wrote:

> Greenbaum is representing Arnwine, not replacing her. He works for her organization and is of mixed race. --- Peggy

> I have an objection to Greenbaum. While I realize he comes from an advocacy group, he is not a minority attorney and we already have a rep who worked with DOJ. If it is to be Greenbaum, I would rather not fill that position since I am one down.
--- Tova Wang <wang@tcf.org> wrote:

is Jon Greenbaum

Here's his info in full:

http://www.lawyerscommittee.org/2005website/aboutus/staff/staffgreenbaum.htm

He is the Director of the Voting Rights Project for the Lawyers Committee for Civil Rights. He will be representing Barbara Arnwine, the Executive Director of the Lawyers Committee.

His contact and mailing info is:

jgreenbaum@lawyerscommittee.org
202-662-8315
1401 New York Avenue, NW
Suite 400
Washington, DC 20005

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

www.tcf.org, for the latest news, analysis, opinions, and events.

<mailto:join-tcfmain@mailhost.groundspring.org>
Click here to receive our weekly e-mail updates.
Do you have text to replace the corrupted text in paragraph 4? --- Peggy

--- psims@eac.gov wrote:

> Tova just sent me the summary you prepared of The Federal Crime of Election Fraud by Craig Donsanto. There is something wrong in the fourth paragraph (odd characters and missing text). Can you please send a replacement fourth paragraph? You can send it in an email and I will place it in the document. --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:22 PM ---

Dear Tova,

I am working with Peggy Sims in order to set a date for the Voting Fraud/Voter Intimidation Project Working Group. I have been trying to reach Barbara Arnwine in order to find out which days in May she is potentially available to attend this meeting but all of my attempts have been unsuccessful.

I would appreciate any help that you could provide in this matter.
As you may recall, the Commissioners directed me to find a nonpartisan local election official to serve on the Working Group. The three of us discussed the desirability of having a Hispanic. I proposed that I find someone from Texas because of that State’s colorful history of voting fraud and their innovative approaches to combat it. In those Texas counties that hire Election Administrators to run elections, rather than having elected officials do so (Tax Assessor for voter registration; County Clerk for balloting), the Election Administrator is hired by the County Election Commission and is supposed to perform his or her duties in a nonpartisan manner. (See attached excerpts from Texas Election Code regarding election administrator hiring and restrictions on partisan activity.) Any experienced Texas election official will be familiar with voting fraud and voter intimidation schemes used in that State. Mr. Perez has over 13 years experience as a county Election Administrator in Texas. You won’t find many news articles mentioning him because he has kept his nose clean. (The Texas press, as in many other parts of the country, prefers to report bad news.) Mr. Perez is plugged into the association of Texas election officials and the two largest organizations of election officials in this country: the International Association of Clerks, Recorders, Election Officials and Treasurers (IACREOT); and The Election Center. He is a past President and past Chairman of the Legislative Committee for the Texas Association of Election Administrators. He currently serves on IACREOT’s Election Officials Committee, which plans the educational sessions for election officials that are conducted at that organization’s conferences. His peers in IACREOT and The Election Center have selected his submissions on web presentations (IACREOT) and his professional practices papers (Election Center) for awards. Mr. Perez also has access to information from other States through his membership in IACREOT and The Election Center. He also has a sense of humor, which you will note if you access the staff web page on the Guadalupe County Elections web site and hear the Mission Impossible theme .. something that might be useful in the upcoming meeting.

Guadalupe County is small but growing. In 2004, the county had over 65 thousand registered voters (a number more than doubled the number of registered voters in 1988). A third of the county’s population claims Hispanic or Latino origin, according to the U.S. Census Bureau. The county is in south central Texas and is bordered by Comal, Hays, Cladwell, Gonzales, Wilson, and Bexar counties. In the 1980s, the county was predominately a farming community; but in recent years, many people have moved from San Antonio (Bexar County) to Guadalupe County, preferring to live in Guadalupe County and work in Bexar County.

--- Peggy
Peggy:

What political party is Perez with? How political is he? Is the position in Texas neutral or political? Who appointed Perez?

As to Pat I will contact him but I can't promise anything. If Pat can't come, who is getting knocked off Tova's list?

Job

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:22 PM ---

Devon E. Romig/EAC/GOV

To Margaret Sims/EAC/GOV@EAC

cc

Subject Updated scheduling list and Contact info

Peggy,

Here is the most updated version of the list that I have available.

Work Group Contact Availability Info.xlsx

Thanks,

Devon Romig

U.S. Election Assistance Commission

1225 New York Ave. NW - Suite #1100

Washington, D.C. 20005

(202)566-2377

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:22 PM ---

"Donsanto, Craig"

<Craig.Donsanto@usdoj.gov>

To psims@eac.gov

cc

Subject RE: Your Materials
Sure. But where is the resistance coming from? The notes were not accurate. As you know, I have to be very concerned about that.

---

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 16, 2006 12:34 PM
To: Donsanto, Craig
Subject: RE: Your Materials

Craig:

I am getting some resistance from my consultants to correcting the summary of the interview prior to the meeting. Would you mind noting the corrections at the meeting? --- Peggy

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

05/16/2006 12:06 PM

Thank you, Peg. This stuff is very interesting.

---

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 16, 2006 11:27 AM
To: Donsanto, Craig
Subject: Re: Your Materials

I have forwarded your message to our consultants and have requested a corrected version for distribution at the WG meeting. --- Peggy

"Donsanto, Craig" <Craig.Donsanto@usdoj.gov>
I have read over the materials you sent to me and viewed the pieces on the CD.

I have only one correction:

I did not say that offenders who receive target letters routinely request or routinely receive audiences here at DOJHQ. That is very rare. Instead, what usually happens is that once a subject for an election fraud investigation is advised that he or she is going to be charged that person usually enters into plea negotiations and ultimately pleads guilty. Very few federal election fraud cases go to trial. When a subject does request a HQ interview or a HW hearing, it would be held in the first instance by myself. But again, Peg, that is rare.

Also, while the occurrences of prosecutions of isolated instances of felons and alien voters and double voters has increased, we still aggressively and I believe quite successfully pursue systematic schemes to corrupt the electoral process, as the cases we brought recently out of Knott and Pike Counties in Kentucky, those we brought out of Lincoln and Logan Counties in West Virginia, and those we brought in New Hampshire growing out of the jamming of get-out-the-vote phone bank lines attest.
What about my question on gas receipts?

Job

--- psims@eac.gov wrote:

> I can email this out to our participants after I get
> back to the office, and we can have copies available
> at the meeting.
> Peggy
> --------------------------
> Sent from my BlackBerry Wireless Handheld
>
>
> ----- Original Message ----- 
> From: Wang
> Sent: 05/13/2006 10:54 AM
> To: psims@eac.gov
> Cc: "Job Serebrov".<s>
> Subject: Fw: research summary
> 
> Job found it. I'm assuming its too late to include
> so as I said I'll just
> present it if thats OK. Thanks again Job. T
> 
> ----- Original Message ----- 
> From: "Job Serebrov" <
> To: <wang@tcf.org>
> Sent: Saturday, May 13, 2006 10:12 AM
> Subject: Re: research summary
> 
> 
> > T-
> >
> > Are you talking about this?
> >
> > J-
> >
> > --- wang@tcf.org wrote:
> >
> >> In the middle of the night I got the feeling that
> >> you may be right, that I did do a summary of the
> >> existing literature review (that Job, you
> >> approved)
> >> I'll have to look for it on Monday (unless I go
> >> into the office over the weekend, which is
> >> possible). I may be hallucinating, but if not,
> >> I'll
> >> just present it at the meeting rather than try to
> >> get it to them ahead of time. Tova
> >
> ---- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:22 PM ----
I don't know if its too late, but in the interview summary we actually said: There is widespread but not unanimous agreement that there is little polling place fraud. That's quite different than saying, as you do here, that there is disagreement.

----- Original Message ----- 
From: psims@eac.gov [mailto:psims@eac.gov] 
Sent: Monday, May 22, 2006 3:56 PM 
To: wang@tcf.org; serebrov@sbcglobal.net 
Subject: PowerPoint Presentation to EAC Boards

FYI - Attached is a copy of the PowerPoint presentation on the voting fraud-voter intimidation research project for tomorrow's meetings of the EAC Standards Board (110 state and local election officials) and the EAC Advisory Board (37 representatives from national associations and government agencies who play a role in HAVA implementation and from science and technology-related professions appointed by Congressional members). I used your summaries as the primary source of information for the presentation. --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:22 PM ---

Devon E. Romig/EAC/GOV 
05/25/2006 02:37 PM 
To Margaret Sims/EAC/GOV@EAC 
cc
Subject Summary for VFVI working group meeting

Peggy,

Here is the summary that you requested. Let me know if this works.

Thanks!

Devon Romig
United States Election Assistance Commission
1225 New York Ave, NW, Suite 1100
Washington, DC 20005
202.566.2377 phone
202.566.3128 fax
www.eac.gov

VFVI Meeting Summary.doc
--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:22 PM ---

Margaret Sims/EAC/GOV 
05/16/2006 02:47 PM 
To "Donsanto, Craig"
<Craig.Donsanto@usdoj.gov>@GSAEXTERNAL 
cc
I think they are panicking because they are preparing to travel tomorrow and may not have time to submit a revised version. They also are resisting changes to their interview summaries because the summaries represent what they think they heard. I was there at the interview and I heard what you said. I'm not sure that either of them heard everything (including the nuances) because so much of the information was new to them and it was one of their earlier interviews. I'm sorry I did not catch the defects before the summary went out.

My first concern is ensuring that the Working Group has the correct information. Then, we can deal with what version, if any, goes in the final report. Do you want me to excerpt the corrections from your email and submit them to the Working Group? --- Peggy

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

Sure. But where is the resistance coming from? The notes were not accurate. As you know, I have to be very concerned about that.

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 16, 2006 12:34 PM
To: Donsanto, Craig
Subject: RE: Your Materials

Craig:

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"Donsanto, Craig" <Craig.Donsanto@usdoj.gov>
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Sent: Tuesday, May 16, 2006 11:27 AM
To: Donsanto, Craig
Subject: Re: Your Materials

I have forwarded your message to our consultants and have requested a corrected version for distribution at the WG meeting. --- Peggy

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

05/16/2006 10:46 AM

Peg --

I have read over the materials you sent to me and viewed the pieces on the CD.

I have only one correction:

I did not say that offenders who receive target letters routinely request - or routinely receive - audiences here at DOJHQ. That is very rare. Instead, what usually happens is that once a subject for an
election fraud investigation is advised that he or she is going to be charged that person usually enters into plea negotiations and ultimately pleads guilty. Very few federal election fraud cases go to trial. When a subject does request a HQ interview or a HW hearing, it would be held in the first instance by myself. But again, Peg, that is rare.

Also, while the occurrences of prosecutions of isolated instances of felons and alien voters and double voters has increased, we still aggressively and I believe quite successfully pursue systematic schemes to corrupt the electoral process, as the cases we brought recently out of Knott and Pike Counties in Kentucky, those we brought out of Lincoln and Logan Counties in West Virginia, and those we brought in New Hampshire growing out of the jamming of get0-out-the-vote phone bank lines attest.

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:22 PM -----

wang@tcf.org
05/12/2006 09:48 PM
To psims@eac.gov
cc
Subject Re: Fraud Definition

How about specifying Section 2 and 203 of the VRA?
----- Original Message -----
From: psims@eac.gov
To: wang-(a,tcf.org
Sent: Friday, May 12, 2006 1:34 PM
Subject: RE: Fraud Definition

Lets raise this issue at the meeting. (I'll add "DRAFT" to the current document.) My concern is that there are a number of requirements in the Voting Rights Act. Not all of them are considered election fraud, when violated. For example, failure to preclear changes in election procedures is not treated as election fraud, though it is actionable. --- Peggy

"Tova Wang" <wang@tcf.org>

05/12/2006 12:45 PM
To psims@eac.gov
cc
Subject RE: Fraud Definition

Upon first reading, my only comment would be that I would like to restore "failing to follow the
Would you please take a look at the attached? I combined both of your definitions, reformatted the list, removed a reference to the fraud having to have an actual impact on the election results (because fraud can be prosecuted without proving that it actually changed the results of the election), and taken out a couple of vague examples (e.g.; reference to failing to enforce state laws --- because there may be legitimate reasons for not doing so).

I have made contact with Ben Ginsberg's office and am waiting to hear if he accepts our invitation to join the working group. --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:22 PM -----
"Donsanto, Craig"
To psims@eac.gov
cc
05/16/2006 02:55 PM
Subject RE: Your Materials

The first item is not as big a deal as the second one: the processes under which subjects of investigations come to Jesus is not as important as the overall assessment of our law enforcement achievements. But stressing the isolated test cases we brought - - and will continue to being - - to deter things like felon voting, alien voting and double voting, which not mentioning such significant achievements as the five case PROJECTS mentioned in my last e-mail - - misrepresents what we are doing and the deterrent message we are trying to communicate.

I appreciate that these two young people may have found themselves in a Brave New World when they came over here. It showed in their questioning. But the fact that criminal law enforcement is not at all similar to preventative legal relief (as under the Voting Rights Act) or civil relief (as election contest litigation) is I guess more of a problem than I at first foresaw. My real concerns is that the civil rights groups - -- with whom we over here have an amazing amount of common grounds - - will take the singling out of the felon and alien voter cases as evincing a malevolent aggression on their constituencies. That is not the case. We are only enforcing the law.

I think they are panicking because they are preparing to travel tomorrow and may not have time to submit a revised version. They also are resisting changes to their interview summaries because the summaries represent what they think they heard. I was there at the interview and I heard what you said. I'm not sure that either of them heard everything (including the nuances) because so much of the information was new to them and it was one of their earlier interviews. I'm sorry I did not catch the defects before the summary
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Sure. But where is the resistance coming from? The notes were not accurate. As you know, I have to be very concerned about that.

Craig:

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--- Peggy
Thank you, Peg. This stuff is very interesting.

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 16, 2006 11:27 AM
To: Donsanto, Craig
Subject: Re: Your Materials

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

05/16/2006 10:46 AM
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--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM ---

Margaret Sims/EAC/GOV
05/16/2006 02:37 PM
To Elieen L. Collver/EAC/GOV
cc dromig@eac.gov
Subject Re: Tent Cards

Oops! I hit send prematurely. Here is the attachment. --- Peggy

Working Group Attendees 5-18-06.doc

Elieen L. Collver/EAC/GOV
05/16/2006 01:38 PM
To Margaret Sims/EAC/GOV@EAC
cc dromig@eac.gov
Subject Re: Tent Cards

Please forward list...there was no attachment. thanks!

Elle L.K Collver
Attached is a list of folks who will be attending the Voting Fraud-Voter Intimidation Working Group meeting. I have asterisked the names that will require tent cards. I am working on a seating chart so that we can be sure the Ds and the Rs aren't all seated together in a "them vs. us" pattern. --- Peggy

Peg --

At the Advisory Board meeting we had last week, your two contractors asked to interview the over-100 AUSAs who are serving as District Election Officers in connection with the Fraud study.

This request needs to be addressed to Natalie Voris of EOUSA per the message from here that follows.

If the contractors require additional information in connection with the Fraud Study, and should EOUSA not be able to satisfy their needs n they can communicate with me on criminal issues and Cameron Quinn on Civil Rights issues.

I will be here when you arrive later today at the Board of Advisors meeting when you arrive to talk to us at 4:30.

Ms. Voris' message follows:

Per the USAM, all requests for interviews/surveys/research projects that involve USAOs must be approved by EOUSA. I am pasting the provision
below - the contact name needs to be updated. Requests should come to me, as the Acting Counsel to the Director.

Thanks,
Natalie

--------------------------
Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

---- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM ----
Margaret Sims/EAC/GOV
05/24/2006 03:17 PM
To "Tova Wang" <wang@tcf.org> @GSAEXTERNAL
cc Jeannie Layson/EAC/GOV@EAC, bwhitener@eac.gov
Subject Re: press interview

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

"Tova Wang" <wang@tcf.org>

"Tova Wang" <wang@tcf.org>
05/24/2006 02:52 PM
To psims@eac.gov
cc
Subject press interview

Hi Peg,

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

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

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

Click here to receive our weekly e-mail updates.

---- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM ----
"Donsanto, Craig" <Craig.Donsanto@usdoj.gov>
To psims@eac.gov
cc "Hillman, Noel" <Noel.Hillman@usdoj.gov>, "Simmons,
Thank you for this, Peg.

The third bullet point is one I embrace fully. We lack the statutory took to do the job. Hopefully, that can be remedied through legislation. But as things stand today large loopholes in the federal legal matrix addressing electoral abuse and fraud exist –- particularly when such abuses occur in elections where there were no federal candidates on the ballot.

From: psims@eac.gov
Sent: Tuesday, May 16, 2006 8:44 AM
To: Donsanto, Craig
Subject: Re: Voting Fraud-Voter Intimidation Working Group

Here is the content of the email attachment:

**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.

"Donsanto, Craig" <Craig.Donsanto@usdoj.gov>
05/15/2006 04:53 PM
topsims@eac.gov
cc
Subject: Re: Voting Fraud-Voter Intimidation Working Group

Peggy --

I am currently on train in transit back from a day in Newark. I tried to
recover your attachment on Blackberry but got a message telling me the "file
is empty."

Can you paste it to an e-mail perhaps?
--------------------------
Sent from Dr. D's Fabulous BlackBerry Wireless Handheld
Dear Working Group Members and Participants:

You should receive a packet of information today, either by Federal Express or hand delivery, concerning Thursday's meeting of the project Working Group for EAC's Voting Fraud-Voter Intimidation research project. Attached is an analysis of the consultants' research into relevant literature and reports. This summary was not available when we prepared the information packets last Friday, but may be of interest to you. Our consultants and I look forward to having a productive discussion with you.

Regards,

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
e-mail: psims@eac.gov
Cases were from 2000 to the present.

--- psims@eac.gov wrote:

> Would you please refresh my memory about the date ranges used for the Nexis article research and the case law research? I'm drawing a blank and I don't see it in the summaries. I need it for this mornings Commissioner briefing. Thanks! --- Peggy

Did you find out whether I can use the Chairman's parking spot?

--- psims@eac.gov wrote:

> You will need to submit hotel and parking receipts. You don't need to submit meal receipts. You don't need to submit gas receipts because use of a personally owned vehicle (POV) is reimbursed based on mileage. I think I emailed the mileage rate to you. If you need it again, I'll look it up when I am at the office (this afternoon). Peg

--- Original Message ---
From: "Job Serebrov"
Sent: 05/12/2006 09:05 PM
To: psims@eac.gov
Subject: Question
Since I am driving to DC, besides hotel receipts, do you want me to keep my gas receipts or how will my car use be compensated? Also, I assume I don't have to retain food receipts.

The Standards Board has the reputation of being crankier than the Board of Advisors. They beat up on the Commissioners last year.

Is such a roasting usual? I mean, do they think we did a bad job???

You have most of the pieces of the report now. We absolutely need to put the statutory authority for the research up front. We need to add the definition. We also need to add a short piece addressing the approach for this preliminary research (including short statements on the pros and cons of information sources --- you began to address this in the literature review summary). I expect that the biggest project will be fleshing out the possible avenues for subsequent research in this area. It would be great if we could come up with cost estimates. If we can't, we need to at least identify what info we hope to get, what we are likely to miss, and any pitfalls.

Given today's roast, I will take another look at what we have now to highlight remarks that might
needlessly tick board members off. We can discuss whether or not editing or removing the remark would be detrimental to or have no real effect on the final report. (An example of such a remark is the reference to the number of articles out of Florida. A local official from that State objected on the grounds that the number of articles does not reliably indicate the number of problems.) I know we can expect a challenge from Board of Advisors member Craig Donsanto regarding the focus of the Election Crimes Branch prosecutions.

Yes, we can discuss the organization and "look" of the report after Job returns. Yes, the Commissioners will want to review it and submit their changes before the report goes to the boards.

It is too early to tell what EAC efforts may be mounted in FY 2007. I doubt that fire from the Standards Board will prevent Commissioners from doing what they think is needed. But, given that it is an election year, appropriations legislation may not be signed until December or later -- so we won't know how much money we have for awhile. --- Peggy

"Tova Wang" <wang@tcf.org>

05/24/2006 03:27 PM

To psims@eac.gov

cc

Subject RE: presentation

Yikes. It sounds like a lot of work after all. Should we talk over what the report should look like again, I guess when Job gets back? Will you help us write it in a way you think will satisfy? I guess it goes to the commissioners first anyway. Does this portend anything for phase 2?

Thanks Peg. Tova

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Wednesday, May 24, 2006 2:16 PM
To: wang@tcf.org
Subject: Re: presentation

I'm glad it is over --- for now. One audience was a lot tougher than the other. The Standards Board was much more critical of the research than the Board of Advisors.

Of course, the Board of Advisors is the body that wanted EAC to place a high priority on the research. Its members were interested in sharing personal experiences (including problems with getting anyone to prosecute) and observations (that we need to expand the research to give Congress and political parties a better picture of how rare or prevalent are voting fraud and intimidation, that the HAVA-mandated statewide voter registration lists should help to prevent fraud, etc.). They also asked if EAC will look at specific opportunities for fraud (using cell phones
in vote buying schemes to photograph the ballot being cast at the poll) and how the agency will research voter intimidation/suppression involving voters with disabilities (advocates want to pass on complaints received).

The members of the Standards Board focused much more on the scope of the research and the completeness and accuracy of the information gleaned. Some wanted to include campaign finance crimes in the mix; others understood why we did not. Several did not like the use of newspaper articles, or were defensive about references to the large number of articles about their State. They made the point that, given the vagaries of the press, EAC should not use the number of articles about a specific State or particular vote fraud/intimidation activity as a basis for determining the likelihood that problems will occur in a given State or the frequency with which certain activities occur. (I never said that we did, but some members thought it was at least implied.) Some members want more research on the topic (into prosecutions and/or unsuccessful referrals made by election officials to law enforcement agencies); others want us to "quit throwing away tax dollars" and to stop the research altogether. Although my first slide noted our statutory authority to conduct this study, several members challenged EAC's right to do so --- saying that DOJ, not EAC, should conduct such research.

The dueling approaches of these boards may give us heartburn when the time comes for them to review and comment on the draft. We will have to make a strong statement at the beginning, perhaps repeated at the end, that this is preliminary research. We also may need to thoroughly explain how choices were made regarding what to look at, who to interview, etc. We may need to clearly acknowledge both the strengths and weaknesses of the various sources of information used in the preliminary research. Finally, when reviewing ideas for subsequent research, we may need to discuss the pros and cons of each approach, what additional information we expect to retrieve, and, perhaps, the estimated cost.

By the way, I did clarify the polling place fraud bullet. --- Peg

"Tova Wang" <wang@tcf.org>

05/24/2006 09:14 AM

to psims@eac.gov

cc

subject presentation

How did it go? Were you able to verbally correct that discrepancy we talked about the other day? Thanks. Tova

Tova Andrea Wang
Democracy Fellow
The Century Foundation
Peggy,

In preparation for the logistics of this week's working group, I need to know how many people to expect for the meeting. Also, if you still need me to make name tags, I will need a list of attendees and the Avery label size.

Also, I will need help from Laiza on the table tents, or we can see if she has the time to help with that.

Thanks!

Elle

Elle L.K Collver
U.S. Election Assistance Commission
1225 New York Avenue, Suite 1100
Washington, D.C. 20005
office: (202) 566-2256
blackberry: (202) 294-9251
www.eac.gov

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM -----

Devon E. Romig/EAC/GOV

I have attached the list of the working groups participants. Peggy, you may want to double check this list incase I have left anyone out.

In place of name tags we just used the tent cards for the APIA working group. This seemed to be effective because it was easier to identify the person who was speaking but we could use both.
Peggy,

In preparation for the logistics of this week's working group, I need to know how many people to expect for the meeting. Also, if you still need me to make name tags, I will need a list of attendees and the Avery label size.

Also, I will need help from Laiza on the table tents, or we can see if she has the time to help with that.

Thanks!

Elle

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM ---

Devon E. Romig/EAC/GOV

05/15/2006 03:28 PM

To Eileen L. Collver/EAC/GOV @ EAC

cc Margaret Sims/EAC/GOV @ EAC

Subject Re: working group

I have arranged for a transcriptionist to be at the meeting but I am not sure about the snacks for the break.

Devon Romig
Sounds great. It did seem to work just fine for our Asian Language group. Is there going to be a transcriptionist? If so, has anyone taken care of that?

Did you still want to provide the cookies or snacks, or shall I get that from Cafe Mozart (where I am planning to get the coffee). I can just buy a few boxes of cookies for the break.

Elle

Elle L.K Colver
U.S. Election Assistance Commission
1225 New York Avenue, Suite 1100
Washington, D.C. 20005
office: (202) 566-2256
blackberry: (202) 294-9251
www.eac.gov

Elle: I think our number will be about 21 (with the Working Group members, consultants, possible EAC Commissioners and staff, and the court reporter). I'll have a better idea of the final list after I brief Commissioners tomorrow morning. Devon noted that they used only tent cards for the Asian Language Working Group. That might be sufficient for this group and would cut back on some of the work we have...
to do in preparation. --- Peggy

Eileen L. Colliver/EAC/GOV

05/15/2006 12:19 PM

To Margaret Sims/EAC/GOV@EAC

cc Laiza N. Otero/EAC/GOV@EAC, dromig@eac.gov@EAC

Subject working group

Peggy,

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----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM -----

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

05/17/2006 10:59 AM

To psims@eac.gov

cc

Subject RE: Report on Voting Fraud-Voter Intimidation Research

Peg --
This is a complicated issue largely because of two things: 1) there is a lot of ambiguity out there as to what constitutes “intimidation.” To the civil rights community, “intimidation” means anything that makes voting uncomfortable or less than automatic. To us in the criminal law enforcement “intimidation” means threats of economic or physical nature made to force or prevent voting. Only the latter involve aggravating factors that warrant putting offenders in jail, and the statutes that address “intimidation” from a criminal perspective are thus limited. We have never had many “intimidation” criminal cases. For one thing, in this modern post voting rights era, there is not a lot of physical/economic duress out there in the voting context - - at least not that I have seen. For another, where it does occur it is very hard to investigate and detect as victims who have been physically or economically intimidated are not likely to come to the FBI.

The bottom line is that we take matters that do present predication for physical or economically based “intimidation” very seriously, AND that we are being extremely proactive in trying to find ways to prosecute matters involving voter suppression as in the Tobin cases in New Hampshire where the local GOP tried to jam telephone lines for a GOTV effort run by the Dems. But even then - - the usual “suppression” matter involves flyers that are passed around giving out misleading information about an election, and we have investigated every one of those that came to our attention last election cycle. We were not able to identify the person(s) responsible for printing the misleading flyers in any of these. But we sure as heck tried.

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Wednesday, May 17, 2006 9:57 AM
To: Donsanto, Craig
Subject: Report on Voting Fraud-Voter Intimidation Research

Craig:

I'm putting the finishing touches on a status report to the EAC Standards Board and EAC Board of Advisors on our Voting Fraud-Voter Intimidation research project. For the most part, I am using our consultants summaries for the report, but one bullet under the interview summaries is giving me heartburn. It is the bullet that references the decrease in DOJ voter intimidation actions. It is one of the places in which our consultants had indicated that your office is focussing on prosecuting individuals. I have reworded it and would like your feedback on the revision:

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 has increased its focus on matters such as noncitizen voting, double voting, and felon voting. While the Voting Section of the Civil Rights Division focuses on systemic patterns of malfeasance, the Election Crimes Branch of the Public Integrity Section has increased prosecutions of individual instances of felon, alien, and double voting while also maintaining an aggressive pursuit of systematic schemes to corrupt the electoral process.

Please suggest any changes that you think would further clarify the current approach. --- Peggy

I am working on the snacks. I just ordered the coffee (reg/decaf). Cafe Mozart is faxing over an invoice and we can pick up a few boxes of cookies from there too.

GAYLIN-Adam said that you had looked into the way of getting reimbursed for paying for the break.
foods/coffees that are provided at these meetings? Any ideas?

Thanks,
Elle

Elle L.K Colver
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www.eac.gov
Devon E. Romig/EAC/GOV

Devon E. Romig/EAC/GOV
05/15/2006 03:28 PM
To Elleen L. Collver/EAC/GOV@EAC
cc Margaret Sims/EAC/GOV@EAC
Subject Re: working group

I have arranged for a transcriptionist to be at the meeting but I am not sure about the snacks for the break.

Devon Romig
United States Election Assistance Commission
1225 New York Ave. NW, Suite 1100
Washington, DC 20005
202.566.2377 phone
202.566.3128 fax
www.eac.gov
Elleen L. Colliver/EAC/GOV

Elleen L. Colliver/EAC/GOV
05/15/2006 03:19 PM
To Margaret Sims/EAC/GOV@EAC
cc dromig@eac.gov
Subject Re: working group

Sounds great. It did seem to work just fine for our Asian Language group. Is there going to be a transcriptionist? If so, has anyone taken care of that?

Did you still want to provide the cookies or snacks, or shall I get that from Cafe Mozart (where I am planning to get the coffee). I can just buy a few boxes of cookies for the break.

Elle
Elle:
I think our number will be about 21 (with the Working Group members, consultants, possible EAC Commissioners and staff, and the court reporter). I’ll have a better idea of the final list after I brief Commissioners tomorrow morning. Devon noted that they used only tent cards for the Asian Language Working Group. That might be sufficient for this group and would cut back on some of the work we have to do in preparation. --- Peggy

Peggy,
In preparation for the logistics of this week’s working group, I need to know how many people to expect for the meeting. Also, if you still need me to make name tags, I will need a list of attendees and the Avery label size.

Also, I will need help from Laiza on the table tents, or we can see if she has the time to help with that.
Thanks!

Elle

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U.S. Election Assistance Commission
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Washington, D.C. 20005
office: (202) 566-2256
blackberry: (202) 294-9251
www.eac.gov

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM ---
Margaret Sims/EAC/GOV
05/22/2006 05:01 PM
To Cortes, Romig, Collver, Tamar Nedzar/EAC/GOV, Laiza N. Otero
cc
Subject Voting Fraud-Voter Intimidation Working Group Meeting

If any of you took notes of the discussion during the Voting Fraud-Voter Intimidation Working Group meeting, would you please provide a copy to Devon. Devon, would you please use the meeting agenda to organize and consolidate any notes by topic, and send the consolidated notes to me? Thanks. --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM ---
Margaret Sims/EAC/GOV
05/15/2006 04:37 PM
To Voting Fraud-Voter Intimidation Working Group
cc jgreenbaum@lawyerscommittee.org, vjohnson@lawyerscommittee.org, dlovecchio@perkinscoie.com, bschuler@lathropgage.com, Craig.Donsanto@usdoj.gov
Subject Voting Fraud-Voter Intimidation Working Group

Dear Working Group Members and Participants:

You should receive a packet of information today, either by Federal Express or hand delivery, concerning Thursday’s meeting of the project Working Group for EAC’s Voting Fraud-Voter Intimidation research project. Attached is an analysis of the consultants’ research into relevant literature and reports. This summary was not available when we prepared the information packets last Friday, but may be of interest to you. Our consultants and I look forward to having a productive discussion with you.

Regards,

Peggy Sims
Election Research Specialist
U.S. Election Assistance Commission
1225 New York Ave, NW - Ste 1100
Gaylin Vogel/EAC/GOV

05/15/2006 03:39 PM

To: Elileen L. Collver/EAC/GOV@EAC
cc: Devon E. Romig/EAC/GOV@EAC, Margaret Sims/EAC/GOV@EAC
Subject: Re: working group

I haven't really looked into it. I know that contractors and grantees can order food and have the government pay for it if the meeting is to disseminate information. Logic dictates that we can do the same, but I am not sure of the process. I have been here when we ordered lunch for meetings. Diana would be the one to ask. Perhaps the contractor can pay for it and put it on their next invoice but the COTR for the contract would have to be in the loop on this call.

Gaylin Vogel
Law Clerk
U.S. Election Assistance Commission
1225 New York Avenue, NW Suite 1100
Washington, DC 20005
tel: 202-566-3116
http://www.eac.gov
GVogel@eac.gov

Elileen L. Collver/EAC/GOV

05/15/2006 03:35 PM

To: Devon E. Romig/EAC/GOV@EAC, gvogel@eac.gov@EAC
cc: Margaret Sims/EAC/GOV@EAC
Subject: Re: working group

I am working on the snacks. I just ordered the coffee (reg/decaf). Cafe Mozart is faxing over an invoice and we can pick up a few boxes of cookies from there too.

GAYLIN-Adam said that you had looked into the way of getting reimbursed for paying for the break foods/coffees that are provided at these meetings? Any ideas?

Thanks,
Elle

Elle L.K Coliver
U.S. Election Assistance Commission
I have arranged for a transcriptionist to be at the meeting but I am not sure about the snacks for the break.

Devon Romig
United States Election Assistance Commission
1225 New York Ave. NW, Suite 1100
Washington, DC 20005
202.566.2377 phone
202.566.3128 fax
www.eac.gov

Eileen L. Collver/EAC/GOV
05/15/2006 03:28 PM
To Eileen L. Collver/EAC/GOV@EAC
cc Margaret Sims/EAC/GOV@EAC
Subject Re: working group

Sounds great. It did seem to work just fine for our Asian Language group. Is there going to be a transcriptionist? If so, has anyone taken care of that?

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Elle:
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Peggy,

In preparation for the logistics of this week's working group, I need to know how many people to expect for the meeting. Also, if you still need me to make name tags, I will need a list of attendees and the avery label size.

Also, I will need help from Laiza on the table tents, or we can see if she has the time to help with that.

Thanks!

Elle

Elle L.K Coliver
U.S. Election Assistance Commission
The contracts for the two consultants on this project do not cover such costs. --- Peggy.

This is just to confirm our Monday, May 22, teleconference at 4:30 PM EST/3:30 PM CST. Attached is a list of follow-up activities discussed at the working group meeting and recorded on the flip chart. We will need to flesh these out a bit, perhaps once we have access to the transcript. --- Peggy

Recommendations for Future Research

- Bipartisan observers/poll watchers
  - To collect data
  - To deter fraud/intimidation

- Surveys
  - State laws
  - State election offices
  - Specific states
  - Local election officials
  - Voters (this suggestion was rejected by the panel)
  - State implementation of administrative complaint procedures (applies only to HAVA Title III violations) to ID examples of procedures for other than HAVA Title III complaints

- Follow up on initial reports of fraud/intimidation from the Nexis search of news articles and literature review

- Research absentee balloting process issues
  - Methodology of “for cause” absentee voting

- Risk-analysis for voting fraud
Who?
What part of process?
Ease of committing the fraud
Which elections?

➤ Analyze
- Phone logs from toll-free lines for election concerns
- Federal observer reports
- Local newspapers

➤ Academic statistical research

➤ Search and match procedures for voter registration list maintenance (subject to confirmation) to identify potential avenues for vote fraud

➤ Research State district court actions

➤ Broaden scope of interviews to local officials and district attorneys

➤ Explore the concept of election courts

➤ Model statutes

Peggy,

Here are the notes from the meeting.

Summary of VFVI Meeting.doc

Thanks!

Devon Romig
United States Election Assistance Commission
1225 New York Ave. NW, Suite 1100
Washington, DC 20005
202.566.2377 phone
202.566.3128 fax
www.eac.gov

To Margaret Sims/EAC/GOV@EAC
cc
Subject Summary of notes for VFVI meeting
How did you deal with the issue of mileage v. airline costs for my travel?

--- psims@eac.gov wrote:

> I signed and submitted your personal services 
> payment vouchers this 
> morning. --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM ----
Margaret Sims/EAC/GOV
05/23/2006 11:11 AM
To  "Job Serebrov" @GSAEXTERNAL
cc
Subject  Re: Payment Vouchers

I have to have a little time to focus on these issues and to check with our Finance Officer. Today and tomorrow, most of my time is scheduled for the EAC Standards Board and Board of Advisors meetings. --- Peggy

"Job Serebrov" 
05/23/2006 09:17 AM
To  psims@eac.gov
cc
Subject  Re: Payment Vouchers

How did you deal with the issue of mileage v. airline costs for my travel?

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--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM ----
Margaret Sims/EAC/GOV
05/23/2006 09:16 AM
To  Job Serebrov, Tova Andrea Wang
cc
Subject  Payment Vouchers

004232
Hi Peg, I have this all filled out -- would you quickly check before I fax? And I have all my travel receipts which I will mail to you. Thanks. T

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

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

Click here to receive our weekly e-mail updates.

Tova:
Here is your voucher with the pay period dates and signature date updated, and a check mark added for the travel costs. I've been thinking that it might be better to make a separate submission for the travel costs. That way, if there are any delays in receiving your receipts, or there are any corrections or clarifications needed on the travel costs, we won't have to hold up the voucher for payment of personal services. If you agree, you should delete the check mark, dollar amount and travel dates from this voucher. --- Peggy
Subject RE: Date Ranges for Research

January 1, 2001 - January 1, 2006
-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 16, 2006 7:41 AM
To: wang@tcf.org; serebrov@sbcglobal.net
Subject: Date Ranges for Research

Would you please refresh my memory about the date ranges used for the Nexis article research and the case law research? I'm drawing a blank and I don't see it in the summaries. I need it for this mornings Commissioner briefing. Thanks! --- Peggy.

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM -----
Margaret Sims/EAC/GOV
05/15/2006 02:48 PM
To: Elieen L. Collver/EAC/GOV
cc: dromig@eac.gov
Subject: Re: working group

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Elieen L. Collver/EAC/GOV

Elieen L. Collver/EAC/GOV
05/15/2006 12:19 PM
To: Margaret Sims/EAC/GOV@EAC
cc: Laiza N. Otero/EAC/GOV@EAC, dromig@eac.gov@EAC
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Elle

Elle L.K Collver
U.S. Election Assistance Commission
1225 New York Avenue, Suite 1100
Washington, D.C. 20005
office: (202) 566-2256
blackberry: (202) 294-9251
www.eac.gov

Elieen L. Collver/EAC/GOV
05/15/2006 03:19 PM
To Margaret Sims/EAC/GOV@EAC
cc dromig@eac.gov
Subject Re: working group

Elle:
I think our number will be about 21 (with the Working Group members, consultants, possible EAC Commissioners and staff, and the court reporter). I'll have a better idea of the final list after I brief Commissioners tomorrow morning. Devon noted that they used only tent cards for the Asian Language Working Group. That might be sufficient for this group and would cut back on some of the work we have to do in preparation. --- Peggy

Elieen L. Collver/EAC/GOV
Peggy,

In preparation for the logistics of this week's working group, I need to know how many people to expect for the meeting. Also, if you still need me to make name tags, I will need a list of attendees and the Avery label size.

Also, I will need help from Laiza on the table tents, or we can see if she has the time to help with that.

Thanks!

Elle

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U.S. Election Assistance Commission
1225 New York Avenue, Suite 1100
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----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM -----
Margaret Sims/EAC/GOV
05/15/2006 06:41 PM
To "Craig Donsanto" <Craig.Donsanto@usdoj.gov>
cc
Subject Re: Voting Fraud-Voter Intimidation Working Group

It could be a Berry problem. (I occasionally have that problem with attachments I try to retrieve through my Blackberry.)

The attachment is a pdf file, but I have access to a Word version that I can use to insert text in an email tomorrow. I don't have access to the attachment from my Berry.

Peggy

Sent from my BlackBerry Wireless Handheld

----- Original Message ----- 
From: "Donsanto, Craig" [Craig.Donsanto@usdoj.gov]
Peggy --

I am currently on train in transit back from a day in Newark. I tried to recover your attachment on Blackberry but got a message telling me the "file is empty."

Can you paste it to an e-mail perhaps?

Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

---Original Message---
From: psims@eac.gov
To: barnwine@lawyerscommittee.org <barnwine@lawyerscommittee.org>; Rbauer@perkinscoie.com <Rbauer@perkinscoie.com>; bginsberg@pattonboggs.com <bginsberg@pattonboggs.com>; mhearne@lathropgage.com <mhearne@lathropgage.com>; krogers@sos.state.ga.us <krogers@sos.state.ga.us>; assistant@sos.in.gov <assistant@sos.in.gov>
CC: jgreenbaum@lawyerscommittee.org <jgreenbaum@lawyerscommittee.org>; vjohnson@lawyerscommittee.org <vjohnson@lawyerscommittee.org>; dlovechio@perkinscoie.com <dlovechio@perkinscoie.com>; bschuler@lathropgage.com <bschuler@lathropgage.com>; Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>
Sent: Mon May 15 16:37:48 2006
Subject: Voting Fraud-Voter Intimidation Working Group

Dear Working Group Members and Participants:

You should receive a packet of information today, either by Federal Express or hand delivery, concerning Thursday's meeting of the project Working Group for EAC's Voting Fraud-Voter Intimidation research project. Attached is an analysis of the consultants' research into relevant literature and reports. This summary was not available when we prepared the information packets last Friday, but may be of interest to you. Our consultants and I look forward to having a productive discussion with you.

Regards,

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
e-mail: psims@eac.gov
I found some typos in the Status Report. Please replace the one I gave you with the attached. Thanks. --- Peggy

---

I know --- I'll have to cover that in my oral presentation, along with some other points. The audience will have a copy of the paper I put together using Job's and your summaries and findings. The paper provides a lot more detail. We did not plan to provide a copy of the PowerPoint presentation, which is just meant to keep me on track and interested in the presentation. --- Peggy

---

I still think we should include the recommendations in the report.

--- Original Message ---
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Friday, May 26, 2006 9:30 AM
To: Tova Andrea Wang; Job Serebrov
Subject: Fw: Request to interview AUSAs

Below is Craig's response to the request to interview AUSAs. It does not appear that this avenue is likely because the AUSAs are so busy..

Also, he asked about permission for other folks to attend the election crimes training session, and the answer was "no". (I can't even get in, and I'm a federal employee.). I understand that a good part of the reason is practical -- they are having enough trouble accommodating the folks that are required to come.

Peggy

---
----- Original Message -----
From: "Donsanto, Craig" [Craig.Donsanto@usdoj.gov]
Sent: 05/23/2006 02:49 PM
To: psims@eac.gov; "Voris, Natalie (USAEO)" <Natalie.Voris@usdoj.gov>
"Hillman, Noel" <Noel.Hillman@usdoj.gov>; "Simmons, Nancy" <Nancy.Simmons@usdoj.gov>
Subject: Request to interview AUSAs

Peg --

At the Advisory Board meeting we had last week, your two contractors asked to interview the over-100 AUSAs who are serving as District Election Officers in connection with the Fraud study.

This request needs to be addressed to Natalie Voris of EOUSA per the message from here that follows.

If the contractors require additional information in connection with the Fraud Study, and should EOUSA not be able to satisfy their needs, they can communicate with me on criminal issues and Cameron Quinn on Civil Rights issues.

I will be here when you arrive later today at the Board of Advisors meeting when you arrive to talk to us at 4:30.

Ms. Voris' message follows:

Per the USAM, all requests for interviews/surveys/research projects that involve USAOs must be approved by EOUSA. I am pasting the provision below - the contact name needs to be updated. Requests should come to me, as the Acting Counsel to the Director.

Thanks,
Natalie
--------------------------
Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM -----
Margaret Sims/EAC/GOV
05/16/2006 03:50 PM
To: "Tova Wang" <wang@tcf.org>@GSAEXTERNAL
cc
Subject Re: board of advisers presentation

I haven't sent it yet. If you need to leave early, you can look at what I have so far, which does not have the intro or the text regarding the final report. --- Peggy
Hi Peg, Have you tried to send me the presentation? I haven't gotten it, but I think we may be having email problems. Let me know. I'd need to look at it today since I'll be tied up tomorrow. Tova

Towa Andrea Wang
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.

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM ---

"Donsanto, Craig"
<Craig.Donsanto@usdoj.gov>
05/17/2006 03:24 PM
Subject: RE: Status Report on Voting Fraud-Voter Intimidation Project

Thank you, Peg. This is at least more accurate than what I read this morning. Thank you for taking the time to discuss this with me. I shall see you tomorrow.

--- From: psims@eac.gov [mailto:psims@eac.gov] ---
--- Sent: Wednesday, May 17, 2006 3:04 PM ---
--- To: Donsanto, Craig ---
--- Subject: Status Report on Voting Fraud-Voter Intimidation Project ---

Craig:

This is what I was working on for the upcoming meetings of the EAC Board of Advisors and EAC...
Peggy -- can you call me about this in about an hour?

202-514-1421.

---

Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

-----Original Message-----
From: psims@eac.gov <psims@eac.gov>
To: Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>
Subject: Report on Voting Fraud-Voter Intimidation Research

Craig:

I'm putting the finishing touches on a status report to the EAC Standards Board and EAC Board of Advisors on our Voting Fraud-Voter Intimidation research project. For the most part, I am using our consultants summaries for the report, but one bullet under the interview summaries is giving me heartburn. It is the bullet that references the decrease in DOJ voter intimidation actions. It is one of the places in which our consultants had indicated that your office is focussing on prosecuting individuals. I have reworded it and would like your feedback on the revision:

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 has increased its focus on matters such as noncitizen voting, double voting, and felon voting. While the Voting Section of the Civil Rights Division focuses on systemic patterns of malfeasance, the Election Crimes Branch of the Public Integrity Section has increased prosecutions of individual instances of felon, alien, and double voting while also maintaining an aggressive pursuit of systematic schemes to corrupt the electoral process.

Please suggest any changes that you think would further clarify the current approach. --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM -----
Shall I call you at about 2:30 PM? -- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM ---

Margaret Sims/EAC/GOV
05/15/2006 05:09 PM
To: Job Serebrov
cc
Subject: Mileage Rate for POV

Job:
The federal mileage rate for POVs is $.445 per mile (see http://www.gsa.gov/Portal/gsa/ep/contentView.do?programId=9299&channelId=-13224&oooid=10359&contentId=9646&pagetypeId=8203&contentType=GSA_BASIC&programPage=%2Fep%2Fprogram%2FgsaBasic.jsp&P=MTT). Write down the number on you odometer at the beginning (starting at home) and end of the trip (when you arrive back home). The difference should be your total mileage, unless you make any side trips for personal convenience. The mileage for side trips should be deleted from the total. --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM ---

Margaret Sims/EAC/GOV
05/24/2006 03:16 PM
To: "Tova Wang" <wangt@tcf.org>@GSAEXTERNAL
cc
Subject: Re: presentation

I'm glad it is over --- for now. One audience was a lot tougher than the other. The Standards Board was much more critical of the research than the Board of Advisors.

Of course, the Board of Advisors is the body that wanted EAC to place a high priority on the research. Its members were interested in sharing personal experiences (including problems with getting anyone to prosecute) and observations (that we need to expand the research to give Congress and political parties a better picture of how rare or prevalent are voting fraud and intimidation, that the HAVA-mandated statewide voter registration lists should help to prevent fraud, etc.). They also asked if EAC will look at specific opportunities for fraud (using cell phones in vote buying schemes to photograph the ballot being cast at the poll) and how the agency will research voter intimidation/suppression involving voters with disabilities (advocates want to pass on complaints received).

The members of the Standards Board focused much more on the scope of the research and the completeness and accuracy of the information gleaned. Some wanted to include campaign finance crimes in the mix; others understood why we did not. Several did not like the use of newspaper articles, or were defensive about references to the large number of articles about their State. They made the point that, given the vagaries of the press, EAC should not use the number of articles about a specific State or particular vote fraud/intimidation activity as a basis for determining the likelihood that problems will occur in a given State or the frequency with which certain activities occur. (I never said that we did, but some members thought it was at least implied.) Some members want more research on the topic (into prosecutions and/or unsuccessful referrals made by election officials to law enforcement agencies); others want us to "quit throwing away tax dollars" and to stop the research altogether. Although my first slide noted our statutory authority to conduct this study, several members challenged EAC's right to do so --- saying that DOJ, not EAC, should conduct such research.

The dueling approaches of these boards may give us heartburn when the time comes for them to review
and comment on the draft. We will have to make a strong statement at the beginning, perhaps repeated at the end, that this is preliminary research. We also may need to thoroughly explain how choices were made regarding what to look at, who to interview, etc. We may need to clearly acknowledge both the strengths and weaknesses of the various sources of information used in the preliminary research. Finally, when reviewing ideas for subsequent research, we may need to discuss the pros and cons of each approach, what additional information we expect to retrieve, and, perhaps, the estimated cost.

By the way, I did clarify the polling place fraud bullet. --- Peg

"Tova Wang" <wang@tcf.org>

How did it go? Were you able to verbally correct that discrepancy we talked about the other day? Thanks. Tova

Tova Andrea Wang
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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----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM -----
"Tova Wang"<wang@tcf.org> To psims@eac.gov
05/24/2006 03:27 PM cc
Subject RE: presentation

Yikes. It sounds like a lot of work after all. Should we talk over what the report should look like again, I guess when Job gets back? Will you help us write it in a way you think will satisfy? I guess it goes to the commissioners first anyway. Does this portend anything for phase 2? Thanks Peg. Tova

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Wednesday, May 24, 2006 2:16 PM
To: wang@tcf.org
Subject: Re: presentation
I'm glad it is over --- for now. One audience was a lot tougher than the other. The Standards Board was much more critical of the research than the Board of Advisors.

Of course, the Board of Advisors is the body that wanted EAC to place a high priority on the research. Its members were interested in sharing personal experiences (including problems with getting anyone to prosecute) and observations (that we need to expand the research to give Congress and political parties a better picture of how rare or prevalent are voting fraud and intimidation, that the HAVA-mandated statewide voter registration lists should help to prevent fraud, etc.). They also asked if EAC will look at specific opportunities for fraud (using cell phones in vote buying schemes to photograph the ballot being cast at the poll) and how the agency will research voter intimidation/suppression involving voters with disabilities (advocates want to pass on complaints received).

The members of the Standards Board focused much more on the scope of the research and the completeness and accuracy of the information gleaned. Some wanted to include campaign finance crimes in the mix; others understood why we did not. Several did not like the use of newspaper articles, or were defensive about references to the large number of articles about their State. They made the point that, given the vagaries of the press, EAC should not use the number of articles about a specific State or particular vote fraud/intimidation activity as a basis for determining the likelihood that problems will occur in a given State or the frequency with which certain activities occur. (I never said that we did, but some members thought it was at least implied.) Some members want more research on the topic (into prosecutions and/or unsuccessful referrals made by election officials to law enforcement agencies); others want us to "quit throwing away tax dollars" and to stop the research altogether. Although my first slide noted our statutory authority to conduct this study, several members challenged EAC's right to do so --- saying that DOJ, not EAC, should conduct such research.

The dueling approaches of these boards may give us heartburn when the time comes for them to review and comment on the draft. We will have to make a strong statement at the beginning, perhaps repeated at the end, that this is preliminary research. We also may need to thoroughly explain how choices were made regarding what to look at, who to interview, etc. We may need to clearly acknowledge both the strengths and weaknesses of the various sources of information used in the preliminary research. Finally, when reviewing ideas for subsequent research, we may need to discuss the pros and cons of each approach, what additional information we expect to retrieve, and, perhaps, the estimated cost.

By the way, I did clarify the polling place fraud bullet. --- Peg

"Tova Wang" <wang@tcf.org>

05/24/2006 09:14 AM
To psims@eac.gov
cc
Subject presentation
How did it go? Were you able to verbally correct that discrepancy we talked about the other day? Thanks. Tova

Tova Andrea Wang  
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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--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM ---

"Tova Wang"  
<wang@tcf.org>  
05/16/2006 05:08 PM  
To psims@eac.gov  
cc

Subject RE: board of advisers presentation

This looks fine otherwise, but I'm not sure I understand why you included the attachments you did. They are not really representative of what we did for the project as a whole. The summaries are just meant to supplement the lexis excel charts.

-----Original Message-----
From: psims@eac.gov  [mailto:psims@eac.gov]  
Sent: Tuesday, May 16, 2006 2:51 PM  
To: wang@tcf.org  
Subject: Re: board of advisers presentation

I haven't sent it yet. If you need to leave early, you can look at what I have so far, which does not have the intro or the text regarding the final report. --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM ---
Hi Peg, Have you tried to send me the presentation? I haven't gotten it, but I think we may be having email problems. Let me know. I'd need to look at it today since I'll be tied up tomorrow.
Tova

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--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM ---

"Donsanto, Craig"
To psims@eac.gov
cc
Subject RE: Your Materials

Thank you, Peg. This stuff is very interesting.

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 16, 2006 11:27 AM
To: Donsanto, Craig
Subject: Re: Your Materials

I have forwarded your message to our consultants and have requested a corrected version for distribution at the WG meeting. --- Peggy

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

05/16/2006 10:46 AM

Topsims@eac.gov
cc
Subject: Your Materials
Peg -

I have read over the materials you sent to me and viewed the pieces on the CD.

I have only one correction:

I did not say that offenders who receive target letters routinely request or routinely receive - - audiences here at DOJHQ. That is very rare. Instead, what usually happens is that once a subject for an election fraud investigation is advised that he or she is going to be charged that person usually enters into plea negotiations and ultimately pleads guilty. Very few federal election fraud cases go to trial. When a subject does request a HQ interview or a HW hearing, it would be held in the first instance by myself. But again, Peg, that is rare.

Also, while the occurrences of prosecutions of isolated instances of felons and alien voters and double voters has increased, we still aggressively and I believe quite successfully pursue systematic schemes to corrupt the electoral process, as the cases we brought recently out of Knott and Pike Counties in Kentucky, those we brought out of Lincoln and Logan Counties in West Virginia, and those we brought in New Hampshire growing out of the jamming of get-out-the-vote phone bank lines attest.

I don't think anyone should be given the opportunity to correct mistakes.

Should we send all of the interview summaries to the people we interviewed for review then?

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 16, 2006 10:30 AM
To: Tova Wang <wang@tcf.org>, psims@eac.gov
Cc: 
Subject: Corrections

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM -----
"Job Serebrov"
05/16/2006 11:13 AM
To "Tova Wang" <wang@tcf.org>, psims@eac.gov
Cc: 
Subject: Corrections

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM -----
"Tova Wang" <wang@tcf.org>
05/16/2006 11:34 AM
To psims@eac.gov
Cc: 
Subject: RE: Corrections
It wasn't his mistake. I was there at the interview. I just did not have time to review all of the interview summaries. --- Peggy

I don't think anyone should be given the opportunity to correct mistakes.

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM ---
Margaret Sims/EAC/GOV
05/16/2006 11:30 AM
To "Job Serebrov" @GSAEXTERNAL
Subject Re: Corrections

It wasn't his mistake. I was there at the interview. I just did not have time to review all of the interview summaries. --- Peggy

I don't think anyone should be given the opportunity to correct mistakes.
OK. Weather is not going to be great in DC Thursday. I hope that does not delay me.

--- psims@eac.gov wrote:

> We don't need a castle key, but we have to wait until the Chairman returns to the office tomorrow to confirm availability of the parking pass. I expect you will be on the road, then. Try calling me our toll-free line (1-866-747-1471) tomorrow afternoon, say after 2 PM EST, so that we can talk about this. --- Peg

--- psims@eac.gov wrote:

> Did you find out whether I can use the Chairman's parking spot?

> You will need to submit hotel and parking receipts. You don't need to submit gas receipts because use of a personally owned vehicle (POV) is reimbursed based on mileage. I think I emailed the mileage rate to you. If you need it again, I'll look it up when I am.

> at the office (this afternoon).
Sent from my BlackBerry Wireless Handheld

----- Original Message ----- 
From: "Job Serebrov"  
Sent: 05/12/2006 09:03 PM  
To: psims@eac.gov  
Subject: Question

Peg:

Since I am driving to DC, besides hotel receipts, do you want me to keep my gas receipts or how will my car use be compensated? Also, I assume I don't have to retain food receipts.

Job

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM ----- 

"Tova Wang" <wang@tcf.org>  
To psims@eac.gov  
cc dromig@eac.gov  
Subject I'm sorry

I don't think I sent this to you either. Can we hand it out at the meeting as an addendum? Its another summary that would have gone in the news article section. I'm usually so organized, I'm very embarrassed. Too many things! Thanks

Tova Andrea Wang  
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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What is the information you need when you say:
The consultants jointly selected experts from ???

We chose the interviewees by first coming up with a list of the categories of types of people we wanted to interview. Then we each filled those categories with a certain number of people, equally. The ultimate categories were academics, advocates, elections officials, lawyers and judges.

Is that what you need?

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 16, 2006 2:51 PM
To: wang@tcf.org
Subject: Re: board of advisers presentation

I haven't sent it yet. If you need to leave early, you can look at what I have so far, which does not have the intro or the text regarding the final report. --- Peggy

Hi Peg, Have you tried to send me the presentation? I haven't gotten it, but I think we may be
having email problems. Let me know. I’d need to look at it today since I’ll be tied up tomorrow.

Tova

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--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM ---

Excellent!

--- psims@eac.gov wrote:

> Just thought you would like to see the Chairman's
> reaction to the Ginsberg choice, attached.
> Peggy
> --------------------------
> Sent from my BlackBerry Wireless Handheld
> 
> ----- Original Message ----- 
> From: Paul DeGregorio
> Sent: 05/14/2006 12:01 PM
> To: CN=Margaret Sims/OU=EAC/O=GOV@EAC
> Cc: CN=Amie J. Sherrill/OU=EAC/O=GOV
> Subject: Re: New Working Group Member
> 
> Ben Ginsberg is one of the most respected election
> law attorneys in the country. Great choice.
> 
> --------------------------
> Sent from my BlackBerry Wireless Handheld
> 
> ----- Original Message ----- 
> From: Margaret Sims
> Sent: 05/12/2006 04:04 PM
> To: pdegregorio@eac.gov
> Cc: CN=Amie J. Sherrill/OU=EAC/O=GOV@EAC
> Subject: New Working Group Member
Hello to all,

I would love to help, but I will not be in the office from today (Monday, May 15th) thru Wednesday, May 17th ----- I'll be back on Thursday morning. When is your meeting taking place? I had e-mailed Adam a draft of the table tents I did for the APIA working group; perhaps he still has it archived in his Lotus notes and could forward it to you. All you would have to do then is erase the APIA names and insert the ones for the new working group. In case he does not have the document I sent him and you need them prior to me returning to the office ---- in Microsoft Word, open a new document, go under Tools, then labels and envelopes, choose Labels and then Options -- then choose the correct Avery product number for your tent cards and click New document -- this will bring a blank template where you can begin to insert the names. I hope this helps. I can be reached by phone at (610) 780-8551 in case you need my help. Also, the tent card box usually brings an instruction sheet, it's not the most clear though.

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

-----Elieen L. Collver/EAC/GOV wrote: -----
Also, I will need help from Laiza on the table tents, or we can see if she has the time to help with that.

Thanks!

Elle

Elle L.K Collver
U.S. Election Assistance Commission
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Washington, D.C. 20005
office: (202) 566-2256
blackberry: (202) 294-9251
www.eac.gov

FYI - Attached is a copy of the PowerPoint presentation on the voting fraud-voter intimidation research project for tomorrow's meetings of the EAC Standards Board (110 state and local election officials) and the EAC Advisory Board (37 representatives from national associations and government agencies who play a role in HAVA implementation and from science and technology-related professions appointed by Congressional members). I used your summaries as the primary source of information for the presentation. --- Peggy

VF-VI Project Presentation.ppt

All,

As discussed in the meeting today, please find attached the House and Senate Conference Reports associated with the passage of HAVA. In each document, the word "fraud" is capitalized, bolded, and highlighted.
Kind Regards,

Tamar Nedzar
Law Clerk
U.S. Election Assistance Commission
1225 New York Avenue, NW Suite 1100
Washington, DC 20005
(202) 566-2377
http://www.eac.gov
TNedzar@eac.gov

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM -----

"Tova Wang"  
<wang@tcf.org>  
05/23/2006 09:23 AM
To psims@eac.gov
cc
Subject RE: PowerPoint Presentation to EAC Boards

OK, thanks

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 23, 2006 7:46 AM
To: wang@tcf.org
Subject: RE: PowerPoint Presentation to EAC Boards

I know --- I'll have to cover that in my oral presentation, along with some other points. The audience will have a copy of the paper I put together using Job's and your summaries and findings. The paper provides a lot more detail. We did not plan to provide a copy of the PowerPoint presentation, which is just meant to keep me on track and them interested in the presentation. --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM -----

"Tova Wang"  
<wang@tcf.org>  
05/22/2006 03:43 PM
To psims@eac.gov
cc
Subject RE: voucher

Is there something separate I should fill out for the travel, or should I just submit a letter? Thanks.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, May 22, 2006 2:30 PM  
To: wang@tcf.org  
Subject: Re: voucher  

Tova:
Here is your voucher with the pay period dates and signature date updated, and a check mark added for the travel costs. I've been thinking that it might be better to make a separate submission for the travel costs. That way, if there are any delays in receiving your receipts, or there are any corrections or clarifications needed on the travel costs, we won't have to hold up the voucher for payment of personal services. If you agree, you should delete the check mark, dollar amount and travel dates from this voucher. --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM -----  
Margaret Sims/EAC/GOV  
05/22/2006 03:58 PM  
To: "Tova Wang" <wang@tcf.org>  
cc  
Subject RE: voucher

A letter detailing the costs, noting the total reimbursement expected, and attaching your travel receipts is fine. --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM -----  
"Tova Wang" <wang@tcf.org>  
05/19/2006 04:34 PM  
To: psims@eac.gov  
cc  
Subject: Re: Monday Teleconference

That's fine for me. Thanks so much for doing such a great job running the show yesterday. Did you think it went well?

Also, is there any reason why we cannot talk about our findings with people now? Please let me know. Thanks. Have a great weekend. Tova

----- Original Message -----  
From: psims@eac.gov  
To: wang@tcf.org, serebrov@sbcglobal.net  
Date: Fri, 19 May 2006 15:30:59 -0400  
Subject: Monday Teleconference

This is just to confirm our Monday, May 22, teleconference at 4:30 PM EST/3:30 PM CST. Attached is a list of follow-up activities discussed at the working group meeting and recorded on the flip chart. We will need to flesh these out a bit, perhaps once we have access to the transcript. --- Peggy

Recommendations for Future Research
Bipartisan observers/poll watchers
- To collect data
- To deter fraud/intimidation

Surveys
- State laws
- State election offices
- Specific states
- Local election officials
- Voters (this suggestion was rejected by the panel)
- State implementation of administrative complaint procedures (applies only to HAVA Title III violations) to ID examples of procedures for other than HAVA Title III complaints

Follow up on initial reports of fraud/intimidation from the Nexis search of news articles and literature review

Research absentee balloting process issues
- Methodology of "for cause" absentee voting

Risk-analysis for voting fraud
- Who?
- What part of process?
- Ease of committing the fraud
- Which elections?

Analyze
- Phone logs from toll-free lines for election concerns
- Federal observer reports
- Local newspapers

Academic statistical research

Search and match procedures for voter registration list maintenance (subject to confirmation) to identify potential avenues for vote fraud

Research State district court actions

Broaden scope of interviews to local officials and district attorneys

Explore the concept of election courts

Model statutes

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM ---
Peggy:
The package came today. Thanks. See you Thursday.
Barry

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM ---

Margaret Sims/EAC/GOV
05/15/2006 01:56 PM

Subject Re: Voting Fraud-Voter Intimidations

Barry:

Would you please take a moment to review the draft definition of election fraud? One of our consultants is concerned that it does not sufficiently cover violations of the Voting Rights Act that would qualify. Thanks!
--- Peggy

"Weinberg and Utrecht" <weinutr@verizon.net>

"Weinberg and Utrecht" <weinutr@verizon.net>
05/15/2006 01:53 PM

Subject Re: Voting Fraud-Voter Intimidation

Peggy:
The package came today. Thanks. See you Thursday.
Barry

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM ---

Margaret Sims/EAC/GOV
05/16/2006 11:27 AM

Subject Re: Your Materials

I have forwarded your message to our consultants and have requested a corrected version for distribution at the WG meeting. --- Peggy
Peg --

I have read over the materials you sent to me and viewed the pieces on the CD.

I have only one correction:

I did not say that offenders who receive target letters routinely request - or routinely receive - audiences here at DOJHQ. That is very rare. Instead, what usually happens is that once a subject for an election fraud investigation is advised that he or she is going to be charged that person usually enters into plea negotiations and ultimately pleads guilty. Very few federal election fraud cases go to trial. When a subject does request a HQ interview or a HW hearing, it would be held in the first instance by myself. But again, Peg, that is rare.

Also, while the occurrences of prosecutions of isolated instances of felons and alien voters and double voters has increased, we still aggressively and I believe quite successfully pursue systematic schemes to corrupt the electoral process, as the cases we brought recently out of Knott and Pike Counties in Kentucky, those we brought out of Lincoln and Logan Counties in West Virginia, and those we brought in New Hampshire growing out of the jamming of get-out-the-vote phone bank lines attest.

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM ---

Tova Wang
<wang@tcf.org>
05/16/2006 03:53 PM

To psims@eac.gov
cc

Subject RE: board of advisers presentation

I'll be here for a while, I just wanted to make sure. If you send it to me anytime before 5 I can look at it in time. If not, I'll try my best to look at it en route tomorrow.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 16, 2006 2:51 PM
To: wang@tcf.org
Subject: Re: board of advisers presentation

I haven't sent it yet. If you need to leave early, you can look at what I have so far, which does not have the intro or the text regarding the final report. --- Peggy
Hi Peg. Have you tried to send me the presentation? I haven't gotten it, but I think we may be having email problems. Let me know. I'd need to look at it today since I'll be tied up tomorrow.

Tova

Tova Andrea Wang
Democracy Fellow
The Century Foundation
41 East 7th 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.

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM ---

I agree!

--- Tova Wang <wang@tcf.org> wrote:

> I still think it's sufficient for him to raise the points verbally. All of
> the interview summaries reflect what Job and I both understood the
> interviewees to say. This really opens the door to people making, as Job
> says, "corrections"
> 
> -----Original Message-----
> From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 16, 2006 10:47 AM
To: wang@tcf.org
Cc: serebrov@sbcglobal.net
Subject: RE: Corrections

Might not be a bad idea before the final report is prepared, but I would not worry about it for Thursday's meeting. I'm only concerned with the Donsanto interview summary because he will be attending the meeting. --- Peggy

--- Forwarded by Margaret Sims/EACLGOV on 04/30/2007 04:20 PM ---

To psims@eac.gov
cc
Subject: Re: Question

Ok

--- psims@eac.gov wrote:

> You will need to submit hotel and parking receipts.
> You don't need to submit meal receipts. You don't need to submit gas receipts because use of a personally owned vehicle (POV) is reimbursed based on mileage. I think I emailed the mileage rate to you. If you need it again, I'll look it up when I am at the office (this afternoon).
> Peg

> --------------------------
> Sent from my BlackBerry Wireless Handheld
>

> ----- Original Message ----- 
> From: "Job Serebrov" 
> Sent: 05/12/2006 09:05 PM 
> To: psims@eac.gov 
> Subject: Question 
> 
> Peg:
> > Since I am driving to DC, besides hotel receipts, do you want me to keep my gas receipts or how will my car use be compensated? Also, I assume I don't have to retain food receipts.
Great -- thanks so much and apologies for the false alarm.

-----Original Message-----
From: dromig@eac.gov [mailto:dromig@eac.gov]
Sent: Monday, May 15, 2006 8:51 AM
To: wang@tcf.org
Cc: psims@eac.gov
Subject: RE: I'm sorry

This article is on the CD, it is located in the "Nexis Article Charts" folder.

Devon Romig
United States Election Assistance Commission
1225 New York Ave. NW, Suite 1100
Washington, DC 20005
202.566.2377 phone
202.566.3128 fax
www.eac.gov

Thats good. I'm probably just getting crazy, trying to make sure everything is perfect. Devon, maybe you can check? Otherwise I'll check it when it comes. Thanks. And be well Peg.
Tova:  
I think you did send this --- or is this a revised version of one you sent earlier? It should be on the CD in the packet you should receive today. (Can't check that right now as I am at the clinic.) If I put anything on the CD that you want to highlight at the meeting, let me know and we'll make copies for those attending.  
Peggy

Sent from my BlackBerry Wireless Handheld

----- Original Message -----  
From: "Tova Wang" [wang@tcf.org]  
Sent: 05/15/2006 09:07 AM  
To: Margaret Sims  
Cc: Devon Romig  
Subject: I'm sorry

I don't think I sent this to you either. Can we hand it out at the meeting as an addendum? Its another summary that would have gone in the news article section. I'm usually so organized, I'm very embarrassed. Too many things! Thanks

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

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

Click here to receive our weekly e-mail updates.

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM -----  
"Donsanto, Craig"  
<Craig.Donsanto@usdoj.gov>  
To psims@eac.gov  
cc  
Subject Re: Voting Fraud-Voter Intimidation Working Group

Peggy --  
I am currently on train in trasit back from a day in Newark. I tried to recover your attachment on Blackberry but got a message telling me the "file
Can you paste it to an e-mail perhaps?

Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

-----Original Message-----
From: psims@eac.gov <psims@eac.gov>
To: barnwine@lawyerscommittee.org <barnwine@lawyerscommittee.org>; Rbauer@perkinscole.com <Rbauer@perkinscole.com>; bginsberg@pattonboggs.com <bginsberg@pattonboggs.com>; mhearne@lathropgage.com <mhearne@lathropgage.com>; krogers@sos.state.ga.us <krogers@sos.state.ga.us>; assistant@sos.in.gov <assistant@sos.in.gov>; weinutr@verizon.net CC: jgreenbaum@lawyerscommittee.org <jgreenbaum@lawyerscommittee.org>; yjohnson@lawyerscommittee.org <yjohnson@lawyerscommittee.org>; dlovecchio@perkinscole.com <dlovecchio@perkinscole.com>; bschuler@lathropgage.com <bschuler@lathropgage.com>; Donsanto, Craig <Craig.Donsanto@usdoj.gov>
Sent: Mon May 15 16:37:48 2006
Subject: Voting Fraud-Voter Intimidation Working Group

Dear Working Group Members and Participants:

You should receive a packet of information today, either by Federal Express or hand delivery, concerning Thursday's meeting of the project Working Group for EAC's Voting Fraud-Voter Intimidation research project. Attached is an analysis of the consultants' research into relevant literature and reports. This summary was not available when we prepared the information packets last Friday, but may be of interest to you. Our consultants and I look forward to having a productive discussion with you.

Regards,

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

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM -----
Margaret Sims/EAC/GOV
05/16/2006 08:43 AM
To: "Donsanto, Craig" <Craig.Donsanto@usdoj.gov>@GSAEXTERNAL
cc
Subject: Re: Voting Fraud-Voter Intimidation Working Group

Here is the content of the email attachment:
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, much more is 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 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.

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

05/15/2006 04:53 PM

Subject: Re: Voting Fraud-Voter Intimidation Working Group

Peggy --

I am currently on train in transit back from a day in Newark. I tried to recover your attachment on Blackberry but got a message telling me the "file is empty."

Can you paste it to an e-mail perhaps?

Sent from Dr. D's Fabulous Blackberry Wireless Handheld

-----Original Message-----
From: psims@eac.gov <psims@eac.gov>
To: barnwine@lawyerscommittee.org <barnwine@lawyerscommittee.org>; Rbauer@perkinscoie.com <Rbauer@perkinscoie.com>; bginsberg@pattonboggs.com <bginsberg@pattonboggs.com>; mhearnelim@lathropgage.com <mhearnelim@lathropgage.com>; jrperez50@sbcglobal.net; krogers@sos.state.ga.us <krogers@sos.state.ga.us>; assistant@sos.in.gov <assistant@sos.in.gov>; assistant@sos.in.gov >
CC: jgreenbaum@lawyerscommittee.org <jgreenbaum@lawyerscommittee.org>; vjohnson@lawyerscommittee.org <vjohnson@lawyerscommittee.org>; dlovechio@perkinscoie.com <dlovechio@perkinscoie.com>; bschuler@lathropgage.com <bschuler@lathropgage.com>; Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>
Sent: Mon May 15 16:37:48 2006
Subject: Voting Fraud-Voter Intimidation Working Group

Dear Working Group Members and Participants:

You should receive a packet of information today, either by Federal Express or hand delivery, concerning Thursday's meeting of the project Working Group for EAC's Voting Fraud-Voter Intimidation research project. Attached is an analysis of the consultants' research into relevant literature and reports. This summary was not available when we prepared the information packets last Friday, but may be of interest to you. Our consultants and I look forward to having a productive discussion with you.

Regards,
Craig;

You asked about the Nexis search terms used by our consultants. The list follows. --- Peggy.

Election and fraud
Voter and fraud
Vote and fraud
Voter and challenge
Vote and challenge
Election and challenge
Election and irregularity
Election and irregularities
Election and violation
Election and stealing
Ballot box and tampering
Ballot box and theft
Ballot box and stealing
Election and officers
Election and Sheriff
Miscount and votes
Election and crime
Election and criminal
Vote and crime
Vote and criminal
Double voting
Multiple voting
Dead and voting
Election and counting and violation
Election and counting and error
Vote and counting and violation
Vote and counting and error
Voter and intimidation
Voter and intimidating
Vote and intimidation
Denial and voter and registration
Voter identification
Vote and identification
Voter and racial profiling
Vote and racial profiling
Voter and racial
Vote and racial
Voter and racial and challenge
Vote and racial and challenge
Voter and deny and racial
Vote and deny and racial
Voter and deny and challenge
Vote and deny and challenge
Voter and deny and black
Vote and deny and black
Voter and black and challenge
Vote and black and challenge
Voter and deny and African American
Vote and deny and African American
Voter and African American and challenge
Vote and African American and challenge
Election and black and challenge
Election and African American and challenge
Voter and deny and Hispanic
Voter and deny and Latino
Vote and deny and Hispanic
Vote and deny and Latino
Voter and Hispanic and challenge
Voter and Latino and challenge
Vote and Hispanic and challenge
Vote and Latino and challenge
Election and Hispanic and challenge
Election and Latino and challenge
Voter and deny and Native American
Vote and deny and Native American
Voter and Native American and challenge
Vote and Native American and challenge
Election and Native American and challenge
Voter and deny and Asian American
Vote and deny and Asian American
Voter and Asian American and challenge
Vote and Asian American and challenge
Voter and Asian American and challenge
Election and Asian American and challenge
Voter and deny and Indian
Voter and deny and Indian
Voter and Indian and challenge
Vote and Indian and challenge
Election and Indian and challenge
Poll tax
Voting and test
Absentee ballot and deny
Absentee ballot and reject
Absentee ballot and challenge
Vote and challenge
Voter and challenge
Election and challenge
Vote and police
Voter and police
Poll and police
Vote and law enforcement
Voter and law enforcement
Poll and law enforcement
Vote and deceptive practices
Voter and deceptive practices
Election and deceptive practices
Voter and deceive
Voter and false information
Dirty tricks
Vote and felon
Vote and ex-felon
Disenfranchisement
Disenfranchise
Law and election and manipulation
Vote and purging
Vote and purge
Registration and removal
Registration and purging
Registration and purge
Vote buying
Vote and noncitizen
Voter and noncitizen
Vote and selective enforcement
Identification and selective
Election and misinformation
Registration and restrictions
Election and administrator and fraud
Election and official and fraud
Provisional ballot and deny
Provisional ballot and denial
Affidavit ballot and deny
Affidavit ballot and denial
Absentee ballot and coerce
Absentee ballot and coercion
Registration and destruction
Voter and deter
Vote and deterrence
Voter and deterrence
Ballot integrity
Ballot security
Ballot security and minority
Ballot security and black
Ballot security and African American
Ballot security and Latino
Ballot security and Hispanic
Ballot security and Native American
Ballot security and Indian
Vote and suppression
Minority and vote and suppression
Black and vote and suppression
African American and vote and suppression
Latino and vote and suppression
Hispanic and vote and suppression
Native American and vote and suppression
Vote and suppress
Minority and vote and suppress
African American and vote and suppress
Latino and vote and suppress
Native American and vote and suppress
Vote and depress
Jim Crow
Literacy test
Voter and harass
Voter and harassment
Vote and mail and fraud
Poll and guards
Election and consent decree
Vote and barrier
Voting and barrier
Voter and barrier
Election and long line
Voter and long line

Poll worker and challenge
Poll worker and intimidate
Poll worker and intimidation
Poll worker and intimidating
Poll worker and threatening
Poll worker and abusive
Election official and challenge
Election official and intimidate
Election official and intimidation
Election official and intimidating
Election official and threatening
Election official and abusive
Poll watcher and challenge
Poll watcher and intimidate
Poll watcher and intimidating
Poll watcher and intimidation
Poll watcher and abusive
Poll watcher and threatening
Poll inspector and challenge
Poll inspector and intimidate
Poll inspector and intimidating
Poll inspector and intimidation
Poll inspector and abusive
Poll inspector and threatening
Poll judge and challenge
Poll judge and intimidate
Poll judge and intimidating
Poll judge and intimidation
Poll judge and abusive
Poll judge and threatening
Poll monitor and challenge
Poll monitor and intimidate
Poll monitor and intimidating
Poll monitor and intimidation
Poll monitor and abusive
Poll monitor and threatening
Election judge and challenge
Election judge and intimidate
Election judge and intimidating
Election judge and intimidation
Election judge and abusive
Election judge and threatening
Election monitor and challenge
Election monitor and intimidate
Election monitor and intimidating
Election monitor and intimidation
Election monitor and abusive
Election monitor and threatening
Election observer and challenge
Election observer and intimidate
Election observer and intimidating
Election observer and intimidation
Election observer and abusive
Election observer and threatening

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM ---

Margaret Sims/EAC/GOV
05/16/2006 03:37 PM
To "Donsanto, Craig"
<Craig.Donsanto@usdoj.gov>@GSAEXTERNAL
cc
Subject: RE: Your Materials

OK. --- Peg

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

"Donsanto, Craig"<Craig.Donsanto@usdoj.gov>
05/16/2006 03:17 PM
To psims@eac.gov
cc
Subject: RE: Your Materials

Let me try to do it, Peg. Again what I do not want to see occur is for the LCCR to start attacking us. We
have more in common with them than I had originally assumed, thanks to the write-ups of their interviews.
We need to promote what we have in common not try to score political points. But I will try to correct the
records as long as you will agree you heard what I said the way I know I said it!

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 16, 2006 3:14 PM
To: Donsanto, Craig
Subject: RE: Your Materials

I fully understand. Do you want me to prepare a correction sheet for the Working Group, placing your
second and more important point first, or do you want to handle this verbally at the meeting? --- Peggy
The first item is not as big a deal as the second one: the processes under which subjects of investigations come to Jesus is not as important as the overall assessment of our law enforcement achievements. But stressing the isolated test cases we brought - and will continue to being - to deter things like felon voting, alien voting and double voting, which not mentioning such significant achievements as the five case PROJECTS mentioned in my last e-mail - misrepresents what we are doing and the deterrent message we are trying to communicate.

I appreciate that these two young people may have found themselves in a Brave New World when they came over here. It showed in their questioning. But the fact that criminal law enforcement is not at all similar to preventative legal relief (as under the Voting Rights Act) or civil relief (as election contest litigation) is I guess more of a problem than I at first foresaw. My real concerns is that the civil rights groups - with whom we over here have an amazing amount of common grounds - will take the singling out of the felon and alien voter cases as evincing a malevolent aggression on their constituencies. That is not the case. We are only enforcing the law.

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 16, 2006 2:47 PM
To: Donsanto, Craig
Subject: RE: Your Materials

I think they are panicking because they are preparing to travel tomorrow and may not have time to submit a revised version. They also are resisting changes to their interview summaries because the summaries represent what they think they heard. I was there at the interview and I heard what you said. I'm not sure that either of them heard everything (including the nuances) because so much of the information was new to them and it was one of their earlier interviews. I'm sorry I did not catch the defects before the summary went out.

My first concern is ensuring that the Working Group has the correct information. Then, we can deal with what version, if any, goes in the final report. Do you want me to excerpt the corrections from your email and submit them to the Working Group? --- Peggy
Sure. But where is the resistance coming from? The notes were not accurate. As you know, I have to be very concerned about that.

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 16, 2006 12:34 PM
To: Donsanto, Craig
Subject: RE: Your Materials

Craig:

I am getting some resistance from my consultants to correcting the summary of the interview prior to the meeting. Would you mind noting the corrections at the meeting? --- Peggy
Subject: RE: Your Materials

Thank you, Peg. This stuff is very interesting.

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 16, 2006 11:27 AM
To: Donsanto, Craig
Subject: Re: Your Materials

I have forwarded your message to our consultants and have requested a corrected version for distribution at the WG meeting. --- Peggy

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

05/16/2006 10:46 AM
Peg - -

I have read over the materials you sent to me and viewed the pieces on the CD.

I have only one correction:

I did not say that offenders who receive target letters routinely request - - or routinely receive - - audiences here at DOJHQ. That is very rare. Instead, what usually happens is that once a subject for an election fraud investigation is advised that he or she is going to be charged that person usually enters into plea negotiations and ultimately pleads guilty. Very few federal election fraud cases go to trial. When a subject does request a HQ interview or a HW hearing, it would be held in the first instance by myself. But again, Peg, that is rare.

Also, while the occurrences of prosecutions of isolated instances of felons and alien voters and double voters has increased, we still aggressively and I believe quite successfully pursue systematic schemes to corrupt the electoral process, as the cases we brought recently out of Knott and Pike Counties in Kentucky, those we brought out of Lincoln and Logan Counties in West Virginia, and those we brought in New Hampshire growing out of the jamming of getout-the-vote phone bank lines attest.
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

I think he can just raise these points at the meeting, no? I'm sure many we interviewed would say we misquoted them on something. This is what both Job and I remember him saying. I think it would be unfair for him to change/amend his interview without giving the same opportunity to the other interviewees.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 16, 2006 9:59 AM
To: wang@tcf.org; serebrov@sbcglobal.net
Subject: Fw: Your Materials

See corrections from Donsanto at DOJ. We should probably provide corrected versions to the Working Group. --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 05/16/2006 10:58 AM ------
"Donsanto, Craig" <Craig.Donsanto@usdoj.gov>

05/16/2006 10:46 AM
To psims@eac.gov
cc
Subject Your Materials
I have read over the materials you sent to me and viewed the pieces on the CD.

I have only one correction:

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Also, while the occurrences of prosecutions of isolated instances of felons and alien voters and double voters has increased, we still aggressively and I believe quite successfully pursue systematic schemes to corrupt the electoral process, as the cases we brought recently out of Knott and Pike Counties in Kentucky, those we brought out of Lincoln and Logan Counties in West Virginia, and those we brought in New Hampshire growing out of the jamming of get-out-the-vote phone bank lines attest.

Peggy --

I was just thinking of you!

Great session yesterday. I really enjoyed it. Robust discussion.

On another subject, Nancy Simmons needs the e-mail address of NASED. Can you give her both that and the website address for them? Her e-mail is nancy.simmons@usdoj.gov.

Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

-----Original Message-----
From: psims@eac.gov <psims@eac.gov>
To: Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>
Sent: Fri May 19 14:51:21 2006
Subject: Voting Fraud-Voter Intimidation Project-Nexis Word Search

Craig;

You asked about the Nexis search terms used by our consultants. The list follows. --- Peggy.

Election and fraud
Voter and fraud
Vote and fraud
Voter and challenge
Vote and challenge
Election and challenge
Election and irregularity
Election and irregularities
Election and violation
Election and stealing
Ballot box and tampering
Ballot box and theft
Ballot box and stealing
Election and officers
Election and Sheriff
Miscount and votes
Election and crime
Election and criminal
Vote and crime
Vote and criminal
Double voting
Multiple voting
Dead and voting
Election and counting and violation
Election and counting and error
Vote and counting and violation
Vote and counting and error
Voter and intimidation
Voter and intimidating
Vote and intimidation
Denial and voter and registration
Voter identification
Vote and identification
Vote and racial profiling
Vote and racial profiling
Vote and racial
Vote and racial
Vote and racial and challenge
Vote and racial and challenge
Voter and deny and racial
Vote and deny and racial
Voter and deny and challenge
Voter and deny and challenge
Voter and deny and black
Vote and deny and black
Voter and black and challenge
Vote and black and challenge
Voter and deny and African American
Vote and deny and African American
Voter and African American and challenge
Vote and African American and challenge
Election and black and challenge
Election and African American and challenge
Voter and deny and Hispanic
Voter and deny and Latino
Vote and deny and Hispanic
Vote and deny and Latino
Voter and Hispanic and challenge
Voter and Latino and challenge
Vote and Hispanic and challenge
Vote and Latino and challenge
Election and Hispanic and challenge
Election and Latino and challenge
Voter and deny and Native American
Vote and deny and Native American
Vote and Native American and challenge
Vote and Native American and challenge
Election and Native American and challenge
Vote and deny and Asian American
Vote and deny and Asian American
Vote and Asian American and challenge
Vote and Asian American and challenge
Vote and Asian American and challenge
Election and Asian American and challenge
Vote and deny and Indian
Vote and deny and Indian
Vote and Indian and challenge
Vote and Indian and challenge
Election and Indian and challenge
Poll tax
Voting and test
Absentee ballot and deny
Absentee ballot and reject
Absentee ballot and challenge
Vote and challenge
Vote and challenge
Election and challenge
Vote and police
Vote and police
Poll and police
Vote and law enforcement
Vote and law enforcement
Poll and law enforcement
Vote and deceptive practices
Vote and deceptive practices
Election and deceptive practices
Vote and deceive
Vote and false information
Dirty tricks
Vote and felon
Vote and ex-felon
Disenfranchisement
Disenfranchise
Law and election and manipulation
Vote and purging
Vote and purge
Registration and removal
Registration and purging
Registration and purge
Vote buying
Vote and noncitizen
Voter and noncitizen
Vote and selective enforcement
Identification and selective
Election and misinformation
Registration and restrictions
Election and administrator and fraud
Election and official and fraud
Provisional ballot and deny
Provisional ballot and denial
Affidavit ballot and deny
Affidavit ballot and denial
Absentee ballot and coerce
Absentee ballot and coercion
Registration and destruction
Voter and deter
Vote and deterrence
Voter and deterrence
Ballot integrity
Ballot security
Ballot security and minority
Ballot security and black
Ballot security and African American
Ballot security and Latino
Ballot security and Hispanic
Ballot security and Native American
Ballot security and Indian
Vote and suppression
Minority and vote and suppression
Black and vote and suppression
African American and vote and suppression
Latino and vote and suppression
Hispanic and vote and suppression
Native American and vote and suppression
Vote and suppress
Minority and vote and suppress
African American and vote and suppress
Latino and vote and suppress
Native American and vote and suppress
Vote and depress
Jim Crow
Literacy test
Voter and harass
Voter and harassment
Vote and mail and fraud
Poll and guards
Election and consent decree
Vote and barrier
Voting and barrier
Voter and barrier
Election and long line
Voter and long line
Poll worker and challenge
Poll worker and intimidate
Poll worker and intimidation
Poll worker and intimidating
Poll worker and threatening
Poll worker and abusive
Election official and challenge
Election official and intimidate
Election official and intimidation
Election official and intimidating
Election official and threatening
Election official and abusive
Poll watcher and challenge
Poll watcher and intimidate
Poll watcher and intimidating
Poll watcher and intimidation
Poll watcher and abusive
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Poll inspector and challenge
Poll inspector and intimidate
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Election judge and abusive
Election judge and threatening
Election monitor and challenge
Election monitor and intimidate
Election monitor and intimidating
Election monitor and intimidation
Election monitor and abusive
Election monitor and threatening
Election observer and challenge
Election observer and intimidate
Election observer and intimidating
Election observer and intimidation
Election observer and abusive
Election observer and threatening

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM ---

"Tova Wang"
<wang@tcf.org>  To psims@eac.gov
05/15/2006 05:05 PM  cc Subject RE: Fraud Definition

Sounds good. Thanks.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, May 15, 2006 4:03 PM
To: wang@tcf.org
Subject: Re: Fraud Definition
Election and stealing
Ballot box and tampering
Ballot box and theft
Ballot box and stealing
Election and officers
Election and Sheriff
Miscount and votes
Election and crime
Election and criminal
Vote and crime
Vote and criminal
Double voting
Multiple voting
Dead and voting
Election and counting and violation
Election and counting and error
Vote and counting and violation
Vote and counting and error
Voter and intimidation
Voter and intimidating
Vote and intimidation
Denial and voter and registration
Voter identification
Vote and identification
Voter and racial profiling
Vote and racial profiling
Voter and racial
Vote and racial
Voter and racial and challenge
Vote and racial and challenge
Voter and deny and racial
Vote and deny and racial
Voter and deny and challenge
Vote and deny and challenge
Voter and deny and black
Vote and deny and black
Voter and black and challenge
Vote and black and challenge
Voter and deny and African American
Vote and deny and African American
Voter and African American and challenge
Vote and African American and challenge
Election and black and challenge
Election and African American and challenge
Voter and deny and Hispanic
Voter and deny and Latino
Vote and deny and Hispanic
Vote and deny and Latino
Voter and Hispanic and challenge
Voter and Latino and challenge
Vote and Hispanic and challenge
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Election and Hispanic and challenge
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Voter and deny and Native American
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Voter and Native American and challenge
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Voter and Indian and challenge
Vote and Indian and challenge
Election and Indian and challenge
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Voter and challenge
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Vote and police
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OK. --- Peg

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

Let me try to do it, Peg. Again what I do not want to see occur is for the LCCR to start attacking us. We have more in common with them than I had originally assumed, thanks to the write-ups of their interviews. We need to promote what we have in common not try to score political points. But I will try to correct the records as long as you will agree you heard what I said the way I know I said it!
I fully understand. Do you want me to prepare a correction sheet for the Working Group, placing your second and more important point first, or do you want to handle this verbally at the meeting? --- Peggy

The first item is not as big a deal as the second one: the processes under which subjects of investigations come to Jesus is not as important as the overall assessment of our law enforcement achievements. But stressing the isolated test cases we brought - - and will continue to being - - to deter things like felon voting, alien voting and double voting, which not mentioning such significant achievements as the five case PROJECTS mentioned in my last e-mail - - misrepresents what we are doing and the deterrent message we are trying to communicate.

I appreciate that these two young people may have found themselves in a Brave New World when they came over here. It showed in their questioning. But the fact that criminal law enforcement is not at all similar to preventative legal relief (as under the Voting Rights Act) or civil relief (as election contest litigation) is I guess more of a problem than I at first foresaw. My real concerns is that the civil rights groups - - with whom we over here have an amazing amount of common grounds - - will take the singling out of the felon and alien voter cases as evincing a malevolent aggression on their constituencies. That is not the case. We are only enforcing the law.

I think they are panicking because they are preparing to travel tomorrow and may not have time to submit a revised version. They also are resisting changes to their interview summaries because the summaries
represent what they think they heard. I was there at the interview and I heard what you said. I'm not sure that either of them heard everything (including the nuances) because so much of the information was new to them and it was one of their earlier interviews. I'm sorry I did not catch the defects before the summary went out.

My first concern is ensuring that the Working Group has the correct information. Then, we can deal with what version, if any, goes in the final report. Do you want me to excerpt the corrections from your email and submit them to the Working Group? --- Peggy

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

05/16/2006 01:41 PM

Sure. But where is the resistance coming from? The notes were not accurate. As you know, I have to be very concerned about that.

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 16, 2006 12:34 PM
To: Donsanto, Craig
Subject: RE: Your Materials

Craig:

I am getting some resistance from my consultants to correcting the summary of the interview prior to the meeting. Would you mind noting the corrections at the meeting? --- Peggy
Thank you, Peg. This stuff is very interesting.

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 16, 2006 11:27 AM
To: Donsanto, Craig
Subject: Re: Your Materials

I have forwarded your message to our consultants and have requested a corrected version for distribution at the WG meeting. --- Peggy

*Donsanto, Craig* <Craig.Donsanto@usdoj.gov>
I have read over the materials you sent to me and viewed the pieces on the CD.

I have only one correction:

I did not say that offenders who receive target letters routinely request -- or routinely receive -- audiences here at DOJHQ. That is very rare. Instead, what usually happens is that once a subject for an election fraud investigation is advised that he or she is going to be charged that person usually enters into plea negotiations and ultimately pleads guilty. Very few federal election fraud cases go to trial. When a subject does request a HQ interview or a HW hearing, it would be held in the first instance by myself. But again, Peg, that is rare.

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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

---

I think he can just raise these points at the meeting, no? I'm sure many we interviewed would say we misquoted them on something. This is what both Job and I remember him saying. I think it would be unfair for him to change/amend his interview without giving the same opportunity to the other interviewees.

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

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 16, 2006 9:59 AM
To: wang@tcf.org; serebrov@sbcglobal.net
Subject: Fw: Your Materials

See corrections from Donsanto at DOJ. We should probably provide corrected versions to the Working Group. --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 05/16/2006 10:58 AM -----

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

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--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM ---

“Donsanto, Craig”
<Craig.Donsanto@usdoj.gov>

To: psims@eac.gov
cc: “Simmons, Nancy” <Nancy.Simmons@usdoj.gov>

Subject: Re: Voting Fraud-Voter Intimidation Project-Nexis Word Search

Peggy --

I was just thinking of you!

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Sent from Dr. D’s Fabulous BlackBerry Wireless Handheld

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Sent: Fri May 19 14:51:21 2006
Subject: Voting Fraud-Voter Intimidation Project-Nexis Word Search
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Voter identification
Vote and identification
Voter and racial profiling
Vote and racial profiling
Voter and racial
Vote and racial
Voter and racial and challenge
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Vote and deny and black
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Election and Asian American and challenge
Voter and deny and Indian
Vote and deny and Indian
Voter and Indian and challenge
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Election and Indian and challenge
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Voting and test
Absentee ballot and deny
Absentee ballot and reject
Absentee ballot and challenge
Vote and challenge
Voter and challenge
Election and challenge
Vote and police
Voter and police
Poll and police
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Voter and law enforcement
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Voter and deceptive practices
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Dirty tricks
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Disenfranchise
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Registration and removal
Registration and purging
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Vote and noncitizen
Voter and noncitizen
Vote and selective enforcement
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Ballot security and Native American
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Native American and vote and suppression
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Voting and barrier
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OK. --- Peg

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

"Donsanto, Craig" <Craig.Donsanto@usdoj.gov>
05/16/2006 03:17 PM
To psims@eac.gov
cc
Subject RE: Your Materials
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From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 16, 2006 3:14 PM
To: Donsanto, Craig
Subject: RE: Your Materials

I fully understand. Do you want me to prepare a correction sheet for the Working Group, placing your second and more important point first, or do you want to handle this verbally at the meeting? --- Peggy

"Donsanto, Craig" <Craig.Donsanto@usdoj.gov>
05/16/2006 02:55 PM

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From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 16, 2006 2:47 PM
To: Donsanto, Craig
Subject: RE: Your Materials

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05/16/2006 01:41 PM

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

05/16/2006 12:06 PM

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To: Donsanto, Craig
Subject: Re: Your Materials

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I have only one correction:

I did not say that offenders who receive target letters routinely request or routinely receive audiences here at DOJHQ. That is very rare. Instead, what usually happens is that once a subject for an election fraud investigation is advised that he or she is going to be charged that person usually enters into plea negotiations and ultimately pleads guilty. Very few federal election fraud cases go to trial. When a subject does request a HQ interview or a HW hearing, it would be held in the first instance by myself. But again, Peg, that is rare.

Also, while the occurrences of prosecutions of isolated instances of felons and alien voters and double voters has increased, we still aggressively and I believe quite successfully pursue systematic schemes to corrupt the electoral process, as the cases we brought recently out of Knott and Pike Counties in Kentucky, those we brought out of Lincoln and Logan Counties in West Virginia, and those we brought in 004302.
New Hampshire growing out of the jamming of get0-out-the-vote phone bank lines attest.

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM -----
Margaret Sims/EAC/GOV
05/15/2006 03:51 PM
To Paul DeGregorio, Ray Martinez, Donetta Davidson, Gracia Hillman
cc twilkey@eac.gov, jthompson@eac.gov, Gavin S. Gilmour/EAC/GOV/EAC, ecortes@eac.gov, Amie J. Sherrill/EAC/GOV/EAC, Adam Ambrogli/EAC/GOV/EAC, Eileen L. Collver/EAC/GOV/EAC, Sheila A. Banks/EAC/GOV/EAC
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

I think he can just raise these points at the meeting, no? I’m sure many we interviewed would say we misquoted them on something. This is what both Job and I remember him saying. I think it would be unfair for him to change/amend his interview without giving the same opportunity to the other interviewees.

----- Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 16, 2006 9:59 AM
To: wang@tcf.org
Subject: Fw: Your Materials

See corrections from Donsanto at DOJ. We should probably provide corrected versions to the Working Group. --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 05/16/2006 10:58 AM -----
Peg --

I have read over the materials you sent to me and viewed the pieces on the CD.

I have only one correction:

I did not say that offenders who receive target letters routinely request or routinely receive audiences here at DOJHQ. That is very rare. Instead, what usually happens is that once a subject for an election fraud investigation is advised that he or she is going to be charged that person usually enters into plea negotiations and ultimately pleads guilty. Very few federal election fraud cases go to trial. When a subject does request a HQ interview or a HW hearing, it would be held in the first instance by myself. But again, Peg, that is rare.

Also, while the occurrences of prosecutions of isolated instances of felons and alien voters and double voters has increased, we still aggressively and I believe quite successfully pursue systematic schemes to corrupt the electoral process, as the cases we brought recently out of Knott and Pike Counties in Kentucky, those we brought out of Lincoln and Logan Counties in West Virginia, and those we brought in New Hampshire growing out of the jamming of get0-out-the-vote phone bank lines attest.

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM ---

Peggy --

I was just thinking of you!

Great session yesterday. I really enjoyed it. Robust discussion.

On another subject, Nancy Simmons needs the e-mail address of NASED. Can you give her both that and the website address for them? Her e-mail is nancy.simmons@usdoj.gov.

----------

Sent from Dr. D's Fabulous BlackBerry Wireless Handheld
-- Original Message --
From: psims@eac.gov <psims@eac.gov>
To: Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>
Sent: Fri May 19 14:51:21 2006
Subject: Voting Fraud-Voter Intimidation Project-Nexis Word Search

Craig;

You asked about the Nexis search terms used by our consultants. The list follows. --- Peggy.

Election and fraud
Voter and fraud
Vote and fraud
Voter and challenge
Vote and challenge
Election and challenge
Election and irregularity
Election and irregularities
Election and violation
Election and stealing
Ballot box and tampering
Ballot box and theft
Ballot box and stealing
Election and officers
Election and Sheriff
Miscount and votes
Election and crime
Election and criminal
Vote and crime
Vote and criminal
Double voting
Multiple voting
Dead and voting
Election and counting and violation
Election and counting and error
Vote and counting and violation
Vote and counting and error
Voter and intimidation
Voter and intimidating
Vote and intimidation
Denial and voter and registration
Voter identification
Vote and identification
Voter and racial profiling
Vote and racial profiling
Voter and racial
Vote and racial
Voter and racial and challenge
Vote and racial and challenge
Voter and deny and racial
Vote and deny and racial
Voter and deny and challenge
Vote and deny and challenge
Voter and deny and black
Vote and deny and black
Voter and black and challenge
Vote and black and challenge
Voter and deny and African American
Voter and African American and challenge
Election and black and challenge
Election and African American and challenge
Voter and deny and Hispanic
Voter and deny and Latino
Voter and African American and challenge
Voter and Latino and challenge
Voter and Hispanic and challenge
Voter and Latino and challenge
Election and Hispanic and challenge
Election and Latino and challenge
Voter and deny and Native American
Voter and Native American and challenge
Voter and Native American and challenge
Election and Native American and challenge
Voter and deny and Asian American
Voter and Asian American and challenge
Election and Asian American and challenge
Voter and Asian American and challenge
Voter and Asian American and challenge
Vote and Asian American and challenge
Voter and deny and Indian
Voter and deny and Indian
Voter and Indian and challenge
Vote and Indian and challenge
Election and Indian and challenge
Poll tax
Voting and test
Absentee ballot and deny
Absentee ballot and reject
Absentee ballot and challenge
Vote and challenge
Voter and challenge
Election and challenge
Voter and police
Vote and police
Poll and police
Vote and law enforcement
Voter and law enforcement
Poll and law enforcement
Vote and deceptive practices
Voter and deceptive practices
Election and deceptive practices
Voter and deceive
Voter and false information
Dirty tricks
Vote and felon
Vote and ex-felon
Disenfranchisement
Disenfranchise
Law and election and manipulation
Vote and purging
Vote and purge
Registration and removal
Registration and purging

004306
Registration and purge
Vote buying
Vote and noncitizen
Voter and noncitizen
Vote and selective enforcement
Identification and selective
Election and misinformation
Registration and restrictions
Election and administrator and fraud
Election and official and fraud
Provisional ballot and deny
Provisional ballot and denial
Affidavit ballot and deny
Affidavit ballot and denial
Absentee ballot and coerce
Absentee ballot and coercion
Registration and destruction
Voter and deterrence
Vote and deterrence
Voter and deterrence
Ballot integrity
Ballot security
Ballot security and minority
Ballot security and black
Ballot security and African American
Ballot security and Latino
Ballot security and Hispanic
Ballot security and Native American
Ballot security and Indian
Vote and suppression
Minority and vote and suppression
Black and vote and suppression
African American and vote and suppression
Latino and vote and suppression
Hispanic and vote and suppression
Native American and vote and suppression
Vote and suppress
Minority and vote and suppress
African American and vote and suppress
Latino and vote and suppress
Native American and vote and suppress
Vote and depress
Jim Crow
Literacy test
Voter and harass
Vote and harassment
Vote and mail and fraud
Poll and guards
Election and consent decree
Vote and barrier
Voting and barrier
Voter and barrier
Election and long line
Voter and long line
Poll worker and challenge
Poll worker and intimidate
Poll worker and intimidation
Poll worker and intimidating
Poll worker and threatening
Poll worker and abusive
Election official and challenge
Election official and intimidate
Election official and intimidation
Election official and intimidating
Election official and threatening
Election official and abusive
Poll watcher and challenge
Poll watcher and intimidate
Poll watcher and intimidating
Poll watcher and intimidation
Poll watcher and abusive
Poll watcher and threatening
Poll inspector and challenge
Poll inspector and intimidate
Poll inspector and intimidating
Poll inspector and intimidation
Poll inspector and abusive
Poll inspector and threatening
Poll judge and challenge
Poll judge and intimidate
Poll judge and intimidating
Poll judge and intimidation
Poll judge and abusive
Poll judge and threatening
Poll monitor and challenge
Poll monitor and intimidate
Poll monitor and intimidating
Poll monitor and intimidation
Poll monitor and abusive
Poll monitor and threatening
Election judge and challenge
Election judge and intimidate
Election judge and intimidating
Election judge and intimidation
Election judge and abusive
Election judge and threatening
Election monitor and challenge
Election monitor and intimidate
Election monitor and intimidating
Election monitor and intimidation
Election monitor and abusive
Election monitor and threatening
Election observer and challenge
Election observer and intimidate
Election observer and intimidating
Election observer and intimidation
Election observer and abusive
Election observer and threatening

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM ---

"Tova Wang"
<wang@tcf.org>
05/15/2006 05:05 PM

To psims@eac.gov
cc

Subject RE: Fraud Definition
Sounds good. Thanks.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, May 15, 2006 4:03 PM
To: wang@tcf.org
Subject: Re: Fraud Definition

Tova:

We can certainly discuss this at the Working Group meeting. (The draft
definition had already been sent out by the time I read your message.) There
may be other VRA provisions that should be considered as well, such as the
prohibition on removing the names of certain registrants, who were
registered by federal examiners, without obtaining prior approval of the
Justice Department.

After I received your email, I asked Barry Weinberg to review the draft
definition and consider if we have left off examples of Voting Rights Act
violations that would qualify as election fraud. Barry, during his 25 years
with DOJ, led aggressive action against attempts to place police at the
polls to intimidate voters, challenges targeting minorities, failure to
provide election materials and assistance in languages other than English
(in covered jurisdictions), etc. His input should prove helpful. --- Peggy

---

How about specifying Section 2 and 203 of the VRA?

----- Original Message ----- 
From: psims@eac.gov
To: wang@tcf.org
Sent: Friday, May 12, 2006 1:34 PM
Subject: RE: Fraud Definition

Lets raise this issue at the meeting. (I'll add "DRAFT" to the current
document.) My concern is that there are a number of requirements in the
Voting Rights Act. Not all of them are considered election fraud, when
violated. For example, failure to preclear changes in election procedures
is not treated as election fraud, though it is actionable. --- Peggy

"Tova Wang" <wang@tcf.org>

05/12/2006 12:45 PM

psims@eac.gov,  
cc

RE: Fraud Definition

Upon first reading, my only comment would be that I would like to restore "failing to follow the requirements of the Voting Rights Act" ----- Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Friday, May 12, 2006 9:20 AM
To: wang@tcf.org
Subject: Fraud Definition

Would you please take a look at the attached? I combined both of your definitions, reformatted the list, removed a reference to the fraud having to have an actual impact on the election results (because fraud can be prosecuted without proving that it actually changed the results of the election), and taken out a couple of vague examples (e.g.; reference to failing to enforce state laws --- because there may be legitimate reasons for not doing so).

I have made contact with Ben Ginsberg's office and am waiting to hear if he accepts our invitation to join the working group. --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM -----
Margaret Sims/EAC/GOV
05/17/2006 09:56 AM
To Craig Donsanto
cc
Subject Report on Voting Fraud-Voter Intimidation Research
Craig:

I'm putting the finishing touches on a status report to the EAC Standards Board and EAC Board of Advisors on our Voting Fraud-Voter Intimidation research project. For the most part, I am using our consultants summaries for the report, but one bullet under the interview summaries is giving me heartburn. It is the bullet that references the decrease in DOJ voter intimidation actions. It is one of the places in which our consultants had indicated that your office is focusing on prosecuting individuals. I have reworded it and would like your feedback on the revision:

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 has increased its focus on matters such as noncitizen voting, double voting, and felon voting. While the Voting Section of the Civil Rights Division focuses on systemic patterns of malfeasance, the Election Crimes Branch of the Public Integrity Section has increased prosecutions of individual instances of felon, alien, and double voting while also maintaining an aggressive pursuit of systematic schemes to corrupt the electoral process.

Please suggest any changes that you think would further clarify the current approach. --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM ---

Margaret Sims/EAC/GOV
05/15/2006 01:09 PM
To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL
cc
Subject Re: Thursday

No problem. I've got the conference room reserved from Noon to 6 PM, so you can come earlier. --- Peggy

"Tova Wang" <wang@tcf.org>

"Tova Wang" <wang@tcf.org>
05/15/2006 11:36 AM
To psims@eac.gov
cc
Subject thursday

Is it OK if I come around 12:30 or so to make sure I have all my materials arranged properly for presentation? Thanks.

Tova Andrea Wang
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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I did not realize that I had to itemize the per diem, so yes, that was an oversight. There was a $5 service charge. I will forward you the documentation on that. Thanks so much. Tova

Subject: RE: Travel Reimbursement

Tova:
In reviewing your travel reimbursement request that arrived in my In box this week, I noticed that you did not include per diem in your request for payment. Was that an oversight? I calculate that you would be eligible for a total of $160 in per diem for the trip ($48 for Wednesday 5/17, $64 for Thursday 5/18, and $48 for Friday 5/19). Also, the airfare receipt shows a total charge of $288.60, but the amount you requested for airfare was $293.60. Perhaps there was a service fee that does not show on the receipt. Can you clarify? --- Peggy

--- "Craig C. Donsanto" <[redacted]> wrote:

Date: Tue, 30 May 2006 19:57:36 -0700 (PDT)
From: "Craig C. Donsanto" <[redacted]>
Subject: Re: Article to your secondary e-mail address
To: "Elliott, Michael (LA) (IC)" <Michael.Elliott@ic.fbi.gov>

Mike --

As we say back where I come from: this article is "wicked pissah"!

The woman mentioned in this piece towards the end has
been contracted with the Election Assistance Commission to do a study of electoral fraud in the US.
She is my problem, and she doesn't have a clue -- despite the fact that she has had the rare opportunity to interview me and get stats from me and my colleagues on our electoral fraud cases.
You should be most proud of this article as it accurately captures the soul of what you and I are trying to do in this very important area of federal law enforcement.
And greetings from Hilton Head, South Carolina --

--- "Elliott, Michael (LA) (IC)"
<Michael.Elliott@ic.fbi.gov> wrote:

Craig,

As requested, please find below The Hill article on the CF&B Initiative:


Michael

SSA Michael B. Elliott
Public Corruption/Governmental Fraud Unit
FBIHQ, Room 3975
202-324-4687 (Office)
310-210-8511 (Cellular)

Craig C. Donsanto
Hi Peg,

How are you? I was wondering, whatever happened to getting the collective notes of the EAC staff? Thanks. Tova

Tova Andrea Wang
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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---

Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM ---

Margaret Sims/EAC/GOV
06/01/2006 02:50 PM  To  Tova Andrea Wang
   cc
Subject  Travel Reimbursement

Tova:
In reviewing your travel reimbursement request that arrived in my In box this week, I noticed that you did not include per diem in your request for payment. Was that an oversight? I calculate that you would be eligible for a total of $160 in per diem for the trip ($48 for Wednesday 5/17, $64 for Thursday 5/18, and $48 for Friday 5/19). Also, the airfare receipt shows a total charge of $288.60, but the amount you requested for airfare was $293.60. Perhaps there was a service fee that does not show on the receipt. Can you clarify? --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM -----

Margaret Sims/EAC/GOV
05/31/2006 11:26 AM  To  "Tova Wang" <wang@tcf.org>@GSAEXTERNAL
   cc
Subject  Re: Working Group Notes

Sorry. We have had so much going on, I did not have time to send the attached to you last week. This is Devon's compilation of notes taken by EAC staff at the working group meeting. --- Peggy

VFVI Meeting Summary.doc

"Tova Wang" <wang@tcf.org>

"Tova Wang"
05/31/2006 11:26 AM  To  psims@eac.gov
   cc
Hi Peg,

How are you? I was wondering, whatever happened to getting the collective notes of the EAC staff?
Thanks. Tova

Tova Andrea Wang
Democracy Fellow
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phone: 212-452-7704  fax: 212-535-7534

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Hi Peg,

Do you have an ETA for the transcript? Seems like it should be around now. Thanks and have a great weekend. Tova

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

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

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Hi, What's going on? I have not received responses from either one of you in a week. I'd like to wrap this up in the next two weeks if we can. Did you get my recommendations? Thanks.

Tova

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM -----
Margaret Sims/EAC/GOV
06/08/2006 09:35 AM
To wang@tcf.org@GSAEXTERNAL
Subject Re:

Sorry. We have been swamped with other program activities and preparations for today's testimony before House Admin. We have not yet received the transcript of the Working Group session. Devon checked with the court reporter, who said it will be delivered today. --- Peggy

wang@tcf.org

wang@tcf.org
06/08/2006 09:15 AM
To psims@eac.gov
cc "Job Serebrov"
Subject

Hi, What's going on? I have not received responses from either one of you in a week. I'd like to wrap this up in the next two weeks if we can. Did you get my recommendations? Thanks.

Tova

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM -----
Devon E. Romig/EAC/GOV
06/07/2006 10:08 AM
To Margaret Sims/EAC/GOV@EAC
cc jwilson@eac.gov
Subject Re: Transcript of 5-18-06 Working Group Meeting

Tim at Carol reporting said the transcript will be here today or tomorrow.

Devon Romig
United States Election Assistance Commission
1225 New York Ave. NW, Suite 1100
Washington, DC 20005
Have we had any word about the transcript for the 5-18-06 Voting Fraud-Voter Intimidation Working Group meeting? Our consultants each need a copy so that they can draft the final report? If we have it in electronic form, so much the better. --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM ---

Hi Peg,

How do you recommend dealing with this? I have this feeling like he's trying to create a situation where I will have to write it myself. Thanks. Tova

-----Original Message-----
From: Job Serebrov
Sent: Thursday, June 01, 2006 9:42 PM
To: psims@eac.gov; wang@tcf.org
Subject: Re: Transcript & Teleconference

Peggy:

I can't predict when I get home but it is between 5:30 and 6:30 my time. I know that is generally too late to have a teleconference.

I plan to review Tova's recommendations this weekend and work on my own as well as expanding the explanation of the case section.

Please see what your financial officer did with regards to my travel.
Thank you,
Job

--- psims@eac.gov wrote:

> What time do you arrive home from work? Perhaps we could talk then?
> Re your question on the mileage, I have approached our Financial Officer with a request that you receive full reimbursement on the grounds that your actual total travel costs are less than the estimated total travel costs. If you had flown to DC, stayed in our more expensive hotels, and received the higher per diem for 3 days (instead of 1), I have not yet received a response from her and she has been out of the office much of this week, so I don't know what she decided to do.

--- Peggy

---

"Job Serebrov"
06/08/2006 01:10 PM

To
psims@eac.gov, wang@tcf.org
cc
serebrov@sbcglobal.net
Subject
Re: Transcript & Teleconference

Peg:

I just arrived home for lunch. I can no longer take time during the work day for telephone conferences. As I told you I will need to finish this project after daily working hours. I am still getting things done from being out for ten days. I will review Tova's recommendations and expand on mine this weekend.

Also, I sent you an e-mail asking how you handled the mileage portion of my travel voucher?

Job

--- psims@eac.gov wrote:
4 PM EST is fine with me, if it works for Job.

---

Peggy

wang@tcf.org

06/08/2006 10:10 AM

To

psims@eac.gov

cc

serebrov@sbcglobal.net

Subject

Re: Transcript & Teleconference

Can we make it 4 est? I have another meeting at 3.

----- Original Message ----- 
From: <psims@eac.gov>
To: <wang@tcf.org>
Cc: 
Sent: Thursday, June 08, 2006 9:55 AM
Subject: Re: Transcript & Teleconference

I'll see how it comes in. I hope we receive an electronic copy. If we only receive a hard copy, we can pdf it and email it to the two of you.

How about Monday afternoon at 3 PM EST for a brief teleconference? I really can't do it before then because of other commitments. --- Peggy

wang@tcf.org

06/08/2006 09:42 To

psims@eac.gov

cc

Re: Re:
How will you be getting it to us? Will it be something you can email? And can we set up a call for some time in the next few days? Thanks.

Original Message:

From: <psims@eac.gov>
To: <wang@tcf.org>
Cc: 
Sent: Thursday, June 08, 2006 9:35 AM
Subject: Re:

>> Sorry. We have been swamped with other program activities and preparations for today's testimony before House Admin. We have not yet received the transcript of the Working Group session. Devon checked with the court reporter, who said it will be delivered today.
--- Peggy

wang@tcf.org

06/08/2006 09:15 AM
psims@eac.gov
cc
"Job Serebrov"

Hi, What's going on? I have not received
I'll fax it to you if that works. The total is $124.44. Thank you. Have a nice weekend. Tova

Send it now. Let me know how much it is, so that I can include it in the total for reimbursement. --- Peggy

*Tova Wang* <wang@tcf.org>
06/09/2006 01:56 PM

To psims@eac.gov
cc
Subject travel
Hi again,

I just got the bill from our car service from the trip last month. Can I still send it to you? Do I need a cover note? Thanks. Tova

Tova Andrea Wang
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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----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM -----

"Tova Wang"<wang@tcf.org>  To psims@eac.gov, "Job Serebro
06/09/2006 12:49 PM                    cc

Subject more gao

Sorry, its 500 pages -- it also includes data on absentee fraud and voter intimidation

Tova Andrea Wang
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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----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM -----

Margaret Sims/EAC/GOV
06/12/2006 05:09 PM To "Tova Wang"<wang@tcf.org>@GSAEXTERNAL

Subject RE: Will Call Later
How about 9:30 AM EST, Wednesday morning (6/14/06)?

"Tova Wang" <wang@tcf.org>

"Tova Wang" 
<wang@tcf.org> 
06/12/2006 04:46 PM 
To psims@eac.gov 
cc 
Subject RE: Will Call Later 

Either between 9 and 10 or between 12 and 1:30 would be ideal, but I should be around most of the afternoon. Thanks Peg. Tova

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, June 12, 2006 2:39 PM 
To: wang@tcf.org
Subject: Will Call Later

I'll try to call you Wednesday. Is there a time that is best for you? Today has been too hectic. Tomorrow is primary election day in VA. Still no transcript. I have taken a look at the recommendations that you sent me, but have not yet heard from Job. --- Peg

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM ----- 
Devon E. Romig/EAC/GOV
06/07/2006 10:01 AM 
To Margaret Sims/EAC/GOV@EAC 
cc jwilson@eac.gov
Subject Re: Transcript of 5-18-06 Working Group Meeting

I will call the transcript company and ask them about it.

Devon Romig
United States Election Assistance Commission
1225 New York Ave. NW, Suite 1100
Washington, DC 20005
202.566.2377 phone
202.566.3128 fax
www.eac.gov
Margaret Sims/EAC/GOV

Margaret Sims/EAC/GOV
06/07/2006 09:47 AM 
To dromig@eac.gov, jwilson@eac.gov 
cc 
Subject Transcript of 5-18-06 Working Group Meeting
Here are my recommendations with the last one now included. Please let me know about the transcript and when you all want to talk about getting the final report done. Thanks. Tova

Tova Andrea Wang
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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--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM ---

"Job Serebrov"
<serebrov@sbcglobal.net> To psims@eac.gov, wang@tcf.org
06/13/2006 09:10 AM cc
Subject Transcripts, Etc.

Peggy:

Any sign of the transcript? Will the other members of the working group get a copy? I have had questions from several about it.

If you want to talk I can do so this Friday at 6 pm your time.

Job

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:18 PM ---

Margaret Sims/EAC/GOV To wang@tcf.org@GSAEXTERNAL
06/08/2006 11:07 AM cc
Subject Re: Transcript & Teleconference

4 PM EST is fine with me, if it works for Job. --- Peggy

wang@tcf.org
Can we make it 4 est? I have another meeting at 3.

----- Original Message -----
From: <psims@eac.gov>
To: <wang@tcf.org>
Cc: <serebrov@sbcglobal.net>
Sent: Thursday, June 08, 2006 9:55 AM
Subject: Re: Transcript & Teleconference

> I'll see how it comes in. I hope we receive an electronic copy. If we
> only receive a hard copy, we can pdf it and email it to the two of you.
> How about Monday afternoon at 3 PM EST for a brief teleconference? I
> really can't do it before then because of other commitments. --- Peggy

> How will you be getting it to us? Will it be something you can email?
> And
> can we set up a call for some time in the next few days? Thanks.

----- Original Message -----
From: <psims@eac.gov>
To: <wang@tcf.org>
Cc: <serebrov@sbcglobal.net>
Sent: Thursday, June 08, 2006 9:35 AM
Subject: Re:
Sorry. We have been swamped with other program activities and preparations for today's testimony before House Admin. We have not yet received the transcript of the Working Group session. Devon checked with the court reporter, who said it will be delivered today. --- Peggy

Hi, What's going on? I have not received responses from either one of you in a week. I'd like to wrap this up in the next two weeks if we can. Did you get my recommendations? Thanks.

Tova

I can't do that time, I'll be at an event in DC.

-----Original Message-----
From: Job Serebrov
Sent: Tuesday, June 13, 2006 8:10 AM
To: psims@eac.gov; wang@tcf.org
Subject: Transcripts, Etc.

Peggy:

Any sign of the transcript? Will the other members of the working group get a copy? I have had questions from several about it.

If you want to talk I can do so this Friday at 6 pm your time.

Job

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:18 PM ---

"Tova Wang"
<wang@tcf.org>
06/09/2006 12:09 PM

To psims@eac.gov, "Job Serebrov"
cc
Subject gao report

This has information on many of our topics, but they also surveyed jurisdictions on voter reg fraud coming up with a rate of 5%

http://www.gao.gov/cgi-bin/getrpt?GAO-06-450

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

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

Click here to receive our weekly e-mail updates.

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:18 PM -----

Joyce Wilson/EAC/GOV
06/07/2006 09:58 AM

To Margaret Sims/EAC/GOV@EAC
cc
Subject Re: Transcript of 5-18-06 Working Group Meeting
Not that I know of. Would it have gone to Bryan possibly? Our public meeting transcripts go to him.

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

Our Financial Officer accepted my arguments. You should receive a travel reimbursement totalling $1,200.03. GSA will reimburse through electronic funds transfer. I don't usually receive notification when our consultants are reimbursed.

I still have no transcripts. --- Peggy

Peggy:

I can't predict when I get home but it is between 5:30 and 6:30 my time. I know that is generally too late to have a teleconference.

I plan to review Tova's recommendations this weekend and work on my own as well as expanding the explanation of the case section.

Please see what your financial officer did with regards to my travel.

Thank you,

Job

--- psims@eac.gov wrote:

> What time do you arrive home from work? Perhaps we
could talk then?

Re your question on the mileage, I have approached our Financial Officer with a request that you receive full reimbursement on the grounds that your actual total travel costs are less than the estimated total travel costs if you had flown to DC, stayed in our more expensive hotels, and received the higher per diem for 3 days (instead of 1). I have not yet received a response from her and she has been out of the office much of this week, so I don't know what she decided to do.

--- Peggy

"Job Serebrov 06/08/2006 01:10 PM"

To psims@eac.gov, wang@tcf.org
cc serebrov@sbcglobal.net
Subject Re: Transcript & Teleconference

Peg:

I just arrived home for lunch. I can no longer take time during the work day for telephone conferences. As I told you I will need to finish this project after daily working hours. I am still getting things done from being out for ten days. I will review Tova's recommendations and expand on mine this weekend. Also, I sent you an e-mail asking how you handled the mileage portion of my travel voucher?

Job

--- psims@eac.gov wrote:

> 4 PM EST is fine with me, if it works for Job.

---

> Peggy

>
Can we make it 4 est? I have another meeting at 3.

--- Original Message ---
From: <psims@eac.gov>
To: <wang@tcf.org>
Cc: < untouched>
Sent: Thursday, June 08, 2006 9:55 AM
Subject: Re: Transcript & Teleconference

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How about Monday afternoon at 3 PM EST for a brief teleconference? I really can't do it before them because of other commitments. --- Peggy

---

004330
How will you be getting it to us? Will it be something you can email?
And
can we set up a call for some time in the next few days? Thanks.

----- Original Message ----- 
From: <psims@eac.gov>
To: <wang@tcf.org>
Cc:
Sent: Thursday, June 08, 2006 9:35 AM
Subject: Re:

Sorry... We have been swamped with other program activities and preparations for today's testimony before House Admin. We have not yet received the transcript of the Working Group session. Devon checked with the court reporter, who said it will be delivered today.
--- Peggy

Hi, Whats going on? I have not received responses from either one of you in a week. I'd like to wrap this up in the next two weeks if we can. Did you get my recommendations? Thanks.
Could you do Friday in the morning?

----- Original Message ----- 
From: "Job Serebrov" 
to: <wang@tcf.org>; <psims@eac.gov> 
Sent: Wednesday, June 14, 2006 10:17 PM   
Subject: Re: teleconference 

> Tova: 
>  
> 5 pm EST is 4 pm Central. Peg would have to call at 7 
> pm EST to be 6 pm Central.  
> 
> Job 
> 
> --- wang@tcf.org wrote: 
> 
> >> Let's try to do that. Peg, you will call us 5 pm  
> >> EST? 
> >> ----- Original Message ----- 
> >> From: "Job Serebrov" 
> >> To: "Tova Wang" <wang@tcf.org> 
> >> Sent: Wednesday, June 14, 2006 6:29 PM   
> >> Subject: Re: teleconference 
> >> 
> >> 
> >> > Wednesday next week? It would have to be 6 pm. 
> >> > 
> >> > --- Tova Wang <wang@tcf.org> wrote: 
> >> > 
> >> > >> Hi Job, 
> >> > >> 
> >> > >> Peg tells me that we should now be getting the
transcript early next week.
Regardless, we should talk about the organization
and distribution of work
on the final report and try to finally get it
done.
Would it be possible
for you to do a call before you leave for work in
the morning, say 8 am your
time, on Wednesday? If not, could you do 6 pm
your
time on Wednesday?
Thanks.
Tova

Tova Andrea Wang
Democracy Fellow
The Century Foundation
41 East 70th Street - New York, NY 10021
phone: 212-452-7704 fax: 212-535-7534
www.tcf.org, for the latest news,
analysis, opinions, and events.

---
mailto:join-tcfmain@mailhost.groundspring.org>
Click here to receive our
weekly e-mail updates.
---

Peg:
I just arrived home for lunch. I can no longer take
time during the work day for telephone conferences. As
I told you I will need to finish this project after
daily working hours. I am still getting things done
from being out for ten days. I will review Tova's
recommendations and expand on mine this weekend.

Also, I sent you an e-mail asking how you handled the mileage portion of my travel voucher?

Job

--- psims@eac.gov wrote:

> 4 PM EST is fine with me, if it works for Job. ---
> Peggy

wang@tcf.org
06/08/2006 10:10 AM
To
psims@eac.gov
cc
Subject
Re: Transcript & Teleconference

Can we make it 4 est? I have another meeting at 3.

----- Original Message -----
From: <psims@eac.gov>
To: <wang@tcf.org>
Cc: 
Sent: Thursday, June 08, 2006 9:55 AM
Subject: Re: Transcript & Teleconference

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electronic copy. If we
only receive a hard copy, we can pdf it and email
it to the two of you.
How about Monday afternoon at 3 PM EST for a brief
teleconference? I
can't do it before them because of other
commitments. --- Peggy

wang@tcf.org

06/08/2006 09:42 AM
psims@eac.gov
How will you be getting it to us? Will it be something you can email? And can we set up a call for some time in the next few days? Thanks.

--- Original Message ---
From: psimseac.gov
To: wang@tcf.org
Cc:
Sent: Thursday, June 08, 2006 9:35 AM
Subject: Re:

>> Sorry. We have been swamped with other program activities and preparations for today's testimony before House Admin. We have not yet received the transcript of the Working Group session. Devon checked with the court reporter, who said it will be delivered today.

--- Peggy

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Did you get my recommendations? Thanks.

Tova
What time do you arrive home from work? Perhaps we could talk then?

Re your question on the mileage, I have approached our Financial Officer with a request that you receive full reimbursement on the grounds that your actual total travel costs are less than the estimated total travel costs if you had flown to DC, stayed in our more expensive hotels, and received the higher per diem for 3 days (instead of 1). I have not yet received a response from her and she has been out of the office much of this week, so I don't know what she decided to do. --- Peggy

--- psims@eac.gov wrote:
> 4 PM EST is fine with me, if it works for Job. --- 
> Peggy
>
> wang@tcf.org
> 06/08/2006 10:10 AM
>
> To psims@eac.gov, wang@tcf.org
> cc
> Subject Re: Transcript & Teleconference
> Re: Transcript & Teleconference
Can we make it 4 est? I have another meeting at 3.

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From: <psims@eac.gov>
To: <wang@tcf.org>
Cc: 
Sent: Thursday, June 08, 2006 9:55 AM
Subject: Re: Transcript & Teleconference

I'll see how it comes in. I hope we receive an electronic copy. If we only receive a hard copy, we can pdf it and email it to the two of you.

How about Monday afternoon at 3 PM EST for a brief teleconference? I really can't do it before them because of other commitments. --- Peggy}

wang@tcf.org

06/08/2006 09:42 To AM
psims@eac.gov
cc
set
Subject
Re: Re:

How will you be getting it to us? Will it be something you can email? And can we set up a call for some time in the next few days? Thanks.

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From: <psims@eac.gov>
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Cc: 
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Sorry. We have been swamped with other program activities and preparations for today's testimony before House Admin. We have not yet received the transcript of the Working Group session. Devon checked with the court reporter, who said it will be delivered today.

--- Peggy

wang@tcf.org

---

Hi, What's going on? I have not received responses from either one of you in a week. I'd like to wrap this up in the next two weeks if we can.

Did you get my recommendations? Thanks.

Tova
-----Original Message-----
From: Job Serebrov
Sent: Friday, June 09, 2006 8:17 AM
To: Tova Wang
Subject: RE: Transcript & Teleconference

Normally I am not home for lunch.

--- Tova Wang <wang@tcf.org> wrote:

> What about during a lunch hour?
> 
> -----Original Message-----
> From: Job Serebrov
> Sent: Thursday, June 08, 2006 9:42 PM
> To: psims@eac.gov; wang@tcf.org
> Subject: Re: Transcript & Teleconference
> 
> Peggy:
> 
> I can't predict when I get home but it is between
> 5:30
> and 6:30 my time. I know that is generally too late
> to
> have a teleconference.
> 
> I plan to review Tova's recommendations this weekend
> and work on my own as well as expanding the
> explanation of the case section.
> 
> Please see what your financial officer did with
> regards to my travel.
> 
> Thank you,
> 
> Job
> 
> --- psims@eac.gov wrote:
> 
> > What time do you arrive home from work? Perhaps
> we
> > could talk then?
> > 
> > Re your question on the mileage, I have approached
> our Financial Officer
> > with a request that you receive full reimbursement
> > on the grounds that
> > your actual total travel costs are less than the
> estimated total travel
costs if you had flown to DC, stayed in our more
expensive hotels, and
received the higher per diem for 3 days (instead
of
1). I have not yet
received a response from her and she has been out
of
the office much of
this week, so I don't know what she decided to do.
--- Peggy

---

"Job Serebrov
06/08/2006 01:10 PM

To: psims@eac.gov, wang@tcf.org
cc: serebrov@sbcglobal.net
Subject: Re: Transcript & Teleconference

Peg:
I just arrived home for lunch. I can no longer
take
time during the work day for telephone
conferences.
As
I told you I will need to finish this project
after
daily working hours. I am still getting things
done
from being out for ten days. I will review Tova's
recommendations and
expand on mine this weekend.
Also, I sent you an e-mail asking how you handled
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Peggy
Can we make it 4 EST? I have another meeting at 3.

----- Original Message ----- 
From: <psims@eac.gov>
To: <wang@tcf.org>
Cc: <s

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wang@tcf.org

06/08/2006 09:42 To AM
psims@eac.gov
cc

Subject

Re: Re:
How will you be getting it to us? Will it be something you can email? And can we set up a call for some time in the next few days? Thanks.

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

From: <psims@eac.gov>
To: <wang@tcf.org>
Cc: <wang@tcf.org>
Sent: Thursday, June 08, 2006 9:35 AM
Subject: Re:

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Peggy

wang@tcf.org

06/08/2006 09:15 To AM

--- message truncated ---

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:18 PM ----

"Tova Wang"
<wang@tcf.org> To "Job Serebrov" psims@eac.gov
cc
Subject nexis

Hi Peg and Job,
Thats a first! Thanks -- I'll fax and send. Tova

-----Original Message-----
From: psims@eac.gov
Sent: Monday, June 19, 2006 12:24 PM
To: wang@tcf.org
Subject: Re: voucher

Looks good to me! --- Peggy
--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:18 PM ---

wang@tcf.org

To "Job Serebrov", psims@eac.gov

cc

Subject Re: teleconference

fine

----- Original Message ----- 
From: "Job Serebrov" <ser
To: <wang@tcf.org>; <psims@eac.gov>
Sent: Wednesday, June 14, 2006 10:17 PM
Subject: Re: teleconference

> Tova:
>
> 5 pm EST is 4 pm Central. Peg would have to call at 7
> pm EST to be 6 pm Central.
>
> Job
>
> --- wang@tcf.org wrote:
>
> >> Let's try to do that. Peg, you will call us 5 pm
> >> EST?
> >> ----- Original Message ----- 
> >> From: "Job Serebrov" <ser
> >> To: "Tova Wang" <wang@tcf.org>
> >> Sent: Wednesday, June 14, 2006 6:29 PM
> >> Subject: Re: teleconference
> >>
> >>
> >> > Wednesday next week? It would have to be 6 pm.
> >> >
> >> > --- Tova Wang <wang@tcf.org> wrote:
> >> >
> >> >
> >> > Hi Job,
> >> >
> >> > Peg tells me that we should now be getting the
> >> > transcript early next week.
> >> > Regardless, we should talk about the organization
> >> > and distribution of work
> >> > on the final report and try to finally get it
> >> > done.
> >> > Would it be possible
> >> > for you to do a call before you leave for work in
> >> > the morning, say 8 am your
> >> > time, on Wednesday? If not, could you do 6 pm
> >> > your
> >> > time on Wednesday?
Thanks.

Tova

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

www.tcf.org, for the latest news,
analysis, opinions, and events.

<mailto:join-tcfmain@mailhost.groundspring.org>
Click here to receive our weekly e-mail updates.

---
Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:18 PM ---
Margaret Sims/EAC/GOV 06/19/2006 01:24 PM
To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL
cc
Subject Re: voucher

Looks good to me! --- Peggy

"Tova Wang" <wang@tcf.org>

"Tova Wang" <wang@tcf.org> 06/19/2006 08:40 AM
To psims@eac.gov
cc
Subject voucher

Hi Peg,

Attached is my voucher for the last month -- can you check it quickly before I send it? Also, are we good for Wednesday at 7? Thanks. Tova
Good news!!! The transcript is finally here.

Devon Romig
United States Election Assistance Commission
1225 New York Ave. NW, Suite 1100
Washington, DC 20005
202.566.2377 phone
202.566.3128 fax
www.eac.gov

Dear EAC,

Attached please note the ASCII file for the Voting Fraud-Voter Intimidation Meeting taken on Wednesday, May 18, 2006. Your transcript has been shipped to you.

ASCII file name: 051806.txt

Please let us know if you have any questions.
I have been told that GSA expects to make the disbursement next week, probably on or around June 28.
--- Peggy

Here's an update from Craig on his Election Crimes book. The last was published in 1995.

It is written and currently in the Deputy AG's office for policy review.

I have published the two most substantive chapters of the new book as private, personal papers under the aegis of the International Foundation for Electoral Systems (IFES), for which I have done a lot of work around the world. I recommend that you access IFES' website and go to the "Money and Politics" part of their extensive site. I should have two papers available there, one addressing Abuse of the Franchise (published in connection with work I did last year in Liberia) and the other involving Federal Campaign Finance Xrime" done in connection with work in Bosnia.

If you can't find them this way, please call me.

Sent from Dr. D's Fabulous BlackBerry Wireless Handheld
It will need to be early next week. What news of the transcript?

--- psims@eac.gov wrote:

> I am sorry, but I have to postpone the teleconference originally scheduled for this evening. Is another day this week or early next week good for you two?
> Peggy
>
--- Sent from my BlackBerry Wireless Handheld
>

Can I also get an answer on whether we can speak about the project publicly?

OK. I have marked my calendar for a 7 PM EST/6 PM CST teleconference for this Wednesday. Still no transcript. --- Peggy
fine

----- Original Message -----
From: "Job Serebrov" <
To: <wang@tcf.org>; <psims@eac.gov>
Sent: Wednesday, June 14, 2006 10:17 PM
Subject: Re: teleconference

> Tova:
>
> 5 pm EST is 4 pm Central. Peg would have to call at 7
> pm EST to be 6 pm Central.
>
> Job
>
> --- wang@tcf.org wrote:
>
> >>> Let's try to do that. Peg, you will call us 5 pm
> >>> EST?
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> >>> From: "Job Serebrov" <
> >>> To: "Tova Wang" <wang@tcf.org>
> >>> Sent: Wednesday, June 14, 2006 6:29 PM
> >>> Subject: Re: teleconference
> >>>
> >>>>
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> >>> >
> >>> > --- Tova Wang <wang@tcf.org> wrote:
> >>> >
> >>> > Hi Job,
> >>> >
> >>> > Peg tells me that we should now be getting the
> >>> > transcript early next week.
> >>> > Regardless, we should talk about the organization
> >>> > and distribution of work
> >>> > on the final report and try to finally get it
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> >>> > Would it be possible
> >>> > for you to do a call before you leave for work in
> >>> > the morning, say 8 am your
> >>> > time, on Wednesday? If not, could you do 6 pm
> >>> > your
> >>> > time on Wednesday?
> >>> > Thanks.
> >>> >
> >>> > Tova
> >>> >
> >>> > Tova Andrea Wang
> >>> > Democracy Fellow
> >>> > The Century Foundation
> >>> > 41 East 70th Street - New York, NY 10021
Would it be possible to find out how fast GSA will be able to process the travel reimbursement for Job Serebrov? --- Peggy

Peggy:

I need you to check on Monday to see when I will get my last invoice paid as well as my travel which was going to be expedited.

Are we still talking on Wednesday at 7 EST?

Thanks,

Job
Your personal services invoice should be paid this week (Thursday or Friday). The payment of travel costs will take longer. I'll check with Finance to see if we can get an estimated date from GSA. --- Peggy

Peggy:

I need you to check on Monday to see when I will get my last invoice paid as well as my travel which was going to be expedited.

Are we still talking on Wednesday at 7 EST?

Thanks,

Job

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

Nancy
Peggy--We sent the request to the Finance Center on 6/13. Finance quotes a 2 week turnaround.

Diana M. Scott
Administrative Officer
U.S. Election Assistance Commission
(202) 566-3100 (office)
(202) 566-3127 (fax)
dscott@eac.gov

Margaret Sims/EAC/GOV

Margaret Sims/EAC/GOV
06/19/2006 02:28 PM

To DScott@eac.gov
cc Bola Olu/EAC/GOV@EAC
Subject Travel Reimbursement for Serebrov

Would it be possible to find out how fast GSA will be able to process the travel reimbursement for Job Serebrov? --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:18 PM ----- 

Margaret Sims/EAC/GOV
06/22/2006 10:30 AM

To "Job Serebrov" <wang@tcf.org>, "Tova Andrea Wang" <wang@tcf.org>
cc
Subject Re: Teleconference

OK. Next Monday (6-26) at 7 PM EST. I'll call you.
Peggy

-----------------------------
Sent from my BlackBerry Wireless Handheld

----- Original Message ----- 
From: "Job Serebrov"
Sent: 06/21/2006 09:34 PM
To: wang@tcf.org; psims@eac.gov
Subject: Re: Teleconference

Monday at 7 EST is ok with me. What about you Peg?

Job

--- wang@tcf.org wrote:

> How about Monday at 6:30 or 7 est?
> ----- Original Message ----- 
> From: "Job Serebrov" <s
> To: <psims@eac.gov>; "Tova Andrea Wang"
> <wang@tcf.org>
> Sent: Wednesday, June 21, 2006 6:21 PM
> Subject: Re: Teleconference
> 
> > It will need to be early next week. What news of the
> > transcript?
> >
> > --- psims@eac.gov wrote:
> >
> > >> I am sorry, but I have to postpone the
> > >> teleconference originally scheduled
> > >> for this evening. Is another day this week or
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> > >> --------------------------
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> }

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:18 PM ----

Margaret Sims/EAC/GOV
06/19/2006 12:30 PM

To: Bryan Whitener/EAC/GOV
cc: Gavin S. Gilmour/EAC/GOV@EAC, Juliet E. Thompson-Hodgkins/EAC/GOV@EAC
Subject: Re: Fw: The 7th Edition

I have a copy of Donsanto's IFES paper, if you need it. We used it as one of the resources for the vote fraud-voter intimidation research. --- Peggy
Here's an update from Craig on his Election Crimes book. The last was published in 1995.

----- Forwarded by Bryan Whitener/EAC/GOV on 06/15/2006 08:38 AM -----
"Donsanto, Craig"
<Craig.Donsanto@usdoj.gov>
To bwhitener@eac.gov
cc
06/13/2006 08:04 PM
Subject The 7th Edition!

It is written and currently in the Deputy AG's office for policy review.

I have published the two most substantive chapters of the new book as private, personal papers under the aegis of the International Foundation for Electoral Systems (IFES), for which I have done a lot of work around the world. I recommend that you access IFES' website and go to the "Money and Politics" part of their extensive site. I should have two papers available there, one addressing Abuse of the Franchise (published in connection with work I did last year in Liberia) and the other involving Federal Campaign Finance Xrime" done in connection with work in Bosnia.

If you can't find them this way, please call me: 202-514-1421.

Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:18 PM -----
"Tova Wang"
<wang@tcf.org>
To psims@eac.gov, "Job Serebrov
cc
06/21/2006 12:25 PM
Subject RE: Teleconference

Anyday anytime except tomorrow is OK by me. Tova
-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]

Sent: Wednesday, June 21, 2006 11:15 AM
To: Tova Andrea Wang; Job Serebrov
Subject: Teleconference

I am sorry, but I have to postpone the teleconference originally scheduled for this evening. Is another day this week or early next week good for you two? Peggy

--------------------------
Sent from my BlackBerry Wireless Handheld

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:18 PM ---
"Job Serebrov"
06/22/2006 09:27 PM
To psims@eac.gov
cc
Subject Suggestions

RECOMMENDATIONS.doc Peggy:

When Tova sent me her suggestions I made some changes and additions. Tova later wrote to me and said she expected me to come up with my own list. Due to time constraints and at risk of duplication I rather go with the corrected suggestions.

Job
--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:18 PM ---
"Job Serebrov"
06/21/2006 06:25 PM
To "Tova Wang <wang@tcf.org>, psims@eac.gov
cc
Subject Re: nexis

I have no objection to amending the official findings/CD to add these.

--- Tova Wang <wang@tcf.org> wrote:

> Hi Peg and Job,
> > I don't know how we might be able to use these but
> here, finally, are the
Hi Peg and Job,

I don't know how we might be able to use these but here, finally, are the super-refined versions of the nexis charts. Can we include them? Thanks.

Tova

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:18 PM ---

Margaret Sims/EAC/GOV
06/22/2006 10:31 AM
To: "Job Serebrov" <serebrov@lul.org>, "Tova Andrea Wang" <wang@tcf.org>
cc
Subject: Re: nexis

Fine by me, Peggy

--------------------------
Sent from my BlackBerry Wireless Handheld

----- Original Message ----- 
From: "Job Serebrov" <serebrov@lul.org>
Sent: 06/21/2006 06:25 AM
To: "Tova Wang" <wang@tcf.org>; psims@eac.gov
Subject: Re: nexis

I have no objection to amending the official findings/CD to add these.

--- Tova Wang <wang@tcf.org> wrote:

> Hi Peg and Job,
> > I don't know how we might be able to use these but here, finally, are the super-refined versions of the nexis charts. Can we include them? Thanks.
> > Tova
>

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:18 PM ----- 

"Tova Wang" <wang@tcf.org>
06/20/2006 11:10 AM
To: psims@eac.gov
cc
Subject: question
Am I correct in assuming that I still cannot discuss the findings of our report? Thanks.

Tova Andrea Wang  
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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----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM -----

"Job Serebrov"  
06/30/2006 10:02 PM  
To: wang@tcf.org, psims@eac.gov  
cc  
Subject: Re: Various

For Donsanto to be able to do this, we would need enough time and money to contact all interviewees and also permit comment from them. However, in this matter I am 100% in agreement with Tova.

--- wang@tcf.org wrote:

> Also, I maintain that a reasonable solution to this
> is to allow Donsanto
> and/or any of the commissioners who desire to do so
> to provide a statement
> that would be included in the report and in the
> record.
> ------ Original Message ------
> From: <wang@tcf.org>
> To: <psims@eac.gov>; "Job Serebrov"
> <
> Cc: "Towa Wang" <wang@tcf.org>
> Sent: Friday, June 30, 2006 9:42 PM  
> Subject: Re: Various
> 
> > That would be great on the contract.
> >
> > If the interview is "edited" as you put it, I will
> be very, very
> uncomfortable, as I believe Job would be as well.
> I know you don't want
> to spend anymore time on this, but I consider it a
> rather important issue,
> and I think Job does too. I would be happy to
> talk to you and Tom and any
> of the commissioners about this further if that
> would be helpful. I am
> available by cell over the next four days and in
the office all next week.
>
> Thanks for the updated invoice stuff. Happy 4th.

> Tova
> ----- Original Message ----- 
> From: <psims@eac.gov>
> To: "Job Serebrov" <serebrov@sbcglobal.net>
> Cc: "Tova Andrea Wang" <wang@tcf.org>
> Sent: Friday, June 30, 2006 6:41 PM
> Subject: Re: Various

>Actually, the Donsanto interview was the only one 
>I did attend, but I 
>> agree the issue is taking up too much of your 
>time. I just wanted you to 
>> be forwarned that the paragraph has already 
>> raised red flags in DC of and 
>> is likely to result in an edit. Enough said 
>about that.
>
>> I am concerned about the number of hours left for 
>this project. If you 
>> and Tova both agree, I'll see if our Contracting 
>Officer will approve a 
>> contract mod to provide for some additional hours 
>and money to 
>> incorporate comments received on the report and 
>other efforts that fall 
>> within the tasks specified in the current 
>contract. We won't get 60 
>> thou, but there might be a little year end money 
>we can use to finish 
>> this off properly. 
>> Peg 
>
>> -------------------------- 
>> Sent from my BlackBerry Wireless Handheld 
>
>> From: "Job Serebrov" [serebrov@sbcglobal.net] 
>> Sent: 06/30/2006 05:58 PM 
>> To: psims@eac.gov; wang@tcf.org 
>> Subject: Various

>> Peg:
>>
>> I had to take time off this afternoon to handle 
>some 
>> issues. Did you get an answer as to my travel 
>> reimbursement?
>>
>> I spoke to Tova about the Donsanto issue. We both 
>> agree about what we heard during the interview. 
>We 
>> also agree that this is taking up too much time 
>(of 
>> which we have so little left) and is a minor part
one interview which makes up one of thirty interviews. I feel the same as Tova, the Commission was not in on the interview and thus do not know what was said and we are not giving those interviewed the opportunity, especially given how long ago the interviews were, to object. Frankly, if the Commission wants to give us another sixty hours each we can call all of our interviewees, give them the review and ask for comments. In any case, we can't include comments from other interviews with lectures by person interviewed, outside of our interview with that person. We simply can't afford to single out one statement in one interview that there is a disagreement on. Finally, I don't read the paragraph as you do—I remember what was said—the paragraph clearly does not imply an abandonment of other DOJ electoral investigations.

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM ---
Margaret Sims/EAC/GOV
06/27/2006 02:47 PM
To Jeannie Layson/EAC/GOV
cc
Subject Re: U.S. News & World Report

Here it is. --- Peg

EAC Boards VF-VI Status Report.doc

Jeannie Layson/EAC/GOV

Jeannie Layson/EAC/GOV
Peg,

Would you please send me the document regarding this project that was submitted to the Standards Bd?

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 Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM ---

"Tova Wang"  
<wang@tcf.org>  
06/28/2006 04:37 PM

To psims@eac.gov, "Job Serebrov"  
cc

Subject methodology

As you may recall, the working group expressed interest in the risk analysis method. The recent report by the Brennan Center on voting machines employs this methodology. If you look at pp. 8-19 of the attached, it provides a potential model. I think it might be worth including this as an appendix or footnote in the methodology section. Please let me know what you think. Tova

Tova Andrea Wang  
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.
Here is the spreadsheet I have for you. Please let me know if you notice any discrepancies. Thanks. ---
Peggy

Serebrov Payment Tracking.xls

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM ---

"Tova Wang"
<wang@tcf.org>
06/27/2006 12:48 PM

To psims@eac.gov
cc
Subject invoice

Hi Peg.

What is the current invoice schedule? Thanks.

Tova Andrea Wang
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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--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM ---

"Tova Wang"
<wang@tcf.org>
06/29/2006 12:07 PM

To psims@eac.gov
cc
Subject FW: methodology

Will it be possible for you to extract the excerpt for inclusion in the report? Thanks.

-----Original Message-----
From: Job Serebrov [mailto:
Sent: Wednesday, June 28, 2006 5:40 PM
To: Tova Wang; psims@eac.gov
Subject: Re: methodology

Agreed

--- Tova Wang <wang@tcf.org> wrote:

> As you may recall, the working group expressed
interest in the risk analysis method. The recent report by the Brennan Center on voting machines employs this methodology. If you look at pp. 8-19 of the attached, it provides a potential model. I think it might be worth including this as an appendix or footnote in the methodology section. Please let me know what you think.

Tova

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


---

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM ---

"Job Serebrov"

To psims@eac.gov
cc
Subject Please Change This

Peggy:

In the transcript, there is one serious mistake that must be changed immediately. On page 5 it indicates that I helped review and draft changes to the election code of Libya. It should be Namibia not Libya. The reason this is so serious if it stands is that at the time I reviewed Namibia's Code it was illegal for Americans to deal with Libya. I need to know that this has been corrected any ALL parties who have seen the transcript notified.

Job
Jeannie

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

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

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

--- Peggy

Tova Andrea Wang
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.
Attached is an updated schedule showing 2 more invoice periods. I'll send separate spreadsheets to you and Job showing what funds and hours have been used and what are available. --- Peggy

Hi Peg,

What is the current invoice schedule? Thanks.

Tova Andrea Wang
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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I would make time to discuss this. I feel that any edit would be wrong while a comment at the end of the interview by the Commission would not be. But in this case, two of us remember it one way and one the other way.

--- wang@tcf.org wrote:

> That would be great on the contract.
> If the interview is "edited" as you put it, I will be very, very uncomfortable, as I believe Job would be as well. I know you don't want to spend anymore time on this, but I consider it a rather important issue, and I think Job does too. I would be happy to talk to you and Tom and any of the commissioners about this further if that would be helpful. I am available by cell over the next four days and in the office all next week.
> Thanks for the updated invoice stuff. Happy 4th.
>
> Tova
>
> ----- Original Message ----- 
> From: <psims@eac.gov> 
> To: "Job Serebrov" <serebrov@sbcglobal.net> 
> Cc: "Tova Andrea Wang" <wang@tcf.org> 
> Sent: Friday, June 30, 2006 6:41 PM 
> Subject: Re: Various
> > Actually, the Donsanto interview was the only one I did attend, but I agree the issue is taking up too much of your time. I just wanted you to be forwarned that the paragraph has already raised red flags in DC of and is likely to result in an edit. Enough said about that.
> > I am concerned about the number of hours left for this project. If you and Tova both agree, I'll see if our Contracting Officer will approve a contract mod to provide for some additional hours and money to incorporate comments received on the report and other efforts that fall within the tasks specified in the current contract. We won't get 60 thou, might be a little year end money we can use to finish this off properly.
> > Peg
> >
> --------------------------
Peg:

I had to take time off this afternoon to handle some issues. Did you get an answer as to my travel reimbursement?

I spoke to Tova about the Donsanto issue. We both agree about what we heard during the interview. We also agree that this is taking up too much time (of which we have so little left) and is a minor part of one interview which makes up one of thirty interviews.

I feel the same as Tova, the Commission was not on the interview and thus do not know what was said and we are not giving those interviewed the opportunity, especially given how long ago the interviews were, to object. Frankly, if the Commission wants to give us another sixty hours each we can call all of our interviewees, give them the review and ask for comments. In any case, we can't include comments from other interviews with, or lectures by person interviewed, outside of our interview with that person. We simply can't afford to single out one statement in one interview that there is a disagreement on. Finally, I don't read the paragraph as you do---I remember what was said---the paragraph clearly does not imply an abandonment of other DOJ electoral investigations.

Job
I'll need to get back to you on this and the definition tomorrow (too many things going on today). In the meantime, I have attached the written status report that was presented to the EAC Standards Board and Board of Advisors, because I can't remember if I ever provided the final version to the two of you. The status report is primarily made up of your preliminary reports, with some intro information provided and a brief summary of recommendations discussed at the Working Group meeting. This may or may not help the two of you in preparing the final. You can use any of it, or none of it. I am sure that your product will be much better than this quickly pulled together thing. --- Peggy

EAC Boards VF-VI Status Report.doc

"Tova Wang" <wang@tcf.org>

Does this work for you?

Tova Andrea Wang
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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Table of Contents.doc

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM ---

"Job Serebrov" <ser...> To psims@eac.gov
cc

Subject Travel Pay
Peg:

So far no travel pay. Tova got hers a couple of days ago. Please call and check. I need it.

Thanks,

Job

------ Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM ------

"Tova Wang"
<wang@tcf.org>  To psims@eac.gov,
06/29/2006 01:24 PM  cc twilkey@eat.gov
Subject RE: donsanto interview

Peg, If you review the numerous speeches and writings of Donsanto, including at the BAI training sessions, you will see that in the past he has frequently said that as a matter of law and policy the Department generally only pursued organized patterns. I can point you to particular citations if you like. He clearly said when we interviewed him that there had been a shift in resources and energy. This is in both of our notes. I don't think this should be an issue of departmental politics.

Tova

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Thursday, June 29, 2006 12:00 PM
To: wang@tcf.org;
Cc: twilkey@eac.gov
Subject: Re: donsanto interview

Tova and Job:

All I can do is advise you that I don't think this paragraph will pass by the Commission, as written, because readers can misinterpret what is being reported and use something published by EAC against DOJ. I suspect that both of you are aware of legal action being taken by an advocacy group against DOJ alleging that the agency is acting in a manner that fails to protect, and even discourages, the voter participation of minorities and disadvantaged individuals. Though I do not intend to address the merits of that action, which focuses on the efforts of more than one DOJ office, I am concerned that some readers would use the sentence that begins with "This change in direction, focus, and level of aggression ..." as evidence that DOJ's Election Crimes Branch has completely changed course to focus on aggressively pursuing individuals who vote when ineligible, many of whom are minorities.

It is true that, for years, the Election Crimes Branch did not pursue individual violators. (I certainly observed this from the time I became involved in researching election administration matters in 1986.) Much of the reason for this is that the agency just did not have the resources to pursue everything; so, as the agency budget permitted, DOJ pursued cases that provided the most bang
for the buck --- cases involving multiple individuals that were not already being pursued by State or local public attorneys. As you know, DOJ recently expanded its efforts and added the prosecution of individuals for double voting or voting when ineligible (felony convictions or no U.S. citizenship). Although I did not know of this decision prior to the interview, the action is not a complete surprise, given the increasing pressure on the agency to pursue such cases that began with a real squeaker of a 1996 race in California's 46th CD (Orange County). In the interview with you, Donsanto also stated that the department evaluates each case before pursuing it, and does not pursue every individual referred for voting violations. (You may remember he noted his reluctance to pursue noncitizen voting, which can result in deportation, when it could separate the individual from his family.)

In my opinion, the addition of the prosecution of individuals, while an important new development, is not a complete change in direction or focus. The pursuit of individual violators does not supplant DOJ's continuing efforts to pursue organized schemes to corrupt the process. It is part of a recent expansion of the agency's efforts to combat election crimes that includes: (1) more aggressive pursuit of criminal campaign finance violations (not covered by EAC's study); (2) exploration of new avenues to prosecute voter suppression schemes (e.g.; the NH phone bank blocking case); (3) better training of U.S. attorneys and FBI agents in the recognition, investigation and prosecution of election offenses; (4) efforts to improve coordination with state and local law enforcement agencies; and (5) press conferences and public announcements before federal elections to publicize how the public can report election crimes. Donsanto provided information on much of these efforts either during the interview or by supplying case lists and training information on the day of the interview.

I hope you will reconsider revising the paragraph at issue.

Peggy Sims
Election Research Specialist
U.S. Election Assistance Commission

Hi Peg,

Job and I have discussed this matter and agree on our response to it.

Presumably the paragraph you are concerned about is the following:
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 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.

Neither of us thinks this passage says that the Department has stopped pursuing patterns, as you suggested, and we maintain that this is what Mr. Donsanto said to us in the interview. If Mr. Donsanto wants to object, perhaps he can write a letter or something to that effect that could be part of the record.

Tova Andrea Wang
Democracy Fellow
The Century Foundation
41 East 70th Street - New York, NY 10021
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Margaret Sims/EAC/GOV
06/29/2006 05:31 PM

To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL
cc twilkey@eac.gov

Subject RE: donsanto interview

I don't think anyone disagrees that DOJ's earlier policy was to prosecute organized conspiracies, not individual violators. This policy was based both on existing law and resources available. Donsanto made that clear in numerous presentations before election officials, though I doubt he would have highlighted the resource issue in any of his written reports.

I did not hear Donsanto say that there was a shift in resources and energy away from prosecuting organized conspiracies in order to pursue prosecutions of individuals. I think we should avoid implying that this is the case. I understood his statement to address a shift in DOJ resources and energy to support increased efforts to prosecute election crimes, including the expansion of prosecutions to include individual incidents. I have not seen, nor do I think Donsanto has ever stated, that there has been a decrease in the effort to prosecute organized conspiracies to corrupt the process. Yet, adequate resources continue to be an issue, as Donsanto noted in his interview and at the Working Group meeting (when referring to having to decide which of two voter suppression cases to prosecute because he didn't have the resources to do both).

Your reference to policy based on law reminded me that changes in federal law, and an evolution in the understanding of how to use newer law, also would have affected DOJ's decision to add the prosecution of individuals for such violations as registering and voting when not a U.S. citizen or when a convicted felon. Earlier federal law did not directly address voter registration by felons, permitting federal prosecution in such instances only where it could be shown that the applicant knowingly and willfully
provided false information as to his or her eligibility to vote. Earlier federal law permitted the prosecution of noncitizens for registering to vote based on false claims of the U.S. citizenship that each State required for registering to vote in federal elections, but did not require U.S. citizenship to vote in federal elections. These laws made federal prosecution of noncitizen and felon voter registration and voting much more challenging. With the implementation of the NVRA in 1995, we began to see federal election law that could more easily be used for federal prosecution of both voter registration and voting by noncitizens and convicted felons. And, late in 1996, immigration reform legislation was passed that clearly prohibits noncitizens from voting in federal elections (without requiring the "knowing and willful" component).

--- Peggy

"Tova Wang" <wang@tcf.org>

Peg, if you review the numerous speeches and writings of Donsanto, including at the BAl training sessions, you will see that in the past he has frequently said that as a matter of law and policy the Department generally only pursued organized patterns. I can point you to particular citations if you like. He clearly said when we interviewed him that there had been a shift in resources and energy. This is in both of our notes. I don't think this should be an issue of departmental politics.

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Peggy Sims
Election Research Specialist
U.S. Election Assistance Commission

"Tova Wang" <wang@tcf.org>

06/28/2006 04:47 PM
To psims@eac.gov
cc "Job Serebrov"
Subject donsanto interview

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July weekend.

--------------------------
Sent from my BlackBerry Wireless Handheld

----- Original Message ----- 
From: "Job Serebrov"  
Sent: 06/30/2006 05:58 PM 
To: psims@eac.gov; wang@tcf.org 
Subject: Various

Peg:

I had to take time off this afternoon to handle some issues. Did you get an answer as to my travel reimbursement?

I spoke to Tova about the Donsanto issue. We both agree about what we heard during the interview. We also agree that this is taking up too much time (of which we have so little left) and is a minor part of one interview which makes up one of thirty interviews. I feel the same as Tova, the Commission was not in on the interview and thus do not know what was said and we are not giving those interviewed the opportunity, especially given how long ago the interviews were, to object. Frankly, if the Commission wants to give us another sixty hours each we can call all of our interviewees, give them the review and ask for comments. In any case, we can't include comments from other interviews with, or lectures by person interviewed, outside of our interview with that person. We simply can't afford to single out one statement in one interview that there is a disagreement on. Finally, I don't read the paragraph as you do---I remember what was said---the paragraph clearly does not imply an abandonment of other DOJ electoral investigations.

Job

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM -----

"Job Serebrov" 
06/30/2006 07:10 PM 
To psims@eac.gov, wang@tcf.org 
cc 
Subject Re: Various

Peg:

It's ok with me as long as we finish before the end of November.
--- psims@eac.gov wrote:

> Actually, the Donsanto interview was the only one I did attend, but I agree the issue is taking up too much of your time. I just wanted you to be forewarned that the paragraph has already raised red flags in DC of and is likely to result in an edit. Enough said about that.

> I am concerned about the number of hours left for this project. If you and Tova both agree, I'll see if our Contracting Officer will approve a contract mod to provide for some additional hours and money to incorporate comments received on the report and other efforts that fall within the tasks specified in the current contract. We won't get 60 thou, but there might be a little year end money we can use to finish this off properly.

> Peg

> --------------------------
> Sent from my BlackBerry Wireless Handheld

> ----- Original Message ----- 
> From: "Job Serebrov" [serebrov@sbcglobal.net]
> Sent: 06/30/2006 05:58 PM
> To: psims@eac.gov; wang@tcf.org
> Subject: Various

> Peg:

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> I spoke to Tova about the Donsanto issue. We both agree about what we heard during the interview. We also agree that this is taking up too much time (of which we have so little left) and is a minor part of one interview which makes up one of thirty interviews.

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> as you do---I remember what was said---the paragraph
> clearly does not imply an abandonment of other DOJ
> electoral investigations.
>
> Job
>
>

I wasn't planning on circulating the transcript to the Commissioners. Most of them probably don't have the
time to go through the whole thing. I will let them know it is available, if they are interested in reviewing it.
--- Peggy

"Tova Wang" <wang@tcf.org>

Wow, there are a lot of errors in this. But at least it gets at the substance. Will this be circulated to the
commissioners?

-----Original Message-----
From: dromig@eac.gov
Sent: Thursday, June 22, 2006 2:45 PM
To: psims@eac.gov
Cc: serebrov@sbcglobal.net; wang@tcf.org
Subject: Fw: May 18, 2006 Meeting

Good news!!! The transcript is finally here.

Devon Romig
United States Election Assistance Commission
1225 New York Ave. NW, Suite 1100
Washington, DC 20005
202.566.2377 phone
202.566.3128 fax
www.eac.gov
Dear EAC,

Attached please note the ASCII file for the Voting Fraud-Voter Intimidation Meeting taken on Wednesday, May 18, 2006. Your transcript has been shipped to you.

ASCII file name: 051806.txt

Please let us know if you have any questions.

Timothy Brischler, Office Manager, 703.273.9221
Jeannie:

Here are my responses:

1. When will EAC receive the preliminary report on voter intimidation and voting fraud?
   I anticipate that we will have a draft final report from our consultants in 2-3 weeks, after our consultants have had time to review the transcript from the project Working Group meeting, which was not available until last week.

2. When we receive the preliminary report, what is the EAC process to formulate a final product that will be made public?
   First, Commissioners and Commission staff will have to review the preliminary draft. Then a draft will be submitted to the EAC Standards Board and EAC Advisory Board for review and comment. This second step is taken in accordance with HAVA §247, which requires EAC to carry out its duties under Title II, Subtitle C (Studies and Other Activities to Promote Effective Administration of Federal Elections) in consultation with the Standards Board and the Board of Advisors.

3. When will we make this research available to the public? What form will it be in? (Best practices, etc.)
   The final report cannot be made public until it has been accepted by the Commissioners. Normally, this does not happen until the researcher(s) submit a final report that has been revised to address clarifications and corrections deemed necessary through the review process described above. The time it takes for the researchers to produce this final report will depend, somewhat, on the number of clarifications and corrections deemed necessary.
As the researchers were charged with conducting preliminary background research on voting fraud and voter intimidation in the U.S., this report will not include recommended best practices. It will summarize the preliminary research as well as the deliberations of our project Working Group. It also will include recommendations for future EAC activity related to the development of: (1) methods of identifying, deterring, and investigating voting fraud and voter intimidation; and (2) nationwide statistics on voting fraud.

If the reporter has spoken to Secretary Rokita, who maintains that EAC has no authority to conduct this research, you may want to note that EAC initiated this preliminary research on voting fraud and voter intimidation in accordance with the Help America Vote Act, (HAVA) §241, which requires EAC to conduct research on election administration issues, including the development of:

• nationwide statistics and methods of identifying, deterring, and investigating voting fraud in elections for Federal office [§241(b)(6)]; and
• ways of identifying, deterring, and investigating methods of voter intimidation [§241(b)(7)].

At its 2005 meeting, EAC’s Board of Advisors recommended that the agency make research on these matters a high priority.

Peggy Sims
Election Research Specialist
U.S. Election Assistance Commission

Jeannie Layson/EAC/GOV

Jeannie Layson/EAC/GOV
06/27/2006 02:26 PM
To psims@eac.gov, twilkey@eac.gov
cc
Subject US News & World Report inquiry

Please provide answers to the following questions, posed to me by US News & World Report’s Scott Michels. I need this info by the end of the day to meet his deadline.

1. When will EAC receive the preliminary report on voter intimidation and voting fraud?
2. When we receive the preliminary report, what is the EAC process to formulate a final product that will be made public?
3. When will we make this research available to the public? What form will it be in? (Best practices, etc.)
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 consultats 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 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
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.
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.

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Peg

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General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100
Margaret Sims/EAC/GOV

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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 Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM -----
Margaret Sims/EAC/GOV
07/03/2006 11:38 AM
To: Devon Romig
cc
Subject: Fw: methodology

Please edit the attached Word document to remove the returns at the end of each line that are not needed, then send it to Tova and Job. Thanks! --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 07/03/2006 11:37 AM -----
Margaret Sims/EAC/GOV
06/30/2006 05:25 PM
To: "Tova Wang" <wang@tcf.org>@GSAEXTERNAL
Subject: Re: FW: methodology
The attached is the text extracted from pages 8-19 and the Attachment C referenced within the text. The formatting is still a little weird. Can you work with this, or do I need to play with it some more? --- Peggy

Risk Analysis Methodology-Brennan Center excerpt.doc

"Tova Wang" <wang@tcf.org>

Will it be possible for you to extract the excerpt for inclusion in the report? Thanks.

-----Original Message-----
From: Job Serebrov [mailto:JobSerebrov@tcf.org]
Sent: Wednesday, June 28, 2006 5:40 PM
To: Tova Wang; psims@eac.gov
Subject: Re: methodology

Agreed

--- Tova Wang <wang@tcf.org> wrote:

> As you may recall, the working group expressed
> interest in the risk analysis
> method. The recent report by the Brennan Center on
> voting machines employs
> this methodology. If you look at pp. 8-19 of the
> attached, it provides a
> potential model. I think it might be worth
> including this as an appendix or
> footnote in the methodology section. Please let me
> know what you think.
> Tova
> Tova Andrea Wang
> Democracy Fellow
> The Century Foundation
> 41 East 70th Street - New York, NY 10021
> phone: 212-452-7704  fax: 212-535-7534
> www.tcf.org, for the latest news,
> analysis, opinions, and events.
> 
> <mailto:join-tcfmain@mailhost.groundspring.org>
Tova: 
If you have used up all of your remaining hours, you need to stop work until we have the contract modification in place that provides for more hours. 
Peggy

Also, I maintain that a reasonable solution to this is to allow Donsanto and/or any of the commissioners who desire to do so to provide a statement that would be included in the report and in the record.

--- Original Message ---
From: <wang@tcf.org>
To: <psims@eac.gov>; "Job Serebrov"
Cc: "Tova Wang" <wang@tcf.org>
Sent: Friday, June 30, 2006 9:42 PM
Subject: Re: Various

> That would be great on the contract.
> 
> If the interview is "edited" as you put it, I will be very, very uncomfortable, as I believe Job would be as well. I know you don't want to spend anymore time on this, but I consider it a rather important issue, and I think Job does too. I would be happy to talk to you and Tom and any of the commissioners about this further if that would be helpful. I am available by cell over the next four days and in the office all next week.
Thanks for the updated invoice stuff. Happy 4th.

Tova

----- Original Message -----
From: psims@eac.gov
To: "Job Serebrov" <se>
Cc: "Tova Andrea Wang" <wang@tcf.org>
Sent: Friday, June 30, 2006 6:41 PM
Subject: Re: Various

Actually, the Donsanto interview was the only one I did attend, but I agree the issue is taking up too much of your time. I just wanted you to be forewarned that the paragraph has already raised red flags in DC of and is likely to result in an edit. Enough said about that.

I am concerned about the number of hours left for this project. If you and Tova both agree, I'll see if our Contracting Officer will approve a contract mod to provide for some additional hours and money to incorporate comments received on the report and other efforts that fall within the tasks specified in the current contract. We won't get 60 thou, but there might be a little year end money we can use to finish this off properly.

Peg

Sent from my BlackBerry Wireless Handheld

----- Original Message -----
From: "Job Serebrov" [psims@eac.gov]
Sent: 06/30/2006 05:58 PM
To: psims@eac.gov; wang@tcf.org
Subject: Various

Peg:

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I spoke to Tova about the Donsanto issue. We both agree about what we heard during the interview. We also agree that this is taking up too much time (of which we have so little left) and is a minor part of one interview which makes up one of thirty interviews. I feel the same as Tova, the Commission was not in on the interview and thus do not know what was said and we are not giving those interviewed the opportunity, especially given how long ago the interviews were, to object. Frankly, if the Commission wants to give us another sixty hours each we can call all of our interviewees, give them the review and ask for comments. In any case, we can't include comments from other interviews with, or lectures by person interviewed, outside of our interview with that person. We simply can't afford to single out one statement in one interview that there is a disagreement on. Finally, I don't read the paragraph
as you do---I remember what was said---the paragraph clearly does not imply an abandonment of other DOJ electoral investigations.

Job


----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:16 PM -----
Margaret Sims/EAC/GOV
07/03/2006 12:40 PM To Serebrov
cc
Subject Travel Reimbursement

GSA reports that a pay out of $1,200.03 was made today. --- Peggy
----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:16 PM -----
Margaret Sims/EAC/GOV
06/30/2006 05:25 PM To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL
cc
Subject Re: FW: methodology

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Risk Analysis Methodology-Brennan Center excerpt.doc
"Tova Wang" <wang@tcf.org>

"Tova Wang"
<wang@tcf.org>
06/29/2006 12:07 PM To psims@eac.gov
cc
Subject FW: methodology

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-----Original Message-----
From: Job Serebrov [mailto:serebrov@sbcglobal.net]
Sent: Wednesday, June 28, 2006 5:40 PM
To: Tova Wang; psims@eac.gov
Subject: Re: methodology

Agreed

--- Tova Wang <wang@tcf.org> wrote:

> As you may recall, the working group expressed 
> interest in the risk analysis 
> method. The recent report by the Brennan Center on 
> voting machines employs 
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> including this as an appendix or 
> footnote in the methodology section. Please let me 
> know what you think. 
> Tova

> Tova Andrea Wang
> Democracy Fellow
> The Century Foundation
> 41 East 70th Street - New York, NY 10021
> phone: 212-452-7704  fax: 212-535-7534
> www.tcf.org, for the latest news, analysis, opinions, and events.
> 
> ———
> <mailto:join-tcfmain@mailhost.groundspr@mng.org>
> Click here to receive our weekly e-mail updates.
> 
> ———

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:16 PM ----
Margaret Sims/EAC/GOV
07/03/2006 11:04 AM
To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL
cc serebrow@sbcglobal.net
Subject Re: final report

Once is enough. You don't need to resend. --- Peggy

"Tova Wang" <wang@tcf.org>
Peg, We don't need to re-send you all of the material that we gave you to provide to the working group for the final report, eg the individual interviews, research summaries, nexis and case charts, right? Thanks. Happy 4th. Tova

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

Visit our Web site, www.tcf.org, for the latest news, analysis, opinions, and events.
Click here to receive our weekly e-mail updates.

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:16 PM -----
"Job Serebrov"
<serebrov@sbcglobal.net> To psims@eac.gov, wang@tcf.org
cc
Subject Hrs

Peg:

It seems to Tova and me that somewhere between 30 and 40 for each of us would be safe (having learned from not asking for enough hours).

Job

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:16 PM -----
"Job Serebrov"
<serebrov@sbcglobal.net> To psims@eac.gov
cc
Subject Re: Travel Reimbursement

No, its Bank of America. I just checked again and its
not there. If it does not appear by morning I will need you to see what is going on.

--- psims@eac.gov wrote:

> They usually send it electronically. Could your bank have failed to post it due to the holiday? Does your bank tend to float deposits for a day or two?
> Peggy

> --------------------------
> Sent from my BlackBerry Wireless Handheld

> ----- Original Message ----- 
> From: "Job Serebrov" [serebrov@sbcglobal.net]
> Sent: 07/05/2006 08:13 AM
> To: psims@eac.gov.
> Subject: Re: Travel Reimbursement

> Peg:

> I checked my account this morning (July 5th) and this still has not been paid. Did GSA mail it?

> Job

> --- psims@eac.gov wrote:

> > GSA reports that a pay out of $1,200.03 was made today. --- Peggy

> --- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:16 PM ---

Margaret Sims/EAC/GOV
07/03/2006 11:30 AM

To  "Tova Wang" <wang@tcf.org>@GSAEXTERNAL
cc

Subject  RE: Estimated Additional Hours Needed

We'll have to guesstimate. It is likely that we will receive some comments and questions from the Commissioners and a number of comments from the boards. We could do the modification a little later, but we have to do it before the end of August to take advantage of year-end funds. Basically, the sooner we can figure this out, the better chance we have of using some of the year-end money for this project, before it is taken for something else. We have no guaranties that funds will be available in the next fiscal year. --- Peggy

"Tova Wang" <wang@tcf.org>
Doesn't it really depend on what the Commission comes back to us with? It's kind of hard to estimate before knowing what they're going to want.

----- Original Message ----- 
From: psims@eac.gov [mailto:psims@eac.gov] 
Sent: Monday, July 03, 2006 10:11 AM 
To: wang@tcf.org; serebrov@sbcglobal.net 
Cc: twilkey@eac.gov 
Subject: Estimated Additional Hours Needed

Tova and Job: 

I don't have the authority to modify contracts, but Tom Wilkey does. In order to help Tom determine how many additional hours (and dollars) should be added to your personal services contracts, I'll need an estimate from the two of you for the number of additional hours required to complete the final report (taking into account revisions that may be needed to address questions and comments submitted by the Commissioners and the EAC Standards Board and Board of Advisors). Please note that we cannot add any tasks to the existing contract, but we can account for additional hours required to complete the final report.

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

---- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:16 PM -----
"Job Serebrov"
<serebrov@sbcglobal.net>
07/09/2006 06:00 PM 
To psims@eac.gov, wang@tcf.org 
cc 
Subject Telephone Conference

Peg:

I need to move our call to next Monday at 7 pm EST. What is the situation with the extra hours?
Job

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:16 PM -----
Margaret Sims/EAC/GOV
07/03/2006 11:35 AM
To: "Tova Wang" <wang@tcf.org>@GSAEXTERNAL
cc
Subject: RE: FW: methodology

I've asked Devon to do it. She can get it to you faster than I. --- Peggy

"Tova Wang" <wang@tcf.org>

"Tova Wang"
<wang@tcf.org>
07/03/2006 11:18 AM
To: psims@eac.gov
cc: serebrov@sbcglobal.net
Subject: RE: FW: methodology

The excess returns would be a great start, and then I can do the rest. Thanks a lot.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, July 03, 2006 10:14 AM
To: wang@tcf.org
Cc: serebrov@sbcglobal.net
Subject: Re: FW: methodology

Do you just need to have the excess returns removed, or do you think it needs other clean up as well? --- Peggy

wang@tcf.org
07/01/2006 05:30 PM
To: psims@eac.gov
cc: serebrov@sbcglobal.net
Subject: Re: FW: methodology
It would be great if someone there could work on cleaning it up. Let us know. Thanks.

----- Original Message ----- 
From: psims@eac.gov
To: wang@tcf.org
Cc: serebrov@sbcglobal.net
Sent: Friday, June 30, 2006 5:25 PM
Subject: Re: FW: methodology

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06/29/2006 12:07 PM

To
psims@eac.gov

cc

Subject

FW: methodology

Will it be possible for you to extract the excerpt for inclusion in the report? Thanks.

-----Original Message----- 
From: Job Serebrov [mailto:serebrov@sbcglobal.net]
Sent: Wednesday, June 28, 2006 5:40 PM
To: Tova Wang; psims@eac.gov
Subject: Re: methodology

Agreed

--- Tova Wang <wang@tcf.org> wrote:

> As you may recall, the working group expressed
> interest in the risk analysis
> method. The recent report by the Brennan Center on
> voting machines employs
this methodology. If you look at pp. 8-19 of the attached, it provides a potential model. I think it might be worth including this as an appendix or footnote in the methodology section. Please let me know what you think.

Tova

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

www.tcf.org, for the latest news, analysis, opinions, and events.

appendices attached, except Peg I think you put together the list of the working group members? In any case, I can't find one at the moment, but it would be easy enough to put together. Perhaps even Devon or someone could do that, especially since I don't think I have any hours left, and probably shouldn't even be writing this email. I don't remember the conversation about adding to the list of interviewees, but we can talk about that later.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, July 17, 2006 9:13 AM
To: wang@tcf.org
Cc: "Job Serebrov" <serebrov@sbcglobal.net>, wang@tcf.org
Subject: RE: final report

Thanks. I probably won't be able to start getting into this until tomorrow AM. I noticed that the appendices weren't attached. I think we discussed earlier that the list of interviewees needed to
have more information for the final report, and the list of books and documents should be presented in the same manner as a bibliography for the final report. We can talk more about this tonight during our teleconference at 7 PM EST. --- Peggy

Hi Peg,

Attached please find drafts of the sections for the final report. Job, please double check I'm not missing anything or sent the wrong version of anything. I'm very concerned I may have. Is there a summary of the case review that I should have? Also, as we discussed, the attached does not include all of the individual summaries and charts which we already gave you for the working group and which have not changed. Peg, we'll want to see the complete set of the materials you plan to give to the commissioners, et.al., before you do so. If you could both let me know if all the formatting is OK, that would be great too. Thanks so much and look forward to talking to you at 7 EST.

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

Click here to receive our weekly e-mail updates. List of Experts Interviewed.doc

APPENDIX C - BRENNAN EXCERPT.doc Existing Literature Reviewed.doc

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:16 PM -----
Subject: Voucher

I received your faxed voucher today, signed it, and gave it to Finance. --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:16 PM -----

Margaret Sims/EAC/GOV
07/17/2006 12:25 PM

To: "Tova Wang" <wang@tcf.org>@GSAEXTERNAL
cc "Job Serebrov" <serebrov@sbcglobal.net>, wang@tcf.org
Subject: RE: final report

Yes, I have the list of Working Group members. --- Peggy

"Tova Wang" <wang@tcf.org>

07/17/2006 10:29 AM

To: psims@eac.gov
cc "Job Serebrov" <serebrov@sbcglobal.net>, wang@tcf.org
Subject: RE: final report

appendices attached, except Peg I think you put together the list of the working group members? In any case, I can't find one at the moment, but it would be easy enough to put together. Perhaps even Devon or someone could do that, especially since I don't think I have any hours left, and probably shouldn't even be writing this email. I don't remember the conversation about adding to the list of interviewees, but we can talk about that later.

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APPENDIX C -- BRENNA EXCERPT.doc Existing Literature Reviewed.doc
Here is the list of Working Group members with some information highlighted about each individual. Yes, you can email me later in the day to let me know if I should call you at home or at work. --- Peggy

"Tova Wang" <wang@tcf.org>

Can you send it over? As I recall, it includes bios, right? I'm assuming on the interviewees you think we should have very short biographical information? Also, Peg, I'm not sure if I'll still be at work at 7 or home. Is it ok if I email you late in the day as to where I am? Thanks.

----- Original Message -----  
From: psims@eac.gov [mailto:psims@eac.gov]  
Sent: Monday, July 17, 2006 11:26 AM  
To: wang@tcf.org  
Cc: 'Job Serebrov'; wang@tcf.org  
Subject: RE: final report

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He asks that you call him on his cell, 501-626-0440

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--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:16 PM ---

"Tova Wang"
<wang@tcf.org> 07/17/2006 05:36 PM
To psims@eac.gov
cc
Subject contacting Job

I received your faxed voucher this morning, signed it, and submitted it to Finance. --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:16 PM ---

"Tova Wang"
<wang@tcf.org> 07/17/2006 05:36 PM
To psims@eac.gov
cc
That's good.
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

That’s good.
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
07/17/2006 10:15 AM
To jthompson@eac.gov
cc twilkey@eac.gov, Karen Lynn-Dyson/EAC/GOV@EAC
Subject Voting Fraud-Voter Intimidation Draft Report

Julie:

I received pieces of the draft final report on voting fraud-voter intimidation this morning. If it is OK with you, I'll hold it until all I have all of the pieces, so that you can review it as a whole document. --- Peggy
I'm sorry I did not get back to you on this yesterday. I reviewed the voucher this morning and found that only two corrections are needed (coverage dates and # of days worked during the first two weeks). I've made the corrections in red on the attached copy of your voucher. --- Peggy

-- Wang voucher 6-18 to 7-15.doc

Speaking of which, does this look ok to you?
-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, July 17, 2006 9:13 AM
To: wang@tcf.org
Cc: 'Job Serebrov'; wang@tcf.org
Subject: Re: final report

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----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:16 PM -----

Karen Lynn-Dyson/EAC/GOV
07/28/2006 09:30 AM  To twilkey@eac.gov, Margaret Sims/EAC/GOV@EAC, Edgardo Cortes/EAC/GOV@EAC

Subject Fw: Invitation to attend Election Fraud Conference

All-

I assume that in light of our Voting Fraud and Voter Intimidation project, we will have an EAC presence there?

K
Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
Please find attached an invitation to attend the Election Fraud Conference co-sponsored by the Center for Public Policy and Administration at the University of Utah and the Caltech/MIT Voting Technology Project, September 29-30, 2006 in Salt Lake City, UT.

Regards,
Melissa Slemin

California Institute of Technology
Voting Technology Project
MC 228-77
1200 E California Blvd
Pasadena, CA 91125
phone: 626.395.4089
fax: 626.405.9841

http://votingtechnologyproject.org

There was no telephone conference scheduled yesterday. If you all remember, due to my current job and grandchildren situation we were unable to arrange a teleconference.

--- wang@tcf.org wrote:

> What's going on? Where are we at? Thanks. Tova
> ------ Original Message ------
Dear friends and colleagues,

As some of you know, I have decided to voluntarily give up many of my voting rights and become a resident of the District of Columbia. As I will be simply transferring to The Century Foundation's DC office, my email will remain the same (wang@tcf.org). My new work contact information as of August 8 is as follows:

The Century Foundation  
1333 H Street, NW  
10th Floor  
Washington, DC 20005

(202) 741-6263

I look forward to speaking with you and seeing you soon.

Tova Wang  
Democracy Fellow  
The Century Foundation
The 3rd batch.
Peg Sims

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:25 PM -----

"Donsanto, Craig"
<Craig.Donsanto@usdoj.gov> To psims@eac.gov
05/03/2006 12:53 PM
Subject Re: Voting Fraud-Voter Intimidation

Okay -- you are on for May 18th! Can we do it over here at 10?

Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

-----Original Message-----
From: psims@eac.gov <psims@eac.gov> To: Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>
Sent: Wed May 03 12:40:19 2006
Subject: Re: Voting Fraud-Voter Intimidation

My problem is that agency staff is booked most of the week of 5/21. Monday through Wednesday are taken up with meetings of the Standards Board Executive Committee, the full Standards Board, and the Board of Advisors. Thursday, we have EAC's public meeting. Also, I will lose one of my two consultants in June, so I'm trying to wrap up this project (and get the final report from the consultants) by the end of May.

Say "Hi" to Cameron for me.

"Donsanto, Craig" <Craig.Donsanto@usdoj.gov>
05/03/2006 11:56 AM
To psims@eac.gov
cc
Subject Re: Voting Fraud-Voter Intimidation
Hi Peg. I am sitting here with Cameron Quinn putting together this year's ballt conference for AUSAs. She send her best!

I am available on 5/18. But I am also going to the Board of Advisors Meeting the following week. I would rather do this then.

Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

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From: psims@eac.gov <psims@eac.gov>
To: Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>
Subject: Voting Fraud-Voter Intimidation

Craig:

We are continuing our efforts to hone in on a date for the Working Group meeting. Are you available the afternoon of Thursday, May 18?

Peggy Sims
Election Research Specialist
U.S. Election Assistance Commission

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:25 PM -----
Margaret Sims/EAC/GOV
05/03/2006 04:59 PM
To "Donsanto, Craig" <Craig.Donsanto@usdoj.gov>@GSAEXTERNAL
cc
Subject Re: Voting Fraud-Voter Intimidation

I am looking at the afternoon of 5/18 for the meeting, due to scheduling conflicts of Working Group members. There remain two members from whom we have not yet received confirmations of their schedule (with some, it is like pulling teeth), but right now 5/18 still looks like the best day. We may have to hold the meeting over here to make it easier for Commissioners to drop in. --- Peg

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Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

-----Original Message-----
From: psims@eac.gov <psims@eac.gov>
To: Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>
Sent: Wed May 03 11:39:50 2006
Subject: Voting Fraud-Voter Intimidation

Craig:
We are continuing our efforts to hone in on a date for the Working Group meeting. Are you available the afternoon of Thursday, May 18?

Peggy Sims
Election Research Specialist
U.S. Election Assistance Commission

Tuesday at 4 is OK for me.

----- Original Message ----- 
From: psims@eac.gov 
To: wang@tcf.org ; serebrov@sbcglobal.net 
Cc: dromig@eac.gov 
Sent: Friday, May 05, 2006 2:32 PM  
Subject: Working Group

Hi, Folks:

Teleconference
Are both of you available for a teleconference next Tuesday afternoon at about 4 PM EST? If this does not work for you, please suggest another date and/or time. I would like to discuss our preparations for the Working Group meeting.

Working Group Members
We have a very good person to fill the slot for the nonpartisan local election official: J.R. Perez, Elections Administrator for Guadalupe County, TX. Attached is his bio. Hope you have no objections to him. He is available on May 18. I have place 2 calls to Pat Rogers office, but have not yet received a reply. Job, if you have any pull with him, you may want to contact him, too.

Travel Arrangements
You should make your own travel arrangements, including hotel. Travel time cannot be billed to the contract, except for hours actually worked on the contract (i.e.; reviewing materials in preparation for the meeting, and the like). Current Federal rates follow:

Maximum Lodging = $180 per day- does not include hotel taxes (if you cannot get this rate, we have covered reasonable rates that are a little higher)
Meals & Incidentals = $64 per day (except that it is $48 on the first and last day of travel)
Mileage for Personally Owned Vehicle = $ .445 per mile

Under the new contract, I do not have to fill out a travel authorization for you. I can approve your trip via email. Afterwards, when you turn in your next pay voucher, you can attach the airline receipt (or mileage documentation), hotel receipt(s), and ground transportation receipts and a copy of any printed itineraries. Calculate the total travel expenses due you, including applicable per diem. I do not need meal receipts.

Job, under Federal travel regulations, deviations for personal reasons are not normally accommodated. What you can do, however, is to give me a comparison of the cost of roundtrip mileage, hotel, and per diem of doing it your way against the cost of a roundtrip flight, ground transportation, hotel, and per diem. If your way costs less, it should be no problem to cover the full cost. If your way is more expensive, we may only pay up to the amount of traditional travel. (The same rules apply to me when I travel.) If you can tell me where, other than DC, you will spend the night, I can check on applicable per diem rates.

Peggy

---- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:25 PM ----
Margaret Sims/EAC/GOV
05/04/2006 03:13 PM
To "Donsanto, Craig"
<Craig.Donsanto@usdoj.gov>@GSAEXTERNAL
cc
Subject RE: Voting Fraud-Voter Intimidation

Craig:

This meeting is being held to obtain input from our eight-member Working Group for the project. The group is composed of election lawyers, election officials, and a representative of an advocacy group, all of whom have an interest and some expertise in the identification and/or prosecution of voting fraud and voter intimidation. The group was chosen so that we would have an equal number of folks on each side of the political spectrum, plus some nonpartisan members.

After our consultants review the results of their preliminary research (interviews, literature review, case law), we will ask the Working Group to brainstorm possible next steps for EAC. Our consultants will write a report summarizing the proposals that come out of this meeting. The report will go to the Commissioners, who will decide what they want to do, funds available, and what priority to assign to the effort(s).

Your participation in this part of the process is extremely important, so I am very happy that you can find time for us that afternoon. I'll get an agenda and other information to you next week. --- Peggy

"Donsanto, Craig" <Craig.Donsanto@usdoj.gov>
Okay, Peg -- I will mark off the entire afternoon and try to be there. What is the agenda? I was not aware that this was anything beyond having your contractors spend another session with me. Also, if they will be needing stats and stuff like that I need to know as I will bring my state-people with me.

From: psims@eac.gov
Sent: Thursday, May 04, 2006 2:28 PM
To: Donsanto, Craig
Subject: Re: Voting Fraud-Voter Intimidation

Right now, we are planning to meet in EAC's large conference room between 1 PM and 5 PM. If you cannot be there for the whole afternoon, we will appreciate whatever time you can spare. I'll get back to you with more information (agenda, list of Working Group members, etc.). --- Peggy

Afternoon of May 18 -- 2:30 okay? How long will they need??

Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

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Peggy Sims
Election Research Specialist
U.S. Election Assistance Commission

Did you look at the attached excerpts from Texas Code? --- Peggy

"Job Serebrov" <serebrov@sbcglobal.net>

We have the same set-up here in Arkansas. We hired a person just like Perez. However, given this, I would still like to know if he has a party affiliation and this brings up another issue. How is the county election commission chosen. In Arkansas it is the
Chairmen of the Republican and Democrat Parties or if he/she does not want to serve a person is elected in his/her stead and a third member picked by the party with the most constitutional officers. Practically that has meant that the Democrats have controlled election commissions in Arkansas since the end of Reconstruction. This is why I want to know the situation in Texas.

--- psims@eac.gov wrote:

> As you may recall, the Commissioners directed me to
> find a nonpartisan
> local election official to serve on the Working
> Group. The three of us
> discussed the desirability of having a Hispanic. I
> proposed that I find
> someone from Texas because of that State's colorful
> history of voting
> fraud and their innovative approaches to combat it.
> In those Texas
> counties that hire Election Administrators to run
> elections, rather than
> having elected officials do so (Tax Assessor for
> voter registration;
> County Clerk for balloting), the Election
> Administrator is hired by the
> County Election Commission and is supposed to
> perform his or her duties in
> a nonpartisan manner. (See attached excerpts from
> Texas Election Code
> regarding election administrator hiring and
> restrictions on partisan
> activity.)
> Any experienced Texas election official will be
> familiar with voting fraud
> and voter intimidation schemes used in that State.
> Mr. Perez has over 13
> years experience as a county Election Administrator
> in Texas. You won't
> find many news articles mentioning him because he
> has kept his nose clean.
> (The Texas press, as in many other parts of the
> country, prefers to
> report bad news.) Mr. Perez is plugged into the
> association of Texas
> election officials and the two largest organizations
> of election officials
> in this country: the International Association of
> Clerks, Recorders,
> Election Officials and Treasurers (IACREOT); and The
> Election Center. He
> is a past President and past Chairman of the
> Legislative Committee for the
> Texas Association of Election Administrators. He
> currently serves on
> IACREOT's Election Officials Committee, which plans
> the educational
> sessions for election officials that are conducted
at that organization's conferences. His peers in IACREOT and The Election Center have selected his submissions on web presentations (IACREOT) and his professional practices papers (Election Center) for awards. Mr. Perez also has access to information from other States through his membership in IACREOT and The Election Center. He also has a sense of humor, which you will note if you access the staff web page on the Guadalupe County Elections web site and hear the Mission Impossible theme... something that might be useful in the upcoming meeting.

Guadalupe County is small but growing. In 2004, the county had over 65,000 registered voters (a number more than doubled the number of registered voters in 1988). A third of the county's population claims Hispanic or Latino origin, according to the U.S. Census Bureau. The county is in south central Texas and is bordered by Comal, Hays, Cladwell, Gonzales, Wilson, and Bexar counties. In the 1980s, the county was predominately a farming community; but in recent years, many people have moved from San Antonio (Bexar County) to Guadalupe County, preferring to live in Guadalupe County and work in Bexar County.

--- Peggy

"Job Serebrov" <serebrov@sbcglobal.net> 05/09/2006 11:30 PM

To psims@eac.gov cc

Subject Re: Working Group

Peggy:

What political party is Perez with? How political is he? Is the position in Texas neutral or political?
> Who
> appointed Perez?
>
> As to Pat I will contact him but I can't promise
> anything. If Pat can't come, who is getting knocked
> off Tova's list?
>
> Job
>

Diana:

The following members of the Working Group for our Voting Fraud/Voter Intimidation research project will need to make travel arrangements in order to attend an afternoon meeting of the group on May 18 in Washington, DC:

Mark "Thor" Hearne - St Louis, MO
J.R. Perez - Seguin, TX
The Honorable Todd Rokita - Indianapolis, IN
Kathy Rogers - Atlanta, GA

I may have one additional member from Albuquerque, NM confirmed early next week.

May these people use Adventure Travel to make these arrangements in the same manner as the Asian Language Working Group? I understand the members of that group made hotel and flight arrangements through Adventure Travel and that these costs were billed directly to EAC. We did plan for EAC to pay for the travel of the Voting Fraud/Voter Intimidation Working Group (budgeted under Research). Devon will prepare their travel authorizations.

Peggy Sims
Election Research Specialist

This seems OK, I guess its a less detailed version of what I sent you. I hope you will advise us as to what
we are supposed to talk about/go over since we have provided the group with everything we've done ahead of time. I also hope that you will have an answer for me on Wade. It utterly essential that we have a leader from the civil rights community at the table.

-----Original Message-----
From: psims@eac.gov
Sent: Thursday, May 11, 2006 9:07 AM
To: wang@tcf.org; serebrov@sbcglobal.net
Subject: Today's Teleconference

I assume that we are still on for today's teleconference at 11 AM EST. I will call you. I have attached a draft agenda for your review and comment. --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:25 PM -----
"Job Serebrov"
<serebrov@sbcglobal.net> 05/11/2006 03:36 PM
To: "Tova Wang" <wang@tcf.org>, psims@eac.gov
cc serebrov@sbcglobal.net
Subject Re: new working group representative

I have an objection to Greenbaum. While I realize he comes from an advocacy group, he is not a minority attorney and we already have a rep who worked with DOJ. If it is to be Greenbaum, I would rather not fill that position since I am one down.

--- Tova Wang <wang@tcf.org> wrote:
> is Jon Greenbaum
> Here' s his info in full:
> http://www.lawyerscommittee.org/2005website/aboutus/staff/staffgreenbaum.htm
> He is the Director of the Voting Rights Project for
> the Lawyers Committee
> for Civil Rights. He will be representing Barbara
> Arnwine, the Executive
> Director of the Lawyers Committee.
> His contact and mailing info is:
> jgreenbaum@lawyerscommittee.org
> 202-662-8315
> 1401 New York Avenue, NW
> Suite 400
> Washington, DC 20005
> Tova Andrea Wang
> Democracy Fellow
> The Century Foundation
It might be an Apple issue

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Thursday, May 11, 2006 1:09 PM
To: serebrov@sbcglobal.net
Cc: wang@tcf.org
Subject: Literature Summary

Tova just sent me the summary you prepared of The Federal Crime of Election Fraud by Craig Donsanto. There is something wrong in the fourth paragraph (odd characters and missing text). Can you please send a replacement fourth paragraph? You can send it in an email and I will place it in the document. --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:25 PM -----

"Job Serebrov"
<serebrov@sbcglobal.net>
05/04/2006 12:04 PM
To: psims@eac.gov
cc
Subject: Re: Good News

Peggy:

Rogers contact information is below on my last message. My uncle is having a complicated procedure where they are both cementing his spine to shore it up and testing for a malignant tumor—which they now
suspect as the cause of the sudden bone problems. If it is a tumor, the working group session could get complicated.

Job

--- psims@eac.gov wrote:

> Job:
> > Hope your uncle's surgery goes well.
> > I have the Chairman's OK to follow your recommendation and replace Norcross with Rogers. Do you have contact information for Rogers? ---
> > Peggy

> "Job Serebrov" <serebrov@sbcglobal.net>
> 05/04/2006 11:17 AM
> To
> psims@eac.gov
> cc
> Subject
> Re: Good News

> I will have a better idea about my uncle's condition today after surgery.

> See:
> 500 Fourth Street NW
> P.O. Box 2168
> Albuquerque, NM 87103-2168
> (505) 848-1800
> Fax: (505) 848-1891
> Asst: Carol Casstevens
> patrogers@modrall.com

> --- psims@eac.gov wrote:

> > Job:
> > Secretary Rokita is available May 18. I'm going to talk with the Chairman today about substituting Rogers for Norcross. Do you have contact information for Rogers? --- Peggy
Okay, Peg -- thank you. I will be there.

The non-election officials on the Working Group currently include:

- Barry Weinberg, whom you know
- Barbara Arnwine, Lawyers Committee for Civil Rights Under Law (organization associated with the Voting Rights Project and Election Protection)
- Bob Bauer, Perkins Coie, DC (Democrat attorney)
- Mark "Thor" Hearne, Lathrop & Gage, St Louis, MO (Republican attorney)

I am trying to recruit one other Republican attorney, Patrick Rogers, Modrall, Sperling, Roehl, Harris and Sisk, NM, who was recommended by our Republican consultant. He would replace an original member who is no longer available.

I know that Barbara has associated at conferences and in legislative efforts with Wade Henderson, Leadership Conference on Civil Rights. Also, the Lawyers Committee for Civil Rights is listed as one of many members of the Executive Committee for the Leadership Conference on Civil Rights (see http://www.civilrights.org/about/lccr/executive_committee.html).

Does this information help? --- Peggy
Peggy -- they don't have anything to do with the Leadership Conference on Civil Rights do they?

I ask only because the Justice Department is currently engaged in a very acrimonious FOIA litigation with LCCR that focuses precisely on our efforts to combat voter "intimidationm"

Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

-----Original Message-----
From: psims@eac.gov <psims@eac.gov>
To: Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>
Sent: Thu May 04 17:20:39 2006
Subject: RE: Voting Fraud-Voter Intimidation

It is just the Working Group for the Voting Fraud-Voter Intimidation Project. I am asking you to attend as Technical Advisor for the project. --- Peggy

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

05/04/2006 03:26 PM
To
    psims@eac.gov
cc
Subject
    RE: Voting Fraud-Voter Intimidation

Peg -- what is the name of the group?

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Thursday, May 04, 2006 3:13 PM
To: Donsanto, Craig
Subject: RE: Voting Fraud-Voter Intimidation
Craig:

This meeting is being held to obtain input from our eight-member Working Group for the project. The group is composed of election lawyers, election officials, and a representative of an advocacy group, all of whom have an interest and some expertise in the identification and/or prosecution of voting fraud and voter intimidation. The group was chosen so that we would have an equal number of folks on each side of the political spectrum, plus some nonpartisan members.

After our consultants review the results of their preliminary research (interviews, literature review, case law), we will ask the Working Group to brainstorm possible next steps for EAC. Our consultants will write a report summarizing the proposals that come out of this meeting. The report will go to the Commissioners, who will decide what they want to do, funds available, and what priority to assigned to the effort(s).

Your participation in this part of the process is extremely important, so I am very happy that you can find time for us that afternoon. I'll get an agenda and other information to you next week. --- Peggy

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

05/04/2006 02:32 PM

To: psims@eac.gov

cc: psims@eac.gov

Subject: RE: Voting Fraud-Voter Intimidation

Okay, Peg -- I will mark off the entire afternoon and try to be there. What is the agenda? I was not aware that this was anything beyond having your contractors spend another session with me. Also, if they will be needing stats and stuff like that I need to know as I will bring my state-people with me.

From: psims@eac.gov [mailto:psims@eac.gov]

Sent: Thursday, May 04, 2006 2:28 PM

To: Donsanto, Craig
Subject: Re: Voting Fraud-Voter Intimidation

Right now, we are planning to meet in EAC's large conference room between 1 PM and 5 PM. If you cannot be there for the whole afternoon, we will appreciate whatever time you can spare. I'll get back to you with more information (agenda, list of Working Group members, etc.). --- Peggy

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

05/03/2006 05:59 PM

To psims@eac.gov

cc

Subject Re: Voting Fraud-Voter Intimidation

Afternoon of May 18 -- 2:30 okay? How long will they need??
--------------------------
Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

-----Original Message-----
From: psims@eac.gov <psims@eac.gov>
To: Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>
Sent: Wed May 03 16:59:09 2006
Subject: Re: Voting Fraud-Voter Intimidation

I am looking at the afternoon of 5/18 for the meeting, due to scheduling conflicts of Working Group members. There remain two members from whom we have not yet received confirmations of their schedule (with some, it is like pulling teeth), but right now 5/18 still looks like the best day. We may have to hold the meeting over here to make it easier for Commissioners to drop in.
--- Peg

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

05/03/2006 12:53 PM
Okay -- you are on for May 18th! Can we do it over here at 10?

My problem is that agency staff is booked most of the week of 5/21. Monday
through Wednesday are taken up with meetings of the Standards Board Executive
Committee, the full Standards Board, and the Board of Advisors. Thursday, we
have EAC's public meeting. Also, I will lose one of my two consultants in
June, so I'm trying to wrap up this project (and get the final report from the
consultants) by the end of May.

Say "Hi" to Cameron for me.

Hi Peg. I am sitting here with Cameron Quinn putting together this year's
ballot conference for AUSAs. She send her best!

I am available on 5/18. But I am also going to the Board of Advisors Meeting
the following week. I would rather do this then.
Craig:

We are continuing our efforts to hone in on a date for the Working Group meeting. Are you available the afternoon of Thursday, May 18?

Peggy Sims
Election Research Specialist
U.S. Election Assistance Commission

No, but I have left a message for her assistant and I am waiting for her to return my call. I will let you know as soon as I hear anything.

Devon Romig
United States Election Assistance Commission
1225 New York Ave. NW, Suite 1100
Washington, DC 20005
202.566.2377 phone
202.566.3128 fax
www.eac.gov
Margaret Sims/EAC/GOV
Did Barbara Arnwine's office indicate who they propose to send in her place? --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:25 PM -----
"Job Serebrov"
<serebrov@sbcglobal.net> To psims@eac.gov
05/08/2006 11:30 PM cc
Subject Re: Working Group

Peggy:

What political party is Perez with? How political is he? Is the position in Texas neutral or political? Who appointed Perez?

As to Pat I will contact him but I can't promise anything. If Pat can't come, who is getting knocked off Tova's list?

Job

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:25 PM -----
Diana Scott/EAC/GOV To Margaret Sims/EAC/GOV@EAC
05/08/2006 10:22 AM cc dromig@eac.gov, Karen Lynn-Dyson/EAC/GOV@EAC
Subject Re: Working Group Travel

Peggy,

I will send these names to Adventure Travel (AT) authorizing AT to place the airfare and hotel charges on our credit card. That is all I do on my end. BUT Devon has to follow up to make all the arrangements with Marvin Brokaw at AT and whatever else is required as far as support servs. for the meeting is concerned.

I assume this is a separate meeting from the 2 Karen & Brian are having?

Diana M. Scott
Administrative Officer
U.S. Election Assistance Commission
(202) 566-3100 (office)
(202) 566-3127 (fax)
dscott@eac.gov

Margaret Sims/EAC/GOV

Margaret Sims/EAC/GOV
Diana:

The following members of the Working Group for our Voting Fraud/Voter Intimidation research project will need to make travel arrangements in order to attend an afternoon meeting of the group on May 18 in Washington, DC:

Mark "Thor" Hearne - St Louis, MO
J.R. Perez - Seguin, TX
The Honorable Todd Rokita - Indianapolis, IN
Kathy Rogers - Atlanta, GA

I may have one additional member from Albuquerque, NM confirmed early next week.

May these people use Adventure Travel to make these arrangements in the same manner as the Asian Language Working Group? I understand the members of that group made hotel and flight arrangements through Adventure Travel and that these costs were billed directly to EAC. We did plan for EAC to pay for the travel of the Voting Fraud/Voter Intimidation Working Group (budgeted under Research). Devon will prepare their travel authorizations.

Peggy Sims
Election Research Specialist

Peggy:

Please tell the folks there that I am not worried about a perceived breach of contract. This is a completely ridiculous statement considering the contractual requirement that the consultants convene the Working Group and not the Commission and it never specifies where or when this is to take place. All this to say that while the contract does specify a Working Group meeting it does not specify that it must
take place on any particular date or in a particular city. With that said, I have never heard of any federal travel requirements that would result in a loss of money because I decided to drive and not fly. In fact, that is why there is an amount paid per mile. So I would like to see the federal regulation that forces me to take the least expensive transport and restricts all other ground transport costs to that figure.

As to hotels, based on Tova's research there are no rooms for under the $350 range per night. If you can find hotels that are less expensive but still carry the kind of bed I need for my back (either pillow top or a number bed) please do.

The issue of my uncle---today I have not had an update on his condition. But, as I previously stated, if he were to die or have an event while I was in DC, I would have to go to NYC meeting or no meeting.

Finally, neither Tova nor I have been satisfied about Mr. Perez and I have not been told whether Pat Rogers will be coming or one of Tova's people will not be.

In the end, I need to see the travel regulation that I requested above, I would like you to look into hotels for Tova and me that have the kind of bed I need and I would like to know about Perez and Rogers. In the mean time, I should have an update on my uncle by morning. I would also be happy to talk to Julie about the issues involved. I will take you up on your offer to process my travel expenses faster and I do not and never did expect you to get me a travel advance. I worked in international development and know what a headache those are to apply for on the state level.

Job

--- psims@eac.gov wrote:

> Job:
> Folks here are concerned that your failure to show up in person to help conduct the meeting would be a breach of contract. I also am concerned about the impression that your absence will leave with the Commissioners and with the VIPs coming to this meeting.
> If you are concerned about delays in reimbursement caused by including the travel expenses in the personal services voucher, I can always process your request (with receipts) separately and earlier. I can have staff here check to see if we can find hotel rooms at a more reasonable rate for you and Tova. (We recognize that you may not be
able to obtain Federal government rate.) What I cannot do is offer a travel advance, which is not permitted for nonfederal employees, or offer to pay the difference between normal travel expenses and those incurred for personal convenience, when the latter is the higher amount. I urge you to make your travel arrangements ASAP.

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
e-mail: psims@eac.gov

"Job Serebrov" <serebrov@sbcglobal.net> 05/08/2006 01:41 PM
To psims@eac.gov cc
Subject Re: Working Group

Given the information I have Peggy, that is not going to be financially possible. First, given Tova's info about the hotels, it is too much for me to front. Two to three days in DC would run around $1000 for the hotel alone. That does not count the two days on the road to get there and two days back. Second, if I can't charge the federal per mile allowance for the entire trip to DC and back and can only get the equivalent of plane fare, I will actually lose money.

I simply do not see how we can do this in person given the financial restrictions.

--- psims@eac.gov wrote:
Job:

I don't think we can put you on teleconference for 4 1/2 hours. We really need to have you here in person if you are to help conduct the Working Group meeting. You should make your travel arrangements ASAP. --- Peggy

"Job Serebrov" <serebrov@sbcglobal.net>
05/08/2006 10:14 AM

To: psims@eac.gov, wang@tcf.org
cc

Subject
Re: Working Group

Peggy:

4:00 eastern on Tuesday is fine however, given the financial restrictions that you indicated would be in place for use of my car (I would actually loose money coming to DC) and given the cost of hotels at this time (I can't afford to front these costs and wait for months to be repaid), etc, it would take a miracle for this working group meeting to take place in person.

It is looking like the only way it will get done is by teleconference. I also share Tova's concern about the unknown nature of Mr. Perez.

--- psims@eac.gov wrote:

Hi, Folks:

Are both of you available for a teleconference next Tuesday afternoon at
about 4 PM EST? If this does not work for you,
please suggest another
date and/or time. I would like to discuss our
preparations for the
Working Group meeting.

Working Group Members
We have a very good person to fill the slot for
the
nonpartisan local
election official: J.R. Perez, Elections Administrator for Guadalupe County, TX. Attached is his bio. Hope you have no objections to him. He is available on May 18. I have place 2 calls to Pat Rogers office, but have not yet received a reply. Job, if you have any pull with him, you may want to contact him, too.

Travel Arrangements
You should make your own travel arrangements, including hotel. Travel time cannot be billed to the contract, except for hours actually worked on the contract (i.e.; reviewing materials in preparation for the meeting, and the like). Current Federal rates follow:

Maximum Lodging = $180 per day- does not include hotel taxes (if you cannot get this rate, we have covered reasonable rates that are a little higher)
Meals & Incidentals = $64 per day (except that it is $48 on the first and last day of travel)
Mileage for Personally Owned Vehicle = $ .445 per mile

Under the new contract, I do not have to fill out a travel authorization for you. I can approve your trip via email. Afterwords, when you turn in your next pay voucher, you can attach the airline receipt (or mileage documentation), hotel receipt(s), and ground transportation receipts and a copy of any printed itineraries. Calculate the total travel expenses due.
Peggy:

At this point and unless my uncle dies before May 18, the only way I will go to DC is to drive my car. I will need it in case my uncle dies while I am there. You will need to get approval for the use of my car and the two days it will take me to get there and two days back.

Job

The Commissioners made this an equal bi-partisan issue. I am seen as representing the Republican Party. I now have a responsibility to assure that this ends up bi-partisan. I have been placed in a position of dual obligations---both to the contract and to the Party. I in fact see myself as carrying out what the Commission wanted to the letter---equal bi-partisan representation.

--- psims@eac.gov wrote:

> Your response suggests that you do not care what the Commissioners may think about the effort. --- Peggy
Peggy:

Braden is ok also with me but please don't tell me not to "stir up" things. I assure you nothing will come back to bite me. I know these people well enough to say they will also want a balanced group. In fact, one of them was very unhappy with Tova's folks.

Job

--- psims@eac.gov wrote:

According to the Commissioners, you and Tova each got to pick three members of the Working Group. The Commission guidance regarding this particular member follows:

> 4 people from the Academic, Legal and Advocacy sectors - 2 to be chosen by Tova and 2 to be chosen by Job.

This issue of allowing a designee relates to Tova's pick.

As I understand it, we are working on a replacement for Norcross. If Ginsberg is not viable, how about Mark Braden, who includes public integrity in his areas of specialization. I would not try and stir up other members of the Working Group, if I were you.

The effort is likely to come back and bite you.

"Job Serebrov" <serebrov@sbcglobal.net>

05/11/2006 03:53 PM

To

psims@eac.gov

cc
Subject
Re: new working group representative

I really don't care if he represents the organization or not. What mixed race? The entire discussion was because Arnwine was African-American. If you are going to invite him without first having a replacement for my side, I may have to call Thor and Todd and discuss all of this.

--- psims@eac.gov wrote:

Greenbaum is representing Arnwine, not replacing her. He works for her organization and is of mixed race. --- Peggy

"Job Serebrov" <serebrov@sbcglobal.net> 05/11/2006 03:36 PM

To "Tova Wang" <wang@tcf.org>, psims@eac.gov cc serebrov@sbcglobal.net

Re: new working group representative

I have an objection to Greenbaum. While I realize he comes from an advocacy group, he is not a minority attorney and we already have a rep who worked with DOJ. If it is to be Greenbaum, I would rather not fill that position since I am one down.

--- Tova Wang <wang@tcf.org> wrote:

is Jon Greenbaum

Here's his info in full:
http://www.lawyerscommittee.org/2005website/aboutus/staff/staffgreenbaum.htm

He is the Director of the Voting Rights Project for the Lawyers Committee for Civil Rights. He will be representing Barbara Arnwine, the Executive Director of the Lawyers Committee.

His contact and mailing info is:

jgreenbaum@lawyerscommittee.org
202-662-8315
1401 New York Avenue, NW
Suite 400
Washington, DC 20005

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


Click here to receive our weekly e-mail updates.
Here is the second batch of my archived email related to the vote fraud study.

Peg Sims

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:28 PM -----

Aletha Barrington/CONTRACTOR/EAC/GOV

04/19/2006 01:09 PM

subject Voting fraud/Voter intimidation

Good afternoon:

I like to introduce myself, I am Aletha Barrington, the new Contract Assistant, I will be replacing Nicole Mortellito. You may address any questions regarding the Voting Fraud/Voter Intimidation Contract to me as well as cc all monthly reports. Thank you and I look forward to working with you!

Aletha Barrington
(202) 566-2209

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:28 PM -----

Margaret Sims/EAC/GOV

04/17/2006 04:33 PM

To Sarah Ball Johnson

cc serebrov@sbcglobal.net, wang@tcf.org, ecortes@eac.gov

Subject Voting Fraud-Voter Intimidation Teleconference 4-19-06

Hi, Sarah:

Thank you for agreeing to be interviewed on Wednesday, April 19, by the consultants for EAC’s initial research on voting fraud and voter intimidation, Job Serebrov and Tova Wang. Our consultants are conducting interviews as part of preliminary research to determine how EAC may best meet the requirements of Section 241(b)6 and 7 of the Help America Vote Act of 2002. As you may recall, Section 241 requires EAC to conduct research on election administration issues, including the development of:

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

This is what I need you (and the Secretary, if he is available) to do:

• At approximately 11 AM EST on April 19, call
• At the prompt for the pass code, enter
Tova and Job will join you on the line. We have arranged for the line to be open for an hour, with 10 minutes extra on the front end (for folks who have not synchronized their watches).

You mentioned that Secretary Grayson may be using a cell phone. Our teleconference provider has given us the following information regarding the use of cell phones during the teleconference:

- Signals are often in and out and the audio bridging equipment cannot compensate fast enough by adjusting the signal. This affects all participants connected. If participants must use a cell phone – they should be stationary in a location where they can pick up the other participants, moving while using a cell phone causes the signal to go in and out and often will pick up extraneous electrical signals that will cause heavy static on the call.
- The cell phone should be well charged and muted, if possible, until the individual is ready to speak.
- If there is a problem, anybody who dials into a conference can contact the operator/technicians by simply pressing *0 (star zero). This information is part of the recording when individuals are dialing in.

If you have any problems accessing the teleconference, please call Edgardo Cortés. You can reach him at 1-866-747-1471 (toll-free) or 202-566-3126. He can contact our service provider to correct any problems. (I will be on my way to Seattle and unable to help.)

Thanks, again!

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

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:28 PM -----

"Tova Wang"
<wang@tcf.org>
04/17/2006 01:34 PM
To psims@eac.gov
cc
Subject RE: Interviews

Actually, 11 EST would be better. Thanks.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, April 17, 2006 10:49 AM
To: wang@tcf.org
Subject: Interviews

I know you preferred Friday, but Job is not available then. He also said he is not available next week. Do you have any time available this Wednesday? --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/17/2006 11:45 AM -----
I can't do it Friday but Wednesday is ok.

--- psims@eac.gov wrote:

> Tova and Job:
> > I've passed Tova's request on to Craig.
> > Also, Sarah Ball Johnson, KY, finally called back
to say she would be available Wednesday through Friday this week and
next week for the interview. Which day and time is best for you and
Job?
> > --- Peggy
> >
> w ang@ tcf.org
> 04/16/2006 11:39 AM
> > To
> > psims@eac.gov
> > cc
> > "Tova Wang" <wang@tcf.org>
> > Subject
donsanto again
> >
> >
> >
> > Hi Peg,
> > Happy Easter!
> > Would it be possible to talk to Mr. Donsanto about
this latest initiative,
or somehow get more information? Thanks. Tova
>
> http://www.fbi.gov/page2/april06/electioncrime041406.htm
Ms. Rivers,

My name is Devon Romig and I am writing to you on behalf of the Election Assistance Commission. I believe that you have been contacted previously by our consultant Job Serebrov about the Voting Fraud/Voter Intimidation Project Working Group that we are organizing.

We are in the process of setting a date for this event and we would appreciate any suggestions that you may contribute based upon Mr. Norcross's availability in the month of May. The proposed dates are May 1,2,3,8,9,10,11,12,15,16,17,18,19. The meeting will only last for one day. Please let me know any and all of the listed dates that will work with Mr. Norcross's schedule.

Also, I tried to contact you by phone but I received a disconnected notification. Could you please provide me with you most current contact information?

Feel free to call or email me with any questions.

Thanks!

Devon Romig
U.S. Election Assistance Commission
1225 New York Ave. NW - Suite #1100
Washington, D.C. 20005
(202)566-2377

Hi Peg,

I think I might have told you only that I am unavailable on the 5th. I'm actually unavailable on the 4th as well. Any news on this front? We should also arrange a conference call next week about preparing for the meeting, don't you think? Thanks Tova

Tova Andrea Wang
Democracy Fellow
The Century Foundation
41 East 70th Street - New York, NY 10021
Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:28 PM

"Tova Wang"
<wang@tcf.org>
04/21/2006 12:18 PM
To psims@eac.gov
cc
Subject existing research summaries 3 (final)

Peg, I hope we will be able to review the binders you put together before they get sent out. Thanks. Just one more research summary to come Monday. Tova

Tova Andrea Wang
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.


Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:28 PM

"Tova Wang"
<wang@tcf.org>
04/21/2006 11:03 AM
To psims@eac.gov, "Job Serebrov" <serebrov@sbcglobal.net>
cc
Subject wg materials

I will now begin sending several emails with material for the working group meeting. Peg, we still have not heard back from you on whether you like the agenda. I have attached it again. With respect to the interview and research summaries, would you both please review them to make sure there are no glaring mistakes?

Are we going on a hiatus next week? I'm a little confused about what happens from here. Tova

Tova Andrea Wang
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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Democracy Fellow
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Visit our Web site, www.tcf.org, for the latest news, analysis, opinions, and events.

Please also double check that I have not left any out. Thanks.

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

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

Peggy,
I am attaching a link to a recent book published by a Kentucky History Professor, Tracy Campbell, which details voter fraud on state and national level. It is very interesting reading.
http://www.amazon.com/gp/product/078671591X/sr=8-1/qid=1145390029/ref=pd_bbs_1/103-8923253-66478067%5Fencoding=UTF8

Sarah Ball Johnson
Executive Director
Hi, Sarah:

Thank you for agreeing to be interviewed on Wednesday, April 19, by the consultants for EAC's initial research on voting fraud and voter intimidation, Job Serebrov and Tova Wang. Our consultants are conducting interviews as part of preliminary research to determine how EAC may best meet the requirements of Section 241(b)6 and 7 of the Help America Vote Act of 2002. As you may recall, Section 241 requires EAC to conduct research on election administration issues, including the development of:

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

This is what I need you (and the Secretary, if he is available) to do:

- At approximately 11 AM EST on April 19, call ________
- At the prompt for the pass code, enter ________

Tova and Job will join you on the line. We have arranged for the line to be open for an hour, with 10 minutes extra on the front end (for folks who have not synchronized their watches).

You mentioned that Secretary Grayson may be using a cell phone. Our teleconference provider has given us the following information regarding the use of cell phones during the teleconference:

- Signals are often in and out and the audio bridging equipment cannot compensate fast enough by adjusting the signal. This affects all participants connected. If participants must use a cell phone — they should be stationary in a location where they can pick up the other participants, moving while using a cell phone causes the signal to go in and out and often will pick up extraneous electrical signals that will cause heavy static on the call.
- The cell phone should be well charged and muted, if possible, until the individual is ready to speak.
- If there is a problem, anybody who dials into a conference can contact the operator/technicians by simply pressing *0 (star zero). This information is part of the recording when individuals are dialing in.
If you have any problems accessing the teleconference, please call Edgardo Cortés. You can reach him at 1-866-747-1471 (toll-free) or 202-566-3126. He can contact our service provider to correct any problems. (I will be on my way to Seattle and unable to help.)

Thanks, again!

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

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:28 PM ---

Tova Wang
To psims@eac.gov, "Job Serebrov" <serebrov@sbcglobal.net>
04/21/2006 11:19 AM
Subject

Tova Andrea Wang
Democracy Fellow
The Century Foundation
41 East 70th Street - New York, NY 10021
phone: 212-452-7704 fax: 212-535-7534
Visit our Web site, www.tcf.org, for the latest news, analysis, opinions, and events.

Click here to receive our weekly e-mail updates.

Summary of DOJ activities 0405.doc
--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:28 PM ---
Margaret Sims/EAC/GOV
04/18/2006 05:36 PM
To "Johnson, Sarah Ball (SBE)" <SarahBall.Johnson@ky.gov>@GSAEXTERNAL
cc
Subject RE: Voting Fraud-Voter Intimidation Teleconference 4-19-06

Sarah:

Thank you. I have not reviewed this myself, so I really appreciate the link. Professor Campbell was among the people interviewed by our consultants.
Peggy,

I am attaching a link to a recent book published by a Kentucky History Professor, Tracy Campbell, which details voter fraud on state and national level. It is very interesting reading.

[Amazon link]

Sarah Ball Johnson
Executive Director
State Board of Elections
140 Walnut Street
Frankfort, KY 40601
(502) 573-7100
(502) 573-4369-fax

NOTICE: This electronic mail transmission is for the use of the named individual or entity to which it is directed and may contain information that is privileged or confidential. It is not to be transmitted to or received by anyone other than the named addressee (or a person authorized to deliver it to the named addressee). It is not to be copied or forwarded to any unauthorized persons. If you have received this electronic mail transmission in error, delete it from your system without copying or forwarding it, and notify the sender of the error by replying via email or by calling the Kentucky State Board of Elections at (502) 573-7100, so that our address record can be corrected.
Hi, Sarah:

Thank you for agreeing to be interviewed on Wednesday, April 19, by the consultants for EAC's initial research on voting fraud and voter intimidation, Job Serebrov and Tova Wang. Our consultants are conducting interviews as part of preliminary research to determine how EAC may best meet the requirements of Section 241(b)6 and 7 of the Help America Vote Act of 2002. As you may recall, Section 241 requires EAC to conduct research on election administration issues, including the development of:

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

This is what I need you (and the Secretary, if he is available) to do:

- At approximately 11 AM EST on April 19, call 1-866-747-1471 (for folks who have not synchronized their watches).
- At the prompt for the pass code, enter [redacted].

Tova and Job will join you on the line. We have arranged for the line to be open for an hour, with 10 minutes extra on the front end.

You mentioned that Secretary Grayson may be using a cell phone. Our teleconference provider has given us the following information regarding the use of cell phones during the teleconference:

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- If there is a problem, anybody who dials into a conference can contact the operator/technicians by simply pressing *0 (star zero). This information is part of the recording when individuals are dialing in.

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Thanks, again!

---

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
e-mail: psims@eac.gov

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:28 PM ---
Margaret Sims/EAC/GOV
04/17/2006 12:37 PM To Job Serebrov, Tova Andrea Wang
Are you two still available for the conference call we had scheduled for this afternoon at 4 PM EST/3 PM CST? --- Peg

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:28 PM ---

"Tova Wang" <wang@tcf.org>
04/21/2006 11:09 AM
To psims@eac.gov, "Job Serebrov" <serebrov@sbcglobal.net>
cc
Subject interview summaries 3

Tova Andrea Wang
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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Interview with Lori Minnite.doc Interview with Neil Bradley final.doc Interview with Nina Perales final.doc
Interview with Pat Rogers.doc Interview with Rebecca Vigil-Giron.doc Interview with Sarah Ball Johnson.doc
Interview with Steve Ansolobehere and Chandler Davidson.doc Interview with Tracy Campbell.doc

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:28 PM ---

Margaret Sims/EAC/GOV
04/19/2006 03:31 PM
To "Job Serebrov" <serebrov@sbcglobal.net>, "Tova Andrea Wang" <wang@tcf.org>
cc
Subject Recent email from Aletha Barrington

Please ignore the message sent to you today by Aletha Barrington. It was sent in error. As COR for this project, I remain your primary contact. Thanks.
Peggy

Sent from my BlackBerry Wireless Handheld
Tova Andrea Wang
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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indiana litigation - official.doc  Section 5 Recommendation Memorandum summary.doc  Securing the Vote.doc  Shattering the Myth.doc

Steal this Vote Review final.doc  stealing elections review.doc

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:28 PM -----

Diana Scott/EAC/GOV
04/18/2006 11:38 AM

To Edgardo Cortes/EAC/GOV@EAC
cc Bola Olu/EAC/GOV@EAC, Devon E. Romig/EAC/GOV@EAC, Margaret Sims/EAC/GOV@EAC

Subject Re: Voting Fraud-Voter Intimidation Teleconference 4-19-06

I have just forwarded to you the Feb 3 email I sent to EAC Staff.

Diana M. Scott
Administrative Officer
U.S. Election Assistance Commission
(202) 566-3100 (office)
(202) 566-3127 (fax)
dscott@eac.gov

Edgardo Cortes/EAC/GOV

Edgardo Cortes/EAC/GOV
Hi, Sarah:

Thank you for agreeing to be interviewed on Wednesday, April 19, by the consultants for EAC’s initial research on voting fraud and voter intimidation, Job Serebrov and Tova Wang. Our consultants are conducting interviews as part of preliminary research to determine how EAC may best meet the requirements of Section 241(b)6 and 7 of the Help America Vote Act of 2002. As you may recall, Section 241 requires EAC to conduct research on election administration issues, including the development of:

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

This is what I need you (and the Secretary, if he is available) to do:

- At approximately 11 AM EST on April 19, call [redacted].
- At the prompt for the pass code, enter [redacted].

Tova and Job will join you on the line. We have arranged for the line to be open for an hour, with 10 minutes extra on the front end (for folks who have not synchronized their watches).

You mentioned that Secretary Grayson may be using a cell phone. Our teleconference provider has given us the following information regarding the use of cell phones during the teleconference:
Is this OK now?

Tova Andrea Wang  
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.

Fraud Project Definition-rev 6-27.doc

Hi Peg,

Job and I have discussed this matter and agree on our response to it.

Presumably the paragraph you are concerned about is the following:

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 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.

Neither of us thinks this passage says that the Department has stopped pursuing patterns, as you suggested, and we maintain that this is what Mr. Donsanto said to you in the interview. If Mr. Donsanto wants to object, perhaps he can write a letter or something to that effect that could be part of the record.
Tova and Job:

All I can do is advise you that I don't think this paragraph will pass by the Commission, as written, because readers can misinterpret what is being reported and use something published by EAC against DOJ. I suspect that both of you are aware of legal action being taken by an advocacy group against DOJ alleging that the agency is acting in a manner that fails to protect, and even discourages, the voter participation of minorities and disadvantaged individuals. Though I do not intend to address the merits of that action, which focuses on the efforts of more than one DOJ office, I am concerned that some readers would use the sentence that begins with "This change in direction, focus, and level of aggression ..." as evidence that DOJ's Election Crimes Branch has completely changed course to focus on aggressively pursuing individuals who vote when ineligible, many of whom are minorities.

It is true that, for years, the Election Crimes Branch did not pursue individual violators. (I certainly observed this from the time I became involved in researching election administration matters in 1986.) Much of the reason for this is that the agency just did not have the resources to pursue everything; so, as the agency budget permitted, DOJ pursued cases that provided the most bang for the buck --- cases involving multiple individuals that were not already being pursued by State or local public attorneys. As you know, DOJ recently expanded its efforts and added the prosecution of individuals for double voting or voting when ineligible (felony convictions or no U.S. citizenship). Although I did not know of this decision prior to the interview, the action is not a complete surprise, given the increasing pressure on the agency to pursue such cases that began with a real squeaker of a 1996 race in California's 46th CD (Orange County). In the interview with you, Donsanto also stated that the department evaluates each case before pursuing it, and does not pursue every individual referred for voting violations. (You may remember he noted his reluctance to pursue noncitizen voting, which can result in deportation, when it could separate the individual from his family.)

In my opinion, the addition of the prosecution of individuals, while an important new development, is not a complete change in direction or focus. The pursuit of individual violators does not supplant DOJ's continuing efforts to pursue organized schemes to corrupt the process. It is part of a recent expansion of the agency's efforts to combat election crime that includes: (1) more aggressive pursuit of criminal campaign finance violations (not covered by EAC's study); (2) exploration of new avenues to prosecute voter suppression schemes (e.g.; the NH phone bank blocking case); (3) better training of U.S. attorneys and FBI agents in the recognition, investigation and prosecution of election offenses; (4) efforts to improve
coordination with state and local law enforcement agencies; and (5) press conferences and public announcements before federal elections to publicize how the public can report election crimes. Donsanto provided information on much of these efforts either during the interview or by supplying case lists and training information on the day of the interview.

I hope you will reconsider revising the paragraph at issue.

Peggy Sims
Election Research Specialist
U.S. Election Assistance Commission

Tell me what you think about this paragraph. I hope you will reconsider revising the paragraph at issue.

Peggy Sims
Election Research Specialist
U.S. Election Assistance Commission

Hi Peg,

Job and I have discussed this matter and agree on our response to it.

Presumably the paragraph you are concerned about is the following:

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 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.

Neither of us thinks this passage says that the Department has stopped pursuing patterns, as you suggested, and we maintain that this is what Mr. Donsanto said to us in the interview. If Mr. Donsanto wants to object, perhaps he can write a letter or something to that effect that could be part of the record.

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

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

Click here to receive our weekly e-mail updates.
Peggy:

Still no travel funds. Please see what you can fund out on Monday. At this point this is late.

Job

Further comment from Tova. --- Peggy

Also, I maintain that a reasonable solution to this is to allow Donsanto and/or any of the commissioners who desire to do so to provide a statement that would be included in the report and in the record.

> That would be great on the contract.
> If the interview is "edited" as you put it, I will be very, very uncomfortable, as I believe Job would be as well. I know you don't want to spend anymore time on this, but I consider it a rather important issue,
and I think Job does too. I would be happy to talk to you and Tom and any
of the commissioners about this further if that would be helpful. I am
available by cell over the next four days and in the office all next week.

Thanks for the updated invoice stuff. Happy 4th.

Tova

----- Original Message -----  
From: <psims@eac.gov>
To: "Job Serebrov" <serebrov@sbcglobal.net>
Cc: "Tova Andrea Wang" <wang@tcf.org>
Sent: Friday, June 30, 2006 6:41 PM
Subject: Re: Various

Actually, the Donsanto interview was the only one I did attend, but I
agree the issue is taking up too much of your time. I just wanted you to
be forewarned that the paragraph has already raised red flags in DC of and
is likely to result in an edit. Enough said about that.

I am concerned about the number of hours left for this project. If you
and Tova both agree, I'll see if our Contracting Officer will approve a
contract mod to provide for some additional hours and money to
incorporate comments received on the report and other efforts that fall
within the tasks specified in the current contract. We won't get 60
thou, but there might be a little year end money we can use to finish
this off properly.
Peg

--------------------------
Sent from my BlackBerry Wireless Handheld

----- Original Message -----  
From: "Job Serebrov" [serebrov@sbcglobal.net]
Sent: 06/30/2006 05:58 PM
To: psims@eac.gov; wang@tcf.org
Subject: Various

Peg:

I had to take time off this afternoon to handle some
issues. Did you get an answer as to my travel
reimbursement?

I spoke to Tova about the Donsanto issue. We both
agree about what we heard during the interview. We
also agree that this is taking up too much time (of
which we have so little left) and is a minor part of
one interview which makes up one of thirty interviews.
I feel the same as Tova, the Commission was not in on
the interview and thus do not know what was said and
we are not giving those interviewed the opportunity,
especially given how long ago the interviews were, to
object. Frankly, if the Commission wants to give us
another sixty hours each we can call all of our
interviewees, give them the review and ask for
comments. In any case, we can't include comments from
other interviews with, or lectures by person
interviewed, outside of our interview with that
>> person. We simply can't afford to single out one
>> statement in one interview that there is a
>> disagreement on. Finally, I don't read the paragraph
>> as you do—I remember what was said—the paragraph
>> clearly does not imply an abandonment of other DOJ
>> electoral investigations.
>>
>> Job
>>
>>
>>
>>

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM ----
Margaret Sims/EAC/GOV
07/03/2006 11:12 AM
To Bola Olu/EAC/GOV
cc
Subject Fw: Travel Funds

Can you please find out where GSA is with this reimbursement? Thanks. --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 07/03/2006 11:12 AM ----
"Job Serebrov"
<serebrov@sbcglobal.net>
07/02/2006 09:34 AM
To psims@eac.gov
cc
Subject Travel Funds

Peggy:

Still no travel funds. Please see what you can fund out on Monday. At this point this is late.

Job

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM ----
Bola Olu/EAC/GOV
07/03/2006 11:57 AM
To Margaret Sims/EAC/GOV@EAC
cc
Subject Re: Fw: Travel Funds
I am assuming you are referring to the 6/9/06 payment in the amount of $1,200.03. I checked with Finance and the payout date is today.

Bola Olu
Financial Administrative Specialist
United States Election Assistance Commission
1225 New York Avenue N.W., Suite - 1100
Washington, DC 20005
P:202-566-3124
F:202/566-3127
http://www.eac.gov/

"Integrity - Treat everyone with the same principle, be loyal to those who are not present"

Margaret Sims/EAC/GOV

Margaret Sims/EAC/GOV
07/03/2006 11:12 AM
To Bola Olu/EAC/GOV@EAC
cc
Subject Fw: Travel Funds

Can you please find out where GSA is with this reimbursement? Thanks. --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 07/03/2006 11:12 AM -----
"Job Serebrov"
<serebrov@sbcglobal.net>
07/02/2006 09:34 AM
To psims@eac.gov
cc
Subject Travel Funds

Peggy:

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Job

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM -----
Margaret Sims/EAC/GOV
07/03/2006 12:51 PM
To Job Serebrov
cc
Subject Payments for Personal Services
Job:

I may have forgotten to send this summary of payments for personal services to you. If I didn't, here it is again. --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM ---

Margaret Sims/EAC/GOV
07/03/2006 10:35 AM

To: wang@tcf.org@GSAEXTERNAL
cc: "Job Serebrov" <serebrov@sbcglobal.net>, "Tova Wang" <wang@tcf.org>
Subject: Re: Various

Most of the Commissioners and Tom will be out of the office for the next two weeks to attend the IACREOT, NASS, and NASED summer conferences. I'll let Tom know you want to talk with him when I see him at the airport tomorrow. He may decide to call from out of town. --- Peggy

That would be great on the contract.

If the interview is "edited" as you put it, I will be very, very uncomfortable, as I believe Job would be as well. I know you don't want to spend anymore time on this, but I consider it a rather important issue, and I think Job does too. I would be happy to talk to you and Tom and any of the commissioners about this further if that would be helpful. I am available by cell over the next four days and in the office all next week.

Thanks for the updated invoice stuff. Happy 4th.

Tova

----- Original Message ----- 
From: <psims@eac.gov>
To: "Job Serebrov" <serebrov@sbcglobal.net>
Cc: "Tova Andrea Wang" <wang@tcf.org>
Sent: Friday, June 30, 2006 6:41 PM
Subject: Re: Various

> Actually, the Donsanto interview was the only one I did attend, but I
> agree the issue is taking up too much of your time. I just wanted you to
> be forewarned that the paragraph has already raised red flags in DC of and
> is likely to result in an edit. Enough said about that.
I am concerned about the number of hours left for this project. If you and Tova both agree, I’ll see if our Contracting Officer will approve a contract mod to provide for some additional hours and money to incorporate comments received on the report and other efforts that fall within the tasks specified in the current contract. We won’t get 60 thou, but there might be a little year end money we can use to finish this off properly.

Peg

---

Sent from my BlackBerry Wireless Handheld

----- Original Message -----
From: "Job Serebrov" [serebrov@sbcglobal.net]
Sent: 06/30/2006 05:58 PM
To: psims@eac.gov; wang@tcf.org
Subject: Various

Peg:

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I spoke to Tova about the Donsanto issue. We both agree about what we heard during the interview. We also agree that this is taking up too much time (of which we have so little left) and is a minor part of one interview which makes up one of thirty interviews. I feel the same as Tova, the Commission was not in on the interview and thus do not know what was said and we are not giving those interviewed the opportunity, especially given how long ago the interviews were, to object. Frankly, if the Commission wants to give us another sixty hours each we can call all of our interviewees, give them the review and ask for comments. In any case, we can't include comments from other interviews with, or lectures by person interviewed, outside of our interview with that person. We simply can't afford to single out one statement in one interview that there is a disagreement on. Finally, I don't read the paragraph as you do---I remember what was said---the paragraph clearly does not imply an abandonment of other DOJ electoral investigations.

Job

---

Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM ---

Devon E. Romig/EAC/GOV
07/03/2006 01:22 PM
To wang@tcf.org, serebrov@sbcglobal.net
Devin Romig  
United States Election Assistance Commission  
1225 New York Ave. NW, Suite 1100  
Washington, DC 20005  
202.566.2377 phone  
202.566.3128 fax  
www.eac.gov  

"Job Serebrov"  
<serebrov@sbcglobal.net>  
07/06/2006 08:25 AM  
To psims@eac.gov  
cc  
Subject Travel Funds  

Peg:  
I still have not received the travel funds. This is causing a large financial problem. I don’t know what is with these people but it is obvious my bank has not received it and I doubt it was sent. Please find out what is going on.  
Job  

"Tova Wang"  
<wang@tcf.org>  
07/03/2006 12:19 PM  
To psims@eac.gov  
cc  
Subject RE: Estimated Additional Hours Needed  

I think I’ve already gone over my hours. Let me know when I submit my invoice. If I have, I’ll just reduce them on paper. Thanks.
We'll have to guesstimate. It is likely that we will receive some comments and questions from the Commissioners and a number of comments from the boards. We could do the modification a little later, but we have to do it before the end of August to take advantage of year-end funds. Basically, the sooner we can figure this out, the better chance we have of using some of the year-end money for this project, before it is taken for something else. We have no guarantees that funds will be available in the next fiscal year. --- Peggy

"Tova Wang" <wang@tcf.org>
07/03/2006 11:13 AM

To psims@eac.gov
cc
Subject RE: Estimated Additional Hours Needed

Doesn't it really depend on what the Commission comes back to us with? Its kind of hard to estimate before knowing what they're going to want.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, July 03, 2006 10:11 AM
To: wang@tcf.org; serebrov@sbcglobal.net
Cc: twilkey@eac.gov
Subject: Estimated Additional Hours Needed

Tova and Job:

I don't have the authority to modify contracts, but Tom Wilkey does. In order to help Tom determine how many additional hours (and dollars) should be added to your personal services contracts, I'll need an estimate from the two of you for the number of additional hours required to complete the final report (taking into account revisions that may be needed to address questions and comments submitted by the Commissioners and the EAC Standards Board and Board of Advisors). Please note that we cannot add any tasks to the existing contract, but we can account for additional hours required to complete the final report.

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

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM -----
I thought I emailed an account of your hours used. Just in case I didn't, here it is again.

Wang Payment Tracking.xls

"Tova Wang" <wang@tcf.org>

I think I've already gone over my hours. Let me know when I submit my invoice. If I have, I'll just reduce them on paper. Thanks.

We'll have to guesstimate. It is likely that we will receive some comments and questions from the Commissioners and a number of comments from the boards. We could do the modification a little later, but we have to do it before the end of August to take advantage of year-end funds. Basically, the sooner we can figure this out, the better chance we have of using some of the year-end money for this project, before it is taken for something else. We have no guaranties that funds will be available in the next fiscal year. --- Peggy
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email: psims@eac.gov

Peg:

My travel funds finally came in to my bank.

Job
Doesn't it really depend on what the Commission comes back to us with? It's kind of hard to estimate before knowing what they're going to want.

----- Original Message ----- 
From: psims@eac.gov [mailto:psims@eac.gov]  
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Phone: 866-747-1471 (toll free) or 202-566-3120 (direct)  
Fax: 202-566-3127  
email: psims@eac.gov

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM ----- 

It would be great if someone there could work on cleaning it up. Let us know. Thanks.

----- Original Message ----- 
From: psims@eac.gov  
To: wang@tcf.org  
Cc: serebrov@sbcglobal.net  
Sent: Friday, June 30, 2006 5:25 PM  
Subject: Re: FW: methodology
Will it be possible for you to extract the excerpt for inclusion in the report? Thanks.

-----Original Message-----
From: Job Serebrov [mailto:serebrov@sbcglobal.net]
Sent: Wednesday, June 28, 2006 5:40 PM
To: Tova Wang; psims@eac.gov
Subject: Re: methodology

Agreed

--- Tova Wang <wang@tcf.org> wrote:

> As you may recall, the working group expressed
> interest in the risk analysis
> method. The recent report by the Brennan Center on
> voting machines employs
> this methodology. If you look at pp. 8-19 of the
> attached, it provides a
> potential model. I think it might be worth
> including this as an appendix or
> footnote in the methodology section. Please let me
> know what you think.
> Tova
>
> Tova Andrea Wang
> Democracy Fellow
> The Century Foundation
> 41 East 70th Street - New York, NY 10021
> phone: 212-452-7704 fax: 212-535-7534
> 
> www.tcf.org, for the latest news,
> analysis, opinions, and events.
> 
> ---
I have asked our finance folks to check with GSA. I will let you know when I receive the answer. --- Peggy

"Job Serebrov" <serebrov@sbcglobal.net>

Peggy:

Still no travel funds. Please see what you can fund out on Monday. At this point this is late.

Job

Tova and Job:
I don't have the authority to modify contracts, but Tom Wilkey does. In order to help Tom determine how many additional hours (and dollars) should be added to your personal services contracts, I'll need an estimate from the two of you for the number of additional hours required to complete the final report (taking into account revisions that may be needed to address questions and comments submitted by the Commissioners and the EAC Standards Board and Board of Advisors). Please note that we cannot add any tasks to the existing contract, but we can account for additional hours required to complete the final report.

Peggy Sims
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Washington, DC 20005
Phone: 866-747-1471 (toll free) or 202-566-3120 (direct)
Fax: 202-566-3127
e-mail: psims@eac.gov

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
cc: "Tom Wilkey" <twilkey@eac.gov>
Afternoon of May 18 -- 2:30 okay? How long will they need??
---------------------------------------------
Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

-----Original Message-----
From: psims@eac.gov <psims@eac.gov>
To: Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>
Sent: Wed May 03 16:59:09 2006
Subject: Re: Voting Fraud-Voter Intimidation

I am looking at the afternoon of 5/18 for the meeting, due to scheduling conflicts of Working Group members. There remain two members from whom we have not yet received confirmations of their schedule (with some, it is like pulling teeth), but right now 5/18 still looks like the best day. We may have to hold the meeting over here to make it easier for Commissioners to drop in.
--- Peg

"Donsanto, Craig" <Craig.Donsanto@usdoj.gov>
05/03/2006 12:53 PM
To: psims@eac.gov
cc
Subject: Re: Voting Fraud-Voter Intimidation

Okay -- you are on for May 18th! Can we do it over here at 10?
-----------------------------
Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

-----Original Message-----
From: psims@eac.gov <psims@eac.gov>
To: Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>
Sent: Wed May 03 12:40:19 2006
Subject: Re: Voting Fraud-Voter Intimidation
My problem is that agency staff is booked most of the week of 5/21. Monday through Wednesday are taken up with meetings of the Standards Board Executive Committee, the full Standards Board, and the Board of Advisors. Thursday, we have EAC's public meeting. Also, I will lose one of my two consultants in June, so I'm trying to wrap up this project (and get the final report from the consultants) by the end of May.

Say "Hi" to Cameron for me.

Hi Peg. I am sitting here with Cameron Quinn putting together this year's ballt conference for AUSAs. She send her best!

I am available on 5/18. But I am also going to the Board of Advisors Meeting the following week. I would rather do this then.

---Original Message---
From: psims@eac.gov <psims@eac.gov>
To: Donsanto, Craig <Craig.Donsanto@usdoj.gov>
Sent: Wed May 03 11:39:50 2006
Subject: Voting Fraud-Voter Intimidation

Craig:

We are continuing our efforts to hone in on a date for the Working Group meeting. Are you available the afternoon of Thursday, May 18?

Peggy Sims
Election Research Specialist
U.S. Election Assistance Commission
Right now, we are planning to meet in EAC's large conference room between 1 PM and 5 PM. If you cannot be there for the whole afternoon, we will appreciate whatever time you can spare. I'll get back to you with more information (agenda, list of Working Group members, etc.). --- Peggy

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

Afternoon of May 18 -- 2:30 okay? How long will they need??

Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

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05/03/2006 12:53 PM
To
cc
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Say "Hi" to Cameron for me.

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

05/03/2006 11:56 AM
To
cc
Subject

Re: Voting Fraud-Voter Intimidation

Hi Peg. I am sitting here with Cameron Quinn putting together this year's ball conference for AUSAs. She send her best!

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Peggy Sims
Election Research Specialist
U.S. Election Assistance Commission

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:24 PM -----
Margaret Sims/EAC/GOV
05/12/2006 01:41 PM  To "Job Serebrov"
<serebrov@sbcglobal.net>@GSAEXTERNAL
cc
Subject  Re: Fraud Definition

I will add "DRAFT" to the definition and, yes, the WG will have suggestions. I do plan to send packets to you and Tova containing the same materials being provided to the WG. I haven't sent anything yet because I was hoping to finalize the WG list for inclusion. (Still waiting for a response from Ginsberg.)

Regarding Tova's response, we may want to have a very short meeting after the WG disperses, followed by a teleconference the following Monday afternoon. Tuesday is bad for me because I'll be out of the office attending a series of EAC meetings that begin that day. --- Peggy

"Job Serebrov" <serebrov@sbcglobal.net>

"Job Serebrov" <serebrov@sbcglobal.net>  To psims@eac.gov, wang@tcf.org
05/12/2006 12:52 PM  cc
Subject  Re: Fraud Definition

This is ok, given the fact that the WG may have suggestions. Will you be sending us the same packets that you are sending the WG? Also, I figure with Tova's response we will need to have a teleconference on the report once I return to Little Rock. We will need to do it that following Monday or Tuesday.
Would you please take a look at the attached? I combined both of your definitions, reformatted the list, removed a reference to the fraud having to have an actual impact on the election results (because fraud can be prosecuted without proving that it actually changed the results of the election), and taken out a couple of vague examples (e.g., reference to failing to enforce state laws because there may be legitimate reasons for not doing so).

I have made contact with Ben Ginsberg's office and am waiting to hear if he accepts our invitation to join the working group.

--- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:24 PM ---

Margaret Sims/EAC/GOV
05/05/2006 02:32 PM
To: Tova Andrea Wang, Job Serebrov
cc: dromig@eac.gov
Subject: Working Group

Hi, Folks:

Teleconference
Are both of you available for a teleconference next Tuesday afternoon at about 4 PM EST? If this does not work for you, please suggest another date and/or time. I would like to discuss our preparations for the Working Group meeting.

Working Group Members
We have a very good person to fill the slot for the nonpartisan local election official: J.R. Perez, Elections Administrator for Guadalupe County, TX. Attached is his bio. Hope you have no objections to him. He is available on May 18. I have placed 2 calls to Pat Rogers' office, but have not yet received a reply. Job, if you have any pull with him, you may want to contact him, too.

Travel Arrangements
You should make your own travel arrangements, including hotel. Travel time cannot be billed to the contract, except for hours actually worked on the contract (i.e., reviewing materials in preparation for the meeting, and the like). Current Federal rates follow:

- Maximum Lodging = $180 per day - does not include hotel taxes (if you cannot get this rate, we have covered reasonable rates that are a little higher)
- Meals & Incidentals = $64 per day (except that it is $48 on the first and last day of travel)
Mileage for Personally Owned Vehicle = $ .445 per mile

Under the new contract, I do not have to fill out a travel authorization for you. I can approve your trip via email. Afterwards, when you turn in your next pay voucher, you can attach the airline receipt (or mileage documentation), hotel receipt(s), and ground transportation receipts and a copy of any printed itineraries. Calculate the total travel expenses due you, including applicable per diem. I do not need meal receipts.

Job, under Federal travel regulations, deviations for personal reasons are not normally accommodated. What you can do, however, is to give me a comparison of the cost of roundtrip mileage, hotel, and per diem of doing it your way against the cost of a roundtrip flight, ground transportation, hotel, and per diem. If your way costs less, it should be no problem to cover the full cost. If your way is more expensive, we may only pay up to the amount of traditional travel. (The same rules apply to me when I travel.) If you can tell me where, other than DC, you will spend the night, I can check on applicable per diem rates.

Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:24 PM ----

Margaret Sims/EAC/GOV
05/12/2006 03:19 PM
To: "Job Serebrov"
<serebrov@sbcglobal.net>@GSAEXTERNAL
cc
Subject: Re: Fraud Definition

I have placed another call to his office (after one previous call to his assistant and an email to him). I, too, am concerned about our dwindling chances. --- Peggy

"Job Serebrov" <serebrov@sbcglobal.net>

"Job Serebrov"
<serebrov@sbcglobal.net>
05/12/2006 03:06 PM
To: psims@eac.gov
cc
Subject: Re: Fraud Definition

Given the short time period, you may want to give Ginsberg a deadline. The longer we wait, the poorer our chances are of getting Braden.

--- psims@eac.gov wrote:

> I am reluctant to invite Braden until after I have received a "No" from Ginsberg. --- Peg
Sounds good to me. If not Ginsburg try Braden.

--- psims@eac.gov wrote:

> I will add "DRAFT" to the definition and, yes, the
> WG will have
> suggestions. I do plan to send packets to you and
> Tova containing the
> same materials being provided to the WG. I
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I have made contact with Ben Ginsberg's office and am waiting to hear if he accepts our invitation to join the working group.

--- Peggy

Thanks. We are still trying to get through to Bauer and Arnwine. They have not responded, so their availability is not yet reflected on our spreadsheet. --- Peggy
Hi Peg,

Attached, to add to the collection, is a summary overview of the interviews. Do you have that spreadsheet you were telling me about reflecting the times WG participants are available? If so, maybe we can talk soon? Thanks. Tova

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

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

Click here to receive our weekly e-mail updates.

---- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:24 PM ----

The bio for JR Perez tells us very little about him and there is pretty much nothing about him on the web. Can you tell us more about him and how you decided on him? Thanks. Tova

----- Original Message -----  
From: psims@eac.gov  
To: wang@tcf.org ; serebrov@sbcglobal.net  
Cc: dromig@eac.gov  
Sent: Friday, May 05, 2006 2:32 PM  
Subject: Working Group

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Teleconference
Are both of you available for a teleconference next Tuesday afternoon at about 4 PM EST? If this does not work for you, please suggest another date and/or time. I would like to discuss our preparations for the Working Group meeting.

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Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:24 PM -----
Margaret Sims/EAC/GOV
05/10/2006 10:27 AM
To Devon E. Romig/EAC/GOV
cc
Subject Re: Court reporter

Thanks for checking this out for me, Devon. I've asked Tom if there are funds available for this service. Our consultants were very enthusiastic about the idea. --- Peg

Devon E. Romig/EAC/GOV
Peggy,

I spoke to the people who usually handle the EAC court reporting. They charge $9.00 per page with an average of 40 pages per hour. This service would cost about $1800.00.

The turn around time for the transcript is 10 to 15 days. The transcripts comes in a bound paper copy and an electronic copy.

I can also check around for different prices.

Devon Romig
United States Election Assistance Commission
1225 New York Ave. NW, Suite 1100
Washington, DC 20005
202.566.2377 phone
202.566.3128 fax
www.eac.gov

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:24 PM -----

Elieen L. Collver/EAC/GOV
05/04/2006 02:26 PM

Peggy,

Yes. Thanks. Depending on when Commissioner Davidson can spare you, we may need your help putting materials together for the Working Group (probably next week). We also will have to print name tags and place cards. If you are a good note-taker, we also will need people to take turns taking notes at the meeting. --- Peggy
Can I help on this working group?

Elle

Elle L.K Coliver
U.S. Election Assistance Commission
1225 New York Avenue, Suite 1100
Washington, D.C. 20005
office: (202) 566-2256
www.eac.gov
Margaret Sims/EAC/GOV

Margaret Sims/EAC/GOV
05/04/2006 02:07 PM
todegregorio@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 Ambrogii/EAC/GOV@EAC, Eileen L.
Coliver/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC,
bbenavides@eac.gov, Karen Lynn-Dyson/EAC/GOV@EAC
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

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:24 PM -----
Margaret Sims/EAC/GOV
05/04/2006 10:33 AM
To Job Serebrov
cc
Subject Good News

Job:
Secretary Rokita is available May 18. I'm going to talk with the Chairman today about substituting Rogers for Norcross. Do you have contact information for Rogers? --- Peggy
----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:24 PM -----
Margaret Sims/EAC/GOV
05/04/2006 05:20 PM
To "Donsanto, Craig"
cc
Subject
RE: Voting Fraud-Voter Intimidation

It is just the Working Group for the Voting Fraud-Voter Intimidation Project. I am asking you to attend as Technical Advisor for the project. --- Peggy

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

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

To psims@eac.gov

cc

05/04/2006 03:26 PM

Subject RE: Voting Fraud-Voter Intimidation

Peg -- what is the name of the group?

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Thursday, May 04, 2006 3:13 PM
To: Donsanto, Craig
Subject: RE: Voting Fraud-Voter Intimidation

Craig:

This meeting is being held to obtain input from our eight-member Working Group for the project. The group is composed of election lawyers, election officials, and a representative of an advocacy group, all of whom have an interest and some expertise in the identification and/or prosecution of voting fraud and voter intimidation. The group was chosen so that we would have an equal number of folks on each side of the political spectrum, plus some nonpartisan members.

After our consultants review the results of their preliminary research (interviews, literature review, case law), we will ask the Working Group to brainstorm possible next steps for EAC. Our consultants will write a report summarizing the proposals that come out of this meeting. The report will go to the Commissioners, who will decide what they want to do, funds available, and what priority to assigned to the effort(s).

Your participation in this part of the process is extremely important, so I am very happy that you can find time for us that afternoon. I'll get an agenda and other information to you next week. --- Peggy
Okay, Peg -- I will mark off the entire afternoon and try to be there. What is the agenda? I was not aware that this was anything beyond having your contractors spend another session with me. Also, if they will be needing stats and stuff like that I need to know as I will bring my state-people with me.

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Thursday, May 04, 2006 2:28 PM
To: Donsanto, Craig
Subject: Re: Voting Fraud-Voter Intimidation

Right now, we are planning to meet in EAC's large conference room between 1 PM and 5 PM. If you cannot be there for the whole afternoon, we will appreciate whatever time you can spare. I'll get back to you with more information (agenda, list of Working Group members, etc.). --- Peggy

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

05/03/2006 05:59 PM

To: psims@eac.gov
Cc: psims@eac.gov
Subject: Re: Voting Fraud-Voter Intimidation

Afternoon of May 18 -- 2:30 okay? How long will they need??
I am looking at the afternoon of 5/18 for the meeting, due to scheduling conflicts of Working Group members. There remain two members from whom we have not yet received confirmations of their schedule (with some, it is like pulling teeth), but right now 5/18 still looks like the best day. We may have to hold the meeting over here to make it easier for Commissioners to drop in.

--- Peg

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

05/03/2006 12:53 PM
To
psims@eac.gov
cc
Subject
Re: Voting Fraud-Voter Intimidation

Okay -- you are on for May 18th! Can we do it over here at 10?
--------------------------
Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

My problem is that agency staff is booked most of the week of 5/21. Monday through Wednesday are taken up with meetings of the Standards Board Executive Committee, the full Standards Board, and the Board of Advisors. Thursday, we have EAC's public meeting. Also, I will lose one of my two consultants in June, so I'm trying to wrap up this project (and get the final report from the consultants) by the end of May.

Say "Hi" to Cameron for me.
Hi Peg. I am sitting here with Cameron Quinn putting together this year's ballt conference for AUSAs. She send her best!

I am available on 5/18. But I am also going to the Board of Advisors Meeting the following week. I would rather do this then.

Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

---Original Message-----
From: psims@eac.gov <psims@eac.gov>
To: Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>
Sent: Wed May 03 11:39:50 2006
Subject: Voting Fraud-Voter Intimidation

Craig:

We are continuing our efforts to hone in on a date for the Working Group meeting. Are you available the afternoon of Thursday, May 18?

Peggy Sims
Election Research Specialist
U.S. Election Assistance Commission

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:24 PM -----
Margaret Sims/EAC/GOV
05/12/2006 01:34 PM	To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL
cc
Subject: RE: Fraud Definition
are a number of requirements in the Voting Rights Act. Not all of them are considered election fraud, when violated. For example, failure to preclear changes in election procedures is not treated as election fraud, though it is actionable. --- Peggy

"Tova Wang" <wang@tcf.org>

05/12/2006 12:45 PM
Subject: RE: Fraud Definition

Upon first reading, my only comment would be that I would like to restore "failing to follow the requirements of the Voting Rights Act."

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Friday, May 12, 2006 9:20 AM
To: wang@tcf.org; serebrov@sbcglobal.net
Subject: Fraud Definition

Would you please take a look at the attached? I combined both of your definitions, reformatted the list, removed a reference to the fraud having to have an actual impact on the election results (because fraud can be prosecuted without proving that it actually changed the results of the election), and taken out a couple of vague examples (e.g.; reference to failing to enforce state laws --- because there may be legitimate reasons for not doing so).

I have made contact with Ben Ginsberg's office and am waiting to hear if he accepts our invitation to join the working group. --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:24 PM -----
Margaret Sims/EAC/GOV
04/24/2006 12:13 PM
To: "Tova Wang" <wang@tcf.org>@GSAEXTERNAL
cc
Subject: Re: invoice

Tova:

The draft voucher looks fine except for two things (one of them is our fault):

(1) it appears that you worked 11 days, rather than 10, during the first two weeks; and
(2) you need to put the total dollar amount owed you ($9,102) somewhere on the form. (Last time you put it in the box with the total hours worked this period.)

Don't forget to sign and date the voucher. Thanks.

Peggy Sims
Hi Peg,

Can you please check this before I fax it? Thanks! And can we talk sometime today?

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

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

Click here to receive our weekly e-mail updates.

voucher 3-26-4-22.doc

Barry Weinberg has confirmed he can attend the afternoon of May 18. He lives in the DC area, so we won’t have to worry about travel. I have contacted Pat Rogers office and left a voice mail for his assistant. Hopefully, I will hear from them this afternoon. — Peggy
We have heard from Bob Bauer regarding his availability, so we don't need to have you pursue the matter. Thanks for the offer, though. --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:24 PM ---

"Tova Wang"
<wang@tcf.org>
05/09/2006 05:17 PM
To psims@eac.gov, serebrov@sbcglobal.net
cc
Subject perez

I talked to Adam, and I am OK with JR Perez. I'm working on the Barbra situation.

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

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

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:24 PM ---

"Job Serebrov"
<serebrov@sbcglobal.net>
05/10/2006 12:25 PM
To psims@eac.gov
cc
Subject Travel

Peggy:

If I am calculating it right and I believe I am, it would cost around $450 plus my meal allowance in Virginia and Tennessee (coming and going).

All of this said, I am still a person down and there is the bed problem.

Job

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:24 PM ---

wang@tcf.org
05/06/2006 08:28 AM
To psims@eac.gov
cc
----- Original Message ----- 
From: Priceline Customer Service
To: WANG@TCF.ORG
Sent: Friday, May 05, 2006 9:21 PM
Subject: Your Priceline Hotel Reservation #103-967-342-62

Thank you for booking your trip with priceline.com. A copy of your itinerary, along with special instructions, is included below. Please review your complete itinerary details, along with other important information for your request number.

Hotel Details
Embassy Suites Hotel Washington, D.C.
1250 22Nd St Nw
Washington, DC 20037
202-857-3388

Summary of Charges

<table>
<thead>
<tr>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Room Cost (two per room per night)</td>
<td>$81.625 USD</td>
</tr>
<tr>
<td>Number of Rooms</td>
<td>2</td>
</tr>
<tr>
<td>Number of Nights</td>
<td>2</td>
</tr>
<tr>
<td>Room Subtotal</td>
<td>$163.25 USD</td>
</tr>
<tr>
<td>Taxes and Fees</td>
<td>37.42 USD</td>
</tr>
<tr>
<td>Total Room Cost</td>
<td>200.67 USD</td>
</tr>
</tbody>
</table>

Frequently Asked Questions

Can I add nights to my hotel reservation? Can I add rooms to my reservation? Can I change or cancel my hotel rooms? What if my travel plans change? What if I make a mistake?

Check-in: Wednesday, May 17, 2006, 07:00 PM
Check-out: Friday, May 19, 2006, 12:00 PM
Room: confirm

Self help: Contact Us
Thats great news. What happens with respect to hotels? Should I make my own arrangements? I expect Job and I will want to stay the nights of the 17th and 18th. Thanks Pegs. And congratulations.

----- Original Message ----- 
From: <psims@eac.gov>
To: <wang@tcf.org>
Sent: Thursday, May 04, 2006 5:47 PM
Subject: Re: wg

Tova:

Rokita is available --- so the afternoon of May 18 it is. I will not disinvite anyone. I am trying to get Job's next choice (Pat Rogers) as a replacement for Norcross.

Monday appears to be out for a teleconference because Job will be unavailable that afternoon and I am scheduled for something else that morning. I'll check my schedule tomorrow and send a message to you and Job regarding other possible days and times. --- Peggy

wang@tcf.org
Hi Peg,

Just wondering if you had any word from Rokita. Also, I wanted to let you know that I think disinviting members of the working group would be a very unwise and frankly embarrassing way of dealing with the problem of getting 100% attendance. I'm sure we'll talk before any decisions are made. As I said, I'm free on Monday. Thanks. Tova

---

Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:24 PM ---

Devon E. Romig/EAC/GOV

To: Margaret Sims/EAC/GOV@EAC
cc:

Subject: Re: Barbara Arnwine

Peggy,

I just received an update about Ms. Arnwine's schedule. She is not available on May 9th.

Thanks,

Devon

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:24 PM ---

Margaret Sims/EAC/GOV

To: "Weinberg and Utrecht"
<weinutr@verizon.net>@GSAEXTERNAL
cc:

Subject: Re: Voting Fraud-Voter Intimidation

Barry:

Would you please provide an address to which we can Federal Express materials before the meeting? ---
"Weinberg and Utrecht" <weinutr@verizon.net>

"Weinberg and Utrecht" <weinutr@verizon.net>  
To: psims@eac.gov  
cc:  
Subject: Re: Voting Fraud-Voter Intimidation

that would be fine

----- Original Message ------
From: psims@eac.gov
To: weinutr@verizon.net
Sent: Thursday, May 04, 2006 1:08 PM
Subject: Voting Fraud-Voter Intimidation

Barry:

It appears that the afternoon of Thursday, May 18 is best for a meeting of the working group. I know you said you would not be available in the morning that day. If we started at 1 PM, would that be too soon for you?

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

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:24 PM -----
"priceline.com Customer Service" <hotel@trans.priceline.com>  
To: psims@eac.gov  
cc:  
Subject: Travel Plans for Tova Wang

Please respond to hotel@trans.priceline.com
How about we meld this with the EAC Board of Advisors meeting? I just got tagged to be parliamentarian --

We could attend to your folks while I arbitrate a food fight!!!!

Sent from Dr. D's Fabulous BlackBerry Wireless Handheld
Are you available any days in the third week of May?
Peggy

--------------------------
Sent from my BlackBerry Wireless Handheld

----- Original Message -----  
From: "Donsanto, Craig" [Craig.Donsanto@usdoj.gov]
Sent: 04/03/2006 03:16 PM
To: Margaret Sims
Subject: RE: Voting Fraud-Voter Intimidation Project

Hello Peg!

God willing, I will be here the first two weeks of May.

As for your second question, it is not possible for me to assess the level of public attribution that would be appropriate without seeing the substantive stuff in context. I do not foresee a problem. So, I recommend that you get me a draft text and I will review it to ensure we are not disclosing things we shouldn't disclose.

----- Original Message -----  
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, April 03, 2006 3:13 PM
To: Donsanto, Craig
Subject: Re: Voting Fraud-Voter Intimidation Project

Craig:

I have 2 issues for you today.

First, I am trying to schedule a meeting of the project working group for EAC's Voting Fraud-Voter Intimidation research project. As a technical advisor on this project, your attendance is particularly important to me. Would you please look at your schedule and let me know if there are any days during the first 2 weeks of May that you would NOT be available?

Second, is it OK for our consultants to refer in their report to guidance provided in the DOJ training materials? I ask this because I understood that some materials in the materials are considered confidential and we do not want to violate your confidentiality provisions. If there is a compromise position, such as having you review that portion of the consultants' report, then let me know.
Unfortunately, I have to get the Working Group together before then, so that my consultants can prepare the final report before June. (In June, I lose one of them to State employment.) In understand about the crammed schedule. This month and next are chock full.

Peggy

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

How about we meld this wit the EAC Board of Advisors meeting? I just got taged to be parliamentarian --

We could attend to your folks while I arbitrate a food fight!!!!

--------------------------
Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

-----Original Message-----
From: psims@eac.gov <psims@eac.gov>
To: Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>
Sent: Wed Apr 26 20:30:24 2006
Subject: Re: Voting Fraud-Voter Intimidation Project

Craig:
Are you available any days in the third week of May?
Hello Peg!

God willing, I will be here the first two weeks of May.

As for your second question, it is not possible for me to assess the level of public attribution that would be appropriate without seeing the substantive stuff in context. I do not foresee a problem. So, I recommend that you get me a draft text and I will review it to ensure we are not disclosing things we shouldn't disclose.

Craig:

I have 2 issues for you today.

First, I am trying to schedule a meeting of the project working group for EAC's Voting Fraud-Voter Intimidation research project. As a technical advisor on this project, your attendance is particularly important to me. Would you please look at your schedule and let me know if there are any days during the first 2 weeks of May that you would NOT be available?

Second, is it OK for our consultants to refer in their report to guidance provided in the DOJ training materials? I ask this because I understood that some materials in the materials are considered confidential and we do not want to violate your confidentiality provisions. If there is a compromis position, such as having you review that portion of the consultants' report, then let me know.
Donsanto lists four types of election fraud: schemes to purposely and corruptly register voters who either do not exist, or who are known by the putative defendant to be ineligible to vote under applicable state law; schemes to cast, record or fraudulently tabulate votes for voters who do not participate in the voting act at all; schemes to corrupt the voting act of voters who do participate in the voting act to a limited extent; and, schemes to knowingly prevent voters qualified voters from voting.

--- psims@eac.gov wrote:

> When I opened the attachment, I still had problems
> with the 4th paragraph.
> Would you please just send me that paragraph within
> the text of your
> email so that I can paste it into the document? ---
> Peggy

> "Job Serebrov" <serebrov@sbcglobal.net>
> 05/11/2006 03:49 PM
>
> To
> psims@eac.gov
> cc
>
> Subject
> Re: Literature Summary

>
I resent the review as you see at the bottom. When I opened it and sent it there was no corrupted text.

--- psims@eac.gov wrote:

Do you have text to replace the corrupted text in paragraph 4? --- Peggy

"Job Serebrov" <serebrov@sbcglobal.net>  
05/11/2006 03:17 PM

To psims@eac.gov
cc

Subject
Re: Literature Summary

--- psims@eac.gov wrote:

Tova just sent me the summary you prepared of The Federal Crime of Election Fraud by Craig Donsanto. There is something wrong in the fourth paragraph (odd characters and missing text). Can you please send a replacement fourth paragraph? You can send it in an email and I will place it in the document. --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:24 PM ---

Donetta L. Davidson/EAC/GOV
05/04/2006 03:57 PM
To Margaret Sims/EAC/GOV@EAC
cc
Peggy sorry but I am out of town on the 18th of May. Good luck

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:24 PM -----
"Job Serebrov"
<serebrov@sbcglobal.net> To psims@eac.gov
05/09/2006 03:09 PM cc
Subject Conference Call

Peggy:

I would like to get this travel issue sorted out between us before the call at 4pm. While the hotel problem is applicable to both Tova and me, the ground travel is not. In any case, I will want to read the federal regulation on this before we speak. Please either send me the regulation that states I must travel by the least expensive means and that all alternative travel cost can not exceed this or give me the site.

Thanks,

Job

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:23 PM -----
Margaret Sims/EAC/GOV
05/09/2006 03:34 PM To "Job Serebrov"
<serebrov@sbcglobal.net>@GSAEXTERNAL cc twilkey@eac.gov, jthompson@eac.gov
Subject Re: Conference Call

Job:

I'm afraid I don't have time to look up the Federal travel regulation. I can refer to GSA Form 87, which is the Federal travel authorization form that is based on the travel regulations. There are two questions on this form that would apply to your situation:

- Question 14 asks, "Is the employee making any deviations from the authorized itinerary for personal convenience, taking any annual leave or using a different mode of transportation for personal convenience?"
Question 17A asks, "Will POV be used for any travel between itinerary points? (If 'Yes', check one box below and complete item 17B.)" This is followed by one check box with a statement, "Use of POV is advantageous to the government" and another check box that states, "Use of POV is not advantageous to the government. Use of POV has been determined to be for personal convenience and reimbursement limited to constructive cost of common carrier."

Line 17B is used to note mileage rate. These provisions apply to our Commissioners, our staff, and our consultants. I understand that everyone has to make allowances for emergencies, but your emergency has not yet arrived, and may well arrive after the May 18 meeting. Furthermore, personal emergencies are considered personal matters. The government does not reimburse us for additional travel costs resulting from our need to address personal matters.

Because you are not a Federal employee and we recognize that airlines do not and hotels may not offer you government rate, we can reimburse the higher hotel rate so long as your total travel costs under the current contract do not exceed the total amount budgeted for travel reimbursement for this contract ($3,500).

Regarding the Working Group meeting, I am pleased that you recognize that convening the Working Group is a deliverable. You also should recall that the only reason Commission staff is involved in helping to set up this meeting is that you and Tova told me that the two of you did not have the resources to do it and that it would be better to have one central coordinator (i.e.; EAC). We have repeatedly talked about holding the meeting in DC because so many of our working group members are here and because we can support the meeting at EAC offices and stay within the EAC budget.

The date for the original Working Group meeting was presented by you and Tova to me in your work plan. As you know, many of the dates in the plan had to slide because the two of you indicated that you needed more time to complete the preliminary research to be presented at the meeting. Beginning in April, our teleconferences honed in on possible weeks for the meeting. May 18 is the only day all but Norcross could attend. Norcross was available only 2 days out of the three weeks we were considering. We are attempting to fill his slot with the person you recommended, Pat Rogers.

We can discuss any remaining concerns you have regarding the participation of Perez and of Pat Rogers during this afternoon’s teleconference. --- Peggy

"Job Serebrov" <serebrov@sbcglobal.net>

"Job Serebrov" <serebrov@sbcglobal.net> To psims@eac.gov
cc
Subject Conference Call

Peggy:

I would like to get this travel issue sorted out between us before the call at 4pm. While the hotel problem is applicable to both Tova and me, the ground travel is not. In any case, I will want to read the federal regulation on this before we speak. Please either send me the regulation that states I must travel by the least expensive means and that all
alternative travel cost can not exceed this or give me the site.

Thanks,

Job

Peggy:

I expect that since Norcross can't make it either you will try to get Rogers or cut one of Tova's folks.

Job

--- psims@eac.gov wrote:

> Job and Tova:
> 
> As of now, the afternoon of Thursday, May 18 appears to be the best possible date for the meeting. Norcross is not available to attend in person that day (he is available only 2 days during the first three weeks of May). We won't have confirmation of the availability of Secretary Rokita until tomorrow --- but I am hopeful.
> 
> I'll give you an update tomorrow. Maybe we can schedule a teleconference on Monday afternoon. --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:23 PM ---

"Donsanto, Craig"
<Craig.Donsanto@usdoj.gov> To psims@eac.gov
04/26/2006 09:07 PM Subject Re: Voting Fraud-Voter Intimidation Project
Peg -- I'll have check. I am pretty well clogged next month.

What do you need Peg?

--------------------------
Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

-----Original Message-----
From: psims@eac.gov <psims@eac.gov>
To: Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>
Sent: Wed Apr 26 20:30:24 2006
Subject: Re: Voting Fraud-Voter Intimidation Project

Craig:
Are you available any days in the third week of May?
Peggy

--------------------------
Sent from my BlackBerry Wireless Handheld

----- Original Message ----- 
From: "Donsanto, Craig" [Craig.Donsanto@usdoj.gov] 
Sent: 04/03/2006 03:16 PM 
To: Margaret Sims 
Subject: RE: Voting Fraud-Voter Intimidation Project

Hello Peg!

God willing, I will be here the first two weeks of May.

As for your second question, it is not possible for me to assess the level of public attribution that would be appropriate without seeing the substantive stuff in context. I do not foresee a problem. So, I recommend that you get me a draft text and I will review it to ensure we are not disclosing things we shouldn't disclose.

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, April 03, 2006 3:13 PM
To: Donsanto, Craig
Subject: Re: Voting Fraud-Voter Intimidation Project

004502
Craig:

I have 2 issues for you today.

First, I am trying to schedule a meeting of the project working group for EAC's Voting Fraud-Voter Intimidation research project. As a technical advisor on this project, your attendance is particularly important to me. Would you please look at your schedule and let me know if there are any days during the first 2 weeks of May that you would NOT be available?

Second, is it OK for our consultants to refer in their report to guidance provided in the DOJ training materials? I ask this because I understood that some materials in the materials are considered confidential and we do not want to violate your confidentiality provisions. If there is a compromise position, such as having you review that portion of the consultants' report, then let me know.

Thanks!

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

Can you help me respond to this ... and soon? --- Peggy

Peggy:

Please tell the folks there that I am not worried about a perceived breach of contract. This is a completely ridiculous statement considering the contractual requirement that the consultants convene
the Working Group and not the Commission and it never specifies where or when this is to take place. All this to say that while the contract does specify a Working Group meeting it does not specify that it must take place on any particular date or in a particular city. With that said, I have never heard of any federal travel requirements that would result in a loss of money because I decided to drive and not fly. In fact, that is why there is a an amount paid per mile. So I would like to see the federal regulation that forces me to take the least expensive transport and restricts all other ground transport costs to that figure.

As to hotels, based on Tova's research there are no rooms for under the $350 range per night. If you can find hotels that are less expensive but still carry the kind of bed I need for my back (either pillow top or a number bed) please do.

The issue of my uncle--today I have not had an update on his condition. But, as I previously stated, if he were to die or have an event while I was in DC, I would have to go to NYC meeting or no meeting.

Finally, neither Tova nor I have been satisfied about Mr. Perez and I have not been told whether Pat Rogers will be coming or one of Tova's people will not be.

In the end, I need to see the travel regulation that I requested above, I would like you to look into hotels for Tova and me that have the kind of bed I need and I would like to know about Perez and Rogers. In the mean time, I should have an update on my uncle by morning. I would also be happy to talk to Julie about the issues involved. I will take you up on your offer to process my travel expenses faster and I do not and never did expect you to get me a travel advance. I worked in international development and know what a headache those are to apply for on the state level.

Job

--- psims@eac.gov wrote:

> Job:
> >
> > Folks here are concerned that your failure to show up in person to help conduct the meeting would be a breach of contract.
> > I also am concerned about the impression that your absence will leave with the Commissioners and with the VIPs coming to this meeting.
> >
> > If you are concerned about delays in reimbursement caused by including the travel expenses in the personal services voucher, I can always process your request (with receipts) separately and earlier.
I can have staff here check to see if we can find hotel rooms at a more reasonable rate for you and Tova. (We recognize that you may not be able to obtain Federal government rate.) What I cannot do is offer a travel advance, which is not permitted for nonfederal employees, or offer to pay the difference between normal travel expenses and those incurred for personal convenience, when the latter is the higher amount.

I urge you to make your travel arrangements ASAP.

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
e-mail: psims@eac.gov

"Job Serebrov" <serebrov@sbcglobal.net>
05/08/2006 01:41 PM

To
psims@eac.gov
cc

Subject
Re: Working Group

Given the information I have Peggy, that is not going to be financially possible. First, given Tova's info about the hotels, it is too much for me to front. Two to three days in DC would run around $1000 for the hotel alone. That does not count the two days on the road to get there and two days back. Second, if I can't charge the federal per mile allowance for the entire trip to DC and back and can only get the equivalent of plane fare, I will actually loose money. I simply do not see how we can do this in person given the financial restrictions.
--- psims@eac.gov wrote:

Job:

I don't think we can put you on teleconference for 41/2 hours. We really need to have you here in person if you are to help conduct the Working Group meeting. You should make your travel arrangements ASAP. --- Peggy

---

"Job Serebrov" <serebrov@sbcglobal.net>
05/08/2006 10:14 AM

To
psims@eac.gov, wang@tcf.org
cc

Subject
Re: Working Group

Peggy:

4:00 eastern on Tuesday is fine however, given the financial restrictions that you indicated would be in place for use of my car (I would actually loose money coming to DC) and given the cost of hotels at this time (I can't afford to front these costs and wait for months to be repaid), etc, it would take a miracle for this working group meeting to take place in person. It is looking like the only way it will get done is by teleconference. I also share Tova's concern about the unknown nature of Mr. Perez.

Job

--- psims@eac.gov wrote:

Hi, Folks:
Teleconference

Are both of you available for a teleconference next Tuesday afternoon at about 4 PM EST? If this does not work for you, please suggest another date and/or time. I would like to discuss our preparations for the Working Group meeting.

Working Group Members

We have a very good person to fill the slot for the nonpartisan local election official: J.R. Perez, Elections Administrator for Guadalupe County, TX. Attached is his bio. Hope you have no objections to him. He is available on May 18. I have placed 2 calls to Pat Rogers office, but have not yet received a reply. Job, if you have any pull with him, you may want to contact him, too.

Travel Arrangements

You should make your own travel arrangements, including hotel. Travel time cannot be billed to the contract, except for hours actually worked on the contract (i.e.; reviewing materials in preparation for the meeting, and the like). Current Federal rates follow:

- Maximum Lodging = $180 per day- does not include hotel taxes (if you cannot get this rate, we have covered reasonable rates that are a little higher)
- Meals & Incidentals = $64 per day (except that it is $48 on the first and last day of travel)
- Mileage for Personally Owned Vehicle = $ .445 per mile

Under the new contract, I do not have to fill out a travel authorization for you. I can approve your trip via email. Afterwards, when you turn in your next pay voucher, you can attach the airline receipt (or mileage documentation), hotel receipt(s), and ground

004507
transportation receipts and a copy of any printed itineraries. Calculate the total travel expenses due.

Do you want me to call both Bob too?

Tova Andrea Wang
Democracy Fellow
The Century Foundation
41 East 70th Street - New York, NY 10021
phone: 212-452-7704 fax: 212-535-7534
Visit our Web site, www.tcf.org, for the latest news, analysis, opinions, and events.
Click here to receive our weekly e-mail updates.

We accidentally left it out when we emailed all the summaries

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Thursday, May 11, 2006 1:09 PM
To: serebrov@sbcglobal.net
Cc: wang@tcf.org
Subject: Literature Summary

Tova just sent me the summary you prepared of The Federal Crime of Election Fraud by Craig Donsanto. There is something wrong in the fourth paragraph (odd characters and missing text). Can you please send a replacement fourth paragraph? You can send it in an email and I will place it in the document. --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:23 PM ----
"Tova Wang"
<wang@tcf.org>
04/26/2006 05:46 PM
To psims@eac.gov
cc
Subject wg

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:23 PM ---
"Tova Wang"
<wang@tcf.org>
05/11/2006 02:10 PM
To psims@eac.gov, serebrov@sbcglobal.net
cc
Subject RE: Literature Summary

004508
He is representing Barbara Arnwine, and we have already established we are not disinviting anyone. We still don't know about Ginsburg yet anyway, right?

-----Original Message-----
From: Job Serebrov [mailto:serebrov@sbcglobal.net]
Sent: Thursday, May 11, 2006 2:36 PM
To: Tova Wang; psims@eac.gov
Cc: serebrov@sbcglobal.net
Subject: Re: new working group representative

I have an objection to Greenbaum. While I realize he comes from an advocacy group, he is not a minority attorney and we already have a rep who worked with DOJ. If it is to be Greenbaum, I would rather not fill that position since I am one down.

--- Tova Wang <wang@tcf.org> wrote:

> is Jon Greenbaum
> Here's his info in full:
> http://www.lawyerscommittee.org/2005website/aboutus/staff/staffgreenbaum.htm
> 1
>
> He is the Director of the Voting Rights Project for
> the Lawyers Committee
> for Civil Rights. He will be representing Barbara
> Arnwine, the Executive
> Director of the Lawyers Committee.
> His contact and mailing info is:
> jgreenbaum@lawyerscommittee.org
> 202-662-8315
> 1401 New York Avenue, NW
> Suite 400
> Washington, DC 20005
>
>
> Tova Andrea Wang
> Democracy Fellow
> The Century Foundation
> 41 East 70th Street - New York, NY 10021
> phone: 212-452-7704  fax: 212-535-7534
> www.tcf.org, for the latest news,
> analysis, opinions, and events.
I resent the review as you see at the bottom. When I opened it and sent it there was no corrupted text.

--- psims@eac.gov wrote:
>
> Do you have text to replace the corrupted text in paragraph 4?  --- Peggy
something wrong in the fourth paragraph (odd characters and missing text). Can you please send a replacement fourth paragraph? You can send it in an email and I will place it in the document. --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:23 PM ---

Margaret Sims/EAC/GOV
05/05/2006 01:59 PM
to "J. R. Perez" <jrperez50@sbcglobal.net>\GSAEXTERNAL
cc
subject Re: Bio for Perez

Thanks, J.R. Great to have you on board! We will get back to you shortly regarding travel arrangements. The meeting materials will be sent by Federal Express next week.

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

"J. R. Perez" <jrperez50@sbcglobal.net>

"J. R. Perez"
<jrperez50@sbcglobal.net>
05/05/2006 01:23 PM

to psims@eac.gov

c

Subject Bio for Perez

Hi Peggy, it was nice talking with you today and I would be glad to try and add to the discussion. I am attaching a brief bio and will await your instructions for the travel arrangements. I look forward to receiving the current information on panel issues.

J.R. Perez
Elections Administrator
Guadalupe County

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:23 PM ---
Barry:

Would you please provide an address to which we can Federal Express materials before the meeting? ---

Peg

Barry:

It appears that the afternoon of Thursday, May 18 is best for a meeting of the working group. I know you
said you would not be available in the morning that day. If we started at 1 PM, would that be too soon for you?

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-
email: psims@eac.gov

List a vacancy---to be filled. If we don't hear from Ginsberg by late afternoon please call Braden.

Job
--- psims@eac.gov wrote:

> Job:
> What do you suggest I do with the list of Working Group members. I need to get the Fed Ex packages out by the end of the day, and have not heard back from Ginsberg. Do you want me to list a vacancy, or list Norcross with a note that he cannot attend? If we find a substitute, we can always provide an updated list next Thursday. --- Peggy

Peggy,

A possible hotel suggestion for Job might be the Sheraton College Park in Beltsville, MD. They have room availability for the nights of the 17th and the 18th for $159.00 a night.
They have what is called the Sheraton Sweet Sleeper Bed. More information at:


This hotel is a little out of the way but the members of the Asian Language Working Group and others have stayed there. The hotel does offer a shuttle to and from Reagan airport and the metro.

Devon Romig
United States Election Assistance Commission
1225 New York Ave. NW, Suite 1100
Washington, DC 20005
202.566.2377 phone
202.566.3128 fax
www.eac.gov

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:23 PM ---

Margaret Sims/EAC/GOV
05/12/2006 01:51 PM
To Devon Romig
cc
Subject Wang & Serebov Fed Ex Info

Devon:

Here is the information you need for the Fed Ex forms for Job and Tova.

Tova Wang
201 West 74th Street, Apt 11F
New York, NY 10023
Phone: 212-362-5223
(Note that the package may be left with the doorman.)

Job Serebrov
2110 South Spring Street
Little Rock, AR 72206
Phone: 501-374-2176

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:23 PM -----

"Tova Wang"
<wang@tcf.org>
05/02/2006 05:52 PM
To psims@eac.gov
cc
Subject RE: Voting Fraud/Voter Intimidation Project Working Group

OK. I'll be out of the office for the next three days, and mostly unavailable on Thursday and Friday as you know already. Tomorrow you can try me on my cell phone 917-656-7905. I'll try to check email when I can. Thanks Peg. Tova

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 02, 2006 4:41 PM
To: wang@tcf.org

00451
Subject: RE: Voting Fraud/Voter Intimidation Project Working Group

I hope to have a better idea tomorrow, if Rokita's office responds. If not, we'd better have a teleconference to discuss our options. --- Peggy

"Tova Wang" <wang@tcf.org>

05/02/2006 05:06 PM

To dromig@eac.gov

Cc psims@eac.gov

Subject RE: Voting Fraud/Voter Intimidation Project Working Group

Can you please give me an idea where we are at with all this? I'd like to be able to figure out my schedule. Thanks -- and thanks for all your assistance on this. Tova

-----Original Message-----
From: dromig@eac.gov [mailto:dromig@eac.gov]
Sent: Tuesday, May 02, 2006 3:54 PM
To: wang@tcf.org
Subject: RE: Voting Fraud/Voter Intimidation Project Working Group

Yes, I have spoken to her assistant several times but today has been the first time that I have ever spoken to her assistant. We did get the information that we needed. Thanks for your help!

Devon Romig
U.S. Election Assistance Commission
1225 New York Ave. NW - Suite #1100
Washington, D.C. 20005
(202)566-2377

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:23 PM -----
"Tova Wang"
<wang@tcf.org>
04/26/2006 04:39 PM

To psims@eac.gov

Cc

Subject RE: interview analysis

I think I can help you at least with respect to Barbara. I'll be speaking to her today!

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Thanks. We are still trying to get through to Bauer and Arnwine. They have not responded, so their availability is not yet reflected on our spreadsheet. --- Peggy

---

Hi Peg,

Attached, to add to the collection, is a summary overview of the interviews. Do you have that spreadsheet you were telling me about reflecting the times WG participants are available? If so, maybe we can talk soon? Thanks. Tova

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

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

Click here to receive our weekly e-mail updates.

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:23 PM ---
Here is the last summary of existing research. Please let us know how to proceed from here. Thanks.

Tova Andrea Wang
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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--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:23 PM -----

Tova:  

Rokita is available --- so the afternoon of May 18 it is. I will not disinvite anyone. I am trying to get Job's next choice (Pat Rogers) as a replacement for Norcross.

Monday appears to be out for a teleconference because Job will be unavailable that afternoon and I am scheduled for something else that morning. I'll check my schedule tomorrow and send a message to you and Job regarding other possible days and times. --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:23 PM -----  

Hi Peg,

Just wondering if you had any word from Rokita. Also, I wanted to let you know that I think disinviting members of the working group would be a very unwise and frankly embarrassing way of dealing with the problem of getting 100% attendance. I'm sure we'll talk before any decisions are made. As I said, I'm free on Monday. Thanks. Tova

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:23 PM -----  

"Job Serebrov"  
<serebrov@sbcglobal.net> To
I would give him until Monday morning but I would also call Braden today and tell him there may be an opening for him on the WG and find out whether he is free.

--- psims@eac.gov wrote:

> I have placed another call to his office (after one previous call to his assistant and an email to him). I, too, am concerned about our dwindling chances. --- Peggy

"Job Serebrov" <serebrov@sbcglobal.net> 05/12/2006 03:06 PM

> To
> psims@eac.gov
> cc
> Subject
> Re: Fraud Definition
>
>
>
>
>
> Given the short time period, you may want to give Ginsberg a deadline. The longer we wait, the poorer our chances are of getting Braden.
>
> --- psims@eac.gov wrote:
>
> > I am reluctant to invite Braden until after I have received a "No" from Ginsberg. --- Peg

"Job Serebrov" <serebrov@sbcglobal.net> 05/12/2006 02:33 PM

> To
> psims@eac.gov
> cc
> Subject
> Re: Fraud Definition
Sounds good to me. If not Ginsburg try Braden.

--- psims@eac.gov wrote:

I will add "DRAFT" to the definition and, yes, the WG will have suggestions. I do plan to send packets to you and the same materials being provided to the WG. I haven't sent anything yet because I was hoping to finalize the WG list for inclusion. (Still waiting for a response from Ginsberg.)

Regarding Tova's response, we may want to have a very short meeting after the WG disperses, followed by a teleconference the following Monday afternoon. Tuesday is bad for me because I'll be out of the office attending a series of EAC meetings that begin that day. --- Peggy

"Job Serebrov" <serebrov@sbcglobal.net> 05/12/2006 12:52 PM

To psims@eac.gov, wang@tcf.org cc Subject Re: Fraud Definition

This is ok, given the fact that the WG may have suggestions. Will you be sending us the same packets that you are sending the WG? Also, I figure with Tova's response we will need to have a teleconference on the report once I return to Little Rock. We
I will need to do it that following Monday or Tuesday.

--- psims@eac.gov wrote:

Would you please take a look at the attached?

I combined both of your definitions, reformatted the list, removed a reference to the fraud having to have an actual impact on the election results (because fraud can be prosecuted without proving that it actually changed the results of the election), and taken out a couple of vague examples (e.g., reference to failing to enforce state laws --- because there may be legitimate reasons for not doing so).

I have made contact with Ben Ginsberg's office and am waiting to hear if he accepts our invitation to join the working group.

--- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:23 PM ---
Case Summaries.doc

Peggy:

Please add this to the packet.

Job

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:23 PM -----

"Job Serebrov"
<serebrov@sbcglobal.net> To psims@eac.gov
05/10/2006 11:51 AM cc
Subject Re: Update

The bed is not what I need and Beltsville is a bit far out.

--- psims@eac.gov wrote:

> Why is the hotel suggestion not workable? (I need to know as we continue our search.) -- Peg
>
>
>
> "Job Serebrov" <serebrov@sbcglobal.net>
> 05/10/2006 10:29 AM
> To
> psims@eac.gov
> cc
> Subject Update
> 
> Peggy:
> 
> Pat just e-mailed me. He has something he can't move on the 18th. So I am now down one person and still no good hotel situation. Devon's suggestion is not workable.
> 
> Job
> 
>
According to the Commissioners, you and Tova each got to pick three members of the Working Group. The Commission guidance regarding this particular member follows:

4 people from the Academic, Legal and Advocacy sectors - 2 to be chosen by Tova and 2 to be chosen by Job.

This issue of allowing a designee relates to Tova’s pick.

As I understand it, we are working on a replacement for Norcross. If Ginsberg is not viable, how about Mark Braden, who includes public integrity in his areas of specialization. I would not try and stir up other members of the Working Group, if I were you. The effort is likely to come back and bite you.

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:23 PM ---

Margaret Sims/EAC/GOV

To "Job Serebrov"
<serebrov@sbcglobal.net>@GSAEXTERNAL
cc wang@tcf.org

Subject Re: new working group representative

"Job Serebrov" <serebrov@sbcglobal.net>

"Job Serebrov"
<serebrov@sbcglobal.net>
05/11/2006 03:53 PM

To psims@eac.gov

cc

Subject Re: new working group representative

I really don't care if he represents the organization or not. What mixed race? The entire discussion was because Arnwine was African-American. If you are going to invite him without first having a replacement for my side, I may have to call Thor and Todd and discuss all of this.

--- psims@eac.gov wrote:

> Greenbaum is representing Arnwine, not replacing her. He works for her organization and is of mixed race. --- Peggy
> }>
> }>
> }>
> }>
> }>
> }>
> }>
> }>
> }>
> }>
> }>
> }>
> }>
> "Job Serebrov" <serebrov@sbcglobal.net>
> 05/11/2006 03:36 PM
> }
> }>
> }>
> }>
> "Tova Wang" <wang@tcf.org>, psims@eac.gov
> cc
I have an objection to Greenbaum. While I realize he comes from an advocacy group, he is not a minority attorney and we already have a rep who worked with DOJ. If it is to be Greenbaum, I would rather not fill that position since I am one down.

--- Tova Wang <wang@tcf.org> wrote:

> is Jon Greenbaum
> Here's his info in full:
>

> He is the Director of the Voting Rights Project for the Lawyers Committee for Civil Rights. He will be representing Barbara Arnwine, the Executive Director of the Lawyers Committee.

> His contact and mailing info is:

> jgreenbaum@lawyerscommittee.org
> 202-662-8315
> 1401 New York Avenue, NW
> Suite 400
> Washington, DC 20005

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

> www.tcf.org, for the latest news, analysis, opinions, and events.

> [mailto:join-tcfmain@mailhost.groundspring.org](mailto:join-tcfmain@mailhost.groundspring.org)
> Click here to receive our weekly e-mail updates.
Yes, please let Joyce know and she will get someone.
Tom

Tom: I understand that EAC hired a court reporter for the Asian Language Working Group meeting. I would like to do the same for the May 18 Voting Fraud-Voter Intimidation Working Group meeting, but I did not include funds in my budget for this service. Do we have funds that could be used for this purpose? (See Devon's cost estimate below.) --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 05/10/2006 10:18 AM -----
Devon E. Romig/EAC/GOV

05/10/2006 09:54 AM
To Margaret Sims/EAC/GOV@EAC
cc twilkey@eac.gov, Devon E. Romig/EAC/GOV
Subject Court reporter
Peggy,

I spoke to the people who usually handle the EAC court reporting. They charge $9.00 per page with an average of 40 pages per hour. This service would cost about $1800.00.

The turn around time for the transcript is 10 to 15 days. The transcripts comes in a bound paper copy and an electronic copy.

I can also check around for different prices.

Devon Romig
United States Election Assistance Commission
1225 New York Ave. NW, Suite 1100
Washington, DC 20005
202.566.2377 phone
202.566.3128 fax
www.eac.gov

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:23 PM ---

"Job Serebrov"
<serebrov@sbcglobal.net>
05/09/2006 10:46 AM
To psims@eac.gov
cc
Subject Fwd: RE: Working Group meeting

FYI

--- "Patrick J. Rogers" <patrogers@modrall.com> wrote:

> Subject: RE: Working Group meeting
> Date: Tue, 9 May 2006 07:42:44 -0600
> From: "Patrick J. Rogers" <patrogers@modrall.com>
> To: "Job Serebrov" <serebrov@sbcglobal.net>
> 
> Job---maybe. I will call you and/or Ms. Sims
> tomorrow. Depositions all
day today. Thanks, Pat
> 
> What's the best number to call you tomorrow?
> 
> Patrick J. Rogers
> Modrall, Sperling, Roehl, Harris & Sisk, P.A.
-----Original Message-----
From: Job Serebrov [mailto:serebrov@sbcglobal.net]
Sent: Monday, May 08, 2006 9:41 PM
To: Patrick J. Rogers
Subject: Working Group meeting

Pat:

The working group meeting for the voter fraud project is scheduled for May 18th in DC but David Norcross can't attend. Could you come? If so, we need to arrange travel and a hotel for you.

Regards,
Job

------------------------------------------------------------
Modrall, Sperling, Roehl, Harris & Sisk, P.A.
------------------------------------------------------------

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. If the reader of this message is not the intended recipient or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination or copying of this communication is strictly prohibited. If you have received this electronic transmission in error, please delete it from your system without copying it, and notify the sender by reply e-mail or by calling 505.848.1800, so that our address record can be corrected. Thank you.
As you may recall, the Commissioners directed me to find a nonpartisan local election official to serve on the Working Group. The three of us discussed the desirability of having a Hispanic. I proposed that I find someone from Texas because of that State's colorful history of voting fraud and their innovative approaches to combat it. In those Texas counties that hire Election Administrators to run elections, rather than having elected officials do so (Tax Assessor for voter registration; County Clerk for balloting), the Election Administrator is hired by the County Election Commission and is supposed to perform his or her duties in a nonpartisan manner. (See attached excerpts from Texas Election Code regarding election administrator hiring and restrictions on partisan activity.) Any experienced Texas election official will be familiar with voting fraud and voter intimidation schemes used in that State. Mr. Perez has over 13 years experience as a county Election Administrator in Texas. You won't find many news articles mentioning him because he has kept his nose clean. (The Texas press, as in many other parts of the country, prefers to report bad news.) Mr. Perez is plugged into the association of Texas election officials and the two largest organizations of election officials in this country: the International Association of Clerks, Recorders, Election Officials and Treasurers (IACREOT); and The Election Center. He is a past President and past Chairman of the Legislative Committee for the Texas Association of Election Administrators. He currently serves on IACREOT's Election Officials Committee, which plans the educational sessions for election officials that are conducted at that organization's conferences. His peers in IACREOT and The Election Center have selected his submissions on web presentations (IACREOT) and his professional practices papers (Election Center) for awards. Mr. Perez also has access to information from other States through his membership in IACREOT and The Election Center. He also has a sense of humor, which you will note if you access the staff web page on the Guadalupe County Elections web site and hear the Mission Impossible theme .. something that might be useful in the upcoming meeting.

Guadalupe County is small but growing. In 2004, the county had over 65 thousand registered voters (a number more than doubled the number of registered voters in 1988). A third of the county's population claims Hispanic or Latino origin, according to the U.S. Census Bureau. The county is in south central Texas and is bordered by Comal, Hays, Cladwell, Gonzales, Wilson, and Bexar counties. In the 1980s, the county was predominately a farming community; but in recent years, many people have moved from San Antonio (Bexar County) to Guadalupe County, preferring to live in Guadalupe County and work in Bexar County.

--- Peggy
Peggy:

What political party is Perez with? How political is he? Is the position in Texas neutral or political? Who appointed Perez?

As to Pat I will contact him but I can't promise anything. If Pat can't come, who is getting knocked off Tova's list?

Job

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:23 PM ----- 
Margaret Sims/EAC/GOV 
05/09/2006 11:38 AM 
To Tova Andrea Wang 
cc 
Subject Fw: Case Summaries 

Had you seen this? --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 05/09/2006 11:38 AM ----- 
"Job Serebrov" <serebrov@sbcglobal.net> 
05/08/2006 09:30 AM 
To psims@eac.gov 
cc 
Subject Case Summaries
The teleconference is on. However, I am still one person down for the meeting and I am not comfortable. This will have to be discussed since from the start it was agreed that the WG would be equal and if I lost a person Tova would have to lose one. Further and most importantly, I don't yet have a hotel so my attendance is still up in the air. Finally, the agenda is not what we discussed and gives far too much time for areas that can be covered in a short time. Not listed are all of the questions that Tova's proposed agenda had. All in all, it needs to be redone.

--- psims@eac.gov wrote:

> I assume that we are still on for today's
teleconference at 11 AM EST. I
> will call you. I have attached a draft agenda for
> your review and
> comment. --- Peggy
>

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:23 PM ---

Diana Scott/EAC/GOV

05/08/2006 01:52 PM

To Margaret Sims/EAC/GOV@EAC

cc dromig@eac.gov, Karen Lynn-Dyson/EAC/GOV@EAC, Edgardo Cortes/EAC/GOV@EAC

Subject Re: Working Group Travel

I have given Adventure Travel the necessary credit card authorization on this. Devon please follow-up with the reservations etc.

Diana M. Scott
Administrative Officer
U.S. Election Assistance Commission
(202) 566-3100 (office)
(202) 566-3127 (fax)
dscott@eac.gov

Margaret Sims/EAC/GOV
Diana:

The following members of the Working Group for our Voting Fraud/Voter Intimidation research project will need to make travel arrangements in order to attend an afternoon meeting of the group on May 18 in Washington, DC:

Mark "Thor" Hearne - St Louis, MO
J.R. Perez - Seguin, TX
The Honorable Todd Rokita - Indianapolis, IN
Kathy Rogers - Atlanta, GA

I may have one additional member from Albuquerque, NM confirmed early next week.

May these people use Adventure Travel to make these arrangements in the same manner as the Asian Language Working Group? I understand the members of that group made hotel and flight arrangements through Adventure Travel and that these costs were billed directly to EAC. We did plan for EAC to pay for the travel of the Voting Fraud/Voter Intimidation Working Group (budgeted under Research). Devon will prepare their travel authorizations.

Peggy Sims
Election Research Specialist
Peggy:

4:00 eastern on Tuesday is fine however, given the financial restrictions that you indicated would be in place for use of my car (I would actually lose money coming to DC) and given the cost of hotels at this time (I can't afford to front these costs and wait for months to be repaid), etc, it would take a miracle for this working group meeting to take place in person. It is looking like the only way it will get done is by teleconference. I also share Tova's concern about the unknown nature of Mr. Perez.

Job

--- psims@eac.gov wrote:

> Hi, Folks:
> Teleconference
> Are both of you available for a teleconference next Tuesday afternoon at about 4 PM EST? If this does not work for you, please suggest another date and/or time. I would like to discuss our preparations for the Working Group meeting.
> Working Group Members
> We have a very good person to fill the slot for the nonpartisan local election official: J.R. Perez, Elections Administrator for Guadalupe County, TX. Attached is his bio. Hope you have no objections to him. He is available on May 18. I have placed 2 calls to Pat Rogers office, but have not yet received a reply. Job, if you have any pull with him, you may want to contact him, too.
> Travel Arrangements
> You should make your own travel arrangements, including hotel. Travel time cannot be billed to the contract, except for hours actually worked on the contract (i.e.; reviewing materials in preparation for the meeting, and the like). Current Federal rates follow:
> Maximum Lodging = $180 per day- does not include hotel taxes (if you cannot get this rate, we have covered reasonable rates that are a little higher)
> Meals & Incidentals = $64 per day (except that it is $48 on the first and last day of travel)
> Mileage for Personally Owned Vehicle = $.445 per mile
> Under the new contract, I do not have to fill out a
travel authorization
for you. I can approve your trip via email.
Afterwords, when you turn in
your next pay voucher, you can attach the airline
receipt (or mileage
documentation), hotel receipt(s), and ground
transportation receipts and a
copy of any printed itineraries. Calculate the
total travel expenses due
you, including applicable per diem. I do not need
meal receipts.

Job, under Federal travel regulations, deviations
for personal reasons are
not normally accommodated. What you can do,
however, is to give me a
comparison of the cost of roundtrip mileage, hotel,
and per diem of doing it your way against the cost of a roundtrip flight,
ground transportation,
hotel, and per diem. If your way costs less, it
should be no problem to
cover the full cost. If your way is more expensive,
we may only pay up to
the amount of traditional travel. (The same rules
apply to me when I travel.) If you can tell me where, other than DC,
you will spend the
night, I can check on applicable per diem rates.

Peggy

Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:22 PM —

"Job Serebrov"
<serebrov@sbcglobal.net> To psims@eac.gov
05/10/2006 03:03 PM cc
Subject Option

Peggy:

I may have the only option left but it is a risk time wise. I could stay at the Baymont in Salem by Roanoke and then leave early that morning and drive into DC or to a park and ride (Metro). I would make it before 12:00 barring any unforeseen road issues. However, I would have to leave to go home right after the meeting. That would cancel the next day's meeting.

Job
I need to run to West Little Rock so you can get me on my cell if you want to talk.

501-626-0440

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:22 PM -----
Margaret Sims/EAC/GOV
05/12/2006 02:46 PM
To: Job Serebrov
cc:
Subject: Working Group List

Job:

What do you suggest I do with the list of Working Group members. I need to get the Fed Ex packages out by the end of the day, and have not heard back from Ginsberg. Do you want me to list a vacancy, or list Norcross with a note that he cannot attend? If we find a substitute, we can always provide an updated list next Thursday. --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:22 PM -----
"Tova Wang" <wang@tcf.org>
05/11/2006 04:25 PM
To: psims@eac.gov
cc:
Subject: RE: Material I may not have included

news article review

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Thursday, May 11, 2006 3:23 PM
To: wang@tcf.org
Subject: Re: Material I may not have included

Would these go under literature review or news article review? --- Peggy

"Tova Wang" <wang@tcf.org>

05/10/2006 11:45 AM
To: psims@eac.gov
cc: serebrov@sbcglobal.net, dromig@eac.gov
Subject: Material I may not have included
Peg,

Correct me if I'm wrong, but I think I omitted sending you these specific summaries that are based on complex cases that could not be adequately described within the confines of the nexis article excel spreadsheets. If we can, these should be included, probably on the disc. Sorry.

Tova Andrea Wang
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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--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:22 PM ---
Margaret Sims/EAC/GOV
05/11/2006 11:45 AM
To Job Serebrov
cc
Subject Court Case Charts

Job
In preparing the CDs, we have run across the following files that appear to be duplicates. Which ones should go on the CD? --- Peggy

Chart Election Accessible.doc Chart Vote Inaccessible.doc
ChartDenialVoterRegistrrt.doc ChartDenialVoterRegistrat2.doc
Chart Provisional BallotDen.doc Chart Provisional BallotDen2.doc

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:22 PM ---
"Job Serebrov"
<serebrov@sbcglobal.net> To psims@eac.gov
05/09/2006 12:03 PM cc
Subject Re: Working Group-Perez

Here is the issue---four of the five people who
selected Perez are Republicans. If the shoe were on the other foot I would be uncomfortable. This one is up to Tova to call but I am not sure that he can be neutral.

--- psims@eac.gov wrote:

> OK, I get it. The text in the attachment follows:
> 
> EXCERPTS FROM TEXAS ELECTION CODE
> 
> SUBCHAPTER B. COUNTY ELECTIONS ADMINISTRATOR
> 
> ***
> 
> § 31.032. APPOINTMENT OF ADMINISTRATOR; COUNTY ELECTION COMMISSION.
> 
> (a) The position of county elections administrator is filled by appointment of the county election commission, which consists of:
> 
> (1) the county judge, as chair;
> (2) the county clerk, as vice chair;
> (3) the county tax assessor-collector, as secretary; and
> (4) the county chair of each political party that made nominations by primary election for the last general election for state and county officers preceding the date of the meeting at which the appointment is made.
> 
> (b) The affirmative vote of a majority of the commission's membership is necessary for the appointment of an administrator.
> 
> (c) Each appointment must be evidenced by a written resolution or order signed by the number of commission members necessary to make the appointment. Not later than the third day after the date an administrator is appointed, the officer who presided at the meeting shall file a signed copy of the resolution or order with the county clerk. Not later than the third day after the date the copy is filed, the county clerk shall deliver a certified copy of the resolution or order to the secretary of state.
> 
> (d) The initial appointment may be made at any time after the adoption of the order creating the position.
> 
> ***
> 
> § 31.035. RESTRICTIONS ON POLITICAL ACTIVITIES.
> 
> (a) A county elections administrator may not be a candidate for a public office or an office of a political party,
hold a public office, or
hold an office of or position in a political party.
At the time an
administrator becomes a candidate or accepts an
office or position in
violation of this subsection, the administrator
vacates the position of
administrator.
(b) A county elections administrator
commits an offense if the
administrator makes a political contribution or
political expenditure, as
defined by the law regulating political funds and
campaigns, or publicly
supports or opposes a candidate for public office or
a measure to be voted
on at an election. An offense under this subsection
is a Class A
misdemeanor. On a final conviction, the
administrator's employment is
terminated, and the person convicted is ineligible
for future appointment
as county elections administrator.

"Job Serebrov" <serebrov@sbcglobal.net>
05/09/2006 11:38 AM

To
psims@eac.gov
cc

Subject
Re: Working Group-Perez

The code attachment did not work that is what I
meant
by it did not come through.

--- psims@eac.gov wrote:

> Did you look at the attached excerpts from Texas
> Code? --- Peggy

"Job Serebrov" <serebrov@sbcglobal.net>
05/09/2006 11:23 AM

To
psims@eac.gov
cc
We have the same set-up here in Arkansas. We hired a person just like Perez. However, given this, I would still like to know if he has a party affiliation and this brings up another issue. How is the county election commission chosen. In Arkansas it is the Chairmen of the Republican and Democrat Parties or if he/she does not want to serve a person is elected in his/her stead and a third member picked by the party with the most constitutional officers. Practically that has meant that the Democrats have controlled election commissions in Arkansas since the end of Reconstruction. This is why I want to know the situation in Texas.

--- psims@eac.gov wrote:

As you may recall, the Commissioners directed me to find a nonpartisan local election official to serve on the Working Group. The three of us discussed the desirability of having a Hispant. I proposed that I find someone from Texas because of that State's colorful history of voting fraud and their innovative approaches to combat it. In those Texas counties that hire Election Administrators to run elections, rather than having elected officials do so (Tax Assessor for voter registration; County Clerk for balloting), the Election Administrator is hired by the County Election Commission and is supposed to perform his or her duties in a nonpartisan manner. (See attached excerpts from Texas Election Code regarding election administrator hiring and
restrictions on partisan activity.
Any experienced Texas election official will be familiar with voting fraud and voter intimidation schemes used in that State.
Mr. Perez has over 13 years experience as a county Election Administrator in Texas. You won't find many news articles mentioning him because he has kept his nose clean. (The Texas press, as in many other parts of the country, prefers to report bad news.) Mr. Perez is plugged into the association of Texas election officials and the two largest organizations of election officials in this country: the International Association of Clerks, Recorders, Election Officials and Treasurers (IACREOT); and

--- message truncated ---

Job did this one

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Thursday, May 11, 2006 12:56 PM
To: wang@tcf.org
Subject: Re: research summaries

Something is wrong in the fourth paragraph of the Federal Election Crime summary. Do you know what it is supposed to say there?
I have the feeling we didn't include these in the original batch I sent you. Could you double check and if not, would you please include them in the existing research materials? Sorry and thanks. I'm kind of doing all of this on my own in case you couldn't tell. List is coming...

Tova Andrea Wang
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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----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:22 PM -----
Margaret Sims/EAC/GOV
05/11/2006 11:16 AM  To  Job Serebrov, Tova Andrea Wang
cc
Subject  Rev Agenda for Working Group Meeting

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:22 PM -----
Margaret Sims/EAC/GOV
05/09/2006 02:48 PM  To  Adam Ambrogi/EAC/GOV
cc
Subject  Fw: Working Group-Perez

Adam:

J.R. Perez's resume is attached, and I have forwarded my last explanatory email to Job in answer to his concerns. I will tell Tova not to contact Ray, but that she may talk with you about this issue. Thanks! ---

Peggy
As you may recall, the Commissioners directed me to find a nonpartisan local election official to serve on the Working Group. The three of us discussed the desirability of having a Hispanic. I proposed that I find someone from Texas because of that State's colorful history of voting fraud and their innovative approaches to combat it. In those Texas counties that hire Election Administrators to run elections, rather than having elected officials do so (Tax Assessor for voter registration, County Clerk for balloting), the Election Administrator is hired by the County Election Commission and is supposed to perform his or her duties in a nonpartisan manner. (See attached excerpts from Texas Election Code regarding election administrator hiring and restrictions on partisan activity.)

Any experienced Texas election official will be familiar with voting fraud and voter intimidation schemes used in that State. Mr. Perez has over 13 years experience as a county Election Administrator in Texas. You won't find many news articles mentioning him because he has kept his nose clean. (The Texas press, as in many other parts of the country, prefers to report bad news.) Mr. Perez is plugged into the association of Texas election officials and the two largest organizations of election officials in this country: the International Association of Clerks, Recorders, Election Officials and Treasurers (IACREOT); and The Election Center. He is a past President and past Chairman of the Legislative Committee for the Texas Association of Election Administrators. He currently serves on IACREOT's Election Officials Committee, which plans the educational sessions for election officials that are conducted at that organization's conferences. His peers in IACREOT and The Election Center have selected his submissions on web presentations (IACREOT) and his professional practices papers (Election Center) for awards. Mr. Perez also has access to information from other States through his membership in IACREOT and The Election Center. He also has a sense of humor, which you will note if you access the staff web page on the Guadalupe County Elections web site and hear the Mission Impossible theme .. something that might be useful in the upcoming meeting.

Guadalupe County is small but growing. In 2004, the county had over 65 thousand registered voters (a number more than doubled the number of registered voters in 1988). A third of the county's population claims Hispanic or Latino origin, according to the U.S. Census Bureau. The county is in south central Texas and is bordered by Comal, Hays, Cladwell, Gonzales, Wilson, and Bexar counties. In the 1980s, the county was predominately a farming community; but in recent years, many people have moved from San Antonio (Bexar County) to Guadalupe County, preferring to live in Guadalupe County and work in Bexar County.

--- Peggy

"Job Serebrov" <serebrov@sbcglobal.net>
Peggy:

What political party is Perez with? How political is he? Is the position in Texas neutral or political? Who appointed Perez?

As to Pat I will contact him but I can't promise anything. If Pat can't come, who is getting knocked off Tova's list?

Job

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:22 PM ---

"Job Serebrov"
<serebrov@sbcglobal.net> To psims@eac.gov
05/11/2006 04:35 PM cc
Subject Re: new working group representative

Peggy:

Braden is ok also with me but please don't tell me not to "stir up" things. I assure you nothing will come back to bite me. I know these people well enough to say they will also want a balanced group. In fact, one of them was very unhappy with Tova's folks.

Job

--- psims@eac.gov wrote:

> According to the Commissioners, you and Tova each
> got to pick three
> members of the Working Group. The Commission
> guidance regarding this
> particular member follows:
> >
> > 4 people from the Academic, Legal and Advocacy
> > sectors - 2 to be chosen by
> > Tova and 2 to be chosen by Job.
> >
> > This issue of allowing a designee relates to Tova's
> > pick.
> >
> > As I understand it, we are working on a replacement
> > for Norcross. If
> > Ginsberg is not viable, how about Mark Braden, who
> > includes public
> > integrity in his areas of specialization. I would
> > not try and stir up
other members of the Working Group, if I were you. The effort is likely to come back and bite you.

"Job Serebrov" <serebrov@sbcglobal.net> 05/11/2006 03:53 PM
To psims@eac.gov cc
Subject Re: new working group representative

I really don't care if he represents the organization or not. What mixed race? The entire discussion was because Arnwine was African-American. If you are going to invite him without first having a replacement for my side, I may have to call Thor and Todd and discuss all of this.

--- psims@eac.gov wrote:

> Greenbaum is representing Arnwine, not replacing her. He works for her organization and is of mixed race. --- Peggy

"Job Serebrov" <serebrov@sbcglobal.net> 05/11/2006 03:36 PM
To "Tova Wang" <wang@tcf.org>, psims@eac.gov cc serebrov@sbcglobal.net
Subject Re: new working group representative

I have an objection to Greenbaum. While I realize he comes from an advocacy group, he is not a minority attorney and we already have a rep who worked with
DOJ. If it is to be Greenbaum, I would rather not fill that position since I am one down.

--- Tova Wang <wang@tcf.org> wrote:

> > is Jon Greenbaum
> >
> > Here's his info in full:
> >
> >
> http://www.lawyerscommittee.org/2005website/aboutus/staff/staffgreenbaum.htm
> >
> >
> > l
> >
> > He is the Director of the Voting Rights Project for the Lawyers Committee for Civil Rights. He will be representing Barbara Arnwine, the Executive Director of the Lawyers Committee.
> >
> > His contact and mailing info is:
> >
> > jgreenbaum@lawyerscommittee.org 202-662-8315
> > 1401 New York Avenue, NW Suite 400
> > Washington, DC 20005
> >
> >
> > Tova Andrea Wang
> > Democracy Fellow
> > The Century Foundation
> > 41 East 70th Street - New York, NY 10021
> > phone: 212-452-7704  fax: 212-535-7534
> >
> > www.tcf.org, for the latest news, analysis, opinions, and events.
> >
> > <mailto:join-tcfmain@mailhost.groundspring.org>
> > Click here to receive our weekly e-mail updates.
When I opened the attachment, I still had problems with the 4th paragraph. Would you please just send me that paragraph within the text of your email so that I can paste it into the document? --- Peggy

I resent the review as you see at the bottom. When I opened it and sent it there was no corrupted text.

--- psims@eac.gov wrote:

> Do you have text to replace the corrupted text in paragraph 4? --- Peggy
> 
> "Job Serebrov" <serebrov@sbcglobal.net>
> 05/11/2006 03:17 PM
> 
> To
> psims@eac.gov
> cc
> 
> Subject
> Re: Literature Summary
> 
> --- psims@eac.gov wrote:
Tova just sent me the summary you prepared of The Federal Crime of Election Fraud by Craig Donsanto. There is something wrong in the fourth paragraph (odd characters and missing text). Can you please send a replacement fourth paragraph? You can send it in an email and I will place it in the document. --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:22 PM ---
"Job Serebrov"
<serebrov@sbcglobal.net> To psims@eac.gov
04/24/2006 12:41 PM cc
Subject Re: Voucher

Ok. Thanks

--- psims@eac.gov wrote:

> Job:
> > I've signed and submitted your voucher. I had to correct the contract date. (It is 2/26/06, not 4/22/06.) Everything else looked great. --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:22 PM ---
Margaret Sims/EAC/GOV
05/09/2006 02:51 PM To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL cc Adam Ambrogi/EAC/GOV@EAC
Subject RE: Working Group-Perez

We are still on for 4 PM. Ray is out of the office due to a family emergency, so I suggest you NOT contact him. You may contact his Special Assistant, Adam Ambrogi (aambrogi@eac.gov or 202-566-3105), who also hails from Texas. --- Peggy

"Tova Wang" <wang@tcf.org>

"Tova Wang" <wang@tcf.org> To psims@eac.gov, serebrov@sbcglobal.net cc
We are still doing the 4 pm call, right? We can discuss it more then. Would it be OK if I see if Ray knows this person? Thanks. Tova

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 09, 2006 10:14 AM
To: serebrov@sbcglobal.net
Cc: wang@tcf.org
Subject: Re: Working Group-Perez

As you may recall, the Commissioners directed me to find a nonpartisan local election official to serve on the Working Group. The three of us discussed the desirability of having a Hispanic. I proposed that I find someone from Texas because of that State's colorful history of voting fraud and their innovative approaches to combat it. In those Texas counties that hire Election Administrators to run elections, rather than having elected officials do so (Tax Assessor for voter registration; County Clerk for balloting), the Election Administrator is hired by the County Election Commission and is supposed to perform his or her duties in a nonpartisan manner. (See attached excerpts from Texas Election Code regarding election administrator hiring and restrictions on partisan activity.)

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--- Peggy
Peggy:

What political party is Perez with? How political is he? Is the position in Texas neutral or political? Who appointed Perez?

As to Pat I will contact him but I can't promise anything. If Pat can't come, who is getting knocked off Tova's list?

Job

---- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:22 PM ----
Margaret Sims/EAC/GOV
05/12/2006 10:10 AM
To bginsberg@pattonboggs.com
cc
Subject Voting Fraud-Voter Intimidation Working Group

Dear Mr. Ginsberg:

This is to confirm my call to your office this morning inviting you to be a member of and attend the upcoming meeting of the U.S. Election Assistance Commission's (EAC) Working Group on Voting Fraud-Voter Intimidation. The meeting is scheduled to take place from 1:00 PM to 5:30 PM on Thursday, May 18th, 2006 at the offices of the U.S. Election Assistance Commission (EAC), 1225 New York Avenue, NW, 11th Floor, Washington, DC.

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 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 the agency make research on these matters a high priority. Subsequently, the Commission contracted with two consultants (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;

We strive to include bipartisan representation on the Working Group associated with this project. You were recommended for this project by our Republican consultant, Job Serebrov. Your ideas for possible EAC activities related to this topic will help the agency as it plans future actions to meet its HAVA responsibilities.

If you can find the time in your busy schedule to participate, I will have an information packet delivered to your office by COB, Monday, May 15. Please let me know if you are available. Thank you.

Regards,

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

--- Forwaded by Margaret Sims/EAC/GOV on 04/30/2007 04:22 PM ---
Margaret Sims/EAC/GOV
05/10/2006 09:25 AM
To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL
cc
Subject Re: arnwine

I'm checking on this. Will get back to you as soon as I have more info. --- Peggy

"Tova Wang" <wang@tcf.org>

"Tova Wang" <wang@tcf.org>
05/09/2006 05:28 PM
To psims@eac.gov
cc
Subject arnwine
She definitely cannot do it. Would you please find out if Wade Henderson would be possible? Now it's my turn to be upset!!! Thanks.

Tova Andrea Wang
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.
• Signals are often in and out and the audio bridging equipment cannot compensate fast enough by adjusting the signal. This affects all participants connected. If participants must use a cell phone – they should be stationary in a location where they can pick up the other participants, moving while using a cell phone causes the signal to go in and out and often will pick up extraneous electrical signals that will cause heavy static on the call.

• The cell phone should be well charged and muted, if possible, until the individual is ready to speak.

• If there is a problem, anybody who dials into a conference can contact the operator/technicians by simply pressing *0 (star zero). This information is part of the recording when individuals are dialing in.

If you have any problems accessing the teleconference, please call Edgardo Cortés. You can reach him at 1-866-747-1471 (toll-free) or 202-566-3126. He can contact our service provider to correct any problems. (I will be on my way to Seattle and unable to help.)

Thanks, again!

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

---- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:28 PM ----

"Tova Wang"
<wang@tcf.org>
04/21/2006 11:05 AM
To psims@eac.gov, "Job Serebrov" <serebrov@sbcglobal.net>
cc Subject summaries of interviews

Part 1. I'm going to try not to overload

Tova Andrea Wang
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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Interview Justice Stratton.doc Interview w Tony Sirvello FINAL.doc
Yes but it needs to go no longer than 30 mins

--- psims@eac.gov wrote:

> Are you two still available for the conference call we had scheduled for
> this afternoon at 4 PM EST/3 PM CST? --- Peg

Yes, she is the assistant to David A. Norcross and she is unavailable until Monday. I spoke with the woman who is filling in for her this week and she does not have access to Mr. Norcross's schedule.

Was this message sent to someone's assistant? We have no one named Rivers on our working group. Peggy
Ms. Rivers,

My name is Devon Romig and I am writing to you on behalf of the Election Assistance Commission. I believe that you have been contacted previously by our consultant Job Serebrov about the Voting Fraud/Voter Intimidation Project Working Group that we are organizing.

We are in the process of setting a date for this event and we would appreciate any suggestions that you may contribute based upon Mr. Norcross's availability in the month of May. The proposed dates are May 1, 2, 3, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19. The meeting will only last for one day. Please let me know any and all of the listed dates that will work with Mr. Norcross's schedule.

Also, I tried to contact you by phone but I received a disconnected notification. Could you please provide me with your most current contact information?

Feel free to call or email me with any questions.

Thanks!

Devon Romig
U.S. Election Assistance Commission
1225 New York Ave. NW - Suite #1100
Washington, D.C. 20005
(202)566-2377

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:28 PM -----
Tova Andrea Wang
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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absentee nexis chart 2.xls 'dead' voters and multiple voting nexis chart.xls deceptive practices nexis chart.xls

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absentee nexis chart 2.xls 'dead' voters and multiple voting nexis chart.xls deceptive practices nexis chart.xls
It
vote buying nexis chart.xls voter registration fraud nexis chart.xls Wrongful Removal from Registration Lists.xls Nexis Analysis.doc

------ Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:28 PM ------

"Tova Wang"
<wang@tcf.org>
04/21/2006 11:22 AM
To psims@eac.gov, "Job Serebrov" <serebrov@sbcglobal.net>
cc
Subject methodology review

Tova Andrea Wang
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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methodology -- official.doc

------ Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:28 PM ------

"Tova Wang"
<wang@tcf.org>
04/21/2006 11:07 AM
To psims@eac.gov, "Job Serebrov" <serebrov@sbcglobal.net>
cc
Subject interview with Doug Webber — correct version

I sent the wrong version! Please use this one.

Tova Andrea Wang
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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And there will be one more forthcoming next week.

Tova Andrea Wang
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Visit our Web site, www.tcf.org, for the latest news, analysis, opinions, and events.
Was this message sent to someone's assistant? We have no one named Rivers on our working group.

Peggy

Sent from my BlackBerry Wireless Handheld
Devon E. Romig

From: Devon E. Romig
Sent: 04/19/2006 12:24 PM
To: [Redacted]
Cc: Margaret Sims
Subject: Voting Fraud/Voter Intimidation Project Working Group

Ms. Rivers,

My name is Devon Romig and I am writing to you on behalf of the Election Assistance Commission. I believe that you have been contacted previously by our consultant Job Serebrov about the Voting Fraud/Voter Intimidation Project Working Group that we are organizing.

We are in the process of setting a date for this event and we would appreciate any suggestions that you may contribute based upon Mr. Norcross's availability in the month of May. The proposed dates are May 1, 2, 3, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19. The meeting will only last for one day. Please let me know any and all of the listed dates that will work with Mr. Norcross's schedule.

Also, I tried to contact you by phone but I received a disconnected notification. Could you please provide me with your most current contact information?

Feel free to call or email me with any questions.

Thanks!

Devon Romig
U.S. Election Assistance Commission
1225 New York Ave. NW - Suite #1100
Washington, D.C. 20005
(202)566-2377
Tova Andrea Wang  
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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Interview with Heather Dawn Thompson.doc  
Interview with Jason Torchinsky final.doc  
Interview with Joe Rich.doc  
Interview with Joe SandlerFINAL.doc  
Interview with John Ravitz.doc  
Interview with John Tanner.doc  
Interview with Kevin Kennedy.doc

Diana:

This is just to let you know that I have requested a teleconference on Wednesday, April 19, from 11 AM to Noon EST. I asked for 6 lines to accommodate our research consultants and the folks that they will be interviewing for our Voting Fraud/Voter Intimidation project.

Peggy Sims  
Election Research Specialist

04/17/2006 04:39 PM  
To Diana Scott  
cc

Subject Teleconference Requested  

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:27 PM -----  
"Tova Wang"  
<wang@tcf.org>  
04/17/2006 12:28 PM  
To psims@eac.gov  
cc

Subject RE: Interviews

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:27 PM -----  
Margaret Sims/EAC/GOV  
04/17/2006 04:39 PM  
To Diana Scott  
cc

Subject Teleconference Requested

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:28 PM -----  
"Tova Wang"  
<wang@tcf.org>  
04/21/2006 11:07 AM  
To psims@eac.gov, "Job Serebrov" <serebrov@sbcglobal.net>  
cc

Subject summaries of interviews 2
I know you preferred Friday, but Job is not available then. He also said he is not available next week. Do you have any time available this Wednesday? --- Peggy

I can't do it Friday but Wednesday is ok.

--- psims@eac.gov wrote:

> Tova and Job:
> > I've passed Tova's request on to Craig.
> > Also, Sarah Ball Johnson, KY, finally called back to say she would be available Wednesday through Friday this week and next week for the interview. Which day and time is best for you and Job?
> > --- Peggy
> >
> > wang@tcf.org
> > 04/16/2006 11:39 AM
> > To
> > psims@eac.gov
> > cc
> > "Tova Wang" <wang@tcf.org>
Hi Peg,

Happy Easter!

Would it be possible to talk to Mr. Donsanto about this latest initiative, or somehow get more information? Thanks. Tova

http://www.fbi.gov/page2/april06/electioncrime041406.htm

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:27 PM ---
"Tova Wang" <wang@tcf.org> To psims@eac.gov, serebrov@sbcglobal.net
04/17/2006 04:53 PM cc
Subject interview analysis

Tova Andrea Wang
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.

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:27 PM ---
"Donsanto, Craig" <Craig.Donsanto@usdoj.gov> To psims@eac.gov
05/03/2006 11:56 AM cc
Subject Re: Voting Fraud-Voter Intimidation

Hi Peg. I am sitting here with Cameron Quinn putting together this year's
ballt conference for AUSAs. She send her best!

I am available on 5/18. But I am also going to the Board of Advisors Meeting the following week. I would rather do this then.

Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

-----Original Message-----
From: psims@eac.gov <psims@eac.gov>
To: Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>
Sent: Wed May 03 11:39:50 2006
Subject: Voting Fraud-Voter Intimidation

Craig:

We are continuing our efforts to hone in on a date for the Working Group meeting. Are you available the afternoon of Thursday, May 18?

Peggy Sims
Election Research Specialist
U.S. Election Assistance Commission

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:27 PM -----
Devon E. Romig/EAC/GOV
05/10/2006 09:54 AM

To Margaret Sims/EAC/GOV@EAC

cc

Subject Court reporter

Peggy,

I spoke to the people who usually handle the EAC court reporting. They charge $9.00 per page with an average of 40 pages per hour. This service would cost about $1800.00.

The turn around time for the transcript is 10 to 15 days. The transcripts comes in a bound paper copy and an electronic copy.

I can also check around for different prices.

Devon Romig
United States Election Assistance Commission
1225 New York Ave. NW, Suite 1100
Washington, DC 20005
202.566.2377 phone
202.566.3128 fax
www.eac.gov

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:27 PM -----

wang@tcf.org
05/05/2006 09:17 PM

To psims@eac.gov, serebrov@sbcglobal.net
cc
Literally, there is not a hotel room to be found in the district on these dates. The only thing I could find was a room for $379 a night. I have booked it and will assume that since we are so under-budget on travel that this will be OK.

----- Original Message ----- 
From: psims@eac.gov 
To: wang@tcf.org ; serebrov@sbcglobal.net 
Cc: dromig@eac.gov 
Sent: Friday, May 05, 2006 2:32 PM 
Subject: Working Group

Hi, Folks:

Teleconference
Are both of you available for a teleconference next Tuesday afternoon at about 4 PM EST? If this does not work for you, please suggest another date and/or time. I would like to discuss our preparations for the Working Group meeting.

Working Group Members
We have a very good person to fill the slot for the nonpartisan local election official: J.R. Perez, Elections Administrator for Guadalupe County, TX. Attached is his bio. Hope you have no objections to him. He is available on May 18. I have place 2 calls to Pat Rogers office, but have not yet received a reply. Job, if you have any pull with him, you may want to contact him, too.

Travel Arrangements
You should make your own travel arrangements, including hotel. Travel time cannot be billed to the contract, except for hours actually worked on the contract (i.e.; reviewing materials in preparation for the meeting, and the like). Current Federal rates follow:

Maximum Lodging = $180 per day- does not include hotel taxes (if you cannot get this rate, we have covered reasonable rates that are a little higher)
Meals & Incidentals = $64 per day (except that it is $48 on the first and last day of travel)
Mileage for Personally Owned Vehicle = $.445 per mile

Under the new contract, I do not have to fill out a travel authorization for you. I can approve your trip via email. Afterwords, when you turn in your next pay voucher, you can attach the airline receipt (or mileage documentation), hotel receipt(s), and ground transportation receipts and a copy of any printed itineraries. Calculate the total travel expenses due you, including applicable per diem. I do not need meal receipts.

Job, under Federal travel regulations, deviations for personal reasons are not normally accommodated. What you can do, however, is to give me a comparison of the cost of roundtrip mileage, hotel, and per diem of doing it your way against the cost of a roundtrip flight, ground transportation, hotel, and per diem. If your way costs less, it should be no problem to cover the full cost. If your way is more expensive, we may only pay up to the amount of traditional travel. (The same rules apply to me when I travel.) If you can tell me where, other than DC, you will spend the night, I can check on applicable per diem rates.
OK, I will include all on the CD. Thanks. ---- Peggy

"Job Serebrov" <serebrov@sbcglobal.net>

All. They are not duplicates. There are some cases repeated and some not. It is a slight variant of the word search.

--- psims@eac.gov wrote:

> Job
> In preparing the CDs, we have run across the
> following files that appear
> to be duplicates. Which ones should go on the CD?
> --- Peggy
> 
> 
> 

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:27 PM ----

"Tova Wang"
<wang@tcf.org>

05/11/2006 12:06 PM

To psims@eac.gov
cc dromig@eac.gov, serebrov@sbcglobal.net, "Tova Wang"
<wang@tcf.org>
Subject list of interviewees
Thank you, Peg - - see you then.

The meeting is scheduled for Thursday, May 18, 1-5:30 PM (though we may finish earlier). It will be held in EAC's large conference room (the one we use for public meetings, located off our lobby). --- Peggy

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

05/05/2006 12:43 PM

To: psims@eac.gov

cc: psims@eac.gov

Subject: RE: Please remind me of time and place for Voter Intimidation project meeting

---

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Friday, May 05, 2006 12:53 PM
To: Donsanto, Craig
Subject: RE: Please remind me of time and place for Voter Intimidation project meeting

The meeting is scheduled for Thursday, May 18, 1-5:30 PM (though we may finish earlier). It will be held in EAC's large conference room (the one we use for public meetings, located off our lobby). --- Peggy
If you tell me now I will put it into my calendar here, which in turn will remind me!

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Friday, May 05, 2006 12:42 PM
To: Donsanto, Craig
Subject: Re: Please remind me of time and place for Voter Intimidation project meeting

How many days in advance do you need the reminder? -- Peggy

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

Did Barbara Arnwine's office indicate who they propose to send in her place? --- Peggy

"Job Serebrov"
<serebrov@sbcglobal.net>
05/10/2006 02:35 PM
To: psims@eac.gov
cc
Subject: Latham
The Latham is booked solid. I called. I am checking out some possibilities but this is not looking good.

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:27 PM ----- 
Margaret Sims/EAC/GOV  
05/10/2006 03:20 PM  
To "Job Serebrov"  
<serebrov@sbcglobal.net> @GSAEXTERNAL  
cc  
Subject Re: Latham

One source suggests the Georgetown Inn has vacancies and pillow top beds. Try 1-800-424-2979 or 202-353-8900.

"Job Serebrov" <serebrov@sbcglobal.net> 

"Job Serebrov"  
<serebrov@sbcglobal.net>  
05/10/2006 02:35 PM  
To psims@eac.gov  
cc  
Subject Latham

The Latham is booked solid. I called. I am checking out some possibilities but this is not looking good.

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:27 PM ----- 
Margaret Sims/EAC/GOV  
05/11/2006 10:06 AM  
To Tova Andrea Wang, Job Serebrov  
cc  
Subject Today's Teleconference

I assume that we are still on for today's teleconference at 11 AM EST. I will call you. I have attached a draft agenda for your review and comment. --- Peggy

Agenda 5-18-06 Mtg-draft.doc
This is ok, given the fact that the WG may have suggestions. Will you be sending us the same packets that you are sending the WG? Also, I figure with Tova’s response we will need to have a teleconference on the report once I return to Little Rock. We will need to do it that following Monday or Tuesday.

--- psims@eac.gov wrote:

> Would you please take a look at the attached? I combined both of your definitions, reformatted the list, removed a reference to the fraud having to have an actual impact on the election results (because fraud can be prosecuted without proving that it actually changed the results of the election), and taken out a couple of vague examples (e.g.; reference to failing to enforce state laws --- because there may be legitimate reasons for not doing so).
> I have made contact with Ben Ginsberg's office and am waiting to hear if he accepts our invitation to join the working group.
> --- Peggy
>

Yes. My wife is a vegetarian and I can't eat wheat products and don't eat pork. Non-toxic Oriental seems to always work. I did not cc Tova on this until I received your reaction. You probably want to include
Hi Devon:
We have heard from Mark Hearne and Todd Rokita. They are both flying in and out on the 18th and will not need hotel rooms. We're kind of waiting to see if Perez and Rogers need rooms before booking any hotel. As soon as we get approval of Hearne and Rokita air schedules and get them booked, we'll forward their itineraries to you.

Kind Regards,
Marvin

-----Original Message-----
From: dromig@eac.gov [mailto:dromig@eac.gov]
Sent: Tuesday, May 09, 2006 8:31 AM
To: marvin.brokaw@adtrav.com
Cc: psims@eac.gov
Subject: May 18th Meeting at EAC

Hello Marvin,

I just wanted to follow up with the voicemail message that I left for you yesterday. We will be holding a meeting at our offices in Washington DC on May 18, 2006. I have informed the out of state attendees to contact you for their travel arrangements.

We have been authorized to pay for the attendees airfare and hotel arrangements. Please note
that all of the participants are authorized for a two night hotel room stay, as long as the dates are May 17th and 18th.

I attached the list of the meeting participants that will be contacting you about their travel arrangements for the May 18th meeting in Washington DC.
Let me know if you have any questions for me or if you need any more information from me.

Thanks for your help!

Devon Romig
United States Election Assistance Commission
1225 New York Ave. NW, Suite 1100
Washington, DC 20005
202.566.2377 phone
202.566.3128 fax
www.eac.gov

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:27 PM ---
Devon E. Romig/EAC/GOV
05/03/2006 03:23 PM To Margaret Sims/EAC/GOV@EAC
                           cc
                           Subject David Norcross

Peggy,

I just spoke to Mr. Norcross's assistant, he cannot attend the meeting on the 18th, he will be out of town at another event.

Devon Romig
U.S. Election Assistance Commission
1225 New York Ave. NW - Suite #1100
Washington, D.C. 20005
(202)566-2377
--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:27 PM ---
"Donsanto, Craig"
<Craig.Donsanto@usdoj.gov> To psims@eac.gov
                           cc
                           Subject Re: Voting Fraud-Voter Intimidation

Peggy -- they don't have anything to do with the Leadership Conference on Civil Rights do they?

I ask only because the Justice Department is currently engaged in a very acrimonious FOIA litigation with LCCR that focuses precisely on our efforts to combat voter "intimidationm"
It is just the Working Group for the Voting Fraud-Voter Intimidation Project. I am asking you to attend as Technical Advisor for the project. --- Peggy

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

05/04/2006 03:26 PM
To
psims@eac.gov
cc
Subject
RE: Voting Fraud-Voter Intimidation

Peg -- what is the name of the group?

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Thursday, May 04, 2006 3:13 PM
To: Donsanto, Craig
Subject: RE: Voting Fraud-Voter Intimidation

Craig:

This meeting is being held to obtain input from our eight-member Working Group for the project. The group is composed of election lawyers, election officials, and a representative of an advocacy group, all of whom have an interest and some expertise in the identification and/or prosecution of voting fraud and voter intimidation. The group was chosen so that we would have an equal number of folks on each side of the political spectrum, plus some nonpartisan members.

After our consultants review the results of their preliminary research (interviews, literature review, case law), we will ask the Working Group to brainstorm possible next steps for EAC. Our consultants will write a report summarizing the proposals that come out of this meeting. The report will go to the Commissioners, who will decide what they want to do, funds available, and what priority to assigned to the effort(s).
Your participation in this part of the process is extremely important, so I am very happy that you can find time for us that afternoon. I'll get an agenda and other information to you next week. --- Peggy

"Donsanto, Craig" <Craig.Donsanto@usdoj.gov>
05/04/2006 02:32 PM
To
psims@eac.gov
cc
Subject
"RE: Voting Fraud-Voter Intimidation"

Okay, Peg -- I will mark off the entire afternoon and try to be there. What is the agenda? I was not aware that this was anything beyond having your contractors spend another session with me. Also, if they will be needing stats and stuff like that I need to know as I will bring my state-people with me.

From: psims@eac.gov
Sent: Thursday, May 04, 2006 2:28 PM
To: Donsanto, Craig
Subject: Re: Voting Fraud-Voter Intimidation

Right now, we are planning to meet in EAC's large conference room between 1 PM and 5 PM. If you cannot be there for the whole afternoon, we will appreciate whatever time you can spare. I'll get back to you with more information (agenda, list of Working Group members, etc.). --- Peggy

"Donsanto, Craig" <Craig.Donsanto@usdoj.gov>
05/03/2006 05:59 PM
To
psims@eac.gov
Subject: Re: Voting Fraud-Voter Intimidation

Afternoon of May 18 @ 2:30 okay? How long will they need??
-----------------------------
Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

----Original Message----
From: psims@eac.gov <psims@eac.gov>
To: Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>
Sent: Wed May 03 16:59:09 2006
Subject: Re: Voting Fraud-Voter Intimidation

I am looking at the afternoon of 5/18 for the meeting, due to scheduling conflicts of Working Group members. There remain two members from whom we have not yet received confirmations of their schedule (with some, it is like pulling teeth), but right now 5/18 still looks like the best day. We may have to hold the meeting over here to make it easier for Commissioners to drop in.
--- Peg

"Donsanto, Craig" <Craig.Donsanto@usdoj.gov>
05/03/2006 12:53 PM
To
cc
Subject: Re: Voting Fraud-Voter Intimidation

Okay -- you are on for May 18th! Can we do it over here at 10?
-----------------------------
Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

004572
My problem is that agency staff is booked most of the week of 5/21. Monday through Wednesday are taken up with meetings of the Standards Board Executive Committee, the full Standards Board, and the Board of Advisors. Thursday, we have EAC's public meeting. Also, I will lose one of my two consultants in June, so I'm trying to wrap up this project (and get the final report from the consultants) by the end of May.

Say "Hi" to Cameron for me.

Hi Peg. I am sitting here with Cameron Quinn putting together this year's ballot conference for AUSAs. She send her best!

I am available on 5/18. But I am also going to the Board of Advisors Meeting the following week. I would rather do this then.

---

Craig: We are continuing our efforts to hone in on a date for the Working Group meeting. Are you available the afternoon of Thursday, May 18?

Peggy Sims
Election Research Specialist
U.S. Election Assistance Commission
On another note entirely, since traffic will be bad going to Roanoke, do you want to have a dinner meeting with Tova and me after the group meeting to discuss the final report? As long as we are out by 7 or so I am ok with it. Also, my wife would have to be there as she will be meeting me after the WG.

--- psims@eac.gov wrote:

> According to the Commissioners, you and Tova each got to pick three members of the Working Group. The Commission guidance regarding this particular member follows:
> 4 people from the Academic, Legal and Advocacy sectors - 2 to be chosen by Tova and 2 to be chosen by Job.
> This issue of allowing a designee relates to Tova's pick.
> As I understand it, we are working on a replacement for Norcross. If Ginsberg is not viable, how about Mark Braden, who includes public integrity in his areas of specialization. I would not try and stir up other members of the Working Group, if I were you. The effort is likely to come back and bite you.

"Job Serebrov" <serebrov@sbcglobal.net>
05/11/2006 03:53 PM
To psims@eac.gov  
cc  
Subject  
Re: new working group representative  

I really don't care if he represents the organization or not. What mixed race? The entire discussion was because Arnwine was African-American. If you are going to invite him without first having a replacement for my side, I may have to call Thor and Todd and discuss all of this. 

--- psims@eac.gov wrote:  

> Greenbaum is representing Arnwine, not replacing her. He works for her organization and is of mixed race. --- Peggy

> "Job Serebrov" <serebrov@sbcglobal.net>  
> 05/11/2006 03:36 PM  
> To  
> "Tova Wang" <wang@tcf.org>, psims@eac.gov  
> cc serebrov@sbcglobal.net  
> Subject  
> Re: new working group representative  

> I have an objection to Greenbaum. While I realize he comes from an advocacy group, he is not a minority attorney and we already have a rep who worked with DOJ. If it is to be Greenbaum, I would rather not fill that position since I am one down. 

--- Tova Wang <wang@tcf.org> wrote:  

> is Jon Greenbaum  
> Here's his info in full:
He is the Director of the Voting Rights Project for the Lawyers Committee for Civil Rights. He will be representing Barbara Arnwine, the Executive Director of the Lawyers Committee. His contact and mailing info is:

jgreenbaum@lawyerscommittee.org
202-662-8315
1401 New York Avenue, NW
Suite 400
Washington, DC 20005

Tova Andrea Wang
Democracy Fellow
The Century Foundation
41 East 70th Street - New York, NY 10021
phone: 212-452-7704 fax: 212-535-7534
www.tcf.org, for the latest news, analysis, opinions, and events.

<mailto:join-tcfmain@mailhost.groundspring.org>
Click here to receive our weekly e-mail updates.
Dinner sounds like a great idea. Do either of you have any dietary restrictions or preferences? (I seem to recall that Tova would prefer a place that has vegetarian options). I'll try to locate a nearby place that won't bust the budget. --- Peggy

"Job Serebrov" <serebrov@sbcglobal.net>

On another note entirely, since traffic will be bad going to Roanoke, do you want to have a dinner meeting with Tova and me after the group meeting to discuss the final report? As long as we are out by 7 or so I am ok with it. Also, my wife would have to be there as she will be meeting me after the WG.

--- psims@eac.gov wrote:

> According to the Commissioners, you and Tova each
> got to pick three
> members of the Working Group. The Commission
> guidance regarding this
> particular member follows:
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> > Tova and 2 to be chosen by Job.
> > This issue of allowing a designee relates to Tova's
> > pick.
> > As I understand it, we are working on a replacement
> > for Norcross. If
> > Ginsberg is not viable, how about Mark Braden, who
> > includes public
> > integrity in his areas of specialization. I would
> > not try and stir up
> > other members of the Working Group, if I were you.
> > The effort is likely
> > to come back and bite you.
> >
> > "Job Serebrov" <serebrov@sbcglobal.net>
I really don't care if he represents the organization or not. What mixed race? The entire discussion was because Arnwine was African-American. If you are going to invite him without first having a replacement for my side, I may have to call Thor and Todd and discuss all of this.

--- psims@eac.gov wrote:

> Greenbaum is representing Arnwine, not replacing her. He works for her organization and is of mixed race. --- Peggy

"Job Serebrov" <serebrov@sbcglobal.net> wrote:

I have an objection to Greenbaum. While I realize he comes from an advocacy group, he is not a minority attorney and we already have a rep who worked with DOJ. If it is to be Greenbaum, I would rather not fill that position since I am one down.

--- Tova Wang <wang@tcf.org> wrote:

Here's his info in full:
He is the Director of the Voting Rights Project for the Lawyers Committee for Civil Rights. He will be representing Barbara Arnwine, the Executive Director of the Lawyers Committee.

His contact and mailing info is:

jgreenbaum@lawyerscommittee.org
202-662-8315
1401 New York Avenue, NW
Suite 400
Washington, DC 20005

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


<mailto:join-tcfmain@mailhost.groundspring.org>
Click here to receive our weekly e-mail updates.

---- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:27 PM ----
"Tova Wang"
<wang@tcf.org>
05/09/2006 11:45 AM
To psims@eac.gov
cc
yes

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 09, 2006 10:38 AM
To: wang@tcf.org
Subject: Fw: Case Summaries

Had you seen this? --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 05/09/2006 11:38 AM -----
"Job Serebrov" <serebrov@sbcglobal.net>

05/08/2006 09:30 AM

Peggy:

Please add this to the packet.

Job

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:27 PM -----
"Job Serebrov" <serebrov@sbcglobal.net> To psims@eac.gov
cc

05/12/2006 03:45 PM

Subject Re: Good News

I'm thankful it all worked out.

--- psims@eac.gov wrote:

> Ginsberg has accepted our invitation! --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:27 PM -----
Devon E. Romig/EAC/GOV
Peggy,

I just spoke to Valerie Johnson, Ms. Arnwine's assistant. The following are a list of dates that are possible for her attendance:

8th - PM (2pm to 6pm)
9th - Possible PM
16th - PM (1:30pm - 5:30pm)
17th - All day*
18th - All day*
19th - All day*

*All day availability does not begin until after 9:30 or 10:00 AM

I will update this information on the shared drive.

Thanks,

Devon

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:27 PM ---

"Job Serebrov"
<serebrov@sbcglobal.net> To psims@eac.gov, wang@tcf.org
05/08/2006 10:14 AM cc
Subject Re: Working Group

Peggy:

4:00 eastern on Tuesday is fine however, given the financial restrictions that you indicated would be in place for use of my car (I would actually lose money coming to DC) and given the cost of hotels at this time (I can't afford to front these costs and wait for months to be repaid), etc, it would take a miracle for this working group meeting to take place in person. It is looking like the only way it will get done is by teleconference. I also share Tova's concern about the unknown nature of Mr. Perez.

Job

--- psims@eac.gov wrote:
> Hi, Folks:
>
Teleconference
Are both of you available for a teleconference next Tuesday afternoon at about 4 PM EST? If this does not work for you, please suggest another date and/or time. I would like to discuss our preparations for the Working Group meeting.

Working Group Members
We have a very good person to fill the slot for the nonpartisan local election official: J.R. Perez, Elections Administrator for Guadalupe County, TX. Attached is his bio. Hope you have no objections to him. He is available on May 18. I have placed 2 calls to Pat Rogers office, but have not yet received a reply. Job, if you have any pull with him, you may want to contact him, too.

Travel Arrangements
You should make your own travel arrangements, including hotel. Travel time cannot be billed to the contract, except for hours actually worked on the contract (i.e., reviewing materials in preparation for the meeting, and the like). Current Federal rates follow:

- Maximum Lodging = $180 per day- does not include hotel taxes (if you cannot get this rate, we have covered reasonable rates that are a little higher)
- Meals & Incidentals = $64 per day (except that it is $48 on the first and last day of travel)
- Mileage for Personally Owned Vehicle = $ .445 per mile
- Under the new contract, I do not have to fill out a travel authorization for you. I can approve your trip via email. Afterwards, when you turn in your next pay voucher, you can attach the airline receipt (or mileage documentation), hotel receipt(s), and ground transportation receipts and a copy of any printed itineraries. Calculate the total travel expenses due you, including applicable per diem. I do not need meal receipts.
- Job, under Federal travel regulations, deviations for personal reasons are not normally accommodated. What you can do, however, is to give me a comparison of the cost of roundtrip mileage, hotel, and per diem of doing
it your way against the cost of a roundtrip flight,
ground transportation,
hotel, and per diem. If your way costs less, it
should be no problem to
cover the full cost. If your way is more expensive,
we may only pay up to
the amount of traditional travel. (The same rules
apply to me when I
travel.) If you can tell me where, other than DC,
you will spend the
night, I can check on applicable per diem rates.

Peggy

Craig:

I think we have resolved the issue of Barbara Arnwine's absence from the upcoming meeting by having
one of her staff represent her (and her organization). Please review the attached rough summary of DOJ
Cases ASAP and let me know if I need to delete reference to the open investigations. Hopefully, we won't
have to remove this information as it does not specify the defendants or States involved. --- Peg

Rough Summary of Department of Justice, Public Integrity Section Activities, October 2002-January 2006

Prosecutions and Convictions-- Individuals
Noncitizen voting: 20
Vote buying: 49
Double voting: 12
Registration fraud: 13
Civil Rights: 4
Voter Intimidation: 2
Unclear: 1

Open Investigations (note: a few cases overlap with prosecutions and convictions)
Noncitizen voting: 3
Vote buying: 25
Double voting: 15
Registration fraud: 29
Absentee ballot fraud: 9
Official: 8
Ineligibles: 4
Deceptive Practices: 1
Civil Rights: 14
Intimidation: 6
Other: 2

Cases and Investigations Closed for Lack of Evidence

Civil Rights: 8
Official: 12
Registration Fraud: 12
Absentee Ballot Fraud: 14
Ineligible Voting: 3
Intimidation: 8
Double Voting: 5
Ballot Box Stuffing: 1
Vote Buying: 14
Ballot/machine tampering: 2
Other: 8
Unclear: 3

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:27 PM ---

"Donsanto, Craig"
To psims@eac.gov
cc
Subject RE: Voting Fraud-Voter Intimidation

Peg - - what is the name of the group?

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Thursday, May 04, 2006 3:13 PM
To: Donsanto, Craig
Subject: RE: Voting Fraud-Voter Intimidation

Craig:

This meeting is being held to obtain input from our eight-member Working Group for the project. The group is composed of election lawyers, election officials, and a representative of an advocacy group, all of whom have an interest and some expertise in the identification and/or prosecution of voting fraud and voter intimidation. The group was chosen so that we would have an equal number of folks on each side of the political spectrum, plus some nonpartisan members.
After our consultants review the results of their preliminary research (interviews, literature review, case law), we will ask the Working Group to brainstorm possible next steps for EAC. Our consultants will write a report summarizing the proposals that come out of this meeting. The report will go to the Commissioners, who will decide what they want to do, funds available, and what priority to assign to the effort(s).

Your participation in this part of the process is extremely important, so I am very happy that you can find time for us that afternoon. I'll get an agenda and other information to you next week. --- Peggy

Okay, Peg - - I will mark off the entire afternoon and try to be there. What is the agenda? I was not aware that this was anything beyond having your contractors spend another session with me. Also, if they will be needing stats and stuff like that I need to know as I will bring my state-people with me.

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Thursday, May 04, 2006 2:28 PM
To: Donsanto, Craig
Subject: Re: Voting Fraud-Voter Intimidation

Right now, we are planning to meet in EAC's large conference room between 1 PM and 5 PM. If you cannot be there for the whole afternoon, we will appreciate whatever time you can spare. I'll get back to you with more information (agenda, list of Working Group members, etc.). --- Peggy

"Donsanto, Craig" <Craig.Donsanto@usdoj.gov>
--- Original Message ---
From: psims@eac.gov <psims@eac.gov>
To: Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>
Sent: Wed May 03 16:59:09 2006
Subject: Re: Voting Fraud-Voter Intimidation

I am looking at the afternoon of 5/18 for the meeting, due to scheduling conflicts of Working Group members. There remain two members from whom we have not yet received confirmations of their schedule (with some, it is like pulling teeth), but right now 5/18 still looks like the best day. We may have to hold the meeting over here to make it easier for Commissioners to drop in. --- Peg

"Donsanto, Craig" <Craig.Donsanto@usdoj.gov>
05/03/2006 12:53 PM
To
cc
Subject
Re: Voting Fraud-Voter Intimidation

Okay -- you are on for May 18th! Can we do it over here at 10?

---
Sent from Dr. D's Fabulous BlackBerry Wireless Handheld
From: psims@eac.gov <psims@eac.gov>
To: Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>
Sent: Wed May 03 12:40:19 2006
Subject: Re: Voting Fraud-Voter Intimidation

My problem is that agency staff is booked most of the week of 5/21. Monday through Wednesday are taken up with meetings of the Standards Board Executive Committee, the full Standards Board, and the Board of Advisors. Thursday, we have EAC's public meeting. Also, I will lose one of my two consultants in June, so I'm trying to wrap up this project (and get the final report from the consultants) by the end of May.

Say "Hi" to Cameron for me.

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

05/03/2006 11:56 AM
To
psims@eac.gov
Subject
Re: Voting Fraud-Voter Intimidation

Hi Peg. I am sitting here with Cameron Quinn putting together this year's ballt conference for AUSAs. She send her best!

I am available on 5/18. But I am also going to the Board of Advisors Meeting the following week. I would rather do this then.

Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

-----Original Message-----
From: psims@eac.gov <psims@eac.gov>
To: Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>
Sent: Wed May 03 11:39:50 2006
Subject: Voting Fraud-Voter Intimidation

Craig:

We are continuing our efforts to hone in on a date for the Working Group meeting. Are you available the afternoon of Thursday, May 18?

Peggy Sims
Election Research Specialist
U.S. Election Assistance Commission
Peg:

Since I am driving to DC, besides hotel receipts, do you want me to keep my gas receipts or how will my car use be compensated? Also, I assume I don't have to retain food receipts.

Job

My problem is that agency staff is booked most of the week of 5/21. Monday through Wednesday are taken up with meetings of the Standards Board Executive Committee, the full Standards Board, and the Board of Advisors. Thursday, we have EAC's public meeting. Also, I will lose one of my two consultants in June, so I'm trying to wrap up this project (and get the final report from the consultants) by the end of May.

Say "Hi" to Cameron for me.

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

05/12/2006 09:05 PM

Subject: Question

Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:27 PM

"Job Serebrov"
<serebrov@sbcglobal.net> To psims@eac.gov

05/12/2006 09:05 PM

Subject: Question

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:27 PM ---

"Job Serebrov"
<serebrov@sbcglobal.net> To psims@eac.gov

05/12/2006 09:05 PM

Subject: Question

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:27 PM ---

Margaret Sims/EAC/GOV To "Donsanto, Craig"
<Craig.Donsanto@usdoj.gov> @GSAEXTERNAL

05/03/2006 12:40 PM

Subject: Re: Voting Fraud-Voter Intimidation

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:27 PM ---

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<serebrov@sbcglobal.net> To psims@eac.gov

05/12/2006 09:05 PM

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Subject: Question
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To: Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>
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Peggy Sims
Election Research Specialist
U.S. Election Assistance Commission

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:27 PM -----

Margaret Sims/EAC/GOV
05/11/2006 02:08 PM
To: Job Serebrov
cc: wang@tcf.org
Subject: Literature Summary

Tova just sent me the summary you prepared of The Federal Crime of Election Fraud by Craig Donsanto. There is something wrong in the fourth paragraph (odd characters and missing text). Can you please send a replacement fourth paragraph? You can send it in an email and I will place it in the document. --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:26 PM -----

Margaret Sims/EAC/GOV
05/10/2006 10:32 AM
To: Devon Romig
cc
Subject: Fw: Court Reporter for Working Group Meeting

Devon:
We have the OK from Tom to obtain a court reporter. Per his response (attached), please coordinate with Joyce. Also, I understand the reporter for the Asian Language Working Group arrived late. Please find out how we can ensure the one for our meeting arrives on time. Thanks! --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 05/10/2006 10:31 AM -----

Thomas R. Wilkey/EAC/GOV
Yes, please let Joyce know and she will get someone
Tom

Tom:
I understand that EAC hired a court reporter for the Asian Language Working Group meeting. I would like
to do the same for the May 18 Voting Fraud-Voter Intimidation Working Group meeting, but I did not
include funds in my budget for this service. Do we have funds that could be used for this purpose? (See
Devon's cost estimate below.) --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 05/10/2006 10:18 AM ---
Devon E. Romig/EAC/GOV

Peggy,
I spoke to the people who usually handle the EAC court reporting. They charge $9.00 per page with an average of 40 pages per hour. This service would cost about $1800.00.

The turn around time for the transcript is 10 to 15 days. The transcripts comes in a bound paper copy and an electronic copy.

I can also check around for different prices.

Devon Romig  
United States Election Assistance Commission  
1225 New York Ave. NW, Suite 1100  
Washington, DC 20005  
202.566.2377 phone  
202.566.3128 fax  
www.eac.gov

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:26 PM ---  
Devon E. Romig/EAC/GOV  
05/03/2006 10:50 AM  
To Margaret Sims/EAC/GOV@EAC  
cc  
Subject Secretary Rokita's schedule

Peggy,

I just spoke to Nathan Cane (Secretary Rokita's assistant). He did not have any new information but they are going to have a scheduling meeting tomorrow morning and he will ask specifically about the afternoon of May 18th. I also reminded him to find out any of the days that he was not available or any of the days that he had could attend the meeting in the morning or the afternoon.

Thanks,

Devon
--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:26 PM ---  
Margaret Sims/EAC/GOV  
05/04/2006 01:05 PM  
To Devon E. Romig/EAC/GOV  
cc  
Subject Re: VFVI Working Group

Devon:
I forgot to tell you that Thor Hearne's assistant is named Bethany. She can be reached at 314/613-2510.  
--- Peggy

Devon E. Romig/EAC/GOV
Peggy,

I have called each of the participants. So far I have a definite confirmation from Kathy Rogers.

Here is the list of the out of town participants for the Voter Fraud/Voter Intimidation Project Working Group:

Mark Hearne II - St. Louis, MO
Tod Rokita - Indianapolis, IN
Kathy Rogers - Atlanta, GA

Possible Participant:

Patrick Rogers - New Mexico

Thanks,

Devon Romig
U.S. Election Assistance Commission
1225 New York Ave. NW - Suite #1100
Washington, D.C. 20005
(202)566-2377

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:26 PM ---

"Tova Wang"
<wang@tcf.org>                     To psims@eac.gov
05/11/2006 05:32 PM            cc psims@eac.gov
Subject RE: new working group representative

I'm up for a short meeting afterward and a teleconference on Monday. And maybe when all of this is over, you and I can have dinner! Have I told you that I am moving down to DC this summer?

I suspect you have put up with much more than I have and I really appreciate everything you have done.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Thursday, May 11, 2006 4:27 PM
To: wang@tcf.org
Subject: RE: new working group representative
Tova:

I understood Job to say that he could only find a hotel room with the right bed in Roanoke (hours away). He will drive in Thursday morning for the meeting and return to that hotel Thursday night. He won't drive back into DC for a Friday morning meeting.

We don't have to do dinner. I recognize that you have spent a lot of time and energy to make this project work, and I don't want to put you out. (You have done a lot under difficult circumstances.) Though we will be bushed, we may want to have a short meeting right after the Working Group disperses --- or we could do a teleconference the following Monday afternoon (before I head into three more days of meetings). --- Peggy

--- Original Message ---

It would not be my first preference to do this right after the meeting, and I sort of had tentative plans. They can be changed if necessary of course, but what happened to meeting on Friday morning?

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Thursday, May 11, 2006 3:47 PM
To: serebrov@sbcglobal.net; wang@tcf.org
Subject: Re: new working group representative

Dinner sounds like a great idea. Do either of you have any dietary restrictions of preferences? (I seem to recall that Tova would prefer a place that has vegetarian options). I'll try to locate a nearby place that won't bust the budget. --- Peggy

--- Original Message ---

"Job Serebrov" <serebrov@sbcglobal.net>

05/11/2006 04:39 PM
On another note entirely, since traffic will be bad
going to Roanoke, do you want to have a dinner meeting
with Tova and me after the group meeting to discuss
the final report? As long as we are out by 7 or so I am
ok with it. Also, my wife would have to be there as
she will be meeting me after the WG.

--- psims@eac.gov wrote:

> According to the Commissioners, you and Tova each
> got to pick three
> members of the Working Group. The Commission
> guidance regarding this
> particular member follows:
> 
> 4 people from the Academic, Legal and Advocacy
> sectors - 2 to be chosen by
> Tova and 2 to be chosen by Job.
> 
> This issue of allowing a designee relates to Tova's
> pick.
> 
> As I understand it, we are working on a replacement
> for Norcross. If
> Ginsberg is not viable, how about Mark Braden, who
> includes public
> integrity in his areas of specialization. I would
> not try and stir up
> other members of the Working Group, if I were you.
> The effort is likely
> to come back and bite you.
>
> "Job Serebrov" <serebrov@sbcglobal.net>
> 05/11/2006 03:53 PM
>
> To
> psims@eac.gov
> cc
> 
> Subject
> Re: new working group representative
> 
>
I really don't care if he represents the organization or not. What mixed race? The entire discussion was because Arnwine was African-American. If you are going to invite him without first having a replacement for my side, I may have to call Thor and Todd and discuss all of this.

--- psims@eac.gov wrote:

Greenbaum is representing Arnwine, not replacing her. He works for her organization and is of mixed race. --- Peggy

"Job Serebrov" <serebrov@sbcglobal.net>
05/11/2006 03:36 PM

To
"Tova Wang" <wang@tcf.org>, psims@eac.gov
cc
serebrov@sbcglobal.net
Subject
Re: new working group representative

I have an objection to Greenbaum. While I realize he comes from an advocacy group, he is not a minority attorney and we already have a rep who worked with DOJ. If it is to be Greenbaum, I would rather not fill that position since I am one down.

--- Tova Wang <wang@tcf.org> wrote:

> > is Jon Greenbaum
> > > Here's his info in full:
> > >
> > http://www.lawyerscommittee.org/2005website/aboutus/staff/staffgreenbaum.htm
> > >
> > > 1
> > >
> > > He is the Director of the Voting Rights Project for the Lawyers Committee for Civil Rights. He will be representing
Barbara Arnwine, the Executive Director of the Lawyers Committee. His contact and mailing info is:

jgreenbaum@lawyerscommittee.org
202-662-8315
1401 New York Avenue, NW
Suite 400
Washington, DC 20005

Tova Andrea Wang
Democracy Fellow
The Century Foundation
41 East 70th Street - New York, NY 10021
Phone: 212-452-7704  Fax: 212-535-7534
www.tcf.org, for the latest news,
analysis, opinions, and events.

mailto:join-tcfmain@mailhost.groundspring.org
Click here to receive our weekly e-mail updates.

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:26 PM -----

Devon E. Romig/EAC/GOV
05/09/2006 09:32 AM

To bschuler@lathropgage.com, mhearne@lathropgage.com,
jperez50@sbcglobal.net, assistant@sos.in.gov,
krogers@sos.state.ga.us
Cc Margaret Sims/EAC/GOV/EAC
Subject Voter Fraud/Voter Intimidation Working Group, May 18th, 2006

Dear Meeting Participants,

Thank you for confirming your participation in the upcoming Voter Fraud/Voter Intimidation Working Group Meeting in Washington, D.C.. This meeting will take place at our office from 1:00 PM to 5:30 PM on Thursday May 18th, 2006.
The Election Assistance Commission (EAC) will cover the cost of your flight, the cost of your hotel room and provide you with a daily per diem. The cost of the airfare and the hotel stay will be paid directly by the EAC, as long as you book your travel through Adventure Travel.

To coordinate your flight and hotel stay, please contact Marvin Brokaw of Adventure Travel at (205) 444-4800, ext. 3501. Please note that the eligible dates of the hotel accommodation include the evenings on May 17th and May 18th. Once you have contacted him and you have received the itinerary via e-mail you must forward me a copy immediately so that I can complete a travel authorization form.

I have included two attachments with this email; the first attachment is a letter that contains important information that you will need to know before calling the travel agent and the second attachment provides some general information that should help you get around the city during your trip.

In addition to your travel itinerary, I will also need the following information by the close of business this Friday May 12, 2006 in order to complete your travel authorization:

- Full Name:
- Title:
- Entity for whom you work:
- Address to Which the Reimbursement Check Will Be Mailed:
- Work Telephone:
- Fax Number:
- Social Security #: (if uncomfortable e-mailing this, feel free to call me):

Feel free to contact me with any questions.

Sincerely,

Devon Romig
United States Election Assistance Commission
1225 New York Ave. NW, Suite 1100
Washington, DC 20005
202.566.2377 phone
202.566.3128 fax
www.eac.gov

Per Diem Letter VFVI.doc  Logistics Sheet VFVI.doc
----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:26 PM -----
“Tova Wang”
<wang@tcf.org>  To psims@eac.gov, dromig@eac.gov
05/11/2006 01:30 PM  cc
Subject research summaries

I have the feeling we didn’t include these in the original batch I sent you. Could you double check and if not, would you please include them in the existing research materials? Sorry and thanks. I’m kind of doing all of this on my own in case you couldn’t tell. List is coming...

Tova Andrea Wang
Given the information I have Peggy, that is not going to be financially possible. First, given Tova's info about the hotels, it is too much for me to front. Two to three days in DC would run around $1000 for the hotel alone. That does not count the two days on the road to get there and two days back. Second, if I can't charge the federal per mile allowance for the entire trip to DC and back and can only get the equivalent of plane fare, I will actually loose money.

I simply do not see how we can do this in person given the financial restrictions.

--- psims@eac.gov wrote:

> Job:
> 
> I don't think we can put you on teleconference for 41/2 hours. We really need to have you here in person if you are to help conduct the Working Group meeting. You should make your travel arrangements ASAP. --- Peggy
> 
> "Job Serebrov" <serebrov@sbcglobal.net> 05/08/2006 10:14 AM
> 
> To psims@eac.gov, wang@tcf.org
> cc
Subject
Re: Working Group

Peggy:

4:00 eastern on Tuesday is fine however, given the financial restrictions that you indicated would be in place for use of my car (I would actually loose money coming to DC) and given the cost of hotels at this time (I can't afford to front these costs and wait for months to be repaid), etc, it would take a miracle for this working group meeting to take place in person. It is looking like the only way it will get done is by teleconference. I also share Tova's concern about the unknown nature of Mr. Perez.

Job

--- psims@eac.gov wrote:

Hi, Folks:

Teleconference
Are both of you available for a teleconference next Tuesday afternoon at about 4 PM EST? If this does not work for you, please suggest another date and/or time. I would like to discuss our preparations for the Working Group meeting.

Working Group Members
We have a very good person to fill the slot for the nonpartisan local election official: J.R. Perez, Elections Administrator for Guadalupe County, TX. Attached is his bio. Hope you have no objections to him. He is available on May 18. I have place 2 calls to Pat Rogers office, but have not yet received a reply. Job, if you have any pull with him, you may want to contact him, too.
Travel Arrangements
You should make your own travel arrangements, including hotel. Travel
time cannot be billed to the contract, except for hours actually worked on
the contract (i.e.; reviewing materials in preparation for the meeting,
and the like). Current Federal rates follow:

- **Maximum Lodging = $180 per day**—does not include hotel taxes (if you
cannot get this rate, we have covered reasonable rates that are a little
higher)
- **Meals & Incidentals = $64 per day** (except that it is $48 on the first and
last day of travel)
- **Mileage for Personally Owned Vehicle = $ .445 per mile**

Under the new contract, I do not have to fill out a travel authorization
for you. I can approve your trip via email. Afterwords, when you turn in
your next pay voucher, you can attach the airline receipt (or mileage
documentation), hotel receipt[s], and ground transportation receipts and a
copy of any printed itineraries. Calculate the total travel expenses due
you, including applicable per diem. I do not need meal receipts.

Job, under Federal travel regulations, deviations for personal reasons are
not normally accommodated. What you can do, however, is to give me a
comparison of the cost of roundtrip mileage, hotel,
and per diem of doing it your way against the cost of a roundtrip flight,
ground transportation, hotel, and per diem. If your way costs less, it should be no problem to
cover the full cost. If your way is more expensive, we may only pay up to
the amount of traditional travel. (The same rules apply to me when I travel.) If you can tell me where, other than DC,
you will spend the night, I can check on applicable per diem rates.

Peggy
Let me check with Devon early tomorrow. If she did not hear from him this afternoon, I'll have her contact you. Perhaps you will have more success than we have.

Peggy

Sent from my BlackBerry Wireless Handheld

----- Original Message ----- 
From: "Tova Wang" [wang@tcf.org] 
Sent: 04/26/2006 05:46 PM 
To: Margaret Sims 
Subject: wg

Do you want me to call both Bob too?

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

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

Click here to receive our weekly e-mail updates.

FYI - The person I mentioned as a replacement for David Norcross, who was unavailable, could not attend the Voting Fraud-Voter Intimidation Working Group meeting. Our consultant, Job Serebrov, suggested Benjamin Ginsberg, who is willing. I'm sorry I could not check with you on this beforehand --- things
That was not the only reason -- it was to have someone from the civil rights community. I hardly think you can have a discussion about voter intimidation and suppression without someone with that background at the table. I know you agree with this given what you've said to me in the past.

Original Message

From: Job Serebrov [mailto:serebrov@sbcglobal.net]
Sent: Thursday, May 11, 2006 2:48 PM
To: Tova Wang; psims@eac.gov
Subject: Re: new working group representative

We don't know about Ginsburg but it was only stated, over my objection, that no current invitee was being disinvited. This does not apply to representatives of those people in my mind, especially when the main specific reason for inviting the person was her race.

--- Tova Wang <wang@tcf.org> wrote:

> He is representing Barbara Arnwine, and we have
> already established we are
> not disinviting anyone. We still don't know about
> Ginsburg yet anyway,
> right?
> >
> > -----Original Message-----
> > From: Job Serebrov [mailto:serebrov@sbcglobal.net]
> > Sent: Thursday, May 11, 2006 2:36 PM
> > To: Tova Wang; psims@eac.gov
> > Cc: serebrov@sbcglobal.net
> > Subject: Re: new working group representative
> >
> > I have an objection to Greenbaum. While I realize he
> > comes from an advocacy group, he is not a minority
> > attorney and we already have a rep who worked with
> > DOJ. If it is to be Greenbaum, I would rather not
> > fill
> > that position since I am one down.
> >
> > --- Tova Wang <wang@tcf.org> wrote:
> >
> > > is Jon Greenbaum
> > >
> > Here's his info in full:
> > >
> > http://www.lawyerscommittee.org/2005website/aboutus/staff/staffgreenbaum.htm
He is the Director of the Voting Rights Project for the Lawyers Committee. He will be representing Barbara Arnwine, the Executive Director of the Lawyers Committee.

His contact and mailing info is:

jgreenbaum@lawyerscommittee.org
202-662-8315
1401 New York Avenue, NW
Suite 400
Washington, DC 20005

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

www.tcf.org, for the latest news, analysis, opinions, and events.

---

<mailto:join-tcfmain@mailhost.groundspring.org>
Click here to receive our weekly e-mail updates.

The code attachment did not work that is what I meant by it did not come through.
psims@eac.gov wrote:

Did you look at the attached excerpts from Texas Code? --- Peggy

"Job Serebrov" <serebrov@sbcglobal.net>
05/09/2006 11:23 AM

To psims@eac.gov
Cc wang@tcf.org
Subject Re: Working Group-Perez

We have the same set-up here in Arkansas. We hired a person just like Perez. However, given this, I would still like to know if he has a party affiliation and this brings up another issue. How is the county election commission chosen. In Arkansas it is the Chairmen of the Republican and Democrat Parties or if he/she does not want to serve a person is elected in his/her stead and a third member picked by the party with the most constitutional officers. Practically that has meant that the Democrats have controlled election commissions in Arkansas since the end of Reconstruction. This is why I want to know the situation in Texas.

--- psims@eac.gov wrote:

As you may recall, the Commissioners directed me to find a nonpartisan local election official to serve on the Working Group. The three of us discussed the desirability of having a Hispanic. I proposed that I find someone from Texas because of that State's colorful history of voting and their innovative approaches to combat it. In those Texas counties that hire Election Administrators to run elections, rather than having elected officials do so (Tax Assessor for voter registration; County Clerk for balloting), the Election
Administrator is hired by the County Election Commission and is supposed to perform his or her duties in a nonpartisan manner. (See attached excerpts from Texas Election Code regarding election administrator hiring and restrictions on partisan activity.)

Any experienced Texas election official will be familiar with voting fraud and voter intimidation schemes used in that State.

Mr. Perez has over 13 years experience as a county Election Administrator in Texas. You won't find many news articles mentioning him because he has kept his nose clean. (The Texas press, as in many other parts of the country, prefers to report bad news.) Mr. Perez is plugged into the association of Texas election officials and the two largest organizations of election officials in this country: the International Association of Clerks, Recorders, Election Officials and Treasurers (IACREOT); and The Election Center. He is a past President and past Chairman of the Legislative Committee for the Texas Association of Election Administrators. He currently serves on IACREOT's Election Officials Committee, which plans the educational sessions for election officials that are conducted at that organization's conferences. His peers in IACREOT and The Election Center have selected his submissions on web presentations (IACREOT) and his professional practices papers (Election Center) for awards.

Mr. Perez also has access to information from other States through his membership in IACREOT and The Election Center. He also has a sense of humor, which you will note if you access the staff web page on the Guadalupe County Elections web site and hear the Mission Impossible theme .. something that might be useful in the upcoming meeting.

Guadalupe County is small but growing. In 2004, the county had over 65
thousand registered voters (a number more than doubled the number of registered voters in 1988). A third of the county's population claims Hispanic or Latino origin, according to the U.S. Census Bureau. The county is in south central Texas and is bordered by Comal, Hays, Cladwell, Gonzales, Wilson, and Bexar counties. In the 1980s, the county was predominately a farming community; but in recent years, many people have moved from San Antonio (Bexar County) to Guadalupe County, preferring to live in Guadalupe County and work in Bexar County.

--- Peggy

"Job Serebrov" <serebrov@sbcglobal.net> 05/08/2006 11:30 PM

To psims@eac.gov cc

Subject Re: Working Group

Peggy:

What political party is Perez with? How political is he? Is the position in Texas neutral or political? Who appointed Perez?

As to Pat I will contact him but I can't promise anything. If Pat can't come, who is getting knocked off Tova's list?

Job
Craig:

We are continuing our efforts to hone in on a date for the Working Group meeting. Are you available the afternoon of Thursday, May 18?

Peggy Sims
Election Research Specialist
U.S. Election Assistance Commission

Job, please double check to make sure I haven't missed anything

Tova Andrea Wang
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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Tova:

I understood Job to say that he could only find a hotel room with the right bed in Roanoke (hours away). He will drive in Thursday morning for the meeting and return to that hotel Thursday night. He won't drive back into DC for a Friday morning meeting.

We don't have to do dinner. I recognize that you have spent a lot of time and energy to make this project work, and I don't want to put you out. (You have done a lot under difficult circumstances.) Though we will be bushed, we may want to have a short meeting right after the Working Group disperses --- or we could do a teleconference the following Monday afternoon (before I head into three more days of meetings). --- Peggy

"Tova Wang" <wang@tcf.org>

It would not be my first preference to do this right after the meeting, and I sort of had tentative plans. They can be changed if necessary of course, but what happened to meeting on Friday morning?

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Thursday, May 11, 2006 3:47 PM
To: serebrov@sbcglobal.net; wang@tcf.org
Subject: Re: new working group representative

Dinner sounds like a great idea. Do either of you have any dietary restrictions of preferences? (I seem to recall that Tova would prefer a place that has vegetarian options). I'll try to locate a nearby place that won't bust the budget. --- Peggy

"Job Serebrov" <serebrov@sbcglobal.net>

On another note entirely, since traffic will be bad
going to Roanoke, do you want to have a dinner meeting with Tova and me after the group meeting to discuss the final report? As long as we are out by 7 or so I am ok with it. Also, my wife would have to be there as she will be meeting me after the WG.

--- psims@eac.gov wrote:

> According to the Commissioners, you and Tova each got to pick three members of the Working Group. The Commission guidance regarding this particular member follows:
> 4 people from the Academic, Legal and Advocacy sectors - 2 to be chosen by Tova and 2 to be chosen by Job.
> This issue of allowing a designee relates to Tova's pick.
>
> As I understand it, we are working on a replacement for Norcross. If Ginsberg is not viable, how about Mark Braden, who includes public integrity in his areas of specialization. I would not try and stir up other members of the Working Group, if I were you. The effort is likely to come back and bite you.
>
> "Job Serebrow" 05/11/2006 03:59:41
>
> To
> psims@eac.gov
> cc
> Subject
> Re: new working group representative
>
> I really don't care if he represents the organization or not. What mixed race? The entire discussion was because Arnwine was African-American. If you are going to invite him without first having a replacement for my side, I may have to call Thor and Todd and discuss all of this.
Greenbaum is representing Arnwine, not replacing her. He works for her organization and is of mixed race. --- Peggy

"Job Serebrov" <serebrov@sbcglobal.net> wrote:
05/11/2006 03:36 PM
To
"Tova Wang" <wang@tcf.org>, psims@eac.gov
cc
serebrov@sbcglobal.net
Subject
Re: new working group representative

I have an objection to Greenbaum. While I realize he comes from an advocacy group, he is not a minority attorney and we already have a rep who worked with DOJ. If it is to be Greenbaum, I would rather not fill that position since I am one down.

--- Tova Wang <wang@tcf.org> wrote:

> is Jon Greenbaum

Here's his info:

http://www.lawyerscommittee.org/2005website/aboutus/staff/staffgreenbaum.htm

He is the Director of the Voting Rights Project for the Lawyers Committee for Civil Rights. He will be representing Barbara Arnwine, the Executive Director of the Lawyers Committee.

His contact and mailing info is:

jgreenbaum@lawyerscommittee.org
202-662-8315
1401 New York Avenue, NW
Suite 400
For purposes of travel arrangements, Job do you want to plan to meet the day before and/or the day after the meeting?

----- Original Message -----  
From: psims@eac.gov  
To: wang@tcf.org ; se@tcf.org  
Cc: dromig@eac.gov  
Sent: Friday, May 05, 2006 2:32 PM  
Subject: Working Group  

Hi, Folks:
Teleconference
Are both of you available for a teleconference next Tuesday afternoon at about 4 PM EST? If this does not work for you, please suggest another date and/or time. I would like to discuss our preparations for the Working Group meeting.

Working Group Members
We have a very good person to fill the slot for the nonpartisan local election official: J.R. Perez, Elections Administrator for Guadalupe County, TX. Attached is his bio. Hope you have no objections to him. He is available on May 18. I have placed 2 calls to Pat Rogers office, but have not yet received a reply. Job, if you have any pull with him, you may want to contact him, too.

Travel Arrangements
You should make your own travel arrangements, including hotel. Travel time cannot be billed to the contract, except for hours actually worked on the contract (i.e.; reviewing materials in preparation for the meeting, and the like). Current Federal rates follow:

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Under the new contract, I do not have to fill out a travel authorization for you. I can approve your trip via email. Afterwords, when you turn in your next pay voucher, you can attach the airline receipt (or mileage documentation), hotel receipt(s), and ground transportation receipts and a copy of any printed itineraries. Calculate the total travel expenses due you, including applicable per diem. I do not need meal receipts.

Job, under Federal travel regulations, deviations for personal reasons are not normally accommodated. What you can do, however, is to give me a comparison of the cost of roundtrip mileage, hotel, and per diem of doing it your way against the cost of a roundtrip flight, ground transportation, hotel, and per diem. If your way costs less, it should be no problem to cover the full cost. If your way is more expensive, we may only pay up to the amount of traditional travel. (The same rules apply to me when I travel.) If you can tell me where, other than DC, you will spend the night, I can check on applicable per diem rates.

Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:26 PM -----

wang@tcf.org
05/05/2006 06:18 PM
To psims@eac.gov
cc dromig@eac.gov
Subject Re: Working Group

I'm finding there are no hotel rooms available

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

From: psims@eac.gov
To: wang@tcf.org
Hi, Folks:

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Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:26 PM ---
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--- psims@eac.gov wrote:

> Greenbaum is representing Arnwine, not replacing her. He works for her organization and is of mixed race. --- Peggy

> 

> "Job Serebrov" <serebrov@tcf.org> wrote:

> 05/11/2006 03:36 PM

> To

> "Tova Wang" <wang@tcf.org>, psims@eac.gov

> Subject

> Re: new working group representative

> 

> I have an objection to Greenbaum. While I realize he comes from an advocacy group, he is not a minority attorney and we already have a rep who worked with DOJ. If it is to be Greenbaum, I would rather not fill that position since I am one down.

> --- Tova Wang <wang@tcf.org> wrote:

> > is Jon Greenbaum

> > Here' s his info in full:

> >

http://www.lawyerscommittee.org/2005website/aboutus/staff/staffgreenbaum.htm

> > 1

> > He is the Director of the Voting Rights Project for the Lawyers Committee for Civil Rights. He will be representing Barbara Arnwine, the Executive Director of the Lawyers Committee.

> > His contact and mailing info is:

> > jgreenbaum@lawyerscommittee.org
Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:26 PM ---

"Tova Wang"
<wang@tcf.org>
05/10/2006 12:16 PM

To psims@eac.gov, dromig@eac.gov
cc [redacted]
Subject another one

Plus, I found a few typos on the nexis analysis. Sorry about this.

Tova Andrea Wang
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.
Upon first reading, my only comment would be that I would like to restore "failing to follow the requirements of the Voting Rights Act"

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Friday, May 12, 2006 9:20 AM
To: wang@tcf.org; serebrov@sbcglobal.net
Subject: Fraud Definition

Would you please take a look at the attached? I combined both of your definitions, reformatted the list, removed a reference to the fraud having to have an actual impact on the election results (because fraud can be prosecuted without proving that it actually changed the results of the election), and taken out a couple of vague examples (e.g.; reference to failing to enforce state laws --- because there may be legitimate reasons for not doing so).

I have made contact with Ben Ginsberg's office and am waiting to hear if he accepts our invitation to join the working group. --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:26 PM -----
Margaret Sims/EAC/GOV
05/04/2006 10:52 AM
To: Joyce Wilson
cc
Subject: Large Conference Room Needed

This is just to confirm my request to reserve the large conference room on Thursday, May 18, from Noon-6 PM. We will be using it for a meeting of the Voting Fraud/Voter Intimidation Working Group. Thanks! --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:26 PM -----
Devon E. Romig/EAC/GOV
05/08/2006 02:56 PM
To: vjohnson@lawyerscommittee.org, barnwine@lawyerscommittee.org, dlovecchio@perkinscoie.com, Rbauer@perkinscoie.com, weinutr@verizon.net
cc: Margaret Sims/EAC/GOV@EAC
Subject: Voter Fraud/Voter Intimidation Working Group, May 18th

Dear Meeting Participants,

Thank you for confirming your participation in the upcoming Voter Fraud/Voter Intimidation Working Group Meeting in Washington, D.C. This meeting will take place at our office from 1:00 PM to 5:30 PM on
Thursday May 18th, 2006.

The office of the Election Assistance Commission is located at:
1225 New York Avenue NW, Suite 1100
Washington, D.C. 20005

We will send more information about this meeting via Federal Express. If you would like this information to be sent to an address other than your office please reply with the preferred address.

Feel free to contact me with any questions.

Sincerely,

Devon Romig
United States Election Assistance Commission
1225 New York Ave. NW, Suite 1100
Washington, DC 20005.
202 566 2377 phone
202.566.3128 fax
www.eac.gov

-- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:26 PM --

"Tova Wang"
<wang@tcf.org>
05/10/2006 11:45 AM
Subject Material I may not have included

Peg,

Correct me if I'm wrong, but I think I omitted sending you these specific summaries that are based on complex cases that could not be adequately described within the confines of the nexis article excel spreadsheets. If we can, these should be included, probably on the disc. Sorry.

Tova Andrea Wang
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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Wisconsin FINAL.doc South Dakota FINAL.doc Washington FINAL.doc

-- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:26 PM --

"Job Serebrov"
05/09/2006 11:24 AM
Subject Re: Fwd: RE: Working Group meeting
I will hear from him tomorrow but that still does not solve all of my issues—see my longer e-mail.

--- psims@eac.gov wrote:

> I had a voice mail message from him on Monday. I called him back but had to leave a voice mail message (telephone tag). If you hear from him and he is willing and able to come, I need to know this. We need to have him call our travel service to make travel arrangements ASAP. Thanks. ---

> Peggy

> "Job Serebrov" <s^>
> 05/09/2006 10:46 AM

> To
> psims@eac.gov
> cc

> Subject
> Fwd: RE: Working Group meeting

> FYI

> --- "Patrick J. Rogers" <patrogers@modrall.com> wrote:

> > Subject: RE: Working Group meeting
> > Date: Tue, 9 May 2006 07:42:44 -0600
> > From: "Patrick J. Rogers" <patrogers@modrall.com>
> > To: "Job Serebrov" <s^>
> >
> > Job—maybe. I will call you and/or Ms. Sims tomorrow. Depositions all day today. Thanks, Pat
> >
> > What's the best number to call you tomorrow?

> Patrick J. Rogers
> Modrall, Sperling, Roehl, Harris & Sisk, P.A.
> P.O. Box 2168
> Albuquerque, NM 87103-2168
> Tel: 505-848-1849
> Fax: 505-848-1891
Pat:

The working group meeting for the voter fraud project is scheduled for May 18th in DC but David Norcross can't attend. Could you come? If so, we need to arrange travel and a hotel for you.

Regards,

Job

---
Modrall, Sperling, Roehl, Harris & Sisk, P.A.

---
THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. If the reader of this message is not the intended recipient or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination or copying of this communication is strictly prohibited. If you have received this electronic transmission in error, please delete it from your system without copying it, and notify the sender by e-mail or by calling 505.848.1800, so that our address record can be corrected. Thank you.
Barbara says that you have been working it out with her assistant Valerie, that they have spoken to you several times.

-----Original Message-----
From: dromig@eac.gov [mailto:dromig@eac.gov]
Sent: Tuesday, May 02, 2006 8:46 AM
To: wang@tcf.org
Cc: psims@eac.gov
Subject: Voting Fraud/Voter Intimidation Project Working Group

Dear Tova,

I am working with Peggy Sims in order to set a date for the Voting Fraud/Voter Intimidation Project Working Group. I have been trying to reach Barbara Arnwine in order to find out which days in May she is potentially available to attend this meeting but all of my attempts have been unsuccessful.

I would appreciate any help that you could provide in this matter.

Sincerely,

Devon Romig
U.S. Election Assistance Commission
1225 New York Ave. NW - Suite #1100
Washington, D.C. 20005
(202)566-2377

that would be fine

----- Original Message -----
From: psims@eac.gov
To: weinutr@verizon.net
Sent: Thursday, May 04, 2006 1:08 PM
Subject: Voting Fraud-Voter Intimidation
Barry:

It appears that the afternoon of Thursday, May 18 is best for a meeting of the working group. I know you said you would not be available in the morning that day. If we started at 1 PM, would that be too soon for you?

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
e-mail: psims@eac.gov

OK, thanks. I'll get back to you with more information. --- Peggy

"Weinberg and Utrecht" <weinutr@verizon.net>

that would be fine

----- Original Message -----  
From: psims@eac.gov
To: weinutr@verizon.net
Sent: Thursday, May 04, 2006 1:08 PM
Subject: Voting Fraud-Voter Intimidation

Barry:

It appears that the afternoon of Thursday, May 18 is best for a meeting of the working group. I know you said you would not be available in the morning that day. If we started at 1 PM, would that be too soon for you?
Sounds good to me. If not Ginsburg try Braden.

--- psims@eac.gov wrote:

> I will add "DRAFT" to the definition and, yes, the
> WG will have
> suggestions. I do plan to send packets to you and
> Tova containing the
> same materials being provided to the WG. I haven't
> sent anything yet
> because I was hoping to finalize the WG list for
> inclusion. (Still
> waiting for a response from Ginsberg.)
> >
> > Regarding Tova's response, we may want to have a
> > very short meeting after
> > the WG disperses, followed by a teleconference the
> > following Monday
> > afternoon. Tuesday is bad for me because I'll be
> > out of the office
> > attending a series of EAC meetings that begin that
> > day. --- Peggy
> >
> >
> > "Job Serebrov"  <http://[redacted]>
> > 05/12/2006 12:52 PM
> >
> > To
> > psims@eac.gov, wang@tcf.org
> > cc
> >
> > Subject
> > Re: Fraud Definition
> >
> >
This is ok, given the fact that the WG may have suggestions. Will you be sending us the same packets that you are sending the WG? Also, I figure with Tova's response we will need to have a teleconference on the report once I return to Little Rock. We will need to do it that following Monday or Tuesday.

--- psims@eac.gov wrote:

Would you please take a look at the attached? I combined both of your definitions, reformatted the list, removed a reference to the fraud having to have an actual impact on the election results (because fraud can be prosecuted without proving that it actually changed the results of the election), and taken out a couple of vague examples (e.g., reference to failing to enforce state laws --- because there may be legitimate reasons for not doing so).

I have made contact with Ben Ginsberg's office and am waiting to hear if he accepts our invitation to join the working group. --- Peggy

I am reluctant to invite Braden until after I have received a "No" from Ginsberg. --- Peg
Sounds good to me. If not Ginsburg try Braden.

--- psims@eac.gov wrote:

> I will add "DRAFT" to the definition and, yes, the
> WG will have
> suggestions. I do plan to send packets to you and
> Tova containing the
> same materials being provided to the WG. I haven't
> sent anything yet.
> because I was hoping to finalize the WG list for
> inclusion. (Still
> waiting for a response from Ginsberg.)
> Regarding Tova's response, we may want to have a
> very short meeting after
> the WG disperses, followed by a teleconference the
> following Monday
> afternoon. Tuesday is bad for me because I'll be
> out of the office
> attending a series of EAC meetings that begin that
> day. --- Peggy

> "Job Serebrov" <serebrov@sbcglobal.net>
> 05/12/2006 12:52 PM
> To psims@eac.gov, wang@tcf.org
> cc
> Subject Re: Fraud Definition

> This is ok, given the fact that the WG may have
> suggestions. Will you be sending us the same packets
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> I have made contact with Ben Ginsberg's office and am waiting to hear if he accepts our invitation to join the working group.
> --- Peggy

I did not get any attachments.

--- psims@eac.gov wrote:
> Did you look at the attached excerpts from Texas Code? --- Peggy
> "Job Serebrov" <serebrov@sbcglobal.net> 05/09/2006 11:23 AM
We have the same set-up here in Arkansas. We hired a person just like Perez. However, given this, I would still like to know if he has a party affiliation and this brings up another issue. How is the county election commission chosen. In Arkansas it is the Chairmen of the Republican and Democrat Parties or if he/she does not want to serve a person is elected in his/her stead and a third member picked by the party with the most constitutional officers. Practically that has meant that the Democrats have controlled election commissions in Arkansas since the end of Reconstruction. This is why I want to know the situation in Texas.

--- psims@eac.gov wrote:

As you may recall, the Commissioners directed me to find a nonpartisan local election official to serve on the Working Group. The three of us discussed the desirability of having a Hispanic. I proposed that I find someone from Texas because of that State's colorful history of voting fraud and their innovative approaches to combat it. In those Texas counties that hire Election Administrators to run elections, rather than having elected officials do so (Tax Assessor for voter registration; County Clerk for balloting), the Election Administrator is hired by the County Election Commission and is supposed to perform his or her duties in a nonpartisan manner. (See attached excerpts from Texas Election Code regarding election administrator hiring and restrictions on partisan activity.) Any experienced Texas election official will be familiar with voting fraud.
> and voter intimidation schemes used in that State.
>
> > Mr. Perez has over 13
> > years experience as a county Election
> > Administrator
> > in Texas. You won't
> > find many news articles mentioning him because he
> > has kept his nose clean.
> > (The Texas press, as in many other parts of the
> > country, prefers to
> > report bad news.) Mr. Perez is plugged into the
> > association of Texas
> > election officials and the two largest
> > organizations
> > of election officials
> > in this country: the International Association of
> > Clerks, Recorders,
> > Election Officials and Treasurers (IACREOT); and
> > The
> > Election Center. He
> > is a past President and past Chairman of the
> > Legislative Committee for the
> > Texas Association of Election Administrators. He
> > currently serves on
> > IACREOT's Election Officials Committee, which
> > plans
> > sessions for election officials that are conducted
> > at that organization's
> > conferences. His peers in IACREOT and The
> > Election
> > Center have selected
> > his submissions on web presentations (IACREOT) and
> > his professional
> > practices papers (Election Center) for awards.
> > Mr.
> > Perez also has access
> > to information from other States through his
> > membership in IACREOT and The
> > Election Center. He also has a sense of humor,
> > which you will note if you
> > access the staff web page on the Guadalupe County
> > Elections web site and
> > hear the Mission Impossible theme .. something
> > that
> > might be useful in the
> > upcoming meeting.
> >
> > Guadalupe County is small but growing. In 2004,
> > the
> > county had over 65
> > thousand registered voters (a number more than
> > doubled the number of
> > registered voters in 1988). A third of the
> > county's
> > population claims
> > Hispanic or Latino origin, according to the U.S.
> > Census Bureau. The county
> > is in south central Texas and is bordered by
> > Comal,
> > Hays, Cladwell,
Gonzales, Wilson, and Bexar counties. In the 1980s, the county was predominately a farming community; but in recent years, many people have moved from San Antonio (Bexar County) to Guadalupe County, preferring to live in Guadalupe County and work in Bexar County.

--- Peggy

"Job Serebrov" 05/08/2006 11:36 PM
To psims@eac.gov
cc
Subject Re: Working Group

Peggy:

What political party is Perez with? How political is he? Is the position in Texas neutral or political?
Who appointed Perez?

As to Pat I will contact him but I can't promise anything. If Pat can't come, who is getting knocked off Tova's list?

Job

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:26 PM ---
"Job Serebrov" 05/04/2006 11:17 AM
To psims@eac.gov
cc
I will have a better idea about my uncle's condition today after surgery.

500 Fourth Street NW
P.O. Box 2168
Albuquerque, NM 87103-2168
(505) 848-1800
Fax: (505) 848-1891
Asst: Carol Casstevens
patrogers@modrall.com

--- psims@eac.gov wrote:

> Job:
> Secretary Rokita is available May 18. I'm going to
talk with the Chairman
today about substituting Rogers for Norcross. Do
you have contact
> information for Rogers? --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:26 PM ---

"Job Serebrov"
05/03/2006 01:46 PM
To psims@eac.gov
cc
Subject Re: Working Group Meeting

Monday afternoon I have a commission meeting.

--- psims@eac.gov wrote:

> Job and Tova:
>
> As of now, the afternoon of Thursday, May 18 appears
to be the best
> possible date for the meeting. Norcross is not
available to attend in
person that day (he is available only 2 days during
the first three weeks
of May). We won't have confirmation of the
availability of Secretary
Rokita until tomorrow --- but I am hopeful.

> I'll give you an update tomorrow. Maybe we can
schedule a teleconference
> on Monday afternoon. --- Peggy
I did send you the Brennan piece, but not the other one.

From: Tova Wang
Sent: Thursday, May 11, 2006 12:31 PM
To: psims@eac.gov; dromig@eac.gov
Subject: research summaries

I have the feeling we didn't include these in the original batch I sent you. Could you double check and if not, would you please include them in the existing research materials? Sorry and thanks. I'm kind of doing all of this on my own in case you couldn't tell. List is coming...

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

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

Devon:

Send an email to Perez to remind him to contact Adventure Travel ASAP. We don't have confirmation of Rogers participation yet, though we have had a number of voice mails flying back and forth, so we cannot yet notify him to make travel arrangements immediately. --- Peggy
Hi Devon:
We have heard from Mark Hearne and Todd Rokita. They are both flying in and out on the 18th and will not need hotel rooms. We're kind of waiting to see if Perez and Rogers need rooms before booking any hotel. As soon as we get approval of Hearne and Rokita air schedules and get them booked, we'll forward their itineraries to you.

Kind Regards,
Marvin

-----Original Message-----
From: dromig@eac.gov (mailto:dromig@eac.gov)
Sent: Tuesday, May 09, 2006 8:31 AM
To: marvin.brokaw@adtrav.com
Cc: psims@eac.gov
Subject: May 18th Meeting at EAC

Hello Marvin,

I just wanted to follow up with the voicemail message that I left for you yesterday. We will be holding a meeting at our offices in Washington DC on May 18, 2006. I have informed the out of state attendees to contact you for their travel arrangements.

We have been authorized to pay for the attendees airfare and hotel arrangements. Please note that all of the participants are authorized for a two night hotel room stay, as long as the dates are May 17th and 18th.

I attached the list of the meeting participants that will be contacting you about their travel arrangements for the May 18th meeting in Washington DC.
Let me know if you have any questions for me or if you need any more information from me.

Thanks for your help!

Devon Romig
United States Election Assistance Commission
1225 New York Ave. NW, Suite 1100
Washington, DC 20005
202.566.2377 phone
202.566.3128 fax
www.eac.gov

Can you please give me an idea where we are at with all this? I'd like to be able to figure out my schedule. Thanks -- and thanks for all your assistance on this. Tova

-----Original Message-----
From: dromig@eac.gov [mailto:dromig@eac.gov]
Sent: Tuesday, May 02, 2006 3:54 PM
To: wang@tcf.org
Subject: RE: Voting Fraud/Voter Intimidation Project Working Group

Yes, I have spoken to her assistant several times but today has been the first time that I have ever spoken to her assistant. We did get the information that we needed. Thanks for your help!

Devon Romig
U.S. Election Assistance Commission
1225 New York Ave. NW - Suite #1100
Washington, D.C. 20005
(202)566-2377

I hope to have a better idea tomorrow, if Rokita's office responds. If not, we'd better have a teleconference to discuss our options. --- Peggy
Can you please give me an idea where we are at with all this? I'd like to be able to figure out my schedule. Thanks -- and thanks for all your assistance on this. Tova

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(202)566-2377

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:25 PM -----

Sounds good. I'm available any time on Monday. Tova

----- Original Message -----
As of now, the afternoon of Thursday, May 18 appears to be the best possible date for the meeting. Norcross is not available to attend in person that day (he is available only 2 days during the first three weeks of May). We won't have confirmation of the availability of Secretary Rokita until tomorrow --- but I am hopeful.

I'll give you an update tomorrow. Maybe we can schedule a teleconference on Monday afternoon. --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:25 PM -----

"Donsanto, Craig"
<Craig.Donsanto@usdoj.gov> To psims@eac.gov
05/11/2006 03:36 PM cc "Mitchell, Cynthia" <Cynthia.Mitchell@usdoj.gov>
Subject RE: Voting Fraud-Voter Intimidation Working Group

Peg-

I plan to be here tomorrow, although I may have to go to the main building during the day. If you are here and I am out, just leave the packet with the receptionist. Thank you.

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Thursday, May 11, 2006 3:34 PM
To: Donsanto, Craig
Subject: RE: Voting Fraud-Voter Intimidation Working Group

Craig:

I would love to have an updated list for our research files. For purposes of getting this information out to our participants, I will note that the consultants' summary is based upon information provided as of January 2006. Thanks.

Do you expect to be at your office tomorrow afternoon? I can walk over with the information packet we will have put together for the Working Group. --- Peggy

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

I have Cynthia Mitchell in here with me now.

She says that the figures you listed in your attachment are your analysis of our product, and that therefore we cannot re-evaluate them.

I do not see anything in these raw numbers that impacts adversely any privacy or privilege issues.

We can update the public list and send that to you, if you'd prefer. That would allow you to represent that the numbers are current up through now. But if you would prefer, you can use what you have as long as it is represented as complete only through January, 2006.

Let us know your desires - - -

---

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Thursday, May 11, 2006 2:35 PM
To: Donsanto, Craig
Subject: Voting Fraud-Voter Intimidation Working Group
Importance: High

Craig:

I think we have resolved the issue of Barbara Arnwine's absence from the upcoming meeting by having one of her staff represent her (and her organization). Please review the attached rough summary of DOJ Cases ASAP and let me know if I need to delete reference to the open investigations. Hopefully, we won't have to remove this information as it does not specify the defendants or States involved. --- Peg

---

Rough Summary of Department of Justice, Public Integrity Section Activities, October 2002-January 2006

Prosecutions and Convictions-- Individuals
Noncitizen voting: 20
Vote buying: 49
Double voting: 12
Registration fraud: 13
Civil Rights: 4
Voter Intimidation: 2
Unclear: 1
Open Investigations (note: a few cases overlap with prosecutions and convictions)
Noncitizen voting: 3
Vote buying: 25
Double voting: 15
Registration fraud: 29
Absentee ballot fraud: 9
Official: 8
Ineligibles: 4
Deceptive Practices: 1
Civil Rights: 14
Intimidation: 6
Other: 2

Cases and Investigations Closed for Lack of Evidence
Civil Rights: 8
Official: 12
Registration Fraud: 12
Absentee Ballot Fraud: 14
Ineligible Voting: 3
Intimidation: 8
Double Voting: 5
Ballot Box Stuffing: 1
Vote Buying: 14
Ballot/machine tampering: 2
Other: 8
Unclear: 3

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:25 PM ---

Hi Peg,

Can you please check this before I fax it? Thanks! And can we talk sometime today?

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

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:25 PM ---

Oops! I forgot to cc. you on this. --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 05/04/2006 02:23 PM ---

Margarit Sims/EAC/GOV
05/04/2006 02:07 PM

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:25 PM ---

Margaret Sims/EAC/GOV
05/04/2006 02:23 PM
----- Original Message ----
From: "Job Serebrov" <serebrov@job.org>
To: <wang@tcf.org>
Sent: Saturday, May 13, 2006 10:12 AM
Subject: Re: research summary

> T-
> Are you talking about this?
> J-
> --- wang@tcf.org wrote:
> 
>> In the middle of the night I got the feeling that
>> you may be right, that I did do a summary of the
>> existing literature review (that Job, you approved)
>> I'll have to look for it on Monday (unless I go
>> into the office over the weekend, which is
>> possible). I may be hallucinating, but if not, I'll
>> just present it at the meeting rather than try to
>> get it to them ahead of time. Tova

---- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:25 PM ----

"Donsanto, Craig"
<Craig.Donsanto@usdoj.gov>
05/11/2006 02:55 PM
To psims@eac.gov
cc
Subject RE: Voting Fraud-Voter Intimidation Working Group

Peggy --

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Let us know your desires -- 

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Importance: High
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Unclear: 3

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:25 PM -----

"Tova Wang"
<wang@tcf.org>
05/11/2006 01:10 PM
To psims@eac.gov
cc
Subject new working group representative

is Jon Greenbaum

Here's his info in full:
http://www.lawyerscommittee.org/2005website/aboutus/staff/staffgreenbaum.html

He is the Director of the Voting Rights Project for the Lawyers Committee for Civil Rights. He will be representing Barbara Arnwine, the Executive Director of the Lawyers Committee.

His contact and mailing info is:
igreenbaum@lawyerscommittee.org
202-662-8315
1401 New York Avenue, NW
Suite 400
Washington, DC 20005

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

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

Click here to receive our weekly e-mail updates.

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:25 PM -----

Devon E. Romig/EAC/GOV
05/09/2006 09:31 AM
To marvin.brokaw@adtrav.com
cc Margaret Sims/EAC/GOV@EAC
Subject May 18th Meeting at EAC
Hello Marvin,

I just wanted to follow up with the voicemail message that I left for you yesterday. We will be holding a meeting at our offices in Washington DC on May 18, 2006. I have informed the out of state attendees to contact you for their travel arrangements.

We have been authorized to pay for the attendees airfare and hotel arrangements. Please note that all of the participants are authorized for a two night hotel room stay, as long as the dates are May 17th and 18th.

I attached the list of the meeting participants that will be contacting you about their travel arrangements for the May 18th meeting in Washington DC.
Let me know if you have any questions for me or if you need any more information from me.

Thanks for your help!

Devore Romig
United States Election Assistance Commission
1225 New York Ave. NW, Suite 1100
Washington, DC 20005
202.566.2377 phone
202.566.3128 fax
www.eac.gov

OUT OF STATE PARTICIPANTS VFVI Meeting.doc

Margaret Sims/EAC/GOV
05/08/2006 01:05 PM
To "Job Serebrov" @GSAEXTERNAL
cc
Subject Re: Working Group

Job:

I don't think we can put you on teleconference for 4 1/2 hours. We really need to have you here in person if you are to help conduct the Working Group meeting. You should make your travel arrangements ASAP.
--- Peggy

"Job Serebrov" @eagleglobal.net>

"Job Serebrov"
05/08/2006 10:14 AM
To psims@eac.gov, wang@tcf.org
cc
Subject Re: Working Group
Peggy:

4:00 eastern on Tuesday is fine however, given the financial restrictions that you indicated would be in place for use of my car (I would actually loose money coming to DC) and given the cost of hotels at this time (I can't afford to front these costs and wait for months to be repaid), etc, it would take a miracle for this working group meeting to take place in person. It is looking like the only way it will get done is by teleconference. I also share Tova's concern about the unknown nature of Mr. Perez.

Job

--- psims@eac.gov wrote:

> Hi, Folks:

> Teleconference

> Are both of you available for a teleconference next Tuesday afternoon at about 4 PM EST? If this does not work for you, please suggest another date and/or time. I would like to discuss our preparations for the Working Group meeting.

> Working Group Members

> We have a very good person to fill the slot for the nonpartisan local election official: J.R. Perez, Elections Administrator for Guadalupe County, TX. Attached is his bio. Hope you have no objections to him. He is available on May 18. I have place 2 calls to Pat Rogers office, but have not yet received a reply. Job, if you have any pull with him, you may want to contact him, too.

> Travel Arrangements

> You should make your own travel arrangements, including hotel. Travel time cannot be billed to the contract, except for hours actually worked on the contract (i.e.; reviewing materials in preparation for the meeting, and the like). Current Federal rates follow:

> Maximum Lodging = $180 per day- does not include hotel taxes (if you cannot get this rate, we have covered reasonable rates that are a little higher)

> Meals & Incidentals = $64 per day (except that it is $48 on the first and last day of travel)

> Mileage for Personally Owned Vehicle = $.445 per mile
Under the new contract, I do not have to fill out a travel authorization for you. I can approve your trip via email. Afterwords, when you turn in your next pay voucher, you can attach the airline receipt (or mileage documentation), hotel receipt(s), and ground transportation receipts and a copy of any printed itineraries. Calculate the total travel expenses due you, including applicable per diem. I do not need meal receipts.

Job, under Federal travel regulations, deviations for personal reasons are not normally accommodated. What you can do, however, is to give me a comparison of the cost of roundtrip mileage, hotel, and per diem of doing it your way against the cost of a roundtrip flight, ground transportation, hotel, and per diem. If your way costs less, it should be no problem to cover the full cost. If your way is more expensive, we may only pay up to the amount of traditional travel. (The same rules apply to me when I travel.) If you can tell me where, other than DC, you will spend the night, I can check on applicable per diem rates.

Peggy

Do you have any other suggestions?

--- psims@eac.gov wrote:

> One sources suggests the Georgetown Inn has vacancies and pillow top beds.
> Try 1-800-424-2979 or 202-353-8900.
The Latham is booked solid. I called. I am checking out some possibilities but this is not looking good.

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:25 PM ---

Margaret Sims/EAC/GOV
05/10/2006 11:45 AM
To "Job Serebrov"
cc
Subject Re: Update

Why is the hotel suggestion not workable? (I need to know as we continue our search.) -- Peg

Peggy:

Pat just e-mailed me. He has something he can't move on the 18th. So I am now down one person and still no good hotel situation. Devon's suggestion is not workable.

Job
Here is the first batch of my archived email related to the vote fraud study.

Peg Sims

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 02:25 PM -----
"Job Serebrov"

Peg: Where are we on things?

Job

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 02:25 PM -----
Margaret Sims/EAC/GOV

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

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

combined defining Fraud 11-18-05.doc

------ Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 02:25 PM ------
"Tove Wang"
<wang@tcf.org>
08/08/2006 12:05 PM To psims@eac.gov cc Subject FW: bibliographic form
Hi Peg, Here is the list of literature reviewed in bibliographic form. Please let us know if you have been able to look over any of the materials. Starting this afternoon, I will be pretty unavailable for the next two weeks.

Thanks

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

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

I'm assuming we will get the extension for the revision period. Thanks.

From: psims@eac.gov
To: wang@tcf.org
Sent: Friday, August 11, 2006 2:39 PM
Subject: Re: direct deposit

> Tova:
> > I show only 2 hours left on your contract as of 7/15/06 -- but here is the form you requested. --- Peggy
> > (See attached file: EFT Form.rtf)
Hey Peg,

Hope you are well. Whenever you have a chance, I need the form to change the direct deposit to my new bank account. Thanks so much.

Tova

PS -- Keep me posted on what's going on with the report

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 02:25 PM ---
Margaret Sims/EAC/GOV
08/11/2006 02:39 PM
To wang@tcf.org@GSAEXTERNAL
cc
Subject Re: direct deposit

Tova:

I show only 2 hours left on your contract as of 7/15/06 -- but here is the form you requested. --- Peggy

EFT Form.rtf

wang@tcf.org
Hey Peg,

Hope you are well. Whenever you have a chance, I need the form to change the direct deposit to my new bank account. Thanks so much.

Tova

PS -- Keep me posted on what's going on with the report
Tom,
A draft letter is attached. I've incorporated comments from Gavin and Julie.

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

www.eac.gov brennan center letter.doc

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 02:25 PM -----
Margaret Sims/EAC/GOV
10/10/2006 01:56 PM
To Sheila A. Banks/EAC/GOV
cc
Subject Fw: Letter from Barbara Arnwine

Any chance you could send a pdf version of the letter to me? --Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 10/10/2006 01:55 PM -----
Gracia Hillman/EAC/GOV
10/10/2006 12:12 PM
To Margaret Sims/EAC/GOV@EAC
cc "Julie Thompson-Hodgkins" <jthompson@eac.gov>, "Tom Wilkey" <twilkey@eac.gov>, sbanks@eac.gov
Subject Re: Letter from Barbara Arnwine

The letter was addressed to the commissioners. I will ask Sheila to give a copy to you.

Per our normal procedures, I would guess a reply should be drafted for the Chairman's signature (especially as he is the DFO for the Board of Advisors) but you should check that with Tom.

Thanks.

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 02:25 PM -----
Margaret Sims/EAC/GOV
10/11/2006 01:45 PM
To Jeannie Layson/EAC/GOV
cc twilkey@eac.gov, Juliet E. Hodgkins/EAC/GOV@EAC, bwhitener@eac.gov
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

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.

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 Margaret Sims/EAC/GOV on 04/30/2007 02:25 PM ---

Margaret Sims/EAC/GOV

To Tova Andrea Wang, Job Serabrov

cc

Subject Don't Believe Everything You Read

Tova and Job:

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

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

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

VF-VI Study Status 5-17-06.pdf
----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 02:25 PM -----

Jeannie Layson/EAC/GOV
10/13/2006 10:50 AM
To artslevine@yahoo.com
cc
Subject Your inquiry

Mr. Levine,
Per your inquiry from yesterday, the status report on the EAC's voter fraud and intimidation research project is attached. It was prepared by EAC staff and presented to our Standards Board and Board of Advisors at a meeting that was open to the public in May of this year. EAC staff is currently working on a final report.

Please let me know if I can be of further assistance, and I'd be glad to add you to our distribution list so you'll get updates on this and other EAC projects.

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

www.eac.gov VF-VI Study Status 5-17-06.pdf
----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 02:25 PM -----

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 accommodate him, as he has dutifully covered EAC, and plans to include us in a story next week about the election landscape. 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 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 

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 02:25 PM ----- 
Bryan Whitener/EAC/GOV 
10/11/2006 11:34 AM 

To: Thomas R. Wilkey/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 
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"
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 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)
wendy.weiser@nyu.edu

Has the working group met since the preliminary report was given to the Standards Bd?
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

Find a time that works. There's a story in today's St Louis PD that points to over 1000 suspect voter registrations.

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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 Margaret Sims/EAC/GOV on 04/30/2007 02:25 PM ----
Margaret Sims/EAC/GOV
10/11/2006 01:57 PM	To Jeannie Layson/EAC/GOV
cc twilkey@eac.gov, Juliet E. Hodgkins/EAC/GOV@EAC, bwhitener@eac.gov
Subject Re: Voting Fraud-Voter Intimidation Report

The working group met prior to the meeting of the EAC boards, but too late for its deliberations to be summarized in the written status report on the project that was delivered to the boards. The status report notes that a meeting of the working group was about to be held to review the research so far and make recommendations. ---- Peggy

Jeannie Layson/EAC/GOV

Jeannie Layson/EAC/GOV
10/11/2006 01:03 PM	To Margaret Sims/EAC/GOV@EAC
cc
Subject Re: Voting Fraud-Voter Intimidation Report

Has the working group met since the preliminary report was given to the Standards Bd?

--------------------
Sent from my BlackBerry Wireless Handheld  
Margaret Sims  
----- Original Message -----  

From: Margaret Sims  
Sent: 10/11/2006 12:34 PM  
To: Paul DeGregorio; Jeannie Layson; Thomas Wilkey
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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

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Sent: 10/11/2006 10:15 AM  
To: Paul DeGregorio  
Cc: Amie Sherrill, Margaret Sims  
Subject: Interview Request

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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

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 02:25 PM ---

Paul DeGregorio/EAC/GOV  
09/28/2006 11:27 PM  
To: Margaret Sims/EAC/GOV  
cc:  
Subject: Speech

Peg,

I thought I would share with you the speech I am going to given on Fraud and Intimidation in Salt Lake City at noon on Friday. If you have time, please read it over and let me know if you see anything I shouldn't say. Thanks.

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

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

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 02:25 PM ---

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  
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 neither 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" <wendy.weiser@nyu.edu>
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;

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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 to receive a copy of these reports. If this request is denied, please provide an explanation as to why.

Sincerely,
Tom,

Thanks but Wendy Weiser seems to be under the assumption that we provided all of this material to USA Today. As agreed to by the commissioners, counsel and staff, we only provided USA Today with the public documents that were presented to the advisory boards at the May meetings. Should we not clarify this to Wendy and provide her or anyone else with the same. I also just received the same request from election officials in Cook County, IL and King County, WA. Reporters are pestering them for information based on the USA Today article so election officials now want it from EAC. Looks like this is only the start so we need to get ahead of the curve.

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 neither of these reports can be released.

----- Original Message ----- 
From: Bryan Whitener
Sent: 10/11/2006 11:34 AM
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"
<wendy.weiser@nyu.edu> To bwhitener@eac.gov
10/11/2006 10:57 AM cc
Subject request for reports

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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)
wendy.weiser@nyu.edu
We don't have a summary in numbers. We just have a summary of cases, some of which do not appear to reach the level of election fraud, and the charts of newspaper articles, some of which only contain allegations and some of which report convictions. These charts were on the CD I sent you before the Working Group meeting. Unfortunately, we have a long way to go before we have what I would classify as statistics.

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
e-mail: psims@eac.gov

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

Peggy - - I can take whatever you got!!! What does the data you got show?

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, August 22, 2006 1:53 PM
To: Donsanto, Craig
Subject: Re: Does EAC have access to stats on --

No reliable, comprehensive data --- just the preliminary research results from case law, literature review, and interviews. --- Peggy
Donsanto, Craig
<Craig.Donsanto@usdoj.gov>

08/22/2006 12:50 PM
cc"Campbell, Benton" <Benton.Campbell@usdoj.gov>, "Simmons, Nancy" <Nancy.Simmons@usdoj.gov>
Subject: Does EAC have access to stats on –

-- State and local level prosecutions dealing with electoral fraud?

This message was brought to you by Dr. D's fabulous Blackberry!

---- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 02:25 PM ----

Margaret Sims/EAC/GOV
10/11/2006 02:37 PM
To Jeannie Layson/EAC/GOV
cc twilkey@eac.gov, Juliet E. Hodgkins/EAC/GOV@EAC, bwhitener@eac.gov
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
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov
Margaret Sims/EAC/GOV
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

Yes, that is what prompted my question. So the answer is no -- they have not met since May 17?

Peggy,
Could you give Jeannie a call she needs some help fashioning a statement regarding the USA Today article since Tova and Job are hoping mad
Thanks

Sent from my BlackBerry Wireless Handheld
FYI.

----- Forwarded by Margaret Sims/EAC/GOV on 10/13/2006 01:22 PM -----
*Carrera, James A
10/10/2006 12:35 PM

Peggy,

As noted in our recent status report, 75 percent of contract funding has been reached. The attached is submitted in accordance with the contract requirements.

If you have any questions please contact me.

Regards,
Jim

James Carrera / KPMG LLP / jcarrera@kpmg.com / 703 286-8106 (office) / [phone number] / 703 995-0325 (fax) /

The information in this email is confidential and may be legally privileged. It is intended solely for the addressee. Access to this email by anyone else is unauthorized. If you are not the intended recipient, any disclosure, copying, distribution or any action taken or omitted to be taken in reliance on it, is prohibited and may be unlawful. When addressed to our clients any opinions or advice contained in this email are subject to the terms and conditions expressed in the governing KPMG client engagement letter.

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 02:25 PM -----
Margaret Sims/EAC/GOV
09/27/2006 12:51 PM

To: Bryan Whitener
cc: Juliet E. Hodgkins/EAC/GOV@EAC, Karen
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

Who is signing the letter?

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

I will IF they sign off on it
Who is signing the letter?

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

See questions below. I can answer the first two, but see if this language is acceptable for questions 3 and 4.

Can I get full report submitted by Tova Wang? If not, why not? EAC staff is currently reviewing the data, and we have not compiled a final report. I will make sure you receive the final report when it is issued.

This answer will probably not make him happy, but it's the best I can come up with. Suggestions?

----- Forwarded by Maggie Sims/EAC/GOV on 04/30/2007 02:25 PM -----

Bryan Whitener/EAC/GOV

004663
To Jeannie Layson/EAC/GOV@EAC
cc
Subject reporter - Art Levine, Salon.com

Art Levine
Salon.com
2006 deadline today or tomorrow

What exactly is the document USA Today refers to? Is it a report or just a staff document? Can I get full report submitted by Tova Wang? If not, why not?

FYI
Google search shows this on the DLC website
http://www.dlc.org/ndol_ci.cfm?kaid=139&subid=275&contentid=253439

Art Levine
Senior Fellow
Progressive Policy Institute

Also,

Salon's shameful six

There was Florida in 2000 and Ohio in 2004. Here are the six states where vote suppression could cost voters their voice -- and Democrats the election -- in 2006.

Salon News
By Art Levine

Eva Steele has a son in the military who is supposed to be fighting for freedom in Iraq, but sitting in a wheelchair in her room in a Mesa, Ariz., assisted-living facility, she wonders why it's so hard for her to realize a basic freedom back here in America: the right to vote.
Arriving in Arizona in January from Kansas City, weakened by four heart attacks and degenerative disk disease, Steele, 57, discovered that without a birth certificate she can't register to vote. Under a draconian new Arizona law that supposedly targets illegal immigrants, she needs proof of citizenship and a state-issued driver's license or photo I.D. to register. But her van and purse were stolen in the first few weeks after she moved to Mesa, and with her disability checks going to rent and medicine, she can't afford the $15 needed to get her birth certificate from Missouri. Her wheelchair makes it hard for her to navigate the bus routes or the bureaucratic maze required to argue with state bureaucrats. She's unable to overcome the hurdles thrown in her way -- and in the way of as many as 500,000 other Arizona residents -- by the state's Republican politicians.

###

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 02:25 PM ---

Jeannie Layson/EAC/GOV
10/12/2006 10:59 AM
To: Thomas.Hicks@mail.house.gov
cc:
Subject: Research update

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 02:25 PM ---

Jeannie Layson/EAC/GOV
10/12/2006 05:26 PM
To: ghillman@eac.gov, pdegregorio@eac.gov, ddavidson@eac.gov, twilkey@eac.gov, jthompson@eac.gov, ggilmour@eac.gov, psims@eac.gov, klynndyson@eac.gov, bwhitener@eac.gov
cc: ghillman@eac.gov, pdegregorio@eac.gov, ddavidson@eac.gov, twilkey@eac.gov, jthompson@eac.gov, ggilmour@eac.gov, psims@eac.gov, klynndyson@eac.gov, bwhitener@eac.gov
Subject: FOR YOUR APPROVAL

Commissioners,

Wendy Weiser of the Brennan Center has requested some of the information that was distributed to the Bd. of Adv. and the Standards Bd. at the May meeting. Her request is below. Attached is a draft letter that I
suggest accompany the information we provide. Also enclosed would be the resolutions passed by both entities. Please let me know if the letter meets your approval. (The letter would be from Tom.)

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 to receive a copy of these reports. If this request is denied, please provide an explanation as to why.

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

www.eac.gov  brennan center letter.doc

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 02:25 PM -----

"Donsanto, Craig" <Craig.Donsanto@usdoj.gov>
08/22/2006 02:44 PM
To "Campbell, Benton" <Benton.Campbell@usdoj.gov>,  
"Simmons, Nancy" <Nancy.Simmons@usdoj.gov>  
cc psims@eac.gov

Subject FW: Does EAC have access to stats on --

Ben - -

This forwards a short e-mail chain between me and Peg Sims at the EAC. Peg is an institution where this sort of thing is concerned and if there were national stats available she would be the first place I would go - - which come to think of it is why I did!

Her remarks bring-up another issue: apples and oranges.

There are a lot of categories of crime that could arguably fit under the umbrella of “election crime” but which would not be the sort of thing we would find useful for present purposes. Examples would be theft of election materials unrelated to an intent to corrupt the election, campaigning or assaults in or near polls, “campaign slander” (i.e., lying about one’s opponent) which is not a federal crime but is potentially a crime in 20 or so states, corruption in the procurement of election equipment (i.e., Louisiana had a recent high
profile case against its secretary of state who took bribes from voting equipment vendors in exchange for buying their machines). This stuff is criminal, but it does not involve corruption of the electoral process itself.

Also, some local prosecutors who do enforce the laws dealing with particularly vote buying - - for various reasons - - chose to prosecute the voters for selling their votes rather than the corrupt political operatives who buy the votes. Many times this is simply because slamming the voter rather than the corrupt pols is easier, quicker and does not entangle the prosecutor in the caldron of local politics. In other instances it is more sinister: I am aware of several instances where local prosecutors tried to charge voters whose names surfaced as people whose votes locally prominent pols had been bought in order to silence them in the federal case. Federally, we usually treat the voters as victims and go after those who tried to purchase their birthright. In one case in Western North Carolina, the target of our case was a local DA. When our indictment against him was returned it named the voters whose votes he was being charged with having bought (we try to avoid this now!). His first act of defense was to charge all these voters with selling their votes under N.C. law. We had to intercede for him - - through the U.S. Attorney at that time - - with the N.C. Governor to pardon these voters so that they could testify concerning the material facts without incriminating themselves.

My point here is this:

Even if we can get some State stats, since the State concept of "election crime" and ours is usually different, and since state prosecutors often approach this type of case from an entirely different perspective than we do at the federal level, State stats will likely have minimal value to substantiating the thesis we are trying to advance: that local law enforcement in the election crime area is not adequate.

----- Message from psims@eac.gov on Tue, 22 Aug 2006 14:09:06 -0400 -----

To: "Donsanto, Craig" <Craig.Donsanto@crm.usdoj.gov>

Subject: RE: Does EAC have access to stats on --

We don't have a summary in numbers. We just have a summary of cases, some of which do not appear to reach the level of election fraud, and the charts of newspaper articles, some of which only contain allegations and some of which report convictions. These charts were on the CD I sent you before the Working Group meeting. Unfortunately, we have a long way to go before we have what I would classify as statistics.

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

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

08/22/2006 01:54 PM

To psims@eac.gov

cc

Subject RE: Does EAC have access to stats on --
Peggy - - I can take whatever you got!!! What does the data you got show?

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, August 22, 2006 1:53 PM
To: Donsanto, Craig
Subject: Re: Does EAC have access to stats on --

No reliable, comprehensive data -- just the preliminary research results from case law, literature review, and interviews. -- Peggy

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

08/22/2006 12:50 PM
To psims@eac.gov, bhanco@eac.gov
cc "Campbell, Benton" <Benton.Campbell@usdoj.gov>, "Simmons, Nancy" <Nancy.Simmons@usdoj.gov>
Subject Does EAC have access to stats on --

-- State and local level prosecutions dealing with electoral fraud?

This message was brought to you by Dr. D's fabulous Blackberry!

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 02:25 PM -----

"Tova Wang"
<wang@tcf.org>
10/03/2006 10:41 AM
To: "Ambrogi, Adam (Rules)" <Adam_Ambrogi@rules.senate.gov>, psims@eac.gov
cc
Subject: RE: Chapin Survey
Thanks Adam. As the current project moves forward and then proceeds to phase 2, this will be a great resource I'm sure. Tova

Tova Andrea Wang, Democracy Fellow
The Century Foundation
1333 H Street, NW, Washington, D.C. 20005

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

From: Ambrogi, Adam (Rules) [mailto:Adam_Ambrogi@rules.senate.gov]
Sent: Monday, October 02, 2006 11:39 AM
To: psims@eac.gov; wang@tcf.org
Subject: Chapin Survey

Peggy and Tova:

I know that we had been looking for a state survey of election fraud and intimidation statutes—as you may have seen, doug chapin recently released a report on this info-attached here. I hope all is well with the both of you.

Best regards,
Adam

Adam D. Ambrogi
Democratic Professional Staff Member
Senate Committee on Rules and Administration
Russell Senate Office Building, Room 479
Washington, D.C. 20510
202-224-0279

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 02:25 PM -----
Margaret Sims/EAC/GOV
10/13/2006 04:40 PM
To Jeannie Layson/EAC/GOV
cc twilkey@eac.gov
Subject Fw: Don't Believe Everything You Read

Jeannie:

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

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

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

Peg:

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

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

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

Regards,

Job

psims@eac.gov wrote:

Tova and Job:

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

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

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

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 02:25 PM ---

Jeannie Layson/EAC/GOV
10/13/2006 04:11 PM
To psims@eac.gov
cc
Subject job and tova

Please forward me the email you sent Tova and Job, as he is calling me and I want to make sure I understand what is being communicated to them. Thank you.

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

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 02:25 PM ---

Jeannie Layson/EAC/GOV
10/11/2006 08:22 AM
To pdegregorio@eac.gov, ghillman@eac.gov, ddavidson@eac.gov
cc twilkey@eac.gov, jthompson@eac.gov, psims@eac.gov, bwhitener@eac.gov
Subject USA Today

See story below that ran in today's USA Today. This reporter requested the info a few weeks ago, and we had to release it b/c it was distributed at a Standards Bd. meeting, which is considered a public venue.
Also, the document was not labeled draft.

I anticipate that we may get questions about why we haven't released it. I propose the following response. Please let me know if you approve. The story follows.

"This was a preliminary report presented to our oversight committees. The EAC is waiting on a final report, which we will release upon its completion."

Report refutes fraud at poll sites

Updated 10/11/2006 8:05 AM 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

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."

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
The proposed response sounds okay but the story is out. Other media may want the information. That the material given USA Today wasn't identified as draft or preliminary findings is now our problem.

I hope we are working post haste to have the report ready to release less we be seen as trying to bury this. It seems to me that other articles will be written, if not from the document that we sent to USA Today, then certainly from the USA Today article as the source document.

My initial reaction is that both reports are currently under review by EAC staff. I will entertain other thoughts but that is pretty much the what is the situation right now. Both research projects were designed to give the EAC issues and recommendations in both of these areas and are currently being reviewed. As a matter of fact the report from our consultants on Voter fraud and Intimiation has not been forwarded by staff to the Commissioners but Peg will need to weigh in on that.

Sent from my BlackBerry Wireless Handheld
Bryan Whitener

----- Original Message -----
All

Richard Wolf of USA Today called and asked for the following. Jeannie and I ask that you consider this carefully and let us know ASAP what to provide.

(1) The status report on voter fraud and consultant update that was presented to the advisory boards in May, 2006.

(2) The status of the required guidance document on provisional voting and voter ID that is referenced in the following passage in today’s Electionline Weekly by Doug Chapin.

In addition to the EAC’s considerable election management responsibilities (especially in the area of voting equipment certification and testing), the agency has key policy issues to resolve in the immediate to near-term future, including a required guidance document on provisional voting and voter ID (now nearly two years overdue) and continued regulatory oversight over state implementation of “motor voter”. This latter issue will almost certainly involve questions about the intersection of state and federal laws on voter registration - questions which divided the Commission when applied to Arizona, and could divide it again as Republicans and Democrats continue their traditional struggle to balance access to the franchise with concerns about the potential for fraud at the polls.

Thanks,
Bryan

—— Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 02:25 PM ——

To Jeannie Layson/EAC/GOV@EAC
cc ggilmour@eac.gov, jthompson@eac.gov, klynndyson@eac.gov, psims@eac.gov
Subject Re: Brennan Center letter

I like this..it needs to go to the 3 C’s for review and approval.
We also need to be prepared as to what happens when they receive it.
Thanks for your help.
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

Jeannie Layson/EAC/GOV
10/12/2006 04:08 PM
To twilkey@eac.gov
cc jthompson@eac.gov, ggilmour@eac.gov, klynndyson@eac.gov, psims@eac.gov
Subject Brennan Center letter

Tom,
A draft letter is attached. I've incorporated comments from Gavin and Julie.

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

www.eac.gov brennan center letter.doc

Matt (and Amy) are working on a speech for the Chairman to deliver at the Vote Fraud conference in Utah at the end of the week. Matt has asked for the consultants' definition of vote fraud/voter intimidation and the draft recommendations. As neither have been through full Commission review, I would like to speak with one or both of you before I drop this information in any one Commissioner's lap. Matt is looking for this information today. FYI, attached are copies of the consultants' definition and the draft recommendations from the consultants and others from the working group. Also attached is a summary of concerns expressed by the working group. --- Peggy

Fraud Project Definition-rev 6-27.doc  RECOMMENDATIONS - final2.doc  Working Group Recommendations final.doc

Key Working Group Comments and Observations AND concerns final.doc

Bryan Whitener/EAC/GOV
10/11/2006 05:29 PM
To Paul DeGregorio/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC, Gracia Hillman/EAC/GOV@EAC
cc Thomas R. Wilkey/EAC/GOV@EAC, Juliet E.
WASHINGTON (AP) -- The most common form of voter fraud involves absentee ballots, including forgery and coercion in getting older or ailing voters to fill them out, according to a preliminary report to the U.S. Election Assistance Commission.

But the report, delivered in May, suggested that reports of polling place fraud involving "dead" voters and voting by felons and non-citizens might be overstated. The researchers said there is far more anecdotal evidence about voter fraud than specific verifiable claims.

"On balance, more researchers find it to be less of a problem than is commonly described in political debate," the report said.

"Many times people put their own partisan spin on voter fraud and voter intimidation," EAC Chairman Paul DeGregorio said Wednesday.

DeGregorio said the report was only preliminary and cautioned that more investigation is needed to understand the amount of voter fraud in this country.

"Many times you see people attempting to commit fraud, but it never gets to the level of being reported," said DeGregorio, a former elections official in St. Louis. He noted a case of more than 1,400 suspect voter registration cards being investigated in St. Louis.

The preliminary report was prepared by Tova Wang, an elections expert at the Century Foundation think tank and Job Serebrov, an Arkansas attorney.

Conservatives have argued the problem of voter fraud is severe in some states, while liberals generally argue that voters face too many restrictions.

New state laws requiring voters to present identification at polling places have faced legal challenges in states such as Arizona and Georgia.

"It's absolutely a serious problem," said Thor Hearne, counsel to the American Center for Voting Rights. "It's an unfortunate reality, particularly in battleground states."

Those problems include voter fraud and voter intimidation, he said.

The final voter fraud report is expected after the Nov. 7 midterm elections, DeGregorio said.

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----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 02:25 PM -----
Dan,

Just wanted to let you know that the USAT article is not about a research report but a "status" report, which was presented to the Standards Bd. and the Bd. of Advisors at a meeting held in May. During this meeting, these entities received updates on many EAC activities, and the aforementioned status report was just one of those updates. And by the way, the meeting was open to the public, and posted on our website and in the Fed. Register. In the Fed. Register notice you'll see that the agenda included an update on our research projects.

Please let me know if you have any questions. Thank you for your consideration in this matter.

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 Margaret Sims/EAC/GOV on 04/30/2007 02:25 PM -----

Thomas R. Wilkey/EAC/GOV
10/12/2006 04:26 PM
To: Jeannie Layson/EAC/GOV@EAC
cc:ggilmour@eac.gov, jthompson@eac.gov, psims@eac.gov

Subject: Re: Fw: reporter - Art Levine, Salon.com

A.) The "report" they refer to was a status report written by staff
B.) The full report is currently being reviewed by staff and the report was intended to give recommendations to the EAC on how and what to do additional studies or guidance on.
C.) the report will be available at some future time after staff has had an opportunity to review and evaluate it's contents.

Thomas R. Wilkey
Executive Director
US Election Assistance Commission
1225 New York Ave, NW - Suite 1100
Washington, DC 20005
See questions below. I can answer the first two, but see if this language is acceptable for questions 3 and 4.

Can I get full report submitted by Tova Wang? If not, why not? EAC staff is currently reviewing the data, and we have not compiled a final report. I will make sure you receive the final report when it is issued.

This answer will probably not make him happy, but it's the best I can come up with. Suggestions?

----- Forwarded by Jeannie Layson/EAC/GOV on 10/12/2006 04:06 PM ----- 
Bryan Whitener/EAC/GOV

Art Levine
Salon.com

deadline today or tomorrow

What exactly is the document USA Today refers to?
Is it a report or just a staff document?
Can I get full report submitted by Tova Wang?
If not, why not?
FYI
Google search shows this on the DLC website
http://www.dlc.org/ndol_ci.cfm?kaid=139&subid=275&contentid=253439

Art Levine
Senior Fellow
Progressive Policy Institute

Also,

Salon’s shameful six

There was Florida in 2000 and Ohio in 2004. Here are the six states where vote suppression could cost voters their voice -- and Democrats the election -- in 2006.

Salon News
By Art Levine

Eva Steele has a son in the military who is supposed to be fighting for freedom in Iraq, but sitting in a wheelchair in her room in a Mesa, Ariz., assisted-living facility, she wonders why it’s so hard for her to realize a basic freedom back here in America: the right to vote.

Arriving in Arizona in January from Kansas City, weakened by four heart attacks and degenerative disk disease, Steele, 57, discovered that without a birth certificate she can’t register to vote. Under a draconian new Arizona law that supposedly targets illegal immigrants, she needs proof of citizenship and a state-issued driver’s license or photo I.D. to register. But her van and purse were stolen in the first few weeks after she moved to Mesa, and with her disability checks going to rent and medicine, she can’t afford the $15 needed to get her birth certificate from Missouri. Her wheelchair makes it hard for her to navigate the bus routes or the bureaucratic maze required to argue with state bureaucrats. She’s unable to overcome the hurdles thrown in her way -- and in the way of as many as 500,000 other Arizona residents -- by the state’s Republican politicians.

###

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 02:25 PM ---

Paul DeGregorio/EAC/GOV
09/27/2006 12:36 PM

To Margaret Sims/EAC/GOV@EAC

cc

Subject Re: Last Submission from Vote Fraud-Voter Intimidation Consultants

No big deal -- and no big delay. Don’t worry about it.

Paul DeGregorio
Chairman
US Election Assistance Commission
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

Attached is a proposed draft. I have to get this resolved ASAP as she is demanding a delivery time from me. I literally cannot answer my phone. Unfortunately, the Brennan Center can and will make a big stink if we don't respond. We don't need more accusations about us sitting on research.

The letter would be accompanied by the resolutions passed at the May meetings.
And, I need to know who is supposed to sign this letter.

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

www.eac.gov brennan center letter.doc

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 02:25 PM ----

Jeannie Layson/EAC/GOV
10/12/2006 01:18 PM

To twilkey@eac.gov
Cc klynndyson@eac.gov, jthompson@eac.gov, ggilmour@eac.gov, psims@eac.gov

Subject Brennan Center

Please note that Wendy Weiser has asked me to provide a time frame for when I will provide the following documents. Tom, per our conversation, I can write a letter, but how do we address her request for the voter ID info? Also, is this something Karen should handle as these are for research docs? I need an answer soon...

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 to receive a copy of these reports. If this request is denied, please provide an explanation as to why.

Sincerely,

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

Jeannie:

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

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

--- Peggy
Peg:

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

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

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

Regards,

Job

psims@eac.gov wrote:

Tova and Job:

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

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

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

---- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 02:25 PM ----

Margaret Sims/EAC/GOV
09/26/2006 12:50 PM
To Thomas Wilkey
cc
Subject: Fw: Preparation for Vote Fraud Conference in Utah

Here are the documents I sent you yesterday. Also attached is a copy of the status report on this research that was provided to the Standards Board and Board of Advisors earlier this year. --- Peggy

---- Forwarded by Margaret Sims/EAC/GOV on 09/26/2006 12:48 PM ----

Margaret Sims/EAC/GOV
09/25/2006 12:36 PM
To Juliet E. Hodgkins/EAC/GOV@EAC, twilkey@eac.gov
cc Karen Lynn-Dyson/EAC/GOV@EAC
Subject: Preparation for Vote Fraud Conference in Utah

Matt (and Amy) are working on a speech for the Chairman to deliver at the Vote Fraud conference in Utah at the end of the week. Matt has asked for the consultants' definition of vote fraud/voter intimidation and the draft recommendations. As neither have been through full Commission review, I would like to speak with one or both of you before I drop this information in any one Commissioner's lap. Matt is looking for this information today. FYI, attached are copies of the consultants' definition and the draft recommendations from the consultants and others from the working group. Also attached is a summary of concerns expressed by the working group. --- Peggy

---- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 02:25 PM ----

Karen Lynn-Dyson/EAC/GOV
09/25/2006 12:39 PM
To Margaret Sims/EAC/GOV@EAC
Many, many thanks for keeping me in the loop on this
(I think)

:-)

Karen Lynn-Dyson
Research Director
U.S. Election Assistance Commission
1225 New York Avenue, NW Suite 1100
Washington, DC 20005
tel: 202-566-3123
A new email you may want to add to the collection.

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
e-mail: psims@eac.gov

--- Forwarded by Margaret Sims/EAC/GOV on 04/26/2007 05:22 PM ---
Margaret Sims/EAC/GOV
04/26/2007 05:14 PM

	To Jeannie Layson/EAC/GOV
	cc jthompson@eac.gov

Subject Re: tova

Do we know who received her letter? I haven't seen it. --- Peggy

Jeannie Layson/EAC/GOV

See her press release (third item).

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

Please see Dan Seligson's questions and request. Exactly what are we going to provide to the House subcommittee and when? Once they receive it, can the subcommittee or its members then release it to anyone they choose? Do we plan to release it to everyone once we've provided it to the subcommittee?

--- Forwarded by Bryan Whitener/EAC/GOV on 03/09/2007 02:29 PM ---

"Dan Seligson" <dseligson@electionline.org>  
To "Bryan Whitener" <bwhitener@eac.gov>  
cc  
03/09/2007 02:26 PM  
Subject info request re: House Appropriations subcommittee hearing

Bryan -

As I mentioned on the phone, I am seeking information as a follow up to the House Appropriations Subcommittee on Financial Services. At the hearing, Rep. Maurice Hinchey, D-N.Y., requested that the EAC submit the original version of a report written by Tova Wang and Job Serebrov. Chairwoman Davidson said she would provide the original report (I believe) within three days. Is that still the case? Will the subcommittee have the original report, as submitted by the consultants, on Monday? And if so, may we have a copy as well?

Thanks,

Dan

Daniel Seligson
editor
electionline.org
1025 F St. NW Suite 900
Washington, DC 20004
202-552-2039

--- Forwarded by Margaret Sims/EAC/GOV on 04/24/2007 04:22 PM ---

Margaret Sims/EAC/GOV
03/13/2007 02:31 PM  
To Jeannie Layson/EAC/GOV
Looks fine to me. Of course, she is probably referring to our decision not to release the consultants' draft final report. --- Peggy

Jeannie Layson/EAC/GOV

Hello all,
A columnist from the WaPo has asked for info about both the voter ID and the fraud and intimidation reports. This was prompted by the accusation that the president was concerned that the fired prosecutors were not aggressively pursuing voter fraud cases. She had heard that we were refusing to release this information, so I am trying to demonstrate otherwise, as well as show that we have discussed these projects numerous times in public meetings. Please take a look at my draft email to her and let me know if you have any suggestions. She needs to hear back from me by 4 p.m. Thanks for your help with this.

Ms. Cocco,
Per your questions, go here to view the testimony regarding voter ID from our Feb. 2 public meeting. As I mentioned, at this meeting EAC Chair Donetta Davidson requested that staff review the initial research provided by Eagleton and produce a final report, which would include recommendations for further study on this subject. Currently, staff is working to finalize the voter ID report.

Regarding the voter fraud and intimidation research, at a May 2006 public meeting of our Standards Board and Board of Advisors, the EAC project manager for this research presented a staff update on the project. Go here to view the agenda, page 3. The document you referred to was the update the project manager gave at this public meeting, and it has been made available to anyone who asked for it. The final culmination of this project can be found here, and links to the attachments provided by the consultants are available by going to page 24 of this report. The commissioners adopted this report at a public meeting in Dec. 2006.

As a small agency of 23 employees, including the four commissioners, it is necessary for the agency to contract with consultants to gather the initial data for these projects. After EAC receives the initial data, the agency reviews the data for accuracy and then releases a final report.

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
The info that is on the website should be everything that you and she need. If you have trouble locating that info, Jeannie can probably direct you to where you can find it.

_____________________________
Sent from my BlackBerry® Wireless Handheld
Karen Lynn-Dyson

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

From: Karen Lynn-Dyson
Sent: 04/02/2007 11:02 AM EDT
To: Margaret Sims
Cc: Juliet Hodgkins; stephanie.wolson@gmail.com

Peg-

This week Heather Moss, a research intern will be starting with us. Heather is presently in law school and worked for DOJ in the Voting Rights Division for four years. Heather’s primary responsibility (for the next month or so) will be helping us develop the follow- on research project for the Election Crimes study.

Also as an FYI- Commissioner Hunter and her Special Assistant, Stephanie Wolson have expressed an interest in working closely with staff on this project.

I would like to schedule a call/meeting for later on this week so that everyone can be brought up to speed on this work.

In preparation for this meeting I would like to give Heather the project materials which Job and Tova worked on and any relevant material you may have.

Could you direct me to these files so that Heather may begin her work on this project? Could you also let me know dates and times this week that might work for you?

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
Julie has already raised the point that most concerned me: I don't think it is accurate to say the consultant's recommendations were their findings. The recommendations were a combination of consultant recommendations and working group recommendations for future EAC action. We did not ask the consultants to provide "findings" because this research was never supposed to be the definitive study on the subject. Instead, it was supposed to be an initial effort to see what relevant information is available, to define voting fraud and voter intimidation, and to make recommendations to EAC regarding how to pursue the subject (next steps). --- Peggy

Jeannie Layson/EAC/GOV

04/03/2007 05:33 PM
To psims@eac.gov, jthompson@eac.gov, klynndyson@eac.gov, Thomas R. Wilkey/EAC/GOV@EAC
cc
Subject Please review my responses

This are questions from a "freelance" reporter who is very hot about the "Tova Wang report." Please let me know if my answers are accurate, and I welcome any suggestions you may have. I need to get your input by COB tomorrow. I am also looking for more clarification on what didn't make it into the fraud report. She is asking if we included all of their "findings" and their "research."

Thanks.

1) You said that the Wang/Serebrov report has not been released because it was predecisional. Was the Moritz/Eagleton report released because it was not predecisional? The Moritz/Eagleton report was a predecisional document. The commissioners took an action not to adopt a final report based upon the Moritz/Eagleton report, but to release all the predecisional information (the draft report).

2) I understood you to say that the December EAC report includes all of the Wang/Serebrov recommendations but not all of the Wang/Serebrov findings. Is that correct? The report does include all of their recommendations, which were their findings, and all of the research they conducted.

3) I understood you to say that EAC staff added results of their own research to the December EAC report. Is that correct? What I said was EAC staff reviewed the report for accuracy, for grammar and added language that reflected the commission's decision to adopt the final version based upon the initial research provided by the consultants.

4) If I'm correct on questions 2 and 3, would it be accurate to say that
readers of the December report cannot tell how much of that report does and
does not reflect the original Wang/Serebrov findings? The consultants'
recommendations are their findings. All of the recommendations are included in
the final report, so readers can make the determination regarding the
recommendations.

5) I called earlier today requesting the Wang/Serebrov report, and you sent me
the December EAC report. I am concerned that if I had not already been
researching this closely, I would have thought that you'd sent me the
Wang/Serebrov report and would have reported incorrectly that you had. Does
the EAC have any comment on this manner of responding to press inquiries? (I
contacted you to request the report after I read in the Statesman Journal of
Salem, Oregon, an article by Marie Cocco that says: "The bipartisan commission
didn't widely release the consultants' review, but makes it available on
request." Did the EAC indeed give Ms. Cocco a copy of the "consultants'
review"? Or has she misunderstood you in the way I'm concerned about?) I sent
you a link to the "EAC report" because it is what was adopted by the
commission based upon the research conducted by the consultants. The final
report clearly states how it was compiled and includes bios for both of the
consultants. Regarding Ms. Cocco, I explained the entire process to her. I
provided the staff update on the project which was presented at a public
meeting in May 2006 and the final report, which is posted on the EAC website.
Regarding "this manner of responding to press inquiries," I have forwarded
your comments to my supervisor so he can review my performance regarding the
handling of your inquiry.

6) I understood you to say that the EAC did not release the Wang/Serebrov
report in its original form because the EAC has to do due diligence and its
staff is small. Do I understand you correctly? As a small agency of 23
employees, including the four commissioners, it is necessary for the agency to
contract with consultants to gather the initial data for research projects.
After EAC receives the initial data, the agency reviews the data for accuracy.
What form of due diligence does the EAC's staff routinely conduct on research
that is contracted out to experts before that research is released? You
mentioned "vetting" the research. What does that vetting entail? It depends on
the project. For instance, if it is information directly related to a mandate
within the Help America Vote Act (HAVA), staff will make sure that the
information is consistent with the law. In addition, we often ask for input
from our Standards Board and Board of Advisors, which combined consist of more
than 147 members. If we are using research that will eventually become
guidance, we are required by HAVA to seek the input of these boards. Go here
for more information about these boards and its members. If the board members
have feedback, then we must make the determination whether to incorporate it,
and, if so, how to incorporate their changes. If the research is focused on
election laws throughout the country, we make sure the laws are cited
correctly and that state legislatures haven't changed or amended these laws
since the research was conducted. (As you probably know, there have been many
new election laws introduced at the state level since 2004.) Throughout the
process, we review for grammar as well as make sure the document flows and is
arranged logically -- the basic tenets of editing.

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov
Most of the working files for this project are in a red folder sitting on my window sill; but I have some individual files in manila folders for Job and Tova propped upright on my desk next to the computer. Isn't this something that can wait until Monday? --- Peggy

Where are your working files maintained?
Margaret Sims

From: Margaret Sims
Sent: 04/13/2007 04:27 PM EDT
To: Edgardo Cortes
Subject: Re: Working group meeting transcript

I don't maintain "official" contract files, just working copies (and I am missing a copy of one of Tova's contracts). The official files should be with the other official EAC contract files. There were 4 personal services contracts between Tova and Job. --- Peggy

Peggy,
They are also requesting copies of the signed contracts. Where are your official contract files for that contract? Let me know where they are and I will pull them to give Gavin the copies so he can review for releasability. Thanks!

Edgardo Cortés
Election Research Specialist
There is only one transcript. In addition to the electronic copy, I have a hard copy in the file. Job Serebrov submitted one correction related to the information reported on his background, not the study. Otherwise, the transcript has NOT been reviewed for accuracy and we have not released copies to anyone but our consultants. --- Peggy

Edgardo Cortes/EAC/GOV

To Margaret Sims/EAC/GOV
cc Gavin S. Gilmour/EAC/GOV
Subject Working group meeting transcript

Peggy,
Is the transcript contained in T:\RESEARCH IN PROGRESS\VOTING FRAUD-VOTER INTIMIDATION\Working Group the only transcript that exists for that working group? Did you ever review it for accuracy? Has it been released to anyone previously? We've had a request from Todd Rokita's office for a copy and I want to be sure we are sending the correct file. Please let us know as soon as possible. Thanks!

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

--- Forwarded by Margaret Sims/EAC/GOV on 04/24/2007 04:21 PM ---
Gavin:
For the most part, the appendices published on our website appear to be cleaned up versions of what was on the CD. One big exception: the appendices do not include the charts of Nexis articles reviewed, which were on the CD. Also, I can't tell at a glance if all of the case law charts were put on the website. --- Peggy

Gavin S. Gilmour/EAC/GOV

Is this the same thing (with subsequent research collected) that appears in the 4 appendix to the final report as posted on our website?

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.

Gavin:
We put the bulk of the raw research, as it stood just prior to the Working Group meeting, on a CD that was included in the folder provided to all meeting participants. You can access the contents that we put on the
Peggy,

Do you know the CD that is being referenced, below?

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

Thank you. I would also like to obtain a certain CD (I presume this contains data from the Serebrov/Wang research) that is referred to many times in the transcript of the May 18, 2006 EAC Voting Fraud Meeting. Do you know if this is available? I believe it was sent to the meeting participants before the meeting – but we cannot locate a copy in our office materials. A copy sent by mail to my attention would be most helpful. Thank you. Jerry Bonnet

-----Original Message-----
From: ggilmour@eac.gov [mailto:ggilmour@eac.gov]
Sent: Monday, April 16, 2007 11:11 AM
To: Bonnet, Jerry (SOS)
Subject: Re: Your Information Request

Here are the docs, zipped per your request.
(See attached file: Requested docs.zip)

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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Gavin S.
Gilmour/EAC/GOV

04/16/2007 10:45 AM
jbonnet@sos.in.gov

Subject
Re: Your Information Request
(Document link: Gavin S. Gilmour)

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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Gavin S.
Gilmour/EAC/GOV

04/13/2007 05:30 PM
jbonnet@sos.in.gov

Subject
Re: Your Information Request
(Document link: Gavin S. Gilmour)
Jerry,

The employment agreements you requested.

[attachment "Employee Agreements Fraud Project.pdf" deleted by Gavin S. Gilmour/EAC/GOV]

Let me know if you have questions

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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Jerry,

Per your request, please find a copy of the meeting transcript.
[attachment "Transcript 051806.TXT" deleted by Gavin S. Gilmour/EAC/GOV]

Additionally, you will find the final EAC report (including the attachments--see page 24) on our website. The link is posted, below.

[attachment "Voter%20Fraud%20&%20Intimidation%20Report%20-POSTED.url" deleted by Gavin S. Gilmour/EAC/GOV]

A copy of a draft report has been posted on the NY Times Website. I
believe you can find it at the following link:

[attachment "20070411voters_draft_report.url" deleted by Gavin S. Gilmour/EAC/GOV]

I will need to get back with you regarding the Contract Employees scope of work.

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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--- Forwarded by Margaret Sims/EAC/GOV on 04/24/2007 04:21 PM ---

Margaret Sims/EAC/GOV
04/17/2007 01:27 PM
To Jeannie Layson/EAC/GOV
cc Juliet E. Hodgkins/EAC/GOV@EAC
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
Julie:
The attached appears to be the Job Serebrov email, a portion of which was quoted in the NY Times. He was responding to my email advising him that recent press reports were referring to the status report on the vote fraud-voter intimidation project, and that we had not released the final report. (A copy of my email is attached.) There are no follow-up emails on this topic. --- Peggy

Peg:

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

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

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

Regards,

Job

psims@eac.gov wrote:

Tova and Job:

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

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

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

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV
04/17/2007 02:58 PM
To Margaret Sims/EAC/GOV@EAC
cc
Subject Need emails

Peggy,

Can you pull out the emails between you and Job that were quoted in the NYT? I need anything that has to do with the subject that was referred to in the quoted email as well as any follow up to that email. We
need it to be able to respond to the letter from Sen. Feinstein, and I figured you could identify those easier than me searching through the reams of paper in Jeannie’s office.

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 Margaret Sims/EAC/GOV on 04/24/2007 04:21 PM -----
Margaret Sims/EAC/GOV
04/18/2007 05:40 PM	To Jeannie Layson/EAC/GOV@EAC
cc Juliet E. Hodgkins/EAC/GOV@EAC, Thomas R.
Wilkey/EAC/GOV@EAC
Subject Re: Need your help ASAP

Jeannie:

I did not receive your request in time to type responses on my blackberry by 2 PM, given the information needed. Here are the answers to your questions:

1. Why did we only contact DOJ officials regarding the accuracy of their interviews?

As far as I know, we didn’t contact DOJ officials about this except in response to concerns they had previously expressed to us. Also, I don’t believe we ever allowed DOJ to edit the summaries. (I certainly didn’t.) I believe the consultants and I discussed the idea of having all the interviewees review their respective interview summaries, but the consultants objected to the idea and there were concerns that the all of the money remaining available was needed to complete the final report.

Craig Donsanto, Election Crimes Branch, saw the summary of his interview among the documents provided to the Working Group (prior to the meeting of that group), and pointed out an important factual error. The summary, as originally written, portrayed DOJ as switching from the prosecution of conspiracies to the prosecution of individuals. I was present at this interview and this was not what Craig had said, nor is it supported by the information available on the election crimes pursued by that branch. DOJ continues to pursue conspiracies and, in addition, has begun to pursue individuals (specifically, double voting, felon voting and alien voting) in an effort to deter others from election crime.

To my knowledge, John Tanner, Voting Section, Civil Rights Division, had not seen the consultants’ full summary of his interview; but he expressed concern to Tova Wang and EAC about the consultants’ characterization of the interviews with Donsanto and him that had been included in the May 2006 status report. This report was provided to the members of the EAC Standards and Advisory Boards. Per HAVA requirements, the Voting Section is represented on the Advisory Board. Tanner pointed to the following errors:

• First, the consultants stated that DOJ was not pursuing voter suppression cases. Tanner responded that “[t]he 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 ... 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
Second, the consultants implied that DOJ is not pursuing instances of unequal implementation of ID rules. Tanner’s response was that “[c]hallenges 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 such discrimination in which we have not taken action.”

Tanner also pointed to the consultants’ refusal during the interview to define what they meant by “voter intimidation”, which Tanner suspected did not jibe with the meaning of the term in federal prosecutions and probably contributed to misunderstandings. (Federal voter intimidation prosecutions require the threat of economic or physical harm.)

By the way, both of these officials are career attorneys, not political appointees. They have years of service at DOJ, working under a number of different administrations.

2. Exactly what did we change and why?

In the case of the Donsanto interview summary, I spoke with our consultants and asked them to make the correction. At first, they both refused. Later, they revised the summary to be a little less blatant, but the implication that there had been a complete change in approach remained. We revised the summary to clearly indicate that prosecution of conspiracies continues. The revised paragraph is on page 4 of the published summary. We also added an intro paragraph similar to other interview summaries submitted by the consultants to summarize the enforcement authority of the Election Crimes Branch and to distinguish it from the Voting Section, Civil Rights Division.

In the case of the actual John Tanner interview summary, we added an intro paragraph similar to other interview summaries submitted by the consultants to summarize the enforcement authority of the Voting Section and to distinguish it from the Election Crimes Branch. We also moved the consultants’ note about the refusal to share certain internal working papers to the end of the summary because it seemed to distract from the main interview points if left as an introduction.

Making the distinction between the Election Crimes Branch and the Voting Section is important. 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 and that are enforced by the Election Crimes Branch through Us Attorneys’ offices. The difference is key to understanding federal election law enforcement.

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
e-mail: psims@eac.gov

Jeannie Layson/EAC/GOV
Peg,
If possible, I need answers for these questions in reference to the vote fraud/voter intimidation project by 2 p.m. today for an inquiry for Congressional Quarterly:

1. Why did we only contact DOJ officials regarding the accuracy of their interviews?
2. Exactly what did we change and why?

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

FYI - I noticed that some newsclobs are saying we spent $100,000 on the Voting Fraud-Voter Intimidation project. Each of the consultants had two contracts totaling almost $75,000 (not including funds set aside for related travel), so the total between them would have been closer to $150,000. If anyone needs to know the added travel costs, Wang spent about $4,500 and Serebrov $1,200 over the course of the 2 contracts.

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Here are most of the emails from my active email files. A few did not hold the check mark, so I will send them separately. I'm trying to work out the best way to hand off copies of the emails from my archived files.

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email: psims@eac.gov

Hi Peg, I left you a voice message last week -- you might have been at NCSL. Anyway, would you give me a call when you have a moment? Thanks.

Tova Andrea Wang, Democracy Fellow
The Century Foundation
1333 H Street, NW, Washington, D.C. 20037
Visit our Web site, www.tcf.org, for the latest news, analysis, opinions, and events.

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

Margaret Sims/EAC/GOV
11/03/2006 07:11 PM
To Juliet E. Hodgkins/EAC/GOV@EAC
cc
Subject Re: Job and Tova

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Juliet E. Hodgkins/EAC/GOV

11/03/2006 05:42 PM
To Margaret Sims/EAC/GOV@EAC
c
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11/03/2006 07:14 PM
To Margaret Sims/EAC/GOV@EAC
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Sent from my BlackBerry Wireless Handheld
Margaret Sims
----- Original Message -----

From: Margaret Sims
Sent: 11/03/2006 06:11 PM
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Subject: Re: Job and Tova

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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 Margaret Sims/EAC/GOV on 04/24/2007 02:51 PM -----
Subject Re: Job and Tova

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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

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Juliet E. Hodgkins
----- Original Message -----

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Sent: 11/03/2006 06:14 PM
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Subject: Re: Job and Tova

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11/03/2006 05:42 PM
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----- Forwarded by Margaret Sims/EAC/GOV on 04/24/2007 02:51 PM -----

Margaret Sims/EAC/GOV
11/06/2006 11:07 AM	To Juliet E. Hodgkins/EAC/GOV@EAC
cc
Subject Re: VF_VI Literature Review

Juliet:
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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
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To Margaret Sims/EAC/GOV@EAC
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I. BACKGROUND/INTRODUCTION

A. WHAT WE KNOW ABOUT FRAUD
B. PURPOSE OF THE EAC STUDY
C. METHODOLOGY OF THE EAC STUDY

II. DEFINITION OF ELECTION CRIMES

A. VOTER FRAUD IS TOO LIMITED
B. COLLOQUIAL DEFINITION IS TOO BROAD
C. ELECTION CRIMES
D. WHAT IS NOT AN ELECTION CRIME FOR PURPOSES OF THIS STUDY

III. RECOMMENDATIONS ON HOW TO STUDY ELECTION CRIMES

A. ACCEPTED RECOMMENDATIONS
   i. SURVEY LAW ENFORCEMENT, INVESTIGATORY AGENCIES, AND PROSECUTORS
   ii. REVIEW ADMINISTRATIVE COMPLAINTS FILED WITH STATES
   iii. REVIEW DOJ/USA ACTIONS
B. REJECTED RECOMMENDATIONS
   i. REASONS WHY REJECTED
Juliet E. Hodgkins/EAC/GOV

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11/03/2006 05:42 PM
To Margaret Sims/EAC/GOV@EAC
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Washington, DC 20005
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---- Forwarded by Margaret Sims/EAC/GOV on 04/24/2007 02:51 PM ----
Margaret Sims/EAC/GOV
11/06/2006 12:21 PM
To Juliet E. Hodgkins/EAC/GOV
cc
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

--- Forwarded by Margaret Sims/EAC/GOV on 04/24/2007 02:51 PM ---

Juliet E. Hodgkins/EAC/GOV
11/06/2006 12:30 PM
To: Margaret Sims/EAC/GOV@EAC
cc
Subject: Re: VF_VI Literature Review

The consultant's report is a draft of an EAC report. We will take the consultant's report and finalize it into OUR 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
11/06/2006 12:21 PM
To: Juliet E. Hodgkins/EAC/GOV@EAC
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--- Forwarded by Margaret Sims/EAC/GOV on 04/24/2007 02:51 PM ---

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
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11/06/2006 11:07 AM
To: Juliet E. Hodgkins/EAC/GOV@EAC
cc
Subject: Re: VF VI Literature Review

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Juliet E. Hodgkins/EAC/GOV

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11/03/2006 06:41 PM
To: Margaret Sims/EAC/GOV@EAC
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Sent from my BlackBerry Wireless Handheld
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----- Original Message -----

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Sent: 11/03/2006 06:38 PM
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----- Original Message -----

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United States Election Assistance Commission
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Juliet:

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

Peggy,

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Juliet Thompson Hodgkins
General Counsel
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(202) 566-3100

Hi-

Is this the kind of thing I should be passing on to you or Gavin?
Please investigate this incident or pass it on to the proper authority.

This morning, I received a recorded message saying that my polling place was "St. Francis" something or other. Later in the day, I wondered why I was informed of this change via a phone number with an out of state area code. I just check the Mahoning County Board of Elections site and the polling location is still listed as "Frank Ohl School" which is where I've voted since moving here.

Since I received another call about the same time, I'll give you information on both numbers.

For the first call (which I believe is the culprit) the information on my caller ID was "Unknown Name 320-230-0961". They claimed they were from American for Reform Now or something like that. When I dialed that number, I received this message: "Mailbox for Rob Olsen is full." While writing this email, I just received another call from this number. Now the recorded message was from Ohio for Fair Minimum Wage.

For the other call (from this morning) the information on my caller ID was "Amer Voice Retr 206-706-2650". When I dialed that number I got a recording which identified them as "People for Washington State Democrats... authorized by Kl 2006."

Thank you for your time and attention to this matter.

Cheryl Bollinger
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
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--- Forwarded by Margaret Sims/EAC/GOV on 04/24/2007 02:51 PM ---

Margaret Sims/EAC/GOV
11/07/2006 09:47 AM
To Juliet E. Hodgkins/EAC/GOV
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

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Margaret Sims/EAC/GOV
11/07/2006 09:47 AM
To Juliet E. Hodgkins/EAC/GOV
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

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(202) 566-3100  

----- Forwarded by Margaret Sims/EAC/GOV on 04/24/2007 02:51 PM -----  
Margaret Sims/EAC/GOV  
11/07/2006 11:29 AM  
To Juliet E. Hodgkins/EAC/GOV@EAC  
cc  
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 tears.) 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 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
that would be great. I am also interested in identifying the points of contention between DOJ and the consultants.

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

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
I am getting close to having a first cut at a report, minus a few key sections. Just wondering how those summaries are coming along.

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

Almost finished sorting through the interview summaries. I don't find them as helpful as the literature summaries, but hope to have something to you by the end of the day. (I was at the clinic yesterday, and could only work a half day.) --- Peggy

Juliet E. Hodgkins/EAC/GOV

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

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
Peggy,

I have attached a rough draft of the report that I think that we should propose to the Commissioners. I was hoping that you could give it a read and give me your comments by Friday morning, as I have to deliver a draft to the Commissioners on Friday. I also have a couple of questions. You will notice that I have noted that several items will be attached as appendixes. First question: Should we attach these things? Second question: In cases where you have provided summaries of the summaries, should we attach yours or theirs?

Do you have contact information for this guy?

Mark (Thor) Hearne II
Partner-Member
Thomas R. Wilkey/EAC/GOV

11/15/2006 12:23 PM

To Margaret Sims/EAC/GOV@EAC

cc

Subject Thor Hearn

Do you have contact information for this guy?

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 Margaret Sims/EAC/GOV on 04/24/2007 02:50 PM -----
Margaret Sims/EAC/GOV
11/15/2006 04:02 PM
To Juliet E. Hodgkins/EAC/GOV
cc
Subject Re: Draft Voter Fraud/Voter Intimidation

Got it, and will get back to you by Friday AM. --- Peggy
----- Forwarded by Margaret Sims/EAC/GOV on 04/24/2007 02:50 PM -----
Juliet E. Hodgkins/EAC/GOV
11/15/2006 04:10 PM
To Margaret Sims/EAC/GOV@EAC
cc
Subject Re: Draft Voter Fraud/Voter Intimidation

Thanks.
Margaret Sims/EAC/GOV
11/15/2006 04:02 PM
To: Juliet E. Hodgkins/EAC/GOV@EAC
cc
Subject: Re: Draft Voter Fraud/Voter Intimidation

Got it, and will get back to you by Friday AM. --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/24/2007 02:50 PM -----
Margaret Sims/EAC/GOV
11/17/2006 09:28 AM
To: Juliet E. Hodgkins/EAC/GOV@EAC
cc
Subject: Draft Voter Fraud/Voter Intimidation Report

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

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

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
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100
Thanks so much for all of your help. Have a very Happy Thanksgiving.

Sent from my BlackBerry Wireless Handheld
Margaret Sims

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

11/26/2006 09:39 PM
To Juliet E. Hodgkins/EAC/GOV
cc
Subject Re: Draft Voter Fraud/Voter Intimidation Report

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

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

--- Forwarded by Margaret Sims/EAC/GOV on 04/24/2007 02:50 PM ---

Gavin S. Gilmour/EAC/GOV
11/27/2006 10:58 AM
To Margaret Sims/EAC/GOV@EAC
cc
Subject Re: My Thoughts –PRIVILEGED COMMUNICATION

Peggy,

Just to clarify... you only attended (by teleconference or otherwise) one of the interviews? I thought it was more than that?

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.

Margaret Sims/EAC/GOV

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
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

--- Forwarded by Margaret Sims/EAC/GOV on 04/24/2007 02:50 PM ---

Margaret Sims/EAC/GOV
11/27/2006 11:30 AM

To: Gavin S. Gilmour/EAC/GOV
cc: 

Subject: Re: My Thoughts – PRIVILEGED COMMUNICATION

I attended only the interview with Craig Donsanto. --- Peggy

Gavin S. Gilmour/EAC/GOV
Peggy,

Just to clarify... you only attended (by teleconference or otherwise) one of the interviews? I thought it was more than that?

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:

Margaret Sims/EAC/GOV

--- Peggy

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--- Peggy

Gavin S. Gilmour/EAC/GOV

Do Not Release
Attached is a revised version of the Voting Fraud/Voter Intimidation Draft Report. The changes that Commissioner Hillman suggested have been made and highlighted in yellow. See pages 10-11.

Peggy and I are working on the revision of the Donsanto and Tanner interview summaries and will forward that to you under a separate email.
Juliet Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100

--- Forwarded by Margaret Sims/EAC/GOV on 04/24/2007 02:50 PM ---

Margaret Sims/EAC/GOV
11/30/2006 04:37 PM To Juliet E. Hodgkins/EAC/GOV@EAC
cc
Subject Donsanto-Tanner Interviews

Julie:

I made some suggested edits in the attached excerpts of the Donsanto and Tanner interview summaries. You may be able to better phrase them. The most important edits are:

- I noticed that the consultants had listed Donsanto's and Tanner's titles incorrectly (which we may also need to correct in our report where we list the interviewees). Donsanto and Tanner might be amused that our consultants "promoted" them, but their bosses may not.
- I redacted two sentences that I thought we should not publicize and one that I thought was in error from the Donsanto description. I also tried to correct the paragraph that discusses DOJ's pursuit of individual offenders.
- I moved the note about Tanner's failure to provide data and information to the end of the description (the highlighted paragraph) so that its isn't so "in your face". I also tried to edit it, but am still a bit concerned about including it at all.

If you have any questions, or want to talk about this, give me a call [redacted]. Also, I may be in the office tomorrow, if my insides cooperate. --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 04/24/2007 02:50 PM ---

Juliet E. Hodgkins/EAC/GOV
12/01/2006 03:17 PM To Margaret Sims/EAC/GOV@EAC
cc
Subject Re: Donsanto-Tanner Interviews

I made the correction on the titles in the report. There was one that was not correct.

There are a couple of things I may suggest that we leave out, as I don't think that DOJ would have a problem with it, (e.g. the fact that they won't release information on pending cases).

I will forward to the Cs for their review.
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
11/30/2006 04:37 PM
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If you have any questions, or want to talk about this, give me a call (703-323-9277). Also, I may be in the office tomorrow, if my insides cooperate. --- Peggy

Summaries of Interviews with Donsanto-Tanner redacted-revised.doc

----- Forwarded by Margaret Sims/EAC/GOV on 04/24/2007 02:50 PM -----
Margaret Sims/EAC/GOV
12/01/2006 03:52 PM
To Juliet E. Hodgkins/EAC/GOV
cc
Subject Re: Donsanto-Tanner Interviews

Julie:

I assume you mean the note associated with the Tanner interview when you mentioned the pending cases. That's fine by me. I was just a little concerned that the note as a whole was a little adversarial and whiny. If any questions arise as to why certain items should be deleted from the Donsanto interview summary, I have answers. --- Peggy
I made the correction on the titles in the report. There was one that was not correct.

There are a couple of things I may suggest that we leave in, as I don't think that DOJ would have a problem with it, (e.g. the fact that they won't release information on pending cases).

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Juliet Thompson Hodgkins
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1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100
Margaret Sims/EAC/GOV

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11/30/2006 04:37 PM
To Juliet E. Hodgkins/EAC/GOV@EAC
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If you have any questions, or want to talk about this, give me a call (703-323-9277). Also, I may be in the office tomorrow, if my insides cooperate. --- Peggy
Dear Peter:

I apologize for the delayed response. The paper that the media touted as an EAC statement on vote fraud was actually just a report on the status of preliminary research into voting fraud and voter intimidation conducted by EAC consultants. The document does not represent a consensus statement on the subject by EAC. The status report was presented to the EAC Board of Advisors and the EAC Standards Board last spring. As these meetings were open to the public, the status report is available to the public. (See attached.)

EAC plans to consider a draft of its own report, which is based on the preliminary research of our consultants, at this Thursday’s public meeting. (See agenda published at http://www.eac.gov/docs/Public%20Meeting.%202012-07-06.%20Wash.%20Revised%20Final%20Agenda.pdf.) If the report is approved, EAC will publish it on our web page.

Regards,

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

VF-VI Study Status 5-17-06.pdf

Then I need to get commishes to okay.

--- Forwarded by Bryan Whitener/EAC/GOV on 12/06/2006 12:36 PM ---

To bwhitener@eac.gov
Brian,

Please find attached the draft fraud report press release for review. The other documents will follow in a separate email.

Jennifer

---------------
NEW E-MAIL: jennifer.roseutley@bm.com

Jennifer Rose-Utley
Manager, Public Affairs
Burson-Marsteller
202.530.4505
jennifer.roseutley@bm.com

----------
We've Moved!

Please visit us at our new location:

Burson-Marsteller
1110 Vermont Avenue, NW, Suite 1100
Washington, DC 20005

Fraud Press Release - DRAFT v2.doc
---- Forwarded by Margaret Sims/EAC/GOV on 04/24/2007 02:50 PM ----
Margaret Sims/EAC/GOV
12/06/2006 03:46 PM To bwhitener@eac.gov
cc
Subject VF-VI Research Contacts

Bryan:

The two consultants were:

- Tova Wang (wang@tcf.org)
- Job Serebrov (serebrov@sbcglobal.net)
The contact information for the Project Working Group, including technical advisor, Craig Donsanto, is in the attached spreadsheet.

You should also send notice to John Tanner, Chief, Voting Section, Civil Rights Division, DOJ (john.k.tanner@usdoj.gov). --- Peggy

Work Group Contact-Availability Info.xls
----- Forwarded by Margaret Sims/EAC/GOV on 04/24/2007 02:50 PM -----
"Bryan Whitener"
<bwhitener@eac.gov>  To psims@eac.gov
12/07/2006 02:45 PM  cc
Subject EAC Releases Findings of Voting Fraud and Voter Intimidation Study, 12-07-06

U.S. ELECTION ASSISTANCE COMMISSION
1225 New York Ave. NW – Suite 1100
Washington, DC 20005

For Immediate Release
December 7, 2006

Contact:
Jeannie Layson
Bryan Whitener
(202) 566-3100

EAC Releases Findings of Voting Fraud and Voter Intimidation Study

No consensus on the regularity of voting fraud and voting intimidation found
Agency accepts recommendations to conduct a comprehensive study on elections crimes

WASHINGTON - The United States Election Assistance Commission (EAC) today voted on the findings of the "Voting Fraud and Voter Intimidation Study" and accepted recommendations to conduct
a comprehensive assessment of all claims, charges and prosecutions of voting crimes.

The study represents the first phase of the information gathering process and includes a working definition of election crimes. EAC will now proceed with the second phase, a more comprehensive data-driven survey and study of elections crimes and voter intimidation. The new phase will offer consistency to the study and will identify a common definition of the issue for dialogue among elections officials, civil rights and voter advocacy groups, law enforcement officials, attorneys and the public.

The recommendations accepted by EAC today include:

**Survey Chief Elections Officers to Review and Assess Administrative Complaints:** EAC will survey the states' chief election officers regarding complaints that have been filed, investigated and resolved since January 1, 2004.

**Survey State Election Crime Investigation Units Regarding Complaints Filed and Referred:** EAC will 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.

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

**Analyze Survey Data in Light of State Laws and Procedures:** EAC will use the reliable data gathered from each survey group to analyze the effectiveness of fraud prevention and reporting measures.

In order to arrive at the findings, EAC consultants reviewed existing studies, articles, reports and case law on voting fraud and intimidation and conducted interviews with experts in the field regarding their experiences and research. According to the findings, while there is currently no consensus on the frequency of voting fraud and voter intimidation, most participants agreed that absentee balloting is subject to the greatest proportion of fraudulent acts, followed by vote buying and voter registration fraud.

Following today's vote to approve the survey recommendations, EAC will begin a comprehensive survey and subsequent study on voting fraud and voter intimidation based on hard data. Section 241 of the Help America Vote Act of 2002 (HAVA) mandates that EAC research and study various issues related to the administration of elections. During Fiscal Year 2006, EAC in consultation with the Standards Board and Board of Advisors selected voting fraud and voter intimidation from a list of potential research topics that serve to improve the administration of elections for federal office.

For the EAC's full report on the Voting Fraud and Voter Intimidation Study or to view testimony from today's hearing, visit [www.eac.gov](http://www.eac.gov).
EAC is an independent bipartisan commission created by 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 three EAC commissioners are Paul DeGregorio, chairman; Donetta Davidson and Gracia Hillman. One vacancy currently exists.

---

Commissioners,

I want to respond to Rick Hasen's post regarding EAC and the fraud report. My suggested response is below, and his original post follows. Please let me know if you agree that I should attempt to correct the misinformation he posted. If so, please let me know if you approve of my suggested response. Thank you.

Mr. Hasen,

I write to point out incorrect information you posted on your website on December 11, 2006. You wrote: "Note what's missing compared to the earlier version leaked to the USA Today Newspaper." No one at the EAC leaked anything to USA Today. The reporter asked for a copy of the staff report about the fraud research that was presented at a public meeting in May to our Board of Advisors and the Standards Board, and the EAC provided it to him. This information was presented and discussed at a meeting that was open to the public, so we provided materials distributed at the meeting to anyone who requested it. The staff report about the fraud project was also distributed to every member of both advisory boards. Go [here](https://www.regulations.gov/document?D=EAC-2006-1147) to view the Federal Register notice about the public meeting at which this project and many others were discussed.

The statement you attribute to one of the consultants is absolutely correct. As stated by their contract, these consultants were hired so that the EAC could "...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."

As for your reference to what's "missing compared to the earlier version," the report contains the complete summaries of every interview conducted by the consultants as well as every book, article, report or case that was reviewed. It does not contain the synopsis of those interviews, which were written by the consultants. EAC provided the individual summaries so readers could reach their own conclusions about the substance of the interviews.
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 and decision. These are not, nor should they be, determinations or decisions made by consultants. The EAC has the ultimate responsibility for the reports it issues, and it is incumbent upon the agency to conduct due diligence to ensure reports, data or any other information is complete and accurate before it is adopted by the Commission.

As someone with a public platform who informs the public about matters regarding election administration, I would appreciate it if you would extend the same professional courtesy most journalists do and contact the agency in the future if you have questions or concerns about EAC policy or actions. You may reach me directly at 202-566-3103. I appreciate your consideration in this matter.

Sincerely,
Jeannie Layson
Director of Communications
US Election Assistance Commission

More on FL-13, and a Role for the EAC?
When I saw this headline on the Sarasota Herald Tribune web page, I thought it must have been about the FL-13 race. Over on the election law listserv, Doug Johnson, responding to my commentary calling for the House to investigate the problems and declare a revote in the FL-13 race, suggested that perhaps the EAC is better situated to conduct an investigation than the House of the problems in the FL-13. I'm afraid we might not be able to count on the EAC to conduct an investigation that is well-funded, tough, and fair. Politics appears to be creeping in to decisions of the EAC's advisory board, and there's real concern about the EAC's vote fraud report. Note what's missing compared to the earlier version leaked to the USA Today newspaper. 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."
The EAC has also lost two commissioners, one Republican and one Democrat, who appeared to be tough-minded and fair. I am very worried about the fairness and non-partisanship of the new rumored nominees. In short, the EAC has to prove it is up to the task of fair and serious inquiry before it could be trusted with something like an investigation of the FL-13.

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

Sent from my BlackBerry Wireless Handheld

--- Forwarded by Margaret Sims/EAC/GOV on 04/24/2007 02:50 PM ---

Gracia Hillman/EAC/GOV

12/13/2006 10:50 AM

To Jeannie Layson/EAC/GOV@EAC, Paul DeGregorio/EAC/GOV@EAC, Donetta L. Davidson/EAC/GOV@EAC

cc Thomas R. Wilkey/EAC/GOV@EAC, Margaret Sims/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, Gavin S. Gilmour/EAC/GOV@EAC, Bryan Whitener/EAC/GOV@EAC

Subject Re: Rick Hasen response-need your approval

I know that People For the American Way delivered petitions to EAC about release of the Fraud report but I need to know what other communications EAC has had with People For about the study.

Was it represented on the study's working group? If so, by whom? Did they write to us and did we answer? Did anybody from there talk with anybody at EAC about the study and our work? Thanks.

Sent from my BlackBerry Wireless Handheld

--- Forwarded by Margaret Sims/EAC/GOV on 04/24/2007 02:50 PM ---

Gracia Hillman/EAC/GOV

12/14/2006 12:07 PM

To "Paul DeGregorio" <pdeggregorio@eac.gov>, "Donetta Davidson" <ddavidson@eac.gov>, Thomas R. Wilkey/EAC/GOV@EAC, Juliet E. Thompson/EAC/GOV@EAC, Margaret Sims/EAC/GOV@EAC, "Jeannie Layson" <jlayson@eac.gov>, "Karen Lynn-Dyson" <klynn-dyson@eac.gov>

cc "Sheila Banks" <sbanks@eac.gov>

Subject People For

Commissioner Hillman:

PFAW was not represented on the Working Group for the Voting Fraud-Voter Intimidation research project. Also, I have had no communications with the organization about the study. I did work with...
Jeannie and Gavin on a response to PFAW's FOIA request for the study. Jeannie should have the final copy of that reply.

Peggy Sims
Election Research Specialist

Gracia Hillman/EAC/GOV

I know that People For the American Way delivered petitions to EAC about release of the Fraud report but I need to know what other communications EAC has had with People For about the study.

Was it represented on the study's working group? If so, by whom? Did they write to us and did we answer? Did anybody from there talk with anybody at EAC about the study and our work? Thanks.

Sent from my BlackBerry Wireless Handheld

Are there any plans to rebut the PFAW response? If so, may I help? --- Peggy

I didn't get any comments from you regarding yesterday's response to Rick Hasen. Any thoughts on that?
Margaret Sims/EAC/GOV To Juliet E. Hodgkins/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC cc

Subject PFAW Response to EAC Vote Fraud Report

Are there any plans to rebut the PFAW response? If so, may I help? --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 04/24/2007 02:50 PM ---
Margaret Sims/EAC/GOV To Jeannie Layson/EAC/GOV@EAC cc

Subject Re: PFAW Response to EAC Vote Fraud Report

Sorry. I saw a message addressed to the Commissioners. I did not realize the fact that I was cc'd meant that you wanted my comments as well. Will do better next time. In the case of PFAW, I think we may need to address other points, as well. I can put some comments in bullet form, and you can take them or leave them. --- Peggy

Jeannie Layson/EAC/GOV

Jeannie Layson/EAC/GOV To Margaret Sims/EAC/GOV@EAC cc Juliet E. Hodgkins/EAC/GOV@EAC

Subject Re: PFAW Response to EAC Vote Fraud Report

I didn't get any comments from you regarding yesterday's response to Rick Hasen. Any thoughts on that?

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
12/14/2006 12:55 PM

To: Juliet E. Hodgkins/EAC@EAC, Jeannie Layson/EAC@EAC
cc

Subject: PFAW Response to EAC Vote Fraud Report

Are there any plans to rebut the PFAW response? If so, may I help? --- Peggy

----- Forwarded by Margaret Sims/EAC@EAC on 04/24/2007 02:50 PM -----

Karen Lynn-Dyson/EAC@EAC
12/14/2006 01:36 PM

To: Margaret Sims/EAC@EAC
cc: Donetta Davidson <Ddavidson@eac.gov>, Gracia Hillman/EAC@EAC, "Jeannie Layson" <jlayson@eac.gov>, Juliet E. Thompson/EAC@EAC, "Karen Lynn-Dyson" <klynn-dyson@eac.gov>, "Paul DeGregorio" <pdegregorio@eac.gov>, "Sheila Banks" <sbanks@eac.gov>, Thomas R. Wilkey/EAC@EAC

Subject: Re: People For

Peg, et.al-

I did not have any interaction with this group.

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

Margaret Sims/EAC@EAC

To: Gracia Hillman/EAC@EAC
cc: Donetta Davidson <Ddavidson@eac.gov>, "Jeannie Layson" <jlayson@eac.gov>, Juliet E. Thompson/EAC@EAC, "Karen Lynn-Dyson" <klynn-dyson@eac.gov>, "Paul DeGregorio" <pdegregorio@eac.gov>, "Sheila Banks" <sbanks@eac.gov>, Thomas R. Wilkey/EAC@EAC

Subject: Re: People For

Commissioner Hillman:
PFAW was not represented on the Working Group for the Voting Fraud-Voter Intimidation research project. Also, I have had no communications with the organization about the study. I did work with Jeannie and Gavin on a response to PFAW's FOIA request for the study. Jeannie should have the final copy of that reply.

Peggy Sims
Election Research Specialist

Gracia
Hillman/EAC/GOV
12/14/2006 12:07
PM

To "Paul DeGregorio" <pdegregorio@eac.gov>, "Donetta Davidson" <Ddavidson@eac.gov>, Thomas R. Wilkey/EAC/GOV@EAC, Juliet E. Thompson/EAC/GOV@EAC, Margaret Sims/EAC/GOV@EAC, "Jeannie Layson" <jlayson@eac.gov>, "Karen Lynn-Dyson" <klynn-dyson@eac.gov>, "Sheila Banks" <sbanks@eac.gov>

Subject People For

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Was it represented on the study's working group? If so, by whom? Did they write to us and did we answer? Did anybody from there talk with anybody at EAC about the study and our work? Thanks.

Sent from my BlackBerry Wireless Handheld

----- Forwarded by Margaret Sims/EAC/GOV on 04/24/2007 02:50 PM -----

Gracia Hillman/EAC/GOV

12/18/2006 12:44 PM

To pdegregorio@eac.gov, Ddavidson@eac.gov, Margaret Sims/EAC/GOV@EAC

cc

Subject Suggested Timeline for Election Crimes Study

Attached is the suggested timeline that I offered for the Election Crimes Study.

It is an excel spreadsheet, which, if printed, should be done with Landscape layout. If printed on 8 1/2 x 11 paper, it will print as two pages.

Election Crimes, Proj 2007 Timeline.xls

----- Forwarded by Margaret Sims/EAC/GOV on 04/24/2007 02:50 PM -----
Was the report that was drafted after the working group meeting or the interviews done with EAC participant reviewed after the draft was completed.
Need this right away

Sent from my BlackBerry Wireless Handheld

--- Forwarded by Margaret Sims/EAC/GOV on 04/24/2007 02:50 PM ---

Karen Lynn-Dyson/EAC/GOV
01/26/2007 11:49 AM
to Elieen L. Kuala/EAC/GOV
cc Margaret Sims/EAC/GOV
Subject Re:

Peg-
Could you get Elle and answer on this, if she hasn't already gotten one?
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

Elieen L. Kuala/EAC/GOV

Hey Karen,
Did Barbara Arnwine ever attend ANY of the voter fraud working group meetings?
Thanks,
I already got one, thanks!

Elle L.K. Kuala
Special Assistant to the Chair
U.S. Election Assistance Commission
office: (202) 566-2256
blackberry: (202) 294-9251

Karen Lynn-Dyson/EAC/GOV

Peg-

Could you get Elle and answer on this, if she hasn't already gotten one?

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
Hey Karen,

Did Barbara Arnwine ever attend ANY of the voter fraud working group meetings?

Thanks;

Elle

Elle Collver
U.S. Election Assistance Commission
1225 New York Avenue, Suite 1100
Washington, D.C. 20005
(202) 566-2256
www.eac.gov

Sent from my BlackBerry Wireless Handheld
Curtis:

I believe that the only items I have in hard copy, and not in electronic format, are my working copies of the contracts (official copies would be in the agency contract files), the monthly pay invoices and travel reimbursement requests submitted by the consultants, and some DOJ training documentation that was given to us on condition that we keep it confidential.

Other than emails, the documentation that is in electronic form is housed in EAC’s shared drawer at T:\RESEARCH IN PROGRESS\VOTING FRAUD-VOTER INTIMIDATION. Do you have read access to that?

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
e-mail: psims@eac.gov

Curtis Crider/EAC/GOV

04/23/2007 02:27 PM
To EAC Personnel
cc
Subject documentation for evaluation

All:

The Office of Inspector General has initiated an evaluation of the contracting process used by the EAC for the voter fraud and voter intimidation projects. In order for us to complete our evaluation, we need copies of all e-mails or other documents that you have regarding either project. Electronic documents can be sent to an e-mail account that we have set up - eaccon@eac.gov.

If you have any hard copy documents, please let me know.

If you do not have any documents or e-mails, please send me an e-mail to that effect.

Thank you,

Curtis Crider
Office of Inspector General, Election Assistance Commission
Phone - (202) 566-3125
Fax - (202) 566-0957

Important: This electronic transmission is intended for the use of the individual or entity to which it is
addressed. It may contain information that is privileged, confidential, or otherwise protected from disclosure under applicable law.
Fifth batch attached. More to come. --- Peggy Sims

Please do ask him. Thanks

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, April 03, 2006 4:14 PM
To: wang@tcf.org; bcc@eac.gov
Subject: Fw: DOJ Training Materials

Devon's response is attached. Guess I'll add this to the list of questions going to Donsanto.
---Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/03/2006 05:12 PM -----
Devon E. Romig/EAC/GOV

Peggy,

The sections that you listed below are also empty in our copy. I have attached a copy of the complete table of contents with all of the section that are empty in our copy of the 2004 DOJ training binder.

Thanks,

Devon
Devon:
One of our consultants noted that there are several sections appear to be missing from the 2004 DOJ training binder. She wasn't sure if it is because of what DOJ sent over to EAC or a problem in the photocopying. From what she can see, some of the table of contents is missing and tabs 14, 15, 16, 17, 21, 23 and 26 are all empty. I think we must have provided the T of C because I don't see one in the binder. Can you please retrieve the binder and check this out for me?
Thanks! --- Peggy

Hi Peg,

I will call J.R. on Thursday to run it by him and let you know what he says. As for my availability on Wednesday, April 12, the answer is "yes". Morning is best for me, although I could be available in the afternoon. You choose a time and I will be here.

Thanks,

Tony

----- Original Message -----
Intimidation Working Group

Tony:

Which one do you think would be best? J.R. Perez, as Election Administrator, should have knowledge of voting fraud and voter intimidation in both voter registration and voting. I assume that, though Patricia is the voter registration supervisor, she also would have knowledge of voting fraud and voter intimidation in balloting. Would they be available in May for a meeting of the project working group? Who could best stand up to the DNC and RNC counsels?

On a related matter, would you be available for our consultants to interview you by telephone next Wednesday? If so, let me know a convenient time. I'll confirm the time with the two consultants, Job Serebrov and Tova Wang. Then, I'll get back to you with the toll-free line and pass code you will need to use for the teleconference.

Thanks!

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

Good Afternoon Peg,

How about J. R. Perez, Elections Administrator, Guadalupe County or Patricia Benavides, Voting Registration Supervisor, Tarrant County, Texas?

Tony
----- Original Message -----
From: Helen Jamison
To: Tony J. Sirvello III
Sent: Tuesday, April 04, 2006 11:46 AM
Subject: RE: Nonpartisan Local Election Official Needed for Voting Fraud/Voter Intimidation Working Group

Dear Tony,
Unfortunately both Javier and myself have to decline in being members of the working group from Texas. It is a bad time of the year where we have so many elections and would not be able to contribute enough time to doing research of any kind. Please keep us in mind for future meetings.

Helen Jamison

-----Original Message-----
From: Tony J. Sirvello III
Sent: Monday, April 03, 2006 1:19 PM
To: Helen Jamison; Javier Chacon
Subject: Fw: Nonpartisan Local Election Official Needed for Voting Fraud/Voter Intimidation Working Group

Helen, Javier,

Attached is the information from the EAC requesting your services as a member of the working group from Texas. Please let me know in a couple of days if one of you will be able to participate. If you need more information, call me and I will conference in with Peggy Sims, who can give you more details.

Thanks,

Tony

----- Original Message -----
From: Sims eac.gov
To: 
Sent: Thursday, March 16, 2006 10:29 AM
Subject: Nonpartisan Local Election Official Needed for Voting Fraud/Voter Intimidation Working Group

Tony:

Thanks for being willing to help me identify a qualified, nonpartisan local election official to serve on our Project Working Group for the preliminary research being conducted on voting fraud and voter intimidation.

Background
Section 241 of the Help America Vote Act of 2002 requires EAC to conduct research on election administration issues. Among the issues listed in the statute are the development of:

1. nationwide statistics and methods of identifying, deterring, and investigating voting fraud in elections for Federal office [section 241(b)(6)]; and
2. 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.

Preliminary EAC Research

Subsequently, the Commission contracted with two consultants (Tova Wang and Job Serebrov) to:

1. develop a comprehensive description of what constitutes voting fraud and voter intimidation in the context of Federal elections;
2. perform preliminary research on these topics (including Federal and State administrative and case law review), identify related activities of key government agencies and civic and advocacy organizations, and deliver a summary of this research and all source documentation;
3. convene a meeting of a project working group composed of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation, provide the results of the preliminary research to the working group, and record the working group's deliberations; and
4. produce a report to EAC summarizing the findings of the preliminary research effort and working group deliberations that includes recommendations for future EAC action, if any.

The Project Working Group will probably meet only once during this preliminary research effort (probably in late April) to review the consultants' research and provide input. Other members of the Working Group are lawyers from advocacy groups and major political parties, two State election officials, and Barry Weinberg, former Deputy Chief of DOJ's Voting Section, Civil Rights Division. Craig Donsanto, Director of DOJ's Election Crimes Branch will serve as a technical advisor to the group.

I really appreciate any help you can offer in identifying a qualified individual to fill the slot on the Working Group that has been reserved for an experienced, nonpartisan local election official.

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
Good Afternoon Peg,

How about J. R. Perez, Elections Administrator, Guadalupe County or Patricia Benavides, Voting Registration Supervisor, Tarrant County, Texas?

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I really appreciate any help you can offer in identifying a qualified individual to fill the slot on the Working Group that has been reserved for an experienced, nonpartisan local election official.

Peggy Sims
Election Research Specialist
U.S. Election Assistance Commission
1225 New York Ave, NW - Ste 1100
Washington, DC 20005
Tony:

How about scheduling the teleconference with our consultants for 10 AM CST/11 AM EST on Wednesday, April 12? --- Peggy

----- Original Message ----- 
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, April 04, 2006 8:46 AM
To: Tova Andrea Wang; Job Serebrov
Subject: Project Working Group Meeting

The Chairman and Vice Chairman are interested in attending the meeting. Due to schedule conflicts, they are asking us to look at the week of May 15. Does that pose a problem for either of you peggy

--------------------------
Sent from my BlackBerry Wireless Handheld

----- Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM -----
"Tova Wang" <wang@tcf.org>
04/12/2006 12:30 PM
To "Job Serebrov" psims@eac.gov
cc "Nicole Mortellito" nmortellito@eac.gov
Subject RE: working group meeting
That's fine, just asking

-----Original Message-----
From: Job Serebrov [mailto:Job.Serebrov@EAC.GOV]
Sent: Wednesday, April 12, 2006 11:26 AM
To: Tova Wang; psims@eac.gov
Cc: 'Job Serebrov'; 'Nicole Mortellito'
Subject: Re: working group meeting

It was my understanding that the meeting would be on the 15th or later.

Tova, Peggy is out of the office this week.

--- Tova Wang <wang@tcf.org> wrote:

> I cannot do it on May 5 now. Any update on a date?
> I will be in DC for other meetings May 4 - May 7 if that makes any difference (EAC would not have to pay my transportation if it was on, for example, Monday May 8 or possibly even the 9th) Thanks.
> Tova Andrea Wang
> Democracy Fellow
> The Century Foundation
> 41 East 70th Street - New York, NY 10021
> phone: 212-452-7704 fax: 212-535-7534
> 
> <mailto:join-tcfmain@mailhost.groundspring.org>
> Click here to receive our weekly e-mail updates.

---- Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM ----

"Tova Wang"
<wang@tcf.org>
04/11/2006 11:42 AM

To psims@eac.gov, "Job Serebrov" <serebrov@sbcglobal.net>
cc "Nicole Mortellito" <nmortellito@eac.gov>
Subject RE: Kennedy Interview
As I have alerted Nicole, the call is not working. Someone ought to get in touch with Kevin -- I do not have his contact information.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, April 10, 2006 8:45 PM
To: Tova Andrea Wang; Job Serebrov
Subject: Kennedy Interview

It appears that the teleconference with Kevin Kennedy is set for tomorrow, April 11, at 10:30 AM CST/11:30 AM EST. Use the usual phone number and passcode.

If you have trouble connecting, contact Nicole.

Peg

Sent from my BlackBerry Wireless Handheld

---- Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM ----

Nicole Mortellito/CONTRACTOR/EA C/GOV
04/11/2006 11:45 AM

To: "Tova Wang" <wang@tcf.org>@GSAEXTERNAL
cc psims@eac.gov, "Job Serebrov" <serebrov@sbcglobal.net>
Subject: RE: Kennedy Interview

the call is up and running!! you may dial in

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

"Tova Wang" <wang@tcf.org>

04/11/2006 11:42 AM

To psims@eac.gov, "Job Serebrov" <serebrov@sbcglobal.net>
cc
As I have alerted Nicole, the call is not working. Someone ought to get in touch with Kevin -- I do not have his contact information.

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Peg

Sent from my BlackBerry Wireless Handheld

----- Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM -----

Nicole Mortellito/CONTRACTOR/EA C/GOV
04/10/2006 10:05 AM

To Margaret Sims/EAC/GOV@EAC
cc

Subject Re: Teleconference set up

You are set for the 12th at 11am , pass code

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
Margaret Sims/EAC/GOV
Nicole:
Could you please help me set up a teleconference for Wednesday, April 12 at 11 AM EST (for 1 hour)?
Please send me confirmation.
Peg

--- Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM ---

"Weinberg and Utrecht"
<weinutr@verizon.net>  To psims@eac.gov
04/04/2006 08:14 AM
Subject Re: Voting Fraud-Voter Intimidation Project

Peggy:
May looks pretty good right now. I will not be available May 1, or in the morning (before 12:30) on May 4 or May 11, or in the afternoon on May 10.
Barry
----- Original Message ----- 
From: psims@eac.gov
To: weinutr@verizon.net
Sent: Monday, April 03, 2006 3:15 PM
Subject: Voting Fraud-Voter Intimidation Project

Hi, Barry:

I'm trying to arrange a meeting of the Working Group for EAC's Voting Fraud-Voter Intimidation project. Would you please look at your schedule and let me know if there are any days during the first 2 weeks of May that you would NOT be available?

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
I didn't have anything specific in mind yet, especially as I have not finished going through the voluminous documentation, but I will let you know.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, April 03, 2006 2:41 PM
To: wang@tcf.org; serebrov@sbcglobal.net
Subject: Mentioning DOJ Training Guidance

Tova and Job:

Craig Donsanto responds that it is not possible for him to assess the level of public attribution that would be appropriate without seeing the substantive stuff in context. He does not foresee a problem; but recommends that I provide him with the draft text. He will review it to ensure we are not disclosing things we shouldn't disclose.

Therefore, please provide the draft text to me ASAP, so that I can forward it to him for review. I suspect he will provide me with a prompt response, which I will forward to you.

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

That time is fine. A half hour earlier would be better. I also have a 12 CDT meeting.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Friday, April 07, 2006 12:27 PM
To: Kevin Kennedy
Subject: Interview

Kevin:
I'm just following up on my request for your availability to be interviewed by our consultants for our voting fraud/voter intimidation project. Are you available Tuesday, April 11 at 11 AM CST?
Peggy Sims

----------------------------
Sent from my BlackBerry Wireless Handheld

--- Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM ---
Margaret Sims/EAC/GOV
04/03/2006 05:11 PM
To: "Job Serebrov" @GSAEXTERNAL
cc
Subject: Re: Working Group Contact Info

Thanks, Job! --- Peggy

"Job Serebrov" <

"Job Serebrov"
04/03/2006 04:57 PM
To: psims@eac.gov
cc
Subject: Re: Working Group Contact Info

Norcross's assistant is Maria Rivers:
Rivers@BlankRome.com

Rokita's assistant is:

Amy Miller
Executive Assistant
Indiana Secretary of State Todd Rokita
317-232-6536
assistant@sos.in.gov

--- psims@eac.gov wrote:
> Please review the attached and let me know of any corrections that should be made. Thanks! --- Peggy
>
"Job Serebrov"
04/03/2006 03:46 PM

To psims@eac.gov, wang@tcf.org
cc
Subject Re: Mentioning DOJ Training Guidance

Lets discuss this in 10 minutes.

--- psims@eac.gov wrote:

> Tova and Job:
> Craig Donsanto responds that it is not possible for
> him to assess the
> level of public attribution that would be
> appropriate without seeing the
> substantive stuff in context. He does not foresee a
> problem; but
> recommends that I provide him with the draft text.
> He will review it to
> ensure we are not disclosing things we shouldn't
> disclose.
> Therefore, please provide the draft text to me ASAP,
> so that I can forward
> it to him for review. I suspect he will provide me
> with a prompt
> response, which I will forward to you.
>
> 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
>

"Tova Wang"
<wang@tcf.org>
04/04/2006 01:30 PM

To psims@eac.gov
cc "Job Serebrov" <wang@tcf.org>, "Tova Wang"
Subject working group agenda
Hi Peg,

Attached is a draft of an agenda for the working group. Let us know what you think. Thanks. Tova

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

Visit our Web site, www.tcf.org, for the latest news, analysis, opinions, and events.
Click here to receive our weekly e-mail updates.

--- Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM ---
"Job Serebrov"

To psims@eac.gov, "Tova Andrea Wang" <wang@tcf.org>
cc
Subject Re: Project Working Group Meeting

Peggy:

Here is my situation. I am to go to work full time for the Governor at some time in June. I just don't know when and because we are having a special session right now, no one can give me any indications as to the date. The special session will last for at least two weeks. However, I had to arrange a job because the contract ends at the end of May. So---all of this said---if, for instance, I go to work for the Governor the first week of June, I will only be able to work on EAC matters after hours at night.

Job

--- psims@eac.gov wrote:

> The Chairman and Vice Chairman are interested in attending the meeting. Due
to schedule conflicts, they are asking us to look at the week of May 15.
> Does that pose a problem for either of you?
> -----------------------------------------------
> Sent from my BlackBerry Wireless Handheld
>
Sorry, you mean it's today. OK, thanks. Tova

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, April 10, 2006 8:45 PM
To: Tova Andrea Wang; Job Serebrov
Subject: Kennedy Interview

It appears that the teleconference with Kevin Kennedy is set for tomorrow, April 11, at 10:30 AM CST/11:30 AM CST. Use the usual phone number and passcode. If you have trouble connecting, contact Nicole.

Peg

--------------------------
Sent from my BlackBerry Wireless Handheld

Kevin:

Following up on yesterday's conversation, would you be available next Tuesday (4/11) to be interviewed by phone by our consultants on the Voting Fraud-Voter Intimidation research project? The interview is likely to take less than an hour. You pick the time and I'll confirm it with our consultants, Tova Wang and Job Serebrov. Then, I'll send you an email with the toll-free number and pass code that you will need for the teleconference.

EAC is conducting this preliminary research to determine how best to meet HAVA requirements. Section 241 of the Help America Vote Act of 2002 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)].

Please let me know if you have any questions. Thanks.

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

Please review the attached and let me know of any corrections that should be made. Thanks! --- Peggy

Thanks, Craig! --- Peggy

Hello Peg!

God willing, I will be here the first two weeks of May.
As for your second question, it is not possible for me to assess the level of public attribution that would be appropriate without seeing the substantive stuff in context. I do not foresee a problem. So, I recommend that you get me a draft text and I will review it to ensure we are not disclosing things we shouldn’t disclose.

From: psims@eac.gov
Sent: Monday, April 03, 2006 3:13 PM
To: Donsanto, Craig
Subject: Re: Voting Fraud-Voter Intimidation Project

Craig:

I have 2 issues for you today.

First, I am trying to schedule a meeting of the project working group for EAC’s Voting Fraud-Voter Intimidation research project. As a technical advisor on this project, your attendance is particularly important to me. Would you please look at your schedule and let me know if there are any days during the first 2 weeks of May that you would NOT be available?

Second, is it OK for our consultants to refer in their report to guidance provided in the DOJ training materials? I ask this because I understood that some materials in the materials are considered confidential and we do not want to violate your confidentiality provisions. If there is a compromise position, such as having you review that portion of the consultants’ report, then let me know.

Thanks!

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
e-mail: psims@eac.gov

----- Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM -----

"Tova Wang"
<wang@tcf.org>
04/10/2006 11:04 AM

To psims@eac.gov
cc “Job Serebrov”
Subject small question for Donsanto

Could you please also ask him what the training materials are referring to when they discuss “ballot box stuffing?” Does this mean elections workers add extra votes? Thanks so much. Tova

Tova Andrea Wang

004773
Craig is on the list because the Commission requested he serve as a technical advisory to the project. Although not a member of the project working group, I do need to check his availability for the meeting.

I tried to tell you on the phone that we still are trying to confirm the El Paso County, TX election official for the working group. (Several attempts have been made to contact the Election Director, but she has been out of town.) If we can't get her, we will try for her deputy (also Hispanic). Once I have a response that one of them is willing to serve, I'll update the contact info table and see if I can't get a bio for you two to review. --- Peggy

Why is Craig Donsanto on the list? And what happened about the local election official? Thanks. Tova

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, April 03, 2006 3:33 PM
To: wang@tcf.org
Subject: Working Group Contact Info

Please review the attached and let me know of any corrections that should be made. Thanks! --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM -----
That gives us no time between interviews though, right? We've never been able to really limit it to 30 minutes.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, April 10, 2006 8:45 PM
To: Tova Andrea Wang; Job Serebrov
Subject: Kennedy Interview

It appears that the teleconference with Kevin Kennedy is set for tomorrow, April 11, at 10:30 AM CST/11:30 AM EST. Use the usual phone number and passcode.

If you have trouble connecting, contact Nicole.

Peg

--------------------------
Sent from my BlackBerry Wireless Handheld

--- Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM ---

"Job Serebrov"

04/06/2006 09:56 AM

To psims@eac.gov, wang@tcf.org
cc
Subject Re: Upcoming Interviews-DOJ Info

Peggy:
The interviews are ok with me.

Tova:
I think I should write the review on the IFES white paper instead of the red book.

Job

--- psims@eac.gov wrote:
> Hi, Job and Tova:
Tony Sirvello (former election director for Harris County, TX and current Executive Director of the International Association of Clerks, Recorders, Election Officials and Treasurers) can make himself available for an interview next Wednesday morning (4/12). He is on CST. Is there a time that works well for the two of you? How about 10 AM CST/11 AM EST? I saw Kevin Kennedy at a meeting in our office this past Tuesday. We are trying to set up an interview with him next Tuesday (4/11).

I asked Donsanto about an updated version of his Prosecution of Election Offenses. He responded that it is at the printers and will not be available for a couple of months. In the interim, he referred me to the white paper he did for IFES, which I have attached. He said that the white paper includes the same information on the prosecution of election fraud that will be in the book. --- Peggy

—— Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM ——

wang@tcf.org

04/02/2006 06:56 PM

To psims@eac.gov

cc "Job Serebrov", "Tova Wang"

Subject doj training materials

Hi Peg,

I've just made it through the 2004 binder of materials and have two questions. First, I understand that these materials are confidential, but may we refer to guidance provided in them in our report? Otherwise they are of not much use to us. There's not that much in it that would add to what Donsanto and Tanner told us, but there are a few issues raised that I believe might be germane.

Second, there are several sections evidently missing from the 2004 binder and I'm not sure if that's because of what Donsanto sent over or a problem in the photocopying. From what I can see, some of the table of contents is missing and tabs 14, 15, 16, 17, 21, 23 and 26 are all empty. Can you please look into this?

Thanks and I look forward to speaking to you tomorrow. Tova
Tony:

Which one do you think would be best? J.R. Perez, as Election Administrator, should have knowledge of voting fraud and voter intimidation in both voter registration and voting. I assume that, though Patricia is the voter registration supervisor, she also would have knowledge of voting fraud and voter intimidation in balloting. Would they be available in May for a meeting of the project working group? Who could best stand up to the DNC and RNC counsels?

On a related matter, would you be available for our consultants to interview you by telephone next Wednesday? If so, let me know a convenient time. I'll confirm the time with the two consultants, Job Serebrov and Tova Wang. Then, I'll get back to you with the toll-free line and pass code you will need to use for the teleconference.

Thanks!

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

Good Afternoon Peg,

How about J. R. Perez, Elections Administrator, Guadalupe County or Patricia Benavides, Voting Registration Supervisor, Tarrant County, Texas?

Tony

----- Original Message -----
From: Helen Jamison
To: Tony J. Sirvello III
Sent: Tuesday, April 04, 2006 11:46 AM
Subject: RE: Nonpartisan Local Election Official Needed for Voting Fraud/Voter Intimidation Working Group

Dear Tony,
Unfortunately both Javier and myself have to decline in being members of the working group from Texas. It is a bad time of the year where we have so many elections and would not be able to contribute enough time to doing research of any kind. Please keep us in mind for future meetings.

Helen Jamison

-----Original Message-----
From: Tony J. Sirvello III [mailto:tjthree@msn.com]
Sent: Monday, April 03, 2006 1:19 PM
To: Helen Jamison; Javier Chacon
Subject: Fw: Nonpartisan Local Election Official Needed for Voting Fraud/Voter Intimidation Working Group

Helen, Javier,

Attached is the information from the EAC requesting your services as a member of the working group from Texas. Please let me know in a couple of days if one of you will be able to participate. If you need more information, call me and I will conference in with Peggy Sims, who can give you more details.

Thanks,

Tony

----- Original Message ----- 
From: psims@eac.gov
To: 
Sent: Thursday, March 16, 2006 10:29 AM
Subject: Nonpartisan Local Election Official Needed for Voting Fraud/Voter Intimidation Working Group

Tony:

Thanks for being willing to help me identify a qualified, nonpartisan local election official to serve on our Project Working Group for the preliminary research being conducted on voting fraud and voter intimidation.

Background

Section 241 of the Help America Vote Act of 2002 requires EAC to conduct research on election administration issues. Among the issues listed in the statute are the development of:
The fraud chapter has been published by IFES as part of their Money and Politics Program. It's on their website. I tweaked the text a bit and presented it in Abjua. The rest of it is regrettably not public at present.

Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

-----Original Message-----
From: psims@eac.gov <psims@eac.gov>
To: Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>
Sent: Wed Apr 05 17:26:12 2006
Subject: Re: Voting Fraud-Voter Intimidation Project

Is there any way to get an advance copy? Our consultants will need to review it before you receive your printed versions. --- Peggy

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

04/05/2006 04:14 PM
To
psims@eac.gov
cc

Subject
Re: Voting Fraud-Voter Intimidation Project

The 7th edition is done and on its way to the printer. It is my hope to get it our in a couple months.

Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

-----Original Message-----
From: psims@eac.gov <psims@eac.gov>
To: Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>
Sent: Wed Apr 05 13:05:15 2006
Subject: Voting Fraud-Voter Intimidation Project

Craig: 

In reviewing the great materials you gave our consultants, we have not found an updated draft of your famous Prosecution of Election Offenses. Is that available for review? If you have a pdf version, I could pass that on to our consultants (noting any restrictions you may have on use).

Also, we noticed some gaps in the 2004 DOJ training binder. It appears that we are missing the Chris Herren information from Panel 3 and something titled "July 21, 2004" from Panel 4. If these were removed because we should not see them, just let me know.

I also have to check your availability the week of May15. I'm still trying to find a date that everyone will be available for the working group meeting.

Sorry to bug you. Hope all is going well.

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
Hi, Barry:

I'm trying to arrange a meeting of the Working Group for EAC's Voting Fraud-Voter Intimidation project. Would you please look at your schedule and let me know if there are any days during the first 2 weeks of May that you would NOT be available?

Peggy Sims
Election Research Specialist
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Washington, DC 20005
Phone: 866-747-1471 (toll free) or 202-566-3120 (direct)
Fax: 202-566-3127
e-mail: psims@eac.gov

I've been trying to schedule an interview (by teleconference) among our two consultants, Tova Wang and Job Serebrov. and an election attorney, Colleen McAndrews. I had to leave your name with her assistant, today, just in case she calls back when I am out of the office.

The EAC consultants are available for interviews next week before 4:30 AM EST on Monday (4/10) and in the afternoon on Wednesday (4/12). Email info on any teleconferences scheduled to Job and Tova (wang@tcf.org). Job operates on CST; Tova on EST.

Thanks! --- Peggy

That time is fine for me. Thanks.
Hi, Job and Tova:

Tony Sirvello (former election director for Harris County, TX and current Executive Director of the International Association of Clerks, Recorders, Election Officials and Treasurers) can make himself available for an interview next Wednesday morning (4/12). He is on CST. Is there a time that works well for the two of you? How about 10 AM CST/11 AM EST? I saw Kevin Kennedy at a meeting in our office this past Tuesday. We are trying to set up an interview with him next Tuesday (4/11).

I asked Donsanto about an updated version of his Prosecution of Election Offenses. He responded that it is at the printers and will not be available for a couple of months. In the interim, he referred me to the white paper he did for IFES, which I have attached. He said that the white paper includes the same information on the prosecution of election fraud that will be in the book. --- Peggy

--------- Original Message -----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, April 10, 2006 11:02 AM
To: Kevin Kennedy
Subject: Re: Interview

I am trying to arrange the teleconference for 10:30 AM CST tomorrow, April 11. Will get back to you once confirmed.
Peggy

------------
Sent from my BlackBerry Wireless Handheld

------ Original Message ------
From: "Kennedy, Kevin" [Kevin.Kennedy@seb.state.wi.us]
Sent: 04/09/2006 11:13 AM
To: "psims@eac.gov" <psims@eac.gov>
Subject: RE: Interview

That time is fine. A half hour earlier would be better. I also have a 12 CDT

004788
meeting.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Friday, April 07, 2006 12:27 PM
To: Kevin Kennedy
Subject: Interview

Kevin:
I'm just following up on my request for your availability to be interviewed by our consultants for our voting fraud/voter intimidation project. Are you available Tuesday, April 11 at 11 AM CST?
Peggy Sims

-----------
Sent from my BlackBerry Wireless Handheld

----- Forwarded by Margaret Sims/EAC GOV on 05/01/2007 08:46 PM -----
Nicole Mortellito/CONTRACTOR/EA C/GOV
04/11/2006 11:45 AM
To "Tova Wang <wang@tcf.org>@GSAEXTERNAL
cc psims@eac.gov
Subject conf call is up and running

all dial in info is the same!

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

----- Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM -----
Margaret Sims/EAC/GOV
04/03/2006 03:18 PM
To wang@tcf.org@GSAEXTERNAL
cc
Subject Re: doj training materials

Tova:
I'm checking with Craig regarding reference in our report to the DOJ training materials. The 2004 DOJ training materials did not have a table of contents. I think Devon added that to help you find your way
Hi Peg,

I've just made it through the 2004 binder of materials and have two questions. First, I understand that these materials are confidential, but may we refer to guidance provided in them in our report? Otherwise they are of not much use to us. There's not that much in it that would add to what Donsanto and Tanner told us, but there are a few issues raised that I believe might be germane.

Second, there are several sections evidently missing from the 2004 binder and I'm not sure if that's because of what Donsanto sent over or a problem in the photocopying. From what I can see, some of the table of contents is missing and tabs 14, 15, 16, 17, 21, 23 and 26 are all empty. Can you please look into this?

Thanks and I look forward to speaking to you tomorrow. Tova

Ms. Wang,

My name is Devon Romig and I am working with Peggy and Edgardo at the EAC. I have completed a travel voucher for you and I need your signature in order to submit the voucher.

If you could please respond with a fax number, I will send you a copy of the voucher.

Let me know if you have any other questions.

Sincerely,

Devon Romig
United States Election Assistance Commission
I just saw what you did. I should be out of hours at the end of May. I believe I will be working for the state in June which will make it difficult to find time to finish and could slow things down but I am not yet sure of that.

--- psims@eac.gov wrote:

> Attached is an updated invoice schedule for the FY 06 contracts for the Voting Fraud/Voter Intimidation project. --- Peggy

I know you preferred Friday, but Job is not available then. He also said he is not available next week. Do you have any time available this Wednesday? --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM ----

Margaret Sims/EAC/GOV
04/17/2006 11:48 AM

To Tova Andrea Wang
cc

Subject Interviews

I can't do it Friday but Wednesday is ok.

--- psims@eac.gov wrote:

> Tova and Job:
I've passed Tova's request on to Craig.

Also, Sarah Ball Johnson, KY, finally called back to say she would be available Wednesday through Friday this week and next week for the interview. Which day and time is best for you and Job? --- Peggy

--- Peggy

wangs@tcf.org
04/16/2006 11:39 AM

To psims@eac.gov
cc "Tova Wang" wang@tcf.org
Subject donsanto again

Hi Peg,

Happy Easter!

Would it be possible to talk to Mr. Donsanto about this latest initiative, or somehow get more information? Thanks. Tova

http://www.fbi.gov/page2/april06/electioncrime041406.htm

--- Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM ---

Margaret Sims/EAC/GOV
04/17/2006 10:48 AM

To Job Serebrov, Tova Andrea Wang
cc

Subject Invoice Schedule

Attached is an updated invoice schedule for the FY 06 contracts for the Voting Fraud/Voter Intimidation project. --- Peggy

FY06 Contracts Invoice Schedule.xls
That's what I am concerned about. I think we need to end all interviews with Sarah Ball Johnson. With the literature reviews I am finishing, the case write up and the Tova's Nexis research that I need to read, I will have about 45 hours left for the Working Group meeting and final write up.

--- psims@eac.gov wrote:

> I have to check with Conny McCormack to see if things have settled down for her enough so that she would be available. I have had no response to my overtures to Colleen McAndrews' office. I can try again, but I have to be out of town again, from Wednesday through Friday this week, on another research contract and for EAC's public meeting in Seattle. Were you able to get through to Mike McCarthy?
> 
> Please remember to watch your time. We'll need to reserve some of your time for the working group meeting and the subsequent reports. --- Peggy

> "Job Serebrov" <serebrov@sbcglobal.net>
> 04/17/2006 10:17 AM
> 
> To psims@eac.gov, wang@tcf.org
> cc
> 
> Subject Re: Follow up Donsanto and KY Interviews

> Next week is out for me. I need to check my schedule this week. Is this the last interview that you were able to arrange?
--- psims@eac.gov wrote:

Tova and Job:

I've passed Tova's request on to Craig.

Also, Sarah Ball Johnson, KY, finally called back to say she would be available Wednesday through Friday this week and next week for the interview. Which day and time is best for you and Job?

--- Peggy

---

wang@tcf.org
04/16/2006 11:39 AM

To psims@eac.gov
cc "Tova Wang" <wang@tcf.org>
Subject donsanto again

Hi Peg,

Happy Easter!

Would it be possible to talk to Mr. Donsanto about this latest initiative, or somehow get more information? Thanks. Tova

http://www.fbi.gov/page2/april06/electioncrime041406.htm

--- Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM ---

"Tova Wang"
<wang@tcf.org>
04/17/2006 10:21 AM

To "Job Serebrov", psims@eac.gov
cc

Subject RE: Announcement of FBI Election Crimes Initiative
-----Original Message-----
From: Job Serebrov [mailto:]
Sent: Monday, April 17, 2006 9:13 AM
To: Tova Wang; psims@eac.gov
Subject: RE: Announcement of FBI Election Crimes Initiative

Tova-Do we have time to review this?

--- Tova Wang <wang@tcf.org> wrote:

> Is it possible to get the materials they are using for the trainings?
> Thanks Peg.

> -----Original Message-----
> From: psims@eac.gov [mailto:psims@eac.gov]
> Sent: Monday, April 17, 2006 9:08 AM
> To: wang@tcf.org;
> Subject: Fw: Announcement of FBI Election Crimes Initiative

> See Donsanto response below.--- Peggy

> ----- Forwarded by Margaret Sims/EAC/GOV on 04/17/2006 10:07 AM -----

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

> 04/17/2006 09:56 AM

> To
> psims@eac.gov

> cc

> Subject
> RE: Announcement of FBI Election Crimes Initiative

> Peg --

> This is essentially FBI's equivalent of the Department's Ballot Access and Integrity Initiative. The news conference on Thursday announced that FBI was enhancing its prioritization of campaign financing offenses. The main
feature of this initiative, aside from enhancing the priority these cases will get in the Bureau, is that each of the Bureau's 57 Field Divisions will have at least one "Election Coordinator Agent" who will be the equivalent of the District Election Officer AUSAs. We have been training these new FBI-types: the week before last we had roughly 75 of them in Denver in a very well received two-day session in election law enforcement at which several FEC people spoke. On Wednesday, I head out to Portland, Oregon for more of the same.

Hi, Craig:

Tova noticed an article about an FBI initiative against election crimes (see attached email). Is this something new, or is it more of the same initiative that you addressed in your interview? If it is new, would you have time for a teleconference with Job and Tova to answer any questions they may have on the initiative?

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

----- Forwarded by Margaret Sims/EAC/GOV on 04/17/2006 08:56 AM -----

wang@tcf.org

04/16/2006 11:39 AM
Hi Peg,

Happy Easter!

Would it be possible to talk to Mr. Donsanto about this latest initiative, or somehow get more information? Thanks, Tova

<http://www.fbi.gov/page2/april06/electioncrime041406.htm>

Peggy:

This is incorrect. Our project ends May 31. This month's invoice is due on April 21 and is invoice number 3. Invoice number 4 is due at the end of May.
> Attached is an updated invoice schedule for the FY 06 contracts for the Voting Fraud/Voter Intimidation project. --- Peggy

---

----- Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM -----

"Tova Wang"  
<wang@tcf.org>  
04/17/2006 09:20 AM

To psims@eac.gov
cc

Subject  RE: Follow up Donsanto and KY Interviews

---

Any time Friday is fine for me. Thanks

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, Apr' 17
To: wang@tcf.org; 
Subject: Re: Follow up Donsanto and KY Interviews

Tova and Job:

I've passed Tova's request on to Craig.

Also, Sarah Ball Johnson, KY, finally called back to say she would be available Wednesday through Friday this week and next week for the interview. Which day and time is best for you and Job?

--- Peggy

w@wang@tcf.org  
04/16/2006 11:39 AM

To psims@eac.gov
cc
"Tova Wang" <wang@tcf.org>

Subject
donsanto again
Hi Peg,

Happy Easter!

Would it be possible to talk to Mr. Donsanto about this latest initiative, or somehow get more information? Thanks. Tova

http://www.fbi.gov/page2/april06/electioncrime041406.htm

Next week is out for me. I need to check my schedule this week. Is this the last interview that you were able to arrange?

--- psims@eac.gov Wrote:

> Tova and Job:
> 
> I've passed Tova's request on to Craig.
> 
> Also, Sarah Ball Johnson, KY, finally called back to say she would be available Wednesday through Friday this week and next week for the interview. Which day and time is best for you and Job?
> 
> --- Peggy
> 
> wang@tcf.org
> 04/16/2006 11:39 AM
> 
> To
> psims@eac.gov
> cc
> "Tova Wang" <wang@tcf.org>
> Subject
> donsanto again
Hi Peg,

Happy Easter!

Would it be possible to talk to Mr. Donsanto about this latest initiative, or somehow get more information? Thanks. Tova

http://www.fbi.gov/page2/april06/electioncrime041406.htm

Good Morning Peg,

That works for me...I will stay off the phone and wait on the call.

Have A Great Weekend,

Tony

----- Original Message ----- 
From: psims@eac.gov
To: 
Sent: Thursday, April 06, 2006 2:27 PM
Subject: Re: Fw: Nonpartisan Local Election Official Needed for Voting Fraud/Voter Intimidation Working Group

Tony:

How about scheduling the teleconference with our consultants for 10 AM CST/11 AM EST on Wednesday, April 12? --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM ----- 
Margaret Sims/EAC/GOV
04/17/2006 08:59 AM 
To: Craig Donsanto
cc
Subject: Fw: Announcement of FBI Election Crimes Initiative
Hi, Craig:

Tova noticed an article about an FBI initiative against election crimes (see attached email). Is this something new, or is it more of the same initiative that you addressed in your interview? If it is new, would you have time for a teleconference with Job and Tova to answer any questions they may have on the initiative?

Peggy Sims
Election Research Specialist
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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

Hi Peg,

Happy Easter!

Would it be possible to talk to Mr. Donsanto about this latest initiative, or somehow get more information? Thanks. Tova

http://www.fbi.gov/page2/april06/electioncrime041406.htm

Good Afternoon Peg,

I will make the call as scheduled. I am still in shock about Ray.

Tony
Tony:
We have set up your telephone interview with our 2 consultants (Job Serebrov and Tova Wang) as a teleconference. Please call [redacted] (toll free) at around 10 AM CST on Wed 4/12. At the prompt for the passcode, enter [redacted]. Tova and Job will join you on the line. This works best if you use a land line, rather than a cell phone.

If you have trouble connecting, please call Nicole Mortellito at our office.

Thanks!
Peggy

----- Original Message ----- 
From: Tony J. Sirvello III [tjthree@msn.com] 
Sent: 04/07/2006 08:52 AM 
To: Margaret Sims 
Subject: Re: Fw: Nonpartisan Local Election Official Needed for Voting Fraud/Voter Intimidation Working Group

Good Morning Peg,

That works for me....I will stay off the phone and wait on the call.

Have A Great Weekend,

Tony

----- Original Message ----- 
From: psims@eac.gov
To: [redacted]
Sent: Thursday, April 06, 2006 2:27 PM
Subject: Re: Fw: Nonpartisan Local Election Official Needed for Voting Fraud/Voter Intimidation Working Group

Tony:

How about scheduling the teleconference with our consultants for 10 AM CST/11 AM EST on Wednesday, April 12? --- Peggy

----- Original Message ----- 
From: psims@eac.gov
To: Tony Sirvello
Sent: Monday, April 10, 2006 6:04 PM
Subject: Re: Fw: Nonpartisan Local Election Official Needed for Voting Fraud/Voter Intimidation Working Group

Tony:
We have set up your telephone interview with our 2 consultants (Job Serebrov and Tova Wang) as a teleconference. Please call [redacted] (toll free) at around 10 AM CST on Wed 4/12. At the prompt for the passcode, enter [redacted]. Tova and Job will join you on the line. This works best if you use a land line, rather than a cell phone.

If you have trouble connecting, please call Nicole Mortellito at our office.

Thanks!
Peggy
The 4th batch. More to come tomorrow.
Peg Sims

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:22 PM ---
Margaret Sims/EAC/GOV
05/09/2006 11:44 AM

OK, I get it. The text in the attachment follows:

EXCERPTS FROM TEXAS ELECTION CODE

SUBCHAPTER B. COUNTY ELECTIONS ADMINISTRATOR

***

§ 31.032. APPOINTMENT OF ADMINISTRATOR; COUNTY ELECTION COMMISSION.
(a) The position of county elections administrator is filled by appointment of the county elections commission, which consists of:
   (1) the county judge, as chair;
   (2) the county clerk, as vice chair;
   (3) the county tax assessor-collector, as secretary; and
   (4) the county chair of each political party that made nominations by primary election for the last general election for state and county officers preceding the date of the meeting at which the appointment is made.
(b) The affirmative vote of a majority of the commission's membership is necessary for the appointment of an administrator.
(c) Each appointment must be evidenced by a written resolution or order signed by the number of commission members necessary to make the appointment. Not later than the third day after the date an administrator is appointed, the officer who presided at the meeting shall file a signed copy of the resolution or order with the county clerk. Not later than the third day after the date the copy is filed, the county clerk shall deliver a certified copy of the resolution or order to the secretary of state.
(d) The initial appointment may be made at any time after the adoption of the order creating the position.
§ 31.035. RESTRICTIONS ON POLITICAL ACTIVITIES.

(a) A county elections administrator may not be a candidate for a public office or an office of a political party, hold a public office, or hold an office of or position in a political party. At the time an administrator becomes a candidate or accepts an office or position in violation of this subsection, the administrator vacates the position of administrator.

(b) A county elections administrator commits an offense if the administrator makes a political contribution or political expenditure, as defined by the law regulating political funds and campaigns, or publicly supports or opposes a candidate for public office or a measure to be voted on at an election. An offense under this subsection is a Class A misdemeanor. On a final conviction, the administrator's employment is terminated, and the person convicted is ineligible for future appointment as county elections administrator.

"Job Serebrov" <serebrov@sbcglobal.net>

The code attachment did not work that is what I meant by it did not come through.

--- psims@eac.gov wrote:

> Did you look at the attached excerpts from Texas Code? --- Peggy
> 
> "Job Serebrov" <serebrov@sbcglobal.net> 05/09/2006 11:23 AM
> 
> To psims@eac.gov
> cc wang@tcf.org
> Subject Re: Working Group-Perez
We have the same set-up here in Arkansas. We hired a person just like Perez. However, given this, I would still like to know if he has a party affiliation and this brings up another issue. How is the county election commission chosen. In Arkansas it is the Chairmen of the Republican and Democrat Parties or if he/she does not want to serve a person is elected in his/her stead and a third member picked by the party with the most constitutional officers. Practically that has meant that the Democrats have controlled election commissions in Arkansas since the end of Reconstruction. This is why I want to know the situation in Texas.

--- psims@eac.gov wrote:

As you may recall, the Commissioners directed me to find a nonpartisan local election official to serve on the Working Group. The three of us discussed the desirability of having a Hispanic. I proposed that I find someone from Texas because of that State's colorful history of voting fraud and their innovative approaches to combat it. In those Texas counties that hire Election Administrators to run elections, rather than having elected officials do so (Tax Assessor for voter registration; County Clerk for balloting), the Election Administrator is hired by the County Election Commission and is supposed to perform his or her duties in a nonpartisan manner. (See attached excerpts from Texas Election Code regarding election administrator hiring and restrictions on partisan activity.) Any experienced Texas election official will be familiar with voting fraud and voter intimidation schemes used in that State.

Mr. Perez has over 13 years experience as a county Election Administrator in Texas. You won't find many news articles mentioning him because he has kept his nose clean. (The Texas press, as in many other parts of the country, prefers to report bad news.) Mr. Perez is plugged into the
association of Texas

election officials and the two largest
organizations

of election officials

in this country: the International Association of

Clerks, Recorders,

Election Officials and Treasurers (IACREOT); and

The

Election Center. He is a past President and past Chairman of the
Legislative Committee for the
Texas Association of Election Administrators. He currently serves on
IACREOT's Election Officials Committee, which plans
sessions for election officials that are conducted at that organization's
conferences. His peers in IACREOT and The Election Center have selected
his submissions on web presentations (IACREOT) and his professional
practices papers (Election Center) for awards.

Mr. Perez also has access to information from other States through his
membership in IACREOT and The Election Center. He also has a sense of humor, which you will note if you access the staff web page on the Guadalupe County Elections web site and hear the Mission Impossible theme - something that might be useful in the upcoming meeting.

Guadalupe County is small but growing. In 2004, the county had over 65 thousand registered voters (a number more than doubled the number of registered voters in 1988). A third of the county's population claims Hispanic or Latino origin, according to the U.S. Census Bureau. The county is in south central Texas and is bordered by Comal, Hays, Cladwell, Gonzales, Wilson, and Bexar counties. In the 1980s, the county was predominately a farming community; but in recent years, many people have moved from San Antonio (Bexar County) to Guadalupe County, preferring to live in Guadalupe County and work in Bexar County.

--- Peggy
Peggy:

What political party is Perez with? How political is he? Is the position in Texas neutral or political? Who appointed Perez?

As to Pat I will contact him but I can't promise anything. If Pat can't come, who is getting knocked off Tova's list?

Job
--- psims@eac.gov wrote:

> Tova just sent me the summary you prepared of The Federal Crime of Election Fraud by... There is something wrong in the fourth paragraph (odd characters and missing text). Can you please send a replacement fourth paragraph? You can send it in an email and I will place it in the document. --- Peggy

Would you please take a look at the attached? I combined both of your definitions, reformatted the list, removed a reference to the fraud having to have an actual impact on the election results (because fraud can be prosecuted without proving that it actually changed the results of the election), and taken out a couple of vague examples (e.g., reference to failing to enforce state laws --- because there may be legitimate reasons for not doing so).

I have made contact with Ben Ginsberg's office and am waiting to hear if he accepts our invitation to join the working group. --- Peggy

Fraud Project Definition-rev 5-12-06.doc

Thanks! I'll get back to you. --- Peggy

"Weinberg and Utrecht" <weinutr@verizon.net>
Peggy:
You've hit the jackpot! I'm available, with 2 exceptions, every hour of every day from May 15 through May 19. I am not available Thursday morning, May 18, or Friday afternoon, May 19.

Barry

----- Original Message ----- 
From: psims@eac.gov
To: Barry Weinberg
Sent: Wednesday, April 26, 2006 8:28 PM
Subject: Re: Voting Fraud-Voter Intimidation Project

Barry:
Are you available any days in the third week of May?
Peggy

Sent from my BlackBerry Wireless Handheld

----- Original Message ----- 
From: "Weinberg and Utrecht" [weinutr@verizon.net]
Sent: 04/04/2006 08:14 AM
To: Margaret Sims
Subject: Re: Voting Fraud-Voter Intimidation Project

Peggy:
May looks pretty good right now. I will not be available May 1, or in the morning (before 12:30) on May 4 or May 11, or in the afternoon on May 10.
Barry

----- Original Message ----- 
From: psims@eac.gov
To: weinutr@verizon.net
Sent: Monday, April 03, 2006 3:15 PM
Subject: Voting Fraud-Voter Intimidation Project

Hi, Barry:

I'm trying to arrange a meeting of the Working Group for EAC's Voting Fraud-Voter Intimidation project. Would you please look at your schedule and let me know if there are any days during the first 2 weeks of May that you would NOT be available?

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
Your response suggests that you do not care what the Commissioners may think about the effort. ---

Peggy

"Job Serebrov" <serebrov@sbcglobal.net>

Peggy:

Braden is ok also with me but please don't tell me not to "stir up" things. I assure you nothing will come back to bite me. I know these people well enough to say they will also want a balanced group. In fact, one of them was very unhappy with Tova's folks.

Job

--- psims@eac.gov wrote:

> According to the Commissioners, you and Tova each
> got to pick three
> members of the Working Group. The Commission
> guidance regarding this
> particular member follows:
> 
> 4 people from the Academic, Legal and Advocacy
> sectors - 2 to be chosen by
> Tova and 2 to be chosen by Job.
> 
> This issue of allowing a designee relates to Tova's
> pick.
> 
> As I understand it, we are working on a replacement
> for Norcross. If
> Ginsberg is not viable, how about Mark Braden, who
> includes public
> integrity in his areas of specialization. I would
> not try and stir up
> other members of the Working Group, if I were you.
> The effort is likely
> to come back and bite you.
I really don't care if he represents the organization or not. What mixed race? The entire discussion was because Arnwine was African-American. If you are going to invite him without first having a replacement for my side, I may have to call Thor and Todd and discuss all of this.

--- psims@eac.gov wrote:

> Greenbaum is representing Arnwine, not replacing her. He works for her organization and is of mixed race. --- Peggy

---

I have an objection to Greenbaum. While I realize he comes from an advocacy group, he is not a minority attorney and we already have a rep who worked with DOJ. If it is to be Greenbaum, I would rather not fill that position since I am one down.
--- Tova Wang <wang@tcf.org> wrote:

is Jon Greenbaum

Here's his info in full:

http://www.lawyerscommittee.org/2005website/aboutus/staff/staffgreenbaum.htm

He is the Director of the Voting Rights Project for the Lawyers Committee for Civil Rights. He will be representing Barbara Arnowine, the Executive Director of the Lawyers Committee.

His contact and mailing info is:

jgreenbaum@lawyerscommittee.org
202-662-8315
1401 New York Avenue, NW
Suite 400
Washington, DC 20005

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

www.tcf.org, for the latest news, analysis, opinions, and events.

<mailto:join-tcfmain@mailhost.groundspring.org>
Click here to receive our weekly e-mail updates.
Do you have text to replace the corrupted text in paragraph 4? --- Peggy

"Job Serebrov" <serebrov@sbcglobal.net>

--- psims@eac.gov wrote:

> Tova just sent me the summary you prepared of The Federal Crime of Election Fraud by Craig Donsanto. There is something wrong in the fourth paragraph (odd characters and missing text). Can you please send a replacement fourth paragraph? You can send it in an email and I will place it in the document. --- Peggy

Dear Tova,

I am working with Peggy Sims in order to set a date for the Voting Fraud/Voter Intimidation Project Working Group. I have been trying to reach Barbara Arnwine in order to find out which days in May she is potentially available to attend this meeting but all of my attempts have been unsuccessful.

I would appreciate any help that you could provide in this matter.
As you may recall, the Commissioners directed me to find a nonpartisan local election official to serve on the Working Group. The three of us discussed the desirability of having a Hispanic. I proposed that I find someone from Texas because of that State's colorful history of voting fraud and their innovative approaches to combat it. In those Texas counties that hire Election Administrators to run elections, rather than having elected officials do so (Tax Assessor for voter registration; County Clerk for balloting), the Election Administrator is hired by the County Election Commission and is supposed to perform his or her duties in a nonpartisan manner. (See attached excerpts from Texas Election Code regarding election administrator hiring and restrictions on partisan activity.) Any experienced Texas election official will be familiar with voting fraud and voter intimidation schemes used in that State. Mr. Perez has over 13 years experience as a county Election Administrator in Texas. You won't find many news articles mentioning him because he has kept his nose clean. (The Texas press, as in many other parts of the country, prefers to report bad news.) Mr. Perez is plugged into the association of Texas election officials and the two largest organizations of election officials in this country: the International Association of Clerks, Recorders, Election Officials and Treasurers (IACREOT); and The Election Center. He is a past President and past Chairman of the Legislative Committee for the Texas Association of Election Administrators. He currently serves on IACREOT's Election Officials Committee, which plans the educational sessions for election officials that are conducted at that organization's conferences. His peers in IACREOT and The Election Center have selected his submissions on web presentations (IACREOT) and his professional practices papers (Election Center) for awards. Mr. Perez also has access to information from other States through his membership in IACREOT and The Election Center. He also has a sense of humor, which you will note if you access the staff web page on the Guadalupe County Elections web site and hear the Mission Impossible theme .. something that might be useful in the upcoming meeting.

Guadalupe County is small but growing. In 2004, the county had over 65 thousand registered voters (a number more than doubled the number of registered voters in 1988). A third of the county's population claims Hispanic or Latino origin, according to the U.S. Census Bureau. The county is in south central Texas and is bordered by Comal, Hays, Cladwell, Gonzales, Wilson, and Bexar counties. In the 1980s, the county was predominately a farming community; but in recent years, many people have moved from San Antonio (Bexar County) to Guadalupe County, preferring to live in Guadalupe County and work in Bexar County.

--- Peggy

--- Peggy
Peggy:

What political party is Perez with? How political is he? Is the position in Texas neutral or political? Who appointed Perez?

As to Pat I will contact him but I can't promise anything. If Pat can't come, who is getting knocked off Tova's list?

Job

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:22 PM ----- 
Devon E. Romig/EAC/GOV
04/24/2006 04:41 PM To Margaret Sims/EAC/GOV@EAC
cc
Subject Updated scheduling list and Contact info

Peggy,

Here is the most updated version of the list that I have available.

Work Group Contact Availability Info.xls

Thanks,

Devon Romig
U.S. Election Assistance Commission
1225 New York Ave. NW - Suite #1100
Washington, D.C. 20005
(202)566-2377

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:22 PM ----- 
"Donsanto, Craig"
<Craig.Donsanto@usdoj.gov>
05/16/2006 01:41 PM To psims@eac.gov
cc
Subject RE: Your Materials
Sure. But where is the resistance coming from? The notes were not accurate. As you know, I have to be very concerned about that.

---

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 16, 2006 12:34 PM
To: Donsanto, Craig
Subject: RE: Your Materials

Craig:

I am getting some resistance from my consultants to correcting the summary of the interview prior to the meeting. Would you mind noting the corrections at the meeting? --- Peggy

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

05/16/2006 12:06 PM
topsims@eac.gov
cc
Subject: RE: Your Materials

Thank you, Peg. This stuff is very interesting.

---

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 16, 2006 11:27 AM
To: Donsanto, Craig
Subject: Re: Your Materials

I have forwarded your message to our consultants and have requested a corrected version for distribution at the WG meeting. --- Peggy

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

I have read over the materials you sent to me and viewed the pieces on the CD.

I have only one correction:

I did not say that offenders who receive target letters routinely request or routinely receive audiences here at DOJHQ. That is very rare. Instead, what usually happens is that once a subject for an election fraud investigation is advised that he or she is going to be charged that person usually enters into plea negotiations and ultimately pleads guilty. Very few federal election fraud cases go to trial. When a subject does request a HQ interview or a HW hearing, it would be held in the first instance by myself. But again, Peg, that is rare.

Also, while the occurrences of prosecutions of isolated instances of felons and alien voters and double voters has increased, we still aggressively and I believe quite successfully pursue systematic schemes to corrupt the electoral process, as the cases we brought recently out of Knott and Pike Counties in Kentucky, those we brought out of Lincoln and Logan Counties in West Virginia, and those we brought in New Hampshire growing out of the jamming of get-out-the-vote phone bank lines attest.

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:22 PM ---

"Job Serebrov" To psims@eac.gov
cc
Subject Re: research summary

Peggy:
What about my question on gas receipts?

Job

--- psims@eac.gov wrote:

> I can email this out to our participants after I get
> back to the office, and we can have copies available
> at the meeting.
> Peggy
> --------------------------
> Sent from my BlackBerry Wireless Handheld
>
>
> ----- Original Message ----- 
> From: wang 
> Sent: 03/13/2006 10:54 AM
> To: psims@eac.gov
> Cc: "Job Serebrov" <serebrov@sbcglobal.net>
> Subject: Fw: research summary
>
> Job found it. I'm assuming its too late to include
> so as I said I'll just
> present it if thats OK. Thanks again Job. T
>
> ----- Original Message ----- 
> From: "Job Serebrov" <serebrov@sbcglobal.net>
> To: <wang@tcf.org>
> Sent: Saturday, May 13, 2006 10:12 AM
> Subject: Re: research summary
>
> > T-
> >
> > Are you talking about this?
> >
> > J-
> >
> > --- wang@tcf.org wrote:
> >
> >> In the middle of the night I got the feeling that
> >> you may be right, that I did do a summary of the
> >> existing literature review (that Job, you
> >> approved)
> >> . I'll have to look for it on Monday (unless I go
> >> into the office over the weekend, which is
> >> possible). I may be hallucinating, but if not,
> >> I'll
> >> just present it at the meeting rather than try to
> >> get it to them ahead of time. Tova
> >
> 
> ----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:22 PM -----

"Tova Wang"
<wang@tcf.org>
05/22/2006 06:07 PM

To psims@eac.gov
cc
Subject: RE: PowerPoint Presentation to EAC Boards

I don't know if it's too late, but in the interview summary we actually said there is widespread but not unanimous agreement that there is little polling place fraud. That's quite different than saying, as you do here, that there is disagreement.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, May 22, 2006 3:56 PM
To: wang@tcf.org;
Subject: PowerPoint Presentation to EAC Boards

FYI - Attached is a copy of the PowerPoint presentation on the voting fraud-voter intimidation research project for tomorrow's meetings of the EAC Standards Board (110 state and local election officials) and the EAC Advisory Board (37 representatives from national associations and government agencies who play a role in HAVA implementation and from science and technology-related professions appointed by Congressional members). I used your summaries as the primary source of information for the presentation. --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:22 PM -----
Devon E. Romig/EAC/GOV
05/25/2006 02:37 PM

Peggy,

Here is the summary that you requested. Let me know if this works.

Thanks!

Devon Romig
United States Election Assistance Commission
1225 New York Ave. NW, Suite 1100
Washington, DC 20005
202.566.2377 phone
202.566.3128 fax
www.eac.gov

VFVI Meeting Summary.doc
----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:22 PM -----
I think they are panicking because they are preparing to travel tomorrow and may not have time to submit a revised version. They also are resisting changes to their interview summaries because the summaries represent what they think they heard. I was there at the interview and I heard what you said. I'm not sure that either of them heard everything (including the nuances) because so much of the information was new to them and it was one of their earlier interviews. I'm sorry I did not catch the defects before the summary went out.

My first concern is ensuring that the Working Group has the correct information. Then, we can deal with what version, if any, goes in the final report. Do you want me to excerpt the corrections from your email and submit them to the Working Group? --- Peggy

Sure. But where is the resistance coming from? The notes were not accurate. As you know, I have to be very concerned about that.

Craig:

I am getting some resistance from my consultants to correcting the summary of the interview prior to the meeting. Would you mind noting the corrections at the meeting? --- Peggy
Thank you, Peg. This stuff is very interesting.

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 16, 2006 11:27 AM
To: Donsanto, Craig
Subject: Re: Your Materials

I have forwarded your message to our consultants and have requested a corrected version for distribution at the WG meeting. --- Peggy

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

05/16/2006 10:46 AM

Topsims@eac.gov
cc
Subject: Your Materials

Peg - -

I have read over the materials you sent to me and viewed the pieces on the CD.

I have only one correction:

I did not say that offenders who receive target letters routinely request - or routinely receive - audiences here at DOJHQ. That is very rare. Instead, what usually happens is that once a subject for an
election fraud investigation is advised that he or she is going to be charged that person usually enters into plea negotiations and ultimately pleads guilty. Very few federal election fraud cases go to trial. When a subject does request a HQ interview or a HW hearing, it would be held in the first instance by myself. But again, Peg, that is rare.

Also, while the occurrences of prosecutions of isolated instances of felons and alien voters and double voters has increased, we still aggressively and I believe quite successfully pursue systematic schemes to corrupt the electoral process, as the cases we brought recently out of Knott and Pike Counties in Kentucky, those we brought out of Lincoln and Logan Counties in West Virginia, and those we brought in New Hampshire growing out of the jamming of get0-out-the-vote phone bank lines attest.

How about specifying Section 2 and 203 of the VRA?

----- Original Message ----- 
From: psims@eac.gov
To: wang@tcf.org
Sent: Friday, May 12, 2006 1:34 PM
Subject: RE: Fraud Definition

Lets raise this issue at the meeting. (I'll add "DRAFT" to the current document.) My concern is that there are a number of requirements in the Voting Rights Act. Not all of them are considered election fraud, when violated. For example, failure to preclear changes in election procedures is not treated as election fraud, though it is actionable. --- Peggy

"Tova Wang"<wang@tcf.org>

05/12/2006 12:45 PM
To psims@eac.gov
cc
Subject RE: Fraud Definition

Upon first reading, my only comment would be that I would like to restore "failing to follow the
Would you please take a look at the attached? I combined both of your definitions, reformatted the list, removed a reference to the fraud having to have an actual impact on the election results (because fraud can be prosecuted without proving that it actually changed the results of the election), and taken out a couple of vague examples (e.g.; reference to failing to enforce state laws --- because there may be legitimate reasons for not doing so).

I have made contact with Ben Ginsberg's office and am waiting to hear if he accepts our invitation to join the working group. --- Peggy

The first item is not as big a deal as the second one: the processes under which subjects of investigations come to Jesus is not as important as the overall assessment of our law enforcement achievements. But stressing the isolated test cases we brought - - and will continue to being - - to deter things like felon voting, alien voting and double voting, which not mentioning such significant achievements as the five case PROJECTS mentioned in my last e-mail - - misrepresents what we are doing and the deterrent message we are trying to communicate.

I appreciate that these two young people may have found themselves in a Brave New World when they came over here. It showed in their questioning. But the fact that criminal law enforcement is not at all similar to preventative legal relief (as under the Voting Rights Act) or civil relief (as election contest litigation) is I guess more of a problem than I at first foresaw. My real concern is that the civil rights groups - - with whom we over here have an amazing amount of common grounds - - will take the singling out of the felon and alien voter cases as evincing a malevolent aggression on their constituencies. That is not the case. We are only enforcing the law.

I think they are panicking because they are preparing to travel tomorrow and may not have time to submit a revised version. They also are resisting changes to their interview summaries because the summaries represent what they think they heard. I was there at the interview and I heard what you said. I'm not sure that either of them heard everything (including the nuances) because so much of the information was new to them and it was one of their earlier interviews. I'm sorry I did not catch the defects before the summary...
went out.

My first concern is ensuring that the Working Group has the correct information. Then, we can deal with what version, if any, goes in the final report. Do you want me to excerpt the corrections from your email and submit them to the Working Group? --- Peggy

Sure. But where is the resistance coming from? The notes were not accurate. As you know, I have to be very concerned about that.

Craig:

I am getting some resistance from my consultants to correcting the summary of the interview prior to the meeting. Would you mind noting the corrections at the meeting? --- Peggy
Thank you, Peg. This stuff is very interesting.

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I have forwarded your message to our consultants and have requested a corrected version for distribution at the WG meeting. --- Peggy

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

05/16/2006 10:46 AM
Sounds good. Thanks.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, May 15, 2006 4:03 PM
To: wang@tcf.org
Subject: Re: Fraud Definition

Tova:

We can certainly discuss this at the Working Group meeting. (The draft definition had already been sent out by the time I read your message.) There may be other VRA provisions that should be considered as well, such as the prohibition on removing the names of certain registrants, who were registered by federal examiners, without obtaining prior approval of the Justice Department.

After I received your email, I asked Barry Weinberg to review the draft definition and consider if we have left off examples of Voting Rights Act violations that would qualify as election fraud. Barry, during his 25 years with DOJ, led aggressive action against attempts to place police at the polls to intimidate voters, challenges targeting minorities, failure to provide election materials and assistance in languages other than English (in covered jurisdictions), etc. His input should prove helpful.  --- Peggy

---

How about specifying Section 2 and 203 of the VRA?

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To: wang@tcf.org
Sent: Friday, May 12, 2006 1:34 PM
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Lets raise this issue at the meeting. (I'll add "DRAFT" to the current document.) My concern is that there are a number of requirements in the Voting Rights Act. Not all of them are considered election fraud, when violated. For example, failure to preclear changes in election procedures
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"Tova Wang" <wang@tcf.org>

05/12/2006 12:45 PM

To psims@eac.gov

cc

Subject RE: Fraud Definition

Upon first reading, my only comment would be that I would like to restore "failing to follow the requirements of the Voting Rights Act" ———Original Message———

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Friday, May 006 9:20 AM
To: wang@tcf.org; Subject: Fraud Definition

Would you please take a look at the attached? I combined both of your definitions, reformatted the list, removed a reference to the fraud having to have an actual impact on the election results (because fraud can be prosecuted without proving that it actually changed the results of the election), and taken out a couple of vague examples (e.g.; reference to failing to enforce state laws — because there may be legitimate reasons for not doing so).

I have made contact with Be Ginsberg's office and am waiting to hear if he accepts our invitation to join the working group. --- Peggy

—— Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM ——

Margaret Sims/EAC/GOV
05/17/2006 09:56 AM
To Craig Donsanto
cc
Subject Report on Voting Fraud-Voter Intimidation Research
Craig:

I'm putting the finishing touches on a status report to the EAC Standards Board and EAC Board of Advisors on our Voting Fraud-Voter Intimidation research project. For the most part, I am using our consultants summaries for the report, but one bullet under the interview summaries is giving me heartburn. It is the bullet that references the decrease in DOJ voter intimidation actions. It is one of the places in which our consultants had indicated that your office is focussing on prosecuting individuals. I have reworded it and would like your feedback on the revision:

Several people indicate - including representatives in DOJ -- that for various reasons, the Department of Justice 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. While the Voting Section of the Civil Rights Division focuses on systemic patterns of malfeasance, the Election Crimes Branch of the Public Integrity Section has increased prosecutions of individual instances of felon, alien, and double voting while also maintaining an aggressive pursuit of systematic schemes to corrupt the electoral process.

Please suggest any changes that you think would further clarify the current approach. --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM ---

Margaret Sims/EAC/GOV
05/15/2006 01:09 PM
To: "Tova Wang"<wang@tcf.org>@GSAEXTERNAL
cc
Subject: Re: Thursday

No problem. I've got the conference room reserved from Noon to 6 PM, so you can come earlier. --- Peggy

"Tova Wang"<wang@tcf.org>

"Tova Wang"
05/15/2006 11:36 AM
To: psims@eac.gov
cc
Subject: thursday

Is it OK if I come around 12:30 or so to make sure I have all my materials arranged properly for presentation? Thanks.

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

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

Click here to receive our weekly e-mail updates.
I did not realize that I had to itemize the per diem, so yes, that was an oversight. There was a $5 service charge. I will forward you the documentation on that. Thanks so much. Tova

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Thursday, June 01, 2006 1:50 PM
To: wang@tcf.org
Subject: Travel Reimbursement

Tova:
In reviewing your travel reimbursement request that arrived in my In box this week, I noticed that you did not include per diem in your request for payment. Was that an oversight? I calculate that you would be eligible for a total of $160 in per diem for the trip ($48 for Wednesday 5/17, $64 for Thursday 5/18, and $48 for Friday 5/19). Also, the airfare receipt shows a total charge of $288.60, but the amount you requested for airfare was $293.60. Perhaps there was a service fee that does not show on the receipt. Can you clarify? --- Peggy

--- "Craig C. Donsanto" <cdonsanto@yahoo.com> wrote:

> Date: Tue, 30 May 2006 19:57:36 -0700 (PDT)
> From: "Craig C. Donsanto" <cdonsanto@yahoo.com>
> Subject: Re: Article to your secondary e-mail address
> To: "Elliott, Michael (LA) (IC)"
> <Michael.Elliott@ic.fbi.gov>
> > Mike --
> > As we say back where I come from: this article is
> "wicked pissah"!
> > The woman mentioned in this piece towards the end
> has
been contracted with the Election Assistance
Commission to do a study of electoral fraud in the
US.
She is my problem, and she doesn't have a clue --
despite the fact that she has had the rare
opportunity
to interview me and get stats from me and my
colleagues on our electoral fraud cases.
You should be most proud of this article as it
accurately captures the soul of what you and I are
trying to do in this very important area of federal
law enforcement.
And greetings from Hilton Head, South Carolina --
--- "Elliott, Michael (LA) (IC)"
<Michael.Elliott@ic.fbi.gov> wrote:
> Craig,
>
> As requested, please find below The Hill article
> on
> the CF&BF
> Initiative:
>

> Michael
>
> SSA Michael B. Elliott
>
> Public Corruption/Governmental Fraud Unit
>
> FBIHQ, Room 3975
>
> 202-324-4687 (Office)
>
> 310-210-8511 (Cellular)
>
> Craig C. Donsanto
> cdonsanto@yahoo.com
This is the last batch of archived emails related to the voting fraud study. I have some records concerning the study that are available in hard copy only. I will photocopy them for you as soon as I am able to do so.
--- Peggy Sims

--- Forwarded by Margaret Sims/EAC/GOV on 05/07/2007 04:12 PM ---

"Job Serebrov"

Peggy:

Any word on getting us a copy of our contracts?

Job

--- Forwarded by Margaret Sims/EAC/GOV on 05/07/2007 04:12 PM ---

Karen Lynn-Dyson/EAC/GOV

Subject Tova and Job contracts
Jeannie:

Thanks for helping me out on this. I talked to Donsanto by phone about the need for his assistance. He said he needs a letter from the chair spelling out the Commission's mandate and how he can help it, and asking him to do so. Attached is the draft. I would appreciate your wordsmithing. --- Peggy

---

Chair Ltr to Donsanto-DRAFT.doc

--- Forwarded by Margaret Sims/EAC/GOV on 05/07/2007 04:12 PM ---

Margaret Sims /EAC/GOV
11/16/2005 03:51 PM

To Tova Andrea Wang, Job Serebrov
cc Gavin S. Gilmour/EAC/GOV@EAC
Subject Moving Along

Dear Tova and Job:

Rest assured that I have not ignored your emails. We have a lot going on around here, and have had to use a triage system to tackle all of the things that currently need our attention. I understand that Julie has responded to Tova's question about the September monthly report, indicating that the nomenclature refers to work done in September, not a monthly report due in September. Here are responses to other questions you have raised, and some concerns of mine:

Teleconference - We do need a teleconference this week to discuss some procedural issues and any remaining concerns that you may have. At the moment, my schedule for the remainder of the week is flexible. When would a teleconference be convenient for you two?

Working Group - I am circulating your lists of possible working group members to our Commissioners for review and comment. I will get back to you as soon as I have heard from everyone. This may take awhile, probably through the end of November, as one of our Commissioners is out of the office for an extended period due to a death in the family.

Revised Workplan - Due to political sensitivities regarding this project, it is more important than usual that you act as a team. I noticed several instances on the revised workplan where only one of you is scheduled to be involved. While it seems to me that it would be OK for one or the other to take the lead on a particular aspect of the work (e.g., developing Westlaw search terms, drafting a research instrument, or setting up interviews), it is very important that both of you be involved in making final decisions on the information gathering process and in the resulting information gathering effort (e.g., finalizing the Westlaw search terms and reviewing the search results; finalizing the proposed research instrument, administering the survey, and reviewing the survey responses; and conducting interviews).

DOJ Contact - I am working through the DOJ bureaucracy to obtain the input we need from the Election Crimes Branch. I have spoken to the career attorney I mentioned in previous teleconferences, Craig Donsanto. He is very interested in providing information and perspectives that will be useful to the project; but may have to obtain his superior's permission to participate. I will keep you posted on my efforts. Once we have access to him, it will be important to schedule an initial interview at the earliest time convenient for him and the two of you.

Contacting Other EAC Contractors - Questions for other EAC contractors need to be fielded through me. I realize this may seem cumbersome, but there are a number of reasons for this, some involving contractual issues, some procedural and policy issues. I will have to coordinate our activities on this
project with the EAC project manager for the other EAC research project(s). Together, we will ascertain what the other contractors already have provided to EAC that may answer your questions, perhaps without an interview being necessary, or if the research is not far enough along to provide the information you seek.

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

--- Forwarded by Margaret Sims/EAC/GOV on 05/07/2007 04:12 PM ---

"Job Serebrov"  
<psims@eac.gov, wang@tcf.org>  
11/17/2005 02:44 PM  
cc  
Subject Re: Teleconference

Its ok.
Job

--- psims@eac.gov wrote:

> How about 2 PM EST tomorrow (Friday)? I'll call each of you and bring you into the conference. --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 05/07/2007 04:12 PM ---

"Job Serebrov"  
10/19/2005 12:22 PM  
cc  
Subject Working Group List

Benjamin L Ginsberg.doc  Cleta Mitchell Bio.doc  David A Norcross.doc  E. Mark Braden.doc  TER.official.shortbio.7.15.05.doc  
Thor_Hearne_Resume_5_05.pdf  W0528922.DOC

Dear Peggy:

Here is my list for the Working Group. I still have two out who have not yet responded but there are seven on my current list and you need to pick three. I recommend Roketa, Rogers and Hearne.
Please let me know your picks asap.

The seven are:

Cleta Mitchell (DC)
Patiçe Rogers (NM)
Mark (Thor) Hearne II (MO)
Mark Braden (DC)
David Norcross (DC)
Ben Ginsberg (DC)
Todd Roketa, Sec of State, Indiana (IN)

Regards,

Job

--- Forwarded by Margaret Sims/EAC/GOV on 05/07/2007 04:12 PM ---

I guess I will have to drive folks crazy Monday to make the Tuesday deadline.

--- psims@eac.gov wrote:

> Job:
> I am sorry to say that I have no further information for you at this time.
> --- Peggy

> "Job Serebrov" <
> 10/21/2005 12:38 PM
> To psims@eac.gov
> cc
> Subject Contracts
> "Job Serebrov" <
> 10/21/2005 04:02 PM
> To psims@eac.gov
> cc
> Subject Re: Contracts
Peg, This all sounds good. Will you be calling us on Wednesday?

I should not need a hotel for the 28th. Just let me know what time. Are there expense forms we should have for reimbursement?

On the work product, we did send Karen a very preliminary draft of a work plan. I attach it again here and we can talk about it more on Wednesday.

My only money question is, are we being paid on a monthly basis? And if so, when does that begin? I assume this all is in the contracts we'll be getting...

Thanks.

Tova

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, October 03 2005 2:48 PM
To: wang@ttf.org; s
Cc: ggilmour@eac.gov
Subject: Voting Fraud Teleconference-Meeting-Work Schedule

Tova and Job:

Teleconference -
Let's schedule the teleconference for 4:00 PM on Wednesday, October 5. Gavin Gilmour will join us.

Meeting -
October 28 is fine for the face-to-face meeting in DC. We have allocated $5,000 to each of you to cover reasonable and necessary travel and other incidental expenses. Expenses claimed for reimbursement need to be itemized, with appropriate receipts provided. You should be able to
obtain the Federal government rate at an area hotel (if you plan to stay overnight). If the hotel needs a letter from EAC (in lieu of showing them your signed contract), just let me know. Airlines apparently no longer honor government rates for government contractors. Rail carriers may provide government rates for government contractors. If you drive, the current government rate for a personally owned vehicle (POV) is 48.5 cents per mile.

Deliverables -
The first item on the list of deliverables is the draft project workplan, which is due ASAP after award. Would it be possible for the two of you to deliver a draft workplan to me via email by 10/11? That would be after we have had our teleconference to work out lingering questions.

Questions for Finance -
If you have questions for our Finance Officer, you can reach her via email at dscott@eac.gov. I would appreciate it if you would cc: me on such emails, so that I know to follow up with her.

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

Hi Peg,

Attached please find our joint working definition of voter fraud and intimidation.

This is also to let you know that Job and I have agreed that I may speak with political and social scientists with expertise in methodology and data collection alone.

Finally, the types of expenses that we are incurring unrelated to travel include such items as long distance phone calls, particularly between Job and myself, but also between me and the political scientists mentioned above; and books such as John Fund's "Stealing Elections," Andrew Gumble's "Stealing the Election," and "Deliver the Vote: A History of Election Fraud, an American Political Tradition-1742-2004" by Tracy Campbell, which cost in the $25 range each. I also ordered the 2005 National Directory of Prosecuting Attorneys for $50. Another potential expense might be shipping fees if we want to exchange material that cannot be emailed. Please let us know how you would like us to arrange for reimbursement for such expenses.

Thanks.
Peg and Gavin,

Peg, I know you are out sick today. Hope you are feeling better by the time you get this message.

While we had a kick off conference scheduled for the Legal Resources Website, we did not have one for the Voter Fraud project. We should probably try to schedule a telephone kick off this week. I don't foresee any reason that the conference would have to be in person, do you?

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

Peggy:

As to the clips, your solution will be fine. Do you think the chair will sign the contracts in the next two or so days? Also, when the contracts are signed please make sure our first month invoices are sent for processing.
--- psims@eac.gov wrote:

> Job:
> I found Gavin. He said that the Chair has the letters that have to accompany the contracts for you and Tova. Once she signs them, the finance folks will fax a copy to you and send the original by mail.
>
> After we have the signed contracts:
>
> Adjusted Workplan - You and Tova should look at the workplan to determine what should be revised due to the contract issues.
>
> Working Group - I will ask for a one or two sentences for each person you have on the list of potential working group members. The sentences should summarize why you think the person would be perfect for this particular project. What in their particular experience qualifies them to help develop recommendations for future avenues of EAC research on voting fraud and voter intimidation? (Remember, other research efforts already are underway to address items such as provisional voting, voter ID issues, and contested elections and recounts.) If you want to put an asterisk next to the names that you especially recommend, that would be fine. I have to discuss the potential working group members with our Commissioners, only one of which is in the office now. Others are in the field and I can speak with them as they return. I'll bet that this will take some time, probably through next week.
>
> Westlaw Search - You and Tova can provide more information about the Westlaw search. I spoke with our Executive Director and he authorized me to use a part-time legal intern to conduct the search and provide the results to you and Tova.
>
> Meetings - The three of us should probably decide a time for a teleconference and a tentative in-person meeting date in the not-to-distant future.
>
> Regarding the election fraud newscasts, Tova was in
town this morning for
a non-EAC meeting. While here, she took the
opportunity to look over the
newsclips in one of my files. (I have another file
that I have yet to
unearth from my FEC boxes.) I mentioned to Tova
that one of our EAC
interns could sort the clips, put them in pdf, and
drop them on a CD for
each of you. Tova thinks that it would be most
useful to have the clips
organized by type of voting fraud (e.g.; absentee
ballot, voter
registration, etc.) and, within that sorting, by
State. Does this work
for you, or would you prefer a different
organization?

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
e-mail: psims@eac.gov

"Job Serebrov"
11/08/2005 03:40 PM

To
psims@eac.gov
cc

Subject
Various

Peggy:

Tova and I will need copies of your vote fraud
literature file. Also, do you want a one liner on
all
of the people proposed for the working group or just
the three that we are recommending for the final
group?
Any work from Gavin?
Peggy:

Friday is best for me to teleconference.

Job

--- psims@eac.gov wrote:

> Dear Tova and Job:
> Rest assured that I have not ignored your emails.
> We have a lot going on around here, and have had to use a triage system to tackle all of the things that currently need our attention. I understand that Julie has responded to Tova's question about the September monthly report, indicating that the nomenclature refers to work done in September, not a monthly report due in September. Here are responses to other questions you have raised, and some concerns of mine:
> Teleconference - We do need a teleconference this week to discuss some procedural issues and any remaining concerns that you may have. At the moment, my schedule for the remainder of the week is flexible. When would a teleconference be convenient for you two?
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004840
Thank you, Peg. This stuff is very interesting.

I have forwarded your message to our consultants and have requested a corrected version for distribution at the WG meeting. --- Peggy
Peg --

I have read over the materials you sent to me and viewed the pieces on the CD.

I have only one correction:

I did not say that offenders who receive target letters routinely request - - or routinely receive - - audiences here at DOJHQ. That is very rare. Instead, what usually happens is that once a subject for an election fraud investigation is advised that he or she is going to be charged that person usually enters into plea negotiations and ultimately pleads guilty. Very few federal election fraud cases go to trial. When a subject does request a HQ interview or a HW hearing, it would be held in the first instance by myself. But again, Peg, that is rare.

Also, while the occurrences of prosecutions of isolated instances of felons and alien voters and double voters has increased, we still aggressively and I believe quite successfully pursue systematic schemes to corrupt the electoral process, as the cases we brought recently out of Knott and Pike Counties in Kentucky, those we brought out of Lincoln and Logan Counties in West Virginia, and those we brought in New Hampshire growing out of the jamming of get0-out-the-vote phone bank lines attest.
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

I think he can just raise these points at the meeting, no? I'm sure many we interviewed would say we misquoted them on something. This is what both Job and I remember him saying. I think it would be unfair for him to change/amend his interview without giving the same opportunity to the other interviewees.

See corrections from Donsanto at DOJ. We should probably provide corrected versions to the Working Group. --- Peggy
Peg --

I have read over the materials you sent to me and viewed the pieces on the CD.

I have only one correction:

I did not say that offenders who receive target letters routinely request - or routinely receive - audiences here at DOJHQ. That is very rare. Instead, what usually happens is that once a subject for an election fraud investigation is advised that he or she is going to be charged that person usually enters into plea negotiations and ultimately pleads guilty. Very few federal election fraud cases go to trial. When a subject does request a HQ interview or a HW hearing, it would be held in the first instance by myself. But again, Peg; that is rare.

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Peggy --

I was just thinking of you!

Great session yesterday. I really enjoyed it. Robust discussion.

On another subject, Nancy Simmons needs the e-mail address of NASED. Can you give her both that and the website address for them? Her e-mail is nancy.simmons@usdoj.gov.

-----Original Message-----
From: psims@eac.gov <psims@eac.gov>
To: Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>
Sent: Fri May 19 14:51:21 2006
Subject: Voting Fraud-Voter Intimidation Project-Nexis Word Search
Craig;

You asked about the Nexis search terms used by our consultants. The list follows. --- Peggy.

Election and fraud
Voter and fraud
Vote and fraud
Voter and challenge
Vote and challenge
Election and challenge
Election and irregularity
Election and irregularities
Election and violation
Election and stealing
Ballot box and tampering
Ballot box and theft
Ballot box and stealing
Election and officers
Election and Sheriff
Miscount and votes
Election and crime
Election and criminal
Vote and crime
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Double voting
Multiple voting
Dead and voting
Election and counting and violation
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Vote and intimidating
Vote and intimidation
Denial and voter and registration
Voter identification
Vote and identification
Voter and racial profiling
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Election and official and fraud
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Voter and deter
Vote and deterrence
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Ballot integrity
Ballot security
Ballot security and minority
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Vote and suppression
Minority and vote and suppression
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Vote and suppress
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Vote and depress
Jim Crow
Literacy test
Voter and harass
Voter and harassment
Vote and mail and fraud
Poll and guards
Election and consent decree
Vote and barrier
Voting and barrier
Voter and barrier
Election and long line
Voter and long line
Poll worker and challenge
Poll worker and intimidate
Poll worker and intimidation
Poll worker and intimidating
Poll worker and threatening
Poll worker and abusive
Election official and challenge
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Election monitor and abusive
Election monitor and threatening
Election observer and challenge
Election observer and intimidate
Election observer and intimidating
Election observer and intimidation
Election observer and abusive
Election observer and threatening

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM ---

"Tova Wang"
<wang@tcf.org> 
05/15/2006 05:05 PM

To psims@eac.gov
cc
Subject RE: Fraud Definition

Sounds good. Thanks.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, May 15, 2006 4:03 PM
To: wang@tcf.org
Subject: Re: Fraud Definition
Election and stealing
Ballot box and tampering
Ballot box and theft
Ballot box and stealing
Election and officers
Election and Sheriff
Miscount and votes
Election and crime
Election and criminal
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Election observer and abusive
Election observer and threatening

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM ---

Margaret Sims/EAC/GOV
05/16/2006 03:37 PM
To "Donsanto, Craig"
<Craig.Donsanto@usdoj.gov>@GSAEXTERNAL
cc
Subject RE: Your Materials

OK. --- Peg

"Donsanto, Craig" <Craig.Donsanto@usdoj.gov>
05/16/2006 03:17 PM
To psims@eac.gov
cc
Subject RE: Your Materials
Let me try to do it, Peg. Again what I do not want to see occur is for the LCCR to start attacking us. We have more in common with them than I had originally assumed, thanks to the write-ups of their interviews. We need to promote what we have in common not try to score political points. But I will try to correct the records as long as you will agree you heard what I said the way I know I said it!

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 16, 2006 3:14 PM
To: Donsanto, Craig
Subject: RE: Your Materials

I fully understand. Do you want me to prepare a correction sheet for the Working Group, placing your second and more important point first, or do you want to handle this verbally at the meeting? --- Peggy

"Donsanto, Craig" <Craig.Donsanto@usdoj.gov>
05/16/2006 02:55 PM

The first item is not as big a deal as the second one: the processes under which subjects of investigations come to Jesus is not as important as the overall assessment of our law enforcement achievements. But stressing the isolated test cases we brought - - and will continue to being - - to deter things like felon voting, alien voting and double voting, which not mentioning such significant achievements as the five case PROJECTS mentioned in my last e-mail - - misrepresents what we are doing and the deterrent message we are trying to communicate.

I appreciate that these two young people may have found themselves in a Brave New World when they came over here. It showed in their questioning. But the fact that criminal law enforcement is not at all similar to preventative legal relief (as under the Voting Rights Act) or civil relief (as election contest litigation) is I guess more of a problem than I at first foresaw. My real concerns is that the civil rights groups - - with whom we over here have an amazing amount of common grounds - - will take the singling out of the felon and alien voter cases as evincing a malevolent aggression on their constituencies. That is not the case. We are only enforcing the law.

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 16, 2006 2:47 PM

004854
To: Donsanto, Craig
Subject: RE: Your Materials

I think they are panicking because they are preparing to travel tomorrow and may not have time to submit a revised version. They also are resisting changes to their interview summaries because the summaries represent what they think they heard. I was there at the interview and I heard what you said. I'm not sure that either of them heard everything (including the nuances) because so much of the information was new to them and it was one of their earlier interviews. I'm sorry I did not catch the defects before the summary went out.

My first concern is ensuring that the Working Group has the correct information. Then, we can deal with what version, if any, goes in the final report. Do you want me to excerpt the corrections from your email and submit them to the Working Group? --- Peggy

Sure. But where is the resistance coming from? The notes were not accurate. As you know, I have to be very concerned about that.
Craig:

I am getting some resistance from my consultants to correcting the summary of the interview prior to the meeting. Would you mind noting the corrections at the meeting? --- Peggy

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

05/16/2006 12:06 PM

Thank you, Peg. This stuff is very interesting.

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 16, 2006 11:27 AM
To: Donsanto, Craig
Subject: Re: Your Materials

I have forwarded your message to our consultants and have requested a corrected version for distribution
at the WG meeting. --- Peggy

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

05/16/2006 10:46 AM

--- Peggy

I have read over the materials you sent to me and viewed the pieces on the CD.

I have only one correction:

I did not say that offenders who receive target letters routinely request or routinely receive audiences here at DOJHQ. That is very rare. Instead, what usually happens is that once a subject for an election fraud investigation is advised that he or she is going to be charged that person usually enters into plea negotiations and ultimately pleads guilty. Very few federal election fraud cases go to trial. When a subject does request a HQ interview or a HW hearing, it would be held in the first instance by myself. But again, Peg, that is rare.

Also, while the occurrences of prosecutions of isolated instances of felons and alien voters and double voters has increased, we still aggressively and I believe quite successfully pursue systematic schemes to corrupt the electoral process, as the cases we brought recently out of Knott and Pike Counties in Kentucky, those we brought out of Lincoln and Logan Counties in West Virginia, and those we brought in...
New Hampshire growing out of the jamming of get-out-the-vote phone bank lines attest.

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

I think he can just raise these points at the meeting, no? I'm sure many we interviewed would say we misquoted them on something. This is what both Job and I remember him saying. I think it would be unfair for him to change/amend his interview without giving the same opportunity to the other interviewees.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 16, 2006 9:59 AM
To: wang@tcf.org
Subject: Fw: Your Materials

See corrections from Donsanto at DOJ. We should probably provide corrected versions to the Working Group. --- Peggy
Peg --

I have read over the materials you sent to me and viewed the pieces on the CD.

I have only one correction:

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--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM ---

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM ---

Peggy --

I was just thinking of you!

Great session yesterday. I really enjoyed it. Robust discussion.

On another subject, Nancy Simmons needs the e-mail address of NASED. Can you give her both that and the website address for them? Her e-mail is nancy.simmons@usdoj.gov.
-----Original Message-----
From: psims@eac.gov <psims@eac.gov>
To: Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>
Sent: Fri May 19 14:51:21 2006
Subject: Voting Fraud-Voter Intimidation Project-Nexis Word Search

Craig:

You asked about the Nexis search terms used by our consultants. The list follows. --- Peggy.

Election and fraud
Voter and fraud
Vote and fraud
Voter and challenge
Vote and challenge
Election and challenge
Election and irregularity
Election and irregularities
Election and violation
Election and stealing
Ballot box and tampering
Ballot box and theft
Ballot box and stealing
Election and officers
Election and Sheriff
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----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM -----

Margaret Sims/EAC/GOV
05/16/2006 02:37 PM
To  Eileen L. Collver/EAC/GOV
cc  dromig@eac.gov
Subject  Re: Tent Cards

Oops! I hit send prematurely. Here is the attachment. --- Peggy

Working Group Attendees 5-18-06.doc

Eileen L. Collver/EAC/GOV
05/16/2006 01:38 PM
To  Margaret Sims/EAC/GOV@EAC
cc  dromig@eac.gov
Subject  Re: Tent Cards

Please forward list...there was no attachment. thanks!

Elle L.K Collver
Attached is a list of folks who will be attending the Voting Fraud-Voter Intimidation Working Group meeting. I have asterisked the names that will require tent cards. I am working on a seating chart so that we can be sure the Ds and the Rs aren't all seated together in a "them vs. us" pattern. --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM -----

Peg --

At the Advisory Board meeting we had last week, your two contractors asked to interview the over-100 AUSAs who are serving as District Election Officers in connection with the Fraud study.

This request needs to be addressed to Natalie Voris of EOUSA per the message from here that follows.

If the contractors require additional information in connection with the Fraud Study, and should EOUSA not be able to satisfy their needs n they can communicate with me on criminal issues and Cameron Quinn on Civil Rights issues.

I will be here when you arrive later today at the Board of Advisors meeting when you arrive to talk to us at 4:30.

Ms. Voris' message follows:

Per the USAM, all requests for interviews/surveys/research projects that involve USAOs must be approved by EOUSA. I am pasting the provision
below - the contact name needs to be updated. Requests should come to me, as the Acting Counsel to the Director.

Thanks,
Natalie

Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM -----

Margaret Sims/EAC/GOV
05/24/2006 03:17 PM
To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL
cc Jeannie Layson/EAC/GOV@EAC, bwhitener@eac.gov
Subject Re: press interview

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

"Tova Wang" <wang@tcf.org>

"Tova Wang" <wang@tcf.org>
05/24/2006 02:52 PM
To psims@eac.gov
cc
Subject press interview

Hi Peg,

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

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

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

Click here to receive our weekly e-mail updates.

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM -----

"Donsanto, Craig" <Craig.Donsanto@usdoj.gov>
To psims@eac.gov
cc "Hillman, Noel" <Noel.Hillman@usdoj.gov>, "Simmons,
Thank you for this, Peg.

The third bullet point is one I embrace fully. We lack the statutory tool to do the job. Hopefully, that can be remedied through legislation. But as things stand today, large loopholes in the federal legal matrix addressing electoral abuse and fraud exist—particularly when such abuses occur in elections where there were no federal candidates on the ballot.

From: psims@eac.gov
Sent: Tuesday, May 16, 2006 8:44 AM
To: Donsanto, Craig
Subject: Re: Voting Fraud-Voter Intimidation Working Group

Here is the content of the email attachment:

**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 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.

---

Peggy --

I am currently on train in transit back from a day in Newark. I tried to recover your attachment on Blackberry but got a message telling me the "file is empty."

Can you paste it to an e-mail perhaps?

Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

---
-----Original Message-----
From: psims@eac.gov <psims@eac.gov>
To: barnwine@lawyerscommittee.org <barnwine@lawyerscommittee.org>; 
    Rbauer@perkinscoie.com <Rbauer@perkinscoie.com>; bginsberg@pattonboggs.com 
    <bginsberg@pattonboggs.com>; mhearnelathropgag.com 
    <mhearnelathropgag.com>; jrperez50@sbcglobal.net <jrperez50@sbcglobal.net>; 
    krogers@sos.state.ga.us <krogers@sos.state.ga.us>; assistant@sos.in.gov 
    <assistant@sos.in.gov>; weinutr@verizon.net <weinutr@verizon.net>
CC: jgreenbaum@lawyerscommittee.org <jgreenbaum@lawyerscommittee.org>; 
    vjohnson@lawyerscommittee.org <vjohnson@lawyerscommittee.org>; 
    dlovecchio@perkinscoie.com <dlovecchio@perkinscoie.com>; 
    bschuler@lathropgag.com <bschuler@lathropgag.com>; Donsanto, Craig 
    <Craig.Donsanto@crm.usdoj.gov>
Sent: Mon May 15 16:37:48 2006
Subject: Voting Fraud-Voter Intimidation Working Group

Dear Working Group Members and Participants:

You should receive a packet of information today, either by Federal Express or
hand delivery, concerning Thursday's meeting of the project Working Group for
EAC's Voting Fraud-Voter Intimidation research project. Attached is an
analysis of the consultants' research into relevant literature and reports.
This summary was not available when we prepared the information packets last
Friday, but may be of interest to you. Our consultants and I look forward to
having a productive discussion with you.

Regards,

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

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM -----
Margaret Sims/EAC/GOV
05/17/2006 03:03 PM
To: Craig Donsanto
cc
Subject: Status Report on Voting Fraud-Voter Intimidation Project

Craig:

This is what I was working on for the upcoming meetings of the EAC Board of Advisors and EAC
Standards Board. --- Peggy

EAC Boards VF-VI Status Report.doc
----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM -----
Cases were from 2000 to the present.

--- psims@eac.gov wrote:

> Would you please refresh my memory about the date ranges used for the Nexis article research and the case law research?
> I'm drawing a blank and I don't see it in the summaries. I need it for this morning's Commissioner briefing. Thanks! --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM ----

--- psims@eac.gov wrote:

> Did you find out whether I can use the Chairman's parking spot?

--- psims@eac.gov wrote:

> You will need to submit hotel and parking receipts. You don't need to submit meal receipts. You don't need to submit gas receipts because use of a personally owned vehicle (POV) is reimbursed based on mileage. I think I emailed the mileage rate to you. If you need it again, I'll look it up when I am at the office (this afternoon).
> Peg
> 
> --------------------------
> Sent from my BlackBerry Wireless Handheld
> 
> ----- Original Message ----- 
> From: "Job Serebrov"
> Sent: 05/12/2006 09:05 PM 
> To: psims@eac.gov 
> Subject: Question
> 
>
Since I am driving to DC, besides hotel receipts, do you want me to keep my gas receipts or how will my car use be compensated? Also, I assume I don't have to retain food receipts.

Job

The Standards Board has the reputation of being crankier than the Board of Advisors. They beat up on the Commissioners last year.

Is such a roasting usual? I mean, do they think we did a bad job???

You have most of the pieces of the report now. We absolutely need to put the statutory authority for the research up front. We need to add the definition. We also need to add a short piece addressing the approach for this preliminary research (including short statements on the pros and cons of information sources — you began to address this in the literature review summary). I expect that the biggest project will be fleshing out the possible avenues for subsequent research in this area. It would be great if we could come up with cost estimates. If we can't, we need to at least identify what info we hope to get, what we are likely to miss, and any pitfalls.

Given today's roast, I will take another look at what we have now to highlight remarks that might
needlessly tick board members off. We can discuss whether or not editing or removing the remark would be detrimental to or have no real effect on the final report. (An example of such a remark is the reference to the number of articles out of Florida. A local official from that State objected on the grounds that the number of articles does not reliably indicate the number of problems.) I know we can expect a challenge from Board of Advisors member Craig Donsanto regarding the focus of the Election Crimes Branch prosecutions.

Yes, we can discuss the organization and "look" of the report after Job returns. Yes, the Commissioners will want to review it and submit their changes before the report goes to the boards.

It is too early to tell what EAC efforts may be mounted in FY 2007. I doubt that fire from the Standards Board will prevent Commissioners from doing what they think is needed. But, given that it is an election year, appropriations legislation may not be signed until December or later -- so we won't know how much money we have for awhile. --- Peggy

---

"Tova Wang" <wang@tcf.org>

05/24/2006 03:27 PM

To psims@eac.gov

cc

Subject RE: presentation

Yikes. It sounds like a lot of work after all. Should we talk over what the report should look like again, I guess when Job gets back? Will you help us write it in a way you think will satisfy? I guess it goes to the commissioners first anyway. Does this portend anything for phase 2?

Thanks Peg. Tova

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

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Wednesday, May 24, 2006 2:16 PM
To: wang@tcf.org
Subject: Re: presentation

I'm glad it is over --- for now. One audience was a lot tougher than the other. The Standards Board was much more critical of the research than the Board of Advisors.

Of course, the Board of Advisors is the body that wanted EAC to place a high priority on the research. Its members were interested in sharing personal experiences (including problems with getting anyone to prosecute) and observations (that we need to expand the research to give Congress and political parties a better picture of how rare or prevalent are voting fraud and intimidation, that the HAVA-mandated statewide voter registration lists should help to prevent fraud, etc.). They also asked if EAC will look at specific opportunities for fraud (using cell phones
in vote buying schemes to photograph the ballot being cast at the poll) and how the agency will research voter intimidation/suppression involving voters with disabilities (advocates want to pass on complaints received).

The members of the Standards Board focused much more on the scope of the research and the completeness and accuracy of the information gleaned. Some wanted to include campaign finance crimes in the mix; others understood why we did not. Several did not like the use of newspaper articles, or were defensive about references to the large number of articles about their State. They made the point that, given the vagaries of the press, EAC should not use the number of articles about a specific State or particular vote fraud/intimidation activity as a basis for determining the likelihood that problems will occur in a given State or the frequency with which certain activities occur. (I never said that we did, but some members thought it was at least implied.) Some members want more research on the topic (into prosecutions and/or unsuccessful referrals made by election officials to law enforcement agencies); others want us to “quit throwing away tax dollars” and to stop the research altogether. Although my first slide noted our statutory authority to conduct this study, several members challenged EAC’s right to do so --- saying that DOJ, not EAC, should conduct such research.

The dueling approaches of these boards may give us heartburn when the time comes for them to review and comment on the draft. We will have to make a strong statement at the beginning, perhaps repeated at the end, that this is preliminary research. We also may need to thoroughly explain how choices were made regarding what to look at, who to interview, etc. We may need to clearly acknowledge both the strengths and weaknesses of the various sources of information used in the preliminary research. Finally, when reviewing ideas for subsequent research, we may need to discuss the pros and cons of each approach, what additional information we expect to retrieve, and, perhaps, the estimated cost.

By the way, I did clarify the polling place fraud bullet. --- Peg

"Tova Wang" <wang@tcf.org>

05/24/2006 09:14 AM
To psims@eac.gov
Cc
Subject presentation

How did it go? Were you able to verbally correct that discrepancy we talked about the other day? Thanks. Tova

Tova Andrea Wang
Democracy Fellow
The Century Foundation
Peggy,

In preparation for the logistics of this week's working group, I need to know how many people to expect for the meeting. Also, if you still need me to make name tags, I will need a list of attendees and the Avery label size.

Also, I will need help from Laiza on the table tents, or we can see if she has the time to help with that.

Thanks!

Elle

Elle L.K Collver  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, D.C. 20005  
office: (202) 566-2256  
blackberry: (202) 294-9251  
www.eac.gov

I have attached the list of the working groups participants. Peggy, you may want to double check this list incase I have left anyone out.

In place of name tags we just used the tent cards for the APIA working group. This seemed to be effective because it was easier to identify the person who was speaking but we could use both.
Peggy,

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www.eac.gov

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM ----

Devon E. Romig/EAC/GOV
05/15/2006 03:28 PM
To: Elieen L. Coliver/EAC/GOV@EAC
cc: Margaret Sims/EAC/GOV@EAC
Subject: Re: working group

I have arranged for a transcriptionist to be at the meeting but I am not sure about the snacks for the break.

Devon Romig
Sounds great. It did seem to work just fine for our Asian Language group. Is there going to be a transcriptionist? If so, has anyone taken care of that?

Did you still want to provide the cookies or snacks, or shall I get that from Cafe Mozart (where I am planning to get the coffee). I can just buy a few boxes of cookies for the break.

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Margaret Sims/EAC/GOV

Elle: I think our number will be about 21 (with the Working Group members, consultants, possible EAC Commissioners and staff, and the court reporter). I'll have a better idea of the final list after I brief Commissioners tomorrow morning. Devon noted that they used only tent cards for the Asian Language Working Group. That might be sufficient for this group and would cut back on some of the work we have
to do in preparation. --- Peggy

Elleen L. Collier/EAC/GOV

05/15/2006 12:19 PM

To Margaret Sims/EAC/GOV@EAC

cc Laiza N. Otero/EAC/GOV@EAC, dromig@eac.gov@EAC

Subject working group

Peggy,

In preparation for the logistics of this week's working group, I need to know how many people to expect for the meeting. Also, if you still need me to make name tags, I will need a list of attendees and the avery label size.

Also, I will need help from Laiza on the table tents, or we can see if she has the time to help with that.

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1225 New York Avenue, Suite 1100
Washington, D.C. 20005
office: (202) 566-2256
blackberry: (202) 294-9251
www.eac.gov

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM -----
"Donsanto, Craig"
<Craig.Donsanto@usdoj.gov>
To psims@eac.gov
cc
Subject RE: Report on Voting Fraud-Voter Intimidation Research

Peg - -
This is a complicated issue largely because of two things: 1) there is a lot of ambiguity out there as to what constitutes "intimidation." To the civil rights community, "intimidation" means anything that makes voting uncomfortable or less than automatic. To us in the criminal law enforcement "intimidation" means threats of economic or physical nature made to force or prevent voting. Only the latter involve aggravating factors that warrant putting offenders in jail, and the statutes that address "intimidation" from a criminal perspective are thus limited. We have never had many "intimidation" criminal cases. For one thing, in this modern post voting rights era, there is not a lot of physical/economic duress out there in the voting context - - at least not that I have seen. For another, where it does occur it is very hard to investigate and detect as victims who have been physically or economically intimidated are not likely to come to the FBI.

The bottom line is that we take matters that do present predication for physical or economically based "intimidation" very seriously. AND that we are being extremely proactive in trying to find ways to prosecute matters involving voter suppression as in the Tobin cases in New Hampshire where the local GOP tried to jam telephone lines for a GOTV effort run by the Dems. But even there - - the usual "suppression" matter involves flyers that are passed around giving out misleading information about an election, and we have investigated every one of those that came to our attention last elect ion cycle. We were not able to identify the person(s) responsible for printing the misleading flyers in any of these. But we sure aseck tried.

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Wednesday, May 17, 2006 9:57 AM
To: Donsanto, Craig
Subject: Report on Voting Fraud-Voter Intimidation Research

Craig:

I'm putting the finishing touches on a status report to the EAC Standards Board and EAC Board of Advisors on our Voting Fraud-Voter Intimidation research project. For the most part, I am using our consultants summaries for the report, but one bullet under the interview summaries is giving me heartburn. It is the bullet that references the decrease in DOJ voter intimidation actions. It is one of the places in which our consultants had indicated that your office is focussing on prosecuting individuals. I have reworded it and would like your feedback on the revision:

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 has increased its focus on matters such as noncitizen voting, double voting, and felon voting. While the Voting Section of the Civil Rights Division focuses on systemic patterns of malfeasance, the Election Crimes Branch of the Public Integrity Section has increased prosecutions of individual instances of felon, alien, and double voting while also maintaining an aggressive pursuit of systematic schemes to corrupt the electoral process.

Please suggest any changes that you think would further clarify the current approach. --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM -----
foods/coffees that are provided at these meetings? Any ideas?

Thanks,
Elle

Elle L.K Collver
U.S. Election Assistance Commission
1225 New York Avenue, Suite 1100
Washington, D.C. 20005
office: (202) 566-2256
blackberry: (202) 294-9251
www.eac.gov
Devon E. Romig/EAC/GOV

I have arranged for a transcriptionist to be at the meeting but I am not sure about the snacks for the break.

Devon Romig
United States Election Assistance Commission
1225 New York Ave. NW, Suite 1100
Washington, DC 20005
202.566.2377 phone
202.566.3128 fax
www.eac.gov
Elieen L. Collver/EAC/GOV

Sounds great. It did seem to work just fine for our Asian Language group. Is there going to be a transcriptionist? If so, has anyone taken care of that?

Did you still want to provide the cookies or snacks, or shall I get that from Cafe Mozart (where I am planning to get the coffee). I can just buy a few boxes of cookies for the break.

Elle
Elle: I think our number will be about 21 (with the Working Group members, consultants, possible EAC Commissioners and staff, and the court reporter). I'll have a better idea of the final list after I brief Commissioners tomorrow morning. Devon noted that they used only tent cards for the Asian Language Working Group. That might be sufficient for this group and would cut back on some of the work we have to do in preparation. --- Peggy

Peggy,

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Thanks!

Elle

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Washington, D.C. 20005
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blackberry: (202) 294-9251
www.eac.gov

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM -----
Margaret Sims/EAC/GOV
05/22/2006 05:01 PM
To Cortes, Romig, Collver, Tamar Nedzar/EAC/GOV, Laiza N. Otero
cc
Subject Voting Fraud-Voter Intimidation Working Group Meeting

If any of you took notes of the discussion during the Voting Fraud-Voter Intimidation Working Group meeting, would you please provide a copy to Devon. Devon, would you please use the meeting agenda to organize and consolidate any notes by topic, and send the consolidated notes to me? Thanks. --- Peggy
----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM -----
Margaret Sims/EAC/GOV
05/15/2006 04:37 PM
To Voting Fraud-Voter Intimidation Working Group
cc jgreenbaum@lawyerscommittee.org, vjohnson@lawyerscommittee.org, diovecchio@perkinscoie.com, bschuler@lathropgage.com, Craig.Donsanto@usdoj.gov
Subject Voting Fraud-Voter Intimidation Working Group

Dear Working Group Members and Participants:

You should receive a packet of information today, either by Federal Express or hand delivery, concerning Thursday's meeting of the project Working Group for EAC's Voting Fraud-Voter Intimidation research project. Attached is an analysis of the consultants' research into relevant literature and reports. This summary was not available when we prepared the information packets last Friday, but may be of interest to you. Our consultants and I look forward to having a productive discussion with you.

Regards,

Peggy Sims
Election Research Specialist
U.S. Election Assistance Commission
1225 New York Ave, NW - Ste 1100
Gaylin Vogel/EAC/GOV
05/15/2006 03:39 PM

I haven't really looked into it. I know that contractors and grantees can order food and have the government pay for it if the meeting is to disseminate information. Logic dictates that we can do the same, but I am not sure of the process. I have been here when we ordered lunch for meetings. Diana would be the one to ask. Perhaps the contractor can pay for it and put it on their next invoice but the COTR for the contract would have to be in the loop on this call.

Gaylin Vogel
Law Clerk
U.S. Election Assistance Commission
1225 New York Avenue, NW Suite 1100
Washington, DC 20005
tel:202-566-3116
http://www.eac.gov
GVogel@eac.gov
Elileen L. Collver/EAC/GOV

------ Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM -----

Gaylin Vogel/EAC/GOV
05/15/2006 03:39 PM

To Eileen L. Collver/EAC/GOV@EAC
cc Devon E. Romig/EAC/GOV@EAC, Margaret Sims/EAC/GOV@EAC
Subject Re: working group

I am working on the snacks. I just ordered the coffee (reg/decaf). Cafe Mozart is faxing over an invoice and we can pick up a few boxes of cookies from there too.

GAYLIN-Adam said that you had looked into the way of getting reimbursed for paying for the break foods/coffees that are provided at these meetings? Any ideas?

Thanks,
Elie

Elle L.K Collver
U.S. Election Assistance Commission
I have arranged for a transcriptionist to be at the meeting but I am not sure about the snacks for the break.

Devon Romig
United States Election Assistance Commission
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202.566.2377 phone
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05/15/2006 03:28 PM
To Eileen L. Collver/EAC/GOV@EAC
cc Margaret Sims/EAC/GOV@EAC
Subject Re: working group

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Also, I will need help from Laiza on the table tents, or we can see if she has the time to help with that.

Thanks!

Elle

Elle L.K Collver
U.S. Election Assistance Commission
The contracts for the two consultants on this project do not cover such costs. --- Peggy

This is just to confirm our Monday, May 22, teleconference at 4:30 PM EST/3:30 PM CST. Attached is a list of follow-up activities discussed at the working group meeting and recorded on the flip chart. We will need to flesh these out a bit, perhaps once we have access to the transcript. --- Peggy

Recommendations for Future Research

- Bipartisan observers/poll watchers
  - To collect data
  - To deter fraud/intimidation

- Surveys
  - State laws
  - State election offices
  - Specific states
  - Local election officials
  - Voters (this suggestion was rejected by the panel)
  - State implementation of administrative complaint procedures (applies only to HAVA Title III violations) to ID examples of procedures for other than HAVA Title III complaints

- Follow up on initial reports of fraud/intimidation from the Nexis search of news articles and literature review

- Research absentee ballotng process issues
  - Methodology of “for cause” absentee voting

- Risk-analysis for voting fraud
Who?
What part of process?
Ease of committing the fraud
Which elections?

> Analyze
  - Phone logs from toll-free lines for election concerns
  - Federal observer reports
  - Local newspapers

> Academic statistical research

> Search and match procedures for voter registration list maintenance (subject to confirmation) to identify potential avenues for vote fraud

> Research State district court actions

> Broaden scope of interviews to local officials and district attorneys

> Explore the concept of election courts

> Model statutes

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM ---
Devon E. Romig/EAC/GOV
05/19/2006 10:15 AM
To Margaret Sims/EAC/GOV@EAC
cc
Subject Summary of notes for VFVI meeting

Peggy,

Here are the notes from the meeting.

Summary of VFVI Meeting.doc

Thanks!

Devon Romig
United States Election Assistance Commission
1225 New York Ave. NW, Suite 1100
Washington, DC 20005
202.566.2377 phone
202.566.3128 fax
www.eac.gov

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM ---
"Job Sarabrov"
05/23/2006 09:17 AM
To psims@eac.gov
cc
Subject Re: Payment Vouchers
How did you deal with the issue of mileage v. airline costs for my travel?

--- psims@eac.gov wrote:

> I signed and submitted your personal services
> payment vouchers this
> morning. --- Peggy

--- Forwarded by Margaret.Sims/EAC/GOV on 04/30/2007 04:21 PM ---

Margaret Sims/EAC/GOV
05/23/2006 11:11 AM
To "Job Serebrov"
cc
Subject Re: Payment Vouchers

I have to have a little time to focus on these issues and to check with our Finance Officer. Today and tomorrow, most of my time is scheduled for the EAC Standards Board and Board of Advisors meetings. --- Peggy

"Job Serebrov"

"Job Serebrov"
05/23/2006 09:17 AM
To psims@eac.gov
cc
Subject Re: Payment Vouchers

How did you deal with the issue of mileage v. airline costs for my travel?

--- psims@eac.gov wrote:

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> payment vouchers this
> morning. --- Peggy

--- Forwarded by Margaret.Sims/EAC/GOV on 04/30/2007 04:21 PM ---

Margaret Sims/EAC/GOV
05/23/2006 09:16 AM
To Job Serebrov, Tova Andrea Wang
cc
Subject Payment Vouchers
I signed and submitted your personal services payment vouchers this morning. --- Peggy

Hi Peg, I have this all filled out -- would you quickly check before I fax? And I have all my travel receipts which I will mail to you. Thanks. T

Tova Andrea Wang
Democracy Fellow
The Century Foundation
41 East 70th Street - New York, NY 10021
phone: 212-452-7704 fax: 212-535-7534
Visit our Web site, www.tcf.org, for the latest news, analysis, opinions, and events.

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM ---

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM ---

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM ---

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM ---
Subject RE: Date Ranges for Research

January 1, 2001 - January 1, 2006
-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 16, 2006 7:41 AM
To: wang@tcf.org; serebrov@sbcglobal.net
Subject: Date Ranges for Research

Would you please refresh my memory about the date ranges used for the Nexis article research and the case law research? I'm drawing a blank and I don't see it in the summaries. I need it for this morning's Commissioner briefing. Thanks! --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM ----
Margaret Sims/EAC/GOV
05/15/2006 02:48 PM
To: Eileen L. Coliver/EAC/GOV
cc: dromig@eac.gov
Subject: Re: working group

Elle:
I think our number will be about 21 (with the Working Group members, consultants, possible EAC Commissioners and staff, and the court reporter). I'll have a better idea of the final list after I brief Commissioners tomorrow morning. Devon noted that they used only tent cards for the Asian Language Working Group. That might be sufficient for this group and would cut back on some of the work we have to do in preparation. --- Peggy

Eileen L. Coliver/EAC/GOV

Eileen L. Coliver/EAC/GOV
05/15/2006 12:19 PM
To: Margaret Sims/EAC/GOV@EAC
cc: Laiza N. Otero/EAC/GOV@EAC, dromig@eac.gov@EAC
Subject: working group

Peggy,

In preparation for the logistics of this week's working group, I need to know how many people to expect for the meeting. Also, if you still need me to make name tags, I will need a list of attendees and the Avery label size.

Also, I will need help from Laiza on the table tents, or we can see if she has the time to help with that.

Thanks!

Elle
Sounds great. It did seem to work just fine for our Asian Language group. Is there going to be a transcriptionist? If so, has anyone taken care of that?

Did you still want to provide the cookies or snacks, or shall I get that from Cafe Mozart (where I am planning to get the coffee). I can just buy a few boxes of cookies for the break.

Elle

Elle L.K. Collver
U.S. Election Assistance Commission
1225 New York Avenue, Suite 1100
Washington, D.C. 20005
office: (202) 566-2256
blackberry: (202) 294-9251
www.eac.gov

Margaret Sims/EAC/GOV
05/15/2006 02:48 PM
To: Elieen L. Collver/EAC/GOV@EAC
cc: dromig@eac.gov
Subject: Re: working group

Elle:
I think our number will be about 21 (with the Working Group members, consultants, possible EAC Commissioners and staff, and the court reporter). I'll have a better idea of the final list after I brief Commissioners tomorrow morning. Devon noted that they used only tent cards for the Asian Language Working Group. That might be sufficient for this group and would cut back on some of the work we have to do in preparation. --- Peggy

Elieen L. Collver/EAC/GOV
Peggy,

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Also, I will need help from Laiza on the table tents, or we can see if she has the time to help with that.

Thanks!

Elle

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM ---

Margaret Sims/EAC/GOV
05/15/2006 06:41 PM
To "Craig Donsanto" <Craig.Donsanto@usdoj.gov>
cc
Subject Re: Voting Fraud-Voter Intimidation Working Group

It could be a Berry problem. (I occasionally have that problem with attachments I try to retrieve through my Blackberry.)

The attachment is a pdf file, but I have access to a Word version that I can use to insert text in an email tomorrow. I don't have access to the attachment from my Berry.

Peggy

-----------------------------
Sent from my BlackBerry Wireless Handheld

----- Original Message -----  
From: "Donsanto, Craig" [Craig.Donsanto@usdoj.gov]
Sent: 05/15/2006 04:53 PM  
To: psims@eac.gov  
Subject: Re: Voting Fraud-Voter Intimidation Working Group  

Peggy --  

I am currently on train in transit back from a day in Newark. I tried to recover your attachment on Blackberry but got a message telling me the "file is empty."  

Can you paste it to an e-mail perhaps?  
--------------------------  
Sent from Dr. D's Fabulous BlackBerry Wireless Handheld  

-----Original Message-----  
From: psims@eac.gov <psims@eac.gov>  
To: barnwine@lawyerscommittee.org <barnwine@lawyerscommittee.org>; Rbauer@perkinscole.com <Rbauer@perkinscole.com>; bginsberg@pattonboggs.com <bginsberg@pattonboggs.com>; mhearme@lathropgage.com <mhearme@lathropgage.com>; jrperez50@sbcglobal.net <jrperez50@sbcglobal.net>; krogers@sos.state.ga.us <krogers@sos.state.ga.us>; assistant@sos.in.gov <assistant@sos.in.gov>; weinutr@verizon.net <weinutr@verizon.net>;  
CC: jgreenbaum@lawyerscommittee.org <jgreenbaum@lawyerscommittee.org>; vjohnson@lawyerscommittee.org <vjohnson@lawyerscommittee.org>; dlovechio@perkinscole.com <dlovechio@perkinscole.com>; bschuler@lathropgage.com <bschuler@lathropgage.com>; Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>  
Subject: Voting Fraud-Voter Intimidation Working Group  

Dear Working Group Members and Participants:  

You should receive a packet of information today, either by Federal Express or hand delivery, concerning Thursday's meeting of the project Working Group for EAC's Voting Fraud-Voter Intimidation research project. Attached is an analysis of the consultants' research into relevant literature and reports. This summary was not available when we prepared the information packets last Friday, but may be of interest to you. Our consultants and I look forward to having a productive discussion with you.  

Regards,  

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  

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM -----
Margaret Sims/EAC/GOV  
05/17/2006 03:02 PM  
To: Amie J. Sherrill/EAC/GOV, Adam Ambrogi/EAC/GOV  

004892
Subject Replacement Handout for EAC Board

I found some typos in the Status Report. Please replace the one I gave you with the attached. Thanks. --- Peggy

EAC Boards V-F VI Status Report.doc
----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM -----
Margaret Sims/EAC/GOV
05/23/2006 08:45 AM
To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL
cc
Subject: RE: PowerPoint Presentation to EAC Boards

I know --- I'll have to cover that in my oral presentation, along with some other points. The audience will have a copy of the paper I put together using Job's and your summaries and findings. The paper provides a lot more detail. We did not plan to provide a copy of the PowerPoint presentation, which is just meant to keep me on track and them interested in the presentation. --- Peggy
----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM -----
"Tova Wang"
<wang@tcf.org>
05/26/2006 10:41 AM
To psims@eac.gov, "Job Serebrov"
cc
Subject RE: Request to interview AUSAs

I still think we should include the recommendations in the report.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Friday, May 26, 2006 9:30 AM
To: Tova Andrea Wang; Job Serebrov
Subject: Fw: Request to interview AUSAs

Below is Craig's response to the request to interview AUSAs. It does not appear that this avenue is likely because the AUSAs are so busy..

Also, he asked about permission for other folks to attend the election crimes training session, and the answer was "no". (I can't even get in, and I'm a federal employee.). I understand that a good part of the reason is practical -- they are having enough trouble accommodating the folks that are required to come.

Peggy
Peg --

At the Advisory Board meeting we had last week, your two contractors asked to interview the over-100 AUSAs who are serving as District Election Officers in connection with the Fraud study.

This request needs to be addressed to Natalie Voris of EOUSA per the message from here that follows.

If the contractors require additional information in connection with the Fraud Study, and should EOUSA not be able to satisfy their needs they can communicate with me on criminal issues and Cameron Quinn on Civil Rights issues.

I will be here when you arrive later today at the Board of Advisors meeting when you arrive to talk to us at 4:30.

Ms. Voris' message follows:

Per the USAM, all requests for interviews/surveys/research projects that involve USAOs must be approved by EOUSA. I am pasting the provision below - the contact name needs to be updated. Requests should come to me, as the Acting Counsel to the Director.

Thanks,
Natalie

Sent from my BlackBerry Wireless Handheld
Hi Peg, Have you tried to send me the presentation? I haven't gotten it, but I think we may be having email problems. Let me know. I'd need to look at it today since I'll be tied up tomorrow. Tova

Tova Andrea Wang
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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Thank you, Peg. This is at least more accurate than what I read this morning. Thank you for taking the time to discuss this with me. I shall see you tomorrow.

Craig:

This is what I was working on for the upcoming meetings of the EAC Board of Advisors and EAC
Peggy -- can you call me about this in about an hour?
202-514-1421.

-----Original Message-----
From: psims@eac.gov <psims@eac.gov>
To: Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>
Subject: Report on Voting Fraud-Voter Intimidation Research

Craig:

I'm putting the finishing touches on a status report to the EAC Standards Board and EAC Board of Advisors on our Voting Fraud-Voter Intimidation research project. For the most part, I am using our consultants summaries for the report, but one bullet under the interview summaries is giving me heartburn. It is the bullet that references the decrease in DOJ voter intimidation actions. It is one of the places in which our consultants had indicated that your office is focussing on prosecuting individuals. I have reworded it and would like your feedback on the revision:

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 has increased its focus on matters such as noncitizen voting, double voting, and felon voting. While the Voting Section of the Civil Rights Division focuses on systemic patterns of malfeasance, the Election Crimes Branch of the Public Integrity Section has increased prosecutions of individual instances of felon, alien, and double voting while also maintaining an aggressive pursuit of systematic schemes to corrupt the electoral process.

Please suggest any changes that you think would further clarify the current approach. --- Peggy
Shall I call you at about 2:30 PM? -- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM -----

Margaret Sims/EAC/GOV
05/15/2006 05:09 PM	To Job Serebrov
cc
Subject Mileage Rate for POV

Job:
The federal mileage rate for POVs is $.445 per mile (see
http://www.gsa.gov/Portal/gsa/ep/contentView.do?programId=0299&channelId=-13224&ooid=10359&contentId=9646&pageTypeId=8203&contentType=GSA_BASIC&programPage=%2Fep%2Fprogram%2FgsaBasic.jsp&P=MTT). Write down the number on you odometer at the beginning (starting at home) and end of the trip (when you arrive back home). The difference should be your total mileage, unless you make any side trips for personal convenience. The mileage for side trips should be deleted from the total. --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM -----

Margaret Sims/EAC/GOV
05/24/2006 03:16 PM	To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL
cc
Subject Re: presentation

I'm glad it is over --- for now. One audience was a lot tougher than the other. The Standards Board was much more critical of the research than the Board of Advisors.

Of course, the Board of Advisors is the body that wanted EAC to place a high priority on the research. Its members were interested in sharing personal experiences (including problems with getting anyone to prosecute) and observations (that we need to expand the research to give Congress and political parties a better picture of how rare or prevalent are voting fraud and intimidation, that the HAVA-mandated statewide voter registration lists should help to prevent fraud, etc.). They also asked if EAC will look at specific opportunities for fraud (using cell phones in vote buying schemes to photograph the ballot being cast at the poll) and how the agency will research voter intimidation/suppression involving voters with disabilities (advocates want to pass on complaints received).

The members of the Standards Board focused much more on the scope of the research and the completeness and accuracy of the information gleaned. Some wanted to include campaign finance crimes in the mix; others understood why we did not. Several did not like the use of newspaper articles, or were defensive about references to the large number of articles about their State. They made the point that, given the vagaries of the press, EAC should not use the number of articles about a specific State or particular vote fraud/intimidation activity as a basis for determining the likelihood that problems will occur in a given State or the frequency with which certain activities occur. (I never said that we did, but some members thought it was at least implied.) Some members want more research on the topic (into prosecutions and/or unsuccessful referrals made by election officials to law enforcement agencies); others want us to "quit throwing away tax dollars" and to stop the research altogether. Although my first slide noted our statutory authority to conduct this study, several members challenged EAC's right to do so --- saying that DOJ, not EAC, should conduct such research.

The dueling approaches of these boards may give us heartburn when the time comes for them to review
and comment on the draft. We will have to make a strong statement at the beginning, perhaps repeated at the end, that this is preliminary research. We also may need to thoroughly explain how choices were made regarding what to look at, who to interview, etc. We may need to clearly acknowledge both the strengths and weaknesses of the various sources of information used in the preliminary research. Finally, when reviewing ideas for subsequent research, we may need to discuss the pros and cons of each approach, what additional information we expect to retrieve, and, perhaps, the estimated cost.

By the way, I did clarify the polling place fraud bullet. --- Peg

"Tova Wang" <wang@tcf.org>

"Tova Wang" <wang@tcf.org>
05/24/2006 09:14 AM
To psims@eac.gov
cc
Subject presentation

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM ---
"Tova Wang" <wang@tcf.org>
05/24/2006 03:27 PM
To psims@eac.gov
cc
Subject RE: presentation

Yikes. It sounds like a lot of work after all. Should we talk over what the report should look like again, I guess when Job gets back? Will you help us write it in a way you think will satisfy? I guess it goes to the commissioners first anyway. Does this portend anything for phase 2? Thanks Peg. Tova

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Wednesday, May 24, 2006 2:16 PM
To: wang@tcf.org
Subject: Re: presentation
I'm glad it is over --- for now. One audience was a lot tougher than the other. The Standards Board was much more critical of the research than the Board of Advisors.

Of course, the Board of Advisors is the body that wanted EAC to place a high priority on the research. Its members were interested in sharing personal experiences (including problems with getting anyone to prosecute) and observations (that we need to expand the research to give Congress and political parties a better picture of how rare or prevalent are voting fraud and intimidation, that the HAVA-mandated statewide voter registration lists should help to prevent fraud, etc.). They also asked if EAC will look at specific opportunities for fraud (using cell phones in vote buying schemes to photograph the ballot being cast at the poll) and how the agency will research voter intimidation/suppression involving voters with disabilities (advocates want to pass on complaints received).

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The dueling approaches of these boards may give us heartburn when the time comes for them to review and comment on the draft. We will have to make a strong statement at the beginning, perhaps repeated at the end, that this is preliminary research. We also may need to thoroughly explain how choices were made regarding what to look at, who to interview, etc. We may need to clearly acknowledge both the strengths and weaknesses of the various sources of information used in the preliminary research. Finally, when reviewing ideas for subsequent research, we may need to discuss the pros and cons of each approach, what additional information we expect to retrieve, and, perhaps, the estimated cost.

By the way, I did clarify the polling place fraud bullet. --- Peg

*Tova Wang* <wang@tcf.org>

05/24/2006 09:14 AM

To: psims@eac.gov

cc

Subject: presentation
How did it go? Were you able to verbally correct that discrepancy we talked about the other day? Thanks. Tova

Tova Andrea Wang  
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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--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM ----

"Tova Wang" <wang@tcf.org>
05/16/2006 05:08 PM
To psims@eac.gov
cc
Subject RE: board of advisers presentation

This looks fine otherwise, but I'm not sure I understand why you included the attachments you did. They are not really representative of what we did for the project as a whole. The summaries are just meant to supplement the nexis excel charts.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 16, 2006 2:51 PM
To: wang@tcf.org
Subject: Re: board of advisers presentation

I haven't sent it yet. If you need to leave early, you can look at what I have so far, which does not have the intro or the text regarding the final report. --- Peggy

"Tova Wang" <wang@tcf.org>
05/16/2006 03:47 PM
To psims@eac.gov
cc
Subject board of advisers presentation
Hi Peg. Have you tried to send me the presentation? I haven't gotten it, but I think we may be having email problems. Let me know. I'd need to look at it today since I'll be tied up tomorrow.

Tova

Tova Andrea Wang
Democracy Fellow
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----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM -----

"Donsanto, Craig" <Craig.Donsanto@usdoj.gov> To psims@eac.gov
05/16/2006 12:06 PM cc
Subject RE: Your Materials

Thank you, Peg. This stuff is very interesting.

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 16, 2006 11:27 AM
To: Donsanto, Craig
Subject: Re: Your Materials

I have forwarded your message to our consultants and have requested a corrected version for distribution at the WG meeting. --- Peggy

"Donsanto, Craig" <Craig.Donsanto@usdoj.gov>
05/16/2006 10:46 AM
cpsims@eac.gov
Subject Your Materials
Peg - -

I have read over the materials you sent to me and viewed the pieces on the CD.

I have only one correction:

I did not say that offenders who receive target letters routinely request - - or routinely receive - - audiences here at DOJHQ. That is very rare. Instead, what usually happens is that once a subject for an election fraud investigation is advised that he or she is going to be charged that person usually enters into plea negotiations and ultimately pleads guilty. Very few federal election fraud cases go to trial. When a subject does request a HQ interview or a HW hearing, it would be held in the first instance by myself. But again, Peg, that is rare.

Also, while the occurrences of prosecutions of isolated instances of felons and alien voters and double voters has increased, we still aggressively and I believe quite successfully pursue systematic schemes to corrupt the electoral process, as the cases we brought recently out of Knott and Pike Counties in Kentucky, those we brought out of Lincoln and Logan Counties in West Virginia, and those we brought in New Hampshire growing out of the jamming of get-out-the-vote phone bank lines attest.

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM -----

"Job Serebrov"
05/16/2006 11:13 AM
To "Tova Wang" <wang@tcf.org>, psims@eac.gov
cc
Subject Corrections

I don't think anyone should be given the opportunity to correct mistakes.

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM -----

"Tova Wang"
<wang@tcf.org>
05/16/2006 11:34 AM
To psims@eac.gov, serebrov@sbcglobal.net
cc
Subject RE: Corrections

Should we send all of the interview summaries to the people we interviewed for review then?

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 16, 2006 10:30 AM
To: serebrov@sbcglobal.net
It wasn't his mistake. I was there at the interview. I just did not have time to review all of the interview summaries. --- Peggy

I don't think anyone should be given the opportunity to correct mistakes.

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM ---

Margaret Sims/EAC/GOV
05/16/2006 11:30 AM
To "Job Serebrov" <wang@tcf.org>, psims@eac.gov
cc wang@tcf.org
Subject Re: Corrections

It wasn't his mistake. I was there at the interview. I just did not have time to review all of the interview summaries. --- Peggy

"Job Serebrov" <wang@tcf.org>
05/16/2006 11:13 AM
To "Tova Wang" <wang@tcf.org>, psims@eac.gov
cc Corrections
OK. Weather is not going to be great in DC Thursday. I hope that does not delay me.

--- psims@eac.gov wrote:

> We don't need a castle key, but we have to wait until the Chairman returns to the office tomorrow to confirm availability of the parking pass. I expect you will be on the road, then. Try calling me our toll-free line tomorrow afternoon, say after 2 PM EST, so that we can talk about this. --- Peg

--- Job Serebrov wrote:

> Did you find out whether I can use the Chairman's parking spot?

--- psims@eac.gov wrote:

> You will need to submit hotel and parking receipts.
> You don't need to submit meal receipts. You don't need to submit gas receipts because use of a personally owned vehicle (POV) is reimbursed based on mileage. I think I emailed the mileage rate to you. If you need it again, I'll look it up when I am at the office (this afternoon).
Peg

----- Original Message ----- 
From: "Job Serebrov" [ ]
Sent: 05/12/2006 09:05
To: psims@eac.gov
Subject: Question

Peg:

Since I am driving to DC, besides hotel receipts, do you want me to keep my gas receipts or how will my car use be compensated? Also, I assume I don't have to retain food receipts.

Job

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM ---
"Tova Wang"
<wang@tcf.org> To psims@eac.gov
05/15/2006 09:07 AM cc dromig@eac.gov
Subject I'm sorry

I don't think I sent this to you either. Can we hand it out at the meeting as an addendum? Its another summary that would have gone in the news article section. I'm usually so organized, I'm very embarrassed. Too many things! Thanks

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

Visit our Web site, www.tcf.org, for the latest news, analysis, opinions, and events.
Click here to receive our weekly e-mail updates.
What is the information you need when you say:
The consultants jointly selected experts from ???

We chose the interviewees by first coming up with a list of the categories of types of people we wanted to interview. Then we each filled those categories with a certain number of people, equally. The ultimate categories were academics, advocates, elections officials, lawyers and judges.

Is that what you need?

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 16, 2006 2:51 PM
To: wang@tcf.org
Subject: Re: board of advisers presentation

I haven't sent it yet. If you need to leave early, you can look at what I have so far, which does not have the intro or the text regarding the final report. --- Peggy

Hi Peg, Have you tried to send me the presentation? I haven't gotten it, but I think we may be
having email problems. Let me know. I'd need to look at it today since I'll be tied up tomorrow.

Tova

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

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

Click here to receive our weekly e-mail updates.

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM ---

"Job Serebrov"
05/15/2006 09:28 AM
To psims@eac.gov
cc
Subject Re: Fw: New Working Group Member

Excellent!

--- psims@eac.gov wrote:

> Just thought you would like to see the Chairman's
> reaction to the Ginsberg choice, attached.
> Peggy
> 
> --------------------------
> Sent from my BlackBerry Wireless Handheld
> 
> 
> ----- Original Message ------
> From: Paul DeGregorio
> Sent: 05/14/2006 12:01 PM
> To: CN=Margaret Sims/OU=EAC/O=GOV@EAC
> Cc: CN=Amie J. Sherrill/OU=EAC/O=GOV
> Subject: Re: New Working Group Member
> 
> Ben Ginsberg is one of the most respected election
> law attorneys in the country. Great choice.
> 
> --------------------------
> Sent from my BlackBerry Wireless Handheld
> 
> 
> ----- Original Message ------
> From: Margaret Sims
> Sent: 05/12/2006 04:04 PM
> To: pdegregorio@eac.gov
> Cc: CN=Amie J. Sherrill/OU=EAC/O=GOV@EAC
> Subject: New Working Group Member


004907
FYI - The person I mentioned as a replacement for David Norcross, who was unavailable, could not attend or Voting Fraud-Voter Intimidation Working Group meeting. Our consultant, Job Serebrov, suggested Benjamin Ginsberg, who is willing. I'm sorry I could not check with you on this beforehand --- things happened so fast! --- Peggy

Hello to all,

I would love to help, but I will not be in the office from today (Monday, May 15th) thru Wednesday, May 17th ------ I'll be back on Thursday morning. When is your meeting taking place? I had e-mailed Adam a draft of the table tents I did for the APIA working group; perhaps he still has it archived in his Lotus notes and could forward it to you. All you would have to do then is erase the APIA names and insert the ones for the new working group. In case he does not have the document I sent him and you need them prior to me returning to the office ---- in Microsoft Word, open a new document, go under Tools, then labels and envelopes, choose Labels and then Options - then choose the correct Avery product number for your tent cards and click New document -- this will bring a blank template where you can begin to insert the names. I hope this helps. I can be reached by phone at [redacted] in case you need my help. Also, the tent card box usually brings an instruction sheet, it's not the most clear though.

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

Peggy,

In preparation for the logistics of this week's working group, I need to know how many people to expect for the meeting. Also, if you still need me to make name tags, I will need a list of attendees and the avery label size.
Also, I will need help from Laiza on the table tents, or we can see if she has the time to help with that.

Thanks!

Elle

Elle L.K Colver
U.S. Election Assistance Commission
1225 New York Avenue, Suite 1100
Washington, D.C. 20005
office: (202) 566-2255
www.eac.gov

FYI - Attached is a copy of the PowerPoint presentation on the voting fraud-voter intimidation research project for tomorrow’s meetings of the EAC Standards Board (110 state and local election officials) and the EAC Advisory Board (37 representatives from national associations and government agencies who play a role in HAVA implementation and from science and technology-related professions appointed by Congressional members). I used your summaries as the primary source of information for the presentation. --- Peggy

VF-VI Project Presentation.ppt

All,

As discussed in the meeting today, please find attached the House and Senate Conference Reports associated with the passage of HAVA. In each document, the word “fraud” is capitalized, bolded, and highlighted.
Kind Regards,

Tamar Nedzar
Law Clerk
U.S. Election Assistance Commission
1225 New York Avenue, NW Suite 1100
Washington, DC 20005
(202) 566-2377
http://www.eac.gov
TNedzar@eac.gov

House Conference Report.doc

Senate Conference Report.doc
----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM -----
"Tova Wang" <wang@tcf.org> To: psims@eac.gov
05/23/2006 09:23 AM cc
Subject: RE: PowerPoint Presentation to EAC Boards

OK, thanks
-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 23, 2006 7:46 AM
To: wang@tcf.org
Subject: RE: PowerPoint Presentation to EAC Boards

I know --- I'll have to cover that in my oral presentation, along with some other points. The audience will have a copy of the paper I put together using Job's and your summaries and findings. The paper provides a lot more detail. We did not plan to provide a copy of the PowerPoint presentation, which is just meant to keep me on track and them interested in the presentation. --- Peggy
----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM -----
"Tova Wang" <wang@tcf.org> To: psims@eac.gov
05/22/2006 03:43 PM cc
Subject: RE: voucher

Is there something separate I should fill out for the travel, or should I just submit a letter? Thanks.
-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, May 22, 2006 2:30 PM
To: wang@tcf.org
Subject: Re: voucher

Tova:
Here is your voucher with the pay period dates and signature date updated, and a check mark added for the travel costs. I've been thinking that it might be better to make a separate submission for the travel costs. That way, if there are any delays in receiving your receipts, or there are any corrections or clarifications needed on the travel costs, we won't have to hold up the voucher for payment of personal services. If you agree, you should delete the check mark, dollar amount and travel dates from this voucher. --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM ---
Margaret Sims/EAC/GOV
05/22/2006 03:58 PM
To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL
cc
Subject RE: voucher

A letter detailing the costs, noting the total reimbursement expected, and attaching your travel receipts is fine. --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM ---
"Tova Wang"
<wang@tcf.org>
05/19/2006 04:34 PM
To psims@eac.gov
cc
Subject Re: Monday Teleconference

That's fine for me. Thanks so much for doing such a great job running the show yesterday. Did you think it went well?
Also, is there any reason why we cannot talk about our findings with people now? Please let me know. Thanks. Have a great weekend. Tova

-----Original Message-----
From: psims@eac.gov
To: wang@tcf.org, serebrov@sbcglobal.net
Date: Fri, 19 May 2006 15:30:59 -0400
Subject: Monday Teleconference

This is just to confirm our Monday, May 22, teleconference at 4:30 PM EST/3:30 PM CST. Attached is a list of follow-up activities discussed at the working group meeting and recorded on the flip chart. We will need to flesh these out a bit, perhaps once we have access to the transcript. --- Peggy

Recommendations for Future Research
Bipartisan observers/poll watchers
- To collect data
- To deter fraud/intimidation

Surveys
- State laws
- State election offices
- Specific states
- Local election officials
- Voters (this suggestion was rejected by the panel)
- State implementation of administrative complaint procedures (applies only to HAVA Title III violations) to ID examples of procedures for other than HAVA Title III complaints

Follow up on initial reports of fraud/intimidation from the Nexis search of news articles and literature review

Research absentee balloting process issues
- Methodology of "for cause" absentee voting

Risk-analysis for voting fraud
- Who?
- What part of process?
- Ease of committing the fraud
- Which elections?

Analyze
- Phone logs from toll-free lines for election concerns
- Federal observer reports
- Local newspapers

Academic statistical research

Search and match procedures for voter registration list maintenance (subject to confirmation) to identify potential avenues for vote fraud

Research State district court actions

Broaden scope of interviews to local officials and district attorneys

Explore the concept of election courts

Model statutes

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM ----

"Weinberg and Utrecht"

To pims@eac.gov

cc
Barry:

Would you please take a moment to review the draft definition of election fraud? One of our consultants is concerned that it does not sufficiently cover violations of the Voting Rights Act that would qualify. Thanks!
--- Peggy

I have forwarded your message to our consultants and have requested a corrected version for distribution at the WG meeting. --- Peggy
Peg —

I have read over the materials you sent to me and viewed the pieces on the CD.

I have only one correction:

I did not say that offenders who receive target letters routinely request or routinely receive audiences here at DOJ HQ. That is very rare. Instead, what usually happens is that once a subject for an election fraud investigation is advised that he or she is going to be charged that person usually enters into plea negotiations and ultimately pleads guilty. Very few federal election fraud cases go to trial. When a subject does request a HQ interview or a HW hearing, it would be held in the first instance by myself. But again, Peg, that is rare.

Also, while the occurrences of prosecutions of isolated instances of felons and alien voters and double voters has increased, we still aggressively and I believe quite successfully pursue systematic schemes to corrupt the electoral process, as the cases we brought recently out of Knott and Pike Counties in Kentucky, those we brought out of Lincoln and Logan Counties in West Virginia, and those we brought in New Hampshire growing out of the jamming of get-out-the-vote phone bank lines attest.

---

I'll be here for a while, I just wanted to make sure. If you send it to me anytime before 5 I can look at it in time. If not, I'll try my best to look at it en route tomorrow.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 16, 2006 2:51 PM
To: wang@tcf.org
Subject: Re: board of advisers presentation

I haven't sent it yet. If you need to leave early, you can look at what I have so far, which does not have the intro or the text regarding the final report. --- Peggy
Hi Peg, Have you tried to send me the presentation? I haven't gotten it, but I think we may be having email problems. Let me know I'd need to look at it today since I'll be tied up tomorrow.

Tova

Tova Andrea Wang
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.

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM ---

--- Tova Wang <wang@tcf.org> wrote:

> I still think its sufficient for him to raise the points verbally. All of
> the interview summaries reflect what Job and I both understood the
> interviewees to say. This really opens to the door to people making, as Job
> says, "corrections"
>
> ----Original Message-----
> From: psims@eac.gov [mailto:psims@eac.gov]
Might not be a bad idea before the final report is prepared, but I would not worry about it for Thursday's meeting. I'm only concerned with the Donsanto interview summary because he will be attending the meeting. --- Peggy

---

Ok

--- psims@eac.gov wrote:

You will need to submit hotel and parking receipts.
You don't need to submit meal receipts. You don't need to submit gas receipts because use of a personally owned vehicle (POV) is reimbursed based on mileage. I think I emailed the mileage rate to you. If you need it again, I'll look it up when I am at the office (this afternoon).

Peg

------------
Sent from my BlackBerry Wireless Handheld

----- Original Message ----- 
From: "Job Serebrov" 
Sent: 05/12/2006 09:05 PM 
To: psims@eac.gov 
Subject: Question 

Peg:

Since I am driving to DC, besides hotel receipts, do you want me to keep my gas receipts or how will my car use be compensated? Also, I assume I don't have to retain food receipts.
Great -- thanks so much and apologies for the false alarm.

--- Original Message ---
From: dromig@eac.gov
Sent: Monday, May 15, 2006 8:51 AM
To: wang@tcf.org
Cc: psims@eac.gov
Subject: RE: I'm sorry

This article is on the CD, it is located in the "Nexis Article Charts" folder.

Devon Romig
United States Election Assistance Commission
1225 New York Ave. NW, Suite 1100
Washington, DC 20005
202.566.2377 phone
202.566.3128 fax
www.eac.gov

Thats good. I'm probably just getting crazy, trying to make sure everything is perfect. Devon, maybe you can check? Otherwise I'll check it when it comes. Thanks. And be well Peg.
-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, May 15, 2006 8:23 AM
To: Tova Andrea Wang
Subject: Re: I’m sorry

Tova:
I think you did send this --- or is this a revised version of one you
sent earlier? It should be on the CD in the packet you should receive
today.. (Can't check that right now as I am at the clinic.) If I put
anything on the CD that you want to highlight at the meeting, let me
know and we'll make copies for those attending.
Peggy

-------------------
Sent from my BlackBerry Wireless Handheld.

----- Original Message ----- 
From: "Tova Wang" [wang@tcf.org]
Sent: 05/15/2006 09:07 AM
To: Margaret Sims
Cc: Devon Romig
Subject: I'm sorry

I don't think I sent this to you either. Can we hand it out at the meeting as an addendum? Its
another summary that would have gone in the news article section. I'm usually so organized, I'm
very embarrassed. Too many things! Thanks

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

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

Click here to receive our weekly e-mail updates.

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM -----
"Donsanto, Craig"
<Craig.Donsanto@usdoj.gov> To psims@eac.gov
05/15/2006 04:53 PM cc
Subject Re: Voting Fraud-Voter Intimidation Working Group

Peggy --
I am currently on train in trasit back from a day in Newark. I tried to
recover your attachment on Blackberry but got a message telling me the "file
is empty."

Can you paste it to an e-mail perhaps?

-------------------------------------
Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

-----Original Message-----
From: psims@eac.gov <psims@eac.gov>
To: barnwine@lawyerscommittee.org <barnwine@lawyerscommittee.org>; Rbauer@perkinscoie.com <Rbauer@perkinscoie.com>; bginsberg@pattonboggs.com <bginsberg@pattonboggs.com>; mhearne@lathropgage.com <mhearne@lathropgage.com>; jrperez50@sbcglobal.net <jrperez50@sbcglobal.net>; krogers@sos.state.ga.us <krogers@sos.state.ga.us>; assistant@sos.in.gov <assistant@sos.in.gov>
CC: bginsberg@pattonboggs.com <bginsberg@pattonboggs.com>; mhearne@lathropgage.com <mhearne@lathropgage.com>; jrperez50@sbcglobal.net <jrperez50@sbcglobal.net>; krogers@sos.state.ga.us <krogers@sos.state.ga.us>; assistant@sos.in.gov <assistant@sos.in.gov>; jgreenbaum@lawyerscommittee.org <jgreenbaum@lawyerscommittee.org>; vjohnson@lawyerscommittee.org <vjohnson@lawyerscommittee.org>; dlovecchio@perkinscoie.com <dlovecchio@perkinscoie.com>; bschuler@lathropgage.com <bschuler@lathropgage.com>; Donsanto, Craig <Craig.Donsanto@usdoj.gov>
Sent: Mon May 15 16:37:48 2006
Subject: Voting Fraud-Voter Intimidation Working Group

Dear Working Group Members and Participants:

You should receive a packet of information today, either by Federal Express or hand delivery, concerning Thursday's meeting of the project Working Group for EAC's Voting Fraud-Voter Intimidation research project. Attached is an analysis of the consultants' research into relevant literature and reports. This summary was not available when we prepared the information packets last Friday, but may be of interest to you. Our consultants and I look forward to having a productive discussion with you.

Regards,

Peggy Sims
Election Research Specialist
U.S. Election Assistance Commission
1225 New York Ave, NW - Ste 1100
Washington, DC 20545
Phone: 	202-356-3127
toll free) or 	202-356-3129
Fax: 202-356-3127
email: psims@eac.gov

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM -----
Margaret Sims/EAC/GOV
05/16/2006 08:43 AM
To: "Donsanto, Craig"
<Craig.Donsanto@usdoj.gov>@GSAEXTERNAL
Subject: Re: Voting Fraud-Voter Intimidation Working Group

Here is the content of the email attachment:
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.

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

Peggy --

I am currently on train in transit back from a day in Newark. I tried to recover your attachment on Blackberry but got a message telling me the "file is empty."

Can you paste it to an e-mail perhaps?

--------------------------
Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

-----Original Message-----
From: psims@eac.gov <psims@eac.gov>
To: barnwine@lawyerscommittee.org <barnwine@lawyerscommittee.org>; Rbauer@perkinscoie.com <Rbauer@perkinscoie.com>; bginsberg@pattonboggs.com <bginsberg@pattonboggs.com>; mhearne@lathropgage.com <mhearne@lathropgage.com>; krogers@sos.state.ga.us <krogers@sos.state.ga.us>; assistant@sos.in.gov <assistant@sos.in.gov>; weinutr@verizon.net <weinutr@verizon.net>
CC: jgreenbaum@lawyerscommittee.org <jgreenbaum@lawyerscommittee.org>; vjohnson@lawyerscommittee.org <vjohnson@lawyerscommittee.org>; dlovechio@perkinscoie.com <dlovechio@perkinscoie.com>; bschuler@lathropgage.com <bschuler@lathropgage.com>; Donsanto, Craig <Craig.Donsanto@usdoj.gov>
Sent: Mon May 15 16:37:48 2006
Subject: Voting Fraud-Voter Intimidation Working Group

Dear Working Group Members and Participants:

You should receive a packet of information today, either by Federal Express or hand delivery, concerning Thursday's meeting of the project Working Group for EAC's Voting Fraud-Voter Intimidation research project. Attached is an analysis of the consultants' research into relevant literature and reports. This summary was not available when we prepared the information packets last Friday, but may be of interest to you. Our consultants and I look forward to having a productive discussion with you.

Regards,
Craig;

You asked about the Nexis search terms used by our consultants. The list follows. --- Peggy.

Election and fraud
Voter and fraud
Vote and fraud
Voter and challenge
Vote and challenge
Election and challenge
Election and irregularity
Election and irregularities
Election and violation
Election and stealing
Ballot box and tampering
Ballot box and theft
Ballot box and stealing
Election and officers
Election and Sheriff
Miscount and votes
Election and crime
Election and criminal
Vote and crime
Vote and criminal
Double voting
Multiple voting
Dead and voting
Election and counting and violation
Election and counting and error
Vote and counting and violation
Vote and counting and error
Voter and intimidation
Voter and intimidating
Vote and intimidation
Denial and voter and registration
Voter identification
Vote and identification
Voter and racial profiling
Vote and racial profiling
Voter and racial
Vote and racial
Voter and racial and challenge
Vote and racial and challenge
Voter and deny and racial
Vote and deny and racial
Voter and deny and challenge
Vote and deny and challenge
Voter and deny and black
Vote and deny and black
Voter and black and challenge
Vote and black and challenge
Voter and deny and African American
Vote and deny and African American
Voter and African American and challenge
Vote and African American and challenge
Election and black and challenge
Election and African American and challenge
Voter and deny and Hispanic
Voter and deny and Latino
Vote and deny and Hispanic
Vote and deny and Latino
Voter and Hispanic and challenge
Voter and Latino and challenge
Vote and Hispanic and challenge
Vote and Latino and challenge
Election and Hispanic and challenge
Election and Latino and challenge
Voter and deny and Native American
Vote and deny and Native American
Voter and Native American and challenge
Vote and Native American and challenge
Election and Native American and challenge
Voter and deny and Asian American

004923
Vote and deny and Asian American
Voter and Asian American and challenge
Vote and Asian American and challenge
Voter and Asian American and challenge
Election and Asian American and challenge
Voter and deny and Indian
Voter and deny and Indian
Voter and Indian and challenge
Voter and Indian and challenge
Election and Indian and challenge
Poll tax
Voting and test
Absentee ballot and deny
Absentee ballot and reject
Absentee ballot and challenge
Voter and challenge
Voter and challenge
Election and challenge
Voter and police
Voter and police
Poll and police
Vote and law enforcement
Voter and law enforcement
Poll and law enforcement
Vote and deceptive practices
Voter and deceptive practices
Election and deceptive practices
Voter and deceive
Voter and false information
Dirty tricks
Vote and felon
Vote and ex-felon
Disenfranchisement
Disenfranchise
Law and election and manipulation
Vote and purging
Vote and purge
Registration and removal
Registration and purging
Registration and purge
Vote buying
Vote and noncitizen
Voter and noncitizen
Vote and selective enforcement
Identification and selective
Election and misinformation
Registration and restrictions
Election and administrator and fraud
Election and official and fraud
Provisional ballot and deny
Provisional ballot and denial
Affidavit ballot and deny
Affidavit ballot and denial
Absentee ballot and coerce
Absentee ballot and coercion
Registration and destruction
Voter and deter
Vote and deterrence
Voter and deterrence
Ballot integrity
Ballot security
Ballot security and minority
Ballot security and black
Ballot security and African American
Ballot security and Latino
Ballot security and Hispanic
Ballot security and Native American
Ballot security and Indian
Vote and suppression
Minority and vote and suppression
Black and vote and suppression
African American and vote and suppression
Latino and vote and suppression
Hispanic and vote and suppression
Native American and vote and suppression
Vote and suppress
Minority and vote and suppress
African American and vote and suppress
Latino and vote and suppress
Native American and vote and suppress
Vote and depress
Jim Crow
Literacy test
Voter and harass
Voter and harassment
Vote and mail and fraud
Poll and guards
Election and consent decree
Vote and barrier
Voting and barrier
Voter and barrier
Election and long line
Voter and long line

Poll worker and challenge
Poll worker and intimidate
Poll worker and intimidation
Poll worker and intimidating
Poll worker and threatening
Poll worker and abusive
Election official and challenge
Election official and intimidate
Election official and intimidation
Election official and intimidating
Election official and threatening
Election official and abusive
Poll watcher and challenge
Poll watcher and intimidate
Poll watcher and intimidating
Poll watcher and intimidation
Poll watcher and abusive
Poll inspector and challenge
Poll inspector and intimidate
Poll inspector and intimidating
Poll inspector and intimidation
Poll inspector and abusive
Poll monitor and challenge
Poll monitor and threatening
Poll monitor and abusive
Election judge and challenge
Election judge and intimidating
Election judge and intimidation
Election judge and abusive
Election judge and threatening
Election monitor and challenge
Election monitor and intimidate
Election monitor and intimidating
Election monitor and abusive
Election monitor and threatening
Election observer and challenge
Election observer and intimidate
Election observer and intimidating
Election observer and abusive
Election observer and threatening

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM ---
Margaret Sims/EAC/GOV
05/16/2006 03:37 PM
To "Donsanto, Craig"
<Craig.Donsanto@usdoj.gov> GSAEXTERNAL
cc
Subject RE: Your Materials

OK. --- Peg

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

"Donsanto, Craig"
<Craig.Donsanto@usdoj.gov>
05/16/2006 03:17 PM
To psims@eac.gov
cc
Subject RE: Your Materials

Let me try to do it, Peg. Again what I do not want to see occur is for the LCCR to start attacking us. We have more in common with them than I had originally assumed, thanks to the write-ups of their interviews. We need to promote what we have in common not try to score political points. But I will try to correct the records as long as you will agree you heard what I said the way I know I said it!

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 16, 2006 3:14 PM
To: Donsanto, Craig
Subject: RE: Your Materials

I fully understand. Do you want me to prepare a correction sheet for the Working Group, placing your second and more important point first, or do you want to handle this verbally at the meeting? --- Peggy
The first item is not as big a deal as the second one: the processes under which subjects of investigations come to Jesus is not as important as the overall assessment of our law enforcement achievements. But stressing the isolated test cases we brought -- and will continue to bring -- to deter things like felon voting, alien voting and double voting, which not mentioning such significant achievements as the five case PROJECTS mentioned in my last e-mail -- misrepresents what we are doing and the deterrent message we are trying to communicate.

I appreciate that these two young people may have found themselves in a Brave New World when they came over here. It showed in their questioning. But the fact that criminal law enforcement is not at all similar to preventative legal relief (as under the Voting Rights Act) or civil relief (as election contest litigation) is I guess more of a problem than I at first foresaw. My real concerns is that the civil rights groups -- with whom we over here have an amazing amount of common grounds -- will take the singling out of the felon and alien voter cases as evincing a malevolent aggression on their constituencies. That is not the case. We are only enforcing the law.

I think they are panicking because they are preparing to travel tomorrow and may not have time to submit a revised version. They also are resisting changes to their interview summaries because the summaries represent what they think they heard. I was there at the interview and I heard what you said. I'm not sure that either of them heard everything (including the nuances) because so much of the information was new to them and it was one of their earlier interviews. I'm sorry I did not catch the defects before the summary went out.

My first concern is ensuring that the Working Group has the correct information. Then, we can deal with what version, if any, goes in the final report. Do you want me to excerpt the corrections from your email and submit them to the Working Group? --- Peggy
Sure. But where is the resistance coming from? The notes were not accurate. As you know, I have to be very concerned about that.

Craig:

I am getting some resistance from my consultants to correcting the summary of the interview prior to the meeting. Would you mind noting the corrections at the meeting? --- Peggy
Thank you, Peg. This stuff is very interesting.

I have forwarded your message to our consultants and have requested a corrected version for distribution at the WG meeting. --- Peggy

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

05/16/2006 10:46 AM
I have read over the materials you sent to me and viewed the pieces on the CD.

I have only one correction:

I did not say that offenders who receive target letters routinely request - or routinely receive - audiences here at DOJHQ. That is very rare. Instead, what usually happens is that once a subject for an election fraud investigation is advised that he or she is going to be charged that person usually enters into plea negotiations and ultimately pleads guilty. Very few federal election fraud cases go to trial. When a subject does request a HQ interview or a HW hearing, it would be held in the first instance by myself. But again, Peg, that is rare.

Also, while the occurrences of prosecutions of isolated instances of felons and alien voters and double voters has increased, we still aggressively and I believe quite successfully pursue systematic schemes to corrupt the electoral process, as the cases we brought recently out of Knott and Pike Counties in Kentucky, those we brought out of Lincoln and Logan Counties in West Virginia, and those we brought in New Hampshire growing out of the jamming of getOut-the-vote phone bank lines attest.
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

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 16, 2006 9:59 AM
To: wang@tcf.org;
Subject: Fw: Your materials

See corrections from Donsanto at DOJ. We should probably provide corrected versions to the Working Group. --- Peggy
I have read over the materials you sent to me and viewed the pieces on the CD.

I have only one correction:

I did not say that offenders who receive target letters routinely request - or routinely receive - audiences here at DOJHQ. That is very rare. Instead, what usually happens is that once a subject for an election fraud investigation is advised that he or she is going to be charged that person usually enters into plea negotiations and ultimately pleads guilty. Very few federal election fraud cases go to trial. When a subject does request a HQ interview or a HW hearing, it would be held in the instance by myself. But again, Peg, that is rare.

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---

"Donsanto, Craig"
<Craig.Donsanto@usdoj.gov>
05/19/2006 03:17 PM

To: psims@eac.gov
cc: "Simmons, Nancy" <Nancy.Simmons@usdoj.gov>
Subject: Re: Voting Fraud-Voter Intimidation Project-Nexis Word Search

Peggy --
I was just thinking of you!

Great session yesterday. I really enjoyed it. Robust discussion.

On another subject, Nancy Simmons needs the e-mail address of NASED. Can you give her both that and the website address for them? Her e-mail is nancy.simmons@usdoj.gov.

Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

-----Original Message-----
From: psims@eac.gov <psims@eac.gov>
To: Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>
Sent: Fri May 19 14:51:21 2006
Subject: Voting Fraud-Voter Intimidation Project-Nexis Word Search

Craig:
You asked about the Nexis search terms used by our consultants. The list follows. --- Peggy.

Election and fraud
Voter and fraud
Vote and fraud
Voter and challenge
Vote and challenge
Election and challenge
Election and irregularity
Election and irregularities
Election and violation
Election and stealing
Ballot box and tampering
Ballot box and theft
Ballot box and stealing
Election and officers
Election and Sheriff
Miscount and votes
Election and crime
Election and criminal
Vote and crime
Vote and criminal
Double voting
Multiple voting
Dead and voting
Election and counting and violation
Election and counting and error
Vote and counting and violation
Vote and counting and error
Voter and intimidation
Voter and intimidating
Vote and intimidation
Denial and voter and registration
Voter identification
Vote and identification
Vote and racial profiling
Vote and racial profiling
Vote and racial
Vote and racial
Vote and racial and challenge
Vote and racial and challenge
Voter and deny and racial
Vote and deny and racial
Voter and deny and challenge
Vote and deny and challenge
Voter and deny and black
Vote and deny and black
Voter and black and challenge
Vote and black and challenge
Voter and deny and African American
Vote and deny and African American
Voter and African American and challenge
Vote and African American and challenge
Election and black and challenge
Election and African American and challenge
Voter and deny and Hispanic
Voter and deny and Latino
Vote and deny and Hispanic
Vote and deny and Latino
Voter and Hispanic and challenge
Voter and Latino and challenge
Vote and Hispanic and challenge
Vote and Latino and challenge
Election and Hispanic and challenge
Election and Latino and challenge
Voter and deny and Native American
Vote and deny and Native American
Vote and Native American and challenge
Vote and Native American and challenge
Election and Native American and challenge
Vote and deny and Asian American
Vote and deny and Asian American
Vote and Asian American and challenge
Vote and Asian American and challenge
Vote and Asian American and challenge
Election and Asian American and challenge
Voter and deny and Indian
Vote and deny and Indian
Vote and Indian and challenge
Vote and Indian and challenge
Election and Indian and challenge
Poll tax
Voting and test
Absentee ballot and deny
Absentee ballot and reject
Absentee ballot and challenge
Vote and challenge
Voter and challenge
Election and challenge
Vote and police
Poll and police
Vote and law enforcement
Voter and law enforcement
Poll and law enforcement
Vote and deceptive practices
Voter and deceptive practices
Election and deceptive practices
Voter and deceive
Voter and false information
Dirty tricks
Vote and felon
Vote and ex-felon
Disenfranchisement
Disenfranchise
Law and election and manipulation
Vote and purging
Vote and purge
Registration and removal
Registration and purging
Registration and purge
Vote buying
Vote and noncitizen
Voter and noncitizen
Vote and selective enforcement
Identification and selective
Election and misinformation
Registration and restrictions
Election and administrator and fraud
Election and official and fraud
Provisional ballot and deny
Provisional ballot and denial
Affidavit ballot and deny
Affidavit ballot and denial
Absentee ballot and coerce
Absentee ballot and coercion
Registration and destruction
Voter and deter
Vote and deterrence
Voter and deterrence
Ballot integrity
Ballot security
Ballot security and minority
Ballot security and black
Ballot security and African American
Ballot security and Latino
Ballot security and Hispanic
Ballot security and Native American
Ballot security and Indian
Vote and suppression
Minority and vote and suppression
Black and vote and suppression
African American and vote and suppression
Latino and vote and suppression
Hispanic and vote and suppression
Native American and vote and suppression
Vote and suppress
Minority and vote and suppress
African American and vote and suppress
Latino and vote and suppress
Native American and vote and suppress
Vote and depress
Jim Crow
Literacy test
Voter and harass
Voter and harassment
Vote and mail and fraud
Poll and guards
Election and consent decree
Vote and barrier
Voting and barrier
Voter and barrier
Election and long line
Voter and long line
Poll worker and challenge
Poll worker and intimidate
Poll worker and intimidation
Poll worker and intimidating
Poll worker and threatening
Poll worker and abusive
Election official and challenge
Election official and intimidate
Election official and intimidation
Election official and intimidating
Election official and threatening
Election official and abusive
Poll watcher and challenge
Poll watcher and intimidate
Poll watcher and intimidating
Poll watcher and intimidation
Poll watcher and abusive
Poll watcher and threatening
Poll inspector and challenge
Poll inspector and intimidate
Poll inspector and intimidating
Poll inspector and intimidation
Poll inspector and abusive
Poll inspector and threatening
Poll judge and challenge
Poll judge and intimidate
Poll judge and intimidating
Poll judge and intimidation
Poll judge and abusive
Poll judge and threatening
Poll monitor and challenge
Poll monitor and intimidate
Poll monitor and intimidating
Poll monitor and intimidation
Poll monitor and abusive
Poll monitor and threatening
Election judge and challenge
Election judge and intimidate
Election judge and intimidating
Election judge and intimidation
Election judge and abusive
Election judge and threatening
Election monitor and challenge
Election monitor and intimidate
Election monitor and intimidating
Election monitor and intimidation
Election monitor and abusive
Election monitor and threatening
Election observer and challenge
Election observer and intimidate
Election observer and intimidating
Election observer and intimidation
Election observer and abusive
Election observer and threatening

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM -----

"Tova Wang"
<wang@tcf.org>  To psims@eac.gov
05/15/2006 05:05 PM  cc
Subject RE: Fraud Definition

Sounds good. Thanks.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, May 15, 2006 4:03 PM
To: wang@tcf.org
Subject: Re: Fraud Definition

Election and stealing
Ballot box and tampering
Ballot box and theft
Ballot box and stealing
Election and officers
Election and Sheriff
Miscount and votes
Election and crime
Election and criminal
Vote and crime
Vote and criminal
Double voting
Multiple voting
Dead and voting
Election and counting and violation
Election and counting and error
Vote and counting and violation
Vote and counting and error
Voter and intimidation
Voter and intimidating
Vote and intimidation
Denial and voter and registration
Voter identification
Vote and identification
Voter and racial profiling
Vote and racial profiling
Voter and racial
Vote and racial
Voter and racial and challenge
Vote and racial and challenge
Voter and deny and racial
Vote and deny and racial
Voter and deny and challenge
Vote and deny and challenge
Voter and deny and black
Vote and deny and black
Voter and black and challenge
Vote and black and challenge
Voter and deny and African American
Vote and deny and African American
Voter and African American and challenge
Vote and African American and challenge
Election and black and challenge
Election and African American and challenge
Voter and deny and Hispanic
Voter and deny and Latino
Vote and deny and Hispanic
Vote and deny and Latino
Voter and Hispanic and challenge
Voter and Latino and challenge
Vote and Hispanic and challenge
Vote and Latino and challenge
Election and Hispanic and challenge
Election and Latino and challenge
Voter and deny and Native American
Vote and deny and Native American
Voter and Native American and challenge
Vote and Native American and challenge
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Voter and deny and Asian American
Vote and deny and Asian American
Voter and Asian American and challenge
Vote and Asian American and challenge
Voter and Asian American and challenge
Election and Asian American and challenge
Voter and deny and Indian
Vote and deny and Indian
Voter and Indian and challenge
Vote and Indian and challenge
Election and Indian and challenge
Poll tax
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Absentee ballot and deny
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Voter and challenge
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Vote and police
Voter and police
Poll and police
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Poll and law enforcement
Vote and deceptive practices
Voter and deceptive practices
Election and deceptive practices
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Voter and false information
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Vote and ex-felon
Disenfranchisement
Disenfranchise
Law and election and manipulation
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Vote and purge
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Poll monitor and intimidate
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Let me try to do it, Peg. Again what I do not want to see occur is for the LCCR to start attacking us. We have more in common with them than I had originally assumed, thanks to the write-ups of their interviews. We need to promote what we have in common not try to score political points. But I will try to correct the records as long as you will agree you heard what I said the way I know I said it!
From: psims@eac.gov [mailto:psims@eac.gov]  
Sent: Tuesday, May 16, 2006 3:14 PM  
To: Donsanto, Craig  
Subject: RE: Your Materials

I fully understand. Do you want me to prepare a correction sheet for the Working Group, placing your second and more important point first, or do you want to handle this verbally at the meeting? --- Peggy

"Donsanto, Craig" <Craig.Donsanto@usdoj.gov>  
05/16/2006 02:55 PM  
Topsims@eac.gov  
cc:  
Subject: RE: Your Materials

The first item is not as big a deal as the second one: the processes under which subjects of investigations come to Jesus is not as important as the overall assessment of our law enforcement achievements. But stressing the isolated test cases we brought - - and will continue to being - - to deter things like felon voting, alien voting and double voting, which not mentioning such significant achievements as the five case PROJECTS mentioned in my last e-mail - - misrepresents what we are doing and the deterrent message we are trying to communicate.

I appreciate that these two young people may have found themselves in a Brave New World when they came over here. It showed in their questioning. But the fact that criminal law enforcement is not at all similar to preventative legal relief (as under the Voting Rights Act) or civil relief (as election contest litigation) is I guess more of a problem than I at first foresaw. My real concerns is that the civil rights groups - - with whom we over here have an amazing amount of common grounds - - will take the singling out of the felon and alien voter cases as evincing a malevolent aggression on their constituencies. That is not the case. We are only enforcing the law.

From: psims@eac.gov [mailto:psims@eac.gov]  
Sent: Tuesday, May 16, 2006 2:47 PM  
To: Donsanto, Craig  
Subject: RE: Your Materials

I think they are panicking because they are preparing to travel tomorrow and may not have time to submit a revised version. They also are resisting changes to their interview summaries because the summaries
represent what they think they heard. I was there at the interview and I heard what you said. I’m not sure that either of them heard everything (including the nuances) because so much of the information was new to them and it was one of their earlier interviews. I’m sorry I did not catch the defects before the summary went out.

My first concern is ensuring that the Working Group has the correct information. Then, we can deal with what version, if any, goes in the final report. Do you want me to excerpt the corrections from your email and submit them to the Working Group? --- Peggy

Sure. But where is the resistance coming from? The notes were not accurate. As you know, I have to be very concerned about that.

Craig:

I am getting some resistance from my consultants to correcting the summary of the interview prior to the meeting. Would you mind noting the corrections at the meeting? --- Peggy
Revised Workplan - Due to political sensitivities regarding this project, it is more important than usual that you act as a team. I noticed several instances on the revised workplan where only one of you is scheduled to be involved. While it seems to me that it would be OK for one or the other to take the lead on a particular aspect of the work (e.g., developing Westlaw search terms, drafting a research instrument, or setting up interviews), it is very important that both of you be involved in making final decisions on the information gathering process and in the resulting information gathering effort (e.g., finalizing the Westlaw search terms and reviewing the search results; finalizing the proposed research instrument, administering the survey, and reviewing the survey responses; and conducting interviews).

DOJ Contact - I am working through the DOJ bureaucracy to obtain the input we need from the Election Crimes Branch. I have spoken to the career attorney I mentioned in previous teleconferences, Craig Donsanto. He is very interested in providing information and perspectives that will be useful to the project; but may have to obtain his superior's permission to participate. I will keep you posted on my efforts. Once we have access to him, it will be important to schedule an initial interview at the earliest time convenient for him and the two of you.

Contacting Other EAC Contractors - Questions for other EAC contractors need to be fielded through me. I realize this may seem cumbersome, but there are a number of reasons for this, some involving contractual issues, some procedural and policy issues. I will have to coordinate our activities on this project with the EAC project manager for the other EAC research project(s). Together, we will ascertain what the other contractors already have provided to EAC that may answer your questions, perhaps without an interview being necessary, or if the research is not far enough along to provide the information you seek.
Hi Peggy,

I got the email, but not the attachment...

This week, I will be in the office on Friday, but can participate in a conference call during the following times:

Today: Any time after 4 PM
Wednesday: Between 12 and 1 and any time after 3:30 PM
Thursday: Any time after 4 PM
Friday: I'm in the office

Hope one of those times works!
Tamar Nedzar
Law Clerk
U.S. Election Assistance Commission
1225 New York Avenue, NW Suite 1100
Washington, DC 20005
(202) 566-2377
http://www.eac.gov
TNedzar@eac.gov

-----Margaret Sims/EAC/GOV wrote: -----
I’ve forgotten when you usually come in. Even if you are not in the office, perhaps you might be available by phone. When might you NOT be available?

Peggy Sims  
Research Specialist  
U.S. Election Assistance Commission  
1225 New York Ave, NW - Ste 1100  
Washington, DC 20005  
Phone: [123-456-7890 (toll free) or 234-567-8901 (direct)]  
Fax: 202-566-3127  
email: psims@eac.gov

--- Forwarded by Margaret Sims/EAC/GOV on 05/07/2007 04:11 PM ---

Margaret Sims/EAC/GOV  
11/29/2005 02:27 PM  
To Tamar Nedzar/EAC/GOV  
cc  
Subject: Re: Teleconference

Tamar:

I will try to set up the teleconference for tomorrow. I’ll confirm the time, once I hear back from Tova and Job regarding the times you thought you would be available. Below is the search term attachment that you did not receive with the earlier email. Tova later noted that everywhere we have a term, such as African American and .... or Latino and .... we should also have the following:

Asian American (and if possible, Chinese, Korean, Vietnamese)  
Native American  
Indian  
Indian Country

We may receive a revised search term listing before our teleconference, in which case I will forward it to you. Also attached is a separate list of search terms proposed for a Nexis search, which I received just today.

Peggy Sims  
Research Specialist  
U.S. Election Assistance Commission  
1225 New York Ave, NW - Ste 1100  
Washington, DC 20005  
Phone: [123-456-7890 (toll free) or 234-567-8901 (direct)]  
Fax: 202-566-3127  
email: psims@eac.gov

Word Search Terms DRAFT 11-22-05.doc  nexis word search 1128.doc

Tamar Nedzar/EAC/GOV
Hi Peggy,

I got the email, but not the attachment...

This week, I will be in the office on Friday, but can participate in a conference call during the following times:

Today: Any time after 4 PM  
Wednesday: Between 12 and 1 and any time after 3:30 PM  
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Hope one of those times works!
Tamar Nedzar
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http://www.eac.gov  
Tnrdzar@eac.gov

-----Margaret Sims/EAC/GOV wrote: -----  
To: Tamar Nedzar/EAC/GOV@EAC  
From: Margaret Sims/EAC/GOV  
Date: 11/28/2005 11:49AM  
Subject: Teleconference  

Tamar:

The contractors for the Voting Fraud/Voter Intimidation research want to have another teleconference involving you this week. I have received an initial list of search terms (see attached), but have some questions about why some items are on the list (e.g.: overvotes, undervotes, paper & ballot).

I've forgotten when you usually come in. Even if you are not in the office, perhaps you might be available by phone. When might you NOT be available?

Peggy Sims  
Research Specialist  
U.S. Election Assistance Commission  
1225 New York Ave, NW - Ste 1100  
Washington, DC 20005  
Phone: [contact information redacted]  or  [contact information redacted]  
Fax: 202-566-3127  
email: psims@eac.gov
Just to be on the safe side, I'll prepare an authorization that covers estimated roundtrip cab fare. Hope you, too, have a great holiday. --- Peggy

Thanks Peg. The only immediate issue is the cab fares between the Capitol Hilton and American University next Thursday. You might know better than me what that's likely to cost. I also assume from this that we can submit our invoices after the weekend. I hope that's OK, because I'll be out of reach in about 15 minutes until Saturday.

Have a great holiday.

Tova

----- Original Message ----- 
From: psims@eac.gov
To: wang@tcf.org
Sent: Wednesday, November 23, 2005 2:24 PM
Subject: Personal Services Invoices-Travel Vouchers-Other Expenses

Job and Tova:

I've been busy seeking answers from our attorneys and our Finance Officer, Diana Scott, regarding your reimbursement questions. The results follow:

Invoices/Vouchers for Personal Services

In order to meet legal requirements and provide what is needed by our Finance Officer, we have developed the attached form that you may use for your monthly invoices for consulting services on the Voting Fraud and Voter Intimidation Project. This form is optional. If you prefer, you can provide the same information in a letter. Please see your contract for specifics regarding hours that can be worked
and compensation.

I also confirmed with Diana Scott that under the contract recently ratified, EAC considers that your service began on September 1, 2005. Consequently, you do not have to wait until the 25th of the month to file your vouchers for services provided during the previous month. Each voucher should cover one month, and may be filed immediately after the end of the month.

If you fax your invoice/voucher for personal services to me, please drop the original in the mail. We can begin processing your voucher based on the fax, but would like to have the original document for our files.

Travel Authorizations and Vouchers

Apparently, we need to prepare travel authorizations for any travel that you do on behalf of this project. I know how to prepare them, but will need input from you for each trip regarding the expected costs of transportation (separate costs of airfare, train fare, ground transportation), hotel (including taxes), other expected travel expenses (e.g., airport parking), the points between which you will travel, and the days of travel. I'll prepare the authorization based on this information and put it into the pipeline for the appropriate officials' signatures. Once it is signed, I will fax a copy to you. It is important that we work together to prepare these authorizations well in advance of the travel dates.

Once the travel is concluded, we can prepare the travel vouchers to obtain reimbursement for your travel costs, in accordance with federal travel regulations. You will need to send me your receipts for the hotel, the plane or train, ground transportation (if you did not use your personal vehicle), and parking (if you parked at the airport). You will get a set amount for meals, so you do not need to provide meal receipts. I will prepare the voucher and fax it to you for your signature. If you see any problems with the voucher, this is the time to fix them. Once you are satisfied with the voucher, you will need to return the signed voucher by mail or in person. I'll attach the receipts you provided and a copy of the travel authorization, and send it forward for processing.

Other Expenses

Because your contracts do not provide for the reimbursement of other expenses, we have to look for other ways to deal with them.

For the publications, there are two options: (1) you can pay for them yourself and mark them up as you please; or (2) I can find them in our library or order them through our supply person. Anything paid for by EAC is EAC property, which would mean turning them over to EAC with no marks in them.

If you need to messenger items to accomplish the work under contract, I can authorize the use of EAC's Federal Express account number on a case-by-case basis. I'll need some advance notice and will have to supply our finance folks with the tracking number, who is sending the package, to whom, and when. That way, they won't be surprised when they see item on the FedEx invoice. (An easy way to provide all the information would be to fax a copy of the FedEx Airbill to me.)

At this time, our consultants pay their phone expenses out of their personal services compensation. When it works for you, we can bypass the need for you to incur phone charges by using EAC's teleconferencing capabilities.

Hope you have a Happy Thanksgiving!
Hi again Peggy,

I just looked at the list, and I have to tell you that I'm a bit concerned. I know of ways to condense searching to encompass many of the terms in one session (example: vote% & fraud would bring up voter fraud, vote fraud, etc.). However, the list is still 9 pages long. I will do my best to start on it tomorrow, but it will take me more than a day to complete it given the other projects I have on my plate. I just want you to be aware that it will take me some time to complete the task given the current parameters.

Talk to you later.
Tamar Nedzar
Law Clerk
U.S. Election Assistance Commission
1225 New York Avenue, NW Suite 1100
Washington, DC 20005
(202) 566-2377
http://www.eac.gov
TNilazar@eac.gov

--- Forwarded by Margaret Sims/EAC/GOV on 05/07/2007 04:11 PM ---

To: Margaret Sims/EAC/GOV@EAC
cc: Karen Lynn-Dyson/EAC/GOV@EAC
Subject: Re: Fw: Updated Word Search List

Tamar:

Here is an updated word search list for the case law/administrative decisions search. I am still trying to confirm the time for the teleconference. As it stands right now, I will probably call you at 3:45 PM today. I should call your home phone: [redacted].

Peggy Sims
Research Specialist
U.S. Election Assistance Commission
1225 New York Ave, NW - Ste 1100
Peggy & Tova:

Here is the updated case law word search list.

Job

Word Search Terms.doc

Peggy Sims
Research Specialist
U.S. Election Assistance Commission
1225 New York Ave, NW - Ste 1100
Washington, DC 20005
Phone: 202-666-3127
Fax: 202-666-3127
email: psims@eac.gov

----- Forwarded by Margaret Sims/EAC/GOV on 11/30/2005 08:47 AM -----

"Job Serebrov"

Towang@tcf.org, psims@eac.gov

11/29/2005 07:07 PM

Subject: Updated Word Search List

Tamar:

Don't worry about responding to this email, as I know you have to pay attention in class.

I questioned the length of the search term list and also thought that there would be ways to combine some of the search terms. It has been awhile since I have done a Westlaw search, however, which is why I need your input during the teleconference. Yes, I recognize that going through the list of search terms and printing off or saving the resulting references will take time. I'll need you to provide that feedback to our consultants so that we all are on the same page.

Devon has not done a Nexis search before; but, if EAC has access to that database, she is willing to conduct that search. The work would go along with other help she is providing. She will be sorting through my huge files of press clippings on voting fraud, will PDF the sorted clippings, and drop the PDF files onto CDs for our consultants' review.

Peggy Sims
Research Specialist
U.S. Election Assistance Commission
1225 New York Ave, NW - Ste 1100
Washington, DC 20005
Phone: 202-666-3127
Fax: 202-666-3127
Vice Chairman--

Thanks, as always, for sharing feedback from our major stakeholders.

I have forwarded this e-mail on to Peg Sims, who has day-to-day oversight responsibility for this project. I'm certain Peg will be monitoring this project extremely closely and I'm pleased to have a pro like Peg watching out for EAC's best interests.

Regards-

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

----- Original Message ----- 
From: psims@eac.gov [mailto:psims@eac.gov]  
Sent: Tuesday, November 29, 2005 3:19 PM  
To: wang@tcf.org  
Subject: Teleconference With Legal Clerk and Intern  

I am available any of those times. Remind us of their names again please? Tova  

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]  
Sent: Tuesday, November 29, 2005 3:19 PM  
To: wang@tcf.org  
Subject: Teleconference With Legal Clerk and Intern  

Tova and Job:  

Are you two available for a teleconference with our Law Clerk and Intern tomorrow at either of the times listed below?
The Law Clerk's name is Tamar Nedzar. She is very sharp. Our intern's name is Devon Romig.

Tamar has the most recent lists of search terms and may have questions about them. Devon will need to know how you want the press clippings sorted by type of voting fraud. I think we need to give her a specific list. that, I hope, will not overlap. For example, do you want her to sort using the term Absentee Ballot Fraud when that can involve voter intimidation/coercion/undue influence, vote buying, ballot tampering, and ballot box stuffing (by voting in the name of another or under a fictitious name).

We need to discuss this because I am concerned that we currently do not have a full written description of what does and does not constitute voting fraud and voter intimidation. The current written definition excludes voter registration shenanigans; yet, voter registration applications submitted with fictitious names or that falsely affirm eligibility to vote are considered election crimes that can have an impact on election results. Specifically, they are used in schemes to vote more than once or to have ineligible persons participate in voting. Also, an increasing number of States are including as an election crime the knowing and willful destruction of voter registration applications by voter registration drives and their failure to transmit such applications to the election office in a timely manner.

If we define voting fraud as any illegal act that has a clear and direct distorting impact on the election results, then administrative mistakes that violate federal or State law could be included. For federal elections, administrative mistakes definitely are not considered voting fraud. The examples provided for "de facto" fraud and "quasi" fraud also are not likely to be considered part of voting fraud and voter intimidation without evidence that there also is ballot box stuffing, vote buying, tampering with ballots or vote tallies, voter intimidation, etc. Although a number of things other than voting fraud and voter intimidation can (and do) distort election results, EAC is handling such issues under separate research efforts.

For your information, I have attached a speech presented by Craig Donsanto (complete with typos) that addresses the issue of defining voting fraud. Perhaps it will be of interest to you.

Peggy Sims
Research Specialist
U.S. Election Assistance Commission
1225 New York Ave, NW - Ste 1100
Tova and Job,

It was good to talk to you today. Hope you are doing well. I've attached my African American search results below. It encompasses all of the terms you suggested having to do with African Americans.

The following is a search I used to truncate words and combine terms, but I still got a large number of results:

Vot! and deny and black or vot! and black and challenge or vot! and black and reject or vot! and black or vot! And deny and African w/s American or vot! And African w/s American and reject or challenge or vot! And African w/s American or election and black and deny or challenge or reject or election and black or election and African w/s American and deny or challenge or reject or election and African w/s American or ballot and security and black or ballot and security and African w/s American or black and vot! And suppress! Or African w/s American and vot! And suppress or African w/s and disenfranchis! or black and disenfranchis!

If this search yields useful cases for you, I can continue searching using the same strategy. If not, please provide me with additional guidelines and I will do my best!

Please feel free to contact me should you have any questions or need additional information.

Thank you,
Tamar Nedzar
Law Clerk
U.S. Election Assistance Commission
Diana:

Where are we on getting the first payment to Job Serebrov? Will GSA be able to transfer funds this week?
--- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 05/07/2007 04:11 PM ---

Peggy:

We needed to schedule the face to face meeting for Oct 28. Talk with you on Weds.

--- psims@eac.gov wrote:

> I will initiate the calls to you two on Wednesday.
> The number I have for
> Tova is [redacted] For Job, I have [redacted]
> Let me know if I
> should use a different number for you on Wednesday.
> 
> Thanks, Tova, for the copy of the draft workplan you
> provided to Karen.
> I'll take a look at it and, hopefully, provide some
> feedback on Wednesday.
> I have not yet caught up to all the paperwork and
> emails that preceded my
> assignment to this project. Karen just handed me a
> folder full of
> documents that should help.
> 
> I think you may have received an email from Nicole
> Mortellito regarding an
October 14 meeting. If you two cannot come in person but can attend via phone, just let me know. Nicole's message has information regarding hotel rates that conflicts with what I've just sent you. I've asked her to double check her information because I have another contractor that has had no problem obtaining government rate at hotels.

Yes, you will be paid on a monthly basis. You can file your first invoice on October 25, according to Diana Scott.

Peggy Sims
Research Specialist
U.S. Election Assistance Commission
1225 New York Ave, NW - Ste 1100
Washington, DC 20005

Phone: (direct)
Fax: 202-566-3127
email: psims@eac.gov

"Tova Wang" <wang@tcf.org>
10/03/2005 03:54 PM

To psims@eac.gov,
cc ggilmour@eac.gov
Subject RE: Voting Fraud Teleconference-Meeting-Work Schedule

Peg, This all sounds good. Will you be calling us on Wednesday?

I should not need a hotel for the 28th. Just let me know what time. Are there expense forms we should have for reimbursement?

On the work product, we did send Karen a very preliminary draft of a work plan. I attach it again here and we can talk about it more on Wednesday.

My only money question is, are we being paid on a monthly basis? And if so, when does that begin? I assume this all is in the contracts we'll be getting...
Thanks.

Tova

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, October 03, 2005 2:48 PM
To: wang@tcf.org
Cc: ggilmour@eac.gov
Subject: Voting Fraud Teleconference-Meeting-Work

Tova and Job:

Teleconference -
Let's schedule the teleconference for 4:00 PM on
Wednesday, October 5.
Gavin Gilmour will join us.

Meeting -
October 28 is fine for the face-to-face meeting in
DC. We have allocated
$5,000 to each of you to cover reasonable and
necessary travel and other
incidental expenses. Expenses claimed for
reimbursement need to be
itemized, with appropriate receipts provided. You
should be able to
obtain the Federal government rate at an area hotel
(if you plan to stay
overnight). If the hotel needs a letter from EAC
(in lieu of showing them
your signed contract), just let me know. Airlines
apparently no longer
honor government rates for government contractors.
Rail carriers may
provide government rates for government contractors.
If you drive, the
current government rate for a personally owned
vehicle (POV) is 48.5 cents
per mile.

Deliverables -
The first item on the list of deliverables is the
draft project workplan,
which is due ASAP after award. Would it be possible
for the two of you to
deliver a draft workplan to me via email by 10/11?
That would be after we
have had our teleconference to work out lingering
questions.

Questions for Finance -
If you have questions for our Finance Officer, you
can reach her via email
at dscott@eac.gov. I would appreciate it if you
would cc: me on such
e-mails, so that I know to follow up with her.

Peggy Sims
Nicole:

I am forwarding the most recent workplan for the voting fraud-voter intimidation research contract. --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 05/07/2007 04:11 PM ---

"Job Serebrov"

11/09/2005 04:27 PM

To wang@tcf.org, psims@eac.gov

cc

Subject Revised Work Plan

Revised Work Plan.doc Peggy:

Here is the revised work plan that Tova and I worked on today. Any word from the Chair on signing?

Job

--- Forwarded by Margaret Sims/EAC/GOV on 05/07/2007 04:11 PM ---

"Tova Wang"

<wang@tcf.org>

11/28/2005 05:30 PM

To "Job Serebrov" psims@eac.gov

cc

Subject word searches
In the course of compiling a list of search terms for the nexis research, I thought of some major omissions to the WESTLAW list.

Everywhere we have a term such as African American and .... or Latino and .... we should also have the following:

- Asian American (and if possible, Chinese, Korean, Vietnamese)
- Native American
- Indian
- Indian Country

Moreover, everwhere we have poll worker or poll inspector we should also have the following:

- Poll judges
- Poll monitors
- Poll observers

Let me know if you want me to re-do the list.

Tova

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

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

Click here to receive our weekly e-mail updates.

--- Forwarded by Margaret Sims/EAC/GOV on 05/07/2007 04:11 PM -----

"Tova Wang"
<wang@tcf.org>
11/29/2005 04:02 PM

To psims@eac.gov
cc
Subject RE: Teleconference With Legal Clerk and Intern

Can you give us a better idea of the other EAC research projects that you think we might overlap with if we include these activities? Job and I had strong reasons for what we did and did not include and how we wanted to frame the term fraud, so we do indeed need to discuss this -- perhaps before or after the discussion with Tamar and Devon?

Thanks. Tova

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, November 29, 2005 3:18 PM
To: wang@tcf.org
Cc:
Subject: RE: Teleconference With Legal Clerk and Intern

The Law Clerk's name is Tamar Nedzar. She is very sharp. Our intern's name is Devon Romig.

Tamar has the most recent lists of search terms and may have questions about them. Devon will need to know how you want the press clippings sorted by type of voting fraud. I think we need to give her a specific list that, I hope, will not overlap. For example, do you want her to sort using the term Absentee Ballot Fraud when that can involve voter intimidation/coercion/undue influence, vote buying, ballot tampering, and ballot box stuffing (by voting in the name of another or under a fictitious name).

We need to discuss this because I am concerned that we currently do not have a full written description of what does and does not constitute voting fraud and voter intimidation. The current written definition excludes voter registration shenanigans; yet, voter registration applications submitted with fictitious names or that falsely affirm eligibility to vote are considered election crimes that can have an impact on election results. Specifically, they are used in schemes to vote more than once or to have ineligible persons participate in voting. Also, an increasing number of States are including as an election crime the knowing and willful destruction of voter registration applications by voter registration drives and their failure to transmit such applications to the election office in a timely manner.

If we define voting fraud as any illegal act that has a clear and direct distorting impact on the election results, then administrative mistakes that violate federal or State law could be included. For federal elections, administrative mistakes definitely are not considered voting fraud. The examples provided for "de facto" fraud and "quasi" fraud also are not likely to be considered part of voting fraud and voter intimidation without evidence that there also is ballot box stuffing, vote buying, tampering with ballots or vote tallies, voter intimidation, etc. Although a number of things other than voting fraud and voter intimidation can (and do) distort election results, EAC is handling such issues under separate research efforts.

For your information, I have attached a speech presented by Craig Donsanto (complete with typos) that addresses the issue of defining voting fraud. Perhaps it will be of interest to you.

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)
Fax: 202-566-3127
e-mail: psims@eac.gov

--- Forwarded by Margaret Sims/EAC/GOV on 05/07/2007 04:11 PM ---

"Iob Serebrov" To psims@eac.gov
11/15/2005 12:34 PM
cc
Subject One or More Line Info Bios
Peggy:

I am requesting that we be able to have four instead of three from each side. I have four very good people who have a lot of experience in this area. I left you a telephone call on this matter. I know we have to watch the budget but one of my picks is in DC and will not cost much if anything to get to meetings. I know that Tova also had DC people that she could add as a fourth.

Job

-- Forwarded by Margaret Sims/EAC/GOV on 05/07/2007 04:11 PM --

Margaret Sims/EAC/GOV
11/30/2005 09:28 AM
To Juliet Thompson, Gavin S. Gilmour/EAC/GOV
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

Tova and Job:

This is to confirm the email addresses and best phone numbers to reach Tamar Nedzar and Devon Romig. I would appreciate it if you would cc me on any emails to them. That way you can keep me in the loop without my serving as a road block or go-between. Thanks! --- Peggy

Tamar Nedzar
Law Clerk
Phone [redacted]
Email: TNedzar@eac.gov

Devon Romig
Intern
I am available. Tova

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, October 31, 2005 2:45 PM
To: wang@tcf.org
Subject: Teleconference Needed

Would both of you be available for a teleconference tomorrow at 2 PM EST concerning contract issues? The teleconference would include Julie Thompson, our General Counsel, and me. We would call you.

Peggy Sims
Research Specialist
U.S. Election Assistance Commission
1225 New York Ave, NW - Ste 1100
Washington, DC 20005
Phone: 202-565-3127
Fax: 202-566-3127
email: psims@eac.gov

----- Forwarded by Margaret Sims/EAC/GOV on 05/07/2007 04:11 PM -----
Margaret Sims/EAC/GOV
10/31/2005 04:10 PM
To: Tova Andrea Wang, Serebrov
cc
Subject: RE: Teleconference Needed

We are confirmed for a teleconference tomorrow at 2 PM EST. We will call you at the following phone numbers, unless you tell me otherwise:

Tova
Job

Thanks!

--- Peggy
----- Forwarded by Margaret Sims/EAC/GOV on 05/07/2007 04:11 PM -----
Margaret Sims/EAC/GOV
10/31/2005 02:47 PM
To: Gavin S. Gilmour/EAC/GOV
cc
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.
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

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

The SOWs that Karen provides below were revised for these contracts. I have attached one of these for your information, since they are identical.
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.

Gavin S. Gilmour/EAC/GOV
10/06/2005 11:50 AM
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

----- Forwarded by Margaret Sims/EAC/GOV on 05/07/2007 04:11 PM -----

Juliet E. Thompson/EAC/GOV To Margaret Sims/EAC/GOV
11/16/2005 03:58 PM cc
Subject Letter with Tova and Job contracts

to the best of my knowledge the letters that went with the Tova and Job letters were the following:

Wang contract cover letter.doc Serebrov contract cover letter.doc

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 Margaret Sims/EAC/GOV on 05/07/2007 04:11 PM -----

"Craig.Donsanto@usdoj.gov" <Craig.Donsanto@usdoj.gov> To "Noel.Hillman@usdoj.gov" <Noel.Hillman@usdoj.gov>, "psims@eac.gov" <psims@eac.gov> cc
11/16/2005 07:28 PM Subject Re: Requesting Your Help-Preliminary Research on Voting Fraud and Voter Intimidation
Peg --

Please have your Chair send ME a letter spelling out what your Commission's mandate, how I can help it, and asking me to do so. I will take it from there.

--------------------------
Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

-----Original Message-----
From: psims@eac.gov <psims@eac.gov>
To: Donsanto, Craig <Craig.Donsanto@usdoj.gov>
Sent: Wed Nov 16 17:34:08.2005
Subject: Requesting Your Help-Preliminary Research on Voting Fraud and Voter Intimidation

Hi, Craig:

As I mentioned in my telephone call earlier today, I have been assigned to manage the U.S. Election Assistance Commission's (EAC) preliminary research project on voting fraud and voter intimidation. I know these are subjects with which you are intimately familiar and recognize that the project needs the information and insights that you can provide, so I am asking for your help.

As you know, section 241 of the Help America Vote Act of 2002 requires EAC to conduct research on election administration issues. Among the issues listed in the statute are:

* nationwide statistics and methods of identifying, deterring, and investigating voting fraud in elections for Federal office [section 241(b)(6)]; and

* 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;

* 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;

* draft the project scope and Statement of Work for future research on these topics, if EAC decides to pursue one or more recommendations for future research.

At minimum, I hope that you can serve as an information resource for the team of two EAC consultants hired to conduct the research and me. I also would like to explore the feasibility of your participation in meetings of the project working group.

If EAC needs to submit a more formal request for your help, please advise me how to do so. Also, it would help me to know if there are any restrictions on your participation, other than anticipated restrictions on the time you have available.

Let me know if you have any questions about this request or the research project. I look forward to hearing from you and hope you are doing well.

Regards,

Peggy Sims
Research Specialist
U.S. Election Assistance Commission
1225 New York Ave, NW - Ste 1100
Washington, DC 20005
Phone: 202-566-3127
Fax: 202-566-3127
email: psims@eac.gov

Peggy:

We need to have a conference call this week if possible. I will have the one liner bios to you today. Also, when do you think the Commission with make its choices?
The following activities were performed in the month of October:

Sent draft work plan

Developed and sent list of potential working group members with short bios.

Drafted definition of fraud/intimidation

Developed partial list of people to interview (full list must wait for vetting of the working group list)

Developed preliminary working list of existing research

Discussed the use of a law clerk with the EAC who would perform given word searches on Westlaw regarding vote fraud and voter intimidation (waiting on EAC legal department for response).

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
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: 
Fax: 202-566-3127
email: psims@eac.gov

--- Forwarded by Margaret Sims/EAC/GOV on 05/07/2007 04:11 PM ---

Karen Lynn-Dyson/EAC/GOV
10/31/2005 10:43 AM
To Juliet E. Thompson/EAC/GOV@EAC
cc Carol A. Paquette/EAC/GOV@EAC, Margaret Sims/EAC/GOV@EAC, Diana Scott/EAC/GOV@EAC
Subject Fw: Statement of Work to be circulated to the voting fraud/voter intimidation consultant candidates

Julie-

As you might imagine, there are many e-mails that were sent to Job and Tova regarding their work. This attached e-mail started the most definitive train of thought or work on this.

While there was not one definitive call or e-mail that said that the contract is ready, signed and sealed, there are many e-mails that imply that. I will send several of those on to you.

Carol-

Can you check your file for the final "contract/SOW" language that was used. I remember that in the beginning of September, Carol made some revisions to this piece and I believe, sent it on to Diana or to Gaylin.

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

--- Forwarded by Karen Lynn-Dyson/EAC/GOV on 10/30/2005 09:37 AM ---

Nicole Mortellito/CONTRACTOR/E To Karen Lynn-Dyson/EAC/GOV@EAC
Regards,

Nicole K. Mortellito
Assistant to the Executive Director - Thomas R. Wilkey
U.S. Election Assistance Commission
1225 New York Avenue - Suite 1100
Washington, DC
202.566.3114 phone
202.566.27 fax
--- Forwarded by Nicole Mortellito/CONTRACTOR/EAC/GOV on 08/24/2005 05:26 PM ---

Karen
Lynn-Dyson/EAC/GOV
08/17/2005 04:29 PM
To Nicole Mortellito/CONTRACTOR/EAC/GOV
cc Thomas R. Wilkey/EAC/GOV@EAC, Margaret 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

--- Forwarded by Margaret Sims/EAC/GOV on 05/07/2007 04:11 PM ---
Here is the revised work plan that Tova and I worked on today. Any word from the Chair on signing?

Job

I have been in meetings all afternoon, but I did find a moment to speak with the Chair's special assistant. She expected the Chair to sign off on the letters this afternoon. Unfortunately, this may have been done after our finance folks had gone home. For obvious reasons, the finance folks lock up before they go, so I cannot check their in-boxes tonight. I will check with them tomorrow AM.

I'll take a look at the revised workplan tomorrow.

Peggy Sims
Research Specialist
U.S. Election Assistance Commission
1225 New York Ave, NW - Ste 1100
Washington, DC 20005
Phone: 202-566-3100
Fax: 202-566-3127
e-mail: psims@eac.gov
Peggy & Edgardo,

I got an email and call from Job Serebrov this morning. I have meant to ask you two to get together on the invoice information. I know that we do not currently have a "standard", but I thought that the information that Edgardo gave out to Contractors was quite good. Perhaps Edgardo could just jot down his information in email format and send it to Tova and Job. I have Job's email if that would be helpful.

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 Margaret Sims/EAC/GOV on 05/07/2007 04:10 PM -----

Edgardo Cortes /EAC/GOV
10/24/2005 10:20 AM

To Juliet E. Thompson/EAC/GOV@EAC
cc Margaret Sims/EAC/GOV@EAC
Subject Re: Invoice information

I can certainly put the information together in an email to send out to them (I got all that info from Carol). I won't be able to get it done until later today though.

Edgardo Cortés
Election Research Specialist
U.S. Election Assistance Commission
1225 New York Ave. NW, Ste. 1100
Washington, DC 20005
(202) 566-3127 fax
ecortes@eac.gov

Juliet E. Thompson/EAC/GOV

Juliet E.
Thompson/EAC/GOV
10/24/2005 10:17 AM

To Edgardo Cortes/EAC/GOV@EAC, Margaret Sims/EAC/GOV@EAC
cc
Subject Invoice information

Peggy & Edgardo,

I got an email and call from Job Serebrov this morning. I have meant to ask you two to get together on the invoice information. I know that we do not currently have a "standard", but I thought that the information that Edgardo gave out to Contractors was quite good. Perhaps Edgardo could just jot down his information in email format and send it to Tova and Job. I have Job's email if that would be helpful.
Tamar and Devon:

The phone numbers and email addresses for Tova and Job follow. I would appreciate it if you would cc: me on any emails you send to them and summarize any phone calls with them. That way, I can be kept in the loop without serving as a roadblock or go-between. Thanks! --- Peggy

Tova Wang (New York)
Phone: 212-452-7704
Email: wang@lcf.org

Job Serebrov (Arkansas - one hour earlier time zone)
Phone: 501-374-2126
Email: serebrov@bog.com

I understand government procedures. I just checked my bank account and still no funds. I need you to look into what is going on.

--- psims@eac.gov wrote:
> I have already made a strong argument to that effect. Everyone here understands. We shouldn't have any trouble budgetwise. We just have to ensure we follow the correct legal procedures. --- Peggy
To psims@eac.gov

Subject Re: One Month Extension

Please remind everyone that without the extension the project will not be finished.

Job

--- psims@eac.gov wrote:

> I have discussed this matter with Julie. She is looking into legal issues. I have also discussed the matter with Karen, as we are preparing our FY 06 department budget plans. (Any funds set aside for an additional month would have to come out of our FY 06 budget.)

> I'll give you an update when I have more information.

Peggy Sims
Research Specialist
U.S. Election Assistance Commission
1225 New York Ave, NW - Ste 1100
Washington, DC 20005
Phone (direct)
Fax: 202-566-3127
e-mail: psims@eac.gov
Peggy:

I understand that you and Tova spoke this morning.

Have you been able to discuss the one month salary extension with Julie any further? As you recall our six month project now needs to be seven because the start date was moved back to Sept 1 to cover work done during that month. We still need the project to go through March which requires approval of an extra month's salary.

--- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 05/07/2007 04:10 PM ---

Margaret Sims /EAC/GOV
11/30/2005 11:13 AM
To "Job Serebrov"@GSAEXTERNAL
cc jthompson@eac.gov
Subject Re: One Month Extension

Job:

I have asked Diana to check with GSA on the status of your first payment (which will cover October work).

--- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 05/07/2007 04:10 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
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

----- Forwarded by Margaret Sims/EAC/GOV on 05/07/2007 04:10 PM -----
Margaret Sims/EAC/GOV
10/31/2005 04:07 PM
To Juliet Thompson
cc
Subject Re Teleconference with Job and Tova
Julie:

Tova and Job have confirmed that they are available for a teleconference tomorrow afternoon at 2 PM. Job asked for more particulars and I mentioned the subject of billing for services. He said that both he and Tova had strenuously objected to the suggestion that they bill by the hour when the details of the contract were being discussed (I guess, with Karen) and that he might have to drop out if he has to do that. I suggested we save discussion of this issue for the teleconference.

We can call them from your office. I'll bring the phone numbers. --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 05/07/2007 04:10 PM ---

Margaret Sims /EAC/GOV
10/19/2005 03:57 PM

To: wang@tcf.org@GSAEXTERNAL
cc: psims@eac.gov
Subject: Re: Travel to DC and Proposed Working Group Members

Tova:

Yes, everyone here recognizes that we will have to amend the timelines associated with all of the contracts involved in the hold up. I suggest that we wait to do this until after the contract is signed.

Peggy Sims
Research Specialist
U.S. Election Assistance Commission
1225 New York Ave, NW - Ste 1100
Washington, DC 20005
Phone: ___________________
Fax: 202-566-3127
e-mail: psims@eac.gov

wang@tcf.org

10/19/2005 03:34 PM

To: "Job Serebrov"
cc: psims@eac.gov
Subject: Re: Travel to DC and Proposed Working Group Members

OK, but Peg, I think the timeline we originally proposed may have to be moved forward if we are not in a position to do the work we need to do yet. Will that be possible?  Thanks.

----- Original Message -----
From: "Job Serebrov"
To: <wang@tcf.org>
Cc: <psims@eac.gov>
Sent: Wednesday, October 19, 2005 2:16 PM
Subject: Re: Travel to DC and Proposed Working Group Members

> Tova:
I don't have travel booked yet and want to wait until everything is in order.

Job

--- wang@tcf.org wrote:

Would it be possible for Job and I just to use the EAC office as a meeting place since we already have the travel booked? He and I should meet. Thanks.

Tova

----- Original Message ----- 
From: psims@eac.gov
To: wang@tcf.org
Sent: Wednesday, October 19, 2005 11:11 AM
Subject: Travel to DC and Proposed Working Group

Dear Tova and Job:

I have been advised by our Counsel that, since the contracts have not yet been signed, we will have to postpone our October 28th meeting. Tova, for future reference, the per diem rates for DC (the Greater Washington, DC area) can be accessed through that website I provided by clicking on the District of Columbia link on the map.

I also have to ask you to hold any further efforts on the Working Group until further notice. We are going to have to limit the number in the group to no more than six. EAC has to pay for the travel for these folks out of FY 2006 dollars. The agency currently is operating under a continuing resolution, and may not have its FY 2006 budget until December 2005, or later. When you submit the names of possible Working Group members, I will need a summary of their work in studying or enforcing laws against voting fraud and voter intimidation. (It is not sufficient to have expressed an interest in these matters, we need experienced folks.) The working group can include nonpartisan members, so long as any partisan-leaning members are balanced (i.e.; 1 R for 1 D).

I am sorry for any inconvenience that this may cause. I wish I had the power to change the situation, but I don't.

Peggy Sims
Research Specialist
U.S. Election Assistance Commission
1225 New York Ave, NW - Ste 1100
Washington, DC 20005
Phone: 
(direct)
Fax: 202-566-3127
e-mail: psims@eac.gov
Do we need to mail you the original of the EFT form? Thanks. Tova

--- Original Message ---

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Thursday, November 03, 2005 3:55 PM
To: wang@tcf.org
Subject: Invoices and Payments

Job and Tova;

The attorneys have advised me that each of you should amend your invoice to indicate the total hours worked (20) during the first month. You should submit a letter ASAP to Diana Scott with that clarification.

I have been told that it takes our agent, the General Services Administration (GSA), two to three weeks to process our requests for payment. I understand that using the electronic funds transfer (EFT) process will reduce the time for payment by up to five days, because it takes additional time for GSA to cut and mail a paper check.

Diana does not have a completed EFT form from either of you, which would permit the electronic transfer of the funds directly to your chosen bank account. I can find no evidence that Karen suggested you should submit the form, so I have attached a blank form below. Please complete it and return it with the invoice amendment to Diana. If you have any questions about how to fill out the EFT form, let me know. I'll do my best to help you out.

I understand that the contract matters are moving forward. I hope to have more news for you on Monday afternoon.

Peggy Sims
Research Specialist
U.S. Election Assistance Commission
1225 New York Ave, NW - Ste 1100
Washington, DC 20005
Phone: 
Fax: 202-566-3127
email: psims@eac.gov
Peggy:

I am getting an answer from Tova. I need Diana Scott’s e-mail. Can you find out when we will receive our checks if we submit an invoice on 10/25. I am a little concerned that if we submit that late we will not be paid for the next three weeks. Would it not make more sense to submit early in the month for payment to arrive by the end of the month?

Job

--- psims@eac.gov wrote:

> I am available for a 3-way teleconference after Noon 
> on Wednesday this 
> week. My schedule on Thursday and Friday is 
> flexible, as well. When 
> would be best for you two? I can call the telephone 
> numbers you prefer 
> and set up the conference call from my desk. 
> 
> Both the 24th or the 28th are fine with me for the 
> face-to-face meeting. 
> Which do you prefer? If you have no preference, I 
> suggest we pick the 
> earlier of the two. 
> 
> Regarding your contracts, I understand that the 
> contract will carry the 
> date of 9/25/05. All contracts have to be signed by 
> the Chair, who has 
> been out of the office on Commission business. I 
> have been told that she 
> will sign off on your contracts, among others, 
> today. Our financial 
> officer will send it to you after that. I'll try to 
> obtain copies and fax 
> the appropriate one to you as soon as they have been 
> signed. 
> 
> Regarding your pay, the contract will state that you 
> should submit a 
> monthly invoice to EAC for payment of your fee for
that month. The contract is for 6 months, so our Finance Officer, Diana Scott, wants you to submit an invoice to her each month for 1/6th of the total payment, beginning 10/25/05.

I look forward to talking again with the two of you.

Peggy Sims
Research Specialist
U.S. Election Assistance Commission
1225 New York Ave, NW, Suite 1100
Washington, DC
Phone: 202-566-3127
Fax: 202-566-3127
email: psims@eac.gov

"Job Serebrov"
10/03/2005 10:08 AM

To: psims@eac.gov
cc
Subject: Meetings

Peggy:

Just spoke with Tova. We would like to have a three way telephone conference with you this week if possible. The best dates for our face to face are Oct 24th or 28th. Please let me know what works for you.

Talk with you when you get answers to my questions.

 Regards,

Job

--- Forwarded by Margaret Sims/EAC/GOV on 05/07/2007 04:10 PM ---
Subject  Tova/Job meeting that is coming up

We are going to need to put this off until we can get these contract reviews completed. If you need some language on this, let me know.

Juliet E. Thompson
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20085
(202) 566-3100

Tova:
Look forward to seeing you between 2 and 3 PM next Tuesday. If you need to make it later, that's OK. --- Peggy

"Tova Wang" <wang@tcf.org>

That's great. I'll probably come by between 2 and 3 if that's ok. I look forward to seeing you, even if only briefly. Tova

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Thursday, November 03, 2005 5:23 PM
To: wang@tcf.org
Subject: Re: Tuesday

Tova:
I should be available during the mid to late afternoon, provided we are not besieged with election-related calls. Regardless, I can provide the file with the news clippings for your review.

--- Peggy
Hi Peg,

I will be down in DC next Tuesday for a meeting. I wonder if it would be useful for me to come by -- I think you mentioned at one point you had a big collection of articles. It would be great to be able to take a look at them. I'm available mid to late afternoon. Let me know.

Any word on the contract situation?

Thanks.

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

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

Click here to receive our weekly e-mail updates.

--- Forwarded by Margaret Sims/EAC/GOV on 05/07/2007 04:10 PM ---

"Job Serebrow " To "Tova Wang <wang@tcf.org>, psims@eac.gov
cc
Subject RE: In-Person Meeting

I probably could give two to three days in January.

--- Tova Wang <wang@tcf.org> wrote:
As I mentioned to Job earlier, I think we need to meet as soon as possible in order to develop and pare down our lists of who we want to interview, determine how we are going to go about doing the interviews (in-person, phone, email), schedule such meetings, decide what themes we agree to discuss with them; go over existing research and how we will work on summarizing existing findings; hammer out what is within the scope of our research; meet with the intern and law clerk; discuss how we are going to do the case law research; etc. Up to now, we both agreed, we have been operating in a bit of a void. We've been trying to do this meeting for months.

Is it that you think we can combine this meeting with a meeting with Craig? I actually think they need to be separate since I think both will be very laborious and very different in nature.

However, I will defer to whatever you, Peg, think best. I don't fee so strongly about it that I will be extremely upset if we wait until January.

Thanks.

Tova

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: a 2005 5:09 PM
To: wang@tcf.org
Subject: Re: In-Person Meeting

Job and Tova:

If you both agree, a meeting in early January in lieu of a December meeting would be fine with me. As it would be good for you two to pick Craig Donsanto's brain when you are here, I'll find out when he is not available so that we can avoid that time.

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)
"Job Serebrov"

11/21/2005 04:02 PM

To	psims@eac.gov

Subject
Re: Word Search Terms

What do you think about moving the meeting to January after all of the holidays?

--- psims@eac.gov wrote:

> Thanks for the update. I'll let Tamar know. ---
> Peggy

"Job Serebrov"

11/21/2005 12:07 PM

To
psims@eac.gov
cc
Subject
Word Search Terms

Peggy:

I sent the words search terms to Tova yesterday to review. Unfortunately, she will not be able to do so until late today or tomorrow. Consequently, I need to wait to send them to you.
As far as a trip to DC goes, I gave Tova two possible dates---Friday December 16 or Monday December 19.

Regards,

Job

Noel --

This forwards a long request from Peg Sims, formerly of FEC's Office of Election Administration and currently with the EAC.

The long and the short of her est is that EAC is required by HAVA to conduct research into election fraud. Peg has been put in charge of this project, and EAC through Peg want me to provide them input to this EAC activity.

I would be delighted to do this.

My question for you is whether I can just do this, or do AC have to submit a more formal request. If the latter, to whom should it be sent??

Thanks Chief.

---Original Message---
From: psims@eac.gov <psims@eac.gov>
To: Donsanto, Craig <Craig.Donsanto@usdoj.gov>
Sent: Wed Nov 16 17:34:08 2005
Subject: Requesting Your Help-Preliminary Research on Voting Fraud and Voter Intimidation
Intimidation

Hi, Craig:

As I mentioned in my telephone call earlier today, I have been assigned to manage the U.S. Election Assistance Commission’s (EAC) preliminary research project on voting fraud and voter intimidation. I know these are subjects with which you are intimately familiar and recognize that the project needs the information and insights that you can provide, so I am asking for your help.

As you know, section 241 of the Help America Vote Act of 2002 requires EAC to conduct research on election administration issues. Among the issues listed in the statute are:

* nationwide statistics and methods of identifying, deterring, and investigating voting fraud in elections for Federal office [section 241(b)(6)]; and

* 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;

* 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;

* draft the project scope and Statement of Work for future research on these topics, if EAC decides to pursue one or more recommendations for future research.

At minimum, I hope that you can serve as an information resource for the team.
of two EAC consultants hired to conduct the research and me. I also would like to explore the feasibility of your participation in meetings of the project working group.

If EAC needs to submit a more formal request for your help, please advise me how to do so. Also, it would help me to know if there are any restrictions on your participation, other than anticipated restrictions on the time you have available.

Let me know if you have any questions about this request or the research project. I look forward to hearing from you and hope you are doing well.

Regards,

Peggy Sims
Research Specialist
U.S. Election Assistance Commission
1225 New York Ave, NW - Ste 1040
Washington, DC 20005
Phone: (202) 566-3127 (toll free) or
Fax: 202-566-3127
email: psims@eac.gov

--- Forwarded by Margaret Sims/EAC/GOV on 05/07/2007 04:10 PM ---

"Tova Wang"
<wang@tcf.org>
10/05/2005 05:26 PM
To psims@eac.gov
cc ggilmour@eac.gov
Subject fraud/intimidation project

--- Forwarded by Margaret Sims/EAC/GOV on 05/07/2007 04:10 PM ---

"Job Serebrov"
11/03/2005 12:03 PM
To psims@eac.gov, jthompson@eac.gov
cc
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
Last email and then I have to get back to paying attention in class. (!) As I remember, Devon was going to do the Nexis search. Is that still the case?

Thanks,
Tamar Nedzar
Law Clerk
U.S. Election Assistance Commission
1225 New York Avenue, NW Suite 1100
Washington, DC 20005
(202) 566-2377
http://www.eac.gov
TNedzar@eac.gov

---Margaret Sims/EAC/GOV wrote: ---

To: Tamar Nedzar/EAC/GOV@EAC
From: Margaret Sims/EAC/GOV
Date: 11/29/2005 02:27PM
Subject: Re: Teleconference

Tamar:

I will try to set up the teleconference for tomorrow. I'll confirm the time, once I hear back from Tova and Job regarding the times you thought you would be available. Below is the search term attachment that you did not receive with the earlier email. Tova later noted that everywhere we have a term, such as African American and .... or Latino and .... we should also have the following:

Asian American (and if possible, Chinese, Korean, Vietnamese)
Native American
Indian
Indian Country

We may receive a revised search term listing before our teleconference, in which case I will forward it to you. Also attached is a separate list of search terms proposed for a Nexis search, which I received just today.

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
e-mail: psims@eac.gov
Hi Peggy,

I got the email, but not the attachment...

This week, I will be in the office on Friday, but can participate in a conference call during the following times:

Today: Any time after 4 PM
Wednesday: Between 12 and 1 and any time after 3:30 PM
Thursday: Any time after 4 PM
Friday: I'm in the office

Hope one of those times works!

Tamar Nedzar
Law Clerk
U.S. Election Assistance Commission
1225 New York Avenue, NW Suite 1100
Washington, DC 20005
(202) 566-2377
http://www.eac.gov
TNedzar@eac.gov

-----Margaret Sims/EAC/GOV wrote: -----
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

Hi Peg,

I'm sorry to bother you with this, but the EAC receptionist will not put me through to Diana and she has not responded to my email. Do you know if she got my EFT fax? Thanks. Tova

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Thursday, November 03, 2005 3:55 PM
To: psims@eac.gov
Subject: Invoices and Payments
Job and Tova;

The attorneys have advised me that each of you should amend your invoice to indicate the total hours worked (20) during the first month. You should submit a letter ASAP to Diana Scott with that clarification.

I have been told that it takes our agent, the General Services Administration (GSA), two to three weeks to process our requests for payment. I understand that using the electronic funds transfer (EFT) process will reduce the time for payment by up to five days, because it takes additional time for GSA to cut and mail a paper check.

Diana does not have a completed EFT form from either of you, which would permit the electronic transfer of the funds directly to your chosen bank account. I can find no evidence that Karen suggested you should submit the form, so I have attached a blank form below. Please complete it and return it with the invoice amendment to Diana. If you have any questions about how to fill out the EFT form, let me know. I'll do my best to help you out.

I understand that the contract matters are moving forward. I hope to have more news for you on Monday afternoon.

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
Based on your feedback, I would like to schedule a teleconference among the three of us at 3:30 PM EST today --- to discuss any remaining issues regarding what we mean by voting fraud and voter intimidation, and what we want in the search terms. Then, I can bring Tamar and Devon in to join us at 3:45. Does that work for you two?

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

----- Forwarded by Margaret Sims/EAC/GOV on 05/07/2007 04:10 PM -----  

"Tova Wang"
<wang@tcf.org>  
11/30/2005 09:25 AM  
Subject: RE: Wednesday Teleconference

Sounds good. Tova

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Wednesday, November 30, 2005 8:41 AM
To: serebrov@sbcglobal.net; wang@tcf.org
Subject: Wednesday Teleconference

Based on your feedback, I would like to schedule a teleconference among the three of us at 3:30 PM EST today --- to discuss any remaining issues regarding what we mean by voting fraud and voter intimidation, and what we want in the search terms. Then, I can bring Tamar and Devon in to join us at 3:45. Does that work for you two?

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

----- Forwarded by Margaret Sims/EAC/GOV on 05/07/2007 04:10 PM -----

"Job Serebrov"
10/31/2005 03:47 PM
Subject: Re: Teleconference Needed
Fine by me. Thanks, Tova

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Thursday, November 17, 2005 2:33 PM
To: wang@tcf.org; serebrov@sbcglobal.net
Subject: Teleconference

How about 2 PM EST tomorrow (Friday)? I'll call each of you and bring you into the conference.  
-- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 05/07/2007 04:09 PM -----

"Job Serebrov"
11/29/2005 06:04 PM
To: psims@eac.gov, wang@tcf.org
cc
Subject: RE: Teleconference With Legal Clerk and Intern

Peggy:

I think that you have hit the major problem in voter fraud—the federal/state system. We are essentially operating under state laws that control federal elections. Administrative mistakes can amount to voter fraud because the state system controls voting procedure. I must strongly disagree with you as to whether de facto or quasi fraud needs anything else. In my 15 years of election practice and administration it needed nothing else.

We can discuss the rest of your additions to our definition at our conference call.
Job

--- psims@eac.gov wrote:

> The Law Clerk's name is Tamar Nedzar. She is very sharp. Our intern's name is Devon Romig.

> Tamar has the most recent lists of search terms and may have questions about them. Devon will need to know how you want the press clippings sorted by type of voting fraud. I think we need to give her a specific list that, I hope, will not overlap. For example, do you want her to sort using the term Absentee Ballot Fraud when that can involve voter intimidation/coercion/undue influence, vote buying, ballot tampering, and ballot box stuffing (by voting in the name of another or under a fictitious name).

> We need to discuss this because I am concerned that we currently do not have a full written description of what does and does not constitute voting fraud and voter intimidation. The current written definition excludes voter registration shenanigans; yet, voter registration applications submitted with fictitious names or that falsely affirm eligibility to vote are considered election crimes that can have an impact on election results. Specifically, they are used in schemes to vote more than once or to have ineligible persons participate in voting. Also, an increasing number of States are including as an election crime the knowing and willful destruction of voter registration applications by voter registration drives and their failure to transmit such applications to the election office in a timely manner.

> If we define voting fraud as any illegal act that has a clear and direct distorting impact on the election results, then administrative mistakes that violate federal or State law could be included. For federal elections, administrative mistakes definitely are not considered voting fraud. The examples provided for "de facto" fraud and "quasi" fraud also are not likely to be considered part of voting fraud and voter intimidation without evidence that there also is ballot box stuffing, vote
buying, tampering with ballots or vote tallies, voter intimidation, etc.

Although a number of things other than voting fraud and voter intimidation can (and do) distort election results, EAC is handling such issues under separate research efforts.

For your information, I have attached a speech presented by Craig Donsanto (complete with typos) that addresses the issue of defining voting fraud. Perhaps it will be of interest to you.

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

----- Forwarded by Margaret Sims/EAC/GOV on 05/07/2007 04:09 PM -----

Tamar Nedzar/EAC/GOV
11/30/2005 10:18 AM
To: Margaret Sims/EAC/GOV@EAC
cc
Subject: Re: Fw: Updated Word Search List

Home should work, but the number you have is my old number. The new one is

I'll talk to you at 3:45!
Tamar Nedzar
Law Clerk
U.S. Election Assistance Commission
1225 New York Avenue, NW Suite 1100
Washington, DC 20005
(202) 566-2377
http://www.eac.gov
TNedzar@eac.gov

----- Margaret Sims/EAC/GOV wrote: -----
Here is an updated word search list for the case law/administrative decisions search. I am still trying to confirm the time for the teleconference. As it stands right now, I will probably call you at 3:45 PM today. I should call your home phone [redacted], right?

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
e-mail: psims@eac.gov

Peggy & Tova:
Here is the updated case law word search list.

Job

Word Search Terms.doc

Whatever happened to the training we were going to have on this and other aspects of recordkeeping for our contracts, or are we supposed to find this information as best we can? Also, what is the status of the contracts with Job and Tova. Can they submit an invoice without a signed contract?  --- Peggy

Juliet E. Thompson/EAC/GOV

To Edgardo Cortes/EAC/GOV, Margaret Sims/EAC/GOV@EAC

cc Lynn-Dyson/EAC/GOV@EAC, Paquette/EAC/GOV@EAC

Subject Re: Invoice information
Peggy & Edgardo,

I got an email and call from Job Serebrov this morning. I have meant to ask you two to get together on the invoice information. I know that we do not currently have a "standard", but I thought that the information that Edgardo gave out to Contractors was quite good. Perhaps Edgardo could just jot down his information in email format and send it to Tova and Job. I have Job's email if that would be helpful.

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 Margaret Sims/EAC/GOV on 05/07/2007 04:09 PM ----

"Tova Wang"
<wang@tcf.org> To psims@eac.gov
11/29/2005 11:37 AM cc
Subject intern and law clerk

Do you know yet if we will be able to speak to them today or tomorrow? Thanks. 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

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---- Forwarded by Margaret Sims/EAC/GOV on 05/07/2007 04:09 PM ----

Karen
Lynn-Dyson/EAC/GOV To Margaret Sims/EAC/GOV@EAC
11/09/2005 12:57 PM cc
Subject Fw: Call from Paul Vinovich

That saga continues :-) 

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/OV on 11/08/2005 12:56 PM ---

Gracia Hillman/EAC/OV
11/09/2005 12:40 PM
To: Paul DeGregorio/EAC/OV@EAC, Donetta L. Davidson/EAC/OV, Raymundo Martinez/EAC/OV, Juliet E. Thompson/EAC/OV, Thomas R. Wilkey/EAC/OV
cc: Karen Lynn-Dyson/EAC/OV
Subject: Re: Call from Paul Vinovich

What Paul V said is NOT at all an accurate statement of what Tova said. I was there. This is very disappointing to read. I may call Mr. V myself.

I watched and heard what was said and by whom. I will be glad to brief you tomorrow morning.

-----------------

Sent from my BlackBerry Wireless Handheld
Paul DeGregorio

From: Paul DeGregorio
To: Gracia Hillman; Donetta Davidson; Raymundo Martinez; Juliet Thompson; Thomas Wilkey
Cc: Karen Lynn-Dyson
Subject: Call from Paul Vinovich

I took a telephone call this morning from Paul Vinovich. He had attempted to reach Gracia, but since she was not here, he asked Sheila if I was in the office so he spoke to me.

Paul was very upset with comments that Tova Wang had made at yesterday's AEI's meeting in which she basically indicated that voter fraud did not exist in the USA. He asked how a person who believes that voter fraud does not exist--or not seem at least willing to listen to both sides--can be hired by the EAC to do a study on voter fraud/voter intimidation. I explained to Paul (as I have now had to explain to many others) that Tova was "balanced" on the study with Job Severbrov. He did not know Job but was well-aware of Tova's positions and was concerned that her public comments indicate that she will not be fair in looking at this issue. I explained to Paul that we were monitoring the work of our consultants on this study and no report would be issued publicly without the support of at least three commissioners. I sent him some background information on Job. I think this study will need close monitoring.

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)
pdgregorio@eac.gov
Peggy:

I just received an e-mail from Tova. She is also ok with the 28th which is better for me.

I am interested in your answer to her question about work product.

Job

--- psims@eac.gov wrote:

> I am available for a 3-way teleconference after Noon on Wednesday this week. My schedule on Thursday and Friday is flexible, as well. When would be best for you two? I can call the telephone numbers you prefer and set up the conference call from my desk.
> Both the 24th or the 28th are fine with me for the face-to-face meeting. Which do you prefer? If you have no preference, I suggest we pick the earlier of the two.
>
> Regarding your contracts, I understand that the contract will carry the date of 9/25/05. All contracts have to be signed by the Chair, who has been out of the office on Commission business. I have been told that she will sign off on your contracts, among others, today. Our financial officer will send it to you after that. I'll try to obtain copies and fax the appropriate one to you as soon as they have been signed.
>
> Regarding your pay, the contract will state that you should submit a monthly invoice to EAC for payment of your fee for that month. The contract is for 6 months, so our Finance Officer,
Diana Scott, wants you
to submit an invoice to her each month for 1/6th of
the total payment,
beginning 10/25/05.

I look forward to talking again with the two of you.

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
e-mail: psims@eac.gov

"Job Serebrov" <[redacted]>
10/03/2005 10:08 AM

To
psims@eac.gov
cc

Subject
Meetings

Peggy:

Just spoke with Tova. We would like to have a three
way telephone conference with you this week if
possible. The best dates for our face to face are
Oct
24th or 28th. Please let me know what works for you.

Talk with you when you get answers to my questions.

Regards,

Job

--- Forwarded by Margaret Sims/EAC/GOV on 05/07/2007 04:09 PM ---

"Tova Wang"
<wang@tcf.org>
10/11/2005 02:54 PM

To psims@eac.gov
cc
You can send it to The Century Foundation, that's fine. For future reference, I have a doorman so sending stuff to my house is fine too. Thank you! Tova

-----Original Message-----
From: psims@eac.gov
To: wang@tcf.org
Date: Tue, 11 Oct 2005 13:41:38 -0400
Subject: Address for Federal Express

Tova:

I am about to Federal Express some material to you. Should I use your Century Foundation address, or your apartment address? If you want it sent to your apartment, Is it OK for Fed Ex to leave the Fed Ex at your apartment building or should I mark it to be held for pick up at the nearest Fed Ex office?

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
e-mail: psims@eac.gov

That's the right number. On the 14th I do want to be on by phone. I probably will only be able to be on for the beginning though. I may be able to rejoin again at the end. Will someone be taking notes?

Thanks for everything. Tova

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, October 03, 2005 3:42 PM
To: wang@tcf.org;
Subject: RE: Voting Fraud Teleconference-Meeting-Work Schedule

I will initiate the calls to you two on Wednesday. The number I have for Tova is [redacted]. For Job, I have [redacted]. Let me know if I should use a different number for you on
Wednesday.

Thanks, Tova, for the copy of the draft workplan you provided to Karen. I'll take a look at it and, hopefully, provide some feedback on Wednesday. I have not yet caught up to all the paperwork and emails that preceded my assignment to this project. Karen just handed me a folder full of documents that should help.

I think you may have received an email from Nicole Mortellito regarding an October 14 meeting. If you two cannot come in person but can attend via phone, just let me know. Nicole's message has information regarding hotel rates that conflicts with what I've just sent you. I've asked her to double check her information because I have another contractor that has had no problem obtaining government rate at hotels.

Yes, you will be paid on a monthly basis. You can file your first invoice on October 25, according to Diana Scott.

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

"Tova Wang" <wang@tcf.org>  
10/03/2005 03:54 PM  
To psims@eac.gov  
cc ggilmour@eac.gov  
Subject RE: Voting Fraud Teleconference-Meeting-Work Schedule

Peg, This all sounds good. Will you be calling us on Wednesday?

I should not need a hotel for the 28th. Just let me know what time. Are there expense forms we should have for reimbursement?

On the work product, we did send Karen a very preliminary draft of a work plan. I attach it again here and we can talk about it more on Wednesday.

My only money question is, are we being paid on a monthly basis? And if so, when does that begin? I assume this all is in the contracts we'll be getting...
Thanks.

Tova

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, October 03, 2005 2:48 PM
To: wang@tcf.org;
Cc: ggilmour@eac.gov
Subject: Voting Fraud Teleconference-Meeting-Work Schedule

Tova and Job:

Teleconference -
Let's schedule the teleconference for 4:00 PM on Wednesday, October 5. Gavin Gilmour will join us.

Meeting -
October 28 is fine for the face-to-face meeting in DC. We have allocated $5,000 to each of you to cover reasonable and necessary travel and other incidental expenses. Expenses claimed for reimbursement need to be itemized, with appropriate receipts provided. You should be able to obtain the Federal government rate at an area hotel (if you plan to stay overnight). If the hotel needs a letter from EAC (in lieu of showing them your signed contract), just let me know. Airlines apparently no longer honor government rates for government contractors. Rail carriers may provide government rates for government contractors. If you drive, the current government rate for a personally owned vehicle (POV) is 48.5 cents per mile.

Deliverables -
The first item on the list of deliverables is the draft project workplan, which is due ASAP after award. Would it be possible for the two of you to deliver a draft workplan to me via email by 10/11? That would be after we have had our teleconference to work out lingering questions.

Questions for Finance -
If you have questions for our Finance Officer, you can reach her via email at dscott@eac.gov. I would appreciate it if you would cc: me on such emails, so that I know to follow up with her.

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

----- Forwarded by Margaret Sims/EAC/GOV on 05/07/2007 04:09 PM -----

"Tova Wang"
<wang@tcf.org>
11/29/2005 02:15 PM
To psims@eac.gov
cc "Job Serebrov"
Subject nexit search
I'm sorry, I don't understand

-----Original Message-----
From: Job Serebrov
Sent: Tuesday, November 22, 2005 3:22 PM
To: psims@eac.gov; wang@tcf.org
Subject: Word Search Terms

Peggy:

Attached are the word search terms.

Job

Tova:

I placed the few words that you added in the middle of my list into my existing file so some terms are out of order from the last list that you sent me.

Job

I wasn't sure what it should be since we weren't doing the 20 hours a week at that point. Should it be the
same amount?

-----Original Message-----
From: psims@eac.gov  [mailto:psims@eac.gov]
Sent: Monday, November 28, 2005 4:50 PM
To: wang@tcf.org
Subject: Re: September invoice

Tova:
I received your faxed invoices, but the one for the pay period September 1-30, 2005 is missing the total dollar amount claimed. Would you please send the one again, with the dollar amount inserted? --- Peggy

Hi Peg:

I'm faxing you the September and October invoices. I will fax you the November one on Wednesday. Thanks. Tova

The following was done in September in furtherance of a project Providing Consulting Services in the Development of a Voting Fraud and Voter Intimidation

Project # E4019698

Invoice # 1: September 1, 2005-September 30, 2005

50 hours:

September Time Spent on EAC Project

Preparation for two teleconferences;

Two teleconferences and calls with Job;
Calls with EAC staff
Conceptualize project;
Draft work plan;
Draft preliminary definition of fraud;
Background research into vote fraud & voter intimidation.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Wednesday, November 23, 2005 2:25 PM
To: wang@tcf.org
Subject: Personal Services Invoices-Travel Vouchers-Other Expenses

Job and Tova:

I've been busy seeking answers from our attorneys and our Finance Officer, Diana Scott, regarding your reimbursement questions. The results follow:

Invoices/Vouchers for Personal Services

In order to meet legal requirements and provide what is needed by our Finance Officer, we have developed the attached form that you may use for your monthly invoices for consulting services on the Voting Fraud and Voter Intimidation Project. This form is optional. If you prefer, you can provide the same information in a letter. Please see your contract for specifics regarding hours that can be worked and compensation.

I also confirmed with Diana Scott that under the contract recently ratified, EAC considers that your service began on September 1, 2005. Consequently, you do not have to wait until the 25th of the month to file your vouchers for services provided during the previous month. Each voucher should cover one month, and may be filed immediately after the end of the month.

If you fax your invoice/voucher for personal services to me, please drop the original in the mail. We can begin processing your voucher based on the fax, but would like to have the original document for our files.

Travel Authorizations and Vouchers

Apparently, we need to prepare travel authorizations for any travel that you do on behalf of this project. I know how to prepare them, but will need input from you for each trip regarding the expected costs of transportation (separate costs of airfare, train fare, ground transportation), hotel (including taxes), other expected travel expenses (e.g.; airport parking), the points between which you will travel, and the days of travel. I'll prepare the authorization based on this information and put it into the pipeline for the appropriate officials' signatures. Once it is signed, I will fax a copy to you. It is important that we work together to prepare these authorizations well in advance of the travel dates.
Once the travel is concluded, we can prepare the travel vouchers to obtain reimbursement for your travel costs, in accordance with federal travel regulations. You will need to send me your receipts for the hotel, the plane or train, ground transportation (if you did not use your personal vehicle), and parking (if you parked at the airport). You will get a set amount for meals, so you do not need to provide meal receipts. I will prepare the voucher and fax it to you for your signature. If you see any problems with the voucher, this is the time to fix them. Once you are satisfied with the voucher, you will need to return the signed voucher by mail or in person. I'll attach the receipts you provided and a copy of the travel authorization, and send it forward for processing.

Other Expenses

Because your contracts do not provide for the reimbursement of other expenses, we have to look for other ways to deal with them.

For the publications, there are two options: (1) you can pay for them yourself and mark them up as you please; or (2) I can find them in our library or order them through our supply person. Anything paid for by EAC is EAC property, which would mean turning them over to EAC with no marks in them.

If you need to messenger items to accomplish the work under contract, I can authorize the use of EAC's Federal Express account number on a case-by-case basis. I'll need some advance notice and will have to supply our finance folks with the tracking number, who is sending the package, to whom, and when. That way, they won't be surprised when they see item on the FedEx invoice. (An easy way to provide all the information would be to fax a copy of the FedEx Airbill to me.)

At this time, our consultants pay their phone expenses out of their personal services compensation. When it works for you, we can bypass the need for you to incur phone charges by using EAC's teleconferencing capabilities.

Hope you have a Happy Thanksgiving!

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

--- Forwarded by Margaret Sims/EAC/GOV on 05/07/2007 04:09 PM -----

"Tova Wang"
<wang@tcf.org>

To psims@eac.gov
cc
Subject monthly report

--- Forwarded by Margaret Sims/EAC/GOV on 05/07/2007 04:09 PM -----

Please see attached. I will be faxing my invoice. Thanks. Tova

Tova Andrea Wang
I will be down in DC 12/1-12/2 to speak at an election reform conference. While my major expenses will be charged to this other project, while I am there I would like to meet with a couple of people who are on our list of experts to interview. Would it be possible to get reimbursed for my travel within DC? For example, I'll be staying at the Capitol Hilton and one of the interviewees is a professor out at American University. Please let me know.

Also, I would still like to know if expenses unrelated to travel should simply be added to our monthly invoices.

Thanks.

Tova Andrea Wang
Senior Program Officer and Democracy Fellow
The Century Foundation
41 East 70th Street - New York, NY 10021
phone: 212-452-7704 fax: 212-535-7534
Visit our Web site, www.tcf.org, for the latest news, analysis, opinions, and events.

Margaret Sims / EAC/GOV
10/25/2005 02:29 PM
To: "Tova Wang" <wang@tcf.org>@GSAEXTERNAL
cc
Subject: Re: wp

Tova:
If you have to spend time and effort pulling the information together, let's wait until the contract is signed. If you already have the information on hand, please forward it to me.

Thanks!

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

"Tova Wang" <wang@tcf.org>

Hi Peg,

Do you want the information on the proposed working group members you requested (their backgrounds on this issue) now or should I wait until the contract situation is clear? I understand more information on that is forthcoming imminently.

Thanks. Tova

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

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

Click here to receive our weekly e-mail updates.
Hi Peg,

I will be down in DC next Tuesday for a meeting. I wonder if it would be useful for me to come by -- I think you mentioned at one point you had a big collection of articles. It would be great to be able to take a look at them. I'm available mid to late afternoon. Let me know.

Any word on the contract situation?

Thanks.

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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--- Forwarded by Margaret Sims/EAC/GOV on 05/07/2007 04:09 PM ---

Margaret Sims /EAC/GOV  
11/03/2005 06:23 PM  
To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL  
cc  
Subject Re: Tuesday

Tova:

I should be available during the mid to late afternoon, provided we are not besieged with election-related calls. Regardless, I can provide the file with the news clippings for your review.

--- Peggy

"Tova Wang" <wang@tcf.org>

"Tova Wang"  
<wang@tcf.org>  
11/03/2005 02:00 PM  
To psims@eac.gov  
cc  
Subject tuesday

Hi Peg,

I will be down in DC next Tuesday for a meeting. I wonder if it would be useful for me to come by -- I think you mentioned at one point you had a big collection of articles. It would be great to be able to take a look
at them. I'm available mid to late afternoon. Let me know.

Any word on the contract situation?

Thanks.

Tova Andrea Wang
Senior Program Officer and Democracy Fellow
The Century Foundation
41 East 70th Street - New York, NY 10021
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---- Forwarded by Margaret Sims/EAC/GOV on 05/07/2007 04:09 PM ----

Margaret Sims /EAC/GOV
11/21/2005 03:26 PM
To Tamar Nedzar/EAC/GOV
cc
Subject Re: Voter Fraud/Intimidation

Tamar:

Job notified me today that he had sent the key word search terms to Tova yesterday to review. Unfortunately, she will not be able to do so until late today or tomorrow. Consequently, he needs to wait to send them to me. I'll let you know as soon as I know. --- Peggy

Tamar Nedzar/EAC/GOV

11/21/2005 02:58 PM
To Margaret Sims/EAC/GOV@EAC
cc Karen Lynn-Dyson/EAC/GOV@EAC
Subject Voter Fraud/Intimidation

Hi Peggy,

Just wondering if you had heard anything from Tova and Job about the terms they want me to search for on Lexis. If they don't get back to you today, just forward anything they send you to this email. I check it at least once a day and can do work from home.

Thanks,

Tamar Nedzar
Law Clerk
I am about to Federal Express some material to you. Is it OK for Fed Ex to leave the package at your Spring Street address, or should I mark it to be held for pick up at the nearest Fed Ex office?

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

--- Forwarded by Margaret Sims/EAC/GOV on 05/07/2007 04:09 PM ---
Margaret Sims/EAC/GOV
11/30/2005 11:00 AM
To Devon E. Romig/CONTRACTOR/EAC/GOV
cc
Subject Nexis Search Terms

Devon:

In preparation for this afternoon's teleconference, you may want to review the attached list of Nexis search terms. If you have any questions, we can discuss them before the teleconference or, if I can't provide answers, we can ask our consultants who prepared the list. --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 05/07/2007 04:09 PM ---
wang@tcf.org
10/17/2005 11:08 AM
To psims@eac.gov
cc
Subject working group

Hi Peg,

I'd like to talk to you briefly about the development of the working group when you have a moment. I understand you are in a meeting right now -- is there a good time for me to give you a buzz today and/or tomorrow? Thanks so much. Tova

--- Forwarded by Margaret Sims/EAC/GOV on 05/07/2007 04:09 PM ---
Diana Scott/EAC/GOV
11/18/2005 03:15 PM
To Margaret Sims/EAC/GOV@EAC
Subject  Contract/invoice: Job Serebrov

Peggy,

Serebrov has submitted a few versions of his invoice via email. I will provide you with paper copies of his emails. As we have been speaking recently about this, his invoice should contain:

- Date
- Name and address of payee
- Act Number that is on the contract
- Detailed description of services rendered --no 1 or 2 liners
- $ amount of invoice

If invoice amount contains any reimbursement for travel expenses, the expenses need to be itemized (and of course, pre-approved). These expenses should not be on a travel voucher although the legal dept. stated that in the SOW. This is not so.

Finally, we previously required vendors to submit invoices via the mail. However, in the recently revised contracts, the legal dept. omitted this and used language "should be delivered" instead. I am not entertaining any invoice via email. I have brought this to Julie's attention.

Diana M. Scott
Administrative Officer
U.S. Election Assistance Commission
(202) 566-3100 (office)
(202) 566-3127 (fax)
dscott@eac.gov

And they say there is no Santa Claus

--- psims@eac.gov wrote:

> 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
Only between 3:30 and 5:30

--- psims@eac.gov wrote:

> Tova and Job:
> Are you two available for a teleconference with our
> Law Clerk and Intern
> tomorrow at either of the times listed below?
> Between 12 and 1 PM EST; or
> Any time between 3:30 and 5:30 PM EST
> 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

--- Forwarded by Margaret Sims/EAC/GOV on 05/07/2007 04:09 PM ---

Job Serebrov

To psims@eac.gov, wang@tcf.org
cc
Subject Re: Teleconference With Legal Clerk and Intern

Job and Tova:

If you both agree, a meeting in early January in lieu of a December meeting would be fine with me. As it
would be good for you two to pick Craig Donsanto's brain when you are here, I'll find out when he is not available so that we can avoid that time.

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

"Job Serebrov" <serebrov@sbcglobal.net>

What do you think about moving the meeting to January after all of the holidays?

--- psims@eac.gov wrote:

> Thanks for the update. I'll let Tamar know. ---
> Peggy
> 
> "Job Serebrov" <serebrov@sbcglobal.net>
> 11/21/2005 12:07 PM
> 
> To
> psims@eac.gov
> cc
> 
> Subject Word Search Terms
> 
> 
> Peggy:
> 
> I sent the words search terms to Tova yesterday to review. Unfortunately, she will not be able to do so until late today or tomorrow. Consequently, I need to wait to send them to you.
As far as a trip to DC goes, I gave Tova two possible dates---Friday December 16 or Monday December 19.

Regards,

Job

Peggy:

Any word from finance as to the status of the contracts?

Job

Thanks for the update. I'll let Tamar know. --- Peggy

"Job Serebrov" <serebrov@sbcglobal.net>
Peggy:

I sent the words search terms to Tova yesterday to review. Unfortunately, she will not be able to do so until late today or tomorrow. Consequently, I need to wait to send them to you.

As far as a trip to DC goes, I gave Tova two possible dates---Friday December 16 or Monday December 19.

Regards,

Job

---- Forwarded by Margaret Sims/EAC/GOV on 05/07/2007 04:09 PM ----

Margaret Sims/EAC/GOV
11/21/2005 04:57 PM

To "Job Serebrov"
@GSAEXTERNAL

cc

Subject Re: Invoices

Dear Job:

I checked with the finance folks regarding your question about when you should submit your next invoice. They told me that it will not help to submit the invoice early because not all of the people who need to sign off on it will be in the office.

Also, Friday evening, Diana Scott asked for more information on your invoice (perhaps based on feedback from GSA). In addition to the total hours and total dollar amount that you have provided in your second email, she needs:

- Date of Invoice
- Name and Address of Payee
- Act Number, which is listed on your contract (E4019698)
- Pay Period
- # of days on which you worked

Diana also told me on Friday that she is not sure she can accept invoices by email. Until I can confirm with our attorneys that email is OK, I suggest that you fax the amended invoice and future invoices to me at the fax number listed below, and send the original by mail.

I understand that all of this back-and-forth must be as aggravating to you as to me. I am working with folks here to develop a form that you may use for invoices that will provide all of the information that our finance folks and GSA need. (We have not located a government form that we can use for personal services contracts.) The form would be strictly optional. Alternatively, you could send a letter that provides the same information. I also have reminded people about the federal government's prompt payment requirements. Although we have to process all of our payments through our agent, GSA, we remain bound by these provisions.

Peggy Sims
Research Specialist
U.S. Election Assistance Commission
We have initiated research projects on:

- Provisional Ballots and Voter ID;
- Laws and Practices Regarding Vote Counting (including pre-election testing, security, post-election audits), Recounts, and Contested Elections;
- Management Guidelines for Voting Systems;
- Technical Issues in the Implementation of the Statewide Voter Registration Database; and
- Pollworker Recruitment, Training, and Retention.

At minimum, I think we need to look at knowing and willful violations. Mistakes involving misunderstandings; unintentional errors in processing voter registration applications, absentee ballots, or provisional ballots; unintentional election coding errors on vote counting programs; unintentional errors in preparing or distributing ballots and voting equipment; unintentional errors in preparing vote tallies; and badly trained poll workers do not rise to the level of voting fraud—though they can definitely affect the integrity of the election.

Although some Voting Rights Act provisions are used to prosecute voter intimidation, the Department of Justice's Voting Section, Civil Rights Division, also has initiated action against States for failure to properly implement other provisions of the Voting Rights Act, the National Voter Registration Act (including the list maintenance requirements) and the Uniformed and Overseas Citizens Absentee Voting Act. Failure of States and local jurisdictions to properly implement these provisions is not considered voting fraud, but is actionable.

We do have gaps in federal election crimes laws, however. For example, I remember when we first saw votes being auctioned on eBay and when we heard of voter registration drives destroying or failing to turn in voter registration applications they had collected, there was concern that current law did not provide leverage for federal prosecution. As it turned out, State prosecution under State election laws was more effective in those cases.
Can you give us a better idea of the other EAC research projects that you think we might overlap with if we include these activities? Job and I had strong reasons for what we did and did not include and how we wanted to frame the term fraud, so we do indeed need to discuss this -- perhaps before or after the discussion with Tamar and Devon?

Thanks. Tova

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, November 29, 2005 3:18 PM
To: wang@tcf.org
Cc: unknown@unknown.cc
Subject: RE: Teleconference With Legal Clerk and Intern

The Law Clerk's name is Tamar Nedzar. She is very sharp. Our intern's name is Devon Romig.

Tamar has the most recent lists of search terms and may have questions about them. Devon will need to know how you want the press clippings sorted by type of voting fraud. I think we need to give her a specific list that, I hope, will not overlap. For example, do you want her to sort using the term Absentee Ballot Fraud when that can involve voter intimidation/coercion/undue influence, vote buying, ballot tampering, and ballot box stuffing (by voting in the name of another or under a fictitious name).

We need to discuss this because I am concerned that we currently do not have a full written description of what does and does not constitute voting fraud and voter intimidation. The current written definition excludes voter registration shenanigans; yet, voter registration applications submitted with fictitious names or that falsely affirm eligibility to vote are considered election crimes that can have an impact on election results. Specifically, they are used in schemes to vote more than once or to have ineligible persons participate in voting. Also, an increasing number of States are including as an election crime the knowing and willful destruction of voter registration applications by voter registration drives and their failure to transmit such applications to the election office in a timely manner.

If we define voting fraud as any illegal act that has a clear and direct distorting impact on the election results, then administrative mistakes that violate federal or State law could be included. For federal elections, administrative mistakes definitely are not considered voting fraud. The examples provided for "de facto" fraud and "quasi" fraud also are not likely to be considered part of voting fraud and voter intimidation without evidence that there also is ballot box stuffing, vote buying, tampering with ballots or vote tallies, voter intimidation, etc. Although a number of things other than voting fraud and voter intimidation can (and do) distort election results, EAC is handling
such issues under separate research efforts.

For your information, I have attached a speech presented by Craig Donsanto (complete with typos) that addresses the issue of defining voting fraud. Perhaps it will be of interest to you.

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
e-mail: psims@eac.gov

--- Forwarded by Margaret Sims/EAC/GOV on 05/07/2007 04:09 PM ---
"Job Serebrov"

To psims@eac.gov
10/19/2005 11:59 AM
Subject Re: Travel to DC and Proposed Working Group Members

Peggy:

What form do you want use to submit our invoice in for this month?

Job

--- psims@eac.gov wrote:

> Dear Tova and Job:
> > I have been advised by our Counsel that, since the contracts have not yet been signed, we will have to postpone our October 28th meeting. Tova, for future reference, the per diem rates for DC (the Greater Washington, DC area) can be accessed through that web site I provided by clicking on the District of Columbia link on the map. > > I also have to ask you to hold any further efforts on the Working Group until further notice. We are going to have to limit the number in the group to no more than six. EAC has to pay for the travel for these folks out of FY 2006 dollars. The agency currently is operating under a continuing resolution, and may not have its FY 2006 budget until December 2005, or later. When you submit the names of
possible Working Group members, I will need a summary of their work in studying or enforcing laws against voting fraud and voter intimidation. (It is not sufficient to have expressed an interest in these matters, we need experienced folks.) The working group can include nonpartisan members, so long as any partisan-leaning members are balanced (i.e.; 1 R for 1 D).

I am sorry for any inconvenience that this may cause. I wish I had the power to change the situation, but I don't.

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
Fax: 202-566-3127
email: psims@eac.gov

---

Forwarded by Margaret Sims/EAC/GOV on 05/07/2007 04:09 PM ---

"Tova Wang"
<wang@tcf.org> To psims@eac.gov
10/14/2005 10:59 AM To psims@eac.gov
cc
Subject

Hi Peggy,

Just an FYI -- Job and I have developed our own draft of a definition of fraud and intimidation and are working on compiling existing research. With respect to the working group, I have sent him the names and bios of my first choices, most of whom I have not yet spoken to. My thought was that I would have you vet them before asking them if they could do it, so I wouldn't have to turn around and say no. I have plenty of "plan B" people should some of my first choices not work out. Job has gone ahead and inquired as to people's availability before putting them on his list, which he expects to send me today.

Hope you had a great weekend.

Tova

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, October 11, 2005 4:33 PM
To: wang@tcf.org
Subject: Contract Issues-Government Per Diem Rates

005024
phone from home on the Job and Tova call. I have also asked Gavin to sit in as the drugs have left me a little foggy.

Let me know if you will call me or if I need to call you.

______________
Sent from my BlackBerry Wireless Handheld

----- Forwarded by Margaret Sims/EAC/GOV on 05/07/2007 04:09 PM -----
Margaret Sims /EAC/GOV
11/18/2005 03:06 PM
To Donetta Davidson
cc Eileen L. Collver/EAC/GOV@EAC
Subject Fw: RESPONSE REQUESTED-Working Group for Voting Fraud and Voter Intimidation Project

Dear Commissioner Davidson:

Attached is the earlier email requesting feedback on potential Working Group members for the voting fraud and voter intimidation research project. --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 11/18/2005 03:03 PM -----
Margaret Sims /EAC/GOV
11/16/2005 01:12 PM
To Gracia Hillman, Paul DeGregorio, Ray Martinez, Donetta Davidson
Sheila A. Banks/EAC/GOV@EAC, Amie J. Sherrill/EAC/GOV@EAC, Adam Ambrogi/EAC/GOV@EAC, Eileen L. Collver/EAC/GOV@EAC, Gavin S. Gilmour/EAC/GOV@EAC
cc 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 Commissioner [name redacted] 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

Attached is Jeannie's edited version of the letter to DOJ. Would you please copy it to your file, accept all changes, and run it on the Chair's letterhead. Once she signs it, I will want to fax a copy to Donsanto and send the original by mail. Thanks. --- Peggy

Peg,
My suggested edits are attached.

Peggy Sims
Research Specialist
I think Diana Scott needs the original with the original signature. If you want to fax a copy to her, as well, fax it to her at 202-566-3127. — Peggy

"Tova Wang" <wang@tcf.org>

"Tova Wang"
<wang@tcf.org>
11/03/2005 04:11 PM
To psims@eac.gov
cc
Subject RE: Invoices and Payments

Do we need to mail you the original of the EFT form? Thanks. Tova

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Thursday, November 03, 2005 3:55 PM
To: wang@tcf.org
Subject: Invoices and Payments

Job and Tova;

The attorneys have advised me that each of you should amend your invoice to indicate the total hours worked (20) during the first month. You should submit a letter ASAP to Diana Scott with that clarification.

I have been told that it takes our agent, the General Services Administration (GSA), two to three weeks to process our requests for payment. I understand that using the electronic funds transfer (EFT) process will reduce the time for payment by up to five days, because it takes additional time for GSA to cut and mail a paper check.

Diana does not have a completed EFT form from either of you, which would permit the electronic transfer of the funds directly to your chosen bank account. I can find no evidence that Karen suggested you should submit the form, so I have attached a blank form below. Please complete it and return it with the invoice amendment to Diana. If you have any questions about how to fill out the EFT form, let me know. I'll do my best to help you out.

I understand that the contract matters are moving forward. I hope to have more news for you on Monday afternoon.

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
e-mail: psims@eac.gov
Hi Peg, Nicole and Karen,

Just FYI, I will be out of the office after today for the rest of the week (actually speaking at conferences down in DC). My cell is 917-656-7905 if you need to reach me, and I should be able to check email sporadically. Thanks

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

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--- Forwarded by Margaret Sims/EAC/GOV on 05/07/2007 04:09 PM ---

"Tova Wang"  
<wang@tcf.org>

To psims@eac.gov, klynndyson@eac.gov, nmortellito@eac.gov  
cc

Subject

Tova:
Yes, she has received your EFT fax. All is well. — Peggy

"Tova Wang" <wang@tcf.org>

005028
Hello Peg and greetings from Mexico City.

Interesting way you put that question!! When will I NOT be available!!!

Peg -- I have a speech to deliver to the Illinois Association of Election Commissioners December 7-8. After that, my wife says she will arise in protest if I don't stay put for the next couple months!!!

So I guess anytime after December 8 will work.

I hope I can help you and the EAC on this.

Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

---Original Message---
From: psims@eac.gov <psims@eac.gov>
To: Donsanto, Craig <Craig.Donsanto@usdoj.gov>
Sent: Tue Nov 22 16:50:20 2005
Subject: Re: Requesting Your Help-Preliminary Research on Voting Fraud and Voter Intimidation

Craig:

This is just to let you know that I have drafted a letter for the Chair's signature, but she may want to make some changes before she signs. Once it is signed, I'll fax a copy to you and send the original by mail. For planning purposes, can you tell me when you don't expect to be available during the next 3 months (Dec-Feb)?

Peggy Sims
Phone: 202-566-3120 (direct)
email: psims@eac.gov
Dear Julie and Peggy:

I am writing today to see if the contracts have finally been approved. Julie, you had indicated several days ago that your staff would take a few days to complete its review. Completion of the contract process affects our ability to proceed to month two scheduled work and, just as important, our getting paid by mid-November—which is financially critical at this point. Finally, I will need a copy of the contract by next week for the final stage of an interview process. The amount I am being paid for this project in effect pushes me to the upper end of the GS rating for this position.

Peggy, when do you think the final working group members will be selected? We need to know this as many of those who were not selected will default to the group of folks that we interview.

Job

Tova:

Thad’s research on threat assessment is not being conducted under an EAC contract. The requirement to work through EAC only applies to contact with EAC contractors about EAC research. Thad’s EAC contract is for Vote Counts/Contested Elections and Recounts. At this time, the contractor is analyzing State laws and procedures and contacting appropriate federal agencies regarding any pertinent consent agreements. Currently, there are no plans to do a survey that would be subject to the Paperwork Reduction Act requirements.

If your interest in Thad involves his non-EAC research, I would have no problem with you contacting him directly. If you think he will not respond unless I forward your request to him, I will see what I can do.
Hi Peg,

I would like to talk to Thad Hall about the methodology of our research and about the threat assessment survey he is doing with Electionline and Caltech [http://www.vote.caltech.edu/media/threat_risk.pdf](http://www.vote.caltech.edu/media/threat_risk.pdf). Can you please facilitate that? Thanks.

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](http://www.tcf.org) to receive our weekly e-mail updates.

--- Forwarded by Margaret Sims/EAC/GOV on 05/07/2007 04:08 PM ---

"Job Serebrov"  
11/30/2005 10:05 AM  
Subject Re: Wednesday Teleconference

Yesterday, before I got food poisoning, I would have said yes. While I can participate in the conference, I don't know how focused I will be.

Job
I'll need to get back to you on this and the definition tomorrow (too many things going on today). In the meantime, I have attached the written status report that was presented to the EAC Standards Board and Board of Advisors, because I can't remember if I ever provided the final version to the two of you. The status report is primarily made up of your preliminary reports, with some intro information provided and a brief summary of recommendations discussed at the Working Group meeting. This may or may not help the two of you in preparing the final. You can use any of it, or none of it. I am sure that your product will be much better than this quickly pulled together thing. --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM ---

"Job Serebrov"<br>06/29/2006 07:58 PM<br>To psims@eac.gov <br>cc<br>Subject Travel Pay
Peg:

So far no travel pay. Tova got hers a couple of days ago. Please call and check. I need it.

Thanks,

Job

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM ------

"Tova Wang"
<wang@tcf.org>
06/29/2006 01:24 PM

To psims@eac.gov,
cc twilkey@eac.gov
Subject RE: donsanto interview

Peg, if you review the numerous speeches and writings of Donsanto, including at the BAI training sessions, you will see that in the past he has frequently said that as a matter of law and policy the Department generally only pursued organized patterns. I can point you to particular citations if you like. He clearly said when we interviewed him that there had been a shift in resources and energy. This is in both of our notes. I don't think this should be an issue of departmental politics.

Tova

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Thursday, June 29, 2006 12:00 PM
To: wang@tcf.org;
Cc: twilkey@eac.gov
Subject: Re: donsanto interview

Tova and Job:

All I can do is advise you that I don't think this paragraph will pass by the Commission, as written, because readers can misinterpret what is being reported and use something published by EAC against DOJ. I suspect that both of you are aware of legal action being taken by an advocacy group against DOJ alleging that the agency is acting in a manner that fails to protect, and even discourages, the voter participation of minorities and disadvantaged individuals. Though I do not intend to address the merits of that action, which focuses on the efforts of more than one DOJ office, I am concerned that some readers would use the sentence that begins with "This change in direction, focus, and level of aggression ..." as evidence that DOJ's Election Crimes Branch has completely changed course to focus on aggressively pursuing individuals who vote when ineligible, many of whom are minorities.

It is true that, for years, the Election Crimes Branch did not pursue individual violators. (I certainly observed this from the time I became involved in researching election administration matters in 1986.) Much of the reason for this is that the agency just did not have the resources to pursue everything; so, as the agency budget permitted, DOJ pursued cases that provided the most bang...
for the buck --- cases involving multiple individuals that were not already being pursued by State or local public attorneys. As you know, DOJ recently expanded its efforts and added the prosecution of individuals for double voting or voting when ineligible (felony convictions or no U.S. citizenship). Although I did not know of this decision prior to the interview, the action is not a complete surprise, given the increasing pressure on the agency to pursue such cases that began with a real squeaker of a 1996 race in California's 46th CD (Orange County). In the interview with you, Donsanto also stated that the department evaluates each case before pursuing it, and does not pursue every individual referred for voting violations. (You may remember he noted his reluctance to pursue noncitizen voting, which can result in deportation, when it could separate the individual from his family.)

In my opinion, the addition of the prosecution of individuals, while an important new development, is not a complete change in direction or focus. The pursuit of individual violators does not supplant DOJ's continuing efforts to pursue organized schemes to corrupt the process. It is part of a recent expansion of the agency's efforts to combat election crime that includes: (1) more aggressive pursuit of criminal campaign finance violations (not covered by EAC's study); (2) exploration of new avenues to prosecute voter suppression schemes (e.g.; the NH phone bank blocking case); (3) better training of U.S. attorneys and FBI agents in the recognition, investigation and prosecution of election offenses; (4) efforts to improve coordination with state and local law enforcement agencies; and (5) press conferences and public announcements before federal elections to publicize how the public can report election crimes. Donsanto provided information on much of these efforts either during the interview or by supplying case lists and training information on the day of the interview.

I hope you will reconsider revising the paragraph at issue.

Peggy Sims
Election Research Specialist
U.S. Election Assistance Commission

Hi Peg,

Job and I have discussed this matter and agree on our response to it.

Presumably the paragraph you are concerned about is the following:
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 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.

Neither of us thinks this passage says that the Department has stopped pursuing patterns, as you suggested, and we maintain that this is what Mr. Donsanto said to us in the interview. If Mr. Donsanto wants to object, perhaps he can write a letter or something to that effect that could be part of the record.

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

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

---
Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM ---
Margaret Sims/EAC/GOV
06/29/2006 05:31 PM	To "Tova Wang"<wang@tcf.org>@GSAEXTERNAL
cc twilkey@eac.gov
Subject RE: donsanto interview

I don't think anyone disagrees that DOJ's earlier policy was to prosecute organized conspiracies, not individual violators. This policy was based both on existing law and resources available. Donsanto made that clear in numerous presentations before election officials, though I doubt he would have highlighted the resource issue in any of his written reports.

I did not hear Donsanto say that there was a shift in resources and energy away from prosecuting organized conspiracies in order to pursue prosecutions of individuals. I think we should avoid implying that this is the case. I understood his statement to address a shift in DOJ resources and energy to support increased efforts to prosecute election crimes, including the expansion of prosecutions to include individual incidents. I have not seen, nor do I think Donsanto has ever stated, that there has been a decrease in the effort to prosecute organized conspiracies to corrupt the process. Yet, adequate resources continue to be an issue, as Donsanto noted in his interview and at the Working Group meeting (when referring to having to decide which of two voter suppression cases to prosecute because he didn't have the resources to do both).

Your reference to policy based on law reminded me that changes in federal law, and an evolution in the understanding of how to use newer law, also would have affected DOJ's decision to add the prosecution of individuals for such violations as registering and voting when not a U.S. citizen or when a convicted felon. Earlier federal law did not directly address voter registration by felons, permitting federal prosecution in such instances only where it could be shown that the applicant knowingly and willfully
provided false information as to his or her eligibility to vote. Earlier federal law permitted the prosecution of noncitizens for registering to vote based on false claims of the U.S. citizenship that each State required for registering to vote in federal elections, but did not require U.S. citizenship to vote in federal elections. These laws made federal prosecution of noncitizen and felon voter registration and voting much more challenging. With the implementation of the NVRA in 1995, we began to see federal election law that could more easily be used for federal prosecution of both voter registration and voting by noncitizens and convicted felons. And, late in 1996, immigration reform legislation was passed that clearly prohibits noncitizens from voting in federal elections (without requiring the "knowing and willful" component).

--- Peggy

"Tova Wang" <wang@tcf.org>

Peg, If you review the numerous speeches and writings of Donsanto, including at the BAI training sessions, you will see that in the past he has frequently said that as a matter of law and policy the Department generally only pursued organized patterns. I can point you to particular citations if you like. He clearly said when we interviewed him that there had been a shift in resources and energy. This is in both of our notes. I don't think this should be an issue of departmental politics.

Tova

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Thursday, June 29, 2006 12:00 PM
To: wang@tcf.org;,
Cc: twilkey@eac.gov
Subject: Re: donsanto interview

Tova and Job:

All I can do is advise you that I don't think this paragraph will pass by the Commission, as written, because readers can misinterpret what is being reported and use something published by EAC against DOJ. I suspect that both of you are aware of legal action being taken by an advocacy group against DOJ alleging that the agency is acting in a manner that fails to protect, and even discourages, the voter participation of minorities and disadvantaged individuals. Though I do not intend to address the merits of that action, which focuses on the efforts of more than one DOJ office, I am concerned that some readers would use the sentence that begins with "This change in direction, focus, and level of aggression ..." as evidence that DOJ's Election Crimes Branch has completely changed course to focus on aggressively pursuing individuals who vote when ineligible, many of whom are minorities.

It is true that, for years, the Election Crimes Branch did not pursue individual violators. (I certainly observed this from the time I became involved in researching election administration matters in 1986.) Much of the reason for this is that the agency just did not have the resources to pursue everything; so, as the agency budget permitted, DOJ pursued cases that provided the most bang
for the buck --- cases involving multiple individuals that were not already being pursued by State or local public attorneys. As you know, DOJ recently expanded its efforts and added the prosecution of individuals for double voting or voting when ineligible (felony convictions or no U.S. citizenship). Although I did not know of this decision prior to the interview, the action is not a complete surprise, given the increasing pressure on the agency to pursue such cases that began with a real squeaker of a 1996 race in California's 46th CD (Orange County). In the interview with you, Donsanto also stated that the department evaluates each case before pursuing it, and does not pursue every individual referred for voting violations. (You may remember he noted his reluctance to pursue noncitizen voting, which can result in deportation, when it could separate the individual from his family.)

In my opinion, the addition of the prosecution of individuals, while an important new development, is not a complete change in direction or focus. The pursuit of individual violators does not supplant DOJ's continuing efforts to pursue organized schemes to corrupt the process. It is part of a recent expansion of the agency's efforts to combat election crime that includes: (1) more aggressive pursuit of criminal campaign finance violations (not covered by EAC's study); (2) exploration of new avenues to prosecute voter suppression schemes (e.g.; the NH phone bank blocking case); (3) better training of U.S. attorneys and FBI agents in the recognition, investigation and prosecution of election offenses; (4) efforts to improve coordination with state and local law enforcement agencies; and (5) press conferences and public announcements before federal elections to publicize how the public can report election crimes. Donsanto provided information on much of these efforts either during the interview or by supplying case lists and training information on the day of the interview.

I hope you will reconsider revising the paragraph at issue.

Peggy Sims
Election Research Specialist
U.S. Election Assistance Commission

Hi Peg,

Job and I have discussed this matter and agree on our response to it.

Presumably the paragraph you are concerned about is the following:
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 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.

Neither of us thinks this passage says that the Department has stopped pursuing patterns, as you suggested, and we maintain that this is what Mr. Donsanto said to us in the interview. If Mr. Donsanto wants to object, perhaps he can write a letter or something to that effect that could be part of the record.

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

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

Click here to receive our weekly e-mail updates.

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM -----
Margaret Sims/EAC/GOV
06/30/2006 05:29 PM  To Tova Andrea Wang
cc
Subject Contract Hours & Payments for Services

Here is the spreadsheet I have for you. Please let me know if you notice any discrepancies. Thanks. --- Peggy

Wang Payment Tracking.xls
----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM -----
Margaret Sims/EAC/GOV
06/30/2006 06:19 PM  To "Job Serebrov" <
cc
Subject Re: Various

Not yet. The problem is that so many folks seem to be off for a long 4th of
July weekend.

Sent from my BlackBerry Wireless Handheld

----- Original Message ----- 
From: "Job Serebrov" [se
Sent: 06/30/2006 05:58 PM 
To: psims@eac.gov; wang@tcf.org  
Subject: Various

Peg:

I had to take time off this afternoon to handle some issues. Did you get an answer as to my travel reimbursement?

I spoke to Tova about the Donsanto issue. We both agree about what we heard during the interview. We also agree that this is taking up too much time (of which we have so little left) and is a minor part of one interview which makes up one of thirty interviews. I feel the same as Tova, the Commission was not in on the interview and thus do not know what was said and we are not giving those interviewed the opportunity, especially given how long ago the interviews were, to object. Frankly, if the Commission wants to give us another sixty hours each we can call all of our interviewees, give them the review and ask for comments. In any case, we can't include comments from other interviews with, or lectures by person interviewed, outside of our interview with that person. We simply can't afford to single out one statement in one interview that there is a disagreement on. Finally, I don't read the paragraph as you do---I remember what was said---the paragraph clearly does not imply an abandonment of other DOJ electoral investigations.

Job

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM -----

"Job Serebrov"
06/30/2006 07:10 PM

To psims@eac.gov, wang@tcf.org

Subject Re: Various

Peg:

Its ok with me as long as we finish before the end of November.
--- psims@eac.gov wrote:

> Actually, the Donsanto interview was the only one I did attend, but I agree the issue is taking up too much of your time. I just wanted you to be forewarned that the paragraph has already raised red flags in DC of and is likely to result in an edit. Enough said about that.

> I am concerned about the number of hours left for this project. If you and Tova both agree, I'll see if our Contracting Officer will approve a contract mod to provide for some additional hours and money to incorporate comments received on the report and other efforts that fall within the tasks specified in the current contract. We won't get 60 thou, but there might be a little year end money we can use to finish this off properly.

> Peg

> --------------------------
> Sent from my BlackBerry Wireless Handheld

> ----- Original Message ----- 
> From: "Job Serebrov" [mailto:job@eac.gov]
> Sent: 06/30/2006 05:58 PM
> To: psims@eac.gov; wang@tcf.org
> Subject: Various

> Peg:

> I had to take time off this afternoon to handle some issues. Did you get an answer as to my travel reimbursement?

> I spoke to Tova about the Donsanto issue. We both agree about what we heard during the interview. We also agree that this is taking up too much time (of which we have so little left) and is a minor part of one interview which makes up one of thirty interviews. I feel the same as Tova, the Commission was not in on the interview and thus do not know what was said and we are not giving those interviewed the opportunity, especially given how long ago the interviews were, to object. Frankly, if the Commission wants to give us another sixty hours each we can call all of our interviewees, give them the review and ask for comments. In any case, we can't include comments from other interviews with, or lectures by person interviewed, outside of our interview with that person. We simply can't afford to single out one statement in one interview that there is a disagreement on. Finally, I don't read the paragraph.
as you do---I remember what was said---the paragraph clearly does not imply an abandonment of other DOJ electoral investigations.

---

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM ---

Margaret Sims/EAC/GOV
06/28/2006 04:38 PM

To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL
cc dromig@eac.gov

Subject RE: May 18, 2006 Meeting

I wasn't planning on circulating the transcript to the Commissioners. Most of them probably don't have the time to go through the whole thing. I will let them know it is available, if they are interested in reviewing it.

--- Peggy

"Tova Wang" <wang@tcf.org>

"Tova Wang"<wang@tcf.org>
06/23/2006 01:04 PM

To dromig@eac.gov, psims@eac.gov
cc

Subject RE: May 18, 2006 Meeting

Wow, there are a lot of errors in this. But at least it gets at the substance. Will this be circulated to the commissioners?

----- Original Message ----- 
From: dromig@eac.gov [mailto:dromig@eac.gov]
Sent: Thursday, June 22, 2006 2:45 PM
To: psims@eac.gov
Cc: serebrov@sbcglobal.net; wang@tcf.org
Subject: Fw: May 18, 2006 Meeting

Good news!!! The transcript is finally here.

Devon Romig
United States Election Assistance Commission
1225 New York Ave. NW, Suite 1100
Washington, DC 20005
202.566.2377 phone
202.566.3128 fax
www.eac.gov
Dear EAC,

Attached please note the ASCII file for the Voting Fraud-Voter Intimidation Meeting taken on Wednesday, May 18, 2006. Your transcript has been shipped to you.

ASCII file name: 051806.txt

Please let us know if you have any questions.

Timothy Brischler, Office Manager, 703.273.9221

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM ---

"Job Serebrov"

I am ok with it.

--- Tova Wang <wang@tcf.org> wrote:

> Is this OK now?
> Tova Andrea Wang
> Democracy Fellow
> The Century Foundation
> 41 East 70th Street - New York, NY 10021
> phone: 212-452-7704  fax: 212-535-7534
> www.tcf.org, for the latest news,
> analysis, opinions, and events.
Jeannie:

Here are my responses:

1. *When will EAC receive the preliminary report on voter intimidation and voting fraud?*

   I anticipate that we will have a draft final report from our consultants in 2-3 weeks, after our consultants have had time to review the transcript from the project Working Group meeting, which was not available until last week.

2. *When we receive the preliminary report, what is the EAC process to formulate a final product that will be made public?*

   First, Commissioners and Commission staff will have to review the preliminary draft. Then a draft will be submitted to the EAC Standards Board and EAC Advisory Board for review and comment. This second step is taken in accordance with HAVA §247, which requires EAC to carry out its duties under Title II, Subtitle C (Studies and Other Activities to Promote Effective Administration of Federal Elections) in consultation with the Standards Board and the Board of Advisors.

3. *When will we make this research available to the public? What form will it be in? (Best practices, etc.)*

   The final report cannot be made public until it has been accepted by the Commissioners. Normally, this does not happen until the researcher(s) submit a final report that has been revised to address clarifications and corrections deemed necessary through the review process described above. The time it takes for the researchers to produce this final report will depend, somewhat, on the number of clarifications and corrections deemed necessary.
As the researchers were charged with conducting preliminary background research on voting fraud and voter intimidation in the U.S., this report will not include recommended best practices. It will summarize the preliminary research as well as the deliberations of our project Working Group. It also will include recommendations for future EAC activity related to the development of: (1) methods of identifying, deterring, and investigating voting fraud and voter intimidation; and (2) nationwide statistics on voting fraud.

If the reporter has spoken to Secretary Rokita, who maintains that EAC has no authority to conduct this research, you might mention that EAC initiated this preliminary research on voting fraud and voter intimidation in accordance with the Help America Vote Act, (HAVA) §241, which requires EAC to conduct research on election administration issues, including the development of:

- nationwide statistics and methods of identifying, deterring, and investigating voting fraud in elections for Federal office [§241(b)(6)]; and
- ways of identifying, deterring, and investigating methods of voter intimidation [§241(b)(7)].

At its 2005 meeting, EAC's Board of Advisors recommended that the agency make research on these matters a high priority.

Peggy Sims
Election Research Specialist
U.S. Election Assistance Commission

Jeannie Layson/EAC/GOV

Jeannie Layson/EAC/GOV
06/27/2006 02:26 PM
To: psims@eac.gov, twilkey@eac.gov
cc: Jeannie Layson/EAC/GOV
Subject: US News & World Report inquiry

Please provide answers to the following questions, posed to me by US News & World Report's Scott Michels. I need this info by the end of the day to meet his deadline.

1. When will EAC receive the preliminary report on voter intimidation and voting fraud?
2. When we receive the preliminary report, what is the EAC process to formulate a final product that will be made public?
3. When will we make this research available to the public? What form will it be in? (Best practices, etc.)

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

Job and I have discussed this matter and agree on our response to it.

Presumably the paragraph you are concerned about is the following:

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 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.

Neither of us thinks this passage says that the Department has stopped pursuing patterns, as you suggested, and we maintain that this is what Mr. Donsanto said to us in the interview. If Mr. Donsanto wants to object, perhaps he can write a letter or something to that effect that could be part of the record.
Tova and Job:

All I can do is advise you that I don’t think this paragraph will pass by the Commission, as written, because readers can misinterpret what is being reported and use something published by EAC against DOJ. I suspect that both of you are aware of legal action being taken by an advocacy group against DOJ alleging that the agency is acting in a manner that fails to protect, and even discourages, the voter participation of minorities and disadvantaged individuals. Though I do not intend to address the merits of that action, which focuses on the efforts of more than one DOJ office, I am concerned that some readers would use the sentence that begins with "This change in direction, focus, and level of aggression ..." as evidence that DOJ’s Election Crimes Branch has completely changed course to focus on aggressively pursuing individuals who vote when ineligible, many of whom are minorities.

It is true that, for years, the Election Crimes Branch did not pursue individual violators. (I certainly observed this from the time I became involved in researching election administration matters in 1986.) Much of the reason for this is that the agency just did not have the resources to pursue everything; so, as the agency budget permitted, DOJ pursued cases that provided the most bang for the buck --- cases involving multiple individuals that were not already being pursued by State or local public attorneys. As you know, DOJ recently expanded its efforts and added the prosecution of individuals for double voting or voting when ineligible (felony convictions or no U.S. citizenship). Although I did not know of this decision prior to the interview, the action is not a complete surprise, given the increasing pressure on the agency to pursue such cases that began with a real squeaker of a 1996 race in California’s 46th CD (Orange County). In the interview with you, Donsanto also stated that the department evaluates each case before pursuing it, and does not pursue every individual referred for voting violations. (You may remember he noted his reluctance to pursue noncitizen voting, which can result in deportation, when it could separate the individual from his family.)

In my opinion, the addition of the prosecution of individuals, while an important new development, is not a complete change in direction or focus. The pursuit of individual violators does not supplant DOJ’s continuing efforts to pursue organized schemes to corrupt the process. It is part of a recent expansion of the agency’s efforts to combat election crime that includes: (1) more aggressive pursuit of criminal campaign finance violations (not covered by EAC’s study); (2) exploration of new avenues to prosecute voter suppression schemes (e.g.; the NH phone bank blocking case); (3) better training of U.S. attorneys and FBI agents in the recognition, investigation and prosecution of election offenses; (4) efforts to improve
coordination with state and local law enforcement agencies; and (5) press conferences and public announcements before federal elections to publicize how the public can report election crimes. Donsanto provided information on much of these efforts either during the interview or by supplying case lists and training information on the day of the interview.

I hope you will reconsider revising the paragraph at issue.

Peggy Sims
Election Research Specialist
U.S. Election Assistance Commission

"Tova Wang" <wang@tcf.org>

Hi Peg,

Job and I have discussed this matter and agree on our response to it.

Presumably the paragraph you are concerned about is the following:

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 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.

Neither of us thinks this passage says that the Department has stopped pursuing patterns, as you suggested, and we maintain that this is what Mr. Donsanto said to us in the interview. If Mr. Donsanto wants to object, perhaps he can write a letter or something to that effect that could be part of the record.

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

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

Click here to receive our weekly e-mail updates.
Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM

Peggy:

Still no travel funds. Please see what you can fund out on Monday. At this point this is late.

Job

Further comment from Tova. --- Peggy

Also, I maintain that a reasonable solution to this is to allow Donsanto and/or any of the commissioners who desire to do so to provide a statement that would be included in the report and in the record.

----- Original Message ----- 
From: <wang@tcf.org>
To: <psims@eac.gov>; "Job Serebrov" <serebrov@sbcglobal.net>
Cc: "Tova Wang" <wang@tcf.org>
Sent: Friday, June 30, 2006 9:42 PM
Subject: Re: Various

> That would be great on the contract.
> 
> If the interview is "edited" as you put it, I will be very, very uncomfortable, as I believe Job would be as well. I know you don't want to spend anymore time on this, but I consider it a rather important issue,
and I think Joe does too. I would be happy to talk to you and Tom and any of the commissioners about this further if that would be helpful. I am available by cell over the next four days and in the office all next week.

Thanks for the updated invoice stuff. Happy 4th.

Tova

----- Original Message -----
From: <psims@eac.gov>
To: "Job Serebrov"
Cc: "Tova Andrea Wang" <wang@tcf.org>
Sent: Friday, June 30, 2006 6:41 PM
Subject: Re: Various

Actually, the Donsanto interview was the only one I did attend, but I agree the issue is taking up too much of your time. I just wanted you to be forewarned that the paragraph has already raised red flags in DC of and is likely to result in an edit. Enough said about that.

I am concerned about the number of hours left for this project. If you and Tova both agree, I'll see if our Contracting Officer will approve a contract mod to provide for some additional hours and money to incorporate comments received on the report and other efforts that fall within the tasks specified in the current contract. We won't get 60 thou, but there might be a little year end money we can use to finish this off properly.

Peg

--------------------------
Sent from my BlackBerry Wireless Handheld

----- Original Message -----
From: "Job Serebrov"
Sent: 06/30/2006 05:58 PM
To: psims@eac.gov; wang@tcf.org
Subject: Various

Peg:

I had to take time off this afternoon to handle some issues. Did you get an answer as to my travel reimbursement?

I spoke to Tova about the Donsanto issue. We both agree what we heard during the interview. We also agree that this is taking up too much time (of which we have so little left) and is a minor part of one interview which makes up one of thirty interviews. I feel the same as Tova, the Commission was not in on the interview and thus do not know what was said and we are not giving those interviewed the opportunity, especially given how long ago the interviews were, to object. Frankly, if the Commission wants to give us another sixty hours each we can call all of our interviewees, give them the review and ask for comments. In any case, we can't include comments from other interviews with, or lectures by person interviewed, outside of our interview with that
person. We simply can't afford to single out one statement in one interview that there is a disagreement on. Finally, I don't read the paragraph as you do---I remember what was said---the paragraph clearly does not imply an abandonment of other DOJ electoral investigations.

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM -----
Margaret Sims/EAC/GOV
07/03/2006 11:12 AM
To Bola Olu/EAC/GOV
cc
Subject Fw: Travel Funds

Can you please find out where GSA is with this reimbursement? Thanks. --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 07/03/2006 11:12 AM -----
"Job Secretary"
07/02/2006 09:34 AM
To psims@eac.gov
cc
Subject Travel Funds

Peggy:

Still no travel funds. Please see what you can fund out on Monday. At this point this is late.

Job

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM -----
Bola Olu/EAC/GOV
07/03/2006 11:57 AM
To Margaret Sims/EAC/GOV@EAC
cc
Subject Re: Fw: Travel Funds
I am assuming you are referring to the 6/9/06 payment in the amount of $1,200.03. I checked with Finance and the payout date is today.

Bola Olu  
Financial Administrative Specialist  
United States Election Assistance Commission  
1225 New York Avenue N.W., Suite - 1100  
Washington, DC 20005  
P:202-566-3124  
F:202/566-3127  
http://www.eac.gov/  

"Integrity - Treat everyone with the same principle, be loyal to those who are not present"  
Margaret Sims/EAC/GOV  

Can you please find out where GSA is with this reimbursement? Thanks. --- Peggy  

--- Forwarded by Margaret Sims/EAC/GOV on 07/03/2006 11:12 AM ---  
"Job Serebrov"  
07/02/2006 09:34 AM  
To psims@eac.gov  
cc  
Subject Travel Funds  

Peggy:  
Still no travel funds. Please see what you can fund out on Monday. At this point this is late.  
Job  

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM ---  
Margaret Sims/EAC/GOV  
07/03/2006 12:51 PM  
To Job Serebrov  
cc  
Subject Payments for Personal Services
I may have forgotten to send this summary of payments for personal services to you. If I didn't, here it is again. --- Peggy

Most of the Commissioners and Tom will be out of the office for the next two weeks to attend the IACREOT, NASS, and NASED summer conferences. I'll let Tom know you want to talk with him when I see him at the airport tomorrow. He may decide to call from out of town. --- Peggy

That would be great on the contract.

If the interview is "edited" as you put it, I will be very, very uncomfortable, as I believe Job would be as well. I know you don't want to spend anymore time on this, but I consider it a rather important issue, and I think Job does too. I would be happy to talk to you and Tom and any of the commissioners about this further if that would be helpful. I am available by cell over the next four days and in the office all next week.

Thanks for the updated invoice stuff. Happy 4th.

Tova
I am concerned about the number of hours left for this project. If you and Tova both agree, I'll see if our Contracting Officer will approve a contract mod to provide for some additional hours and money to incorporate comments received on the report and other efforts that fall within the tasks specified in the current contract. We won't get 60 thou, but there might be a little year end money we can use to finish this off properly.

Peg

Sent from my BlackBerry Wireless Handheld

----- Original Message ----- 
From: "Job Serebrov"
Sent: 06/30/2006 05:58 PM
To: psims@eac.gov; wang@tcf.org
Subject: Various

Peg:

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Job
Peg:

I still have not received the travel funds. This is causing a large financial problem. I don't know what is with these people but it is obvious my bank has not received it and I doubt it was sent. Please find out what is going on.

Job

----- Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, July 03, 2006 10:30 AM
To: wang@tcf.org
Subject: RE: Estimated Additional Hours Needed

I think I've already gone over my hours. Let me know when I submit my invoice. If I have, I'll just reduce them on paper. Thanks.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, July 03, 2006 10:30 AM
To: wang@tcf.org
Subject: RE: Estimated Additional Hours Needed
We'll have to guesstimate. It is likely that we will receive some comments and questions from the Commissioners and a number of comments from the boards. We could do the modification a little later, but we have to do it before the end of August to take advantage of year-end funds. Basically, the sooner we can figure this out, the better chance we have of using some of the year-end money for this project, before it is taken for something else. We have no guaranties that funds will be available in the next fiscal year. --- Peggy

"Tova Wang" <wang@tcf.org>
07/03/2006 11:13 AM
To psims@eac.gov
cc
Subject RE: Estimated Additional Hours Needed

Doesn't it really depend on what the Commission comes back to us with? Its kind of hard to estimate before knowing what they're going to want.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, Jul 03 2006 10:11 AM
To: wang@tcf.org, twilkey@eac.gov
Cc: psims@eac.gov
Subject: Estimated Additional Hours Needed

Tova and Job:

I don't have the authority to modify contracts, but Tom Wilkey does. In order to help Tom determine how many additional hours (and dollars) should be added to your personal services contracts, I'll need an estimate from the two of you for the number of additional hours required to complete the final report (taking into account revisions that may be needed to address questions and comments submitted by the Commissioners and the EAC Standards Board and Board of Advisors). Please note that we cannot add any tasks to the existing contract, but we can account for additional hours required to complete the final report.

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
e-mail: psims@eac.gov

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM -----

00505
I thought I emailed an account of your hours used. Just in case I didn't, here it is again.

Wang Payment Tracking.xls

--- Original Message ---
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, July 03, 2006 10:30 AM
To: wang@tcf.org
Subject: RE: Estimated Additional Hours Needed

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Doesn't it really depend on what the Commission comes back to us with? It's kind of hard to estimate before knowing what they're going to want.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, July 03, 2006 10:11 AM
To: wang@tcf.org; job@tcf.org
Cc: twilkey@eac.gov
Subject: Estimated Additional Hours Needed

Tova and Job:

I don't have the authority to modify contracts, but Tom Wilkey does. In order to help Tom determine how many additional hours (and dollars) should be added to your personal services contracts, I'll need an estimate from the two of you for the number of additional hours required to complete the final report (taking into account revisions that may be needed to address questions and comments submitted by the Commissioners and the EAC Standards Board and Board of Advisors). Please note that we cannot add any tasks to the existing contract, but we can account for additional hours required to complete the final report.

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

Peg:

My travel funds finally came in to my bank.

Job

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM -----
Subject RE: Estimated Additional Hours Needed

Doesn't it really depend on what the Commission comes back to us with? It's kind of hard to estimate before knowing what they're going to want.

----- Original Message-----
From: psims@eac.gov 
Sent: Monday, July 03, 2006 10:11 AM
To: wang@tcf.org; serebrov@sbcglobal.net
Cc: twilkey@eac.gov
Subject: Estimated Additional Hours Needed

Tova and Job:

I don't have the authority to modify contracts, but Tom Wilkey does. In order to help Tom determine how many additional hours (and dollars) should be added to your personal services contracts, I'll need an estimate from the two of you for the number of additional hours required to complete the final report (taking into account revisions that may be needed to address questions and comments submitted by the Commissioners and the EAC Standards Board and Board of Advisors). Please note that we cannot add any tasks to the existing contract, but we can account for additional hours required to complete the final report.

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e-mail: psims@eac.gov

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM -----

It would be great if someone there could work on cleaning it up. Let us know. Thanks.

----- Original Message -----
From: psims@eac.gov
To: wang@tcf.org
Cc: 
Sent: Friday, June 30, 2006 5:25 PM
Subject: Re: FW: methodology
Will it be possible for you to extract the excerpt for inclusion in the report? Thanks.

-----Original Message-----
From: Job Serebrov [mailto:
Sent: Wednesday, June 28, 2006 5:40 PM
To: Tova Wang; psims@eac.gov
Subject: Re: methodology

Agreed

--- Tova Wang <wang@tcf.org> wrote:

> As you may recall, the working group expressed
> interest in the risk analysis
> method. The recent report by the Brennan Center on
> voting machines employs
> this methodology. If you look at pp. [removed] of the [removed] attached, it provides a
> potential model. I think it might be worth
> including this as an appendix or
> footnote in the methodology section. Please let me
> know what you think.
> Tova
> Tova Andrea Wang
> Democracy Fellow
> The Century Foundation
> 41 East 70th Street - New York, NY 10021
> phone: 212-452-7704, fax: 212-535-7534
> www.tcf.org, for the latest news,
> analysis, opinions, and events.
--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM ---

Margaret Sims/EAC/GOV
07/03/2006 11:13 AM
To "Job Serebrov"
cc
Subject Re: Travel Funds

I have asked our finance folks to check with GSA. I will let you know when I receive the answer. --- Peggy

"Job Serebrov"
07/02/2006 09:34 AM
To psims@eac.gov
cc
Subject Travel Funds

Peggy:

Still no travel funds. Please see what you can fund out on Monday. At this point this is late.

Job

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM ---

Margaret Sims/EAC/GOV
07/03/2006 11:11 AM
To Tova Andrea Wang, Job Serebrov
cc twilkey@eac.gov
Subject Estimated Additional Hours Needed

Tova and Job:
I don't have the authority to modify contracts, but Tom Wilkey does. In order to help Tom determine how many additional hours (and dollars) should be added to your personal services contracts, I'll need an estimate from the two of you for the number of additional hours required to complete the final report (taking into account revisions that may be needed to address questions and comments submitted by the Commissioners and the EAC Standards Board and Board of Advisors). Please note that we cannot add any tasks to the existing contract, but we can account for additional hours required to complete the final report.

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email: psims@eac.gov  

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM -------

Margaret Sims/EAC/GOV  
07/11/2006 12:05 PM  
To Juliet E. Thompson-Hodgkins/EAC/GOV  
cc  
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  
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>
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 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

-----------------------------
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
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.
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 consolidated draft of the final report? We can determine what clarifications or corrections are necessary at that time.

Peg

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
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Peg

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

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM -----

Margaret Sims/EAC/GOV
07/03/2006 11:38 AM
To Devon Romig
cc
Subject Fw: methodology

Please edit the attached Word document to remove the returns at the end of each line that are not needed, then send it to Tova and Job. Thanks! --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 07/03/2006 11:37 AM -----

Margaret Sims/EAC/GOV
06/30/2006 05:25 PM
To "Tova Wang"<wang@tcf.org>@GSAEXTERNAL
cc serebrov@sbcglobal.net
Subject Re: FW: methodology
The attached is the text extracted from pages 8-19 and the Attachment C referenced within the text. The formatting is still a little weird. Can you work with this, or do I need to play with it some more? --- Peggy

--- Original Message ---
From: Job Serebrov [mailto:]
Sent: Wednesday, June 28, 2006 5:40 PM
To: Tova Wang; psims@eac.gov
Subject: Re: methodology

Agreed

--- Tova Wang <wang@tcf.org> wrote:

> As you may recall, the working group expressed interest in the risk analysis method. The recent report by the Brennan Center on voting machines employs this methodology. If you look at pp. 8-19 of the attached, it provides a potential model. I think it might be worth including this as an appendix or footnote in the methodology section. Please let me know what you think.
> Tova
> Tova Andrea Wang
> Democracy Fellow
> The Century Foundation
> 41 East 70th Street - New York, NY 10021
> phone: 212-452-7704 fax: 212-535-7534
> www.tcf.org, for the latest news, analysis, opinions, and events.
>
Tova:
If you have used up all of your remaining hours, you need to stop work until we have the contract modification in place that provides for more hours.
Peggy

------------------------
Sent from my BlackBerry Wireless Handheld

Also, I maintain that a reasonable solution to this is to allow Donsanto and/or any of the commissioners who desire to do so to provide a statement that would be included in the report and in the record.

---- Original Message ----
From: <wang@tcf.org>
To: <psims@eac.gov>; "Job Serebrov" <serebrov@sbcglobal.net>
Cc: "Tova Wang" <wang@tcf.org>
Sent: Friday, June 30, 2006 9:42 PM
Subject: Re: Various

> That would be great on the contract.
>
> If the interview is "edited" as you put it, I will be very, very
> uncomfortable, as I believe Job would be as well. I know you don't want
> to spend anymore time on this, but I consider it a rather important issue,
> and I think Job does too. I would be happy to talk to you and Tom and any
> of the commissioners about this further if that would be helpful. I am
> available by cell over the next four days and in the office all next week.
Thanks for the updated invoice stuff. Happy 4th.

Tova

----- Original Message -----
From: <psims@eac.gov>
To: "Job Serebrov"
Cc: "Tova Andrea Wang" <wang@tcf.org>
Sent: Friday, June 30, 2006 6:41 PM
Subject: Re: Various

>> Actually, the Donsanto interview was the only one I did attend, but I
>> agree the issue is taking up too much of your time. I just wanted you to
>> be forewarned that the paragraph has already raised red flags in DC of and
>> is likely to result in an edit. Enough said about that.
>>
>> I am concerned about the number of hours left for this project. If you
>> and Tova both agree, I'll see if our Contracting Officer will approve a
>> contract mod to provide for some additional hours and money to
>> incorporate comments received on the report and other efforts that fall
>> within the tasks specified in the current contract. We won't get 60
>> thou, but there might be a little year end money we can use to finish
>> this off properly.
>> Peg
>>
>> --------------------------
>> Sent from my BlackBerry Wireless Handheld
>>
>> ----- Original Message ----- 
From: "Job Serebrov"
Sent: 06/30/2006 05:58 PM
To: psims@eac.gov; wang@tcf.org
Subject: Various

Peg:

I had to take time off this afternoon to handle some issues. Did you get an answer as to my travel reimbursement?

I spoke to Tova about the Donsanto issue. We both agree about what we heard during the interview. We also agree that this is taking up too much time (of which we have so little left) and is a minor part of one interview which makes up one onethird interviews. I feel the same as Tova, the Commission was not in on the interview and thus do not know what was said and we are not giving those interviewed the opportunity, especially given how long ago the interviews were, to object. Frankly, if the Commission wants to give us another sixty hours each we can call all of our interviewees, give them the review and ask for comments. In any case, we can't include comments from other interviews with, or lectures by person interviewed, outside of our interview with that person. We simply can't afford to single out one statement in one interview that there is a disagreement on. Finally, I don't read the paragraph
>> as you do---I remember what was said---the paragraph >> clearly does not imply an abandonment of other DOJ >> electoral investigations.

---- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:16 PM ----
Margaret Sims/EAC/GOV
07/03/2006 12:40 PM
To: Serebrov
cc:
Subject: Travel Reimbursement

GSA reports that a pay out of $1,200.03 was made today. --- Peggy
---- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:16 PM ----
Margaret Sims/EAC/GOV
06/30/2006 05:25 PM
To: "Tova Wang" <wang@tcf.org>@GSAEXTERNAL
cc: [redacted]
Subject: Re: FW: methodology

The attached is the text extracted from pages 8-19 and the Attachment C referenced within the text. The formatting is still a little weird. Can you work with this, or do I need to play with it some more? --- Peggy

Risk Analysis Methodology-Brennan Center excerpt.doc

"Tova Wang" <wang@tcf.org>

"Tova Wang" <wang@tcf.org>
06/29/2006 12:07 PM
To: psims@eac.gov
cc:
Subject: FW: methodology

Will it be possible for you to extract the excerpt for inclusion in the report? Thanks.

-----Original Message-----
From: Job Serebrov [redacted]
Sent: Wednesday, June 28, 2006 5:40 PM
To: Tova Wang; psims@eac.gov
Subject: Re: methodology

Agreed

--- Tova Wang <wang@tcf.org> wrote:

> As you may recall, the working group expressed interest in the risk analysis method. The recent report by the Brennan Center on voting machines employs this methodology. If you look at pp. 8-19 of the attached, it provides a potential model. I think it might be worth including this as an appendix or footnote in the methodology section. Please let me know what you think.

> Tova

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

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:16 PM -----
Margaret Sims/EAC/GOV
07/03/2006 11:04 AM

To: “Tova Wang”<wang@tcf.org> @GSAEXTERNAL

cc: [redacted]

Subject: Re: final report

Once is enough. You don't need to resend. --- Peggy

"Tova Wang" <wang@tcf.org>

"Tova Wang"
<wang@tcf.org> To psims@eac.gov
07/03/2006 09:10 AM
Subject final report

Peg, We don't need to re-send you all of the material that we gave you to provide to the working group for the final report, eg the individual interviews, research summaries, nexis and case charts, right? Thanks. Happy 4th. Tova

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

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

Click here to receive our weekly e-mail updates.

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:16 PM ----- 

"Job Serebrov" To psims@eac.gov, wang@tcf.org
07/03/2006 10:14 PM
Subject Hrs

Peg:

It seems to Tova and me that somewhere between 30 and 40 for each of us would be safe (having learned from not asking for enough hours).

Job

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:16 PM ----- 

"Job Serebrov" To psims@eac.gov
07/05/2006 07:19 PM
Subject Re: Travel Reimbursement

No, its Bank of America. I just checked again and its
not there. If it does not appear by morning I will need you to see what is going on.

--- psims@eac.gov wrote:

> They usually send it electronically. Could your bank have failed to post it due to the holiday? Does your bank tend to float deposits for a day or two?  
> Peggy

> --------------------------
> Sent from my BlackBerry Wireless Handheld

> ----- Original Message -----
> From: "Job Serebrov" <job@eaglobal.net>
> Sent: 07/05/2006 08:13 AM
> To: psims@eac.gov
> Subject: Re: Travel Reimbursement

> Peg:

> I checked my account this morning (July 5th) and this still has not been paid. Did GSA mail it?

> Job

> --- psims@eac.gov wrote:

> > GSA reports that a pay out of $1,200.03 was made today. --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:16 PM ---

Margaret Sims/EAC/GOV

To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL

To: "Tova Wang" <wang@tcf.org>@GSAEXTERNAL

cc

Subject RE: Estimated Additional Hours Needed

We'll have to guesstimate. It is likely that we will receive some comments and questions from the Commissioners and a number of comments from the boards. We could do the modification a little later, but we have to do it before the end of August to take advantage of year-end funds. Basically, the sooner we can figure this out, the better chance we have of using some of the year-end money for this project, before it is taken for something else. We have no guaranties that funds will be available in the next fiscal year. --- Peggy

"Tova Wang":<wang@tcf.org>
Doesn't it really depend on what the Commission comes back to us with? Its kind of hard to estimate before knowing what they're going to want.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, July 03, 2006 10:11 AM
To: wang@tcf.org; twilkey@eac.gov
Cc: 
Subject: Estimated Additional Hours Needed

Tova and Job:

I don't have the authority to modify contracts, but Tom Wilkey does. In order to help Tom determine how many additional hours (and dollars) should be added to your personal services contracts, I'll need an estimate from the two of you for the number of additional hours required to complete the final report (taking into account revisions that may be needed to address questions and comments submitted by the Commissioners and the EAC Standards Board and Board of Advisors). Please note that we cannot add any tasks to the existing contract, but we can account for additional hours required to complete the final report.

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

Peg:

I need to move our call to next Monday at 7 pm EST.
What is the situation with the extra hours?
I've asked Devon to do it. She can get it to you faster than I. --- Peggy

"Tova Wang" <wang@tcf.org>

The excess returns would be a great start, and then I can do the rest. Thanks a lot.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, July 03, 2006 10:14 AM
To: wang@tcf.org
Cc: 
Subject: Re: FW: methodology

Do you just need to have the excess returns removed, or do you think it needs other clean up as well? --- Peggy

wang@tcf.org
07/01/2006 05:30
PM

To: psims@eac.gov
c

Re: FW: methodology

Subject
suggest accompany the information we provide. Also enclosed would be the resolutions passed by both entities. Please let me know if the letter meets your approval. (The letter would be from Tom.)

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 to receive a copy of these reports. If this request is denied, please provide an explanation as to why.

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

www.eac.gov brennen center letter.doc
profile case against its secretary of state who took bribes from voting equipment vendors in exchange for buying their machines). This stuff is criminal, but it does not involve corruption of them electoral process itself.

Also, some local prosecutors who do enforce the laws dealing with particularly vote buying - - chose to prosecute the voters for selling their votes rather than the corrupt political operatives who buy the votes. Many times this is simply because slamming the voter rather than the corrupt pols is easier, quicker and does not entangle the prosecutor in the caldron of local politics. In other instances it is more sinister: I am aware of several instances where local prosecutors tried to charge voters whose names surfaced as people whose votes locally prominent pols had been bought in order to silence them in the federal case. Federally, we usually treat the voters as victims and go after those who tried to purchase their birthright. In one case in Western North Carolina, the target of our case was a local DA. When our indictment against him was returned it named the voters whose votes he was being charged with having bought (we try to avoid this now!). His first act of defense was to charge all these voters with selling their votes under N.C. law. We had to intercede for him - - through the U.S. Attorney at that time - - with the N.C. Governor to pardon these voters so that they could testify concerning the material facts without incriminating themselves.

My point here is this:

Even if we can get some State stats, since the State concept of "election crime" and ours is usually different, and since state prosecutors often approach this type of case from an entirely different perspective than we do at the federal level, State stats will likely have minimal value to substantiating the thesis we are trying to advance: that local law enforcement in the election crime area is not adequate.

----- Message from psims@eac.gov on Tue, 22 Aug 2006 14:09:06 -0400 -----

To: "Donsanto, Craig" <Craig.Donsanto@crm.usdoj.gov>
Subject: RE: Does EAC have access to stats on --

We don’t have a summary in numbers. We just have a summary of cases, some of which do not appear to reach the level of election fraud, and the charts of newspaper articles, some of which only contain allegations and some of which report convictions. These charts were on the CD I sent you before the Working Group meeting. Unfortunately, we have a long way to go before we have what I would classify as statistics.

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

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

08/22/2006 01:54 PM
Peggy - - I can take whatever you got!!! What does the data you got show?

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, August 22, 2006 1:53 PM
To: Donsanto, Craig
Subject: Re: Does EAC have access to stats on --

No reliable, comprehensive data --- just the preliminary research results from case law, literature review, and interviews. --- Peggy

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

08/22/2006 12:50 PM
To psims@eac.gov, bhancock@eac.gov
cc "Campbell, Benton" <Benton.Campbell@usdoj.gov>, "Simmons, Nancy"
<Nancy.Simmons@usdoj.gov>
Subj Does EAC have access to stats on --
ct

-- State and local level prosecutions dealing with electoral fraud?

This message was brought to you by Dr. D's fabulous Blackberry!

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 02:25 PM -----

"Tova Wang"
<wang@tcf.org>
10/03/2006 10:41 AM
To "Ambrogi, Adam (Rules)"
.Adam.Ambrogi@rules.senate.gov>, psims@eac.gov
cc
Subject RE: Chapin Survey
Fifth batch attached. More to come. --- Peggy Sims

Please do ask him. Thanks
-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, April 03, 2006 4:14 PM
To: wang@tcf.org
Subject: Fw: DOJ Training Materials

Devon's response is attached. Guess I'll add this to the list of questions going to Donsanto.
---Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/03/2006 05:12 PM -----
Devon E. Romig/EAC/GOV

04/03/2006 04:21 PM

To Margaret Sims/EAC/GOV@EAC
cc
Subject Re: DOJ Training Materials

Peggy,

The sections that you listed below are also empty in our copy. I have attached a copy of the complete table of contents with all of the section that are empty in our copy of the 2004 DOJ training binder.

Thanks,

Devon
Devon:
One of our consultants noted that there are several sections appear to be missing from the 2004 DOJ training binder. She wasn't sure if it is because of what DOJ sent over to EAC or a problem in the photocopying. From what she can see, some of the table of contents is missing and tabs 14, 15, 16, 17, 21, 23 and 26 are all empty. I think we must have provided the T of C because I don't see one in the binder. Can you please retrieve the binder and check this out for me?
Thanks! --- Peggy

Hi Peg,

I will call J.R. on Thursday to run it by him and let you know what he says. As for my availability on Wednesday, April 12, the answer is "yes". Morning is best for me, although I could be available in the afternoon. You choose a time and I will be here.

Thanks,

Tony
Intimidation Working Group

Tony:

Which one do you think would be best? J.R. Perez, as Election Administrator, should have knowledge of voting fraud and voter intimidation in both voter registration and voting. I assume that, though Patricia is the voter registration supervisor, she also would have knowledge of voting fraud and voter intimidation in balloting. Would they be available in May for a meeting of the project working group? Who could best stand up to the DNC and RNC counsels?

On a related matter, would you be available for our consultants to interview you by telephone next Wednesday? If so, let me know a convenient time. I'll confirm the time with the two consultants, Job Serebrov and Tova Wang. Then, I'll get back to you with the toll-free line and pass code you will need to use for the teleconference.

Thanks!

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

"Tony J. Sirvello III" <tjsthree@msn.com>

04/04/2006 02:17 PM 
To "Peggy Sims" <psims@eac.gov>
cc
Subje Fw: Nonpartisan Local Election Official Needed for Voting Fraud/Voter Intimidation Working Group

Good Afternoon Peg,

How about J. R. Perez, Elections Administrator, Guadalupe County or Patricia Benavides, Voting Registration Supervisor, Tarrant County, Texas?

Tony
----- Original Message -----  
From: Helen Jamison  
To: Tony J. Sirvello III  
Sent: Tuesday, April 04, 2006 11:46 AM  
Subject: RE: Nonpartisan Local Election Official Needed for Voting Fraud/Voter Intimidation Working Group  

Dear Tony,  
Unfortunately both Javier and myself have to decline in being members of the working group from Texas. It is a bad time of the year where we have so many elections and would not be able to contribute enough time to doing research of any kind. Please keep us in mind for future meetings.  
Helen Jamison  

----- Original Message -----  
From: Tony J. Sirvello III [mailto: ]  
Sent: Monday, April 03, 2006 1:19 PM  
To: Helen Jamison; Javier Chacon  
Subject: Fw: Nonpartisan Local Election Official Needed for Voting Fraud/Voter Intimidation Working Group  

Helen, Javier,  

Attached is the information from the EAC requesting your services as a member of the working group from Texas. Please let me know in a couple of days if one of you will be able to participate. If you need more information, call me and I will conference in with Peggy Sims, who can give you more details.  

Thanks,  

Tony  

----- Original Message -----  
From: psims@eac.gov  
To:  
Sent: Thursday, March 16, 2006 10:29 AM  
Subject: Nonpartisan Local Election Official Needed for Voting Fraud/Voter Intimidation Working Group  

Tony:  

Thanks for being willing to help me identify a qualified, nonpartisan local election official to serve on our Project Working Group for the preliminary research being conducted on voting fraud and voter intimidation.  

Background
Section 241 of the Help America Vote Act of 2002 requires EAC to conduct research on election administration issues. Among the issues listed in the statute are the development of:

1. nationwide statistics and methods of identifying, deterring, and investigating voting fraud in elections for Federal office [section 241(b)(6)]; and
2. 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.

Preliminary EAC Research

Subsequently, the Commission contracted with two consultants (Tova Wang and Job Serebrov) to:

1. develop a comprehensive description of what constitutes voting fraud and voter intimidation in the context of Federal elections;
2. perform preliminary research on these topics (including Federal and State administrative and case law review), identify related activities of key government agencies and civic and advocacy organizations, and deliver a summary of this research and all source documentation;
3. convene a meeting of a project working group composed of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation, provide the results of the preliminary research to the working group, and record the working group's deliberations; and
4. produce a report to EAC summarizing the findings of the preliminary research effort and working group deliberations that includes recommendations for future EAC action, if any.

The Project Working Group will probably meet only once during this preliminary research effort (probably in late April) to review the consultants research and provide input. Other members of the Working Group are lawyers from advocacy groups and major political parties, two State election officials, and Barry Weinberg, former Deputy Chief of DOJ's Voting Section, Civil Rights Division. Craig Donsanto, Director of DOJ's Election Crimes Branch will serve as a technical advisor to the group.

I really appreciate any help you can offer in identifying a qualified individual to fill the slot on the Working Group that has been reserved for an experienced, nonpartisan local election official.

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
e-mail: psims@eac.gov

"Tony J. Sirvello III" <tjsthree@msn.com>
Good Afternoon Peg,

How about J. R. Perez, Elections Administrator, Guadalupe County or Patricia Benavides, Voting Registration Supervisor, Tarrant County, Texas?

Tony

----- Original Message -----  
From: Helen Jamison  
To: Tony J. Sirvello III  
Sent: Tuesday, April 04, 2006 11:46 AM  
Subject: RE: Nonpartisan Local Election Official Needed for Voting Fraud/Voter Intimidation Working Group

Dear Tony,
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Helen Jamison  
-----Original Message-----  
From: Tony J. Sirvello III [mailto: ]  
Sent: Monday, April 03, 2006 1:19 PM  
To: Helen Jamison; Javier Chacon  
Subject: Fw: Nonpartisan Local Election Official Needed for Voting Fraud/Voter Intimidation Working Group

Helen, Javier,

Attached is the information from the EAC requesting your services as a member of the working group from Texas. Please let me know in a couple of days if one of you will be able to participate. If you need more information, call me and I will conference in with Peggy Sims, who can give you more details.

Thanks,

Tony

----- Original Message -----  
From: psims@eac.gov
To: [Redacted]

Sent: Thursday, March 16, 2006 10:29 AM

Subject: Nonpartisan Local Election Official Needed for Voting Fraud/Voter Intimidation Working Group

Tony:

Thanks for being willing to help me identify a qualified, nonpartisan local election official to serve on our Project Working Group for the preliminary research being conducted on voting fraud and voter intimidation.

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2. methods of identifying, deterring, and investigating methods of voter intimidation [section 241(b)(7)].

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1. develop a comprehensive description of what constitutes voting fraud and voter intimidation in the context of Federal elections;
2. perform preliminary research on these topics (including Federal and State administrative and case law review), identify related activities of key government agencies and civic and advocacy organizations, and deliver a summary of this research and all source documentation;
3. convene a meeting of a project working group composed of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation, provide the results of the preliminary research to the working group, and record the working group's deliberations; and
4. produce a report to EAC summarizing the findings of the preliminary research effort and working group deliberations that includes recommendations for future EAC action, if any.

The Project Working Group will probably meet only once during this preliminary research effort (probably in late April) to review the consultants research and provide input. Other members of the Working Group are lawyers from advocacy groups and major political parties, two State election officials, and Barry Weinberg, former Deputy Chief of DOJ's Voting Section, Civil Rights Division. Craig Donsanto, Director of DOJ's Election Crimes Branch will serve as a technical advisor to the group.

I really appreciate any help you can offer in identifying a qualified individual to fill the slot on the Working Group that has been reserved for an experienced, nonpartisan local election official.

Peggy Sims
Election Research Specialist
U.S. Election Assistance Commission
1225 New York Ave, NW - Ste 1100
Washington, DC 20005
Tony:

How about scheduling the teleconference with our consultants for 10 AM CST/11 AM EST on Wednesday, April 12? --- Peggy

No, except it means pushing everything back, i.e. the final report. I suppose we could, as we discussed, take a week or two off in May and tack it on to June. There's no way we could write a final report in ten days, obviously. That would be fine with me.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, April 04, 2006 8:46 AM
To: Tova Andrea Wang; Job Serebrov
Subject: Project Working Group Meeting

The Chairman and Vice Chairman are interested in attending the meeting. Due to schedule conflicts, they are asking us to look at the week of May 15. Does that pose a problem for either of you? Peggy

---------------
Sent from my BlackBerry Wireless Handheld

----- Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM -----
That's fine, just asking

-----Original Message-----
From: Job Serebrov [mailto:
Sent: Wednesday, April 12, 2006 11:26 AM
To: Tova Wang; psims@eac.gov
Cc: 'Job Serebrov'; 'Nicole Mortellito'
Subject: Re: working group meeting

It was my understanding that the meeting would be on
the 15th or later.

Tova, Peggy is out of the office this week.

--- Tova Wang <wang@tcf.org> wrote:

> I cannot do it on May 5 now. Any update on a date?
> I will be in DC for
> other meetings May 4 - May 7 if that makes any
> difference (EAC would not
> have to pay my transportation if it was on, for
> example, Monday May 8 or
> possibly even the 9th) Thanks.
> 
> Tova Andrea Wang
> Democracy Fellow
> The Century Foundation
> 41 East 70th Street - New York, NY 10021
> phone: 212-452-7704  fax: 212-535-7534
> 
> www.tcf.org, for the latest news,
> analysis, opinions, and events.
> 
> 
> <mailto:join-tcfmain@mailhost.groundspring.org>
> Click here to receive our
> weekly e-mail updates.
> 
> 

----- Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM -----

"Tova Wang"
<wang@tcf.org>
04/11/2006 11:42 AM

To psims@eac.gov, "Job Serebrov"

cc "Nicole Mortellito" <nmortellito@eac.gov>

Subject RE: Kennedy Interview
As I have alerted Nicole, the call is not working. Someone ought to get in touch with Kevin -- I do not have his contact information.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, April 10, 2006 8:45 PM
To: Tova Andrea Wang; Job Serebrov
Subject: Kennedy Interview

It appears that the teleconference with Kevin Kennedy is set for tomorrow, April 11, at 10:30 AM CST/11:30 AM EST. Use the usual phone number and passcode.

If you have trouble connecting, contact Nicole.

Peg

--------------------------
Sent from my BlackBerry Wireless Handheld

----- Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM -----
Nicole Mortellito/CONTRACTOR/EA C/GOV
04/11/2006 11:45 AM

To: "Tova Wang" <wang@tcf.org>@GSAEXTERNAL
cc psims@eac.gov, "Job Serebrov"

Subject: RE: Kennedy Interview

the call is up and running!! you may dial in

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

"Tova Wang" <wang@tcf.org>

04/11/2006 11:42 AM

To psims@eac.gov, "Job Serebrov" <serebrov@sbcglobal.net>
cc
As I have alerted Nicole, the call is not working. Someone ought to get in touch with Kevin -- I do not have his contact information.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, April 10, 2006 8:45 AM
To: Tova Andrea Wang; Job Serebrov
Subject: Kennedy Interview

It appears that the teleconference with Kevin Kennedy is set for tomorrow, April 11, at 10:30 AM CST/11:30 AM EST. Use the usual phone number (866-222-9044) and passcode (62209).

If you have trouble connecting, contact Nicole.

Peg

--------------------------
Sent from my BlackBerry Wireless Handheld

----- Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM -----
Nicole
Mortellito/CONTRACTOR/EA C/GOV
04/10/2006 10:05 AM
To Margaret Sims/EAC/GOV@EAC
cc Subject Re: Teleconference set up

You are set for the 12th at 11am

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
Margaret Sims/EAC/GOV
Nicole:
Could you please help me set up a teleconference for Wednesday, April 12 at 11 AM EST (for 1 hour)?
Please send me confirmation.
Peg

Sent from my BlackBerry Wireless Handheld

--- Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM ---
"Weinberg and Utrecht" <weinutr@verizon.net> 
04/04/2006 08:14 AM 
To: psims@eac.gov 
Subject: Re: Voting Fraud-Voter Intimidation Project

Peggy:
May looks pretty good right now. I will not be available May 1, or in the morning (before 12:30) on May 4 or May 11, or in the afternoon on May 10.
Barry

----- Original Message -----
From: psims@eac.gov
To: weinutr@verizon.net
Sent: Monday, April 03, 2006 3:15 PM
Subject: Voting Fraud-Voter Intimidation Project

Hi, Barry:

I'm trying to arrange a meeting of the Working Group for EAC's Voting Fraud-Voter Intimidation project. Would you please look at your schedule and let me know if there are any days during the first 2 weeks of May that you would NOT be available?

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
I didn't have anything specific in mind yet, especially as I have not finished going through the voluminous documentation, but I will let you know.

Tova and Job:

Craig Donsanto responds that it is not possible for him to assess the level of public attribution that would be appropriate without seeing the substantive stuff in context. He does not foresee a problem; but recommends that I provide him with the draft text. He will review it to ensure we are not disclosing things we shouldn't disclose.

Therefore, please provide the draft text to me ASAP, so that I can forward it to him for review. I suspect he will provide me with a prompt response, which I will forward to you.

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
e-mail: psims@eac.gov

That time is fine. A half hour earlier would be better. I also have a 12 CDT meeting.

------Original Message------
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Friday, April 07, 2006 12:27 PM

That time is fine. A half hour earlier would be better. I also have a 12 CDT meeting.

------Original Message------
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Friday, April 07, 2006 12:27 PM
To: Kevin Kennedy  
Subject: Interview

Kevin:
I'm just following up on my request for your availability to be interviewed by our consultants for our voting fraud/voter intimidation project. Are you available Tuesday, April 11 at 11 AM CST?

Peggy Sims

--------------------------
Sent from my BlackBerry Wireless Handheld

----- Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM -----
Margaret Sims/EAC/GOV  
04/03/2006 05:11 PM

To: "Job Serebrov"  
cc

Subject: Re: Working Group Contact Info

Thanks, Job! --- Peggy

"Job Serebrov" <serebrov@sbcglobal.net>

"Job Serebrov"  
04/03/2006 04:57 PM

To: psims@eac.gov
cc

Subject: Re: Working Group Contact Info

Norcross's assistant is Maria Rivers:  
Rivers@BlankRome.com

Rokita's assistant is:

Amy Miller  
Executive Assistant  
Indiana Secretary of State Todd Rokita  
317-232-6536  
assistant@sos.in.gov

--- psims@eac.gov wrote:
> Please review the attached and let me know of any corrections that should be made. Thanks! --- Peggy
> 
>
Let's discuss this in 10 minutes.

--- psims@eac.gov wrote:

> Tova and Job:
> 
> Craig Donsanto responds that it is not possible for
> him to assess the
> level of public attribution that would be
> appropriate without seeing the
> substantive stuff in context. He does not foresee a
> problem; but
> recommends that I provide him with the draft text.
> He will review it to
> ensure we are not disclosing things we shouldn't
disclose.
> 
> Therefore, please provide the draft text to me ASAP,
> so that I can forward
> it to him for review. I suspect he will provide me
> with a prompt
> response, which I will forward to you.
> 
> Peggy Sims
> Election Research Specialist
> U.S. Election Assistance Commission
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> Phone: 866-747-1471 (toll free) or 202-566-3120
> (direct)
> Fax: 202-566-3127
> email: psims@eac.gov
> 

----- Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM -----
Hi Peg,

Attached is a draft of an agenda for the working group. Let us know what you think. Thanks. Tova

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

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

Click here to receive our weekly e-mail updates.

--- Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM ---

"Job Serebrov"

04/04/2006 12:35 PM
To psims@eac.gov, "Tova Andrea Wang" <wang@tcf.org>
cc
Subject Re: Project Working Group Meeting

Peggy:

Here is my situation. I am to go to work full time for the Governor at some time in June. I just don't know when and because we are having a special session right now, no one can give me any indications as to the date. The special session will last for at least two weeks. However, I had to arrange a job because the contract ends at the end of May. So---all of this said---if, for instance, I go to work for the Governor the first week of June, I will only be able to work on EAC matters after hours at night.

Job

--- psims@eac.gov wrote:

> The Chairman and Vice Chairman are interested in attending the meeting. Due
to schedule conflicts, they are asking us to look at the week of May 15.
> Does that pose a problem for either of you peggy
> 
> --------------------------
> Sent from my BlackBerry Wireless Handheld
> 
>
Sorry, you mean its today. OK, thanks. Tova

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, April 10, 2006 8:45 PM
To: Tova Andrea Wang; Job Serebrov
Subject: Kennedy Interview

It appears that the teleconference with Kevin Kennedy is set for tomorrow, April 11, at 10:30 AM CST/11:30 AM EST. Use the usual phone number and passcode ( ).
If you have trouble connecting, contact Nicole.
Peg

--------------------------
Sent from my BlackBerry Wireless Handheld

Kevin:

Following up on yesterday's conversation, would you be available next Tuesday (4/11) to be interviewed by phone by our consultants on the Voting Fraud-Voter Intimidation research project? The interview is likely to take less than an hour. You pick the time and I'll confirm it with our consultants, Tova Wang and Job Serebrov. Then, I'll send you an email with the toll-free number and pass code that you will need for the teleconference.

EAC is conducting this preliminary research to determine how best to meet HAVA requirements. Section 241 of the Help America Vote Act of 2002 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)].

Please let me know if you have any questions. Thanks.

Peggy Sims
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1225 New York Ave, NW - Ste 1100
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Fax: 202-566-3127
email: psims@eac.gov

----- Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM -----
Margaret Sims/EAC/GOV
04/03/2006 04:33 PM
To Tova Andrea Wang, Job Serebrov
cc
Subject Working Group Contact Info

Please review the attached and let me know of any corrections that should be made. Thanks! --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM -----
Margaret Sims/EAC/GOV
04/03/2006 03:41 PM
To "Donsanto, Craig" <Craig.Donsanto@usdoj.gov>@GSAEXTERNAL
cc
Subject RE: Voting Fraud-Voter Intimidation Project

Thanks, Craig! --- Peggy

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

04/03/2006 03:16 PM
To psims@eac.gov
cc
Subject RE: Voting Fraud-Voter Intimidation Project

Hello Peg!

God willing, I will be here the first two weeks of May.
As for your second question, it is not possible for me to assess the level of public attribution that would be appropriate without seeing the substantive stuff in context. I do not foresee a problem. So, I recommend that you get me a draft text and I will review it to ensure we are not disclosing things we shouldn’t disclose.

--- Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM ---

"Tova Wang"
<wang@tcf.org>
04/10/2006 11:04 AM
To psims@eac.gov
cc "Job Serebrov"
Subject small question for Donsanto

Could you please also ask him what the training materials are referring to when they discuss "ballot box stuffing?" Does this mean elections workers add extra votes? Thanks so much. Tova

Tova Andrea Wang
Craig is on the list because the Commission requested he serve as a technical advisory to the project. Although not a member of the project working group, I do need to check his availability for the meeting.

I tried to tell you on the phone that we still are trying to confirm the El Paso County, TX election official for the working group. (Several attempts have been made to contact the Election Director, but she has been out of town.) If we can't get her, we will try for her deputy (also Hispanic). Once I have a response that one of them is willing to serve, I'll update the contact info table and see if I can't get a bio for you two to review. --- Peggy

Why is Craig Donsanto on the list? And what happened about the local election official? Thanks. Tova

----- Original Message ----- 
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, April 03, 2006 3:33 PM
To: wang@tcf.org
Subject: Working Group Contact Info

Please review the attached and let me know of any corrections that should be made. Thanks! --- Peg
That gives us no time between interviews though, right? We've never been able to really limit it to 30 minutes.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]  
Sent: Monday, April 10, 2006 8:45 PM 
To: Tova Andrea Wang; Job Serebrov  
Subject: Kennedy Interview

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If you have trouble connecting, contact Nicole.

Peg

--------------------------
Sent from my BlackBerry Wireless Handheld

----- Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM ----

To: psims@eac.gov, wang@icf.org  
Subject: Re: Upcoming Interviews-DOJ Info

Peggy:
The interviews are ok with me.

Tova:
I think I should write the review on the IFES white paper instead of the red book.

Job

--- psims@eac.gov wrote:
> Hi, Job and Tova:
Tony Sirvello (former election director for Harris County, TX and current Executive Director of the International Association of Clerks, Recorders, Election Officials and Treasurers) can make himself available for an interview next Wednesday morning (4/12). He is on CST. Is there a time that works well for the two of you? How about 10 AM CST/11 AM EST? I saw Kevin Kennedy at a meeting in our office this past Tuesday. We are trying to set up an interview with him next Tuesday (4/11).

I asked Donsanto about an updated version of his Prosecution of Election Offenses. He responded that it is at the printers and will not be available for a couple of months. In the interim, he referred me to the white paper he did for IFES, which I have attached. He said that the white paper includes the same information on the prosecution of election fraud that will be in the book. --- Peggy

---

Hi Peg,

I've just made it through the 2004 binder of materials and have two questions. First, I understand that these materials are confidential, but may we refer to guidance provided in them in our report? Otherwise they are of not much use to us. There's not that much in it that would add to what Donsanto and Tanner told us, but there are a few issues raised that I believe might be germane.

Second, there are several sections evidently missing from the 2004 binder and I'm not sure if that's because of what Donsanto sent over or a problem in the photocopying. From what I can see, some of the table of contents is missing and tabs 14, 15, 16, 17, 21, 23 and 26 are all empty. Can you please look into this?

Thanks and I look forward to speaking to you tomorrow. Tova

--- Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM ---

Margaret Sims/EAC/GOV
Tony:

Which one do you think would be best? J.R. Perez, as Election Administrator, should have knowledge of voting fraud and voter intimidation in both voter registration and voting. I assume that, though Patricia is the voter registration supervisor, she also would have knowledge of voting fraud and voter intimidation in balloting. Would they be available in May for a meeting of the project working group? Who could best stand up to the DNC and RNC counsels?

On a related matter, would you be available for our consultants to interview you by telephone next Wednesday? If so, let me know a convenient time. I'll confirm the time with the two consultants, Job Serebrov and Tova Wang. Then, I'll get back to you with the toll-free line and pass code you will need to use for the teleconference.

Thanks!

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

Good Afternoon Peg,

How about J. R. Perez, Elections Administrator, Guadalupe County or Patricia Benavides, Voting Registration Supervisor, Tarrant County, Texas?

Tony
Dear Tony,

Unfortunately both Javier and myself have to decline in being members of the working group from Texas. It is a bad time of the year where we have so many elections and would not be able to contribute enough time to doing research of any kind. Please keep us in mind for future meetings.

Helen Jamison

-----Original Message-----
From: Tony J. Sirvello III [mailto:]
Sent: Monday, April 03, 2006 1:19 PM
To: Helen Jamison; Javier Chacon
Subject: Fw: Nonpartisan Local Election Official Needed for Voting Fraud/Voter Intimidation Working Group

Helen, Javier,

Attached is the information from the EAC requesting your services as a member of the working group from Texas. Please let me know in a couple of days if one of you will be able to participate. If you need more information, call me and I will conference in with Peggy Sims, who can give you more details.

Thanks,

Tony

----- Original Message -----
From: psims@eac.gov
To: 
Sent: Thursday, March 16, 2006 10:29 AM
Subject: Nonpartisan Local Election Official Needed for Voting Fraud/Voter Intimidation Working Group

Tony:

Thanks for being willing to help me identify a qualified, nonpartisan local election official to serve on our Project Working Group for the preliminary research being conducted on voting fraud and voter intimidation.

Background

Section 241 of the Help America Vote Act of 2002 requires EAC to conduct research on election administration issues. Among the issues listed in the statute are the development of:
1. nationwide statistics and methods of identifying, deterring, and investigating voting fraud in elections for Federal office [section 241(b)(6)]; and
2. 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.

Preliminary EAC Research

Subsequently, the Commission contracted with two consultants (Tova Wang and Job Serebrov) to:

1. develop a comprehensive description of what constitutes voting fraud and voter intimidation in the context of Federal elections;
2. perform preliminary research on these topics (including Federal and State administrative and case law review), identify related activities of key government agencies and civic and advocacy organizations, and deliver a summary of this research and all source documentation;
3. convene a meeting of a project working group composed of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation, provide the results of the preliminary research to the working group, and record the working group's deliberations; and
4. produce a report to EAC summarizing the findings of the preliminary research effort and working group deliberations that includes recommendations for future EAC action, if any.

The Project Working Group will probably meet only once during this preliminary research effort (probably in late April) to review the consultants research and provide input. Other members of the Working Group are lawyers from advocacy groups and major political parties, two State election officials, and Barry Weinberg, former Deputy Chief of DOJ's Voting Section, Civil Rights Division. Craig Donsanto, Director of DOJ's Election Crimes Branch will serve as a technical advisor to the group.

I really appreciate any help you can offer in identifying a qualified individual to fill the slot on the Working Group that has been reserved for an experienced, nonpartisan local election official.

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

"Tony J. Sirvello III"
04/04/2006 02:17 PM
to Peggy Sims <psims@eac.gov>
cc
subject Fw: Nonpartisan Local Election Official Needed for Voting Fraud/Voter Intimidation Working Group
Good Afternoon Peg,

How about J. R. Perez, Elections Administrator, Guadalupe County or Patricia Benavides, Voting Registration Supervisor, Tarrant County, Texas?

Tony

----- Original Message -----  
From: Helen Jamison  
To: Tony J. Sirvello III  
Sent: Tuesday, April 04, 2006 11:46 AM  
Subject: RE: Nonpartisan Local Election Official Needed for Voting Fraud/Voter Intimidation Working Group

Dear Tony,

Unfortunately both Javier and myself have to decline in being members of the working group from Texas. It is a bad time of the year where we have so many elections and would not be able to contribute enough time to doing research of any kind. Please keep us in mind for future meetings.

Helen Jamison

-----Original Message-----  
From: Tony J. Sirvello III  
Sent: Monday, April 03, 2006 1:19 PM  
To: Helen Jamison; Javier Chacon  
Subject: Fw: Nonpartisan Local Election Official Needed for Voting Fraud/Voter Intimidation Working Group

Helen, Javier,

Attached is the information from the EAC requesting your services as a member of the working group from Texas. Please let me know in a couple of days if one of you will be able to participate. If you need more information, call me and I will conference in with Peggy Sims, who can give you more details.

Thanks,

Tony

----- Original Message -----  
From: psims@eac.gov  
To:  
Sent: Thursday, March 16, 2006 10:29 AM
Subject: Nonpartisan Local Election Official Needed for Voting Fraud/Voter Intimidation Working Group

Tony:

Thanks for being willing to help me identify a qualified, nonpartisan local election official to serve on our Project Working Group for the preliminary research being conducted on voting fraud and voter intimidation.

Background

Section 241 of the Help America Vote Act of 2002 requires EAC to conduct research on election administration issues. Among the issues listed in the statute are the development of:

1. nationwide statistics and methods of identifying, deterring, and investigating voting fraud in elections for Federal office [section 241(b)(6)]; and
2. 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.

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Subsequently, the Commission contracted with two consultants (Tova Wang and Job Serebrov) to:

1. develop a comprehensive description of what constitutes voting fraud and voter intimidation in the context of Federal elections;
2. perform preliminary research on these topics (including Federal and State administrative and case law review), identify related activities of key government agencies and civic and advocacy organizations, and deliver a summary of this research and all source documentation;
3. convene a meeting of a project working group composed of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation, provide the results of the preliminary research to the working group, and record the working group's deliberations; and
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The Project Working Group will probably meet only once during this preliminary research effort (probably in late April) to review the consultants research and provide input. Other members of the Working Group are lawyers from advocacy groups and major political parties, two State election officials, and Barry Weinberg, former Deputy Chief of DOJ's Voting Section, Civil Rights Division. Craig Donsanto, Director of DOJ's Election Crimes Branch will serve as a technical advisor to the group.

I really appreciate any help you can offer in identifying a qualified individual to fill the slot on the Working Group that has been reserved for an experienced, nonpartisan local election official.

Peggy Sims
Election Research Specialist
U.S. Election Assistance Commission
OK, thanks. I can access the IFES web site. That will give the consultants something to work with. --- Peg

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

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

04/05/2006 05:32 PM

To: psims@eac.gov
cc
Subject: Re: Voting Fraud-Voter Intimidation Project

The fraud chapter has been published by IFES as part of their Money and Politics Program. It's on their website. I tweaked the text a bit and presented it in Abjua. The rest of it is regretably not public at present.

--------------------------
Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

-----Original Message-----
From: psims@eac.gov <psims@eac.gov>
To: Donsanto, Craig <Craig.Donsanto@usdoj.gov>
Sent: Wed Apr 05 17:26:12 2006
Subject: Re: Voting Fraud-Voter Intimidation Project

Is there any way to get an advance copy? Our consultants will need to review it before you receive your printed versions. --- Peggy

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

04/05/2006 04:14 PM
To
psims@eac.gov

c

Subject
Re: Voting Fraud-Voter Intimidation Project

The 7th edition is done and on its way to the printer. It is my hope to get it our in a couple months.

Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

-----Original Message-----
From: psims@eac.gov <psims@eac.gov>
To: Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>
Sent: Wed Apr 05 13:05:15 2006
Subject: Voting Fraud-Voter Intimidation Project

Craig:

In reviewing the great materials you gave our consultants, we have not found an updated draft of your famous Prosecution of Election Offenses. Is that available for review? If you have a pdf version, I could pass that on to our consultants (noting any restrictions you may have on use).

Also, we noticed some gaps in the 2004 DOJ training binder. It appears that we are missing the Chris Herren information from Panel 3 and something titled "July 21, 2004" from Panel 4. If these were removed because we should not see them, just let me know.

I also have to check your availability the week of May15. I'm still trying to find a date that everyone will be available for the working group meeting.

Sorry to bug you. Hope all is going well.

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
e-mail: psims@eac.gov
Hi, Barry:

I'm trying to arrange a meeting of the Working Group for EAC's Voting Fraud-Voter Intimidation project. Would you please look at your schedule and let me know if there are any days during the first 2 weeks of May that you would NOT be available?

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
e-mail: psims@eac.gov

I've been trying to schedule an interview (by teleconference) among our two consultants, Tova Wang and Job Serebrov, and an election attorney. I had to leave your name with her assistant, today, just in case she calls back when I am out of the office.

The EAC consultants are available for interviews next week before 4:30 AM EST on Monday (4/10) and in the afternoon on Wednesday (4/12). Email info on any teleconferences scheduled to Job and Tova (wang@tcf.org). Job operates on CST; Tova on EST.

Thanks! --- Peggy

That time is fine for me. Thanks.

----- Original Message -----
Hi, Job and Tova:

Tony Sirvello (former election director for Harris County, TX and current Executive Director of the International Association of Clerks, Recorders, Election Officials and Treasurers) can make himself available for an interview next Wednesday morning (4/12). He is on CST. Is there a time that works well for the two of you? How about 10 AM CST/11 AM EST? I saw Kevin Kennedy at a meeting in our office this past Tuesday. We are trying to set up an interview with him next Tuesday (4/11).

I asked Donsanto about an updated version of his *Prosecution of Election Offenses*. He responded that it is at the printers and will not be available for a couple of months. In the interim, he referred me to the white paper he did for IFES, which I have attached. He said that the white paper includes the same information on the prosecution of election fraud that will be in the book. --- Peggy

Thank you.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]  
Sent: Monday, April 10, 2006 11:02 AM  
To: Kevin Kennedy  
Subject: Re: Interview

I am trying to arrange the teleconference for 10:30 AM CST tomorrow, April 11. Will get back to you once confirmed.  
Peggy

--------------------------
Sent from my BlackBerry Wireless Handheld

----- Original Message -----  
From: "Kennedy, Kevin" [Kevin.Kennedy@seb.state.wi.us]  
Sent: 04/09/2006 11:13 AM  
To: "psims@eac.gov" <psims@eac.gov>  
Subject: RE: Interview

That time is fine. A half hour earlier would be better. I also have a 12 CDT
meeting.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Friday, April 07, 2006 12:27 PM
To: Kevin Kennedy
Subject: Interview

Kevin:
I'm just following up on my request for your availability to be interviewed by our consultants for our voting fraud/voter intimidation project. Are you available Tuesday, April 11 at 11 AM CST?
Peggy Sim

_________________________
Sent from my BlackBerry Wireless Handheld

----- Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM -----
Nicole Mortellito/CONTRACTOR/EA  
C/GOV  
04/11/2006 11:45 AM  
To “Tova Wang” <wang@tcf.org>@GSAEXTERNAL  
cc psims@eac.gov  
Subject conf call is up and running

all dial in info is the same!

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

----- Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM -----
Margaret Sims/EAC/GOV  
04/03/2006 03:18 PM  
To wang@tcf.org@GSAEXTERNAL  
cc serbrov@sbcglobal.net  
Subject Re: doj training materials

Tova:
I'm checking with Craig regarding reference in our report to the DOJ training materials. The 2004 DOJ training materials did not have a table of contents. I think Devon added that to help you find your way
Hi Peg,

I've just made it through the 2004 binder of materials and have two questions. First, I understand that these materials are confidential, but may we refer to guidance provided in them in our report? Otherwise they are of not much use to us. There's not that much in it that would add to what Donsanto and Tanner told us, but there are a few issues raised that I believe might be germane.

Second, there are several sections evidently missing from the 2004 binder and I'm not sure if that's because of what Donsanto sent over or a problem in the photocopying. From what I can see, some of the table of contents is missing and tabs 14, 15, 16, 17, 21, 23 and 26 are all empty. Can you please look into this?

Thanks and I look forward to speaking to you tomorrow. Tova

----- Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM -----

Ms. Wang,

My name is Devon Romig and I am working with Peggy and Edgardo at the EAC. I have completed a travel voucher for you and I need your signature in order to submit the voucher.

If you could please respond with a fax number, I will send you a copy of the voucher.

Let me know if you have any other questions.

Sincerely,

Devon Romig
United States Election Assistance Commission
I just saw what you did. I should be out of hours at the end of May. I believe I will be working for the state in June which will make it difficult to find time to finish and could slow things down but I am not yet sure of that.

--- psims@eac.gov wrote:

> Attached is an updated invoice schedule for the FY 06 contracts for the Voting Fraud/Voter Intimidation project. --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM -----

Margaret Sims/EAC/GOV
04/17/2006 11:48 AM
To Tova Andrea Wang
cc
Subject Interviews

I know you preferred Friday, but Job is not available then. He also said he is not available next week. Do you have any time available this Wednesday? --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/17/2006 11:45 AM -----

"Job Serebrov"  To psims@eac.gov
04/17/2006 11:06 AM
cc
Subject Re: Follow up Donsanto and KY Interviews

I can't do it Friday but Wednesday is ok.

--- psims@eac.gov wrote:

> Tova and Job:
I've passed Tova's request on to Craig.

Also, Sarah Ball Johnson, KY, finally called back to say she would be available Wednesday through Friday this week and next week for the interview. Which day and time is best for you and Job?

--- Peggy

Hi Peg,

Happy Easter!

Would it be possible to talk to Mr. Donsanto about this latest initiative, or somehow get more information? Thanks. Tova

http://www.fbi.gov/page2/april06/electioncrime041406.htm

----- Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM -----

Margaret Sims/EAC/GOV
04/17/2006 10:48 AM

To  Job Serebrov, Tova Andrea Wang
cc

Subject  Invoice Schedule

Attached is an updated invoice schedule for the FY 06 contracts for the Voting Fraud/Voter Intimidation project. --- Peggy

FY06 Contracts Invoice Schedule.xls
That's what I am concerned about. I think we need to end all interviews with Sarah Ball Johnson. With the literature reviews I am finishing, the case write up and the Tova's Nexis research that I need to read, I will have about 45 hours left for the Working Group meeting and final write up.

--- psims@eac.gov wrote:

> I have to check with Conny McCormack to see if things have settled down for her enough so that she would be available. I have had no response to my overtures to Colleen McAndrews' office. I can try again, but I have to be out of town again, from Wednesday through Friday this week, on another research contract and for EAC's public meeting in Seattle. Were you able to get through to Mike McCarthy?
> Please remember to watch your time. We'll need to reserve some of your time for the working group meeting and the subsequent reports. --- Peggy

> "Job Serebrov"
> 04/17/2006 10:17 AM
>
> To
> psims@eac.gov, wang@tcf.org
> cc
>
> Subject
> Re: Follow up Donsanto and KY Interviews
>
> Next week is out for me. I need to check my schedule this week. Is this the last interview that you were able to arrange?
--- psims@eac.gov wrote:

Tova and Job:

I've passed Tova's request on to Craig.

Also, Sarah Ball Johnson, KY, finally called back to say she would be available Wednesday through Friday this week and next week for the interview. Which day and time is best for you and Job?

--- Peggy

----------

wang@tcf.org
04/16/2006 11:39 AM

To psims@eac.gov
cc "Tova Wang" <wang@tcf.org>
Subject donsanto again

Hi Peg,

Happy Easter!

Would it be possible to talk to Mr. Donsanto about this latest initiative, or somehow get more information? Thanks. Tova

http://www.fbi.gov/page2/april06/electioncrime041406.htm

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"Tova Wang" <wang@tcf.org>
04/17/2006 10:21 AM

To "Job Serebrov", psims@eac.gov
cc
Subject RE: Announcement of FBI Election Crimes Initiative

005114
We could skim it

-----Original Message-----
From: Job Serebrov [mailto:serebrov@sbcglobal.net]
Sent: Monday, April 17, 2006 9:13 AM
To: Tova Wang; psims@eac.gov
Subject: RE: Announcement of FBI Election Crimes Initiative

Tova-Do we have time to review this?

--- Tova Wang <wang@tcf.org> wrote:

> Is it possible to get the materials they are using for the trainings?
> Thanks Peg.
>
> -----Original Message-----
> From: psims@eac.gov [mailto:psims@eac.gov]
> Sent: Monday, April 17, 2006 9:08 AM
> To: wang@tcf.org; serebrov@sbcglobal.net
> Subject: Fw: Announcement of FBI Election Crimes Initiative
>
> See Donsanto response below.--- Peggy
>
> ----- Forwarded by Margaret Sims/EAC/GOV on 04/17/2006 10:07 AM -----
> 
> "Donsanto, Craig" <Craig.Donsanto@usdoj.gov>
>
> 04/17/2006 09:56 AM
>
> To
> psims@eac.gov
> 
> cc
> 
> Subject
> RE: Announcement of FBI Election Crimes Initiative
>
> Peg --
>
> This is essentially FBI's equivalent of the Department's Ballot Access and
> Integrity Initiative. The news conference on Thursday announced that FBI
> was enhancing its prioritization of campaign financing offenses. The main
feature of this initiative, aside from enhancing the
priority these cases
will get in the Bureau, is that each of the Bureau's
57 Field Divisions will
have at least one "Election Coordinator Agent" who
will be the equivalent of
the District Election Officer AUSAs. We have been
training these new
FBI-types: the week before last we had roughly 75 of
them in Denver in a
very well received two-day session in election law enforcement at
which several FEC people spoke. On Wednesday, I head out
to Portland, Oregon for
more of the same.

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, April 17, 2006 9:00 AM
To: Donsanto, Craig
Subject: Fw: Announcement of FBI Election Crimes
Initiative

Hi, Craig:

Tova noticed an article about an FBI initiative
against election crimes (see
attached email). Is this something new, or is it
more of the same
initiative that you addressed in your interview? If
it is new, would you
have time for a teleconference with Job and Tova to
answer any questions
they may have on the initiative?

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

----- Forwarded by Margaret Sims/EAC/GOV on
04/17/2006 08:56 AM -----
To psims@eac.gov

cc "Tova Wang" <wang@tcf.org>

Subject donsanto again

Hi Peg,

Happy Easter!

Would it be possible to talk to Mr. Donsanto about this latest initiative, or somehow get more information? Thanks. Tova

<http://www.fbi.gov/page2/april06/electioncrime041406.htm>

http://www.fbi.gov/page2/april06/electioncrime041406.htm

----- Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM -----

"Job Serebrov"

To psims@eac.gov

cc

Subject Re: Invoice Schedule

Peggy:

This is incorrect. Our project ends May 31. This month's invoice is due on April 21 and is invoice number 3. Invoice number 4 is due at the end of May.

--- psims@eac.gov wrote:
Attached is an updated invoice schedule for the FY 06 contracts for the Voting Fraud/Voter Intimidation project. --- Peggy

Any time Friday is fine for me. Thanks

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, April 17, 2006 8:05 AM
To: wang@tcf.org
Subject: Re: Follow up Donsanto and KY Interviews

Tova and Job:
I've passed Tova's request on to Craig.

Also, Sarah Ball Johnson, KY, finally called back to say she would be available Wednesday through Friday this week and next week for the interview. Which day and time is best for you and Job?

--- Peggy
Hi Peg,

Happy Easter!

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http://www.fbi.gov/page2/april06/electioncrime041406.htm

-----
Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM -----

"Job Serebryov"
04/17/2006 10:17 AM
To psims@eac.gov, wang@tcf.org
cc
Subject Re: Follow up Donsanto and KY Interviews

Next week is out for me (check my schedule this week. Is this the last interview that you were able to arrange?

--- psims@eac.gov wrote:

> Tova and Job:
> > I've passed Tova's request on to Craig.
> > Also, Sarah Ball Johnson, KY, finally called back to say she would be available Wednesday through Friday this week and next week for the interview. Which day and time is best for you and Job?
> > --- Peggy
> >
> >
> >
> > wang@tcf.org
> > 04/16/2006 11:39 AM
> >
> > To psims@eac.gov
> > cc
> > "Tova Wang" <wang@tcf.org>
> > Subject donsanto again
> >
> >
Hi Peg,

Happy Easter!

Would it be possible to talk to Mr. Donsanto about this latest initiative, or somehow get more information? Thanks. Tova

http://www.fbi.gov/page2/april06/electioncrime041406.htm

Good Morning Peg,

That works for me....I will stay off the phone and wait on the call.

Have A Great Weekend,

Tony

----- Original Message -----
From: psims@eac.gov
To:
Sent: Thursday, April 06, 2006 2:27 PM
Subject: Re: Fw: Nonpartisan Local Election Official Needed for Voting Fraud/Voter Intimidation Working Group

Tony:

How about scheduling the teleconference with our consultants for 10 AM CST/11 AM EST on Wednesday, April 12? --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 05/01/2007 08:46 PM -----
Margaret Sims/EAC/GOV
04/17/2006 08:59 AM
To Craig Donsanto
cc
Subject Fw: Announcement of FBI Election Crimes Initiative
Hi, Craig:

Tova noticed an article about an FBI initiative against election crimes (see attached email). Is this something new, or is it more of the same initiative that you addressed in your interview? If it is new, would you have time for a teleconference with Job and Tova to answer any questions they may have on the initiative?

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

Hi Peg,

Happy Easter!

Would it be possible to talk to Mr. Donsanto about this latest initiative, or somehow get more information? Thanks. Tova

Tova

http://www.fbi.gov/page2/april06/electioncrime041406.htm

Good Afternoon Peg,

I will make the call as scheduled. I am still in shock about Ray.

Tony
----- Original Message -----  
From: psims@eac.gov  
To: Tony Sirvello  
Sent: Monday, April 10, 2006 6:04 PM  
Subject: Re: Fw: Nonpartisan Local Election Official Needed for Voting Fraud/Voter Intimidation Working Group

Tony:  
We have set up your telephone interview with our 2 consultants (Job Serebrov and Tova Wang) as a teleconference. Please call 1( ) (toll free) at around 10 AM CST on Wed 4/12. At the prompt for the passcode, enter . Tova and Job will join you on the line. This works best if you use a land line, rather than a cell phone.

If you have trouble connecting, please call Nicole Mortellito at our office.

Thanks!

Peggy

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Sent from my BlackBerry Wireless Handheld

----- Original Message -----  
From: "Tony J. Sirvello III"  
Sent: 04/07/2006 08:52 AM  
To: Margaret Sims  
Subject: Re: Fw: Nonpartisan Local Election Official Needed for Voting Fraud/Voter Intimidation Working Group

Good Morning Peg,

That works for me....I will stay off the phone and wait on the call.

Have A Great Weekend,

Tony

----- Original Message -----  
From: psims@eac.gov  
To:  
Sent: Thursday, April 06, 2006 2:27 PM  
Subject: Re: Fw: Nonpartisan Local Election Official Needed for Voting Fraud/Voter Intimidation Working Group

Tony:

How about scheduling the teleconference with our consultants for 10 AM CST/11 AM EST on Wednesday, April 12? --- Peggy
The 4th batch. More to come tomorrow.
Peg Sims

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:22 PM ---
Margaret Sims/EAC/GOV
05/09/2006 11:44 AM
To: "Job Serebrov"@GSAEXTERNAL
cc
Subject: Re: Working Group-Perez

OK, I get it. The text in the attachment follows:

EXCERPTS FROM TEXAS ELECTION CODE

SUBCHAPTER B. COUNTY ELECTIONS ADMINISTRATOR

***

§ 31.032. APPOINTMENT OF ADMINISTRATOR; COUNTY ELECTION COMMISSION.

(a) The position of county elections administrator is filled by appointment of the county election commission, which consists of:

1. the county judge, as chair;
2. the county clerk, as vice chair;
3. the county tax assessor-collector, as secretary; and
4. the county chair of each political party that made nominations by primary election for the last general election for state and county officers preceding the date of the meeting at which the appointment is made.

(b) The affirmative vote of a majority of the commission’s membership is necessary for the appointment of an administrator.

(c) Each appointment must be evidenced by a written resolution or order signed by the number of commission members necessary to make the appointment. Not later than the third day after the date an administrator is appointed, the officer who presided at the meeting shall file a signed copy of the resolution or order with the county clerk. Not later than the third day after the date the copy is filed, the county clerk shall deliver a certified copy of the resolution or order to the secretary of state.

(d) The initial appointment may be made at any time after the adoption of the order creating the position.
§ 31.035. RESTRICTIONS ON POLITICAL ACTIVITIES.

(a) A county elections administrator may not be a candidate for a public office or an office of a political party, hold a public office, or hold an office of or position in a political party. At the time an administrator becomes a candidate or accepts an office or position in violation of this subsection, the administrator vacates the position of administrator.

(b) A county elections administrator commits an offense if the administrator makes a political contribution or political expenditure, as defined by the law regulating political funds and campaigns, or publicly supports or opposes a candidate for public office or a measure to be voted on at an election. An offense under this subsection is a Class A misdemeanor. On a final conviction, the administrator's employment is terminated, and the person convicted is ineligible for future appointment as county elections administrator.

---

The code attachment did not work that is what I meant by it did not come through.

--- psims@eac.gov wrote:

> Did you look at the attached excerpts from Texas Code? --- Peggy

---

---"Job Serebrov" <Job Serebrov>

To psims@eac.gov

cc

Subject Re: Working Group-Perez
We have the same set-up here in Arkansas. We hired a person just like Perez. However, given this, I would still like to know if he has a party affiliation and this brings up another issue. How is the county election commission chosen. In Arkansas it is the Chairmen of the Republican and Democrat Parties or if he/she does not want to serve a person is elected in his/her stead and a third member picked by the party with the most constitutional officers. Practically that has meant that the Democrats have controlled election commissions in Arkansas since the end of Reconstruction. This is why I want to know the situation in Texas.

--- psims@eac.gov wrote:

As you may recall, the Commissioners directed me to find a nonpartisan local election official to serve on the Working Group. The three of us discussed the desirability of having a Hispanic. I proposed that I find someone from Texas because of that State's colorful history of voting fraud and their innovative approaches to combat it. In those Texas counties that hire Election Administrators to run elections, rather than having elected officials do so (Tax Assessor for voter registration; County Clerk for balloting), the Election Administrator is hired by the County Election Commission and is supposed to perform his or her duties in a nonpartisan manner. (See attached excerpts from Texas Election Code regarding election administrator hiring and restrictions on partisan activity.) Any experienced Texas election official will be familiar with voting fraud and voter intimidation schemes used in that State.

Mr. Perez has over 13 years experience as a county Election Administrator in Texas. You won't find many news articles mentioning him because he has kept his nose clean. (The Texas press, as in many other parts of the country, prefers to report bad news.) Mr. Perez is plugged into the
Mr. Perez also has access to information from other States through his membership in IACREOT and The Election Center. He also has a sense of humor, which you will note if you access the staff web page on the Guadalupe County Elections web site and hear the Mission Impossible theme...something that might be useful in the upcoming meeting.

Guadalupe County is small but growing. In 2004, the county had over 65 thousand registered voters (a number more than doubled the number of registered voters in 1988). A third of the county's population claims Hispanic or Latino origin, according to the U.S. Census Bureau. The county is in south central Texas and is bordered by Comal, Hays, Cladwell, Gonzales, Wilson, and Bexar counties. In the 1980s, the county was predominately a farming community; but in recent years, many people have moved from San Antonio (Bexar County) to Guadalupe County, preferring to live in Guadalupe County and work in Bexar County.
Peggy:

What political party is Perez with? How political is he? Is the position in Texas neutral or political? Who appointed Perez?

As to Pat I will contact him but I can't promise anything. If Pat can't come, who is getting knocked off Tova's list?

Job
--- psims@eac.gov wrote:

Tova just sent me the summary you prepared of The Federal Crime of Election Fraud by Craig Donsanto. There is something wrong in the fourth paragraph (odd characters and missing text). Can you please send a replacement fourth paragraph? You can send it in an email and I will place it in the document. --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:22 PM ---

Margaret Sims/EAC/GOV
05/12/2006 10:19 AM
To Tova Andrea Wang, Job Serebrov
cc
Subject Fraud Definition

Would you please take a look at the attached? I combined both of your definitions, reformatted the list, removed a reference to the fraud having to have an actual impact on the election results (because fraud can be prosecuted without proving that it actually changed the results of the election), and taken out a couple of vague examples (e.g., reference to failing to enforce state laws --- because there may be legitimate reasons for not doing so).

I have made contact with Ben Ginsberg's office and am waiting to hear if he accepts our invitation to join the working group. --- Peggy

Fraud Project Definition rev 5-12-06.doc
--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:22 PM ---

Margaret Sims/EAC/GOV
04/27/2006 09:24 AM
To "Weinberg and Utrecht" <weinutr@verizon.net>@GSAEXTERNAL
cc
Subject Re: Voting Fraud-Voter Intimidation Project

Thanks! I'll get back to you. --- Peggy

"Weinberg and Utrecht" <weinutr@verizon.net>
04/27/2006 07:56 AM
To psims@eac.gov
cc
Subject Re: Voting Fraud-Voter Intimidation Project
Peggy:
You've hit the jackpot! I'm available, with 2 exceptions, every hour of every day from May 15 through May 19. I am not available Thursday morning, May 18, or Friday afternoon, May 19.

Barry

----- Original Message -----~
From: psims@eac.gov
To: Barry Weinberg
Sent: Wednesday, April 26, 2006 8:28 PM
Subject: Re: Voting Fraud-Voter Intimidation Project

Barry:
Are you available any days in the third week of May?
Peggy

--------------------------
Sent from my BlackBerry Wireless Handheld

----- Original Message -----~
From: "Weinberg and Utrecht" [weinutr@verizon.net]
Sent: 04/04/2006 08:14 AM
To: Margaret Sims
Subject: Re: Voting Fraud-Voter Intimidation Project

Peggy:
May looks pretty good right now. I will not be available May 1, or in the morning (before 12:30) on May 4 or May 11, or in the afternoon on May 10.

Barry

----- Original Message -----~
From: psims@eac.gov
To: "Weinberg and Utrecht" [weinutr@verizon.net]
Sent: Monday, April 03, 2006 3:15 PM
Subject: Voting Fraud-Voter Intimidation Project

Hi, Barry:

I'm trying to arrange a meeting of the Working Group for EAC's Voting Fraud-Voter Intimidation project. Would you please look at your schedule and let me know if there are any days during the first 2 weeks of May that you would NOT be available?

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
Your response suggests that you do not care what the Commissioners may think about the effort. ---

Peggy

"Job Serebrov" <serebrov@sbcglobal.net>

Peggy:

Braden is ok also with me but please don't tell me not to "stir up" things. I assure you nothing will come back to bite me. I know these people well enough to say they will also want a balanced group. In fact, one of them was very unhappy with Tova's folks.

Job

--- psims@eac.gov wrote:

> According to the Commissioners, you and Tova each
> got to pick three
> members of the Working Group. The Commission
> guidance regarding this
> particular member follows:
> >
> > 4 people from the Academic, Legal and Advocacy
> > sectors - 2 to be chosen by
> > Tova and 2 to be chosen by Job.
> >
> > This issue of allowing a designee relates to Tova's
> > pick.
> >
> > As I understand it, we are working on a replacement
> > for Norcross. If
> > Ginsberg is not viable, how about Mark Braden, who
> > includes public
> > integrity in his areas of specialization. I would
> > not try and stir up
> > other members of the Working Group, if I were you.
> > The effort is likely
> > to come back and bite you.
I really don't care if he represents the organization or not. What mixed race? The entire discussion was because Arnwine was African-American. If you are going to invite him without first having a replacement for my side, I may have to call Thor and Todd and discuss all of this.

--- psims@eac.gov wrote:

> Greenbaum is representing Arnwine, not replacing her. He works for her organization and is of mixed race. --- Peggy

> "Job Serebrov" <..>
> 05/11/2006 03:36 PM
> To
> "Tova Wang" <wang@tcf.org>, psims@eac.gov
> cc
> Subject
> Re: new working group representative

> I have an objection to Greenbaum. While I realize he comes from an advocacy group, he is not a minority attorney and we already have a rep who worked with DOJ. If it is to be Greenbaum, I would rather not fill that position since I am one down.
--- Tova Wang <wang@tcf.org> wrote:

is Jon Greenbaum

Here's his info in full:

http://www.lawyerscommittee.org/2005website/aboutus/staff/staffgreenbaum.htm

> > > l
> > > He is the Director of the Voting Rights Project
> > > for
> > > the Lawyers Committee
> > > for Civil Rights. He will be representing
> > Barbara
> > > Arnwine, the Executive
> > > Director of the Lawyers Committee.
> > > His contact and mailing info is:
> > > jgreenbaum@lawyerscommittee.org
> > > 202-662-8315
> > > 1401 New York Avenue, NW
> > > Suite 400
> > > Washington, DC 20005
> > >
> > > Tova Andrea Wang
> > > Democracy Fellow
> > > The Century Foundation
> > > 41 East 70th Street - New York, NY 10021
> > > phone: 212-452-7704 fax: 212-535-7534
> > >
> > > www.tcf.org, for the latest news,
> > > analysis, opinions, and events.
> > >
> > > <mailto:join-tcfmain@mailhost.groundspring.org>
> > > Click here to receive our
> > > weekly e-mail updates.
Do you have text to replace the corrupted text in paragraph 4? --- Peggy

"Job Serebrov" <serebrov@...>

05/11/2006 03:17 PM

--- psims@eac.gov wrote:

> Tova just sent me the summary you prepared of *The Federal Crime of Election Fraud* by Craig Donsanto. There is something wrong in the fourth paragraph (odd characters and missing text). Can you please send a replacement fourth paragraph? You can send it in an email and I will place it in the document. --- Peggy

Dear Tova,

I am working with Peggy Sims in order to set a date for the Voting Fraud/Voter Intimidation Project Working Group. I have been trying to reach Barbara Arnwine in order to find out which days in May she is potentially available to attend this meeting but all of my attempts have been unsuccessful.

I would appreciate any help that you could provide in this matter.
Sincerely,

Devon Romig
U.S. Election Assistance Commission
1225 New York Ave. NW - Suite #1100
Washington, D.C. 20005
(202)566-2377

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:22 PM -----

Margaret Sims/EAC/GOV
05/09/2006 11:13 AM	 To "Job Serebrov"@GSAEXTERNAL
cc wang@tcf.org

Subject Re: Working Group-Perez

As you may recall, the Commissioners directed me to find a nonpartisan local election official to serve on
the Working Group. The three of us discussed the desirability of having a Hispanic. I proposed that I find
someone from Texas because of that State’s colorful history of voting fraud and their innovative
approaches to combat it. In those Texas counties that hire Election Administrators to run elections, rather
than having elected officials do so (Tax Assessor for voter registration; County Clerk for balloting), the
Election Administrator is hired by the County Election Commission and is supposed to perform his or her
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Any experienced Texas election official will be familiar with voting fraud and voter intimidation schemes
used in that State. Mr. Perez has over 13 years experience as a county Election Administrator in Texas.
You won’t find many news articles mentioning him because he has kept his nose clean. (The Texas
press, as in many other parts of the country, prefers to report bad news.) Mr. Perez is plugged into the
association of Texas election officials and the two largest organizations of election officials in this country:
the International Association of Clerks, Recorders, Election Officials and Treasurers (IACREOT); and The
Election Center. He is a past President and past Chairman of the Legislative Committee for the Texas
Association of Election Administrators. He currently serves on IACREOT’s Election Officials Committee,
which plans the educational sessions for election officials that are conducted at that organization’s
conferences. His peers in IACREOT and The Election Center have selected his submissions on web
presentations (IACREOT) and his professional practices papers (Election Center) for awards. Mr. Perez
also has access to information from other States through his membership in IACREOT and The Election
Center. He also has a sense of humor, which you will note if you access the staff web page on the
Guadalupe County Elections web site and hear the Mission Impossible theme .. something that might be
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Guadalupe County is small but growing. In 2004, the county had over 65 thousand registered voters (a
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Texas and is bordered by Comal, Hays, Cladwell, Gonzales, Wilson, and Bexar counties. In the 1980s,
the county was predominately a farming community; but in recent years, many people have moved from
San Antonio (Bexar County) to Guadalupe County, preferring to live in Guadalupe County and work in
Bexar County.

--- Peggy

bt_elec_admin-appt-partisan_restrictions.doc
Peggy:

What political party is Perez with? How political is he? Is the position in Texas neutral or political? Who appointed Perez?

As to Pat I will contact him but I can't promise anything. If Pat can't come, who is getting knocked off Tova's list?

Job

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:22 PM -----

Devon E. Romig/EAC/GOV

04/24/2006 04:41 PM

To Margaret Sims/EAC/GOV@EAC

cc

Subject Updated scheduling list and Contact info

Peggy,

Here is the most updated version of the list that I have available.

[Attachment: Work Group Contact-Availability Info.xls]

Thanks,

Devon Romig
U.S. Election Assistance Commission
1225 New York Ave. NW - Suite #1100
Washington, D.C. 20005
(202)566-2377

----- Forwarded by Margaret Simis/EAC/GOV on 04/30/2007 04:22 PM -----

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

05/16/2006 01:41 PM

To psims@eac.gov

cc

Subject RE: Your Materials
Sure. But where is the resistance coming from? The notes were not accurate. As you know, I have to be very concerned about that.

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 16, 2006 12:34 PM
To: Donsanto, Craig
Subject: RE: Your Materials

Craig:

I am getting some resistance from my consultants to correcting the summary of the interview prior to the meeting. Would you mind noting the corrections at the meeting? --- Peggy

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

05/16/2006 12:06 PM
topsims@eac.gov
cc
Subject: RE: Your Materials

Thank you, Peg. This stuff is very interesting.

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 16, 2006 11:27 AM
To: Donsanto, Craig
Subject: Re: Your Materials

I have forwarded your message to our consultants and have requested a corrected version for distribution at the WG meeting. --- Peggy

*Donsanto, Craig* <Craig.Donsanto@usdoj.gov>
Peg --

I have read over the materials you sent to me and viewed the pieces on the CD.

I have only one correction:

I did not say that offenders who re3ceive target letters routinely request -- or routinely receive -- audiences here at DOJHQ. That is very rare. Instead, what usually happens is that once a subject for an election fraud investigation is advised that he or she is going to be charged that person usually enters into plea negotiations and ultimately pleads guilty. Very few federal election fraud cases go to trial. When a subject does request a HQ interview or a HW hearing, it would be held in the first instance by myself. But again, Peg, that is rare.

Also, while the occurrences of prosecutions of isolated instances of felons and alien voters and double voters has increased, we still aggressively and I believe quite successfully pursue systematic schemes to corrupt the electoral process, as the cases we brought recently out of Knott and Pike Counties in Kentucky, those we brought out of Lincoln and Logan Counties in West Virginia, and those we brought in New Hampshire growing out of the jamming of get0-out-the-vote phone bank lines attest.

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:22 PM -----
What about my question on gas receipts?

Job

--- psims@eac.gov wrote:

> I can email this out to our participants after I get
> back to the office, and we can have copies available
> at the meeting.
> Peggy
> --------------------------
> Sent from my BlackBerry Wireless Handheld
>
> ----- Original Message ----- 
> From: wang
> Sent: 05/13/2006 10:54 AM
> To: psims@eac.gov
> Cc: "Job Serebrov" < 
> Subject: Fw: research summary
> 
> Job found it. I'm assuming its too late to include
> so as I said I'll just
> present it if that's OK. Thanks again Job. T
> ----- Original Message ----- 
> From: "Job Serebrov" < 
> To: <wang@tcf.org>
> Sent: Saturday, May 13, 2006 10:12 AM
> Subject: Re: research summary
>
> > T-
> >
> > Are you talking about this?
> >
> > J-
> >
> > --- wang@tcf.org wrote:
> >
> >> In the middle of the night I got the feeling that
> >> you may be right, that I did do a summary of the
> >> existing literature review (that Job, you
> >> approved)
> >> . I'll have to look for it on Monday (unless I go
> >> into the office over the weekend, which is
> >> possible). I may be hallucinating, but if not,
> >> I'll
> >> just present it at the meeting rather than try to
> >> get into them ahead of time. Tova
> >
> ---- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:22 PM ----
Subject RE: PowerPoint Presentation to EAC Boards

I don't know if it's too late, but in the interview summary we actually said there is widespread but not unanimous agreement that there is little polling place fraud. That's quite different than saying, as you do here, that there is disagreement.

----- Original Message -----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, May 22, 2006 3:56 PM
To: wang@tcf.org,
Subject: PowerPoint Presentation to EAC Boards

FYI - Attached is a copy of the PowerPoint presentation on the voting fraud-voter intimidation research project for tomorrow's meetings of the EAC Standards Board (110 state and local election officials) and the EAC Advisory Board (37 representatives from national associations and government agencies who play a role in HAVA implementation and from science and technology-related professions appointed by Congressional members). I used your summaries as the primary source of information for the presentation. --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:22 PM -----
Devon E. Romig/EAC/GOV
05/25/2006 02:37 PM
To: Margaret Sims/EAC/GOV@EAC
cc
Subject: Summary for VFVI working group meeting

Peggy,

Here is the summary that you requested. Let me know if this works.

Thanks!

Devon Romig
United States Election Assistance Commission
1225 New York Ave. NW, Suite 1100
Washington, DC 20005
202.566.2377 phone
202.566.3128 fax
www.eac.gov

VFVI Meeting Summary.doc
----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:22 PM -----
Margaret Sims/EAC/GOV
05/16/2006 02:47 PM
To: "Donsanto, Craig" <Craig.Donsanto@usdoj.gov> GSAEXTERNAL
cc
I think they are panicking because they are preparing to travel tomorrow and may not have time to submit a revised version. They also are resisting changes to their interview summaries because the summaries represent what they think they heard. I was there at the interview and I heard what you said. I'm not sure that either of them heard everything (including the nuances) because so much of the information was new to them and it was one of their earlier interviews. I'm sorry I did not catch the defects before the summary went out.

My first concern is ensuring that the Working Group has the correct information. Then, we can deal with what version, if any, goes in the final report. Do you want me to excerpt the corrections from your email and submit them to the Working Group? --- Peggy

Sure. But where is the resistance coming from? The notes were not accurate. As you know, I have to be very concerned about that.

Craig:

I am getting some resistance from my consultants to correcting the summary of the interview prior to the meeting. Would you mind noting the corrections at the meeting? --- Peggy

005140
Thank you, Peg. This stuff is very interesting.

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 16, 2006 11:27 AM
To: Donsanto, Craig
Subject: Re: Your Materials

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

05/16/2006 10:46 AM

Topsims@eac.gov
cc
Subject: Your Materials

Peg - -

I have read over the materials you sent to me and viewed the pieces on the CD.

I have only one correction:

I did not say that offenders who receive target letters routinely request - - or routinely receive - - audiences here at DOJHQ. That is very rare. Instead, what usually happens is that once a subject for an
election fraud investigation is advised that he or she is going to be charged that person usually enters into plea negotiations and ultimately pleads guilty. Very few federal election fraud cases go to trial. When a subject does request a HQ interview or a HW hearing, it would be held in the first instance by myself. But again, Peg, that is rare.

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How about specifying Section 2 and 203 of the VRA?

----- Original Message -----
From: psims@eac.gov
To: wang@tcf.org
Sent: Friday, May 12, 2006 1:34 PM
Subject: RE: Fraud Definition

 Lets raise this issue at the meeting. (I'll add "DRAFT" to the current document.) My concern is that there are a number of requirements in the Voting Rights Act. Not all of them are considered election fraud, when violated. For example, failure to preclear changes in election procedures is not treated as election fraud, though it is actionable. --- Peggy

"Tova Wang" <wang@tcf.org>

05/12/2006 12:45 PM

To psims@eac.gov
cc
Subject RE: Fraud Definition

Upon first reading, my only comment would be that I would like to restore "failing to follow the
requirements of the Voting Rights Act"  
-----Original Message-----  
From: psims@eac.gov [mailto:psims@eac.gov]  
Sent: Friday, May 12, 2006 9:20 AM  
To: wang@tcf.org; ---  
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----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:22 PM -----  
"Donsanto, Craig"  
<Craig.Donsanto@usdoj.gov> To psims@eac.gov  
05/16/2006 02:55 PM  
Subject RE: Your Materials  

The first item is not as big a deal as the second one: the processes under which subjects of investigations come to Jesus is not as important as the overall assessment of our law enforcement achievements. But stressing the isolated test cases we brought --- and will continue to being -- to deter things like felon voting, alien voting and double voting, which not mentioning such significant achievements as the five case PROJECTS mentioned in my last e-mail --- misrepresents what we are doing and the deterrent message we are trying to communicate.

I appreciate that these two young people may have found themselves in a Brave New World when they came over here. It showed in their questioning. But the fact that criminal law enforcement is not at all similar to preventative legal relief (as under the Voting Rights Act) or civil relief (as election contest litigation) is I guess more of a problem than I at first foresaw. My real concerns is that the civil rights groups --- with whom we over here have an amazing amount of common grounds --- will take the singling out of the felon and alien voter cases as evincing a malevolent aggression on their constituencies. That is not the case. We are only enforcing the law.

From: psims@eac.gov [mailto:psims@eac.gov]  
Sent: Tuesday, May 16, 2006 2:47 PM  
To: Donsanto, Craig  
Subject: RE: Your Materials  

I think they are panicking because they are preparing to travel tomorrow and may not have time to submit a revised version. They also are resisting changes to their interview summaries because the summaries represent what they think they heard. I was there at the interview and I heard what you said. I'm not sure that either of them heard everything (including the nuances) because so much of the information was new to them and it was one of their earlier interviews. I'm sorry I did not catch the defects before the summary
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"Donsanto, Craig" <Craig.Donsanto@usdoj.gov>
05/16/2006 01:41 PM
topsims@eac.gov
topsims@eac.gov
Subject: RE: Your Materials

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Sent: Tuesday, May 16, 2006 12:34 PM
To: Donsanto, Craig
Subject: RE: Your Materials

Craig:

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"Donsanto, Craig" <Craig.Donsanto@usdoj.gov>
05/16/2006 12:06 PM
topsims@eac.gov
topsims@eac.gov
Subject: RE: Your Materials
Thank you, Peg. This stuff is very interesting.

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 16, 2006 11:27 AM
To: Donsanto, Craig
Subject: Re: Your Materials

I have forwarded your message to our consultants and have requested a corrected version for distribution at the WG meeting. --- Peggy

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

05/16/2006 10:46 AM
Peg ---

I have read over the materials you sent to me and viewed the pieces on the CD.

I have only one correction:

I did not say that offenders who receive target letters routinely request or routinely receive audiences here at DOJHQ. That is very rare. Instead, what usually happens is that once a subject for an election fraud investigation is advised that he or she is going to be charged that person usually enters into plea negotiations and ultimately pleads guilty. Very few federal election fraud cases go to trial. When a subject does request a HQ interview or a HW hearing, it would be held in the first instance by myself. But again, Peg, that is rare.

Also, while the occurrences of prosecutions of isolated instances of felons and alien voters and double voters has increased, we still aggressively and I believe quite successfully pursue systematic schemes to corrupt the electoral process, as the cases we brought recently out of Knott and Pike Counties in Kentucky, those we brought out of Lincoln and Logan Counties in West Virginia, and those we brought in New Hampshire growing out of the jamming of get out-the-vote phone bank lines attest.

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM ----

Margaret Sims/EAC/GOV
05/16/2006 02:37 PM
To Eileen L. Collier/EAC/GOV
cc dromig@eac.gov
Subject Re: Tent Cards

Oops! I hit send prematurely. Here is the attachment. --- Peggy

Working Group Attendees 5-18-06.doc

Eileen L. Collier/EAC/GOV
05/16/2006 01:38 PM
To Margaret Sims/EAC/GOV@EAC
cc dromig@eac.gov
Subject Re: Tent Cards

Please forward list...there was no attachment. thanks!

Eille L.K Collier
Attached is a list of folks who will be attending the Voting Fraud-Voter Intimidation Working Group meeting. I have asterisked the names that will require tent cards. I am working on a seating chart so that we can be sure the Ds and the Rs aren't all seated together in a "them vs. us" pattern. --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM ---

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

05/23/2006 02:49 PM

To psims@eac.gov, "Voris, Natalie (USAOE)"
<Natalie.Voris@usdoj.gov>, "Hillman, Noel"
<Noel.Hillman@usdoj.gov>, "Simmons, Nancy"

cc Nancy.Simmons@usdoj.gov

Subject Request to interview AUSAs

Peg --

At the Advisory Board meeting we had last week, your two contractors asked to interview the over-100 AUSAs who are serving as District Election Officers in connection with the Fraud study.

This request needs to be addressed to Natalie Voris of EOUSA per the message from here that follows.

If the contractors require additional information in connection with the Fraud Study, and should EOUSA not be able to satisfy their needs then they can communicate with me on criminal issues and Cameron Quinn on Civil Rights issues.

I will be here when you arrive later today at the Board of Advisors meeting when you arrive to talk to us at 4:30.

Ms. Voris' message follows:

Per the USAM, all requests for interviews/surveys/research projects that involve USAOs must be approved by EOUSA. I am pasting the provision
below - the contact name needs to be updated. Requests should come to me, as the Acting Counsel to the Director.

Thanks,
Natalie

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM ---
Margaret Sims/EAC/GOV
05/24/2006 03:17 PM
To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL
cc Jeannie Layson/EAC/GOV@EAC, bwhitener@eac.gov
Subject Re: press interview

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

"Tova Wang" <wang@tcf.org>

"Tova Wang"
05/24/2006 02:52 PM
To psims@eac.gov
cc
Subject press interview

Hi Peg,

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

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

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

Click here to receive our weekly e-mail updates.
Thank you for this, Peg.

The third bullet point is one I embrace fully. We lack the statutory took to do the job. Hopefully, that can be remedied through legislation. But as things stand today large loopholes in the federal legal matrix addressing electoral abuse and fraud exist - - particularly when such abuses occur in elections where there were no federal candidates on the ballot.

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.

"Donsanto, Craig" <Craig.Donsanto@usdoj.gov>
05/15/2006 04:53 PM
topsims@eac.gov
cc
Subject: Re: Voting Fraud-Voter Intimidation Working Group

Peggy --
I am currently on train in transit back from a day in Newark. I tried to
recover your attachment on Blackberry but got a message telling me the "file
is empty."

Can you paste it to an e-mail perhaps?
--------------------------
Sent from Dr. D's Fabulous BlackBerry Wireless Handheld
Dear Working Group Members and Participants:

You should receive a packet of information today, either by Federal Express or hand delivery, concerning Thursday's meeting of the project Working Group for EAC's Voting Fraud-Voter Intimidation research project. Attached is an analysis of the consultants' research into relevant literature and reports. This summary was not available when we prepared the information packets last Friday, but may be of interest to you. Our consultants and I look forward to having a productive discussion with you.

Regards,

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
e-mail: psims@eac.gov
Cases were from 2000 to the present.

--- psims@eac.gov wrote:

> Would you please refresh my memory about the date ranges used for the Nexis article research and the case law research?
> I'm drawing a blank and I don't see it in the summaries. I need it for this mornings Commissioner briefing. Thanks! --- Peggy

Did you find out whether I can use the Chairman's parking spot?

--- psims@eac.gov wrote:

> You will need to submit hotel and parking receipts.
> You don't need to submit meal receipts. You don't need to submit gas receipts because use of a personally owned vehicle (POV) is reimbursed based on mileage. I think I emailed the mileage rate to you. If you need it again, I'll look it up when I am at the office (this afternoon).
> Peg
>
Since I am driving to DC, besides hotel receipts, do you want me to keep my gas receipts or how will my car use be compensated? Also, I assume I don't have to retain food receipts.

Job

The Standards Board has the reputation of being crankier than the Board of Advisors. They beat up on the Commissioners last year.

Is such a roasting usual? I mean, do they think we did a bad job???

You have most of the pieces of the report now. We absolutely need to put the statutory authority for the research up front. We need to add the definition. We also need to add a short piece addressing the approach for this preliminary research (including short statements on the pros and cons of information sources -- you began to address this in the literature review summary). I expect that the biggest project will be fleshing out the possible avenues for subsequent research in this area. It would be great if we could come up with cost estimates. If we can't, we need to at least identify what info we hope to get, what we are likely to miss, and any pitfalls.

Given today's roast, I will take another look at what we have now to highlight remarks that might...
needlessly tick board members off. We can discuss whether or not editing or removing the remark would be detrimental to or have no real effect on the final report. (An example of such a remark is the reference to the number of articles out of Florida. A local official from that State objected on the grounds that the number of articles does not reliably indicate the number of problems.) I know we can expect a challenge from Board of Advisors member Craig Donsanto regarding the focus of the Election Crimes Branch prosecutions.

Yes, we can discuss the organization and "look" of the report after Job returns. Yes, the Commissioners will want to review it and submit their changes before the report goes to the boards.

It is too early to tell what EAC efforts may be mounted in FY 2007. I doubt that fire from the Standards Board will prevent Commissioners from doing what they think is needed. But, given that it is an election year, appropriations legislation may not be signed until December or later -- so we won't know how much money we have for awhile. --- Peggy

---

Yikes. It sounds like a lot of work after all. Should we talk over what the report should look like again, I guess when Job gets back? Will you help us write it in a way you think will satisfy? I guess it goes to the commissioners first anyway. Does this portend anything for phase 2?

Thanks Peg. Tova

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

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Wednesday, May 24, 2006 2:16 PM
To: wang@tcf.org
Subject: Re: presentation

I'm glad it is over --- for now. One audience was a lot tougher than the other. The Standards Board was much more critical of the research than the Board of Advisors.

Of course, the Board of Advisors is the body that wanted EAC to place a high priority on the research. Its members were interested in sharing personal experiences (including problems with getting anyone to prosecute) and observations (that we need to expand the research to give Congress and political parties a better picture of how rare or prevalent are voting fraud and intimidation, that the HAVA-mandated statewide voter registration lists should help to prevent fraud, etc.). They also asked if EAC will look at specific opportunities for fraud (using cell phones
in vote buying schemes to photograph the ballot being cast at the poll) and how the agency will research voter intimidation/suppression involving voters with disabilities (advocates want to pass on complaints received).

The members of the Standards Board focused much more on the scope of the research and the completeness and accuracy of the information gleaned. Some wanted to include campaign finance crimes in the mix; others understood why we did not. Several did not like the use of newspaper articles, or were defensive about references to the large number of articles about their State. They made the point that, given the vagaries of the press, EAC should not use the number of articles about a specific State or particular vote fraud/intimidation activity as a basis for determining the likelihood that problems will occur in a given State or the frequency with which certain activities occur. (I never said that we did, but some members thought it was at least implied.) Some members want more research on the topic (into prosecutions and/or unsuccessful referrals made by election officials to law enforcement agencies); others want us to "quit throwing away tax dollars" and to stop the research altogether. Although my first slide noted our statutory authority to conduct this study, several members challenged EAC's right to do so --- saying that DOJ, not EAC, should conduct such research.

The dueling approaches of these boards may give us heartburn when the time comes for them to review and comment on the draft. We will have to make a strong statement at the beginning, perhaps repeated at the end, that this is preliminary research. We also may need to thoroughly explain how choices were made regarding what to look at, who to interview, etc. We may need to clearly acknowledge both the strengths and weaknesses of the various sources of information used in the preliminary research. Finally, when reviewing ideas for subsequent research, we may need to discuss the pros and cons of each approach, what additional information we expect to retrieve, and, perhaps, the estimated cost.

By the way, I did clarify the polling place fraud bullet. --- Peg

"Tova Wang" <wang@tcf.org>

05/24/2006 09:14 AM

To psims@eac.gov

cc

Subject presentation

How did it go? Were you able to verbally correct that discrepancy we talked about the other day? Thanks. Tova

Tova Andrea Wang
Democracy Fellow
The Century Foundation
Peggy,

In preparation for the logistics of this week's working group, I need to know how many people to expect for the meeting. Also, if you still need me to make name tags, I will need a list of attendees and the Avery label size.

Also, I will need help from Laiza on the table tents, or we can see if she has the time to help with that.

Thanks!

Elle

Elieen L. Collver
U.S. Election Assistance Commission
1225 New York Avenue, Suite 1100
Washington, D.C. 20005
office: (202) 566-2256
www.eac.gov

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM ---

Devon E. Romig/EAC/GOV
05/15/2006 02:25 PM

I have attached the list of the working groups participants. Peggy, you may want to double check this list incase I have left anyone out.

In place of name tags we just used the tent cards for the APIA working group. This seemed to be effective because it was easier to identify the person who was speaking but we could use both.
Peggy,

In preparation for the logistics of this week's working group, I need to know how many people to expect for the meeting. Also, if you still need me to make name tags, I will need a list of attendees and the Avery label size.

Also, I will need help from Laiza on the table tents, or we can see if she has the time to help with that.

Thanks!

Elle

Elle L.K. Collver/EAC/GOV
U.S. Election Assistance Commission
1225 New York Avenue, Suite 1100
Washington, D.C. 20005
office: (202) 566-2256
www.eac.gov

I have arranged for a transcriptionist to be at the meeting but I am not sure about the snacks for the break.

Devon Romig
Sounds great. It did seem to work just fine for our Asian Language group. Is there going to be a transcriptionist? If so, has anyone taken care of that?

Did you still want to provide the cookies or snacks, or shall I get that from Cafe Mozart (where I am planning to get the coffee). I can just buy a few boxes of cookies for the break.

Elle

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Margaret Sims/EAC/GOV

Elle: I think our number will be about 21 (with the Working Group members, consultants, possible EAC Commissioners and staff, and the court reporter). I'll have a better idea of the final list after I brief Commissioners tomorrow morning. Devon noted that they used only tent cards for the Asian Language Working Group. That might be sufficient for this group and would cut back on some of the work we have
Peggy,

In preparation for the logistics of this week's working group, I need to know how many people to expect for the meeting. Also, if you still need me to make name tags, I will need a list of attendees and the Avery label size.

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www.eac.gov

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM ---
"Donsanto, Craig"
<Craig.Donsanto@usdoj.gov>
To psims@eac.gov
cc
05/17/2006 10:59 AM
Subject RE: Report on Voting Fraud-Voter Intimidation Research

Peg - -
This is a complicated issue largely because of two things: 1) there is a lot of ambiguity out there as to what constitutes "intimidation." To the civil rights community, "intimidation" means anything that makes voting uncomfortable or less than automatic. To us in the criminal law enforcement "intimidation" means threats of economic or physical nature made to force or prevent voting. Only the latter involve aggravating factors that warrant putting offenders in jail, and the statutes that address "intimidation" from a criminal perspective are thus limited. We have never had many "intimidation" criminal cases. For one thing, in this modern post voting rights era, there is not a lot of physical/economic duress out there in the voting context - - at least not that I have seen. For another, where it does occur it is very hard to investigate and detect as victims who have been physically or economically intimidated are not likely to come to the FBI.

The bottom line is that we take matters that do present predication for physical or economically based "intimidation" very seriously, AND that we are being extremely proactive in trying to find ways to prosecute matters involving voter suppression as in the Tobin cases in New Hampshire where the local GOP tried to jam telephone lines for a GOTV effort run by the Dems. But even there - - the usual "suppression" matter involves flyers that are passed around giving out misleading information about an election, and we have investigated every one of those that came to our attention last election cycle. We were not able to identify the person(s) responsible for printing the misleading flyers in any of these. But we sure as heck tried.

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Wednesday, May 17, 2006 9:57 AM
To: Donsanto, Craig
Subject: Report on Voting Fraud-Voter Intimidation Research

Craig:

I'm putting the finishing touches on a status report to the EAC Standards Board and EAC Board of Advisors on our Voting Fraud-Voter Intimidation research project. For the most part, I am using our consultants summaries for the report, but one bullet under the interview summaries is giving me heartburn. It is the bullet that references the decrease in DOJ voter intimidation actions. It is one of the places in which our consultants had indicated that your office is focussing on prosecuting individuals. I have reworded it and would like your feedback on the revision:

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 has increased its focus on matters such as noncitizen voting, double voting, and felon voting. While the Voting Section of the Civil Rights Division focuses on systemic patterns of malfeasance, the Election Crimes Branch of the Public Integrity Section has increased prosecutions of individual instances of felon, alien, and double voting while also maintaining an aggressive pursuit of systematic schemes to corrupt the electoral process.

Please suggest any changes that you think would further clarify the current approach. --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM -----

Eileen L. Collier/EAC/GOV
05/15/2006 03:35 PM
To Devon E. Romig/EAC/GOV@EAC, gvogel@eac.gov@EAC
cc Margaret Sims/EAC/GOV@EAC
Subject Re: working group

I am working on the snacks. I just ordered the coffee (reg/decaf). Cafe Mozart is faxing over an invoice and we can pick up a few boxes of cookies from there too.

GAYLIN-Adam said that you had looked into the way of getting reimbursed for paying for the break
foods/coffees that are provided at these meetings? Any ideas?

Thanks,
Elle

Elle L.K Collver
U.S. Election Assistance Commission
1225 New York Avenue, Suite 1100
Washington, D.C. 20005
office: (202) 566-2256
www.eac.gov
Devon E. Romig/EAC/GOV

Devon E. Romig/EAC/GOV
05/15/2006 03:28 PM
To Elieen L. Collver/EAC/GOV@EAC
cc Margaret Sims/EAC/GOV@EAC
Subject Re: working group

I have arranged for a transcriptionist to be at the meeting but I am not sure about the snacks for the break.

Devon Romig
United States Election Assistance Commission
1225 New York Ave. NW, Suite 1100
Washington, DC 20005
202.566.2377 phone
202.566.3128 fax
www.eac.gov
Elieen L. Collver/EAC/GOV

Elieen L. Collver/EAC/GOV
05/15/2006 03:19 PM
To Margaret Sims/EAC/GOV@EAC
cc dromig@eac.gov
Subject Re: working group

Sounds great. It did seem to work just fine for our Asian Language group. Is there going to be a transcriptionist? If so, has anyone taken care of that?

Did you still want to provide the cookies or snacks, or shall I get that from Cafe Mozart (where I am planning to get the coffee). I can just buy a few boxes of cookies for the break.

Elle
Elle: I think our number will be about 21 (with the Working Group members, consultants, possible EAC Commissioners and staff, and the court reporter). I'll have a better idea of the final list after I brief Commissioners tomorrow morning. Devon noted that they used only tent cards for the Asian Language Working Group. That might be sufficient for this group and would cut back on some of the work we have to do in preparation. --- Peggy

Peggy,

In preparation for the logistics of this week's working group, I need to know how many people to expect for the meeting. Also, if you still need me to make name tags, I will need a list of attendees and the avery label size.

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Thanks!

Elle

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U.S. Election Assistance Commission
1225 New York Avenue, Suite 1100
Washington, D.C. 20005
office: (202) 566-2256
www.eac.gov

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM -----
Margaret Sims/EAC/GOV
05/22/2006 05:01 PM
To Cortes, Romig, Collver, Tamar Nedzar/EAC/GOV, Laiza N. Otero
cc
Subject Voting Fraud-Voter Intimidation Working Group Meeting

If any of you took notes of the discussion during the Voting Fraud-Voter Intimidation Working Group meeting, would you please provide a copy to Devon. Devon, would you please use the meeting agenda to organize and consolidate any notes by topic, and send the consolidated notes to me? Thanks. --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM —
Margaret Sims/EAC/GOV
05/15/2006 04:37 PM
To Voting Fraud-Voter Intimidation Working Group
cc jgreenbaum@lawyerscommittee.org, vjohnson@lawyerscommittee.org, dlovecchio@perkinscoie.com, bschuler@lathropgage.com, Craig.Donsanto@usdoj.gov
Subject Voting Fraud-Voter Intimidation Working Group

Dear Working Group Members and Participants:

You should receive a packet of information today, either by Federal Express or hand delivery, concerning Thursday's meeting of the project Working Group for EAC's Voting Fraud-Voter Intimidation research project. Attached is an analysis of the consultants' research into relevant literature and reports. This summary was not available when we prepared the information packets last Friday, but may be of interest to you. Our consultants and I look forward to having a productive discussion with you.

Regards,

Peggy Sims
Election Research Specialist
U.S. Election Assistance Commission
1225 New York Ave, NW - Ste 1100
I haven't really looked into it. I know that contractors and grantee's can order food and have the government pay for it if the meeting is to disseminate information. Logic dictates that we can do the same, but I am not sure of the process. I have been here when we ordered lunch for meetings. Diana would be the one to ask. Perhaps the contractor can pay for it and put it on their next invoice but the COTR for the contract would have to be in the loop on this call.

Gaylin Vogel  
Law Clerk  
U.S. Election Assistance Commission  
1225 New York Avenue, NW Suite 1100  
Washington, DC 20005  
tel: 202-566-3116  
http://www.eac.gov  
GVogel@eac.gov

Elieen L. Collver/EAC/GOV
05/15/2006 03:35 PM

I am working on the snacks. I just ordered the coffee (reg/decaf). Cafe Mozart is faxing over an invoice and we can pick up a few boxes of cookies from there too.

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Elle L.K Collver  
U.S. Election Assistance Commission
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Devon Romig  
United States Election Assistance Commission  
1225 New York Ave. NW, Suite 1100  
Washington, DC 20005  
202.566.2377 phone  
202.566.3128 fax  
www.eac.gov  
Elileen L. Collver/EAC/GOV

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U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, D.C. 20005  
office: (202) 566-2256  
www.eac.gov
Elle:
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Also, I will need help from Laiza on the table tents, or we can see if she has the time to help with that.

Thanks!

Elle

Elle L.K Collver
U.S. Election Assistance Commission
The contracts for the two consultants on this project do not cover such costs. --- Peggy

This is just to confirm our Monday, May 22, teleconference at 4:30 PM EST/3:30 PM CST. Attached is a list of follow-up activities discussed at the working group meeting and recorded on the flip chart. We will need to flesh these out a bit, perhaps once we have access to the transcript. --- Peggy

Recommendations for Future Research

- Bipartisan observers/poll watchers
  - To collect data
  - To deter fraud/intimidation

- Surveys
  - State laws
  - State election offices
  - Specific states
  - Local election officials
  - Voters (this suggestion was rejected by the panel)
  - State implementation of administrative complaint procedures (applies only to HAVA Title III violations) to ID examples of procedures for other than HAVA Title III complaints

- Follow up on initial reports of fraud/intimidation from the Nexis search of news articles and literature review

- Research absentee balloting process issues
  - Methodology of “for cause” absentee voting

- Risk-analysis for voting fraud
Who?
What part of process?
Ease of committing the fraud
Which elections?

- Analyze
  - Phone logs from toll-free lines for election concerns
  - Federal observer reports
  - Local newspapers

- Academic statistical research

- Search and match procedures for voter registration list maintenance (subject to confirmation) to identify potential avenues for vote fraud

- Research State district court actions

- Broaden scope of interviews to local officials and district attorneys

- Explore the concept of election courts

- Model statutes

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM ---

Peggy,

Here are the notes from the meeting.

Summary of VFVI Meeting.doc

Thanks!

Devon Romig
United States Election Assistance Commission
1225 New York Ave. NW, Suite 1100
Washington, DC 20005
202.566.2377 phone
202.566.3128 fax
www.eac.gov

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM ---

Job Serebrov
<serebrov@sbcglobal.net>
05/23/2006 09:17 AM
How did you deal with the issue of mileage v. airline costs for my travel?

--- psims@eac.gov wrote:

> I signed and submitted your personal services
> payment vouchers this morning. --- Peggy

I have to have a little time to focus on these issues and to check with our Finance Officer. Today and tomorrow, most of my time is scheduled for the EAC Standards Board and Board of Advisors meetings. --- Peggy

"Job Serebrov" <serebrov@sbcglobal.net>

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM ---

Margaret Sims/EAC/GOV

To "Job Serebrov" @GSAEXTERNAL

cc

Subject Re: Payment Vouchers

How did you deal with the issue of mileage v. airline costs for my travel?

--- psims@eac.gov wrote:

> I signed and submitted your personal services
> payment vouchers this morning. --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM -----

Margaret Sims/EAC/GOV

05/23/2006 09:16 AM

To Job Serebrov, Tova Andrea Wang

cc

Subject Payment Vouchers
Hi Peg, I have this all filled out -- would you quickly check before I fax? And I have all my travel receipts which I will mail to you. Thanks. T

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

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

Click here to receive our weekly e-mail updates.

Tova:
Here is your voucher with the pay period dates and signature date updated, and a check mark added for the travel costs. I've been thinking that it might be better to make a separate submission for the travel costs. That way, if there are any delays in receiving your receipts, or there are any corrections or clarifications needed on the travel costs, we won't have to hold up the voucher for payment of personal services. If you agree, you should delete the check mark, dollar amount and travel dates from this voucher. --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM ---

Margaret Sims/EAC/GOV
05/22/2006 03:30 PM
To Tova Wang <wang@tcf.org>@GSAEXTERNAL
cc
Subject Re: voucher

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM ---

"Tova Wang" <wang@tcf.org>
05/16/2006 09:14 AM
To psims@eac.gov, serebrov@sbcglobal.net
cc
Subject RE: Date Ranges for Research

January 1, 2001 - January 1, 2006

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 16, 2006 7:41 AM
To: wang@tcf.org;)
Subject: Date Ranges for Research

Would you please refresh my memory about the date ranges used for the Nexis article research and the case law research? I'm drawing a blank and I don't see it in the summaries. I need it for this mornings Commissioner briefing. Thanks! --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM -----
Margaret Sims/EAC/GOV
05/15/2006 02:48 PM
To: Eileen L. Collier/EAC/GOV
cc: dromig@eac.gov
Subject: Re: working group

Elle:
I think our number will be about 21 (with the Working Group members, consultants, possible EAC Commissioners and staff, and the court reporter). I'll have a better idea of the final list after I brief Commissioners tomorrow morning. Devon noted that they used only tent cards for the Asian Language Working Group. That might be sufficient for this group and would cut back on some of the work we have to do in preparation. --- Peggy

Eileen L. Collier/EAC/GOV
05/15/2006 12:19 PM
To: Margaret Sims/EAC/GOV
cc: Laiza N. Otero/EAC/GOV, dromig@eac.gov
Subject: working group

Peggy,

In preparation for the logistics of this week's working group, I need to know how many people to expect for the meeting. Also, if you still need me to make name tags, I will need a list of attendees and the Avery label size.

Also, I will need help from Laiza on the table tents, or we can see if she has the time to help with that.

Thanks!

Elle
Sounds great. It did seem to work just fine for our Asian Language group. Is there going to be a transcriptionist? If so, has anyone taken care of that?

Did you still want to provide the cookies or snacks, or shall I get that from Cafe Mozart (where I am planning to get the coffee). I can just buy a few boxes of cookies for the break.

Elle:

I think our number will be about 21 (with the Working Group members, consultants, possible EAC Commissioners and staff, and the court reporter). I'll have a better idea of the final list after I brief Commissioners tomorrow morning. Devon noted that they used only tent cards for the Asian Language Working Group. That might be sufficient for this group and would cut back on some of the work we have to do in preparation. --- Peggy
Peggy,

In preparation for the logistics of this week's working group, I need to know how many people to expect for the meeting. Also, if you still need me to make name tags, I will need a list of attendees and the Avery label size.

Also, I will need help from Laiza on the table tents, or we can see if she has the time to help with that.

Thanks!

Elle

Elle L.K Collver
U.S. Election Assistance Commission
1225 New York Avenue, Suite 1100
Washington, D.C. 20005
office: (202) 566-2256
www.eac.gov

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM -----
Sent: 05/15/2006 04:53 PM
To: psims@eac.gov
Subject: Re: Voting Fraud-Voter Intimidation Working Group

Peggy --

I am currently on train in transit back from a day in Newark. I tried to recover your attachment on Blackberry but got a message telling me the "file is empty."

Can you paste it to an e-mail perhaps?

Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

-----Original Message-----
From: psims@eac.gov <psims@eac.gov>
To: barnwine@lawyerscommittee.org <barnwine@lawyerscommittee.org>; Rbauer@perkinscoie.com <Rbauer@perkinscoie.com>; bginsberg@pattonboggs.com <bginsberg@pattonboggs.com>; mhearne@lathropgage.com <mhearne@lathropgage.com>; jrperez50@sbcglobal.net <jrperez50@sbcglobal.net>; krogers@sos.state.ga.us <krogers@sos.state.ga.us>; assistant@sos.in.gov <assistant@sos.in.gov>; weinutr@verizon.net <weinutr@verizon.net>
CC: jgreenbaum@lawyerscommittee.org <jgreenbaum@lawyerscommittee.org>; vjohnson@lawyerscommittee.org <vjohnson@lawyerscommittee.org>; dlovecchio@perkinscoie.com <dlovecchio@perkinscoie.com>; bschuler@lathropgage.com <bschuler@lathropgage.com>; Donsanto, Craig <Craig.Donsanto@cr.usdoj.gov>

Sent: Mon May 15 16:37:48 2006
Subject: Voting Fraud-Voter Intimidation Working Group

Dear Working Group Members and Participants:

You should receive a packet of information today, either by Federal Express or hand delivery, concerning Thursday's meeting of the project Working Group for EAC's Voting Fraud-Voter Intimidation research project. Attached is an analysis of the consultants' research into relevant literature and reports. This summary was not available when we prepared the information packets last Friday, but may be of interest to you. Our consultants and I look forward to having a productive discussion with you.

Regards,

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

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM -----
Margaret Sims/EAC/GOV
05/17/2006 03:02 PM
To: Amie J. Sherrill/EAC/GOV, Adam Ambrogi/EAC/GOV
Subject Replacement Handout for EAC Board

I found some typos in the Status Report. Please replace the one I gave you with the attached. Thanks. --- Peggy

---
EAC Boards VI-VI Status Report.doc

---- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM ----
Margaret Sims/EAC/GOV
05/23/2006 08:45 AM To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL
cc
Subject RE: PowerPoint Presentation to EAC Boards

I know --- I'll have to cover that in my oral presentation, along with some other points. The audience will have a copy of the paper I put together using Job's and your summaries and findings. The paper provides a lot more detail. We did not plan to provide a copy of the PowerPoint presentation, which is just meant to keep me on track and them interested in the presentation. --- Peggy

---- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM ----
"Tova Wang"
<wang@tcf.org>
05/26/2006 10:41 AM To psims@eac.gov, Job Serebrov
cc
Subject RE: Request to interview AUSAs

I still think we should include the recommendations in the report

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Friday, May 26, 2006 9:30 AM
To: Tova Andrea Wang; Job Serebrov
Subject: Fw: Request to interview AUSAs

Below is Craig's response to the request to interview AUSAs. It does not appear that this avenue is likely because the AUSAs are so busy..

Also, he asked about permission for other folks to attend the election crimes training session, and the answer was "no". (I can't even get in, and I'm a federal employee.). I understand that a good part of the reason is practical -- they are having enough trouble accommodating the folks that are required to come.

Peggy

-----------------------------------
----- Original Message -----
From: "Donsanto, Craig" [Craig.Donsanto@usdoj.gov]
Sent: 05/23/2006 02:49 PM
To: psims@eac.gov; "Voris, Natalie (USAEO)" <Natalie.Voris@usdoj.gov>; "Hillman, Noel" <Noel.Hillman@usdoj.gov>; "Simmons, Nancy" <Nancy.Simmons@usdoj.gov>
Subject: Request to interview AUSAs

Peg --

At the Advisory Board meeting we had last week, your two contractors asked to interview the over-100 AUSAs who are serving as District Election Officers in connection with the Fraud study.

This request needs to be addressed to Natalie Voris of EOUSA per the message from here that follows.

If the contractors require additional information in connection with the Fraud Study, and should EOUSA not be able to satisfy their needs they can communicate with me on criminal issues and Cameron Quinn on Civil Rights issues.

I will be here when you arrive later today at the Board of Advisors meeting when you arrive to talk to us at 4:30.

Ms. Voris' message follows:

Per the USAM, all requests for interviews/surveys/research projects that involve USAOs must be approved by EOUSA. I am pasting the prousn •hoyr..- the contact name needs to be updated. Requests should come to me, as the Acting Counsel to the Director.

Thanks,
Natalie

Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM -----
Margaret Sims/EAC/GOV
05/16/2006 03:50 PM
To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL
cc
Subject Re: board of advisers presentation

I haven't sent it yet. If you need to leave early, you can look at what I have so far, which does not have the intro or the text regarding the final report. --- Peggy
Hi Peg, Have you tried to send me the presentation? I haven't gotten it, but I think we may be having email problems. Let me know. I'd need to look at it today since I'll be tied up tomorrow. Tova

Tova Andrea Wang
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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Thank you, Peg. This is at least more accurate than what I read this morning. Thank you for taking the time to discuss this with me. I shall see you tomorrow.

Craig: This is what I was working on for the upcoming meetings of the EAC Board of Advisors and EAC
Peggy -- can you call me about this in about an hour?

---------
Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

-----Original Message-----
From: psims@eac.gov <psims@eac.gov>
To: Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>
Subject: Report on Voting Fraud-Voter Intimidation Research

Craig:

I'm putting the finishing touches on a status report to the EAC Standards Board and EAC Board of Advisors on our Voting Fraud-Voter Intimidation research project. For the most part, I am using our consultants summaries for the report, but one bullet under the interview summaries is giving me heartburn. It is the bullet that references the decrease in DOJ voter intimidation actions. It is one of the places in which our consultants had indicated that your office is focussing on prosecuting individuals. I have reworded it and would like your feedback on the revision:

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 has increased its focus on matters such as noncitizen voting, double voting, and felon voting. While the Voting Section of the Civil Rights Division focuses on systemic patterns of malfeasance, the Election Crimes Branch of the Public Integrity Section has increased prosecutions of individual instances of felon, alien, and double voting while also maintaining an aggressive pursuit of systematic schemes to corrupt the electoral process.

Please suggest any changes that you think would further clarify the current approach. --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM -----
Shall I call you at about 2:30 PM? -- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM ---

Margaret Sims/EAC/GOV
05/15/2006 05:09 PM
To  Job Serebrov
cc
Subject Mileage Rate for POV

The federal mileage rate for POVs is $.445 per mile (see http://www.gsa.gov/Portal/gsa/ep/contentView.do?programId=9299&channelId=-13224&ooid=10359&contentId=9646&pageTypeId=8203&contentType=GSA_BASIC&programPage=%2Fep%2Fprogram%2FgsaBasic.jsp&P=MTT). Write down the number on you odometer at the beginning (starting at home) and end of the trip (when you arrive back home). The difference should be your total mileage, unless you make any side trips for personal convenience. The mileage for side trips should be deleted from the total. --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM ---

Margaret Sims/EAC/GOV
05/24/2006 03:16 PM
To  "Tova Wang" <wang@tcf.org>@GSAEXTERNAL
cc
Subject Re: presentation

I'm glad it is over --- for now. One audience was a lot tougher than the other. The Standards Board was much more critical of the research than the Board of Advisors.

Of course, the Board of Advisors is the body that wanted EAC to place a high priority on the research. Its members were interested in sharing personal experiences (including problems with getting anyone to prosecute) and observations (that we need to expand the research to give Congress and political parties a better picture of how rare or prevalent are voting fraud and intimidation, that the HAVA-mandated statewide voter registration lists should help to prevent fraud, etc.). They also asked if EAC will look at specific opportunities for fraud (using cell phones in vote buying schemes to photograph the ballot being cast at the poll) and how the agency will research voter intimidation/suppression involving voters with disabilities (advocates want to pass on complaints received).

The members of the Standards Board focused much more on the scope of the research and the completeness and accuracy of the information gleaned. Some wanted to include campaign finance crimes in the mix; others understood why we did not. Several did not like the use of newspaper articles, or were defensive about references to the large number of articles about their State. They made the point that, given the vagaries of the press, EAC should not use the number of articles about a specific State or particular vote fraud/intimidation activity as a basis for determining the likelihood that problems will occur in a given State or the frequency with which certain activities occur. (I never said that we did, but some members thought it was at least implied.) Some members want more research on the topic (into prosecutions and/or unsuccessful referrals made by election officials to law enforcement agencies); others want us to "quit throwing away tax dollars" and to stop the research altogether. Although my first slide noted our statutory authority to conduct this study, several members challenged EAC's right to do so --- saying that DOJ, not EAC, should conduct such research.

The dueling approaches of these boards may give us heartburn when the time comes for them to review
and comment on the draft. We will have to make a strong statement at the beginning, perhaps repeated at the end, that this is preliminary research. We also may need to thoroughly explain how choices were made regarding what to look at, who to interview, etc. We may need to clearly acknowledge both the strengths and weaknesses of the various sources of information used in the preliminary research. Finally, when reviewing ideas for subsequent research, we may need to discuss the pros and cons of each approach, what additional information we expect to retrieve, and, perhaps, the estimated cost.

By the way, I did clarify the polling place fraud bullet. --- Peg

"Tova Wang" <wang@tcf.org>

How did it go? Were you able to verbally correct that discrepancy we talked about the other day? Thanks. Tova

Tova Andrea Wang
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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Yikes. It sounds like a lot of work after all. Should we talk over what the report should look like again, I guess when Job gets back? Will you help us write it in a way you think will satisfy? I guess it goes to the commissioners first anyway. Does this portend anything for phase 2? Thanks Peg. Tova

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Wednesday, May 24, 2006 2:16 PM
To: wang@tcf.org
Subject: Re: presentation
I'm glad it is over --- for now. One audience was a lot tougher than the other. The Standards Board was much more critical of the research than the Board of Advisors.

Of course, the Board of Advisors is the body that wanted EAC to place a high priority on the research. Its members were interested in sharing personal experiences (including problems with getting anyone to prosecute) and observations (that we need to expand the research to give Congress and political parties a better picture of how rare or prevalent are voting fraud and intimidation, that the HAVA-mandated statewide voter registration lists should help to prevent fraud, etc.). They also asked if EAC will look at specific opportunities for fraud (using cell phones in vote buying schemes to photograph the ballot being cast at the poll) and how the agency will research voter intimidation/suppression involving voters with disabilities (advocates want to pass on complaints received).

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The dueling approaches of these boards may give us heartburn when the time comes for them to review and comment on the draft. We will have to make a strong statement at the beginning, perhaps repeated at the end, that this is preliminary research. We also may need to thoroughly explain how choices were made regarding what to look at, who to interview, etc. We may need to clearly acknowledge both the strengths and weaknesses of the various sources of information used in the preliminary research. Finally, when reviewing ideas for subsequent research, we may need to discuss the pros and cons of each approach, what additional information we expect to retrieve, and, perhaps, the estimated cost.

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This looks fine otherwise, but I'm not sure I understand why you included the attachments you did. They are not really representative of what we did for the project as a whole. The summaries are just meant to supplement the nexis excel charts.

I haven't sent it yet. If you need to leave early, you can look at what I have so far, which does not have the intro or the text regarding the final report. --- Peggy

"Tova Wang" <wang@tcf.org>
Hi Peg, Have you tried to send me the presentation? I haven’t gotten it, but I think we may be having email problems. Let me know. I’d need to look at it today since I’ll be tied up tomorrow.

Tova

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--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM ---

"Donsanto, Craig"
Craig.Donsanto@usdoj.gov
To psims@eac.gov
cc
05/16/2006 12:06 PM
Subject RE: Your Materials

Thank you, Peg. This stuff is very interesting.

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 16, 2006 11:27 AM
To: Donsanto, Craig
Subject: Re: Your Materials

I have forwarded your message to our consultants and have requested a corrected version for distribution at the WG meeting. --- Peggy

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

05/16/2006 10:46 AM
To psims@eac.gov
cc
Subject: Your Materials
Peg - -

I have read over the materials you sent to me and viewed the pieces on the CD.

I have only one correction:

I did not say that offenders who receive target letters routinely request - - or routinely receive - - audiences here at DOJHQ. That is very rare. Instead, what usually happens is that once a subject for an election fraud investigation is advised that he or she is going to be charged that person usually enters into plea negotiations and ultimately pleads guilty. Very few federal election fraud cases go to trial. When a subject does request a HQ interview or a HW hearing, it would be held in the first instance by myself. But again, Peg, that is rare.

Also, while the occurrences of prosecutions of isolated instances of felons and alien voters and double voters has increased, we still aggressively and I believe quite successfully pursue systematic schemes to corrupt the electoral process, as the cases we brought recently out of Knott and Pike Counties in Kentucky, those we brought out of Lincoln and Logan Counties in West Virginia, and those we brought in New Hampshire growing out of the jamming of get-out-the-vote phone bank lines attest.

I don't think anyone should be given the opportunity to correct mistakes.

Should we send all of the interview summaries to the people we interviewed for review then?

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 16, 2006 10:30 AM
To: serebrov@sbcglobal.net
CC: wang@tcf.org
Subject: Re: Corrections

It wasn't his mistake. I was there at the interview. I just did not have time to review all of the interview summaries. --- Peggy

*Job Serebrov* <serebrov@sbcglobal.net>

05/16/2006 11:13 AM

To "Tova Wang" <wang@tcf.org>, psims@eac.gov
cc
Subject Corrections

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM ---
Margaret Sims/EAC/GOV
05/16/2006 11:30 AM

To "Job Serebrov" @GSAEXTERNAL
cc wang@tcf.org
Subject Re: Corrections

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"Job Serebrov" <serebrov@sbcglobal.net>

05/16/2006 11:13 AM

To "Tova Wang" <wang@tcf.org>, psims@eac.gov
cc
Subject Corrections

I don't think anyone should be given the opportunity to correct mistakes.
OK. Weather is not going to be great in DC Thursday. I hope that does not delay me.

--- psims@eac.gov wrote:

> We don't need a castle key, but we have to wait
> until the Chairman returns
> to the office tomorrow to confirm availability of
> the parking pass. I
> expect you will be on the road, then. Try calling
> me our toll-free line
> (1-866-747-1471) tomorrow afternoon, say after 2 PM
> EST, so that we can
> talk about this. --- Peg
>
>
> "Job Serebrov" <
> 05/15/2006 09:56 AM
> 
> To
> psims@eac.gov
> cc
> 
> Subject
> Re: Question
>
>
> Did you find out whether I can use the Chairman's
> parking spot?
> 
> --- psims@eac.gov wrote:
>
> > You will need to submit hotel and parking
> > receipts.
> > You don't need to submit meal receipts. You don't
> > need to submit gas receipts because use of a
> > personally owned vehicle (POV) is reimbursed based
> > on mileage. I think I emailed the mileage rate to
> > you. If you need it again, I'll look it up when I
> > am
> > at the office (this afternoon).
Peg

----- Original Message ----
From: "Job Serebrov"
Sent: 05/12/2006 09:05 PM
To: psims@eac.gov
Subject: Question

Peg:
Since I am driving to DC, besides hotel receipts,
do you want me to keep my gas receipts or how will my
car use be compensated? Also, I assume I don't have
to retain food receipts.

Job

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM ----

"Tova Wang"
<wang@tcf.org>
05/15/2006 09:07 AM
To psims@eac.gov
cc dromig@eac.gov
Subject I'm sorry

I don't think I sent this to you either. Can we hand it out at the meeting as an addendum? Its another
summary that would have gone in the news article section. I'm usually so organized, I'm very
embarrassed. Too many things! Thanks

Tova Andrea Wang
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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What is the information you need when you say:
The consultants jointly selected experts from ???

We chose the interviewees by first coming up with a list of the categories of types of people we wanted to interview. Then we each filled those categories with a certain number of people, equally. The ultimate categories were academics, advocates, elections officials, lawyers and judges.

Is that what you need?

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 16, 2006 2:51 PM
To: wang@tcf.org
Subject: Re: board of advisers presentation

I haven't sent it yet. If you need to leave early, you can look at what I have so far, which does not have the intro or the text regarding the final report. --- Peggy

Hi Peg, Have you tried to send me the presentation? I haven't gotten it, but I think we may be
having email problems. Let me know. I'd need to look at it today since I'll be tied up tomorrow.

Tova

Tova Andrea Wang
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phone: 212-452-7700 fax: 212-535-7534

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--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM ---

"Job Sorensen"
05/15/2006 09:28 AM
To: psims@eac.gov
cc
Subject: Re: Fw: New Working Group Member

Excellent!

--- psims@eac.gov wrote:

> Just thought you would like to see the Chairman's
> reaction to the Ginsberg choice, attached.
> Peggy
>
> Sent from my BlackBerry Wireless Handheld
>
> ----- Original Message ----- 
> From: Paul DeGregorio
> Sent: 05/14/2006 12:01 PM
> To: CN=Margaret Sims/OU=EAC/O=GOV@EAC
> Cc: CN=Amie J. Sherrill/OU=EAC/O=GOV
> Subject: Re: New Working Group Member
>
> Ben Ginsberg is one of the most respected election
> law attorneys in the country. Great choice.
>
> Sent from my BlackBerry Wireless Handheld
>
> ----- Original Message ----- 
> From: Margaret Sims
> Sent: 05/12/2006 04:04 PM
> To: pdeggregorio@eac.gov
> Cc: CN=Amie J. Sherrill/OU=EAC/O=GOV@EAC
> Subject: New Working Group Member

005189
> FYI - The person I mentioned as a replacement for David Norcross, who was unavailable, could not attend or Voting Fraud-Voter Intimidation Working Group meeting. Our consultant, Job Serebrov, suggested Benjamin Ginsberg, who is willing. I'm sorry I could not check with you on this beforehand. --- things happened so fast! --- Peggy

Hello to all!

I would love to help, but I will not be in the office from today (Monday, May 15th) thru Wednesday, May 17th ------- I'll be back on Thursday morning. When is your meeting taking place? I had e-mailed Adam a draft of the table tents I did for the APIA working group; perhaps he still has it archived in his Lotus notes and could forward it to you. All you would have to do then is erase the APIA names and insert the ones for the new working group. In case he does not have the document I sent him and you need them prior to me returning to the office ---- in Microsoft Word, open a new document, go under Tools, then labels and envelopes, choose Labels and then Options -- then choose the correct Avery product number for your tent cards and click New document -- this will bring a blank template where you can begin to insert the names. I hope this helps. I can be reached by phone in case you need my help. Also, the tent card box usually brings an instruction sheet , it's not the most clear though.

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

-----Eileen L. Colver/EAC/GOV wrote: -----
Also, I will need help from Laiza on the table tents, or we can see if she has the time to help with that.

Thanks!

Elle

Elle L.K Collver
U.S. Election Assistance Commission
1225 New York Avenue, Suite 1100
Washington, D.C. 20005
office: (202) 566-2256
blackberry: (202) 294-9251
www.eac.gov

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM ---
Margaret Sims/EAC/GOV
05/22/2006 04:55 PM
to Tova Andrea Wang, Job Serebrov
cc
Subject PowerPoint Presentation to EAC Boards

FYI - Attached is a copy of the PowerPoint presentation on the voting fraud-voter intimidation research project for tomorrow's meetings of the EAC Standards Board (110 state and local election officials) and the EAC Advisory Board (37 representatives from national associations and government agencies who play a role in HAVA implementation and from science and technology-related professions appointed by Congressional members). I used your summaries as the primary source of information for the presentation. --- Peggy

VF-VI Project Presentation.ppt
--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM ---
Tamar Nedzar/EAC/GOV
05/18/2006 04:36 PM
to cconsanto@usdoj.gov, weinutr@verizon.net,
assistant@sos.in.gov, krogers@sos.state.ga.us,
jperez50@sbcglobal.net, mheame@lathropgage.com,
bginsberg@pattonboggs.com, Rbauer@nerkinscoe.com,
barnwine@lawyerscommittee.org.
wang@tcf.org
cc Margaret Sims/EAC/GOV@EAC, Edgardo
Cortes/EAC/GOV@EAC, Juliet E.
Thompson-Hodgkins/EAC/GOV@EAC
Subject Senate and House Conference Reports

All,

As discussed in the meeting today, please find attached the House and Senate Conference Reports associated with the passage of HAVA. In each document, the word "fraud" is capitalized, bolded, and highlighted.
Kind Regards,

Tamar Nedzar
Law Clerk
U.S. Election Assistance Commission
1225 New York Avenue, NW Suite 1100
Washington, DC 20005
(202) 566-2377
http://www.eac.gov
TNedzar@eac.gov

House Conference Report.doc

Senate Conference Report.doc

---- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM ----
"Tova Wang"
<wang@tcf.org> To psims@eac.gov
05/23/2006 09:23 AM cc
Subject RE: PowerPoint Presentation to EAC Boards

OK, thanks

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 23, 2006 7:46 AM
To: wang@tcf.org
Subject: RE: PowerPoint Presentation to EAC Boards

I know --- I'll have to cover that in my oral presentation, along with some other points. The audience will have a copy of the paper I put together using Job's and your summaries and findings. The paper provides a lot more detail. We did not plan to provide a copy of the PowerPoint presentation, which is just meant to keep me on track and them interested in the presentation. --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM ----
"Tova Wang"
<wang@tcf.org> To psims@eac.gov
05/22/2006 03:43 PM cc
Subject RE: voucher

Is there something separate I should fill out for the travel, or should I just submit a letter? Thanks.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, May 22, 2006 2:30 PM
To: wang@tcf.org
Subject: Re: voucher

Tova:
Here is your voucher with the pay period dates and signature date updated, and a check mark added for the travel costs. I've been thinking that it might be better to make a separate submission for the travel costs. That way, if there are any delays in receiving your receipts, or there are any corrections or clarifications needed on the travel costs, we won't have to hold up the voucher for payment of personal services. If you agree, you should delete the check mark, dollar amount and travel dates from this voucher. --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM -----
Margaret Sims/EAC/GOV
05/22/2006 03:58 PM
To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL
cc
Subject RE: voucher

A letter detailing the costs, noting the total reimbursement expected, and attaching your travel receipts is fine. --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM -----
"Tova Wang"
<wang@tcf.org>
05/19/2006 04:34 PM
To psims@eac.gov
cc
Subject Re: Monday Teleconference

That's fine for me. Thanks so much for doing such a great job running the show yesterday. Did you think it went well?

Also, is there any reason why we cannot talk about our findings with people now? Please let me know. Thanks. Have a great weekend. Tova

-----Original Message-----
From: psims@eac.gov
To: wang@tcf.org,
Date: Fri, 19 May 2006 15:30:59 -0400
Subject: Monday Teleconference

This is just to confirm our Monday, May 22, teleconference at 4:30 PM EST/3:30 PM CST. Attached is a list of follow-up activities discussed at the working group meeting and recorded on the flip chart. We will need to flesh these out a bit, perhaps once we have access to the transcript. --- Peggy

Recommendations for Future Research
Bipartisan observers/poll watchers

- To collect data
- To deter fraud/intimidation

Surveys
- State laws
- State election offices
- Specific states
- Local election officials
- Voters (this suggestion was rejected by the panel)
- State implementation of administrative complaint procedures (applies only to HAVA Title III violations) to ID examples of procedures for other than HAVA Title III complaints

Follow up on initial reports of fraud/intimidation from the Nexis search of news articles and literature review

Research absentee balloting process issues
- Methodology of “for cause” absentee voting

Risk-analysis for voting fraud
- Who?
- What part of process?
- Ease of committing the fraud
- Which elections?

Analyze
- Phone logs from toll-free lines for election concerns
- Federal observer reports
- Local newspapers

Academic statistical research

Search and match procedures for voter registration list maintenance (subject to confirmation) to identify potential avenues for vote fraud

Research State district court actions

Broaden scope of interviews to local officials and district attorneys

Explore the concept of election courts

Model statutes
Subject Re: Voting Fraud-Voter Intimidation

Peggy:
The package came today. Thanks. See you Thursday.
Barry

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM -----
Margaret Sims/EAC/GOV
05/15/2006 01:56 PM
To: "Weinberg and Utrecht"
<weinutr@verizon.net>@GSAEXTERNAL
cc
Subject: Re: Voting Fraud-Voter Intimidation

Barry:

Would you please take a moment to review the draft definition of election fraud? One of our consultants is concerned that it does not sufficiently cover violations of the Voting Rights Act that would qualify. Thanks! --- Peggy

"Weinberg and Utrecht" <weinutr@verizon.net>

"Weinberg and Utrecht" <weinutr@verizon.net>
05/15/2006 01:53 PM
To: psims@eac.gov
cc
Subject: Re: Voting Fraud-Voter Intimidation

Peggy:
The package came today. Thanks. See you Thursday.
Barry

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM -----
Margaret Sims/EAC/GOV
05/16/2006 11:27 AM
To: "Donsanto, Craig"
<Craig.Donsanto@usdoj.gov>@GSAEXTERNAL
cc
Subject: Re: Your Materials

I have forwarded your message to our consultants and have requested a corrected version for distribution at the WG meeting. --- Peggy
Peg --

I have read over the materials you sent to me and viewed the pieces on the CD.

I have only one correction:

I did not say that offenders who receive target letters routinely request or routinely receive audiences here at DOJHQ. That is very rare. Instead, what usually happens is that once a subject for an election fraud investigation is advised that he or she is going to be charged that person usually enters into plea negotiations and ultimately pleads guilty. Very few federal election fraud cases go to trial. When a subject does request a HQ interview or a HW hearing, it would be held in the first instance by myself. But again, Peg, that is rare.

Also, while the occurrences of prosecutions of isolated instances of felons and alien voters and double voters has increased, we still aggressively and I believe quite successfully pursue systematic schemes to corrupt the electoral process, as the cases we brought recently out of Knott and Pike Counties in Kentucky, those we brought out of Lincoln and Logan Counties in West Virginia, and those we brought in New Hampshire growing out of the jamming of get-out-the-vote phone bank lines attest.

I'll be here for a while, I just wanted to make sure. If you send it to me anytime before 5 I can look at it in time. If not, I'll try my best to look at it en route tomorrow.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 16, 2006 2:51 PM
To: wang@tcf.org
Subject: Re: board of advisers presentation

I haven't sent it yet. If you need to leave early, you can look at what I have so far, which does not have the intro or the text regarding the final report. --- Peggy
Hi Peg, Have you tried to send me the presentation? I haven't gotten it, but I think we may be having email problems. Let me know. I'd need to look at it today since I'll be tied up tomorrow.

Tova

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

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

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:20 PM ---

I agree!

--- Tova Wang <wang@tcf.org> wrote:

> I still think its sufficient for him to raise the
> points verbally. All of
> the interview summaries reflect what Job and I both
> understood the
> interviewees to say. This really opens to the door
> to people making, as Job
> says, "corrections"
> >
> > -----Original Message-----
> > From: psims@eac.gov [mailto:psims@eac.gov]
Ok

--- psims@eac.gov wrote:

> You will need to submit hotel and parking receipts.
> You don't need to submit meal receipts. You don't
> need to submit gas receipts because use of a
> personally owned vehicle (POV) is reimbursed based
> on mileage. I think I emailed the mileage rate to
> you. If you need it again, I'll look it up when I am
> at the office (this afternoon).
> Peg
> --------------------------
> Sent from my BlackBerry Wireless Handheld.
> 
> ----- Original Message ----- 
> From: "Job Serebrov" [serebrov@sbcglobal.net]
> Sent: 05/12/2006 09:05 PM
> To: psims@eac.gov
> Subject: Question
> 
> Peg:
> Since I am driving to DC, besides hotel receipts, do
> you want me to keep my gas receipts or how will my
> car
> use be compensated? Also, I assume I don't have to
> retain food receipts.
Great -- thanks so much and apologies for the false alarm.

This article is on the CD, it is located in the "Nexis Article Charts" folder.

Devon Romig
United States Election Assistance Commission
1225 New York Ave. NW, Suite 1100
Washington, DC 20005
202.566.2377 phone
202.566.3128 fax
www.eac.gov

Thats good. I'm probably just getting crazy, trying to make sure everything is perfect. Devon, maybe you can check? Otherwise I'll check it when it comes. Thanks. And be well Peg.
Tova:  
I think you did send this --- or is this a revised version of one you sent earlier? It should be on the CD in the packet you should receive today.. (Can't check that right now as I am at the clinic.) If I put anything on the CD that you want to highlight at the meeting, let me know and we'll make copies for those attending.

Peggy

Sent from my BlackBerry Wireless Handheld

I don't think I sent this to you either. Can we hand it out at the meeting as an addendum? Its another summary that would have gone in the news article section. I'm usually so organized, I'm very embarrassed. Too many things! Thanks

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

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

Click here to receive our weekly e-mail updates.

Peggy --

I am currently on train in transit back from a day in Newark. I tried to recover your attachment on Blackberry but got a message telling me the "file
is empty."

Can you paste it to an e-mail perhaps?
--------------------------
Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

-----Original Message-----
From: psims@eac.gov <psims@eac.gov>
To: barnwine@lawyerscommittee.org <barnwine@lawyerscommittee.org>; Rbauer@perkinscoie.com <Rbauer@perkinscoie.com>; bginsberg@pattonboggs.com <bginsberg@pattonboggs.com>; mhearnelathropgage.com <mhearnelathropgage.com>; jrperesz50@sbcglobal.net <jrperesz50@sbcglobal.net>; krogers@sos.state.ga.us <krogers@sos.state.ga.us>; assistant@sos.in.gov <assistant@sos.in.gov>; weinutr@verizon.net <weinutr@verizon.net>
CC: jgreenbaum@lawyerscommittee.org <jgreenbaum@lawyerscommittee.org>; vjohnson@lawyerscommittee.org <vjohnson@lawyerscommittee.org>; dlovecchio@perkinscoie.com <dlovecchio@perkinscoie.com>; bschuler@lathropgage.com <bschuler@lathropgage.com>; Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>
Sent: Mon May 15 16:37:48 2006
Subject: Voting Fraud-Voter Intimidation Working Group

Dear Working Group Members and Participants:

You should receive a packet of information today, either by Federal Express or hand delivery, concerning Thursday's meeting of the project Working Group for EAC's Voting Fraud-Voter Intimidation research project. Attached is an analysis of the consultants' research into relevant literature and reports. This summary was not available when we prepared the information packets last Friday, but may be of interest to you. Our consultants and I look forward to having a productive discussion with you.

Regards,

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
e-mail: psims@eac.gov

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM -----
Margaret Sims/EAC/GOV
05/16/2006 08:43 AM
To "Donsanto, Craig"
<Craig.Donsanto@usdoj.gov>@GSAEXTERNAL
cc
Subject: Re: Voting Fraud-Voter Intimidation Working Group

Here is the content of the email attachment:
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 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.

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

Peggy --

I am currently on train in transit back from a day in Newark. I tried to recover your attachment on Blackberry but got a message telling me the "file is empty."

Can you paste it to an e-mail perhaps?

--------------------------
Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

-----Original Message-----
From: psims@eac.gov <psims@eac.gov>
To: barnwine@lawyerscommittee.org <barnwine@lawyerscommittee.org>; Rbauer@perkinscoie.com <Rbauer@perkinscoie.com>; bginsberg@pattonboggs.com <bginsberg@pattonboggs.com>; mhearnelathropgag.com <mhearnelathropgag.com>; jrpererez50@sbcglobal.net <jrpererez50@sbcglobal.net>; krogers@sos.state.ga.us <krogers@sos.state.ga.us>; assistant@sos.in.gov <assistant@sos.in.gov>; weinutr@verizon.net <weinutr@verizon.net>
CC: jgreenbaum@lawyerscommittee.org <jgreenbaum@lawyerscommittee.org>; vjohnson@lawyerscommittee.org <vjohnson@lawyerscommittee.org>; dlovecchio@perkinscoie.com <dlovecchio@perkinscoie.com>; bschuler@lathropgag.com <bschuler@lathropgag.com>; Craig <Donsanto@crm.usdoj.gov>
Sent: Mon May 15 16:37:48 2006
Subject: Voting Fraud-Voter Intimidation Working Group

Dear Working Group Members and Participants:

You should receive a packet of information today, either by Federal Express or hand delivery, concerning Thursday's meeting of the project Working Group for EAC's Voting Fraud-Voter Intimidation research project. Attached is an analysis of the consultants' research into relevant literature and reports. This summary was not available when we prepared the information packets last Friday, but may be of interest to you. Our consultants and I look forward to having a productive discussion with you.

Regards,
You asked about the Nexis search terms used by our consultants. The list follows. --- Peggy.

Election and fraud
Voter and fraud
Vote and fraud
Voter and challenge
Vote and challenge
Election and challenge
Election and irregularity
Election and irregularities
Election and violation
Election and stealing
Ballot box and tampering
Ballot box and theft
Ballot box and stealing
Election and officers
Election and Sheriff
Miscount and votes
Election and crime
Election and criminal
Vote and crime
Vote and criminal
Double voting
Multiple voting
Dead and voting
Election and counting and violation
Election and counting and error
Vote and counting and violation
Vote and counting and error
Voter and intimidation
Voter and intimidating
Vote and intimidation
Denial and voter and registration
Voter identification
Vote and identification
Voter and racial profiling
Vote and racial profiling
Voter and racial
Vote and racial
Voter and racial and challenge
Vote and racial and challenge
Voter and deny and racial
Vote and deny and racial
Voter and deny and challenge
Vote and deny and challenge
Voter and deny and black
Vote and deny and black
Voter and black and challenge
Vote and black and challenge
Voter and deny and African American
Vote and deny and African American
Voter and African American and challenge
Vote and African American and challenge
Election and black and challenge
Election and African American and challenge
Voter and deny and Hispanic
Voter and deny and Latino
Vote and deny and Hispanic
Vote and deny and Latino
Voter and Hispanic and challenge
Voter and Latino and challenge
Vote and Hispanic and challenge
Voter and Latino and challenge
Election and Hispanic and challenge
Election and Latino and challenge
Voter and deny and Native American
Vote and deny and Native American
Voter and Native American and challenge
Vote and Native American and challenge
Election and Native American and challenge
Voter and deny and Asian American
Vote and deny and Asian American
Voter and Asian American and challenge
Vote and Asian American and challenge
Voter and Asian American and challenge
Election and Asian American and challenge
Voter and deny and Indian
Voter and Indian and challenge
Vote and Indian and challenge
Election and Indian and challenge
Poll tax
Voting and test
Absentee ballot and deny
Absentee ballot and reject
Absentee ballot and challenge
Vote and challenge
Voter and challenge
Election and challenge
Vote and police
Voter and police
Poll and police
Vote and law enforcement
Voter and law enforcement
Poll and law enforcement
Vote and deceptive practices
Voter and deceptive practices
Election and deceptive practices
Voter and deceive
Voter and false information
Dirty tricks
Vote and felon
Vote and ex-felon
Disenfranchisement
Disenfranchise
Law and election and manipulation
Vote and purging
Vote and purge
Registration and removal
Registration and purging
Registration and purge
Vote buying
Vote and noncitizen
Voter and noncitizen
Vote and selective enforcement
Identification and selective
Election and misinformation
Registration and restrictions
Election and administrator and fraud
Election and official and fraud
Provisional ballot and deny
Provisional ballot and denial
Affidavit ballot and deny
Affidavit ballot and denial
Absentee ballot and coerce
Absentee ballot and coercion
Registration and destruction
Voter and deter
Vote and deterrence
Voter and deterrence
Ballot integrity
Ballot security
Ballot security and minority
Ballot security and black
Ballot security and African American
Ballot security and Latino
Ballot security and Hispanic
Ballot security and Native American
Ballot security and Indian
Vote and suppression
Minority and vote and suppression
Black and vote and suppression
African American and vote and suppression
Latino and vote and suppression
Hispanic and vote and suppression
Native American and vote and suppression
Vote and suppress
Minority and vote and suppress
African American and vote and suppress
Latino and vote and suppress
Native American and vote and suppress
Vote and depress
Jim Crow
Literacy test
Voter and harass
Voter and harassment
Vote and mail and fraud
Poll and guards
Election and consent decree
Vote and barrier
Voting and barrier
Voter and barrier
Election and long line
Voter and long line

Poll worker and challenge
Poll worker and intimidate
Poll worker and intimidation
Poll worker and intimidating
Poll worker and threatening
Poll worker and abusive
Election official and challenge
Election official and intimidate
Election official and intimidation
Election official and intimidating
Election official and threatening
Election official and abusive
Poll watcher and challenge
Poll watcher and intimidate
Poll watcher and intimidating
Poll watcher and intimidation
Poll watcher and abusive
Poll watcher and threatening
Poll inspector and challenge
Poll inspector and intimidate
Poll inspector and intimidating
Poll inspector and intimidation
Poll inspector and abusive
Poll inspector and threatening
Poll judge and challenge
Poll judge and intimidate
Poll judge and intimidating
Poll judge and intimidation
Poll judge and abusive
Poll judge and threatening
Poll monitor and challenge
Poll monitor and intimidate
Poll monitor and intimidating
Poll monitor and intimidation
Poll monitor and abusive
Poll monitor and threatening
Election judge and challenge
Election judge and intimidate
Election judge and intimidating
Election judge and intimidation
Election judge and abusive
Election judge and threatening
Election monitor and challenge
Election monitor and intimidate
Election monitor and intimidating
Election monitor and intimidation
Election monitor and abusive
Election monitor and threatening
Election observer and challenge
Election observer and intimidate
Election observer and intimidating
Election observer and intimidation
Election observer and abusive
Election observer and threatening

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM ------

Margaret Sims/EAC/GOV
05/16/2006 03:37 PM
To "Donsanto, Craig"
<Craig.Donsanto@usdoj.gov>@GSAEXTERNAL
cc
Subject RE: Your Materials

OK. --- Peg

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

"Donsanto, Craig"
<Craig.Donsanto@usdoj.gov>
05/16/2006 03:17 PM
To psims@eac.gov
cc
Subject RE: Your Materials

Let me try to do it, Peg. Again what I do not want to see occur is for the LCCR to start attacking us. We have more in common with them than I had originally assumed, thanks to the write-ups of their interviews. We need to promote what we have in common not try to score political points. But I will try to correct the records as long as you will agree you heard what I said the way I know I said it!

From: psims@eac.gov
Sent: Tuesday, May 16, 2006 3:14 PM
To: Donsanto, Craig
Subject: RE: Your Materials

I fully understand. Do you want me to prepare a correction sheet for the Working Group, placing your second and more important point first, or do you want to handle this verbally at the meeting? --- Peggy
The first item is not as big a deal as the second one: the processes under which subjects of investigations come to Jesus is not as important as the overall assessment of our law enforcement achievements. But stressing the isolated test cases we brought - - and will continue to being - - to deter things like felon voting, alien voting and double voting, which not mentioning such significant achievements as the five case PROJECTS mentioned in my last e-mail - - misrepresents what we are doing and the deterrent message we are trying to communicate.

I appreciate that these two young people may have found themselves in a Brave New World when they came over here. It showed in their questioning. But the fact that criminal law enforcement is not at all similar to preventative legal relief (as under the Voting Rights Act) or civil relief (as election contest litigation) is I guess more of a problem than I at first foresaw. My real concerns is that the civil rights groups - - with whom we over here have an amazing amount of common grounds - - will take the singling out of the felon and alien voter cases as evincing a malevolent aggression on their constituencies. That is not the case. We are only enforcing the law.

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 16, 2006 2:47 PM
To: Donsanto, Craig
Subject: RE: Your Materials

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"Donsanto, Craig" <Craig.Donsanto@usdoj.gov>
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Dear Commissioners:

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From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 16, 2006 9:59 AM
To: wang@tcf.org; serebrov@sbcglobal.net
Subject: Fw: Your Materials

See corrections from Donsanto at DOJ. We should probably provide corrected versions to the Working Group. --- Peggy

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Peggy --

I was just thinking of you!

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On another subject, Nancy Simmons needs the e-mail address of NASED. Can you give her both that and the website address for them? Her e-mail is nancy.simmons@usdoj.gov.

-----Original Message-----
From: psims@eac.gov <psims@eac.gov>
To: Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>
Sent: Fri May 19 14:51:21 2006
Subject: Voting Fraud-Voter Intimidation Project-Nexis Word Search

Craig;

You asked about the Nexis search terms used by our consultants. The list follows. --- Peggy.

Election and fraud
Voter and fraud
Vote and fraud

005215
Voter and challenge
Vote and challenge
Election and challenge
Election and irregularity
Election and irregularities
Election and violation
Election and stealing
Ballot box and tampering
Ballot box and theft
Ballot box and stealing
Election and officers
Election and Sheriff
Poll and votes
Election and crime
Election and criminal
Vote and crime
Vote and criminal
Double voting
Multiple voting
Dead and voting
Election and counting and violation
Election and counting and error
Vote and counting and violation
Vote and counting and error
Voter and intimidation
Voter and intimidating
Vote and intimidation
Denial and voter and registration
Voter identification
Vote and identification
Vote and racial profiling
Vote and racial profiling
Vote and racial
Vote and racial
Voter and racial and challenge
Vote and racial and challenge
Voter and deny and racial
Vote and deny and racial
Voter and deny and challenge
Vote and deny and challenge
Voter and deny and black
Vote and deny and black
Voter and black and challenge
Vote and black and challenge
Voter and deny and African American
Vote and deny and African American
Voter and African American and challenge
Vote and African American and challenge
Election and black and challenge
Election and African American and challenge
Voter and deny and Hispanic
Voter and deny and Latino
Vote and deny and Hispanic
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Election and Native American and challenge
Voter and deny and Asian American
Vote and deny and Asian American
Voter and Asian American and challenge
Vote and Asian American and challenge
Election and Asian American and challenge
Voter and deny and Indian
Vote and deny and Indian
Voter and Indian and challenge
Vote and Indian and challenge
Election and Indian and challenge
Poll tax
Voting and test
Absentee ballot and deny
Absentee ballot and reject
Absentee ballot and challenge
Vote and challenge
Voter and challenge
Election and challenge
Vote and police
Voter and police
Poll and police
Vote and law enforcement
Voter and law enforcement
Poll and law enforcement
Vote and deceptive practices
Voter and deceptive practices
Election and deceptive practices
Voter and deceive
Voter and false information
Dirty tricks
Vote and felon
Vote and ex-felon
Disenfranchise
Disenfranchisement
Law and election and manipulation
Vote and purging
Vote and purge
Registration and removal
Registration and purging
Registration and purge
Vote buying
Vote and noncitizen
Voter and noncitizen
Vote and selective enforcement
Identification and selective
Election and misinformation
Registration and restrictions
Election and administrator and fraud
Election and official and fraud
Provisional ballot and deny
Provisional ballot and denial
Affidavit ballot and deny
Affidavit ballot and denial
Absentee ballot and coerce
Absentee ballot and coercion
Registration and destruction

005217
Voter and deter
Vote and deterrence
Voter and deterrence
Ballot integrity
Ballot security
Ballot security and minority
Ballot security and black
Ballot security and African American
Ballot security and Latino
Ballot security and Hispanic
Ballot security and Native American
Ballot security and Indian
Vote and suppression
Minority and vote and suppression
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Vote and suppress
Minority and vote and suppress
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Vote and depress
Jim Crow
Literacy test
Voter and harass
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Poll and guards
Election and consent decree
Vote and barrier
Voting and barrier
Voter and barrier
Election and long line
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Poll worker and challenge
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Election monitor and threatening
Election observer and challenge
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----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM -----

"Tova Wang"
<wang@tcf.org> To psims@eac.gov
05/15/2006 05:05 PM cc
Subject RE: Fraud Definition

Sounds good. Thanks.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, May 15, 2006 4:03 PM
To: wang@tcf.org
Subject: Re: Fraud Definition

Election and stealing
Ballot box and tampering
Ballot box and theft
Ballot box and stealing
Election and officers
Election and Sheriff
Miscount and votes
I fully understand. Do you want me to prepare a correction sheet for the Working Group, placing your second and more important point first, or do you want to handle this verbally at the meeting? --- Peggy

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I appreciate that these two young people may have found themselves in a Brave New World when they came over here. It showed in their questioning. But the fact that criminal law enforcement is not at all similar to preventative legal relief (as under the Voting Rights Act) or civil relief (as election contest litigation) is I guess more of a problem than I at first foresaw. My real concerns is that the civil rights groups - - with whom we over here have an amazing amount of common grounds - - will take the singling out of the felon and alien voter cases as evincing a malevolent aggression on their constituencies. That is not the case. We are only enforcing the law.

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Sure. But where is the resistance coming from? The notes were not accurate. As you know, I have to be very concerned about that.

From: psims@eac.gov
Sent: Tuesday, May 16, 2006 12:34 PM
To: Donsanto, Craig
Subject: RE: Your Materials

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

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Voter and racial
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Voter and racial and challenge
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Voter and deny and challenge
Voter and deny and black
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Voter and deny and Indian
Vote and deny and Indian
Voter and Indian and challenge
Vote and Indian and challenge
Election and Indian and challenge
Poll tax
Voting and test
Absentee ballot and deny
Absentee ballot and reject
Absentee ballot and challenge
Vote and challenge
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Election and challenge
Vote and police
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Vote and deceptive practices
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Vote and felon
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Disenfranchisement
Disenfranchise
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Vote and purge
Registration and removal
Registration and purging
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Vote buying
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Vote and selective enforcement
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Provisional ballot and deny
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Affidavit ballot and deny
Affidavit ballot and denial
Absentee ballot and coerce
Absentee ballot and coercion
Registration and destruction
Voter and deter
Vote and deterrence
Voter and deterrence
Ballot integrity
Ballot security
Ballot security and minority
Ballot security and black
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Poll and guards
Election and consent decree
Vote and barrier
Voting and barrier
Voter and barrier
Election and long line
Voter and long line
Poll worker and challenge
Poll worker and intimidate
Poll worker and intimidation
Poll worker and intimidating
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Poll worker and abusive
Election official and challenge
Election official and intimidate
Election official and intimidation
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05/15/2006 05:05 PM

To: psims@eac.gov
cc

Subject: RE: Fraud Definition

Sounds good. Thanks.

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Sent: Monday, May 15, 2006 4:03 PM
To: wang@tcf.org
Subject: Re: Fraud Definition

Election and stealing
OK. --- Peg

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

"Donsanto, Craig"
<Craig.Donsanto@usdoj.gov>
05/16/2006 03:17 PM

To psims@eac.gov
cc
Subject RE: Your Materials
Let me try to do it, Peg. Again what I do not want to see occur is for the LCCR to start attacking us. We have more in common with them than I had originally assumed, thanks to the write-ups of their interviews. We need to promote what we have in common not try to score political points. But I will try to correct the records as long as you will agree you heard what I said the way I know I said it!

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 16, 2006 3:14 PM
To: Donsanto, Craig
Subject: RE: Your Materials

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"Donsanto, Craig" <Craig.Donsanto@usdoj.gov>
05/16/2006 02:55 PM

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To: Donsanto, Craig  
Subject: RE: Your Materials

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

05/16/2006 12:06 PM

Topsims@eac.gov

cc

Subject: RE: Your Materials

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From: psims@eac.gov [mailto:psims@eac.gov]
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I have only one correction:

I did not say that offenders who re3ceive target letters routinely request -- or routinely receive -- audiences here at DOJHQ. That is very rare. Instead, what usually happens is that once a subject for an election fraud investigation is advised that he or she is going to be charged that person usually enters into plea negotiations and ultimately pleads guilty. Very few federal election fraud cases go to trial. When a subject does request a HQ interview or a HW hearing, it would be held in the first instance by myself. But again, Peg, that is rare.

Also, while the occurrences of prosecutions of isolated instances of felons and alien voters and double voters has increased, we still aggressively and I believe quite successfully pursue systematic schemes to corrupt the electoral process, as the cases we brought recently out of Knott and Pike Counties in Kentucky, those we brought out of Lincoln and Logan Counties in West Virginia, and those we brought in New Hampshire growing out of the jamming of get0-out-the-vote phone bank lines attest.

Peggy --

I was just thinking of you!

Great session yesterday. I really enjoyed it. Robust discussion.

On another subject, Nancy Simmons needs the e-mail address of NASED. Can you give her both that and the website address for them? Her e-mail is nancy.simmons@usdoj.gov.
Sounds good. Thanks.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, May 15, 2006 4:03 PM
To: wang@tcf.org
Subject: Re: Fraud Definition

Tova:

We can certainly discuss this at the Working Group meeting. (The draft definition had already been sent out by the time I read your message.) There may be other VRA provisions that should be considered as well, such as the prohibition on removing the names of certain registrants, who were registered by federal examiners, without obtaining prior approval of the Justice Department.

After I received your email, I asked Barry Weinberg to review the draft definition and consider if we have left off examples of Voting Rights Act violations that would qualify as election fraud. Barry, during his 25 years with DOJ, led aggressive action against attempts to place police at the polls to intimidate voters, challenges targeting minorities, failure to provide election materials and assistance in languages other than English (in covered jurisdictions), etc. His input should prove helpful. --- Peggy

How about specifying Section 2 and 203 of the VRA?

----- Original Message ----- 
From: psims@eac.gov
To: wang@tcf.org
Sent: Friday, May 12, 2006 1:34 PM
Subject: RE: Fraud Definition

Lets raise this issue at the meeting. (I'll add "DRAFT" to the current document.) My concern is that there are a number of requirements in the Voting Rights Act. Not all of them are considered election fraud, when violated. For example, failure to preclear changes in election procedures
is not treated as election fraud, though it is actionable. --- Peggy

"Tova Wang" <wang@tcf.org>

05/12/2006 12:45 PM

To:

psims@eac.gov, serebrov@sbcglobal.net

cc

Subject:

RE: Fraud Definition

Upon first reading, my only comment would be that I would like to restore "failing to follow the requirements of the Voting Rights Act" -----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Friday, May 12, 2006 9:20 AM
To: wang@tcf.org; serebrov@sbcglobal.net
Subject: Fraud Definition

Would you please take a look at the attached? I combined both of your definitions, reformatted the list, removed a reference to the fraud having to have an actual impact on the election results (because fraud can be prosecuted without proving that it actually changed the results of the election), and taken out a couple of vague examples (e.g.; reference to failing to enforce state laws --- because there may be legitimate reasons for not doing so).

I have made contact with Ben Ginsberg's office and am waiting to hear if he accepts our invitation to join the working group. --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM -----
Margaret Sims/EAC/GOV
05/17/2006 09:56 AM
To: Craig Donsanto
cc
Subject: Report on Voting Fraud-Voter Intimidation Research
Craig:

I'm putting the finishing touches on a status report to the EAC Standards Board and EAC Board of Advisors on our Voting Fraud-Voter Intimidation research project. For the most part, I am using our consultants summaries for the report, but one bullet under the interview summaries is giving me heartburn. It is the bullet that references the decrease in DOJ voter intimidation actions. It is one of the places in which our consultants had indicated that your office is focusing on prosecuting individuals. I have reworded it and would like your feedback on the revision:

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 has increased its focus on matters such as noncitizen voting, double voting, and felon voting. While the Voting Section of the Civil Rights Division focuses on systemic patterns of malfeasance, the Election Crimes Branch of the Public Integrity Section has increased prosecutions of individual instances of felon, alien, and double voting while also maintaining an aggressive pursuit of systematic schemes to corrupt the electoral process.

Please suggest any changes that you think would further clarify the current approach. --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM -----

Margaret Sims/EAC/GOV
05/15/2006 01:09 PM To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL
cc
Subject Re: Thursday

No problem. I've got the conference room reserved from Noon to 6 PM, so you can come earlier. --- Peggy

"Tova Wang" <wang@tcf.org>

Is it OK if I come around 12:30 or so to make sure I have all my materials arranged properly for presentation? Thanks.

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

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

Click here to receive our weekly e-mail updates.
I did not realize that I had to itemize the per diem, so yes, that was an oversight. There was a $5 service charge. I will forward you the documentation on that. Thanks so much. Tova

----- Original Message-----
From: psims@eac.gov
Sent: Thursday, June 01, 2006 1:50 PM
To: wang@tcf.org
Subject: Travel Reimbursement

Tova:
In reviewing your travel reimbursement request that arrived in my In box this week, I noticed that you did not include per diem in your request for payment. Was that an oversight? I calculate that you would be eligible for a total of $160 in per diem for the trip ($48 for Wednesday 5/17, $64 for Thursday 5/18, and $48 for Friday 5/19). Also, the airfare receipt shows a total charge of $288.60, but the amount you requested for airfare was $293.60. Perhaps there was a service fee that does not show on the receipt. Can you clarify? --- Peggy

--- "Craig C. Donsanto" <cdonsanto@yahoo.com> wrote:

> Date: Tue, 30 May 2006 19:57:36 -0700 (PDT)
> From: "Craig C. Donsanto"
> Subject: Re: Article to your secondary e-mail address
> To: "Elliott, Michael (LA) (IC)"
> <Michael.Elliott@ic.fbi.gov>
> > Mike - -
> > As we say back where I come from: this article is
> > "wicked pissah"!
> > The woman mentioned in this piece towards the end
> has
been contracted with the Election Assistance Commission to do a study of electoral fraud in the US.

She is my problem, and she doesn't have a clue -- despite the fact that she has had the rare opportunity to interview me and get stats from me and my colleagues on our electoral fraud cases.

You should be most proud of this article as it accurately captures the soul of what you and I are trying to do in this very important area of federal law enforcement.

And greetings from Hilton Head, South Carolina --

--- "Elliott, Michael (LA) (IC)"
<Michael.Elliott@ic.fbi.gov> wrote:

Craig,

As requested, please find below The Hill article on the CF&BF Initiative:


Michael

SSA Michael B. Elliott

Public Corruption/Governmental Fraud Unit

FBIHQ, Room 3975

202-324-4687 (Office)

Craig C. Donsanto
Do You Yahoo!? Tired of spam? Yahoo! Mail has the best spam protection around http://mail.yahoo.com

Craig C. Donsanto

Do You Yahoo!? Tired of spam? Yahoo! Mail has the best spam protection around http://mail.yahoo.com

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM -----

"Tova Wang" <wang@tcf.org> To psims@eac.gov
06/01/2006 03:04 PM cc
Subject FW: Expedia travel confirmation - Washington, DC - May 17, 2006 - (Itin# 116272039590)

-----Original Message-----
From: travel@expedia.com [mailto:travel@expedia.com]
Sent: Tuesday, May 09, 2006 4:55 PM
To: wang@tcf.org
Subject: Expedia travel confirmation - Washington, DC - May 17, 2006 - (Itin# 116272039590)

Travel Confirmation

Thank you for booking your trip with Expedia.com. View this itinerary online for the most up-to-date information. Our interactive demo can show you how easy it is to get information about your itinerary.

Need a hotel or a car or an activity or service in Washington DC? Here are some options we’ve found for you.

- Connecticut Avenue Days Inn $666.00 per night
- Renaissance Mayflower Hotel $459.00 per night
- Comfort Inn Largo/Fed Ex Field $96.00 per night
- Car Rental - Economy Midsize Full Size
- Activities & Services - Sightseeing Dining options Ground transportation Attraction passes

Search for more hotels
Search for more cars
Search for more activities & services

Receive Expedia.com newsletters

Booked items

005242
Thank you for choosing Expedia.com

Don't Just Travel. Travel Right. http://www.expedia.com

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM -----

Peggy:

I will not be home from Las Vegas until Saturday. I was given an offer for a career clerking position with a federal judge and accepted. I will be relocating in December.

Job

psims@eac.gov wrote:

Sorry. We have had so much going on, I did not have time to send the attached to you last week. This is Devon's compilation of notes taken by EAC staff at the working group meeting. --- Peggy

"Tova Wang" <wang@tcf.org>
05/31/2006 11:26 AM

To psims@eac.gov
cc
Subject notes

Hi Peg,

How are you? I was wondering, whatever happened to getting the collective notes of the EAC staff?
Thanks. Tova

Tova Andrea Wang  
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.

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM -----  
"Tova Wang"  
<wang@tcf.org>  
05/31/2006 01:50 PM  
To psims@eac.gov  
cc serebrov@sbcglobal.net  
Subject RE: Working Group Notes

Peg, I'm sorry, but this is really not helpful. Its another outline. I guess we have to wait for the transcript. I wish now I had taken notes myself! Thanks anyway. Tova

-----Original Message-----  
From psims@eac.gov [mailto:psims@eac.gov]  
Sent: Wednesday, May 31, 2006 12:31 PM  
To: wang@tcf.org  
Cc:  
Subject: Re: Working Group Notes

Sorry. We have had so much going on, I did not have time to send the attached to you last week. This is Devon's compilation of notes taken by EAC staff at the working group meeting. --- Peggy

"Tova Wang" <wang@tcf.org>  
05/31/2006 11:26 AM  
To psims@eac.gov  
cc  
Subject notes
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----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM -----
Margaret Sims/EAC/GOV
06/01/2006 02:50 PM	To Tova Andrea Wang
cc Subject Travel Reimbursement

Tova:
In reviewing your travel reimbursement request that arrived in my In box this week, I noticed that you did not include per diem in your request for payment. Was that an oversight? I calculate that you would be eligible for a total of $160 in per diem for the trip ($48 for Wednesday 5/17, $64 for Thursday 5/18, and $48 for Friday 5/19). Also, the airfare receipt shows a total charge of $288.60, but the amount you requested for airfare was $293.60. Perhaps there was a service fee that does not show on the receipt. Can you clarify? --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM -----
Margaret Sims/EAC/GOV
05/31/2006 01:30 PM	To “Tova Wang” <wang@tcf.org>@GSAEXTERNAL
cc Subject Re: Working Group Notes

Sorry. We have had so much going on, I did not have time to send the attached to you last week. This is Devon's compilation of notes taken by EAC staff at the working group meeting. --- Peggy

VFVI Meeting Summary.doc

"Tova Wang" <wang@tcf.org>

"Tova Wang" <wang@tcf.org>
05/31/2006 11:26 AM
To psims@eac.gov
cc
Hi Peg,

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Tova Andrea Wang
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----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM -----
"Tova Wang"
<wang@tcf.org>
06/02/2006 04:50 PM
To psims@eac.gov
cc
Subject transcript

Hi Peg,

Do you have an ETA for the transcript? Seems like it should be around now. Thanks and have a great weekend. Tova

Tova Andrea Wang
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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----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM -----
wang@tcf.org
06/08/2006 09:15 AM
To psims@eac.gov
cc "Job Serebrov"
Subject
Hi, What's going on? I have not received responses from either one of you in a week. I'd like to wrap this up in the next two weeks if we can. Did you get my recommendations? Thanks.

Tova

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM -----
Margaret Sims/EAC/GOV
06/08/2006 09:35 AM
To wang@tcf.org@GSAEXTERNAL
cc [REDACTED]
Subject Re:

Sorry. We have been swamped with other program activities and preparations for today's testimony before House Admin. We have not yet received the transcript of the Working Group session. Devon checked with the court reporter, who said it will be delivered today. --- Peggy

wang@tcf.org

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM -----
Margaret Sims/EAC/GOV
06/08/2006 09:15 AM
To [REDACTED]
cc [REDACTED]
Subject

Hi, What's going on? I have not received responses from either one of you in a week. I'd like to wrap this up in the next two weeks if we can. Did you get my recommendations? Thanks.

Tova

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM -----
Devon E. Romig/EAC/GOV
06/07/2006 10:08 AM
To [REDACTED]
cc jwilson@eac.gov
Subject Re: Transcript of 5-18-06 Working Group Meeting

Tim at Carol reporting said the transcript will be here today or tomorrow.

Devon Romig
United States Election Assistance Commission
1225 New York Ave. NW, Suite 1100
Washington, DC 20005
Have we had any word about the transcript for the 5-18-06 Voting Fraud-Voter Intimidation Working Group meeting? Our consultants each need a copy so that they can draft the final report. If we have it in electronic form, so much the better. --- Peggy

Hi Peg,

How do you recommend dealing with this? I have this feeling like he's trying to create a situation where I will have to write it myself. Thanks. Tova

-----Original Message-----
From: Job Serebrov [mailto:serebrov@sbcglobal.net]
Sent: Thursday, June 08, 2006 9:42 PM
To: psims@eac.gov; wang@tcf.org
Subject: Re: Transcript & Teleconference

Peggy:

I can't predict when I get home but it is between 5:30 and 6:30 my time. I know that is generally too late to have a teleconference.

I plan to review Tova's recommendations this weekend and work on my own as well as expanding the explanation of the case section.

Please see what your financial officer did with regards to my travel.
Thank you,

Job

--- psims@eac.gov wrote:

> What time do you arrive home from work? Perhaps we
> could talk then?
>
> Re your question on the mileage, I have approached
> our Financial Officer
> with a request that you receive full reimbursement
> on the grounds that
> your actual total travel costs are less than the
> estimated total travel
> costs if you had flown to DC, stayed in our more
> expensive hotels, and
> received the higher per diem for 3 days (instead of
> 1). I have not yet
> received a response from her and she has been out of
> the office much of
> this week, so I don't know what she decided to do.
> --- Peggy

"Job Serebrov"
06/08/2006 01:10 PM

To
psims@eac.gov, wang@tcf.org

Subject
Re: Transcript & Teleconference

Peg:

I just arrived home for lunch. I can no longer take
the time during the work day for telephone conferences.
As I told you I will need to finish this project after
daily working hours. I am still getting things done
from being out for ten days. I will review Tova's recommendations and
expand on mine this weekend.

Also, I sent you an e-mail asking how you handled
the mileage portion of my travel voucher?

Job

--- psims@eac.gov wrote:
4 PM EST is fine with me, if it works for Job.

---

Peggy

---

> 4 PM EST is fine with me, if it works for Job.

---

> Peggy

---

> wang@tcf.org
> 06/08/2006 10:10 AM

> To
> psims@eac.gov

> Subject
> Re: Transcript & Teleconference

> Can we make it 4 EST? I have another meeting at 3.

> ---

> I'll see how it comes in. I hope we receive an electronic copy. If we only receive a hard copy, we can pdf it and email it to you.

> How about Monday afternoon at 3 PM EST for a brief teleconference? I really can't do it before then because of other commitments. --- Peggy

---

> wang@tcf.org
> 06/08/2006 09:42 AM

> To
> psims@eac.gov

> Subject
> Re: Re:
How will you be getting it to us? Will it be something you can email?
And
can we set up a call for some time in the next few days? Thanks.

Original Message -----
From: psims@eac.gov
To: <wang@tcf.org>
Cc: 
Sent: Thursday, June 08, 2006 9:35 AM
Subject: Re:

Sorry. We have been swamped with other program activities and for today's testimony before House Admin. We have not yet received the transcript of the Working Group session. Devon checked with reporter who said it will be delivered today.

--- Peggy

w Wang@tcf.org

06/08/2006 09:15 To AM
psims@eac.gov
cc 
Serebrov

<serbrov@sbcglobal.net>
Subject

Hi, What's going on? I have not received
I'll fax it to you if that works. The total is $124.44. Thank you. Have a nice weekend. Tova

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Friday, June 09, 2006 3:03 PM
To: wang@tcf.org
Subject: Re: travel

Send it now. Let me know how much it is, so that I can include it in the total for reimbursement. ---
Peggy

"Tova Wang" <wang@tcf.org>
Hi again,

I just got the bill from our car service from the trip last month. Can I still send it to you? Do I need a cover note? Thanks. Tova

Tova Andrea Wang  
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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Sorry, its 500 pages -- it also includes data on absentee fraud and voter intimidation

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

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

Click here to receive our weekly e-mail updates.
How about 9:30 AM EST, Wednesday morning (6/14/06)?

"Tova Wang" <wang@tcf.org>

---

Either between 9 and 10 or between 12 and 1:30 would be ideal, but I should be around most of the afternoon. Thanks Peg. Tova

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, June 12, 2006 2:39 PM
To: wang@tcf.org
Subject: Will Call Later

I'll try to call you Wednesday. Is there a time that is best for you? Today has been too hectic. Tomorrow is primary election day in VA. Still no transcript. I have taken a look at the recommendations that you sent me, but have not yet heard from Job. --- Peg

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM -----

Devon E. Romig/EAC/GOV
06/07/2006 10:01 AM

To Margaret Sims/EAC/GOV@EAC
cc jwilson@eac.gov
Subject Re: Transcript of 5-18-06 Working Group Meeting

I will call the transcript company and ask them about it.

Devon Romig
United States Election Assistance Commission
1225 New York Ave. NW, Suite 1100
Washington, DC 20005
202.566.2377 phone
202.566.3128 fax
www.eac.gov
Margaret Sims/EAC/GOV

Margaret Sims/EAC/GOV
06/07/2006 09:47 AM

To dromig@eac.gov, jwilson@eac.gov
cc
Subject Transcript of 5-18-06 Working Group Meeting
Can we make it 4 est? I have another meeting at 3.

----- Original Message ----- 
From: <psims@eac.gov> 
To: <wang@tcf.org> 
Cc: <serebrov@sbcglobal.net> 
Sent: Thursday, June 08, 2006 9:55 AM 
Subject: Re: Transcript & Teleconference 

> I'll see how it comes in. I hope we receive an electronic copy. If we
> only receive a hard copy, we can pdf it and email it to the two of you.
> How about Monday afternoon at 3 PM EST for a brief teleconference? I
> really can't do it before them because of other commitments. --- Peggy 

wvang@tcf.org

06/08/2006 09:42 AM

psims@eac.gov

c

To

cc

Subject

Re: Re:

How will you be getting it to us? Will it be something you can email?
And

can we set up a call for some time in the next few days? Thanks.

----- Original Message ----- 
From: <psims@eac.gov> 
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Cc: <serebrov@sbcglobal.net> 
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Sorry. We have been swamped with other program activities and preparations for today's testimony before House Admin. We have not yet received the transcript of the Working Group session. Devon checked with the court reporter, who said it will be delivered today. --- Peggy

Hi, What's going on? I have not received responses from either one of you in a week. I'd like to wrap this up in the next two weeks if we can. Did you get my recommendations? Thanks.

Tova

I can't do that time, I'll be at an event in DC.

-----Original Message-----
From: Job Serebrov [mailto:serebrov@sbcglobal.net]
Sent: Tuesday, June 13, 2006 8:10 AM

To: psims@eac.gov; wang@tcf.org
Subject: Transcripts, Etc.

Peggy:

Any sign of the transcript? Will the other members of the working group get a copy? I have had questions from several about it.

If you want to talk I can do so this Friday at 6 pm your time.

Job

This has information on many of our topics, but they also surveyed jurisdictions on voter reg fraud coming up with a rate of 5%


Tova Andrea Wang
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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----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:18 PM -----

Tova Wang
<wang@tcf.org>
06/09/2006 12:09 PM

Subject: gao report

----- Forwarded by Joyce Wilson/EAC/GOV on 06/07/2006 09:58 AM -----

To: margaret.sims@eac.gov
cc
Subject Re: Transcript of 5-18-06 Working Group Meeting

005257
Not that I know of. Would it have gone to Bryan possibly? Our public meeting transcripts go to him.

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

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:18 PM ----- 
Margaret Sims/EAC/GOV  
06/09/2006 04:50 PM  
To "Job Serebrov"@GSAEXTERNAL
cc 
Subject Re: Travel & Transcripts

Our Financial Officer accepted my arguments. You should receive a travel reimbursement totalling $1,200.03. GSA will reimburse through electronic funds transfer. I don't usually receive notification when our consultants are reimbursed.

I still have no transcripts. --- Peggy

"Job Serebrov" <serebrov@sbcglobal.net>

Peggy:

I can't predict when I get home but it is between 5:30 and 6:30 my time. I know that is generally too late to have a teleconference.

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"Job Serebrov" 06/08/2006 01:10 PM

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Cc: 
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And

can we set up a call for some time in the next few days? Thanks.

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From: <psims@eac.gov>
To: <wang@tcf.org>
Cc: 
Sent: Thursday, June 08, 2006 9:35 AM 
Subject: Re:

Sorry. We have been swamped with other program activities and preparations for today's testimony before House Admin. We have not yet received the transcript of the Working Group session. Devon checked with the court reporter, who said it will be delivered today.

--- Peggy

wang@tcf.org

06/08/2006 09:15 To AM

psims@eac.gov

c

"Job Serebrov"

Subject

Hi, What's going on? I have not received responses from either one of you in a week. I'd like to wrap this up in the next two weeks if we can. Did you get my recommendations? Thanks.
Could you do Friday in the morning?

----- Original Message -----  
From: "Job Serebrov" <serebrov@sbcglobal.net>
To: <wang@tcf.org>; <psims@eac.gov>
Sent: Wednesday, June 14, 2006 10:17 PM
Subject: Re: teleconference

Tova:

5 pm EST is 4 pm Central. Peg would have to call at 7 pm EST to be 6 pm Central.

Job:

--- wang@tcf.org wrote:

>> Let's try to do that. Peg, you will call us 5 pm EST?

> Wednesday next week? It would have to be 6 pm.  
>  
> --- Tova Wang <wang@tcf.org> wrote:
>  
> >> Hi Job,  
> >>  
> >> Peg tells me that we should now be getting the
>> transcript early next week.
>> Regardless, we should talk about the organization
>> and distribution of work
>> on the final report and try to finally get it
done.
>> Would it be possible
>> for you to do a call before you leave for work in
>> the morning, say 8 am your
>> time, on Wednesday? If not, could you do 6 pm
>> your
>> time on Wednesday?
>> Thanks.
>>
>> Tova
>>
>> Tova Andrea Wang
>> Democracy Fellow
>> The Century Foundation
>> 41 East 70th Street - New York, NY 10021
>> phone: 212-452-7704  fax: 212-535-7534
>> www.tcf.org, for the latest news,
>> analysis, opinions, and events.
>>
>> <mailto:join-tcfmain@mailhost.groundspring.org>
>> Click here to receive our
>> weekly e-mail updates.
>

Peg:

I just arrived home for lunch. I can no longer take
time during the work day for telephone conferences. As
I told you I will need to finish this project after
daily working hours. I am still getting things done
from being out for ten days. I will review Tova's
recommendations and expand on mine this weekend.

Also, I sent you an e-mail asking how you handled the mileage portion of my travel voucher?

Job

--- psims@eac.gov wrote:

> 4 PM EST is fine with me, if it works for Job. ---
> Peggy

--- Original Message ---
> From: <psims@eac.gov>
> To: <wong@tcf.org>
> Cc: 
> Subject: Re: Transcript & Teleconference
> 
> Can we make it 4 est? I have another meeting at 3.
> 
> I'll see how it comes in. I hope we receive an electronic copy. If we only receive a hard copy, we can pdf it and email it to the two of you.
> 
> How about Monday afternoon at 3 PM EST for a brief teleconference? I really can't do it before them because of other commitments. --- Peggy

---

wang@tcf.org

06/08/2006 09:42 To

AM

psims@eac.gov
How will you be getting it to us? Will it be something you can email? And can we set up a call for some time in the next few days? Thanks.

--- Original Message ------
From: psims@eac.gov
To: wang@tcf.org
Cc: wang@tcf.org
Sent: Thursday, June 08, 2006 9:35 AM
Subject: Re:

Sorry. We have been swamped with other program activities and preparations for today's testimony before House Admin. We have not yet received the transcript of the Working Group session. Devon checked with the court reporter, who said it will be delivered today.

Peggy

wang@tcf.org

06/08/2006 09:15 To AM
psims@eac.gov
cc
"Job" Serebrov

<serebrov@sbcglobal.net>
Subject
Hi, What's going on? I have not received responses from either one of you in a week. I'd like to wrap this up in the next two weeks if we can. Did you get my recommendations? Thanks. Tova

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:18 PM ---

"Tova Wang"
<wang@tcf.org>
06/09/2006 01:56 PM

To psims@eac.gov
cc
Subject travel

Hi again,

I just got the bill from our car service from the trip last month. Can I still send it to you? Do I need a cover note? Thanks. Tova

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

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

Click here to receive our weekly e-mail updates.

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:18 PM -----

Margaret Sims/EAC/GOV
06/08/2006 05:09 PM
To "Job Serebrov"@GSAEXTERNAL
cc
Subject Re: Transcript & Teleconference
What time do you arrive home from work? Perhaps we could talk then?

Re your question on the mileage, I have approached our Financial Officer with a request that you receive full reimbursement on the grounds that your actual total travel costs are less than the estimated total travel costs if you had flown to DC, stayed in our more expensive hotels, and received the higher per diem for 3 days (instead of 1). I have not yet received a response from her and she has been out of the office much of this week, so I don't know what she decided to do. --- Peggy

Peg:

I just arrived home for lunch. I can no longer take time during the work day for telephone conferences. As I told you I will need to finish this project after daily working hours. I am still getting things done from being out for ten days. I will review Tova's recommendations and expand on mine this weekend.

Also, I sent you an e-mail asking how you handled the mileage portion of my travel voucher?

Job

--- psims@eac.gov wrote:

> 4 PM EST is fine with me, if it works for Job. ---
> Peggy
>
> wang@tcf.org
> 06/08/2006 10:10 AM
> To
> psims@eac.gov
> cc
> serebrov@sbcglobal.net
> Subject
> Re: Transcript & Teleconference
> get
> get
Can we make it 4 EST? I have another meeting at 3.

----- Original Message -----
From: <psims@eac.gov>
To: <wang@tcf.org>
Cc: 
Sent: Thursday, June 08, 2006 9:55 AM
Subject: Re: Transcript & Teleconference

>
>
> I'll see how it comes in. I hope we receive an
> electronic copy. If we
> only receive a hard copy, we can pdf it and email
> it to the two of you.
> How about Monday afternoon at 3 PM EST for a brief
> teleconference? I
> really can't do it before them because of other
> commitments. --- Peggy
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wang@tcf.org

06/08/2006 09:42 To
AM
psims@eac.gov
cc

Subject

Re: Re:

How will you be getting it to us? Will it be
something you can email?

And

can we set up a call for some time in the next few
days? Thanks.

----- Original Message -----
From: <psims@eac.gov>
To: <wang@tcf.org>
Cc: <serebrov@sbcglobal.net>
Sent: Thursday, June 08, 2006 9:35 AM
Subject: Re:
Sorry. We have been swamped with other program activities and preparations for today's testimony before House Admin. We have not yet received the transcript of the Working Group session. Devon checked with the court reporter, who said it will be delivered today.
--- Peggy

wang@tcf.org

06/08/2006 09:15 To psims@eac.gov
>> cc
>> "Job Serebrov"
>> Subject

Hi, What's going on? I have not received responses from either one of you in a week. I'd like to wrap this up in the next two weeks if we can. Did you get my recommendations? Thanks.

Tova

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:18 PM -----
Normally I am not home for lunch.

--- Tova Wang <wang@tcf.org> wrote:

> What about during a lunch hour?
> 
> I can't predict when I get home but it is between 5:30 and 6:30 my time. I know that is generally too late to have a teleconference.
> 
> I plan to review Tova's recommendations this weekend and work on my own as well as expanding the explanation of the case section.
> 
> Please see what your financial officer did with regards to my travel.
> 
> Thank you,
> 
> Job
> 
> --- psims@eac.gov wrote:
> 
> What time do you arrive home from work? Perhaps we could talk then?
> 
> Re your question on the mileage, I have approached our Financial Officer with a request that you receive full reimbursement on the grounds that your actual total travel costs are less than the estimated total travel.
costs if you had flown to DC, stayed in our more
expensive hotels, and
received the higher per diem for 3 days (instead
of
1). I have not yet
received a response from her and she has been out
of
the office much of
this week, so I don't know what she decided to do.
--- Peggy

---

"Job Serebrov" <serebrov@sbcglobal.net>
06/08/2006 01:10 PM

To
psims@eac.gov, wang@tcf.org

Subject
Re: Transcript & Teleconference

Peg:

I just arrived home for lunch. I can no longer
take
time during the work day for telephone
conferences.
As I told you I will need to finish this project
after
daily working hours. I am still getting things
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Also, I sent you an e-mail asking how you handled
the
mileage portion of my travel voucher?
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--- psims@eac.gov wrote:

> 4 PM EST is fine with me, if it works for Job.
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Peggy
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How will you be getting it to us? Will it be something you can email? And can we set up a call for some time in the next few days? Thanks.

----- Original Message ----- 
From: <psims@eac.gov>
To: <wang@tcf.org>
Cc: 
Sent: Thursday, June 08, 2006 9:35 AM
Subject: Re:

Sorry. We have been swamped with other program activities and preparations for today's testimony before House Admin. We have not yet received the transcript of the Working Group session. Devon checked with the court reporter, who said it will be delivered today.

--- Peggy

wang@tcf.org

06/08/2006 09:15 To
AM

--- message truncated ---

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:18 PM -----

“Tova Wang”
<wang@tcf.org> 
To “Job Serebrov” psims@eac.gov
cc
Subject nexis

Hi Peg and Job,
I don't know how we might be able to use these but here, finally, are the super-refined versions of the nexis charts. Can we include them? Thanks. Tova

Thats a first! Thanks -- I'll fax and send. Tova

Looks good to me! --- Peggy

Hi Peg,

Attached is my voucher for the last month -- can you check it quickly before I send it? Also, are we good for Wednesday at 7? Thanks. Tova

Tova Andrea Wang
Democracy Fellow
The Century Foundation
41 East 70th Street - New York, NY 10021
phone: 212-452-7704 fax: 212-535-7534
fine
----- Original Message ----- 
From: "Job Serebrov" <serebrov@sbcglobal.net>
To: <wang@tcf.org>; <psims@eac.gov>
Sent: Wednesday, June 14, 2006 10:17 PM
Subject: Re: teleconference

> Tova:
> 
> 5 pm EST is 4 pm Central. Peg would have to call at 7
> pm EST to be 6 pm Central.
> 
> Job
> 
> --- wang@tcf.org wrote:
> 
> >> Let's try to do that. Peg, you will call us 5 pm
> >> EST?
> >> ----- Original Message ----- 
> >> From: "Job Serebrov" <serebrov@sbcglobal.net>
> >> To: "Tova Wang" <wang@tcf.org>
> >> Sent: Wednesday, June 14, 2006 6:29 PM
> >> Subject: Re: teleconference
> >>
> >>
> >> Wednesday next week? It would have to be 6 pm.
> >>
> >>
> >> --- Tova Wang <wang@tcf.org> wrote:
> >>
> >>
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> >>
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> >> transcript early next week.
> >> Regardless, we should talk about the organization
> >> and distribution of work
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> >> for you to do a call before you leave for work in
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> >> time on Wednesday?
Hi Peg,

Attached is my voucher for the last month -- can you check it quickly before I send it? Also, are we good for Wednesday at 7? Thanks. Tova
Good news!!! The transcript is finally here.

Devon Romig
United States Election Assistance Commission
1225 New York Ave. NW, Suite 1100
Washington, DC 20005
202.566.2377 phone
202.566.3128 fax
www.eac.gov

Dear EAC,

Attached please note the ASCII file for the Voting Fraud-Voter Intimidation Meeting taken on Wednesday, May 18, 2006. Your transcript has been shipped to you.

ASCII file name: 051806.txt

Please let us know if you have any questions.
I have been told that GSA expects to make the disbursement next week, probably on or around June 28.
--- Peggy

Here's an update from Craig on his Election Crimes book. The last was published in 1995.

It is written and currently in the Deputy AG's office for policy review.

I have published the two most substantive chapters of the new book as private, personal papers under the aegis of the International Foundation for Electoral Systems (IFES), for which I have done a lot of work around the world. I recommend that you access IFES' website and go to the "Money and Politics" part of their extensive site. I should have two papers available there, one addressing Abuse of the Franchise (published in connection with work I did last year in Liberia) and the other involving Federal Campaign Finance Xrime" done in connection with work in Bosnia.

If you can't find them this way, please call me: [redacted]

Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:18 PM ---
Subject Re: Teleconference

It will need to be early next week. What news of the transcript?

--- psims@eac.gov wrote:

> I am sorry, but I have to postpone the teleconference originally scheduled for this evening. Is another day this week or early next week good for you two?
> Peggy
> 
> Sent from my BlackBerry Wireless Handheld
>
>

Can I also get an answer on whether we can speak about the project publicly?

OK. I have marked my calendar for a 7 PM EST/6 PM CST teleconference for this Wednesday. Still no transcript. --- Peggy

wang@tcf.org
fine

----- Original Message -----  
From: "Job Serebrov"  
To: <wang@tcf.org>; <pseim@eac.gov>  
Sent: Wednesday, June 14, 2006 10:17 PM  
Subject: Re: teleconference

> Tova:
> 
> 5 pm EST is 4 pm Central. Peg would have to call at 7 pm EST to be 6 pm Central.
> 
> Job
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> --- wang@tcf.org wrote:
> 
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> >> To: "Tova Wang" <wang@tcf.org>  
> >> Sent: Wednesday, June 14, 2006 6:29 PM  
> >> Subject: Re: teleconference
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> >> > Wednesday next week? It would have to be 6 pm.
> >> >
> >> > --- Tova Wang <wang@tcf.org> wrote:
> >> >
> >> >> Hi Job,
> >> >>
> >> >> Peg tells me that we should now be getting the transcript early next week.
> >> >> Regardless, we should talk about the organization and distribution of work on the final report and try to finally get it done.
> >> >> Would it be possible for you to do a call before you leave for work in the morning, say 8 am your time, on Wednesday? If not, could you do 6 pm your time on Wednesday?
> >> >> Thanks.
> >> >>
> >> >> Tova
> >> >>
> >> >> Tova Andrea Wang
> >> >> Democracy Fellow
> >> >> The Century Foundation
> >> >> 41 East 70th Street - New York, NY 10021
Would it be possible to find out how long TSCA will be able to process the travel reimbursement for Job Serebrov? --- Peggy

Peggy:

I need you to check on Monday to see when I will get my last invoice paid as well as my travel which was going to be expedited.

Are we still talking on Wednesday at 7 EST?

Thanks,

Job
----- Original Message ----- 
From: "Job Serebrov"  
To: <wang@tcf.org>; <psims@eac.gov>  
Sent: Wednesday, June 14, 2006 10:17 PM 
Subject: Re: teleconference

> Tova: 
> 
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> pm EST to be 6 pm Central. 
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> --- wang@tcf.org wrote: 
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>> EST? 
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>> From: "Job Serebrov"  
>> To: "Tova Wang" <wang@tcf.org>  
>> Sent: Wednesday, June 14, 2006 6:29 PM 
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>> > --- Tova Wang <wang@tcf.org> wrote: 
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>> >> time on Wednesday?
Thanks.

Tova

Tova Andrea Wang
Democracy Fellow
The Century Foundation
41 East 70th Street - New York, NY 10021
phone: 212-452-7704 fax: 212-535-7534
www.tcf.org, for the latest news,
analysis, opinions, and events.

www.tcf.org, for the latest news,
analysis, opinions, and events.

<mailto:join-tcfmain@mailhost.groundspring.org>
Click here to receive our
weekly e-mail updates.

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:18 PM -----
Margaret Sims/EAC/GOV
06/19/2006 01:24 PM
To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL
cc
Subject Re: voucher

Looks good to me! --- Peggy

"Tova Wang" <wang@tcf.org>

"Tova Wang" <wang@tcf.org>
06/19/2006 08:40 AM
To psims@eac.gov
cc
Subject voucher

Hi Peg,

Attached is my voucher for the last month -- can you check it quickly before I send it? Also, are we good for Wednesday at 7? Thanks. Tova
Good news!!! The transcript is finally here.

Devon Romig
United States Election Assistance Commission
1225 New York Ave. NW, Suite 1100
Washington, DC 20005
202.566.2377 phone
202.566.3128 fax
www.eac.gov

Dear EAC,

Attached please note the ASCII file for the Voting Fraud-Voter Intimidation Meeting taken on Wednesday, May 18, 2006. Your transcript has been shipped to you.

ASCII file name: 051806.txt

Please let us know if you have any questions.
--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:18 PM ---
Margaret Sims/EAC/GOV
06/19/2006 04:28 PM
To Job Serebrov
cc
Subject Travel Reimbursement

I have been told that GSA expects to make the disbursement next week, probably on or around June 28.  
--- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:18 PM ---
Bryan Whitener/EAC/GOV
06/15/2006 05:01 PM
To Margaret Sims/EAC/GOV@EAC, Juliet E. Thompson-Hodgkins/EAC/GOV@EAC, Gavin S. Gilmour/EAC/GOV@EAC
cc
Subject: Fw: The 7th Edition!

Here's an update from Craig on his Election Crimes book. The last was published in 1995.

--- Forwarded by Bryan Whitener/EAC/GOV on 06/15/2006 08:38 AM ---
"Donsanto, Craig" <Craig.Donsanto@usdoj.gov>
06/13/2006 08:04 PM
To bwhitener@eac.gov
cc
Subject: The 7th Edition!

It is written and currently in the Deputy AG's office for policy review.

I have published the two most substantive chapters of the new book as private, personal papers under the aegis of the International Foundation for Electoral Systems (IFES), for which I have done a lot of work around the world. I recommend that you access IFES' website and go to the "Money and Politics" part of their extensive site. I should have two papers available there, one addressing Abuse of the Franchise (published in connection with work I did last year in Liberia) and the other involving Federal Campaign Finance Xrime" done in connection with work in Bosnia.

If you can't find them this way, please call me:

Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:18 PM ---
"Job Serebrov"
06/21/2006 06:21 PM
To psims@eac.gov, "Tova Andrea Wang"<wang@tcf.org>
cc

005285
Subject Re: Teleconference

It will need to be early next week. What news of the transcript?

--- psims@eac.gov wrote:

> I am sorry, but I have to postpone the teleconference originally scheduled for this evening. Is another day this week or early next week good for you two?
> Peggy

Sent from my BlackBerry Wireless Handheld

Can I also get an answer on whether we can speak about the project publicly?

OK. I have marked my calendar for a 7 PM EST/6 PM CST teleconference for this Wednesday. Still no transcript. --- Peggy
fine
----- Original Message ----- 
From: "Job Serebrov" <[redacted]>
To: <wang@tcf.org>; <psims@aeac.gov>
Sent: Wednesday, June 14, 2006 10:17 PM
Subject: Re: teleconference

> Tova:
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> 5 pm EST is 4 pm Central. Peg would have to call at 7 pm EST to be 6 pm Central.
>
> Job
>
> --- wang@tcf.org wrote:
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> >> Let's try to do that. Peg, you will call us 5 pm EST?
> >> ----- Original Message ----- 
> >> From: "Job Serebrov" <[redacted]>
> >> To: "Tova Wang" <wang@tcf.org>
> >> Sent: Wednesday, June 14, 2006 6:29 PM
> >> Subject: Re: teleconference
> >>
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> >> > --- Tova Wang <wang@tcf.org> wrote:
> >> >
> >> > > Hi Job,
> >> >
> >> > > Peg tells me that we should now be getting the transcript early next week.
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> >> > > Would it be possible for you to do a call before you leave for work in the morning, say 8 am your time, on Wednesday? If not, could you do 6 pm your time on Wednesday?
> >> >
> >> > > Thanks.
> >> >
> >> > Tova
> >> >
> >> > Tova Andrea Wang
> >> > Democracy Fellow
> >> > The Century Foundation
> >> > 41 East 70th Street - New York, NY 10021
> >>>
> >>
> >>
> >>
Would it be possible to find out how fast GSA will be able to process the travel reimbursement for Job Serebrov? --- Peggy

Peggy:

I need you to check on Monday to see when I will get my last invoice paid as well as my travel which was going to be expedited.

Are we still talking on Wednesday at 7 EST?

Thanks,

Job
Your personal services invoice should be paid this week (Thursday or Friday). The payment of travel costs will take longer. I'll check with Finance to see if we can get an estimated date from GSA. --- Peggy

Peggy:

I need you to check on Monday to see when I will get my last invoice paid as well as my travel which was going to be expedited.

Are we still talking on Wednesday at 7 EST?

Thanks,
Job

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

Nancy
Peggy--We sent the request to the Finance Center on 6/13. Finance quotes a 2 week turnaround.

Diana M. Scott
Administrative Officer
U.S. Election Assistance Commission
(202) 566-3100 (office)
(202) 566-3127 (fax)
dscott@eac.gov

Would it be possible to find out how fast GSA will be able to process the travel reimbursement for Job Serebrov? --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:18 PM -----

OK. Next Monday (6-26) at 7 PM EST. I'll call you.
Peggy

--------------------------
Sent from my BlackBerry Wireless Handheld

----- Original Message ----- 
From: "Job Serebrov" [serebrov@sbcglobal.net]
Sent: 06/21/2006 09:34 PM
To: wang@tcf.org; psims@eac.gov  
Subject: Re: Teleconference  

Monday at 7 EST is ok with me. What about you Peg?

Job  

--- wang@tcf.org wrote:  

> How about Monday at 6:30 or 7 est?  
> --- Original Message---  
> From: "Job Serebrov" <---  
> To: <psims@eac.gov>; "Tova Andrea Wang"  
> <wang@tcf.org>  
> Sent: Wednesday, June 21, 2006 6:21 PM  
> Subject: Re: Teleconference  
> >  
> > It will need to be early next week. What news of the transcript?  
> >  
> > --- psims@eac.gov wrote:  
> >  
> > >> I am sorry, but I have to postpone the teleconference originally scheduled for this evening. Is another day this week or early next week good for you two?  
> > >> Peggy  
> > >> --------------------------  
> > >> Sent from my BlackBerry Wireless Handheld  
> > >

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:18 PM -----  
Margaret Sims/EAC/GOV  
06/19/2006 12:30 PM  
To Bryan Whitener/EAC/GOV  
cc Gavin S. Gilmour/EAC/GOV@EAC, Juliet E. Thompson-Hodgkins/EAC/GOV@EAC  
Subject Re: Fw: The 7th Edition!

I have a copy of Donsanto's IFES paper, if you need it. We used it as one of the resources for the vote fraud-voter intimidation research. --- Peggy  

005291
Here's an update from Craig on his Election Crimes book. The last was published in 1995.

It is written and currently in the Deputy AG's office for policy review.

I have published the two most substantive chapters of the new book as private, personal papers under the aegis of the International Foundation for Electoral Systems (IFES), for which I have done a lot of work around the world. I recommend that you access IFES' website and go to the "Money and Politics" part of their extensive site. I should have two papers available there, one addressing Abuse of the Franchise (published in connection with work I did last year in Liberia) and the other involving Federal Campaign Finance Xrime" done in connection with work in Bosnia.

If you can't find them this way, please call me: ____________________________

Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

Anyday anytime except tomorrow is OK by me. Tova

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
I am sorry, but I have to postpone the teleconference originally scheduled for this evening. Is another day this week or early next week good for you two? Peggy

Sent from my BlackBerry Wireless Handheld

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:18 PM ---

"Job Serebrov"

06/22/2006 09:27 PM

To: psims@eac.gov

cc

Subject: Suggestions

--- RECOMMENDATIONS.doc Peggy:

When Tova sent me her suggestions I made some changes and additions. Tova later wrote to me and said she expected me to come up with my own list. Due to time constraints and at risk of duplication I rather go with the corrected suggestions.

Job

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:18 PM ---

"Serebrov"

06/21/2006 06:25 PM

To: "Tova Wang <wang@tcf.org>, psims@eac.gov

cc

Subject: Re: nexis

I have no objection to amending the official findings/CD to add these.

--- Tova Wang <wang@tcf.org> wrote:

> Hi Peg and Job,
> > I don't know how we might be able to use these but
> > here, finally, are the
> super-refined versions of the nexis charts. Can we
> include them? Thanks.
> Tova
>

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:18 PM ----

Margaret Sims/EAC/GOV
06/22/2006 10:31 AM

To: "Job Serebrov",
"Tova Andrea Wang" <wang@tcf.org>

cc

Subject: Re: nexis

Fine by me. Peg

Peggy

--------------------------
Sent from my BlackBerry Wireless Handheld

----- Original Message ----- 
From: "Job Serebrov"  
Sent: 06/21/2006 06:25 PM  
To: "Tova Wang" <wang@tcf.org>; psims@eac.gov  
Subject: Re: nexis

I have no objection to amending the official findings/CD to add these.

--- Tova Wang <wang@tcf.org> wrote:

> Hi Peg and Job,
> 
> I don't know how we might be able to use these but here, finally, are the super-refined versions of the nexis charts. Can we include them? Thanks.
> Tova

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:18 PM ----

"Tova Wang" <wang@tcf.org>
06/20/2006 11:10 AM

To: psims@eac.gov

cc

Subject: question
Am I correct in assuming that I still cannot discuss the findings of our report? Thanks.

Tova Andrea Wang  
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.

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM -----  
"Job Serebrov"  
06/30/2006 10:02 PM  
To wang@tcf.org, psims@eac.gov  
cc  
Subject Re: Various

For Donsanto to be able to do this, we would need enough time and money to contact all interviewees and also permit comment from them. However, in this matter I am 100% in agreement with Tova.

--- wang@tcf.org wrote:

> Also, I maintain that a reasonable solution to this  
> is to allow Donsanto  
> and/or any of the commissioners who desire to do so  
> to provide a statement  
> that would be included in the report and in the  
> record.  
> ----- Original Message -----  
> From: <wang@tcf.org>  
> To: <psims@eac.gov>; "Job Serebrov"  
> Cc: "Tova Wang" <wang@tcf.org>  
> Sent: Friday, June 30, 2006 9:42 PM  
> Subject: Re: Various  
>  
>  
> > That would be great on the contract.  
> >  
> > If the interview is "edited" as you put it, I will  
> be very, very  
> > uncomfortable, as I believe Job would be as well.  
> I know you don't want  
> > to spend anymore time on this, but I consider it a  
> rather important issue,  
> > and I think Job does too. I would be happy to  
> talk to you and Tom and any  
> > of the commissioners about this further if that  
> would be helpful. I am  
> > available by cell over the next four days and in
Actually, the Donsanto interview was the only one I did attend, but I agree the issue is taking up too much of your time. I just wanted you to be forewarned that the paragraph has already raised red flags in DC of and is likely to result in an edit. Enough said about that.

I am concerned about the number of hours left for this project. If you and Tova both agree, I'll see if our Contracting Officer will approve a contract mod to provide for some additional hours and money to incorporate comments received on the report and other efforts that fall within the tasks specified in the current contract. We won't get 60 thou, but there might be a little year end money we can use to finish this off properly.

Peg

--------------------------
Sent from my BlackBerry Wireless Handheld

--- Original Message
From: "Job Serebrov" [serebrov@eac.gov]
Sent: 06/30/2006 05:58 PM
To: psims@eac.gov; wang@tcf.org
Subject: Various

Peg:

I had to take time off this afternoon to handle some issues. Did you get an answer as to my travel reimbursement?

I spoke to Tova about the Donsanto issue. We both agree about what we heard during the interview. We also agree that this is taking up too much time (of which we have so little left) and is a minor part
of one interview which makes up one of thirty interviews.
I feel the same as Tova, the Commission was not in on the interview and thus do not know what was said and we are not giving opportunity, especially given how long ago the interviews were, to object. Frankly, if the Commission wants to give us another sixty hours each we can call all of our interviewees, give them the review and ask for comments. In any case, we can't include comments from other interviews with, or lectures by person interviewed, outside of our interview with that person. We simply can't afford to single out one statement in one interview that there is a disagreement on. Finally, I don't read the paragraph as you do---I remember what was said---the paragraph clearly does not imply an abandonment of other DOJ electoral investigations.

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM ---

Margaret Sims/EAC/GOV
06/27/2006 02:47 PM To Jeannie Layson/EAC/GOV
cc
Subject Re: U.S. News & World Report

Here it is. --- Peg

EAC Boards VF-VI Status Report.doc

Jeannie Layson/EAC/GOV

Jeannie Layson/EAC/GOV
06/27/2006 01:12 PM

To  Margaret Sims/EAC/GOV@EAC
cc

Subject  Re: U.S. News & World Report

Peg,
Would you please send me the document regarding this project that was submitted to the Standards Bd?

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 Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM -----
"Tova Wang"
<wang@tcf.org>  To  psims@eac.gov, "Job Serebrov" <job.serebrov76@yahoo.com>
06/28/2006 04:37 PM
cc

Subject  methodology

As you may recall, the working group expressed interest in the risk analysis method. The recent report by the Brennan Center on voting machines employs this methodology. If you look at pp. 8-19 of the attached, it provides a potential model. I think it might be worth including this as an appendix or footnote in the methodology section. Please let me know what you think. Tova

Tova Andrea Wang
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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brennan machine report.pdf
----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM -----
Margaret Sims/EAC/GOV  06/30/2006 05:31 PM
To  Job Serebrov
cc

Subject  Contract Hours & Payments for Services
Hi Peg,

What is the current invoice schedule? Thanks.

Tova Andrea Wang
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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Will it be possible for you to extract the excerpt for inclusion in the report? Thanks.

-----Original Message-----
From: Job Serebrov [mailto:...
Sent: Wednesday, June 28, 2006 5:40 PM
To: Tova Wang; psims@eac.gov
Subject: Re: methodology

Agreed

--- Tova Wang <wang@tcf.org> wrote:

> As you may recall, the working group expressed
> interest in the risk analysis
> method. The recent report by the Brennan Center on
> voting machines employs
> this methodology. If you look at pp. 8-19 of the
> attached, it provides a
> potential model. I think it might be worth
> including this as an appendix or
> footnote in the methodology section. Please let me
> know what you think.
> Tova
> Tova Andrea Wang
> Democracy Fellow
> The Century Foundation
> 41 East 70th Street - New York, NY 10021
> phone: 212-452-7704 fax: 212-535-7534
> www.tcf.org, for the latest news,
> analysis, opinions, and events.
> 
> Peggy:
>
> In the transcript, there is one serious mistake that
must be changed immediately. On page 5 it indicates
that I helped review and draft changes to the election
code of Libya. It should be Namibia, not Libya. The
reason this is so serious if it stands is that at the
time I reviewed Namibia’s Code it was illegal for
Americans to deal with Libya. I need to know that this
has been corrected any ALL parties who have seen the
transcript notified.

Job
Hi, What's going on? I have not received responses from either one of you in a week. I'd like to wrap this up in the next two weeks if we can. Did you get my recommendations? Thanks.

Tova

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:18 PM ---

"Tova Wang"
<wang@tcf.org>
06/09/2006 01:56 PM
To psims@eac.gov
cc
Subject travel

Hi again,

I just got the bill from our car service from the trip last month. Can I still send it to you? Do I need a cover note? Thanks. Tova

Tova Andrea Wang
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.

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:18 PM ---

Margaret Sims/EAC/GOV
06/08/2006 05:09 PM
To "Job Serebrov" walden@gsaexternal.gov
cc
Subject Re: Transcript & Teleconference
What time do you arrive home from work? Perhaps we could talk then?

Re your question on the mileage, I have approached our Financial Officer with a request that you receive full reimbursement on the grounds that your actual total travel costs are less than the estimated total travel costs if you had flown to DC, stayed in our more expensive hotels, and received the higher per diem for 3 days (instead of 1). I have not yet received a response from her and she has been out of the office much of this week, so I don't know what she decided to do. --- Peggy

"Job Serebrov"

Peg:

I just arrived home for lunch. I can no longer take time during the work day for telephone conferences. As I told you I will need to finish this project after daily working hours. I am still getting things done from being out for ten days. I will review Tova's recommendations and expand on mine this weekend.

Also, I sent you an e-mail asking how you handled the mileage portion of my travel voucher?

Job

--- psims@eac.gov wrote:

> 4 PM EST is fine with me, if it works for Job. ---
> Peggy
> 
> 
> wang@tcf.org
> 06/08/2006 10:10 AM
> 
> To
> psims@eac.gov
> cc
> Subject
> Re: Transcript & Teleconference
> 
> 
> 005302
Hi Peg and Job,

How will you be getting it to us? Will it be something you can email?

And can we set up a call for some time in the next few days? Thanks.

----- Original Message ----- 
From: <psims@eac.gov> 
To: <wang@tcf.org> 
Cc: <serebrov@sbcglobal.net> 
Sent: Thursday, June 08, 2006 9:35 AM 
Subject: Re: 

Sorry. We have been swamped with other program activities and preparations for today's testimony before House Admin. We have not yet received the transcript of the Working Group session. Devon checked with the court reporter, who said it will be delivered today.

--- Peggy

--- message truncated ---

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:18 PM ----- 
"Tova Wang" 
<wang@tcf.org> 
06/21/2006 11:00 AM 
To "Job Serebrov", psims@eac.gov 
cc 
Subject nexis

Hi Peg and Job,
Thats a first! Thanks -- I'll fax and send. Tova

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

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, June 19, 2006 12:24 PM
To: wang@tcf.org
Subject: Re: voucher

Looks good to me! --- Peggy

Hi Peg,

Attached is my voucher for the last month -- can you check it quickly before I send it? Also, are we good for Wednesday at 7? Thanks. Tova

Tova Andrea Wang
Democracy Fellow
The Century Foundation
41 East 70th Street - New York, NY 10021
phone: 212-452-7704 fax: 212-535-7534
Can we make it 4 est? I have another meeting at 3.

----- Original Message ----- 
From: <psims@eac.gov>
To: <wang@tcf.org>
Cc:  
Sent: Thursday, June 08, 2006 9:55 AM 
Subject: Re: Transcript & Teleconference  

> I'll see how it comes in. I hope we receive an electronic copy. If we  
> only receive a hard copy, we can pdf it and email it to the two of you.  
> How about Monday afternoon at 3 PM EST for a brief teleconference? I  
> really can't do it before them because of other commitments. --- Peggy  

wang@tcf.org

06/08/2006 09:42 AM
psims@eac.gov

005305
Sorry. We have been swamped with other program activities and preparations for today's testimony before House Admin. We have not yet received the transcript of the Working Group session. Devon checked with the court reporter, who said it will be delivered today. --- Peggy

---

Hi, What's going on? I have not received responses from either one of you in a week. I'd like to wrap this up in the next two weeks if we can. Did you get my recommendations? Thanks.

Tova

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:18 PM -----

I can't do that time, I'll be at an event in DC.
To: psims@eac.gov; wang@tcf.org
Subject: Transcripts, Etc.

Peggy:

Any sign of the transcript? Will the other members of the working group get a copy? I have had questions from several about it.

If you want to talk I can do so this Friday at 6 pm your time.

Job

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:18 PM ---

"Tova Wang"
<wang@tcf.org>
06/09/2006 12:09 PM

This has information on many of our topics, but they also surveyed jurisdictions on voter reg fraud coming up with a rate of 5%

http://www.gao.gov/cgi-bin/getrpt?GAO-06-450

Tova Andrea Wang
Democracy Fellow
The Century Foundation
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--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:18 PM ---

Joyce Wilson/EAC/GOV
06/07/2006 09:58 AM

Subject Re: Transcript of 5-18-06 Working Group Meeting
Not that I know of. Would it have gone to Bryan possibly? Our public meeting transcripts go to him.

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

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:18 PM -----
Margaret Sims/EAC/GOV  
06/09/2006 04:50 PM  
To: "Job Serebrov"  
cc:  
Subject: Re: Travel & Transcripts

Our Financial Officer accepted my arguments. You should receive a travel reimbursement totalling $1,200.03. GSA will reimburse through electronic funds transfer. I don't usually receive notification when our consultants are reimbursed.

I still have no transcripts. --- Peggy

"Job Serebrov"  
06/08/2006 10:42 PM  
To: psims@eac.gov, wang@tcf.org  
cc:  
Subject: Re: Transcript & Teleconference

Peggy:

I can't predict when I get home but it is between 5:30 and 6:30 my time. I know that is generally too late to have a teleconference.

I plan to review Tova's recommendations this weekend and work on my own as well as expanding the explanation of the case section.

Please see what your financial officer did with regards to my travel.

Thank you,

Job

--- psims@eac.gov wrote:

> What time do you arrive home from work? Perhaps we
could talk then?

Re your question on the mileage, I have approached our Financial Officer with a request that you receive full reimbursement on the grounds that your actual total travel costs are less than the estimated total travel costs if you had flown to DC, stayed in our more expensive hotels, and received the higher per diem for 3 days (instead of 1). I have not yet received a response from her and she has been out of the office much of this week, so I don't know what she decided to do.

--- Peggy

"Job Serebrov" 06/08/2006 01:10 PM
To psims@eac.gov, wang@tcf.org
Subject Re: Transcript & Teleconference

Peg:

I just arrived home for the week. I can no longer take time during the work day for telephone conferences. As I told you I will need to finish this project after daily working hours. I am still getting things done from being out for ten days. I will review Tova's recommendations and expand on mine this weekend.

Also, I sent you an e-mail asking how you handled the mileage portion of my travel voucher?

Job

--- psims@eac.gov wrote:

> 4 PM EST is fine with me, if it works for Job.

---

> Peggy
Can we make it 4 EST? I have another meeting at 3.

----- Original Message ----- 
From: <psims@eac.gov>
To: <wang@tcf.org>
Cc: 
Sent: Thursday, June 08, 2006 9:55 AM
Subject: Re: Transcript & Teleconference

I'll see how it comes in. I hope we receive an electronic copy. If we only receive a hard copy, we can pdf it and email it to the two of you. How about Monday afternoon at 3 PM EST for a brief teleconference? I really can't do it before then because of other commitments. --- Peggy

wang@tcf.org

06/08/2006 09:42 To AM
psims@eac.gov
cc
Subject
Re: Re:
How will you be getting it to us? Will it be something you can email?
And can we set up a call for some time in the next few days? Thanks.

----- Original Message ----- 
From: <psims@eac.gov>
To: [Redacted]
Cc: [Redacted]
Sent: Thursday, June 08, 2006 9:35 AM
Subject: Re:

Sorry. We have been swamped with other program activities and preparations for today’s testimony before House Admin. We have not yet received the transcript of the Working Group session. Devon checked with the court reporter, who said it will be delivered today.

--- Peggy

Hi, What’s going on? I have not received responses from either one of you in a week. I’d like to wrap this up in the next two weeks if we can. Did you get my recommendations? Thanks.
Could you do Friday in the morning?

----- Original Message ----- 
From: "Job Serebrov" <serebrov@sbcglobal.net> 
To: <wang@tcf.org>; <psims@eac.gov> 
Sent: Wednesday, June 14, 2006 10:17 PM 
Subject: Re: teleconference

> Tova: 
> 5 pm EST is 4 pm Central. Peg would have to call at 7 pm EST to be 6 pm Central.
> Job 
> --- wang@tcf.org wrote: 
> >> Let's try to do that. Peg, you will call us 5 pm EST?
> >> ----- Original Message ----- 
> >> From: "Job Serebrov" <serebrov@sbcglobal.net> 
> >> To: "Tova Wang" <wang@tcf.org> 
> >> Sent: Wednesday, June 14, 2006 6:29 PM 
> >> Subject: Re: teleconference
> >> 
> >> > Wednesday next week? It would have to be 6 pm. 
> >> > 
> >> > --- Tova Wang <wang@tcf.org> wrote:
> >> > 
> >> > Hi Job,
> >> > 
> >> > Peg tells me that we should now be getting the
transcript early next week.

Regardless, we should talk about the organization and distribution of work on the final report and try to finally get it done.

Would it be possible for you to do a call before you leave for work in the morning, say 8 am your time, on Wednesday? If not, could you do 6 pm your time on Wednesday?

Thanks.

Tova

Tova Andrea Wang
Democracy Fellow
The Century Foundation
41 East 70th Street - New York, NY 10021
phone: 212-452-7704 fax: 212-535-7534
www.tcf.org, for the latest news, analysis, opinions, and events.

<mailto:join-tcfmain@mailhost.groundspring.org>
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---

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:18 PM ---

06/08/2006 01:10 PM
To psims@eac.gov, wang@tcf.org
cc
Subject Re: Transcript & Teleconference

Peg:

I just arrived home for lunch. I can no longer take time during the work day for telephone conferences. As I told you I will need to finish this project after daily working hours. I am still getting things done from being out for ten days. I will review Tova's
recommendations and expand on mine this weekend.

Also, I sent you an e-mail asking how you handled the mileage portion of my travel voucher.

Job

--- psims@eac.gov wrote:

> 4 PM EST is fine with me, if it works for Job. ---
> Peggy
>
> wang@tcf.org
> 06/08/2006 10:10 AM
>
> To
> psims@eac.gov
> cc
> Subject
> Re: Transcript & Teleconference
>
> Can we make it 4 est? I have another meeting at 3.

----- Original Message ------
> From: <psims@eac.gov>
> To: <wang@tcf.org>
> Cc: 
> Sent: Thursday, June 08, 2006 9:55 AM
> Subject: Re: Transcript & Teleconference
>
> I'll see how it comes in. I hope we receive an electronic copy. If we only receive a hard copy, we can pdf it and email it to the two of you.
> How about Monday afternoon at 3 PM EST for a brief teleconference? I really can't do it before them because of other commitments. --- Peggy
>
> wang@tcf.org
>
> 06/08/2006 09:42 To
> AM
> psims@eac.gov
Subject: Re: Re:

How will you be getting it to us? Will it be something you can email?
And

Can we set up a call for some time in the next few days? Thanks.

----- Original Message -----
From: <psims@eac.gov>
To: <w@tcf.org>
Cc: <Job Serebrov>
Sent: Thursday, June 08, 2006 9:35 AM

Subject: Re:

>> Sorry. We have been swamped with other program activities and preparations for today's testimony before House Admin. We have not yet received the transcript of the Working Group session. Devon checked with the court reporter, who said it will be delivered today.
--- Peggy

w@tcf.org

06/08/2006 09:15 To AM
psims@eac.gov
c
>Serebrov"

Your personal services invoice should be paid this week (Thursday or Friday). The payment of travel costs will take longer. I'll check with Finance to see if we can get an estimated date from GSA. --- Peggy

---

Peggy:

I need you to check on Monday to see when I will get my last invoice paid as well as my travel which was going to be expedited.

Are we still talking on Wednesday at 7 EST?

Thanks,

Job

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:18 PM ---

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

Nancy

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:18 PM ---
Peggy--We sent the request to the Finance Center on 6/13. Finance quotes a 2 week turnaround.

Diana M. Scott
Administrative Officer
U.S. Election Assistance Commission
(202) 566-3100 (office)
(202) 566-3127 (fax)
dscott@eac.gov

Margaret Sims/EAC/GOV

Would it be possible to find out how fast GSA will be able to process the travel reimbursement for Job Serebrov? --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:18 PM -----
Margaret Sims/EAC/GOV
06/22/2006 10:30 AM
To: "Job Serebrov", "Tova Andrea Wang" <wang@tcf.org>
cc
Subject: Re: Teleconference

OK. Next Monday (6-26) at 7 PM EST. I'll call you.

Peggy

--------------------------
Sent from my BlackBerry Wireless Handheld

----- Original Message ----- 
From: "Job Serebrov" [serebrov@sbcglobal.net]
Sent: 06/21/2006 09:34 PM

005317
To: wang@tcf.org; psims@eac.gov
Subject: Re: Teleconference

Monday at 7 EST is ok with me. What about you Peg?

Job

--- wang@tcf.org wrote:

> How about Monday at 6:30 or 7 est?
> ----- Original Message ----- 
> From: "Job Serebrov" <wang@tcf.org>
> To: "Tova Andrea Wang"
> <psims@eac.gov>
> Sent: Wednesday, June 21, 2006 6:21 PM
> Subject: Re: Teleconference
> 
> > It will need to be early next week. What news of
> > the
> > transcript?
> > 
> > --- psims@eac.gov wrote:
> > 
> > >>> I am sorry, but I have to postpone the
> > >>> teleconference originally scheduled
> > >>> for this evening. Is another day this week or
> > >>> early
> > >>> next week good for you
> > >>> two?
> > >>> Peggy
> > >>>
> > >>> --------------------------
> > >>> Sent from my BlackBerry Wireless Handheld
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--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:18 PM ---
Margaret Sims/EAC/GOV
06/19/2006 12:30 PM
To Bryan Whitener/EAC/GOV
cc Gavin S. Gilmour/EAC/GOV@EAC, Juliet E. Thompson-Hodgkins/EAC/GOV@EAC
Subject Re: Fw: The 7th Edition

I have a copy of Donsanto's IFES paper, if you need it. We used it as one of the resources for the vote
fraud-voter intimidation research. --- Peggy
Here's an update from Craig on his Election Crimes book. The last was published in 1995.

--- Forwarded by Bryan Whitener/EAC/GOV on 06/15/2006 08:38 AM ---

"Donsanto, Craig"
<Craig.Donsanto@usdoj.gov>
To: bwhitener@eac.gov
cc
06/13/2006 08:04 PM
Subject: The 7th Edition!

It is written and currently in the Deputy AG's office for policy review.

I have published the two most substantive chapters of the new book as private, personal papers under the aegis of the International Foundation for Electoral Systems (IFES), for which I have done a lot of work around the world. I recommend that you access IFES' website and go to the "Money and Politics" part of their extensive site. I should have two papers available there, one addressing Abuse of the Franchise (published in connection with work I did last year in Liberia) and the other involving Federal Campaign Finance Xrime done in connection with work in Bosnia.

If you can't find them this way, please call me:

------------------

Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:18 PM -----

"Tova Wang"
<wang@tcf.org>
To: psims@eac.gov, "Job Serebro"
cc
06/21/2006 12:25 PM
Subject: RE: Teleconference

Anyday anytime except tomorrow is OK by me. Tova

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Wednesday, June 21, 2006 11:15 AM
To: Tova Andrea Wang; Job Serebrov
Subject: Teleconference

I am sorry, but I have to postpone the teleconference originally scheduled for this evening. Is another day this week or early next week good for you two? Peggy

--------------------------
Sent from my BlackBerry Wireless Handheld

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:18 PM -----

"Job Serebrov" To psims@eac.gov
06/22/2006 09:27 PM cc
Subject Suggestions

RECOMMENDATIONS.doc

Peggy:

When Tova sent me her suggestions I made some changes and additions. Tova later wrote to me and said she expected me to come up with my own list. Due to time constraints and at risk of duplication I rather go with the corrected suggestions.

Job

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:18 PM -----

"Job Serebrov" To "Tova Wang <wang@tcf.org>, psims@eac.gov
06/21/2006 06:25 PM cc
Subject Re: nexis

I have no objection to amending the official findings/CD to add these.

--- Tova Wang <wang@tcf.org> wrote:

> Hi Peg and Job,
> 
> I don't know how we might be able to use these but here, finally, are the
super-refined versions of the nexis charts. Can we include them? Thanks.
Tova

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:18 PM ---
Margaret Sims/EAC/GOV
06/22/2006 10:31 AM
To: "Job Serebrov" Wang <wang@tcf.org>
cc
Subject: Re: nexis

Fine by me.
Peggy

-------------------------
Sent from my BlackBerry Wireless Handheld

----- Original Message ----- 
From: "Job Serebrov"
Sent: 06/21/2006 06:25 PM
To: "Tova Wang" <wang@tcf.org>; psims@eac.gov
Subject: Re: nexis

I have no objection to amending the official findings/CD to add these.

--- Tova Wang <wang@tcf.org> wrote:

> Hi Peg and Job,
>
> I don't know how we might be able to use these but here, finally, are the super-refined versions of the nexis charts. Can we include them? Thanks.
> Tova
>
--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:18 PM ---
"Tova Wang"
<wang@tcf.org>
06/20/2006 11:10 AM
To: psims@eac.gov
cc
Subject: question
Am I correct in assuming that I still cannot discuss the findings of our report? Thanks.

Tova Andrea Wang
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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--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM ---

"Job Serebrov"
<serebrov@sbcglobal.net> To wang@tcf.org, psims@eac.gov
06/30/2006 10:02 PM cc Subject Re: Various

For Donsanto to be able to do this, we would need enough time and money to contact all interviewees and also permit comment from them. However, in this matter I am 100% in agreement with Tova.

--- wang@tcf.org wrote:

> Also, I maintain that a reasonable solution to this
> is to allow Donsanto
> and/or any of the commissioners who desire to do so
> to provide a statement
> that would be included in the report and in the
> record.
> ----- Original Message ----- 
> From: <wang@tcf.org>
> To: <psims@eac.gov>; "
> Cc: "Tova Wang" <wang@tcf.org>
> Sent: Friday, June 30, 2006 9:42 PM
> Subject: Re: Various
> 
> > That would be great on the contract.
> >
> > If the interview is "edited" as you put it, I will
> be very, very
> uncomfortable, as I believe Job would be as well.
> I know you don't want
> to spend anymore time on this, but I consider it a
> rather important issue,
> and I think Job does too. I would be happy to
> talk to you and Tom and any
> of the commissioners about this further if that
> would be helpful. I am
> available by cell over the next four days and in
the office all next week.

Thanks for the updated invoice stuff. Happy 4th.

Tova

----- Original Message ----- 
From: <psims@eac.gov>
To: "Job Serebrov"
Cc: "Tova Andrea Wang" <wang@tcf.org>
Sent: Friday, June 30, 2006 6:41 PM
Subject: Re: Various


Actually, the Donsanto interview was the only one I did attend, but I agree the issue is taking up too much of your time. I just wanted you to be forwarned that the paragraph has already raised red flags in DC of and is likely to result in an edit. Enough said about that.

I am concerned about the number of hours left for this project. If you and Tova both agree, I'll see if our Contracting Officer will approve a contract mod to provide for some additional hours and money to incorporate comments received on the report and other efforts that fall within the tasks specified in the current contract. We won't get 60 thou, but there might be a little year end money we can use to finish this off properly.

Peg

--------------------------
Sent from my BlackBerry Wireless Handheld


----- Original Message ----- 
From: "Job Sereb'rov" [psims@eac.gov]
Sent: 06/30/2006 05:58 PM
To: psims@eac.gov; wang@tcf.org
Subject: Various

Peg:

I had to take time off this afternoon to handle some issues. Did you get an answer as to my travel reimbursement?

I spoke to Tova about the Donsanto issue. We both agree about what we heard during the interview. We also agree that this is taking up too much time (of which we have so little left) and is a minor part
of one interview which makes up one of thirty interviews. I feel the same as Tova, the Commission was not in on the interview and thus do not know what was said and we are not giving those interviewed the opportunity, especially given how long ago the interviews were, to object. Frankly, if the Commission wants to give us another sixty hours each we can call all of our interviewees, give them the review and ask for comments. In any case, we can't include comments from other interviews with, or lectures by person interviewed, outside of our interview with that person. We simply can't afford to single out one statement in one interview that there is a disagreement on. Finally, I don't read the paragraph as you do—I remember what was said—the paragraph clearly does not imply an abandonment of other DOJ electoral investigations.

Here it is. --- Peg

EAC Boards VF-VI Status Report.doc

Jeannie Layson/EAC/GOV

Jeannie Layson/EAC/GOV
Peg,
Would you please send me the document regarding this project that was submitted to the Standards Bd?

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 Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM -----
"Tova Wang"
<wang@tcf.org>
06/28/2006 04:37 PM
To psims@eac.gov, "Job Serebrov"
cc
Subject methodology

As you may recall, the working group expressed interest in the risk analysis method. The recent report by the Brennan Center on voting machines employs this methodology. If you look at pp. 8-19 of the attached, it provides a potential model. I think it might be worth including this as an appendix or footnote in the methodology section. Please let me know what you think. Tova

Tova Andrea Wang
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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brennan machine report.pdf
----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM -----
Margaret Sims/EAC/GOV
06/30/2006 05:31 PM
To Job Serebrov
cc
Subject Contract Hours & Payments for Services
Here is the spreadsheet I have for you. Please let me know if you notice any discrepancies. Thanks. ---
Peggy

Serebrov Payment Tracking.xls

***** Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM *****

"Tova Wang"
<wang@tcf.org>
06/27/2006 12:48 PM

To: psims@eac.gov
cc

Subject: invoice

---

Hi Peg,

What is the current invoice schedule? Thanks.

Tova Andrea Wang
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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***** Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM *****

"Tova Wang"
<wang@tcf.org>
06/29/2006 12:07 PM

To: psims@eac.gov
cc

Subject: FW: methodology

---

Will it be possible for you to extract the excerpt for inclusion in the report? Thanks.

-----Original Message-----
From: Job Serebrov [mailto:
Sent: Wednesday, June 28, 2006 5:40 PM
To: Tova Wang; psims@eac.gov
Subject: Re: methodology

Agreed

--- Tova Wang <wang@tcf.org> wrote:

> As you may recall, the working group expressed
interest in the risk analysis
method. The recent report by the Brennan Center on
voting machines employs
this methodology. If you look at pp. 8-19 of the
attached, it provides a
potential model. I think it might be worth
including this as an appendix or
footnote in the methodology section. Please let me
know what you think.
Tova

Tova Andrea Wang
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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<mailto:join-tcfmain@mailhost.groundspring.org>
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weekly e-mail updates.

Peggy:

In the transcript, there is one serious mistake that
must be changed immediately. On page 5 it indicates
that I helped review and draft changes to the election
code of Libya. It should be Namibia not Libya. The
reason this is so serious if it stands is that at the
time I reviewed Namibia's Code it was illegal for
Americans to deal with Libya. I need to know that this
has been corrected any ALL parties who have seen the
transcript notified.

Job
Jeannie

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

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

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

--- Peggy

Does this work for you?

Tova Andrea Wang
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.
Attached is an updated schedule showing 2 more invoice periods. I'll send separate spreadsheets to you and Job showing what funds and hours have been used and what are available. --- Peggy

FY06 Contracts Invoice Schedule.xls

Hi Peg,

What is the current invoice schedule? Thanks.

Tova Andrea Wang
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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--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM ---

"Job Serebroy" To wang@tcf.org, psims@eac.gov cc "Tova Wang" <wang@tcf.org>
Subject Re: Various
I would make time to discuss this. I feel that any edit would be wrong while a comment at the end of the interview by the Commission would not be. But in this case, two of us remember it one way and one the other way.

--- wang@tcf.org wrote:

> That would be great on the contract.
> 
> If the interview is "edited" as you put it, I will be very, very uncomfortable, as I believe Job would be as well. I know you don't want to spend anymore time on this, but I consider it a rather important issue, and I think Job does too. I would be happy to talk to you and Tom and any of the commissioners about this further if that would be helpful. I am available by cell over the next four days and in the office all next week.
> 
> Thanks for the updated invoice stuff. Happy 4th.
> 
> Tova

----- Original Message ----- 
From: <psims@eac.gov>
To: "Job Serebrov" <ser
t>
Cc: "Tova Andrea Wang" <wang@tcf.org>
Sent: Friday, June 30, 2006 6:41 PM
Subject: Re: Various

> Actually, the Donsanto interview was the only one I did attend, but I agree the issue is taking up too much of your time. I just wanted you to be forewarned that the paragraph has already raised red flags in DC of and is likely to result in an edit. Enough said about that.
> 
> I am concerned about the number of hours left for this project. If you and Tova both agree, I'll see if our Contracting Officer will approve a contract mod to provide for some additional hours and money to incorporate comments received on the report and other efforts that fall within the tasks specified in the current contract. We won't get 60 thou, but there might be a little year end money we can use to finish this off properly.
> 
> Peg
> 
> --------------------------
Peg:

I had to take time off this afternoon to handle some issues. Did you get an answer as to my travel reimbursement?

I spoke to Tova about the Donsanto issue. We both agree about what we heard during the interview. We also agree that this is taking up too much time (of which we have so little left) and is a minor part of one interview which makes up one of thirty interviews.

I feel the same as Tova, the Commission was not on the interview and thus do not know what was said and we are not giving those interviewed the opportunity, especially given how long ago the interviews were, to object. Frankly, if the Commission wants to give us another sixty hours each we can call all of our interviewees, give them the review and ask for comments. In any case, we can't include comments from other interviews with, or lectures by person interviewed, outside of our interview with that person. We simply can't afford to single out one statement in one interview that there is a disagreement on. Finally, I don't read the paragraph as you do---I remember what was said---the paragraph clearly does not imply an abandonment of other DOJ electoral investigations.

Job

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM ---
I'll need to get back to you on this and the definition tomorrow (too many things going on today). In the meantime, I have attached the written status report that was presented to the EAC Standards Board and Board of Advisors, because I can't remember if I ever provided the final version to the two of you. The status report is primarily made up of your preliminary reports, with some intro information provided and a brief summary of recommendations discussed at the Working Group meeting. This may or may not help the two of you in preparing the final. You can use any of it, or none of it. I am sure that your product will be much better than this quickly pulled together thing. --- Peggy
Peg:

So far no travel pay. Tova got hers a couple of days ago. Please call and check. I need it.

Thanks,

Job

----

"Tova Wang"
<wang@tcf.org>
06/29/2006 01:24 PM
To psims@eac.gov,
cc twilkey@eac.gov
Subject RE: donsanto interview

Peg, If you review the numerous speeches and writings of Donsanto, including at the BAI training sessions, you will see that in the past he has frequently said that as a matter of law and policy the Department generally only pursued organized patterns. I can point you to particular citations if you like. He clearly said when we interviewed him that there had been a shift in resources and energy. This is in both of our notes. I don’t think this should be an issue of departmental politics.

Tova

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Thursday, June 29, 2006 12:00 PM
To: wang@tcf.org;
Cc: twilkey@eac.gov
Subject: Re: donsanto interview

Tova and Job:

All I can do is advise you that I don’t think this paragraph will pass by the Commission, as written, because readers can misinterpret what is being reported and use something published by EAC against DOJ. I suspect that both of you are aware of legal action being taken by an advocacy group against DOJ alleging that the agency is acting in a manner that fails to protect, and even discourages, the voter participation of minorities and disadvantaged individuals. Though I do not intend to address the merits of that action, which focuses on the efforts of more than one DOJ office, I am concerned that some readers would use the sentence that begins with "This change in direction, focus, and level of aggression..." as evidence that DOJ's Election Crimes Branch has completely changed course to focus on aggressively pursuing individuals who vote when ineligible, many of whom are minorities.

It is true that, for years, the Election Crimes Branch did not pursue individual violators. (I certainly observed this from the time I became involved in researching election administration matters in 1986.) Much of the reason for this is that the agency just did not have the resources to pursue everything; so, as the agency budget permitted, DOJ pursued cases that provided the most bang
for the buck --- cases involving multiple individuals that were not already being pursued by State or local public attorneys. As you know, DOJ recently expanded its efforts and added the prosecution of individuals for double voting or voting when ineligible (felony convictions or no U.S. citizenship). Although I did not know of this decision prior to the interview, the action is not a complete surprise, given the increasing pressure on the agency to pursue such cases that began with a real squeaker of a 1996 race in California's 46th CD (Orange County). In the interview with you, Donsanto also stated that the department evaluates each case before pursuing it, and does not pursue every individual referred for voting violations. (You may remember he noted his reluctance to pursue noncitizen voting, which can result in deportation, when it could separate the individual from his family.)

In my opinion, the addition of the prosecution of individuals, while an important new development, is not a complete change in direction or focus. The pursuit of individual violators does not supplant DOJ's continuing efforts to pursue organized schemes to corrupt the process. It is part of a recent expansion of the agency's efforts to combat election crime that includes: (1) more aggressive pursuit of criminal campaign finance violations (not covered by EAC's study); (2) exploration of new avenues to prosecute voter suppression schemes (e.g.; the NH phone bank blocking case); (3) better training of U.S. attorneys and FBI agents in the recognition, investigation and prosecution of election offenses; (4) efforts to improve coordination with state and local law enforcement agencies; and (5) press conferences and public announcements before federal elections to publicize how the public can report election crimes. Donsanto provided information on much of these efforts either during the interview or by supplying case lists and training information on the day of the interview.

I hope you will reconsider revising the paragraph at issue.

Peggy Sims
Election Research Specialist
U.S. Election Assistance Commission
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 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.

Neither of us thinks this passage says that the Department has stopped pursuing patterns, as you suggested, and we maintain that this is what Mr. Donsanto said to us in the interview. If Mr. Donsanto wants to object, perhaps he can write a letter or something to that effect that could be part of the record.

Tova Andrea Wang
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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----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM -----
Margaret Sims/EAC/GOV
06/29/2006 05:31 PM
To “Tova Wang” <wang@tcf.org>@GSAEXTERNAL
cc Ikey@eac.gov
Subject RE: donsanto interview

I don't think anyone disagrees that DOJ's earlier policy was to prosecute organized conspiracies, not individual violators. This policy was based both on existing law and resources available. Donsanto made that clear in numerous presentations before election officials, though I doubt he would have highlighted the resource issue in any of his written reports.

I did not hear Donsanto say that there was a shift in resources and energy away from prosecuting organized conspiracies in order to pursue prosecutions of individuals. I think we should avoid implying that this is the case. I understood his statement to address a shift in DOJ resources and energy to support increased efforts to prosecute election crimes, including the expansion of prosecutions to include individual incidents. I have not seen, nor do I think Donsanto has ever stated, that there has been a decrease in the effort to prosecute organized conspiracies to corrupt the process. Yet, adequate resources continue to be an issue, as Donsanto noted in his interview and at the Working Group meeting (when referring to having to decide which of two voter suppression cases to prosecute because he didn't have the resources to do both).

Your reference to policy based on law reminded me that changes in federal law, and an evolution in the understanding of how to use newer law, also would have affected DOJ's decision to add the prosecution of individuals for such violations as registering and voting when not a U.S. citizen or when a convicted felon. Earlier federal law did not directly address voter registration by felons, permitting federal prosecution in such instances only where it could be shown that the applicant knowingly and willfully
provided false information as to his or her eligibility to vote. Earlier federal law permitted the prosecution of noncitizens for registering to vote based on false claims of the U.S. citizenship that each State required for registering to vote in federal elections, but did not require U.S. citizenship to vote in federal elections. These laws made federal prosecution of noncitizen and felon voter registration and voting much more challenging. With the implementation of the NVRA in 1995, we began to see federal election law that could more easily be used for federal prosecution of both voter registration and voting by noncitizens and convicted felons. And, late in 1996, immigration reform legislation was passed that clearly prohibits noncitizens from voting in federal elections (without requiring the "knowing and willful" component).

--- Peggy

"Tova Wang" <wang@tcf.org>

Peg, If you review the numerous speeches and writings of Donsanto, including at the BAI training sessions, you will see that in the past he has frequently said that as a matter of law and policy the Department generally only pursued organized patterns. I can point you to particular citations if you like. He clearly said when we interviewed him that there had been a shift in resources and energy. This is in both of our notes. I don't think this should be an issue of departmental politics.

Tova

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Thursday, June 29, 2006 12:00 PM
To: wang@tcf.org
Cc: twilkey@eac.gov
Subject: Re: donsanto interview

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It is true that, for years, the Election Crimes Branch did not pursue individual violators. (I certainly observed this from the time I became involved in researching election administration matters in 1986.) Much of the reason for this is that the agency just did not have the resources to pursue everything; so, as the agency budget permitted, DOJ pursued cases that provided the most bang
for the buck --- cases involving multiple individuals that were not already being pursued by State or local public attorneys. As you know, DOJ recently expanded its efforts and added the prosecution of individuals for double voting or voting when ineligible (felony convictions or no U.S. citizenship). Although I did not know of this decision prior to the interview, the action is not a complete surprise, given the increasing pressure on the agency to pursue such cases that began with a real squeaker of a 1996 race in California's 46th CD (Orange County). In the interview with you, Donsanto also stated that the department evaluates each case before pursuing it, and does not pursue every individual referred for voting violations. (You may remember he noted his reluctance to pursue noncitizen voting, which can result in deportation, when it could separate the individual from his family.)

In my opinion, the addition of the prosecution of individuals, while an important new development, is not a complete change in direction or focus. The pursuit of individual violators does not supplant DOJ's continuing efforts to pursue organized schemes to corrupt the process. It is part of a recent expansion of the agency's efforts to combat election crime that includes: (1) more aggressive pursuit of criminal campaign finance violations (not covered by EAC's study); (2) exploration of new avenues to prosecute voter suppression schemes (e.g.; the NH phone bank blocking case); (3) better training of U.S. attorneys and FBI agents in the recognition, investigation and prosecution of election offenses; (4) efforts to improve coordination with state and local law enforcement agencies; and (5) press conferences and public announcements before federal elections to publicize how the public can report election crimes. Donsanto provided information on much of these efforts either during the interview or by supplying case lists and training information on the day of the interview.

I hope you will reconsider revising the paragraph at issue.

Peggy Sims
Election Research Specialist
U.S. Election Assistance Commission

Hi Peg,

Job and I have discussed this matter and agree on our response to it.

Presumably the paragraph you are concerned about is the following:
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 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.

Neither of us thinks this passage says that the Department has stopped pursuing patterns, as you suggested, and we maintain that this is what Mr. Donsanto said to us in the interview. If Mr. Donsanto wants to object, perhaps he can write a letter or something to that effect that could be part of the record.

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

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

Click here to receive our weekly e-mail updates.
July weekend.

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Sent from my BlackBerry Wireless Handheld

----- Original Message ----- 
From: "Job Serebrov"  
Sent: 06/30/2006 05:58 PM  
To: psims@eac.gov; wang@tcf.org  
Subject: Various

Peg:

I had to take time off this afternoon to handle some issues. Did you get an answer as to my travel reimbursement?

I spoke to Tova about the Donsanto issue. We both agree about what we heard during the interview. We also agree that this is taking up too much time (of which we have so little left) and is a minor part of one interview which makes up one of thirty interviews. I feel the same as Tova, the Commission was not in on the interview and thus do not know what was said and we are not giving those interviewed the opportunity, especially given how long ago the interviews were, to object. Frankly, if the Commission wants to give us another sixty hours each we can call all of our interviewees, give them the review and ask for comments. In any case, we can't include comments from other interviews with, or lectures by person interviewed, outside of our interview with that person. We simply can't afford to single out one statement in one interview that there is a disagreement on. Finally, I don't read the paragraph as you do---I remember what was said---the paragraph clearly does not imply an abandonment of other DOJ electoral investigations.

Job

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM -----

"Job Serebrov"  
06/30/2006 07:10 PM  
To psims@eac.gov, wang@tcf.org  
cc   
Subject Re: Various

Peg:

It's ok with me as long as we finish before the end of November.
--- psims@eac.gov wrote:

> Actually, the Donsanto interview was the only one I did attend, but I agree the issue is taking up too much of your time. I just wanted you to be forewarned that the paragraph has already raised red flags in DC of and is likely to result in an edit. Enough said about that.

> I am concerned about the number of hours left for this project. If you and Tova both agree, I'll see if our Contracting Officer will approve a contract mod to provide for some additional hours and money to incorporate comments received on the report and other efforts that fall within the tasks specified in the current contract. We won't get 60 thou, but there might be a little year end money we can use to finish this off properly.

> Peg

---

Sent from my BlackBerry Wireless Handheld

----- Original Message ----- 
From: "Job Serebrov"  
Sent: 06/30/2006 05:50 AM  
To: psims@eac.gov; wang@tcf.org  
Subject: Various

Peg:

I had to take time off this afternoon to handle some issues. Did you get an answer as to my travel reimbursement?

I spoke to Tova about the Donsanto issue. We both agree about what we heard during the interview. We also agree that this is taking up too much time (of which we have so little left) and is a minor part of one interview which makes up one of thirty interviews.

I feel the same as Tova, the Commission was not on on the interview and thus do not know what was said and we are not giving those interviewed the opportunity, especially given how long ago the interviews were, to object. Frankly, if the Commission wants to give us another sixty hours each we can call all of our interviewees, give them the review and ask for comments. In any case, we can't include comments from other interviews with, or lectures by person interviewed, outside of our interview with that person. We simply can't afford to single out one statement in one interview that there is a disagreement on. Finally, I don't read the paragraph
as you do---I remember what was said---the paragraph clearly does not imply an abandonment of other DOJ electoral investigations.

Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM

Margaret Sims/EAC/GOV
06/26/2006 04:38 PM

To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL
cc dromig@eac.gov,

Subject RE: May 18, 2006 Meeting

---

I wasn't planning on circulating the transcript to the Commissioners. Most of them probably don't have the time to go through the whole thing. I will let them know it is available, if they are interested in reviewing it.
--- Peggy

"Tova Wang" <wang@tcf.org>

"Tova Wang"
<wang@tcf.org>
06/23/2006 01:04 PM

To dromig@eac.gov, psims@eac.gov
cc

Subject RE: May 18, 2006 Meeting

---

Wow, there are a lot of errors in this. But at least it gets at the substance. Will this be circulated to the commissioners?

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

From: dromig@eac.gov [mailto:dromig@eac.gov]
Sent: Thursday, June 22, 2006 2:45 PM
To: psims@eac.gov
Cc: wang@tcf.org
Subject: Fw: May 18, 2006 Meeting

Good news!!! The transcript is finally here.

Devon Romig
United States Election Assistance Commission
1225 New York Ave. NW, Suite 1100
Washington, DC 20005
202.566.2377 phone
202.566.3128 fax
www.eac.gov
Dear EAC,

Attached please note the ASCII file for the Voting Fraud-Voter Intimidation Meeting taken on Wednesday, May 18, 2006. Your transcript has been shipped to you.

ASCII file name: 051806.txt

Please let us know if you have any questions.

Timothy Brischler, Office Manager, 703.273.9221

I am ok with it.

--- Tova Wang <wang@tcf.org> wrote:

> Is this OK now?
> Tova Andrea Wang
> Democracy Fellow
> The Century Foundation
> 41 East 70th Street - New York, NY 10021
> phone: 212-452-7704 fax: 212-535-7534
> www.tcf.org, for the latest news,
> analysis, opinions, and events.
>
Jeannie:

Here are my responses:

1. **When will EAC receive the preliminary report on voter intimidation and voting fraud?**
   I anticipate that we will have a draft final report from our consultants in 2-3 weeks, after our consultants have had time to review the transcript from the project Working Group meeting, which was not available until last week.

2. **When we receive the preliminary report, what is the EAC process to formulate a final product that will be made public?**
   First, Commissioners and Commission staff will have to review the preliminary draft. Then a draft will be submitted to the EAC Standards Board and EAC Advisory Board for review and comment. This second step is taken in accordance with HAVA §247, which requires EAC to carry out its duties under Title II, Subtitle C (Studies and Other Activities to Promote Effective Administration of Federal Elections) in consultation with the Standards Board and the Board of Advisors.

3. **When will we make this research available to the public? What form will it be in? (Best practices, etc.)**
   The final report cannot be made public until it has been accepted by the Commissioners. Normally, this does not happen until the researcher(s) submit a final report that has been revised to address clarifications and corrections deemed necessary through the review process described above. The time it takes for the researchers to produce this final report will depend, somewhat, on the number of clarifications and corrections deemed necessary.
As the researchers were charged with conducting preliminary background research on voting fraud and voter intimidation in the U.S., this report will not include recommended best practices. It will summarize the preliminary research as well as the deliberations of our project Working Group. It also will include recommendations for future EAC activity related to the development of: (1) methods of identifying, deterring, and investigating voting fraud and voter intimidation; and (2) nationwide statistics on voting fraud.

If the reporter has spoken to Secretary Rokita, who maintains that EAC has no authority to conduct this research, you may want to note that EAC initiated this preliminary research on voting fraud and voter intimidation in accordance with the Help America Vote Act, (HAVA) §241, which requires EAC to conduct research on election administration issues, including the development of:

- nationwide statistics and methods of identifying, deterring, and investigating voting fraud in elections for Federal office [§241(b)(6)]; and
- ways of identifying, deterring, and investigating methods of voter intimidation [§241(b)(7)].

At its 2005 meeting, EAC's Board of Advisors recommended that the agency make research on these matters a high priority.

Peggy Sims
Election Research Specialist
U.S. Election Assistance Commission

Jeannie Layson/EAC/GOV

Jeannie Layson/EAC/GOV 06/27/2006 02:26 PM To psims@eac.gov, twilkey@eac.gov
cc
Subject US News & World Report inquiry

Please provide answers to the following questions, posed to me by US News & World Report's Scott Michels. I need this info by the end of the day to meet his deadline.

1. When will EAC receive the preliminary report on voter intimidation and voting fraud?
2. When we receive the preliminary report, what is the EAC process to formulate a final product that will be made public?
3. When will we make this research available to the public? What form will it be in? (Best practices, etc.)

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

Job and I have discussed this matter and agree on our response to it.

Presumably the paragraph you are concerned about is the following:

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 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.

Neither of us thinks this passage says that the Department has stopped pursuing patterns, as you suggested, and we maintain that this is what Mr. Donsanto said to us in the interview. If Mr. Donsanto wants to object, perhaps he can write a letter or something to that effect that could be part of the record.
Tova and Job:

All I can do is advise you that I don’t think this paragraph will pass by the Commission, as written, because readers can misinterpret what is being reported and use something published by EAC against DOJ. I suspect that both of you are aware of legal action being taken by an advocacy group against DOJ alleging that the agency is acting in a manner that fails to protect, and even discourages, the voter participation of minorities and disadvantaged individuals. Though I do not intend to address the merits of that action, which focuses on the efforts of more than one DOJ office, I am concerned that some readers would use the sentence that begins with “This change in direction, focus, and level of aggression ...” as evidence that DOJ’s Election Crimes Branch has completely changed course to focus on aggressively pursuing individuals who vote when ineligible, many of whom are minorities.

It is true that, for years, the Election Crimes Branch did not pursue individual violators. (I certainly observed this from the time I became involved in researching election administration matters in 1986.) Much of the reason for this is that the agency just did not have the resources to pursue everything; so, as the agency budget permitted, DOJ pursued cases that provided the most bang for the buck --- cases involving multiple individuals that were not already being pursued by State or local public attorneys. As you know, DOJ recently expanded its efforts and added the prosecution of individuals for double voting or voting when ineligible (felony convictions or no U.S. citizenship). Although I did not know of this decision prior to the interview, the action is not a complete surprise, given the increasing pressure on the agency to pursue such cases that began with a real squeaker of a 1996 race in California’s 46th CD (Orange County). In the interview with you, Donsanto also stated that the department evaluates each case before pursuing it, and does not pursue every individual referred for voting violations. (You may remember he noted his reluctance to pursue noncitizen voting, which can result in deportation, when it could separate the individual from his family.)

In my opinion, the addition of the prosecution of individuals, while an important new development, is not a complete change in direction or focus. The pursuit of individual violators does not supplant DOJ’s continuing efforts to pursue organized schemes to corrupt the process. It is part of a recent expansion of the agency’s efforts to combat election crime that includes: (1) more aggressive pursuit of criminal campaign finance violations (not covered by EAC’s study); (2) exploration of new avenues to prosecute voter suppression schemes (e.g.; the NH phone bank blocking case); (3) better training of U.S. attorneys and FBI agents in the recognition, investigation and prosecution of election offenses; (4) efforts to improve
coordination with state and local law enforcement agencies; and (5) press conferences and public announcements before federal elections to publicize how the public can report election crimes. Donsanto provided information on much of these efforts either during the interview or by supplying case lists and training information on the day of the interview.

I hope you will reconsider revising the paragraph at issue.

Peggy Sims
Election Research Specialist
U.S. Election Assistance Commission

"Tova Wang" <wang@tcf.org>

Hi Peg,

Job and I have discussed this matter and agree on our response to it.

Presumably the paragraph you are concerned about is the following:

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 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.

Neither of us thinks this passage says that the Department has stopped pursuing patterns, as you suggested, and we maintain that this is what Mr. Donsanto said to us in the interview. If Mr. Donsanto wants to object, perhaps he can write a letter or something to that effect that could be part of the record.

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

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

Click here to receive our weekly e-mail updates.
Peggy:

Still no travel funds. Please see what you can fund out on Monday. At this point this is late.

Job

Further comment from Tova. --- Peggy

Also, I maintain that a reasonable solution to this is to allow Donsanto and/or any of the commissioners who desire to do so to provide a statement that would be included in the report and in the record.

----- Original Message ----- 
From: <wang@tcf.org>
To: <psims@eac.gov>; "Job Serebrov" <job.serебров@gmail.com>
Cc: "Tova Wang" <wang@tcf.org>
Sent: Friday, June 30, 2006 9:42 PM
Subject: Re: Various

> That would be great on the contract.
> 
> If the interview is "edited" as you put it, I will be very, very uncomfortable, as I believe Job would be as well. I know you don't want to spend anymore time on this, but I consider it a rather important issue,
and I think Job does too. I would be happy to talk to you and Tom and any
of the commissioners about this further if that would be helpful. I am
available by cell over the next four days and in the office all next week.

Thanks for the updated invoice stuff. Happy 4th.

Tova

----- Original Message ----- 
From: <psims@eac.gov>
To: "Job Serebrov" <psims@eac.gov>
Cc: "Tova Andrea Wang" <wang@tcf.org>
Sent: Friday, June 30, 2006 6:41 PM
Subject: Re: Various

Actually, the Donsanto interview was the only one I did attend, but I
agree the issue is taking up too much of your time. I just wanted you to
be forewarned that the paragraph has already raised red flags in DC of and
is likely to result in an edit. Enough said about that.

I am concerned about the number of hours left for this project. If you
and Tova both agree, I'll see if our Contracting Officer will approve a
contract mod to provide for some additional hours and money to
incorporate comments received on the report and other efforts that fall
within the tasks specified in the current contract. We won't get 60
thou, but there might be a little year end money we can use to finish
this off properly.

Peg

--------------------------
Sent from my BlackBerry Wireless Handheld

----- Original Message ----- 
From: "Job Serebrov" <psims@eac.gov>
Sent: 06/30/2006 05:55 PM
To: psims@eac.gov; wang@tcf.org
Subject: Various

Peg:

I had to take time off this afternoon to handle some
issues. Did you get an answer as to my travel
reimbursement?

I spoke to Tova about the Donsanto issue. We both
agree about what we heard during the interview. We
also agree that this is taking up too much time (of
which we have so little left) and is a minor part of
one interview which makes up one of thirty interviews.
I feel the same as Tova, the Commission was not in on
the interview and thus do not know what was said and
we are not giving those interviewed the opportunity,
especially given how long ago the interviews were, to
object. Frankly, if the Commission wants to give us
another sixty hours each we can call all of our
interviewees, give them the review and ask for
comments. In any case, we can't include comments from
other interviews with, or lectures by person
interviewed, outside of our interview with that
>> person. We simply can't afford to single out one
>> statement in one interview that there is a
>> disagreement on. Finally, I don't read the paragraph
>> as you do---I remember what was said---the paragraph
>> clearly does not imply an abandonment of other DOJ
>> electoral investigations.
>>
>> Job
>>

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM ----
Margaret Sims/EAC/GOV
07/03/2006 11:12 AM
To: Bola Olu/EAC/GOV
cc
Subject: Fw: Travel Funds

Can you please find out where GSA is with this reimbursement? Thanks. --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 07/03/2006 11:12 AM ----
"Job Serebrov"
07/02/2006 09:34 AM
To: psims@eac.gov
cc
Subject: Travel Funds

Peggy:

Still no travel funds. Please see what you can fund out on Monday. At this point this is late.

Job

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM ----
Bola Olu/EAC/GOV
07/03/2006 11:57 AM
To: Margaret Sims/EAC/GOV@EAC
cc
Subject: Re: Fw: Travel Funds

Peggy:
I may have forgotten to send this summary of payments for personal services to you. If I didn't, here it is again. --- Peggy

Most of the Commissioners and Tom will be out of the office for the next two weeks to attend the IACREOT, NASS, and NASED summer conferences. I'll let Tom know you want to talk with him when I see him at the airport tomorrow. He may decide to call from out of town. --- Peggy

That would be great on the contract.

If the interview is "edited" as you put it, I will be very, very uncomfortable, as I believe Job would be as well. I know you don't want to spend anymore time on this, but I consider it a rather important issue, and I think Job does too. I would be happy to talk to you and Tom and any of the commissioners about this further if that would be helpful. I am available by cell over the next four days and in the office all next week.

Thanks for the updated invoice stuff. Happy 4th.

Tova
I am concerned about the number of hours left for this project. If you and Tova both agree, I'll see if our Contracting Officer will approve a contract mod to provide for some additional hours and money to incorporate comments received on the report and other efforts that fall within the tasks specified in the current contract. We won't get 60 thou, but there might be a little year end money we can use to finish this off properly.

Peg

Sent from my BlackBerry Wireless Handheld

----- Original Message -----
From: "Job Serebrov" [mailto:job_serebrov@eac.gov]
Sent: 06/30/2006 05:58 PM
To: psims@eac.gov; wang@tcf.org
Subject: Various

Peg:

I had to take time off this afternoon to handle some issues. Did you get an answer as to my travel reimbursement?

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Job
Peg: 

I still have not received the travel funds. This is causing a large financial problem. I don't know what is with these people but it is obvious my bank has not received it and I doubt it was sent. Please find out what is going on. 

Job

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM -----

"Tove Wang" <wang@tcf.org> 
07/03/2006 12:19 PM

To psims@eac.gov
cc

Subject RE: Estimated Additional Hours Needed

I think I've already gone over my hours. Let me know when I submit my invoice. If I have, I'll just reduce them on paper. Thanks.

----- Original Message ----- 
From: psims@eac.gov [mailto:psims@eac.gov] 
Sent: Monday, July 03, 2006 10:30 AM 
To: wang@tcf.org 
Subject: RE: Estimated Additional Hours Needed
We'll have to guesstimate. It is likely that we will receive some comments and questions from the Commissioners and a number of comments from the boards. We could do the modification a little later, but we have to do it before the end of August to take advantage of year-end funds. Basically, the sooner we can figure this out, the better chance we have of using some of the year-end money for this project, before it is taken for something else. We have no guaranties that funds will be available in the next fiscal year. --- Peggy

"Tova Wang" <wang@tcf.org>
07/03/2006 11:13 AM
To: psims@eac.gov
cc: Subject: RE: Estimated Additional Hours Needed

Doesn't it really depend on what the Commission comes back to us with? Its kind of hard to estimate before knowing what they're going to want.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, July 03, 2006 10:11 AM
To: wang@tcf.org; twilkey@eac.gov
Cc: twilkey@eac.gov
Subject: Estimated Additional Hours Needed

Tova and Job:

I don't have the authority to modify contracts, but Tom Wilkey does. In order to help Tom determine how many additional hours (and dollars) should be added to your personal services contracts, I'll need an estimate from the two of you for the number of additional hours required to complete the final report (taking into account revisions that may be needed to address questions and comments submitted by the Commissioners and the EAC Standards Board and Board of Advisors). Please note that we cannot add any tasks to the existing contract, but we can account for additional hours required to complete the final report.

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

----- Forwarded by Margaret Sims/EAC/Gov on 04/30/2007 04:17 PM -----
I thought I emailed an account of your hours used. Just in case I didn't, here it is again.

Wang Payment Tracking.xls

"Tova Wang" <wang@tcf.org>

I think I've already gone over my hours. Let me know when I submit my invoice. If I have, I'll just reduce them on paper. Thanks.

-----Original Message-----
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To: wang@tcf.org
Cc: twilkey@eac.gov
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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

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM -----
"Job Serebrov" <jjob@tcf.org>
07/07/2006 08:06 AM
To: psims@eac.gov
cc
Subject: Travel Funds

Peg:

My travel funds finally came in to my bank.

Job

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM -----
"Tova Wang" <wang@tcf.org>
07/03/2006 11:13 AM
To: psims@eac.gov
cc
Subject RE: Estimated Additional Hours Needed

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From: psims@eac.gov [mailto:psims@eac.gov]
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U.S. Election Assistance Commission
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Washington, DC 20005
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Fax: 202-566-3127
e-mail: psims@eac.gov

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM -----

wang@tcf.org
07/01/2006 05:30 PM
To: psims@eac.gov
cc: 
Subject Re: FW: methodology

It would be great if someone there could work on cleaning it up. Let us know. Thanks.

----- Original Message -----
The attached is the text extracted from pages 8-19 and the Attachment C referenced within the text. The formatting is still a little weird. Can you work with this, or do I need to play with it some more? --- Peggy

"Tova Wang" <wang@tcf.org>

06/29/2006 12:07 PM

To psims@eac.gov
cc
Subject FW: methodology

Will it be possible for you to extract the excerpt for inclusion in the report? Thanks.

-----Original Message-----
From: Job Serebrov [mailto:]
Sent: Wednesday, June 28, 2006 5:40 PM
To: Tova Wang; psims@eac.gov
Subject: Re: methodology

Agreed

--- Tova Wang <wang@tcf.org> wrote:

> As you may recall, the working group expressed
> interest in the risk analysis
> method. The recent report by the Brennan Center on
> voting machines employs
> this methodology. If you look at pp. 8-19 of the
> attached, it provides a
> potential model. I think it might be worth
> including this as an appendix or
> footnote in the methodology section. Please let me
> know what you think.
> Tova
> Tova Andrea Wang
> Democracy Fellow
> The Century Foundation
> 41 East 70th Street - New York, NY 10021
> phone: 212-452-7704 fax: 212-535-7534
> www.tcf.org, for the latest news,
> analysis, opinions, and events.
>
I have asked our finance folks to check with GSA. I will let you know when I receive the answer. --- Peggy

Peggy:

Still no travel funds. Please see what you can fund out on Monday. At this point this is late.

Job

Tova and Job:
I don't have the authority to modify contracts, but Tom Wilkey does. In order to help Tom determine how many additional hours (and dollars) should be added to your personal services contracts, I'll need an estimate from the two of you for the number of additional hours required to complete the final report (taking into account revisions that may be needed to address questions and comments submitted by the Commissioners and the EAC Standards Board and Board of Advisors). Please note that we cannot add any tasks to the existing contract, but we can account for additional hours required to complete the final report.

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

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM -----
Margaret Sims/EAC/GOV
07/11/2006 12:05 PM
To Juliet E. Thompson-Hodgkins/EAC/GOV
cc
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>
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 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

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.

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
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
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

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM ---

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.

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Why don't we discuss this with Tanner (and Donsanto) after we have had a chance to review a 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
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

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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

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Peg

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Juliet E. Thompson-Hodgkins

From: Juliet E. Thompson-Hodgkins
Sent: 07/10/2006 10:55 AM
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Cc: Thomas Wilkey
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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 Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM -----
Margaret Sims/EAC/GOV
07/03/2006 11:38 AM
To Devon Romig
cc
Subject Fw: methodology

Please edit the attached Word document to remove the returns at the end of each line that are not needed, then send it to Tova and Job. Thanks! --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 07/03/2006 11:37 AM -----
Margaret Sims/EAC/GOV
06/30/2006 05:25 PM
To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL
cc
Subject Re: FW: methodology

005364
Will it be possible for you to extract the excerpt for inclusion in the report? Thanks.

-----Original Message-----
From: Job Serebrov [mailto:jobs@tcf.org]
Sent: Wednesday, June 28, 2006 5:40 PM
To: Tova Wang; psims@eac.gov
Subject: Re: methodology

Agreed

--- Tova Wang <wang@tcf.org> wrote:

> As you may recall, the working group expressed interest in the risk analysis method. The recent report by the Brennan Center on voting machines employs this methodology. If you look at pp. 8-19 of the attached, it provides a potential model. I think it might be worth including this as an appendix or footnote in the methodology section. Please let me know what you think.
> Tova
> Tova Andrea Wang
> Democracy Fellow
> The Century Foundation
> 41 East 70th Street - New York, NY 10021
> phone: 212-452-7704 fax: 212-535-7534
> www.tcf.org, for the latest news, analysis, opinions, and events.
Tova:
If you have used up all of your remaining hours, you need to stop work until we have the contract modification in place that provides for more hours.
Peggy

Also, I maintain that a reasonable solution to this is to allow Donsanto and/or any of the commissioners who desire to do so to provide a statement that would be included in the report and in the record.

That would be great on the contract.

If the interview is "edited" as you put it, I will be very, very uncomfortable, as I believe Job would be as well. I know you don't want to spend anymore time on this, but I consider it a rather important issue, and I think Job does too. I would be happy to talk to you and Tom and any of the commissioners about this further if that would be helpful. I am available by cell over the next four days and in the office all next week.
Thanks for the updated invoice stuff. Happy 4th.

Tova

----- Original Message ----- 
From: psims@eac.gov
To: "Job Serebrov"
Cc: "Tova Andrea 
Wang <wang@tcf.org>
Sent: Friday, June 30, 2006 6:41 PM
Subject: Re: Various

Actually, the Donsanto interview was the only one I did attend, but I agree the issue is taking up too much of your time. I just wanted you to be forewarned that the paragraph has already raised red flags in DC of and is likely to result in an edit. Enough said about that.

I am concerned about the number of hours left for this project. If you and Tova both agree, I'll see if our Contracting Officer will approve a contract mod to provide for some additional hours and money to incorporate comments received on the report and other efforts that fall within the tasks specified in the current contract. We won't get 60 thou, but there might be a little year end money we can use to finish this off properly.

Peg

Sent from my BlackBerry Wireless Handheld

----- Original Message ----- 
From: "Job Serebrov"
Sent: 06/30/2006 05:56 PM
To: psims@eac.gov; wang@tcf.org
Subject: Various

Peg:

I had to take time off this afternoon to handle some issues. Did you get an answer as to my travel reimbursement?

I spoke to Tova about the Donsanto issue. We both agree about what we heard during the interview. We also agree that this is taking up too much time (of which we have so little left) and is a minor part of one interview which makes up one of thirty interviews. I feel the same as Tova, the Commission was not in on the interview and thus do not know what was said and we are not giving those interviewed the opportunity, especially given how long ago the interviews were, to object. Frankly, if the Commission wants to give us another sixty hours each we can call all of our interviewees, give them the review and ask for comments. In any case, we can't include comments from other interviews with, or lectures by person interviewed, outside of our interview with that person. We simply can't afford to single out one statement in one interview that there is a disagreement on. Finally, I don't read the paragraph
as you do---I remember what was said---the paragraph clearly does not imply an abandonment of other DOJ electoral investigations.

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:16 PM ---
Margaret Sims/EAC/GOV 07/03/2006 12:40 PM  To Serebrov
cc
Subject Travel Reimbursement

GSA reports that a pay out of $1,200.03 was made today. --- Peggy
--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:16 PM ---
Margaret Sims/EAC/GOV 06/30/2006 05:25 PM  To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL
cc
Subject Re: FW: methodology

The attached is the text extracted from pages 8-19 and the Attachment C referenced within the text. The formatting is still a little weird. Can you work with this, or do I need to play with it some more? --- Peggy

Risk Analysis Methodology-Brennan Center excerpt.doc

"Tova Wang" <wang@tcf.org>

"Tova Wang" <wang@tcf.org> 06/29/2006 12:07 PM  To psims@eac.gov
cc
Subject FW: methodology

Will it be possible for you to extract the excerpt for inclusion in the report? Thanks.

-----Original Message-----
From: Job Serebrov [mailto]
Sent: Wednesday, June 28, 2006 5:40 PM
To: Tova Wang; psims@eac.gov  
Subject: Re: methodology

Agreed

--- Tova Wang <wang@tcf.org> wrote:

> As you may recall, the working group expressed
> interest in the risk analysis
> method. The recent report by the Brennan Center on
> voting machines employs
> this methodology. If you look at pp. 8-19 of the
> attached, it provides a
> potential model. I think it might be worth
> including this as an appendix or
> footnote in the methodology section. Please let me
> know what you think.
> Tova
> Tova Andrea Wang
> Democracy Fellow
> The Century Foundation
> 41 East 70th Street - New York, NY 10021
> phone: 212-452-7704  fax: 212-535-7534
> www.tcf.org, for the latest news,
> analysis, opinions, and events.
> 
> Once is enough. You don't need to resend. --- Peggy

"Tova Wang" <wang@tcf.org>
Peg, We don't need to re-send you all of the material that we gave you to provide to the working group for the final report, eg the individual interviews, research summaries, nexis and case charts, right? Thanks. Happy 4th. Tova

Tova Andrea Wang
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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Peg:

It seems to Tova and me that somewhere between 30 and 40 for each of us would be safe (having learned from not asking for enough hours).

Job

No, its Bank of America. I just checked again and its
not there. If it does not appear by morning I will
need you to see what is going on.

--- psims@eac.gov wrote:

> They usually send it electronically. Could your bank
> have failed to post it due to the holiday? Does your
> bank tend to float deposits for a day or two?
> Peggy
> 
> --------------------------
> Sent from my BlackBerry Wireless Handheld
> 
> ----- Original Message ----- 
> From: "Job Serebrov"
> Sent: 07/05/2006 08:13 AM
> To: psims@eac.gov
> Subject: Re: Travel Reimbursement
> 
> Peg:
> 
> I checked my account this morning (July 5th) and
> this
> still has not been paid. Did GSA mail it?
> 
> Job
> 
> --- psims@eac.gov wrote:
> 
> > GSA reports that a pay out of $1,200.03 was made
> > today. --- Peggy
> 
> 
> 

We'll have to guesstimate. It is likely that we will receive some comments and questions from the
Commissioners and a number of comments from the boards. We could do the modification a little later,
but we have to do it before the end of August to take advantage of year-end funds. Basically, the sooner
we can figure this out, the better chance we have of using some of the year-end money for this project,
before it is taken for something else. We have no guaranties that funds will be available in the next fiscal
year. --- Peggy

"Tova Wang" <wang@tcf.org>
Doesn't it really depend on what the Commission comes back to us with? It's kind of hard to estimate before knowing what they're going to want.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, July 03, 2006 10:11 AM
To: wang@tcf.org; twilkey@eac.gov
Cc: 
Subject: Estimated Additional Hours Needed

Tova and Job:

I don't have the authority to modify contracts, but Tom Wilkey does. In order to help Tom determine how many additional hours (and dollars) should be added to your personal services contracts, I'll need an estimate from the two of you for the number of additional hours required to complete the final report (taking into account revisions that may be needed to address questions and comments submitted by the Commissioners and the EAC Standards Board and Board of Advisors). Please note that we cannot add any tasks to the existing contract, but we can account for additional hours required to complete the final report.

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

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:16 PM -----

"Job Serebrov"  
07/09/2006 06:00 PM  
To: psims@eac.gov, wang@tcf.org  
cc  
Subject: Telephone Conference

Peg:

I need to move our call to next Monday at 7 pm EST. What is the situation with the extra hours?
I've asked Devon to do it. She can get it to you faster than I. --- Peggy

"Tova Wang" <wang@tcf.org>

The excess returns would be a great start, and then I can do the rest. Thanks a lot.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, July 03, 2006 10:14 AM
To: wantc
Cc: 
Subject: Re: FW: methodology

Do you just need to have the excess returns removed, or do you think it needs other clean up as well? --- Peggy
It would be great if someone there could work on cleaning it up. Let us know. Thanks.

----- Original Message ----- 
From: psims@eac.gov
To: wang@tcf.org
Cc: 
Sent: Friday, June 30, 2006 5:25 PM
Subject: Re: FW: methodology

The attached is the text extracted from pages 8-19 and the Attachment C referenced within the text. The formatting is still a little weird. Can you work with this, or do I need to play with it some more? --- Peggy

"Tova Wang" <wang@tcf.org>

06/29/2006 12:07 PM

To psims@eac.gov

cc

Subject FW: methodology

Will it be possible for you to extract the excerpt for inclusion in the report? Thanks.

-----Original Message-----
From: Job Serebrov [mailto:]
Sent: Wednesday, June 28, 2006 5:40 PM
To: Tova Wang; psims@eac.gov
Subject: Re: methodology

Agreed

--- Tova Wang <wang@tcf.org> wrote:

> As you may recall, the working group expressed
> interest in the risk analysis
> method. The recent report by the Brennan Center on
> voting machines employs
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Tova

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Democracy Fellow
The Century Foundation
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phone: 212-452-7704 fax: 212-535-7534

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<mailto:join-tcfmain@mailhost.groundspring.org>
Click here to receive our weekly e-mail updates.

appendices attached, except Peg I think you put together the list of the working group members? In any case, I can't find one at the moment, but it would be easy enough to put together. Perhaps even Devon or someone could do that, especially since I don't think I have any hours left, and probably shouldn't even be writing this email. I don't remember the conversation about adding to the list of interviewees, but we can talk about that later.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, July 17, 2006 9:13 AM
To: wang@tcf.org
Cc: "Job Serebrov" , wang@tcf.org
Subject: Re: final report

Thanks. I probably won't be able to start getting into this until tomorrow AM. I noticed that the appendices weren't attached. I think we discussed earlier that the list of interviewees needed to
Hi Peg,

Attached please find drafts of the sections for the final report. Job, please double check I'm not missing anything or sent the wrong version of anything. I'm very concerned I may have. Is there a summary of the case review that I should have? Also, as we discussed, the attached does not include all of the individual summaries and charts which we already gave you for the working group and which have not changed. Peg, we'll want to see the complete set of the materials you plan to give to the commissioners, et al., before you do so. If you could both let me know if all the formatting is OK, that would be great too. Thanks so much and look forward to talking to you at 7 EST.

Tova Andrea Wang  
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.

APPENDIX C -- BRENNAN EXCERPT.doc  Existing Literature Reviewed.doc

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:16 PM ---

Margaret Sims/EAC/GOV  
07/20/2006 02:46 PM  
To Tova Andrea Wang  
cc
Subject: Voucher

I received your faxed voucher today, signed it, and gave it to Finance. --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:16 PM ---

Margaret Sims/EAC/GOV
07/17/2006 12:25 PM

To: "Tova Wang" <wang@tcf.org>@GSAEXTERNAL
cc "Job Serebrov" <serebrov@shoolbrief>, wang@tcf.org

Subject: RE: final report

---

Yes, I have the list of Working Group members. --- Peggy

"Tova Wang" <wang@tcf.org>
07/17/2006 10:29 AM

To: psims@eac.gov
cc "Job Serebrov" <serebrov@shoolbrief>, wang@tcf.org

Subject: RE: final report

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From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, July 17, 2006 9:13 AM
To: wang@tcf.org
Cc: 'Job Serebrov'; wang@tcf.org

Subject: Re: final report

Thanks. I probably won't be able to start getting into this until tomorrow AM. I noticed that the appendices weren't attached. I think we discussed earlier that the list of interviewees needed to have more information for the final report, and the list of books and documents should be presented in the same manner as a bibliography for the final report. We can talk more about this tonight during our teleconference at 7 PM EST. --- Peggy
Hi Peg,

Attached please find drafts of the sections for the final report. Job, please double check I'm not missing anything or sent the wrong version of anything. I'm very concerned I may have. Is there a summary of the case review that I should have? Also, as we discussed, the attached does not include all of the individual summaries and charts which we already gave you for the working group and which have not changed. Peg, we'll want to see the complete set of the materials you plan to give to the commissioners, et al., before you do so. If you could both let me know if all the formatting is OK, that would be great too. Thanks so much and look forward to talking to you at 7 EST.

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Click here to receive our weekly e-mail updates. List of Experts Interviewed.doc

APPENDIX C -- BRENNAN EXCERPT.doc Existing Literature Reviewed.doc

---- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:16 PM ----

Margaret Sims/EAC/GOV
07/17/2006 01:41 PM
To: *Tova Wang* <wang@tcf.org>@GSAEXTERNAL
cc: [Redacted]
Subject: RE: final report

---005378---
Here is the list of Working Group members with some information highlighted about each individual. Yes, you can email me later in the day to let me know if I should call you at home or at work. --- Peggy

"Tova Wang" <wang@tcf.org>

"Tova Wang" <wang@tcf.org>
07/17/2006 12:34 PM
To: psims@eac.gov
cc:
Subject: RE: final report

Can you send it over? As I recall, it includes bios, right? I'm assuming on the interviewees you think we should have very short biographical information? Also, Peg, I'm not sure if I'll still be at work at 7 or home. Is it ok if I email you late in the day as to where I am? My home phone (for only two more weeks!) is

Thanks.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, July 17, 2006 11:26 AM
To: wang@tcf.org
Cc: 'Job Serebrov'; wang@tcf.org
Subject: RE: final report

Yes, I have the list of Working Group members. --- Peggy

"Tova Wang" <wang@tcf.org>

07/17/2006 10:29 AM
To: psims@eac.gov
cc: 'Job Serebrov'; wang@tcf.org
Subject: RE: final report

appendices attached, except Peg I think you put together the list of the working group members? In any case, I can't find one at the moment, but it would be easy enough to put together. Perhaps even Devon or someone could do that, especially since I don't think I have any hours left, and probably shouldn't even be writing this email. I don't remember the conversation about adding to the list of interviewees, but we can talk about that later.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Thanks. I probably won't be able to start getting into this until tomorrow AM. I noticed that the appendices weren't attached. I think we discussed earlier that the list of interviewees needed to have more information for the final report, and the list of books and documents should be presented in the same manner as a bibliography for the final report. We can talk more about this tonight during our teleconference at 7 PM EST. --- Peggy
Speaking of which, does this look ok to you?

----- Original Message -----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, July 17, 2006 9:13 AM
To: wang@tcf.org
Cc: 'Job Serebrov'; wang@tcf.org
Subject: Re: final report

Thanks. I probably won't be able to start getting into this until tomorrow AM. I noticed that the appendices weren't attached. I think we discussed earlier that the list of interviewees needed to have more information for the final report, and the list of books and documents should be presented in the same manner as a bibliography for the final report. We can talk more about this tonight during our teleconference at 7 PM EST. --- Peggy

Hi Peg,

Attached please find drafts of the sections for the final report. Job, please double check I'm not missing anything or sent the wrong version of anything. I'm very concerned I may have. Is there a summary of the case review that I should have? Also, as we discussed, the attached does not include all of the individual summaries and charts which we already gave you for the working group and which have not changed. Peg, we'll want to see the complete set of the materials you
plan to give to the commissioners, et.al., before you do so. If you could both let me know if all the formatting is OK, that would be great too. Thanks so much and look forward to talking to you at 7 EST.

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

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

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:16 PM ---

"Tova Wang" <wang@tcf.org> To psims@eac.gov
07/17/2006 05:51 PM cc
Subject contacting Job

He asks that you call him on his cell, 501-626-0440

Tova Andrea Wang
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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--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:16 PM ---

Margaret Sims/EAC/GOV To Job Serebrov
07/19/2006 11:23 AM cc
Subject Voucher

I received your faxed voucher this morning, signed it, and submitted it to Finance. --- Peggy
--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:16 PM ---

"Tova Wang" <wang@tcf.org> To psims@eac.gov
07/17/2006 05:36 PM cc
Subject I'll be in my office :(

212-452-7704

Tova Andrea Wang
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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----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:16 PM -----

Juliet E.
Thompson-Hodgkins/EAC/GOV

07/17/2006 10:18 AM

To Margaret Sims/EAC/GOV@EAC

Subject Re: Voting Fraud-Voter Intimidation Draft Report

That's good.
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
07/17/2006 10:15 AM

To jthompson@eac.gov

cc twilkey@eac.gov, Karen Lynn-Dyson/EAC/GOV@EAC

Subject Voting Fraud-Voter Intimidation Draft Report

Julie:

I received pieces of the draft final report on voting fraud-voter intimidation this morning. If it is OK with you, I'll hold it until all I have all of the pieces, so that you can review it as a whole document. --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:16 PM -----
I'm sorry I did not get back to you on this yesterday. I reviewed the voucher this morning and found that only two corrections are needed (coverage dates and # of days worked during the first two weeks). I've made the corrections in red on the attached copy of your voucher. --- Peggy

Wang voucher 6-18 to 7-15.doc

Speaking of which, does this look ok to you?

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, July 17, 2006 9:13 AM
To: wang@tcf.org
Cc: 'Job Serebrov'; wang@tcf.org
Subject: Re: final report

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Hi Peg,

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Tova Andrea Wang  
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Click here to receive our weekly e-mail updates. voucher 6-18 to 7-16.doc

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:16 PM ---  
Karen Lynn-Dyson/EAC/GOV  
07/28/2006 09:30 AM  
To  twilkey@eac.gov, Margaret Sims/EAC/GOV@EAC, Edgardo Cortes/EAC/GOV@EAC  
cc

Subject  Fw: Invitation to attend Election Fraud Conference

All-

I assume that in light of our Voting Fraud and Voter Intimidation project, we will have an EAC presence there?

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

005385
Margaret Sims/EAC/GOV	 To eaccon@eac.gov
cce

Subject Vote Fraud Study-Archived Email Part 3

The 3rd batch.
Peg Sims

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:25 PM -----

"Donsanto, Craig"<Craig.Donsanto@usdoj.gov>
05/03/2006 12:53 PM
To psims@eac.gov
cc

Subject Re: Voting Fraud-Voter Intimidation

Okay -- you are on for May 18th! Can we do it over here at 10?

--------------------------
Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

-----Original Message-----
From: psims@eac.gov <psims@eac.gov>
To: Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>
Sent: Wed May 03 12:40:19 2006
Subject: Re: Voting Fraud-Voter Intimidation

My problem is that agency staff is booked most of the week of 5/21. Monday through Wednesday are taken up with meetings of the Standards Board Executive Committee, the full Standards Board, and the Board of Advisors. Thursday, we have EAC's public meeting. Also, I will lose one of my two consultants in June, so I'm trying to wrap up this project (and get the final report from the consultants) by the end of May.

Say "Hi" to Cameron for me.

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

05/03/2006 11:56 AM
To psims@eac.gov
cc

Subject Re: Voting Fraud-Voter Intimidation
Hi Peg. I am sitting here with Cameron Quinn putting together this year’s ballt conference for AUSAs. She send her best!

I am available on 5/18. But I am also going to the Board of Advisors Meeting the following week. I would rather do this then.

Sent from Dr. D’s Fabulous BlackBerry Wireless Handheld

-----Original Message-----
From: psims@eac.gov <psims@eac.gov>
To: Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>
Sent: Wed May 03 11:39:50 2006
Subject: Voting Fraud-Voter Intimidation

Craig:

We are continuing our efforts to hone in on a date for the Working Group meeting. Are you available the afternoon of Thursday, May 18?

Peggy Sims
Election Research Specialist
U.S. Election Assistance Commission

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:25 PM -----
Margaret Sims/EAC/GOV
05/03/2006 04:59 PM
To: "Donsanto, Craig" <Craig.Donsanto@usdoj.gov>@GSAEXTERNAL
cc
Subject: Re: Voting Fraud-Voter Intimidation

I am looking at the afternoon of 5/18 for the meeting, due to scheduling conflicts of Working Group members. There remain two members from whom we have not yet received confirmations of their schedule (with some, it is like pulling teeth), but right now 5/18 still looks like the best day. We may have to hold the meeting over here to make it easier for Commissioners to drop in. --- Peg

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05/03/2006 11:56 AM
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cc
Subject

Re: Voting Fraud-Voter Intimidation

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From: psims@eac.gov <psims@eac.gov>
To: Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>
Sent: Wed May 03 11:39:50 2006
Subject: Voting Fraud-Voter Intimidation

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Peggy Sims
Election Research Specialist
U.S. Election Assistance Commission

Tuesday at 4 is OK for me.

----- Original Message -----
From: psims@eac.gov
To: wang@tcf.org ; dromig@eac.gov
Cc: 
Sent: Friday, May 05, 2006 2:32 PM
Subject: Working Group

Hi, Folks:

Teleconference
Are both of you available for a teleconference next Tuesday afternoon at about 4 PM EST? If this does not work for you, please suggest another date and/or time. I would like to discuss our preparations for the Working Group meeting.

Working Group Members
We have a very good person to fill the slot for the nonpartisan local election official: J.R. Perez, Elections Administrator for Guadalupe County, TX. Attached is his bio. Hope you have no objections to him. He is available on May 18. I have place 2 calls to Pat Rogers office, but have not yet received a reply. Job, if you have any pull with him, you may want to contact him, too.

Travel Arrangements
You should make your own travel arrangements, including hotel. Travel time cannot be billed to the contract, except for hours actually worked on the contract (i.e.; reviewing materials in preparation for the meeting, and the like). Current Federal rates follow:

Maximum Lodging = $180 per day- does not include hotel taxes (if you cannot get this rate, we have covered reasonable rates that are a little higher)
Meals & Incidentals = $64 per day (except that it is $48 on the first and last day of travel)
Mileage for Personally Owned Vehicle = $ .445 per mile

Under the new contract, I do not have to fill out a travel authorization for you. I can approve your trip via email. Afterwords, when you turn in your next pay voucher, you can attach the airline receipt (or mileage documentation), hotel receipt(s), and ground transportation receipts and a copy of any printed itineraries. Calculate the total travel expenses due you, including applicable per diem. I do not need meal receipts.

Job, under Federal travel regulations, deviations for personal reasons are not normally accommodated. What you can do, however, is to give me a comparison of the cost of roundtrip mileage, hotel, and per diem of doing it your way against the cost of a roundtrip flight, ground transportation, hotel, and per diem. If your way costs less, it should be no problem to cover the full cost. If your way is more expensive, we may only pay up to the amount of traditional travel. (The same rules apply to me when I travel.) If you can tell me where, other than DC, you will spend the night, I can check on applicable per diem rates.

Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:25 PM -----
Margaret Sims/EAC/GOV
05/04/2006 03:13 PM
To "Donsanto, Craig"
<Craig.Donsanto@usdoj.gov>@GSAEXTERNAL
cc
Subject RE: Voting Fraud-Voter Intimidation

Craig:

This meeting is being held to obtain input from our eight-member Working Group for the project. The group is composed of election lawyers, election officials, and a representative of an advocacy group, all of whom have an interest and some expertise in the identification and/or prosecution of voting fraud and voter intimidation. The group was chosen so that we would have an equal number of folks on each side of the political spectrum, plus some nonpartisan members.

After our consultants review the results of their preliminary research (interviews, literature review, case law), we will ask the Working Group to brainstorm possible next steps for EAC. Our consultants will write a report summarizing the proposals that come out of this meeting. The report will go to the Commissioners, who will decide what they want to do, funds available, and what priority to assigned to the effort(s).

Your participation in this part of the process is extremely important, so I am very happy that you can find time for us that afternoon. I'll get an agenda and other information to you next week. --- Peggy

"Donsanto, Craig" <Craig.Donsanto@usdoj.gov>
Okay, Peg - I will mark off the entire afternoon and try to be there. What is the agenda? I was not aware that this was anything beyond having your contractors spend another session with me. Also, if they will be needing stats and stuff like that I need to know as I will bring my state-people with me.

---

From: psims@eac.gov
Sent: Thursday, May 04, 2006 2:28 PM
To: Donsanto, Craig
Subject: Re: Voting Fraud-Voter Intimidation

Right now, we are planning to meet in EAC's large conference room between 1 PM and 5 PM. If you cannot be there for the whole afternoon, we will appreciate whatever time you can spare. I'll get back to you with more information (agenda, list of Working Group members, etc.). --- Peggy

---

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

05/03/2006 05:59 PM
topsims@eac.gov
cc
Subject: Re: Voting Fraud-Voter Intimidation

Afternoon of May 18 -- 2:30 okay? How long will they need??
--------------------------
Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

-----Original Message-----
From: psims@eac.gov
To: Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>
Sent: Wed May 03 16:59:09 2006
Subject: Re: Voting Fraud-Voter Intimidation

I am looking at the afternoon of 5/18 for the meeting, due to scheduling conflicts of Working Group members. There remain two members from whom we have not yet received confirmations of their schedule (with some, it is like pulling teeth), but right now 5/18 still looks like the best day. We may have to hold the meeting over here to make it easier for Commissioners to drop in. --- Peg
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Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

-----Original Message-----
From: psims@eac.gov <psims@eac.gov>
To: Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>
Sent: Wed May 03 12:40:19 2006
Subject: Re: Voting Fraud-Voter Intimidation

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Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

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To: Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>
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Craig:

We are continuing our efforts to hone in on a date for the Working Group meeting. Are you available the afternoon of Thursday, May 18?

Peggy Sims
Election Research Specialist
U.S. Election Assistance Commission

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:25 PM -----
Margaret Sims/EAC/GOV
05/09/2006 11:33 AM
To: "Job Serebrov"@GSAEXTERNAL
cc wang@tcf.org
Subject: Re: Working Group-Perez

Did you look at the attached excerpts from Texas Code? --- Peggy

"Job Serebrov"<snip>
05/09/2006 11:23 AM
To: psims@eac.gov
cc wang@tcf.org
Subject: Re: Working Group-Perez

We have the same set-up here in Arkansas. We hired a person just like Perez. However, given this, I would still like to know if he has a party affiliation and this brings up another issue. How is the county election commission chosen. In Arkansas it is the...
Chairmen of the Republican and Democrat Parties or if he/she does not want to serve a person is elected in his/her stead and a third member picked by the party with the most constitutional officers. Practically that has meant that the Democrats have controlled election commissions in Arkansas since the end of Reconstruction. This is why I want to know the situation in Texas.

--- psims@eac.gov wrote:

> As you may recall, the Commissioners directed me to
> find a nonpartisan
> local election official to serve on the Working
> Group. The three of us
> discussed the desirability of having a Hispanic. I
> proposed that I find
> someone from Texas because of that State's colorful
> history of voting
> fraud and their innovative approaches to combat it.
> In those Texas
> counties that hire Election Administrators to run
> elections, rather than
> having elected officials do so (Tax Assessor for
> voter registration;
> County Clerk for balloting), the Election
> Administrator is hired by the
> County Election Commission and is supposed to
> perform his or her duties in
> a nonpartisan manner. (See attached excerpts from
> Texas Election Code
> regarding election administrator hiring and
> restrictions on partisan
> activity.)
> Any experienced Texas election official will be
> familiar with voting fraud
> and voter intimidation schemes used in that State.
> Mr. Perez has over 13
> years experience as a county Election Administrator
> in Texas. You won't
> find many news articles mentioning him because he
> has kept his nose clean.
> (The Texas press, as in many other parts of the
> country, prefers to
> report bad news.) Mr. Perez is plugged into the
> association of Texas
> election officials and the two largest organizations
> of election officials
> in this country: the International Association of
> Clerks, Recorders,
> Election Officials and Treasurers (IACREOT); and The
> Election Center. He
> is a past President and past Chairman of the
> Legislative Committee for the
> Texas Association of Election Administrators. He
> currently serves on
> IACREOT's Election Officials Committee, which plans
> the educational
> sessions for election officials that are conducted
Thanks. Tova

Tova Andrea Wang
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----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM -----
"Tova Wang" <wang@tcf.org>
05/31/2006 01:50 PM
To psims@eac.gov
cc [redacted]
Subject RE: Working Group Notes

Peg, I'm sorry, but this is really not helpful. It's another outline. I guess we have to wait for the transcript. I wish now I had taken notes myself! Thanks anyway. Tova

-----Original Message-----
From psims@eac.gov [mailto:psims@eac.gov]
Sent: Wednesday, May 31, 2006 12:31 PM
To: wang@tcf.org
Cc: [redacted]
Subject: Re: Working Group Notes

Sorry. We have had so much going on, I did not have time to send the attached to you last week. This is Devon's compilation of notes taken by EAC staff at the working group meeting. --- Peggy

"Tova Wang" <wang@tcf.org>
05/31/2006 11:26 AM
Hi Peg,

How are you? I was wondering, whatever happened to getting the collective notes of the EAC staff? Thanks. Tova

Tova Andrea Wang  
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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Tova:
In reviewing your travel reimbursement request that arrived in my In box this week, I noticed that you did not include per diem in your request for payment. Was that an oversight? I calculate that you would be eligible for a total of $160 in per diem for the trip ($48 for Wednesday 5/17, $64 for Thursday 5/18, and $48 for Friday 5/19). Also, the airfare receipt shows a total charge of $288.60, but the amount you requested for airfare was $293.60. Perhaps there was a service fee that does not show on the receipt. Can you clarify? --- Peggy

Sorry. We have had so much going on, I did not have time to send the attached to you last week. This is Devon's compilation of notes taken by EAC staff at the working group meeting. --- Peggy

VFVI Meeting Summary.doc

"Tova Wang" <wang@tcf.org>
Hi Peg,

How are you? I was wondering, whatever happened to getting the collective notes of the EAC staff? Thanks. Tova

Tova Andrea Wang
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Hi Peg,

Do you have an ETA for the transcript? Seems like it should be around now. Thanks and have a great weekend. Tova

Tova Andrea Wang
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.
Hi, What's going on? I have not received responses from either one of you in a week. I'd like to wrap this up in the next two weeks if we can. Did you get my recommendations? Thanks.

Tova

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM ---

Margaret Sims/EAC/GOV
06/08/2006 09:35 AM
To wang@tcf.org@GSAEXTERNAL
cc
Subject Re: 

Sorry. We have been swamped with other program activities and preparations for today's testimony before House Admin. We have not yet received the transcript of the Working Group session. Devon checked with the court reporter, who said it will be delivered today. --- Peggy

wang@tcf.org

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM ---

Devon E. Romig/EAC/GOV
06/07/2006 10:08 AM
To Margaret Sims/EAC/GOV@EAC
cc jwilson@eac.gov
Subject Re: Transcript of 5-18-06 Working Group Meeting

Tim at Carol reporting said the transcript will be here today or tomorrow.

Devon Romig
United States Election Assistance Commission
1225 New York Ave. NW, Suite 1100
Washington, DC 20005
Have we had any word about the transcript for the 5-18-06 Voting Fraud-Voter Intimidation Working Group meeting? Our consultants each need a copy so that they can draft the final report? If we have it in electronic form, so much the better. --- Peggy

Hi Peg,

How do you recommend dealing with this? I have this feeling like he's trying to create a situation where I will have to write it myself. Thanks. Tova

-----Original Message-----
From: Job Serebrov [mailto:
Sent: Thursday, June 08, 2006 9:42 PM
To: psims@eac.gov; wang@tcf.org
Subject: Re: Transcript & Teleconference

Peggy:

I can't predict when I get home but it is between 5:30 and 6:30 my time. I know that is generally too late to have a teleconference.

I plan to review Tova's recommendations this weekend and work on my own as well as expanding the explanation of the case section.

Please see what your financial officer did with regards to my travel.
Thank you,

Job

--- psims@eac.gov wrote:

> What time do you arrive home from work? Perhaps we could talk then?
> 
> Re your question on the mileage, I have approached our Financial Officer with a request that you receive full reimbursement on the grounds that your actual total travel costs are less than the estimated total travel costs if you had flown to DC, stayed in our more expensive hotels, and received the higher per diem for 3 days (instead of 1). I have not yet received a response from her and she has been out of the office much of this week, so I don't know what she decided to do.
> --- Peggy

---

"Job Serebrov" <>
06/08/2006 01:10 PM

To
psims@eac.gov, wang@tcf.org
cc
Subject
Re: Transcript & Teleconference

Peg:

I just arrived home for lunch. I can no longer take time during the work day for telephone conferences. As I told you I will need to finish this project after daily working hours. I am still getting things done from being out for ten days. I will review Tova's recommendations and expand on mine this weekend.

Also, I sent you an e-mail asking how you handled the mileage portion of my travel voucher?

Job

--- psims@eac.gov wrote:
Can we make it 4 EST? I have another meeting at 3.

----- Original Message ----- 
From: <psims@eac.gov> 
To: <wang@tcf.org> 
Cc:  
Sent: Thursday, June 08, 2006 9:55 AM 
Subject: Re: Transcript & Teleconference 

I'll see how it comes in. I hope we receive an electronic copy. If we only receive a hard copy, we can pdf it and email it to the two of you.

How about Monday afternoon at 3 PM EST for a brief teleconference? I really can't do it before then because of other commitments. --- Peggy
How will you be getting it to us? Will it be something you can email?
And
can we set up a call for some time in the next few days? Thanks.
----- Original Message ----- 
From: <psims@eac.gov>
To: <wang@tcf.org>
Cc: 
Sent: Thursday, June 08, 2006 9:35 AM
Subject: Re:

Sorry. We have been swamped with other program activities and preparations for today's testimony before House Admin. We have not yet received the transcript of the Working Group session. Devon checked with the court reporter, who said it will be delivered today.
--- Peggy

Hi, What's going on? I have not received
I'll fax it to you if that works. The total is $124.44. Thank you. Have a nice weekend. Tova

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Friday, June 09, 2006 3:03 PM
To: wang@tcf.org
Subject: Re: travel

Send it now. Let me know how much it is, so that I can include it in the total for reimbursement. ---

Peggy

"Tova Wang" <wang@tcf.org>
Hi again,

I just got the bill from our car service from the trip last month. Can I still send it to you? Do I need a cover note? Thanks.  Tova

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

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

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM ---

"Tova Wang"  
<wang@tcf.org>  
To psims@eac.gov, "Job Serebrov"

06/09/2006 12:49 PM  
cc

Subject more gao

Sorry, its 500 pages -- it also includes data on absentee fraud and voter intimidation

Tova Andrea Wang  
Democracy Fellow  
The Century Foundation  
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--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM ---

Margaret Sims/EAC/GOV  
06/12/2006 05:09 PM  
To  "Tova Wang" <wang@tcf.org>@GSAEXTERNAL

Subject RE: Will Call Later
How about 9:30 AM EST, Wednesday morning (6/14/06)?

"Tova Wang" <wang@tcf.org>

"Tova Wang" <wang@tcf.org>

  06/12/2006 04:46 PM

To: psims@eac.gov
cc
Subject: RE: Will Call Later

Either between 9 and 10 or between 12 and 1:30 would be ideal, but I should be around most of the afternoon. Thanks Peg. Tova

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, June 12, 2006 2:39 PM
To: wang@tcf.org
Subject: Will Call Later

I'll try to call you Wednesday. Is there a time that is best for you? Today has been too hectic. Tomorrow is primary election day in VA. Still no transcript. I have taken a look at the recommendations that you sent me, but have not yet heard from Job. --- Peg

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM -----

Devon E. Romig/EAC/GOV

To: Margaret Sims/EAC/GOV@EAC
cc: jwilson@eac.gov
Subject: Re: Transcript of 5-18-06 Working Group Meeting

I will call the transcript company and ask them about it.

Devon Romig
United States Election Assistance Commission
1225 New York Ave. NW, Suite 1100
Washington, DC 20005
202.566.2377 phone
202.566.3128 fax
www.eac.gov
Margaret Sims/EAC/GOV

Margaret Sims/EAC/GOV

To: dromig@eac.gov, jwilson@eac.gov
cc
Subject: Transcript of 5-18-06 Working Group Meeting
Have we had any word about the transcript for the 5-18-06 Voting Fraud-Voter Intimidation Working Group meeting? Our consultants each need a copy so that they can draft the final report? If we have it in electronic form, so much the better. --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM -----
Diana Scott/EAC/GOV
06/09/2006 01:02 PM
To: Margaret Sims/EAC/GOV@EAC
cc
Subject: Travel Reimbursement for Job Sebrebrov

Peggy,

Regarding his travel for the EAC’s May 18 meeting, I would concur with you that we should reimburse Mr. Sebrebrov in the amount of $1200.03 for travel related expenses (hotel/mileage/per diem). Since there is a $577.95 dollar difference in cost (travel via air vs travel via POV), I believe the $1200.03 is more economically advantageous to the Agency. Attached is your drafted memo.

Diana M. Scott
Administrative Officer
U.S. Election Assistance Commission
(202) 566-3100 (office)
(202) 566-3127 (fax)
dscott@eac.gov

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM -----
Margaret Sims/EAC/GOV
06/09/2006 04:45 PM
To: “Tova Wang”<wang@tcf.org>@GSAEXTERNAL
cc
Subject: RE: travel

Got It! You should receive a total travel reimbursement of $1,533.02 for that trip. (I could not include the internet service fee the hotel charged, but everything else counted.) --- Peggy

“Tova Wang”<wang@tcf.org>

“Tova Wang”
I'll fax it to you if that works. The total is $124.44. Thank you. Have a nice weekend. Tova

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Friday, June 09, 2006 3:03 PM
To: wang@tcf.org
Subject: Re: travel

Send it now. Let me know how much it is, so that I can include it in the total for reimbursement. ---
Peggy

Hi again,

I just got the bill from our car service from the trip last month. Can I still send it to you? Do I need a cover note? Thanks. Tova

Tova Andrea Wang
Democracy Fellow
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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.
Perfect. Thanks.

-----Original Message-----
From: psims@eac.gov
Sent: Monday, June 12, 2006 4:09 PM
To: wang@tcf.org
Subject: RE: Will Call Later

How about 9:30 AM EST, Wednesday morning (6/14/06)?

"Tova Wang" <wang@tcf.org>
06/12/2006 04:46 PM

Either between 9 and 10 or between 12 and 1:30 would be ideal, but I should be around most of
the afternoon. Thanks Peg. Tova

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From: psims@eac.gov
Sent: Monday, June 12, 2006 2:39 PM
To: wang@tcf.org
Subject: Will Call Later

I'll try to call you Wednesday. Is there a time that is best for you? Today has been too hectic.
Tomorrow is primary election day in VA. Still no transcript. I have taken a look at the
recommendations that you sent me, but have not yet heard from Job. --- Peg

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:19 PM -----
Here are my recommendations with the last one now included. Please let me know about the transcript and when you all want to talk about getting the final report done. Thanks. Tova

Tova Andrea Wang  
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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Peggy:

Any sign of the transcript? Will the other members of the working group get a copy? I have had questions from several about it.

If you want to talk I can do so this Friday at 6 pm your time.

Job

4 PM EST is fine with me, if it works for Job. --- Peggy

wang@tcf.org
Jeannie

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

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

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

--- Peggy

Does this work for you?

Tova Andrea Wang
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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Attached is an updated schedule showing 2 more invoice periods. I'll send separate spreadsheets to you and Job showing what funds and hours have been used and what are available. --- Peggy

Hi Peg,

What is the current invoice schedule? Thanks.

Tova Andrea Wang
Democracy Fellow
The Century Foundation
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phone: 212-452-7704  fax: 212-535-7534

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I would make time to discuss this. I feel that any edit would be wrong while a comment at the end of the interview by the Commission would not be. But in this case, two of us remember it one way and one the other way.

--- wang@tcf.org wrote:

> That would be great on the contract.
> 
> If the interview is "edited" as you put it, I will be very, very uncomfortable, as I believe Job would be as well. I know you don't want to spend anymore time on this, but I consider it a rather important issue, and I think Job does too. I would be happy to talk to you and Tom and any of the commissioners about this further if that would be helpful. I am available by cell over the next four days and in the office all next week.
> 
> Thanks for the updated invoice stuff. Happy 4th.
> 
> Tova

----- Original Message -----
From: <psims@eac.gov>
To: "Job Serebrov"
Cc: "Tova Andrea Wang" <wang@tcf.org>
Sent: Friday, June 30, 2006 6:41 PM
Subject: Re: Various

> Actually, the Donsanto interview was the only one I did attend, but I agree the issue is taking up too much of your time. I just wanted you to be forwarned that the paragraph has already raised red flags in DC of and is likely to result in an edit. Enough said about that.
> 
> I am concerned about the number of hours left for this project. If you and Tova both agree, I'll see if our Contracting Officer will approve a contract mod to provide for some additional hours and money to incorporate comments received on the report and other efforts that fall within the tasks specified in the current contract. We won't get 60 thou, but there might be a little year end money we can use to finish this off properly.
> 
> Peg

> --------------------------
I had to take time off this afternoon to handle some issues. Did you get an answer as to my travel reimbursement?

I spoke to Tova about the Donsanto issue. We both agree about what we heard during the interview. We also agree that this is taking up too much time (of which we have so little left) and is a minor part of one interview which makes up one of thirty interviews.

I feel the same as Tova, the Commission was not on the interview and thus do not know what was said and we are not giving those interviewed the opportunity, especially given how long ago the interviews were, to object. Frankly, if the Commission wants to give us another sixty hours each we can call all of our interviewees, give them the review and ask for comments. In any case, we can't include comments from other interviews with, or lectures by person interviewed, outside of our interview with that person. We simply can't afford to single out one statement in one interview that there is a disagreement on. Finally, I don't read the paragraph as you do—I remember what was said—the paragraph clearly does not imply an abandonment of other DOJ electoral investigations.

Job
I'll need to get back to you on this and the definition tomorrow (too many things going on today). In the meantime, I have attached the written status report that was presented to the EAC Standards Board and Board of Advisors, because I can't remember if I ever provided the final version to the two of you. The status report is primarily made up of your preliminary reports, with some intro information provided and a brief summary of recommendations discussed at the Working Group meeting. This may or may not help the two of you in preparing the final. You can use any of it, or none of it. I am sure that your product will be much better than this quickly pulled together thing. --- Peggy

EAC Boards VF-VI Status Report.doc

Does this work for you?

Tova Andrea Wang
Democracy Fellow
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Table of Contents.doc

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM -----
Peg:

So far no travel pay. Tova got hers a couple of days ago. Please call and check. I need it.

Thanks,

Job

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM -----

"Tova Wang"
<wang@tcf.org>
06/29/2006 01:24 PM

To psims@eac.gov
cc twilkey@eac.gov
Subject RE: donsanto interview

Peg, If you review the numerous speeches and writings of Donsanto, including at the BAI training sessions, you will see that in the past he has frequently said that as a matter of law and policy the Department generally only pursued organized patterns. I can point you to particular citations if you like. He clearly said when we interviewed him that there had been a shift in resources and energy. This is in both of our notes. I don't think this should be an issue of departmental politics.

Tova

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Thursday, June 29, 2006 12:00 PM
To: wang@tcf.org; twilkey@eac.gov
Cc: psims@eac.gov
Subject: Re: donsanto interview

Tova and Job:

All I can do is advise you that I don't think this paragraph will pass by the Commission, as written, because readers can misinterpret what is being reported and use something published by EAC against DOJ. I suspect that both of you are aware of legal action being taken by an advocacy group against DOJ alleging that the agency is acting in a manner that fails to protect, and even discourages, the voter participation of minorities and disadvantaged individuals. Though I do not intend to address the merits of that action, which focuses on the efforts of more than one DOJ office, I am concerned that some readers would use the sentence that begins with "This change in direction, focus, and level of aggression ..." as evidence that DOJ's Election Crimes Branch has completely changed course to focus on aggressively pursuing individuals who vote when ineligible, many of whom are minorities.

It is true that, for years, the Election Crimes Branch did not pursue individual violators. (I certainly observed this from the time I became involved in researching election administration matters in 1986.) Much of the reason for this is that the agency just did not have the resources to pursue everything; so, as the agency budget permitted, DOJ pursued cases that provided the most bang
for the buck --- cases involving multiple individuals that were not already being pursued by State
or local public attorneys. As you know, DOJ recently expanded its efforts and added the
prosecution of individuals for double voting or voting when ineligible (felony convictions or no U.S.
citizenship). Although I did not know of this decision prior to the interview, the action is not a
complete surprise, given the increasing pressure on the agency to pursue such cases that began
with a real squeaker of a 1996 race in California's 46th CD (Orange County). In the interview with
you, Donsanto also stated that the department evaluates each case before pursuing it, and does
not pursue every individual referred for voting violations. (You may remember he noted his
reluctance to pursue noncitizen voting, which can result in deportation, when it could separate the
individual from his family.)

In my opinion, the addition of the prosecution of individuals, while an important new development,
is not a complete change in direction or focus. The pursuit of individual violators does not
supplant DOJ's continuing efforts to pursue organized schemes to corrupt the process. It is part
of a recent expansion of the agency's efforts to combat election crime that includes: (1) more
aggressive pursuit of criminal campaign finance violations (not covered by EAC's study); (2)
exploration of new avenues to prosecute voter suppression schemes (e.g.; the NH phone bank
blocking case); (3) better training of U.S. attorneys and FBI agents in the recognition, investigation
and prosecution of election offenses; (4) efforts to improve coordination with state and local law
enforcement agencies; and (5) press conferences and public announcements before federal
elections to publicize how the public can report election crimes. Donsanto provided information
on much of these efforts either during the interview or by supplying case lists and training
information on the day of the interview.

I hope you will reconsider revising the paragraph at issue.

Peggy Sims
Election Research Specialist
U.S. Election Assistance Commission

Hi Peg,

Job and I have discussed this matter and agree on our response to it.

Presumably the paragraph you are concerned about is the following:
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 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.

Neither of us thinks this passage says that the Department has stopped pursuing patterns, as you suggested, and we maintain that this is what Mr. Donsanto said to us in the interview. If Mr. Donsanto wants to object, perhaps he can write a letter or something to that effect that could be part of the record.

Tova Andrea Wang
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I don't think anyone disagrees that DOJ's earlier policy was to prosecute organized conspiracies, not individual violators. This policy was based both on existing law and resources available. Donsanto made that clear in numerous presentations before election officials, though I doubt he would have highlighted the resource issue in any of his written reports.

I did not hear Donsanto say that there was a shift in resources and energy away from prosecuting organized conspiracies in order to pursue prosecutions of individuals. I think we should avoid implying that this is the case. I understood his statement to address a shift in DOJ resources and energy to support increased efforts to prosecute election crimes, including the expansion of prosecutions to include individual incidents. I have not seen, nor do I think Donsanto has ever stated, that there has been a decrease in the effort to prosecute organized conspiracies to corrupt the process. Yet, adequate resources continue to be an issue, as Donsanto noted in his interview and at the Working Group meeting (when referring to having to decide which of two voter suppression cases to prosecute because he didn't have the resources to do both).

Your reference to policy based on law reminded me that changes in federal law, and an evolution in the understanding of how to use newer law, also would have affected DOJ's decision to add the prosecution of individuals for such violations as registering and voting when not a U.S. citizen or when a convicted felon. Earlier federal law did not directly address voter registration by felons, permitting federal prosecution in such instances only where it could be shown that the applicant knowingly and willfully...
provided false information as to his or her eligibility to vote. Earlier federal law permitted the prosecution of noncitizens for registering to vote based on false claims of the U.S. citizenship that each State required for registering to vote in federal elections, but did not require U.S. citizenship to vote in federal elections. These laws made federal prosecution of noncitizen and felon voter registration and voting much more challenging. With the implementation of the NVRA in 1995, we began to see federal election law that could more easily be used for federal prosecution of both voter registration and voting by noncitizens and convicted felons. And, late in 1996, immigration reform legislation was passed that clearly prohibits noncitizens from voting in federal elections (without requiring the "knowing and willful" component).

--- Peggy

"Tova Wang" <wang@tcf.org>

Peg, If you review the numerous speeches and writings of Donsanto, including at the BAI training sessions, you will see that in the past he has frequently said that as a matter of law and policy the Department generally only pursued organized patterns. I can point you to particular citations if you like. He clearly said when we interviewed him that there had been a shift in resources and energy. This is in both of our notes. I don't think this should be an issue of departmental politics.

Tova

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Sent: Thursday, June 29, 2006 12:00 PM
To: wang@tcf.org;
Cc: twilkey@eac.gov
Subject: Re: donsanto interview

Tova and Job:

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It is true that, for years, the Election Crimes Branch did not pursue individual violators. (I certainly observed this from the time I became involved in researching election administration matters in 1986.) Much of the reason for this is that the agency just did not have the resources to pursue everything; so, as the agency budget permitted, DOJ pursued cases that provided the most bang
for the buck --- cases involving multiple individuals that were not already being pursued by State or local public attorneys. As you know, DOJ recently expanded its efforts and added the prosecution of individuals for double voting or voting when ineligible (felony convictions or no U.S. citizenship). Although I did not know of this decision prior to the interview, the action is not a complete surprise, given the increasing pressure on the agency to pursue such cases that began with a real squeaker of a 1996 race in California's 46th CD (Orange County). In the interview with you, Donsanto also stated that the department evaluates each case before pursuing it, and does not pursue every individual referred for voting violations. (You may remember he noted his reluctance to pursue noncitizen voting, which can result in deportation, when it could separate the individual from his family.)

In my opinion, the addition of the prosecution of individuals, while an important new development, is not a complete change in direction or focus. The pursuit of individual violators does not supplant DOJ’s continuing efforts to pursue organized schemes to corrupt the process. It is part of a recent expansion of the agency’s efforts to combat election crime that includes: (1) more aggressive pursuit of criminal campaign finance violations (not covered by EAC’s study); (2) exploration of new avenues to prosecute voter suppression schemes (e.g.; the NH phone bank blocking case); (3) better training of U.S. attorneys and FBI agents in the recognition, investigation and prosecution of election offenses; (4) efforts to improve coordination with state and local law enforcement agencies; and (5) press conferences and public announcements before federal elections to publicize how the public can report election crimes. Donsanto provided information on much of these efforts either during the interview or by supplying case lists and training information on the day of the interview.

I hope you will reconsider revising the paragraph at issue.

Peggy Sims
Election Research Specialist
U.S. Election Assistance Commission

"Tova Wang" <wang@tcf.org>

06/28/2006 04:47 PM

Hi Peg,

Job and I have discussed this matter and agree on our response to it.

Presumably the paragraph you are concerned about is the following:
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 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.

Neither of us thinks this passage says that the Department has stopped pursuing patterns, as you suggested, and we maintain that this is what Mr. Donsanto said to us in the interview. If Mr. Donsanto wants to object, perhaps he can write a letter or something to that effect that could be part of the record.

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Democracy Fellow
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----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM -----

Margaret Sims/EAC/GOV
06/30/2006 05:29 PM
To Tova Andrea Wang
cc
Subject Contract Hours & Payments for Services

Here is the spreadsheet I have for you. Please let me know if you notice any discrepancies. Thanks. --- Peggy

Wang Payment Tracking.xls

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM -----

Margaret Sims/EAC/GOV
06/30/2006 06:19 PM
To "Job Serebrov" cc
Subject Re: Various

Not yet. The problem is that so many folks seem to be off for a long 4th of
July weekend.

---------------------------------
Sent from my BlackBerry Wireless Handheld

----- Original Message ----- 
From: "Job Serebrov" 
Sent: 06/30/2006 05:58 PM 
To: psims@eac.gov; wang@tcf.org 
Subject: Various

Peg:

I had to take time off this afternoon to handle some issues. Did you get an answer as to my travel reimbursement?

I spoke to Tova about the Donsanto issue. We both agree about what we heard during the interview. We also agree that this is taking up too much time (of which we have so little left) and is a minor part of one interview which makes up one of thirty interviews. I feel the same as Tova, the Commission was not in on the interview and thus do not know what was said and we are not giving those interviewed the opportunity, especially given how long ago the interviews were, to object. Frankly, if the Commission wants to give us another sixty hours each we can call all of our interviewees, give them the review and ask for comments. In any case, we can't include comments from other interviews with, or lectures by person interviewed, outside of our interview with that person. We simply can't afford to single out one statement in one interview that there is a disagreement on. Finally, I don't read the paragraph as you do---I remember what was said---the paragraph clearly does not imply an abandonment of other DOJ electoral investigations.

Job

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM -----

"Job Serebrov"  
06/30/2006 07:10 PM  
To psims@eac.gov, wang@tcf.org 
cc 
Subject Re: Various

Peg:

Its ok with me as long as we finish before the end of November.
--- psims@eac.gov wrote:

> Actually, the Donsanto interview was the only one I did attend, but I agree the issue is taking up too much of your time. I just wanted you to be forewarned that the paragraph has already raised red flags in DC of and is likely to result in an edit. Enough said about that.

> I am concerned about the number of hours left for this project. If you and Tova both agree, I'll see if our Contracting Officer will approve a contract mod to provide for some additional hours and money to incorporate comments received on the report and other efforts that fall within the tasks specified in the current contract. We won't get 60 thou, but there might be a little year end money we can use to finish this off properly.

> Peg

> ____________________________
> Sent from my BlackBerry Wireless Handheld

> ----- Original Message ----- 
> From: "Job Serebrov"  
> Sent: 06/30/2006 05:58 am  
> To: psims@eac.gov; wang@tcf.org  
> Subject: Various

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> I had to take time off this afternoon to handle some issues. Did you get an answer as to my travel reimbursement?

> I spoke to Tova about the Donsanto issue. We both agree about what we heard during the interview. We also agree that this is taking up too much time (of which we have so little left) and is a minor part of one interview which makes up one of thirty interviews.

> I feel the same as Tova, the Commission was not in on the interview and thus do not know what was said and we are not giving those interviewed the opportunity, especially given how long ago the interviews were, to object. Frankly, if the Commission wants to give us another sixty hours each we can call all of our interviewees, give them the review and ask for comments. In any case, we can't include comments from other interviews with, or lectures by person interviewed, outside of our interview with that person. We simply can't afford to single out one statement in one interview that there is a disagreement on. Finally, I don't read the paragraph
I wasn’t planning on circulating the transcript to the Commissioners. Most of them probably don’t have the
time to go through the whole thing. I will let them know it is available, if they are interested in reviewing it.
--- Peggy

"Tova Wang" <wang@tcf.org>

Wow, there are a lot of errors in this. But at least it gets at the substance. Will this be circulated to the commissions?

-----Original Message-----
From: dromig@eac.gov [mailto:dromig@eac.gov]
Sent: Thursday, June 22, 2006 2:45 PM
To: psims@eac.gov
Cc: wang@tcf.org
Subject: Fw: May 18, 2006 Meeting

Good news!!! The transcript is finally here.

Devon Romig
United States Election Assistance Commission
1225 New York Ave. NW, Suite 1100
Washington, DC 20005
202.566.2377 phone
202.566.3128 fax
www.eac.gov
Dear EAC,

Attached please note the ASCII file for the Voting Fraud-Voter Intimidation Meeting taken on Wednesday, May 18, 2006. Your transcript has been shipped to you.

ASCII file name: 051806.txt

Please let us know if you have any questions.

Timothy Brischler, Office Manager, 703.273.9221

I am ok with it.

--- Tova Wang <wang@tcf.org> wrote:

> Is this OK now?
> 
> Tova Andrea Wang
> Democracy Fellow
> The Century Foundation
> 41 East 70th Street - New York, NY 10021
> phone: 212-452-7704  fax: 212-535-7534
> 
> www.tcf.org, for the latest news,
> analysis, opinions, and events.
> 
>
Jeannie:

Here are my responses:

1. **When will EAC receive the preliminary report on voter intimidation and voting fraud?**
   
   I anticipate that we will have a draft final report from our consultants in 2-3 weeks, after our consultants have had time to review the transcript from the project Working Group meeting, which was not available until last week.

2. **When we receive the preliminary report, what is the EAC process to formulate a final product that will be made public?**
   
   First, Commissioners and Commission staff will have to review the preliminary draft. Then a draft will be submitted to the EAC Standards Board and EAC Advisory Board for review and comment. This second step is taken in accordance with HAVA §247, which requires EAC to carry out its duties under Title II, Subtitle C (Studies and Other Activities to Promote Effective Administration of Federal Elections) in consultation with the Standards Board and the Board of Advisors.

3. **When will we make this research available to the public? What form will it be in? (Best practices, etc.)**
   
   The final report cannot be made public until it has been accepted by the Commissioners. Normally, this does not happen until the researcher(s) submit a final report that has been revised to address clarifications and corrections deemed necessary through the review process described above. The time it takes for the researchers to produce this final report will depend, somewhat, on the number of clarifications and corrections deemed necessary.
As the researchers were charged with conducting preliminary background research on voting fraud and voter intimidation in the U.S., this report will not include recommended best practices. It will summarize the preliminary research as well as the deliberations of our project Working Group. It also will include recommendations for future EAC activity related to the development of: (1) methods of identifying, deterring, and investigating voting fraud and voter intimidation; and (2) nationwide statistics on voting fraud.

If the reporter has spoken to Secretary Rokita, who maintains that EAC has no authority to conduct this research, you may want to note that EAC initiated this preliminary research on voting fraud and voter intimidation in accordance with the Help America Vote Act, (HAVA) §241, which requires EAC to conduct research on election administration issues, including the development of:

- nationwide statistics and methods of identifying, deterring, and investigating voting fraud in elections for Federal office [§241(b)(6)]; and
- ways of identifying, deterring, and investigating methods of voter intimidation [§241(b)(7)].

At its 2005 meeting, EAC's Board of Advisors recommended that the agency make research on these matters a high priority.

Peggy Sims
Election Research Specialist
U.S. Election Assistance Commission

Jeannie Layson/EAC/GOV

Jeannie Layson/EAC/GOV
06/27/2006 02:26 PM
To psims@eac.gov, twilkey@eac.gov
cc
Subject US News & World Report inquiry

Please provide answers to the following questions, posed to me by US News & World Report's Scott Michels. I need this info by the end of the day to meet his deadline.

1. When will EAC receive the preliminary report on voter intimidation and voting fraud?
2. When we receive the preliminary report, what is the EAC process to formulate a final product that will be made public?
3. When will we make this research available to the public? What form will it be in? (Best practices, etc.)

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

Job and I have discussed this matter and agree on our response to it.

Presumably the paragraph you are concerned about is the following:

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 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.

Neither of us thinks this passage says that the Department has stopped pursuing patterns, as you suggested, and we maintain that this is what Mr. Donsanto said to us in the interview. If Mr. Donsanto wants to object, perhaps he can write a letter or something to that effect that could be part of the record.
Tova and Job:

All I can do is advise you that I don’t think this paragraph will pass by the Commission, as written, because readers can misinterpret what is being reported and use something published by EAC against DOJ. I suspect that both of you are aware of legal action being taken by an advocacy group against DOJ alleging that the agency is acting in a manner that fails to protect, and even discourages, the voter participation of minorities and disadvantaged individuals. Though I do not intend to address the merits of that action, which focuses on the efforts of more than one DOJ office, I am concerned that some readers would use the sentence that begins with “This change in direction, focus, and level of aggression ...” as evidence that DOJ’s Election Crimes Branch has completely changed course to focus on aggressively pursuing individuals who vote when ineligible, many of whom are minorities.

It is true that, for years, the Election Crimes Branch did not pursue individual violators. (I certainly observed this from the time I became involved in researching election administration matters in 1986.) Much of the reason for this is that the agency just did not have the resources to pursue everything; so, as the agency budget permitted, DOJ pursued cases that provided the most bang for the buck --- cases involving multiple individuals that were not already being pursued by State or local public attorneys. As you know, DOJ recently expanded its efforts and added the prosecution of individuals for double voting or voting when ineligible (felony convictions or no U.S. citizenship). Although I did not know of this decision prior to the interview, the action is not a complete surprise, given the increasing pressure on the agency to pursue such cases that began with a real squeaker of a 1996 race in California’s 46th CD (Orange County). In the interview with you, Donsanto also stated that the department evaluates each case before pursuing it, and does not pursue every individual referred for voting violations. (You may remember he noted his reluctance to pursue noncitizen voting, which can result in deportation, when it could separate the individual from his family.)

In my opinion, the addition of the prosecution of individuals, while an important new development, is not a complete change in direction or focus. The pursuit of individual violators does not supplant DOJ’s continuing efforts to pursue organized schemes to corrupt the process. It is part of a recent expansion of the agency’s efforts to combat election crime that includes: (1) more aggressive pursuit of criminal campaign finance violations (not covered by EAC’s study); (2) exploration of new avenues to prosecute voter suppression schemes (e.g., the NH phone bank blocking case); (3) better training of U.S. attorneys and FBI agents in the recognition, investigation and prosecution of election offenses; (4) efforts to improve
coordination with state and local law enforcement agencies; and (5) press conferences and public announcements before federal elections to publicize how the public can report election crimes. Donsanto provided information on much of these efforts either during the interview or by supplying case lists and training information on the day of the interview.

I hope you will reconsider revising the paragraph at issue.

Peggy Sims
Election Research Specialist
U.S. Election Assistance Commission

"Tova Wang" <wang@tcf.org>

Hi Peg,

Job and I have discussed this matter and agree on our response to it.

Presumably the paragraph you are concerned about is the following:

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 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.

Neither of us thinks this passage says that the Department has stopped pursuing patterns, as you suggested, and we maintain that this is what Mr. Donsanto said to us in the interview. If Mr. Donsanto wants to object, perhaps he can write a letter or something to that effect that could be part of the record.

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

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

Click here to receive our weekly e-mail updates.
Peggy:

Still no travel funds. Please see what you can fund out on Monday. At this point this is late.

Job

Further comment from Tova. --- Peggy

Also, I maintain that a reasonable solution to this is to allow Donsanto and/or any of the commissioners who desire to do so to provide a statement that would be included in the report and in the record.

> That would be great on the contract.
> If the interview is "edited" as you put it, I will be very, very uncomfortable, as I believe Job would be as well. I know you don't want to spend anymore time on this, but I consider it a rather important issue,
and I think Job does too. I would be happy to talk to you and Tom and any
of the commissioners about this further if that would be helpful. I am
available by cell over the next four days and in the office all next week.

Thanks for the updated invoice stuff. Happy 4th.

Tova

----- Original Message ----- 
From: <psims@eac.gov>
To: "Job Serebrov"
Cc: "Tova Andrea Wang" <wang@tcf.org>
Sent: Friday, June 30, 2006 6:41 PM
Subject: Re: Various

Actually, the Donsanto interview was the only one I did attend, but I
agree the issue is taking up too much of your time. I just wanted you to
be forwarned that the paragraph has already raised red flags in DC of and
is likely to result in an edit. Enough said about that.

I am concerned about the number of hours left for this project. If you
and Tova both agree, I'll see if our Contracting Officer will approve a
contract mod to provide for some additional hours and money to
incorporate comments received on the report and other efforts that fall
within the tasks specified in the current contract. We won't get 60
thou, but there might be a little year end money we can use to finish
this off properly.

Peg

--------------------------
Sent from my BlackBerry Wireless Handheld

----- Original Message ----- 
From: "Job Serebrov"
Sent: 06/30/2006 05:58 PM
To: psims@eac.gov; wang@tcf.org
Subject: Various

Peg:

I had to take time off this afternoon to handle some
issues. Did you get an answer as to my travel
reimbursement?

I spoke to Tova about the Donsanto issue. We both
agree about what we heard during the interview. We
also agree that this is taking up too much time (of
which we have so little left) and is a minor part of
one interview which makes up one of thirty interviews.
I feel the same as Tova, the Commission was not in on
the interview and thus do not know what was said and
we are not giving those interviewed the opportunity,
especially given how long ago the interviews were, to
object. Frankly, if the Commission wants to give us
another sixty hours each we can call all of our
interviewees, give them the review and ask for
comments. In any case, we can't include comments from
other interviews with, or lectures by person
interviewed, outside of our interview with that
>> person. We simply can't afford to single out one
>> statement in one interview that there is a
>> disagreement on. Finally, I don't read the paragraph
>> as you do---I remember what was said---the paragraph
>> clearly does not imply an abandonment of other DOJ
>> electoral investigations.
>>
>> Job

Can you please find out where GSA is with this reimbursement? Thanks. --- Peggy

Peggy:

Still no travel funds. Please see what you can fund
out on Monday. At this point this is late.

Job

Peggy:
I am assuming you are referring to the 6/9/06 payment in the amount of $1,200.03. I checked with Finance and the payout date is today.

Bola Olu  
Financial Administrative Specialist  
United States Election Assistance Commission  
1225 New York Avenue N.W., Suite - 1100  
Washington, DC 20005  
P:202-566-3124  
F:202/566-3127  
http://www.eac.gov/  

"Integrity - Treat everyone with the same principle, be loyal to those who are not present"  
Margaret Sims/EAC/GOV

Can you please find out where GSA is with this reimbursement? Thanks. --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 07/03/2006 11:12 AM -----

"Job Serebrov"  
07/02/2006 09:34 AM  
To psims@eac.gov  
cc  
Subject Travel Funds

Peggy:

Still no travel funds. Please see what you can fund out on Monday. At this point this is late.

Job

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM -----

Margaret Sims/EAC/GOV  
07/03/2006 12:51 PM  
To Job Serebrov  
cc  
Subject Payments for Personal Services
Job:

I may have forgotten to send this summary of payments for personal services to you. If I didn't, here it is again. --- Peggy

Serebrov Payment Tracking.xls

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM ---

Margaret Sims/EAC/GOV

To: wang@tcf.org@GSAEXTERNAL

cc: "Job Serebrov" <wang@tcf.org>

Subject: Re: Various

Most of the Commissioners and Tom will be out of the office for the next two weeks to attend the IACREOT, NASS, and NASED summer conferences. I'll let Tom know you want to talk with him when I see him at the airport tomorrow. He may decide to call from out of town. --- Peggy

wang@tcf.org

That would be great on the contract.

If the interview is "edited" as you put it, I will be very, very uncomfortable, as I believe Job would be as well. I know you don't want to spend anymore time on this, but I consider it a rather important issue, and I think Job does too. I would be happy to talk to you and Tom and any of the commissioners about this further if that would be helpful. I am available by cell over the next four days and in the office all next week.

Thanks for the updated invoice stuff. Happy 4th.

Tova

----- Original Message -----
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Cc: "Tova Andrea Wang"<wang@tcf.org>
Sent: Friday, June 30, 2006 6:41 PM
Subject: Re: Various

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I am concerned about the number of hours left for this project. If you and Tova both agree, I'll see if our Contracting Officer will approve a contract mod to provide for some additional hours and money to incorporate comments received on the report and other efforts that fall within the tasks specified in the current contract. We won't get 60 thou, but there might be a little year end money we can use to finish this off properly.

Peg

--------------------------
Sent from my BlackBerry Wireless Handheld

----- Original Message ----- 
From: "Job Serebrov"
Sent: 06/30/2006 05:58 PM
To: psims@eac.gov; wang@tcf.org
Subject: Various

Peg:

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I spoke to Tova about the Donsanto issue. We both agree about what we heard during the interview. We also agree that this is taking up too much time (of which we have so little left) and is a minor part of one interview which makes up one of thirty interviews. I feel the same as Tova, the Commission was not in on the interview and thus do not know what was said and we are not giving those interviewed the opportunity, especially given how long ago the interviews were, to object. Frankly, if the Commission wants to give us another sixty hours each we can call all of our interviewees, give them the review and ask for comments. In any case, we can't include comments from other interviews with, or lectures by person interviewed, outside of our interview with that person. We simply can't afford to single out one statement in one interview that there is a disagreement on. Finally, I don't read the paragraph as you do---I remember what was said---the paragraph clearly does not imply an abandonment of other DOJ electoral investigations.

Job
Peg:

I still have not received the travel funds. This is causing a large financial problem. I don't know what is with these people but it is obvious my bank has not received it and I doubt it was sent. Please find out what is going on.

Job

----- Original Message-----
From: psims@eac.gov
Sent: Monday, July 03, 2006 10:30 AM
To: wang@tcf.org
Subject: RE: Estimated Additional Hours Needed
We'll have to guesstimate. It is likely that we will receive some comments and questions from the Commissioners and a number of comments from the boards. We could do the modification a little later, but we have to do it before the end of August to take advantage of year-end funds. Basically, the sooner we can figure this out, the better chance we have of using some of the year-end money for this project, before it is taken for something else. We have no guaranties that funds will be available in the next fiscal year. --- Peggy

"Tova Wang" <wang@tcf.org>

07/03/2006 11:13 AM

To psims@eac.gov
cc
Subject RE: Estimated Additional Hours Needed

 Doesn't it really depend on what the Commission comes back to us with? Its kind of hard to estimate before knowing what they're going to want.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, July 03, 2006 10:11 AM
To: wang@tcf.org; twilkey@eac.gov
Cc: 
Subject: Estimated Additional Hours Needed

Tova and Job:

I don't have the authority to modify contracts, but Tom Wilkey does. In order to help Tom determine how many additional hours (and dollars) should be added to your personal services contracts, I'll need an estimate from the two of you for the number of additional hours required to complete the final report (taking into account revisions that may be needed to address questions and comments submitted by the Commissioners and the EAC Standards Board and Board of Advisors). Please note that we cannot add any tasks to the existing contract, but we can account for additional hours required to complete the final report.

Peggy Sims
Election Research Specialist
U.S. Election Assistance Commission
1225 New York Ave, NW - Ste 1100
Washington, DC 20005
Phone: 888-747-1471 (toll free) or 202-566-3120 (direct)
Fax: 202-566-3127
email: psims@eac.gov

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM -----
I thought I emailed an account of your hours used. Just in case I didn't, here it is again.

Wang Payment Tracking.xls

"Tova Wang" <wang@tcf.org>

To psims@eac.gov
cc
Subject RE: Estimated Additional Hours Needed

I think I've already gone over my hours. Let me know when I submit my invoice. If I have, I'll just reduce them on paper. Thanks.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, July 03, 2006 10:30 AM
To: wang@tcf.org
Subject: RE: Estimated Additional Hours Needed

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Sent: Monday, July 03, 2006 10:11 AM
To: wang@tcf.org; twilkey@eac.gov
Subject: Estimated Additional Hours Needed

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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
e-mail: psims@eac.gov

---

Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM ---

"Job Serebrov"

07/07/2006 08:06 AM

To: psims@eac.gov
cc

Subject: Travel Funds

Peg:

My travel funds finally came in to my bank.

Job

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM ----

"Tova Wang"
<wang@tcf.org>

07/03/2006 11:13 AM

To: psims@eac.gov
cc
Doesn't it really depend on what the Commission comes back to us with? It's kind of hard to estimate before knowing what they're going to want.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
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To: wang@tcf.org,
Cc: twilkey@eac.gov
Subject: Estimated Additional Hours Needed

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Phone: 866-747-1471 (toll free) or 202-566-3120 (direct)
Fax: 202-566-3127
e-mail: psims@eac.gov

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM -----
wang@tcf.org
07/01/2006 05:30 PM
to psims@eac.gov
cc
subject Re: FW: methodology

It would be great if someone there could work on cleaning it up. Let us know. Thanks.
----- Original Message -----
The attached is the text extracted from pages 8-19 and the Attachment C referenced within the text. The formatting is still a little weird. Can you work with this, or do I need to play with it some more? --- Peggy

"Tova Wang" <wang@tcf.org>

06/29/2006 12:07 PM

Will it be possible for you to extract the excerpt for inclusion in the report? Thanks.

-----Original Message-----
From: Job Serebrov [mailto:...]
Sent: Wednesday, June 28, 2006 5:40 PM
To: Tova Wang; psims@eac.gov
Subject: Re: methodology

Agreed

--- Tova Wang <wang@tcf.org> wrote:

> As you may recall, the working group expressed interest in the risk analysis method. The recent report by the Brennan Center on voting machines employs this methodology. If you look at pp. 8-19 of the attached, it provides a potential model. I think it might be worth including this as an appendix or footnote in the methodology section. Please let me know what you think.
> Tova
> Tova Andrea Wang
> Democracy Fellow
> The Century Foundation
> 41 East 70th Street - New York, NY 10021
> phone: 212-452-7704 fax: 212-535-7534
> www.tcf.org, for the latest news, analysis, opinions, and events.
I have asked our finance folks to check with GSA. I will let you know when I receive the answer. --- Peggy

Peggy:

Still no travel funds. Please see what you can fund out on Monday. At this point this is late.

Job

Tova and Job:
I don't have the authority to modify contracts, but Tom Wilkey does. In order to help Tom determine how many additional hours (and dollars) should be added to your personal services contracts, I'll need an estimate from the two of you for the number of additional hours required to complete the final report (taking into account revisions that may be needed to address questions and comments submitted by the Commissioners and the EAC Standards Board and Board of Advisors). Please note that we cannot add any tasks to the existing contract, but we can account for additional hours required to complete the final report.

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Washington, DC 20005  
Phone: 866-747-1471 (toll free) or 202-566-3120 (direct)  
Fax: 202-566-3127  
email: psims@eac.gov  

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM ---

Margaret Sims/EAC/GOV  
07/11/2006 12:05 PM  
To Juliet E. Thompson-Hodgkins/EAC/GOV @EAC  
cc  
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>
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 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

-------------------
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.

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

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

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM -----  

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 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
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
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. Wikey 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

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Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
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Washington, DC 20005
(202) 566-3100

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM -----
Margaret Sims/EAC/GOV
07/03/2006 11:38 AM
To: Devon Romig
cc
Subject: Fw: methodology

Please edit the attached Word document to remove the returns at the end of each line that are not needed, then send it to Tova and Job. Thanks! --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 07/03/2006 11:37 AM -----
Margaret Sims/EAC/GOV
06/30/2006 05:25 PM
To: "Tova Wang" <wang@tcf.org>@GSAEXTERNAL
cc
Subject: Re: FW: methodology

005448
The attached is the text extracted from pages 8-19 and the Attachment C referenced within the text. The formatting is still a little weird. Can you work with this, or do I need to play with it some more? --- Peggy

--- Original Message ---

From: Job Serebrov [mailto: ]
Sent: Wednesday, June 28, 2006 5:40 PM
To: Tova Wang; psims@eac.gov
Subject: Re: methodology

Agreed

--- Tova Wang <wang@tcf.org> wrote:

> As you may recall, the working group expressed
> interest in the risk analysis
> method. The recent report by the Brennan Center on
> voting machines employs
> this methodology. If you look at pp. 8-19 of the
> attached, it provides a
> potential model. I think it might be worth
> including this as an appendix or
> footnote in the methodology section. Please let me
> know what you think.
> Tova
> Tova Andrea Wang
> Democracy Fellow
> The Century Foundation
> 41 East 70th Street - New York, NY 10021
> phone: 212-452-7704  fax: 212-535-7534
> www.tcf.org, for the latest news,
> analysis, opinions, and events.
>
> Click here to receive our
> weekly e-mail updates.
>
>

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM -----

Margaret Sims/EAC/GOV
07/05/2006 02:49 PM
To "Tova Andrea Wang" <wang@tcf.org>
cc
Subject Contract Hours

Tova:
If you have used up all of your remaining hours, you need to stop work until we have the contract
modification in place that provides for more hours.
Peggy

------------------------
Sent from my BlackBerry Wireless Handheld

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:17 PM -----

wang@tcf.org
06/30/2006 09:45 PM
To wang@tcf.org, psims@eac.gov, "Job Serebrov"
cc
Subject Re: Various

Also, I maintain that a reasonable solution to this is to allow Donsanto
and/or any of the commissioners who desire to do so to provide a statement
that would be included in the report and in the record.

----- Original Message -----
From: <wang@tcf.org>
To: <psims@eac.gov>; "Job Serebrov" <psims@eac.gov>
Cc: "Tova Wang" <wang@tcf.org>
Sent: Friday, June 30, 2006 9:42 PM
Subject: Re: Various

> That would be great on the contract.
>
> If the interview is "edited" as you put it, I will be very, very
> uncomfortable, as I believe Job would be as well. I know you don't want
> to spend anymore time on this, but I consider it a rather important issue,
> and I think Job does too. I would be happy to talk to you and Tom and any
> of the commissioners about this further if that would be helpful. I am
> available by cell over the next four days and in the office all next week.
Thanks for the updated invoice stuff. Happy 4th.

Tova

----- Original Message ----- 
From: <psims@eac.gov>
To: "Job Serebrov" <psims@eac.gov>
Cc: "Tova Andrea Wan" <wang@tcf.org>
Sent: Friday, June 30, 2006 6:41 PM
Subject: Re: Various

> Actually, the Donsanto interview was the only one I did attend, but I
> agree the issue is taking up too much of your time. I just wanted you to
> be forewarned that the paragraph has already raised red flags in DC of and
> is likely to result in an edit. Enough said about that.
>
> I am concerned about the number of hours left for this project. If you
> and Tova both agree, I'll see if our Contracting Officer will approve a
> contract mod to provide for some additional hours and money to
> incorporate comments received on the report and other efforts that fall
> within the tasks specified in the current contract. We won't get 60
> thou, but there might be a little year end money we can use to finish
> this off properly.
>
> Peg

----------
Sent from my BlackBerry Wireless Handheld

----- Original Message ----- 
From: "Job Serebrov" <psims@eac.gov>
Sent: 06/30/2006 05:58 PM
To: psims@eac.gov; wang@tcf.org
Subject: Various

Peg:

I had to take time off this afternoon to handle some
issues. Did you get an answer as to my travel
reimbursement?

I spoke to Tova about the Donsanto issue. We both
agree about what we heard during the interview. We
also agree that this is taking up too much time (of
which we have so little left) and is a minor part of
one interview which makes up one of thirty interviews.
I feel the same as Tova, the Commission was not in on
the interview and thus do not know what was said and
we are not giving those interviewed the opportunity,
especially given how long ago the interviews were, to
object. Frankly, if the Commission wants to give us
another sixty hours each we can call all of our
interviewees, give them the review and ask for
comments. In any case, we can't include comments from
other interviews with, or lectures by person
interviewed, outside of our interview with that
person. We simply can't afford to single out one
statement in one interview that there is a
disagreement on. Finally, I don't read the paragraph
as you do---I remember what was said---the paragraph clearly does not imply an abandonment of other DOJ electoral investigations.

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:16 PM ---
Margaret Sims/EAC/GOV
07/03/2006 12:40 PM
To Serebrov
cc
Subject Travel Reimbursement

GSA reports that a pay out of $1,200.03 was made today. --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:16 PM ---
Margaret Sims/EAC/GOV
06/30/2006 05:25 PM
To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL
cc
Subject Re: FW: methodology

The attached is the text extracted from pages 8-19 and the Attachment C referenced within the text. The formatting is still a little weird. Can you work with this, or do I need to play with it some more? --- Peggy

Risk Analysis Methodology-Brennan Center excerpt.doc

"Tova Wang" <wang@tcf.org>

"Tova Wang"
<wang@tcf.org>
06/29/2006 12:07 PM
To psims@eac.gov
cc
Subject FW: methodology

Will it be possible for you to extract the excerpt for inclusion in the report? Thanks.

---- Original Message ----
From: Job Serebrov [mailto:]
Sent: Wednesday, June 28, 2006 5:40 PM
To: Tova Wang; psims@eac.gov
Subject: Re: methodology

Agreed

--- Tova Wang <wang@tcf.org> wrote:

> As you may recall, the working group expressed
> interest in the risk analysis
> method. The recent report by the Brennan Center on
> voting machines employs
> this methodology. If you look at pp. 8-19 of the
> attached, it provides a
> potential model. I think it might be worth
> including this as an appendix or
> footnote in the methodology section. Please let me
> know what you think.
> Tova
> Tova Andrea Wang
> Democracy Fellow
> The Century Foundation
> 41 East 70th Street - New York, NY 10021
> phone: 212-452-7704 fax: 212-535-7534
> www.tcf.org, for the latest news,
> analysis, opinions, and events.
> 
> Once is enough. You don't need to resend. --- Peggy

"Tova Wang" <wang@tcf.org>
Peg, We don't need to re-send you all of the material that we gave you to provide to the working group for the final report, eg the individual interviews, research summaries, nexis and case charts, right? Thanks. Happy 4th. Tova

Tova Andrea Wang
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.

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:16 PM -----
"Job Serebrov"
07/03/2006 10:14 PM
To psims@eac.gov, wang@tcf.org
cc
Subject Hrs

Peg:

It seems to Tova and me that somewhere between 30 and 40 for each of us would be safe (having learned from not asking for enough hours).

Job

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:16 PM -----
"Job Serebrov"
07/05/2006 07:19 PM
To psims@eac.gov
cc
Subject Re: Travel Reimbursement

No, its Bank of America. I just checked again and its
not there. If it does not appear by morning I will need you to see what is going on.

--- psims@eac.gov wrote:

> They usually send it electronically. Could your bank have failed to post it due to the holiday? Does your bank tend to float deposits for a day or two? Peggy

--- Original Message ----
From: "Job Serebrov" [ii]
Sent: 07/05/2006 08:13 AM
To: psims@eac.gov
Subject: Re: Travel Reimbursement

Peg:

I checked my account this morning (July 5th) and this still has not been paid. Did GSA mail it?

Job

--- psims@eac.gov wrote:

> GSA reports that a pay out of $1,200.03 was made today. --- Peggy

We'll have to guesstimate. It is likely that we will receive some comments and questions from the Commissioners and a number of comments from the boards. We could do the modification a little later, but we have to do it before the end of August to take advantage of year-end funds. Basically, the sooner we can figure this out, the better chance we have of using some of the year-end money for this project, before it is taken for something else. We have no guaranties that funds will be available in the next fiscal year. --- Peggy

"Tova Wang" <wang@tcf.org>
Tova and Job:

I don't have the authority to modify contracts, but Tom Wilkey does. In order to help Tom determine how many additional hours (and dollars) should be added to your personal services contracts, I'll need an estimate from the two of you for the number of additional hours required to complete the final report (taking into account revisions that may be needed to address questions and comments submitted by the Commissioners and the EAC Standards Board and Board of Advisors). Please note that we cannot add any tasks to the existing contract, but we can account for additional hours required to complete the final report.

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

Peg:

I need to move our call to next Monday at 7 pm EST. What is the situation with the extra hours?
I've asked Devon to do it. She can get it to you faster than I. --- Peggy

The excess returns would be a great start, and then I can do the rest. Thanks a lot.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, July 03, 2006 10:14 AM
To: wang@tcf.org
Cc:  
Subject: Re: FW: methodology

Do you just need to have the excess returns removed, or do you think it needs other clean up as well? --- Peggy
It would be great if someone there could work on cleaning it up. Let us know. Thanks.

----- Original Message -----
From: psims@eac.gov
To: wang@tcf.org
Cc: 
Sent: Friday, June 30, 2006 5:25 PM
Subject: Re: FW: methodology

The attached is the text extracted from pages 8-19 and the Attachment C referenced within the text. The formatting is still a little weird. Can you work with this, or do I need to play with it some more? --- Peggy

"Tova Wang" <wang@tcf.org>

06/29/2006 12:07 PM
To
psims@eac.gov
cc
Subject
FW: methodology

Will it be possible for you to extract the excerpt for inclusion in the report? Thanks.

-----Original Message-----
From: Job Serebrov [mailto:]
Sent: Wednesday, June 28, 2006 5:40 PM
To: Tova Wang; psims@eac.gov
Subject: Re: methodology

Agreed

--- Tova Wang <wang@tcf.org> wrote:

> As you may recall, the working group expressed
> interest in the risk analysis
> method. The recent report by the Brennan Center on
> voting machines employs
this methodology. If you look at pp. 8-19 of the attached, it provides a potential model. I think it might be worth including this as an appendix or footnote in the methodology section. Please let me know what you think.

Tova

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

www.tcf.org, for the latest news, analysis, opinions, and events.

appendices attached, except Peg I think you put together the list of the working group members? In any case, I can't find one at the moment, but it would be easy enough to put together. Perhaps even Devon or someone could do that, especially since I don't think I have any hours left, and probably shouldn't even be writing this email. I don't remember the conversation about adding to the list of interviewees, but we can talk about that later.

Thanks. I probably won't be able to start getting into this until tomorrow AM. I noticed that the appendices weren't attached. I think we discussed earlier that the list of interviewees needed to
Hi Peg,

Attached please find drafts of the sections for the final report. Job, please double check I'm not missing anything or sent the wrong version of anything. I'm very concerned I may have. Is there a summary of the case review that I should have? Also, as we discussed, the attached does not include all of the individual summaries and charts which we already gave you for the working group and which have not changed. Peg, we'll want to see the complete set of the materials you plan to give to the commissioners, et.al., before you do so. If you could both let me know if all the formatting is OK, that would be great too. Thanks so much and look forward to talking to you at 7 EST.

Tova Andrea Wang  
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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List of Experts Interviewed.doc  
APPENDIX C - BRENnan EXCERPT.doc  
Existing Literature Reviewed.doc

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:16 PM -----  
Margaret Sims/EAC/GOV  
07/20/2006 02:46 PM  
To Tova Andrea Wang 
cc
I received your faxed voucher today, signed it, and gave it to Finance. --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:16 PM ---

Margaret Sims/EAC/GOV
07/17/2006 12:25 PM

To: "Tova Wang" <wang@tcf.org>@GSAEXTERNAL
cc: "Job Serebrov" wagon@tcf.org

Subject: RE: final report

Yes, I have the list of Working Group members. --- Peggy

"Tova Wang" <wang@tcf.org>

07/17/2006 10:29 AM

To: psims@eac.gov
cc: "Job Serebrov" wagon@tcf.org

Subject: RE: final report

appendices attached, except Peg I think you put together the list of the working group members? In any case, I can't find one at the moment, but it would be easy enough to put together. Perhaps even Devon or someone could do that, especially since I don't think I have any hours left, and probably shouldn't even be writing this email. I don't remember the conversation about adding to the list of interviewees, but we can talk about that later.

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, July 17, 2006 9:13 AM
To: wang@tcf.org
Cc: 'Job Serebrov'; wang@tcf.org
Subject: Re: final report

Thanks. I probably won't be able to start getting into this until tomorrow AM. I noticed that the appendices weren't attached. I think we discussed earlier that the list of interviewees needed to have more information for the final report, and the list of books and documents should be presented in the same manner as a bibliography for the final report. We can talk more about this tonight during our teleconference at 7 PM EST. --- Peggy
Hi Peg,

Attached please find drafts of the sections for the final report. Job, please double check I'm not missing anything or sent the wrong version of anything. I'm very concerned I may have. Is there a summary of the case review that I should have? Also, as we discussed, the attached does not include all of the individual summaries and charts which we already gave you for the working group and which have not changed. Peg, we'll want to see the complete set of the materials you plan to give to the commissioners, et.al., before you do so. If you could both let me know if all the formatting is OK, that would be great too. Thanks so much and look forward to talking to you at 7 EST.

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The Century Foundation
41 East 70th Street - New York, NY 10021
phone: 212-452-7704  fax: 212-535-7534

Visit our Web site, www.tcf.org, for the latest news, analysis, opinions, and events.
Here is the list of Working Group members with some information highlighted about each individual. Yes, you can email me later in the day to let me know if I should call you at home or at work. --- Peggy

Can you send it over? As I recall, it includes bios, right? I'm assuming on the interviewees you think we should have very short biographical information? Also, Peg, I'm not sure if I'll still be at work at 7 or home. Is it ok if I email you late in the day as to where I am? My home phone (for only two more weeks!) is

--- Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, July 17, 2006 11:26 AM
To: wang@tcf.org
Cc: 'Job Serebrov'; wang@tcf.org
Subject: RE: final report

Yes, I have the list of Working Group members. --- Peggy

appendices attached, except Peg I think you put together the list of the working group members? In any case, I can't find one at the moment, but it would be easy enough to put together. Perhaps even Devon or someone could do that, especially since I don't think I have any hours left, and probably shouldn't even be writing this email. I don't remember the conversation about adding to the list of interviewees, but we can talk about that later.

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"Tova Wang" <wang@tcf.org>  
07/17/2006 10:41 AM

To: psims@eac.gov
CC: "Job Serebrov"
wang@tcf.org

Subject: RE: final report

Speaking of which, does this look ok to you?

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, July 17, 2006 9:13 AM
To: wang@tcf.org
Cc: 'Job Serebrov'; wang@tcf.org
Subject: Re: final report

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"Tova Wang" <wang@tcf.org>
07/17/2006 09:33 AM

To: psims@eac.gov
CC: "Job Serebrov" wang@tcf.org

Subject: final report

Hi Peg,

Attached please find drafts of the sections for the final report. Job, please double check I'm not missing anything or sent the wrong version of anything. I'm very concerned I may have. Is there a summary of the case review that I should have? Also, as we discussed, the attached does not include all of the individual summaries and charts which we already gave you for the working group and which have not changed. Peg, we'll want to see the complete set of the materials you
plan to give to the commissioners, et.al., before you do so. If you could both let me know if all the formatting is OK, that would be great too. Thanks so much and look forward to talking to you at 7 EST.

Tova Andrea Wang
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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--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:16 PM ---

"Tova Wang"
<wang@tcf.org>
07/17/2006 05:51 PM
To psims@eac.gov
cc
Subject contacting Job

He asks that you call him on his cell [redacted]

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

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

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:16 PM ---

Margaret Sims/EAC/GOV
07/19/2006 11:23 AM
To Job Serebrov
cc
Subject Voucher

I received your faxed voucher this morning, signed it, and submitted it to Finance. --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:16 PM ---

"Tova Wang"
<wang@tcf.org>
07/17/2006 05:36 PM
To psims@eac.gov
cc
That's good.
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
07/17/2006 10:15 AM
To jthompson@eac.gov
cc twilkey@eac.gov, Karen Lynn-Dyson/EAC/GOV@EAC
Subject Voting Fraud-Voter Intimidation Draft Report

Julie:

I received pieces of the draft final report on voting fraud-voter intimidation this morning. If it is OK with you, I'll hold it until all I have all of the pieces, so that you can review it as a whole document. --- Peggy
I'm sorry I did not get back to you on this yesterday. I reviewed the voucher this morning and found that only two corrections are needed (coverage dates and # of days worked during the first two weeks). I've made the corrections in red on the attached copy of your voucher. --- Peggy

Subject: RE: final report

"Tova Wang" <wang@tcf.org>

Speaking of which, does this look ok to you?

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, July 17, 2006 9:13 AM
To: wang@tcf.org
Cc: 'Job Serebrov'; wang@tcf.org
Subject: Re: final report

Thanks. I probably won't be able to start getting into this until tomorrow AM. I noticed that the appendices weren't attached. I think we discussed earlier that the list of interviewees needed to have more information for the final report, and the list of books and documents should be presented in the same manner as a bibliography for the final report. We can talk more about this tonight during our teleconference at 7 PM EST. --- Peggy
Hi Peg,

Attached please find drafts of the sections for the final report. Job, please double check I'm not missing anything or sent the wrong version of anything. I'm very concerned I may have. Is there a summary of the case review that I should have? Also, as we discussed, the attached does not include all of the individual summaries and charts which we already gave you for the working group and which have not changed. Peg, we'll want to see the complete set of the materials you plan to give to the commissioners, et.al., before you do so. If you could both let me know if all the formatting is OK, that would be great too. Thanks so much and look forward to talking to you at 7 EST.

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

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

Click here to receive our weekly e-mail updates. voucher 5-18 to 7-16.doc

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:16 PM -----

Karen Lynn-Dyson/EAC/GOV
07/28/2006 09:30 AM

To twilkey@eac.gov, Margaret Sims/EAC/GOV@EAC, Edgardo Cortes/EAC/GOV@EAC
cc
Subject Fw: Invitation to attend Election Fraud Conference

All-

I assume that in light of our Voting Fraud and Voter Intimidation project, we will have an EAC presence there?

K
Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue, NW Suite 1100
Washington, DC 20005
Please find attached an invitation to attend the Election Fraud Conference co-sponsored by the Center for Public Policy and Administration at the University of Utah and the Caltech/MIT Voting Technology Project, September 29-30, 2006 in Salt Lake City, UT.

Regards,
Melissa Slemin

California Institute of Technology
Voting Technology Project
MC 228-77
1200 E California Blvd
Pasadena, CA 91125
phone: 626.395.4089
fax: 626.405.9841

http://votingtechnologyproject.org

There was no telephone conference scheduled yesterday. If you all remember, due to my current job and grandchildren situation we were unable to arrange a teleconference.

--- wang@tcf.org wrote:

> What's going on? Where are we at? Thanks. Tova
> ----- Original Message -----
Okay -- you are on for May 18th! Can we do it over here at 10?

Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

-----Original Message-----
From: psims@eac.gov <psims@eac.gov>
To: Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>
Sent: Wed May 03 12:40:19 2006
Subject: Re: Voting Fraud-Voter Intimidation

My problem is that agency staff is booked most of the week of 5/21. Monday through Wednesday are taken up with meetings of the Standards Board Executive Committee, the full Standards Board, and the Board of Advisors. Thursday, we have EAC's public meeting. Also, I will lose one of my two consultants in June, so I'm trying to wrap up this project (and get the final report from the consultants) by the end of May.

Say "Hi" to Cameron for me.

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

05/03/2006 11:56 AM
To
cc
Subject

Re: Voting Fraud-Voter Intimidation

Hi Peg. I am sitting here with Cameron Quinn putting together this year's ballot conference for AUSAs. She send her best!

I am available on 5/18. But I am also going to the Board of Advisors Meeting the following week. I would rather do this then.

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Subject: Voting Fraud-Voter Intimidation

Craig:
We are continuing our efforts to hone in on a date for the Working Group meeting. Are you available the afternoon of Thursday, May 18?

Peggy Sims
Election Research Specialist
U.S. Election Assistance Commission

Tuesday at 4 is OK for me.

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

From: psims@eac.gov
To: wang@tcf.org ;  
Cc: dromig@eac.gov
Sent: Friday, May 05, 2006 2:32 PM
Subject: Working Group

Hi, Folks:

Teleconference
Are both of you available for a teleconference next Tuesday afternoon at about 4 PM EST? If this does not work for you, please suggest another date and/or time. I would like to discuss our preparations for the Working Group meeting.

Working Group Members
We have a very good person to fill the slot for the nonpartisan local election official: J.R. Perez, Elections Administrator for Guadalupe County, TX. Attached is his bio. Hope you have no objections to him. He is available on May 18. I have place 2 calls to Pat Rogers office, but have not yet received a reply. Job, if you have any pull with him, you may want to contact him, too.

Travel Arrangements
You should make your own travel arrangements, including hotel. Travel time cannot be billed to the contract, except for hours actually worked on the contract (i.e.; reviewing materials in preparation for the meeting, and the like). Current Federal rates follow:

Maximum Lodging = $180 per day- does not include hotel taxes (if you cannot get this rate, we have covered reasonable rates that are a little higher)
Meals & Incidentals = $64 per day (except that it is $48 on the first and last day of travel)
Mileage for Personally Owned Vehicle = $ .445 per mile

Under the new contract, I do not have to fill out a travel authorization for you. I can approve your trip via email. Afterwords, when you turn in your next pay voucher, you can attach the airline receipt (or mileage documentation), hotel receipt(s), and ground transportation receipts and a copy of any printed itineraries. Calculate the total travel expenses due you, including applicable per diem. I do not need meal receipts.

Job, under Federal travel regulations, deviations for personal reasons are not normally accommodated. What you can do, however, is to give me a comparison of the cost of roundtrip mileage, hotel, and per diem of doing it your way against the cost of a roundtrip flight, ground transportation, hotel, and per diem. If your way costs less, it should be no problem to cover the full cost. If your way is more expensive, we may only pay up to the amount of traditional travel. (The same rules apply to me when I travel.) If you can tell me where, other than DC, you will spend the night, I can check on applicable per diem rates.

Peggy

Craig:

This meeting is being held to obtain input from our eight-member Working Group for the project. The group is composed of election lawyers, election officials, and a representative of an advocacy group, all of whom have an interest and some expertise in the identification and/or prosecution of voting fraud and voter intimidation. The group was chosen so that we would have an equal number of folks on each side of the political spectrum, plus some nonpartisan members.

After our consultants review the results of their preliminary research (interviews, literature review, case law), we will ask the Working Group to brainstorm possible next steps for EAC. Our consultants will write a report summarizing the proposals that come out of this meeting. The report will go to the Commissioners, who will decide what they want to do, funds available, and what priority to assigned to the effort(s).

Your participation in this part of the process is extremely important, so I am very happy that you can find time for us that afternoon. I'll get an agenda and other information to you next week. --- Peggy

"Donsanto, Craig" <Craig.Donsanto@usdoj.gov>
Okay, Peg -- I will mark off the entire afternoon and try to be there. What is the agenda? I was not aware that this was anything beyond having your contractors spend another session with me. Also, if they will be needing stats and stuff like that I need to know as I will bring my state-people with me.

From: psims@eac.gov
Sent: Thursday, May 04, 2006 2:28 PM
To: Donsanto, Craig
Subject: Re: Voting Fraud-Voter Intimidation

Right now, we are planning to meet in EAC’s large conference room between 1 PM and 5 PM. If you cannot be there for the whole afternoon, we will appreciate whatever time you can spare. I’ll get back to you with more information (agenda, list of Working Group members, etc.). --- Peggy

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

05/03/2006 05:59 PM
To: psims@eac.gov
Cc: psims@eac.gov
Subject: Re: Voting Fraud-Voter Intimidation

Afternoon of May 18 -- 2:30 okay? How long will they need??
--------------------------
Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

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To: Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>
Sent: Wed May 03 16:59:09 2006
Subject: Re: Voting Fraud-Voter Intimidation

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Peggy Sims
Election Research Specialist
U.S. Election Assistance Commission

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:25 PM ----
Margaret Sims/EAC/GOV
05/09/2006 11:33 AM
To "Job Serebrov"
cc wang@tcf.org
Subject Re: Working Group-Perez

Did you look at the attached excerpts from Texas Code? --- Peggy

"Job Serebrov"
05/09/2006 11:23 AM
To psims@eac.gov
cc wang@tcf.org
Subject Re: Working Group-Perez

We have the same set-up here in Arkansas. We hired a person just like Perez. However, given this, I would still like to know if he has a party affiliation and this brings up another issue. How is the county election commission chosen. In Arkansas it is the
Chairmen of the Republican and Democrat Parties or if he/she does not want to serve a person is elected in his/her stead and a third member picked by the party with the most constitutional officers. Practically that has meant that the Democrats have controlled election commissions in Arkansas since the end of Reconstruction. This is why I want to know the situation in Texas.

--- psims@eac.gov wrote:

> As you may recall, the Commissioners directed me to find a nonpartisan local election official to serve on the Working Group. The three of us discussed the desirability of having a Hispanic. I proposed that I find someone from Texas because of that State's colorful history of voting fraud and their innovative approaches to combat it. In those Texas counties that hire Election Administrators to run elections, rather than having elected officials do so (Tax Assessor for voter registration; County Clerk for balloting), the Election Administrator is hired by the County Election Commission and is supposed to perform his or her duties in a nonpartisan manner. (See attached excerpts from Texas Election Code regarding election administrator hiring and restrictions on partisan activity.) Any experienced Texas election official will be familiar with voting fraud and voter intimidation schemes used in that State. Mr. Perez has over 13 years experience as a county Election Administrator in Texas. You won't find many news articles mentioning him because he has kept his nose clean. (The Texas press, as in many other parts of the country, prefers to report bad news.) Mr. Perez is plugged into the association of Texas election officials and the two largest organizations of election officials in this country: the International Association of Clerks, Recorders, Election Officials and Treasurers (IACREOT); and The Election Center. He is a past President and past Chairman of the Legislative Committee for the Texas Association of Election Administrators. He currently serves on IACREOT's Election Officials Committee, which plans the educational sessions for election officials that are conducted
at that organization's conferences. His peers in IACREOT and The Election Center have selected his submissions on web presentations (IACREOT) and his professional practices papers (Election Center) for awards. Mr. Perez also has access to information from other States through his membership in IACREOT and The Election Center. He also has a sense of humor, which you will note if you access the staff web page on the Guadalupe County Elections web site and hear the Mission Impossible theme... something that might be useful in the upcoming meeting.

Guadalupe County is small but growing. In 2004, the county had over 65 thousand registered voters (a number more than doubled the number of registered voters in 1988). A third of the county's population claims Hispanic or Latino origin, according to the U.S. Census Bureau. The county is in south central Texas and is bordered by Comal, Hays, Cladwell, Gonzales, Wilson, and Bexar counties. In the 1980s, the county was predominately a farming community; but in recent years, many people have moved from San Antonio (Bexar County) to Guadalupe County, preferring to live in Guadalupe County and work in Bexar County.

--- Peggy

"Job Serebrov" <05/08/2006 11:30 PM

To
psims@eac.gov
cc

Subject
Re: Working Group

---

What political party is Perez with? How political is he? Is the position in Texas neutral or political?
> Who
> appointed Perez?
>
> As to Pat I will contact him but I can't promise anything. If Pat can't come, who is getting knocked off Tova's list?
>
> Job
>
>
----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:25 PM -----
Margaret Sims/EAC/GOV
05/05/2006 05:34 PM
To Diana Scott
cc Karen Lynn-Dyson/EAC/GOV@EAC, dromig@eac.gov
Subject Working Group Travel

Diana:

The following members of the Working Group for our Voting Fraud/Voter Intimidation research project will need to make travel arrangements in order to attend an afternoon meeting of the group on May 18 in Washington, DC:

Mark "Thor" Hearne - St Louis, MO
J.R. Perez - Seguin, TX
The Honorable Todd Rokita - Indianapolis, IN
Kathy Rogers - Atlanta, GA

I may have one additional member from Albuquerque, NM confirmed early next week.

May these people use Adventure Travel to make these arrangements in the same manner as the Asian Language Working Group? I understand the members of that group made hotel and flight arrangements through Adventure Travel and that these costs were billed directly to EAC. We did plan for EAC to pay for the travel of the Voting Fraud/Voter Intimidation Working Group (budgeted under Research). Devon will prepare their travel authorizations.

Peggy Sims
Election Research Specialist

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:25 PM -----
"Tova Wang"
<wang@tcf.org>
05/11/2006 10:12 AM
To psims@eac.gov
cc
Subject RE: Today's Teleconference

This seems OK, I guess its a less detailed version of what I sent you. I hope you will advise us as to what
we are supposed to talk about/go over since we have provided the group with everything we've done ahead of time. I also hope that you will have an answer for me on Wade. It utterly essential that we have a leader from the civil rights community at the table.

---- Original Message ----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Thursday, May 11, 2006 9:07 AM
To: wang@tcf.org;  
Subject: Today's Teleconference

I assume that we are still on for today's teleconference at 11 AM EST. I will call you. I have attached a draft agenda for your review and comment. --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:25 PM -----

"Job Senghoy"
05/11/2006 03:36 PM
To: "Tova Wang" <wang@tcf.org>, psims@eac.gov
cc:  
Subject: Re: new working group representative

I have an objection to Greenbaum. While I realize he comes from an advocacy group, he is not a minority attorney and we already have a rep who worked with DOJ. If it is to be Greenbaum, I would rather not fill that position since I am one down.

--- Tova Wang <wang@tcf.org> wrote:

> is Jon Greenbaum
> Here' s his info in full:
> http://www.lawyerscommittee.org/2005website/aboutus/staff/staffgreenbaum.htm
> 1
> He is the Director of the Voting Rights Project for
> the Lawyers Committee
> for Civil Rights. He will be representing Barbara
> Arnwine, the Executive
> Director of the Lawyers Committee.
> His contact and mailing info is:
> jgreenbaum@lawyerscommittee.org
> 202-662-8315
> 1401 New York Avenue, NW
> Suite 400
> Washington, DC 20005
> Tova Andrea Wang
> Democracy Fellow
> The Century Foundation
It might be an Apple issue

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Thursday, May 11, 2006 1:09 PM
To: 
Cc: wang@tcf.org
Subject: Literature Summary

Tova just sent me the summary you prepared of The Federal Crime of Election Fraud by Craig Donsanto. There is something wrong in the fourth paragraph (odd characters and missing text). Can you please send a replacement fourth paragraph? You can send it in an email and I will place it in the document. --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:25 PM -----

"Job Serebrov"
05/04/2006 12:04 PM
Subject Re: Good News

Peggy:

Rogers contact information is below on my last message. My uncle is having a complicated procedure where they are both cementing his spine to shore it up and testing for a malignant tumor---which they now
suspect as the cause of the sudden bone problems. If it is a tumor, the working group session could get complicated.

Job

--- psims@eac.gov wrote:

> Job:
> > Hope your uncle's surgery goes well.
> > I have the Chairman's OK to follow your recommendation and replace Norcross with Rogers. Do you have contact information for Rogers? --- Peggy
>
> "Job Serebrov" 05/04/2006 11:17 AM
>
> To
> psims@eac.gov
> cc
>
> Subject
> Re: Good News
>
> I will have a better idea about my uncle's condition today after surgery.
>
> See:
> 500 Fourth Street NW
> P.O. Box 2168
> Albuquerque, NM 87103-2168
> (505) 848-1800
> Fax: (505) 848-1891
> Asst: Carol Casstevens
>
> --- psims@eac.gov wrote:
>
> > Job:
> > Secretary Rokita is available May 18. I'm going to talk with the Chairman today about substituting Rogers for Norcross. Do you have contact information for Rogers? --- Peggy
> >
Okay, Peg -- thank you. I will be there.

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Friday, May 05, 2006 9:16 AM
To: Donsanto, Craig
Subject: Re: Voting Fraud-Voter Intimidation

The non-election officials on the Working Group currently include:
- Barry Weinberg, whom you know
- Barbara Arnwine, Lawyers Committee for Civil Rights Under Law (organization associated with the Voting Rights Project and Election Protection)
- Bob Bauer, Perkins Coie, DC (Democrat attorney)
- Mark "Thor" Hearne, Lathrop & Gage, St Louis, MO (Republican attorney)

I am trying to recruit one other Republican attorney, Patrick Rogers, Modrall, Sperling, Roehl, Harris and Sisk, NM, who was recommended by our Republican consultant. He would replace an original member who is no longer available.

I know that Barbara has associated at conferences and in legislative efforts with Wade Henderson, Leadership Conference on Civil Rights. Also, the Lawyers Committee for Civil Rights is listed as one of many members of the Executive Committee for the Leadership Conference on Civil Rights (see http://www.civilrights.org/about/lccr/executive_committee.html).

Does this information help? --- Peggy
Peggy -- they don't have anything to do with the Leadership Conference on Civil Rights do they?

I ask only because the Justice Department is currently engaged in a very acrimonious FOIA litigation with LCCR that focuses precisely on our efforts to combat voter "intimidationm"

--------------------------
Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

-----Original Message-----
From: psims@eac.gov <psims@eac.gov>
To: Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>
Sent: Thu May 04 17:20:39 2006
Subject: RE: Voting Fraud-Voter Intimidation

It is just the Working Group for the Voting Fraud-Voter Intimidation Project. I am asking you to attend as Technical Advisor for the project. --- Peggy

"Donsanto, Craig" <Craig.Donsanto@usdoj.gov>
05/04/2006 03:26 PM
To
psims@eac.gov
cc
Subject
RE: Voting Fraud-Voter Intimidation

Peg -- what is the name of the group?

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Thursday, May 04, 2006 3:13 PM
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Subject: RE: Voting Fraud-Voter Intimidation
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To
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Subject
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Sent: Thursday, May 04, 2006 2:28 PM
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005488
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05/03/2006 05:59 PM

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05/03/2006 12:53 PM

005489
To psims@eac.gov
cc
Subject Re: Voting Fraud-Voter Intimidation

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Peggy Sims
Election Research Specialist
U.S. Election Assistance Commission

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:25 PM -----
Devon E. Romig/EAC/GOV

05/09/2006 11:34 AM

To Margaret Sims/EAC/GOV@EAC
cc
Subject Re: May 18 Meeting

No, but I have left a message for her assistant and I am waiting for her to return my call. I will let you know as soon as I hear anything.

Devon Romig
United States Election Assistance Commission
1225 New York Ave. NW, Suite 1100
Washington, DC 20005
202 566.2377 phone
202.566.3128 fax
www.eac.gov
Margaret Sims/EAC/GOV

Margaret Sims/EAC/GOV
05/09/2006 11:19 AM

To dromig@eac.gov
cc
Subject May 18 Meeting
Did Barbara Arnwine's office indicate who they propose to send in her place? --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:25 PM ---

"Job Serebrov"
To: psims@eac.gov
cc
Subject: Re: Working Group

Peggy:

What political party is Perez with? How political is he? Is the position in Texas neutral or political? Who appointed Perez?

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--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:25 PM ---

Diana Scott/EAC/GOV
To: Margaret Sims/EAC/GOV@EAC
cc: dromig@eac.gov, Karen Lynn-Dyson/EAC/GOV@EAC
Subject: Re: Working Group Travel

Peggy,

I will send these names to Adventure Travel (AT) authorizing AT to place the airfare and hotel charges on our credit card. That is all I do on my end. BUT Devon has to follow up to make all the arrangements with Marvin Brokaw at AT and whatever else is required as far as support servs. for the meeting is concerned.

I assume this is a separate meeting from the 2 Karen & Brian are having?

Diana M. Scott
Administrative Officer
U.S. Election Assistance Commission
(202) 566-3100 (office)
(202) 566-3127 (fax)
dscott@eac.gov

Margaret Sims/EAC/GOV

Margaret Sims/EAC/GOV
Diana:

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Mark "Thor" Hearne - St Louis, MO  
J.R. Perez - Seguin, TX  
The Honorable Todd Rokita - Indianapolis, IN  
Kathy Rogers - Atlanta, GA

I may have one additional member from Albuquerque, NM confirmed early next week.

May these people use Adventure Travel to make these arrangements in the same manner as the Asian Language Working Group? I understand the members of that group made hotel and flight arrangements through Adventure Travel and that these costs were billed directly to EAC. We did plan for EAC to pay for the travel of the Voting Fraud/Voter Intimidation Working Group (budgeted under Research). Devon will prepare their travel authorizations.

Peggy Sims  
Election Research Specialist

Peggy:

Please tell the folks there that I am not worried about a perceived breach of contract. This is a completely ridiculous statement considering the contractual requirement that the consultants convene the Working Group and not the Commission and it never specifies where or when this is to take place. All this to say that while the contract does specify a Working Group meeting it does not specify that it must
take place on any particular date or in a particular city. With that said, I have never heard of any federal travel requirements that would result in a loss of money because I decided to drive and not fly. In fact, that is why there is a an amount paid per mile. So I would like to see the federal regulation that forces me to take the least expensive transport and restricts all other ground transport costs to that figure.

As to hotels, based on Tova's research there are no rooms for under the $350 range per night. If you can find hotels that are less expensive but still carry the kind of bed I need for my back (either pillow top or a number bed) please do.

The issue of my uncle---today I have not had an update on his condition. But, as I previously stated, if he were to die or have an event while I was in DC, I would have to go to NYC meeting or no meeting.

Finally, neither Tova nor I have been satisfied about Mr. Perez and I have not been told whether Pat Rogers will be coming or one of Tova's people will not be.

In the end, I need to see the travel regulation that I requested above, I would like you to look into hotels for Tova and me that have the kind of bed I need and I would like to know about Perez and Rogers. In the mean time, I should have an update on my uncle by morning. I would also be happy to talk to Julie about the issues involved. I will take you up on your offer to process my travel expenses faster and I do not and never did expect you to get me a travel advance. I worked in international development and know what a headache those are to apply for on the state level.

Job

--- psims@eac.gov wrote:

> Job:
> > Folks here are concerned that your failure to show up in person to help conduct the meeting would be a breach of contract. I also am concerned about the impression that your absence will leave with the Commissioners and with the VIPs coming to this meeting.
> > If you are concerned about delays in reimbursement caused by including the travel expenses in the personal services voucher, I can always process your request (with receipts) separately and earlier. I can have staff here check to see if we can find hotel rooms at a more reasonable rate for you and Tova. (We recognize that you may not be
able to obtain Federal government rate.) What I cannot do is offer a travel advance, which is not permitted for nonfederal employees, or offer to pay the difference between normal travel expenses and those incurred for personal convenience, when the latter is the higher amount.

I urge you to make your travel arrangements ASAP.

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

"Job Serebrov" <
05/08/2006 01:41 PM

To
psims@eac.gov
cc

Subject
Re: Working Group

Given the information I have Peggy, that is not going to be financially possible. First, given Tova's info about the hotels, it is too much for me to front. Two to three days in DC would run around $1000 for the hotel alone. That does not count the two days on the road to get there and two days back. Second, if I can't charge the federal per mile allowance for the entire trip to DC and back and can only get the equivalent of plane fare, I will actually loose money.

I simply do not see how we can do this in person given the financial restrictions.

--- psims@eac.gov wrote:
I don't think we can put you on teleconference for 41/2 hours. We really need to have you here in person if you are to help conduct the Working Group meeting. You should make your travel arrangements ASAP. --- Peggy

"Job Serebrov" 05/08/2006 10:14 AM

To psims@eac.gov, wang@tcf.org
cc

Subject: Re: Working Group

Peggy:

4:00 eastern on Tuesday is fine however, given the financial restrictions that you indicated would be in place for use of my car (I would actually lose money coming to DC) and given the cost of hotels at this time (I can't afford to front these costs and wait for months to be repaid), etc, it would take a miracle for this working group meeting to take place in person.

It is looking like the only way it will get done is by teleconference. I also share Tova's concern about the unknown nature of Mr. Perez.

--- psims@eac.gov wrote:

Hi, Folks:

Teleconference

Are both of you available for a teleconference next Tuesday afternoon at
about 4 PM EST? If this does not work for you, please suggest another date and/or time. I would like to discuss our preparations for the Working Group meeting.

Working Group Members
We have a very good person to fill the slot for the nonpartisan local election official: J.R. Perez, Elections Administrator for Guadalupe County, TX. Attached is his bio. Hope you have no objections to him. He is available on May 18. I have placed 2 calls to Pat Rogers office, but have not yet received a reply. Job, if you have any pull with him, you may want to contact him, too.

Travel Arrangements
You should make your own travel arrangements, including hotel. Travel time cannot be billed to the contract, except for hours actually worked on the contract (i.e.; reviewing materials in preparation for the meeting, and the like). Current Federal rates follow:

- Maximum Lodging = $180 per day- does not include hotel taxes (if you cannot get this rate, we have covered reasonable rates that are a little higher)
- Meals & Incidentals = $64 per day (except that it is $48 on the first and last day of travel)
- Mileage for Personally Owned Vehicle = $.445 per mile
- Under the new contract, I do not have to fill out a travel authorization for you. I can approve your trip via email. Afterwards, when you turn in your next pay voucher, you can attach the airline receipt (or mileage documentation), hotel receipt(s), and ground transportation receipts and a copy of any printed itineraries. Calculate the total travel expenses due.
Peggy:

At this point and unless my uncle dies before May 18, the only way I will go to DC is to drive my car. I will need it in case my uncle dies while I am there. You will need to get approval for the use of my car and the two days it will take me to get there and two days back.

Job

The Commissioners made this an equal bi-partisan issue. I am seen as representing the Republican Party. I now have a responsibility to assure that this ends up bi-partisan. I have been placed in a position of dual obligations—both to the contract and to the Party. I in fact see myself as carrying out what the Commission wanted to the letter—equal bi-partisan representation.

--- psims@eac.gov wrote:

> Your response suggests that you do not care what the Commissioners may think about the effort. --- Peggy
> 
> "Job Serebrov" 05/11/2006 04:35 PM
> 
> To
> 
> psims@eac.gov
Subject
Re: new working group representative

> Peggy:
> Braden is ok also with me but please don't tell me not to "stir up" things. I assure you nothing will come back to bite me. I know these people well enough to say they will also want a balanced group. In fact, one of them was very unhappy with Tova's folks.
>
> Job
>
> --- psims@eac.gov wrote:
> > According to the Commissioners, you and Tova each got to pick three members of the Working Group. The Commission guidance regarding this particular member follows:
> > > 4 people from the Academic, Legal and Advocacy sectors - 2 to be chosen by Tova and 2 to be chosen by Job.
> > > This issue of allowing a designee relates to Tova's pick.
> > > As I understand it, we are working on a replacement for Norcross. If Ginsberg is not viable, how about Mark Braden, who includes public integrity in his areas of specialization. I would not try and stir up other members of the Working Group, if I were you.
> > > The effort is likely to come back and bite you.
> > >
> > "Job Serebrov"
> > 05/11/2006 03:53 PM
> >
> > To
> > psims@eac.gov
> > cc
I really don't care if he represents the organization or not. What mixed race? The entire discussion was because Arnwine was African-American. If you are going to invite him without first having a replacement for my side, I may have to call Thor and Todd and discuss all of this.

--- psims@eac.gov wrote:

Greenbaum is representing Arnwine, not replacing her. He works for her organization and is of mixed race. --- Peggy

--- "Job Serebrov" 05/11/2006 03:36 AM

To: "Tova Wang" <wang@tcf.org>, psims@eac.gov

Subject: Re: new working group representative

I have an objection to Greenbaum. While I realize he comes from an advocacy group, he is not a minority attorney and we already have a rep who worked with DOJ. If it is to be Greenbaum, I would rather not fill that position since I am one down.

--- Tova Wang <wang@tcf.org> wrote:

is Jon Greenbaum

Here's his info in full:
He is the Director of the Voting Rights Project for the Lawyers Committee for Civil Rights. He will be representing Barbara Arnwine, the Executive Director of the Lawyers Committee.

His contact and mailing info is:

jgreenbaum@lawyerscommittee.org
202-662-8315
1401 New York Avenue, NW
Suite 400
Washington, DC 20005

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


Click here to receive our weekly e-mail updates.
Afternoon of May 18 -- 2:30 okay? How long will they need??

--- Peg

-----Original Message-----
From: psims@eac.gov <psims@eac.gov>
To: Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>
Sent: Wed May 03 16:59:09 2006
Subject: Re: Voting Fraud-Voter Intimidation

I am looking at the afternoon of 5/18 for the meeting, due to scheduling conflicts of Working Group members. There remain two members from whom we have not yet received confirmations of their schedule (with some, it is like pulling teeth), but right now 5/18 still looks like the best day. We may have to hold the meeting over here to make it easier for Commissioners to drop in.  

--- Peg

Okay -- you are on for May 18th! Can we do it over here at 10?

--- Peg

-----Original Message-----
From: psims@eac.gov <psims@eac.gov>
To: Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>
Sent: Wed May 03 12:40:19 2006
Subject: Re: Voting Fraud-Voter Intimidation
My problem is that agency staff is booked most of the week of 5/21. Monday through Wednesday are taken up with meetings of the Standards Board Executive Committee, the full Standards Board, and the Board of Advisors. Thursday, we have EAC's public meeting. Also, I will lose one of my two consultants in June, so I'm trying to wrap up this project (and get the final report from the consultants) by the end of May.

Say "Hi" to Cameron for me.

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

05/03/2006 11:56 AM
To psims@eac.gov
cc
Subject Re: Voting Fraud-Voter Intimidation

Hi Peg. I am sitting here with Cameron Quinn putting together this year's ballot conference for AUSAs. She send her best!

I am available on 5/18. But I am also going to the Board of Advisors Meeting the following week. I would rather do this then.

--------------------------
Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

-----Original Message-----
From: psims@eac.gov <psims@eac.gov>
To: Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>
Sent: Wed May 03 11:39:50 2006
Subject: Voting Fraud-Voter Intimidation

Craig:

We are continuing our efforts to hone in on a date for the Working Group meeting. Are you available the afternoon of Thursday, May 18?

Peggy Sims
Election Research Specialist
U.S. Election Assistance Commission
Right now, we are planning to meet in EAC's large conference room between 1 PM and 5 PM. If you cannot be there for the whole afternoon, we will appreciate whatever time you can spare. I'll get back to you with more information (agenda, list of Working Group members, etc.). --- Peggy

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

Afternoon of May 18 -- 2:30 okay? How long will they need??
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To
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Peggy Sims
Election Research Specialist
U.S. Election Assistance Commission

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:24 PM ----

Margaret Sims/EAC/GOV
05/12/2006 01:41 PM
To: "Job Serebrov" @GSAEXTERNAL
cc
Subject: Re: Fraud Definition

I will add "DRAFT" to the definition and, yes, the WG will have suggestions. I do plan to send packets to you and Tova containing the same materials being provided to the WG. I haven't sent anything yet because I was hoping to finalize the WG list for inclusion. (Still waiting for a response from Ginsberg.)

Regarding Tova's response, we may want to have a very short meeting after the WG disperses, followed by a teleconference the following Monday afternoon. Tuesday is bad for me because I'll be out of the office attending a series of EAC meetings that begin that day. --- Peggy

"Job Serebrov" <psims@eac.gov>
05/12/2006 12:52 PM
To: psims@eac.gov, wang@tcf.org
cc
Subject: Re: Fraud Definition

This is ok, given the fact that the WG may have suggestions. Will you be sending us the same packets that you are sending the WG? Also, I figure with Tova's response we will need to have a teleconference on the report once I return to Little Rock. We will need to do it that following Monday or Tuesday.
--- psims@eac.gov wrote:

> Would you please take a look at the attached? I combined both of your definitions, reformatted the list, removed a reference to the fraud having to have an actual impact on the election results (because fraud can be prosecuted without proving that it actually changed the results of the election), and taken out a couple of vague examples (e.g.; reference to failing to enforce state laws --- because there may be legitimate reasons for not doing so).

> I have made contact with Ben Ginsberg's office and am waiting to hear if he accepts our invitation to join the working group.

--- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:24 PM -----

Margaret Sims/EAC/GOV
05/05/2006 02:32 PM
To Tova Andrea Wang, Job Serebrov
cc dromig@eac.gov
Subject Working Group

Hi, Folks:

Teleconference
Are both of you available for a teleconference next Tuesday afternoon at about 4 PM EST? If this does not work for you, please suggest another date and/or time. I would like to discuss our preparations for the Working Group meeting.

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We have a very good person to fill the slot for the nonpartisan local election official: J.R. Perez, Elections Administrator for Guadalupe County, TX. Attached is his bio. Hope you have no objections to him. He is available on May 18. I have place 2 calls to Pat Rogers office, but have not yet received a reply. Job, if you have any pull with him, you may want to contact him, too.

Travel Arrangements
You should make your own travel arrangements, including hotel. Travel time cannot be billed to the contract, except for hours actually worked on the contract (i.e.; reviewing materials in preparation for the meeting, and the like). Current Federal rates follow:

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Under the new contract, I do not have to fill out a travel authorization for you. I can approve your trip via email. Afterwards, when you turn in your next pay voucher, you can attach the airline receipt (or mileage documentation), hotel receipt(s), and ground transportation receipts and a copy of any printed itineraries. Calculate the total travel expenses due you, including applicable per diem. I do not need meal receipts.

Job, under Federal travel regulations, deviations for personal reasons are not normally accommodated. What you can do, however, is to give me a comparison of the cost of roundtrip mileage, hotel, and per diem of doing it your way against the cost of a roundtrip flight, ground transportation, hotel, and per diem. If your way costs less, it should be no problem to cover the full cost. If your way is more expensive, we may only pay up to the amount of traditional travel. (The same rules apply to me when I travel.) If you can tell me where, other than DC, you will spend the night, I can check on applicable per diem rates.

Peggy

---
Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:24 PM ----
Margaret Sims/EAC/GOV
05/12/2006 03:19 PM
To "Job Serebrov"
cc NAL
Subject Re: Fraud Definition

I have placed another call to his office (after one previous call to his assistant and an email to him). I, too, am concerned about our dwindling chances. --- Peggy

"Job Serebrov"

"Job Serebrov"
05/12/2006 03:06 PM
To psims@eac.gov
cc
Subject Re: Fraud Definition

Given the short time period, you may want to give Ginsberg a deadline. The longer we wait, the poorer our chances are of getting Braden.

--- psims@eac.gov wrote:

> I am reluctant to invite Braden until after I have
> received a "No" from
> Ginsberg. --- Peg
Sounds good to me. If not Ginsburg try Braden.

--- psims@eac.gov wrote:

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--- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:24 PM -----

Margaret Sims/EAC/GOV
04/26/2006 04:37 PM  To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL cc Subject Re: interview analysis

Thanks. We are still trying to get through to Bauer and Arnwine. They have not responded, so their availability is not yet reflected on our spreadsheet. --- Peggy

005509
Hi Peg,

Attached, to add to the collection, is a summary overview of the interviews. Do you have that spreadsheet you were telling me about reflecting the times WG participants are available? If so, maybe we can talk soon? Thanks. Tova

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

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

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:24 PM ---

The bio for JR Perez tells us very little about him and there is pretty much nothing about him on the web. Can you tell us more about him and how you decided on him? Thanks. Tova

----- Original Message -----
Teleconference
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Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:24 PM -----

Margaret Sims/EAC/GOV

05/10/2006 10:27 AM	To Devon E. Romig/EAC/GOV

cc

Subject Re: Court reporter

Thanks for checking this out for me, Devon. I've asked Tom if there are funds available for this service. Our consultants were very enthusiastic about the idea. --- Peg

Devon E. Romig/EAC/GOV
Peggy,

I spoke to the people who usually handle the EAC court reporting. They charge $9.00 per page with an average of 40 pages per hour. This service would cost about $1800.00.

The turn around time for the transcript is 10 to 15 days. The transcripts comes in a bound paper copy and an electronic copy.

I can also check around for different prices.

Devon Romig  
United States Election Assistance Commission  
1225 New York Ave. NW, Suite 1100  
Washington, DC 20005  
202.566.2377 phone  
202.566.3128 fax  
www.eac.gov

Yes. Thanks. Depending on when Commissioner Davidson can spare you, we may need your help putting materials together for the Working Group (probably next week). We also will have to print name tags and place cards. If you are a good note-taker, we also will need people to take turns taking notes at the meeting. --- Peggy

Elieen L. Collver/EAC/GOV
Can I help on this working group?

Elle

Elle L.K Collver  
U.S. Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, D.C. 20005  
office: (202) 566-2256  
blackberry: (202) 294-9251  
www.eac.gov  
Margaret Sims/EAC/GOV

Margaret Sims/EAC/GOV  
05/04/2006 02:07 PM  
To pdegregorio@eac.gov, rmartinez@eac.gov, ddaidson@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, Eileen L. Collier/EAC/GOV@EAC, Sheila A. Banks/EAC/GOV@EAC, bbnavides@eac.gov, Karen Lynn-Dyson/EAC/GOV@EAC  
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

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:24 PM -----  
Margaret Sims/EAC/GOV  
05/04/2006 10:33 AM  
To Job Serebrov  
cc  
Subject Good News

Job:  
Secretary Rokita is available May 18. I'm going to talk with the Chairman today about substituting Rogers for Norcross. Do you have contact information for Rogers? --- Peggy  
----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:24 PM -----  
Margaret Sims/EAC/GOV  
05/04/2006 05:20 PM  
To "Donsanto, Craig"  
cc @GSAEXTERNAL  
Subject
It is just the Working Group for the Voting Fraud-Voter Intimidation Project. I am asking you to attend as Technical Advisor for the project. --- Peggy

Peg - - what is the name of the group?

Craig:

This meeting is being held to obtain input from our eight-member Working Group for the project. The group is composed of election lawyers, election officials, and a representative of an advocacy group, all of whom have an interest and some expertise in the identification and/or prosecution of voting fraud and voter intimidation. The group was chosen so that we would have an equal number of folks on each side of the political spectrum, plus some nonpartisan members.

After our consultants review the results of their preliminary research (interviews, literature review, case law), we will ask the Working Group to brainstorm possible next steps for EAC. Our consultants will write a report summarizing the proposals that come out of this meeting. The report will go to the Commissioners, who will decide what they want to do, funds available, and what priority to assigned to the effort(s).

Your participation in this part of the process is extremely important, so I am very happy that you can find time for us that afternoon. I'll get an agenda and other information to you next week. --- Peggy
Okay, Peg - - I will mark off the entire afternoon and try to be there. What is the agenda? I was not aware that this was anything beyond having your contractors spend another session with me. Also, if they will be needing stats and stuff like that I need to know as I will bring my state-people with me.

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Thursday, May 04, 2006 2:28 PM
To: Donsanto, Craig
Subject: Re: Voting Fraud-Voter Intimidation

Right now, we are planning to meet in EAC's large conference room between 1 PM and 5 PM. If you cannot be there for the whole afternoon, we will appreciate whatever time you can spare. I'll get back to you with more information (agenda, list of Working Group members, etc.). --- Peggy

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

05/03/2006 05:59 PM

To: psims@eac.gov
cc: Topsims@eac.gov
Subject: Re: Voting Fraud-Voter Intimidation

Afternoon of May 18 -- 2:30 okay? How long will they need??
Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

-----Original Message-----
From: psims@eac.gov <psims@eac.gov>
To: Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>
Sent: Wed May 03 16:59:09 2006
Subject: Re: Voting Fraud-Voter Intimidation

I am looking at the afternoon of 5/18 for the meeting, due to scheduling conflicts of Working Group members. There remain two members from whom we have not yet received confirmations of their schedule (with some, it is like pulling teeth), but right now 5/18 still looks like the best day. We may have to hold the meeting over here to make it easier for Commissioners to drop in.
--- Peg

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

05/03/2006 12:53 PM
To
cc
Subject

Re: Voting Fraud-Voter Intimidation

Okay -- you are on for May 18th! Can we do it over here at 10?

------------
Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

-----Original Message-----
From: psims@eac.gov <psims@eac.gov>
To: Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>
Sent: Wed May 03 12:40:19 2006
Subject: Re: Voting Fraud-Voter Intimidation

My problem is that agency staff is booked most of the week of 5/21. Monday through Wednesday are taken up with meetings of the Standards Board Executive Committee, the full Standards Board, and the Board of Advisors. Thursday, we have EAC's public meeting. Also, I will lose one of my two consultants in June, so I'm trying to wrap up this project (and get the final report from the consultants) by the end of May.

Say "Hi" to Cameron for me.
Hi Peg. I am sitting here with Cameron Quinn putting together this year's ballt conference for AUSAs. She send her best!

I am available on 5/18. But I am also going to the Board of Advisors Meeting the following week. I would rather do this then.

Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

-----Original Message-----
From: psims@eac.gov <psims@eac.gov>
To: Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>
Sent: Wed May 03 11:39:50 2006
Subject: Voting Fraud-Voter Intimidation

Craig:

We are continuing our efforts to hone in on a date for the Working Group meeting. Are you available the afternoon of Thursday, May 18?

Peggy Sims
Election Research Specialist
U.S. Election Assistance Commission

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:24 PM -----
Margaret Sims/EAC/GOV
05/12/2006 01:34 PM
To: "Tova Wang" <wang@tcf.org>@GSAEXTERNAL
Subject: RE: Fraud Definition

Lets raise this issue at the meeting. (I'll add "DRAFT" to the current document.) My concern is that there
are a number of requirements in the Voting Rights Act. Not all of them are considered election fraud, when violated. For example, failure to preclear changes in election procedures is not treated as election fraud, though it is actionable. --- Peggy

"Tova Wang" <wang@tcf.org>

"Tova Wang"  
05/12/2006 12:45 PM  
To: psims@eac.gov  
cc: wang@tcf.org  
Subject: RE: Fraud Definition

Upon first reading, my only comment would be that I would like to restore "failing to follow the requirements of the Voting Rights Act"

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Friday, May 12, 2006 9:20 AM
To: wang@tcf.org;
Subject: Fraud Definition

Would you please take a look at the attached? I combined both of your definitions, reformatted the list, removed a reference to the fraud having to have an actual impact on the election results (because fraud can be prosecuted without proving that it actually changed the results of the election), and taken out a couple of vague examples (e.g.; reference to failing to enforce state laws --- because there may be legitimate reasons for not doing so).

I have made contact with Ben Ginsberg's office and am waiting to hear if he accepts our invitation to join the working group. --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:24 PM -----
Margaret Sims/EAC/GOV  
04/24/2006 12:13 PM  
To: "Tova Wang" <wang@tcf.org>@GSAEXTERNAL  
cc:  
Subject: Re: invoice

Tova:

The draft voucher looks fine except for two things (one of them is our fault):

(1) It appears that you worked 11 days, rather than 10, during the first two weeks; and
(2) you need to put the total dollar amount owed you ($9,102) somewhere on the form. (Last time you put it in the box with the total hours worked this period.)

Don't forget to sign and date the voucher. Thanks.

Peggy Sims
Hi Peg,

Can you please check this before I fax it? Thanks! And can we talk sometime today?

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

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

Click here to receive our weekly e-mail updates.

voucher 3-26-4-22.doc

Barry Weinberg has confirmed he can attend the afternoon of May 18. He lives in the DC area, so we won't have to worry about travel. I have contacted Pat Rogers office and left a voice mail for his assistant. Hopefully, I will hear from them this afternoon. --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:24 PM -----  
Margaret Sims/EAC/GOV  
05/04/2006 02:10 PM  
To Devon Romig  
cc ecortes@eac.gov  
Subject Voting Fraud-Voter Intimidation Working Group Meeting

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:24 PM -----  
Margaret Sims/EAC/GOV  
04/27/2006 09:23 AM  
To Tova Andrea Wang  
cc
We have heard from Bob Bauer regarding his availability, so we don’t need to have you pursue the matter. Thanks for the offer, though. --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:24 PM -----

"Tova Wang"
<wang@tcf.org>
05/09/2006 05:17 PM
To psims@eac.gov
cc
Subject perez

I talked to Adam, and I am OK with JR Perez. I'm working on the Barbra situation.

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

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

Click here to receive our weekly e-mail updates.

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:24 PM -----

"Job Serebrov"
05/10/2006 12:25 PM
To psims@eac.gov
cc
Subject Travel

Peggy:

If I am calculating it right and I believe I am, it would cost around $450 plus my meal allowance in Virginia and Tennessee (coming and going).

All of this said, I am still a person down and there is the bed problem.

Job

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:24 PM -----

wang@tcf.org
05/06/2006 08:28 AM
To psims@eac.gov
cc
That's great news. What happens with respect to hotels? Should I make my own arrangements? I expect Job and I will want to stay the nights of the 17th and 18th. Thanks Pegs. And congratulations.

----- Original Message -----
From: <psims@eac.gov>
To: <wang@tcf.org>
Sent: Thursday, May 04, 2006 5:47 PM
Subject: Re: wg

> Tova:
> Rokita is available --- so the afternoon of May 18 it is. I will not
disinvite anyone. I am trying to get Job's next choice (Pat Rogers) as a
replacement for Norcross.
> Monday appears to be out for a teleconference because Job will be
unavailable that afternoon and I am scheduled for something else that
morning. I'll check my schedule tomorrow and send a message to you and
Job
> regarding other possible days and times. --- Peggy
>
Hi Peg,

Just wondering if you had any word from Rokita. Also, I wanted to let you know that I think disinviting members of the working group would be a very unwise and frankly embarrassing way of dealing with the problem of getting 100% attendance. I'm sure we'll talk before any decisions are made. As I said, I'm free on Monday. Thanks. Tova

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:24 PM ---

Devon E. Romig/EAC/GOV
05/02/2006 01:11 PM

Peggy,

I just received an update about Ms. Arnwine's schedule. She is not available on May 9th.

Thanks,

Devon

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:24 PM ---

Margaret Sims/EAC/GOV
05/05/2006 10:56 AM

Barry:

Would you please provide an address to which we can Federal Express materials before the meeting?

---
that would be fine

----- Original Message ----- 
From: psims@eac.gov
To: Sen.
Sent: Thursday, May 04, 2006 1:08 PM
Subject: Voting Fraud-Voter Intimidation

Barry:

It appears that the afternoon of Thursday, May 18 is best for a meeting of the working group. I know you said you would not be available in the morning that day. If we started at 1 PM, would that be too soon for you?

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

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:24 PM ----- 
"priceline.com Customer Service"
To: psims@eac.gov
cc
Subject: Travel Plans for Tova Wang
How about we meld this with the EAC Board of Advisors meeting? I just got tagged to be parliamentarian --

We could attend to your folks while I arbitrate a food fight!!!!

Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

-----Original Message-----
From: psims@eac.gov <psims@eac.gov>
To: Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>
Sent: Wed Apr 26 20:30:24 2006
Subject: Re: Voting Fraud-Voter Intimidation Project

Craig:
Hello Peg!

God willing, I will be here the first two weeks of May.

As for your second question, it is not possible for me to assess the level of public attribution that would be appropriate without seeing the substantive stuff in context. I do not foresee a problem. So, I recommend that you get me a draft text and I will review it to ensure we are not disclosing things we shouldn't disclose.

Craig:

I have 2 issues for you today.

First, I am trying to schedule a meeting of the project working group for EAC's Voting Fraud-Voter Intimidation research project. As a technical advisor on this project, your attendance is particularly important to me. Would you please look at your schedule and let me know if there are any days during the first 2 weeks of May that you would NOT be available?

Second, is it OK for our consultants to refer in their report to guidance provided in the DOJ training materials? I ask this because I understood that some materials in the materials are considered confidential and we do not want to violate your confidentiality provisions. If there is a compromise position, such as having you review that portion of the consultants' report, then let me know.
Thanks!

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

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:24 PM -----
Margaret Sims/EAC/GOV
04/27/2006 09:13 AM
To: "Donsanto, Craig"<Craig.Donsanto@usdoj.gov>@GSAEXTERNAL
cc
Subject: Re: Voting Fraud-Voter Intimidation Project

Unfortunately, I have to get the Working Group together before then, so that my consultants can prepare the final report before June. (In June, I lose one of them to State employment.) In understand about the crammed schedule. This month and next are chock full.

Peggy

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

"Donsanto, Craig"<Craig.Donsanto@usdoj.gov>
04/26/2006 09:19 PM
To: psims@eac.gov
cc
Subject: Re: Voting Fraud-Voter Intimidation Project

How about we meld this wit the EAC Board of Advisors meeting? I just got taged to be parliamentarian --

We could attend to your folks whike I arbitrate a food fight!!!!

--------------------
Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

----- Original Message ----- 
From: psims@eac.gov <psims@eac.gov>
To: Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>
Sent: Wed Apr 26 20:30:24 2006
Subject: Re: Voting Fraud-Voter Intimidation Project

Craig:
Are yu available any days in the third week of May?
Hello Peg!

God willing, I will be here the first two weeks of May.

As for your second question, it is not possible for me to assess the level of public attribution that would be appropriate without seeing the substantive stuff in context. I do not foresee a problem. So, I recommend that you get me a draft text and I will review it to ensure we are not disclosing things we shouldn't disclose.
Donsanto lists four types of election fraud: schemes to purposely and corruptly register voters who either do not exist, or who are known by the putative defendant to be ineligible to vote under applicable state law; schemes to cast, record or fraudulently tabulate votes for voters who do not participate in the voting act at all; schemes to corrupt the voting act of voters who do participate in the voting act to a limited extent; and, schemes to knowingly prevent voters qualified voters from voting.

--- psims@eac.gov wrote: 

> When I opened the attachment, I still had problems with the 4th paragraph. 
> Would you please just send me that paragraph within the text of your email so that I can paste it into the document? --- 
> Peggy 
> 
> "Job Serebrov" <psims@eac.gov> 
> 05/11/2006 03:49 PM 
> 
> To psims@eac.gov 
> cc 
> Subject Re: Literature Summary 
> 
>
> I resent the review as you see at the bottom. When I opened it and sent it there was no corrupted text.
> --- psims@eac.gov wrote:
> Do you have text to replace the corrupted text in paragraph 4? --- Peggy
> "Job Serebrov" <05/11/2006 03:17 Pl
> To psims@eac.gov
> cc
> Subject Re: Literature Summary
> --- psims@eac.gov wrote:
> Tova just sent me the summary you prepared of The Federal Crime of Election Fraud by Craig Donsanto. There is something wrong in the fourth paragraph (odd characters and missing text). Can you please send a replacement fourth paragraph? You can send it in an email and I will place it in the document. --- Peggy
> --- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:24 PM ---
Donetta L. Davidson/EAC/GOV 05/04/2006 03:57 PM  To Margaret Sims/EAC/GOV@EAC cc
Peggy:  

I would like to get this travel issue sorted out between us before the call at 4pm. While the hotel problem is applicable to both Tova and me, the ground travel is not. In any case, I will want to read the federal regulation on this before we speak. Please either send me the regulation that states I must travel by the least expensive means and that all alternative travel cost can not exceed this or give me the site.

Thanks,

Job

Job:  

I’m afraid I don’t have time to look up the Federal travel regulation. I can refer to GSA Form 87, which is the Federal travel authorization form that is based on the travel regulations. There are two questions on this form that would apply to your situation:

- Question 14 asks, "Is the employee making any deviations from the authorized itinerary for personal convenience, taking any annual leave or using a different mode of transportation for personal convenience?"
Question 17A asks, "Will POV be used for any travel between itinerary points? (If "Yes", check one box below and complete item 17B.)" This is followed by one check box with a statement, "Use of POV is advantageous to the government" and another check box that states, "Use of POV is not advantageous to the government. Use of POV has been determined to be for personal convenience and reimbursement limited to constructive cost of common carrier."

Line 17 B is used to note mileage rate. These provisions apply to our Commissioners, our staff, and our consultants. I understand that everyone has to make allowances for emergencies, but your emergency has not yet arrived, and may well arrive after the May 18 meeting. Furthermore, personal emergencies are considered personal matters. The government does not reimburse us for additional travel costs resulting from our need to address personal matters.

Because you are not a Federal employee and we recognize that airlines do not and hotels may not offer you government rate, we can reimburse the higher hotel rate so long as your total travel costs under the current contract do not exceed the total amount budgeted for travel reimbursement for this contract ($3,500).

Regarding the Working Group meeting, I am pleased that you recognize that convening the Working Group is a deliverable. You also should recall that the only reason Commission staff is involved in helping to set up this meeting is that you and Tova told me that the two of you did not have the resources to do it and that it would be better to have one central coordinator (i.e.; EAC). We have repeatedly talked about holding the meeting in DC because so many of our working group members are here and because we can support the meeting at EAC offices and stay within the EAC budget.

The date for the original Working Group meeting was presented by you and Tova to me in your work plan. As you know, many of the dates in the plan had to slide because the two of you indicated that you needed more time to complete the preliminary research to be presented at the meeting. Beginning in April, our teleconferences honed in on possible weeks for the meeting. May 18 is the only day all but Norcross could attend. Norcross was available only 2 days out of the three weeks we were considering. We are attempting to fill his slot with the person you recommended, Pat Rogers.

We can discuss any remaining concerns you have regarding the participation of Perez and of Pat Rogers during this afternoon's teleconference. --- Peggy

"Job Serebrov"  
05/09/2006 03:09 PM  
To psims@eac.gov  
cc  
Subject Conference Call

Peggy:

I would like to get this travel issue sorted out between us before the call at 4pm. While the hotel problem is applicable to both Tova and me, the ground travel is not. In any case, I will want to read the federal regulation on this before we speak. Please either send me the regulation that states I must travel by the least expensive means and that all
alternative travel cost cannot exceed this or give me the site.

Thanks,
Job

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:23 PM -----
"Job Serebroy"  To psims@eac.gov, wang@tcf.org
cc dromig@eac.gov
Subject Re: Working Group Meeting

Peggy:
I expect that since Norcross can’t make it either you will try to get Rogers or cut one of Tova’s folks.

Job

--- psims@eac.gov wrote:

> Job and Tova:
> As of now, the afternoon of Thursday, May 18 appears to be the best possible date for the meeting. Norcross is not available to attend in person that day (he is available only 2 days during the first three weeks of May). We won’t have confirmation of the availability of Secretary Rokita until tomorrow --- but I am hopeful.
>
> I’ll give you an update tomorrow. Maybe we can schedule a teleconference on Monday afternoon. --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:23 PM -----
"Donsanto, Craig" <Craig.Donsanto@usdoj.gov>  To psims@eac.gov
cc psims@eac.gov
Subject Re: Voting Fraud-Voter Intimidation Project
Peg -- I'll have check. I am pretty well clogged next month.
What do you need Peg?
--------------------------
Sent from Dr. D's Fabulous BlackBerry Wireless Handheld

-----Original Message-----
From: psims@eac.gov <psims@eac.gov>
To: Donsanto, Craig <Craig.Donsanto@crm.usdoj.gov>
Sent: Wed Apr 26 20:30:24 2006
Subject: Re: Voting Fraud-Voter Intimidation Project

Craig:
Are yu available any days in the third week of May?
Peggy
--------------------------
Sent from my BlackBerry Wireless Handheld

Hello Peg!

God willing, I will be here the first two weeks of May.

As for your second question, it is not possible for me to assess the level of public attribution that would be appropriate without seeing the substantive stuff in context. I do not foresee a problem. So, I recommend that you get me a draft text and I will review it to ensure we are not disclosing things we shouldn't disclose.

From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Monday, April 03, 2006 3:13 PM
To: Donsanto, Craig
Subject: Re: Voting Fraud-Voter Intimidation Project
Craig:

I have 2 issues for you today.

First, I am trying to schedule a meeting of the project working group for EAC's Voting Fraud-Voter Intimidation research project. As a technical advisor on this project, your attendance is particularly important to me. Would you please look at your schedule and let me know if there are any days during the first 2 weeks of May that you would NOT be available?

Second, is it OK for our consultants to refer in their report to guidance provided in the DOJ training materials? I ask this because I understood that some materials in the materials are considered confidential and we do not want to violate your confidentiality provisions. If there is a compromis position, such as having you review that portion of the consultants' report, then let me know.

Thanks!

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

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:23 PM -----
Margaret Sims/EAC/GOV
05/09/2006 11:25 AM
To Gavin Gilmour
cc jthompson@eac.gov
Subject Fw: Working Group-Travel Costs

Can you help me respond to this ... and soon? --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 05/09/2006 11:25 AM -----
"Job Sarabroy"  
05/08/2006 09:58 PM
To psims@eac.gov
cc
Subject Re: Working Group-Travel Costs

Peggy:

Please tell the folks there that I am not worried about a perceived breach of contract. This is a completely ridiculous statement considering the contractual requirement that the consultants convene

005534
the Working Group and not the Commission and it never specifies where or when this is to take place. All this to say that while the contract does specify a Working Group meeting it does not specify that it must take place on any particular date or in a particular city. With that said, I have never heard of any federal travel requirements that would result in a loss of money because I decided to drive and not fly. In fact, that is why there is a an amount paid per mile. So I would like to see the federal regulation that forces me to take the least expensive transport and restricts all other ground transport costs to that figure.

As to hotels, based on Tova's research there are no rooms for under the $350 range per night. If you can find hotels that are less expensive but still carry the kind of bed I need for my back (either pillow top or a number bed) please do.

The issue of my uncle---today I have not had an update on his condition. But, as I previously stated, if he were to die or have an event while I was in DC, I would have to go to NYC meeting or no meeting.

Finally, neither Tova nor I have been satisfied about Mr. Perez and I have not been told whether Pat Rogers will be coming or one of Tova's people will not be.

In the end, I need to see the travel regulation that I requested above, I would like you to look into hotels for Tova and me that have the kind of bed I need and I would like to know about Perez and Rogers. In the mean time, I should have an update on my uncle by morning. I would also be happy to talk to Julie about the issues involved. I will take you up on your offer to process my travel expenses faster and I do not and never did expect you to get me a travel advance. I worked in international development and know what a headache those are to apply for on the state level.

Job

--- psims@eac.gov wrote:

> Job:
> > Folks here are concerned that your failure to show up in person to help conduct the meeting would be a breach of contract.
> > I also am concerned about the impression that your absence will leave with the Commissioners and with the VIPs coming to this meeting.
> > If you are concerned about delays in reimbursement caused by including the travel expenses in the personal services voucher, I can always process your request (with receipts) separately and earlier.
I can have staff here check to see if we can find hotel rooms at a more reasonable rate for you and Tova. (We recognize that you may not be able to obtain Federal government rate.) What I cannot do is offer a travel advance, which is not permitted for nonfederal employees, or offer to pay the difference between normal travel expenses and those incurred for personal convenience, when the latter is the higher amount.

I urge you to make your travel arrangements ASAP.

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

Given the information I have Peggy, that is not going to be financially possible. First, given Tova's info about the hotels, it is too much for me to front. Two to three days in DC would run around $1000 for the hotel alone. That does not count the two days on the road to get there and two days back. Second, if I can't charge the federal per mile allowance for the entire trip to DC and back and can only get the equivalent of plane fare, I will actually loose money.

I simply do not see how we can do this in person given the financial restrictions.
--- psims@eac.gov wrote:

Job:

I don't think we can put you on teleconference for 41/2 hours. We really need to have you here in person if you are to help conduct the Working Group meeting. You should make your travel arrangements ASAP. --- Peggy

"Job Serebrov"

05/08/2006 10:14 AM

To psims@eac.gov, wang@tcf.org
cc

Subject Re: Working Group

Peggy:

4:00 eastern on Tuesday is fine however, given the financial restrictions that you indicated would be in place for use of my car (I would actually loose money coming to DC) and given the cost of hotels at this time (I can't afford to front these costs and wait for months to be repaid), etc, it would take a miracle for this working group meeting to take place in person.

It is looking like the only way it will get done is by teleconference. I also share Tova's concern about the unknown nature of Mr. Perez.

Job

--- psims@eac.gov wrote:

Hi, Folks:
Are both of you available for a teleconference next Tuesday afternoon at about 4 PM EST? If this does not work for you, please suggest another date and/or time. I would like to discuss our preparations for the Working Group meeting.

Working Group Members

We have a very good person to fill the slot for the nonpartisan local election official: J.R. Perez, Elections Administrator for Guadalupe County, TX. Attached is his bio. Hope you have no objections to him. He is available on May 19. I have placed 2 calls to Pat Rogers office, but have not yet received a reply. Job, if you have any pull with him, you may want to contact him, too.

Travel Arrangements

You should make your own travel arrangements, including hotel. Travel time cannot be billed to the contract, except for hours actually worked on the contract (i.e.; reviewing materials in preparation for the meeting, and the like). Current Federal rates follow:

- Maximum Lodging = $180 per day - does not include hotel taxes (if you cannot get this rate, we have covered reasonable rates that are a little higher)
- Meals & Incidentals = $64 per day (except that it is $48 on the first and last day of travel)
- Mileage for Personally Owned Vehicle = $.445 per mile

Under the new contract, I do not have to fill out a travel authorization for you. I can approve your trip via email. Afterwords, when you turn in your next pay voucher, you can attach the airline receipt (or mileage documentation), hotel receipt(s), and ground transportation documentation.
transportation receipts and a copy of any printed itineraries. Calculate the total travel expenses due.

Do you want me to call both Bob too?

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

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

Tova just sent me the summary you prepared of The Federal Crime of Election Fraud by Craig Donsanto. There is something wrong in the fourth paragraph (odd characters and missing text). Can you please send a replacement fourth paragraph? You can send it in an email and I will place it in the document. --- Peggy
He is representing Barbara Arnwine, and we have already established we are not disinviting anyone. We still don't know about Ginsburg yet anyway, right?

-----Original Message-----
From: Job Serebrov [mailto.]
Sent: Thursday, May 11, 2006 2:36 PM
To: Tova Wang; psims@eac.gov
Cc: s
Subject: Re: new working group representative

I have an objection to Greenbaum. While I realize he comes from an advocacy group, he is not a minority attorney and we already have a rep who worked with DOJ. If it is to be Greenbaum, I would rather not fill that position since I am one down.

--- Tova Wang <wang@tcf.org> wrote:

> is Jon Greenbaum
> Here's his info in full:
> http://www.lawyerscommittee.org/2005website/aboutus/staff/staffgreenbaum.htm
> l
> He is the Director of the Voting Rights Project for the Lawyers Committee for Civil Rights. He will be representing Barbara Arnwine, the Executive Director of the Lawyers Committee.
> His contact and mailing info is:
> jgreenbaum@lawyerscommittee.org
> 202-662-8315
> 1401 New York Avenue, NW
> Suite 400
> Washington, DC 20005
> Tova Andrea Wang
> Democracy Fellow
> The Century Foundation
> 41 East 70th Street - New York, NY 10021
> phone: 212-452-7704 fax: 212-535-7534
> www.tcf.org, for the latest news, analysis, opinions, and events.
"Job Serebrov"  
05/11/2006 03:49 PM  
To psims@eac.gov  
cc  
Subject Re: Literature Summary

I resent the review as you see at the bottom. When I opened it and sent it there was no corrupted text.

--- psims@eac.gov wrote:

> Do you have text to replace the corrupted text in paragraph 4? --- Peggy

--- psims@eac.gov wrote:

> Tova just sent me the summary you prepared of The Federal Crime of Election Fraud by Craig Donsanto. There is
Thanks, J.R. Great to have you on board! We will get back to you shortly regarding travel arrangements. The meeting materials will be sent by Federal Express next week.

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
e-mail: psims@eac.gov

Hi Peggy, it was nice talking with you today and I would be glad to try and add to the discussion. I am attaching a brief bio and will await your instructions for the travel arrangements. I look forward to receiving the current information on panel issues.

J.R. Perez
Elections Administrator
Guadalupe County
Barry:

Would you please provide an address to which we can Federal Express materials before the meeting? --- Peg

Barry:

It appears that the afternoon of Thursday, May 18 is best for a meeting of the working group. I know you
said you would not be available in the morning that day. If we started at 1 PM, would that be too soon for you?

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

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:23 PM ---

"Job Sarkehov"  
05/12/2006 02:52 PM
To psims@eac.gov
cc
Subject Re: Working Group List

List a vacancy---to be filled. If we don't hear from Ginsberg by late afternoon please call Braden.

Job

--- psims@eac.gov wrote:

> Job:
> > What do you suggest I do with the list of Working Group members. I need
> > to get the Fed Ex packages out by the end of the day, and have not heard
> > back from Ginsberg. Do you want me to list a vacancy, or list Norcross
> > with a note that he cannot attend? If we find a substitute, we can always
> > provide an updated list next Thursday. --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:23 PM ---

Devon E. Romig/EAC/GOV  
05/09/2006 04:43 PM
To Margaret Sims/EAC/GOV@EAC
cc
Subject Hotel for Job

Peggy,

A possible hotel suggestion for Job might be the Sheraton College Park in Beltsville, MD. They have room availability for the nights of the 17th and the 18th for $159.00 a night.
They have what is called the Sheraton Sweet Sleeper Bed. More information at:


This hotel is a little out of the way but the members of the Asian Language Working Group and others have stayed there. The hotel does offer a shuttle to and from Reagan airport and the metro.

Devon Romig
United States Election Assistance Commission
1225 New York Ave. NW, Suite 1100
Washington, DC 20005
202.566.2377 phone
202.566.3128 fax
www.eac.gov

---- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:23 PM -----

Margaret Sims/EAC/GOV
05/12/2006 01:51 PM
To Devon Romig
cc
Subject Wang & Serebov Fed Ex Info

Devon:

Here is the information you need for the Fed Ex forms for Job and Tova.

Tova Wang
201 West 74th Street, Apt 11F
New York, NY 10023
Phone: 212-362-5223
(Note that the package may be left with the doorman.)

Job Serebrov
2110 South Spring Street
Little Rock, AR 72206
Phone: 501-374-2176

---- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:23 PM -----

"Tova Wang"
<wang@tcf.org>
05/02/2006 05:52 PM
To psims@eac.gov
cc
Subject RE: Voting Fraud/Voter Intimidation Project Working Group

OK. I'll be out of the office for the next three days, and mostly unavailable on Thursday and Friday as you know already. Tomorrow you can try me on my cell and I'll try to check email when I can. Thanks Peg. Tova

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Tuesday, May 02, 2006 4:41 PM
To: wang@tcf.org
Subject: RE: Voting Fraud/Voter Intimidation Project Working Group

I hope to have a better idea tomorrow, if Rokita's office responds. If not, we'd better have a teleconference to discuss our options. --- Peggy

"Tova Wang" <wang@tcf.org>

05/02/2006 05:06 PM

To dromig@eac.gov

cc psims@eac.gov

Subject RE: Voting Fraud/Voter Intimidation Project Working Group

Can you please give me an idea where we are at with all this? I'd like to be able to figure out my schedule. Thanks -- and thanks for all your assistance on this. Tova

-----Original Message-----
From: dromig@eac.gov [mailto:dromig@eac.gov]
Sent: Tuesday, May 02, 2006 3:54 PM
To: wang@tcf.org
Subject: RE: Voting Fraud/Voter Intimidation Project Working Group

Yes, I have spoken to her assistant several times but today has been the first time that I have ever spoken to her assistant. We did get the information that we needed. Thanks for your help!

Devon Romig
U.S. Election Assistance Commission
1225 New York Ave. NW - Suite #1100
Washington, D.C. 20005
(202)566-2377

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:23 PM -----

"Tova Wang"
<wang@tcf.org>

04/26/2006 04:39 PM

To psims@eac.gov

cc

Subject RE: interview analysis

I think I can help you at least with respect to Barbara. I'll be speaking to her today!

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Thanks. We are still trying to get through to Bauer and Arnwine. They have not responded, so their availability is not yet reflected on our spreadsheet. --- Peggy

Hi Peg,

Attached, to add to the collection, is a summary overview of the interviews. Do you have that spreadsheet you were telling me about reflecting the times WG participants are available? If so, maybe we can talk soon? Thanks. Tova

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

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

Click here to receive our weekly e-mail updates.

Hi Peg,
Here is the last summary of existing research. Please let us know how to proceed from here. Thanks.

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

Visit our Web site, www.tcf.org, for the latest news, analysis, opinions, and events.  
Click here to receive our weekly e-mail updates.

Response to the CB Report FINAL.doc  
----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:23 PM -----  
Margaret Sims/EAC/GOV  
05/04/2006 05:47 PM  
To wang@tcf.org@GSAEXTERNAL  
cc  
Subject Re: wg

Tova:  

Rokita is available --- so the afternoon of May 18 it is. I will not disinvite anyone. I am trying to get Job's next choice (Pat Rogers) as a replacement for Norcross.  

Monday appears to be out for a teleconference because Job will be unavailable that afternoon and I am scheduled for something else that morning. I'll check my schedule tomorrow and send a message to you and Job regarding other possible days and times. --- Peggy

wang@tcf.org

Hi Peg,  

Just wondering if you had any word from Rokita. Also, I wanted to let you know that I think disinviting members of the working group would be a very unwise and frankly embarrassing way of dealing with the problem of getting 100% attendance. I'm sure we'll talk before any decisions are made. As I said, I'm free on Monday. Thanks. Tova

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:23 PM -----  
"Job Sarshov" To
I would give him until Monday morning but I would also call Braden today and tell him there may be an opening for him on the WG and find out whether he is free.

--- psims@eac.gov wrote:

> I have placed another call to his office (after one previous call to his assistant and an email to him). I, too, am concerned about our dwindling chances. --- Peggy

--- Job Serebrov wrote:

> Given the short time period, you may want to give Ginsberg a deadline. The longer we wait, the poorer our chances are of getting Braden.

--- psims@eac.gov wrote:

> I am reluctant to invite Braden until after I have received a "No" from Ginsberg. --- Peg

--- Job Serebrov wrote:

> 05/12/2006 02:30 PM

To
> psims@eac.gov
> cc

Subject
> Re: Fraud Definition
Sounds good to me. If not Ginsburg try Braden.

--- psims@eac.gov wrote:

I will add "DRAFT" to the definition and, yes, the WG will have suggestions. I do plan to send packets to you and same materials being provided to the WG. I haven't sent anything yet because I was hoping to finalize the WG list for inclusion. (Still waiting for a response from Ginsberg.) Regarding Tova's response, we may want to have a very short meeting after the WG disperses, followed by a teleconference the following Monday afternoon. Tuesday is bad for me because I'll be out of the office attending a series of EAC meetings that begin that day. --- Peggy

"Job Serebrov" 05/12/2006 12:52 PM

To psims@eac.gov, wang@tcf.org cc Subject Re: Fraud Definition

This is ok, given the fact that the WG may have suggestions. Will you be sending us the same packets that you are sending the WG? Also, I figure with Tova's response we will need to have a teleconference on the report once I return to Little Rock. We
Will need to do it that following Monday or Tuesday.

--- psims@eac.gov wrote:

Would you please take a look at the attached?

I combined both of your definitions, reformatted the list, removed a reference to the fraud having to have an actual impact on the election results.

(because fraud can be prosecuted without proving that it actually changed the results of the election), and taken out a couple of vague examples:

(e.g., reference to failing to enforce state laws --- because there may be legitimate reasons for not doing so).

I have made contact with Ben Ginsberg's office and am waiting to hear if he accepts our invitation to join the working group.

--- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:23 PM ---
Case Summaries.doc

Peggy:

Please add this to the packet.

Job

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:23 PM -----

"Job Serebrov" To psims@eac.gov
cc
Subject Re: Update

The bed is not what I need and Beltsville is a bit far out.

--- psims@eac.gov wrote:

> Why is the hotel suggestion not workable? (I need
> to know as we continue
> our search.) -- Peg
>
>
>
> "Job Serebrov"
> 05/10/2006 10:29 AM
>
> To
> psims@eac.gov
> cc
> Subject
> Update
>
>
>
> Peggy:
>
> Pat just e-mailed me. He has something he can't move
> on the 18th. So I am now down one person and still
> no
> good hotel situation. Devon's suggestion is not
> workable.
>
> Job
>
>
According to the Commissioners, you and Tova each got to pick three members of the Working Group. The Commission guidance regarding this particular member follows:

4 people from the Academic, Legal and Advocacy sectors - 2 to be chosen by Tova and 2 to be chosen by Job.

This issue of allowing a designee relates to Tova's pick.

As I understand it, we are working on a replacement for Norcross. If Ginsberg is not viable, how about Mark Braden, who includes public integrity in his areas of specialization. I would not try and stir up other members of the Working Group, if I were you. The effort is likely to come back and bite you.

I really don't care if he represents the organization or not. What mixed race? The entire discussion was because Arnwine was African-American. If you are going to invite him without first having a replacement for my side, I may have to call Thor and Todd and discuss all of this.

--- psims@eac.gov wrote:
>
> Greenbaum is representing Arnwine, not replacing her. He works for her organization and is of mixed race. --- Peggy
> >
> >
> >
> > "Job Serebrov" <wang@tcf.org>, psims@eac.gov
> > cc
I have an objection to Greenbaum. While I realize he comes from an advocacy group, he is not a minority attorney and we already have a rep who worked with DOJ. If it is to be Greenbaum, I would rather not fill that position since I am one down.

--- Tova Wang <wang@tcf.org> wrote:

> is Jon Greenbaum
> Here's his info in full:
>
> [link]

He is the Director of the Voting Rights Project for the Lawyers Committee for Civil Rights. He will be representing Barbara Arnwine, the Executive Director of the Lawyers Committee.

His contact and mailing info is:

jgreenbaum@lawyerscommittee.org
202-662-8315
1401 New York Avenue, NW
Suite 400
Washington, DC 20005

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

Visit our Web site, [link], for the latest news, analysis, opinions, and events.

---

Click here to receive our weekly e-mail updates.
Yes, please let Joyce know and she will get someone

Tom

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:23 PM ---

Thomas R. Wilkey/EAC/GOV
05/10/2006 10:29 AM

To Margaret Sims/EAC/GOV@EAC

cc

Subject Re: Fw: Court Reporter for Working Group Meeting

--- Forwarded by Margaret Sims/EAC/GOV on 05/10/2006 10:18 AM ---

Devon E. Romig/EAC/GOV
05/10/2006 09:54 AM

To twilkey@eac.gov

cc DScott@eac.gov, Karen Lynn-Dyson/EAC/GOV@EAC

Subject Fw: Court Reporter for Working Group Meeting

Tom:
I understand that EAC hired a court reporter for the Asian Language Working Group meeting. I would like to do the same for the May 18 Voting Fraud-Voter Intimidation Working Group meeting, but I did not include funds in my budget for this service. Do we have funds that could be used for this purpose? (See Devon's cost estimate below.) --- Peggy
Peggy,

I spoke to the people who usually handle the EAC court reporting. They charge $9.00 per page with an average of 40 pages per hour. This service would cost about $1800.00.

The turn around time for the transcript is 10 to 15 days. The transcripts comes in a bound paper copy and an electronic copy.

I can also check around for different prices.

Devon Romig
United States Election Assistance Commission
1225 New York Ave. NW, Suite 1100
Washington, DC 20005
202.566.2377 phone
202.566.3128 fax
www.eac.gov

FYI

--- "Patrick J. Rogers" wrote:

> Subject: RE: Working Group meeting
> Date: Tue, 9 May 2006 07:42:44 -0600
> From: "Patrick J. Rogers" <patrogers@modrall.com>
> To: "Job Serebrov"
> Job---maybe. I will call you and/or Ms. Sims tomorrow. Depositions all
day today. Thanks, Pat
> What's the best number to call you tomorrow?
> Patrick J. Rogers
> Modrall, Sperling, Roehl, Harris & Sisk, P.A.
-----Original Message-----
From: Job Serebrov [mailto:]
Sent: Monday, May 08, 2006 9:41 PM
To: Patrick J. Rogers
Subject: Working Group meeting

Pat:

The working group meeting for the voter fraud project is scheduled for May 16th in DC but David Norcross can't attend. Could you come? If so, we need to arrange travel and a hotel for you.

Regards,

Job

--------------------------------------------------------------------
Modrall, Sperling, Roehl, Harris & Sisk, P.A.
--------------------------------------------------------------------

THIS MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. If the reader of this message is not the intended recipient or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination or copying of this communication is strictly prohibited. If you have received this electronic transmission in error, please delete it from your system without copying it, and notify the sender by reply e-mail or by calling 505.848.1800, so that our address record can be corrected. Thank you.
As you may recall, the Commissioners directed me to find a nonpartisan local election official to serve on the Working Group. The three of us discussed the desirability of having a Hispanic. I proposed that I find someone from Texas because of that State's colorful history of voting fraud and their innovative approaches to combat it. In those Texas counties that hire Election Administrators to run elections, rather than having elected officials do so (Tax Assessor for voter registration; County Clerk for balloting), the Election Administrator is hired by the County Election Commission and is supposed to perform his or her duties in a nonpartisan manner. (See attached excerpts from Texas Election Code regarding election administrator hiring and restrictions on partisan activity.)

Any experienced Texas election official will be familiar with voting fraud and voter intimidation schemes used in that State. Mr. Perez has over 13 years experience as a county Election Administrator in Texas. You won't find many news articles mentioning him because he has kept his nose clean. (The Texas press, as in many other parts of the country, prefers to report bad news.) Mr. Perez is plugged into the association of Texas election officials and the two largest organizations of election officials in this country: the International Association of Clerks, Recorders, Election Officials and Treasurers (IACREOT); and The Election Center. He is a past President and past Chairman of the Legislative Committee for the Texas Association of Election Administrators. He currently serves on IACREOT's Election Officials Committee, which plans the educational sessions for election officials that are conducted at that organization's conferences. His peers in IACREOT and The Election Center have selected his submissions on web presentations (IACREOT) and his professional practices papers (Election Center) for awards. Mr. Perez also has access to information from other States through his membership in IACREOT and The Election Center. He also has a sense of humor, which you will note if you access the staff web page on the Guadalupe County Elections web site and hear the Mission Impossible theme .. something that might be useful in the upcoming meeting.

Guadalupe County is small but growing. In 2004, the county had over 65 thousand registered voters (a number more than doubled the number of registered voters in 1988). A third of the county's population claims Hispanic or Latino origin, according to the U.S. Census Bureau. The county is in south central Texas and is bordered by Comal, Hays, Cladwell, Gonzales, Wilson, and Bexar counties. In the 1980s, the county was predominately a farming community; but in recent years, many people have moved from San Antonio (Bexar County) to Guadalupe County, preferring to live in Guadalupe County and work in Bexar County.

--- Peggy
Peggy:

What political party is Perez with? How political is he? Is the position in Texas neutral or political? Who appointed Perez?

As to Pat I will contact him but I can't promise anything. If Pat can't come, who is getting knocked off Tova's list?

Job

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:23 PM -----
Margaret Sims/EAC/GOV
05/09/2006 11:38 AM
To Tova Andrea Wang
cc
Subject Fw: Case Summaries

Had you seen this? --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 05/09/2006 11:38 AM -----
"Job Serebrov"
05/08/2006 09:30 AM
To psims@eac.gov
cc
Subject Case Summaries

Peggy:

Please add this to the packet.

Job

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:23 PM -----
"Job Serebrov"
To psims@eac.gov, wang@tcf.org
cc
Subject Re: Today's Teleconference

The teleconference is on. However, I am still one person down for the meeting and I am not comfortable. This will have to be discussed since from the start it was agreed that the WG would be equal and if I lost a person Tova would have to loose one. Further and most importantly, I don't yet have a hotel so my attendance is still up in the air. Finally, the agenda is not what we discussed and gives far too much time for areas that can be covered in a short time. Not listed are all of the questions that Tova’s proposed agenda had. All in all, it needs to be redone.

--- psims@eac.gov wrote:

> I assume that we are still on for today’s
teleconference at 11 AM EST. I
> will call you. I have attached a draft agenda for
> your review and
> comment. --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:23 PM ------

Diana Scott/EAC/GOV
To Margaret Sims/EAC/GOV@EAC
cc dromig@eac.gov, Karen Lynn-Dyson/EAC/GOV@EAC, Edgardo Cortes/EAC/GOV@EAC
Subject Re: Working Group Travel

I have given Adventure Travel the necessary credit card authorization on this. Devon please follow-up with the reservations etc.

Diana M. Scott
Administrative Officer
U.S. Election Assistance Commission
(202) 566-3100 (office)
(202) 566-3127 (fax)
dscott@eac.gov

Margaret Sims/EAC/GOV
Diana:

The following members of the Working Group for our Voting Fraud/Voter Intimidation research project will need to make travel arrangements in order to attend an afternoon meeting of the group on May 18 in Washington, DC:

Mark "Thor" Hearne - St Louis, MO
J.R. Perez - Seguin, TX
The Honorable Todd Rokita - Indianapolis, IN
Kathy Rogers - Atlanta, GA

I may have one additional member from Albuquerque, NM confirmed early next week.

May these people use Adventure Travel to make these arrangements in the same manner as the Asian Language Working Group? I understand the members of that group made hotel and flight arrangements through Adventure Travel and that these costs were billed directly to EAC. We did plan for EAC to pay for the travel of the Voting Fraud/Voter Intimidation Working Group (budgeted under Research). Devon will prepare their travel authorizations.

Peggy Sims
Election Research Specialist

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:23 PM -----
"Tova Wang"
<wang@tcf.org> To psims@eac.gov
05/08/2006 10:18 AM cc
Subject RE: Working Group

I am more than happy to attend in person.
Peggy:

4:00 eastern on Tuesday is fine however, given the financial restrictions that you indicated would be in place for use of my car (I would actually loose money coming to DC) and given the cost of hotels at this time (I can't afford to front these costs and wait for months to be repaid), etc, it would take a miracle for this working group meeting to take place in person. It is looking like the only way it will get done is by teleconference. I also share Tova's concern about the unknown nature of Mr. Perez.

Job

--- psims@eac.gov wrote:

> Hi, Folks:
> >
> > Teleconference
> > Are both of you available for a teleconference next Tuesday afternoon at about 4 PM EST? If this does not work for you, please suggest another date and/or time. I would like to discuss our preparations for the Working Group meeting.
> >
> > Working Group Members
> > We have a very good person to fill the slot for the nonpartisan local election official: J.R. Perez, Elections Administrator for Guadalupe County, TX. Attached is his bio. Hope you have no objections to him. He is available on May 18. I have place 2 calls to Pat Rogers office, but have not yet received a reply. Job, if you have any pull with him, you may want to contact him, too.
> >
> > Travel Arrangements
> > You should make your own travel arrangements, including hotel. Travel time cannot be billed to the contract, except for hours actually worked on the contract (i.e.; reviewing materials in preparation for the meeting, and the like). Current Federal rates follow:
> >
> > Maximum Lodging = $180 per day- does not include hotel taxes (if you cannot get this rate, we have covered reasonable rates that are a little higher)
> >
> > Meals & Incidentals = $64 per day (except that it is $48 on the first and last day of travel)
> >
> > Mileage for Personally Owned Vehicle = $.445 per mile
> >
> > Under the new contract, I do not have to fill out a
travel authorization
for you. I can approve your trip via email.
Afterwards, when you turn in
your next pay voucher, you can attach the airline
receipt (or mileage
documentation), hotel receipt(s), and ground
transportation receipts and a
copy of any printed itineraries. Calculate the
total travel expenses due
you, including applicable per diem. I do not need
meal receipts.

Job, under Federal travel regulations, deviations
for personal reasons are
not normally accommodated. What you can do,
however, is to give me a
comparison of the cost of roundtrip mileage, hotel,
and per diem of doing
it your way against the cost of a roundtrip flight,
ground transportation,
hotel, and per diem. If your way costs less, it
should be no problem to
cover the full cost. If your way is more expensive,
we may only pay up to
the amount of traditional travel. (The same rules
apply to me when I
travel.) If you can tell me where, other than DC,
you will spend the
night, I can check on applicable per diem rates.

Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:22 PM ---

"Job Serebrov"
To psims@eac.gov
cc
Subject Option

Peggy:

I may have the only option left but it is a risk time
wise. I could stay at the Baymont in Salem by Roanoke
and then leave early that morning and drive into DC or
to a park and ride (Metro). I would make it before
12:00 barring any unforeseen road issues. However, I
would have to leave to go home right after the
meeting. That would cancel the next day's meeting.

Job
I need to run to West Little Rock so you can get me on my cell if you want to talk.

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:22 PM -----
Margaret Sims/EAC/GOV
To: Job Serebrov
cc
Subject: Working Group List

Job:

What do you suggest I do with the list of Working Group members. I need to get the Fed Ex packages out by the end of the day, and have not heard back from Ginsberg. Do you want me to list a vacancy, or list Norcross with a note that he cannot attend? If we find a substitute, we can always provide an updated list next Thursday. --- Peggy

----- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:22 PM -----
"Tova Wang"
<wang@tcf.org>
To: psims@eac.gov
cc
Subject: RE: Material I may not have included

news article review

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Thursday, May 11, 2006 3:23 PM
To: wang@tcf.org
Subject: Re: Material I may not have included

Would these go under literature review or news article review? --- Peggy

"Tova Wang" <wang@tcf.org>
05/10/2006 11:45 AM
To: psims@eac.gov
cc: omig@eac.gov
Subject: Material I may not have included
Election Crimes: An Initial Review and Recommendations for Future Study

December 2006
EAC REPORT ON VOTING FRAUD AND VOTER INTIMIDATION STUDY

INTRODUCTION

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

PURPOSE AND METHODOLOGY OF THE EAC STUDY

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

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

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

1 Biographies for Job Serebrov and Tova Wang, the two consultants hired by EAC, are attached as Appendix "1".
fraud and voter intimidation; and (3) proposing recommended strategies for researching this subject.

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

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

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

**J.R. Perez**  
Guadalupe County Elections Administrator, Texas

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

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

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

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

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

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

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

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

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

Reports and Studies of Voting Fraud and Intimidation

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

Articles and Reports


• 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."


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

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

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

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

Interviews with Experts

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

Wade Henderson
Executive Director,
Leadership Conference for Civil Rights

Wendy Weiser
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

Pat Rogers
Attorney, New Mexico

Nina Perales
Counsel,
Mexican American Legal Defense and Education Fund

Rebecca Vigil-Giron
Secretary of State, New Mexico

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

Stephen Ansolobohere
Massachusetts Institute of Technology

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

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

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

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

Case Law and Statutes

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

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

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

Media Reports

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

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

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

DEFINITION OF ELECTION CRIMES

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

Current Terminology

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

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


“Voting” is the act of casting votes to decide an issue or contest. Black’s Law Dictionary, Eighth Edition, p. 1608. Using these terms to form a definition of “voting fraud,” it means fraudulent or deceptive acts committed to influence the act of voting.
Thus, a voter who intentionally impersonates another registered voter and attempts to vote for that person would be committing "voting fraud." Similarly, a person who knowingly provides false information to a voter about the location of the voter's polling place commits fraud on the voter.

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

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

New Terminology

The goal of this study was to develop a common definition of what is generically referred to as "voting fraud" and "voter intimidation" that would serve as the basis for a future, comprehensive study of the existence of these problems. Because the current terminology has such a variety of applications and meanings, "voting fraud" and "voter intimidation" can be read to encompass almost any bad act associated with an election. Such broad terminology is not useful in setting the boundaries of a future study. A definition must set parameters for future study by applying limitations on what is included in the concepts to be studied. The current terminology applies no such limitations.

Thus, EAC has adopted the use of the phrase "election crimes" to limit the scope of its future study. This term captures all crimes related to the voter registration and voting processes and excludes civil wrongs and non-election related crimes. EAC adopted this definition because it better represents the spectrum of activities that we are able to and desire to study. In addition, we recognize that the resources, both financial and human capital, needed to study all "voting fraud" and "voter intimidation," including criminal acts, civil actions, as well as allegations of voter suppression through the use of legal election processes are well beyond the resources available to EAC. Finally, by limiting this definition to criminal acts, EAC can focus its study on a set of more readily measurable data. Criminal behavior is readily defined through state and federal statutes and is prosecuted by government agencies. This is not the case with civil matters. Civil actions can be prosecuted by individuals and/or government entities. Furthermore, what constitutes civil action is far less defined, subject to change, and can vary from case to
case. A more complete discussion of the concept of “election crimes” follows along with a list of excluded actions.

The Definition of an Election Crime for Purposes of this Study

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

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

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

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

Acts of Deception

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

**Acts of Coercion**

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

**Acts of Damage or Destruction**

- Destroying completed voter registration applications;
- Removing or destroying any of the supplies or other conveniences placed in the voting booths or compartments;
- Removing, tearing down, or defacing election materials, instructions or ballots;
Fraudulently altering or changing the vote of any elector, by which such elector is prevented from voting as the person intended;

Knowingly removing, altering, defacing or covering any political sign of any candidate for public office for a prescribed period prior to and following the election;

Intentionally changing, attempting to change, or causing to be changed an official election document including ballots, tallies, and returns; and

Intentionally delaying, attempting to delay, or causing to be delayed the sending of certificate, register, ballots, or other materials whether original or duplicate, required to be sent by jurisdictional law.

**Failure or Refusal to Act**

Intentionally failing to perform an election duty, or knowingly committing an unauthorized act with the intent to effect the election;

Knowingly permitting, making, or attempting to make a false count of election returns;

Intentionally concealing, withholding, or destroying election returns or attempts to do so;

Marking a ballot by folding or physically altering the ballot so as to recognize the ballot at a later time;

Attempting to learn or actually and unlawfully learning how a voter marked a ballot;

Distributing or attempting to distribute election material knowing it to be fraudulent;

Knowingly refusing to register a person who is entitled to register under the rules of that jurisdiction;

Knowingly removing the eligibility status of a voter who is eligible to vote; and

Knowingly refusing to allow an eligible voter to cast his/her ballot.

**What is not an Election Crime for Purposes of this Study**

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

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

Recommendation 1: Conduct More Interviews

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

Recommendation 2: Follow Up on Media Research

The media search conducted for this phase of the research was based on a list of search terms agreed upon by EAC consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contained allegations of fraud or intimidation. Similarly, some of the articles contained information about investigations into such activities or even charges brought. Additional media research should be conducted to determine what, if any, resolutions or further activity there was in each case.

Recommendation 3: Follow Up on Allegations Found in Literature Review

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

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

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

Further research should be conducted using the MyVote1 data with the cooperation of the project leaders. While perhaps not a fully scientific survey given the self-selection of the callers, the information regarding 56,000 complaints may provide insight into the problems voters may have experienced, especially issues regarding intimidation or suppression.
Recommendation 5: Further Review of Complaints Filed With U.S. Department of Justice

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

Recommendation 6: Review Reports Filed By District Election Officers

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

Recommendation 7: Attend Ballot Access and Voting Integrity Symposium

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

Recommendation 8: Conduct Statistical Research

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

- Ten locations that are geographically and demographically diverse where there have been many reports of fraud and/or intimidation;
- Ten locations (geographically and demographically diverse) that have not had many reports of fraud and/or intimidation;
EAC should also conduct a survey of elections officials, district attorneys, and district election officers. The survey sample should be large in order to be able to get the necessary subsets, and it must include a random set of counties where there have and have not been a large number of allegations.

**Recommendation 9: Explore Improvements to Federal Law**

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

**Recommendation 10: Use Observers to Collect Data on Election Day**

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

**Recommendation 11: Study Absentee Ballot Fraud**

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

**Recommendation 12: Use Risk Analysis Methodology to Study Fraud**

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

**Recommendation 13: Conduct Research Using Database Comparisons**

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

**Recommendation 14: Conduct a Study of Deceptive Practices**

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

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

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

**Recommendation 16: Examine the Use of Special Election Courts**

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

**Accepted Recommendations**

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

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

Some of the recommendations are beyond the scope of the current study. While election courts may be a reasonable conclusion to reach after we determine the volume and type of election crimes being reported, charged or prosecuted, it is premature to embark on an analysis of that solution without more information. Last, some of the recommendations do not support a comprehensive study of election crimes. While a risk analysis might be appropriate in a smaller scale study, EAC desires to conduct a broader survey to avoid the existing problem of anecdotal and limited scope of information.
In order to further its goal of developing a comprehensive data set regarding election crimes and the laws and procedures used to identify and prosecute them, EAC intends to engage in the following research activities in studying the existence and enforcement of election crimes:

**Survey Chief Election Officers Regarding Administrative Complaints**

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

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

EXECUTIVE SUMMARY

The Help America Vote Act of 2002 (HAVA) requires the U.S. Election Assistance Commission (EAC) to study a host of topics, including “voting fraud” and “voter intimidation.” In 2005, EAC embarked on an initial review of the existing knowledge of voting fraud and voter intimidation. The goal of that study was to develop a working definition of “voting fraud” and “voter intimidation” and to identify research methodology to conduct a comprehensive, nationwide study of these topics.

EAC staff along with two, bipartisan consultants reviewed the existing information available about voting fraud and voter intimidation, including reading articles, books and reports; interviewing subject matter experts; reviewing media reports of fraud and intimidation; and studying reported cases of prosecutions of these types of crimes. It is clear from this review that there is a great deal of debate on the pervasiveness of fraud in elections as well as what constitute the most common acts of fraud or intimidation. There is also no apparent consensus on the meaning of the phrases “voting fraud” and “voter intimidation.” Some think of voting fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal activities.

In order to facilitate future study of these topics, EAC developed a working definition of “election crimes.” “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.

From EAC’s review of existing information on the issue, it was apparent that there have been a number of studies that touched on various topics and regions of the country concerning voting fraud and intimidation, but that there had never been a comprehensive, nationwide study of these topics. EAC will conduct further research to provide a comprehensive, nationwide look at “election crimes.” Future EAC study of this topic will focus on election-related, criminal activity and will not include acts that are exclusively civil wrongs, campaign finance violations, and violations of ethical provisions. EAC will study these concepts by surveying the states’ chief election officials about complaints they received through their administrative complaint processes, election crime investigation units regarding complaints received and those referred to law enforcement, and law enforcement and prosecutorial agencies regarding complaints received and charges filed.
INTRODUCTION

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

PURPOSE AND METHODOLOGY OF THE EAC STUDY

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

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

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

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

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

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

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

**J.R. Perez**  
Guadalupe County Elections Administrator, Texas

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

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

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

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

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

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

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

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

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

Reports and Studies of Voting fraud and Intimidation

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

Articles and Reports


• 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.


• 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."


Books


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

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

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

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

Interviews with Experts

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

**Wade Henderson**  
Executive Director,  
Leadership Conference for Civil Rights

**Wendy Weiser**  
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

**Pat Rogers**  
Attorney, New Mexico

**Nina Perales**  
Counsel,  
Mexican American Legal Defense and Education Fund

**Rebecca Vigil-Giron**  
Secretary of State, New Mexico

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

**Stephen Ansolobohere**  
Massachusetts Institute of Technology

**Chandler Davidson**  
Rice University
Tracey Campbell  
Author, *Deliver the Vote*

Douglas Webber  
Assistant Attorney General, Indiana

Heather Dawn Thompson  
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

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

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

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  
Chief, 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 nongovernmental groups as a source of fraud, particularly when the workers are paid per registration. Many asserted that impersonation of voters is probably the least frequent type of fraud because it is the most likely type of fraud to be discovered, there are stiff penalties associated with this type of fraud, and it is an inefficient method of influencing an election.

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

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

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

Case Law and Statutes.

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

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

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

Media Reports

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

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

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

DEFINITION OF ELECTION CRIMES

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

Current Terminology

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

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


“Voting” is the act of casting votes to decide an issue or contest. Black’s Law Dictionary, Eighth Edition, p. 1608. Using these terms to form a definition of “voting fraud,” it means fraudulent or deceptive acts committed to influence the act of voting.
Thus, a voter who intentionally impersonates another registered voter and attempts to vote for that person would be committing "voting fraud." Similarly, a person who knowingly provides false information to a voter about the location of the voter's polling place commits fraud on the voter.

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

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

New Terminology

The goal of this study was to develop a common definition of what is generically referred to as "voting fraud" and "voter intimidation" that would serve as the basis for a future, comprehensive study of the existence of these problems. Because the current terminology has such a variety of applications and meanings, "voting fraud" and "voter intimidation" can be read to encompass almost any bad act associated with an election. Such broad terminology is not useful in setting the boundaries of a future study. A definition must set parameters for future study by applying limitations on what is included in the concepts to be studied. The current terminology applies no such limitations.

Thus, EAC has adopted the use of the phrase "election crimes" to limit the scope of its future study. This term captures all crimes related to the voter registration and voting processes and excludes civil wrongs and non-election related crimes. EAC adopted this definition because it better represents the spectrum of activities that we are able to and desire to study. In addition, we recognize that the resources, both financial and human capital, needed to study all "voting fraud" and "voter intimidation," including criminal acts, civil actions, as well as allegations of voter suppression through the use of legal election processes are well beyond the resources available to EAC. Finally, by limiting this definition to criminal acts, EAC can focus its study on a set of more readily measurable data. Criminal behavior is readily defined through state and federal statutes and is prosecuted by government agencies. This is not the case with civil matters. Civil actions can be prosecuted by individuals and/or government entities. Furthermore, what constitutes civil action is far less defined, subject to change, and can vary from case to
case. A more complete discussion of the concept of “election crimes” follows along with a list of excluded actions.

The Definition of an Election Crime for Purposes of this Study

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

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

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

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

Acts of Deception

- Knowingly causing to be mailed or distributed, or knowingly mailing or distributing, literature that includes false information about the voter’s precinct or polling place, the date and time of the election or a candidate;
- Possessing an official ballot outside the voting location, unless the person is an election official or other person authorized by law or local ordinance to possess a ballot outside of the polling location;
- Making or knowingly possessing a counterfeit of an official election ballot;
- Signing a name other than his/her own to a petition proposing an initiative, referendum, recall, or nomination of a candidate for office;
- Knowingly signing more than once for the proposition, question, or candidate in one election;
- Signing a petition proposing an initiative or referendum when the signer is not a qualified voter.
- Voting or attempting to vote in the name of another person;
- Voting or attempting to vote more than once during the same election;
Intentionally making a false affidavit, swearing falsely, or falsely affirming under an oath required by a statute regarding their voting status, including when registering to vote, requesting an absentee ballot or presenting to vote in person;

Registering to vote without being entitled to register;

Knowingly making a materially false statement on an application for voter registration or re-registration; and

Voting or attempting to vote in an election after being disqualified or when the person knows that he/she is not eligible to vote.

Acts of Coercion

Using, threatening to use, or causing to be used force, coercion, violence, restraint, or inflicting, threatening to inflict, or causing to be inflicted damage harm, or loss, upon or against another person to induce or compel that person to vote or refrain from voting or to register or refrain from registering to vote;

Knowingly paying, offering to pay, or causing to be paid money or other thing of value to a person to vote or refrain from voting for a candidate or for or against an election proposition or question;

Knowingly soliciting or encouraging a person who is not qualified to vote in an election;

Knowingly challenging a person’s right to vote without probable cause or on fraudulent grounds, or engaging in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voter from voting or to delay the process of voting;

As an employer, attempting by coercion, intimidation, threats to discharge or to lessen the remuneration of an employee, to influence his/her vote in any election, or who requires or demands an examination or inspection by himself/herself or another of an employee’s ballot;

Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for signing or refraining from signing a petition proposing an initiative;

Inducing or attempting to induce an election official to fail in the official’s duty by force, threat, intimidation, or offers of reward;

Directly or through any other person advancing, paying, soliciting, or receiving or causing to be advanced, paid, solicited, or received, any money or other valuable consideration to or for the use of any person in order to induce a person not to become or to withdraw as a candidate for public office; and

Soliciting, accepting, or agreeing to accept money or other thing of value in exchange for registering to vote.

Acts of Damage or Destruction

Destroying completed voter registration applications;

Removing or destroying any of the supplies or other conveniences placed in the voting booths or compartments;

Removing, tearing down, or defacing election materials, instructions or ballots;
Fraudulently altering or changing the vote of any elector, by which such elector is prevented from voting as the person intended;

- Knowingly removing, altering, defacing or covering any political sign of any candidate for public office for a prescribed period prior to and following the election;

- Intentionally changing, attempting to change, or causing to be changed an official election document including ballots, tallies, and returns; and

- Intentionally delaying, attempting to delay, or causing to be delayed the sending of certificate, register, ballots, or other materials whether original or duplicate, required to be sent by jurisdictional law.

**Failure or Refusal to Act**

- Intentionally failing to perform an election duty, or knowingly committing an unauthorized act with the intent to effect the election;

- Knowingly permitting, making, or attempting to make a false count of election returns;

- Intentionally concealing, withholding, or destroying election returns or attempts to do so;

- Marking a ballot by folding or physically altering the ballot so as to recognize the ballot at a later time;

- Attempting to learn or actually and unlawfully learning how a voter marked a ballot;

- Distributing or attempting to distribute election material knowing it to be fraudulent;

- Knowingly refusing to register a person who is entitled to register under the rules of that jurisdiction;

- Knowingly removing the eligibility status of a voter who is eligible to vote; and

- Knowingly refusing to allow an eligible voter to cast his/her ballot.

**What is not an Election Crime for Purposes of this Study**

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

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

**Recommendation 1: Conduct More Interviews**

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

**Recommendation 2: Follow Up on Media Research**

The media search conducted for this phase of the research was based on a list of search terms agreed upon by EAC consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contained allegations of fraud or intimidation. Similarly, some of the articles contained information about investigations into such activities or even charges brought. Additional media research should be conducted to determine what, if any, resolutions or further activity there was in each case.

**Recommendation 3: Follow Up on Allegations Found in Literature Review**

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

**Recommendation 4: Review Complaints Filed With “MyVote1” Voter Hotline**

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

Further research should be conducted using the MyVote1 data with the cooperation of the project leaders. While perhaps not a fully scientific survey given the self-selection of the callers, the information regarding 56,000 complaints may provide insight into the problems voters may have experienced, especially issues regarding intimidation or suppression.
Recommendation 5: Further Review of Complaints Filed With U.S. Department of Justice

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

Recommendation 6: Review Reports Filed By District Election Officers

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

Recommendation 7: Attend Ballot Access and Voting Integrity Symposium

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

Recommendation 8: Conduct Statistical Research

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

- Ten locations that are geographically and demographically diverse where there have been many reports of fraud and/or intimidation;
- Ten locations (geographically and demographically diverse) that have not had many reports of fraud and/or intimidation;
EAC should also conduct a survey of elections officials, district attorneys, and district election officers. The survey sample should be large in order to be able to get the necessary subsets, and it must include a random set of counties where there have and have not been a large number of allegations.

**Recommendation 9: Explore Improvements to Federal Law**

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

**Recommendation 10: Use Observers to Collect Data on Election Day**

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

**Recommendation 11: Study Absentee Ballot Fraud**

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

**Recommendation 12: Use Risk Analysis Methodology to Study Fraud**

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

**Recommendation 13: Conduct Research Using Database Comparisons**

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

**Recommendation 14: Conduct a Study of Deceptive Practices**

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

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

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

**Recommendation 16: Examine the Use of Special Election Courts**

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

**Accepted Recommendations**

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

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

Some of the recommendations are beyond the scope of the current study. While election courts may be a reasonable conclusion to reach after we determine the volume and type of election crimes being reported, charged or prosecuted, it is premature to embark on an analysis of that solution without more information. Last, some of the recommendations do not support a comprehensive study of election crimes. While a risk analysis might be appropriate in a smaller scale study, EAC desires to conduct a broader survey to avoid the existing problem of anecdotal and limited scope of information.
In order to further its goal of developing a comprehensive data set regarding election crimes and the laws and procedures used to identify and prosecute them, EAC intends to engage in the following research activities in studying the existence and enforcement of election crimes:

**Survey Chief Election Officers Regarding Administrative Complaints**

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

In order to determine how many of these complaints allege the commission of election crimes, EAC will survey the states’ chief election officers regarding complaints that have been filed, investigated, and resolved since January 1, 2004. EAC will use the definition of election crimes provided above in this report in its survey so that data regarding a uniform set of offenses 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. 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 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.
APPENDIX 1 – BIOGRAPHIES OF JOB SEREBROV AND TOVA WANG


APPENDIX 2 – SUMMARIES OF BOOKS, REPORTS AND ARTICLES


APPENDIX 3 – SUMMARIES OF INTERVIEWS


APPENDIX 4 – SUMMARIES OF CASES REVIEWED

EAC REPORT ON VOTING FRAUD AND VOTER INTIMIDATION STUDY

EXECUTIVE SUMMARY

The Help America Vote Act of 2002 (HAVA) requires the U.S. Election Assistance Commission (EAC) to study a host of topics, including “voting fraud” and “voter intimidation.” In 2005, EAC embarked on an initial review of the existing knowledge of voting fraud and voter intimidation. The goal of that study was to develop a working definition of “voting fraud” and “voter intimidation” and to identify research methodology to conduct a comprehensive, nationwide study of these topics.

EAC staff along with two, bipartisan consultants reviewed the existing information available about voting fraud and voter intimidation, including reading articles, books and reports; interviewing subject matter experts; reviewing media reports of fraud and intimidation; and studying reported cases of prosecutions of these types of crimes. It is clear from this review that there is a great deal of debate on the pervasiveness of fraud in elections as well as what constitute the most common acts of fraud or intimidation. There is also no apparent consensus on the meaning of the phrases “voting fraud” and “voter intimidation.” Some think of voting fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal activities.

In order to facilitate future study of these topics, EAC developed a working definition of “election crimes.” “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.

From EAC’s review of existing information on the issue, it was apparent that there have been a number of studies that touched on various topics and regions of the country concerning voting fraud and intimidation, but that there had never been a comprehensive, nationwide study of these topics. EAC will conduct further research to provide a comprehensive, nationwide look at “election crimes.” Future EAC study of this topic will focus on election-related, criminal activity and will not include acts that are exclusively civil wrongs, campaign finance violations, and violations of ethical provisions. EAC will study these concepts by surveying the states’ chief election officials about complaints they received through their administrative complaint processes, election crime investigation units regarding complaints received and those referred to law enforcement, and law enforcement and prosecutorial agencies regarding complaints received and charges filed.
INTRODUCTION

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

PURPOSE AND METHODOLOGY OF THE EAC STUDY

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

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

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

Biographies for Job Serebrov and Tova Wang, the two consultants hired by EAC, are attached as Appendix “1”.
EAC consultants reviewed existing studies, articles, reports and case law on voting fraud and intimidation and conducted interviews with experts in the field. EAC consultants and staff then presented their initial findings to a working group that provided feedback. The working group participants were:

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

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

**J.R. Perez**  
Guadalupe County Elections Administrator, Texas

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

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

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

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

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

*Technical Advisor:*

**Craig Donsanto**  
Director, Election Crimes Branch, U.S. Department of Justice

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

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

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

Reports and Studies of Voting fraud and Intimidation

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

Articles and Reports


• 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."


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

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

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

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

**Interviews with Experts**

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

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<th>Name</th>
<th>Title and Affiliation</th>
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<tr>
<td>Wade Henderson</td>
<td>Executive Director, Leadership Conference for Civil Rights</td>
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<tr>
<td>Wendy Weiser</td>
<td>Deputy Director, Democracy Program, The Brennan Center</td>
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<tr>
<td>William Groth</td>
<td>Attorney for the plaintiffs in the Indiana voter identification litigation</td>
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<td>Lori Minnite</td>
<td>Barnard College, Columbia University</td>
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<tr>
<td>Neil Bradley</td>
<td>ACLU Voting Rights Project</td>
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<td>Pat Rogers</td>
<td>Attorney, New Mexico</td>
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<tr>
<td>Nina Perales</td>
<td>Counsel, Mexican American Legal Defense and Education Fund</td>
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<td>Rebecca Vigil-Giron</td>
<td>Secretary of State, New Mexico</td>
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<td>Sarah Ball Johnson</td>
<td>Executive Director, State Board of Elections, Kentucky</td>
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<tr>
<td>Stephen Ansolobohere</td>
<td>Massachusetts Institute of Technology</td>
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<tr>
<td>Chandler Davidson</td>
<td>Rice University</td>
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These interviews in large part confirmed the conclusions that were gleaned from the articles, reports and books that were analyzed. For example, the interviewees largely agreed that absentee balloting is subject to the greatest proportion of fraudulent acts, followed by vote buying and voter registration fraud. They similarly pointed to voter registration drives by nongovernmental groups as a source of fraud, particularly when the workers are paid per registration. Many asserted that impersonation of voters is probably the least frequent type of fraud because it is the most likely type of fraud to be discovered, there are stiff penalties associated with this type of fraud, and it is an inefficient method of influencing an election.

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

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

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

Case Law and Statutes

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

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

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

Media Reports

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

- absentee ballot fraud,
- voter registration fraud,
- voter intimidation and suppression,
- deceased voters on voter registration list and/or voting,
- multiple voting,
- felons voting,
DRAFT – DO NOT DISTRIBUTE

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

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

DEFINITION OF ELECTION CRIMES

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

Current Terminology

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

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


“Voting” is the act of casting votes to decide an issue or contest. Black’s Law Dictionary, Eighth Edition, p. 1608. Using these terms to form a definition of “voting fraud,” it means fraudulent or deceptive acts committed to influence the act of voting.
Thus, a voter who intentionally impersonates another registered voter and attempts to vote for that person would be committing "voting fraud." Similarly, a person who knowingly provides false information to a voter about the location of the voter's polling place commits fraud on the voter.

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

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

New Terminology

The goal of this study was to develop a common definition of what is generically referred to as "voting fraud" and "voter intimidation" that would serve as the basis for a future, comprehensive study of the existence of these problems. Because the current terminology has such a variety of applications and meanings, "voting fraud" and "voter intimidation" can be read to encompass almost any bad act associated with an election. Such broad terminology is not useful in setting the boundaries of a future study. A definition must set parameters for future study by applying limitations on what is included in the concepts to be studied. The current terminology applies no such limitations.

Thus, EAC has adopted the use of the phrase "election crimes" to limit the scope of its future study. This term captures all crimes related to the voter registration and voting processes and excludes civil wrongs and non-election related crimes. EAC adopted this definition because it better represents the spectrum of activities that we are able to and desire to study. In addition, we recognize that the resources, both financial and human capital, needed to study all "voting fraud" and "voter intimidation," including criminal acts, civil actions, as well as allegations of voter suppression through the use of legal election processes are well beyond the resources available to EAC. Finally, by limiting this definition to criminal acts, EAC can focus its study on a set of more readily measurable data. Criminal behavior is readily defined through state and federal statutes and is prosecuted by government agencies. This is not the case with civil matters. Civil actions can be prosecuted by individuals and/or government entities. Furthermore, what constitutes civil action is far less defined, subject to change, and can vary from case to case.
case. A more complete discussion of the concept of "election crimes" follows along with a list of excluded actions.

The Definition of an Election Crime for Purposes of this Study

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

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

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

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

Acts of Deception

- Knowingly causing to be mailed or distributed, or knowingly mailing or distributing, literature that includes false information about the voter's precinct or polling place, the date and time of the election or a candidate;
- Possessing an official ballot outside the voting location, unless the person is an election official or other person authorized by law or local ordinance to possess a ballot outside of the polling location;
- Making or knowingly possessing a counterfeit of an official election ballot;
- Signing a name other than his/her own to a petition proposing an initiative, referendum, recall, or nomination of a candidate for office;
- Knowingly signing more than once for the proposition, question, or candidate in one election;
- Signing a petition proposing an initiative or referendum when the signer is not a qualified voter.
- Voting or attempting to vote in the name of another person;
- Voting or attempting to vote more than once during the same election;
O 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;

O Registering to vote without being entitled to register;

O Knowingly making a materially false statement on an application for voter registration or re-registration; and

O 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

O 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;

O Knowingly paying, offering to pay, or causing to be paid money or other thing of value to a person to vote or refrain from voting for a candidate or for or against an election proposition or question;

O Knowingly soliciting or encouraging a person who is not qualified to vote in an election;

O Knowingly challenging a person’s right to vote without probable cause or on fraudulent grounds, or engaging in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voter from voting or to delay the process of voting;

O 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;

O Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for signing or refraining from signing a petition proposing an initiative;

O Inducing or attempting to induce an election official to fail in the official’s duty by force, threat, intimidation, or offers of reward;

O 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

O Soliciting, accepting, or agreeing to accept money or other thing of value in exchange for registering to vote.

Acts of Damage or Destruction

O Destroying completed voter registration applications;

O Removing or destroying any of the supplies or other conveniences placed in the voting booths or compartments;

O Removing, tearing down, or defacing election materials, instructions or ballots;
DRAFT – DO NOT DISTRIBUTE

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

**Failure or Refusal to Act**

- Intentionally failing to perform an election duty, or knowingly committing an unauthorized act with the intent to effect the election;
- Knowingly permitting, making, or attempting to make a false count of election returns;
- Intentionally concealing, withholding, or destroying election returns or attempts to do so;
- Marking a ballot by folding or physically altering the ballot so as to recognize the ballot at a later time;
- Attempting to learn or actually and unlawfully learning how a voter marked a ballot;
- Distributing or attempting to distribute election material knowing it to be fraudulent;
- Knowingly refusing to register a person who is entitled to register under the rules of that jurisdiction;
- Knowingly removing the eligibility status of a voter who is eligible to vote; and
- Knowingly refusing to allow an eligible voter to cast his/her ballot.

**What is not an Election Crime for Purposes of this Study**

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

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

Recommendation 1: Conduct More Interviews

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

Recommendation 2: Follow Up on Media Research

The media search conducted for this phase of the research was based on a list of search terms agreed upon by EAC consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contained allegations of fraud or intimidation. Similarly, some of the articles contained information about investigations into such activities or even charges brought. Additional media research should be conducted to determine what, if any, resolutions or further activity there was in each case.

Recommendation 3: Follow Up on Allegations Found in Literature Review

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

Recommendation 4: Review Complaints Filed With “MyVote1” Voter Hotline

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

Further research should be conducted using the MyVote1 data with the cooperation of the project leaders. While perhaps not a fully scientific survey given the self-selection of the callers, the information regarding 56,000 complaints may provide insight into the problems voters may have experienced, especially issues regarding intimidation or suppression.
Recommendation 5: Further Review of Complaints Filed With U.S. Department of Justice

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

Recommendation 6: Review Reports Filed By District Election Officers

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

Recommendation 7: Attend Ballot Access and Voting Integrity Symposium

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

Recommendation 8: Conduct Statistical Research

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

- Ten locations that are geographically and demographically diverse where there have been many reports of fraud and/or intimidation;
- Ten locations (geographically and demographically diverse) that have not had many reports of fraud and/or intimidation;
EAC should also conduct a survey of elections officials, district attorneys, and district election officers. The survey sample should be large in order to be able to get the necessary subsets, and it must include a random set of counties where there have and have not been a large number of allegations.

**Recommendation 9: Explore Improvements to Federal Law**

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

**Recommendation 10: Use Observers to Collect Data on Election Day**

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

**Recommendation 11: Study Absentee Ballot Fraud**

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

**Recommendation 12: Use Risk Analysis Methodology to Study Fraud**

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

**Recommendation 13: Conduct Research Using Database Comparisons**

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

**Recommendation 14: Conduct a Study of Deceptive Practices**

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

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

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

**Recommendation 16: Examine the Use of Special Election Courts**

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

**Accepted Recommendations**

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

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

Some of the recommendations are beyond the scope of the current study. While election courts may be a reasonable conclusion to reach after we determine the volume and type of election crimes being reported, charged or prosecuted, it is premature to embark on an analysis of that solution without more information. Last, some of the recommendations do not support a comprehensive study of election crimes. While a risk analysis might be appropriate in a smaller scale study, EAC desires to conduct a broader survey to avoid the existing problem of anecdotal and limited scope of information.
In order to further its goal of developing a comprehensive data set regarding election crimes and the laws and procedures used to identify and prosecute them, EAC intends to engage in the following research activities in studying the existence and enforcement of election crimes:

**Survey Chief Election Officers Regarding Administrative Complaints**

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

In order to determine how many of these complaints allege the commission of election crimes, EAC will survey the states’ chief election officers regarding complaints that have been filed, investigated, and resolved since January 1, 2004. EAC will use the definition of election crimes provided above in this report in its survey so that data regarding a uniform set of offenses 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. 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 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.
APPENDIX 1 – BIOGRAPHIES OF JOB SEREBROV AND TOVA WANG


APPENDIX 2 – SUMMARIES OF BOOKS, REPORTS AND ARTICLES


APPENDIX 3 – SUMMARIES OF INTERVIEWS


APPENDIX 4 – SUMMARIES OF CASES REVIEWED

EXECUTIVE SUMMARY

The Help America Vote Act of 2002 (HAVA) requires the U.S. Election Assistance Commission (EAC) to study a host of topics, including “voting fraud” and “voter intimidation.” In 2005, EAC embarked on an initial review of the existing knowledge of voting fraud and voter intimidation. The goal of that study was to develop a working definition of “voting fraud” and “voter intimidation” and to identify research methodology to conduct a comprehensive, nationwide study of these topics.

EAC staff along with two, bipartisan consultants reviewed the existing information available about voting fraud and voter intimidation, including reading articles, books and reports; interviewing subject matter experts; reviewing media reports of fraud and intimidation; and studying reported cases of prosecutions of these types of crimes. It is clear from this review that there is a great deal of debate on the pervasiveness of fraud in elections as well as what constitute the most common acts of fraud or intimidation. There is also no apparent consensus on the meaning of the phrases “voting fraud” and “voter intimidation.” Some think of voting fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal activities.

In order to facilitate future study of these topics, EAC developed a working definition of “election crimes.” “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.

From EAC’s review of existing information on the issue, it was apparent that there have been a number of studies that touched on various topics and regions of the country concerning voting fraud and intimidation, but that there had never been a comprehensive, nationwide study of these topics. EAC will conduct further research to provide a comprehensive, nationwide look at “election crimes.” Future EAC study of this topic will focus on election-related, criminal activity and will not include acts that are exclusively civil wrongs, campaign finance violations, and violations of ethical laws and regulations. EAC will study these concepts by surveying the states’ chief election officials about complaints they received, election crime investigation units regarding complaints received and those referred to law enforcement, and law enforcement and prosecutorial agencies regarding complaints received, charges filed, and final disposition of each complaint.
INTRODUCTION

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

PURPOSE AND METHODOLOGY OF THE EAC STUDY

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

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

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

1 Biographies for Job Serebrov and Tova Wang, the two consultants hired by EAC, are attached as Appendix "I".
of voting fraud and voter intimidation; (2) developing a uniform definition of voting fraud and voter intimidation; and (3) proposing recommended strategies for researching this subject.

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

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

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

J.R. Perez
Guadalupe County Elections Administrator, Texas

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

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

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

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

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

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

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

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

EXISTING INFORMATION ABOUT FRAUD AND INTIMIDATION

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

Reports and Studies of Voting fraud and Intimidation

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

Articles and Reports


• 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."


Books


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

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

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

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

Interviews with Experts

In addition to reviewing prior studies and reports on voting fraud and intimidation, EAC consultants interviewed a number of persons regarding their experiences and research of voting fraud and voter intimidation. Persons interviewed included:
Wade Henderson  
Executive Director,  
Leadership Conference for Civil Rights

Douglas Webber  
Assistant Attorney General, Indiana

Wendy Weiser  
Deputy Director,  
Democracy Program, The Brennan Center

Heather Dawn Thompson  
Director of Government Relations,  
National Congress of American Indians

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

Jason Torchinsky  
Assistant General Counsel,  
American Center for Voting Rights

Lori Minnite  
Barnard College, Columbia University

Robin DeJarnette  
Executive Director,  
American Center for Voting Rights

Neil Bradley  
ACLU Voting Rights Project

Harry Van Sickle  
Commissioner of Elections,  
Pennsylvania

Pat Rogers  
Attorney, New Mexico

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

Nina Perales  
Counsel,  
Mexican American Legal Defense and Education Fund

Joseph Sandler  
Counsel  
Democratic National Committee

Rebecca Vigil-Giron  
Secretary of State, New Mexico

John Ravitz  
Executive Director  
New York City Board of Elections

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

Sharon Priest  
Former Secretary of State, Arkansas

Stephen Ansolobehere  
Massachusetts Institute of Technology

Kevin Kennedy  
Executive Director  
State Board of Elections, Wisconsin

Chandler Davidson  
Rice University

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

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

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

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

This information is property of the U.S. Election Assistance Commission, 1225 New York Avenue, NW, Suite 1100, Washington, DC 20005 (202) 566-3100 (p), (202) 566-3127 (f), www.eac.gov
Case Law and Statutes

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

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

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

Media Reports

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

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

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

**DEFINITION OF ELECTION CRIMES**

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

**Current Terminology**

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

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


“Voting” is the act of casting votes to decide an issue or contest. Black’s Law Dictionary, Eighth Edition, p. 1608. Using these terms to form a definition of “voting fraud,” it means fraudulent or deceptive acts committed to influence the act of voting. Thus, a voter who intentionally impersonates another registered voter and attempts to vote for that person would be committing “voting fraud.” Similarly, a person who knowingly provides false information to a voter about the location of the voter’s polling place commits fraud on the voter.

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

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

New Terminology

The goal of this study was to develop a common definition of what is generically referred to as “voting fraud” and “voter intimidation” that would serve as the basis for a future, comprehensive study of the existence of these problems. Because the current terminology has such a variety of applications and meanings, “voting fraud” and “voter intimidation” can be read to encompass almost any bad act associated with an election. Such broad terminology is not useful in setting the boundaries of a future study. A definition must set parameters for future study by applying limitations on what is included in the concepts to be studied. The current terminology applies no such limitations.

Thus, EAC has adopted the use of the phrase “election crimes” to limit the scope of its future study. This term captures all crimes related to the voter registration and voting processes and excludes civil wrongs and non-election related crimes. EAC adopted this definition because it better represents the spectrum of activities that we are able to and desire to study. In addition, EAC recognizes that the resources, both financial and human capital, needed to study all “voting fraud” and “voter intimidation,” including criminal acts, civil actions, as well as allegations of voter suppression through the use of legal election processes are well beyond the resources available to EAC. Finally, by limiting this definition to criminal acts, EAC can focus its study on a set of more readily measurable data. Criminal behavior is readily defined through state and federal statutes and is prosecuted by government agencies. This is not the case with civil matters. Civil actions can be prosecuted by individuals and/or government entities. Furthermore, what constitutes civil action is far less defined, subject to change, and can vary from case to case. A more complete discussion of the concept of “election crimes” follows along with a list of excluded actions.
The Definition of an Election Crime for Purposes of this Study

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

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

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

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

Acts of Deception

- Knowingly causing to be mailed or distributed, or knowingly mailing or distributing, literature that includes false information about the voter's precinct or polling place, the date and time of the election or a candidate;
- Possessing an official ballot outside the voting location, unless the person is an election official or other person authorized by law or local ordinance to possess a ballot outside of the polling location;
- Making or knowingly possessing a counterfeit of an official election ballot;
- Signing a name other than his/her own to a petition proposing an initiative, referendum, recall, or nomination of a candidate for office;
- Knowingly signing more than once for the proposition, question, or candidate in one election;
- Signing a petition proposing an initiative or referendum when the signer is not a qualified voter.
- Voting or attempting to vote in the name of another person;
- Voting or attempting to vote more than once during the same election;
Intentionally making a false affidavit, swearing falsely, or falsely affirming under an oath required by a statute regarding their voting status, including when registering to vote, requesting an absentee ballot or presenting to vote in person;

Registering to vote without being entitled to register;

Knowingly making a materially false statement on an application for voter registration or re-registration; and

Voting or attempting to vote in an election after being disqualified or when the person knows that he/she is not eligible to vote.

Acts of Coercion

Using, threatening to use, or causing to be used force, coercion, violence, restraint, or inflicting, threatening to inflict, or causing to be inflicted damage harm, or loss, upon or against another person to induce or compel that person to vote or refrain from voting or to register or refrain from registering to vote;

Knowingly paying, offering to pay, or causing to be paid money or other thing of value to a person to vote or refrain from voting for a candidate or for or against an election proposition or question;

Knowingly soliciting or encouraging a person who is not qualified to vote in an election;

Knowingly challenging a person’s right to vote without probable cause or on fraudulent grounds, or engaging in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voter from voting or to delay the process of voting;

As an employer, attempting by coercion, intimidation, threats to discharge or to lessen the remuneration of an employee, to influence his/her vote in any election, or who requires or demands an examination or inspection by himself/herself or another of an employee’s ballot;

Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for signing or refraining from signing a petition proposing an initiative;

Inducing or attempting to induce an election official to fail in the official’s duty by force, threat, intimidation, or offers of reward;

Directly or through any other person advancing, paying, soliciting, or receiving or causing to be advanced, paid, solicited, or received, any money or other valuable consideration to or for the use of any person in order to induce a person not to become or to withdraw as a candidate for public office; and

Soliciting, accepting, or agreeing to accept money or other thing of value in exchange for registering to vote.
Acts of Damage or Destruction

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

Failure or Refusal to Act

- Intentionally failing to perform an election duty, or knowingly committing an unauthorized act with the intent to effect the election;
- Knowingly permitting, making, or attempting to make a false count of election returns;
- Intentionally concealing, withholding, or destroying election returns or attempts to do so;
- Marking a ballot by folding or physically altering the ballot so as to recognize the ballot at a later time;
- Attempting to learn or actually and unlawfully learning how a voter marked a ballot;
- Distributing or attempting to distribute election material knowing it to be fraudulent;
- Knowingly refusing to register a person who is entitled to register under the rules of that jurisdiction;
- Knowingly removing the eligibility status of a voter who is eligible to vote; and
- Knowingly refusing to allow an eligible voter to cast his/her ballot.

What is not an Election Crime for Purposes of this Study

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

RECOMMENDATIONS ON HOW TO STUDY ELECTION CRIMES

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

Recommendation 1: Conduct More Interviews

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

Recommendation 2: Follow Up on Media Research

The media search conducted for this phase of the research was based on a list of search terms agreed upon by EAC consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contained allegations of fraud or intimidation. Similarly, some of the articles contained information about investigations into such activities or even charges brought. Additional media research should be conducted to determine what, if any, resolutions or further activity there was in each case.

Recommendation 3: Follow Up on Allegations Found in Literature Review

Many of the allegations made in the reports and books that were analyzed and summarized by EAC consultants were not substantiated and were 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 identified in the literature review.
Recommendation 4: Review Complaints Filed With “MyVote1” Voter Hotline

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

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

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

According to a recent GAO report, the Voting Section of the Civil Rights Division of the Department of Justice has a variety of ways it tracks complaints of voter intimidation. Attempts should be made to obtain relevant data, including the telephone logs of complaints and information from the Interactive Case Management (ICM) system. Further research should also include a review and analysis of the Department of Justice/Office of Personnel Management 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 (DEO) to the Public Integrity Section of the Criminal Division of the Department of Justice. The DEOs play a central role in receiving reports of voting fraud and investigating and pursuing them. Their reports back to the Department would likely provide tremendous insight into what actually transpired during the last several elections. Where necessary, information could be redacted or made confidential.

Recommendation 7: Attend Ballot Access and Voting Integrity Symposium

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

Recommendation 8: Conduct Statistical Research

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

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

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

Recommendation 9: Explore Improvements to Federal Law

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

Recommendation 10: Use Observers to Collect Data on Election Day

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

Recommendation 11: Study Absentee Ballot Fraud

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

**Recommendation 12: Use Risk Analysis Methodology to Study Fraud**

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

**Recommendation 13: Conduct Research Using Database Comparisons**

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

**Recommendation 14: Conduct a Study of Deceptive Practices**

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

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

EAC should study the extent to which states are utilizing the administrative complaint procedure mandated by HAVA. In addition, 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 that could be investigated to determine 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 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 EAC 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 EAC determines the volume and type of election crimes being reported, charged or prosecuted, it is premature to embark on an analysis of that solution without more information. Last, some of the recommendations do not support a comprehensive study of election crimes. While a risk analysis might be appropriate in a smaller scale study, EAC desires to conduct a broader survey to avoid the existing problem of anecdotal and limited scope of information.

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

Survey Chief Election Officers Regarding Administrative Complaints

Likely sources of complaints concerning election crimes are the administrative complaint processes that states were required to establish to comply with Section 402 of HAVA. These complaint procedures were required to be in place prior to a state receiving any funds under HAVA. Citizens are permitted to file complaints alleging violations of HAVA Title III provisions under these procedures with the state’s chief election official. Those complaints must be resolved within 60 days. The procedures also allow for alternative dispute resolution of claims. Some states have expanded this process to include complaints of other violations, such as election crimes.
In order to determine how many of these complaints allege the commission of election crimes, EAC will survey the states' chief election officers regarding complaints that have been filed, investigated, and resolved since January 1, 2004. In addition, we will seek information about any complaints of fraud or intimidation filed with the election official outside of the administrative complaint procedure. EAC will use the definition of election crimes provided above in this report in its survey so that data regarding a uniform set of offenses will be collected.

**Survey State Election Crime Investigation Units Regarding Complaints Filed and Referred**

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

EAC will use a survey instrument to gather information on the numbers and types of complaints that have been received by, investigated, and ultimately referred to local or state law enforcement by election crime investigation units since January 1, 2004. These data will help EAC 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 for the effort.

CONCLUSION

Election crimes are nothing new to our election process. The pervasiveness of these crimes and the fervor with which they have been enforced has created a great deal of debate among academics, election officials, and voters. Past studies of these issues have been limited in scope and some have been riddled with bias. These are issues that deserve comprehensive and nonpartisan review. EAC, through its clearinghouse role, will collect and analyze data on election crimes throughout the country. These data not only will tell us what types of election crimes are committed and where fraud exists, but also inform us of what factors impact the existence, prevention, and prosecution of election crimes.
APPENDIX 1 – BIOGRAPHIES OF JOB SEREBROV AND TOVA WANG


APPENDIX 2 – SUMMARIES OF BOOKS, REPORTS AND ARTICLES


APPENDIX 3 – SUMMARIES OF INTERVIEWS


APPENDIX 4 – SUMMARIES OF CASES REVIEWED

EXECUTIVE SUMMARY

The Help America Vote Act of 2002 (HAVA) requires the U.S. Election Assistance Commission (EAC) to study a host of topics, including “voting fraud” and “voter intimidation.” In 2005, EAC embarked on an initial review of the existing knowledge of voting fraud and voter intimidation. The goal of that study was to develop a working definition of “voting fraud” and “voter intimidation” and to identify research methodology to conduct a comprehensive, nationwide study of these topics.

EAC staff along with two, bipartisan consultants reviewed the existing information available about voting fraud and voter intimidation, including reading articles, books and reports; interviewing subject matter experts; reviewing media reports of fraud and intimidation; and studying reported cases of prosecutions of these types of crimes. It is clear from this review that there is a great deal of debate on the pervasiveness of fraud in elections as well as what constitute the most common acts of fraud or intimidation. There is also no apparent consensus on the meaning of the phrases “voting fraud” and “voter intimidation.” Some think of voting fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal activities.

In order to facilitate future study of these topics, EAC developed a working definition of “election crimes.” “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.

From EAC’s review of existing information on the issue, it was apparent that there have been a number of studies that touched on various topics and regions of the country concerning voting fraud and intimidation, but that there had never been a comprehensive, nationwide study of these topics. EAC will conduct further research to provide a comprehensive, nationwide look at “election crimes.” Future EAC study of this topic will focus on election-related, criminal activity and will not include acts that are exclusively civil wrongs, campaign finance violations, and violations of ethical laws and regulations. EAC will study these concepts by surveying the states’ chief election officials about complaints they received, election crime investigation units regarding complaints received and those referred to law enforcement, and law enforcement and prosecutorial agencies regarding complaints received, charges filed, and final disposition of each complaint.
INTRODUCTION

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

PURPOSE AND METHODOLOGY OF THE EAC STUDY

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

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

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

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

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of voting fraud and voter intimidation; (2) developing a uniform definition of voting fraud and voter intimidation; and (3) proposing recommended strategies for researching this subject.

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

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

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

**J.R. Perez**  
Guadalupe County Elections Administrator, Texas

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

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

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

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

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

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

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

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

EXISTING INFORMATION ABOUT FRAUD AND INTIMIDATION

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

Reports and Studies of Voting Fraud and Intimidation

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

**Articles and Reports**


• 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."


Books


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

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

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

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

**Interviews with Experts**

In addition to reviewing prior studies and reports on voting fraud and intimidation, EAC consultants interviewed a number of persons regarding their experiences and research of voting fraud and voter intimidation. Persons interviewed included:
These interviews in large part confirmed the conclusions that were gleaned from the articles, reports and books that were analyzed. For example, the interviewees largely agreed that absentee balloting is subject to the greatest proportion of fraudulent acts, followed by vote buying and voter registration fraud. They similarly pointed to voter registration drives by nongovernmental groups as a source of fraud, particularly when the workers are paid per registration. Many asserted that impersonation of voters is probably the least frequent type of fraud because it is the most likely type of fraud to be discovered, there are stiff penalties associated with this type of fraud, and it is an inefficient method of influencing an election.

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

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

A summary of the each of the interviews conducted is attached as Appendix “3”.
Case Law and Statutes

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

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

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

Media Reports

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

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

While these reports showed that there were a large number of allegations of voting fraud and voter intimidation, they provided much less information as to whether the allegations were ever formalized as complaints to law enforcement, whether charges were filed, whether prosecutions ensued, and whether any convictions were made. The media reports were enlightening regarding the pervasiveness of complaints of fraud and intimidation throughout the country, the correlation between fraud allegations and the perception that the state was a "battleground" or "swing" state, and the fact that there were reports of almost all types of voting fraud and voter intimidation. However, these
DEFINITION OF ELECTION CRIMES

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

Current Terminology

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

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


“Voting” is the act of casting votes to decide an issue or contest. Black’s Law Dictionary, Eighth Edition, p. 1608. Using these terms to form a definition of “voting fraud,” it means fraudulent or deceptive acts committed to influence the act of voting. Thus, a voter who intentionally impersonates another registered voter and attempts to vote for that person would be committing “voting fraud.” Similarly, a person who knowingly provides false information to a voter about the location of the voter’s polling place commits fraud on the voter.

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

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

**New Terminology**

The goal of this study was to develop a common definition of what is generically referred to as "voting fraud" and "voter intimidation" that would serve as the basis for a future, comprehensive study of the existence of these problems. Because the current terminology has such a variety of applications and meanings, "voting fraud" and "voter intimidation" can be read to encompass almost any bad act associated with an election. Such broad terminology is not useful in setting the boundaries of a future study. A definition must set parameters for future study by applying limitations on what is included in the concepts to be studied. The current terminology applies no such limitations.

Thus, EAC has adopted the use of the phrase "election crimes" to limit the scope of its future study. This term captures all crimes related to the voter registration and voting processes and excludes civil wrongs and non-election related crimes. EAC adopted this definition because it better represents the spectrum of activities that we are able to and desire to study. In addition, EAC recognizes that the resources, both financial and human capital, needed to study all "voting fraud" and "voter intimidation," including criminal acts, civil actions, as well as allegations of voter suppression through the use of legal election processes are well beyond the resources available to EAC. Finally, by limiting this definition to criminal acts, EAC can focus its study on a set of more readily measurable data. Criminal behavior is readily defined through state and federal statutes and is prosecuted by government agencies. This is not the case with civil matters. Civil actions can be prosecuted by individuals and/or government entities. Furthermore, what constitutes civil action is far less defined, subject to change, and can vary from case to case. A more complete discussion of the concept of "election crimes" follows along with a list of excluded actions.
The Definition of an Election Crime for Purposes of this Study

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

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

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

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

**Acts of Deception**

- Knowingly causing to be mailed or distributed, or knowingly mailing or distributing, literature that includes false information about the voter’s precinct or polling place, the date and time of the election or a candidate;
- Possessing an official ballot outside the voting location, unless the person is an election official or other person authorized by law or local ordinance to possess a ballot outside of the polling location;
- Making or knowingly possessing a counterfeit of an official election ballot;
- Signing a name other than his/her own to a petition proposing an initiative, referendum, recall, or nomination of a candidate for office;
- Knowingly signing more than once for the proposition, question, or candidate in one election;
- Signing a petition proposing an initiative or referendum when the signer is not a qualified voter.
- Voting or attempting to vote in the name of another person;
- Voting or attempting to vote more than once during the same election;
o 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;

o Registering to vote without being entitled to register;

o Knowingly making a materially false statement on an application for voter registration or re-registration; and

o 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

o 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;

o Knowingly paying, offering to pay, or causing to be paid money or other thing of value to a person to vote or refrain from voting for a candidate or for or against an election proposition or question;

o Knowingly soliciting or encouraging a person who is not qualified to vote in an election;

o Knowingly challenging a person's right to vote without probable cause or on fraudulent grounds, or engaging in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voter from voting or to delay the process of voting;

o 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;

o Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for signing or refraining from signing a petition proposing an initiative;

o Inducing or attempting to induce an election official to fail in the official's duty by force, threat, intimidation, or offers of reward;

o 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

o Soliciting, accepting, or agreeing to accept money or other thing of value in exchange for registering to vote.
Acts of Damage or Destruction

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

Failure or Refusal to Act

- Intentionally failing to perform an election duty, or knowingly committing an unauthorized act with the intent to effect the election;
- Knowingly permitting, making, or attempting to make a false count of election returns;
- Intentionally concealing, withholding, or destroying election returns or attempts to do so;
- Marking a ballot by folding or physically altering the ballot so as to recognize the ballot at a later time;
- Attempting to learn or actually and unlawfully learning how a voter marked a ballot;
- Distributing or attempting to distribute election material knowing it to be fraudulent;
- Knowingly refusing to register a person who is entitled to register under the rules of that jurisdiction;
- Knowingly removing the eligibility status of a voter who is eligible to vote; and
- Knowingly refusing to allow an eligible voter to cast his/her ballot.

What is not an Election Crime for Purposes of this Study

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

RECOMMENDATIONS ON HOW TO STUDY ELECTION CRIMES

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

Recommendation 1: Conduct More Interviews

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

Recommendation 2: Follow Up on Media Research

The media search conducted for this phase of the research was based on a list of search terms agreed upon by EAC consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contained allegations of fraud or intimidation. Similarly, some of the articles contained information about investigations into such activities or even charges brought. Additional media research should be conducted to determine what, if any, resolutions or further activity there was in each case.

Recommendation 3: Follow Up on Allegations Found in Literature Review

Many of the allegations made in the reports and books that were analyzed and summarized by EAC consultants were not substantiated and were 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 identified in the literature review.
Recommendation 4: Review Complaints Filed With "MyVote1" Voter Hotline

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

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

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

According to a recent GAO report, the Voting Section of the Civil Rights Division of the Department of Justice has a variety of ways it tracks complaints of voter intimidation. Attempts should be made to obtain relevant data, including the telephone logs of complaints and information from the Interactive Case Management (ICM) system. Further research should also include a review and analysis of the Department of Justice/Office of Personnel Management 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 (DEO) to the Public Integrity Section of the Criminal Division of the Department of Justice. The DEOs play a central role in receiving reports of voting fraud and investigating and pursuing them. Their reports back to the Department would likely provide tremendous insight into what actually transpired during the last several elections. Where necessary, information could be redacted or made confidential.

Recommendation 7: Attend Ballot Access and Voting Integrity Symposium

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

**Recommendation 8: Conduct Statistical Research**

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

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

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

**Recommendation 9: Explore Improvements to Federal Law**

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

**Recommendation 10: Use Observers to Collect Data on Election Day**

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

**Recommendation 11: Study Absentee Ballot Fraud**

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

**Recommendation 12: Use Risk Analysis Methodology to Study Fraud**

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

**Recommendation 13: Conduct Research Using Database Comparisons**

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

**Recommendation 14: Conduct a Study of Deceptive Practices**

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

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

EAC should study the extent to which states are utilizing the administrative complaint procedure mandated by HAVA. In addition, 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 that could be investigated to determine 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 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 EAC 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 EAC determines the volume and type of election crimes being reported, charged or prosecuted, it is premature to embark on an analysis of that solution without more information. Last, some of the recommendations do not support a comprehensive study of election crimes. While a risk analysis might be appropriate in a smaller scale study, EAC desires to conduct a broader survey to avoid the existing problem of anecdotal and limited scope of information.

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

Survey Chief Election Officers Regarding Administrative Complaints

Likely sources of complaints concerning election crimes are the administrative complaint processes that states were required to establish to comply with Section 402 of HAVA. These complaint procedures were required to be in place prior to a state receiving any funds under HAVA. Citizens are permitted to file complaints alleging violations of HAVA Title III provisions under these procedures with the state’s chief election official. Those complaints must be resolved within 60 days. The procedures also allow for alternative dispute resolution of claims. Some states have expanded this process to include complaints of other violations, such as election crimes.
In order to determine how many of these complaints allege the commission of election crimes, EAC will survey the states’ chief election officers regarding complaints that have been filed, investigated, and resolved since January 1, 2004. In addition, we will seek information about any complaints of fraud or intimidation filed with the election official outside of the administrative complaint procedure. EAC will use the definition of election crimes provided above in this report in its survey so that data regarding a uniform set of offenses will be collected.

Survey State Election Crime Investigation Units Regarding Complaints Filed and Referred

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

EAC will use a survey instrument to gather information on the numbers and types of complaints that have been received by, investigated, and ultimately referred to local or state law enforcement by election crime investigation units since January 1, 2004. These data will help EAC 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 for the effort.

CONCLUSION

Election crimes are nothing new to our election process. The pervasiveness of these crimes and the fervor with which they have been enforced has created a great deal of debate among academics, election officials, and voters. Past studies of these issues have been limited in scope and some have been riddled with bias. These are issues that deserve comprehensive and nonpartisan review. EAC, through its clearinghouse role, will collect and analyze data on election crimes throughout the country. These data not only will tell us what types of election crimes are committed and where fraud exists, but also inform us of what factors impact the existence, prevention, and prosecution of election crimes.
APPENDIX 1 – BIOGRAPHIES OF JOB SEREBROV AND TOVA WANG

APPENDIX 2 – SUMMARIES OF BOOKS, REPORTS AND ARTICLES

APPENDIX 3 – SUMMARIES OF INTERVIEWS

APPENDIX 4 – SUMMARIES OF CASES REVIEWED
Appendix “1”
Biographies of Job Serebrov and Tova Wang
LEGAL PRACTICE:


Associate attorney, The Nixon Law Firm, 2340 Green Acres Road, Ste. 12, Fayetteville, Arkansas 72703 (December 1998 - April 1999)

Areas of legal practice:
- Federal and state appeals and trials
- Election law (state and FEC)
- Legislative drafting and review
- Legal research and writing
- Federal and state Constitutional law

BAR ADMISSIONS:

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

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

- Graduate Certificate, Election Governance, Griffith University, Queensland, Australia (2003)
- Master of Laws, University of Arkansas School of Law, Fayetteville, Arkansas (1993)
- Juris Doctorate, Washburn University School of Law, Topeka, Kansas (1984)
- Bachelor of Arts in History, Rutgers University, New Brunswick, New Jersey (1980)

ADMINISTRATIVE EXPERIENCE


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

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

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

OTHER EXPERIENCE:

• Advised on political and economic affairs

Director of International Development, Louisiana State University, 107 Hatcher Hall, Baton Rouge, Louisiana 70803 (February 2000-August 2003)

• Developed, drafted, wrote grants for, and administered international research, training, education, and consulting projects, especially those dealing with democratization issues
• Drafted and negotiated international contractual agreements for research and faculty and student exchange with universities and research centers
• Hired and supervised staff
• Drafted office budget, project budgets, and strategic plans
• Reorganized and expanded the role of the Office of International Development
• Advised the Office of International Programs and individual units on improving public relations; consulted on PR strategies
• Interacted with other LSU departments and officials, U.S. and state government agencies, NGOs, and foreign governments and universities

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

• Reviewed national election code and suggested changes
• Drafted national legislation merging the independent agricultural college into the University of Namibia system
• Drafted national legislation guaranteeing voting rights to agricultural workers

Consultant to various members of the Arkansas General Assembly (1994-1999)

• Advised on constitutionality of proposed legislation
• Drafted legislation

Consultant to the Arkansas Attorney General on redistricting the Court of Appeals (1996-1998)
• Drafted five redistricting bills and maps for the constitutionally required redistricting of the Court of Appeals

Member, Committee on Department of Corrections, Murphy Commission - Restructure of Arkansas Government, Little Rock, Arkansas (1996-1997)
• Reviewed the existing structure of the state Department of Corrections
• Advised on how to streamline the department

REFERENCES:

Judge Morris Arnold
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EDUCATION
NEW YORK UNIVERSITY SCHOOL OF LAW, New York, N.Y.
J.D., May, 1996

BARNARD COLLEGE, COLUMBIA UNIVERSITY, New York, N.Y.
B.A. in Political Science, magna cum laude, May, 1991; GPA: 3.8

EXPERIENCE
THE CENTURY FOUNDATION, New York, N.Y.
Senior Program Officer and Democracy Fellow: March, 2001 – Present
Research, write, and publish reports, provide commentary to national and state press, provide expertise to policymakers, give expert testimony and speak before groups around the country on election reform and voting rights, in addition to other civil liberties issues. Currently serve as the Executive Director of The Century Foundation's Post-2004 Election Reform Working Group, comprised of preeminent election law scholars from across the country. Served as staff person to the National Commission on Federal Election Reform, co-chaired by former Presidents Carter and Ford, of which The Century Foundation was a co-sponsor.

THE KAMBER GROUP, New York, N.Y.
Deputy Director of Public Policy: August, 1998 – March, 2001
Formulated and drafted public policy ideas, provided policy research and analysis, and provided general strategic political consulting services to non-governmental organizations, political campaigns, elected officials and grassroots organizations. Conducted lobbying and public advocacy campaigns.

NEW YORK CITY PUBLIC ADVOCATE, Investigation Into Police Misconduct, New York, N.Y.
Deputy Director and Director of Policy: January, 1999 – July, 2000
Conducted all policy analysis and research, including evaluating programs and policies of the NYPD and police departments across the world. Developed policy proposals, conducted briefings, and wrote reports. Helped manage collection of quantitative and qualitative data, expert interviews, hearings, budgeting and fundraising.

Advised on policy, politics, legislation, and public relations for Reverend Jesse Jackson, the Children's Defense Fund, and the Academy of Political Science.

AMERICAN JOURNAL OF INTERNATIONAL LAW, New York, N.Y.
Assistant to the Editor-in-Chief, Theodor Meron: September, 1995 - May, 1996
Researched, edited and assisted in writing articles and speeches on current issues in international human rights law.

Legal Intern: June - August, 1995
Researched and wrote immigration court decisions in political asylum, deportation and exclusion cases.

CLINTON FOR PRESIDENT CAMPAIGN, New York, N.Y.
Manhattan Field Director: February - July, 1992
Coordinated all campaign field operations in Manhattan. Negotiated the support of elected officials and political
leaders; conducted outreach to community organizations; mobilized and managed activities of 1000 volunteers.

**ACTIVITIES/ASSOCIATIONS**

Member, Election Law Committee, Association of the Bar of the City of New York
Member, State Affairs Committee, Citizens Union of New York
Member, Make Votes Count Committee, Citizens Union of New York
Founding member, American Constitution Society – New York
Appendix "2"
Summaries of Articles, Reports and Books
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 a “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 placed 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.

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.

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 intial,
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.

Response to the Report of the 2005 Commission on Federal Election Reform

By The Brennan Center for Justice at NYU School of Law and Spencer Overton,
Commissioner and Law Professor at George Washington University School of Law

Introduction
On September 19, 2005, the Commission on Federal Election Reform, co-chaired by
former President Jimmy Carter and former Secretary of State James Baker III, issued a
report with recommendations for reforming the administration of U.S. elections. This
Response addresses the main substantive flaws in the Report, refuting in detail its
recommendations that “Real ID” cards be used for voter identification, that Social
Security numbers be spread through interstate databases and on ID cards, and that states
restore voting rights to people convicted of felony convictions only in certain cases and
only after they have completed all the terms of their sentence.

Voter Identification Recommendation
According to the Response, the Report's most troubling recommendation is that states require voters to present a Real ID card or a similar "template" ID as a condition of voting. This recommendation is more onerous than the photo ID proposal rejected by the Commission's predecessor in 2001 and is more restrictive than any ID requirement adopted in any state to date. It would impose substantial — and for some, insurmountable — burdens on the right to vote. This ID requirement purportedly intended to prevent "voter fraud," and yet the Report itself concedes that "[t]here is no evidence of extensive fraud in U.S. elections or of multiple voting" before asserting, without any meaningful support, that "both occur." Not only does the Report fail to justify the creation of stringent identification requirements, but it also 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). Additionally, the Report fails to consider alternative measures to advance its goals that are less restrictive to voters.

The Commission's recommendation that eligible citizens be barred from voting unless they are able to present a souped-up "Real ID" card is a proposal guaranteed to disenfranchise a substantial number of eligible voters. Millions of Americans currently do not have driver's licenses or government-issued photo ID cards. As the 2001 National Commission on Federal Election Reform recognized, research shows that between six and ten percent of voting-age Americans do not have driver's licenses or state-issued non-driver's photo ID. That translates into as many as 20 million eligible voters. Millions more may never get the new Real ID card, which requires substantially more cost and effort. The percentage of Americans without the documentary proof of citizenship necessary to obtain Real IDs is likely to remain high because, as discussed below, the requisite documents are both expensive and burdensome to obtain. 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. While Americans of all backgrounds would be excluded by the Report's ID proposal, the burden would fall disproportionately on the elderly, the disabled, students, the poor, and people of color.

According to the Georgia chapter of the AARP, 36 percent of Georgians over age 75 do not have a driver's license. In Wisconsin, approximately 23 percent of persons aged 65 and older do not have driver's licenses or photo ID, and fewer than 3 percent of students have driver's licenses listing their current address. Across the country, more than 3 million Americans with disabilities do not have a driver's license or other form of state-issued photo ID. Moreover, given the frequency with which Americans move residences, it is likely that a far greater percentage of citizens lack driver's licenses or photo IDs bearing their current addresses. 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.

As the Report recognizes, government-issued photo identification costs money. Thus, 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. This safeguard, however, does not address some of the most significant predicate costs in obtaining photo identification – costs incurred whether or not the card itself is free. First, 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. A certified copy of a birth certificate costs from $10.00 to $45.00, depending on the state; a passport costs $85.00; and certified naturalization papers cost $19.95. 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. These are not insignificant burdens.

Strong empirical evidence also shows that photo ID requirements disproportionately burden 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—will also have to make an additional visit to the motor vehicle department in order to obtain the documentation necessary to vote. 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. Not only are minority voters less likely to possess the requisite ID, but they are also more likely than white voters to be asked to furnish ID at the polls. As the Task Force Report of the prior Commission found, identification requirements create the opportunity for selective enforcement—either innocuous or invidious—when poll workers request photo ID only from voters unknown to them. This discretion has often led to special scrutiny of minority voters at the polls.

Faced with overwhelming evidence that Real IDs are both costly and difficult to obtain, the Report suggests that Real ID cards be made “easily available and issued free of charge.” While this is a laudable goal, the evidence suggests that it will not be attained. First, no State currently issues photo IDs free of charge to all voters. And even if the card itself were free, the Real ID would not be “free of charge” unless all documents required to obtain the Real ID were also “free of charge.” In addition, no State makes photo IDs “easily available” to all its citizens.

The 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. Indeed, the evidence that does exist shows that this sort of
fraud occurs only at an extremely low rate. The Report’s 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. As the Report concedes, there is “no evidence of extensive fraud in U.S. elections” of the sort that can be cured by photo identification requirements. This admission – and not the hypothetical specter of fraud represented in the remainder of the Report – is amply borne out by independent research.

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.

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. Existing law has already accounted for this need – with proper safeguards for individual voters – and needs only adequate implementation. If inflated rolls create the specter of potential fraud, for example, the problem will be addressed by proper execution of the registration list related provisions of NVRA and HAVA, which are designed in part to remove ineligible voters from the rolls. 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.

**Recommendation on Database Information Sharing Across States**
It is unquestionably beneficial to account for voters who move across state lines. Nonetheless, the Report fails to consider the 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. The Report’s recommendation creates substantial privacy and security hazards. The Report recommends —without any discussion—that the information used as an individual’s unique fingerprint to track a voter across state lines include not merely the date of birth, but also the person’s “place of birth.” As with the Social Security number, this information is often used as a key to private information wholly unrelated to voting, and as such, disclosure presents a substantial security hazard. Moreover, this information seems particularly susceptible to use in harassing legitimate voters, particularly naturalized citizens.

**Recommendation on Voting Rights of Ex-Felons**
The Report recommends that states restore voting rights only to certain people with criminal convictions, and only after they have “fully served their sentence.” This overly restrictive standard places the Commission out of step with the states, the American public, and the laws of other nations. 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. Since 1997, twelve states have reformed their laws or policies to allow more people with convictions to vote. These reforms are driven by some startling numbers. Approximately 4.7 million Americans have lost the right to vote because of a criminal conviction. This number includes 1.4 million African-American men, whose 13% rate of disenfranchisement is seven times the national average. More than 670,000 of the disenfranchised are women; more than 580,000 are veterans; and 1.7 million have completed their sentences.

The American people also support more generous re-enfranchisement than the Commission Report recommends. In a 2002 telephone survey of 1,000 Americans nationwide, researchers found that substantial majorities (64% and 62% respectively) supported allowing probationers and parolees to vote. Fully 80% favored restoring the franchise to people who had completed felony sentences. Even when questions were asked about certain unpopular offenses, majorities supported voting rights. Two-thirds of respondents supported allowing violent ex-felons to vote; 63% supported allowing ex-felons convicted of illegal stock-trading to vote; and 52% supported restoring the franchise to ex-felons who had been convicted of a sex crime. International norms are even more favorable to voting rights. Moreover, the Report’s recommendation is unworkable. The general rule —that reenfranchisement should follow the completion of a criminal sentence— is itself difficult to administer.
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.
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
EAC Voting Fraud-Voter Intimidation Preliminary Research

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 statues 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 imprisonment, 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.
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.

The Federal Crime of Election Fraud
By Craig Donsanto

In The Federal Crime of Election Fraud, Donsanto addresses the role of the United States Department of Justice in matters of election fraud. Specifically, it answers the most frequently asked questions concerning the federal law enforcement role in election matters. Particularly, 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.

Donsanto indicates that as a general rule, the federal crime of voter fraud embraces only organized efforts to corrupt 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. Finally, Donsanto points out that mistakes and other gaffs that inevitably occur are not included as voter fraud. Where mistakes occur on a significant enough level to potentially affect the outcome of an election, the appropriate remedy is an election contest brought by the loser seeking civil judicial redress through the appropriate state election contest process.

Along with the limits discussed above, 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.

Donsanto lists four types of election fraud: schemes to purposely and corruptly register voters who either do not exist, or who are known by the putative defendant to be
ineligible to vote under applicable state law; schemes to cast, record or fraudulently
tabulate votes for voters who do not participate in the voting act at all; schemes to corrupt
the voting act of voters who do participate in the voting act to a limited extent; and,
schemes to knowingly prevent voters qualified voters from voting.

Donsanto lists four situations where federal prosecution is appropriate: 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; 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 statues such as the Voting Rights Act, 42 U.S.C. section 1973 et seq.; 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, Where
there is a factual basis to believe that fraudulent registration or voting activity is
sufficiently connected to other from of criminal activity that pursuing the voter fraud
angle will yield evidence useful in the prosecution of other categories of federal offense.

Donsanto lists four advantages to federal prosecution: voter fraud investigations are labor
intensive. Local law enforcement agencies often lack the manpower and the financial
resources to take these cases on; 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. Many states lack the broad
grand jury process that exists in the federal system; and, 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. These include: schemes by polling officers to violate their duty
under state law to safeguard the integrity of the election process by purposefully allowing
void ballots to be cast (stuffing the ballot box), or by intentionally rendering fraudulent
vote tallies which can be prosecuted as civil rights violations under 18 U.S.C. sections
241 or 242; schemes to stimulate or reward voter registration by offering or giving voters
things having monetary value violate the “payment for registering” clause of 42 U.S.C.
section 19731(c); schemes to register voters fraudulently through providing election
officials materially false information about the voter’s eligibility for the franchise; and,
schemes to obtain and cast ballots that are materially defective in nonfederal elections
can still be prosecuted under 18 U.S.C. section 1341. There are also some other federal
statutes involved in election fraud cases such as 18 U.S.C. section 597 that prohibits
making expenditures for the specific purpose of stimulating voters to cast ballots for
candidates seeking the federal offices of Senator, Congressman or President and 42
U.S.C. section 1973i (e) that prohibits voting more than once in elections where federal
candidates are on the ballot.

Donsanto lists four questions used by prosecutors in evaluating the credibility of election complaints: does the substance of the complaint assuming it can be proven through investigation - suggest a potential crime; is the complaint sufficiently fact-specific that it provides leads for investigators to pursue; is there a federal statute that can be used to federalize the criminal activity at issue; and, 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.

Finally, Donsanto indicates that election crimes based on race or language minority status are treated as civil rights matters under the Voting Rights Act.

**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.

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 pretextural 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 impersonates 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.
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
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 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 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 disproportionally 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.

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. 18.1 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.)
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 suggests 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

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.
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 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 and types of voter fraud and voter intimidation occurring.

Stealing Elections, John Fund

In Stealing Elections, John 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. Although most fraud is found in urban areas, there are current scandals in rural South Dakota and Texas.” Fund admits that “Democrats figure prominently in the vast majority of examples of election fraud described in this book.” He argues Republican fraud is less common because Republicans are middle class and Democrats are poor and most fraud occurs in inner cities where there are a lot of minorities. However, because of politics, state and local prosecutors are reluctant to go after fraud.

He also stipulates that Democrats and Republicans have different worldviews on voting: Democrats are concerned about intimidation and disenfranchisement while Republicans are concerned with fraud and the need to police the polls.

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.
Fund goes through 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.

Fund criticizes and scorns “conspiracy theories” around electronic voting perpetuated by Democrats. He says that “By whipping up a frenzy of suspicion about electronic voting, Democrats will have built a platform from which, if the presidential or key Senate elections in November 2004 are close, the can launch endless lawsuits everywhere there were problems with electronic machines.”

Stealing Elections 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.

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 then 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.”


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;

* 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.

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.
Appendix "2"
Summaries of Articles, Reports and Books

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.


Argues that "the discriminatory use of so-called 'ballot security' programs" has been a recurring 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 programs (especially voter ID). Indicates that the crux of the problem is lax enforcement of federal voter’s 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 Crawfordsville [Arkansas].”)

Recommends that Congress and the states should adopt “nondiscriminatory, evenly applied measures to ensure the integrity of the ballot.”


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.


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.

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 of multiple voting, providing false information on their felon status, and other offenses against 89 individuals and 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.


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 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.


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, 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.


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 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 those 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.

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**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.

- **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.


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 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.


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 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.


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 that 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 poll workers 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.

• 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”) and distribute them for public comment well in advance of each election day

• 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.

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.

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 address 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).


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 from 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

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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.

Election crimes based on race or language minority status are treated as civil rights matters under the Voting Rights Act.


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.
- 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 Poll[sic]... on November 4.


[NO SUMMARY FOUND] This is summary of federal role in prosecuting election crimes.


[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; Albermarle
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.


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, Minniti 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, Minniti shows that many allegations of fraud do not end up being meritorious. Minniti 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. Minniti 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.

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 a man wearing a black t-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
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


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.


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 and types of voter fraud and voter intimidation occurring.


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-DOS NOT SAY MUCH.]

*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. 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.


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. 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:

1. deliberate disparities in voting machine distribution and long lines in Democratic jurisdictions;
2. misinterpretation of voting laws by elections officials to the detriment of Democratic voters;
3. dirty tricks and deceptive practices to mislead Democratic and minority voters about voting times, places and conditions;
4. machine irregularities in Democratic jurisdictions;
5. relocating polling sites in Democratic and minority areas;
6. suspicious mishandling of absentee ballots;
7. refusing to dispense voter registration forms to certain voter registration groups;
8. intimidation of students;
9. suspicious ballot spoilage rates in certain jurisdictions;
10. “strategic distribution of provisional ballots,” and trashing of provisional ballots;
11. harassment of Native American voters;
12. a Republican backed organization engaging in voter registration efforts throughout the country that allegedly destroyed the voter registration forms of Democrats;
13. illegitimate challenges at the polls by Republican poll watchers;
14. improper demands for identification in certain areas;
15. 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;
16. wrongful purging of eligible voters from voting rolls;
17. partisan harassment;
18. the selective placement of early voting sites; and
19. failure to send out absentee ballots in time for people to vote.

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.
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 ever been convicted of or even charged with the offense of misrepresenting his identity for purposes of casting a fraudulent ballot in person, King Dep. 95-98; 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, DirtyLittle 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 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.

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 Ex. 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, 11th 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 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 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).

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 impostor 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 impostor 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 impostor a ballot or allow him to vote, and presumably would have the impostor arrested or at least investigate the attempted fraud and report the attempt to the Secretary of State as Superintendent of Elections.


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.
Interview with Commissioner Harry Van Sickle and Deputy Chief Counsel to the Secretary of State Larry Boyle, State of Pennsylvania

March 1, 2006

As Commissioner Van Sickle has only been in office for about a year, Mr. Boyle answered most of our questions.

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 – 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 driver’s 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
EAC SUMMARY OF EXPERT INTERVIEWS FOR
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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.

Interview with Craig Donsanto, Director, Elections Crimes Branch, Public Integrity Section, U.S. Department of Justice¹
January 13, 2006

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

Questions

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 Assistant U.S. Attorney (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 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 the Voting Section and the Election Crimes Branch.

Does the Decision to Prosecute Incorporate Particular Political Considerations within a State

¹ Due to a disagreement between DOJ and the consultants' regarding the interpretation of DOJ interview comments, EAC made clarifying edits to this portion of the consultants’ interview summaries.
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?

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 on the ballot.

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.
A federal law is needed that permits prosecution in any election where any federal
instrumentality is used.

Other Information

The Department has held four symposia for District Election Officers (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
EAC SUMMARY OF EXPERT INTERVIEWS FOR VOTING FRAUD-VOTER INTIMIDATION RESEARCH symposium. All other symposia have been closed to the public.

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: 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 against conspiracies to corrupt the process rather than individual offenders acting alone. For deterrence purposes, the Attorney General decided to add the pursuit of individuals who vote when not eligible to vote (noncitizens, felons) or who vote more than once. 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:

1. Felon voters in Milwaukee.

2. 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.

3. 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.

According to the new handbook, the department can take on a case whenever there is a federal candidate on the ballot
Interview with Douglas Webber, Assistant Attorney General, Indiana

February 15, 2006

Background
Mr. Webber was an attorney for the Marion County Election Board and was also part of the Indianapolis Ballot Security Team (sometimes called the Goon Squad). This Team was a group of attorneys well trained in election law whose mission was to enforce ballot security.

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 7th 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 solve 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 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.

Interview Sharon Priest, former Secretary of State, Arkansas
January 24, 2006

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.
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.

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.
- 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.

Interview with Heather Dawn Thompson, Director of Government Relations, National Congress of American Indians

March 22, 2006

Background

Thompson is a member of the Cheyenne River Sioux tribe in South Dakota. For many years she worked locally on elections doing poll monitoring and legal work, from a nonpartisan perspective. In 2004, she headed the Native Vote Election Protection, a project run by the National Congress of American Indians, and was in charge of monitoring all Native American voting sites around the country, focusing on 10 or 15 states with the biggest Native populations. She is now permanently on staff of the National Congress of American Indians as the Director of Government relations. NCAI works jointly with NARF as well as the Election Protection Coalition.

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

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 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 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.

Interview with Jason Torchinsky, former attorney with the Civil Rights Section of the Department of Justice, assistant general counsel for the American Center for Voting Rights (ACVR) and Robin DeJarnette, political consultant for C4 and C5 organizations and executive director for the ACVR.

February 16, 2006

ACVR Generally

Other officers of the ACVR-Thor Hearne II-general counsel and Brian Lunde, former executive director of the Democratic National Committee.

Board of Directors of ACVR-Brian Lunde, Thor Hearne II, and Cameron Quinn

ACVR works with a network of attorneys around the country and has been recently involved with lobbying in PA and MO.

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.
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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.

Interview with Joe Rich, former Chief of the Voting Section,
US Department of Justice
February 7, 2006

Background

Mr. Rich went to Yale undergraduate and received his law degree from the University of Michigan. He served as Chief of the Voting Section from 1999-2005. Prior to that he served in other leadership roles in the Civil Rights Division and litigated several civil rights cases.

Data Collection and Monitoring
The 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.

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.

Interview with Joe Sandler, Counsel to the DNC

February 24, 2006

Background

Sandler is an election attorney. He worked for the DNC in 1986, was in-house counsel from 1993-1998, and currently is outside counsel to the DNC and most state Democratic Parties. Sandler was part of the recount team in Florida in both 2002 and 2004. He recruited and trained attorneys in voting issues—starting in 2002 Sandler recruited in excess of 15,000 attorneys in twenty-two states. He is now putting together a national lawyers council in each state.

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.

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 poll workers among precincts, to ensure adequate and nondiscriminatory access. These standards should be based on set ratios of numbers of machines and poll workers per number of voters expected to turn out, and should be made available for public comment before being adopted.
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.
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
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exclusively for that purpose. That is particularly important for tabulating/aggregating computers.
17. States should adopt "no excuse required" standards for absentee voting.
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.

Interview with John Ravitz, Executive Director, New York City Board of Elections
February 16, 2006

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
- Thorough inspection of absentee ballots subsequent to the election

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

February 24, 2006

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

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

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

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

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

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

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 a formal 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.

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

Interview with Kevin Kennedy, State Elections Director, State of Wisconsin

April 11, 2006

Background

Kennedy is a nonpartisan, appointed official. He has been in this position since 1983.

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.

2004 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.
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 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
Conduct post-election audits

Interview with Lori Minnite, Barnard College

February 22, 2006

Background

Ms. Minnite is an assistant professor of political science at Barnard College. She has done substantial research on voter fraud and wrote the report “Securing the Vote.” Ms. Minnite also did work related to an election lawsuit. The main question that she was asked to address in the lawsuit was—did election-day registration increase the possibility of fraud?

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. 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.

Interview with Nina Perales, Counsel, Mexican American Legal Defense and Education Fund

March 7, 2006

Background

Ms. Perales is an attorney with the Mexican American Legal Defense Fund (MALDEF). MALDEF’s mission is to foster sound public policies, laws and programs to safeguard the civil rights of the 40 million Latinos living in the United States and to empower the Latino community to fully participate in our society. One of the areas MALDEF works in is electoral issues, predominately centered on the Voting Rights Act. 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.

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.

Interview with Pat Rogers, private attorney
March 3, 2006
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Background

In addition to his legal practice with Modrall, Sperling, Roehl, Harris & Sisk, Rogers also does some state-level lobbying for Verizon Wireless, GM, Dumont and other companies. His experience in election law goes back to 1988, where his first elections case was a defense against Bill Richardson, who had sued to get another candidate tossed off a ballot because of petition fraud. Since 1988, he has been involved in election cases at least once every two years.

2004 Litigation

In a case that ended before the New Mexico Supreme Court, Rogers represented the Green Party and other plaintiffs against the New Mexico Secretary of State for sending a directive telling local boards not to require ID for first time voters registering by mail. He argued that this watered-down ID check conflicted with what seemed fairly clear statutory requirements for first time voters. In 2004 these requirements were especially important due to the large presence of 3rd party organizations registering voters such as a 527 funded by Governor Richardson, ACORN, and others.

Plaintiffs were seeking a temporary restraining order requiring Secretary of State to follow the law. Yet the Supreme Court ultimately decided that, whether the directive was right or wrong, it was too late to require ID lest Bush v. Gore issues be raised.

Today, the issue is moot as the state legislature has changed the law, and the Secretary of State will no longer be in office. It seems unlikely they will send any policy directives to county clerks lest they violate due process/public notice.

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 3rd 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 5th 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 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 canvas' 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.

**Interview with Rebecca Vigil-Giron, Secretary of State, New Mexico**

March 24, 2006

**Background**

Vigil-Giron has been Secretary of State for twelve years and was the President of the National Association of Secretaries of State in 2004. 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.

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.

**Interview with Sarah Bell Johnson Interview**

April 19, 2006

**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 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

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.

Interview with Steve Ansolobohere and Chandler Davidson
February 17, 2006

Methodology suggestions

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 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. Ansolobohere 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. Ansolobohere 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. Ansolobohere 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. Ansolobohere 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.

Interview with Tracy Campbell, author

March 3, 2006

Background

Campbell’s first book on election fraud looked at Ed Pritchard, a New Deal figure who went to jail for stuffing ballot boxes. While his initial goal in writing that book was to find out why Pritchard had engaged in vote stealing, his growing understanding of a pervasive culture of electoral corruption led him to consider instead how it was that Pritchard was ever caught. In 1998, he started working on a book regarding fraud in Kentucky, which quickly became a national study. He hoped to convey the ‘real politics’ which he feels readers, not to mention
academics, have little sense about. 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.

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 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.
Interview with Wade Henderson, Executive Director, Leadership Conference for Civil Rights

February 14, 2006

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 reviewing 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 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:
  o 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.)
  o 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
Interview with 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 1/10000th of a percentage of voters. See also the brief Brennan filed on 11th 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 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.
EAC SUMMARY OF EXPERT INTERVIEWS FOR VOTING FRAUD-VOTER INTIMIDATION RESEARCH

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 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.

Interview with Bill Groth, Attorney for the Plaintiffs in Indiana Identification Litigation
February 22, 2006
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 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 2nd 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.

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.

Interview with Neil Bradley, February 21, 2004

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 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.

Interview with Justice Evelyn Stratton, Supreme Court of Ohio

February 17, 2006

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 latches---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. She supports a non-partisan head of state elections. Justice Stratton believes that last minute challenges should not be permitted and that 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.

Interview with Tony Sirvello, Executive Director, IACREOT

April 12, 2006

Biographical

Sirvello is currently the executive director of the International Association of Clerks, Recorders, Election Officials and Treasurers, an organization of 1700 members. Formerly, he ran elections in Harris County, Texas for 29 years.

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.

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.
Interview with Commissioner Harry Van Sickle and Deputy Chief Counsel to the Secretary of State Larry Boyle, State of Pennsylvania

March 1, 2006

As Commissioner Van Sickle has only been in office for about a year, Mr. Boyle answered most of our questions.

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 – 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.

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

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

Questions

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 Assistant U.S. Attorney (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 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 the Voting Section and the Election Crimes Branch.

Does the Decision to Prosecute Incorporate Particular Political Considerations within a State

1 This interviewee did not agree with the consultants’ interpretation of his interview comments. Therefore, EAC made clarifying edits to this portion of the consultants’ interview summaries.
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?

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 on the ballot.

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. A federal law is needed that permits prosecution in any election where any federal instrumentality is used.

Other Information

The Department has held four symposia for District Election Officers (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.

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: 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 against conspiracies to corrupt the process rather than individual offenders acting alone. For deterrence purposes, the Attorney General decided to add the pursuit of individuals who vote when not eligible to vote (noncitizens, felons) or who vote more than once. 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:

1. Felon voters in Milwaukee.

2. 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.

3. 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.

*According to the new handbook, the department can take on a case whenever there is a federal candidate on the ballot*
Interview with Douglas Webber, Assistant Attorney General, Indiana

February 15, 2006

Background

Mr. Webber was an attorney for the Marion County Election Board and was also part of the Indianapolis Ballot Security Team (sometimes called the Goon Squad). This Team was a group of attorneys well trained in election law whose mission was to enforce ballot security.

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 7th 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 solve 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 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.

**Interview Sharon Priest, former Secretary of State, Arkansas**

**January 24, 2006**

**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.
EAC SUMMARY OF EXPERT INTERVIEWS FOR
VOTING FRAUD-VOTER INTIMIDATION RESEARCH

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.
- 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.

Interview with Heather Dawn Thompson, Director of Government Relations, National Congress of American Indians

March 22, 2006

Background

Thompson is a member of the Cheyenne River Sioux tribe in South Dakota. For many years she worked locally on elections doing poll monitoring and legal work, from a nonpartisan perspective. In 2004, she headed the Native Vote Election Protection, a project run by the National Congress of American Indians, and was in charge of monitoring all Native American voting sites around the country, focusing on 10 or 15 states with the biggest Native populations. She is now permanently on staff of the National Congress of American Indians as the Director of Government relations. NCAI works jointly with NARF as well as the Election Protection Coalition.

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

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 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 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.

Interview with Jason Torchinsky, former attorney with the Civil Rights Section of the Department of Justice, assistant general counsel for the American Center for Voting Rights (ACVR) and Robin DeJarnette, political consultant for C4 and C5 organizations and executive director for the ACVR.

February 16, 2006

ACVR Generally

Other officers of the ACVR-Thor Hearne II-general counsel and Brian Lunde, former executive director of the Democratic National Committee.

Board of Directors of ACVR-Brian Lunde, Thor Hearne II, and Cameron Quinn

ACVR works with a network of attorneys around the country and has been recently involved with lobbying in PA and MO.

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.

Interview with Joe Rich, former Chief of the Voting Section,
US Department of Justice
February 7, 2006

Background

Mr. Rich went to Yale undergraduate and received his law degree from the University of Michigan. He served as Chief of the Voting Section from 1999-2005. Prior to that he served in other leadership roles in the Civil Rights Division and litigated several civil rights cases.

Data Collection and Monitoring
The 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.

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.

Interview with Joe Sandler, Counsel to the DNC

February 24, 2006

Background

Sandler is an election attorney. He worked for the DNC in 1986, was in-house counsel from 1993-1998, and currently is outside counsel to the DNC and most state Democratic Parties. Sandler was part of the recount team in Florida in both 2002 and 2004. He recruited and trained attorneys in voting issues---starting in 2002 Sandler recruited in excess of 15,000 attorneys in twenty-two states. He is now putting together a national lawyers council in each state.

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.

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.
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.

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.

Interview with John Ravitz, Executive Director, New York City Board of Elections
February 16, 2006

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.
EAC SUMMARY OF EXPERT INTERVIEWS FOR
VOTING FRAUD-VOTER INTIMIDATION RESEARCH

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
- Thorough inspection of absentee ballots subsequent to the election

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

February 24, 2006

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

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

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

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

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

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

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 a formal 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.

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

Interview with Kevin Kennedy, State Elections Director, State of Wisconsin

April 11, 2006

Background

Kennedy is a nonpartisan; appointed official. He has been in this position since 1983.

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.

2004 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.
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 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.
EAC SUMMARY OF EXPERT INTERVIEWS FOR
VOTING FRAUD-VOTER INTIMIDATION RESEARCH

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
Conduct post-election audits

Interview with Lori Minnite, Barnard College

February 22, 2006

Background

Ms. Minnite is an assistant professor of political science at Barnard College. She has done substantial research on voter fraud and wrote the report “Securing the Vote.” Ms. Minnite also did work related to an election lawsuit. The main question that she was asked to address in the lawsuit was---did election-day registration increase the possibility of fraud?

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. 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.

Interview with Nina Perales, Counsel, Mexican American Legal Defense and Education Fund

March 7, 2006

Background

Ms. Perales is an attorney with the Mexican American Legal Defense Fund (MALDEF). MALDEF’s mission is to foster sound public policies, laws and programs to safeguard the civil rights of the 40 million Latinos living in the United States and to empower the Latino community to fully participate in our society. One of the areas MALDEF works in is electoral issues, predominately centered on the Voting Rights Act. 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.
EAC SUMMARY OF EXPERT INTERVIEWS FOR
VOTING FRAUD-VOTER INTIMIDATION RESEARCH

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.

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.

Interview with Pat Rogers, private attorney

March 3, 2006
Background

In addition to his legal practice with Modrall, Sperling, Roehl, Harris & Sisk, Rogers also does some state-level lobbying for Verizon Wireless, GM, Dumont and other companies. His experience in election law goes back to 1988, where his first elections case was a defense against Bill Richardson, who had sued to get another candidate tossed off a ballot because of petition fraud. Since 1988, he has been involved in election cases at least once every two years.

2004 Litigation

In a case that ended before the New Mexico Supreme Court, Rogers represented the Green Party and other plaintiffs against the New Mexico Secretary of State for sending a directive telling local boards not to require ID for first time voters registering by mail. He argued that this watered-down ID check conflicted with what seemed fairly clear statutory requirements for first time voters. In 2004 these requirements were especially important due to the large presence of 3rd party organizations registering voters such as a 527 funded by Governor Richardson, ACORN, and others.

Plaintiffs were seeking a temporary restraining order requiring Secretary of State to follow the law. Yet the Supreme Court ultimately decided that, whether the directive was right or wrong, it was too late to require ID lest Bush v. Gore issues be raised.

Today, the issue is moot as the state legislature has changed the law, and the Secretary of State will no longer be in office. It seems unlikely they will send any policy directives to county clerks lest they violate due process/public notice.

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 3rd 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 5th 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 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 canvas’ 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.

**Interview with Rebecca Vigil-Giron, Secretary of State, New Mexico**

March 24, 2006

**Background**

Vigil-Giron has been Secretary of State for twelve years and was the President of the National Association of Secretaries of State in 2004. 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.

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.

Interview with Sarah Bell Johnson

April 19, 2006

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 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.
EAC SUMMARY OF EXPERT INTERVIEWS FOR
VOTING FRAUD-VOTER INTIMIDATION RESEARCH

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

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.

Interview with Steve Ansolobohere and Chandler Davidson
February 17, 2006

Methodology suggestions

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 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. Ansolobohere 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. Ansolobohere 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. Ansolobohere 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.

Interview with Tracy Campbell, author

March 3, 2006

Background

Campbell's first book on election fraud looked at Ed Pritchard, a New Deal figure who went to jail for stuffing ballot boxes. While his initial goal in writing that book was to find out why Pritchard had engaged in vote stealing, his growing understanding of a pervasive culture of electoral corruption led him to consider instead how it was that Pritchard was ever caught. In 1998, he started working on a book regarding fraud in Kentucky, which quickly became a national study. He hoped to convey the 'real politics' which he feels readers, not to mention
academics, have little sense about. 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.

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 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 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.
Interview with Wade Henderson, Executive Director, Leadership Conference for Civil Rights

February 14, 2006

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
EAC SUMMARY OF EXPERT INTERVIEWS FOR VOTING FRAUD-VOTER INTIMIDATION RESEARCH

- 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 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
Interview with 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 of $1/10000$ of a percentage of voters. See also the brief Brennan filed on 11th 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 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 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.

**Interview with Bill Groth, Attorney for the Plaintiffs in Indiana Identification Litigation**

February 22, 2006
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 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 2nd 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 coterminus—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.

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.

Interview with Neil Bradley, February 21, 2004

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 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.

Interview with Justice Evelyn Stratton, Supreme Court of Ohio

February 17, 2006

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 latches---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. She supports a non-partisan head of state elections. Justice Stratton believes that last minute challenges should not be permitted and that 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.

Interview with Tony Sirvello, Executive Director, IACREOT

April 12, 2006

Biographical

Sirvello is currently the executive director of the International Association of Clerks, Recorders, Election Officials and Treasurers, an organization of 1700 members. Formerly, he ran elections in Harris County, Texas for 29 years.

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.

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.
Appendix "3"
Summaries of Interviews
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
EAC SUMMARY OF EXPERT INTERVIEWS FOR 
VOTING FRAUD-VOTER INTIMIDATION RESEARCH

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:
  o 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.)
  o 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 of 1/10000th of a percentage of voters. See also the brief Brennan filed on 11th 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 poll worker 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 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
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 wrongly 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 not 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.

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**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
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 2d 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 federal government, with 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.
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.

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**Lori Minniti, Barnard College, Columbia University**

**Securing the Vote**

In Securing the Vote, Ms. Minniti 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. Minniti 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. Minniti stressed that it is important to keep clear who the perpetrators of the fraud are and where the fraud occurs because that affects what the remedy should be. Often, voters are punished for fraud committed by voting officials.

**Other Fraud Issues**

Ms. Minniti found no evidence that NVRA was leading to more voter fraud. She supports non-partisan election administration. Ms.
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.

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**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.
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) affecting 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.
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 3rd 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 prosecutions 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 5th 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
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 canvas' 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 Española 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.

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.
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
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 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.

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.

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
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 Anslobohere, 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:
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. Ansolobohere 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. Ansolobohere 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. Ansolobohere 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. Ansolobohere 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.
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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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.

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.

Litigation

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
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
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 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 have only 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 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...
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.

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.

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
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.

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.
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.
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 poll workers among precincts, to ensure adequate and nondiscriminatory access. These standards should be based on set ratios of numbers of machines and poll workers 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 touch screen (“direct recording equipment” or “DRE”) machines.
12. Touch screen (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 punch card 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.

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 poll workers.

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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**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.**
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**

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**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, 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 14th and 15th 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.

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 filing 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.
**EAC SUMMARY OF EXPERT INTERVIEWS FOR VOTING FRAUD-VOTER INTIMIDATION RESEARCH**

<table>
<thead>
<tr>
<th>Kevin Kennedy, Executive Director of the State Board of Elections, Wisconsin</th>
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<tr>
<td><strong>Complaints of fraud and intimidation do not usually come to Kennedy’s office.</strong> Kennedy says that complainants usually take their allegations to the media first because they are trying to make a political point.</td>
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**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 mismarks 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.

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 doing 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 driver’s 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
- 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 latches---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.

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.

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.
EAC SUMMARY OF EXPERT INTERVIEWS FOR VOTING FRAUD-VOTER INTIMIDATION RESEARCH

- 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 Sickie, Commissioner of Elections, and Deputy Chief Counsel to the Secretary of State Larry Boyle, Pennsylvania

Fraud and intimidation

Neither Van Sickie 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 – 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.

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.

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.

Federalism is no longer big issue. DOJ is permitted to prosecute whenever there is a candidate for federal office.

Don't prosecute everything.

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.

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 himself or herself; or when the US Attorney is unable to handle the case (most frequent reason) and
- brain trust 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 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:

- Alien 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 driver’s 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.
- 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.
<table>
<thead>
<tr>
<th>Name of Case</th>
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<th>Citation</th>
<th>Date</th>
<th>Issue</th>
<th>Decision</th>
</tr>
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<tbody>
<tr>
<td>Powers v. Donahue</td>
<td>Supreme Court of New York, Appellate Division, First Department</td>
<td>276 A.D.2d 157; 717 N.Y.S.2d 550; 2000 N.Y. App. Div. LEXIS 12644</td>
<td>December 5, 2000</td>
<td>Petitioner appealed an order of the supreme court, which denied his motion to direct the New York County Board of Elections, in cases where more than one absentee ballot was returned by a voter, to count only the absentee ballot listing correct candidates' names.</td>
<td>When the New York County Board of Elections learned some absentee ballots mailed to voters in one district listed the wrong candidates for state senator, it sent a second set of absentee ballots to absentee voters informing them the first ballot was defective and requesting they use the second ballot. The board agreed if two ballots were received from the same voter, only the corrected ballot would be counted. Appellant candidate moved in support of the board's determination. Respondent candidate opposed the application, contending that only the first ballot received should have been canvassed. The trial court denied appellant's motion, ruling that pursuant to New York law, where two ballots were received from the same voter, only the ballot with the earlier date was to be accepted. The court found the local board officials should have resolved the dispute as they proposed. The order was modified and the motion granted to the extent of directing the New York County Board of Elections, in cases where more than one absentee ballot was returned by a voter, to accept only the corrected</td>
</tr>
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</table>
ballots violated envelopes, and were in envelopes defendants, election board and supervisor, resulted in plaintiffs loss of the election. Plaintiff sued defendants seeking invalidation of the absentee ballots and certification of the election results tabulated without such ballots.

Plaintiff alleged that defendants counted unlawful absentee ballots that lacked postmarks, were not signed or notarized, were in unsealed and/or torn envelopes, and were in envelopes containing more than one ballot. Prior to tabulation of the absentee ballots, plaintiff was leading intervenor for the final senate position, but the absentee ballots entitled intervenor to the position. The court held that plaintiff was not entitled to relief since he failed to establish that the alleged absentee voting irregularities would require invalidation of a sufficient number of ballots to change the outcome of the election. While the unsealed ballots constituted a technical violation, the outer envelopes were sealed and thus substantially complied with election requirements. Further, while defendants improperly counted one ballot where a sealed ballot envelope and a loose ballot were in the same outer envelope, the one vote involved did not change the election result.

ballot postmarked on or before November 7, 2000, and otherwise affirmed.
<table>
<thead>
<tr>
<th>Plaintiff's Name</th>
<th>Court</th>
<th>Date</th>
<th>Plaintiff's Allegations and Rulings</th>
<th>Plaintiff's Additional Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Townsend v. Stonicher</td>
<td>Supreme Court of Alabama</td>
<td>December 9, 2005</td>
<td>The circuit court overturned the results of a mayoral election after reviewing the absentee ballots cast for said election, resulting in a loss for the incumbent based on the votes received from the appellee voters. The incumbent appealed, and the voters cross-appealed. In the meantime, the trial court stayed enforcement of its judgment pending resolution of the appeal.</td>
<td>The voters and the incumbent all challenged the judgment entered by the trial court arguing that it impermissibly included or excluded certain votes. The appeals court agreed with the voters that the trial court should have excluded the votes of those voters for the incumbent who included an improper form of identification with their absentee ballots. It was undisputed that at least 30 absentee voters who voted for the incumbent provided with their absentee ballots a form of identification that was not proper under Alabama law. As a result, the court further agreed that the trial court erred in allowing those voters to somewhat &quot;cure&quot; that defect by providing a proper form of identification at the trial of the election contest, because, under those circumstances, the trial court erred in allowing those voters to &quot;cure&quot; that defect by providing a proper form of identification at the trial of the election contest, because, under those circumstances, the trial court erred in allowing those voters to &quot;cure&quot; that defect by providing a proper form of identification at the trial of the election contest.</td>
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Plaintiff's other allegations of irregularities were without merit since ballots without postmarks were valid, ballots without signatures were not counted, and ballots without notarized signatures were proper. Request for declaratory and injunctive relief denied.
Appellant candidates appealed from a judgment entered by the supreme court, which partially granted the candidates' petition challenging the method used by respondent Albany County Board of Elections for counting absentee applications and ballots for the office -.

The candidates argued that the Board violated a federal court order regarding the election. The appellate court held that absentee ballots that were sent to voters for the special general election based solely on their applications for the general election were properly voided. The Board had no authority to issue the ballots without an absentee ballot application for the special general election. Two ballots were properly invalidated as the Board failed to retain the envelopes. Ballots were properly counted for voters who failed to identify their physician on their applications. A ballot was

| Gross v. Albany County Bd. of Elections | Supreme Court of New York, Appellate Division, Third Department | 10 A.D.3d 476; 781 N.Y.S.2d 172, 2004 N.Y. App. Div. LEXIS 10360 | August 23, 2004 | Appellant candidates appealed from a judgment entered by the supreme court, which partially granted the candidates' petition challenging the method used by respondent Albany County Board of Elections for counting absentee applications and ballots for the office of Albany County | The candidates argued that the Board violated a federal court order regarding the election. The appellate court held that absentee ballots that were sent to voters for the special general election based solely on their applications for the general election were properly voided. The Board had no authority to issue the ballots without an absentee ballot application for the special general election. Two ballots were properly invalidated as the Board failed to retain the envelopes. Ballots were properly counted for voters who failed to identify their physician on their applications. A ballot was | No | N/A | No |
| Erlandson v. Kiffmeyer | Supreme Court of Minnesota | 659 N.W.2d 724; 2003 Minn. LEXIS 196 | April 17, 2003 | Petitioners, representing the Democratic-Farmer-Labor Party, brought an action against respondents, the Minnesota Secretary of State and the Hennepin County Auditor, seeking relief in regard to the election for United States Senator, following | The appellate court found that, while it may have seemed unfair to the replacement candidate to count votes for other candidates from regular absentee ballots on which the replacement candidate did not appear, those were properly cast ballots voting for a properly nominated candidate. Petitioners' request that the Minnesota supreme court order that votes for United States Senator cast on regular absentee ballots not be counted was denied. A key issue was Minn. Stat. § 204B.41 (2002), which provided, in— | No | N/A | No |
the death of Senator Wellstone. The issue concerned the right of absentee voters to obtain replacement ballots. Individuals intervened on behalf of the Republican Party. The instant court granted review.

part, that official supplemental ballots could not be mailed to absent voters to whom ballots were mailed before the official supplemental ballots were prepared. The supreme court held that, by treating similarly-situated voters differently, § 204B.41 violated equal protection guarantees and could not even survive rational basis review. For voters who cast their regular absentee ballots for Wellstone before the vacancy occurred, but were unable to go to their polling place on election day or pick up a replacement ballot by election day, the prohibition on mailing replacement ballots in § 204B.41 denied them the right to cast a meaningful vote for United States Senator. The petition of petitioners was denied in part, but granted with respect to mailing replacement ballots to all applicants for regular absentee ballots who requested a replacement ballot.

| People v. Deganutti | Appellate Court of Illinois, First District, Third Division | 348 Ill. App. 3d 512; 810 N.E.2d 191; 2004 Ill. App. 3d 512 | May 12, 2004 | Defendant appealed from a judgment of the circuit court, which convicted defendant on charges of unlawful | Defendant went to the voters' homes and obtained their signatures on absentee ballot request forms. Once the ballots were mailed to the voters, defendant returned to the homes. With voter one, defendant sat on the couch | No | N/A | No |
On appeal, she argued insufficient evidence to sustain her convictions. The court affirmed, holding that (1) the circumstantial evidence surrounding defendant's presence as the voters completed their ballots supported the unlawful observation convictions; (2) the fact that defendant knowingly took the voters ballots and mailed them, a violation of Illinois law supported her conviction, and (3) the fact that the statutes defendant was convicted under required only a knowing mental state rather than criminal intent did not violate substantive due process. Affirmed.

<table>
<thead>
<tr>
<th>Name/Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Issue</th>
<th>Holding</th>
<th>Statutory Basis</th>
<th>Other Notes</th>
<th>Should Votes Be Registered Further</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jacobs v. Seminole County Canvassing Bd.</td>
<td>Supreme Court</td>
<td>773 So. 2d 519; 2000 Fla. LEXIS</td>
<td>December 12, 2000</td>
<td>observation of voting and on charges of absentee ballot violations in connection with the completion and mailing of the absentee ballots of two voters.</td>
<td>with the voter and instructed which numbers to punch on the ballot. With voter two, defendant provided a list a numbers and stood nearby as voter two completed the ballots. Defendant then looked at the ballot and had voter two re-punch a number that had not punched cleanly. Defendant then put the ballots in the mail for the voters. On appeal, she argued insufficient evidence to sustain her convictions. The court affirmed, holding that (1) the circumstantial evidence surrounding defendant's presence as the voters completed their ballots supported the unlawful observation convictions; (2) the fact that defendant knowingly took the voters ballots and mailed them, a violation of Illinois law supported her conviction, and (3) the fact that the statutes defendant was convicted under required only a knowing mental state rather than criminal intent did not violate substantive due process. Affirmed.</td>
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<td></td>
<td>No</td>
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</table>
2404 trial court order to be Forms mailed by one party failed to of great public include either a space for the voter importance and to identification number or the preprinted require immediate number. Representatives from that resolution by the party were allowed to add voter identification numbers to request forms after they were returned, and absentee ballots were sent to the persons named on the request forms. The supreme court affirmed the trial court's refusal to invalidate the ballot requests, and adopted the trial court's reasoning that the information required, which included the voter identification number, was directory rather than mandatory. The trial court properly found that the evidence did not support a finding of fraud, gross negligence, or intentional wrongdoing. Allowing one party to correct ballots did not constitute illegal disparate treatment because there was no need to correct the other party's forms. Affirmed.

| Gross v. Albany County Bd. of Elections | Court of Appeals of New York | 3 N.Y.3d 251; 819 N.E.2d 197; 785 N.Y.S.2d 729; | October 14, 2004 | Appellant candidates sought review from an order of the Appellate Division, which affirmed a trial court order | Due to a challenge to a redistricting plan, the Board was enjoined from conducting primary and general elections for certain county districts. A special primary election was directed, with a special general election to be | No | N/A | No |
However, the Board forwarded thereafter challenged those absentee ballots, as they violated the procedure that was to be followed. The trial court held that the ballots should not be canvassed, which decision was affirmed on appeal. On further review due to dissenting opinions, the court found that the ballots were in violation of the federal court order that directed the procedure to be followed, as well as in violation of New York election law. The court concluded that the Board's error was not technical, ministerial, or inconsequential because it was central to the substantive process, and the voters who used absentee ballots were not determined to be "duly qualified electors."

<table>
<thead>
<tr>
<th>In re Canvass of</th>
<th>Supreme Court of</th>
<th>577 Pa.</th>
<th>March 8,</th>
<th>The absentee ballots at issue were</th>
<th>No</th>
<th>N/A</th>
<th>No</th>
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2004 N.Y. LEXIS 2412

holding that absentee ballots from a special general election were not to be canvassed because respondent Albany County Board of Elections failed to follow the set procedure for those voters.

held "expeditiously thereafter." Absentee ballot requests for the first special election were based on prior requests, but new requests had to be made for the general election. However, the Board forwarded absentee ballots for that election as well, based on the prior requests. Candidates in two close races thereafter challenged those absentee ballots, as they violated the procedure that was to be followed. The trial court held that the ballots should not be canvassed, which decision was affirmed on appeal. On further review due to dissenting opinions, the court found that the ballots were in violation of the federal court order that directed the procedure to be followed, as well as in violation of New York election law. The court concluded that the Board's error was not technical, ministerial, or inconsequential because it was central to the substantive process, and the voters who used absentee ballots were not determined to be "duly qualified electors."

Affirmed.
Absentee Ballots of Nov. 4, 2003 Gen. Election

Pennsylvania 231; 843 A.2d 1223; 2004 Pa. LEXIS 431

2004 board voided certain absentee ballots cast in the November 4, 2003, general election. The court of common pleas held that absentee ballots delivered by third persons were valid and should be counted. The commonwealth court affirmed the trial court's decision. The state supreme court granted allocatur. Appellants and appellees were certain candidates and voters.

Hand-delivered to the county elections board by third persons on behalf of non-disabled voters. On appeal, the issue was whether non-disabled absentee voters could have third persons hand-deliver their ballots to the elections board where the board indicated that the practice was permitted. The state supreme court concluded that the "in person" delivery requirement was mandatory, and that absentee ballots delivered in violation of the provision were invalid, notwithstanding the board's erroneous instructions to the contrary. Under the statute's plain meaning, a non-disabled absentee voter had two choices: send the ballot by mail, or deliver it in person. Third-person hand-delivery of absentee ballots was not permitted. To ignore the law's clear instructions regarding in-person delivery would undermine the statute's very purpose as a safeguard against fraud. The state supreme court concluded that its precedent was clear, and it could not simply ignore substantive provisions of the Pennsylvania Election Code. The judgment of the Commonwealth Court was reversed in so far as it held that...
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<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Summary</th>
<th>Stated Issue</th>
<th>Notes</th>
<th>Shouldn't be researched further</th>
</tr>
</thead>
<tbody>
<tr>
<td>In re Canvass of Absentee Ballots of November 4, 2003</td>
<td>Commonwealth Court of Pennsylvania</td>
<td>839 A.2d 451; 2003 Pa. Commw. LEXIS 963</td>
<td>December 22, 2003</td>
<td>The Allegheny County Elections Board did not allow 74 challenged third-party hand-delivered absentee ballots to be counted in the statewide general election. The court of common pleas of Allegheny County reversed the Board's decision and allowed the 74 ballots to be counted. Appellant objecting candidates appealed the trial court's order.</td>
<td>On appeal, the issue was whether non-disabled voters who voted by absentee ballots and had those ballots delivered by third parties to county election boards could have their ballots counted in the statewide general election. First, the appellate court concluded that political bodies had standing to appeal. Also, the trial court did not err by counting the 74 ballots because absentee voters could not be held responsible for following the statutory requirements of Pennsylvania election law where the Board knowingly failed to abide by the statutory language regarding the delivery of absentee ballots, changed its policy to require voters to abide by the language, and then changed its policy back to its original stance that voters did not have to abide by the statutory language, thereby misleading absentee voters regarding delivery requirements. Under the circumstances, it was more important to protect the interest of the voters by not disenfranchising them</td>
<td>No</td>
<td>N/A</td>
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</table>
United States v. Pennsylvania
United States District Court for the Middle District of Pennsylvania
2004
U.S. Dist. LEXIS 21167
October 20, 2004

Plaintiff United States sued defendant Commonwealth of Pennsylvania, governor, and state secretary, claiming that overseas voters would be disenfranchised if they used absentee ballots that included the names of two presidential candidates who had been removed from the final certified ballot and seeking injunctive relief to address the practical implications of the final certification of the slate of

The testimony of the two witnesses offered by the United States did not support its contention that voters protected by the Uniformed and Overseas Citizens Absentee Voting Act would be disenfranchised absent immediate injunctive relief because neither witness testified that any absentee ballots issued to UOCAVA voters were legally incorrect or otherwise invalid. Moreover, there was no evidence that any UOCAVA voter had complained or otherwise expressed concern regarding their ability or right to vote. The fact that some UOCAVA voters received ballots including the names of two candidates who were not on the final certified ballot did not ipso facto support a finding that Pennsylvania was in violation of UOCAVA, especially since the United States failed to establish that the ballot defect undermined the right of

<p>| No | N/A | No |
| Hoblock v. Albany County Bd. of Elections | United States District Court for the Northern District of New York | 341 F. Supp. 2d 169; 2004 U.S. Dist. LEXIS 21326 | October 25, 2004 | Plaintiffs, candidates and voters, sued defendant, the Albany County, New York, Board of Elections, under § 1983, claiming that the Board violated plaintiffs' Fourteenth Amendment rights by refusing to tally the voters' absentee ballots. Plaintiffs moved for a preliminary injunction. | An election for members of the Albany County Legislature had been enjoined, and special primary and general elections were ordered. The order stated that the process for obtaining and counting absentee ballots for the general election would follow New York election law, which required voters to request absentee ballots. However, the Board issued absentee ballots for the general election to all persons who had applied for an absentee ballot for the cancelled election. The voters used absentee ballots to vote; their ballots were later invalidated. A state court determined that automatically sending absentee ballots to those who had not filed an application violated the constitution of UOCAVA voters to cast their ballots. Moreover, Pennsylvania had adduced substantial evidence that the requested injunctive relief, issuing new ballots, would have harmed the Pennsylvania election system and the public by undermining the integrity and efficiency of Pennsylvania's elections and increasing election costs. Motion for injunctive relief denied. | No | N/A | No |</p>
<table>
<thead>
<tr>
<th>Griffin v. Roupas</th>
<th>United States Court of Appeals for the Seventh Circuit</th>
</tr>
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<tbody>
<tr>
<td>385 F.3d 1128; 2004 U.S. App. LEXIS 21476</td>
<td>October 15, 2004</td>
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</table>

In a suit brought by plaintiff working mothers against defendants, members of the Illinois State Board of Elections, alleging that the United States

New York. The district court found that the candidates' claims could have been asserted in state court and were barred by res judicata, but the voters were not parties to the state court action. The candidates were not entitled to joinder and had not filed a motion to intervene. The voters established a likelihood of success on the merits, as the Board effectively took away their right to vote by issuing absentee ballots and then refusing to count them. The voters' claims involved more than just an "unintended irregularity." The candidates' claims were dismissed, and their request for joinder or to intervene was denied. Plaintiffs' motion for a preliminary injunction preventing the Board from certifying winners of the election was granted.

<table>
<thead>
<tr>
<th>Decision (Appeal)</th>
<th>Other Notes</th>
<th>Should Appeal be Granted?</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>N/A</td>
<td>No</td>
</tr>
<tr>
<td>Name</td>
<td>Court</td>
<td>Citation</td>
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<tr>
<td>Reitz v. Rendell</td>
<td>United States District Court for the Middle District of Illinois</td>
<td>2004 U.S. Dist. LEXIS</td>
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Constitution required Illinois to allow them to vote by absentee ballot, the mothers appealed from a decision of the United States District Court for the Northern District of Illinois, Eastern Division, which dismissed their complaint for failure to state a claim.

Correct, because, although it was possible that the problems created by absentee voting might be outweighed by the harm to voters who would lose their vote if they were unable to vote by absentee ballot, the striking of the balance between discouraging fraud and encouraging voter turnout was a legislative judgment with which the court would not interfere unless strongly convinced that such judgment was grossly awry. The court further held that Illinois law did not deny the mothers equal protection of the laws, because the hardships that prevented voting in person did not bear more heavily on working mothers than other classes in the community. Finally, the court held that, although the length and complexity of the Illinois ballot supported an argument for allowing people to vote by mail, such argument had nothing to do with the problems faced by working mothers. It applied to everyone. Affirmed.
The court entered an order, pursuant to a stipulation between the parties, that granted injunctive relief to the service members.

Bush v. Hillsborough County Canvassing Bd.  | Pennsylvania  | 21813  | Pennsylvania officials under the Uniformed and Overseas Citizens Absentee Voting Act, alleging that they and similarly situated service members would be disenfranchised because they did not receive their absentee ballots in time. The parties entered into a voluntary agreement and submitted it to the court for approval.

123 F. Supp. 2d 1305; 2000 U.S. Dist. LEXIS 19265  | December 8, 2000  | The matter came before the court on plaintiffs' complaint for declaratory and injunctive relief alleging that defendant county canvassing boards rejected overseas absentee state ballots and federal write-in ballots based on criteria inconsistent with the Uniformed and Overseas Citizens Act.

Plaintiff presidential and vice-presidential candidates and state political party contended that defendant county canvassing boards rejected overseas absentee state ballots and federal write-in ballots based on criteria inconsistent with the Uniformed and Overseas Citizens Act.

No  | N/A  | No
Absentee Voting Act. Because the state accepted overseas absentee state ballots and federal write--in ballots up to 10 days after the election, the State needed to access that the ballot in fact came from overseas. However, federal law provided the method to establish that fact by requiring the overseas absentee voter to sign an oath that the ballot was mailed from outside the United States and requiring the state election officials to examine the voter's declarations. The court further noted that federal law required the user of a federal write--in ballot to timely apply for a regular state absentee ballot, not that the state receive the application, and that again federal law, by requiring the voter using a federal write--in ballot to swear that he or she had made timely application, had provided the proper method of proof. Plaintiffs withdrew as moot their request for injunctive relief and the court granted in part and denied in part plaintiffs' request for declaratory relief, and declared valid all federal write--in ballots that were signed pursuant to the oath provided therein but rejected solely because the ballot envelope did
candidates, challenged the validity of particular paper ballots, mostly Div.
LENS 3483 be counted in a special legislative election. its order to invalidate ballots improperly marked outside the voting square—ballots where the signature on the envelope differed substantially from the voter registration card signature—and ballots where voters neglected to supply statutorily required information on the envelopes. 'However, the court, seeking to avoid disenfranchising voters where permissible, held that ballots were not invalid where applications substantially complied with statute, there was no objection to the ballots themselves, and there was no evidence of fraud. Where absentee ballot envelopes contained extra ballots, the ballots were to be placed in a ballot

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<th>Case</th>
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<th>Date</th>
<th>Facts</th>
<th>Decision</th>
<th>Importance</th>
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<tbody>
<tr>
<td>Kolb v. Casella</td>
<td>Supreme Court of New York, Appellate Division, Fourth Department</td>
<td>270 A.D.2d 964; 705 N.Y.S.2d 746; 2000 N.Y. App. Div. LEXIS 3483</td>
<td>March 17, 2000</td>
<td>Both petitioner and respondent appealed from order of supreme court, determining which absentee and other paper ballots would be counted in a special legislative election. Both petitioners and respondents, presumably representing different candidates, challenged the validity of particular paper ballots, mostly absentee, in a special legislative election. The court affirmed most of the trial court's findings, but modified its order to invalidate ballots improperly marked outside the voting square—ballots where the signature on the envelope differed substantially from the voter registration card signature—and ballots where voters neglected to supply statutorily required information on the envelopes. However, the court, seeking to avoid disenfranchising voters where permissible, held that ballots were not invalid where applications substantially complied with statute, there was no objection to the ballots themselves, and there was no evidence of fraud. Where absentee ballot envelopes contained extra ballots, the ballots were to be placed in a ballot</td>
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defendant distributed and collected absentee ballots in an election. Because both defendant and his brother were candidates on the ballot, defendant's assistance was illegal under Michigan law. Bound over for trial on election fraud charges, defendant requested a jury instruction on entrapment by estoppel, which was denied. On interlocutory appeal, the appellate court reversed and remanded for an entrapment hearing, holding that defendant should be given the opportunity to present evidence that he unwittingly committed the unlawful acts in reasonable reliance upon the word of the township clerk. The necessary elements of the entrapment defense were: (1) a government official (2) told the defendant that certain criminal conduct was legal; (3) the defendant actually relied on the official's statements; (4) the defendant's reliance was in good faith and reasonable in light of the official's
<table>
<thead>
<tr>
<th>Case</th>
<th>Court and Location</th>
<th>Date</th>
<th>Federal Register No.</th>
<th>Description</th>
<th>Statute Basis for Decision</th>
<th>Note</th>
<th>Should I Research Further</th>
</tr>
</thead>
<tbody>
<tr>
<td>Harris v. Florida Elections Canvassing Comm'n</td>
<td>United States District Court for the Northern District of Florida</td>
<td>December 9, 2000</td>
<td>122 F. Supp. 2d 1317; 2000 U.S. Dist. LEXIS 17675</td>
<td>Plaintiffs challenged the counting of overseas absentee ballots received after 7 p.m. on election day, alleging the ballots violated Florida law. The court found Congress did not intend 3 U.S.C.S. § 1 to impose irrational scheduling rules on state and local canvassing officials, and did not intend to disenfranchise overseas voters. The court held the state statute was required to yield to the Florida Administrative Code, which required the 10-day extension in the receipt of overseas absentee ballots in federal elections because the rule was promulgated to satisfy a consent decree entered by the state in 1982.</td>
<td>No</td>
<td>N/A</td>
<td>No</td>
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<tr>
<td>Weldon v. Berks County Dept of Election Servs.</td>
<td>United States District Court for the Eastern District of Pennsylvania</td>
<td>November 1, 2004</td>
<td>2004 U.S. Dist. LEXIS 21948</td>
<td>Plaintiffs, a congressman and a state representative, filed a motion seeking a restraining order denying the state statute's violation of the equal protection clause as applied to overseas voters. The court held the state statute was not so severe as to violate the congressman's right to due process.</td>
<td>No</td>
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injunction or temporary restraining order that would prohibit defendant county department of election services from delivering to local election districts absentee ballots received from any state, county, or city correctional facility.

SUMMARY: PROCEDURAL POSTURE: Plaintiffs, a congressman and a state representative, filed a motion seeking a preliminary injunction or temporary restraining order that would prohibit defendant county department of election services from delivering to local election districts absentee ballots received from any state, county, or city correctional facility as provided in Pa. Stat. Ann. tit. 25, § 3416.6 and Pa. Stat. Ann. tit. 25, § 3416.8. OVERVIEW: The congressman and representative sought to have the absentee ballots at issue set aside until a hearing could be held to determine whether any of the ballots were delivered to the county board of elections by a third party in violation of Pennsylvania law, whether any of the ballots were submitted by convicted incarcerated felons in violation of Pennsylvania law, and whether any of the ballots were submitted by qualified voters who were improperly assisted without the proper declaration required by Pennsylvania law. The court concluded that an ex parte temporary restraining order was not warranted because there
Quaikinbush v. Skubisz | Court of Appeals of Illinois, First District | 822 N.E.2d 38; 2004 Ill. App. LEXIS 1546 | December 28, 2004 | Respondent appealed from an order of the circuit court certifying mayoral election results for a city in which the court declared petitioner mayor. | Respondent first claimed the trial court erred in denying his motion to dismiss with respect to 38 votes the Election Code was preempted by and violated the Voting Rights Act and the Americans with Disabilities Act of 1990 since it restricted the individuals with whom an absentee voter could entrust their ballot for mailing. The appeals court found the trial court did not err in denying the motion to dismiss, as Illinois election law prevented a candidate or his or her agent from asserting undue influence upon a disabled voter and from manipulating that voter into voting for the candidate or the agent's candidate, and was designed to protect the rights of disabled voters. Respondent had not established that the federal legislature were potential jurisdictional issues, substantial questions concerning the alleged violations, and the complaint did not allege that the department acted or threatened to act in an unlawful manner. The court denied the ex parte motion for a temporary restraining order. The court set a hearing on the motion for preliminary injunction. | No | N/A | No
absentee ballots. The Election Code did not violate equal protection principles, as the burden placed upon absentee voters by the restriction on who could mail an absentee ballot was slight and nondiscriminatory and substantially contributed to the integrity of the election process. Affirmed.

The question presented was whether the county election board should count the six categories of ballots that were in dispute. After a review of the evidence presented, the appeals court modified the trial court's order by: (1) deleting an order directing the county elections board (board) to count 160 affidavit ballots tendered by voters who appeared at the correct polling place but the wrong election district, as there were meaningful distinctions between those voters who went to the wrong polling place and those voters who went to the correct polling place but the wrong election district; (2) directing that the board not count 10

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<tr>
<th>Case Name</th>
<th>Court</th>
<th>Opinion</th>
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<th>Other</th>
<th>Source</th>
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<tr>
<td>Pano v. Sunderland</td>
<td>Supreme Court of New York, Appellate Division, Second Department</td>
<td>14 A.D.3d 627; 790 N.Y.S.2d 136; 2005 N.Y. App. Div. LEXIS 3433</td>
<td>January 25, 2005</td>
<td>In proceedings filed pursuant to New York election law to determine the validity of certain absentee and affidavit ballots tendered for the office of 35th District Senator, appellants, a chairperson of the county Republican committee and the Republican candidate, both sought review of an intended to preempt the rights of state legislatures to restrict absentee voting, and, particularly, who could return absentee ballots. The Election Code did not violate equal protection principles, as the burden placed upon absentee voters by the restriction on who could mail an absentee ballot was slight and nondiscriminatory and substantially contributed to the integrity of the election process. Affirmed.</td>
<td>No</td>
<td>N/A</td>
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<td>State</td>
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<td>Pierce v. Allegheny County Bd. of Elections</td>
<td>United States District Court for the Western District of Pennsylvania</td>
<td>324 F. Supp. 2d 684; 2003 U.S. Dist. LEXIS 25569</td>
<td>November 13, 2003</td>
<td>Plaintiff voters sought to enjoin defendant election board from allowing three different procedures for third-party absentee ballot delivery, require the set aside of all absentee third-party delivered ballots in connection with the November 2003 election, prohibit those ballots from affidavit ballots tendered in the wrong election district because of a map error, as there was no evidence that the voters in this category relied on the maps when they went to the wrong election districts; and (3) directing the board to count 45 absentee ballots tendered by poll workers, as it appeared that the workers substantially complied with the statute by providing a written statement that was the functional equivalent of an application for a special ballot. Order modified and judgment affirmed.</td>
<td>Intervenor political committees also moved to dismiss for lack of standing, lack of subject matter jurisdiction, and failure to state a claim, as well as abstention. Inter alia, the court found that abstention was appropriate under the Pullman doctrine because: (1) construction of Pennsylvania election law was not clear regarding whether the absentee ballot provision requiring hand-delivery to be &quot;in person&quot; was mandatory or directory; (2) the construction of the provision by state courts as mandatory or directory could obviate the need to determine whether</td>
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consider the motion for temporary court issued a limited preliminary injunction whereby the hand-delivered absentee ballots at issue were set aside as "challenged" ballots subject to the election code challenge procedure. Any equal protection issues could be heard in state court by virtue of the state court's concurrent jurisdiction.

| Name/Case | Court | Plaintiff | Defendant | Date | Finding | Citation | Notes | Research
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<tr>
<td>Friedman v. Snipes</td>
<td>United States District Court for the Southern District of Florida</td>
<td>Plaintiff registered voters sued defendant state and county election officials under § 1983 for alleged violations of their rights under 42 U.S.C.S. § 1971(a)(2)(B) of the Civil Rights Act, and</td>
<td>The voters claimed they timely requested absentee ballots but (1) never received the requested ballot or (2) received a ballot when it was too late for them to submit the absentee ballot. The court held that 42 U.S.C.S. § 1971(a)(2)(B) was not intended to apply to the counting of ballots by those already deemed qualified to vote. The plain meaning of § 1971(a)(2)(B) did not support the voters' claim that it</td>
<td>345 F. Supp. 2d 1356; 2004 U.S. Dist. LEXIS 23739</td>
<td>November 9, 2004</td>
<td>No</td>
<td>N/A</td>
<td>No</td>
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the First and Fourteenth Amendments to the United States Constitution. The voters moved for a temporary restraining order (TRO) and/or preliminary injunction. The court granted the TRO and held a hearing on the preliminary injunction. should cover an error or omission on any record or paper or any error or omission in the treatment, handling, or counting of any record or paper. Further, because Florida election law only related to the mechanics of the electoral process, the correct standard to be applied here was whether Florida's important regulatory interests justified the restrictions imposed on their First and Fourteenth Amendment rights. The State's interests in ensuring a fair and honest election and counting votes within a reasonable time justified the light imposition on voting rights. The deadline for returning ballots did not disenfranchise a class of voters. Rather, it imposed a time deadline by which voters had to return their votes. So there was no equal protection violation. Preliminary injunction denied.

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<th>Name</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Summary</th>
<th>State</th>
<th>Issue</th>
<th>Should Issue Be Reconsidered Further</th>
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<tr>
<td>Johnson v. Bush</td>
<td>United States District Court for the Southern District of Florida</td>
<td>214 F. Supp. 2d 1333; 2002 U.S. Dist. LEXIS</td>
<td>July 18, 2002</td>
<td>Plaintiff felons sued defendant state officials for alleged violations of their constitutional rights. The officials moved and the felons cross-</td>
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<td>N/A</td>
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and 10 of the Voting Rights Act of 1965. Each of the felons' claims was fatally flawed. The felons' exclusion from voting did not violate the Equal Protection or Due Process Clauses of the United States Constitution. The First Amendment did not guarantee felons the right to vote. Although there was evidence that racial animus was a factor in the initial enactment of Florida's disenfranchisement law, there was no evidence that race played a part in the re-enactment of that provision. Although it appeared that there was a disparate impact on minorities, the cause was racially neutral. Finally, requiring the felons to pay their victim restitution before their rights would be restored did not constitute an improper poll tax or wealth qualification. The court granted the officials' motion for summary judgment and implicitly denied the felons' motion. Thus, the court dismissed the lawsuit with prejudice.

| Farrakhan v. | United States | 2000 | December | Plaintiffs, convicted | The felons alleged that Washington's | No | N/A | No |
Locke

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<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Facts</th>
<th>Remedies</th>
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<tr>
<td>Locke</td>
<td>District Court for the Eastern District of Washington</td>
<td>U.S. Dist. LEXIS 22212</td>
<td>1, 2000</td>
<td>Felons who were also racial minorities, sued defendants for alleged violations of the Voting Rights Act. The parties filed cross-motions for summary judgment.</td>
<td>Felon disenfranchisement and restoration of civil rights schemes, premised upon Wash. Const. art. VI § 3, resulted in the denial of the right to vote to racial minorities in violation of the VRA. They argued that race bias in, or the discriminatory effect of, the criminal justice system resulted in a disproportionate number of racial minorities being disenfranchised following felony convictions. The court concluded that Washington's felon disenfranchisement provision disenfranchised a disproportionate number of minorities; as a result, minorities were under-represented in Washington's political process. The Rooker-Feldman doctrine barred the felons from bringing any as-applied challenges, and even if it did not bar such claims, there was no evidence that the felons' individual convictions were born of discrimination in the criminal justice system. However, the felons' facial challenge also failed. The remedy they sought would create a new constitutional problem, allowing disenfranchisement only of white felons. Further, the felons did not establish a causal connection between</td>
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<td>Name of Case</td>
<td>Court</td>
<td>Citation</td>
<td>Date</td>
<td>Facts</td>
<td>Holding</td>
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<td>Farrakhan v. Washington</td>
<td>United States Court of Appeals for the Ninth Circuit</td>
<td>338 F.3d 1009; 2003 U.S. App. LEXIS 14810</td>
<td>July 25, 2003</td>
<td>Plaintiff inmates sued defendant state officials, claiming that Washington state's felon disenfranchisement scheme constitutes improper race-based vote denial in violation of § 2 of the Voting Rights Act. The United States District Court for the Eastern District of Washington granted of summary judgment dismissing the inmates' claims. The inmates appealed.</td>
<td>Upon conviction of infamous crimes in the state, (that is, crimes punishable by death or imprisonment in a state correctional facility), the inmates were disenfranchised. The inmates claimed that the disenfranchisement scheme violated § 2 because the criminal justice system was biased against minorities, causing a disproportionate minority representation among those being disenfranchised. The appellate court held, inter alia, that the district court erred in failing to consider evidence of racial bias in the state's criminal justice system in determining whether the state's felon disenfranchisement laws resulted in denial of the right to vote on account of race. Instead of applying its novel &quot;by itself&quot; causation standard, the district court should have applied a totality of the circumstances test that included analysis of the inmates' compelling evidence of racial bias in Washington's criminal justice system.</td>
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### Muntaqim v. Coombe

**Court:** United States Court of Appeals for the Second Circuit  
**Case:** 366 F.3d 102; 2004 U.S. App. LEXIS 8077  
**Date:** April 23, 2004  
**Plaintiff:** Plaintiff inmate appealed a judgment of the United States District Court for the Northern District of New York, which granted summary judgment in favor of defendants in the inmate's action alleging violation of § 2 of the Voting Rights Act of 1965.  

**Holding:** At issue was whether the VRA could be applied to N.Y. Elec. Law § 5–106, which disenfranchised currently incarcerated felons and parolees. The instant court concluded that the Voting Rights Act did not apply to the New York law. Applying the Act to state law would alter the traditional balance of power between the states and the federal government. The court was not convinced that there was a congruence and proportionality between the injury to be prevented or remedied (i.e., the use of vote denial and dilution schemes to avoid the strictures of the VRA), and the means adopted to that end (i.e., prohibition of state felon disenfranchisement law that resulted in...
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<tr>
<th>Plaintiff/Defendant</th>
<th>Court/Institution</th>
<th>Citation/Reference</th>
<th>Decision Date</th>
<th>Facts and Analysis</th>
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<tr>
<td>Johnson v. Governor of Fla.</td>
<td>United States Court of Appeals for the Eleventh Circuit</td>
<td>353 F.3d 1287; 2003 U.S. App. LEXIS 25859</td>
<td>December 19, 2003</td>
<td>Plaintiffs, ex-felon citizens of Florida, on their own right and on behalf of others, sought review of a decision of the United States District Court for the Southern District of Florida, which granted summary judgment to defendants, members of the Florida Clemency Board in vote denial or dilution but were not enacted with a discriminatory purpose. Further, there was no clear statement from Congress that the Act applied to state felon disenfranchisement statutes. Inter alia, defendants were entitled to qualified immunity as to claim asserted against them in their personal capacities, and to Eleventh Amendment immunity to the extent the inmate sought damages against defendants in their official capacities. The district court's judgment was affirmed.</td>
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their official capacity. The citizens challenged the validity of the Florida felon disenfranchisement laws. show that the current disenfranchisement provisions would have been enacted absent the impermissible discriminatory intent. Because the state had not met its burden, summary judgment should not have been granted. The court of appeals found that the claim under the Voting Rights Act, also needed to be remanded for further proceedings. Under a totality of the circumstances, the district court needed to analyze whether intentional racial discrimination was behind the Florida disenfranchisement provisions. The court affirmed the district court's decision to grant summary judgment on the citizens' poll tax claim. The court reversed the district court's decision to grant summary judgment to the Board on the claims under the equal protection clause and for violation of federal voting laws and remanded the matter to the district court for further proceedings.

| Fischer v. Governor | Supreme Court of New Hampshire | 145 N.H. 28; 749 A.2d 321; | March 24, 2000 | Appellant State of New Hampshire challenged a ruling of the superior court | Appellee was incarcerated at the New Hampshire State Prison on felony convictions. When he requested an absentee ballot to vote from a city | No | N/A | No |
that the felon disenfranchisement statutes violate N.H. Const. pt. I, Art. 11. The clerk, the request was denied. The clerk sent him a copy of N.H. Rev. Stat. Ann. § 607(A)(2) (1986), which prohibits a felon from voting "from the time of his sentence until his final discharge." The trial court declared the disenfranchisement statutes unconstitutional and ordered local election officials to allow the plaintiff to vote. Appellant State of New Hampshire challenged this ruling. The central issue was whether the felon disenfranchisement statutes violated N.H. Const. pt. I, art. 11. After a review of the article, its constitutional history, and legislation pertinent to the right of felons to vote, the court concluded that the legislature retained the authority under the article to determine voter qualifications and that the felon disenfranchisement statutes were a reasonable exercise of legislative authority, and reversed. Judgment reversed because the court concluded that the legislature retained its authority under the New Hampshire Constitution to determine voter qualifications and that the felon disenfranchisement statutes were a reasonable exercise of legislative
Johnson v. Governor of Fla.  

**United States Court of Appeals for the Eleventh Circuit**

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<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Opinion Date</th>
<th>Issue</th>
<th>Holding</th>
<th>Rehearing En Banc</th>
<th>Other Notes</th>
<th>Should be Rejected</th>
<th>Original District Court</th>
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<tr>
<td>Johnson v. Governor of Fla.</td>
<td>United States Court of Appeals for the Eleventh Circuit</td>
<td>April 12, 2005</td>
<td>Plaintiff individuals sued defendant members of Florida Clemency Board, arguing that Florida's felony disenfranchisement law, Fla. Const. art. VI, § 4 (1968), violated the Equal Protection Clause and the Voting Rights Act. The United States District Court for the Southern District of Florida granted the members summary judgment. A divided appellate panel reversed. The panel opinion was vacated and a rehearing en banc was granted.</td>
<td>The individuals argued that the racial animus motivating the adoption of Florida's disenfranchisement laws in 1868 remained legally operative despite the reenactment of Fla. Const. art. VI, § 4 in 1968. The subsequent reenactment eliminated any discriminatory taint from the law as originally enacted because the provision narrowed the class of disenfranchised individuals and was amended through a deliberative process. Moreover, there was no allegation of racial discrimination at the time of the reenactment. Thus, the disenfranchisement provision was not a violation of the Equal Protection Clause and the district court properly granted the members summary judgment on that claim. The argument that the Voting Rights Act applied to Florida's disenfranchisement provision was rejected because it raised grave constitutional concerns, i.e., prohibiting a practice that the Fourteenth Amendment permitted the state to maintain. In addition, the legislative history indicated that</td>
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<td>Southern District of Florida</td>
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| State of Origin | Court of Origin | Citation | Date       | Issue                                                                 | Holding                                                                                                     | Entry Date | Notes | Shown in
<p>|-----------------|----------------|----------|------------|----------------------------------------------------------------------|----------------------------------------------------------------***********************************************|------------|-------|---------|
| Mixon v.        | Commonwealth   | 759 A.2d | September  | Respondents filed objections to petitioners' complaint seeking       | Congress never intended the Voting Rights Act to reach felon disenfranchisement provisions. Thus, the      | 18, 2000   | N/A   | No      |
| Commonwealth    | Court of       | 442;     |            | declaratory relief as to the unconstitutionality of the Pennsylvania  | district court properly granted the members summary judgment on the Voting Rights Act claim. The motion     |            |       |         |
|                 |                | Commw.   |            | Voter Registration Act, 25 Pa. Cons. Stat. §§ 961.101--961.5109,       | Petitioner convicted felons were presently or had formerly been confined in state prison. Petitioner      |            |       |         |
|                 |                | LEXIS    |            | regarding felon voting rights.                                        | elector was currently registered to vote in respondent state. Petitioners filed a complaint against       |            |       |         |
|                 |                | 534      |            |                                                                      | respondent state seeking declaratory relief challenging as unconstitutional, state election and         |            |       |         |
|                 |                |          |            |                                                                      | voting laws that excluded confined felons from the definition of qualified absentee electors and that      |            |       |         |
|                 |                |          |            |                                                                      | barred a felon who had been released from a penal institution for less than five years from registering to |            |       |         |
|                 |                |          |            |                                                                      | vote. Respondents filed objections to petitioners' complaint. The court sustained respondents' objection     |            |       |         |
|                 |                |          |            |                                                                      | that incarcerated felons were not unconstitutionally deprived of qualified absentee elector status because  |            |       |         |
|                 |                |          |            |                                                                      | respondent state had broad power to determine the                                                     |            |       |         |</p>
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<th>Name of Case</th>
<th>Court of Origin</th>
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<th>Shouldn't Count?</th>
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<tr>
<td>Rosello v. Calderon</td>
<td>United States District Court for the District of Puerto Rico</td>
<td>2004 U.S. Dist. LEXIS 27216</td>
<td>November 30, 2004</td>
<td>Plaintiff voters filed a § 1983 action against defendant government officials alleging violations the Due Process and Equal Protection Clauses of the U.S. Const. amend. XIV, resulting from the invalidity of absentee and split ballots in a gubernatorial election.</td>
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conditions under which suffrage could be exercised. However, petitioner elector had no standing and the court overruled objection as to deprivation of ex-felon voting rights. The court sustained respondents' objection since incarcerated felons were not unconstitutionally deprived of qualified absentee elector status and petitioner elector had no standing, but objection that ex--incarcerated felons' voting rights were deprived was overruled since status penalized them.
| Woodruff v. Wyoming | United States Court of Appeals for the Tenth Circuit | 49 Fed. Appx. 199; 2002 U.S. App. LEXIS 21060 | October 7, 2002 | Plaintiffs, pro se inmates, appealed from an order of the United States District Court for the District of Wyoming, dismissing their complaint brought under § 1983, challenging Wyo. Stat. Ann. § 6–10–... | and due process were secured under the state and federal constitutions. The court held that the voters had a fundamental due process right created by Puerto Rico Election Law and suffered an equal protection violation in further violation of the U.S. Const. amend. I right to vote, thereby creating their total disenfranchisement. The court held that the evidence created an inference that the split ballots were not uniformly treated and that it was required to examine a mixed question of fact and constitutional law pursuant to federal guidelines to determine whether potential over votes were invalid. The court asserted jurisdiction over the voters' claims | No | N/A | No |
106, which denied them, as convicted felons, the right to vote. The district court dismissed the action for failure to state a claim upon which relief could be granted and as frivolous. of costs or fees, and his appeal was dismissed. The court found that U.S. Const. amend. XIV, § 2 had long been held to exclude felons from the right to vote. It could scarcely be unreasonable for a state to decide that perpetrators of serious crimes should not take part in electing the legislators who made the laws, the executives who enforced them, the prosecutors who tried the cases, or the judges who heard their cases. The court also found the dismissed suit constituted a "strike" under 28 U.S.C.S. § 1915(g), although the suit did not challenge prison conditions per se. One inmate's appeal was dismissed; the judgment dismissing the other's complaint was affirmed.

The statute at issue prohibited all people on parole or probation for indictable offenses from voting. The interested parties alleged that the criminal justice system in New Jersey discriminated against African-Americans and Hispanics, thereby disproportionately increasing their population among parolees and probationers and diluting their political

| N.J. State Conf.-NAACP v. Harvey | Superior Court of New Jersey, Appellate Division | 381 N.J. Super. 155; 885 A.2d 445; 2005 N.J. Super. LEXIS 316 | November 2, 2005 | The Superior Court of New Jersey, Chancery Division, Union County, dismissed a complaint filed by plaintiff interested parties to invalidate N.J. Stat. Ann. § 19:4-1(8) on the grounds that the statute at issue prohibited all people on parole or probation for indictable offenses from voting. The interested parties alleged that the criminal justice system in New Jersey discriminated against African-Americans and Hispanics, thereby disproportionately increasing their population among parolees and probationers and diluting their political | No | N/A | No |
ground that it denied African-Americans and Hispanics equal protection of the law. Defendant, the New Jersey Attorney General, moved to dismiss the complaint for failure to state a claim, and said motion was granted. The interested parties then appealed. power. As a result, the alleged that enforcement of the statute resulted in a denial of equal protection under the state Constitution. The appeals court disagreed. N.J. Const. art. II authorized the New Jersey Legislature to disenfranchise persons convicted of certain crimes from voting. Moreover, those convicts could not vote unless pardoned or unless otherwise restored by law to the right of suffrage. The statute also limited the period of disenfranchisement during a defendant's actual service on parole or probation. Thus, it clearly complied with this specific constitutional mandate. The judgment was affirmed.

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<th>Case Title</th>
<th>Court</th>
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<th>Description</th>
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<th>Appeal</th>
<th>Result</th>
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<tr>
<td>King v. City of Boston</td>
<td>United States District Court for the District of Massachusetts</td>
<td>2004 U.S. Dist. LEXIS 8421</td>
<td>May 13, 2004</td>
<td>Plaintiff inmate filed a motion for summary judgment in his action challenging the constitutionality of Mass. Gen. Laws ch. 51, § 1, which excluded incarcerated felons from voting while they were</td>
<td>The inmate was convicted of a felony and incarcerated. His application for an absentee ballot was denied on the ground that he was not qualified to register and vote under Mass. Gen. Laws ch. 51, § 1. The inmate argued that the statute was unconstitutional as it applied to him because it amounted to additional punishment for crimes he committed before the statute's enactment and thus violated his due process rights and the prohibition</td>
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Plaintiffs, several groups, brought suit alleging that the proposed use of "punch-card" balloting machines in the California against ex post facto laws and bills of attainder. The court held that the statute was regulatory and not punitive because rational choices were implicated in the statute's disenfranchisement of persons under guardianship, persons disqualified because of corrupt elections practices, persons under 18 years of age, as well as incarcerated felons. Specifically, incarcerated felons were disqualified during the period of their imprisonment when it would be difficult to identify their address and ensure the accuracy of their ballots. Therefore, the court concluded that Mass. Gen. Laws ch. 51, § 1 did not violate the inmate's constitutional rights. The court found the statute at issue to be constitutional and denied the inmate's motion for summary judgment.

Plaintiffs claimed voters using punch-card machines would have a comparatively lesser chance of having their votes counted in violation of the Equal Protection Clause and the counties employing punch-card systems had greater minority

Southwest Voter Registration Educ. Project v. Shelley

United States District Court for the Central District of California

278 F. Supp. 2d 1131; 2003 U.S. Dist. LEXIS

August 15, 2003

Plaintiffs claimed voters using punch-card machines would have a comparatively lesser chance of having their votes counted in violation of the Equal Protection Clause and the counties employing punch-card systems had greater minority

No

N/A

No
violate the United States Constitution and Voting Rights Act. Plaintiffs moved for an order delaying that election, scheduled for October 7, 2003, until such time as it could be conducted without use of punch-card machines. Populations thereby disproportionately disfranchised and votes on the basis of race, in violation of § 2 of the Voting Rights Act. While the court did not need to decide the res judicata issue at this juncture, there was ample reason to believe that plaintiffs would have had a difficult time overcoming it as they were seeking to establish the same constitutional violations alleged in prior litigation, but to secure an additional remedy; plaintiffs failed to prove a likelihood of success on the merits with regard to both of their claims. Even if plaintiffs could show disparate treatment, such would not have amounted to illegal or unconstitutional treatment. The balance of hardships weighed heavily in favor of allowing the election to proceed. The public interests in avoiding wholesale disfranchisement, and in not plunging the State into a constitutional crisis, weighed heavily against enjoining the election. Plaintiffs' motion for preliminary injunction (consolidated with plaintiffs' ex parte application for temporary restraining order) was denied.
<table>
<thead>
<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Plaintiff</th>
<th>Holding</th>
<th>Statutory Basis</th>
<th>Order</th>
<th>Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Igartua-de la Rosa v. United States</td>
<td>United States Court of Appeals for the First Circuit</td>
<td>417 F.3d 145; 2005 U.S. App. LEXIS 15944</td>
<td>August 3, 2005</td>
<td>Plaintiff, a U.S. citizen residing in Puerto Rico, appealed from an order of the United States District Court for the District of Puerto Rico, that rejected his claim that he was deprived of the constitutional right to vote for President and Vice President of the United States, and was also violative of three treaty obligations of the United States.</td>
<td>The putative voter had brought the same claims twice before. The court pointed out that U.S. law granted to the citizens of states the right to vote for the slate of electors to represent that state. Although modern ballots omitted the names of the electors and listed only the candidates, and in form it appeared that the citizens were voting for President and Vice President directly, they were not, but were voting for electors. Puerto Rico was not a state, and had not been enfranchised as the District of Columbia had by the 23rd Amendment. The franchise for choosing electors was confined to &quot;states&quot; by the Constitution. The court declined to turn to foreign or treaty law as a source to reverse the political will of the country. The judgment of the district court was affirmed.</td>
<td>No</td>
<td>N/A</td>
<td>No</td>
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</tbody>
</table>

<p>| United States v. Rogelio Mejorada-Lopez | Alaska | 05-CR-074 | December 5, 2005 | Mejorada-Lopez, a Mexican citizen, completed several voter registration applications to register to vote in Alaska and voted in | | | No | N/A | No |</p>
<table>
<thead>
<tr>
<th>Name of Plaintiff</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Facts</th>
<th>Holding</th>
<th>Statute</th>
<th>Notes</th>
<th>Should be Re-searched Further</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States v. Shah</td>
<td>Colorado</td>
<td>1:04-CR-00458</td>
<td>March 1, 2005</td>
<td>Shah was indicted on two counts of providing false information concerning United States citizenship in order to register to vote in violation of 18 U.S.C. section 911 and 1015(f). Shah was convicted on both counts.</td>
<td>No</td>
<td>N/A</td>
<td>No</td>
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<tr>
<td>United States v. Mohsin Ali</td>
<td>Northern Florida</td>
<td>4:05-CR-47</td>
<td>January 17, 2006</td>
<td>A misdemeanor was filed against Ali charging him with voting by a non-</td>
<td>No</td>
<td>N/A</td>
<td>Yes-need information on the outcome of</td>
<td></td>
</tr>
<tr>
<td>Name of Case</td>
<td>Court</td>
<td>Citation</td>
<td>Date</td>
<td>Defendant</td>
<td>Verdict</td>
<td>Summary of Basis for Or Not Rejecting</td>
<td>Other Notes</td>
<td>Should Be Further researched</td>
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<tr>
<td>United States v. Chaudhary</td>
<td>Northern Florida</td>
<td>4:04-CR-00059</td>
<td>May 18, 2005</td>
<td>Chaudhary was indicted for misuse of a social security number in violation of 42 U.S.C. section 408 and for making a false claim of United States citizenship on a 2002 driver's license application in violation of 18 U.S.C. section 911. A superseding indictment was returned, charging Chaudhary with falsely claiming United States citizenship on a driver's license application and on the accompanying voter registration application. He was convicted of the false</td>
<td>No</td>
<td>N/A</td>
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</table>

Citizen of 18 U.S.C. section 611. Trial was set for January 17, 2006.
<table>
<thead>
<tr>
<th>Nature of Case</th>
<th>Court</th>
<th>Case Number</th>
<th>Date</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States v. Velasquez</td>
<td>Southern Florida</td>
<td>1:03-CR-20233</td>
<td>September 9, 2003</td>
<td>Velasquez, a former 1996 and 1998 candidate for the Florida legislature, was indicted on charges of misrepresenting United States citizenship in connection with voting and for making false statements to the Immigration and Naturalization Service, in violation of 18 U.S.C. section 911, 1015(f) and 1001. Velasquez was convicted on two counts of making false statements on his naturalization application to the INS concerning his voting history.</td>
</tr>
</tbody>
</table>
I were charged with voting in various elections beginning in 1998 in violation of 18 U.S.C. section 611. Four of the defendants were also charged with making false citizenship claims in violation of 18 U.S.C. sections 911 or 1015(f). Ten defendants were convicted, one defendant was acquitted, and charges against four defendants were dismissed upon motion of the government.
<table>
<thead>
<tr>
<th>Case Details</th>
<th>Court</th>
<th>Charge</th>
<th>Date</th>
<th>Holding Details</th>
<th>Security Threatened</th>
<th>Other Notes</th>
<th>Should Case Be Researched Further</th>
</tr>
</thead>
</table>
Charles Powell, Jr., Jesse Lewis, Sheila Thomas, Kelvin Ellis, and one precinct worker, Yvette Johnson, on conspiracy and vote buying charges in violation of 18 U.S.C. section 371 and 42 U.S.C. section 1973i(c). All five defendants were convicted. Kelvin Ellis also pled guilty to one count of 18 U.S.C. section 1512(c)(2) relative to a scheme to kill one of the trial witnesses and two counts of 18 U.S.C. section 1503 relative to directing two other witnesses to refuse to testify before the grand jury.

<p>| United States v. McIntosh | Kansas | 2:04-CR-20142 | December 20, 2004 | A felony information was filed against | No | N/A | No |</p>
<table>
<thead>
<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Number</th>
<th>Date</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States v. Conley; United States v. Slone; United States v. Madden; United</td>
<td>Eastern Kentucky</td>
<td>7:03-CR-00013; 7:03-CR-00014; 7:03-CR-</td>
<td>March 28, 2003 and April 24, 2003</td>
<td>Ten people were indicted on vote buying charges in connection with the 1998 primary</td>
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<tr>
<td>Case Details</td>
<td>Court Location</td>
<td>Date</td>
<td>Holding Details</td>
<td>Supreme Court Petition</td>
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<tr>
<td>States v. Slone et al.; United States v. Calhoun; United States v. Johnson; United States v. Newsome, et al.</td>
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<td>election in Knott County, Kentucky, in violation of 42 U.S.C. section 1973(c). Five of the defendants plead guilty, two were convicted, and three were acquitted.</td>
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<tr>
<td>United States v. Hays, et al.</td>
<td>Eastern Kentucky</td>
<td>March 7, 2003</td>
<td>Ten defendants were indicted for conspiracy and vote buying for a local judge in Pike County, Kentucky, in the 2002 general election, in violation of 42 U.S.C. section 1973(c) and 18 U.S.C. section 371. Five defendants were convicted, one defendant was acquitted, and charges against four defendants were dismissed upon motion of the government.</td>
<td>No</td>
</tr>
<tr>
<td>Name of Case</td>
<td>Court</td>
<td>Case No.</td>
<td>Date</td>
<td>District</td>
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<tr>
<td>Turner, et al.</td>
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<tr>
<td>United States v.</td>
<td>Middle Louisiana</td>
<td>3:03-CR-00019</td>
<td>May 2, 2003</td>
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<td>Braud</td>
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<tr>
<td>United States v.</td>
<td>Western</td>
<td>6:03-CR-</td>
<td>April 12,</td>
<td>St. Martinsville City</td>
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</table>
Thibodeaux was indicted on two counts of conspiring to submit false voter registration information, in violation of 18 U.S.C. section 371 and 42 U.S.C. section 1973(c). She pled guilty to both charges.


Two misdemeanor informations were filed charging Lorraine Goodrich and James Scherzer, Kansas residents who voted in the 2000 and 2002 general elections on both Johnson County, Kansas and in Kansas City, Missouri. The informations charged deprivation of a
Informations were filed against Tammy J. Martin, who voted Missouri in the 2004 general election and Brandon E. Jones, who voted both in Raytown and Kansas City, Missouri in the 2004 general election. Both pled guilty. Additionally, similar misdemeanor informations were filed against Tammy J. Martin, who voted in both Independence and Kansas City, Missouri in the 2004 general election and Brandon E. Jones, who voted both in Raytown and Kansas City, Missouri in the 2004 general election. Both pled guilty.

<table>
<thead>
<tr>
<th>Name of Case</th>
<th>County</th>
<th>Type</th>
<th>Date</th>
<th>Held by</th>
<th>Sentence Date of Issue</th>
<th>Other Notes</th>
<th>Should Case be Reopened</th>
<th>Number</th>
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</thead>
<tbody>
<tr>
<td>United States v. Raymond;</td>
<td>New Hampshire</td>
<td></td>
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<td></td>
<td>December 15, 2005</td>
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<tr>
<td>United States v. McGee;</td>
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<td>United States v. Tobin;</td>
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<tr>
<td>United States v. Hansen</td>
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<td>Two informations were filed charging Allen Raymond, former president of a Virginia-based political consulting firm called GOP Marketplace, and</td>
<td>No</td>
<td>N/A</td>
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</tbody>
</table>
Charles McGee, former executive director of the New Hampshire State Republican Committee, with conspiracy to commit telephone harassment using an interstate phone facility in violation of 18 U.S.C. section 371 and 47 U.S.C. section 223. The charges stem from a scheme to block the phone lines used by two Manchester organizations to arrange drives to the polls during the 2002 general election. Both pled guilty. James Tobin, former New England Regional Director of the Republican National Committee, was indicted on charges of conspiring...
to commit telephone harassment using an interstate phone facility in violation of 18 U.S.C. section 371 and 47 U.S.C. section 223. An information was filed charging Shaun Hansen, the principal of an Idaho telemarketing firm called MILO Enterprises which placed the harassing calls, with conspiracy and aiding and abetting telephone harassment, in violation of 18 U.S.C. section 371 and 2 and 47 U.S.C. section 223. The information against Hansen was dismissed upon motion of the government. A superseding
<table>
<thead>
<tr>
<th>Name of Case</th>
<th>Court Location</th>
<th>Criminal Code</th>
<th>Date</th>
<th>Summary of Case</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States v. Workman</td>
<td>Western North Carolina</td>
<td>1:03-CR-00038</td>
<td>June 30, 2003</td>
<td>A ten-count indictment was returned charging Joshua Workman, a Canadian citizen, with voting and related offenses in...</td>
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<td>indictment was returned against Tobin charging conspiracy to impede the constitutional right to vote for federal candidates, in violation of 18 U.S.C. section 241 and conspiracy to make harassing telephone calls in violation of 47 U.S.C. section 223. Tobin was convicted of one count of conspiracy to commit telephone harassment and one count of aiding and abetting of telephone harassment.</td>
</tr>
</tbody>
</table>

Western North Carolina

5:03-CR-00035

May 14, 2004

A nine-count indictment was returned charging Wayne Shatley, Anita Moore, Valerie Moore, Carlos "Sunshine" Hood and Ross "Toogie" Banner with conspiracy and vote buying in the Caldwell County 2002 general election, in violation of 42 U.S.C. section 1973(c) and 18
<table>
<thead>
<tr>
<th>Name of Case</th>
<th>State</th>
<th>Citation</th>
<th>Date</th>
<th>Holding</th>
<th>Sentencing Hearing Date</th>
<th>Statue of Limitation</th>
<th>Should Be Considered Reopened Further</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States v. Vargas</td>
<td>South Dakota</td>
<td>05-CR-50085</td>
<td>December 22, 2005</td>
<td>U.S.C. section 371. Anita and Valerie Moore pled guilty. Shatley, Hood, and Banner were all convicted.</td>
<td>No</td>
<td>N/A</td>
<td>No</td>
</tr>
<tr>
<td>Name of Case</td>
<td>Count</td>
<td>Citation</td>
<td>District</td>
<td>Holding</td>
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<tr>
<td>States v. Nagy; United States v. Adkins; United States v. Harvey</td>
<td>00019; 05-CR-00148; 05-CR-00161</td>
<td>defraud the United States in violation 18 U.S.C. section 371. Mendez pled guilty. An information was filed charging former Logan County police chief Alvin Ray Porter, Jr., with making expenditures to influence voting in violation of 18 U.S.C. section 597. Porter pled guilty. Logan County attorney Mark Oliver Hrutkay was charged by information with mail fraud in violation of 18 U.S.C. section 1341. Hrutkay pled guilty. Earnest Stapleton, commander of the local VFW, was charged by information with mail fraud. He pled guilty. An information was filed.</td>
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<tr>
<td>Location</td>
<td>State</td>
<td>Case Number</td>
<td>Date</td>
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<tr>
<td>United States v. Adkins, et al.</td>
<td>Southern West Virginia</td>
<td>2:04-CR-00162</td>
<td>December 28 &amp; 30, 2005</td>
<td>Jackie Adkins was indicted for vote buying in Lincoln County, West Virginia, in violation of 42 U.S.C. section 1973(c). A superseding indictment added Wandell “Rocky” Adkins to the indictment and charged both defendants with conspiracy to buy votes in violation of 18 U.S.C. section 371 and vote buying. A second superseding indictment was returned which added three additional defendants, Gregory Brent Stowers,</td>
<td>No</td>
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</table>
"Groundhog" Vance, and Toney "Zeke" Dingess, to the conspiracy and vote buying indictment. Charges were later dismissed against Jackie Adkins. A third superseding indictment was returned adding two additional defendants, Jerry Allen Weaver and Ralph Dale Adams. A superseding information was filed charging Vance with expenditures to influence voting in violation of 18 U.S.C. section 597. Vance pled guilty. Superseding informations were filed against Stowers and Dingess for expenditures to influence voting in.
<table>
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<tr>
<th>Case</th>
<th>District</th>
<th>Type</th>
<th>Due Date</th>
<th>Description</th>
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|          |          |          |          | No | N/A | N/A |


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<tr>
<th>Hand of Case</th>
<th>Court</th>
<th>Citation (Doc)</th>
<th>Date</th>
<th>Facts</th>
<th>Holding</th>
<th>Sentence</th>
<th>Certifying</th>
<th>Notes</th>
<th>Signatory</th>
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</table>
filed against Davis and Byas charging them with double voting. Four more indictments were returned charging convicted felons Ethel M. Anderson, Jiyto L. Cox, Correan F. Edwards, and Joseph J. Gooden with falsely certifying that they were eligible to vote. Ocasio and Hamilton pled guilty. Prude was found guilty. A mistrial was declared in the Sanders case. Brooks was acquitted. Byas signed a plea agreement agreeing to plead to a misdemeanor 18 U.S.C. section 242 charge. Swift moved to change his plea. Davis was found incompetent to stand.
Am. Ass'n of People with Disabilities v. Shelley  | United States District Court for the Central District of California  | 324 F. Supp. 2d 1120; 2004 U.S. Dist. LEXIS 12587  | July 6, 2004  | Plaintiffs, disabled voters and organizations representing those voters, sought to enjoin the directives of defendant California Secretary of State, which decertified and withdrew approval of the use of certain direct recording electronic voting systems. One voter applied for a temporary restraining order, or, in the alternative, a preliminary trial so the government dismissed the case. Gooden is a fugitive. Alicea was acquitted. Four cases are pending. —Anderson, Cox, Edwards, and Little.  | The voters urged the invalidation of the Secretary's directives because, allegedly, their effect was to deprive the voters of the opportunity to vote using touch-screen technology. Although it was not disputed that some disabled persons would be unable to vote independently and in private without the use of DREs, it was clear that they would not be deprived of their fundamental right to vote. The Americans with Disabilities Act did not require accommodation that would enable disabled persons to vote in a manner that was comparable in every way with the voting rights enjoyed by persons without disabilities. Rather, it mandated that voting programs be made accessible. Defendant's decision to suspend the use of DREs pending  | No  | N/A  | No
Am. Ass'n of People with Disabilities v. Hood

<table>
<thead>
<tr>
<th>Court</th>
<th>Case Name</th>
<th>Date</th>
<th>Case Citation</th>
<th>Description</th>
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<tbody>
<tr>
<td>United States District Court for the Middle District of Florida</td>
<td>310 F. Supp. 2d 1226; 2004 U.S. Dist. LEXIS 5615</td>
<td>March 24, 2004</td>
<td>Plaintiffs, disabled voters, and a national organization, sued defendants, the Florida Secretary of State, the Director of the Division of Elections of the Florida Department of State, and a county supervisor of elections, under Title II of the Americans With Disabilities Act and Section 504 of</td>
<td>The voters were visually or manually impaired. The optical scan voting system purchased by the county at issue was not readily accessible to visually or manually impaired voters. The voters were unable to vote using the system without third-party assistance. If it was feasible for the county to purchase a readily accessible system, then the voters' rights under the ADA and the RA were violated. The court found that the manually impaired voter's rights were violated. To the extent &quot;jelly switches&quot; and &quot;sip and puff&quot; devices needed to be</td>
</tr>
</tbody>
</table>
Summary judgment was granted for the Secretary and the Director as to visually impaired voters. It was not feasible for the supervisor to provide such a system, since no such system had been certified at the time of the county's purchase. 28 C.F.R. § 35.160 did not require that visually or manually impaired voters be able to vote in the same or similar manner as non-disabled voters. Visually and manually impaired voters had to be afforded an equal opportunity to participate in and enjoy the benefits of voting. The voters' "generic" discrimination claim was coterminous with their claim under 28 C.F.R. § 35.151. A declaratory judgment was entered against the supervisor to the extent another voting system would have permitted unassisted voting. The supervisor was directed to have some voting machines permitting visually impaired voters to vote alone. The supervisor was directed to procure another system if the county's system was not certified and/or did not permit mouth stick voting. The Secretary and Director were granted judgment against the voters.
Troiano v. Lepore
United States District Court for the Southern District of Florida
November 3, 2003


The complaint alleged that after the 2000 elections Palm Beach County purchased a certain number of sophisticated voting machines called the "Sequoia." According to the voters, even though such accessible machines were available, the supervisor decided not to place such accessible machines in each precinct because it would slow things down too much. The court found that the voters lacked standing because they failed to show that they had suffered an injury in fact. The voters also failed to show a likely threat of a future injury because there was no reasonable grounds to believe that the audio components of the voting machines would not be provided in the future. The voters also failed to state an injury that could be redressed by a favorable decision, because the supervisor was already using the Sequoia machines and had already trained poll workers on the use of the machines. Finally, the action was moot because the Sequoia machines had been provided and there was no reasonable expectation that the machines would not have audio components available in the future.
| Plaintiff | United States Court of Appeals for the Eleventh Circuit | Calendar | 382 F.3d 1276; 2004 U.S. App. LEXIS 18497 | October 1, 2004 | Plaintiff visually impaired registered voters sued defendant county election supervisor, alleging that the failure to make available audio components in voting booths to assist persons who were blind or visually impaired violated state and federal law. The United States District Court for the Southern District of Florida entered summary judgment in favor of the election supervisor. The voters appealed. | The district court granted the election supervisor summary judgment on the grounds that the voters did not have standing to assert their claims and the claims were moot. The appellate court agreed that the case was moot because the election supervisor had furnished the requested audio components and those components were to be available in all of the county's voting precincts in upcoming elections. Specifically, the election supervisor had ceased the allegedly illegal practice of limiting access to the audio components prior to receiving notice of the litigation. Moreover, since making the decision to use audio components in every election, the election supervisor had consistently followed that policy and taken actions to implement it even prior to the litigation. Thus, the appellate court could discern no hint that she had any intention of removing the accessible voting machines in the future. Therefore, the voters' claims are no longer justiciable. | No | N/A | No |

The supervisor's motion for summary judgment was granted. The voters' motion for summary judgment was denied.
<table>
<thead>
<tr>
<th>Name of Case</th>
<th>Plaintiff</th>
<th>Court of Appeal</th>
<th>Date</th>
<th>Issue</th>
<th>Holding</th>
<th>Relevance</th>
<th>Relevance</th>
<th>Relevance</th>
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</thead>
<tbody>
<tr>
<td>Am. Ass'n of People with Disabilities v. Smith</td>
<td>United States District Court for the Middle District of Florida</td>
<td>227 F. Supp. 2d 1276; 2002 U.S. Dist. LEXIS 21373</td>
<td>October 16, 2002</td>
<td>Plaintiff organization of people with disabilities and certain visually and manually impaired voters filed an action against defendant state and local election officials and members of a city council, claiming violation of the Americans with Disabilities Act, 42 U.S.C.S. § 12101 et seq., and the Rehabilitation Act of 1973, and Fla. Const. art. VI, § 1.</td>
<td>Defendants filed motions to dismiss.</td>
<td>Individual plaintiffs were unable to vote unassisted with the equipment currently used in the county or the equipment the county had recently purchased. In order to vote, the impaired individuals relied on the assistance of third parties. The court held that it could not say that plaintiffs would be unable to prove any state of facts that would satisfy the ripeness and standing requirements. The issue of whether several Florida statutory sections were violative of the Florida Constitution were so intertwined with the federal claims that to decline supplemental jurisdiction be an abuse of discretion. Those statutes which provided for assistance in voting did not violate Fla. Const. art. VI, § 1. Because plaintiffs may be able to prove that visually and manually impaired voters were being denied meaningful access to the service, program, or activity, the court could not say with certainty that they would</td>
<td>No</td>
<td>N/A</td>
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The state officials' motion to dismiss was granted in part such that the counts were dismissed with prejudice to the extent plaintiffs asserted that they had been excluded from or denied the benefits of a program of direct and secret voting and in part was dismissed with leave to amend. The local officials motion to dismiss was granted in part such that all counts against the city council members were dismissed.

Jenkins v. Williamson-Butler  
Court of Appeal of Louisiana, Fourth Circuit  
883 So. 2d 537; 2004 La. App. LEXIS 2433  
October 8, 2004  
Petitioner, a candidate for a parish juvenile court judgeship, failed to qualify for a runoff election. She filed suit against defendant, the clerk of criminal court for the parish seeking a new election, based on grounds of substantial

The trial court found that the voting machines were not put into service until two, four, and, in many instances, eight hours after the statutorily mandated start hour which constituted serious irregularities so as to deprive voters from freely expressing their will. It was impossible to determine the number of voters that were affected by the late start up or late arrival of voting machines, making it impossible to determine the result. The appellate court agreed that the
| Hester v. McKeithen | Court of Appeal of Louisiana, Fourth Circuit | 882 So. 2d 1291; 2004 La. App. LEXIS 2429 | October 8, 2004 | Petitioner, school board candidate, filed suit against defendants, Louisiana Secretary of State and district court clerk, contesting the school board election results. The trial court rendered judgment against the candidate, finding no basis for the election to be declared void. The candidate appealed. | Irregularities were so serious that the trial court's voiding the election and calling a new election was the proper remedy. Judgment affirmed. | No | N/A | No |

<p>| In re Election Contest of Democratic Primary Election | Supreme Court of Ohio | 88 Ohio St. 3d 258; 2000 | March 29, 2000 | Appellant sought review of the judgment of the court of common | Appellant contended that an election irregularity occurred when the board failed to meet and act by majority vote on another candidate's withdrawal, | No | N/A | No |</p>
<table>
<thead>
<tr>
<th>Case Title</th>
<th>Court</th>
<th>Decision Date</th>
<th>Facts</th>
<th>Result</th>
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</thead>
<tbody>
<tr>
<td>Held May 4, 1999</td>
<td>Ohio</td>
<td></td>
<td>pleas denying his election contest challenging an opponent's nomination for election irregularity.</td>
<td>instead permitting its employees to make decisions. Appellant had to prove by clear and convincing evidence that one or more election irregularities occurred and it affected enough votes to change or make uncertain the result of the election. Judgment affirmed. The appellant did not establish election irregularity by the board's actions on the candidate's withdrawal, the board acted diligently and exercised its discretion in keeping the candidate's name on the ballot and notifying electors of his withdrawal.</td>
</tr>
<tr>
<td>In re Election Contest As to Watertown Special Referendum Election</td>
<td>Supreme Court of South Dakota</td>
<td>May 23, 2001</td>
<td>Appellant sought review of the judgment of the circuit court declaring a local election valid and declining to order a new election.</td>
<td>The burden was on appellants to show not only that voting irregularities occurred, but also show that those irregularities were so egregious that the will of the voters was suppressed. Appellants did not meet their burden, as mere inconvenience or delay in voting was not enough to overturn the election. Judgment affirmed.</td>
</tr>
<tr>
<td>Jones v. Jessup</td>
<td>Supreme Court of Georgia</td>
<td>June 30, 2005</td>
<td>Defendant incumbent appealed a judgment by the trial court that invalidated an election for the</td>
<td>After the candidate lost the sheriff's election to the incumbent, he contested the election, asserting that there were sufficient irregularities to place in doubt the election results. The state supreme court held that the candidate</td>
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ballots were only to be rejected where the electors failed to furnish required information. Because the ballots cast by the witnesses substantially complied with all of the essential requirements of the form, the trial court erred by finding that they should not have been considered. The candidate failed to establish substantial error in the votes. Judgment reversed.

<p>| Toliver v. Thompson | Supreme Court of Oklahoma | 2000 OK 98; 17 P.3d 464; 2000 Okla. LEXIS 101 | December 21, 2000 | Petitioner challenged an order of the district court denying his motion to compel a recount of votes from an election. | The court held a recount of votes cast in an election could occur when the ballots had been preserved in the manner prescribed by statute. The trial court noted when the ballots had not been preserved in such a manner, no recount would be conducted. The court further noted a petition alleging irregularities in an election could be based upon an allegation that it was impossible to determine with mathematical certainty which | No | N/A | No |</p>
<table>
<thead>
<tr>
<th>Name</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Holding</th>
<th>Statutory</th>
<th>Other Notes</th>
<th>Should the Order Be Reversed?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adkins v. Huckabay</td>
<td>Supreme Court of Louisiana</td>
<td>755 So. 2d 206; 2000 La. LEXIS 504</td>
<td>February 25, 2000</td>
<td>Plaintiff candidate challenged judgment of court of appeal, second circuit, which reversed the lower court's judgment and declared defendant candidate winner of a runoff election for sheriff. The issue presented for the appellate court's determination was whether the absentee voting irregularities plaintiff candidate complained of rendered it impossible to determine the outcome of the election for sheriff. The Louisiana supreme court concluded that the lower court had applied the correct standard, substantial compliance, to the election irregularities, but had erred in its application by concluding that the contested absentee ballots substantially complied with the statutory requirements. The supreme court found that in applying substantial compliance to five of the ballot irregularities, the trial court correctly vacated the general election and set it aside because those absentee ballots should have been disqualified. Because of the...</td>
<td>No</td>
<td>N/A</td>
<td>No</td>
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</table>
Appellants, write-in candidates for the offices of mayor and borough council, appealed the judgment of the superior court, appellate division reversing the trial court's decision to set aside the election results for those offices due to irregularities related to the write-in instructions and defective voting machines. The New Jersey supreme court held that the votes that were rejected by election officials did not result from the voters' own errors, but from the election officials' noncompliance with statutory requirements. In other words, the voters were provided with patently inadequate instructions and defective voting machines. Moreover, appellants met the statutory requirement for successfully contesting the election results by showing that enough qualified voters were denied the right to cast write-in votes as to affect the outcome of the election. Judgment reversed and the state trial court's decision reinstated.

<table>
<thead>
<tr>
<th>Case</th>
<th>Court</th>
<th>Opinion No.</th>
<th>Opinion Date</th>
<th>Holding</th>
<th>Plaintiff</th>
<th>Defendant</th>
<th>Judge</th>
</tr>
</thead>
<tbody>
<tr>
<td>In re Gray--Sadler</td>
<td>Supreme Court of New Jersey</td>
<td>164 N.J. 468; 753 A.2d 1101; 2000 N.J. LEXIS 668</td>
<td>June 30, 2000</td>
<td>constitutional guarantee to secrecy of the ballot and the fact that the margin of victory in the runoff election was three votes, it was impossible to determine the result of the runoff election. Thus, the supreme court ordered a new general election. Judgment of the court of appeals reversed.</td>
<td>Yes</td>
<td>No</td>
<td>N/A</td>
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<tr>
<td>Goodwin v. St. Thomas--St.</td>
<td>Territorial Court of the Virgin</td>
<td>43 V.I. 89; 2000</td>
<td>December 13, 2000</td>
<td>Plaintiff alleged that defendants counted unlawful absentee ballots that</td>
<td>No</td>
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</table>
that certain general election absentee ballots violated territorial election law, and that the improper inclusion of such ballots by defendants, election board and supervisor, resulted in plaintiff's loss of the election. Plaintiff sued defendants seeking invalidation of the absentee ballots and certification of the election results tabulated without such ballots.

lacked postmarks, were not signed or notarized, were in unsealed and/or torn envelopes, and were in envelopes containing more than one ballot. Prior to tabulation of the absentee ballots, plaintiff was leading intervenor for the final senate position, but the absentee ballots entitled intervenor to the position. The territorial court held that plaintiff was not entitled to relief since he failed to establish that the alleged absentee voting irregularities would require invalidation of a sufficient number of ballots to change the outcome of the election. While the unsealed ballots constituted a technical violation, the outer envelopes were sealed and thus substantially complied with election requirements. Further, while defendants improperly counted one ballot where a sealed ballot envelope and a loose ballot were in the same outer envelope, the one vote involved did not change the election result. Plaintiff's other allegations of irregularities were without merit since ballots without postmarks were valid, ballots without signatures were not counted, and ballots without notarized signatures were proper.
However, on appeal, the appellate division held that no waiver occurred. Required information. Finally, the candidate failed to make a sufficient showing of voting irregularities in the machine vote to require a hearing on that issue. Judgment reversed.

Finding that the candidate had waived her right to challenge the affidavit ballots and had not sufficiently established her claim of irregularities to warrant a hearing, the trial court denied her petition and declared the opponent the winner of the primary. However, on appeal, the appellate division held that no waiver occurred. Moreover, because hundreds of apparently otherwise eligible voters failed to fill in their party enrollment and/or prior address, it could be reasonably inferred that these voters were misled thereby into omitting the required information.

Finally, the candidate failed to make a sufficient showing of voting irregularities in the machine vote to require a hearing on that issue. Judgment reversed.
<table>
<thead>
<tr>
<th>Issue</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Description</th>
<th>Holding</th>
<th>Summary of Decision</th>
<th>Additional Info</th>
</tr>
</thead>
<tbody>
<tr>
<td>Harpole v. Kemper County Democratic Exec. Comm.</td>
<td>Supreme Court of Mississippi</td>
<td>908 So. 2d 129; 2005 Miss. LEXIS 463</td>
<td>August 4, 2005</td>
<td>After his loss in a primary election for the office of sheriff, appellant candidate sued appellees, a political party's executive committee and the incumbent sheriff, alleging irregularities in the election. The circuit court dismissed the candidate's petition for judicial review with prejudice. He appealed.</td>
<td>The candidate alleged the sheriff had his deputies transport prisoners to the polls, felons voted, and the absentee voter law was breached. The committee agreed with the last contention and threw out the absentee ballots (seven percent of votes cast); after a recount, the sheriff still prevailed. The trial court dismissed the case due to alleged defects in the petition; in the alternative, it held that the candidate failed to sufficiently allege violations and irregularities in the election. The supreme court held that the petition was not defective. Disqualification of seven percent of the total votes was not substantial enough so as to cause the will of the voters to</td>
<td>No</td>
<td>N/A</td>
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</table>
| Defendant | United States v. Madden | United States Court of Appeals for the Sixth Circuit | 403 F.3d 347; 2005 U.S. App. LEXIS 5326 | April 4, 2005 | Defendant appealed his conviction for violating the federal vote-buying statute. He also appealed the sentence imposed by the United States District Court for the Eastern District of Kentucky at Pikeville. The district court applied the U.S. Sentencing Guidelines Manual (Guidelines) § 3B1.1(c) supervisory-role enhancement and increased defendant's base offense level by two.

Defendant paid three people to vote for a local candidate in a primary election. The same ballot contained candidates for the U.S. Senate. While he waived his right to appeal his conviction, he nonetheless asserted two arguments in seeking to avoid the waiver. He first posited that the vote buying statute prohibited only buying votes for federal candidates—a prohibition not violated by his conduct. In the alternative, he stated if the statute did criminalize buying votes for state or local candidates, then the statute was unconstitutional. Both arguments failed. Defendant argued that applying the supervisory-role enhancement constituted impermissible double counting because the supervision he exercised was no more than necessary to establish a vote-buying offense. | No | N/A | No |
mentally ill people who sold their votes were vulnerable, but maintained they were not victims because they received $50 for their votes. The vote sellers were not victims for Guidelines purposes. The district court erred. Defendant's appeal of conviction was dismissed. Defendant's sentence was vacated, and the case was remanded for resentencing.

United States v. Slone
United States Court of Appeals for the Sixth Circuit
411 F.3d 643; 2005 U.S. App. LEXIS 10137
June 3, 2005
Defendant pled guilty to vote buying in a federal election. The United States District Court for the Eastern District of Kentucky sentenced defendant to 10 months in custody and recommended that the sentence be served at an institution that could be reachable. Defendant offered to pay voters for voting in a primary election. Defendant claimed that the vote buying statute did not apply to him because his conduct related solely to a candidate for a county office. Alternatively, defendant asserted that the statute was unconstitutional because it exceeded Congress' enumerated powers. Finally, defendant argued that the district court erred when it failed to consider his medical condition as a ground for a downward departure at sentencing. The argument also failed. Defendant next argued that the district court erred by applying the vulnerable--victim enhancement under U.S. Sentencing Guidelines Manual § 3A1.1(b)(1). He acknowledged that he knew the mentally ill people who sold their votes were vulnerable, but maintained they were not victims because they received $50 for their votes. The vote sellers were not victims for Guidelines purposes. The district court erred. Defendant's appeal of conviction was dismissed. Defendant's sentence was vacated, and the case was remanded for resentencing.
<table>
<thead>
<tr>
<th>Name of case</th>
<th>Defendant</th>
<th>Court of Appeals</th>
<th>Date</th>
<th>Defendant's Medical Needs</th>
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<tbody>
<tr>
<td>United States v.</td>
<td>Defendant appealed his conviction and sentence.</td>
<td>United States Court of Appeals for the Sixth Circuit</td>
<td>July 18, 2005</td>
<td>appellate court found that the vote buying statute applied to all elections in which a federal candidate was on the ballot, and the government need not prove that defendant intended to affect the federal component of the election by his corrupt practices. The facts admitted by defendant at his guilty-plea hearing established all of the essential elements of an offense. The Elections Clause and the Necessary and Proper Clause combined to provide Congress with the power to regulate mixed federal and state elections even when federal candidates were running unopposed. There was no error in the district court's decision on departure under U.S. Sentencing Guidelines Manual § 5H1.4. Defendant's conviction and sentence were affirmed.</td>
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<td>Smith</td>
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United States v. Smith
United States Court of Appeals for the Sixth Circuit
July 18, 2005
Defendants were convicted of vote buying and conspiracy to buy votes. The United States District Court for the Eastern District of Kentucky entered judgment on
One of the defendants was a state representative who decided to run for an elected position. Defendants worked together and with others to buy votes. During defendants' trial, in addition to testimony regarding vote buying, evidence was introduced that two witnesses had been threatened. The appellate court found that defendants No N/A No
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<th>Sentence</th>
<th>Case</th>
<th>Court</th>
<th>Date</th>
<th>Issue</th>
<th>Holding</th>
<th>Standing</th>
<th>Notes</th>
<th>Shortly</th>
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<td>the jury verdict and sentenced defendants. Defendants appealed.</td>
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<td>failed to show evidence of prejudice with regard to denial of the motion for severance. Threat evidence was not excludable under Fed. R. Evid. 404(b) because it was admissible to show consciousness of guilt without any inference as to the character of defendants. Admission of witnesses' testimony was proper because each witness testified that he or she was approached by a member of the conspiracy and offered money for his or her vote. The remaining incarcerated defendant's challenges to his sentence had merit because individuals who sold their votes were not &quot;victims&quot; for the purposes of U.S. Sentencing Guidelines Manual § 3 A1.1. Furthermore, application of U.S. Sentencing Guidelines Manual § 3B1.1(b) violated defendant's Sixth Amendment rights because it was based on facts that defendant did not admit or proved to the jury beyond a reasonable doubt. Defendants' convictions were affirmed. The remaining incarcerated defendant's sentence was vacated and his case was remanded for resentencing in accordance with Booker.</td>
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<td>Nugent v. Phelps</td>
<td>Court of Appeal of Louisiana, Second Circuit</td>
<td>816 So. 2d 349; 2002 La. App. LEXIS 1138</td>
<td>April 23, 2002</td>
<td>Plaintiff incumbent police chief sued defendant challenger, the winning candidate, to have the election nullified and a new election held based on numerous irregularities and unlawful activities by the challenger and his supporters. The challenger won the election by a margin of four votes. At the end of the incumbent's case, the district court for the dismissed his suit. The incumbent appealed.</td>
<td>The incumbent argued that: (1) the number of persons who were bribed for their votes by the challenger's worker was sufficient to change the outcome of the election; (2) the trial judge failed to inform potential witnesses that they could be given immunity from prosecution for bribery of voters if they came forth with truthful testimony; (3) the votes of three of his ardent supporters should have been counted because they were incarcerated for the sole purpose of keeping them from campaigning and voting; and (4) the district attorney, a strong supporter of the challenger, abused his power when he subpoenaed the incumbent to appear before the grand jury a week preceding the election. The appellate court held no more than two votes would be subtracted, a difference that would be insufficient to change the election result or make it impossible to determine. The appellate court found the trial judge read the immunity portion of the statute to the potential witnesses. The appellate court found the arrests of the three supporters were the result of grand jury indictments, and there was no manifest error in</td>
<td>No</td>
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people who were either at congregating where they would vote by absentee ballot and defendant would give them beer or money. Defendant claimed he was entitled to a mistrial because the prosecutor advanced an impermissible "sending the message" argument. The court held that it was precluded from reviewing the entire context in which the argument arose because, while the prosecutor's closing argument was in the record, the defense counsel's closing argument was not. Also, because the prosecutor's statement was incomplete due to defense counsel's objection, the court could not say that the statement made it impossible for defendant to receive a fair trial. Furthermore, the trial judge did not

| Eason v. State | Court of Appeals of Mississippi | 2005 Miss. App. LEXIS 1017 | December 13, 2005 | Defendant appealed a decision of circuit court convicting him of one count of conspiracy to commit voter fraud and eight counts of voter fraud. Defendant was helping with his cousin's campaign in a run-off election for county supervisor. Together, they drove around town, picking up various people who were either at congregating spots or their homes. Defendant would drive the voters to the clerk's office where they would vote by absentee ballot and defendant would give them beer or money. Defendant claimed he was entitled to a mistrial because the prosecutor advanced an impermissible "sending the message" argument. The court held that it was precluded from reviewing the entire context in which the argument arose because, while the prosecutor's closing argument was in the record, the defense counsel's closing argument was not. Also, because the prosecutor's statement was incomplete due to defense counsel's objection, the court could not say that the statement made it impossible for defendant to receive a fair trial. Furthermore, the trial judge did not | No | N/A | No |
abuse his discretion when he did not allow defendant to ask the individual whether she wanted to see defendant go to prison because the individual's potential bias was shown by the individual's testimony that she expected the prosecution to recommend her sentence. The court affirmed defendant's conviction.

United States v. Turner

United States District Court for the Eastern District of Kentucky

2005 U.S. Dist. LEXIS 31709

November 30, 2005

Defendants were charged with committing mail fraud and conspiracy to commit mail fraud and vote-buying. First defendant filed a motion to recuse. Second defendant's motion to join the motion to recuse was granted. First defendant moved to compel the Government to grant testimonial use immunity to second defendant and moved to sever

Defendants argued that recusal was mandated by 28 U.S.C.S. § 455(a) and (b)(1). The court found no merit in defendants' arguments. The fact that the judge's husband was the commissioner of the Kentucky Department of Environmental Protection, a position to which he was appointed by the Republican Governor, was not relevant. The judge's husband was neither a party nor a witness. The court further concluded that no reasonable person could find that the judge's spouse had any direct interest in the instant action. As for issue of money donated by the judge's husband to Republican opponents of first defendant, the court could not discern any reason why such facts warranted recusal. First defendant asserted that

No | N/A | No
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<tr>
<th>Name of Case</th>
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<th>Opinion Date</th>
<th>Facts</th>
<th>Holding</th>
<th>Summary of Case</th>
<th>Other Notes</th>
<th>Should Case be Resumed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ways v. Shively</td>
<td>Supreme Court of Nebraska</td>
<td>264 Neb. 250; 646 N.W. 2d 621; 2002 Neb. LEXIS 158</td>
<td>July 5, 2002</td>
<td>Appellant felon filed a writ of mandamus, which sought to compel appellee Election Commissioner of Lancaster County, Nebraska, to permit him to register to vote. The District Court for Lancaster County denied the motion to recuse was denied. First defendant's</td>
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<td>second defendant should have been granted use immunity based on a belief that second defendant would testify that first defendant did not agree to, possess knowledge of, engage in, or otherwise participate in any of the illegal activity alleged in the indictment. The court found the summary of expected testimony to be too general to grant immunity. In addition, it was far from clear whether the court had the power to grant testimonial use immunity to second defendant. Defendants' motion to recuse was denied. First defendant's motions to compel and to sever were denied.</td>
<td></td>
<td>The felon was discharged from the Nebraska State Penitentiary in June 1998 after completing his sentences for the crimes of pandering, carrying a concealed weapon and attempting to possess a controlled substance. The commissioner asserted that as a result of the felon's conviction, the sentence for which had neither been reversed nor annulled, he had lost his right to vote. The commissioner contended that the only method by which the felon's</td>
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The trial court declared the disenfranchisement statutes unconstitutional and ordered local election officials to allow the plaintiff felon's petition for writ of mandamus and dismissed the petition. The felon appealed. The right to vote could be restored was through a warrant of discharge issued by the Nebraska Board of Pardons—a warrant of discharge had not been issued. The supreme court ruled that the certificate of discharge issued to the felon upon his release did not restore his right to vote. The supreme court ruled that as a matter of law, the specific right to vote was not restored to the felon upon his discharge from incarceration at the completion of his sentences. The judgment was affirmed.

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<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Facts</th>
<th>Holding</th>
<th>Citation</th>
<th>Outcome</th>
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<tbody>
<tr>
<td>Fischer v. Governor</td>
<td>Supreme Court of New Hampshire</td>
<td>145 N.H. 28; 749 A.2d 321; 2000 N.H. LEXIS 16</td>
<td>March 24, 2000</td>
<td>Appellant State of New Hampshire challenged a ruling of the superior court that the felon disenfranchisement statutes violate N.H. Const. pt. I, Art. 11.</td>
<td>Appellee was incarcerated at the New Hampshire State Prison on felony convictions. When he requested an absentee ballot to vote from a city clerk, the request was denied. The clerk sent him a copy of N.H. Rev. Stat. Ann. § 607(A)(2) (1986), which prohibits a felon from voting &quot;from the time of his sentence until his final discharge.&quot; The trial court declared the disenfranchisement statutes unconstitutional and ordered local election officials to allow the plaintiff to vote. Appellant State of New Hampshire challenged this ruling. The central issue was whether the felon</td>
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<td>Name of Case</td>
<td>Court</td>
<td>Citation</td>
<td>Date</td>
<td>Issue</td>
<td>Holding</td>
<td>Statutory Basis of Note</td>
<td>Case Note</td>
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<td>Mixon v. Commonwealth</td>
<td>Commonwealth Court of Pennsylvania</td>
<td>759 A.2d 442; 2000 Pa. Commw. LEXIS 534</td>
<td>September 18, 2000</td>
<td>Respondents filed objections to petitioners' complaint seeking declaratory relief as to the unconstitutionality of the Pennsylvania Election Code, 25 Pa. Cons. Stat. §§</td>
<td>Petitioner convicted felons were presently or had formerly been confined in state prison. Petitioner elector was currently registered to vote in respondent state. Petitioners filed a complaint against respondent state seeking declaratory relief challenging as unconstitutional, state election and voting laws that excluded confined felons from the definition of qualified voter.</td>
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<td>disenfranchisement statutes violated N.H. Const. pt. I, art. 11. After a review of the article, its constitutional history, and legislation pertinent to the right of felons to vote, the court concluded that the legislature retained the authority under the article to determine voter qualifications and that the felon disenfranchisement statutes were a reasonable exercise of legislative authority, and reversed. Judgment reversed because the court concluded that the legislature retained its authority under the New Hampshire Constitution to determine voter qualifications and that the felon disenfranchisement statutes were a reasonable exercise of legislative authority.</td>
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felons were not unconstitutionally deprived of qualified absentee elector status because respondent state had broad power to determine the conditions under which suffrage could be exercised. However, petitioner elector had no standing and the court overruled objection as to deprivation of ex-felon voting rights. The court sustained respondents' objection since incarcerated felons were not unconstitutionally deprived of qualified absentee elector status and petitioner elector had no standing, but objection that ex-incarcerated felons' voting rights were deprived was overruled since status penalized them.

Plaintiffs moved for a preliminary injunction, which the parties agreed to consolidate with the

| NAACP Philadelphia Branch v. Ridge | United States District Court for the Eastern District of Pennsylvania | 2000 U.S. Dist. LEXIS 11520 | August 14, 2000 | Plaintiffs, ex-felon, unincorporated association, and others, filed a civil rights suit against defendant state and local officials, contending that the Pennsylvania Voter Registration Act, | No | N/A | No |
Clause of U.S. all three of the special circumstances found that abstention was not appropriate under the circumstances since it did not agree with plaintiffs' contention that the time constraints caused by the upcoming election meant that the option of pursuing their claims in state court did not offer plaintiffs an adequate remedy. Plaintiff's motion for permanent injunction denied; the court abstained from deciding merits of plaintiffs' claims under the Pullman doctrine because all three of the special circumstances necessary to invoke the doctrine were present in the case; all further proceedings stayed until further order.

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<tr>
<th>Name</th>
<th>United States</th>
<th>Year</th>
<th>Month</th>
<th>Parties</th>
<th>Summary</th>
<th>Notes</th>
<th>Citation</th>
</tr>
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<tbody>
<tr>
<td>Farrakhan v.</td>
<td>2000</td>
<td>December</td>
<td>Plaintiffs, convicted</td>
<td>The felons alleged that Washington's</td>
<td>No</td>
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Racial minorities, sued defendants for alleged violations of the Voting Rights Act. The parties filed cross-motions for summary judgment. Restoration of civil rights schemes, premised upon Wash. Const. art. VI § 3, resulted in the denial of the right to vote to racial minorities in violation of the VRA. They argued that race bias in, or the discriminatory effect of, the criminal justice system resulted in a disproportionate number of racial minorities being disenfranchised following felony convictions. The court concluded that Washington's felon disenfranchisement provision disenfranchised a disproportionate number of minorities; as a result, minorities were underrepresented in Washington's political process. The Rooker-Feldman doctrine barred the felons from bringing any as-applied challenges, and even if it did not bar such claims, there was no evidence that the felons' individual convictions were born of discrimination in the criminal justice system. However, the felons' facial challenge also failed. The remedy they sought would create a new constitutional problem, allowing disenfranchisement only of white felons. Further, the felons did not establish a causal connection between

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<th>Name</th>
<th>Court</th>
<th>Date</th>
<th>Allegation</th>
<th>Decision</th>
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<tbody>
<tr>
<td>Locke</td>
<td>District Court for the Eastern District of Washington</td>
<td>1, 2000</td>
<td>Felons who were also racial minorities, sued defendants for alleged violations of the Voting Rights Act.</td>
<td>Summary judgment.</td>
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</tbody>
</table>
Lexis and the felons cross-...First, Fourteenth, Fifteenth, and Twenty-Fourth Amendments to the United States Constitution, as well as §§ 2 and 10 of the Voting Rights Act of 1965. Each of the felons' claims was fatally flawed. The felons' exclusion from voting did not violate the Equal Protection or Due Process Clauses of the United States Constitution. The First Amendment did not guarantee felons the right to vote. Although there was evidence that racial animus was a factor in the initial enactment of Florida's disenfranchisement law, there was no evidence that race played a part in the re-enactment of that provision. Although it appeared that there was a disparate impact on minorities, the

<p>| Case: Johnson v. Bush | Court: United States District Court for the Southern District of Florida | Plaintiff: Plaintiff felons sued defendant state officials for alleged violations of their constitutional rights. The officials moved and the felons cross-moved for summary judgment. | Rationale: The felons had all successfully completed their terms of incarceration and/or probation, but their civil rights to register and vote had not been restored. They alleged that Florida's disenfranchisement law violated their rights under First, Fourteenth, Fifteenth, and Twenty-Fourth Amendments to the United States Constitution, as well as §§ 2 and 10 of the Voting Rights Act of 1965. Each of the felons' claims was fatally flawed. The felons' exclusion from voting did not violate the Equal Protection or Due Process Clauses of the United States Constitution. The First Amendment did not guarantee felons the right to vote. Although there was evidence that racial animus was a factor in the initial enactment of Florida's disenfranchisement law, there was no evidence that race played a part in the re-enactment of that provision. Although it appeared that there was a disparate impact on minorities, the | Summary: The court granted defendants' motion and denied the felons' motion for summary judgment. | Disposition: No | N/A | No |</p>
<table>
<thead>
<tr>
<th>Citation</th>
<th>Court</th>
<th>Date</th>
<th>Plaintiff's Argument</th>
<th>Holding</th>
</tr>
</thead>
<tbody>
<tr>
<td>King v. City of Boston</td>
<td>United States District Court for the District of Massachusetts</td>
<td>May 13, 2004</td>
<td>Plaintiff inmate filed a motion for summary judgment in his action challenging the constitutionality of Mass. Gen. Laws ch. 51, § 1, which excluded incarcerated felons from voting while they were imprisoned.</td>
<td>The inmate was convicted of a felony and incarcerated. His application for an absentee ballot was denied on the ground that he was not qualified to register and vote under Mass. Gen. Laws ch. 51, § 1. The inmate argued that the statute was unconstitutional as it applied to him because it amounted to additional punishment for crimes he committed before the statute's enactment and thus violated his due process rights and the prohibition against ex post facto laws and bills of attainder. The court held that the statute was regulatory and not punitive because rational choices were implicated in the statute's disenfranchisement of persons under guardianship, persons disqualified</td>
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<tr>
<td>Judges</td>
<td>Citation</td>
<td>Legal Text</td>
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<tr>
<td>Hayden v. Pataki</td>
<td>United States District Court for the Southern District of New York</td>
<td>defendant's motion for judgment on the pleadings on the felons' claims under U.S. Const. amend. XIV, XV because their factual allegations were insufficient from which to draw an inference that the challenged provisions or their predecessors were enacted with discriminatory intent, and because denying suffrage to those who received</td>
<td>No</td>
<td>N/A</td>
</tr>
</tbody>
</table>
1973 were dismissed because § 1973 could not be used to challenge the legality of N.Y. Elec. Law § 5–106. Defendants' motion was granted as to the felons' claims under 42 U.S.C.S. § 1971 because § 1971 did not provide for a private right of action, and because the felons were not "otherwise qualified to vote." The court also granted defendants' motion on the felons' U.S. Const. amend. I claim because it did not guarantee a felon the right to vote. Defendants' motion for judgment on the pleadings was granted in the felons' § 1983 action.

Farrakhan v. Washington
United States Court for Appeals for the Ninth Circuit
338 F.3d 1009; 2003 U.S. App. LEXIS 14810
July 25, 2003
Plaintiff inmates sued defendant state officials, claiming that Washington state's felon disenfranchisement scheme constitutes improper race–based vote denial
Upon conviction of infamous crimes in the state, (that is, crimes punishable by death or imprisonment in a state correctional facility), the inmates were disenfranchised. The inmates claimed that the disenfranchisement scheme violated § 2 because the criminal justice system was biased against minorities, causing a disproportionate
No
N/A
No
In re Phillips  | Supreme Court of Virginia | 265 Va. 81; 574 | January 10, 2003 | The circuit court entered a judgment | More than five years earlier, the former felon was convicted of the felony of violation of § 2 of the Voting Rights Act. The United States District Court for the Eastern District of Washington granted a summary judgment dismissing the inmates' claims. The inmates appealed. | No | N/A | No

The United States District Court for the Eastern District of Washington granted summary judgment dismissing the inmates' claims. The inmates appealed. The circuit court held, inter alia, that the district court erred in failing to consider evidence of racial bias in the state's criminal justice system in determining whether the state's felon disenfranchisement laws resulted in denial of the right to vote on account of race. Instead of applying its novel "by itself" causation standard, the district court should have applied a totality of the circumstances test that included analysis of the inmates' compelling evidence of racial bias in Washington's criminal justice system. However, the inmates lacked standing to challenge the restoration scheme because they presented no evidence of their eligibility, much less even allege that they were eligible for restoration, and had not attempted to have their civil rights restored. The court affirmed as to the eligibility claim but reversed and remanded for further proceedings to the bias in the criminal justice system claim.
S.E.2d 270; 2003 Va. LEXIS 10

<table>
<thead>
<tr>
<th>Fact</th>
<th>Issue</th>
<th>Conclusion</th>
<th>Determination</th>
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<tr>
<td>In which it declined to consider petitioner former felon’s petition for approval of her request to seek restoration of her eligibility to register to vote. The former felon appealed.</td>
<td>Making a false written statement incident to a firearm purchase. She then petitioned the trial court asking it to approve her request to seek restoration of her eligibility to register to vote. Her request was based on Va. Code Ann. § 53.1–231.2, allowing persons convicted of non-violent felonies to petition a trial court for approval of a request to seek restoration of voting rights. The trial court declined. It found that Va. Code Ann. § 53.1–231.2 violated constitutional separation of powers principles since it gave the trial court powers belonging to the governor. It also found that even if the statute was constitutional, it was fundamentally flawed for not providing notice to respondent Commonwealth regarding a petition. After the petition was denied, the state supreme court found the separation of powers principles were not violated since the statute only allowed the trial court to determine if an applicant met the requirements to have voting eligibility restored. It also found the statute was not fundamentally flawed since the Commonwealth was not an interested party.</td>
<td>The former felon appealed.</td>
<td>The former felon appealed.</td>
</tr>
<tr>
<td>Name</td>
<td>Citation</td>
<td>Date</td>
<td>Issue</td>
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<tr>
<td>Howard v. Gilmore</td>
<td>United States Court of Appeals for the Fourth Circuit</td>
<td>2000</td>
<td>February 23, 2000</td>
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</table>
Plaintiffs, ex-felon citizens of Florida, on their own right and on behalf of others, sought review of a decision of the United States District Court for the Southern District of Florida, which granted summary judgment to defendants, members of the Florida Clemency Board in their official capacity. The citizens challenged the validity of the Florida felon disenfranchisement that none of the constitutional provisions appellant relied on were properly pled because appellant failed to assert that either his race or gender were involved in the decisions to deny him the vote. Conditioning reestablishment of his civil rights on a $10 fee was not unconstitutional. The citizens alleged that Fla. Const. art. VI, § 4 (1968) was racially discriminatory and violated their constitutional rights. The citizens also alleged violations of the Voting Rights Act. The court initially examined the history of Fla. Const. art. VI, § 4 (1968) and determined that the citizens had presented evidence that historically the disenfranchisement provisions were motivated by a discriminatory animus. The citizens had met their initial burden of showing that race was a substantial motivating factor. The state was then required to show that the current disenfranchisement provisions would have been enacted absent the impermissible discriminatory intent. Because the state had not met its burden, summary judgment should not have been granted. The court found
<table>
<thead>
<tr>
<th>Case Name</th>
<th>Court Name</th>
<th>Year</th>
<th>Date</th>
<th>Plaintiff</th>
<th>Defendant</th>
<th>Summary</th>
<th>Issue</th>
</tr>
</thead>
<tbody>
<tr>
<td>State v. Black</td>
<td>Court of Appeals of Tennessee</td>
<td>2002</td>
<td>September 26, 2002</td>
<td>In 1997, petitioner was convicted of forgery and sentenced to the penitentiary for two years, but was immediately placed on probation. He subsequently petitioned the circuit court for restoration.</td>
<td>The appellate court's original opinion found that petitioner had not lost his right to hold public office because Tennessee law removed that right only from convicted felons who were &quot;sentenced to the penitentiary.&quot; The trial court's amended judgment made it clear that petitioner was in fact sentenced to the penitentiary. Based upon this correction to the record, the appellate court found that petitioner's rights were violated.</td>
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of citizenship. The
trial court restored
his citizenship rights.
The State appealed.
The appellate court
issued its opinion,
but granted the
State's motions to
supplement the
record and to rehear
its decision.

sentence to the penitentiary resulted in
the forfeiture of his right to seek and
hold public office by operation of
However, the appellate court
concluded that this new information
did not require a different outcome on
the merits of the issue of restoration of
his citizenship rights, including the
right to seek and hold public office.
The appellate court adhered to its
conclusion that the statutory
presumption in favor of the restoration
was not overcome by a showing, by a
preponderance of the evidence, of good
cause to deny the petition for
restoration of citizenship rights. The
appellate court affirmed the restoration
of petitioner's right to vote and
reversed the denial of his right to seek
and hold public office. His full rights
of citizenship were restored.

<table>
<thead>
<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Issue</th>
<th>Holding</th>
<th>Statutory Presumption Overcome?</th>
<th>Other Notes</th>
<th>Should the Case Be Revisited?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Johnson v. Governor of Fla.</td>
<td>United States Court of Appeals for the Eleventh Circuit</td>
<td>405 F.3d 1214; 2005 U.S. App. LEXIS 5945</td>
<td>April 12, 2005</td>
<td>Plaintiff individuals sued defendant members of Florida Clemency Board, arguing that Florida's felon disenfranchisement</td>
<td>The individuals argued that the racial animus motivating the adoption of Florida's disenfranchisement laws in 1868 remained legally operative despite the reenactment of Fla. Const. art. VI, § 4 in 1968. The subsequent reenactment eliminated any</td>
<td>No</td>
<td>N/A</td>
<td>No</td>
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</tbody>
</table>
law, Fla. Const. art. VI, § 4 (1968), violated the Equal Protection Clause and 42 U.S.C.S. § 1973. The United States District Court for the Southern District of Florida granted the members summary judgment. A divided appellate panel reversed. The panel opinion was vacated and a rehearing en banc was granted.

discriminatory taint from the law as originally enacted because the provision narrowed the class of disenfranchised individuals and was amended through a deliberative process. Moreover, there was no allegation of racial discrimination at the time of the reenactment. Thus, the disenfranchisement provision was not a violation of the Equal Protection Clause and the district court properly granted the members summary judgment on that claim. The argument that 42 U.S.C.S. § 1973 applied to Florida's disenfranchisement provision was rejected because it raised grave constitutional concerns, i.e., prohibiting a practice that the Fourteenth Amendment permitted the state to maintain. In addition, the legislative history indicated that Congress never intended the Voting Rights Act to reach felon disenfranchisement provisions. Thus, the district court properly granted the members summary judgment on the Voting Rights Act claim. The motion for summary judgment in favor of the members was granted.
allowed them to be segregated from other ballots cast. Because the ballots could not have been segregated, apportionment was the appropriate remedy if no fraud was involved. If fraud was involved, the election would have had to have been voided and a new election held. Because the trial court did not hold an evidentiary hearing on the fraud allegations, and did not determine whether fraud was in issue, the case was remanded for a determination as to whether fraud was evident in the electoral process. Judgment reversed and remanded.

<p>| Case | Court of Appeals of Mississippi | 2005 Miss. App. LEXIS 1017 | December 13, 2005 | Defendant appealed a decision of the circuit court convicting him of one count of conspiracy to commit voter fraud | Defendant was helping with his cousin's campaign in a run-off election for county supervisor. Together, they drove around town, picking up various people who were either at congregating spots or their homes. Defendant would drive the | No | N/A | No |</p>
<table>
<thead>
<tr>
<th>Plaintiff/Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Defendant</th>
<th>Issue</th>
<th>Judgment/Decision</th>
<th>Manner Supported</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wilson v. Commonwealth</td>
<td>Court of Appeals of Virginia</td>
<td>2000 Va. App. LEXIS 322</td>
<td>May 2, 2000</td>
<td>Defendant appealed the judgment of the circuit court which convicted her of election fraud.</td>
<td>At trial, the Commonwealth introduced substantial testimony and documentary evidence that defendant had continued to live at one residence in the 13th District, long after she stated on the voter registration form that she was living at a residence in the 51st House District. The evidence included records showing electricity and water usage, records from the Department of Motor</td>
<td>No</td>
<td>N/A</td>
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LEXIS

overturned the results of a mayoral election after reviewing the absentee ballots cast for said election, resulting in a loss for appellant incumbent based on the votes received from appellee voters. The incumbent appealed, and the voters cross-appealed. In the meantime, the trial court stayed enforcement of its judgment pending resolution of the appeal.

The voters and the incumbent all challenged the judgment entered by the trial court arguing that it impermissibly included or excluded certain votes. The appeals court agreed with the voters that the trial court should have excluded the votes of those voters for the incumbent who included an improper form of identification with their absentee ballots. It was undisputed that at least 30 absentee voters who voted for the incumbent provided with their absentee ballots a form of identification that was not proper under Alabama law. As a result, the court further agreed that the trial court erred in allowing those voters to somewhat "cure" that defect by providing a proper form of identification at the trial of the election contest, because, under those

Townson v. Stonicher
Supreme Court of Alabama
2005
Lexis 214
December 9, 2005
The circuit court overturned the results of a mayoral election after reviewing the absentee ballots cast for said election, resulting in a loss for appellant incumbent based on the votes received from appellee voters. The incumbent appealed, and the voters cross-appealed. In the meantime, the trial court stayed enforcement of its judgment pending resolution of the appeal.

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<th>Date</th>
<th>Description</th>
<th>Outcome</th>
<th>Statutory Basis of NLRB</th>
<th>Order of Note</th>
<th>Subsequent Case/Research Number</th>
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<tbody>
<tr>
<td>1</td>
<td>ACLU of Minn. v. Kiffmeyer</td>
<td>United States District Court for the District of Minnesota</td>
<td>2004 U.S. Dist. LEXIS 22996</td>
<td>October 29, 2004</td>
<td>Plaintiffs, voters and associations, filed for a temporary restraining order pursuant to Fed. R. Civ. P. 65, against defendant, Minnesota Secretary</td>
<td>Plaintiffs argued that Minn. Stat. § 201.061 was inconsistent with the Help America Vote Act because it did not authorize the voter to complete registration either by a &quot;current and valid photo identification&quot; or by use of a current utility bill, bank statement, government check, paycheck, or other</td>
<td>No</td>
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whose registrations were deemed incomplete. The court found that likely to succeed on their claim that the authorization in Minn. Stat. § 201.061, sub. 3, violated the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution insofar as it did not also authorize the use of a photographic tribal identification card by American Indians who do not reside on their tribal reservations. Also, the court found that plaintiffs demonstrated that they were likely to succeed on their claims that Minn. R. 8200.5100, violated the Equal Protection Clause of the United States Constitution. A temporary restraining order was entered.

<table>
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<th>Plaintiff</th>
<th>Defendant</th>
<th>Civil Rights Act</th>
<th>State Code</th>
<th>Subcode</th>
<th>Federal Law</th>
<th>Opinion by</th>
<th>Habeas Corpus</th>
<th>Telephone</th>
<th>Other</th>
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<tr>
<td>League of Women Voters v. Blackwell</td>
<td>United States District Court for the Northern District of Ohio</td>
<td>340 F. Supp. 2d 823; 2004</td>
<td>October 20, 2004</td>
<td>Plaintiff organizations filed suit against defendant, Ohio's</td>
<td>The directive in question instructed election officials to issue provisional ballots to first-time voters who registered by mail but did not provide</td>
<td>No</td>
<td>N/A</td>
<td>No</td>
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</table>

of State, concerning voter registration. government document that showed the name and address of the individual. The Secretary advised the court that there were less than 600 voters who attempted to register by mail but whose registrations were deemed incomplete. The court found that plaintiffs demonstrated that they were likely to succeed on their claim that the authorization in Minn. Stat. § 201.061, sub. 3, violated the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution insofar as it did not also authorize the use of a photographic tribal identification card by American Indians who do not reside on their tribal reservations. Also, the court found that plaintiffs demonstrated that they were likely to succeed on their claims that Minn. R. 8200.5100, violated the Equal Protection Clause of the United States Constitution. A temporary restraining order was entered.

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Secretary of State, claiming that a directive issued by the Secretary contravened the provisions of the Help America Vote Act. The Secretary filed a motion to dismiss. 

documentary identification at the polling place on election day. When submitting a provisional ballot, a first-time voter could identify himself by providing his driver's license number or the last four digits of his social security number. If he did not know either number, he could provide it before the polls closed. If he did not do so, his provisional ballot would not be counted. The court held that the directive did not contravene the HAVA and otherwise established reasonable requirements for confirming the identity of first-time voters who registered to vote by mail because: (1) the identification procedures were an important bulwark against voter misconduct and fraud; (2) the burden imposed on first-time voters to confirm their identity, and thus show that they were voting legitimately, was slight; and (3) the number of voters unable to meet the burden of proving their identity was likely to be very small. Thus, the balance of interests favored the directive, even if the cost, in terms of uncounted ballots, was regrettable. The court granted the Secretary's motion to dismiss.
<table>
<thead>
<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Description</th>
<th>Result</th>
</tr>
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<tbody>
<tr>
<td>New York v. County of Del.</td>
<td>United States District Court for the Northern District of New York</td>
<td>82 F. Supp. 2d 12, 2000 U.S. Dist. LEXIS 1398</td>
<td>February 8, 2000</td>
<td>Plaintiffs brought a claim in the district court under the Americans With Disabilities Act and filed a motion for a preliminary injunction and motion for leave to amend their complaint, and defendants were ordered to show cause why a preliminary injunction should not be issued.</td>
<td>In their complaint, plaintiffs alleged that defendants violated the ADA by making the voting locations inaccessible to disabled persons and asked for a preliminary injunction requiring defendants to come into compliance before the next election. The court found that defendants were the correct parties, because pursuant to New York election law defendants were responsible for the voting locations. The court further found that the class plaintiffs represented would suffer irreparable harm if they were not able to vote, because, if the voting locations were inaccessible, disabled persons would be denied the right to vote. Also, due to the alleged facts, the court found plaintiffs would likely succeed on the merits. Consequently, the court granted plaintiffs' motion for a preliminary injunction. The court granted plaintiffs' motion for a preliminary injunction and granted plaintiffs' motion for leave to amend their complaint.</td>
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<tr>
<td>New York v. County of Schoharie</td>
<td>United States District Court for the Northern</td>
<td>82 F. Supp. 2d 19, 2000</td>
<td>February 8, 2000</td>
<td>Plaintiffs brought a claim in the district court under the</td>
<td>In their complaint, plaintiffs alleged that defendants violated the ADA by allowing voting locations to be</td>
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The court further found that defendants were the correct party, because pursuant to New York election law, defendants were responsible for the voting locations. The court further found that the class plaintiffs represented would suffer irreparable harm if they were not able to vote, because, if the voting locations were inaccessible, disabled persons would be denied the right to vote. Also, the court found that plaintiffs would likely succeed on the merits of their case. Consequently, the court granted plaintiffs' motion for a preliminary injunction. The court granted plaintiffs' motion for a preliminary injunction because plaintiffs showed irreparable harm and proved likely success on the merits and granted plaintiff's motion for leave to amend the complaint.
<table>
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<tr>
<th>County</th>
<th>Election</th>
<th>Result</th>
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<tr>
<td>Westchester</td>
<td>York</td>
<td>U.S. Dist. LEXIS 24203</td>
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<td>election officials pursuant to 42 U.S.C.S. §§ 12131--12134, N.Y. Exec. Law § 296, and N.Y. Elec. Law § 4-1-4. Plaintiffs moved for a preliminary injunction, requesting (among other things) that the court order defendants to modify the polling places in the county so that they were accessible to disabled voters on election day. Defendants moved to dismiss. on the merits because the currently named defendants could not provide complete relief sought by plaintiffs. Although the county board of elections was empowered to select an alternative polling place should it determine that a polling place designated by a municipality was &quot;unsuitable or unsafe,&quot; it was entirely unclear that its power to merely designate suitable polling places would be adequate to ensure that all polling places used in the upcoming election actually conformed with the Americans with Disabilities Act. Substantial changes and modifications to existing facilities would have to be made, and such changes would be difficult, if not impossible, to make without the cooperation of municipalities. Further, the court could order defendants to approve voting machines that conformed to the ADA were they to be purchased and submitted for county approval, but the court could not order them to purchase them for the voting districts in the county. A judgment issued in the absence of the municipalities would be inadequate. Plaintiffs' motion for preliminary</td>
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</table>
They claimed discrimination under the Americans with Disabilities Act and 28 C.F.R. §§ 35.130 and 35.151 of the Rehabilitation Act of 1973, and violations of the voting rights laws. The court found that the complaint stated causes of action under the ADA, the Rehabilitation Act, and 28 C.F.R. §§ 35.130 and 35.151. The court found that the voters and organizations had standing to raise their claims. The plaintiffs failed to join the state official who would need to approve any talking ballots. The court granted the defendants' motion to dismiss for failure (1) to state a cause of action and (2) to join an indispensable party.
The state contended that the abrogation of state sovereign immunity in Title II of the ADA exceeded congressional authority under U.S. Const. amend XIV, § 5, to enforce substantive constitutional guarantees. The United States Supreme Court held, however, that Title II, as it applied to the class of cases implicating the fundamental right of access to the courts, constituted a valid exercise of Congress's authority. Title II was responsive to evidence of pervasive unequal treatment of persons with disabilities in the administration of state services and programs, and such disability discrimination was thus

<p>| TENNESSEE, Petitioner v. GEORGE LANE et al. | United States Supreme Court | 541 U.S. 509; 124 S. Ct. 1978; 158 L. Ed. 2d 820; 2004 U.S. LEXIS 3386 | May 17, 2004 | Respondent paraplegics sued petitioner State of Tennessee, alleging that the State failed to provide reasonable access to court facilities in violation of Title II of the Americans with Disabilities Act of 1990. Upon the grant of a writ of certiorari, the State appealed the judgment of the | The court could not afford complete relief to the visually impaired voters in that party's absence; it granted the motion to dismiss under Fed. R. Civ. P. 12(b)(7) without prejudice. The court granted the commissioners' motion to dismiss in part and denied it in part. The court granted the motion to dismiss the claims of the visually impaired voters for failure to join an indispensable party, without prejudice, and with leave to amend the complaint. | No | N/A | No |</p>
<table>
<thead>
<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Issue (Issue)</th>
<th>U.S.</th>
<th>Statutory Basis</th>
<th>Result</th>
<th>Should Be Recognized As a Right</th>
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<tbody>
<tr>
<td>Bell v. Marinko</td>
<td>United States Court of Appeals for the Sixth Circuit</td>
<td>367 F.3d 588; 2004 U.S. App. LEXIS 8330</td>
<td>April 28, 2004</td>
<td>Plaintiffs, registered voters, sued defendants, Ohio Board of Elections and Board members, alleging that Ohio Rev. Code Ann. §§ 3509.19–3509.21 violated the National Voter Registration Act, and the Equal Protection Clause of the Fourteenth Amendment. The United States asserted that § 3503.02—that which stated that the place where the family of a married man or woman resided was considered to be his or her place of residence—violated the equal protection clause. The court of appeals found that the Board's procedures did not contravene the National Voter Registration Act because Congress did not intend to bar the removal of names from the official list of persons who were ineligible and improperly registered to vote in the first place. The National Voter Registration Act did not bar the Board's continuing</td>
<td>United States Court of Appeals for the Sixth Circuit which denied the State's claim of sovereign immunity. an appropriate subject for prophylactic legislation. Regardless of whether the State could be subjected to liability for failing to provide access to other facilities or services, the fundamental right of access to the courts warranted the limited requirement that the State reasonably accommodate disabled persons to provide such access. Title II was thus a reasonable prophylactic measure, reasonably targeted to a legitimate end. The judgment denying the State's claim of sovereign immunity was affirmed.</td>
<td>No</td>
<td>N/A</td>
<td>No</td>
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</table>
District Court for the Northern District of Ohio granted summary judgment in favor of defendants. The voters appealed. Consideration of a voter's residence, and encouraged the Board to maintain accurate and reliable voting rolls. Ohio was free to take reasonable steps to see that all applicants for registration to vote actually fulfilled the requirement of bona fide residence. Ohio Rev. Code Ann. § 3503.02(D) did not contravene the National Voter Registration Act. Because the Board did not raise an irrebuttable presumption in applying § 3502.02(D), the voters suffered no equal protection violation. The judgment was affirmed.
The evidence included records showing electricity and water usage, records from the Department of Motor Vehicles and school records. Thus, the evidence was sufficient to support the jury's verdict that defendant made "a false material statement" on the voter registration card required to be filed by Title 24.2 in order for her to be a candidate for office in the primary in question. Judgment of conviction affirmed. Evidence, including records showing electricity and water usage, records from the Department of Motor Vehicles and school records, was sufficient to support jury's verdict that defendant made "a false material statement" on the voter registration card required to be filed in order for her to be a candidate for office in the primary in question.

| ACLU of Minn. v. Kiffmeyer | United States District Court for the District of Minnesota | 2004 | October 29, 2004 | Plaintiffs, voters and associations, filed for a temporary restraining order pursuant to Fed. R. Civ. P. 65, against | Plaintiffs argued that Minn. Stat. § 201.061 was inconsistent with the Help America Vote Act because it did not authorize the voter to complete registration either by a "current and valid photo identification" or by use of | No | N/A | No |
defendant, Minnesota Secretary of State, concerning voter registration.

a current utility bill, bank statement, government check, paycheck, or other government document that showed the name and address of the individual.

The Secretary advised the court that there were less than 600 voters who attempted to register by mail but whose registrations were deemed incomplete. The court found that plaintiffs demonstrated that they were likely to succeed on their claim that the authorization in Minn. Stat. § 201.061, sub. 3, violated the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution insofar as it did not also authorize the use of a photographic tribal identification card by American Indians who do not reside on their tribal reservations. Also, the court found that plaintiffs demonstrated that they were likely to succeed on their claim that all Minn. R. §2005.5100, violated the Equal Protection Clause of the United States Constitution. A temporary restraining order was entered.

The individual claimed that his vote was diluted because the NVRA

Kaisson v. United States District Court for Minnesota

United States 356 F. Supp. 2d

February 16, 2005

Defendant Federal Election

The individual claimed that his vote was diluted because the NVRA

No N/A No
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<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>FEC</th>
<th>Holding</th>
<th>Statute Basis of Note</th>
<th>Other Notes</th>
<th>Should this case be researched further</th>
</tr>
</thead>
<tbody>
<tr>
<td>FEC</td>
<td>the Southern District of New York</td>
<td>371; 2005 U.S. Dist. LEXIS 2279</td>
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<td></td>
<td>Commission filed a motion to dismiss for lack of subject matter jurisdiction plaintiff individual's action, which sought a declaration that the National Voter Registration Act was unconstitutional on the theories that its enactment was not within the enumerated powers of the federal government and that it violated Article II of the United States Constitution.</td>
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<td>Peace &amp; Freedom Party v. Shelley</td>
<td>California Court of Appeal, Third Appellate District</td>
<td>114 Cal. App. 4th 1237; 8 Cal. Rptr. 3d 497; 2004 Cal.</td>
<td>January 15, 2004</td>
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<td>The trial court ruled that inactive voters were excluded from the primary election calculation. The court of appeals affirmed, observing that although the election had already taken place, the issue was likely to recur</td>
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<td>N/A</td>
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<tr>
<td>Name of Case</td>
<td>Court</td>
<td>Citation</td>
<td>Date</td>
<td>Facts</td>
<td>Holding</td>
<td>Statutory Precedent</td>
<td>Other Notes</td>
<td>Should the Case be Research Further</td>
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<td>McKay v. Thompson</td>
<td>United States Court of Appeals for the Sixth Circuit</td>
<td>226 F.3d 752; 2000 U.S. App.</td>
<td>September 18, 2000</td>
<td>Plaintiff challenged order of United States District Court for Eastern District of Tennessee at</td>
<td>The trial court had granted defendant state election officials summary judgment. The court declined to overrule defendants' administrative determination that state law required</td>
<td>No</td>
<td>N/A</td>
<td>No</td>
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<td>Case</td>
<td>Citation</td>
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<td>LEXIS 23387</td>
<td>Chattanooga, which granted defendant state election officials summary judgment on plaintiff's action seeking to stop the state practice of requiring its citizens to disclose their social security numbers as a precondition to voter registration.</td>
<td>plaintiff to disclose his social security number because the interpretation appeared to be reasonable, did not conflict with previous caselaw, and could be challenged in state court. The requirement did not violate the Privacy Act because it was grandfathered under the terms of the Act. The limitations in the National Voter Registration Act did not apply because the NVRA did not specifically prohibit the use of social security numbers and the Act contained a more specific provision regarding such use. Plaintiff could not enforce § 1971 as it was enforceable only by the United States Attorney General. The trial court properly rejected plaintiff's fundamental right to vote, free exercise of religion, privileges and immunities, and due process claims. Although the trial court arguably erred in denying certification of the case to the USAG under 28 U.S.C.S. § 2403(a), plaintiff suffered no harm from the technical violation. Order affirmed because requirement that voters disclose social security numbers as precondition to voter registration did not violate Privacy Act of 1974 or National Voter</td>
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<tr>
<td>Name of Case</td>
<td>Court Name</td>
<td>Citation</td>
<td>Date</td>
<td>Issue</td>
<td>Holding</td>
<td>Statute or Other Basis for Decision</td>
<td>Other Notes</td>
<td>Should the Case Be Reconsidered Further</td>
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<td>Lucas County Democratic Party v. Blackwell</td>
<td>United States District Court for the Northern District of Ohio</td>
<td>341 F. Supp. 2d 861; 2004 U.S. Dist. LEXIS 21416</td>
<td>October 21, 2004</td>
<td>Plaintiff organizations brought an action challenging a memorandum issued by defendant, Ohio's Secretary of State, in December 2003. The organizations claimed that the memorandum contravened provisions of the Help America Vote Act and the National Voter Registration Act. The organizations moved for a preliminary injunction.</td>
<td>Registration Act and trial court properly rejected plaintiff's fundamental right to vote, free exercise of religion, privileges and immunities, and due process claims.</td>
<td>No</td>
<td>N/A</td>
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The case involved a box on Ohio's voter registration form that required a prospective voter who registered in person to supply an Ohio driver's license number or the last four digits of their Social Security number. In his memorandum, the Secretary informed all Ohio County Boards of Elections that, if a person left the box blank, the Boards were not to process the registration forms. The organizations did not file their suit until 18 days before the national election. The court found that there was not enough time before the election to develop the evidentiary record necessary to determine if the organizations were likely to succeed on the merits of their claim. Denying the organizations' motion would have caused them to suffer no irreparable harm. There was no appropriate remedy available to the organizations at the time. The likelihood that the organizations could
<table>
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<tr>
<th>Nat'l Coalition for Students with Disabilities Educ. &amp; Legal Def. Fund v. Scales</th>
<th>United States District Court for the District of Maryland</th>
<th>150 F. Supp. 2d 845; 2001 U.S. Dist. LEXIS 9528</th>
<th>July 5, 2001</th>
<th>Plaintiff, national organization for disabled students, brought an action against university president and university's director of office of disability support services to challenge the voter registration procedures established by the disability support services. Defendants moved to dismiss the first amended complaint, or in the alternative, request a preliminary injunction. The court denied the motion for a preliminary injunction.</th>
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<td>have shown irreparable harm was, in any event, slight in view of the fact that they waited so long before filing suit. Moreover, it would have been entirely improper for the court to order the Boards to re-open in-person registration until election day. The public interest would have been ill-served by an injunction. The motion for a preliminary injunction was denied sua sponte.</td>
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<td>Defendants alleged that plaintiff lacked standing to represent its members, and that plaintiff had not satisfied the notice requirements of the National Voter Registration Act. Further, defendants maintained the facts, as alleged by plaintiff, did not give rise to a past, present, or future violation of the NVRA because (1) the plaintiff's members that requested voter registration services were not registered students at the university and (2) its current voter registration procedures complied with NVRA. As to plaintiff's § 1983 claim, the court held that while plaintiff had alleged sufficient facts to confer standing under the NVRA, such allegations</td>
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The initial intake interview and placing the burden on disabled students to obtain voter registration forms and assistance afterwards did not satisfy its statutory duties. Furthermore, most of the NVRA provisions applied to disabled applicants not registered at the university. Defendants' motion to dismiss first amended complaint was granted as to the § 1983 claim and denied as to plaintiffs claims brought under the National Voter Registration Act of 1993. Defendants' alternative motion for summary judgment was denied.

| People v. Disimone | Court of Appeals of Michigan | 251 Mich. App. 605; 650 N.W.2d 2002 | July 11, 2002 | Defendant was charged with attempting to vote more than once in the 2000 general election. The circuit court granted defendant's motion that the State had to | Defendant was registered in the Colfax township for the 2000 general election. After presenting what appeared to be a valid voter's registration card, defendant proceeded to vote in the Grant township. Defendant had voted in the Colfax township earlier in the day. Defendant moved the court to issue an order that the State had to find | No | N/A | No |
Court judgment and held that under the rules of statutory construction, the fact that the legislature had specifically omitted certain trigger words such as "knowingly," "willingly," "purposefully," or "intentionally" it was unlikely that the legislature had intended for this to be a specific intent crime. The court also rejected the defendant's argument that phrases such as "offer to vote" and "attempt to vote" should be construed as synonymous terms, as when words with similar meanings were used in the same statute, it was presumed that the legislature intended to distinguish between the terms. The order of the circuit court was reversed.

### Diaz v. Hood

**United States District Court for the Southern District of Florida**

342 F. Supp. 2d 1111; 2004 U.S. Dist. LEXIS 21445

October 26, 2004

Plaintiffs, unions and individuals who had attempted to register to vote, sought a declaration of their rights to vote in the November 2, 2004 general

The putative voters sought injunctive relief requiring the election officials to register them to vote. The court first noted that the unions lacked even representative standing, because they failed to show that one of their members could have brought the case in their own behalf. The individual

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<tr>
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<th>Opinion</th>
<th>Date</th>
<th>Facts</th>
<th>Holding</th>
<th>Statutory Basis of No.</th>
<th>Other</th>
<th>Status of Case</th>
<th>Resolution</th>
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<tr>
<td>Diaz v. Hood</td>
<td>United States District Court for the Southern District of Florida</td>
<td>342 F. Supp. 2d 1111; 2004 U.S. Dist. LEXIS 21445</td>
<td>October 26, 2004</td>
<td>Plaintiffs, unions and individuals who had attempted to register to vote, sought a declaration of their rights to vote in the November 2, 2004 general</td>
<td>The putative voters sought injunctive relief requiring the election officials to register them to vote. The court first noted that the unions lacked even representative standing, because they failed to show that one of their members could have brought the case in their own behalf. The individual</td>
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They alleged that defendants, state and county election officials, refused to process their voter registrations for various failures to complete the registration forms. The election officials moved to dismiss the complaint for lack of standing and failure to state a claim. Putative voters raised separate issues: the first had failed to verify her mental capacity, the second failed to check a box indicating that he was not a felon, and the third did not provide the last four digits of her social security number on the form. They claimed the election officials violated federal and state law by refusing to register eligible voters because of nonmaterial errors or omissions in their voter registration applications, and by failing to provide any notice to voter applicants whose registration applications were deemed incomplete. In the first two cases, the election official had handled the errant application properly under Florida law, and the putative voter had effectively caused their own injury by failing to complete the registration. The third completed her form and was registered, so had suffered no injury. Standing failed against the secretary of state. The motions to dismiss the complaint were granted without prejudice.

Charles H. Wesley Educ. United States District Court for 324 F. Supp. 2d July 1, 2004 Plaintiffs, a voter, fraternity members, The organization participated in numerous non-partisan voter No N/A No
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<tr>
<th>Name(s) of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Facts</th>
<th>Holding</th>
<th>Statutory Basis for Action</th>
<th>Other Notes</th>
<th>Citation Basis for Further Reading</th>
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<tbody>
<tr>
<td>Found., Inc. v. Cox</td>
<td>the Northern District of Georgia</td>
<td>1358; 2004 U.S. Dist. LEXIS 12120</td>
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<td>and an organization, sought an injunction ordering defendant, the Georgia Secretary of State, to process the voter registration application forms that they mailed in following a voter registration drive. They contended that by refusing to process the forms defendants violated the National Voter Registration Act and U.S. Const. amends. I, XIV, and XV.</td>
<td>registration drives primarily designed to increase the voting strength of African-Americans. Following one such drive, the fraternity members mailed in over 60 registration forms, including one for the voter who had moved within state since the last election. The Georgia Secretary of State's office refused to process them because they were not mailed individually and neither a registrar, deputy registrar, or an otherwise authorized person had collected the applications as required under state law. The court held that plaintiffs had standing to bring the action. The court held that because the applications were received in accordance with the mandates of the NVRA, the State of Georgia was not free to reject them. The court found that plaintiffs had a substantial likelihood of prevailing on the merits of their claim that the applications were improperly rejected; plaintiffs would be irreparably injured absent an injunction; the potential harm to defendants was outweighed by plaintiffs' injuries; and an injunction was in the public interest. Plaintiffs' motion for a preliminary injunction</td>
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Defendants were enjoined from rejecting any voter registration application on the grounds that it was mailed as part of a "bundle" or that it was collected by someone not authorized or any other reason contrary to the NVRA.

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<tr>
<th>Case Name</th>
<th>Court</th>
<th>Date</th>
<th>Judgment</th>
<th>Holding</th>
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<tbody>
<tr>
<td>Moseley v. Price</td>
<td>United States District Court for the Eastern District of Virginia</td>
<td>January 22, 2004</td>
<td>Plaintiff alleged, that defendants' actions in investigating his voter registration application constituted a change in voting procedures requiring § 5 preclearance under the Voting Rights Act, which preclearance was never sought or received. Plaintiff claimed he withdrew from the race for Commonwealth</td>
<td>The court concluded that plaintiff's claim under the Voting Rights Act lacked merit. Plaintiff did not allege, as required, that any defendants implemented a new, uncleared voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting. Here, the existing practice or procedure in effect in the event a mailed registration card was returned was to &quot;resend the voter card, if address verified as correct.&quot; This was what precisely occurred. Plaintiff inferred, however, that the existing voting rule or practice was to resend the voter card &quot;with no adverse consequences&quot; and that the county's</td>
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<tr>
<td>Name of Case</td>
<td>Court</td>
<td>Citation</td>
<td>Date</td>
<td>Fact</td>
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<tr>
<td>Thompson v. Karben</td>
<td>Supreme Court of New York, Appellate Division, Second Department</td>
<td>295 A.D.2d 438; 743 N.Y.S.2d 175; 2002 N.Y. App. Div. LEXIS 6101</td>
<td>June 10, 2002</td>
<td>Respondents filed a motion seeking the cancellation of appellant's voter registration and political party enrollment on the ground that appellant was unlawfully registered to vote in</td>
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<tr>
<td>Name of Case</td>
<td>United States District Court for the Southern District of Ohio</td>
<td>Date</td>
<td>Holding</td>
<td>Subject Matter (Rs of Nat)</td>
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<td>Nat'l Coalition v. Taft</td>
<td>United States District Court for the Southern District of Ohio</td>
<td>August 2, 2002</td>
<td>Plaintiffs, a nonprofit public interest group and certain individuals sued defendants, certain state and university officials, alleging that they violated the National Voter Registration Act in failing to designate the disability services offices at state public colleges and universities as voter registration sites.</td>
<td>The court found that the disability services offices at issue were subject to the NVRA because the term &quot;office&quot; included a subdivision of a government department or institution and the disability offices at issue were places where citizens regularly went for service and assistance. Moreover, the Ohio Secretary of State had an obligation under the NVRA to designate the disability services offices as voter registration sites because nothing in the law superseded the NVRA's requirement that the responsible state official designate disability services offices as voter registration sites. Moreover, under</td>
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<td>2000 and 2001 federal income tax returns, 2002 property tax bill, a May 2001 paycheck stub, and 2000 and 2001 retirement account statements all showing the subject address. Appellant also testified that he was a signatory on the mortgage of the subject address and that he kept personal belongings at that address. Respondents did not sustain their evidentiary burden. The judgment of the trial court was reversed.</td>
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<td>Name of Case</td>
<td>Court</td>
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<td>Issue</td>
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<td>Lawson v. Shelby County</td>
<td>United States Court of Appeals for the Sixth Circuit</td>
<td>211 F.3d 331; 2000 U.S. App. LEXIS 8634</td>
<td>May 3, 2000</td>
<td>Plaintiffs who were denied the right to vote when they refused to disclose their social security numbers, appealed a judgment of the United States</td>
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The group and individuals moved for a preliminary injunction. Ohio Rev. Code Ann. § 3501.05(R), the Secretary of State's duties expressly included ensuring compliance with the NVRA. The case was not moot even though the Secretary of State had taken steps to ensure compliance with the NVRA given his position to his obligation under the law. The court granted declaratory judgment in favor of the nonprofit organization and the individuals. The motion for a preliminary injunction was granted in part and the Secretary of State was ordered to notify disabled students who had used the designated disability services offices prior to the opening day of the upcoming semester or who had pre-registered for the upcoming semester as to voter registration availability.
| Curtis v. Smith | United States District Court for the Eastern District of Texas | 145 F. Supp. 2d 814; 2001 | June 4, 2001 | Plaintiffs, representatives of several thousand retired persons who | Before a general election, three persons brought an action alleging the Escapées were not bona fide residents of the county, and sought to have their right to vote restored. | No | N/A | No | and § 1983. The district court dismissed, finding the claims were barred by U.S. Const. amend. XI, and the one year statute of limitations. The appeals court reversed, holding the district court erred in dismissing the suit because U.S. Const. amend. XI immunity did not apply to suits brought by a private party under the Ex Parte Young exception. Any damages claim not ancillary to injunctive relief was barred. The court also held the statute of limitations ran from the date plaintiffs were denied the opportunity to vote, not register, and their claim was thus timely. Reversed and remanded to district court to order such relief as will allow plaintiffs to vote and other prospective injunctive relief against county and state officials; declaratory relief and attorneys' fees ancillary to the prospective injunctive relief, all permitted under the Young exception to sovereign immunity, to be fashioned. |
called themselves the "Escapees" and who, spent a large part of their lives traveling about the United States in recreational vehicles, but were registered to vote in the county, moved for preliminary injunction seeking to enjoin a Texas court proceeding under the All Writs Act.

The plaintiffs brought suit in federal district court. The court issued a preliminary injunction forbidding county officials from attempting to purge the voting rolls of the Escapees. The Commissioner contested the results of the election, alleging Escapees' votes should be disallowed. Plaintiffs brought the present case to prevent the same issue from being relitigated. The court held, however, that the issues were different, since, unlike the case in the first proceeding, there was notice and an opportunity to be heard. Further, unlike the first proceeding, the plaintiff in the state court action did not seek to change the prerequisites for voting registration in the county, but instead challenged the actual residency of some members of the Escapees, and such challenge properly belonged in the state court.

The court further held that an election contest under state law was the correct vehicle to contest the registration of Escapees. The court dissolved the temporary restraining order it had previously entered and denied plaintiffs' motion for preliminary injunction.
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<th>Defendant</th>
<th>United States Court of Appeals for the Sixth Circuit</th>
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<tr>
<td>Date</td>
<td>December 10, 2001</td>
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<tr>
<td>Holding</td>
<td>Plaintiff individual appealed from a judgment of the district court, in an action against defendant state officials seeking relief under § 1983 and the National Voter Registration Act, for their alleged refusal to permit individual to register to vote. Officials had moved for dismissal or for summary judgment, and the district court granted the motion. Individual argued on appeal that the district court erred in finding that the registration forms used by the state did not violate the NVRA and in failing to certify a class represented by individual. Individual lived in his automobile and received mail at a rented box. Officials refused to validate individual's attempt to register to vote by mail. Tennessee state law forbade accepting a rented mail box as the address of the potential voter. Individual insisted that his automobile registration provided sufficient proof of residency under the NVRA. The court upheld the legality of state's requirement that one registering to vote provide a specific location as an address, regardless of the transient lifestyle of the potential voter, finding state's procedure faithfully mirrored the requirements of the NVRA as codified in the Code of Federal Regulations. The court also held that the refusal to certify individual as the representative of a class for purposes of this litigation was not an abuse of</td>
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<td>Standard of Review</td>
<td>No</td>
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<tr>
<td>Issue</td>
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<td>Should the Appeal Be Reversed?</td>
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Plaintiffs, two voters and the Ohio Democratic Party, filed suit against defendants, the Ohio Secretary of State, several county boards of elections, and all of the boards' members, alleging claims under the National Voter Registration Act and § 1983. Plaintiffs also filed a motion for a temporary restraining order (TRO). Two individuals filed a motion to intervene as defendants. Plaintiffs alleged that the timing and manner in which defendants intended to hold hearings regarding pre-election challenges to their voter registration violated both the Act and the Due Process Clause. The individuals, who filed pre-election voter eligibility challenges, filed a motion to intervene. The court held that it would grant the motion to intervene because the individuals had a substantial legal interest in the subject matter of the action and time constraints would not permit them to bring separate actions to protect their rights. The court further held that it would grant plaintiffs' motion for a TRO because plaintiffs made sufficient allegations in their complaint to establish standing and because all four factors to consider in issuing a TRO weighed heavily in favor of doing so. The court found that plaintiffs—discretion; in this case, no representative party was available as the indigent individual, acting in his own behalf, was clearly unable to represent fairly the class. The district court's judgment was affirmed.

| Miller v. Blackwell | United States District Court for the Southern District of Ohio | 348 F. Supp. 2d 916; 2004 U.S. Dist. LEXIS 24894 | October 27, 2004 | Plaintiffs, two voters and the Ohio Democratic Party, filed suit against defendants, the Ohio Secretary of State, several county boards of elections, and all of the boards' members, alleging claims under the National Voter Registration Act and § 1983. Plaintiffs also filed a motion for a temporary restraining order (TRO). Two individuals filed a motion to intervene as defendants. | No | N/A | No |
demonstrated a likelihood of success on the merits because they made a strong showing that defendants' intended actions regarding pre-election challenges to voter eligibility abridged plaintiffs' fundamental right to vote and violated the Due Process Clause. Thus, the other factors to consider in granting a TRO automatically weighed in plaintiffs' favor. The court granted plaintiffs' motion for a TRO. The court also granted the individuals' motion to intervene.

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<th>Case Name</th>
<th>Court</th>
<th>Plaintiffs</th>
<th>Defendants</th>
<th>Summary</th>
<th>Supporting Facts</th>
<th>Standards for Granting</th>
<th>Note</th>
<th>Should Cases Proceed Further</th>
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<tr>
<td>Miller v. Blackwell</td>
<td>United States District Court for the southern District of Ohio</td>
<td>348 F. Supp. 2d 916; 2004 U.S. Dist. LEXIS 24894</td>
<td>October 27, 2004</td>
<td>Plaintiffs, two voters and the Ohio Democratic Party, filed suit against defendants, the Ohio Secretary of State, several county boards of elections, and all of the boards' members, alleging claims under the National Voter Registration Act and § 1983. Plaintiffs also filed a motion</td>
<td>Plaintiffs alleged that the timing and manner in which defendants intended to hold hearings regarding pre-election challenges to their voter registration violated both the Act and the Due Process Clause. The individuals, who filed pre-election voter eligibility challenges, filed a motion to intervene. The court held that it would grant the motion to intervene because the individuals had a substantial legal interest in the subject matter of the action and time constraints would not permit them to bring separate actions to protect their</td>
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<td>N/A</td>
<td>No</td>
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The court found that plaintiffs demonstrated a likelihood of success on the merits because they made a strong showing that defendants' intended actions regarding pre-election challenges to voter eligibility abridged plaintiffs' fundamental right to vote and violated the Due Process Clause. Thus, the other factors to consider in granting a TRO automatically weighed in plaintiffs' favor. The court granted plaintiffs' motion for a TRO. The court also granted the individuals' motion to intervene.
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</table>

The intervenor, State of Ohio, sought a restraining order against the challenged election officials and intervenor State of Ohio from discriminating against black voters in Hamilton County on the basis of race. If necessary, they sought to restrain challengers from being allowed at the polls.

Physically present in the polling places in order to challenge voters' eligibility to vote. The court held that the injury asserted, that allowing challengers to challenge voters' eligibility would place an undue burden on voters and impede their right to vote, was not speculative and could be redressed by removing the challengers. The court held that in the absence of any statutory guidance whatsoever governing the procedures and limitations for challenging voters by challengers, and the questionable enforceability of the State's and County's policies regarding good faith challenges and ejection of disruptive challengers from the polls, there existed an enormous risk of chaos, delay, intimidation, and pandemonium inside the polls and in the lines out the door. Furthermore, the law allowing private challengers was not narrowly tailored to serve Ohio's compelling interest in preventing voter fraud. Because the voters had shown a substantial likelihood of success on the merits on the ground that the application of Ohio's statute allowing challengers at polling places was
Commonwealth of the Northern Mariana Islands

A case in which a lower court's grant of summary judgment in favor of defendants on the ground of qualified immunity was reversed by the Supreme Court of the Commonwealth of the Northern Mariana Islands. The court held that the Board's pre-election day procedures violated the plaintiffs' fundamental right to vote. The federal court reasoned that the right to vote was clearly established at the time of the election, and that a reasonable Board would have known that treating voters differently based on their political party would be unconstitutional and the other factors governing the issuance of an injunction weighed in their favor, the court enjoined all defendants from allowing any challengers other than election judges and other electors into the polling places throughout the state on Election Day.

<table>
<thead>
<tr>
<th>Case Name</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Parties</th>
<th>Summary of Facts</th>
<th>Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>Charfiuros v. Bd. of Elections</td>
<td>United States Court of Appeals for the Ninth Circuit</td>
<td>2001 U.S. App. LEXIS 15083</td>
<td>May 10, 2001</td>
<td>Defendants, board of elections and related individuals, appealed from an order of the Supreme Court of the Commonwealth of the Northern Mariana Islands reversing a lower court's grant of summary judgment in favor of defendants on the ground of qualified immunity.</td>
<td>Plaintiffs, disqualified voters, claimed that individual members of the Commonwealth of the Northern Mariana Islands Board of Elections violated § 1983 by administering pre-election day voter challenge procedures which precluded a certain class of voters, including plaintiffs, from voting in a 1995 election. The CNMI Supreme Court reversed a lower court's grant of summary judgment and defendants appealed. The court of appeals held that the Board's pre-election day procedures violated the plaintiffs' fundamental right to vote. The federal court reasoned that the right to vote was clearly established at the time of the election, and that a reasonable Board would have known that treating voters differently based on their political party would be unconstitutional and the other factors governing the issuance of an injunction weighed in their favor, the court enjoined all defendants from allowing any challengers other than election judges and other electors into the polling places throughout the state on Election Day.</td>
<td>No</td>
</tr>
</tbody>
</table>
sufficient to support liability of the Board members in their individual capacities. Finally, the composition of the CNMI Supreme Court's Special Judge panel did not violate the Board's right to due process of law. The decision of Commonwealth of the Northern Mariana Islands Supreme Court was affirmed where defendants' pre-election day voter challenge procedures violated plaintiffs' fundamental right to vote.

| Wit v. Berman | United States Court of Appeals for the Second Circuit | 306 F.3d 1256; 2002 U.S. App. LEXIS 21301 | October 11, 2002 | Appellant voters who established residences in two separate cities sued appellees, state and city election officials, alleging that provisions of the New York State Election Law unconstitutionally prevented the voters from voting in local elections in both places. | Under state election laws, the voters could only vote in districts in which they resided, and residence was limited to one place. The voters contended that, since they had two lawful residences, they were denied constitutional equal protection by the statutory restriction against voting in the local elections of both of the places of their residences. The appellate court held, however, that no constitutional violation was shown since the provisions of the New York State Election Law imposed only reasonable, }
<table>
<thead>
<tr>
<th>Court</th>
<th>United States District Court for the Eastern District of Texas</th>
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<tbody>
<tr>
<td>Case</td>
<td>Curtis v. Smith</td>
</tr>
<tr>
<td>Publication Date</td>
<td>November 3, 2000</td>
</tr>
<tr>
<td>Filing Number</td>
<td>121 F. Supp. 2d 1054; 2000 U.S. Dist. LEXIS 17987</td>
</tr>
<tr>
<td>Plaintiffs</td>
<td>Plaintiffs sought a preliminary injunction to prohibit defendant tax assessor-collector from mailing confirmation letters to approximately 9,000 persons who were registered voters in Polk County, Texas.</td>
</tr>
<tr>
<td>Description of Relief</td>
<td>Plaintiff sought to prohibit defendant from mailing confirmation letters to approximately 9,000 persons, self-styled &quot;escapees&quot; who traveled a major portion of each year in recreational vehicles, all of whom were registered to vote in Polk County, Texas. In accordance with Texas law, three resident voters filed affidavits challenging the escapees' residency. These affidavits triggered defendant's action in sending confirmation notices.</td>
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<tr>
<td>Second Party</td>
<td>No</td>
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<tr>
<td>Third Party</td>
<td>N/A</td>
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<tr>
<td>Subject Matter of Nature</td>
<td>No</td>
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<tr>
<td>Issue</td>
<td>No</td>
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<tr>
<td>Significant Precedent Holder</td>
<td>No</td>
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</table>
County, Texas. to the escapees. The court determined, first, that because of the potential for discrimination, defendant's action required preclearance in accordance with § 5 of the Voting Rights Act and, second, that such preclearance had not been sought or obtained. Accordingly, the court issued a preliminary injunction prohibiting defendant from pursuing the confirmation of residency of the escapees, or any similarly situated group, under the Texas Election Code until the process had been submitted for preclearance in accordance with § 5. The action was taken to ensure that no discriminatory potential existed in the use of such process in the upcoming presidential election or future election. Motion for preliminary injunction was granted, and defendant was enjoined from pursuing confirmation of residency of the 9,000 "escapees," or any similarly situated group, under the Texas Election Code, until the process had been submitted for preclearance under § 5 of the Voting Rights Act.

<p>| Peace &amp; Freedom Party | Court of Appeal of California, 114 Cal. App. 4th | January 15, 2004 | Plaintiff political party appealed a | The trial court ruled that inactive voters were excluded from the primary | No | N/A | No |</p>
<table>
<thead>
<tr>
<th>Party</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Decision</th>
<th>Holding</th>
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</thead>
<tbody>
<tr>
<td>v. Shelley</td>
<td>Third Appellate District</td>
<td>1237:8 Cal. Rptr. 3d 497; 2004 Cal. App. LEXIS 42</td>
<td></td>
<td>judgment from the superior court which denied the party's petition for writ of mandate to compel defendant, the California Secretary of State, to include voters listed in the inactive file of registered voters in calculating whether the party qualified to participate in a primary election.</td>
<td>election. The court of appeals affirmed, observing that although the election had already taken place, the issue was likely to recur and was a matter of continuing public interest and importance; hence, a decision on the merits was proper, although the case was technically moot. The law clearly excluded inactive voters from the calculation. The statutory scheme did not violate the inactive voters' constitutional right of association because it was reasonably designed to ensure that all parties on the ballot had a significant modicum of support from eligible voters. Information in the inactive file was unreliable and often duplicative of information in the active file. Moreover, there was no violation of the National Voter Registration Act because voters listed as inactive were not prevented from voting. Although the Act prohibited removal of voters from the official voting list absent certain conditions, inactive voters in California could correct the record and vote as provided the Act. The court affirmed the denial of a writ of mandate.</td>
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<tr>
<td>Name of Case</td>
<td>Court</td>
<td>Volume</td>
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<td>Date</td>
<td>Issue</td>
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<tr>
<td>Bell v. Marinko</td>
<td>United States District Court for the Northern District of Ohio</td>
<td>235 F. Supp. 2d 772; 2002 U.S. Dist. LEXIS 21753</td>
<td></td>
<td>October 22, 2002</td>
<td>Plaintiff voters sued defendants, a county board of elections, a state secretary of state, and the state's attorney general, for violations of the Motor Voter Act and equal protection of the laws. Defendants moved for summary judgment. The voters also moved for summary judgment.</td>
</tr>
</tbody>
</table>
Charles H. Wesley Educ. Found., Inc. v. Cox

United States Court of Appeals for the Eleventh Circuit

408 F.3d 1349; 2005 U.S. App. LEXIS 8320

May 12, 2005

Plaintiffs, a charitable foundation, four volunteers, and a registered voter, filed a suit against defendant state officials alleging violations of the National Voter Registration Act and the Voting Rights Act. The officials appealed after the United States District Court for the Northern District of Georgia issued a preliminary injunction enjoining them from rejecting voter registration forms submitted by the

The foundation conducted a voter registration drive; it placed the completed applications in a single envelope and mailed them to the Georgia Secretary of State for processing. Included in the batch was the voter's change of address form. Plaintiffs filed the suit after they were notified that the applications had been rejected pursuant to Georgia law, which allegedly restricted who could collect voter registration forms. Plaintiffs contended that the officials had violated the NVRA, the VRA, and U.S. Const. amend. I, XIV, XV. The officials argued that plaintiffs lacked standing and that the district court had erred in issuing the preliminary injunction. The court found no error. Plaintiffs had sufficiently alleged injuries under the NVRA, arising out of the rejection of the voter registration forms; the allegations in the complaint

contravened the MVA. Defendants' motions for summary judgment were granted as to all claims with prejudice, except the voters' state—law claim, which was dismissed for want of jurisdiction, without prejudice.

No N/A No
<table>
<thead>
<tr>
<th>Name</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Holders</th>
<th>Status</th>
<th>Other</th>
<th>Should be cited</th>
<th>Research Further</th>
</tr>
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<tbody>
<tr>
<td>McKay v. Thompson</td>
<td>United States Court of Appeals for the Sixth Circuit</td>
<td>226 F.3d 752; 2000 U.S. App. LEXIS 23387</td>
<td>September 18, 2000</td>
<td>Plaintiff challenged order of United States District Court for Eastern District of Tennessee at Chattanooga, which granted defendant state election officials summary judgment on plaintiff’s action seeking to stop the state practice of requiring its citizens to disclose their social security numbers as a precondition to voter registration.</td>
<td>The trial court had granted defendant state election officials summary judgment. The court declined to overrule defendants' administrative determination that state law required plaintiff to disclose his social security number because the interpretation appeared to be reasonable, did not conflict with previous case law, and could be challenged in state court. The requirement did not violate the Privacy Act of 1974, because it was grand fathered under the terms of the Act. The limitations in the National Voter Registration Act did not apply because the NVRA did not specifically prohibit the use of social security numbers and the Act contained a more specific provision regarding such use.</td>
<td>No</td>
<td>N/A</td>
<td>No</td>
</tr>
<tr>
<td>Coalition</td>
<td>Court</td>
<td>Date</td>
<td>Plaintiff</td>
<td>Defendant</td>
<td>Statutory Basis of Note</td>
<td>Other Notes</td>
<td>Conclusion of Researcher/Draft</td>
<td>Notes</td>
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<td>Natl' Coalition for Students with Disabilities Educ. &amp; Legal Def. Fund v. Scales</td>
<td>United States District Court for the Southern District of Maryland</td>
<td>July 5, 2001</td>
<td>Plaintiff, national organization for disabled students, brought an action against university president and university's director of office of disability support services to challenge the voter registration procedures established by the disability support services. Defendants moved to dismiss</td>
<td>Defendants alleged that plaintiff lacked standing to represent its members, and that plaintiff had not satisfied the notice requirements of the National Voter Registration Act. Further, defendants maintained the facts, as alleged by plaintiff, did not give rise to a past, present, or future violation of the NVRA because (1) the plaintiff's members that requested voter registration services were not registered students at the university and (2) its current voter registration procedures complied with NVRA. As to plaintiff's § 1983 claim, the court held that while plaintiff had alleged</td>
<td>No</td>
<td>N/A</td>
<td>No</td>
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the first amended complaint, or in the alternative for summary judgment. sufficient facts to confer standing under the NVRA, such allegations were not sufficient to support standing on its own behalf on the § 1983 claim. As to the NVRA claim, the court found that the agency practice of only offering voter registration services at the initial intake interview and placing the burden on disabled students to obtain voter registration forms and assistance afterwards did not satisfy its statutory duties. Furthermore, most of the NVRA provisions applied to disabled applicants not registered at the university. Defendants' motion to dismiss first amended complaint was granted as to the § 1983 claim and denied as to plaintiff's claims brought under the National Voter Registration Act of 1993. Defendants' alternative motion for summary judgment was denied.
and two of whom signed nominating petitions for another candidate. They first asked for a preliminary injunction of the municipal election scheduled for the following Tuesday and suggested, alternatively, that the election for City Clerk and for 4th Ward Alderman be enjoined.

The court ruled that by characterizing the claim as plaintiffs did, they sought to enjoin an election because their signatures were not counted, even though their preferred candidates were otherwise precluded from appearing on the ballot. Without regard to their likelihood of obtaining any relief, plaintiffs failed to demonstrate that they would be irreparably harmed if an injunction did not issue; the threatened injury to defendants, responsible as they were for the conduct of the municipal election, far outweighed any threatened injury to plaintiffs; and the granting of a preliminary injunction would greatly disserve the public interest. Plaintiffs' petition for preliminary relief was denied.

| Diaz v. Hood | United States District Court for the Southern District of Florida | 342 F. Supp. 2d 1111; 2004 U.S. Dist. LEXIS 21445 | October 26, 2004 | Plaintiffs, unions and individuals who had attempted to register to vote, sought a declaration of their rights to vote in the November 2, 2004 general election. They therefore, and improperly, excluded. The court ruled that by characterizing the claim as plaintiffs did, they sought to enjoin an election because their signatures were not counted, even though their preferred candidates were otherwise precluded from appearing on the ballot. Without regard to their likelihood of obtaining any relief, plaintiffs failed to demonstrate that they would be irreparably harmed if an injunction did not issue; the threatened injury to defendants, responsible as they were for the conduct of the municipal election, far outweighed any threatened injury to plaintiffs; and the granting of a preliminary injunction would greatly disserve the public interest. Plaintiffs' petition for preliminary relief was denied. | No | N/A | No |
alleged that defendants, state and county election officials, refused to process their voter registrations for various failures to complete the registration forms. The election officials moved to dismiss the complaint for lack of standing and failure to state a claim.

the first had failed to verify her mental capacity, the second failed to check a box indicating that he was not a felon, and the third did not provide the last four digits of her social security number on the form. They claimed the election officials violated federal and state law by refusing to register eligible voters because of nonmaterial errors or omissions in their voter registration applications, and by failing to provide any notice to voter applicants whose registration applications were deemed incomplete. In the first two cases, the election official had handled the errant application properly under Florida law, and the putative voter had effectively caused their own injury by failing to complete the registration. The third completed her form and was registered, so had suffered no injury. Standing failed against the secretary of state. Motion to dismiss without prejudice granted.

<table>
<thead>
<tr>
<th>Case</th>
<th>Court</th>
<th>Date</th>
<th>Plaintiff’s Description</th>
<th>District of Ohio</th>
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</thead>
<tbody>
<tr>
<td>Bell v. Marinko</td>
<td>United States District Court for the Northern District of Ohio</td>
<td>October 22, 2002</td>
<td>Plaintiffs sued defendants, a county board of elections, a state secretary of</td>
<td>Standing failed against the secretary of state. Motion to dismiss without prejudice granted.</td>
</tr>
</tbody>
</table>
The ability of the challengers to assert that the voters were not eligible and had not ever been eligible, and of the board to consider and resolve that challenge, did not contravene the MVA. Defendants' motions for summary judgment were granted as to all claims with prejudice, except the voters' state-law claim.

The voters claimed that the board hearings did not afford them the requisite degree of due process and contravened their rights of privacy by inquiring into personal matters. As to the MVA claim, the court held that residency within the precinct was a crucial qualification. One simply could not be an elector, much less a qualified elector entitled to vote, unless one resided in the precinct where he or she sought to vote. If one never lived within the precinct, one was not and could not be an eligible voter, even if listed on the board's rolls as such. The MVA did not affect the state's ability to condition eligibility to vote on residence. Nor did it undertake to regulate challenges, such as the ones presented, to a registered voter's residency ab initio. The ability of the state, and the state's attorney general, for violations of the Motor Voter Act and equal protection of the laws. Defendants moved for summary judgment. The voters also moved for summary judgment.
| Bell v. Marinko | United States Court of Appeals for the Sixth Circuit | 367 F.3d 588; 2004 U.S. App. LEXIS 8330 | April 28, 2004 | Plaintiffs, registered voters, sued defendants, Ohio Board of Elections and Board members, alleging that Ohio Rev. Code Ann. §§ 3509.19–3509.21 violated the National Voter Registration Act, and the Equal Protection Clause of the Fourteenth Amendment. The United States District Court for the Northern District of Ohio granted summary judgment in favor of defendants. The voters appealed. | The voters contested the challenges to their registration brought under Ohio Code Rev. Ann. § 3505.19 based on Ohio Rev. Code Ann. § 3503.02. Specifically, the voters asserted that § 3503.02—which stated that the place where the family of a married man or woman resided was considered to be his or her place of residence—violated the equal protection clause. The court of appeals found that the Board's procedures did not contravene the National Voter Registration Act because Congress did not intend to bar the removal of names from the official list of persons who were ineligible and improperly registered to vote in the first place. The National Voter Registration Act did not bar the Board's continuing consideration of a voter's residence, and encouraged the Board to maintain accurate and reliable voting rolls. Ohio was free to take reasonable steps to see that all applicants for registration to vote actually fulfilled the requirement of bona fide residence. Ohio Rev. Code No. N/A No |
| Hileman v. McGinness | Court of Appeals of Illinois, Fifth District | 316 Ill. App. 3d 868; 739 N.E.2d 81; 2000 Ill. App. LEXIS 845 | October 25, 2000 | Appellant challenged the circuit court declaration that the result of a primary election for county circuit clerk was void. In a primary election for county circuit clerk, the parties agreed that 681 absentee ballots were presumed invalid. The ballots had been commingled with the valid ballots. There were no markings or indications on the ballots which would have allowed them to be segregated from other ballots cast. Because the ballots could not have been segregated, apportionment was the appropriate remedy if no fraud was involved. If fraud was involved, the election would have had to have been voided and a new election held. Because the trial court did not hold an evidentiary hearing on the fraud allegations, and did not determine whether fraud was in issue, the case was remanded for a determination as to whether fraud was evident in the electoral process. The court reversed the declaration of the | No | N/A | No | Ann. § 3503.02(D) did not contravene the National Voter Registration Act. Because the Board did not raise an irrebuttable presumption in applying § 3502.02(D), the voters suffered no equal protection violation. The judgment was affirmed. |
of the Monroe County coroners election were invalid because none of the ballots cast in Monroe County's second precinct were initialed by an election judge, in violation of Illinois law. The trial court granted appellee's motion for summary judgment, and the appellate court affirmed the judgment. The Illinois supreme court affirmed, noting that statutes requiring election judges to initial election ballots were mandatory, and uninitialed ballots could not have been counted, even where the parties agreed that there was no knowledge of fraud or corruption. Thus, the supreme court held that the trial court properly invalidated all of the ballots cast in Monroe County's second precinct. The court reasoned that none of the ballots contained the requisite initialing, and neither party argued that any of the ballots were properly cast.

| DeFabio v. Gummersheimer | Supreme Court of Illinois | 192 Ill. 2d 63; 733 N.E.2d 1241; 2000 Ill. LEXIS 993 | July 6, 2000 | Appellant challenged the judgment of the appellate court, which affirmed the trial court's decision granting appellee's summary judgment motion in action brought by appellee to contest the results of the election for the position of county coroner in Monroe County. | Appellee filed a petition for election contest, alleging that the official results of the Monroe County coroners election were invalid because none of the 524 ballots cast in Monroe County's second precinct were initialed by an election judge, in violation of Illinois law. The trial court granted appellee's motion for summary judgment, and the appellate court affirmed the judgment. The Illinois supreme court affirmed, noting that statutes requiring election judges to initial election ballots were mandatory, and uninitialed ballots could not have been counted, even where the parties agreed that there was no knowledge of fraud or corruption. Thus, the supreme court held that the trial court properly invalidated all of the ballots cast in Monroe County's second precinct. The court reasoned that none of the ballots contained the requisite initialing, and neither party argued that any of the | No | N/A | No |
uninitialed ballots could have been distinguished or identified as absentee ballots. The supreme court affirmed the judgment because the Illinois statute requiring election judges to initial election ballots was mandatory, and uninitialed ballots could not have been counted, even where the parties agreed that there was no knowledge of fraud or corruption. Additionally, none of the ballots in Monroe County's second precinct contained the requisite initialling.

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<tr>
<th>Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Parties</th>
<th>Actions/Outcomes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gilmore v. Amityville Union Free Sch. Dist.</td>
<td>United States District Court for the Eastern District of New York</td>
<td>305 F. Supp. 2d 271; 2004 U.S. Dist. LEXIS 3116</td>
<td>March 2, 2004</td>
<td>Plaintiffs, two school board candidates, filed a class action complaint against defendants, a school district, the board president, and other district agents or employees, challenging a school board election. Defendants moved to dismiss.</td>
<td>During the election, a voting machine malfunctioned, resulting in votes being cast on lines that were blank on the ballot. The board president devised a plan for counting the machine votes by moving each tally up one line. The two candidates, who were African American, alleged that the president's plan eliminated any possibility that an African American would be elected. The court found that the candidates failed to state a claim under § 1983 because they could not show that defendants' actions were done or approved by a person with final policymaking authority, nor was there</td>
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<tr>
<td>State ex rel. Mackey v. Blackwell</td>
<td>Supreme Court of Ohio</td>
<td>106 Ohio St. 3d 261; 2005 Ohio 4789; 834 N.E.2d 346; 2005</td>
<td>September 28, 2005</td>
<td>Appellants, a political group and county electors who voted by provisional ballot, sought review of a judgment from the court of appeals, which dismissed appellants' complaint, seeking a showing of intentional or purposeful discrimination on defendants' part. The vote-counting method applied equally to all candidates. The candidates' claims under § 2000a and 2000c--8 failed because schools were not places of public accommodation, as required under § 2000a, and § 2000c--8 applied to school segregation. Their claim under § 1971 of deprivation of voting rights failed because § 1971 did not provide for a private right of action. The court declined to exercise supplemental jurisdiction over various state law claims. Defendants' motion to dismiss was granted with respect to the candidates' federal claims; the state law claims were dismissed without prejudice.</td>
<td>No</td>
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<tr>
<td>Issue</td>
<td>Court</td>
<td>Citation</td>
<td>Date</td>
<td>Fact</td>
<td>Holding</td>
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<td>Ohio</td>
<td>LEXIS 2074</td>
<td></td>
<td>writ of mandamus to prevent appellants, the Ohio Secretary of State, a county board of elections, and the board's director, from disenfranchisement of provisional ballot voters.</td>
<td>activist group, brought the mandamus action to compel appellants to prohibit the invalidation of provisional ballots and to notify voters of reasons for ballot rejections. Assorted constitutional and statutory law was relied on in support of the complaint. The court dismissed the complaint, finding that no clear legal right was established under Ohio law and the federal claims could be adequately raised in an action under § 1983. On appeal, the Ohio supreme court held that dismissal was proper, as the complaint actually sought declaratory and injunctive relief, rather than mandamus relief. Further, election--contest actions were the exclusive remedy to challenge election results. An adequate remedy existed under § 1983 to raise the federal--law claims. Affirmed.</td>
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<tr>
<td>Touchston v. McDermott</td>
<td>United States District Court for the Middle District of Florida</td>
<td>120 F. Supp. 2d 1055; 2000 U.S. Dist. LEXIS</td>
<td>November 14, 2000</td>
<td>In action in which plaintiffs, registered voters in Brevard County, Florida, filed suit against defendants, members of several</td>
<td>In their complaint, plaintiffs challenged the constitutionality of § 102.166(4), asserting that the statute violated their rights under the Equal Protection and Due Process Clauses of U.S. Const. amend. XIV. Based on these claims, plaintiffs sought an order</td>
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</table>
Florida law was discriminatory, that citizens were being deprived of the right to vote, or that there had been fraudulent interference with the vote.

<table>
<thead>
<tr>
<th>Case</th>
<th>Court</th>
<th>Decision</th>
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<tbody>
<tr>
<td>Siegel v. LePore</td>
<td>United States District Court for the Southern District of Florida</td>
<td>November 13, 2000</td>
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County Canvassing Boards and the Secretary of the Florida Department of State, challenging the constitutionality of Fla. Stat. Ann. § 102.166(4) (2000), before the court was plaintiffs' emergency motion for temporary restraining order and/or preliminary injunction.
defendants, canvassing board members from four Florida counties, from proceeding with manual recounts of election ballots. 

except where there was an immediate need to correct a constitutional violation. Plaintiffs neither demonstrated a clear deprivation of a constitutional injury or a fundamental unfairness in Florida's manual recount provision. The recount provision was reasonable and non-discriminatory on its face and resided within the state's broad control over presidential election procedures. Plaintiffs failed to show that manual recounts were so unreliable as to constitute a constitutional injury, that plaintiffs' alleged injuries were irreparable, or that they lacked an adequate state court remedy. Injunctive relief denied because plaintiffs demonstrated neither clear deprivation of constitutional injury or fundamental unfairness in Florida's manual recount provision to justify federal court interference in state election procedures.

Gore v. Harris
Supreme Court of Florida
773 So. 2d 524; 2000 Fla. LEXIS 2474
December 22, 2000
In a contest to results of the 2000 presidential election in Florida, the United States Supreme Court
The state supreme court had ordered the trial court to conduct a manual recount of 9000 contested Miami-Dade County ballots, and also held that uncounted "undervotes" in all Florida counties were to be manually counted.

No
N/A
No
The trial court was ordered to use the standard that a vote was "legal" if there was a clear indication of the intent of the voter. The United States Supreme Court released an opinion on December 12, 2000, which held that such a standard violated equal protection rights because it lacked specific standards to ensure equal application, and also mandated that any manual recount would have to have been completed by December 12, 2000. On remand, the state supreme court found that it was impossible under that time frame to adopt adequate standards and make necessary evaluations of vote tabulation equipment. Also, development of a specific, uniform standard for manual recounts was best left to the legislature. Because adequate standards for a manual recount could not be developed by the deadline set by the United States Supreme Court, appellants were afforded no relief.

<table>
<thead>
<tr>
<th>Name of Party</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Issue</th>
<th>Holding</th>
<th>Statutory Basis</th>
<th>Other Notes</th>
<th>Should the Case Be Reheard?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Goodwin v. St. Thomas--St. John Bd. of</td>
<td>Territorial Court of the Virgin Islands</td>
<td>43 V.I. 89; 2000 V.I.</td>
<td>December 13, 2000</td>
<td>Plaintiff political candidate alleged that certain general</td>
<td>Plaintiff alleged that defendants counted unlawful absentee ballots that lacked postmarks, were not signed or</td>
<td>No</td>
<td>N/A</td>
<td>No</td>
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</table>
Elections | LEXIS 15 |
--- | --- |
**Facts:**
Election absentee ballots violated territorial election law, and that the improper inclusion of such ballots by defendants, election board and supervisor, resulted in plaintiff's loss of the election. Plaintiff sued defendants seeking invalidation of the absentee ballots and certification of the election results tabulated without such ballots.

**Holding:**
Notarized, were in unsealed and/or torn envelopes, and were in envelopes containing more than one ballot. Prior to tabulation of the absentee ballots, plaintiff was leading intervenor for the final senate position, but the absentee ballots entitled intervenor to the position. The court held that plaintiff was not entitled to relief since he failed to establish that the alleged absentee voting irregularities would require invalidation of a sufficient number of ballots to change the outcome of the election. While the unsealed ballots constituted a technical violation, the outer envelopes were sealed and thus substantially complied with election requirements. Further, while defendants improperly counted one ballot where a sealed ballot envelope and a loose ballot were in the same outer envelope, the one vote involved did not change the election result. Plaintiff's other allegations of irregularities were without merit since ballots without postmarks were valid, ballots without signatures were not counted, and ballots without notarized signatures were proper. Plaintiff's request for declaratory and injunctive
The irregularities asserted by plaintiff defendants, a challenger candidate, a county board of election, and commissioners, pursuant to § 1983 alleging violation of the Due Process Clause of the Fourteenth Amendment. The United States District Court for the Northern District of New York granted summary judgment in favor of plaintiffs. Defendants appealed. Relief was denied. Invalidation of absentee ballots was not required since the irregularities asserted by plaintiff involved ballots which were in fact valid, were not tabulated by defendants, or were insufficient to change the outcome of the election.

| Shannon v. Jacobowitz | United States Court of Appeals for the Second Circuit | 394 F.3d 90, 2005 U.S. App. LEXIS 259 | January 7, 2005 | Plaintiffs, voters and an incumbent candidate, sued defendants, a challenger candidate, a county board of election, and commissioners, pursuant to § 1983 alleging violation of the Due Process Clause of the Fourteenth Amendment. The United States District Court for the Northern District of New York granted summary judgment in favor of plaintiffs. Defendants appealed. | Local election inspectors noticed a problem with a voting machine. Plaintiffs asserted that their votes were not counted due to the machine malfunction. Rather than pursue the state remedy of quo warranto, by requesting that New York's Attorney General investigate the machine malfunction and challenge the election results in state court, plaintiffs filed their complaint in federal court. The court of appeals found that United States Supreme Court jurisprudence required intentional conduct by state actors as a prerequisite for a due process violation. Neither side alleged that local officials acted intentionally or in a discriminatory manner with regard to the vote misconduct. Both sides conceded that the recorded results were likely due to an unforeseen malfunction with the voting machine. | No | N/A | No |
Because no conduct was alleged that would indicate an intentional deprivation of the right to vote, there was no cognizable federal due process claim. The proper remedy was to assert a quo warranto action to challenge the outcome of a general election based on an alleged voting machine malfunction. The district court’s grant of summary judgment was reversed and its injunctions were vacated. The case was remanded for further proceedings consistent with this opinion.

The Supreme Court vacated the state court’s judgment, finding that the state court opinion could be read to indicate that it construed the Florida Election Code without regard to the extent to which the Florida Constitution could, consistent with U.S. Const. art. II, § 1, cl. 2, circumscribe the legislative power. The judgment of the Florida Supreme Court was vacated and remanded for further proceedings. The court stated the judgment was unclear as to the extent to which the state court saw the Florida constitution as circumscribing the legislature’s
Court of Appeals for the Eleventh Circuit

130; 2000 U.S. App. LEXIS 29366

17, 2000 appealed from judgment of the United States District Court for the Middle District of Florida, which denied their emergency motion for an injunction pending appeal against defendant county election officials. Plaintiffs sought to enjoin defendants from conducting manual recounts or to enjoin defendants from certifying the results of the Presidential election which contained any manual recounts. The district court denied the emergency injunction and plaintiffs appealed. Upon review, the emergency motion for injunction pending appeal was denied without prejudice. Florida had adequate election dispute procedures, which had been invoked and were being implemented in the forms of administrative actions by state officials and actions in state court.

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<tr>
<th>Numaro La.</th>
<th>Code</th>
<th>Opinion</th>
<th>Date</th>
<th>Facts</th>
<th>Holding</th>
<th>Statutory Authority</th>
<th>Other States</th>
<th>Should the Case be Reversed Further</th>
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<tbody>
<tr>
<td>Touchston v. McDermott</td>
<td>United States Court of Appeals for the Eleventh Circuit</td>
<td>234 F.3d 1130; 2000 U.S. App. LEXIS 29366</td>
<td>November 17, 2000</td>
<td>Plaintiff voters appealed from judgment of the United States District Court for the Middle District of Florida, which denied their emergency motion for an injunction pending appeal against defendant county election officials. Plaintiffs sought to enjoin defendants from conducting manual recounts or to enjoin defendants from certifying the results of the Presidential election which contained any manual recounts. The district court denied the emergency injunction and plaintiffs appealed. Upon review, the emergency motion for injunction pending appeal was denied without prejudice. Florida had adequate election dispute procedures, which had been invoked and were being implemented in the forms of administrative actions by state officials and actions in state court.</td>
<td>Plaintiff voters sought an emergency injunction pending appeal to enjoin defendant county election officials from conducting manual ballot recounts or to enjoin defendants from certifying the results of the Presidential election which contained any manual recounts. The district court denied the emergency injunction and plaintiffs appealed. Upon review, the emergency motion for injunction pending appeal was denied without prejudice. Florida had adequate election dispute procedures, which had been invoked and were being implemented in the forms of administrative actions by state officials and actions in state court.</td>
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<tr>
<td>Case</td>
<td>Court</td>
<td>Citation</td>
<td>Date</td>
<td>Issue</td>
<td>Holding</td>
<td>Statutory Basis of Review</td>
<td>Other Notes</td>
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<td>Gore v. Harris</td>
<td>Supreme Court of Florida</td>
<td>772 So. 2d 1243; 2000 Fla. LEXIS 2373</td>
<td>December 8, 2000</td>
<td>The court of appeal certified as being of great public importance a trial court judgment that denied all relief requested by appellants, candidates for President and Vice</td>
<td>Appellants contested the certification of their opponents as the winners of Florida's electoral votes. The Florida supreme court found no error in the trial court's holding that it was proper to certify election night returns from Nassau County rather than results of a machine recount. Nor did the trial court err in refusing to include votes that the Palm Beach County</td>
<td>No</td>
<td>N/A</td>
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President of the United States, in appellants' contest to certified election results.

Canvassing Board found not to be legal votes during a manual recount. However, the trial court erred in excluding votes that were identified during the Palm Beach County manual recount and during a partial manual recount in Miami--Dade County. It was also error to refuse to examine Miami--Dade County ballots that registered as non-votes during the machine count. The trial court applied an improper standard to determine whether appellants had established that the result of the election was in doubt, and improperly concluded that there was no probability of a different result without examining the ballots that appellants claimed contained rejected legal votes. The judgment was reversed and remanded; the trial court was ordered to tabulate by hand Miami-Dade County ballots that the counting machine registered as non-votes, and was directed to order inclusion of votes that had already been identified during manual recounts. The trial court also was ordered to consider whether manual recounts in other counties were necessary.
<table>
<thead>
<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Plaintiff</th>
<th>Defendant</th>
<th>Summary</th>
<th>Statutory \nJurisdiction</th>
<th>Other Notes</th>
<th>Should the \nCase be \nReexamined?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reitz v. Rendell</td>
<td>United States District Court for the Middle District of Pennsylvania</td>
<td>2004 U.S. Dist. LEXIS 21813</td>
<td>October 29, 2004</td>
<td>Plaintiff service members filed an action against defendant state officials under the Uniformed and Overseas Citizens Absentee Voting Act alleging that they and similarly situated service members would be disenfranchised because they did not receive their absentee ballots in time. The parties entered into a voluntary agreement and submitted it to the court for approval.</td>
<td>The court issued an order to assure that the service members and other similarly situated service members who were protected by the UOCAVA would not be disenfranchised. The court ordered the Secretary of the Commonwealth of Pennsylvania to take all reasonable steps necessary to direct the county boards of elections to accept as timely received absentee ballots cast by service members and other overseas voters as defined by UOCAVA, so long as the ballots were received by November 10, 2004. The ballots were to be considered solely for purposes of the federal offices that were included on the ballots. The court held that the ballot needed to be cast no later than November 2, 2004 to be counted. The court did not make any findings of liability against the Governor or the Secretary. The court entered an order, pursuant to a stipulation between the parties, that granted injunctive relief to the service members.</td>
<td>No</td>
<td>N/A</td>
<td>No</td>
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<tr>
<td>United States v. Pennsylvania</td>
<td>United States District Court for the Middle</td>
<td>2004 U.S. Dist.</td>
<td>October 20, 2004</td>
<td>Plaintiff United States sued defendant</td>
<td>The testimony of the two witnesses offered by the United States did not support its contention that voters</td>
<td>No</td>
<td>N/A</td>
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<tr>
<td>District</td>
<td>Case</td>
<td>Citation</td>
<td>Date</td>
<td>Holding</td>
<td>Shurtleff</td>
<td>Other Notes</td>
<td>Should the Court Consider Further</td>
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<tr>
<td>district of Pennsylvania</td>
<td>LEXIS 21167</td>
<td>Commonwealth of Pennsylvania, governor, and state secretary, claiming that overseas voters would be disenfranchised if they used absentee ballots that included the names of two presidential candidates who had been removed from the final certified ballot and seeking injunctive relief to address the practical implications of the final certification of the slate of candidates so late in the election year.</td>
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protected by the Uniformed and Overseas Citizens Absentee Voting Act would be disenfranchised absent immediate injunctive relief because neither witness testified that any absentee ballots issued to UOCAVA voters were legally incorrect or otherwise invalid. Moreover, there was no evidence that any UOCAVA voter had complained or otherwise expressed concern regarding their ability or right to vote. The fact that some UOCAVA voters received ballots including the names of two candidates who were not on the final certified ballot did not ipso facto support a finding that Pennsylvania was in violation of UOCAVA, especially since the United States failed to establish that the ballot defect undermined the right of UOCAVA voters to cast their ballots. Moreover, Pennsylvania had adduced substantial evidence that the requested injunctive relief, issuing new ballots, would have harmed the Pennsylvania election system and the public by undermining the integrity and efficiency of Pennsylvania's elections and increasing election costs. must consider the following four factors: (1)
<table>
<thead>
<tr>
<th>Nominal Name</th>
<th>Court</th>
<th>Citation</th>
<th>Issue</th>
<th>Fact</th>
<th>Holding</th>
<th>Statutory Citation</th>
<th>Other Note</th>
<th>Should be Research Further</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bush v. Hillsborough County Canvassing Bd.</td>
<td>United States District Court for the Northern District of Florida</td>
<td>123 F. Supp. 2d 1305; 2000 U.S. Dist. LEXIS 19265</td>
<td>The matter came before the court on plaintiffs' complaint for declaratory and injunctive relief alleging that defendant county canvassing boards rejected overseas absentee ballots and federal write-in ballots based on criteria inconsistent with federal law, and requesting that the ballots be declared</td>
<td>Plaintiff presidential and vice-presidential candidates and state political party contended that defendant county canvassing boards rejected overseas absentee state ballots and federal write-in ballots based on criteria inconsistent with the Uniformed and Overseas Citizens Absentee Voting Act. Because the state accepted overseas absentee state ballots and federal write-in ballots up to 10 days after the election, the State needed to access that the ballot in fact came from overseas. However, federal law provided the method to establish that fact by requiring the overseas</td>
<td>No</td>
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the likelihood that the applicant will prevail on the merits of the substantive claim; (2) the extent to which the moving party will be irreparably harmed in the absence of injunctive relief; (3) the extent to which the nonmoving party will suffer irreparable harm if the court grants the requested injunctive relief; and (4) the public interest. District courts should only grant injunctive relief after consideration of each of these factors.
<table>
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<tr>
<th>Scenario</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Issue</th>
<th>Holding</th>
<th>Statutory Basis</th>
<th>Other Notes</th>
<th>Rejected Ballots</th>
</tr>
</thead>
<tbody>
<tr>
<td>Harris v. Florida Elections Canvassing</td>
<td>United States District Court for the Northern</td>
<td>122 F. Supp. 2d 1317</td>
<td>December 9, 2000</td>
<td>Plaintiffs challenged the counting of overseas absentee ballots</td>
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<td>valid and that they should be counted.</td>
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| | | | | absentee voter to sign an oath that the ballot was mailed from outside the United States and requiring the state election officials to examine the voter's declarations. The court further noted that federal law required the user of a federal write-in ballot to timely apply for a regular state absentee ballot, not that the state receive the application, and that again federal law, by requiring the voter using a federal write-in ballot to swear that he or she had made timely application, had provided the proper method of proof. Plaintiffs withdrew as moot their request for injunctive relief and the court granted in part and denied in part plaintiffs' request for declaratory relief, and relief GRANTED in part and declared valid all federal write-in ballots that were signed pursuant to the oath provided therein but rejected solely because the ballot envelope did not have an APO, FPO, or foreign postmark, or solely because there was no record of an application for a state absentee ballot. |}
<p>| | | | | | No | N/A | No |</p>
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<thead>
<tr>
<th>Case</th>
<th>Court</th>
<th>Citation</th>
<th>Facts</th>
<th>Holding</th>
<th>Statutory Basis of Note</th>
<th>Other Notes</th>
<th>Standing/Conclusion/Further</th>
</tr>
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<tbody>
<tr>
<td>Comm'n</td>
<td>District of Florida</td>
<td>2000 U.S. Dist. LEXIS 17875</td>
<td>ballots received after 7 p.m. on election day, alleging the ballots violated Florida election law.</td>
<td>state officials in Florida state circuit court, challenging the counting of overseas absentee ballots received after 7 p.m. on election day. Defendant governor removed one case to federal court. The second case was also removed. The court in the second case denied plaintiff's motion for remand and granted a motion to transfer the case to the first federal court under the related case doctrine. Plaintiffs claimed that the overseas ballots violated Florida election law. Defendants argued the deadline was not absolute. The court found Congress did not intend 3 U.S.C.S. § 1 to impose irrational scheduling rules on state and local canvassing officials, and did not intend to disenfranchise overseas voters. The court held the state statute was required to yield to Florida Administrative Code, which required the 10-day extension in the receipt of overseas absentee ballots in federal elections because the rule was promulgated to satisfy a consent decree entered by the state in 1982. Judgment entered for defendants because a Florida administrative rule requiring a 10–day extension in the receipt of</td>
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<td>Name</td>
<td>Court</td>
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<td>Romeu v. Cohen</td>
<td>United States District Court for the Southern District of New York</td>
<td>121 F. Supp. 2d 264; 2000 U.S. Dist. LEXIS 12842</td>
<td>September 7, 2000</td>
<td>Plaintiff territorial resident and plaintiff-intervenor territorial governor moved for summary judgment and defendant federal, state, and local officials moved to dismiss the complaint that alleged that the Voting Rights Amendments of 1970, the Uniform Overseas Citizens Absentee Voting Act, and New York election law were unconstitutional since they denied plaintiff's right to receive an absentee ballot</td>
<td>Plaintiff argued that the laws denied him the right to receive a state absentee ballot in violation of the right to vote, the right to travel, the Privileges and Immunities Clause, and the Equal Protection Clause. Plaintiff-intervenor territorial governor intervened on behalf of similarly situated Puerto Rican residents. Defendants' argued that: 1) plaintiff lacked standing; 2) a non-justiciable political question was raised; and 3) the laws were constitutional. The court held that: 1) plaintiff had standing because he made a substantial showing that application for the benefit was futile; 2) whether or not the statutes violated plaintiff's rights presented a legal, not political, question, and there was no lack of judicially discoverable and manageable standards for resolving the matter; and 3) the laws were constitutional and only a constitutional amendment or legislative reform was adequate.</td>
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ballot for the upcoming presidential election. The court granted defendants' motion to dismiss because the laws that prohibited territorial residents from voting by state absentee ballot in presidential elections were constitutional. The territorial resident contended that the UOCAVA unconstitutionally distinguished between former state residents residing outside the United States, who were permitted to vote in their former states, and former state residents residing in a territory, who were not permitted to vote in their former states. The court of appeals first held that the UOCAVA did not violate the territorial resident's right to equal protection in view of the valid and not insubstantial considerations for the distinction. The territorial resident chose to reside in the territory and had the same voting rights as other territorial residents, even though such residency precluded voting for federal offices. Further, the resident had no constitutional right to vote in his former state after he terminated his

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<tr>
<th>Name of Case</th>
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<th>Date</th>
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<th>Statutory Basis for Decision</th>
<th>Other Notes</th>
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<tbody>
<tr>
<td>Romeu v. Cohen</td>
<td>United States Court of Appeals for the Second Circuit</td>
<td>265 F.3d 118; 2001 U.S. App. LEXIS 19876</td>
<td>September 6, 2001</td>
<td>Plaintiff territorial resident sued defendants, state and federal officials, alleging that the Uniformed and Overseas Citizens Absentee Voting Act unconstitutionally prevented the territorial resident from voting in his former state of residence. The resident appealed the judgment of the United States District Court for the Southern District of New York, which dismissed the</td>
<td>The territorial resident contended that the UOCAVA unconstitutionally distinguished between former state residents residing outside the United States, who were permitted to vote in their former states, and former state residents residing in a territory, who were not permitted to vote in their former states. The court of appeals first held that the UOCAVA did not violate the territorial resident's right to equal protection in view of the valid and not insubstantial considerations for the distinction. The territorial resident chose to reside in the territory and had the same voting rights as other territorial residents, even though such residency precluded voting for federal offices. Further, the resident had no constitutional right to vote in his former state after he terminated his</td>
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<td>Issue</td>
<td>Court</td>
<td>Citation</td>
<td>Date</td>
<td>Issue</td>
<td>Holding</td>
<td>Statutory Basis</td>
<td>Other</td>
<td>Should the Case be Re-argued</td>
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<td>Igartua de la Rosa v. United States</td>
<td>United States District Court for the District of Puerto Rico</td>
<td>107 F. Supp. 2d 140; 2000 U.S. Dist. LEXIS 11146</td>
<td>July 19, 2000</td>
<td>Defendant United States moved to dismiss plaintiffs' action seeking a declaratory judgment allowing them to vote, as U.S. citizens residing in Puerto Rico, in the upcoming and all subsequent Presidential elections. Plaintiffs urged, among other claims, that their right to vote in Presidential elections was residency in such state, and the consequences of the choice of residency did not constitute an unconstitutional interference with the right to travel. Finally, there was no denial of the privileges and immunities of state citizenship, since the territorial resident was treated identically to other territorial residents. The judgment dismissing the territorial resident's complaint was affirmed.</td>
<td>The court denied the motion of defendant United States to dismiss the action of plaintiffs, two groups of Puerto Ricans, seeking a declaratory judgment allowing them to vote in Presidential elections. One group always resided in Puerto Rico and the other became ineligible to vote in Presidential elections upon taking up residence in Puerto Rico. Plaintiffs contended that the Constitution and the International Covenant on Civil and Political Rights, guaranteed their right to vote in Presidential elections and that the Uniformed and Overseas Citizens Absentee Voting Act, was unconstitutional in disallowing Puerto Rican citizens to vote by considering</td>
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guaranteed by the Constitution and the International Covenant on Civil and Political Rights. The court concluded that UOCAVA was constitutional under the rational basis test, and violation of the treaty did not give rise to privately enforceable rights. Nevertheless, the Constitution provided U.S. citizens residing in Puerto Rico the right to participate in Presidential elections. No constitutional amendment was needed. The present political status of Puerto Rico was abhorrent to the Bill of Rights. The court denied defendant United States' motion to dismiss plaintiffs' action seeking a declaratory judgment allowing them to vote in Presidential elections as citizens of the United States and of Puerto Rico. The court held that the United States Constitution itself provided plaintiffs with the right to participate in Presidential elections.

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<tr>
<th>Case</th>
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<th>Citation</th>
<th>Date</th>
<th>Party</th>
<th>Statutory Basis (if any)</th>
<th>Other Notes</th>
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<tr>
<td>James v. Bartlett</td>
<td>Supreme Court of North Carolina</td>
<td>359 N.C. 260; 607 S.E.2d 638; 2005 N.C. LEXIS</td>
<td>February 4, 2005</td>
<td>Appellant candidates challenged elections in the superior court through appeals of election protests before the North Carolina State Board</td>
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<td>N/A</td>
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| Case | Court of Appeals | Citation | Date | Holding | Statute
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<tr>
<td>Sandusky County Democratic Party v. Blackwell</td>
<td>United States Court of Appeals for the Sixth Circuit</td>
<td>387 F.3d 565; 2004 U.S. App. LEXIS 22320</td>
<td>October 26, 2004</td>
<td>Defendant state appealed from an order of the U.S. District Court for the Northern District of Ohio which held that the Help America Vote Act required that voters be permitted to cast provisional ballots upon affirming their registration to vote.</td>
<td>No</td>
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The district court found that HAVA created an individual right to cast a provisional ballot, that this right is individually enforceable under 42 U.S.C.S. § 1983, and that plaintiffs unions and political parties had standing to bring a § 1983 action on behalf of Ohio voters. The court of appeals agreed that the political parties and unions had associational standing to challenge the state's provisional voting directive. Further, the court determined that HAVA was...
<p>| State ex rel. Mackey v. Blackwell | Supreme Court of Ohio | 106 Ohio St. 3d 261; 2005 Ohio 4789; 834 N.E.2d 346; 2005 Ohio LEXIS 2074 | September 28, 2005 | Appellants, a political group and county electors who voted by provisional ballot, sought review of a judgment from the court of appeals which dismissed appellants' complaint, seeking a writ of mandamus to prevent appellees, the Ohio Secretary of State, a county board of elections, | quintessentially about being able to cast a provisional ballot but that the voter casts a provisional ballot at the peril of not being eligible to vote under state law; if the voter is not eligible, the vote will then not be counted. Accordingly, the court of appeals reversed the district court and held that &quot;provisional&quot; ballots cast in a precinct where a voter does not reside and which would be invalid under state law, are not required by the HAVA to be considered legal votes. Affirmed in part and reversed in part. | No | N/A | No |</p>
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<tr>
<th>Name/Case</th>
<th>Court/Location</th>
<th>Date</th>
<th>Facts</th>
<th>Ruling/Comment</th>
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<tbody>
<tr>
<td>Fla. Democratic Party v. Hood</td>
<td>United States District Court for the Northern District of Florida</td>
<td>October 21, 2004</td>
<td>Plaintiff political party sought injunctive relief under the Help America Vote Act, claiming that the election system put in place by defendant election officials violated HAVA because it did not allow</td>
<td>The political party asserted that a prospective voter in a federal election had the right to cast a provisional ballot at a given polling place, even if the local officials asserted that the voter was at the wrong polling place; second, that voter had the right to have that vote counted in the election, if the voter otherwise met all requirements of state law. The court noted that the right to vote was clearly protectable as a civil right, and a primary purpose of</td>
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Therefore, the court granted relief as to the first claim, allowing the unlisted voter to cast a provisional ballot, but denied relief as to the second claim, that the ballot at the wrong place must be counted if it was cast at the wrong place, because that result contradicted State law. The provisional ballot could only be counted if it was cast in the proper precinct under State law.

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<tr>
<th>Case Title</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Issue</th>
<th>Holistic</th>
<th>Statutory Basis (if applicable)</th>
<th>Other Notes</th>
<th>Should the Case be Restricted Further</th>
</tr>
</thead>
<tbody>
<tr>
<td>League of Women Voters v. Blackwell</td>
<td>United States District Court for the Northern District of Ohio</td>
<td>340 F. Supp. 2d 823; 2004 U.S. Dist. LEXIS 20926</td>
<td>October 20, 2004</td>
<td>Plaintiff organizations filed suit against defendant, Ohio's Secretary of State, claiming that a directive issued by the Secretary contravened the provisions of the Help America Vote</td>
<td>The directive in question instructed election officials to issue provisional ballots to first-time voters who registered by mail but did not provide documentary identification at the polling place on election day. When submitting a provisional ballot, a first-time voter could identify himself by providing his driver's license number or the last four digits of his social security number. If he did not know</td>
<td>No</td>
<td>N/A</td>
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The directive did not contravene the HAVA and otherwise established reasonable requirements for confirming the identity of first-time voters who registered to vote by mail because: (1) the identification procedures were an important bulwark against voter misconduct and fraud; (2) the burden imposed on first-time voters to confirm their identity, and thus show that they were voting legitimately, was slight; and (3) the number of voters unable to meet the burden of proving their identity was likely to be very small. Thus, the balance of interests favored the directive, even if the cost, in terms of uncounted ballots, was regrettable.
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<th>Name of Case</th>
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<th>Citation</th>
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<th>Facts</th>
<th>Holding</th>
<th>Summary of Result</th>
<th>Other Notes</th>
<th>Should this Case be Rescheduled?</th>
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<tr>
<td>Hawkins v. Blunt</td>
<td>United States District Court for the Western District of Missouri</td>
<td>2004 U.S. Dist. LEXIS 21512</td>
<td>October 12, 2004</td>
<td>In an action filed by plaintiffs, voters and a state political party, contending that the provisional voting requirements of Mo. Rev. Stat. § 115.430 conflicted with and was preempted by the Help America Vote Act, plaintiffs and defendants, the court also held that Ohio Secretary of State Directive 2004--33 violated HAVA to the extent that it failed to ensure that any individual affirming that he or she was a registered voter in the jurisdiction in which he or she desired to vote and eligible to vote in a federal election was permitted to cast a provisional ballot. However, the district court erred in holding that HAVA required that a voter's provisional ballot be counted as a valid ballot if it was cast anywhere in the county in which the voter resided, even if it was cast outside the precinct in which the voter resided.</td>
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defendant, Michigan secretary of state and the Michigan director of elections, alleging that the state's intended procedure for casting and counting provisional ballots at the upcoming general election would violate the Help America Vote Act and state laws implementing the federal legislation. Defendants filed a motion to transfer venue.

Were members of the parties' respective organizations were likely to be disenfranchised. Defendants moved to transfer venue of the action to the Western District of Michigan claiming that the only proper venue for an action against a state official is the district that encompasses the state's seat of government. Alternatively, defendants sought transfer for the convenience of the parties and witnesses. The court found that defendants' arguments were not supported by the plain language of the current venue statutes. Federal actions against the Michigan secretary of state over rules and practices governing federal elections traditionally were brought in both the Eastern and Western Districts of Michigan. There was no rule that

Bay County Democratic Party v. Land

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<tr>
<td>October 13, 2004</td>
<td>Plaintiffs, state and county Democratic parties, filed an action against defendant, Michigan secretary of state and the Michigan director of elections, alleging that the state's intended procedure for casting and counting provisional ballots at the upcoming general election would violate the Help America Vote Act and state laws implementing the federal legislation. Defendants filed a motion to transfer venue.</td>
<td>340 F. Supp. 2d 802; 2004 U.S. Dist. LEXIS 20551</td>
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The court also held that plaintiffs' equal protection rights were not violated by the requirement that before a voter would be allowed to cast a provisional ballot, the voter would first be directed to his proper polling place.

The parties claimed that if the secretary's proposed procedure was allowed to occur, several voters who were members of the parties' respective organizations were likely to be disenfranchised. Defendants moved to transfer venue of the action to the Western District of Michigan claiming that the only proper venue for an action against a state official is the district that encompasses the state's seat of government. Alternatively, defendants sought transfer for the convenience of the parties and witnesses. The court found that defendants' arguments were not supported by the plain language of the current venue statutes. Federal actions against the Michigan secretary of state over rules and practices governing federal elections traditionally were brought in both the Eastern and Western Districts of Michigan. There was no rule that
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<tr>
<th>State</th>
<th>Court</th>
<th>Case</th>
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<th>Party</th>
<th>District</th>
<th>Status</th>
<th>Issue</th>
<th>Holding</th>
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<tr>
<td>Bay County Democratic Party v. Land</td>
<td>United States District Court for the Eastern District of Michigan</td>
<td>347 F. Supp. 2d 404; 2004 U.S. Dist. LEXIS 20872</td>
<td>October 19, 2004</td>
<td>Plaintiffs, voter organizations and political parties, filed actions against defendants, the Michigan Secretary of State and her director of elections, challenging directives issued to local election officials concerning the casting and tabulation of provisional ballots. Plaintiffs sought a preliminary injunction and contended that the required such actions to be brought only in the district in which the state's seat of government was located, and no inconvenience resulting from litigating in the state's more populous district reasonably could be claimed by a state official who had a mandate to administer elections throughout the state and operated an office in each of its counties. Motion denied.</td>
<td>The court concluded that (1) plaintiffs had standing to assert their claims; (2) HAVA created individual rights enforceable through 42 U.S.C.S. § 1983; (3) Congress had provided a scheme under HAVA in which a voter's right to have a provisional ballot for federal offices tabulated was determined by state law governing eligibility, and defendants' directives for determining eligibility on the basis of precinct--based residency were inconsistent with state and federal election law; (4) Michigan election law defined voter qualifications in terms of the voter's home jurisdiction, and a person who cast a provisional ballot within his or her jurisdiction was entitled under federal law to have his</td>
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directives violated their rights under the Help America Vote Act.

or her votes for federal offices counted if eligibility to vote in that election could be verified; and (5) defendants' directives concerning proof of identity of first-time voters who registered by mail were consistent with federal and state law.

Weber v. Shelley
United States Court of Appeals for the Ninth Circuit
347 F.3d
1101;
2003
U.S.
App.
LEXIS
21979
October 28, 2003
Plaintiff voter brought an suit against defendants, the secretary of state and the county registrar of voters, claiming that the lack of a voter-verified paper trail in the county's newly installed touchscreen voting system violated her rights to equal protection and due process. The United States District Court for the Central District of California granted the secretary and the registrar summary judgment.

On review, the voter contended that use of paperless touch-screen voting systems was unconstitutional and that the trial court erred by ruling her expert testimony inadmissible. The trial court focused on whether the experts' declarations raised genuine issues of material fact about the relative accuracy of the voting system issue and excluded references to newspaper articles and unidentified studies absent any indication that experts normally relied upon them. The appellate court found that the trial court's exclusions were not an abuse of discretion and agreed that the admissible opinions which were left did not tend to show that voters had a lesser chance of having their votes counted. It further found that the use of touchscreen voting systems was not subject to strict

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<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Issue</th>
<th>Holding</th>
<th>Statutory Authority of Note</th>
<th>Other Note</th>
<th>Should be researched further</th>
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<tbody>
<tr>
<td>Am. Ass'n of People with Disabilities v. Shelley</td>
<td>United States District Court for the Central District of California</td>
<td>324 F. Supp. 2d 1126; 2004 U.S. Dist. LEXIS 12587</td>
<td>July 6, 2004</td>
<td>Plaintiffs, disabled voters and organizations representing those voters, sought to enjoin the directives of defendant California Secretary of State, which decertified and withdrew approval of the use of certain direct recording electronic (DRE) voting systems. One voter applied for a temporary restraining order, or, the voters urged the invalidation of the Secretary's directives because, allegedly, their effect was to deprive the voters of the opportunity to vote using touch-screen technology. Although it was not disputed that some disabled persons would be unable to vote independently and in private without the use of DREs, it was clear that they would not be deprived of their fundamental right to vote. The Americans with Disabilities Act, did not require accommodation that would enable disabled persons to vote in a manner that was comparable in every way with the voting rights enjoyed by persons without disabilities. Rather, it mandated that voting programs be scrutinized simply because this particular balloting system might make the possibility of some kinds of fraud more difficult to detect. California made a reasonable, politically neutral and non-discriminatory choice to certify touchscreen systems as an alternative to paper ballots, as did the county in deciding to use such a system. Nothing in the Constitution forbid this choice. The judgment was affirmed.</td>
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<td>No</td>
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Florida Democratic Party v. Hood of Florida, First District

2004 Fla. App. LEXIS 16077

2004

Florida Democratic Party, sought review of an emergency rule adopted by the Florida Department made accessible. Defendant's decision to suspend the use of DREs pending improvement in their reliability and security of the devices was a rational one, designed to protect the voting rights of the state's citizens. The evidence did not support the conclusion that the elimination of the DREs would have a discriminatory effect on the visually or manually impaired. Thus, the voters showed little likelihood of success on the merits. The individual's request for a temporary restraining order, or, in the alternative, a preliminary injunction, was denied. Ninth Circuit's tests for a preliminary injunction, although phrased differently, require a court to inquire into whether there exists a likelihood of success on the merits, and the possibility of irreparable injury; a court is also required to balance the hardships.

| No. | Court | Citation | Date | Issue | Reason | Standard of Review | Other States | Should此案成立 | Remedial Act
|---|---|---|---|---|---|---|---|---|---
| | | | | | | | | | |
| Fl. Democratic Party v. Hood | Court of Appeal of Florida, First District | 884 So. 2d 1148; 2004 Fla. App. LEXIS 16077 | October 28, 2004 | Petitioner, the Florida Democratic Party, sought review of an emergency rule adopted by the Florida Department | The Party argued that: (1) the Florida Administrative Code, recast language from the earlier invalidated rule prohibiting a manual recount of overvotes and undervotes cast on a touchscreen machine; (2) the rule did | No | N/A | No |

006083
of State, contending that the findings of immediate danger, necessity, and procedural fairness on which the rule was based were insufficient under Florida law, which required a showing of such circumstances, and Florida case law. This matter followed.

not call for the manual recount of votes to determine voter intent; and (3) the rule created voters who were entitled to manual recounts in close elections and those who were not. The appeals court disagreed. The Department was clearly concerned with the fact that if no rule were in place, the same confusion and inconsistency in divining a voter's intent that attended the 2000 presidential election in Florida, and the same constitutional problems the United States Supreme Court addressed then, might recur in 2004. It was not the court's responsibility to decide the validity of the rule or whether other means were more appropriate. But, the following question was certified to the Supreme Court: Whether under Fla. Stat. ch. 120.54(4), the Department of State set forth sufficient justification for an emergency rule establishing standards for conducting manual recounts of overvotes and undervotes as applied to touchscreen voting systems? The petition was denied, but a question was certified to the supreme court as a matter of great public importance.
**Case:** Wexler v. Lepore  
**Court:** United States District Court for the Southern District of Florida  
**Case Citation:** 342 F. Supp. 2d 1097; 2004 U.S. Dist. LEXIS 21344  
**Date:** October 25, 2004  

Plaintiffs, a congressman, state commissioners, and a registered voter, brought a § 1983 action against defendants, state officials, alleging that the manual recount procedures for the state's touchscreen paperless voting systems violated their rights under U.S. Const. amends. V and XTV. A bench trial ensued. The officials claimed that the state had established an updated standard for manual recounts in counties using optical scan systems and touchscreen voting systems, therefore, alleviating equal protection concerns. The court held that the rules prescribing what constituted a clear indication on the ballot that the voter had made a definite choice, as well the rules prescribing additional recount procedures for each certified voting system promulgated pursuant to Florida law complied with equal protection requirements under U.S. Const. amends. V and XIV because the rules prescribed uniform, nondifferential standards for what constituted a legal vote under each certified voting system, as well as procedures for conducting a manual recount of overvotes and undervotes in the entire geographic jurisdiction. The court further held that the ballot images printed during a manual recount pursuant to Florida Administrative Code did not violate Florida law because the manual recount scheme properly reflected a voter's choice. Judgment was entered.

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<tr>
<th>Plaintiff</th>
<th>Defendant</th>
<th>Date</th>
<th>Court</th>
<th>Description</th>
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<td>Wexler</td>
<td>United States District Court for the Southern District of Florida</td>
<td>October 25, 2004</td>
<td>United States District Court for the Southern District of Florida</td>
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<th>Judgment</th>
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Ohio from discriminating against black voters in Hamilton County on the basis of race. If necessary, they sought to restrain challengers from being allowed at the polls. The court held that the injury asserted, that allowing challengers to challenge voters' eligibility would place an undue burden on voters and impede their right to vote, was not speculative and could be redressed by removing the challengers. The court held that in the absence of any statutory guidance whatsoever governing the procedures and limitations for challenging voters by challengers, and the questionable enforceability of the State's and County's policies regarding good faith challenges and ejection of disruptive challengers from the polls, there existed an enormous risk of chaos.
| MARIAN SPENCER, et al., Petitioners v. CLARA PUGH, et al. (No. 04A360) SUMMIT COUNTY DEMOCRATIC CENTRAL and EXECUTIVE COMMITTEE, et al., Petitioners v. MATTHEW HEIDER, et al. (No. 04A364) | United States Supreme Court | 125 S. Ct. 305; 160 L. Ed. 2d 213; 2004 U.S. LEXIS 7400 | November 2, 2004 | In two separate actions, plaintiffs sued defendant members of a political party, alleging that the members planned to mount indiscriminate challenges in polling places which would disrupt voting. Plaintiffs applied to vacate orders entered by the United States Court of Appeals for the Sixth Circuit which | delay, intimidation, and pandemonium inside the polls and in the lines out the door. Furthermore, the law allowing private challengers was not narrowly tailored to serve Ohio's compelling interest in preventing voter fraud. The court enjoined all defendants from allowing any challengers other than election judges and other electors into the polling places throughout the state on Election Day. | No | N/A | No |
Charles H. Wesley Educ. Found., Inc. v. Cox
United States District Court for the Northern District of Georgia
324 F. Supp. 2d 1358; 2004 U.S. Dist. LEXIS 12120
July 1, 2004

Plaintiffs, a voter, fraternity members, and an organization, sought an injunction ordering defendant, the Georgia Secretary of State, to process the voter registration application forms that they mailed in following a voter registration drive. They contended that by refusing to process the forms defendants violated the National Voter Registration Act and U.S. Const. amends.

The organization participated in numerous non-partisan voter registration drives primarily designed to increase the voting strength of African-Americans. Following one such drive, the fraternity members mailed in over 60 registration forms, including one for the voter who had moved within state since the last election. The Georgia Secretary of State's office refused to process them because they were not mailed individually and neither a registrar, deputy registrar, or an otherwise authorized person had collected the applications as required under state law. The court held that plaintiffs had standing to bring the action. The court held that because the applications were received in accordance with the

entered emergency stays of injunctions restricting the members' activities.

upcoming election. While the allegations of abuse were serious, it was not possible to determine with any certainty the ultimate validity of the plaintiffs' claims or for the full Supreme Court to review the relevant submissions, and voting officials would be available to enable proper voting by qualified voters.

No N/A No
Jacksonville Coalition for Voter Prot. v. Hood
United States District Court for the Middle District of Florida

351 F. Supp. 2d 1326; 2004 U.S. Dist. LEXIS 26522

October 25, 2004

Plaintiffs, voter protection coalition, union, and voters, filed an emergency motion for a preliminary injunction and argued that African Americans in the county had less opportunity than other members of the state's electorate to vote in the upcoming election, and that defendants, elections officials', mandates of the NVRA, the State of Georgia was not free to reject them. The court found that plaintiffs had a substantial likelihood of prevailing on the merits of their claim that the applications were improperly rejected; plaintiffs would be irreparably injured absent an injunction; the potential harm to defendants was outweighed by plaintiffs' injuries; and an injunction was in the public interest. Injunction granted.

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<tr>
<th>Plaintiff/s</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Paragraphs</th>
<th>Summary/Resolution of Issue</th>
<th>Other Notes</th>
<th>Should This be Followed? (Yes/No)</th>
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<tr>
<td>Jacksonville Coalition for Voter Prot. v. Hood</td>
<td>United States District Court for the Middle District of Florida</td>
<td>351 F. Supp. 2d 1326; 2004 U.S. Dist. LEXIS 26522</td>
<td>October 25, 2004</td>
<td>Plaintiffs, voter protection coalition, union, and voters, filed an emergency motion for a preliminary injunction and argued that African Americans in the county had less opportunity than other members of the state's electorate to vote in the upcoming election, and that defendants, elections officials', mandates of the NVRA, the State of Georgia was not free to reject them. The court found that plaintiffs had a substantial likelihood of prevailing on the merits of their claim that the applications were improperly rejected; plaintiffs would be irreparably injured absent an injunction; the potential harm to defendants was outweighed by plaintiffs' injuries; and an injunction was in the public interest. Injunction granted.</td>
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<td>Name of Case</td>
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<td>Taylor v. Howe</td>
<td>United States Court of Appeals for the Eighth Circuit</td>
<td>225 F.3d 993; 2000 U.S. App. LEXIS 22241</td>
<td>August 31, 2000</td>
<td>Implementation of early voting procedures violated the Voting Rights Act and their constitutional rights.</td>
<td>to the political process. Thus, the coalition, the union, and the voters had not established a likelihood of success on the merits of their claim that the county's implementation of early voting procedures violated § 2 of the Voting Rights Act. Moreover, the coalition, the union, and the voters failed to establish a likelihood of success on the merits of their § 1983 Fourteenth and Fifteenth Amendment claims, which required a higher proof of discriminatory purpose and effect. Injunction denied.</td>
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The district court made erroneous findings of fact and law and failed to appreciate evidence of discriminatory intent.

The court to declare a certain voting technology unconstitutional and then fashion a remedy. The court declined the invitation. The determination of the applicable voting process had always been focused in the legislative branch of the government. While it was true that the percentage of residual or non-voted ballots in the 2000 presidential election ran slightly higher in counties using punch card technology, that fact standing alone was insufficient to declare the use of the system unconstitutional. Moreover, the highest frequency in Ohio of residual voting bore a direct relationship to economic and educational factors, negating the Voting Rights Act claim. The court further stated that local variety in

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<th>Holding</th>
<th>District court’s finding that defendant poll workers did not racially discriminate in denying the vote to this plaintiff was clearly erroneous. Affirmed in part and reversed in part.</th>
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<td>Statute/Lexis</td>
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<td>Other Facts</td>
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<td>Should Be Read</td>
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<td>Name of Case</td>
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<tr>
<td>Taylor v. Currie</td>
<td>United States District Court for the Eastern District of Michigan</td>
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Reference to a federal law or federal right was not enough to confer subject matter jurisdiction where the complaint sought to assert only rights arising under state statutes against state officials in relation to a state election. The court stated that it would not allow defendants to take haven in federal court under the guise of providing equal protection for the citizens of Detroit but with a goal of perpetuating their violation of a non-discriminatory state law. Motion to remand granted.
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<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Facts</th>
<th>Holding</th>
<th>Statutory Basis (if of Note)</th>
<th>Other Notes</th>
<th>Should the Case be Researched Further</th>
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<tbody>
<tr>
<td>Hileman v. McGinness</td>
<td>Court of Appeals of Illinois, Fifth District</td>
<td>316 Ill. App. 3d 868; 739 N.E.2d 81; 2000 Ill. App. LEXIS 845</td>
<td>October 25, 2000</td>
<td>Appellant challenged the circuit court declaration that the result of a primary election for county circuit clerk was void.</td>
<td>In a primary election for county circuit clerk, the parties agreed that 681 absentee ballots were presumed invalid. The ballots had been commingled with the valid ballots. There were no markings or indications on the ballots which would have allowed them to be segregated from other ballots cast. Because the ballots could not have been segregated, apportionment was the</td>
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<td>Name of Case</td>
<td>Court</td>
<td>Citation</td>
<td>Date</td>
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<td>appropriate remedy if no fraud was involved. If fraud was involved, the election would have had to have been voided and a new election held. Because the trial court did not hold an evidentiary hearing on the fraud allegations, and did not determine whether fraud was in issue, the case was remanded for a determination as to whether fraud was evident in</td>
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<td>DeFabio v. Gummersheimer</td>
<td>Supreme Court of Illinois</td>
<td>192 Ill. 2d 63; 733 N.E.2d 1241; 2000 Ill. LEXIS 993</td>
<td>July 6, 2000</td>
<td>Appellant challenged the judgment of the appellate court, which affirmed the trial court's decision granting appellee's summary judgment motion in action brought by</td>
<td>the electoral process. The court reversed the declaration of the trial court, holding that a determination as to whether fraud was involved in the election was necessary to a determination of whether or not a new election was required.</td>
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<td>Name of Case</td>
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<td>appellee to contest the results of the election for the position of county coroner in Monroe County.</td>
<td>ballots cast in Monroe County's second precinct were initialed by an election judge, in violation of Illinois law. The trial court granted appellee's motion for summary judgment, and the appellate court affirmed the judgment. The Illinois supreme court affirmed, noting that statutes requiring election judges to initial election ballots were mandatory, and</td>
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<td>uninitialed ballots could not have been counted, even where the parties agreed that there was no knowledge of fraud or corruption. Thus, the supreme court held that the trial court properly invalidated all of the ballots cast in Monroe County's second precinct. The court reasoned that none of the ballots contained the requisite initialing, and neither party</td>
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<td>argued that any of the uninitialed ballots could have been distinguished or identified as absentee ballots. The supreme court affirmed the judgment because the Illinois statute requiring election judges to initial election ballots was mandatory, and uninitialed ballots could not have been counted, even where the parties agreed that there was no knowledge of fraud or</td>
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<td>Gilmore v. Amityville Union Free Sch. Dist.</td>
<td>United States District Court for the Eastern District of New York</td>
<td>305 F. Supp. 2d 271; 2004 U.S. Dist. LEXIS 3116</td>
<td>March 2, 2004</td>
<td>Plaintiffs, two school board candidates, filed a class action complaint against defendants, a school district, the board president, and other district agents or employees, challenging a school board election. Defendants moved to dismiss.</td>
<td>During the election, a voting machine malfunctioned, resulting in votes being cast on lines that were blank on the ballot. The board president devised a plan for counting the machine votes by moving each tally up one line. The two candidates, who challenged the election, filed a class action lawsuit alleging voter fraud and corruption. Additionally, none of the ballots in Monroe County's second precinct contained the requisite initialing.</td>
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<td><em>were African American, alleged that the president's plan eliminated any possibility that an African American would be elected.</em> The court found that the candidates failed to state a claim under § 1983 because they could not show that defendants' actions were done or approved by a person with final policymaking authority, nor was there a showing of</td>
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<td>intentional or purposeful discrimination on defendants' part. The vote-counting method applied equally to all candidates. The candidates' claims under § 2000a and 2000c--8 failed because schools were not places of public accommodation, as required under § 2000a, and § 2000c--8 applied to school segregation. Their claim under § 1971 of deprivation of voting rights</td>
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<td>State ex rel. Mackey v. Blackwell</td>
<td>Supreme Court of Ohio</td>
<td>106 Ohio St. 3d 261; 2005</td>
<td>September 28, 2005</td>
<td>Appellants, a political group and county electors who voted by</td>
<td>failed because § 1971 did not provide for a private right of action. The court declined to exercise supplemental jurisdiction over various state law claims. Defendants' motion to dismiss was granted with respect to the candidates' federal claims; the state law claims were dismissed without prejudice.</td>
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<td>Ohio 4789; 834 N.E.2d 346; 2005 Ohio LEXIS 2074</td>
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<td>boards of elections, which specified that a signed affirmation statement was necessary for the counting of a provisional ballot in a presidential election. During the election, over 24,400 provisional ballots were cast in one county. The electors' provisional ballots were not counted. They, together with a political activist group, brought the mandamus action to</td>
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<td>compel appellants to prohibit the invalidation of provisional ballots and to notify voters of reasons for ballot rejections. Assorted constitutional and statutory law was relied on in support of the complaint. The court dismissed the complaint, finding that no clear legal right was established under Ohio law and the federal claims could be adequately raised in an</td>
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<td>action under § 1983. On appeal, the Ohio supreme court held that dismissal was proper, as the complaint actually sought declaratory and injunctive relief, rather than mandamus relief. Further, election--contest actions were the exclusive remedy to challenge election results. An adequate remedy existed under § 1983 to raise the federal--law claims.</td>
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<td>Touchston v. McDermott</td>
<td>United States District Court for the Middle District of Florida</td>
<td>120 F. Supp. 2d 1055; 2000 U.S. Dist. LEXIS 20091</td>
<td>November 14, 2000</td>
<td>In action in which plaintiffs, registered voters in Brevard County, Florida, filed suit against defendants, members of several County Canvassing Boards and the Secretary of the Florida Department of State, challenging the constitutionality of Fla. Stat. Ann. § 102.166(4) (2000), before the court was plaintiffs' emergency motion for temporary restraining order and/or preliminary injunction.</td>
<td>Affirmed.</td>
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They had not alleged that the Florida law was discriminatory, that citizens were being deprived of the right to vote, or that there had been fraudulent interference with the vote. Moreover, plaintiffs had not established a likelihood of success on the merits of their claims.

Plaintiffs' motion for temporary restraining order

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<td>forth a valid basis for intervention by federal courts.</td>
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<td>Siegel v. LePore</td>
<td>United States District Court for the Southern District of Florida</td>
<td>120 F. Supp. 2d 1041; 2000 U.S. Dist. LEXIS 16333</td>
<td>November 13, 2000</td>
<td>Plaintiffs, individual Florida voters and Republican Party presidential and vice-presidential candidates, moved for a temporary restraining order and preliminary</td>
<td>The court addressed who should consider plaintiffs' serious arguments that manual recounts would diminish the accuracy of vote counts due</td>
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<td>injunction to enjoin defendants, canvassing board members from four Florida counties, from proceeding with manual recounts of election ballots.</td>
<td>to ballot degradation and the exercise of discretion in determining voter intent. The court ruled that intervention by a federal district court, particularly on a preliminary basis, was inappropriate. A federal court should not interfere except where there was an immediate need to correct a constitutional violation. Plaintiffs neither demonstrated a clear deprivation of a</td>
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<td>constitutional injury or a fundamental unfairness in Florida's manual recount provision. The recount provision was reasonable and non--discriminatory on its face and resided within the state's broad control over presidential election procedures. Plaintiffs failed to show that manual recounts were so unreliable as to constitute a constitutional injury, that</td>
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<td>Gore v. Harris</td>
<td>Supreme</td>
<td>773 So.</td>
<td>December</td>
<td>In a contest to</td>
<td>Plaintiffs' alleged injuries were irreparable, or that they lacked an adequate state court remedy. Injunctive relief denied because plaintiffs demonstrated neither clear deprivation of constitutional injury or fundamental unfairness in Florida's manual recount provision to justify federal court interference in state election procedures.</td>
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<td>Court of Florida</td>
<td>2d 524; 2000 Fla. LEXIS 2474</td>
<td>22, 2000</td>
<td>results of the 2000 presidential election in Florida, the United States Supreme Court reversed and remanded a Florida Supreme Court decision that had ordered a manual recount of certain ballots.</td>
<td>supreme court had ordered the trial court to conduct a manual recount of 9000 contested Miami--Dade County ballots, and also held that uncounted &quot;undervotes&quot; in all Florida counties were to be manually counted. The trial court was ordered to use the standard that a vote was &quot;legal&quot; if there was a clear indication of the intent of the voter. The United States Supreme Court</td>
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<td>released an opinion on December 12, 2000, which held that such a standard violated equal protection rights because it lacked specific standards to ensure equal application, and also mandated that any manual recount would have to have been completed by December 12, 2000. On remand, the state supreme court found that it was impossible under that time frame to adopt</td>
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<td>adequate standards and make necessary evaluations of vote tabulation equipment. Also, development of a specific, uniform standard for manual recounts was best left to the legislature. Because adequate standards for a manual recount could not be developed by the deadline set by the United States Supreme Court, appellants were afforded no relief.</td>
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<td>Goodwin v. St. Thomas--St. John Bd. of Elections</td>
<td>Territorial Court of the Virgin Islands</td>
<td>43 V.I. 89; 2000 V.I. LEXIS 15</td>
<td>December 13, 2000</td>
<td>Plaintiff political candidate alleged that certain general election absentee ballots violated territorial election law, and that the improper inclusion of such ballots by defendants, election board and supervisor, resulted in plaintiff's loss of the election. Plaintiff sued defendants seeking invalidation of the absentee ballots and certification of the election results tabulated without such ballots.</td>
<td>Plaintiff alleged that defendants counted unlawful absentee ballots that lacked postmarks, were not signed or notarized, were in unsealed and/or torn envelopes, and were in envelopes containing more than one ballot. Prior to tabulation of the absentee ballots, plaintiff was leading intervenor for the final senate position, but the absentee ballots entitled intervenor to the</td>
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<td>position. The court held that plaintiff was not entitled to relief since he failed to establish that the alleged absentee voting irregularities would require invalidation of a sufficient number of ballots to change the outcome of the election. While the unsealed ballots constituted a technical violation, the outer envelopes were sealed and thus substantially complied with</td>
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<td>election requirements. Further, while defendants improperly counted one ballot where a sealed ballot envelope and a loose ballot were in the same outer envelope, the one vote involved did not change the election result. Plaintiff's other allegations of irregularities were without merit since ballots without postmarks were valid, ballots without signatures were</td>
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<td>not counted, and ballots without notarized signatures were proper. Plaintiff's request for declaratory and injunctive relief was denied. Invalidation of absentee ballots was not required since the irregularities asserted by plaintiff involved ballots which were in fact valid, were not tabulated by defendants, or were insufficient to change the outcome of the election.</td>
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<td>Shannon v. Jacobowitz</td>
<td>United States Court of Appeals for the Second Circuit</td>
<td>394 F.3d 90; 2005 U.S. App. LEXIS 259</td>
<td>January 7, 2005</td>
<td>Plaintiffs, voters and an incumbent candidate, sued defendants, a challenger candidate, a county board of election, and commissioners, pursuant to § 1983 alleging violation of the Due Process Clause of the Fourteenth Amendment. The United States District Court for the Northern District of New York granted summary judgment in favor of plaintiffs. Defendants appealed.</td>
<td>Local election inspectors noticed a problem with a voting machine. Plaintiffs asserted that their votes were not counted due to the machine malfunction. Rather than pursue the state remedy of quo warranto, by requesting that New York's Attorney General investigate the machine malfunction and challenge the election results in state court, plaintiffs filed their complaint</td>
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in federal court. The court of appeals found that United States Supreme Court jurisprudence required intentional conduct by state actors as a prerequisite for a due process violation. Neither side alleged that local officials acted intentionally or in a discriminatory manner with regard to the vote miscount. Both sides conceded that the recorded
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<td>results were likely due to an unforeseen malfunction with the voting machine. Because no conduct was alleged that would indicate an intentional deprivation of the right to vote, there was no cognizable federal due process claim. The proper remedy was to assert a quo warranto action to challenge the outcome of a general election based on an alleged voting machine.</td>
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<td>GEORGE W. BUSH v. PALM BEACH COUNTY CANVASSING BOARD, ET AL.</td>
<td>United States Supreme Court</td>
<td>531 U.S. 70; 121 S. Ct. 471; 148 L. Ed. 2d 366; 2000 U.S. LEXIS 8087</td>
<td>December 4, 2000</td>
<td>Appellant Republican presidential candidate's petition for writ of certiorari to the Florida supreme court was granted in a case involving interpretations of Fla. Stat. Ann. §§ 102.111, 102.112, in proceedings</td>
<td>The Supreme Court vacated the state court's judgment, finding that the state court opinion could be read to indicate that it construed the Florida Election Code without regard to the</td>
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<td>brought by appellees Democratic presidential candidate, county canvassing boards, and Florida Democratic Party regarding authority of the boards and respondent Florida Secretary of State as to manual recounts of ballots and deadlines.</td>
<td>extent to which the Florida Constitution could, consistent with U.S. Const. art. II, § 1, cl. 2, circumscribe the legislative power. The judgment of the Florida Supreme Court was vacated and remanded for further proceedings. The court stated the judgment was unclear as to the extent to which the state court saw the Florida constitution as circumscribing the legislature's</td>
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<td>Touchston v. McDermott</td>
<td>United States Court of Appeals for the Eleventh Circuit</td>
<td>234 F.3d 1130; 2000 U.S. App. LEXIS 29366</td>
<td>November 17, 2000</td>
<td>Plaintiff voters appealed from judgment of the United States District Court for the Middle District of Florida, which denied their emergency motion for an injunction pending appeal against defendant county election officials. Plaintiffs sought to enjoin defendants from conducting manual recount</td>
<td>authority under Article II of the United States Constitution, and as to the consideration given the federal statute regarding state electors.</td>
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<td>ballot recounts or to enjoin defendants from certifying results of the presidential election that contained any manual recounts.</td>
<td>election which contained any manual recounts. The district court denied the emergency injunction and plaintiffs appealed. Upon review, the emergency motion for injunction pending appeal was denied without prejudice. Florida had adequate election dispute procedures, which had been invoked and were being implemented in the forms of</td>
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administrative actions by state officials and actions in state court. Therefore, the state procedures were adequate to preserve for ultimate review in the United States Supreme Court any federal questions arising out of the state procedures. Moreover, plaintiffs failed to demonstrate a substantial threat of an irreparable injury that would warrant granting the
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<td>extraordinary remedy of an injunction pending appeal. Denial of plaintiff's petition for emergency injunction pending appeal was affirmed. The state procedures were adequate to preserve any federal issue for review, and plaintiffs failed to demonstrate a substantial threat of an irreparable injury that would have warranted granting the extraordinary</td>
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<td>Gore v. Harris</td>
<td>Supreme Court of Florida</td>
<td>772 So. 2d 1243; 2000 Fla. LEXIS 2373</td>
<td>December 8, 2000</td>
<td>The court of appeal certified as being of great public importance a trial court judgment that denied all relief requested by appellants, candidates for President and Vice President of the United States, in appellants' contest to certified election results.</td>
<td>remedy of the injunction.</td>
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<td>Beach County Canvassing Board found not to be legal votes during a manual recount. However, the trial court erred in excluding votes that were identified during the Palm Beach County manual recount and during a partial manual recount in Miami-Dade County. It was also error to refuse to examine Miami-Dade County ballots that registered as non-votes during the</td>
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<td>machine count. The trial court applied an improper standard to determine whether appellants had established that the result of the election was in doubt, and improperly concluded that there was no probability of a different result without examining the ballots that appellants claimed contained rejected legal votes. The judgment was reversed and</td>
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<td>remanded; the trial court was ordered to tabulate by hand Miami-Dade County ballots that the counting machine registered as non-votes, and was directed to order inclusion of votes that had already been identified during manual recounts. The trial court also was ordered to consider whether manual recounts in other counties were necessary.</td>
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<td>Reitz v. Rendell</td>
<td>United States District Court for the Middle District of Pennsylvania</td>
<td>2004 U.S. Dist. LEXIS 21813</td>
<td>October 29, 2004</td>
<td>Plaintiff service members filed an action against defendant state officials under the Uniformed and Overseas Citizens Absentee Voting Act alleging that they and similarly situated service members would be disenfranchised because they did not receive their absentee ballots in time. The parties entered into a voluntary agreement and submitted it to the court for approval.</td>
<td>The court issued an order to assure that the service members and other similarly situated service members who were protected by the UOCAVA would not be disenfranchised. The court ordered the Secretary of the Commonwealth of Pennsylvania to take all reasonable steps necessary to direct the county boards of elections to accept as timely received absentee ballots cast by service members and other overseas voters as defined by UOCAVA, so long as the ballots were received by</td>
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<td>United States v.</td>
<td>United States</td>
<td>2004 U.S.</td>
<td>October 20, 2004</td>
<td>Plaintiff United States sued</td>
<td>The testimony of the two witnesses</td>
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<td>Pennsylvania</td>
<td>District Court for the Middle district of Pennsylvania</td>
<td>Dist. LEXIS 21167</td>
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<td>defendant Commonwealth of Pennsylvania, governor, and state secretary, claiming that overseas voters would be disenfranchised if they used absentee ballots that included the names of two presidential candidates who had been removed from the final certified ballot and seeking injunctive relief to address the practical implications of the final certification of the slate of candidates so late in the election year.</td>
<td>offered by the United States did not support its contention that voters protected by the Uniformed and Overseas Citizens Absentee Voting Act would be disenfranchised absent immediate injunctive relief because neither witness testified that any absentee ballots issued to UOCAVA voters were legally incorrect or otherwise invalid. Moreover, there was no evidence that any UOCAVA voter had complained or otherwise expressed concern</td>
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regarding their ability or right to vote. The fact that some UOCAVA voters received ballots including the names of two candidates who were not on the final certified ballot did not ipso facto support a finding that Pennsylvania was in violation of UOCAVA, especially since the United States failed to establish that the ballot defect undermined the right of UOCAVA voters to cast their ballots. Moreover, Pennsylvania had adduced substantial evidence that the requested
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<td>injunctive relief, issuing new ballots, would have harmed the Pennsylvania election system and the public by undermining the integrity and efficiency of Pennsylvania's elections and increasing election costs. must consider the following four factors: (1) the likelihood that the applicant will prevail on the merits of the substantive claim; (2) the extent to which the moving party will be irreparably harmed in the absence of injunctive relief; (3) the extent to which</td>
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<td>Bush v. Hillsborough County Canvassing Bd.</td>
<td>United States District Court for the Northern District of Florida</td>
<td>123 F. Supp. 2d 1305; 2000 U.S. Dist. LEXIS 19265</td>
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<td>The matter came before the court on plaintiffs' complaint for declaratory and injunctive relief alleging that defendant county canvassing boards rejected overseas absentee state</td>
<td>the nonmoving party will suffer irreparable harm if the court grants the requested injunctive relief; and (4) the public interest. District courts should only grant injunctive relief after consideration of each of these factors. Motion for injunctive relief denied.</td>
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<td>write--in ballots based on criteria inconsistent with federal law, and requesting that the ballots be declared valid and that they should be counted.</td>
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write--in ballots based on criteria inconsistent with federal law, and requesting that the ballots be declared valid and that they should be counted. Because the state accepted overseas absentee state ballots and federal write--in ballots up to 10 days after the election, the State needed to access that the ballot in fact came from overseas. However, federal law provided the method to establish that fact by requiring the overseas absentee voter to sign an oath that the ballot was mailed from...
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Outside the United States and requiring the state election officials to examine a federal write-in ballot to timely apply for a regular absentee ballot, not that the state receive the application; and again federal law, by requiring the voter using a federal write-in ballot to swear that he or she had made timely application, had provided the proper method of proof. Plaintiffs withdrew as moot.

**Statutory Basis (if of Note)**

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<td>Harris v. Florida</td>
<td>United States</td>
<td>122 F. Supp. 2d</td>
<td>December 9, 2000</td>
<td>Plaintiffs challenged the cases, plaintiff</td>
<td>their request for injunctive relief and the court granted in part and denied in part plaintiffs' request for declaratory relief, and relief GRANTED in part and declared valid all federal write--in ballots that were signed pursuant to the oath provided therein but rejected solely because the ballot envelope did not have an APO, FPO, or foreign postmark, or solely because there was no record of an application for a state absentee ballot.</td>
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<td>Elections Canvassing Comm'n</td>
<td>District Court for the Northern District of Florida</td>
<td>1317; 2000 U.S. Dist. LEXIS 17875</td>
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<td>counting of overseas absentee ballots received after 7 p.m. on election day, alleging the ballots violated Florida election law.</td>
<td>electors originally sued defendant state elections canvassing commission and state officials in Florida state circuit court, challenging the counting of overseas absentee ballots received after 7 p.m. on election day. Defendant governor removed one case to federal court. The second case was also removed. The court in the second case denied plaintiff's motion for remand and granted a motion to transfer the case to the first federal court under the related case.</td>
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<td>doctrine. Plaintiffs claimed that the overseas ballots violated Florida election law. Defendants argued the deadline was not absolute. The court found Congress did not intend 3 U.S.C.S. § 1 to impose irrational scheduling rules on state and local canvassing officials, and did not intend to disenfranchise overseas voters. The court held the state statute was required to yield to Florida Administrative Code, which required the 10-day</td>
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<td>extension in the receipt of overseas absentee ballots in federal elections because the rule was promulgated to satisfy a consent decree entered by the state in 1982. Judgment entered for defendants because a Florida administrative rule requiring a 10-day extension in the receipt of overseas absentee ballots in federal elections was enacted to bring the state into compliance with a federally ordered mandate; plaintiffs were not entitled to relief under any provision of state or federal law.</td>
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<td>Romeu v. Cohen</td>
<td>United States District Court for the Southern District of New York</td>
<td>121 F. Supp. 2d 264; 2000 U.S. Dist. LEXIS 12842</td>
<td>September 7, 2000</td>
<td>Plaintiff territorial resident and plaintiff--intervenor territorial governor moved for summary judgment and defendant federal, state, and local officials moved to dismiss the complaint that alleged that the Voting Rights Amendments of 1970, the Uniform Overseas Citizens Absentee Voting Act, and New York election law were unconstitutional since they denied plaintiff's right to receive an absentee ballot for the upcoming presidential election.</td>
<td>Plaintiff argued that the laws denied him the right to receive a state absentee ballot in violation of the right to vote, the right to travel, the Privileges and Immunities Clause, and the Equal Protection Clause. Plaintiff--intervenor territorial governor intervened on behalf of similarly situated Puerto Rican residents. Defendants' argued that: 1) plaintiff lacked standing; 2) a non-justiciable political question was raised; and 3) the laws were constitutional. The court held that: 1) plaintiff had</td>
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<td>standing because he made a substantial showing that application for the benefit was futile; 2) whether or not the statutes violated plaintiff's rights presented a legal, not political, question, and there was no lack of judicially discoverable and manageable standards for resolving the matter; and 3) the laws were constitutional and only a constitutional amendment or grant of statehood would enable plaintiff to vote in a presidential</td>
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<td>Romeu v. Cohen</td>
<td>United States Court of Appeals for the Second Circuit</td>
<td>265 F.3d 118; 2001 U.S. App. LEXIS 19876</td>
<td>September 6, 2001</td>
<td>Plaintiff territorial resident sued defendants, state and federal officials, alleging that the Uniformed and Overseas Citizens Absentee Voting Act unconstitutionally prevented the territorial resident from voting in his former state of residence. The resident appealed.</td>
<td>The territorial resident contended that the UOCAVA unconstitutionally distinguished between former state residents residing outside the United States, who were permitted to vote in their former states, and former state residents residing in a territory, who were not permitted to vote.</td>
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<td>the judgment of the United States District Court for the Southern District of New York, which dismissed the complaint.</td>
<td>vote in their former states. The court of appeals first held that the UOCAVA did not violate the territorial resident's right to equal protection in view of the valid and not insubstantial considerations for the distinction. The territorial resident chose to reside in the territory and had the same voting rights as other territorial residents, even though such residency precluded voting for federal offices. Further, the resident had no constitutional right to vote in his former state after he terminated his</td>
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<td>Igartua de la Rosa v. United States</td>
<td>United States District Court for the District of U.S.</td>
<td>107 F. Supp. 2d 140; 2000 U.S.</td>
<td>July 19, 2000</td>
<td>Defendant United States moved to dismiss plaintiffs' action seeking a declaratory</td>
<td>The court denied the motion of defendant United States to dismiss the action of</td>
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<td>Puerto Rico</td>
<td>Dist.</td>
<td>LEXIS 11146</td>
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<td>judgment allowing them to vote, as U.S. citizens residing in Puerto Rico, in the upcoming and all subsequent Presidential elections. Plaintiffs urged, among other claims, that their right to vote in Presidential elections was guaranteed by the Constitution and the International Covenant on Civil and Political Rights.</td>
<td>plaintiffs, two groups of Puerto Ricans, seeking a declaratory judgment allowing them to vote in Presidential elections. One group always resided in Puerto Rico and the other became ineligible to vote in Presidential elections upon taking up residence in Puerto Rico. Plaintiffs contended that the Constitution and the International Covenant on Civil and Political Rights, guaranteed their right to vote in Presidential elections and that</td>
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<td>the Uniformed and Overseas Citizens Absentee Voting Act, was unconstitutional in disallowing Puerto Rican citizens to vote by considering them to be within the United States. The court concluded that UOCAVA was constitutional under the rational basis test, and violation of the treaty did not give rise to privately enforceable rights. Nevertheless, the Constitution provided U.S. citizens residing in Puerto Rico the right to participate in Presidential</td>
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The court denied defendant United States' motion to dismiss plaintiffs' action seeking a declaratory judgment allowing them to vote in Presidential elections as citizens of the United States and of Puerto Rico. The court held that the United States Constitution itself provided plaintiffs with the right to participate in Presidential elections. No constitutional amendment was needed. The present political status of Puerto Rico was abhorrent to the Bill of Rights.
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<td>James v. Bartlett</td>
<td>Supreme Court of North Carolina</td>
<td>359 N.C. 260; 607 S.E.2d 638; 2005 N.C. LEXIS 146</td>
<td>February 4, 2005</td>
<td>Appellant candidates challenged elections in the superior court through appeals of election protests before the North Carolina State Board of Elections and a declaratory judgment action in the superior court. The court entered an order granting summary judgment in favor of appellees, the Board, the Board's executive director, the Board's members, and the North Carolina Attorney General. The candidates appealed.</td>
<td>The case involved three separate election challenges. The central issue was whether a provisional ballot cast on election day at a precinct other than the voter's correct precinct of residence could be lawfully counted in final election tallies. The superior court held that it could be counted. On appeal, the supreme court determined that state law did not permit out-of-precinct provisional</td>
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<td>Sandusky County Democratic Party v. Blackwell</td>
<td>United States Court of Appeals for the Sixth Circuit</td>
<td>387 F.3d 565; 2004 U.S. App. LEXIS 22320</td>
<td>October 26, 2004</td>
<td>Defendant state appealed from an order of the U.S. District Court for the Northern District of Ohio which held that the Help America Vote Act required that voters be permitted to cast ballots to be counted in state and local elections. The candidates failure to challenge the counting of out-of-precinct provisional ballots before the election did not render their action untimely. Reversed and remanded.</td>
<td>The district court found that HAVA created an individual right to cast a provisional ballot, that this right is individually enforceable under 42</td>
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<td>provisional ballots upon affirming their registration to vote in the county in which they desire to vote and that provisional ballots must be counted as valid ballots when cast in the correct county.</td>
<td>U.S.C.S. § 1983, and that plaintiffs unions and political parties had standing to bring a § 1983 action on behalf of Ohio voters. The court of appeals agreed that the political parties and unions had associational standing to challenge the state's provisional voting directive. Further, the court determined that HAVA was quintessentially about being able to cast a provisional</td>
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<td>ballot but that the voter casts a provisional ballot at the peril of not being eligible to vote under state law; if the voter is not eligible, the vote will then not be counted. Accordingly, the court of appeals reversed the district court and held that &quot;provisional&quot; ballots cast in a precinct where a voter does not reside and which would be invalid under state law, are not required by the HAVA to be considered</td>
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<td>State ex rel. Mackey v. Blackwell</td>
<td>Supreme Court of Ohio</td>
<td>106 Ohio St. 3d 261; 2005 Ohio 4789; 834 N.E.2d 346; 2005 Ohio LEXIS 2074</td>
<td>September 28, 2005</td>
<td>Appellants, a political group and county electors who voted by provisional ballot, sought review of a judgment from the court of appeals which dismissed appellants' complaint, seeking a writ of mandamus to prevent appellees, the Ohio Secretary of State, a county board of elections, and the board's director, from disenfranchisement of provisional ballot voters.</td>
<td>legal votes. Affirmed in part and reversed in part.</td>
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<td>ballots were not counted. They, together with a political activist group, brought the mandamus action to compel appellants to prohibit the invalidation of provisional ballots and to notify voters of reasons for ballot rejections. Assorted constitutional and statutory law was relied on in support of the complaint. The trial court dismissed the complaint, finding that no clear legal right was established</td>
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<td>under Ohio law and the federal claims could be adequately raised in an action under 42 U.S.C.S. § 1983. On appeal, the Ohio Supreme Court held that dismissal was proper, as the complaint actually sought declaratory and injunctive relief, rather than mandamus relief. Further, election–contest actions were the exclusive remedy to challenge election results. An adequate remedy existed</td>
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<td>Fla. Democratic Party v. Hood</td>
<td>United States District Court for the Northern District of Florida</td>
<td>342 F. Supp. 2d 1073; 2004 U.S. Dist. LEXIS 21720</td>
<td>October 21, 2004</td>
<td>Plaintiff political party sought injunctive relief under the Help America Vote Act, claiming that the election system put in place by defendant election officials violated HAVA because it did not allow provisional voting other than in the voter's assigned precinct. The officials moved for judgment on the pleadings.</td>
<td>under § 1983 to raise the federal-law claims. Affirmed.</td>
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Plaintiff political party asserted that a prospective voter in a federal election had the right to cast a provisional ballot at a given polling place, even if the local officials asserted that the voter was at the wrong polling place; second, that voter had the right to have that vote counted in the election, if the voter otherwise.
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<td>met all requirements of state law. The court noted that the right to vote was clearly protectable as a civil right, and a primary purpose of the HAVA was to preserve the votes of persons who had incorrectly been removed from the voting rolls, and thus would not be listed as voters at what would otherwise have been the correct polling place. The irreparable injury to a voter was easily sufficient to</td>
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<td>outweigh any harm to the officials. Therefore, the court granted relief as to the first claim, allowing the unlisted voter to cast a provisional ballot, but denied relief as to the second claim, that the ballot at the wrong place must be counted if it was cast at the wrong place, because that result contradicted State law. The provisional ballot could only be counted if it</td>
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<td>League of Women Voters v. Blackwell</td>
<td>United States District Court for the Northern District of Ohio</td>
<td>340 F. Supp. 2d 823; 2004 U.S. Dist. LEXIS 20926</td>
<td>October 20, 2004</td>
<td>Plaintiff organizations filed suit against defendant, Ohio's Secretary of State, claiming that a directive issued by the Secretary contravened the provisions of the Help America Vote Act. The Secretary filed a motion to dismiss.</td>
<td>The directive in question instructed election officials to issue provisional ballots to first-time voters who registered by mail but did not provide documentary identification at the polling place on election day. When submitting a provisional ballot, a first-time voter could identify himself by providing his driver's license number or the</td>
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<td>last four digits of his social security number. If he did not know either number, he could provide it before the polls closed. If he did not do so, his provisional ballot would not be counted. The court held that the directive did not contravene the HAVA and otherwise established reasonable requirements for confirming the identity of first-time voters who registered to vote by mail because: (1) the</td>
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<td>identification procedures were an important bulwark against voter misconduct and fraud; (2) the burden imposed on first-time voters to confirm their identity, and thus show that they were voting legitimately, was slight; and (3) the number of voters unable to meet the burden of proving their identity was likely to be very small. Thus, the balance of interests favored the directive,</td>
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<td>Sandusky County Democratic Party v. Blackwell</td>
<td>United States Court of Appeals for the Sixth Circuit</td>
<td>386 F.3d 815; 2004 U.S. App. LEXIS 28765</td>
<td>October 23, 2004</td>
<td>Defendant Ohio Secretary of State challenged an order of the United States District Court for the Northern District of Ohio, which held that Ohio Secretary of State Directive 2004--33 violated the federal Help America Vote Act. In its order, the district court directed the Secretary to issue a revised directive that conformed to HAVA's requirements.</td>
<td>On appeal, the court held that the district court correctly ruled that the right to cast a provisional ballot in federal elections was enforceable under 42 U.S.C.S. § 1983 and that at least one plaintiff had standing to enforce that right in the district court. The court also held that Ohio Secretary of State Directive</td>
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<td>2004--33 violated HAVA to the extent that it failed to ensure that any individual affirming that he or she was a registered voter in the jurisdiction in which he or she desired to vote and eligible to vote in a federal election was permitted to cast a provisional ballot. However, the district court erred in holding that HAVA required that a voter's provisional ballot be counted as a</td>
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<td>Hawkins v. Blunt</td>
<td>United States District Court for the Western District of Missouri</td>
<td>2004 U.S. Dist. LEXIS 21512</td>
<td>October 12, 2004</td>
<td>In an action filed by plaintiffs, voters and a state political party, contending that the provisional voting requirements of Mo. Rev. Stat. § 115.430 conflicted with and was preempted by the Help America Vote Act, plaintiffs and defendants, the secretary of state and others, moved</td>
<td>The court held that the text of the HAVA, as well as its legislative history, proved that it could be read to include reasonable accommodations of state precinct voting practices in implementing provisional voting requirements.</td>
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<td>The court further held that Mo. Rev. Stat. § 115.430.2 was reasonable; to effectuate the HAVA's intent and to protect that interest, it could not be unreasonable to direct a voter to his correct voting place where a full ballot was likely to be cast. The court also held that plaintiffs' equal protection rights were not violated by the requirement that before a voter would be allowed to cast a provisional</td>
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<td>Bay County Democratic Party v. Land</td>
<td>United States District Court for the Eastern District of Michigan</td>
<td>340 F. Supp. 2d 802; 2004 U.S. Dist. LEXIS 20551</td>
<td>October 13, 2004</td>
<td>Plaintiffs, state and county Democratic parties, filed an action against defendant, Michigan secretary of state and the Michigan director of elections, alleging that the state's intended procedure for casting and counting provisional ballots at the upcoming general election would violate the Help America Vote Act and state laws implementing the federal</td>
<td>The parties claimed that if the secretary's proposed procedure was allowed to occur, several voters who were members of the parties' respective organizations were likely to be disenfranchised. Defendants moved to transfer venue of the action to the Western District of Michigan claiming that the only proper</td>
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<td>legislature. Defendants filed a motion to transfer venue.</td>
<td>venue for an action against a state official is the district that encompasses the state's seat of government. Alternatively, defendants sought transfer for the convenience of the parties and witnesses. The court found that defendants' arguments were not supported by the plain language of the current venue statutes. Federal actions against the Michigan secretary of state over rules and practices</td>
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<td>governing federal elections traditionally were brought in both the Eastern and Western Districts of Michigan. There was no rule that required such actions to be brought only in the district in which the state's seat of government was located, and no inconvenience resulting from litigating in the state's more populous district reasonably could be claimed by a state official who had a</td>
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<td>Bay County Democratic Party v. Land</td>
<td>United States District Court for the Eastern District of Michigan</td>
<td>347 F. Supp. 2d 404; 2004 U.S. Dist. LEXIS 20872</td>
<td>October 19, 2004</td>
<td>Plaintiffs, voter organizations and political parties, filed actions against defendants, the Michigan Secretary of State and her director of elections, challenging directives issued to local election officials concerning the casting and tabulation of provisional ballots. Plaintiffs sought a</td>
<td>The court concluded that (1) plaintiffs had standing to assert their claims; (2) HAVA created individual rights enforceable through 42 U.S.C.S. § 1983; (3) Congress had provided a scheme under HAVA in which a voter's right to have a</td>
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<td>preliminary injunction and contended that the directives violated their rights under the Help America Vote Act.</td>
<td>provisional ballot for federal offices tabulated was determined by state law governing eligibility, and defendants' directives for determining eligibility on the basis of precinct--based residency were inconsistent with state and federal election law; (4) Michigan election law defined voter qualifications in terms of the voter's home jurisdiction, and a person who cast a</td>
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<td>provisional ballot within his or her jurisdiction was entitled under federal law to have his or her votes for federal offices counted if eligibility to vote in that election could be verified; and (5) defendants' directives concerning proof of identity of first--time voters who registered by mail were consistent with federal and state law.</td>
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<td>James v. Bartlett</td>
<td>Supreme Court of North Carolina</td>
<td>359 N.C. 260; 607 S.E.2d 638; 2005 N.C. LEXIS 146</td>
<td>February 4, 2005</td>
<td>Appellant candidates challenged elections in the superior court through appeals of election protests before the North Carolina State Board of Elections and a declaratory judgment action in the superior court. The court entered an order granting summary judgment in favor of appellees, the Board, the Board's executive director, the Board's members, and the North Carolina Attorney General. The candidates appealed.</td>
<td>The case involved three separate election challenges. The central issue was whether a provisional ballot cast on election day at a precinct other than the voter's correct precinct of residence could be lawfully counted in final election tallies. The superior court held that it could be counted. On appeal, the supreme court determined that state law did not permit out-of-precinct provisional</td>
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<td>Sandusky County Democratic Party v. Blackwell</td>
<td>United States Court of Appeals for the Sixth Circuit</td>
<td>387 F.3d 565; 2004 U.S. App. LEXIS 22320</td>
<td>October 26, 2004</td>
<td>Defendant state appealed from an order of the U.S. District Court for the Northern District of Ohio which held that the Help America Vote Act required that voters be permitted to cast</td>
<td>ballots to be counted in state and local elections. The candidates failure to challenge the counting of out-of-precinct provisional ballots before the election did not render their action untimely. Reversed and remanded.</td>
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<td>U.S.C.S. § 1983, and that plaintiffs unions and political parties had standing to bring a § 1983 action on behalf of Ohio voters. The court of appeals agreed that the political parties and unions had associational standing to challenge the state's provisional voting directive. Further, the court determined that HAVA was quintessentially about being able to cast a provisional</td>
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<td>provisional ballots upon affirming their registration to vote in the county in which they desire to vote and that provisional ballots must be counted as valid ballots when cast in the correct county.</td>
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<td>&quot;provisional&quot; ballot but that the voter casts a provisional ballot at the peril of not being eligible to vote under state law; if the voter is not eligible, the vote will then not be counted. Accordingly, the court of appeals reversed the district court and held that &quot;provisional&quot; ballots cast in a precinct where a voter does not reside and which would be invalid under state law, are not required by the HAVA to be considered</td>
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<td>State ex rel. Mackey v. Blackwell</td>
<td>Supreme Court of Ohio</td>
<td>106 Ohio St. 3d 261; 2005 Ohio 4789; 834 N.E.2d 346; 2005 Ohio LEXIS 2074</td>
<td>September 28, 2005</td>
<td>Appellants, a political group and county electors who voted by provisional ballot, sought review of a judgment from the court of appeals which dismissed appellants' complaint, seeking a writ of mandamus to prevent appellees, the Ohio Secretary of State, a county board of elections, and the board's director, from disenfranchisement of provisional ballot voters.</td>
<td>The Secretary of State issued a directive to all Ohio county boards of elections, which specified that a signed affirmation statement was necessary for the counting of a provisional ballot in a presidential election. During the election, over 24,400 provisional ballots were cast in one county. The electors' provisional legal votes. Affirmed in part and reversed in part.</td>
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<td>ballots were not counted. They, together with a political activist group, brought the mandamus action to compel appellants to prohibit the invalidation of provisional ballots and to notify voters of reasons for ballot rejections. Assorted constitutional and statutory law was relied on in support of the complaint. The trial court dismissed the complaint, finding that no clear legal right was established</td>
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<td>under Ohio law and the federal claims could be adequately raised in an action under 42 U.S.C.S. § 1983. On appeal, the Ohio Supreme Court held that dismissal was proper, as the complaint actually sought declaratory and injunctive relief, rather than mandamus relief. Further, election-contest actions were the exclusive remedy to challenge election results. An adequate remedy existed</td>
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<td>Fla. Democratic Party v. Hood</td>
<td>United States District Court for the Northern District of Florida</td>
<td>342 F. Supp. 2d 1073; 2004 U.S. Dist. LEXIS 21720</td>
<td>October 21, 2004</td>
<td>Plaintiff political party sought injunctive relief under the Help America Vote Act, claiming that the election system put in place by defendant election officials violated HAVA because it did not allow provisional voting other than in the voter's assigned precinct. The officials moved for judgment on the pleadings.</td>
<td>under § 1983 to raise the federal-law claims. Affirmed.</td>
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<td>met all requirements of state law. The court noted that the right to vote was clearly protectable as a civil right, and a primary purpose of the HAVA was to preserve the votes of persons who had incorrectly been removed from the voting rolls, and thus would not be listed as voters at what would otherwise have been the correct polling place. The irreparable injury to a voter was easily sufficient to</td>
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<td>outweigh any harm to the officials. Therefore, the court granted relief as to the first claim, allowing the unlisted voter to cast a provisional ballot, but denied relief as to the second claim, that the ballot at the wrong place must be counted if it was cast at the wrong place, because that result contradicted State law. The provisional ballot could only be counted if it</td>
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<td>League of Women Voters v. Blackwell</td>
<td>United States District Court for the Northern District of Ohio</td>
<td>340 F. Supp. 2d 823; 2004 U.S. Dist. LEXIS 20926</td>
<td>October 20, 2004</td>
<td>Plaintiff organizations filed suit against defendant, Ohio's Secretary of State, claiming that a directive issued by the Secretary contravened the provisions of the Help America Vote Act. The Secretary filed a motion to dismiss.</td>
<td>The directive in question instructed election officials to issue provisional ballots to first-time voters who registered by mail but did not provide documentary identification at the polling place on election day. When submitting a provisional ballot, a first-time voter could identify himself by providing his driver's license number or the</td>
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The court held that the directive did not contravene the HAVA and otherwise established reasonable requirements for confirming the identity of first-time voters who registered to vote by mail because: (1) the

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<td>last four digits of his social security number. If he did not know either number, he could provide it before the polls closed. If he did not do so, his provisional ballot would not be counted. The court held that the directive did not contravene the HAVA and otherwise established reasonable requirements for confirming the identity of first-time voters who registered to vote by mail because: (1) the</td>
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<td>Sandusky County Democratic Party v.</td>
<td>United States Court of Appeals for the Sixth Circuit</td>
<td>386 F.3d 815; 2004 U.S. App. LEXIS 28765</td>
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<td>Hawkins v. Blunt</td>
<td>United States District Court for the Western District of Missouri</td>
<td>2004 U.S. Dist. LEXIS 21512</td>
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The court further held that Mo. Rev. Stat. § 115.430.2 was reasonable; to effectuate the HAVA's intent and to protect that interest, it could not be unreasonable to direct a voter to his correct voting place where a full ballot was likely to be cast. The court also held that plaintiffs' equal protection rights were not violated by the requirement that before a voter would be allowed to cast a provisional ballot was likely for summary judgment.
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<td>Bay County Democratic Party v. Land</td>
<td>United States District Court for the Eastern District of Michigan</td>
<td>340 F. Supp. 2d 802; 2004 U.S. Dist. LEXIS 20551</td>
<td>October 13, 2004</td>
<td>Plaintiffs, state and county Democratic parties, filed an action against defendant, Michigan secretary of state and the Michigan director of elections, alleging that the state's intended procedure for casting and counting provisional ballots at the upcoming general election would violate the Help America Vote Act and state laws implementing the federal statute, the voter would first be directed to his proper polling place.</td>
<td>The parties claimed that if the secretary's proposed procedure was allowed to occur, several voters who were members of the parties' respective organizations were likely to be disenfranchised. Defendants moved to transfer venue of the action to the Western District of Michigan claiming that the only proper</td>
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<td>legislation. Defendants filed a motion to transfer venue.</td>
<td>venue for an action against a state official is the district that encompasses the state's seat of government. Alternatively, defendants sought transfer for the convenience of the parties and witnesses. The court found that defendants' arguments were not supported by the plain language of the current venue statutes. Federal actions against the Michigan secretary of state over rules and practices</td>
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<td>governing federal elections traditionally were brought in both the Eastern and Western Districts of Michigan. There was no rule that required such actions to be brought only in the district in which the state's seat of government was located, and no inconvenience resulting from litigating in the state's more populous district reasonably could be claimed by a state official who had a</td>
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<td>Bay County Democratic Party v. Land</td>
<td>United States District Court for the Eastern District of Michigan</td>
<td>347 F. Supp. 2d 404; 2004 U.S. Dist. LEXIS 20872</td>
<td>October 19, 2004</td>
<td>Plaintiffs, voter organizations and political parties, filed actions against defendants, the Michigan Secretary of State and her director of elections, challenging directives issued to local election officials concerning the casting and tabulation of provisional ballots. Plaintiffs sought a mandate to administer elections throughout the state and operated an office in each of its counties. Motion denied.</td>
<td>The court concluded that (1) plaintiffs had standing to assert their claims; (2) HAVA created individual rights enforceable through 42 U.S.C.S. § 1983; (3) Congress had provided a scheme under HAVA in which a voter's right to have a</td>
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<td>preliminary injunction and contended that the directives violated their rights under the Help America Vote Act.</td>
<td>provisional ballot for federal offices tabulated was determined by state law governing eligibility, and defendants' directives for determining eligibility on the basis of precinct--based residency were inconsistent with state and federal election law; (4) Michigan election law defined voter qualifications in terms of the voter's home jurisdiction, and a person who cast a</td>
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<td>provisional ballot within his or her jurisdiction was entitled under federal law to have his or her votes for federal offices counted if eligibility to vote in that election could be verified; and (5) defendants' directives concerning proof of identity of first-time voters who registered by mail were consistent with federal and state law.</td>
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<td>Charles H. Wesley Educ. Found., Inc. v. Cox</td>
<td>United States Court of Appeals for the Eleventh Circuit</td>
<td>408 F.3d 1349; 2005 U.S. App. LEXIS 8320</td>
<td>May 12, 2005</td>
<td>Plaintiffs, a charitable foundation, four volunteers, and a registered voter, filed a suit against defendant state officials alleging violations of the National Voter Registration Act and the Voting Rights Act. The officials appealed after the United States District Court for the Northern District of Georgia issued a preliminary injunction enjoining them from rejecting voter registrations submitted by the voter's change of address form.</td>
<td>The foundation conducted a voter registration drive; it placed the completed applications in a single envelope and mailed them to the Georgia Secretary of State for processing. Included in the batch was the voter's change of address form. Plaintiffs filed the suit after they were notified that the applications had been rejected pursuant to Georgia law, which allegedly restricted who could collect voter registration</td>
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<td>foundation.</td>
<td>forms. Plaintiffs contended that the officials had violated the NVRA, the VRA, and U.S. Const. amends. I, XIV, XV. The officials argued that plaintiffs lacked standing and that the district court had erred in issuing the preliminary injunction. The court found no error. Plaintiffs had sufficiently alleged injuries under the NVRA, arising out of the rejection of the voter registration forms; the allegations in the</td>
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<td>McKay v.</td>
<td>United</td>
<td>226 F.3d</td>
<td>September</td>
<td>Plaintiff</td>
<td>The trial court</td>
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complaint sufficiently showed an injury--in--fact that was fairly traceable to the officials' conduct. The injunction was properly issued. There was a substantial likelihood that plaintiffs would prevail as to their claims; it served the public interest to protect plaintiffs' franchise--related rights. The court affirmed the preliminary injunction order entered by the district court.
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<td>Thompson</td>
<td>States Court of Appeals for the Sixth Circuit</td>
<td>752; 2000 U.S. App. LEXIS 23387</td>
<td>18, 2000</td>
<td>challenged order of United States District Court for Eastern District of Tennessee at Chattanooga, which granted defendant state election officials summary judgment on plaintiff's action seeking to stop the state practice of requiring its citizens to disclose their social security numbers as a precondition to voter registration.</td>
<td>had granted defendant state election officials summary judgment. The court declined to overrule defendants' administrative determination that state law required plaintiff to disclose his social security number because the interpretation appeared to be reasonable, did not conflict with previous case law, and could be challenged in state court. The requirement did not violate the Privacy Act of 1974, because it</td>
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<td>was grand fathered under the terms of the Act. The limitations in the National Voter Registration Act did not apply because the NVRA did not specifically prohibit the use of social security numbers and the Act contained a more specific provision regarding such use. The trial court properly rejected plaintiff's fundamental right to vote, free exercise of religion, privileges and</td>
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<td>Plaintiff, national</td>
<td>Defendants</td>
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immunities, and due process claims. Order affirmed because requirement that voters disclose social security numbers as precondition to voter registration did not violate Privacy Act of 1974 or National Voter Registration Act and trial court properly rejected plaintiff's fundamental right to vote, free exercise of religion, privileges and immunities, and due process claims.
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<td>Coalition for Students with Disabilities Educ. &amp; Legal Def. Fund v. Scales</td>
<td>States District Court for the Southern District of Maryland</td>
<td>Supp. 2d 845; 2001 U.S. Dist. LEXIS 9528</td>
<td>2001</td>
<td>organization for disabled students, brought an action against university president and university's director of office of disability support services to challenge the voter registration procedures established by the disability support services. Defendants moved to dismiss the first amended complaint, or in the alternative for summary judgment.</td>
<td>alleged that plaintiff lacked standing to represent its members, and that plaintiff had not satisfied the notice requirements of the National Voter Registration Act. Further, defendants maintained the facts, as alleged by plaintiff, did not give rise to a past, present, or future violation of the NVRA because (I) the plaintiff's members that requested voter registration services were not</td>
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<td>registered students at the university and (2) its current voter registration procedures complied with NVRA. As to plaintiff's § 1983 claim, the court held that while plaintiff had alleged sufficient facts to confer standing under the NVRA, such allegations were not sufficient to support standing on its own behalf on the § 1983 claim. As to the NVRA claim, the court found that the agency practice of only offering voter</td>
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<td>registration services at the initial intake interview and placing the burden on disabled students to obtain voter registration forms and assistance afterwards did not satisfy its statutory duties. Furthermore, most of the NVRA provisions applied to disabled applicants not registered at the university. Defendants' motion to dismiss first amended</td>
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<td>Cunningham v. Chi. Bd. of Election Comm'rs</td>
<td>United States District Court for the Northern District of Illinois</td>
<td>2003 U.S. Dist. LEXIS 2528</td>
<td>February 24, 2003</td>
<td>Plaintiffs, who alleged that they were duly registered voters, six of whom had signed nominating petitions for one candidate and two of whom signed</td>
<td>Plaintiffs argued that objections to their signatures were improperly sustained by defendants, the city board of election commissioners. Plaintiff's argued that they were</td>
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<td>nominating petitions for another candidate. They first asked for a preliminary injunction of the municipal election scheduled for the following Tuesday and suggested, alternatively, that the election for City Clerk and for 4th Ward Alderman be enjoined.</td>
<td>registered voters whose names appeared in an inactive file and whose signatures were therefore, and improperly, excluded. The court ruled that by characterizing the claim as plaintiffs did, they sought to enjoin an election because their signatures were not counted, even though their preferred candidates were otherwise precluded from appearing on the ballot. Without regard to their likelihood of</td>
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<td>obtaining any relief, plaintiffs failed to demonstrate that they would be irreparably harmed if an injunction did not issue; the threatened injury to defendants, responsible as they were for the conduct of the municipal election, far outweighed any threatened injury to plaintiffs; and the granting of a preliminary injunction would greatly disserve the public interest. Plaintiffs' petition for</td>
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<td>Diaz v. Hood</td>
<td>United States District Court for the Southern District of Florida</td>
<td>342 F. Supp. 2d 1111; 2004 U.S. Dist. LEXIS 21445</td>
<td>October 26, 2004</td>
<td>Plaintiffs, unions and individuals who had attempted to register to vote, sought a declaration of their rights to vote in the November 2, 2004 general election. They alleged that defendants, state and county election officials, refused to process their voter registrations for various failures to complete the registration forms. The election officials</td>
<td>preliminary relief was denied.</td>
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<td>moved to dismiss the complaint for lack of standing and failure to state a claim.</td>
<td>capacity, the second failed to check a box indicating that he was not a felon, and the third did not provide the last four digits of her social security number on the form. They claimed the election officials violated federal and state law by refusing to register eligible voters because of nonmaterial errors or omissions in their voter registration applications, and by failing to provide any notice to voter</td>
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<td>applicants whose registration applications were deemed incomplete. In the first two cases, the election official had handled the errant application properly under Florida law, and the putative voter had effectively caused their own injury by failing to complete the registration. The third completed her form and was registered, so had suffered no injury. Standing failed against the secretary of state. Motion to dismiss without</td>
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<td>Bell v. Marinko</td>
<td>United States District Court for the Northern District of Ohio</td>
<td>235 F. Supp. 2d 772; 2002 U.S. Dist. LEXIS 21753</td>
<td>October 22, 2002</td>
<td>Plaintiff voters sued defendants, a county board of elections, a state secretary of state, and the state's attorney general, for violations of the Motor Voter Act and equal protection of the laws. Defendants moved for summary judgment. The voters also moved for summary judgment.</td>
<td>prejudice granted.</td>
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<td>claim, the court held that residency within the precinct was a crucial qualification. One simply could not be an elector, much less a qualified elector entitled to vote, unless one resided in the precinct where he or she sought to vote. If one never lived within the precinct, one was not and could not be an eligible voter, even if listed on the board's rolls as such. The MVA did not affect the state's ability to</td>
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<td>Bell v. Marinko</td>
<td>United States Court of Appeals for the Sixth Circuit</td>
<td>367 F.3d 588; 2004 U.S. App. LEXIS 8330</td>
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of the Fourteenth Amendment. The United States District Court for the Northern District of Ohio granted summary judgment in favor of defendants. The voters appealed.
The National Voter Registration Act did not bar the Board's continuing consideration of a voter's residence, and encouraged the Board to maintain accurate and reliable voting rolls. Ohio was free to take reasonable steps to see that all applicants for registration to vote actually fulfilled the requirement of bona fide residence. Ohio Rev. Code Ann.
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<td>§ 3503.02(D) did not contravene the National Voter Registration Act. Because the Board did not raise an irrebuttable presumption in applying § 3502.02(D), the voters suffered no equal protection violation. The judgment was affirmed.</td>
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<td>Miller v. Blackwell</td>
<td>United States District Court for the southern District of Ohio</td>
<td>348 F. Supp. 2d 916; 2004 U.S. Dist. LEXIS 24894</td>
<td>October 27, 2004</td>
<td>Plaintiffs, two voters and the Ohio Democratic Party, filed suit against defendants, the Ohio Secretary of State, several county boards of elections, and all of the boards' members, alleging claims under the National Voter Registration Act and § 1983. Plaintiffs also filed a motion for a temporary restraining order. Two individuals filed a motion to intervene as defendants.</td>
<td>Plaintiffs alleged that the timing and manner in which defendants intended to hold hearings regarding pre-election challenges to their voter registration violated both the Act and the Due Process Clause. The individuals, who filed pre-election voter eligibility challenges, filed a motion to intervene. The court held that it would grant the motion to intervene because the individuals had a substantial legal interest in</td>
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<td>the subject matter of the action and time constraints would not permit them to bring separate actions to protect their rights. The court further held that it would grant plaintiffs' motion for a TRO because plaintiffs made sufficient allegations in their complaint to establish standing and because all four factors to consider in issuing a TRO weighed heavily in favor of doing so. The court found that plaintiffs demonstrated a</td>
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<td>likelihood of success on the merits because they made a strong showing that defendants' intended actions regarding pre-election challenges to voter eligibility abridged plaintiffs' fundamental right to vote and violated the Due Process Clause. Thus, the other factors to consider in granting a TRO automatically weighed in plaintiffs' favor. The court granted plaintiffs' motion for a TRO. The</td>
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<td>Spencer v. Blackwell</td>
<td>United States District Court for the Southern District of Ohio</td>
<td>347 F. Supp. 2d 528; 2004 U.S. Dist. LEXIS 22062</td>
<td>November 1, 2004</td>
<td>Plaintiff voters filed a motion for temporary restraining order and preliminary injunction seeking to restrain defendant election officials and intervenor State of Ohio from discriminating against black voters in Hamilton County on the basis of race. If necessary, they sought to restrain challengers from being allowed at the polls.</td>
<td>The voters alleged that defendants had combined to implement a voter challenge system at the polls that discriminated against African-American voters. Each precinct was run by its election judges but Ohio law also allowed challengers to be physically present in the polling places in order to challenge voters' eligibility to vote. The court held that the injury asserted, that</td>
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<td>allowing challengers to challenge voters' eligibility would place an undue burden on voters and impede their right to vote, was not speculative and could be redressed by removing the challengers. The court held that in the absence of any statutory guidance whatsoever governing the procedures and limitations for challenging voters by challengers, and the questionable enforceability of the State's and</td>
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<td>County's policies regarding good faith challenges and ejection of disruptive challengers from the polls, there existed an enormous risk of chaos, delay, intimidation, and pandemonium inside the polls and in the lines out the door. Furthermore, the law allowing private challengers was not narrowly tailored to serve Ohio's compelling interest in preventing voter fraud. Because the voters had shown a</td>
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<td>substantial likelihood of success on the merits on the ground that the application of Ohio's statute allowing challengers at polling places was unconstitutional and the other factors governing the issuance of an injunction weighed in their favor, the court enjoined all defendants from allowing any challengers other than election judges and other electors into the polling places throughout the</td>
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<td>Charfauros v. Bd. of Elections</td>
<td>United States Court of Appeals for the Ninth Circuit</td>
<td>2001 U.S. App. LEXIS 15083</td>
<td>May 10, 2001</td>
<td>Defendants, board of elections and related individuals, appealed from an order of the Supreme Court of the Commonwealth of the Northern Mariana Islands reversing a lower court's grant of summary judgment in favor of defendants on the ground of qualified immunity.</td>
<td>Plaintiffs, disqualified voters, claimed that individual members of the Commonwealth of the Northern Mariana Islands Board of Elections violated § 1983 by administering pre-election day voter challenge procedures which precluded a certain class of voters, including plaintiffs, from voting in a 1995 election. The CNMI Supreme Court reversed a lower court's grant of summary judgment.</td>
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<td>judgment and defendants appealed. The court of appeals held that the Board's pre-election day procedures violated the plaintiffs' fundamental right to vote. The federal court reasoned that the right to vote was clearly established at the time of the election, and that a reasonable Board would have known that treating voters differently based on their political party would violate the Equal</td>
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<td>Protection Clause. Further the court added that the allegations of the complaint were sufficient to support liability of the Board members in their individual capacities. Finally, the composition of the CNMI Supreme Court's Special Judge panel did not violate the Board's right to due process of law. The decision of Commonwealth of the Northern Mariana Islands Supreme Court was affirmed</td>
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<td>Wit v. Berman</td>
<td>United States Court of Appeals for the Second Circuit</td>
<td>306 F.3d 1256; 2002 U.S. App. LEXIS 21301</td>
<td>October 11, 2002</td>
<td>Appellant voters who established residences in two separate cities sued appellees, state and city election officials, alleging that provisions of the New York State Election Law unconstitutionally prevented the voters from voting in local elections in both cities where they resided. The voters appealed the order of the</td>
<td>where defendants' pre-election day voter challenge procedures violated plaintiffs' fundamental right to vote. Under state election laws, the voters could only vote in districts in which they resided, and residence was limited to one place. The voters contended that, since they had two lawful residences, they were denied constitutional equal protection by the statutory restriction against voting in the local elections of both</td>
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<td>United States District Court for the Southern District of New York which granted appellees' motion to dismiss the complaint.</td>
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<td>of the places of their residences. The appellate court held, however, that no constitutional violation was shown since the provisions of the New York State Election Law imposed only reasonable, nondiscriminatory restrictions which advanced important state regulatory interests. While the voters may have interests in electoral outcomes in both cities, any rule permitting voting based on such interests would be</td>
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unmanageable and subject to potential abuse. Further, basing voter eligibility on domicile, which was always over—or under—inclusive, nonetheless had enormous practical advantages, and the voters offered no workable standard to replace the domicile test. Finally, allowing the voters to choose which of their residences was their domicile for voting purposes could not be deemed
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<td>Curtis v. Smith</td>
<td>United States District Court for the Eastern District of Texas</td>
<td>121 F. Supp. 2d 1054; 2000 U.S. Dist. LEXIS 17987</td>
<td>November 3, 2000</td>
<td>Plaintiffs sought a preliminary injunction to prohibit defendant tax assessor-collector from mailing confirmation letters to approximately 9,000 persons who were registered voters in Polk County, Texas.</td>
<td>discriminatory. Affirmed.</td>
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<td>residency. These affidavits triggered defendant's action in sending confirmation notices to the escapees. The court determined, first, that because of the potential for discrimination, defendant's action required preclearance in accordance with § 5 of the Voting Rights Act and, second, that such preclearance had not been sought or obtained. Accordingly, the court issued a preliminary injunction</td>
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<td>prohibiting defendant from pursuing the confirmation of residency of the escapees, or any similarly situated group, under the Texas Election Code until the process had been submitted for preclearance in accordance with §5. The action was taken to ensure that no discriminatory potential existed in the use of such process in the upcoming presidential election or future election. Motion for preliminary injunction was</td>
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<td>Peace &amp; Freedom Party v. Shelley</td>
<td>Court of Appeal of California, Third Appellate District</td>
<td>114 Cal. App. 4th 1237; 8 Cal. Rptr. 3d 497; 2004 Cal. App. LEXIS 42</td>
<td>January 15, 2004</td>
<td>Plaintiff political party appealed a judgment from the superior court which denied the party's petition for writ of mandate to compel</td>
<td>The trial court ruled that inactive voters were excluded from the primary election. The court of appeals affirmed, observing that although the</td>
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<td>defendant, the California Secretary of State, to include voters listed in the inactive file of registered voters in calculating whether the party qualified to participate in a primary election.</td>
<td>election had already taken place, the issue was likely to recur and was a matter of continuing public interest and importance; hence, a decision on the merits was proper, although the case was technically moot. The law clearly excluded inactive voters from the calculation. The statutory scheme did not violate the inactive voters' constitutional right of association because it was reasonably designed to</td>
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<td>ensure that all parties on the ballot had a significant modicum of support from eligible voters. Information in the inactive file was unreliable and often duplicative of information in the active file. Moreover, there was no violation of the National Voter Registration Act because voters listed as inactive were not prevented from voting. Although the Act prohibited removal of voters from the official voting list absent</td>
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<td>Bell v. Marinko</td>
<td>United States District Court for the Northern District of Ohio</td>
<td>235 F. Supp. 2d 772; 2002 U.S. Dist. LEXIS 21753</td>
<td>October 22, 2002</td>
<td>Plaintiff voters sued defendants, a county board of elections, a state secretary of state, and the state's attorney general, for violations of the Motor Voter Act and equal protection of the laws. Defendants moved for summary judgment. The voters also claimed that the board hearings did not comply with the Act.</td>
<td>The board heard challenges to the voters' qualifications to vote in the county, based on the fact that the voters were transient (seasonal) rather than permanent residents of the county. The court affirmed the denial of a writ of mandate.</td>
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<td>moved for summary judgment.</td>
<td>afford them the requisite degree of due process and contravened their rights of privacy by inquiring into personal matters. As to the MVA claim, the court held that residency within the precinct was a crucial qualification. One simply could not be an elector, much less a qualified elector entitled to vote, unless one resided in the precinct where he or she sought to vote. If one never lived within the precinct, one was</td>
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<td>not and could not be an eligible voter, even if listed on the board's rolls as such. The MVA did not affect the state's ability to condition eligibility to vote on residence. Nor did it undertake to regulate challenges, such as the ones presented, to a registered voter's residency ab initio. The ability of the challengers to assert that the voters were not eligible and had not ever been eligible, and of the board to consider and</td>
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<td>resolve that challenge, did not contravene the MVA. Defendants' motions for summary judgment were granted as to all claims with prejudice, except the voters' state-law claim, which was dismissed for want of jurisdiction, without prejudice.</td>
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<td>Charles H. Wesley Educ. Found., Inc. v. Cox</td>
<td>United States Court of Appeals for the Eleventh Circuit</td>
<td>408 F.3d 1349; 2005 U.S. App. LEXIS 8320</td>
<td>May 12, 2005</td>
<td>Plaintiffs, a charitable foundation, four volunteers, and a registered voter, filed a suit against defendant state officials alleging violations of the National Voter Registration Act and the Voting Rights Act. The officials appealed after the United States District Court for the Northern District of Georgia issued a preliminary injunction enjoining them from rejecting voter registrations submitted by the plaintiff. The completed applications were placed in a single envelope and mailed to the Georgia Secretary of State for processing. Included in the batch was the voter's change of address form. Plaintiffs filed the suit after they were notified that the applications had been rejected pursuant to Georgia law, which allegedly restricted who could collect voter registration forms.</td>
<td>The foundation conducted a voter registration drive; it placed the completed applications in a single envelope and mailed them to the Georgia Secretary of State for processing.</td>
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<td>forms. Plaintiffs contended that the officials had violated the NVRA, the VRA, and U.S. Const. amends. I, XIV, XV. The officials argued that plaintiffs lacked standing and that the district court had erred in issuing the preliminary injunction. The court found no error. Plaintiffs had sufficiently alleged injuries under the NVRA, arising out of the rejection of the voter registration forms; the allegations in the</td>
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Plaintiffs contended that the officials had violated the NVRA, the VRA, and U.S. Const. amends. I, XIV, XV. The officials argued that plaintiffs lacked standing and that the district court had erred in issuing the preliminary injunction. The court found no error. Plaintiffs had sufficiently alleged injuries under the NVRA, arising out of the rejection of the voter registration forms; the allegations in the
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<td>McKay v.</td>
<td>United</td>
<td>226 F.3d</td>
<td>September</td>
<td>Plaintiff</td>
<td>The trial court sufficiently showed an injury--in--fact that was fairly traceable to the officials' conduct. The injunction was properly issued. There was a substantial likelihood that plaintiffs would prevail as to their claims; it served the public interest to protect plaintiffs' franchise--related rights. The court affirmed the preliminary injunction order entered by the district court.</td>
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<td>Thompson</td>
<td>States Court of Appeals for the Sixth Circuit</td>
<td>752; 2000 U.S. App. LEXIS 23387</td>
<td>18, 2000</td>
<td>challenged order of United States District Court for Eastern District of Tennessee at Chattanooga, which granted defendant state election officials summary judgment on plaintiff's action seeking to stop the state practice of requiring its citizens to disclose their social security numbers as a precondition to voter registration.</td>
<td>had granted defendant state election officials summary judgment. The court declined to overrule defendants' administrative determination that state law required plaintiff to disclose his social security number because the interpretation appeared to be reasonable, did not conflict with previous case law, and could be challenged in state court. The requirement did not violate the Privacy Act of 1974; because it</td>
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<td>was grand fathered under the terms of the Act. The limitations in the National Voter Registration Act did not apply because the NVRA did not specifically prohibit the use of social security numbers and the Act contained a more specific provision regarding such use. The trial court properly rejected plaintiff's fundamental right to vote, free exercise of religion, privileges and</td>
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<td>July 5</td>
<td>Plaintiff, national</td>
<td>Defendants</td>
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<td>Coalition for Students with Disabilities Educ. &amp; Legal Def. Fund v. Scales</td>
<td>States District Court for the Southern District of Maryland</td>
<td>Supp. 2d 845; 2001 U.S. Dist. LEXIS 9528</td>
<td>2001</td>
<td>organization for disabled students, brought an action against university president and university's director of office of disability support services to challenge the voter registration procedures established by the disability support services. Defendants moved to dismiss the first amended complaint, or in the alternative for summary judgment.</td>
<td>alleged that plaintiff lacked standing to represent its members, and that plaintiff had not satisfied the notice requirements of the National Voter Registration Act. Further, defendants maintained the facts, as alleged by plaintiff, did not give rise to a past, present, or future violation of the NVRA because (1) the plaintiff's members that requested voter registration services were not</td>
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<td>registered students at the university and (2) its current voter registration procedures complied with NVRA. As to plaintiff's § 1983 claim, the court held that while plaintiff had alleged sufficient facts to confer standing under the NVRA, such allegations were not sufficient to support standing on its own behalf on the § 1983 claim. As to the NVRA claim, the court found that the agency practice of only offering voter</td>
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<td>registration services at the initial intake interview and placing the burden on disabled students to obtain voter registration forms and assistance afterwards did not satisfy its statutory duties. Furthermore, most of the NVRA provisions applied to disabled applicants not registered at the university. Defendants' motion to dismiss first amended</td>
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<td>Cunningham v. Chi. Bd. of Election Comm'rs</td>
<td>United States District Court for the Northern District of Illinois</td>
<td>2003 U.S. Dist. LEXIS 2528</td>
<td>February 24, 2003</td>
<td>Plaintiffs, who alleged that they were duly registered voters, six of whom had signed nominating petitions for one candidate and two of whom signed</td>
<td>Plaintiffs argued that objections to their signatures were improperly sustained by defendants, the city board of election commissioners. Plaintiff's argued that they were</td>
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<td>nominating petitions for another candidate. They first asked for a preliminary injunction of the municipal election scheduled for the following Tuesday and suggested, alternatively, that the election for City Clerk and for 4th Ward Alderman be enjoined.</td>
<td>registered voters whose names appeared in an inactive file and whose signatures were therefore, and improperly, excluded. The court ruled that by characterizing the claim as plaintiffs did, they sought to enjoin an election because their signatures were not counted, even though their preferred candidates were otherwise precluded from appearing on the ballot. Without regard to their likelihood of</td>
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<td>obtaining any relief, plaintiffs failed to demonstrate that they would be irreparably harmed if an injunction did not issue; the threatened injury to defendants, responsible as they were for the conduct of the municipal election, far outweighed any threatened injury to plaintiffs; and the granting of a preliminary injunction would greatly disserve the public interest. Plaintiffs' petition for</td>
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<td>Diaz v. Hood</td>
<td>United States District Court for the Southern District of Florida</td>
<td>342 F. Supp. 2d 1111; 2004 U.S. Dist. LEXIS 21445</td>
<td>October 26, 2004</td>
<td>Plaintiffs, unions and individuals who had attempted to register to vote, sought a declaration of their rights to vote in the November 2, 2004 general election. They alleged that defendants, state and county election officials, refused to process their voter registrations for various failures to complete the registration forms. The election officials</td>
<td>preliminary relief was denied. The putative voters sought injunctive relief requiring the election officials to register them to vote. The court first noted that the unions lacked even representative standing, because they failed to show that one of their members could have brought the case in their own behalf. The individual putative voters raised separate issues: the first had failed to verify her mental</td>
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<td>moved to dismiss the complaint for lack of standing and failure to state a claim.</td>
<td>capacity, the second failed to check a box indicating that he was not a felon, and the third did not provide the last four digits of her social security number on the form. They claimed the election officials violated federal and state law by refusing to register eligible voters because of nonmaterial errors or omissions in their voter registration applications, and by failing to provide any notice to voter</td>
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<td>applicants whose registration applications were deemed incomplete. In the first two cases, the election official had handled the errant application properly under Florida law, and the putative voter had effectively caused their own injury by failing to complete the registration. The third completed her form and was registered, so had suffered no injury. Standing failed against the secretary of state. Motion to dismiss without</td>
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<td>Bell v. Marinko</td>
<td>United States District Court for the Northern District of Ohio</td>
<td>235 F. Supp. 2d 772; 2002 U.S. Dist. LEXIS 21753</td>
<td>October 22, 2002</td>
<td>Plaintiff voters sued defendants, a county board of elections, a state secretary of state, and the state's attorney general, for violations of the Motor Voter Act and equal protection of the laws. Defendants moved for summary judgment. The voters also moved for summary judgment.</td>
<td>prejudice granted.</td>
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claim, the court held that residency within the precinct was a crucial qualification. One simply could not be an elector, much less a qualified elector entitled to vote, unless one resided in the precinct where he or she sought to vote. If one never lived within the precinct, one was not and could not be an eligible voter, even if listed on the board's rolls as such. The MVA did not affect the state's ability to
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<td>condition eligibility to vote on residence. Nor did it undertake to regulate challenges, such as the ones presented, to a registered voter's residency ab initio. The ability of the challengers to assert that the voters were not eligible and had not ever been eligible, and of the board to consider and resolve that challenge, did not contravene the MVA. Defendants' motions for</td>
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<td>Bell v. Marinko</td>
<td>United States Court of Appeals for the Sixth Circuit</td>
<td>367 F.3d 588; 2004 U.S. App. LEXIS 8330</td>
<td>April 28, 2004</td>
<td>Plaintiffs, registered voters, sued defendants, Ohio Board of Elections and Board members, alleging that Ohio Rev. Code Ann. §§ 3509.19-3509.21 violated the National Voter Registration Act, and the Equal Protection Clause</td>
<td>summary judgment were granted as to all claims with prejudice, except the voters' state-law claim, which was dismissed for want of jurisdiction, without prejudice.</td>
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<td>of the Fourteenth Amendment. The United States District Court for the Northern District of Ohio granted summary judgment in favor of defendants. The voters appealed.</td>
<td>where the family of a married man or woman resided was considered to be his or her place of residence----violated the equal protection clause. The court of appeals found that the Board's procedures did not contravene the National Voter Registration Act because Congress did not intend to bar the removal of names from the official list of persons who were ineligible and improperly registered to vote</td>
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<td>in the first place. The National Voter Registration Act did not bar the Board's continuing consideration of a voter's residence, and encouraged the Board to maintain accurate and reliable voting rolls. Ohio was free to take reasonable steps to see that all applicants for registration to vote actually fulfilled the requirement of bona fide residence. Ohio Rev. Code Ann.</td>
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<td>§ 3503.02(D) did not contravene the National Voter Registration Act. Because the Board did not raise an irrebuttable presumption in applying § 3502.02(D), the voters suffered no equal protection violation. The judgment was affirmed.</td>
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<td>New York v. County of Del.</td>
<td>United States District Court for the Northern District of New York</td>
<td>82 F. Supp. 2d 12; 2000 U.S. Dist. LEXIS 1398</td>
<td>February 8, 2000</td>
<td>Plaintiffs brought a claim in the district court under the Americans With Disabilities Act and filed a motion for a preliminary injunction and motion for leave to amend their complaint, and defendants were ordered to show cause why a preliminary injunction should not be issued.</td>
<td>In their complaint plaintiffs alleged that defendants violated the ADA by making the voting locations inaccessible to disabled persons and asked for a preliminary injunction requiring defendants to come into compliance before the next election. The court found that defendants were the correct parties, because</td>
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<td>pursuant to New York election law defendants were responsible for the voting locations. The court further found that the class plaintiffs represented would suffer irreparable harm if they were not able to vote, because, if the voting locations were inaccessible, disabled persons would be denied the right to vote. Also, due to the alleged</td>
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<td>New York v. County of Schoharie</td>
<td>United States District</td>
<td>82 F. Supp. 2d 19; 2000</td>
<td>February 8, 2000</td>
<td>Plaintiffs brought a claim in the</td>
<td>In their complaint, plaintiffs</td>
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In their complaint, plaintiffs would likely succeed on the merits. Consequently, the court granted plaintiffs' motion for a preliminary injunction. The court granted plaintiffs' motion for a preliminary injunction and granted plaintiffs' motion for leave to amend their complaint.
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<td>Court for the Northern District of New York</td>
<td>U.S. Dist. LEXIS 1399</td>
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<td>district court under the Americans With Disabilities Act and filed a motion for a preliminary injunction and a motion for leave to amend their complaint, and defendants were ordered to show cause why a preliminary injunction should not be issued.</td>
<td>alleged defendants violated the ADA by allowing voting locations to be inaccessible for disabled persons and asked for a preliminary injunction requiring defendants to come into compliance before the next election. The court found that defendants were the correct party, because pursuant to New York election law,</td>
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<td>defendants were responsible for the voting locations. The court further found that the class plaintiffs represented would suffer irreparable harm if they were not able to vote, because, if the voting locations were inaccessible, disabled persons would be denied the right to vote. Also, the court found that plaintiffs would likely succeed on the</td>
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- Holding: merits of their case. Consequently, the court granted plaintiffs' motion for a preliminary injunction. The court granted plaintiffs' motion for a preliminary injunction because plaintiffs showed irreparable harm and proved likely success on the merits and granted plaintiff's motion for leave to amend the complaint.

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**Facts**

- Name of Case: 
- Court: 
- Citation: 
- Date: 
- Facts: 
- Holding: merits of their case. Consequently, the court granted plaintiffs' motion for a preliminary injunction. The court granted plaintiffs' motion for a preliminary injunction because plaintiffs showed irreparable harm and proved likely success on the merits and granted plaintiff's motion for leave to amend the complaint.
- Statutory Basis (if of Note): 
- Other Notes: 
- Should the Case be Researched Further: 

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<td>Westchester Disabled on the Move, Inc. v. County of Westchester</td>
<td>United States District Court for the Southern District of New York</td>
<td>346 F. Supp. 2d 473; 2004 U.S. Dist. LEXIS 24203</td>
<td>October 22, 2004</td>
<td>Plaintiffs sued defendant county, county board of elections, and election officials pursuant to 42 U.S.C.S. §§ 12131--12134, N.Y. Exec. Law § 296, and N.Y. Elec. Law § 4--1--4. Plaintiffs moved for a preliminary injunction, requesting (among other things) that the court order defendants to modify the polling places in the county so that they can vote at assigned locations on election day.</td>
<td>The inability to vote at assigned locations on election day constituted irreparable harm. However, plaintiffs could not show a likelihood of success on the merits because the currently named defendants could not provide complete relief sought by plaintiffs. Although the county board of elections was empowered to</td>
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<td>were accessible to disabled voters on election day. Defendants moved to dismiss.</td>
<td>select an alternative polling place should it determine that a polling place designated by a municipality was &quot;unsuitable or unsafe,&quot; it was entirely unclear that its power to merely designate suitable polling places would be adequate to ensure that all polling places used in the upcoming election actually conformed</td>
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<td>with the Americans with Disabilities Act. Substantial changes and modifications to existing facilities would have to be made, and such changes would be difficult, if not impossible, to make without the cooperation of municipalities. Further, the court could order defendants to approve voting machines that conformed to</td>
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<td>the ADA were they to be purchased and submitted for county approval, but the court could not order them to purchase them for the voting districts in the county. A judgment issued in the absence of the municipalities would be inadequate. Plaintiffs' motion for preliminary injunction was denied, and defendants' motion to dismiss was granted.</td>
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<td>Nat'l Org. on Disability v. Tartaglione</td>
<td>United States District Court for the Eastern District of Pennsylvania</td>
<td>2001 U.S. Dist. LEXIS 16731</td>
<td>October 11, 2001</td>
<td>Plaintiffs, disabled voters and special interest organizations, sued defendants, city commissioners, under the Americans with Disabilities Act and § 504 of the Rehabilitation Act of 1973, and regulations under both statutes, regarding election practices. The commissioners moved to dismiss for failure (1) to</td>
<td>The voters were visually impaired or wheelchair bound. They challenged the commissioners' failure to provide talking voting machines and wheelchair accessible voting places. They claimed discrimination in the process of voting because they were not afforded the same opportunity to participate in the voting process as non-disabled</td>
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<td>Yes-see if the case was refiled</td>
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<td>state a cause of action and (2) to join an indispensable party.</td>
<td>voters, and assisted voting and voting by alternative ballot were substantially different from, more burdensome than, and more intrusive than the voting process utilized by non-disabled voters. The court found that the complaint stated causes of actions under the ADA, the Rehabilitation Act, and 28 C.F.R. §§ 35.151 and</td>
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<td>35.130. The court found that the voters and organizations had standing to raise their claims. The organizations had standing through the voters' standing or because they used significant resources challenging the commissioners' conduct. The plaintiffs failed to join the state official who would need to approve any talking voting machine as a</td>
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<td>party. As the court could not afford complete relief to the visually impaired voters in that party's absence, it granted the motion to dismiss under Fed. R. Civ. P. 12(b)(7) without prejudice. The court granted the commissioners' motion to dismiss in part, and denied it in part. The court granted the motion to dismiss the claims of the</td>
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<td>TENNESSEE, Petitioner v. GEORGE LANE et al.</td>
<td>United States Supreme Court</td>
<td>541 U.S. 509; 124 S. Ct. 1978; 158 L. Ed. 2d 820; 2004 U.S. LEXIS 3386</td>
<td>May 17, 2004</td>
<td>Respondent paraplegics sued petitioner State of Tennessee, alleging that the State failed to provide reasonable access to court facilities in violation of Title II of the Americans with Disabilities Act</td>
<td>The state contended that the abrogation of state sovereign immunity in Title II of the ADA exceeded congressional authority under U.S. Const. amend XIV, § 5, to enforce substantive constitutional guarantees.</td>
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<td>of 1990. Upon the grant of a writ of certiorari, the State appealed the judgment of the United States Court of Appeals for the Sixth Circuit which denied the State's claim of sovereign immunity.</td>
<td>The United States Supreme Court held, however, that Title II, as it applied to the class of cases implicating the fundamental right of access to the courts, constituted a valid exercise of Congress's authority. Title II was responsive to evidence of pervasive unequal treatment of persons with disabilities in the administration of state</td>
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<td>services and programs, and such disability discrimination was thus an appropriate subject for prophylactic legislation. Regardless of whether the State could be subjected to liability for failing to provide access to other facilities or services, the fundamental right of access to the courts warranted the limited requirement that the State reasonably</td>
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<td>accommodate disabled persons to provide such access. Title II was thus a reasonable prophylactic measure, reasonably targeted to a legitimate end. The judgment denying the State's claim of sovereign immunity was affirmed.</td>
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<td>Bell v. Marinko</td>
<td>United States Court of Appeals for the Sixth Circuit</td>
<td>367 F.3d 588; 2004 U.S. App. LEXIS 8330</td>
<td>April 28, 2004</td>
<td>Plaintiffs, registered voters, sued defendants, Ohio Board of Elections and Board members, alleging that Ohio Rev. Code Ann. §§ 3509.19-3509.21 violated the National Voter Registration Act, and the Equal Protection Clause of the Fourteenth Amendment. The United States District Court for the Northern District of Ohio granted summary judgment in favor of defendants. The voters appealed.</td>
<td>The voters asserted that § 3503.02----which stated that the place where the family of a married man or woman resided was considered to be his or her place of residence----violated the equal protection clause. The court of appeals found that the Board's procedures did not contravene the National Voter Registration Act because Congress did not intend to bar the removal of names from the official list of persons who were ineligible and improperly registered to vote in</td>
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<td>the first place. The National Voter Registration Act did not bar the Board's continuing consideration of a voter's residence, and encouraged the Board to maintain accurate and reliable voting rolls. Ohio was free to take reasonable steps to see that all applicants for registration to vote actually fulfilled the requirement of bona fide residence. Ohio Rev. Code Ann. § 3503.02(D) did not contravene the National Voter Registration Act. Because the Board did not raise an irrebuttable</td>
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<td>Wilson v. Commonwealth</td>
<td>Court of Appeals of Virginia</td>
<td>2000 Va. App. LEXIS 322</td>
<td>May 2, 2000</td>
<td>Defendant appealed the judgment of the circuit court which convicted her of election fraud.</td>
<td>On appeal, defendant argued that the evidence was insufficient to support her conviction because it failed to prove that she made a willfully false statement on her voter registration form and, even if the evidence did prove that she made such a statement, it did not prove that the voter registration form was the form</td>
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On appeal, defendant argued that the evidence was insufficient to support her conviction because it failed to prove that she made a willfully false statement on her voter registration form and, even if the evidence did prove that she made such a statement, it did not prove that the voter registration form was the form.
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<td>required by Title 24.2. At trial, the Commonwealth introduced substantial testimony and documentary evidence that defendant had continued to live at one residence in the 13th District, long after she stated on the voter registration form that she was living at a residence in the 51st House District. The evidence included records showing electricity and water usage, records from the Department of Motor Vehicles and school records. Thus, the evidence</td>
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<td>was sufficient to support the jury's verdict that defendant made &quot;a false material statement&quot; on the voter registration card required to be filed by Title 24.2 in order for her to be a candidate for office in the primary in question. Judgment of conviction affirmed. Evidence, including records showing electricity and water usage, records from the Department of Motor Vehicles and school records, was sufficient to support jury's verdict that defendant made &quot;a false material statement&quot; on the</td>
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<td>ACLU of Minn. v. Kiffmeyer</td>
<td>United States District Court for the District of Minnesota</td>
<td>2004 U.S. Dist. LEXIS 22996</td>
<td>October 29, 2004</td>
<td>Plaintiffs, voters and associations, filed for a temporary restraining order pursuant to Fed. R. Civ. P. 65, against defendant, Minnesota Secretary of State, concerning voter registration.</td>
<td>voter registration card required to be filed in order for her to be a candidate for office in the primary in question.</td>
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Plaintiffs argued that Minn. Stat. § 201.061 was inconsistent with the Help America Vote Act because it did not authorize the voter to complete registration either by a "current and valid photo identification" or by use of a current utility bill, bank statement, government check, paycheck, or other government document that showed the name and address of the...
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<td>individual. The Secretary advised the court that there were less than 600 voters who attempted to register by mail but whose registrations were deemed incomplete. The court found that plaintiffs demonstrated that they were likely to succeed on their claim that the authorization in Minn. Stat. § 201.061, sub. 3, violated the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution insofar as it did not also authorize the use of a photographic</td>
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<td>Kalsson v.</td>
<td>United States District Court for the Southern District of New York</td>
<td>356 F. Supp. 2d 371; 2005 U.S. Dist. LEXIS 2279</td>
<td>February 16, 2005</td>
<td>Defendant Federal Election Commission filed a motion to dismiss for lack of subject matter jurisdiction plaintiff individual's</td>
<td>The individual claimed that his vote was diluted because the NVRA resulted in more people registering to vote than otherwise would have been the case. The court held</td>
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<td>action, which sought a declaration that the National Voter Registration Act was unconstitutional on the theories that its enactment was not within the enumerated powers of the federal government and that it violated Article II of the United States Constitution.</td>
<td>that the individual lacked standing to bring the action. Because New York was not obliged to adhere to the requirements of the NVRA, the individual did not allege any concrete harm. If New York simply adopted election day registration for elections for federal office, it would have been entirely free of the NVRA just as were five other states. Even if the individual's vote were diluted, and even if such an injury in other circumstances might have sufficed for standing, any</td>
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<td>Peace &amp; Freedom Party v. Shelley</td>
<td>California Court of Appeal, Third Appellate District</td>
<td>114 Cal. App. 4th 1237; 8 Cal. Rptr. 3d 497; 2004 Cal. App. LEXIS 42</td>
<td>January 15, 2004</td>
<td>Plaintiff political party appealed a judgment from the superior court which denied the party's petition for writ of mandate to compel defendant, the California Secretary of State, to include voters listed in</td>
<td>dilution that he suffered was the result of New York's decision to maintain a voter registration system that brought it under the NVRA, not the NVRA itself. The court granted the motion to dismiss for lack of subject matter jurisdiction.</td>
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<td>the inactive file of registered voters in calculating whether the party qualified to participate in a primary election.</td>
<td>importance; hence, a decision on the merits was proper, although the case was technically moot. The law clearly excluded inactive voters from the calculation. The statutory scheme did not violate the inactive voters' constitutional right of association because it was reasonably designed to ensure that all parties on the ballot had a significant modicum of support from eligible voters. Information in the inactive file was unreliable and often duplicative of information in the active file.</td>
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<td>McKay v. Thompson</td>
<td>United States Court of Appeals for the Sixth Circuit</td>
<td>226 F.3d 752; 2000 U.S. App. LEXIS 23387</td>
<td>September 18, 2000</td>
<td>Plaintiff challenged order of United States District Court for Eastern District of Tennessee at Chattanooga, which granted defendant state election officials</td>
<td>Moreover, there was no violation of the National Voter Registration Act because voters listed as inactive were not prevented from voting. Although the Act prohibited removal of voters from the official voting list absent certain conditions, inactive voters in California could correct the record and vote. Affirmed.</td>
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<td>summary judgment on plaintiff's action seeking to stop the state practice of requiring its citizens to disclose their social security numbers as a precondition to voter registration.</td>
<td>plaintiff to disclose his social security number because the interpretation appeared to be reasonable, did not conflict with previous caselaw, and could be challenged in state court. The requirement did not violate the Privacy Act because it was grandfathered under the terms of the Act. The limitations in the National Voter Registration Act did not apply because the NVRA did not specifically prohibit the use of social security numbers and the Act contained a more specific provision</td>
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<td>Plaintiff could not enforce § 1971 as it was enforceable only by the United States Attorney General. The trial court properly rejected plaintiff's fundamental right to vote, free exercise of religion, privileges and immunities, and due process claims. Although the trial court arguably erred in denying certification of the case to the USAG under 28 U.S.C.S. § 2403(a), plaintiff suffered no harm from the technical violation. Order affirmed because requirement that</td>
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<td>Lucas County Democratic Party v. Blackwell</td>
<td>United States District Court for the Northern District of Ohio</td>
<td>341 F. Supp. 2d 861; 2004 U.S. Dist. LEXIS 21416</td>
<td>October 21, 2004</td>
<td>Plaintiff organizations brought an action challenging a memorandum issued by defendant, Ohio's Secretary of State, in December 2003.</td>
<td>The case involved a box on Ohio's voter registration form that required a prospective voter who registered in person to supply an Ohio driver's license number or the last four digits of their social security number as precondition to voter registration did not violate Privacy Act of 1974 or National Voter Registration Act and trial court properly rejected plaintiff's fundamental right to vote, free exercise of religion, privileges and immunities, and due process claims.</td>
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<td>The organizations claimed that the memorandum contravened provisions of the Help America Vote Act and the National Voter Registration Act. The organizations moved for a preliminary injunction.</td>
<td>Social Security number. In his memorandum, the Secretary informed all Ohio County Boards of Elections that, if a person left the box blank, the Boards were not to process the registration forms. The organizations did not file their suit until 18 days before the national election. The court found that there was not enough time before the election to develop the evidentiary record necessary to determine if the organizations were likely to succeed on the merits of their claim. Denying the</td>
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<td>organizations' motion would have caused them to suffer no irreparable harm. There was no appropriate remedy available to the organizations at the time. The likelihood that the organizations could have shown irreparable harm was, in any event, slight in view of the fact that they waited so long before filing suit. Moreover, it would have been entirely improper for the court to order the Boards to re-open in-person registration until election day. The public interest would have been ill-</td>
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<td>Nat'l Coalition for Students with Disabilities Educ. &amp; Legal Def. Fund v. Scales</td>
<td>United States District Court for the District of Maryland</td>
<td>150 F. Supp. 2d 845; 2001 U.S. Dist. LEXIS 9528</td>
<td>July 5, 2001</td>
<td>Plaintiff, national organization for disabled students, brought an action against university president and university's director of office of disability support services to challenge the voter registration procedures established by the disability support services. Defendants moved to dismiss the first amended complaint, or in the alternative for Defendants alleged that plaintiff lacked standing to represent its members, and that plaintiff had not satisfied the notice requirements of the National Voter Registration Act. Further, defendants maintained the facts, as alleged by plaintiff, did not give rise to a past, present, or future violation of the NVRA because (1) the plaintiff's members that requested voter</td>
<td>-served by an injunction. The motion for a preliminary injunction was denied sua sponte.</td>
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|              |       |          |      | summary judgment. | registration services were not registered students at the university and (2) its current voter registration procedures complied with NVRA. As to plaintiff's § 1983 claim, the court held that while plaintiff had alleged sufficient facts to confer standing under the NVRA, such allegations were not sufficient to support standing on its own behalf on the § 1983 claim. As to the NVRA claim, the court found that the agency practice of only offering voter registration services at the initial
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<td>intake interview and placing the burden on disabled students to obtain voter registration forms and assistance afterwards did not satisfy its statutory duties. Furthermore, most of the NVRA provisions applied to disabled applicants not registered at the university. Defendants' motion to dismiss first amended complaint was granted as to the § 1983 claim and denied as to plaintiff's claims brought under the National Voter Registration Act of 1993. Defendants' alternative motion</td>
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<td>People v. Disimone</td>
<td>Court of Appeals of Michigan</td>
<td>251 Mich. App. 605; 650 N.W.2d 436; 2002 Mich. App. LEXIS 826</td>
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<td>Diaz v. Hood</td>
<td>United States District Court for the Southern District of Florida</td>
<td>342 F. Supp. 2d 1111; 2004 U.S. Dist. LEXIS 21445</td>
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<td>Wesley Educ. Found., Inc. v. Cox</td>
<td>States District Court for the Northern District of Georgia</td>
<td>Supp. 2d 1358; 2004 U.S. Dist. LEXIS 12120</td>
<td>2004</td>
<td>fraternity members, and an organization, sought an injunction ordering defendant, the Georgia Secretary of State, to process the voter registration application forms that they mailed in following a voter registration drive. They contended that by refusing to process the forms defendants violated the National Voter Registration Act and U.S. Const. amends. I, XIV, and XV.</td>
<td>participated in numerous non-partisan voter registration drives primarily designed to increase the voting strength of African-Americans. Following one such drive, the fraternity members mailed in over 60 registration forms, including one for the voter who had moved within state since the last election. The Georgia Secretary of State's office refused to process them because they were not mailed individually and neither a registrar, deputy registrar, or an otherwise authorized person</td>
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<td>had collected the applications as required under state law. The court held that plaintiffs had standing to bring the action. The court held that because the applications were received in accordance with the mandates of the NVRA, the State of Georgia was not free to reject them. The court found that: plaintiffs had a substantial likelihood of prevailing on the merits of their claim that the applications were improperly rejected; plaintiffs would be irreparably injured absent an</td>
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<td>injunction; the potential harm to defendants was outweighed by plaintiffs' injuries; and an injunction was in the public interest. Plaintiffs' motion for a preliminary injunction was granted. Defendants were ordered to process the applications received from the organization to determine whether those registrants were qualified to vote. Furthermore, defendants were enjoined from rejecting any voter registration application on the grounds that it was</td>
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<td>Moseley v. Price</td>
<td>United States District Court for the Eastern District of Virginia</td>
<td>300 F. Supp. 2d 389; 2004 U.S. Dist. LEXIS 850</td>
<td>January 22, 2004</td>
<td>Plaintiff alleged, that defendants' actions in investigating his voter registration application constituted a change in voting procedures requiring § 5 preclearance under the Voting Rights Act, which preclearance was never sought or received. Plaintiff claimed he withdrew from mailed as part of a &quot;bundle&quot; or that it was collected by someone not authorized or any other reason contrary to the NVRA.</td>
<td>The court concluded that plaintiff's claim under the Voting Rights Act lacked merit. Plaintiff did not allege, as required, that any defendants implemented a new, uncleared voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting. Here, the existing practice or procedure in effect</td>
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<td>the race for Commonwealth Attorney because of the investigation. Defendants moved to dismiss the complaint.</td>
<td>in the event a mailed registration card was returned was to &quot;resend the voter card, if address verified as correct.&quot; This was what precisely occurred. Plaintiff inferred, however, that the existing voting rule or practice was to resend the voter card &quot;with no adverse consequences&quot; and that the county's initiation of an investigation constituted the implementation of a change that had not been pre-cleared. The court found the inference wholly unwarranted</td>
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<td>Thompson v.</td>
<td>Supreme</td>
<td>295</td>
<td>June 10,</td>
<td>Respondents</td>
<td>because nothing in the written procedure invited or justified such an inference. The court opined that common sense and state law invited a different inference, namely that while a returned card had to be resent if the address was verified as correct, any allegation of fraud could be investigated. Therefore, there was no new procedure for which preclearance was required. The court dismissed plaintiff's federal claims. The court dismissed the state law claims without prejudice.</td>
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The court dismissed plaintiffs federal claims. The court dismissed the state law claims without prejudice.
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<td>Karben</td>
<td>Court of New York, Appellate Division, Second Department</td>
<td>A.D.2d 438; 743 N.Y.S.2d 175; 2002 N.Y. App. Div. LEXIS 6101</td>
<td>2002</td>
<td>filed a motion seeking the cancellation of appellant's voter registration and political party enrollment on the ground that appellant was unlawfully registered to vote in a particular district. The Supreme Court, Rockland County, New York, ordered the cancellation of appellant's voter registration and party enrollment. Appellant challenged the trial court's order.</td>
<td>that appellant was unlawfully registered to vote from an address at which he did not reside and that he should have voted from the address that he claimed as his residence. The appellate court held that respondents adduced insufficient proof to support the conclusion that appellant did not reside at the subject address. On the other hand, appellant submitted copies of his 2002 vehicle registration, 2000 and 2001 federal income tax returns, 2002 property tax bill, a May 2001 paycheck</td>
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<td>Nat'l Coalition v. Taft</td>
<td>United States District Court for the Southern District of Ohio</td>
<td>2002 U.S. Dist. LEXIS 22376</td>
<td>August 2, 2002</td>
<td>Plaintiffs, a nonprofit public interest group and certain individuals, sued defendants, certain state and university</td>
<td>stub, and 2000 and 2001 retirement account statements all showing the subject address. Appellant also testified that he was a signatory on the mortgage of the subject address and that he kept personal belongings at that address. Respondents did not sustain their evidentiary burden. The judgment of the trial court was reversed.</td>
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<td>officials, alleging that they violated the National Voter Registration Act in failing to designate the disability services offices at state public colleges and universities as voter registration sites. The group and individuals moved for a preliminary injunction.</td>
<td>government department or institution and the disability offices at issue were places where citizens regularly went for service and assistance. Moreover, the Ohio Secretary of State had an obligation under the NVRA to designate the disability services offices as voter registration sites because nothing in the law superceded the NVRA's requirement that the responsible state official designate disability services offices as voter registration sites. Moreover, under</td>
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<td>Ohio Rev. Code Ann. § 3501.05(R), the Secretary of State's duties expressly included ensuring compliance with the NVRA. The case was not moot even though the Secretary of State had taken steps to ensure compliance with the NVRA given his position to his obligation under the law. The court granted declaratory judgment in favor of the nonprofit organization and the individuals. The motion for a preliminary injunction was granted in part and the Secretary of</td>
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<td>Lawson v. Shelby County</td>
<td>United States Court of Appeals for the Sixth Circuit</td>
<td>211 F.3d 331; 2000 U.S. App. LEXIS 8634</td>
<td>May 3, 2000</td>
<td>Plaintiffs who were denied the right to vote when they refused to disclose their social security numbers, appealed a judgment of the United States District Court for the Western</td>
<td>State was ordered to notify disabled students who had used the designated disability services offices prior to the opening day of the upcoming semester or who had pre-registered for the upcoming semester as to voter registration availability.</td>
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Plaintiffs attempted to register to vote in October, and to vote in November, but were denied because they refused to disclose their social security numbers. A year after the election date they filed suit alleging denial of constitutional rights.
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<td>District of Tennessee at Memphis dismissing their amended complaint for failure to state claims barred by U.S. Const. amend. XI.</td>
<td>privileges and immunities, the Privacy Act of 1974 and § 1983. The district court dismissed, finding the claims were barred by U.S. Const. amend. XI, and the one year statute of limitations. The appeals court reversed, holding the district court erred in dismissing the suit because U.S. Const. amend. XI immunity did not apply to suits brought by a private party under the Ex Parte Young exception. Any damages claim not ancillary to injunctive relief was</td>
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|              |       |          |      |       | barred. The court also held the statute of limitations ran from the date plaintiffs were denied the opportunity to vote, not register, and their claim was thus timely. Reversed and remanded to district court to order such relief as will allow plaintiffs to vote and other prospective injunctive relief against county and state officials; declaratory relief and attorneys' fees ancillary to the prospective injunctive relief, all permitted under the Young exception to sovereign immunity, | }
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<td>Curtis v. Smith</td>
<td>United States District Court for the Eastern District of Texas</td>
<td>145 F. Supp. 2d 814; 2001 U.S. Dist. LEXIS 8544</td>
<td>June 4, 2001</td>
<td>Plaintiffs, representatives of several thousand retired persons who called themselves the &quot;Escapees,&quot; and who spent a large part of their lives traveling about the United States in recreational vehicles, but were registered to vote in the county, moved for preliminary injunction seeking to enjoin a Texas state court proceeding under the All Writs Act.</td>
<td>Before a general election, three persons brought an action alleging the Escapees were not bona fide residents of the county, and sought to have their names expunged from the rolls of qualified voters. The plaintiffs brought suit in federal district court. The court issued a preliminary injunction forbidding county officials from attempting to purge the voting. Commissioner contested the results of the election, alleging Escapees' votes should be</td>
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<td>disallowed. Plaintiffs brought present case assertedly to prevent the same issue from being relitigated. The court held, however, the issues were different, since, unlike the case in the first proceeding, there was notice and an opportunity to be heard. Further, unlike the first proceeding, the plaintiff in the state court action did not seek to change the prerequisites for voting registration in the county, but instead challenged the actual residency of some members of the Escapees, and</td>
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<td>Pepper v. Darnell</td>
<td>United States Court of Appeals for the Sixth Circuit</td>
<td>24 Fed. Appx. 460; 2001 U.S. App. LEXIS 26618</td>
<td>December 10, 2001</td>
<td>Plaintiff individual appealed from a judgment of the district court, in an action against defendant state</td>
<td>Individual argued on appeal that the district court erred in finding that the registration forms used by the state did not violate the</td>
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<td>NVRA and in failing to certify a class represented by individual. Individual lived in his automobile and received mail at a rented box. Officials refused to validate individual's attempt to register to vote by mail. Tennessee state law forbade accepting a rented mail box as the address of the potential voter. Individual insisted that his automobile registration provided sufficient proof of residency under the NVRA. The court upheld the legality of state's requirement that one registering to vote</td>
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<td>provide a specific location as an address, regardless of the transient lifestyle of the potential voter, finding state's procedure faithfully mirrored the requirements of the NVRA as codified in the Code of Federal Regulations. The court also held that the refusal to certify individual as the representative of a class for purposes of this litigation was not an abuse of discretion; in this case, no representative party was available as the indigent individual, acting in his own behalf, was clearly</td>
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<td>Miller v. Blackwell</td>
<td>United States District Court for the Southern District of Ohio</td>
<td>348 F. Supp. 2d 916; 2004 U.S. Dist. LEXIS 24894</td>
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success on the merits because they made a strong showing that defendants' intended actions regarding pre-election challenges to voter eligibility abridged plaintiffs' fundamental right to vote and violated the Due Process Clause. Thus, the other factors to consider in granting a TRO automatically weighed in plaintiffs' favor. The court granted plaintiffs' motion for a TRO. The court also granted the individuals' motion to intervene.
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<td>Hileman v. McGinness</td>
<td>Appellate Court of Illinois, Fifth District</td>
<td>316 Ill. App. 3d 868; 739 N.E.2d 81; 2000 Ill. App. LEXIS 845</td>
<td>October 25, 2000</td>
<td>Appellant challenged the circuit court's declaration that the result of a primary election for county circuit clerk was void.</td>
<td>In a primary election for county circuit clerk, the parties agreed that 681 absentee ballots were presumed invalid. The ballots had been commingled with the valid ballots. There were no markings or indications on the ballots which would have allowed them to be segregated from other ballots cast. Because the ballots could not have been</td>
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<td>segregated, apportionment was the appropriate remedy if no fraud was involved. If fraud was involved, the election would have had to have been voided and a new election held. Because the trial court did not hold an evidentiary hearing on the fraud allegations, and did not determine whether fraud was in issue, the case was remanded for a</td>
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<td>Eason v. State</td>
<td>Court of Appeals of Mississippi</td>
<td>2005 Miss. App. LEXIS 1017</td>
<td>December 13, 2005</td>
<td>Defendant appealed a decision of the circuit court convicting him of one count of conspiracy to commit voter fraud and eight counts of voter fraud.</td>
<td>Defendant was helping with his cousin's campaign in a run-off election for county supervisor. Together, they drove around town, picking up various people who were either at congregating spots or their homes. Defendant</td>
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<td>would drive the voters to the clerk's office where they would vote by absentee ballot and defendant would give them beer or money. Defendant claimed he was entitled to a mistrial because the prosecutor advanced an impermissible &quot;sending the message&quot; argument. The court held that it was precluded from reviewing the entire context in which the</td>
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<td>Wilson v.</td>
<td>Court of</td>
<td>2000 Va.</td>
<td>May 2,</td>
<td>Defendant</td>
<td>At trial, the prosecutor's closing argument was in the record, the defense counsel's closing argument was not. Also, because the prosecutor's statement was incomplete due to defense counsel's objection, the court could not say that the statement made it impossible for defendant to receive a fair trial. Judgment affirmed.</td>
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<td>Commonwealth</td>
<td>Appeals of Virginia</td>
<td>App. LEXIS 322</td>
<td>2000</td>
<td>appealed the judgment of the circuit court which convicted her of election fraud.</td>
<td>Commonwealth introduced substantial testimony and documentary evidence that defendant had continued to live at one residence in the 13th District, long after she stated on the voter registration form that she was living at a residence in the 51st House District. The evidence included records showing electricity and water usage, records from</td>
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<td>the Department of Motor Vehicles and school records. Thus, the evidence was sufficient to support the jury's verdict that defendant made &quot;a false material statement&quot; on the voter registration card required to be filed in order for her to be a candidate for office in the primary in question. Judgment affirmed.</td>
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<td>Townson v. Stonich</td>
<td>Supreme Court of Alabama</td>
<td>2005 Ala. LEXIS 214</td>
<td>December 9, 2005</td>
<td>The circuit court overturned the results of a mayoral election after reviewing the absentee ballots cast for said election, resulting in a loss for appellant incumbent based on the votes received from appellee voters. The incumbent appealed, and the voters cross--appealed. In the meantime, the trial court stayed enforcement of</td>
<td>The voters and the incumbent all challenged the judgment entered by the trial court arguing that it impermissibly included or excluded certain votes. The appeals court agreed with the voters that the trial court should have excluded the votes of those voters for the incumbent who included an improper form of identification with their absentee ballots. It was undisputed that</td>
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<td>its judgment pending resolution of the appeal.</td>
<td>at least 30 absentee voters who voted for the incumbent provided with their absentee ballots a form of identification that was not proper under Alabama law. As a result, the court further agreed that the trial court erred in allowing those voters to somewhat &quot;cure&quot; that defect by providing a proper form of identification at the trial of the election contest, because, under those</td>
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<td>circumstances, it was difficult to conclude that those voters made an honest effort to comply with the law. Moreover, to count the votes of voters who failed to comply with the essential requirement of submitting proper identification with their absentee ballots had the effect of disenfranchising qualified electors who choose not to vote but rather than to make the effort to comply</td>
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<td>ACLU of Minn. v.</td>
<td>United States</td>
<td>2004 U.S. Dist.</td>
<td>October 29, 2004</td>
<td>Plaintiffs, voters and</td>
<td>with the absentee-voting requirements. The judgment declaring the incumbent's opponent the winner was affirmed. The judgment counting the challenged votes in the final tally of votes was reversed, and said votes were subtracted from the incumbents total, and the stay was vacated. All other arguments were rendered moot as a result.</td>
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<td>Kiffmeyer</td>
<td>District Court for the District of Minnesota</td>
<td>LEXIS 22996</td>
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<td>associations, filed for a temporary restraining order pursuant to Fed. R. Civ. P. 65, against defendant, Minnesota Secretary of State, concerning voter registration.</td>
<td>§ 201.061 was inconsistent with the Help America Vote Act because it did not authorize the voter to complete registration either by a &quot;current and valid photo identification&quot; or by use of a current utility bill, bank statement, government check, paycheck, or other government document that showed the name and address of the</td>
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<td>individual. The Secretary advised the court that there were less than 600 voters who attempted to register by mail but whose registrations were deemed incomplete. The court found that plaintiffs demonstrated that they were likely to succeed on their claim that the authorization in Minn. Stat. § 201.061, sub. 3, violated the Equal Protection Clause of the Fourteenth</td>
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<td>Amendment of the United States Constitution insofar as it did not also authorize the use of a photographic tribal identification card by American Indians who do not reside on their tribal reservations. Also, the court found that plaintiffs demonstrated that they were likely to succeed on their claims that Minn. R. 8200.5100,</td>
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<td>League of Women Voters v. Blackwell</td>
<td>United States District Court for the Northern District of Ohio</td>
<td>340 F. Supp. 2d 823; 2004 U.S. Dist. LEXIS 20926</td>
<td>October 20, 2004</td>
<td>Plaintiff organizations filed suit against defendant, Ohio's Secretary of State, claiming that a directive issued by the Secretary contravened the provisions of the Help America Vote Act. The Secretary filed a motion to</td>
<td>violated the Equal Protection Clause of the United States Constitution. A temporary restraining order was entered.</td>
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<td>ballot, a first-time voter could identify himself by providing his driver's license number or the last four digits of his social security number. If he did not know either number, he could provide it before the polls closed. If he did not do so, his provisional ballot would not be counted. The court held that the directive did not contravene the HAVA and otherwise established reasonable</td>
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<td>requirements for confirming the identity of first-time voters who registered to vote by mail because: (1) the identification procedures were an important bulwark against voter misconduct and fraud; (2) the burden imposed on first-time voters to confirm their identity, and thus show that they were voting legitimately, was slight; and (3) the number of voters unable to meet the</td>
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<td>burden of proving their identity was likely to be very small. Thus, the balance of interests favored the directive, even if the cost, in terms of uncounted ballots, was regrettable. The court granted the Secretary's motion to dismiss.</td>
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<td>United States v. Madden</td>
<td>United States Court of Appeals for the Sixth Circuit</td>
<td>403 F.3d 347; 2005 U.S. App. LEXIS 5326</td>
<td>April 4, 2005</td>
<td>Defendant appealed his conviction for violating the federal vote-buying statute. He also appealed the sentence imposed by the United States District Court for the Eastern District of Kentucky at Pikeville. The district court applied the U.S. Sentencing Guidelines Manual (Guidelines) § 3B1.1(c) supervisory--role</td>
<td>Defendant paid three people to vote for a local candidate in a primary election. The same ballot contained candidates for the U.S. Senate. While he waived his right to appeal his conviction, he nonetheless asserted two arguments in seeking to avoid the waiver. He first posited that the vote buying statute prohibited only buying votes for federal candidates----a prohibition not applicable.</td>
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<td>enhancement and increased defendant's base offense level by two levels.</td>
<td>violated by his conduct. In the alternative, he stated if the statute did criminalize buying votes for state or local candidates, then the statute was unconstitutional. Both arguments failed. Defendant argued that applying the supervisory--role enhancement constituted impermissible double counting because the supervision he exercised was no more than necessary to</td>
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<td>establish a vote-buying offense. That argument also failed. Defendant next argued that the district court erred by applying the vulnerable-victim enhancement under U.S. Sentencing Guidelines Manual § 3A1.1(b)(1). He acknowledged that he knew the mentally ill people who sold their votes were vulnerable, but maintained they were not victims because they received $50 for</td>
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<td>United States v. Slone</td>
<td>United States Court of Appeals for the Sixth Circuit</td>
<td>411 F.3d 643; 2005 U.S. App. LEXIS 10137</td>
<td>June 3, 2005</td>
<td>Defendant pled guilty to vote buying in a federal election. The United States District Court for the Eastern District of</td>
<td>Defendant offered to pay voters for voting in a primary election. Defendant claimed that the vote buying statute did not apply to him</td>
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<td>Kentucky sentenced defendant to 10 months in custody and recommended that the sentence be served at an institution that could accommodate defendant's medical needs. Defendant appealed his conviction and sentence.</td>
<td>because his conduct related solely to a candidate for a county office. Alternatively, defendant asserted that the statute was unconstitutional because it exceeded Congress' enumerated powers. Finally, defendant argued that the district court erred when it failed to consider his medical condition as a ground for a downward departure at sentencing. The</td>
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<td>appellate court found that the vote buying statute applied to all elections in which a federal candidate was on the ballot, and the government need not prove that defendant intended to affect the federal component of the election by his corrupt practices. The facts admitted by defendant at his guilty-plea hearing established all of the essential elements of an</td>
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<td>offense. The Elections Clause and the Necessary and Proper Clause combined to provide Congress with the power to regulate mixed federal and state elections even when federal candidates were running unopposed. There was no error in the district court's decision on departure under U.S. Sentencing Guidelines Manual § 5H1.4. Defendant's conviction and</td>
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<td>United States v. Smith</td>
<td>United States Court of Appeals for the Sixth Circuit</td>
<td>139 Fed. Appx. 681; 2005 U.S. App. LEXIS 14855</td>
<td>July 18, 2005</td>
<td>Defendants were convicted of vote buying and conspiracy to buy votes. The United States District Court for the Eastern District of Kentucky entered judgment on the jury verdict and sentenced defendants. Defendants appealed.</td>
<td>One of the defendants was a state representative who decided to run for an elected position. Defendants worked together and with others to buy votes. During defendants' trial, in addition to testimony regarding vote buying, evidence was introduced that two witnesses had been threatened. The appellate court found that defendants</td>
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<td>failed to show evidence of prejudice with regard to denial of the motion for severance. Threat evidence was not excludable under Fed. R. Evid. 404(b) because it was admissible to show consciousness of guilt without any inference as to the character of defendants. Admission of witnesses' testimony was proper because each witness testified that he or she was approached by a</td>
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<td>member of the conspiracy and offered money for his or her vote. The remaining incarcerated defendant's challenges to his sentence had merit because individuals who sold their votes were not &quot;victims&quot; for the purposes of U.S. Sentencing Guidelines Manual § 3A1.1. Furthermore, application of U.S. Sentencing Guidelines Manual § 3B1.1(b) violated</td>
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<td>Nugent v. Phelps</td>
<td>Court of Appeal of 816 So. 2d 349; 2002</td>
<td>April 23, 2002</td>
<td>Plaintiff incumbent</td>
<td>The incumbent argued that: (1) defendant's Sixth Amendment rights because it was based on facts that defendant did not admit or proved to the jury beyond a reasonable doubt. Defendants' convictions were affirmed. The remaining incarcerated defendant's sentence was vacated and his case was remanded for resentencing in accordance with Booker.</td>
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<td>Louisiana, Second Circuit</td>
<td>La. App. LEXIS 1138</td>
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<td>police chief sued defendant challenger, the winning candidate, to have the election nullified and a new election held based on numerous irregularities and unlawful activities by the challenger and his supporters. The challenger won the election by a margin of four votes. At the end of the incumbent's tenure,</td>
<td>the number of persons who were bribed for their votes by the challenger's worker was sufficient to change the outcome of the election; (2) the trial judge failed to inform potential witnesses that they could be given immunity from prosecution for bribery of voters if they came forth with truthful testimony; (3) the votes of three of his ardent supporters</td>
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<td>case, the district court for the dismissed his suit. The incumbent appealed.</td>
<td>should have been counted because they were incarcerated for the sole purpose of keeping them from campaigning and voting; and (4) the district attorney, a strong supporter of the challenger, abused his power when he subpoenaed the incumbent to appear before the grand jury a week preceding the election. The appellate court held no more than two votes would be</td>
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- subtracted, a difference that would be insufficient to change the election result or make it impossible to determine. The appellate court found the trial judge read the immunity portion of the statute to the potential witnesses. The appellate court found the arrests of the three supporters were the result of grand jury indictments, and there was no manifest error in holding that the

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<td>Eason v. State</td>
<td>Court of Appeals of Mississippi</td>
<td>2005 Miss. App. LEXIS 1017</td>
<td>December 13, 2005</td>
<td>Defendant appealed a decision of circuit court convicting him of one count of conspiracy to commit voter fraud and eight counts of voter fraud.</td>
<td>Defendant was helping with his cousin's campaign in a run-off election for county supervisor. Together, they drove around town, picking up various people who were either at congregating spots or their homes. Defendant would drive the voters to the clerk's office</td>
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<td>where they would vote by absentee ballot and defendant would give them beer or money. Defendant claimed he was entitled to a mistrial because the prosecutor advanced an impermissible &quot;sending the message&quot; argument. The court held that it was precluded from reviewing the entire context in which the argument arose because, while the prosecutor's closing</td>
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<td>argument was in the record, the defense counsel's closing argument was not. Also, because the prosecutor's statement was incomplete due to defense counsel's objection, the court could not say that the statement made it impossible for defendant to receive a fair trial. Furthermore, the trial judge did not abuse his discretion when he did not allow defendant</td>
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<td>United States v. Turner</td>
<td>United States District Court for the Eastern District of Kentucky</td>
<td>2005 U.S. Dist. LEXIS 31709</td>
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<td>Ways v. Shively</td>
<td>Supreme Court of Nebraska</td>
<td>264 Neb. 250; 646 N.W.2d 621; 2002 Neb. LEXIS 158</td>
<td>July 5, 2002</td>
<td>Appellant felon filed a writ of mandamus, which sought to compel appellee Election Commissioner of Lancaster County, Nebraska, to permit him to register to vote. The District Court for Lancaster County denied the felon's petition for writ of mandamus and dismissed the petition. The felon appealed.</td>
<td>The felon was discharged from the Nebraska State Penitentiary in June 1998 after completing his sentences for the crimes of pandering, carrying a concealed weapon and attempting to possess a controlled substance. The commissioner asserted that as a result of the felon's conviction, the sentence for which had neither been reversed nor annulled, he had lost his right to vote. The commissioner contended that the</td>
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<td>only method by which the felon's right to vote could be restored was through a warrant of discharge issued by the Nebraska Board of Pardons--a warrant of discharge had not been issued. The supreme court ruled that the certificate of discharge issued to the felon upon his release did not restore his right to vote. The supreme court ruled that as a matter of law, the specific right to vote was not restored to the felon upon his discharge from incarceration at the</td>
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<td>Fischer v. Governor of New Hampshire</td>
<td>Supreme Court of New Hampshire</td>
<td>145 N.H. 28; 749 A.2d 321; 2000 N.H. LEXIS 16</td>
<td>March 24, 2000</td>
<td>Appellant State of New Hampshire challenged a ruling of the superior court that the felon disenfranchisement statutes violate N.H. Const. pt. I, Art. 11. Appellee was incarcerated at the New Hampshire State Prison on felony convictions. When he requested an absentee ballot to vote from a city clerk, the request was denied. The clerk sent him a copy of N.H. Rev. Stat. Ann. § 607(A)(2) (1986), which prohibits a felon from voting &quot;from the time of his sentence until his final discharge.&quot; The trial court declared the disenfranchisement</td>
<td>completion of his sentences. The judgment was affirmed.</td>
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<td>statutes unconstitutional and ordered local election officials to allow the plaintiff to vote. Appellant State of New Hampshire challenged this ruling. The central issue was whether the felon disenfranchisement statutes violated N.H. Const. pt. I, art. 11. After a review of the article, its constitutional history, and legislation pertinent to the right of felons to vote, the court concluded that the legislature retained the authority under</td>
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<td>the article to determine voter qualifications and that the felon disenfranchisement statutes were a reasonable exercise of legislative authority, and reversed. Judgment reversed because the court concluded that the legislature retained its authority under the New Hampshire Constitution to determine voter qualifications and that the felon disenfranchisement statutes were a reasonable exercise of legislative</td>
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<td>Mixon v. Commonwealth Court of Pennsylvania</td>
<td>759 A.2d 442; 2000 Pa. Commw. LEXIS 534</td>
<td>September 18, 2000</td>
<td>Respondents filed objections to petitioners' complaint seeking declaratory relief as to the unconstitutionality of the Pennsylvania Election Code, 25 Pa. Cons. Stat. §§ 2600 -- 3591, and the Pennsylvania Voter Registration Act, 25 Pa. Cons. Stat. §§ 961.101--961.5109, regarding felon voting rights.</td>
<td>Petitioner convicted felons were presently or had formerly been confined in state prison. Petitioner elector was currently registered to vote in respondent state. Petitioners filed a complaint against respondent state seeking declaratory relief challenging as unconstitutional, state election and voting laws that excluded confined felons from the definition of qualified absentee electors and that barred a felon who had been released.</td>
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<td>from a penal institution for less than five years from registering to vote. Respondents filed objections to petitioners' complaint. The court sustained respondents' objection that incarcerated felons were not unconstitutionally deprived of qualified absentee elector status because respondent state had broad power to determine the conditions under which suffrage could be exercised. However, petitioner elector had no standing.</td>
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<td>NAACP Philadelphia District Court</td>
<td>United States District Court</td>
<td>2000 U.S.</td>
<td>August 14, 2000</td>
<td>Plaintiffs moved for a preliminary</td>
<td>and the court overruled objection as to deprivation of ex-felon voting rights. The court sustained respondents' objection since incarcerated felons were not unconstitutionally deprived of qualified absentee elector status and petitioner elector had no standing, but objection that ex-incarcerated felons' voting rights were deprived was overruled since status penalized them.</td>
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<td>Branch v. Ridge</td>
<td>for the Eastern District of Pennsylvania</td>
<td>Dist. LEXIS 11520</td>
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<td>injunction, which the parties agreed to consolidate with the merits determination for a permanent injunction, in plaintiffs' civil rights suit contending that the Pennsylvania Voter Registration Act, offended the Equal Protection Clause of U.S. Const. amend. XIV.</td>
<td>unincorporated association, and others, filed a civil rights suit against defendant state and local officials, contending that the Pennsylvania Voter Registration Act, violated the Equal Protection Clause by prohibiting some ex-felons from voting during the five year period following their release from prison, while permitting other ex-felons to vote. Plaintiffs conceded that one plaintiff lacked standing, and the court assumed the remaining</td>
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<td>plaintiffs had standing. The court found all three of the special circumstances necessary to invoke the Pullman doctrine were present in the case, but found that abstention was not appropriate under the circumstances since it did not agree with plaintiffs' contention that the time constraints caused by the upcoming election meant that the option of pursuing their claims in state court did not offer plaintiffs an alternative.</td>
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<td>Farrakhan v. Locke</td>
<td>United States District Court for the Eastern District of Washington</td>
<td>2000 U.S. Dist. LEXIS 22212</td>
<td>December 1, 2000</td>
<td>Plaintiffs, convicted felons who were also racial minorities, sued defendants for alleged violations of the Voting Rights Act. The parties filed cross-</td>
<td>The felons alleged that Washington's felon disenfranchisement and restoration of civil rights schemes, premised upon Wash. Const. art. VI § 3,</td>
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<td>motions for summary judgment.</td>
<td>resulted in the denial of the right to vote to racial minorities in violation of the VRA. They argued that race bias in, or the discriminatory effect of, the criminal justice system resulted in a disproportionate number of racial minorities being disenfranchised following felony convictions. The court concluded that Washington's felon disenfranchisement provision disenfranchised a disproportionate number of minorities; as a result, minorities</td>
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were under--represented in Washington's political process. The Rooker--Feldman doctrine barred the felons from bringing any as--applied challenges, and even if it did not bar such claims, there was no evidence that the felons' individual convictions were born of discrimination in the criminal justice system. However, the felons' facial challenge also failed. The remedy they sought would create a new constitutional problem, allowing
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<td>Johnson v. Bush</td>
<td>United States District Court for the Southern District of Florida</td>
<td>214 F. Supp. 2d 1333; 2002 U.S. Dist. LEXIS 14782</td>
<td>July 18, 2002</td>
<td>Plaintiff felons sued defendant state officials for alleged violations of their constitutional rights. The officials moved and the felons cross-moved for summary judgment.</td>
<td>The felons had all successfully completed their terms of incarceration and/or probation, but their civil rights to register and vote had not been restored. They alleged that disenfranchisement only of white felons. Further, the felons did not establish a causal connection between the disenfranchisement provision and the prohibited result. The court granted defendants' motion and denied the felons' motion for summary judgment.</td>
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<td>Florida’s disenfranchisement law violated their rights under First, Fourteenth, Fifteenth, and Twenty--Fourth Amendments to the United States Constitution, as well as § 1983 and §§ 2 and 10 of the Voting Rights Act of 1965. Each of the felons' claims was fatally flawed. The felons' exclusion from voting did not violate the Equal Protection or Due Process Clauses of the United States Constitution. The First Amendment did not guarantee felons the right to</td>
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vote. Although there was evidence that racial animus was a factor in the initial enactment of Florida's disenfranchisement law, there was no evidence that race played a part in the re-enactment of that provision. Although it appeared that there was a disparate impact on minorities, the cause was racially neutral. Finally, requiring the felons to pay their victim restitution before their rights would be restored did not constitute an improper poll tax or wealth
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<td>King v. City of Boston</td>
<td>United States District Court for the District of Massachusetts</td>
<td>2004 U.S. Dist. LEXIS 8421</td>
<td>May 13, 2004</td>
<td>Plaintiff inmate filed a motion for summary judgment in his action challenging the constitutionality of Mass. Gen. Laws ch. 51, § 1, which excluded incarcerated felons from voting while they were imprisoned.</td>
<td>The inmate was convicted of a felony and incarcerated. His application for an absentee ballot was denied on the ground that he was not qualified to register and vote under Mass. Gen. Laws ch. 51, § 1. The inmate argued that the statute was unconstitutional as it applied to him</td>
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<td>because it amounted to additional punishment for crimes he committed before the statute's enactment and thus violated his due process rights and the prohibition against ex post facto laws and bills of attainder. The court held that the statute was regulatory and not punitive because rational choices were implicated in the statute's disenfranchisement of persons under guardianship, persons disqualified because of corrupt</td>
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<td><em>Elections practices, persons under 18 years of age, as well as incarcerated felons. Specifically, incarcerated felons were disqualified during the period of their imprisonment when it would be difficult to identify their address and ensure the accuracy of their ballots. Therefore, the court concluded that Mass. Gen. Laws ch. 51, § 1 did not violate the inmate's constitutional rights. The court found the statute at issue to be</em></td>
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<td>Hayden v. Pataki</td>
<td>United States District Court for the Southern District of New York</td>
<td>2004 U.S. Dist. LEXIS 10863</td>
<td>June 14, 2004</td>
<td>In a 42 U.S.C.S. § 1983 action filed by plaintiffs, black and latino convicted felons, alleging that N.Y. Const. art. II, § 3 and N.Y. Elec. Law § 5--106(2) were unconstitutional, defendants, New York's governor and the chairperson of the board of elections, moved for judgment on the pleadings under Fed. R. Civ. P. 12(c).</td>
<td>The felons sued defendants, alleging that N.Y. Const. art. II, § 3 and N.Y. Elec. Law § 5--106(2) unlawfully denied suffrage to incarcerated and paroled felons on account of their race. The court granted defendants' motion for judgment on the pleadings on the felons' claims under U.S. Const. amend. XIV, XV because their factual allegations were insufficient</td>
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<td>from which to draw an inference that the challenged provisions or their predecessors were enacted with discriminatory intent, and because denying suffrage to those who received more severe punishments, such as a term of incarceration, and not to those who received a lesser punishment, such as probation, was not arbitrary. The felons' claims under 42 U.S.C.S. § 1973 were dismissed because § 1973 could not be used to challenge the</td>
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Should the Case be Researched Further

**Other Notes**

**Statutory Basis (if of Note)**

Holding

**Defendants' motion was granted as to the felons' claims under 42 U.S.C.S. § 1971 because § 1971 did not provide for a private right of action and because the felons were not "otherwise qualified to vote." The court also granted defendants' motion on the felons' U.S. Const. amend. I claim because it did not guarantee a felon the right to vote.**

**Defendants' motion for judgment on the * base**

**Name of Case**

**Date**

**Facts**

**Court**

**Citation**

**Should the Case be Researched Further**

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<td>Farrakhan v. Washington</td>
<td>United States Court for Appeals for the Ninth Circuit</td>
<td>338 F.3d 1009; 2003 U.S. App. LEXIS 14810</td>
<td>July 25, 2003</td>
<td>Plaintiff inmates sued defendant state officials, claiming that Washington state's felon disenfranchisement scheme constitutes improper race-based vote denial in violation of § 2 of the Voting Rights Act. The United States District Court for the Eastern District of Washington granted of summary judgment dismissing the inmates' claims. The inmates appealed.</td>
<td>Upon conviction of infamous crimes in the state, (that is, crimes punishable by death or imprisonment in a state correctional facility), the inmates were disenfranchised. The inmates claimed that the disenfranchisement scheme violated § 2 because the criminal justice system was biased against minorities, causing a disproportionate minority representation</td>
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The appellate court held, inter alia, that the district court erred in failing to consider evidence of racial bias in the state's criminal justice system in determining whether the state's felon disenfranchisement laws resulted in denial of the right to vote on account of race. Instead of applying its novel "by itself" causation standard, the district court should have applied a totality of the circumstances test that included among those being disenfranchised.
analysis of the inmates' compelling evidence of racial bias in Washington's criminal justice system. However, the inmates lacked standing to challenge the restoration scheme because they presented no evidence of their eligibility, much less even allege that they were eligible for restoration, and had not attempted to have their civil rights restored.

The court affirmed as to the eligibility claim but reversed and remanded for
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<td>In re Phillips</td>
<td>Supreme Court of Virginia</td>
<td>265 Va. 81; 574 S.E.2d 270; 2003 Va. LEXIS 10</td>
<td>January 10, 2003</td>
<td>The circuit court, entered a judgment in which it declined to consider petitioner former felon's petition for approval of her request to seek restoration of her eligibility to register to vote. The former felon appealed.</td>
<td>More than five years earlier, the former felon was convicted of the felony of making a false written statement incident to a firearm purchase. She then petitioned the trial court asking it to approve her request to seek restoration of her eligibility to register to vote. Her request was based on Va. Code Ann. § 53.1--231.2, allowing persons convicted of non-violent</td>
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<td>felonies to petition a trial court for approval of a request to seek restoration of voting rights. The trial court declined. It found that Va. Code Ann. § 53.1--231.2 violated constitutional separation of powers principles since it gave the trial court powers belonging to the governor. It also found that even if the statute was constitutional, it was fundamentally flawed for not providing notice to respondent Commonwealth regarding a</td>
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petition. After the petition was denied, the state supreme court found the separation of powers principles were not violated since the statute only allowed the trial court to determine if an applicant met the requirements to have voting eligibility restored. It also found the statute was not fundamentally flawed since the Commonwealth was not an interested party entitled to notice.

OUTCOME: The judgment was reversed and

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<td>Howard v. Gilmore</td>
<td>United States Court of Appeals for the Fourth Circuit</td>
<td>2000 U.S. App. LEXIS 2680</td>
<td>February 23, 2000</td>
<td>Appellant challenged the United States District Court for the Eastern District of Virginia's order summarily dismissing his complaint, related to his inability to vote as a convicted felon, for failure to state a claim upon which relief can be granted.</td>
<td>case was remanded for further proceedings.</td>
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<td>Appellant challenged. The court found U.S. Const. amend. I created no private right of action for seeking reinstatement of previously canceled voting rights, U.S. Const. amends. XIV, XV, XIX, and the VRA required either gender or race discrimination, neither of which appellant asserted, and the U.S. Const. amend. XXIV, while prohibiting the imposition of poll taxes, did not prohibit the imposition of a $10 fee for</td>
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<td>Johnson v.</td>
<td>United States</td>
<td>353 F.3d</td>
<td>December</td>
<td>Plaintiffs, ex--felon</td>
<td>reinstatement of appellant's civil rights, including the right to vote. Consequently, appellant failed to state a claim. The court affirmed, finding that none of the constitutional provisions appellant relied on were properly pled because appellant failed to assert that either his race or gender were involved in the decisions to deny him the vote. Conditioning reestablishment of his civil rights on a $10 fee was not unconstitutional.</td>
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<td>Governor of Fla.</td>
<td>Court of Appeals for the Eleventh Circuit</td>
<td>1287; 2003 U.S. App. LEXIS 25859</td>
<td>19, 2003</td>
<td>citizens of Florida, on their own right and on behalf of others, sought review of a decision of the United States District Court for the Southern District of Florida, which granted summary judgment to defendants, members of the Florida Clemency Board in their official capacity. The citizens challenged the validity of the Florida felon disenfranchisement laws.</td>
<td>alleged that Fla. Const. art. VI, § 4 (1968) was racially discriminatory and violated their constitutional rights. The citizens also alleged violations of the Voting Rights Act. The court initially examined the history of Fla. Const. art. VI, § 4 (1968) and determined that the citizens had presented evidence that historically the disenfranchisement provisions were motivated by a discriminatory animus. The citizens had met their initial burden of showing that</td>
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<td>race was a substantial motivating factor. The state was then required to show that the current disenfranchisement provisions would have been enacted absent the impermissible discriminatory intent. Because the state had not met its burden, summary judgment should not have been granted. The court found that the claim under the Voting Rights Act, also needed to be remanded for further proceedings. Under a totality of the circumstances,</td>
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<td>the district court needed to analyze whether intentional racial discrimination was behind the Florida disenfranchisement provisions, in violation of the Voting Rights Act. The court affirmed the district court's decision to grant summary judgment on the citizens' poll tax claim. The court reversed the district court's decision to grant summary judgment to the Board on the claims under the equal protection clause and for violation of federal voting laws and remanded the</td>
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<td>State v. Black</td>
<td>Court of Appeals of Tennessee</td>
<td>2002 Tenn. App. 696</td>
<td>September 26, 2002</td>
<td>In 1997, petitioner was convicted of forgery and sentenced to the penitentiary for two years, but was immediately placed on probation. He subsequently petitioned the circuit court for restoration of citizenship. The trial court restored his citizenship rights. The State appealed. The appellate court issued its opinion, but granted the State's motions to supplement the record and to</td>
<td>The appellate court's original opinion found that petitioner had not lost his right to hold public office because Tennessee law removed that right only from convicted felons who were &quot;sentenced to the penitentiary.&quot; The trial court's amended judgment made it clear that petitioner was in fact sentenced to the penitentiary. Based upon this correction to the record, the appellate court</td>
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<td>rehear its decision.</td>
<td>found that petitioner's sentence to the penitentiary resulted in the forfeiture of his right to seek and hold public office by operation of Tenn. Code Ann. § 40-20-114. However, the appellate court concluded that this new information did not requires a different outcome on the merits of the issue of restoration of his citizenship rights, including the right to seek and hold public office. The appellate court adhered to its conclusion that the</td>
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<td>Johnson v. Governor of Fla.</td>
<td>United States Court of Appeals for the Eleventh</td>
<td>405 F.3d 1214; 2005 U.S.</td>
<td>April 12, 2005</td>
<td>Plaintiff individuals sued defendant members of Florida</td>
<td>The individuals argued that the racial animus motivating the statutory presumption in favor of the restoration was not overcome by a showing, by a preponderance of the evidence, of good cause to deny the petition for restoration of citizenship rights. The appellate court affirmed the restoration of petitioner's right to vote and reversed the denial of his right to seek and hold public office. His full rights of citizenship were restored.</td>
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<td>Circuit</td>
<td>App. LEXIS 5945</td>
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<td>Clemency Board, arguing that Florida's felon disenfranchisement law, Fla. Const. art. VI, § 4 (1968), violated the Equal Protection Clause and 42 U.S.C.S. § 1973. The United States District Court for the Southern District of Florida granted the members summary judgment. A divided appellate panel reversed. The panel opinion was vacated and a rehearing en banc was granted.</td>
<td>adoption of Florida's disenfranchisement laws in 1868 remained legally operative despite the reenactment of Fla. Const. art. VI, § 4 in 1968. The subsequent reenactment eliminated any discriminatory taint from the law as originally enacted because the provision narrowed the class of disenfranchised individuals and was amended through a deliberative process. Moreover, there was no allegation of racial discrimination at</td>
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<td>the time of the reenactment. Thus, the disenfranchisement provision was not a violation of the Equal Protection Clause and the district court properly granted the members summary judgment on that claim. The argument that 42 U.S.C.S. § 1973 applied to Florida's disenfranchisement provision was rejected because it raised grave constitutional concerns, i.e., prohibiting a practice that the Fourteenth Amendment permitted the state</td>
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<td>to maintain. In addition, the legislative history indicated that Congress never intended the Voting Rights Act to reach felon disenfranchisement provisions. Thus, the district court properly granted the members summary judgment on the Voting Rights Act claim. The motion for summary judgment in favor of the members was granted.</td>
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<td>Jenkins v. Williamson-Butler</td>
<td>Court of Appeal of Louisiana, Fourth Circuit</td>
<td>883 So. 2d 537; 2004 La. App. LEXIS 2433</td>
<td>October 8, 2004</td>
<td>Petitioner, a candidate for a parish juvenile court judgeship, failed to qualify for a runoff election. She filed suit against defendant, the clerk of criminal court for the parish seeking a new election, based on grounds of substantial irregularities. The district court ruled in favor of the candidate</td>
<td>The trial court found that the voting machines were not put into service until two, four, and, in many instances, eight hours after the statutorily mandated starting hour which constituted serious irregularities so as to deprive voters from freely expressing their will. It was impossible to determine the number of voters that were affected by the</td>
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<td>Hester v. McKeithen</td>
<td>Court of Appeal of Louisiana, Fourth Circuit</td>
<td>882 So. 2d 1291; 2004 La. App. LEXIS 2429</td>
<td>October 8, 2004</td>
<td>Petitioner, school board candidate, filed suit against defendants, Louisiana</td>
<td>and ordered the holding of a restricted citywide election. The clerk appealed.</td>
<td>late start up or late arrival of voting machines, making it impossible to determine the result. The appellate court agreed that the irregularities were so serious that the trial court's voiding the election and calling a new election was the proper remedy. Judgment affirmed.</td>
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<td>In re Election Contest of Democratic Primary Election</td>
<td>Supreme Court of Ohio</td>
<td>88 Ohio St. 3d 258; 2000 Ohio 325; 725 N.E.2d 271; 2000 Ohio</td>
<td>March 29, 2000</td>
<td>Appellant sought review of the judgment of the court of common</td>
<td>Appellant contended that an election irregularity occurred when the board failed</td>
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<td>Held May 4, 1999</td>
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<td>LEXIS 607</td>
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<td>pleas denying his election contest challenging an opponent's nomination for election irregularity.</td>
<td>to meet and act by majority vote on another candidate's withdrawal, instead permitting its employees to make decisions. Appellant had to prove by clear and convincing evidence that one or more election irregularities occurred and it affected enough votes to change or make uncertain the result of the election. Judgment affirmed. The appellant did</td>
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<td>In re Election Contest As to Watertown Special Referendum Election</td>
<td>Supreme Court of South Dakota</td>
<td>2001 SD 62; 628 N.W.2d 336; 2001 S.D. LEXIS 66</td>
<td>May 23, 2001</td>
<td>Appellant sought review of the judgment of the circuit court declaring a local election valid and</td>
<td>not establish election irregularity by the board’s actions on the candidate’s withdrawal, the board acted diligently and exercised its discretion in keeping the candidate’s name on the ballot and notifying electors of his withdrawal.</td>
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<td>Jones v. Jessup</td>
<td>Supreme Court of Georgia</td>
<td>279 Ga. 531; 615 S.E.2d 529; 2005 Ga. LEXIS 447</td>
<td>June 30, 2005</td>
<td>Defendant incumbent appealed a judgment by the trial court that invalidated an election for the position of sheriff and</td>
<td>were so egregious that the will of the voters was suppressed. Appellants did not meet their burden, as mere inconvenience or delay in voting was not enough to overturn the election. Judgment affirmed.</td>
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<td>ordered that a new election be held based on plaintiff candidate's election contest.</td>
<td>place in doubt the election results. The state supreme court held that the candidate failed to prove substantial error in the votes cast by the witnesses adduced at the hearing who voted at the election. Although the candidate's evidence reflected the presence of some irregularities, not every irregularity invalidated the vote. The absentee ballots</td>
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were only to be rejected where the electors failed to furnish required information. Because the ballots cast by the witnesses substantially complied with all of the essential requirements of the form, the trial court erred by finding that they should not have been considered. The candidate failed to establish substantial error in the votes. Judgment reversed.
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<tr>
<td>Toliver v. Thompson</td>
<td>Supreme Court of Oklahoma</td>
<td>2000 OK 98; 17 P.3d 464; 2000 Okla. LEXIS 101</td>
<td>December 21, 2000</td>
<td>Petitioner challenged an order of the district court denying his motion to compel a recount of votes from an election.</td>
<td>The court held a recount of votes cast in an election could occur when the ballots had been preserved in the manner prescribed by statute. The trial court noted when the ballots had not been preserved in such a manner, no recount would be conducted. The court further noted a petition alleging irregularities in an election could be based upon an allegation that</td>
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<td>it was impossible to determine with mathematical certainty which candidate was entitled to be issued a certificate of election. The Oklahoma supreme court held petitioner failed to show that the actual votes counted in the election were tainted with irregularity, and similarly failed to show a statutory right to a new election based upon a failure to preserve the</td>
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<td>Adkins v. Huckabay</td>
<td>Supreme Court of Louisiana</td>
<td>755 So. 2d 206; 2000</td>
<td>February 25, 2000</td>
<td>Plaintiff candidate challenged judgment of court of appeal, second circuit, which reversed the lower court's judgment and declared defendant candidate winner of a runoff election for sheriff.</td>
<td>The issue presented for the appellate court's determination was whether the absentee voting irregularities plaintiff candidate complained of rendered it impossible to determine the outcome of the election for sheriff. The Louisiana supreme court concluded that the lower court had applied the correct</td>
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<td>standard, substantial compliance, to the election irregularities, but had erred in its application by concluding that the contested absentee ballots substantially complied with the statutory requirements. The supreme court found that in applying substantial compliance to five of the ballot irregularities, the trial court correctly vacated the general election</td>
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<td>and set it aside because those absentee ballots should have been disqualified. Because of the constitutional guarantee to secrecy of the ballot and the fact that the margin of victory in the runoff election was three votes, it was impossible to determine the result of the runoff election. Thus, the supreme court ordered a new general election. Judgment of the</td>
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<td>In re Gray--Sadler</td>
<td>Supreme Court of New Jersey</td>
<td>164 N.J. 468; 753 A.2d 1101; 2000 N.J. LEXIS 668</td>
<td>June 30, 2000</td>
<td>Appellants, write-in candidates for the offices of mayor and borough council, appealed the judgment of the superior court, appellate division reversing the trial court's decision to set aside the election results for those offices due to irregularities related to the write--in</td>
<td>The New Jersey supreme court held that the votes that were rejected by election officials did not result from the voters' own errors, but from the election officials' noncompliance with statutory requirements. In other words, the voters were provided with patently inadequate instructions and defective voting machines. Moreover,</td>
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<td>Goodwin v. St. Thomas- St. John Bd. of Elections</td>
<td>Territorial Court of the Virgin Islands</td>
<td>43 V.I. 89; 2000 V.I. LEXIS 15</td>
<td>December 13, 2000</td>
<td>instructions and defective voting machines.</td>
<td>appellants met the statutory requirement for successfully contesting the election results by showing that enough qualified voters were denied the right to cast write-in votes as to affect the outcome of the election. Judgment reversed and the state trial court's decision reinstated.</td>
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<td>absentee ballots violated territorial election law, and that the improper inclusion of such ballots by defendants, election board and supervisor, resulted in plaintiff's loss of the election. Plaintiff sued defendants seeking invalidation of the absentee ballots and certification of the</td>
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<td>were not signed or notarized, were in unsealed and/or torn envelopes, and were in envelopes containing more than one ballot. Prior to tabulation of the absentee ballots, plaintiff was leading intervenor for the final senate position, but the absentee ballots entitled intervenor to the position. The territorial court held that plaintiff was not entitled to relief since he failed to</td>
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<td>election results tabulated without such ballots.</td>
<td>establish that the alleged absentee voting irregularities would require invalidation of a sufficient number of ballots to change the outcome of the election. While the unsealed ballots constituted a technical violation, the outer envelopes were sealed and thus substantially complied with election requirements. Further, while defendants improperly</td>
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<td>counted one ballot where a sealed ballot envelope and a loose ballot were in the same outer envelope, the one vote involved did not change the election result. Plaintiff's other allegations of irregularities were without merit since ballots without postmarks were valid, ballots without signatures were not counted, and ballots without notarized signatures were</td>
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(counted one ballot where a sealed ballot envelope and a loose ballot were in the same outer envelope, the one vote involved did not change the election result. Plaintiff's other allegations of irregularities were without merit since ballots without postmarks were valid, ballots without signatures were not counted, and ballots without notarized signatures were)
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<td>Johnson v. Lopez--Torres</td>
<td>Supreme Court of New York, Appellate Division, Second Department</td>
<td>2005 NY Slip Op 7825; 2005 N.Y. App. Div. LEXIS 11276</td>
<td>October 21, 2005</td>
<td>In a proceeding for a re-canvass of certain affidavit ballots cast in the Democratic Party primary election for the public office of surrogate, the supreme court denied appellant candidate's petition requesting the same and declared appellee opponent the winner of</td>
<td>Finding that the candidate had waived her right to challenge the affidavit ballots and had not sufficiently established her claim of irregularities to warrant a hearing, the trial court denied her petition and declared the opponent the winner of the primary. However, on appeal, the appellate division held that no waiver occurred.</td>
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Moreover, because hundreds of apparently otherwise eligible voters failed to fill in their party enrollment and/or prior address, it could be reasonably inferred that these voters were misled thereby into omitting the required information. Finally, the candidate failed to make a sufficient showing of voting irregularities in that election.
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<td>Ex parte Avery</td>
<td>Supreme Court of Alabama</td>
<td>843 So. 2d 137; 2002 Ala. LEXIS 239</td>
<td>August 23, 2002</td>
<td>Petitioner probate judge moved for a writ of mandamus directing a circuit judge to vacate his order requiring the probate judge to transfer all election materials to the circuit clerk and holding him in contempt for failing to do so. The</td>
<td>the machine vote to require a hearing on that issue. Judgment reversed. The issuance of a writ of mandamus was appropriate. The district attorney had a right to the election materials because he was conducting a criminal investigation of the last election. Furthermore, the circuit judge had no jurisdiction or authority to issue an order</td>
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<td>Harpole v. Kemper County Democratic Exec. Comm.</td>
<td>Supreme Court of Mississippi</td>
<td>908 So. 2d 129; 2005 Miss. LEXIS 463</td>
<td>August 4, 2005</td>
<td>After his loss in a primary election for the office of sheriff, appellant candidate sued appellees, a political party's executive</td>
<td>The candidate alleged the sheriff had his deputies transport prisoners to the polls, felons voted, and the absentee voter law was breached. The committee</td>
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<td>probate judge also requested that said material be turned over to the district attorney, pursuant to an outstanding subpoena.</td>
<td>directing that the election materials be given to the clerk. The district attorney received several claims of irregularities in the election, some of which could constitute voter fraud. Petition granted and writ issued.</td>
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<td>committee and the incumbent sheriff, alleging irregularities in the election. The circuit court dismissed the candidate's petition for judicial review with prejudice. He appealed.</td>
<td>agreed with the last contention and threw out the absentee ballots (seven percent of votes cast); after a recount, the sheriff still prevailed. The trial court dismissed the case due to alleged defects in the petition; in the alternative, it held that the candidate failed to sufficiently allege violations and irregularities in the election. The supreme court held that the petition was</td>
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Should the Case be Researched Further

Other Notes

Disqualification of seven percent of the total votes was not substantial enough so as to cause the will of the voters to be impossible to discern and to warrant a special election, and there were not enough illegal votes cast for the sheriff to change the outcome. A blanket allegation implying that the sheriff had deputies transport prisoners to the blank.
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<td>polls was not supported by credible evidence. Judgment affirmed.</td>
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<td>Am. Ass'n of People with Disabilities v. Shelley</td>
<td>United States District Court for the Central District of California</td>
<td>324 F. Supp. 2d 1120; 2004 U.S. Dist. LEXIS 12587</td>
<td>July 6, 2004</td>
<td>Plaintiffs, disabled voters and organizations representing those voters, sought to enjoin the directives of defendant California Secretary of State, which decertified and withdrew approval of the use of certain direct recording electronic voting systems. One voter applied for a temporary restraining order, or, in</td>
<td>The voters urged the invalidation of the Secretary's directives because, allegedly, their effect was to deprive the voters of the opportunity to vote using touch-screen technology. Although it was not disputed that some disabled persons would be unable to vote independently and in private without the use of DREs, it was clear that they would not be</td>
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<td>the alternative, a preliminary injunction.</td>
<td>deprived of their fundamental right to vote. The Americans with Disabilities Act did not require accommodation that would enable disabled persons to vote in a manner that was comparable in every way with the voting rights enjoyed by persons without disabilities. Rather, it mandated that voting programs be made accessible.</td>
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<td>Defendant's decision to suspend the use of DREs pending improvement in their reliability and security of the devices was a rational one, designed to protect the voting rights of the state's citizens. The evidence did not support the conclusion that the elimination of the DREs would have a discriminatory effect on the visually or manually impaired. Thus, the voters</td>
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<td>Am. Ass'n of People with Disabilities v. Hood</td>
<td>United States District Court for the Middle District of Florida</td>
<td>310 F. Supp. 2d 1226; 2004 U.S. Dist. LEXIS 5615</td>
<td>March 24, 2004</td>
<td>Plaintiffs, disabled voters, and a national organization, sued defendants, the Florida Secretary of State, the Director of the Division of Elections of the Florida</td>
<td>showed little likelihood of success on the merits. The individual's request for a temporary restraining order, or, in the alternative, a preliminary injunction, was denied.</td>
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<td>Department of State, and a county supervisor of elections, under Title II of the Americans With Disabilities Act and Section 504 of the Rehabilitation Act of 1973. Summary judgment was granted for the Secretary and the Director as to visually impaired voters.</td>
<td>voters. The voters were unable to vote using the system without third-party assistance. If it was feasible for the county to purchase a readily accessible system, then the voters' rights under the ADA and the RA were violated. The court found that the manually impaired voter's rights were violated. To the extent &quot;jelly switches&quot; and &quot;sip and puff&quot; devices</td>
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<td>needed to be attached to a touch screen machine for it to be accessible, it was not feasible for the supervisor to provide such a system, since no such system had been certified at the time of the county's purchase. 28 C.F.R. § 35.160 did not require that visually or manually impaired voters be able to vote in the same or similar manner as non--</td>
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28 C.F.R. § 35.160 did not require that visually or manually impaired voters be able to vote in the same or similar manner as non--
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<td>disabled voters. Visually and manually impaired voters had to be afforded an equal opportunity to participate in and enjoy the benefits of voting. The voters' &quot;generic&quot; discrimination claim was coterminous with their claim under 28 C.F.R. § 35.151. A declaratory judgment was entered against the supervisor to the extent another voting</td>
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<td>system would have permitted unassisted voting. The supervisor was directed to have some voting machines permitting visually impaired voters to vote alone. The supervisor was directed to procure another system if the county's system was not certified and/or did not permit mouth stick voting. The Secretary and Director were granted judgment against the</td>
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<td>Troiano v. Lepore</td>
<td>United States District Court for the Southern District of Florida</td>
<td>2003 U.S. Dist. LEXIS 25850</td>
<td>November 3, 2003</td>
<td>Plaintiffs, disabled voters, sued defendant a state county supervisor of elections alleging discrimination pursuant to the Americans With Disability Act, 42 U.S.C.S. § 12132 et seq., § 504 of the Rehabilitation Act, 29 U.S.C.S. § 794 et seq., and declaratory relief for the discrimination. Both sides moved for summary.</td>
<td>The complaint alleged that after the 2000 elections Palm Beach County purchased a certain number of sophisticated voting machines called the &quot;Sequoia.&quot; According to the voters, even though such accessible machines were available, the supervisor decided not to place such accessible machines in each precinct because it would slow.</td>
<td>No</td>
<td>N/A</td>
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<td>judgment.</td>
<td>things down too much. The court found that the voters lacked standing because they failed to show that they had suffered an injury in fact. The voters also failed to show a likely threat of a future injury because there was no reasonable grounds to believe that the audio components of the voting machines would not be provided in the future. The voters also</td>
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**Facts**

failed to state an injury that could be redressed by a favorable decision, because the supervisor was already using the Sequoia machines and had already trained poll workers on the use of the machines. Finally, the action was moot because the Sequoia machines had been provided and there was no reasonable expectation that the machines would not have been used.

**Holding**

the case was dismissed for lack of jurisdiction.

**Should the Case be Researched Further?**

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<tr>
<td>Troiano v. Supervisor of Elections</td>
<td>United States Court of Appeals for the Eleventh Circuit</td>
<td>382 F.3d 1276; 2004 U.S. App. LEXIS 18497</td>
<td>September 1, 2004</td>
<td>Plaintiff visually impaired registered voters sued defendant county election supervisor, alleging that the failure to make available audio components in the future.</td>
<td>audio components available in the future. The supervisor's motion for summary judgment was granted. The voters' motion for summary judgment was denied.</td>
<td>No</td>
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The district court granted the election supervisor summary judgment on the grounds that the voters did not have standing to assert their claims and the claims were moot. The voters' motion for summary judgment was denied.
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<td>voting booths to assist persons who were blind or visually impaired violated state and federal law. The United States District Court for the Southern District of Florida entered summary judgment in favor of the election supervisor. The voters appealed.</td>
<td>appellate court agreed that the case was moot because the election supervisor had furnished the requested audio components and those components were to be available in all of the county's voting precincts in upcoming elections. Specifically, the election supervisor had ceased the allegedly illegal practice of limiting access to the audio</td>
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components prior to receiving notice of the litigation. Moreover, since making the decision to use audio components in every election, the election supervisor had consistently followed that policy and taken actions to implement it even prior to the litigation. Thus, the appellate court could discern no hint that she had any intention of removing the
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<tr>
<td>Am. Ass'n of People with Disabilities v. Smith</td>
<td>United States District Court for the Middle District of Florida</td>
<td>227 F. Supp. 2d 1276; 2002 U.S. Dist. LEXIS 21373</td>
<td>October 16, 2002</td>
<td>Plaintiff organization of people with disabilities and certain visually and manually impaired voters filed an action against defendant state</td>
<td>accessible voting machines in the future. Therefore, the voters' claims were moot, and the district court's dismissal was affirmed for lack of subject matter jurisdiction. The decision was affirmed.</td>
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<td>and local election officials and members of a city council, claiming violation of the Americans with Disabilities Act, 42 U.S.C.S. § 12101 et seq., and the Rehabilitation Act of 1973, and Fla. Const. art. VI, § 1. Defendants filed motions to dismiss.</td>
<td>order to vote, the impaired individuals relied on the assistance of third parties. The court held that it could not say that plaintiffs would be unable to prove any state of facts that would satisfy the ripeness and standing requirements. The issue of whether several Florida statutory sections were violative of the Florida Constitution were so intertwined</td>
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with the federal claims that to decline supplemental jurisdiction be an abuse of discretion. Those statutes which provided for assistance in voting did not violate Fla. Const. art. VI, § 1. Because plaintiffs may be able to prove that visually and manually impaired voters were being denied meaningful access to the service, program, or activity, the
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<td>court could not say with certainty that they would not be entitled to relief under any state of facts which could be proved in support of their claims. Defendant council members were entitled to absolute legislative immunity. The state officials' motion to dismiss was granted in part such that the counts were dismissed with prejudice to the extent plaintiffs</td>
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<td>asserted that they had been excluded from or denied the benefits of a program of direct and secret voting and in part was dismissed with leave to amend. The local officials motion to dismiss was granted in part such that all counts against the city council members were dismissed.</td>
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<tr>
<td>United States v.</td>
<td>Alaska</td>
<td>05-CR-074</td>
<td>December 5, 2005</td>
<td>Mejorada-Lopez, a Mexican citizen, completed several voter registration applications to register to vote in Alaska and voted in the 2000, 2002, and 2004 general elections. He was charged with three counts of voting by a non-citizen in violation of 18 U.S.C. section 611 and pled guilty. Mejorada-Lopez was sentenced to probation for</td>
<td>No</td>
<td>N/A</td>
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<tr>
<td>United States v. Shah</td>
<td>Colorado</td>
<td>1:04-CR-00458</td>
<td>March 1, 2005</td>
<td>Shah was indicted on two counts of providing false information concerning United States citizenship in order to register to vote in violation of 18 U.S.C. section 911 and 1015(f). Shah was convicted on both counts.</td>
<td>No</td>
<td>N/A</td>
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<tr>
<td>United States v. Mohsin Ali</td>
<td>Northern Florida</td>
<td>4:05-CR-47</td>
<td>January 17, 2006</td>
<td>A misdemeanor was filed against Ali charging him with voting by a non-citizen of 18 U.S.C. section 611. Trial was set for January 17, 2006</td>
<td>No</td>
<td>N/A</td>
<td>Yes—need information on the outcome of the trial.</td>
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<tr>
<td>United States v. Chaudhary</td>
<td>Northern Florida</td>
<td>4:04-CR-00059</td>
<td>May 18, 2005</td>
<td>Chaudhary was indicted for misuse of a social security number in violation of 42 U.S.C. section 408 and for making a false claim of United States citizenship on a 2002 driver’s license application in violation of 18 U.S.C. section 911. A superseding indictment was returned, charging Chaudhary with falsely claiming United States citizenship on a driver’s license</td>
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<tr>
<td>United States v. Velasquez</td>
<td>Southern Florida</td>
<td>1:03-CR-20233</td>
<td>September 9, 2003</td>
<td>Velasquez, a former 1996 and 1998 candidate for the Florida legislature, was indicted on charges of misrepresenting United States citizenship in connection with voting and for making false statements</td>
<td>No</td>
<td>N/A</td>
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The case involved Velasquez, a former candidate for the Florida legislature, who was convicted of the false citizenship claim on his voter registration application. He was indicted on charges of misrepresenting United States citizenship in connection with voting and for making false statements.
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<tr>
<td>United States v. McKenzie; United States v. Francois; United States v. Exavier; United States v. Lloyd Palmer; United</td>
<td>Southern Florida</td>
<td>0:04-CR-60160; 1:04-CR-20488; 0:04-CR-60161; 0:04-CR-60159;</td>
<td>July 15, 2004</td>
<td>Velasquez was convicted on two counts of making false statements on his naturalization application to the INS concerning his voting history.</td>
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<tr>
<td>United States v. Brooks</td>
<td>Southern Illinois</td>
<td>3:03-CR-30201</td>
<td>February 12, 2004</td>
<td>East St. Louis election official Leander Brooks was indicted for</td>
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<td>section 1973i(c). All four pled guilty. Also indicted were four additional Democrat committeemen, Charles Powell, Jr., Jesse Lewis, Sheila Thomas, Kelvin Ellis, and one precinct worker, Yvette Johnson, on conspiracy and vote buying charges in violation of 18 U.S.C. section 371 and 42 U.S.C. section 1973i(c). All five defendants were convicted. Kelvin Ellis</td>
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<td>United States v. McIntosh</td>
<td>Kansas</td>
<td>2:04-CR-20142</td>
<td>December 20, 2004</td>
<td>also pled guilty to one count of 18 U.S.C. section 1512(c)(2) relative to a scheme to kill one of the trial witnesses and two counts of 18 U.S.C. section 1503 relative to directing two other witnesses to refuse to testify before the grand jury.</td>
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<td>A felony information was filed against lawyer Leslie McIntosh for voting in both Wyandotte County, Kansas and Jackson</td>
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<td>United States v. Conley; United States v. Slone; United States v.</td>
<td>Eastern Kentucky</td>
<td>7:03-CR-00013; 7:03-CR-00014;</td>
<td>March 28, 2003 and April 24, 2003</td>
<td>County, Missouri, in the general elections of 2000 and 2002 in violation of 42 U.S.C. section 1973i(e). A superseding misdemeanor information was filed, charging McIntosh with causing the deprivation of constitutional rights in violation of 18 U.S.C. section 242, to which the defendant pled guilty.</td>
<td>Ten people were indicted on vote buying charges in</td>
<td>No</td>
<td>N/A</td>
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<td>Name of Case</td>
<td>District</td>
<td>Case Number</td>
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<td>United States v. Hays, et al.</td>
<td>Eastern Kentucky</td>
<td>7:03-CR-00011</td>
<td>March 7, 2003</td>
<td>Ten defendants were indicted for conspiracy and vote buying for a local judge in Pike County, Kentucky, in the 2002 general election, in violation of 42 U.S.C. section</td>
<td>No</td>
<td>N/A</td>
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<td>United States v. Turner, et al.</td>
<td>Eastern Kentucky</td>
<td>3:05-CR-00002</td>
<td>May 5, 2005</td>
<td>Three defendants were indicted for vote buying and mail fraud in connection with the 2000 elections in Knott, Letcher, Floyd, and Breathitt Counties, Kentucky, in violation of 42 U.S.C. section 1973i(c) and 18 U.S.C. section 371. Five defendants were convicted, one defendant was acquitted, and charges against four defendants were dismissed upon motion of the government.</td>
<td>No</td>
<td>N/A</td>
<td>Yes - need update on case status.</td>
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<td>United States v. Braud</td>
<td>Middle Louisiana</td>
<td>3:03-CR-00019</td>
<td>May 2, 2003</td>
<td>Tyrell Mathews Braud was indicted on three counts of making false declarations to a grand jury in connection with his 2002 fabrication of eleven voter registration applications, in violation of 18 U.S.C. section 1623. Braud pled guilty on all counts.</td>
<td>No</td>
<td>N/A</td>
<td>No</td>
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<tr>
<td>United States v. Thibodeaux</td>
<td>Western Louisiana</td>
<td>6:03-CR-60055</td>
<td>April 12, 2005</td>
<td>St. Martinsville City Councilwoman Pamela C. Thibodeaux was indicted on</td>
<td>No</td>
<td>N/A</td>
<td>No</td>
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<td>United States v. Scherzer;</td>
<td>Western</td>
<td>4:04-CR-00401; 4:04-CR-</td>
<td>January 7,</td>
<td>two counts of conspiring to submit false voter registration information, in violation of 18 U.S.C. section 371 and 42 U.S.C. section 1973i(c). She pled guilty to both charges.</td>
<td>No</td>
<td>N/A</td>
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<td>United States v. Goodrich;</td>
<td>Missouri</td>
<td>00402; 4:05-CR-00257;</td>
<td>2005; March 28,</td>
<td>Two misdemeanor informations were filed charging Lorraine Goodrich and James Scherzer, Kansas residents who voted in the 2000 and 2002 general elections on</td>
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<td>United States v. Jones; United States v. Martin</td>
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<td>4:05-CR-00258</td>
<td>2005; September 8,</td>
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<td>2005; October 13,</td>
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<td>both Johnson County, Kansas and in Kansas City, Missouri. The informations charged deprivation of a constitutional right by causing spurious ballots, in violation of 18 U.S.C. sections 242 and 2. Both pled guilty. Additionally, similar misdemeanor informations were filed against Tammy J. Martin, who voted in both Independence and Kansas</td>
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<td>United States v. Raymond; United States v. McGee; United States v. Tobin; United States v. Hansen</td>
<td>New Hampshire</td>
<td>04-CR-00141; 04-CR-00146; 04-CR-00216; 04-CR-00054</td>
<td>December 15, 2005</td>
<td>Two informations were filed charging Allen Raymond, former president of a Virginia-based political consulting firm called GOP Marketplace, and Charles McGee, former executive director of the City, Missouri in the 2004 general election and Brandon E. Jones, who voted both in Raytown and Kansas City, Missouri in the 2004 general election. Both pled guilty.</td>
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<td>New Hampshire State Republican Committee, with conspiracy to commit telephone harassment using an interstate phone facility in violation of 18 U.S.C. section 371 and 47 U.S.C. section 223. The charges stem from a scheme to block the phone lines used by two Manchester organizations to arrange drives to the polls during the 2002 general</td>
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<td>election. Both pled guilty. James Tobin, former New England Regional Director of the Republican National Committee, was indicted on charges of conspiring to commit telephone harassment using an interstate phone facility in violation of 18 U.S.C. section 371 and 47 U.S.C. section 223. An information was filed charging Shaun Hansen, the</td>
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<td>returned against Tobin charging conspiracy to impede the constitutional right to vote for federal candidates, in violation of 18 U.S.C. section 241 and conspiracy to make harassing telephone calls in violation of 47 U.S.C. section 223. Tobin was convicted of one count of conspiracy to commit telephone harassment and one count of aiding and abetting of</td>
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<tr>
<td>United States v. Workman</td>
<td>Western North Carolina</td>
<td>1:03-CR-00038</td>
<td>June 30, 2003</td>
<td>A ten-count indictment was returned charging Joshua Workman, a Canadian citizen, with voting and related offenses in the 200 and 2002 primary and general elections in Avery County, North Carolina, in violation of 18 U.S.C. sections 611, 911, 1001, and 1015(f). Workman pled guilty to providing false information to election</td>
<td>No</td>
<td>N/A</td>
<td>No</td>
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officials and to a federal agency.

Anita and Valerie Moore pled guilty.
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<tbody>
<tr>
<td>United States v. Vargas</td>
<td>South Dakota</td>
<td>05-CR-50085</td>
<td>December 22, 2005</td>
<td>An indictment was filed against Rudolph Vargas, for voting more than once at Pine Ridge in the 2002 general election in violation of 42 U.S.C. section 1973i(e). Vargas pled guilty.</td>
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<td>N/A</td>
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<tr>
<td>United States v. Stapleton;</td>
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<td>2:04-CR-00173;</td>
<td>2005;</td>
<td>U.S.C. section 1962. Wells was found guilty. A felony indictment was</td>
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<td>United States v. Thomas E. Esposito;</td>
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<td>2:05-CR-00002; 05-CR-00019; 05-CR-00148; 05-CR-00161</td>
<td>October 11, 2005; December 13, 2005</td>
<td>filed against Logan County sheriff Johnny Mendez for conspiracy to defraud the United States in violation 18 U.S.C section 371. Mendez pled guilty. An information was filed charging former Logan County police chief Alvin Ray Porter, Jr., with making expenditures to influence voting in violation of 18</td>
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<td>U.S.C. section 597. Porter pled guilty. Logan County attorney Mark Oliver Hrutkay was charged by information with mail fraud in violation of 18 U.S.C. section 1341. Hrutkay pled guilty. Earnest Stapleton, commander of the local VFW, was charged by information with mail fraud. He pled guilty. An information was filed charging Thomas E. Esposito, a former mayor</td>
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<td>of the City of Logan, with concealing the commission of a felony, in violation of 18 U.S.C. section 4. Esposito pled guilty. John Wesley Nagy, Logan County Court marshall, pled guilty to making false statements to a federal agent, a violation of 18 U.S.C. section 1001. An information charging Glen Dale Adkins, county clerk of Logan County, with accepting payment for voting, in</td>
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<td>United States v. Adkins, et al.</td>
<td>Southern West Virginia</td>
<td>2:04-CR-00162</td>
<td>December 28 &amp; 30, 2005</td>
<td>Jackie Adkins was indicted for vote buying in Lincoln County, West Virginia, in violation of 42 U.S.C. section 1973i(c). A superceding indictment added Wandell “Rocky” Adkins to the indictment and charged both</td>
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<td>defendants with conspiracy to buy votes in violation of 18 U.S.C. section 371 and vote buying. A second superseding indictment was returned which added three additional defendants, Gregory Brent Stowers, Clifford Odell &quot;Groundhog&quot; Vance, and Toney &quot;Zeke&quot; Dingess, to the conspiracy and vote buying indictment. Charges were later dismissed against Jackie Adkins. A third</td>
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<td>superseding indictment was returned adding two additional defendants, Jerry Allen Weaver and Ralph Dale Adkins. A superseding information was filed charging Vance with expenditures to influence voting, in violation of 18 U.S.C. section 597. Vance pled guilty. Superseding informations were filed against Stowers and Dingess for expenditures to influence</td>
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<td>voting, in violation of 42 U.S.C. section 1973i(e). Five more indictments were later returned charging Cynthia C. Alicea with multiple voting in violation of 42 U.S.C. section 1973i(e) and convicted felons Deshawn B. Brooks, Alexander T. Hamilton, Derek G. Little, and Eric L. Swift with falsely certifying that they were</td>
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Indictments were filed against Davis and Byas charging them with double voting. Four more indictments were returned charging convicted felons Ethel M. Anderson, Jiyto L. Cox, Correan F. Edwards, and Joseph J. Gooden with falsely certifying that they were eligible to vote in violation of 42 U.S.C. section 1973gg-10(2)(B).
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<td>eligible to vote. Ocasio and Hamilton pled guilty. Prude was found guilty. A mistrial was declared in the Sanders case. Brooks was acquitted. Byas signed a plea agreement agreeing to plead to a misdemeanor 18 U.S.C. section 242 charge. Swift moved to change his plea. Davis was found incompetent to stand trial so the government dismissed the case. Gooden is</td>
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<td>a fugitive. Alicea was acquitted. Four cases are pending --- Anderson, Cox, Edwards, and Little.</td>
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<td>Johnson v.</td>
<td>United States District Court for the Southern District of Florida</td>
<td>214 F. Supp. 2d 1333; 2002 U.S. Dist. LEXIS 14782</td>
<td>July 18, 2002</td>
<td>Plaintiff felons sued defendant state officials for alleged violations of their constitutional rights. The officials moved and the felons cross-moved for summary judgment.</td>
<td>The felons had all successfully completed their terms of incarceration and/or probation, but their civil rights to register and vote had not been restored. They alleged that Florida's disenfranchisement law violated their rights under First, Fourteenth, Fifteenth, and Twenty--Fourth Amendments to the United States Constitution, as well as § 1983 and §§ 2 and 10 of the Voting Rights Act of 1965. Each of the felons' claims was fatally flawed.</td>
<td>No</td>
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The felons' exclusion from voting did not violate the Equal Protection or Due Process Clauses of the United States Constitution. The First Amendment did not guarantee felons the right to vote. Although there was evidence that racial animus was a factor in the initial enactment of Florida's disenfranchisement law, there was no evidence that race played a part in the re-enactment of that provision. Although it appeared that there was a disparate impact on...
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<tr>
<td>Farrakhan v. Locke</td>
<td>United States District Court for the Eastern District of Washington</td>
<td>2000 U.S. Dist. LEXIS 22212</td>
<td>December 1, 2000</td>
<td>Plaintiffs, convicted felons who were also racial minorities, sued defendants for alleged</td>
<td>minorities, the cause was racially neutral. Finally, requiring the felons to pay their victim restitution before their rights would be restored did not constitute an improper poll tax or wealth qualification. The court granted the officials' motion for summary judgment and implicitly denied the felons' motion. Thus, the court dismissed the lawsuit with prejudice.</td>
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<td>cases, premised upon Wash. Const. art. VI § 3, resulted in the denial of the right to vote to racial minorities in violation of the VRA. They argued that race bias in, or the discriminatory effect of, the criminal justice system resulted in a disproportionate number of racial minorities being disenfranchised following felony convictions. The court concluded that Washington's felon disenfranchisement provision disenfranchised a disproportionate number of</td>
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<td>minorities; as a result, minorities were under-represented in Washington's political process. The Rooker-Feldman doctrine barred the felons from bringing any as-applied challenges, and even if it did not bar such claims, there was no evidence that the felons' individual convictions were born of discrimination in the criminal justice system. However, the felons' facial challenge also failed. The remedy they sought would create a new</td>
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<td>Farrakhan v. Washington</td>
<td>United States Court of Appeals for the Ninth Circuit</td>
<td>338 F.3d 109; 2003 U.S. App. LEXIS 14810</td>
<td>July 25, 2003</td>
<td>Plaintiff inmates sued defendant state officials, claiming that Washington state's felon disenfranchisement scheme constitutes improper race-based vote denial</td>
<td>Upon conviction of infamous crimes in the state, (that is, crimes punishable by death or imprisonment in a state correctional facility), the inmates were disenfranchised.</td>
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<td>in violation of § 2 of the Voting Rights Act. The United States District Court for the Eastern District of Washington granted of summary judgment dismissing the inmates' claims. The inmates appealed.</td>
<td>The inmates claimed that the disenfranchisement scheme violated § 2 because the criminal justice system was biased against minorities, causing a disproportionate minority representation among those being disenfranchised. The appellate court held, inter alia, that the district court erred in failing to consider evidence of racial bias in the state's criminal justice system in determining whether the state's felon disenfranchisement laws resulted in</td>
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<td>denial of the right to vote on account of race. Instead of applying its novel &quot;by itself&quot; causation standard, the district court should have applied a totality of the circumstances test that included analysis of the inmates' compelling evidence of racial bias in Washington's criminal justice system. However, the inmates lacked standing to challenge the restoration scheme because they presented no evidence of their eligibility, much</td>
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<td>Muntaqim v. Coombe</td>
<td>United States Court of Appeals for the Second Circuit</td>
<td>366 F.3d 102; 2004 U.S. App. LEXIS 8077</td>
<td>April 23, 2004</td>
<td>Plaintiff inmate appealed a judgment of the United States District Court for the Northern District of New York, which granted summary judgment in favor of defendants in the inmate's action alleging violation.</td>
<td>less even allege that they were eligible for restoration, and had not attempted to have their civil rights restored. The court affirmed as to the eligibility claim but reversed and remanded for further proceedings to the bias in the criminal justice system claim.</td>
<td>N/A</td>
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<td>New York law. Applying the Act to state law would alter the traditional balance of power between the states and the federal government. The court was not convinced that there was a congruence and proportionality between the injury to be prevented or remedied (i.e., the use of vote denial and dilution schemes to avoid the strictures of the VRA), and the means adopted to that end (i.e., prohibition of state felon disenfranchisement law that resulted in</td>
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Should the Case be Researched Further

Vote denial or dilution but were not enacted with a discriminatory purpose. Further, there was no clear statement from Congress that the Act applied to state disenfranchisement statutes. Inter alia, defendants were entitled to qualified immunity as to claim asserted against them in their personal capacities. The

Further

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<td>Johnson v. Governor of Fla.</td>
<td>United States Court of Appeals for the Eleventh Circuit</td>
<td>353 F.3d 1287; 2003 U.S. App. LEXIS 25859</td>
<td>December 19, 2003</td>
<td>Plaintiffs, ex--felon citizens of Florida, on their own right and on behalf of others, sought review of a decision of the United States District Court for the Southern District of Florida, which granted summary judgment to defendants, members of the Florida Clemency Board in their official capacity. The citizens challenged the validity of the Florida felon disenfranchisement laws.</td>
<td>The citizens alleged that Fla. Const. art. VI, § 4 (1968) was racially discriminatory and violated their constitutional rights. The citizens also alleged violations of the Voting Rights Act. The court of appeals initially examined the history of Fla. Const. art. VI, § 4 (1968) and determined that the citizens had presented evidence that historically the disenfranchisement provisions were motivated by a</td>
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<td>discriminatory animus. The citizens had met their initial burden of showing that race was a substantial motivating factor. The state was then required to show that the current disenfranchisement provisions would have been enacted absent the impermissible discriminatory intent. Because the state had not met its burden, summary judgment should not have been granted. The court of appeals found that the claim under the Voting Rights Act, also needed to</td>
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be remanded for further proceedings. Under a totality of the circumstances, the district court needed to analyze whether intentional racial discrimination was behind the Florida disenfranchisement provisions. The court affirmed the district court's decision to grant summary judgment on the citizens' poll tax claim. The court reversed the district court's decision to grant summary judgment to the Board on the claims under the equal protection clause and for
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<td>Fischer v. Governor</td>
<td>Supreme Court of New Hampshire</td>
<td>145 N.H. 28; 749 A.2d 321; 2000 N.H. LEXIS 16</td>
<td>March 24, 2000</td>
<td>Appellant State of New Hampshire challenged a ruling of the superior court that the felon disenfranchisement statutes violate N.H. Const. pt. I, Art. 11. Appellee was incarcerated at the New Hampshire State Prison on felony convictions. When he requested an absentee ballot to vote from a city clerk, the request was denied. The clerk sent him a copy of N.H. Rev. Stat. Ann. § 607(A)(2) (1986), which prohibits a felon from voting &quot;from the time of his sentence until his final discharge.&quot; The trial court</td>
<td>violation of federal voting laws and remanded the matter to the district court for further proceedings.</td>
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declared the disenfranchisement statutes unconstitutional and ordered local election officials to allow the plaintiff to vote. Appellant State of New Hampshire challenged this ruling. The central issue was whether the felon disenfranchisement statutes violated N.H. Const. pt. I, art. 11. After a review of the article, its constitutional history, and legislation pertinent to the right of felons to vote, the court concluded that the legislature retained the
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<td>Johnson v. Governor of Court of</td>
<td>United States Court of</td>
<td>405 F.3d 1214;</td>
<td>April 12, 2005</td>
<td>Plaintiff individuals sued</td>
<td>The individuals argued that the authority under the article to determine voter qualifications and that the felon disenfranchisement statutes were a reasonable exercise of legislative authority, and reversed. Judgment reversed because the court concluded that the legislature retained its authority under the New Hampshire Constitution to determine voter qualifications and that the felon disenfranchisement statutes were a reasonable exercise of legislative authority.</td>
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<td>Fla.</td>
<td>Appeals for the Eleventh Circuit</td>
<td>2005 U.S. App. LEXIS 5945</td>
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<td>defendant members of Florida Clemency Board, arguing that Florida's felon disenfranchisement law, Fla. Const. art. VI, § 4 (1968), violated the Equal Protection Clause and the Voting Rights Act. The United States District Court for the Southern District of Florida granted the members summary judgment. A divided appellate panel reversed. The panel opinion was vacated and a rehearing en banc was granted.</td>
<td>racial animus motivating the adoption of Florida's disenfranchisement laws in 1868 remained legally operative despite the reenactment of Fla. Const. art. VI, § 4 in 1968. The subsequent reenactment eliminated any discriminatory taint from the law as originally enacted because the provision narrowed the class of disenfranchised individuals and was amended through a deliberative process. Moreover, there was no allegation of racial</td>
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<td>discrimination at the time of the reenactment. Thus, the disenfranchisement provision was not a violation of the Equal Protection Clause and the district court properly granted the members summary judgment on that claim. The argument that the Voting Rights Act applied to Florida's disenfranchisement provision was rejected because it raised grave constitutional concerns, i.e., prohibiting a practice that the Fourteenth Amendment</td>
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| Mixon v. Commonwealth
Commonwealth Court of Pennsylvania | 759 A.2d 442; 2000 Pa. Commw. | September 18, 2000 | Respondents filed objections to petitioners' complaint seeking declaratory relief | Petitioner convicted felons were presently or had formerly been confined in state | No | N/A | No |
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<th>Name of Case</th>
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<td>LEXIS 534</td>
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<td>as to the unconstitutionality of the Pennsylvania Election Code, 25 Pa. Cons. Stat. §§ 2600 -- 3591, and the Pennsylvania Voter Registration Act, 25 Pa. Cons. Stat. §§ 961.101--961.5109, regarding felon voting rights.</td>
<td>prison. Petitioner elector was currently registered to vote in respondent state. Petitioners filed a complaint against respondent state seeking declaratory relief challenging as unconstitutional, state election and voting laws that excluded confined felons from the definition of qualified absentee electors and that barred a felon who had been released from a penal institution for less than five years from registering to vote. Respondents filed objections to petitioners'</td>
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<td>complaint. The court sustained respondents' objection that incarcerated felons were not unconstitutionally deprived of qualified absentee elector status because respondent state had broad power to determine the conditions under which suffrage could be exercised. However, petitioner elector had no standing and the court overruled objection as to deprivation of ex-felon voting rights. The court sustained respondents' objection since</td>
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<td>Rosello v. Calderon</td>
<td>United States District Court for the District of Puerto Rico</td>
<td>2004 U.S. Dist. LEXIS 27216</td>
<td>November 30, 2004</td>
<td>Plaintiff voters filed a § 1983 action against defendant government officials alleging violations the Due Process and Equal Protection Clauses of the U.S. Const. amend. XIV, resulting from the</td>
<td>incarcerated felons were not unconstitutionally deprived of qualified absentee elector status and petitioner elector had no standing, but objection that ex--incarcerated felons' voting rights were deprived was overruled since status penalized them.</td>
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<td>invalidity of absentee and split ballots in a gubernatorial election.</td>
<td>same office, were null. The court asserted jurisdiction over the disparate treatment claims, which arose under the U.S. Constitution. The court declined to exercise discretionary abstention because the case was not merely a facial attack on the constitutionality of a statute, but was mainly an applied challenge, requiring a hearing in order to develop the record, and because equal protection and due process were secured under the state and federal</td>
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<td>constitutions. The court held that the voters had a fundamental due process right created by Puerto Rico Election Law and suffered an equal protection violation in further violation of the U.S. Const. amend. I right to vote, thereby creating their total disenfranchisement. The court held that the evidence created an inference that the split ballots were not uniformly treated and that it was required to examine a mixed question of fact and constitutional law.</td>
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<td>Woodruff v. Wyoming</td>
<td>United States Court of Appeals for the Tenth Circuit</td>
<td>49 Fed. Appx. 199; 2002 U.S. App. LEXIS 21060</td>
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<td>N.J. State Conf.--NAACP v. Harvey</td>
<td>Superior Court of New Jersey, Appellate Division</td>
<td>381 N.J. Super. 155; 885 A.2d 445; 2005 N.J. Super. LEXIS 316</td>
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<td>King v. City of Boston</td>
<td>United States District Court for the District of Massachusetts</td>
<td>2004 U.S. Dist. LEXIS 8421</td>
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<td>rational choices were implicated in the statute's disenfranchisement of persons under guardianship, persons disqualified because of corrupt elections practices, persons under 18 years of age, as well as incarcerated felons. Specifically, incarcerated felons were disqualified during the period of their imprisonment when it would be difficult to identify their address and ensure the accuracy of their ballots. Therefore, the court concluded that Mass. Gen. Laws ch. 51, § 1 did not</td>
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<td>Southwest Voter Registration Educ. Project v. Shelley</td>
<td>United States District Court for the Central District of California</td>
<td>278 F. Supp. 2d 1131; 2003 U.S. Dist. LEXIS 14413</td>
<td>August 15, 2003</td>
<td>Plaintiffs, several groups, brought suit alleging that the proposed use of &quot;punch-card&quot; balloting machines in the California election would violate the United States Constitution and Voting Rights Act. Plaintiffs moved for an order delaying that election, scheduled for October 7, 2003, until such time as it could be</td>
<td>Should the Case be Researched Further No</td>
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<td>votes on the basis of race, in violation of § 2 of the Voting Rights Act. While the court did not need to decide the res judicata issue at this juncture, there was ample reason to believe that plaintiffs would have had a difficult time overcoming it as they were seeking to establish the same constitutional violations alleged in prior litigation, but to secure an additional remedy. Plaintiffs failed to prove a likelihood of success on the merits with regard to both of their claims. Even if</td>
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Conducted without use of punch-card machines.
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<td>plaintiffs could show disparate treatment, such would not have amounted to illegal or unconstitutional treatment. The balance of hardships weighed heavily in favor of allowing the election to proceed. The public interests in avoiding wholesale disenfranchisement, and/or not plunging the State into a constitutional crisis, weighed heavily against enjoining the election. Plaintiffs' motion for preliminary injunction (consolidated with</td>
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<td>Igartua--de la Rosa v. United States</td>
<td>United States Court of Appeals for the First Circuit</td>
<td>417 F.3d 145; 2005 U.S. App. LEXIS 15944</td>
<td>August 3, 2005</td>
<td>Plaintiff, a U.S. citizen residing in Puerto Rico, appealed from an order of the United States District Court for the District of Puerto Rico, that rejected his claim that he was deprived of the constitutional right to vote for President and Vice President of the United States, and was also violative of three treaty obligations of the United States. The putative voter had brought the same claims twice before. The court pointed out that U.S. law granted to the citizens of states the right to vote for the slate of electors to represent that state. Although modern ballots omitted the names of the electors and listed only the candidates, and in form it appeared that the citizens were voting for President and Vice President directly, they were denied.</td>
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<td>not, but were voting for electors. Puerto Rico was not a state, and had not been enfranchised as the District of Columbia had by the 23rd Amendment. The franchise for choosing electors was confined to &quot;states&quot; by the Constitution. The court declined to turn to foreign or treaty law as a source to reverse the political will of the country. The judgment of the district court was affirmed.</td>
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<td>Powers v. Donahue</td>
<td>Supreme Court of New York, Appellate Division, First Department</td>
<td>276 A.D.2d 157; 717 N.Y.S.2d 550; 2000 N.Y. App. Div. LEXIS 12644</td>
<td>December 5, 2000</td>
<td>Petitioner appealed an order of the supreme court, which denied his motion to direct the New York County Board of Elections, in cases where more than one absentee ballot was returned by a voter, to count only the absentee ballot listing correct candidates' names.</td>
<td>When the New York County Board of Elections learned some absentee ballots mailed to voters in one district listed the wrong candidates for state senator it sent a second set of absentee ballots to absentee voters informing them the first ballot was defective and requesting they use the second ballot. The board agreed if two ballots were received from the same voter, only the corrected ballot would be counted.</td>
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<td>Appellant candidate moved in support of the board's determination. Respondent candidate opposed the application, contending that only the first ballot received should have been canvassed. The trial court denied appellant's motion, ruling that pursuant to New York law, where two ballots were received from the same voter, only the ballot with the earlier date was to be accepted. The court found the</td>
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<td>Goodwin v. St. Thomas--</td>
<td>Territorial Court of the Virgin Islands</td>
<td>43 V.I. 89; 2000</td>
<td>December 13, 2000</td>
<td>Political</td>
<td>Plaintiff alleged that defendants local board officials should have resolved the dispute as they proposed. The order was modified and the motion granted to the extent of directing the New York County Board of Elections, in cases where more than one absentee ballot was returned by a voter, to accept only the corrected ballot postmarked on or before November 7, 2000, and otherwise affirmed.</td>
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<td>St. John Bd. of Elections</td>
<td>Virgin Islands</td>
<td>V.I. LEXIS 15</td>
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<td>candidate alleged that certain general election absentee ballots violated territorial election law, and that the improper inclusion of such ballots by defendants, election board and supervisor, resulted in plaintiff's loss of the election. Plaintiff sued defendants seeking invalidation of the absentee ballots and certification of the election results</td>
<td>counted unlawful absentee ballots that lacked postmarks, were not signed or notarized, were in unsealed and/or torn envelopes, and were in envelopes containing more than one ballot. Prior to tabulation of the absentee ballots, plaintiff was leading intervenor for the final senate position, but the absentee ballots entitled intervenor to the position. The court held that plaintiff was not entitled to relief since he failed to</td>
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<td>tabulated without such ballots.</td>
<td>establish that the alleged absentee voting irregularities would require invalidation of a sufficient number of ballots to change the outcome of the election. While the unsealed ballots constituted a technical violation, the outer envelopes were sealed and thus substantially complied with election requirements. Further, while defendants improperly counted one ballot where a sealed ballot</td>
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<td>Townson v. Stonichers</td>
<td>Supreme Court of Alabama</td>
<td>2005 Ala. LEXIS</td>
<td>December 9, 2005</td>
<td>The circuit court</td>
<td>envelope and a loose ballot were in the same outer envelope, the one vote involved did not change the election result. Plaintiff's other allegations of irregularities were without merit since ballots without postmarks were valid, ballots without signatures were not counted, and ballots without notarized signatures were proper. Request for declaratory and injunctive relief denied.</td>
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<td>overturned the results of a mayoral election after reviewing the absentee ballots cast for said election, resulting in a loss for appellant incumbent based on the votes received from appellee voters. The incumbent appealed, and the voters cross--appealed. In the meantime, the trial court stayed enforcement of its judgment pending</td>
<td>challenged the judgment entered by the trial court arguing that it impermissibly included or excluded certain votes. The appeals court agreed with the voters that the trial court should have excluded the votes of those voters for the incumbent who included an improper form of identification with their absentee ballots. It was undisputed that at least 30 absentee voters who voted for the incumbent provided with</td>
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<td>resolution of the appeal.</td>
<td>their absentee ballots a form of identification that was not proper under Alabama law. As a result, the court further agreed that the trial court erred in allowing those voters to somewhat &quot;cure&quot; that defect by providing a proper form of identification at the trial of the election contest, because, under those circumstances, it was difficult to conclude that those voters made an honest effort to comply with the law. Moreover, to</td>
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<td>Gross v. Albany County Bd. of Elections</td>
<td>Supreme Court of New York, Appellate Division, Third Department</td>
<td>10 A.D.3d 476; 781 N.Y.S.2d 172; 2004 N.Y. App. Div. LEXIS</td>
<td>August 23, 2004</td>
<td>Appellant candidates appealed from a judgment entered by the supreme court, which partially</td>
<td>count the votes of voters who failed to comply with the essential requirement of submitting proper identification with their absentee ballots had the effect of disenfranchising qualified electors who choose not to vote but rather than to make the effort to comply with the absentee-voting requirements. Affirmed.</td>
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The candidates argued that the Board violated a federal court order regarding the election. The appellate court
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<td>granted the candidates' petition challenging the method used by respondent Albany County Board of Elections for counting absentee applications and ballots for the office of Albany County Legislator, 26th and 29th Districts, in a special general election required by the federal courts.</td>
<td>held that absentee ballots that were sent to voters for the special general election based solely on their applications for the general election were properly voided. The Board had no authority to issue the ballots without an absentee ballot application for the special general election. Two ballots were properly invalidated as the Board failed to retain the envelopes. Ballots were properly counted for voters who failed to</td>
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<td>identify their physician on their applications. A ballot was properly counted where the Board failed to scrutinize the sufficiency of the reason for the application. A ballot containing two signatures was properly rejected. A ballot was properly rejected due to extraneous marks outside the voting square. A ballot was properly counted despite the failure of the election inspector to witness the voter's signature. A ballot was</td>
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<td>Erlandson v. Kiffmeyer</td>
<td>Supreme Court of Minnesota</td>
<td>659 N.W.2d 724; 2003 Minn. LEXIS 196</td>
<td>April 17, 2003</td>
<td>Petitioners, representing the Democratic--Farmer--Labor Party, brought an action against respondents, the Minnesota Secretary of State and the Hennepin County Auditor, seeking relief</td>
<td>The appellate court found that, while it may have seemed unfair to the replacement candidate to count votes for other candidates from regular absentee ballots on which the replacement candidate did not appear, those were properly cast ballots voting for a properly counted ballot as the application stated the date of the voter's absence. A ballot was properly counted as the failure to date the application was cured by a time stamp. Affirmed.</td>
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<td>in regard to the election for United States Senator, following the death of Senator Wellstone. The issue concerned the right of absentee voters to obtain replacement ballots. Individuals intervened on behalf of the Republican Party. The instant court granted review.</td>
<td>nominated candidate. Petitioners' request that the Minnesota supreme court order that votes for United States Senator cast on regular absentee ballots not be counted was denied. A key issue was Minn. Stat. § 204B.41 (2002), which provided, in--part, that official supplemental ballots could not be mailed to absent voters to whom ballots were mailed before the official supplemental ballots were</td>
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<td>prepared. The supreme court held that, by treating similarly-situated voters differently, § 204B.41 violated equal protection guarantees and could not even survive rational basis review. For voters who cast their regular absentee ballots for Wellstone before the vacancy occurred, but were unable to go to their polling place on election day or pick up a replacement ballot by election day, the prohibition on</td>
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<td>People v. Deganutti</td>
<td>Appellate Court of Illinois, First District, Third Division</td>
<td>348 Ill. App. 3d 512; 810 N.E.2d 191; 2004 Ill. App.</td>
<td>May 12, 2004</td>
<td>Defendant appealed from a judgment of the circuit court, which convicted</td>
<td>Defendent went to the voters' homes and obtained their signatures on absentee ballot</td>
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<td>LEXIS 518</td>
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<td>defendant on charges of unlawful observation of voting and on charges of absentee ballot violations in connection with the completion and mailing of the absentee ballots of two voters.</td>
<td>request forms. Once the ballots were mailed to the voters, defendant returned to the homes. With voter one, defendant sat on the couch with the voter and instructed which numbers to punch on the ballot. With voter two, defendant provided a list of numbers and stood nearby as voter two completed the ballots. Defendant then looked at the ballot and had voter two re-punch a number that had not</td>
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<td>punched cleanly. Defendant then put the ballots in the mail for the voters. On appeal, she argued insufficient evidence to sustain her convictions. The court affirmed, holding that (1) the circumstantial evidence surrounding defendant's presence as the voters completed their ballots supported the unlawful observation convictions; (2) the fact that defendant knowingly took the voters ballots</td>
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<td>Jacobs v. Seminole County Canvassing Bd.</td>
<td>Supreme Court</td>
<td>773 So. 2d 519; 2000 Fla. LEXIS 2404</td>
<td>December 12, 2000</td>
<td>In an election contest, the First District court of appeal certified a trial court order to be of great public importance and to require and mailed them, a violation of Illinois law supported her conviction, and (3) the fact that the statutes defendant was convicted under required only a knowing mental state rather than criminal intent did not violate substantive due process. Affirmed.</td>
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<td>immediate resolution by the supreme court. The trial court denied appellants' request to invalidate absentee ballot requests in Seminole County in the 2000 presidential election.</td>
<td>Forms mailed by one party failed to include either a space for the voter identification number or the preprinted number. Representatives from that party were allowed to add voter identification numbers to request forms after they were returned, and absentee ballots were sent to the persons named on the request forms. The supreme court affirmed the trial court's refusal to invalidate the</td>
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ballot requests, and adopted the trial court's reasoning that the information required, which included the voter identification number, was directory rather than mandatory. The trial court properly found that the evidence did not support a finding of fraud, gross negligence, or intentional wrongdoing. Allowing one party to correct ballots did not constitute illegal disparate treatment because there was no need to correct the
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<td>Gross v. Albany County Bd. of Elections</td>
<td>Court of Appeals of New York</td>
<td>3 N.Y.3d 251; 819 N.E.2d 197; 785 N.Y.S.2d 729; 2004 N.Y. LEXIS 2412</td>
<td>October 14, 2004</td>
<td>Appellant candidates sought review from an order of the Appellate Division, which affirmed a trial court order holding that absentee ballots from a special general election were not to be canvassed because respondent Albany County Board of Elections failed to follow the set procedure for those voters.</td>
<td>Due to a challenge to a redistricting plan, the Board was enjoined from conducting primary and general elections for certain county districts. A special primary election was directed, with a special general election to be held &quot;expeditiously thereafter.&quot; Absentee ballot requests for the first special election were based on prior requests, but new requests had to be</td>
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made for the general election. However, the Board forwarded absentee ballots for that election as well, based on the prior requests. Candidates in two close races thereafter challenged those absentee ballots, as they violated the procedure that was to be followed. The trial court held that the ballots should not be canvassed, which decision was affirmed on appeal. On further review due to dissenting opinions, the
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<td>court found that the ballots were in violation of the federal court order that directed the procedure to be followed, as well as in violation of New York election law. The court concluded that the Board’s error was not technical, ministerial, or inconsequential because it was central to the substantive process, and the voters who used absentee ballots were not determined to be &quot;duly qualified electors.&quot;</td>
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<td>In re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election</td>
<td>Supreme Court of Pennsylvania</td>
<td>577 Pa. 231; 843 A.2d 1223; 2004 Pa. LEXIS 431</td>
<td>March 8, 2004</td>
<td>A county elections board voided certain absentee ballots cast in the November 4, 2003, general election. The court of common pleas held that absentee ballots delivered by third persons were valid and should be counted. The commonwealth court affirmed the trial court's decision. The state supreme court granted allocatur. Appellants and appellees were certain</td>
<td>The absentee ballots at issue were hand-delivered to the county elections board by third persons on behalf of non-disabled voters. On appeal, the issue was whether non-disabled absentee voters could have third persons hand-deliver their ballots to the elections board where the board indicated that the practice was permitted. The state supreme court concluded that the &quot;in person&quot; delivery requirement was mandatory, and</td>
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<td>candidates and voters.</td>
<td>that absentee ballots delivered in violation of the provision were invalid, notwithstanding the board's erroneous instructions to the contrary. Under the statute's plain meaning, a non-disabled absentee voter had two choices: send the ballot by mail, or deliver it in person. Third-person hand-delivery of absentee ballots was not permitted. To ignore the law's clear instructions regarding in-person delivery</td>
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<td>In re Canvass of</td>
<td>Commonwealth Court of</td>
<td>839 A.2d 451; 2003</td>
<td>December 22, 2003</td>
<td>The Allegheny County</td>
<td>On appeal, the issue was whether certain absentee ballots delivered on behalf of non-disabled absentee voters were valid.</td>
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<td>Absentee Ballots of November 4, 2003</td>
<td>Pennsylvania</td>
<td>Pa. Commw. LEXIS 963</td>
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<td>Elections Board did not allow 74 challenged third-party hand--delivered absentee ballots to be counted in the statewide general election. The court of common pleas of Allegheny County reversed the Board's decision and allowed the 74 ballots to be counted. Appellant objecting candidates appealed the trial court's order.</td>
<td>non-disabled voters who voted by absentee ballots and had those ballots delivered by third parties to county election boards could have their ballots counted in the statewide general election. First, the appellate court concluded that political bodies had standing to appeal. Also, the trial court did not err by counting the 74 ballots because absentee voters could not be held responsible for following the statutory</td>
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<td>requirements of Pennsylvania election law where the Board knowingly failed to abide by the statutory language regarding the delivery of absentee ballots, changed its policy to require voters to abide by the language, and then changed its policy back to its original stance that voters did not have to abide by the statutory language, thereby misleading absentee voters regarding delivery requirements.</td>
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<td>United States v. Pennsylvania</td>
<td>United States District Court for the Middle District of Pennsylvania</td>
<td>2004 U.S. Dist. LEXIS 21167</td>
<td>October 20, 2004</td>
<td>Plaintiff United States sued defendant Commonwealth of</td>
<td>Under the circumstances, it was more important to protect the interest of the voters by not disenfranchising them than to adhere to the strict language of the statute. However, one ballot was not counted because it was not delivered to the Board. Affirmed with the exception that one voter’s ballot was stricken.</td>
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<td>Pennsylvania, governor, and state secretary, claiming that overseas voters would be disenfranchised if they used absentee ballots that included the names of two presidential candidates who had been removed from the final certified ballot and seeking injunctive relief to address the practical implications of the final certification of the slate of candidates so</td>
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<td>contention that voters protected by the Uniformed and Overseas Citizens Absentee Voting Act would be disenfranchised absent immediate injunctive relief because neither witness testified that any absentee ballots issued to UOCAVA voters were legally incorrect or otherwise invalid. Moreover, there was no evidence that any UOCAVA voter had complained or otherwise expressed concern regarding their ability or</td>
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<td>late in the election year.</td>
<td>right to vote. The fact that some UOCAVA voters received ballots including the names of two candidates who were not on the final certified ballot did not ipso facto support a finding that Pennsylvania was in violation of UOCAVA, especially since the United States failed to establish that the ballot defect undermined the right of UOCAVA voters to cast their ballots. Moreover, Pennsylvania had</td>
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<td>Hoblock v. Albany County Bd. of Elections</td>
<td>United States District Court for the Northern District of New York</td>
<td>341 F. Supp. 2d 169; 2004 U.S. Dist. LEXIS 21326</td>
<td>October 25, 2004</td>
<td>Plaintiffs, candidates and voters, sued defendant, the Albany County, New York,</td>
<td>Holding added substantial evidence that the requested injunctive relief, issuing new ballots, would have harmed the Pennsylvania election system and the public by undermining the integrity and efficiency of Pennsylvania's elections and increasing election costs. Motion for injunctive relief denied.</td>
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<td>Board of Elections, under § 1983, claiming that the Board violated plaintiffs' Fourteenth Amendment rights by refusing to tally the voters' absentee ballots. Plaintiffs moved for a preliminary injunction.</td>
<td>primary and general elections were ordered. The order stated that the process for obtaining and counting absentee ballots for the general election would follow New York election law, which required voters to request absentee ballots. However, the Board issued absentee ballots for the general election to all persons who had applied for an absentee ballot for the cancelled election. The voters used absentee ballots</td>
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<td>to vote; their ballots were later invalidated. A state court determined that automatically sending absentee ballots to those who had not filed an application violated the constitution of New York. The district court found that the candidates' claims could have been asserted in state court and were barred by res judicata, but the voters were not parties to the state court action. The candidates were not entitled to joinder and had</td>
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<td>not filed a motion to intervene. The voters established a likelihood of success on the merits, as the Board effectively took away their right to vote by issuing absentee ballots and then refusing to count them. The voters' claims involved more than just an &quot;unintended irregularity.&quot; The candidates' claims were dismissed, and their request for joinder or to intervene was denied. Plaintiffs' motion for a preliminary injunction preventing the</td>
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<td>Griffin v. Roupas</td>
<td>United States Court of Appeals for the Seventh Circuit</td>
<td>385 F.3d 1128; 2004 U.S. App. LEXIS 21476</td>
<td>October 15, 2004</td>
<td>In a suit brought by plaintiff working mothers against defendants, members of the Illinois State Board of Elections, alleging that the United States Constitution required Illinois to allow them to vote by absentee ballot, the mothers appealed from a decision of the United States District Court. The mothers contended that, because it was a hardship for them to vote in person on election day, the U.S. Constitution required Illinois to allow them to vote by absentee ballot. The district court dismissed the mothers' complaint. On appeal, the court held that the district court's ruling was correct, because, although it was possible that the board from certifying winners of the election was granted.</td>
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<td>problems created by absentee voting might be outweighed by the harm to voters who would lose their vote if they were unable to vote by absentee ballot, the striking of the balance between discouraging fraud and encouraging voter turnout was a legislative judgment with which the court would not interfere unless strongly convinced that such judgment was grossly awry. The court further held that Illinois</td>
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<td>law did not deny the mothers equal protection of the laws, because the hardships that prevented voting in person did not bear more heavily on working mothers than other classes in the community. Finally, the court held that, although the length and complexity of the Illinois ballot supported an argument for allowing people to vote by mail, such argument had nothing to do with the problems faced by working mothers. It</td>
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<td>Reitz v. Rendell</td>
<td>United States District Court for the Middle District of Pennsylvania</td>
<td>2004 U.S. Dist. LEXIS 21813</td>
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<td>Bush v. Hillsborough County Canvassing Bd.</td>
<td>United States District Court for the Northern District of Florida</td>
<td>123 F. Supp. 2d 1305; 2000 U.S. Dist. LEXIS 19265</td>
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<td>Kolb v.</td>
<td>Supreme Court</td>
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<td>Casella</td>
<td>Court of New York, Appellate Division, Fourth Department</td>
<td>A.D.2d 964; 705 N.Y.S.2d 746; 2000 N.Y. App. Div. LEXIS 3483</td>
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<td>People v. Woods</td>
<td>Court of Appeals of Michigan</td>
<td>241 Mich. App. 545; 616 N.W.2d 211; 2000 Mich. App. LEXIS 156</td>
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<td>Harris v. Florida Elections Canvassing Comm'n</td>
<td>United States District Court for the Northern District of Florida</td>
<td>122 F. Supp. 2d 1317; 2000 U.S. Dist. LEXIS 17875</td>
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<td>Weldon v. Berks County Dep't of Election Servs.</td>
<td>United States District Court for the Eastern District of Pennsylvania</td>
<td>2004 U.S. Dist. LEXIS 21948</td>
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<td>county, or city correctional facility as provided in Pa. Stat. Ann. tit. 25, § 3416.6 and Pa. Stat. Ann. tit. 25, § 3416.8. OVERVIEW: The congressman and representative sought to have the absentee ballots at issue set aside until a hearing could be held to determine whether any of the ballots were delivered to the county board of elections by a third party in violation of Pennsylvania law, whether any of the ballots were</td>
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<td>Qualkinbush v. Skubisz</td>
<td>Court of Appeals of Illinois, First District</td>
<td>822 N.E.2d 38; 2004 Ill. App. LEXIS 1546</td>
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<td>Panio v. Sunderland</td>
<td>Supreme Court of New York, Appellate Division, Second Department</td>
<td>14 A.D.3d 627; 790 N.Y.S.2d 136; 2005 N.Y. App. Div. LEXIS 3433</td>
<td>January 25, 2005</td>
<td>In proceedings filed pursuant to New York election law to determine the validity of certain absentee and affidavit ballots tendered for the office of 35th District Senator, appellants, a chairperson of</td>
<td>upon absentee voters by the restriction on who could mail an absentee ballot was slight and nondiscriminatory and substantially contributed to the integrity of the election process. Affirmed.</td>
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In proceedings filed pursuant to New York election law to determine the validity of certain absentee and affidavit ballots tendered for the office of 35th District Senator, appellants, a chairperson of...
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<td>the county Republican committee and the Republican candidate, both sought review of an order by the supreme court to count or not count certain ballots. Respondent Democratic candidate cross--appealed.</td>
<td>(1) deleting an order directing the county elections board (board) to count 160 affidavit ballots tendered by voters who appeared at the correct polling place but the wrong election district, as there were meaningful distinctions between those voters who went to the wrong polling place and those voters who went to the correct polling place but the wrong election district; (2) directing that the board not count</td>
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<td>10 affidavit ballots tendered in the wrong election district because of a map error, as there was no evidence that the voters in this category relied on the maps when they went to the wrong election districts; and (3) directing the board to count 45 absentee ballots tendered by poll workers, as it appeared that the workers substantially complied with the statute by providing a written statement that was the functional</td>
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<td>Pierce v. Allegheny County Bd. of Elections</td>
<td>United States District Court for the Western District of Pennsylvania</td>
<td>324 F. Supp. 2d 684; 2003 U.S. Dist. LEXIS 25569</td>
<td>November 13, 2003</td>
<td>Plaintiff voters sought to enjoin defendant election board from allowing three different procedures for third-party absentee ballot delivery, require the set aside of all absentee third-party delivered ballots in connection with the November 2003 election, prohibit those</td>
<td>equivalent of an application for a special ballot. Order modified and judgment affirmed. Intervenor political committees also moved to dismiss for lack of standing, lack of subject matter jurisdiction, and failure to state a claim, as well as abstention. Inter alia, the court found that abstention was appropriate under the Pullman doctrine because: (1) construction of Pennsylvania election law was not clear</td>
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<td>ballots from being delivered to local election districts after having been commingled with other absentee ballots, and convert a temporary restraining order to an injunction.</td>
<td>regarding whether the absentee ballot provision requiring hand-delivery to be &quot;in person&quot; was mandatory or directory; (2) the construction of the provision by state courts as mandatory or directory could obviate the need to determine whether there had been a Fourteenth Amendment equal protection violation; and (3) erroneous construction of the provision could disrupt very important state voting rights policies.</td>
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<td>However, the court had a continuing duty to consider the motion for temporary restraining order/preliminary injunction despite abstention. The court issued a limited preliminary injunction whereby the 937 hand--delivered absentee ballots at issue were set aside as &quot;challenged&quot; ballots subject to the election code challenge procedure. Any equal protection issues could be heard in state</td>
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<td>Friedman v. Snipes</td>
<td>United States District Court for the Southern District of Florida</td>
<td>345 F. Supp. 2d 1356; 2004 U.S. Dist. LEXIS 23739</td>
<td>November 9, 2004</td>
<td>Plaintiff registered voters sued defendant state and county election officials under § 1983 for alleged violations of their rights under 42 U.S.C.S. § 1971(a)(2)(B) of the Civil Rights Act, and the First and Fourteenth Amendments to the United States Constitution. The voters claimed they timely requested absentee ballots but (1) never received the requested ballot or (2) received a ballot when it was too late for them to submit the absentee ballot. The court held that 42 U.S.C.S. § 1971(a)(2)(B) was not intended to apply to the counting of ballots by those already deemed qualified to vote. The plain meaning of §</td>
<td>court by virtue of the state court's concurrent jurisdiction.</td>
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<td>moved for a temporary restraining order (TRO) and/or preliminary injunction. The court granted the TRO and held a hearing on the preliminary injunction.</td>
<td>1971(a)(2)(B) did not support the voters' claim that it should cover an error or omission on any record or paper or any error or omission in the treatment, handling, or counting of any record or paper. Further, because Florida election law only related to the mechanics of the electoral process, the correct standard to be applied here was whether Florida's important regulatory interests justified the restrictions imposed on their</td>
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<td>First and Fourteenth Amendment rights. The State's interests in ensuring a fair and honest election and counting votes within a reasonable time justified the light imposition on voting rights. The deadline for returning ballots did not disenfranchise a class of voters. Rather, it imposed a time deadline by which voters had to return their votes. So there was no equal protection violation.</td>
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<td>Preliminary injunction denied.</td>
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<td>Spencer v. Blackwell</td>
<td>United States District Court for the Southern District of Ohio</td>
<td>347 F. Supp. 2d 528; 2004 U.S. Dist. LEXIS 22062</td>
<td>November 1, 2004</td>
<td>Plaintiff voters filed a motion for temporary restraining order and preliminary injunction seeking to restrain defendant election officials and intervenor State of Ohio from discriminating against black voters in Hamilton County on the basis of race. If necessary, they sought to restrain challengers from being allowed at the polls that discriminated against African-American voters. Each precinct was run by its election judges but Ohio law also allowed challengers to be physically present in the polling places in order to challenge voters' eligibility to vote. The court held that the injury asserted, that allowing</td>
<td>The voters alleged that defendants had combined to implement a voter challenge system at the polls that discriminated against African-American voters.</td>
<td>No</td>
<td>N/A</td>
<td>No</td>
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<td>Name of Case</td>
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<td>polls.</td>
<td>challengers to challenge voters' eligibility would place an undue burden on voters and impede their right to vote, was not speculative and could be redressed by removing the challengers. The court held that in the absence of any statutory guidance whatsoever governing the procedures and limitations for challenging voters by challengers, and the questionable enforceability of the State's and</td>
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<td>County's policies regarding good faith challenges and ejection of disruptive challengers from the polls, there existed an enormous risk of chaos, delay, intimidation, and pandemonium inside the polls and in the lines out the door. Furthermore, the law allowing private challengers was not narrowly tailored to serve Ohio's compelling interest in preventing voter fraud. The court enjoined all</td>
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<tr>
<td>MARIAN SPENCER, et al., Petitioners v. CLARA PUGH, et al. (No. 04A360) SUMMIT COUNTY DEMOCRATIC CENTRAL and EXECUTIVE COMMITTEE, et al., Petitioners v. MATTHEW HEIDER, et al. (No. 04A364)</td>
<td>United States Supreme Court</td>
<td>125 S. Ct. 305; 160 L. Ed. 2d 213; 2004 U.S. LEXIS 7400</td>
<td>November 2, 2004</td>
<td>In two separate actions, plaintiffs sued defendant members of a political party, alleging that the members planned to mount indiscriminate challenges in polling places which would disrupt voting.</td>
<td>Defendants from allowing any challengers other than election judges and other electors into the polling places throughout the state on Election Day.</td>
<td>No</td>
<td>N/A</td>
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In two separate actions, plaintiffs sued defendant members of a political party, alleging that the members planned to mount indiscriminate challenges in polling places which would disrupt voting. Plaintiffs applied to defendants from allowing any challengers other than election judges and other electors into the polling places throughout the state on Election Day.
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<td>vacate orders entered by the United States Court of Appeals for the Sixth Circuit which entered emergency stays of injunctions restricting the members' activities.</td>
<td>voter intimidation and inordinate delays in voting. A district court ordered challengers to stay out of polling places, and another district court ordered challengers to remain in the polling places only as witnesses, but the appellate court stayed the orders. The United States Supreme Court, acting through a single Circuit Justice, declined to reinstate the injunctions for</td>
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<td>Charles H. Wesley Educ.</td>
<td>United States</td>
<td>324 F. Supp. 2d</td>
<td>July 1, 2004</td>
<td>Plaintiffs, a voter, fraternity</td>
<td>prudential reasons, despite the few hours left until the upcoming election. While the allegations of abuse were serious, it was not possible to determine with any certainty the ultimate validity of the plaintiffs' claims or for the full Supreme Court to review the relevant submissions, and voting officials would be available to enable proper voting by qualified voters.</td>
<td>No</td>
<td>N/A</td>
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<td>Name of Case</td>
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<td>Found., Inc. v. Cox</td>
<td>District Court for the Northern District of Georgia</td>
<td>1358; 2004 U.S. Dist. LEXIS 12120</td>
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<td>members, and an organization, sought an injunction ordering defendant, the Georgia Secretary of State, to process the voter registration application forms that they mailed in following a voter registration drive. They contended that by refusing to process the forms defendants violated the National Voter Date Holding</td>
<td>numerous non-partisan voter registration drives primarily designed to increase the voting strength of African-Americans. Following one such drive, the fraternity members mailed in over 60 registration forms, including one for the voter who had moved within state since the last election. The Georgia Secretary of State's office refused to process them because they</td>
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<td>Registration Act and U.S. Const. amends. I, XIV, and XV.</td>
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<td>were not mailed individually and neither a registrar, deputy registrar, or an otherwise authorized person had collected the applications as required under state law. The court held that plaintiffs had standing to bring the action. The court held that because the applications were received in accordance with the mandates of the NVRA, the State of Georgia was not free to reject them. The court found that:</td>
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<td>Jacksonville Coalition for Voter Prot. v. Hood</td>
<td>United States District Court for</td>
<td>351 F. Supp. 2d 1326; 2004 U.S.</td>
<td>October 25, 2004</td>
<td>Plaintiffs, voter protection coalition, union, and the voters based their claim on</td>
<td>The coalition, the union, and the voters based their claim on plaintiffs had a substantial likelihood of prevailing on the merits of their claim that the applications were improperly rejected; plaintiffs would be irreparably injured absent an injunction; the potential harm to defendants was outweighed by plaintiffs' injuries; and an injunction was in the public interest. Injunction granted.</td>
<td>No</td>
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<td>Name of Case</td>
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<td>the Middle District of Florida</td>
<td>Dist. LEXIS 26522</td>
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<td>voters, filed an emergency motion for a preliminary injunction and argued that African Americans in the county had less opportunity than other members of the state's electorate to vote in the upcoming election, and that defendants, elections officials', implementation of early voting procedures violated the Voting Rights Act.</td>
<td>the fact that the county had the largest percentage of African American registered voters of any major county in the state, and, yet, other similarly-sized counties with smaller African American registered voter percentages had more early voting sites. Based on that, they argued that African American voters in the county were disproportionately affected. The</td>
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<td>Act and their constitutional rights.</td>
<td>court found that while it may have been true that having to drive to an early voting site and having to wait in line may cause people to be inconvenienced, inconvenience did not result in a denial of meaningful access to the political process. Thus, the coalition, the union, and the voters had not established a likelihood of success on the merits of their claim that the county's implementation</td>
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<td>Taylor v. Howe</td>
<td>United States Court of Appeals</td>
<td>225 F.3d 993; 2000 U.S. App. LEXIS</td>
<td>August 31, 2000</td>
<td>Plaintiffs, African American voters, poll</td>
<td>of early voting procedures violated § 2 of the Voting Rights Act. Moreover, the coalition, the union, and the voters failed to establish a likelihood of success on the merits of their § 1983 Fourteenth and Fifteenth Amendment claims, which required a higher proof of discriminatory purpose and effect. Injunction denied.</td>
<td>The court of appeals affirmed--in--part, reversed--</td>
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<td>for the Eighth Circuit</td>
<td>22241</td>
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<td>watchers, and candidates appealed from a judgment of the United States District Court for the Eastern District of Arkansas in favor of defendants, elections commissioners and related individuals, on their § 1983 voting rights claims and contended the district court made erroneous findings of fact and law and failed to appreciate evidence of</td>
<td>in--part, and remanded the district court's judgment. The court found that the district court's finding of a lack of intentional discrimination was appropriate as to many defendants. However, as to some of the individual voters' claims for damages, the court held &quot;a definite and firm conviction&quot; that the district court's findings were mistaken. The court noted that the argument that a</td>
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<td>Stewart v. Blackwell</td>
<td>United States District Court for the</td>
<td>356 F. Supp. 2d 791; 2004 U.S. Dist. LEXIS</td>
<td>December 14, 2004</td>
<td>Plaintiffs, including African-American voters, alleged</td>
<td>voter's name was misspelled in the voter register, with a single incorrect letter, was a flimsy pretext and, accordingly, held that the district court's finding that defendant poll workers did not racially discriminate in denying the vote to this plaintiff was clearly erroneous. Affirmed in part and reversed in part.</td>
<td>No</td>
<td>N/A</td>
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<td>Name of Case</td>
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<td>Northern District of Ohio</td>
<td>26897</td>
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<td>that use of punch card voting and &quot;central-count&quot; optical scanning devices by defendants, the Ohio Secretary of State et al., violated their rights under the Due Process Clause, the Equal Protection Clause, and (African-American plaintiff) their rights under § 2 of the Voting Rights Act.</td>
<td>elections by judicial rule or fiat via the invitation to the court to declare a certain voting technology unconstitutional and then fashion a remedy. The court declined the invitation. The determination of the applicable voting process had always been focused in the legislative branch of the government. While it was true that the percentage of residual or non-voted ballots in the 2000</td>
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<td>presidential election ran slightly higher in counties using punch card technology, that fact standing alone was insufficient to declare the use of the system unconstitutional. Moreover, the highest frequency in Ohio of residual voting bore a direct relationship to economic and educational factors, negating the Voting Rights Act claim. The court further stated that local variety</td>
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<tr>
<td>Taylor v. Currie</td>
<td>United States District</td>
<td>386 F. Supp. 2d 929; 2005</td>
<td>September 14, 2005</td>
<td>Plaintiff brought an action against</td>
<td>This action involved issues pertaining to</td>
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in voting technology did not violate the Equal Protection Clause, even if the different technologies had different levels of effectiveness in recording voters' intentions, so long as there was some rational basis for the technology choice. It concluded that defendants' cost and security reasons for the use of punch card ballots were plausible.
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<tr>
<th>Name of Case</th>
<th>Court for the Eastern District of Michigan</th>
<th>Citation</th>
<th>Date</th>
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<td>U.S. Dist. LEXIS 20257</td>
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<td>Defendants, including a city elections commission, alleging defects in a city council primary election pertaining to absentee balloting. The case was removed to federal court by defendants. Pending before the court was a motion to remand, filed by plaintiff.</td>
<td>Absentee ballots. Plaintiff alleged that defendants were not complying with state laws requiring certain eligibility checks before issuing absentee ballots. The state court issued an injunction preventing defendants from mailing absentee ballots. Defendants removed the action to federal court and plaintiff sought a remand. Defendants argued that not mailing the absentee ballots.</td>
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<td>would violate the Voting Rights Act, because it would place a restriction only on the City of Detroit, which was predominately African-American. The court ordered the case remanded because it found no basis under 28 U.S.C.S. §§ 1441 or 1443 for federal jurisdiction. Defendants' mere reference to a federal law or federal right was not enough to confer subject matter</td>
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<td>jurisdiction where the complaint sought to assert only rights arising under state statutes against state officials in relation to a state election. The court stated that it would not allow defendants to take haven in federal court under the guise of providing equal protection for the citizens of Detroit but with a goal of perpetuating their violation of a non-discriminatory state law.</td>
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<td>Motion to remand granted.</td>
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<td>Weber v. Shelley</td>
<td>United States Court of Appeals for the Ninth Circuit</td>
<td>347 F.3d 1101; 2003 U.S. App. LEXIS 21979</td>
<td>October 28, 2003</td>
<td>Plaintiff voter brought an suit against defendants, the secretary of state and the county registrar of voters, claiming that the lack of a voter-verified paper trail in the county's newly installed touchscreen voting system violated her rights to equal protection and due process. The United States District Court for the Central District of California granted the</td>
<td>On review, the voter contended that use of paperless touch-screen voting systems was unconstitutional and that the trial court erred by ruling her expert testimony inadmissible. The trial court focused on whether the experts' declarations raised genuine issues of material fact about the relative accuracy of the voting system at issue and excluded references to newspaper articles and unidentified studies absent any indication that</td>
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<td>secretary and the registrar summary judgment. The voter appealed.</td>
<td>experts normally relied upon them. The appellate court found that the trial court's exclusions were not an abuse of discretion and agreed that the admissible opinions which were left did not tend to show that voters had a lesser chance of having their votes counted. It further found that the use of touchscreen voting systems was not subject to strict scrutiny simply because this particular balloting system might make the possibility of some kinds of fraud more difficult to detect. California</td>
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<td>Am. Ass'n of People with Disabilities v. Shelley</td>
<td>United States District Court for the Central District of California</td>
<td>324 F. Supp. 2d 1120; 2004 U.S. Dist. LEXIS 12587</td>
<td>July 6, 2004</td>
<td>Plaintiffs, disabled voters and organizations representing those voters, sought to enjoin the directives of defendant California</td>
<td>made a reasonable, politically neutral and non-discriminatory choice to certify touchscreen systems as an alternative to paper ballots, as did the county in deciding to use such a system. Nothing in the Constitution forbid this choice. The judgment was affirmed.</td>
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<td>Secretary of State, which decertified and withdrew approval of the use of certain direct recording electronic (DRE) voting systems. One voter applied for a temporary restraining order, or, in the alternative, a preliminary injunction. of a preliminary injunction in a number of ways, including a four-part test that considers (1) likelihood of success on</td>
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<td>disputed that some disabled persons would be unable to vote independently and in private without the use of DREs, it was clear that they would not be deprived of their fundamental right to vote. The Americans with Disabilities Act, did not require accommodation that would enable disabled persons to vote in a manner that was comparable in every way with the voting rights enjoyed by persons without disabilities. Rather, it mandated that voting programs be made</td>
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<td>the merits; (2) the possibility of irreparable injury in the absence of an injunction; (3) a balancing of the harms; and (4) the public interest.</td>
<td>accessible. Defendant's decision to suspend the use of DREs pending improvement in their reliability and security of the devices was a rational one, designed to protect the voting rights of the state's citizens. The evidence did not support the conclusion that the elimination of the DREs would have a discriminatory effect on the visually or manually impaired. Thus, the voters showed little likelihood of success on the merits. The</td>
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<td>Fla. Democratic Party v. Hood</td>
<td>Court of Appeal of Florida, First</td>
<td>884 So. 2d 1148; 2004 Fla. App.</td>
<td>October 28, 2004</td>
<td>Petitioner, the Florida Democratic Party, sought</td>
<td>The Party argued that: (1) the Florida Administrative Code, recast</td>
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<td>review of an emergency rule adopted by the Florida Department of State, contending that the findings of immediate danger, necessity, and procedural fairness on which the rule was based were insufficient under Florida law, which required a showing of such circumstances, and Florida case law. This matter followed.</td>
<td>language from the earlier invalidated rule prohibiting a manual recount of overvotes and undervotes cast on a touchscreen machine; (2) the rule did not call for the manual recount of votes to determine voter intent; and (3) the rule created voters who were entitled to manual recounts in close elections and those who were not. The appeals court disagreed. The Department was clearly concerned with the fact that if no rule were in place, the same confusion and inconsistency in</td>
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<td>divining a voter's intent that attended the 2000 presidential election in Florida, and the same constitutional problems the United States Supreme Court addressed then, might recur in 2004. It was not the court's responsibility to decide the validity of the rule or whether other means were more appropriate. But, the following question was certified to the Supreme Court: Whether under Fla. Stat. ch. 120.54(4), the Department of</td>
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<td>Wexler v. Lepore</td>
<td>United States District Court for the Southern District of</td>
<td>342 F. Supp. 2d 1097; 2004 U.S. Dist. LEXIS 21344</td>
<td>October 25, 2004</td>
<td>Plaintiffs, a congressman, state commissioners, and a registered voter, brought</td>
<td>The officials claimed that the state had established an updated standard for manual recounts in counties using touchscreen voting systems. The petition was denied, but a question was certified to the supreme court as a matter of great public importance.</td>
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<td>Name of Case</td>
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<td>a § 1983 action against defendants, state officials, alleging that the manual recount procedures for the state's touchscreen paperless voting systems violated their rights under U.S. Const. amends. V and XIV. A bench trial ensued.</td>
<td>optical scan systems and touchscreen voting systems, therefore, alleviating equal protection concerns. The court held that the rules prescribing what constituted a clear indication on the ballot that the voter had made a definite choice, as well the rules prescribing additional recount procedures for each certified voting system promulgated pursuant to Florida law complied with equal protection requirements under U.S. Const. amends. V and XIV because the rules</td>
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<td>prescribed uniform, nondifferential standards for what constituted a legal vote under each certified voting system, as well as procedures for conducting a manual recount of overvotes and undervotes in the entire geographic jurisdiction. The court further held that the ballot images printed during a manual recount pursuant to Florida Administrative Code did not violate Florida law because the manual recount scheme properly reflected a voter's choice.</td>
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<td>Judgment was entered for the officials. The claims of the congressman, commissioners, and voter were denied.</td>
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| Name of Case       | Court                                      | Citation                                      | Date             | Petition
Petitioner: Appeal to the Supreme Court and Appellate Division. The petitioner appealed an order of the supreme court, which denied his motion to direct the New York County Board of Elections, in cases where more than one absentee ballot was returned by a voter, to count only the absentee ballot listing correct candidates' names. |
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<td>Powers v. Donahue</td>
<td>Supreme Court of New York, Appellate</td>
<td>276 A.D.2d 157; 717 N.Y.S.2d 550; 2000 N.Y. App. Div. LEXIS 12644</td>
<td>December 5, 2000</td>
<td>Petitioner appealed an order of the supreme court, which denied his motion to direct the New York County Board of Elections, in cases where more than one absentee ballot was returned by a voter, to count only the absentee ballot listing correct candidates' names.</td>
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When the New York County Board of Elections learned some absentee ballots mailed to voters in one district listed the wrong candidates for state senator, it sent a second set of absentee ballots to absentee voters informing them that the first ballot was defective and requesting they use the second ballot. The board agreed that if two ballots were received from the same voter, only the corrected ballot would be counted. Appellant candidate moved in support of the board's determination. Respondent candidate opposed the application, contending that only the first ballot received should have been canvassed. The trial court denied appellant's motion, ruling that pursuant to New York law, where two ballots were received from the same voter, only the ballot with the earlier date was to be accepted. The court found the local board officials should have resolved the dispute as they proposed. The order was modified and the motion granted to the extent of directing the New York County Board of Elections, in cases where more than one absentee ballot was returned by a voter, to accept only the corrected...
Goodwin v. St. Thomas--St. John Bd. of Elections

Plaintiff political candidate alleged that certain general election absentee ballots violated territorial election law, and that the improper inclusion of such ballots by defendants, election board and supervisor, resulted in plaintiff's loss of the election. Plaintiff sued defendants seeking invalidation of the absentee ballots and certification of the election results tabulated without such ballots.

Plaintiff alleged that defendants counted unlawful absentee ballots that lacked postmarks, were not signed or notarized, were in unsealed and/or torn envelopes, and were in envelopes containing more than one ballot. Prior to tabulation of the absentee ballots, plaintiff was leading intervenor for the final senate position, but the absentee ballots entitled intervenor to the position. The court held that plaintiff was not entitled to relief since he failed to establish that the alleged absentee voting irregularities would require invalidation of a sufficient number of ballots to change the outcome of the election. While the unsealed ballots constituted a technical violation, the outer envelopes were sealed and thus substantially complied with election requirements. Further, while defendants improperly counted one ballot where a sealed ballot envelope and a loose ballot were in the same outer envelope, the one vote involved did not change the election result.

No N/A No
Plaintiff's other allegations of irregularities were without merit since ballots without postmarks were valid, ballots without signatures were not counted, and ballots without notarized signatures were proper. Request for declaratory and injunctive relief denied.

| Townson v. Stonicher | Supreme Court of Alabama | 2005 Ala. LEXIS 214 | December 9, 2005 | The circuit court overturned the results of a mayoral election after reviewing the absentee ballots cast for said election, resulting in a loss for appellant incumbent based on the votes received from appellee voters. The incumbent appealed, and the voters cross-appealed. In the meantime, the trial court stayed enforcement of its judgment pending resolution of the appeal. | The voters and the incumbent all challenged the judgment entered by the trial court arguing that it impermissibly included or excluded certain votes. The appeals court agreed with the voters that the trial court should have excluded the votes of those voters for the incumbent who included an improper form of identification with their absentee ballots. It was undisputed that at least 30 absentee voters who voted for the incumbent provided with their absentee ballots a form of identification that was not proper under Alabama law. As a result, the court further agreed that the trial court erred in allowing those voters to somewhat "cure" that defect by providing a proper form of identification at the trial of the election contest, because, under those | No | N/A | No |
Appellant candidates appealed from a judgment entered by the supreme court, which partially granted the candidates' petition challenging the method used by respondent Albany County Board of Elections for counting absentee applications and ballots for the office of Albany County.

The candidates argued that the Board violated a federal court order regarding the election. The appellate court held that absentee ballots that were sent to voters for the special general election based solely on their applications for the general election were properly voided. The Board had no authority to issue the ballots without an absentee ballot application for the special general election. Two ballots were properly invalidated as the Board failed to retain the envelopes. Ballots were properly counted for voters who failed to identify their physician on their applications. A ballot was

circumstances, it was difficult to conclude that those voters made an honest effort to comply with the law. Moreover, to count the votes of voters who failed to comply with the essential requirement of submitting proper identification with their absentee ballots had the effect of disenfranchising qualified electors who choose not to vote but rather than to make the effort to comply with the absentee-voting requirements. Affirmed.
due to extraneous marks outside the voting square. A ballot was properly counted despite the failure of the election inspector to witness the voter's signature. A ballot was properly counted as the application stated the date of the voter's absence. A ballot was properly counted as the application was cured by a time stamp. Affirmed.

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<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Issue</th>
<th>Ruling</th>
<th>Statute, Statutory Provision, or Navigable Internet Address</th>
<th>Date of Notice</th>
<th>Should the Case be Followed?</th>
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<td>Erlandson v. Kiffmeyer</td>
<td>Supreme Court of Minnesota</td>
<td>659 N.W.2d 724; 2003 Minn. LEXIS 196</td>
<td>April 17, 2003</td>
<td>Petitioners, representing the Democratic--Farmer-Labor Party, brought an action against respondents, the Minnesota Secretary of State and the Hennepin County Auditor, seeking relief in regard to the election for United States Senator, following</td>
<td>The appellate court found that, while it may have seemed unfair to the replacement candidate to count votes for other candidates from regular absentee ballots on which the replacement candidate did not appear, those were properly cast ballots voting for a properly nominated candidate. Petitioners' request that the Minnesota supreme court order that votes for United States Senator cast on regular absentee ballots not be counted was denied. A key issue was Minn. Stat. § 204B.41 (2002), which provided, in--</td>
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The death of Senator Wellstone. The issue concerned the right of absentee voters to obtain replacement ballots. Individuals intervened on behalf of the Republican Party. The instant court granted review.

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<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Issue</th>
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<th>Summary of Plaintiff's Case</th>
<th>Other Notes</th>
<th>Statute Reference</th>
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<tr>
<td>People v. Deganutti</td>
<td>Appellate Court of Illinois, First District, Third Division</td>
<td>348 Ill. App. 3d 512; 810 N.E.2d 191; 2004 Ill.</td>
<td>May 12, 2004</td>
<td>Defendant appealed from a judgment of the circuit court, which convicted defendant on charges of unlawful</td>
<td>Defendant went to the voters' homes and obtained their signatures on absentee ballot request forms. Once the ballots were mailed to the voters, defendant returned to the homes. With voter one, defendant sat on the couch</td>
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part, that official supplemental ballots could not be mailed to absent voters to whom ballots were mailed before the official supplemental ballots were prepared. The supreme court held that, by treating similarly-situated voters differently, § 204B.41 violated equal protection guarantees and could not even survive rational basis review. For voters who cast their regular absentee ballots for Wellstone before the vacancy occurred, but were unable to go to their polling place on election day or pick up a replacement ballot by election day, the prohibition on mailing replacement ballots in § 204B.41 denied them the right to cast a meaningful vote for United States Senator. The petition of petitioners was denied in part, but granted with respect to mailing replacement ballots to all applicants for regular absentee ballots who requested a replacement ballot.
The court affirmed, holding that (1) the circumstantial evidence surrounding defendant's presence as the voters completed their ballots supported the unlawful observation convictions; (2) the fact that defendant knowingly took the voters' ballots and mailed them, a violation of Illinois law supported her conviction, and (3) the fact that the statutes defendant was convicted under required only a knowing mental state rather than criminal intent did not violate substantive due process. Affirmed.

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<th>Case</th>
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<td>Jacobs v. Seminole County Canvassing Bd.</td>
<td>Supreme Court</td>
<td>773 So. 2d 519; 2000 Fla. LEXIS</td>
<td>December 12, 2000</td>
<td>In an election contest, the First District court of appeal certified a</td>
<td>Prior to the general election, two political parties mailed preprinted requests for absentee ballots to registered voters in Seminole County.</td>
<td>No</td>
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</tbody>
</table>
included the voter identification number, was directory rather than mandatory. The trial court properly found that the evidence did not support

| Gross v. Albany County Bd. of Elections | Court of Appeals of New York | 2404 | October 14, 2004 | Appellant candidates sought review from an order of the Appellate Division, which affirmed a trial court order | Forms mailed by one party failed to include either a space for the voter identification number or the preprinted number. Representatives from that party were allowed to add voter identification numbers to request forms after they were returned, and absentee ballots were sent to the persons named on the request forms. The supreme court affirmed the trial court's refusal to invalidate the ballot requests, and adopted the trial court's reasoning that the information required, which included the voter identification number, was directory rather than mandatory. The trial court properly found that the evidence did not support a finding of fraud, gross negligence, or intentional wrongdoing. Allowing one party to correct ballots did not constitute illegal disparate treatment because there was no need to correct the other party's forms. Affirmed. | No | N/A | No |
thereafter challenged those absentee ballots, as they violated the procedure that was to be followed. The trial court held that the ballots should not be canvassed, which decision was affirmed on appeal. On further review due to dissenting opinions, the court found that the ballots were in violation of the federal court order that directed as in violation of New York election law. The court concluded that the Board's error was not technical, ministerial, or inconsequential because it was central to the substantive process, and the voters who used absentee ballots were not determined to be "duly qualified electors." Affirmed.

<table>
<thead>
<tr>
<th>Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Parties</th>
<th>Holding</th>
<th>Statutory References</th>
<th>Other Notes</th>
<th>Reactions</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004</td>
<td>N.Y.</td>
<td>LEXIS 2412</td>
<td></td>
<td></td>
<td>holding that absentee ballots from a special general election were not to be canvassed because respondent Albany County Board of Elections failed to follow the set procedure for those voters.</td>
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</table>

In re Canvass of Supreme Court of 577 Pa. March 8, A county elections The absentee ballots at issue were No N/A No
<p>| Name of Case: Absentee Ballots of Nov. 4, 2003 Gen. Election | Court: Pennsylvania | Citations: 231; 843 A.2d 1223; 2004 Pa. LEXIS 431 | Date: 2004 | Facts: Board voided certain absentee ballots cast in the November 4, 2003, general election. The court of common pleas held that absentee ballots delivered by third persons were valid and should be counted. The commonwealth court affirmed the trial court's decision. The state supreme court granted allocatur. Appellants and appellees were certain candidates and voters. | Holding: Hand-delivered to the county elections board by third persons on behalf of non-disabled voters. On appeal, the issue was whether non-disabled absentee voters could have third persons hand-deliver their ballots to the elections board where the board indicated that the practice was permitted. The state supreme court concluded that the &quot;in person&quot; delivery requirement was mandatory, and that absentee ballots delivered in violation of the provision were invalid, notwithstanding the board's erroneous instructions to the contrary. Under the statute's plain meaning, a non-disabled absentee voter had two choices: send the ballot by mail, or deliver it in person. Third-person hand-delivery of absentee ballots was not permitted. To ignore the law's clear instructions regarding in-person delivery would undermine the statute's very purpose as a safeguard against fraud. The state supreme court concluded that its precedent was clear, and it could not simply ignore substantive provisions of the Pennsylvania Election Code. The judgment of the Commonwealth Court was reversed in so far as it held that | Statutory Source: None | Other or Special Facts: Further Information | Should the Case be Followed: Yes |</p>
<table>
<thead>
<tr>
<th>Citation</th>
<th>Court</th>
<th>Date</th>
<th>Issue</th>
<th>Holding</th>
<th>Reason</th>
</tr>
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<tbody>
<tr>
<td>In re Canvass of Absentee Ballots of November 4, 2003</td>
<td>Commonwealth Court of Pennsylvania</td>
<td>December 22, 2003</td>
<td>The Allegheny County Elections Board did not allow 74 challenged third-party hand-delivered absentee ballots to be counted in the statewide general election. The court of common pleas of Allegheny County reversed the Board's decision and allowed the 74 ballots to be counted. Appellant objecting candidates appealed the trial court's order.</td>
<td>On appeal, the issue was whether non-disabled voters who voted by absentee ballots and had those ballots delivered by third parties to county election boards could have their ballots counted in the statewide general election. First, the appellate court concluded that political bodies had standing to appeal. Also, the trial court did not err by counting the 74 ballots because absentee voters could not be held responsible for following the statutory requirements of Pennsylvania election law where the Board knowingly failed to abide by the statutory language regarding the delivery of absentee ballots, changed its policy to require voters to abide by the language, and then changed its policy back to its original stance that voters did not have to abide by the statutory language, thereby misleading absentee voters regarding delivery requirements. Under the circumstances, it was more important to protect the interest of the voters by not disenfranchising them</td>
<td>No</td>
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<tr>
<td>United States v. Pennsylvania</td>
<td>United States District Court for the Middle District of Pennsylvania</td>
<td>2004 U.S. Dist. LEXIS 21167</td>
<td>October 20, 2004</td>
<td>Plaintiff United States sued defendant Commonwealth of Pennsylvania, governor, and state secretary, claiming that overseas voters would be disenfranchised if they used absentee ballots that included the names of two presidential candidates who had been removed from the final certified ballot and seeking injunctive relief to address the practical implications of the final certification of the state of Pennsylvania than to adhere to the strict language of the statute. However, one ballot was not counted because it was not delivered to the Board. Affirmed with the exception that one voter’s ballot was stricken.</td>
<td>No</td>
</tr>
<tr>
<td>Name of Case</td>
<td>Court</td>
<td>Citation</td>
<td>Date</td>
<td>Description</td>
<td>Standardized?</td>
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<td>Hoblock v. Albany County Bd. of Elections</td>
<td>United States District Court for the Northern District of New York</td>
<td>341 F. Supp. 2d 169; 2004 U.S. Dist. LEXIS 21326</td>
<td>October 25, 2004</td>
<td>Plaintiffs, candidates and voters, sued defendant, the Albany County, New York, Board of Elections, under § 1983, claiming that the Board violated plaintiffs' Fourteenth Amendment rights by refusing to tally the voters' absentee ballots. Plaintiffs moved for a preliminary injunction.</td>
<td>No</td>
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</table>

The voters used absentee ballots to vote; their ballots were later invalidated. A state court determined that automatically sending absentee ballots to those who had not filed an application violated the constitution of UOCAVA voters to cast their ballots. Moreover, Pennsylvania had adduced substantial evidence that the requested injunctive relief, issuing new ballots, would have harmed the Pennsylvania election system and the public by undermining the integrity and efficiency of Pennsylvania's elections and increasing election costs. Motion for injunctive relief denied.
<table>
<thead>
<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Issue</th>
<th>Holding</th>
<th>Summary of Holding</th>
<th>Impact of Holding</th>
<th>Second Impact</th>
<th>Further Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Griffin v. Roupas</td>
<td>United States Court of Appeals for the Seventh Circuit</td>
<td>385 F.3d 1128; 2004 U.S. App. LEXIS 21476</td>
<td>October 15, 2004</td>
<td>In a suit brought by plaintiff working mothers against defendants, members of the Illinois State Board of Elections, alleging that the United States was New York. The district court found that the candidates' claims could have been asserted in state court and were barred by res judicata, but the voters were not parties to the state court action. The candidates were not entitled to joinder and had not filed a motion to intervene. The voters established a likelihood of success on the merits, as the Board effectively took away their right to vote by issuing absentee ballots and then refusing to count them. The voters' claims involved more than just an &quot;unintended irregularity.&quot; The candidates' claims were dismissed, and their request for joinder or to intervene was denied. Plaintiffs' motion for a preliminary injunction preventing the Board from certifying winners of the election was granted.</td>
<td>No</td>
<td>N/A</td>
<td>No</td>
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</table>
Constitution required Illinois to allow them to vote by absentee ballot, the mothers appealed from a decision of the United States District Court for the Northern District of Illinois, Eastern Division, which dismissed their complaint for failure to state a claim. The court held that, although the length and complexity of the Illinois ballot supported an argument for allowing people to vote by mail, such argument had nothing to do with the problems faced by working mothers. It applied to everyone. Affirmed.
<table>
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<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Finding</th>
<th>Remedy of lawsuit</th>
<th>Responsible Authority</th>
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<tbody>
<tr>
<td>Pennsylvania</td>
<td>21813</td>
<td>situated service officials under the Uniformed and Overseas Citizens Absentee Voting Act, alleging that they and similarly situated service members would be disenfranchised because they did not receive their absentee ballots in time. The parties entered into a voluntary agreement and submitted it to the court for approval.</td>
<td>be disenfranchised. The court ordered the Secretary of the Commonwealth of Pennsylvania to take all reasonable steps necessary to direct the county boards of elections to accept as timely received absentee ballots cast by service members and other overseas voters as defined by UOCAVA, so long as the ballots were received by November 10, 2004. The ballots were to be considered solely for purposes of the federal offices that were included on the ballots. The court held that the ballot needed to be cast no later than November 2, 2004 to be counted. The court did not make any findings of liability against the Governor or the Secretary. The court entered an order, pursuant to a stipulation between the parties, that granted injunctive relief to the service members.</td>
<td>No</td>
<td>N/A</td>
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<tr>
<td>Bush v. Hillsborough County Canvassing Bd.</td>
<td>United States District Court for the Northern District of Florida</td>
<td>123 F. Supp. 2d 1305; 2000 U.S. Dist. LEXIS 19265</td>
<td>December 8, 2000</td>
<td>The matter came before the court on plaintiffs' complaint for declaratory and injunctive relief alleging that defendant county canvassing boards rejected overseas absentee state ballots and federal write-in ballots based on criteria inconsistent with the Uniformed and Overseas Citizens</td>
<td>No</td>
<td>N/A</td>
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</table>
rejected overseas absentee state ballots and federal write--in ballots based on criteria inconsistent with federal law, and requesting that the ballots be declared valid and that they should be counted.

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Absentee Voting Act. Because the state accepted overseas absentee state ballots and federal write--in ballots up to 10 days after the election, the State needed to access that the ballot in fact came from overseas. However, federal law provided the method to establish that fact by requiring the overseas absentee voter to sign an oath that the ballot was mailed from outside the United States and requiring the state election officials to examine the voter's declarations. The court further noted that federal law required the user of a federal write--in ballot to timely apply for a regular state absentee ballot, not that the state receive the application, and that again federal law, by requiring the voter using a federal write--in ballot to swear that he or she had made timely application, had provided the proper method of proof. Plaintiffs withdrew as moot their request for injunctive relief and the court granted in part and denied in part plaintiffs' request for declaratory relief, and declared valid all federal write--in ballots that were signed pursuant to the oath provided therein but rejected solely because the ballot envelope did
<table>
<thead>
<tr>
<th>Number of Cases</th>
<th>Citation</th>
<th>Date</th>
<th>Holding</th>
<th>Status of Petition</th>
<th>Other Notes</th>
<th>Should this Research be Further Examined</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kolb v. Casella</td>
<td>Supreme Court of New York, Appellate Division, Fourth Department</td>
<td>270 A.D.2d 964; 705 N.Y.S.2d 746; 2000 N.Y. App. Div. LEXIS 3483</td>
<td>Both petitioner and respondent appealed from order of supreme court, determining which absentee and other paper ballots would be counted in a special legislative election. Both petitioner and respondent, presumably representing different candidates, challenged the validity of particular paper ballots, mostly absentee, in a special legislative election. The court affirmed most of the trial court's findings, but modified its order to invalidate ballots improperly marked outside the voting square—ballots where the signature on the envelope differed substantially from the voter registration card signature—and ballots where voters neglected to supply statutorily required information on the envelopes. However, the court, seeking to avoid disenfranchising voters where permissible, held that ballots were not invalid where applications substantially complied with statute, there was no objection to the ballots themselves, and there was no evidence of fraud. Where absentee ballot envelopes contained extra ballots, the ballots were to be placed in a ballot.</td>
<td>No</td>
<td>N/A</td>
<td>No</td>
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<tr>
<td>Case Name</td>
<td>Court</td>
<td>Citation</td>
<td>Date</td>
<td>Facts</td>
<td>Holding</td>
<td>Statutory Issue</td>
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<tr>
<td>People v. Woods</td>
<td>Court of Appeals of Michigan</td>
<td>241 Mich. App. 545; 616 N.W.2d 211; 2000 Mich. App. LEXIS 156</td>
<td>June 27, 2000</td>
<td>Defendant filed an interlocutory appeal of the decision by the circuit court, which denied defendant's request for a jury instruction on entrapment by estoppel, but stayed the proceedings to allow defendant to pursue the interlocutory appeal, in a criminal action alleging violations of election laws.</td>
<td>Defendant distributed and collected absentee ballots in an election. Because both defendant and his brother were candidates on the ballot, defendant's assistance was illegal under Michigan law. Bound over for trial on election fraud charges, defendant requested a jury instruction on entrapment by estoppel, which was denied. On interlocutory appeal, the appellate court reversed and remanded for an entrapment hearing, holding that defendant should be given the opportunity to present evidence that he unwittingly committed the unlawful acts in reasonable reliance upon the word of the township clerk. The necessary elements of the entrapment defense were: (1) a government official told the defendant that certain criminal conduct was legal; (2) the defendant actually relied on the official's statements; (4) the defendant's reliance was in good faith and reasonable in light of the official's</td>
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<tr>
<td>Case Name</td>
<td>Court</td>
<td>Citation</td>
<td>Date</td>
<td>Facts</td>
<td>Legal Analysis</td>
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<td>Harris v. Florida Elections Canvassing Comm'n</td>
<td>United States District Court for the Northern District of Florida</td>
<td>122 F. Supp. 2d 1317; 2000 U.S. Dist. LEXIS 17875</td>
<td>December 9, 2000</td>
<td>Plaintiffs challenged the counting of overseas absentee ballots received after 7 p.m. on election day, alleging the ballots violated Florida law.</td>
<td>The court found Congress did not intend 3 U.S.C.S. § 1 to impose irrational scheduling rules on state and local canvassing officials, and did not intend to disenfranchise overseas voters. The court held the state statute was required to yield to the Florida Administrative Code, which required the 10-day extension in the receipt of overseas absentee ballots in federal elections because the rule was promulgated to satisfy a consent decree entered by the state in 1982.</td>
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<tr>
<td>Weldon v. Berks County Dept of Election Servs.</td>
<td>United States District Court for the Eastern District of Pennsylvania</td>
<td>2004 U.S. Dist. LEXIS 21948</td>
<td>November 1, 2004</td>
<td>Plaintiffs, a congressman and a state representative, filed a motion seeking a</td>
<td>The congressman and representative sought to have the absentee ballots at issue set aside until a hearing could be held to determine whether any of the restraining order denied. CASE</td>
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preliminary injunction or temporary restraining order that would prohibit defendant county department of election services from delivering to local election districts absentee ballots received from any state, county, or city correctional facility.

SUMMARY: PROCEDURAL POSTURE: Plaintiffs, a congressman and a state representative, filed a motion seeking a preliminary injunction or temporary restraining order that would prohibit defendant county department of election services from delivering to local election districts absentee ballots received from any state, county, or city correctional facility as provided in Pa. Stat. Ann. tit. 25, § 3416.6 and Pa. Stat. Ann. tit. 25, § 3416.8. OVERVIEW: The congressman and representative sought to have the absentee ballots at issue set aside until a hearing could be held to determine whether any of the ballots were delivered to the county board of elections by a third party in violation of Pennsylvania law, whether any of the ballots were submitted by convicted incarcerated felons in violation of Pennsylvania law, and whether any of the ballots were submitted by qualified voters who were improperly assisted without the proper declaration required by Pennsylvania law. The court concluded that an ex parte temporary restraining order was not warranted because there
<table>
<thead>
<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Issue</th>
<th>Holding</th>
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<tbody>
<tr>
<td>Qualkinbush v. Skubisz</td>
<td>Court of Appeals of Illinois, First District</td>
<td>822 N.E.2d 38; 2004 Ill. App. LEXIS 1546</td>
<td>December 28, 2004</td>
<td>Respondent appealed from an order of the circuit court certifying mayoral election results for a city in which the court declared petitioner mayor.</td>
<td>Respondent first claimed the trial court erred in denying his motion to dismiss with respect to 38 votes the Election Code was preempted by and violated the Voting Rights Act and the Americans with Disabilities Act of 1990 since it restricted the individuals with whom an absentee voter could entrust their ballot for mailing. The appeals court found the trial court did not err in denying the motion to dismiss, as Illinois election law prevented a candidate or his or her agent from asserting undue influence upon a disabled voter and from manipulating that voter into voting for the candidate or the agent's candidate, and was designed to protect the rights of disabled voters. Respondent had not established that the federal legislature was improperly involved.</td>
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<tr>
<td>Name of Case</td>
<td>Court</td>
<td>Date of Decision</td>
<td>Issue</td>
<td>Holding</td>
<td>Statutory Basis</td>
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<tr>
<td>Panio v. Sunderland</td>
<td>Supreme Court of New York, Appellate Division, Second Department</td>
<td>January 25, 2005</td>
<td>In proceedings filed pursuant to New York election law to determine the validity of certain absentee and affidavit ballots tendered for the office of 35th District Senator, appellants, a chairperson of the county Republican committee and the Republican candidate, both sought review of an</td>
<td>The question presented was whether the county election board should count the six categories of ballots that were in dispute. After a review of the evidence presented, the appeals court modified the trial court's order by: (1) deleting an order directing the county elections board (board) to count 160 affidavit ballots tendered by voters who appeared at the correct polling place but the wrong election district, as there were meaningful distinctions between those voters who went to the wrong polling place and those voters who went to the correct polling place but the wrong election district; (2) directing that the board not count 10</td>
<td>No</td>
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</table>
affidavit ballots tendered in the wrong election district because of a map error, as there was no evidence that the voters in this category relied on the maps when they went to the wrong election districts; and (3) directing the board to count 45 absentee ballots tendered by poll workers, as it appeared that the workers substantially complied with the statute by providing a written statement that was the functional equivalent of an application for a special ballot. Order modified and judgment affirmed.

Plaintiff voters sought to enjoin defendant election board from allowing three different procedures for third-party absentee ballot delivery, require the set aside of all absentee third-party delivered ballots in connection with the November 2003 election, prohibit those ballots from

Intervenor political committees also moved to dismiss for lack of standing, lack of subject matter jurisdiction, and failure to state a claim, as well as abstention. Inter alia, the court found that abstention was appropriate under the Pullman doctrine because: (1) construction of Pennsylvania election law was not clear regarding whether the absentee ballot provision requiring hand-delivery to be "in person" was mandatory or directory; (2) the construction of the provision by state courts as mandatory or directory could obviate the need to determine whether

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<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Affidavit</th>
<th>Other Notes</th>
<th>Status of Court</th>
<th>Amount of Relief Requested</th>
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<tbody>
<tr>
<td>Pierce v. Allegheny County Bd. of Elections</td>
<td>United States District Court for the Western District of Pennsylvania</td>
<td>324 F. Supp. 2d 684; 2003 U.S. Dist. LEXIS 25569</td>
<td>November 13, 2003</td>
<td>affidavit ballots tendered in the wrong election district because of a map error, as there was no evidence that the voters in this category relied on the maps when they went to the wrong election districts; and (3) directing the board to count 45 absentee ballots tendered by poll workers, as it appeared that the workers substantially complied with the statute by providing a written statement that was the functional equivalent of an application for a special ballot. Order modified and judgment affirmed.</td>
<td>No</td>
<td>N/A</td>
<td>No</td>
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court issued a limited preliminary injunction whereby the 937 hand-delivered absentee ballots at issue were set aside as "challenged" ballots subject to the election code challenge procedure. Any equal protection issues could be heard in state court by virtue of the state court's concurrent jurisdiction. There had been a Fourteenth Amendment equal protection violation; and (3) erroneous construction of the provision could disrupt very important state voting rights policies. However, the court had a continuing duty to consider the motion for temporary restraining order/preliminary injunction despite abstention. The court issued a limited preliminary injunction whereby the 937 hand-delivered absentee ballots at issue were set aside as "challenged" ballots subject to the election code challenge procedure. Any equal protection issues could be heard in state court by virtue of the state court's concurrent jurisdiction.

| Friedman v. Snipes | United States District Court for the Southern District of Florida | 345 F. Supp. 2d 1356; 2004 U.S. Dist. LEXIS 23739 | November 9, 2004 | Plaintiff registered voters sued defendant state and county election officials under § 1983 for alleged violations of their rights under 42 U.S.C.S. § 1971(a)(2)(B) of the Civil Rights Act, and the voters claimed they timely requested absentee ballots but (1) never received the requested ballot or (2) received a ballot when it was too late for them to submit the absentee ballot. The court held that 42 U.S.C.S. § 1971(a)(2)(B) was not intended to apply to the counting of ballots by those already deemed qualified to vote. The plain meaning of § 1971(a)(2)(B) did not support the voters' claim that it | No | N/A | No |
Johnson v. Bush

**District Court for the Southern District of Florida**

**July 18, 2002**

214 F. Supp. 2d 1333; 2002 U.S. Dist. LEXIS 19517

- The First and Fourteenth Amendments to the United States Constitution. The voters moved for a temporary restraining order (TRO) and/or preliminary injunction. The court granted the TRO and held a hearing on the preliminary injunction.
- The deadline for returning ballots did not disenfranchise a class of voters. Rather, it imposed a time deadline by which voters had to return their votes. So there was no equal protection violation. Preliminary injunction denied.

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<thead>
<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Date</th>
<th>Fact</th>
<th>Holding</th>
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</thead>
<tbody>
<tr>
<td>Johnson v. Bush</td>
<td>United States District Court for the Southern District of Florida</td>
<td>July 18, 2002</td>
<td>Plaintiff felons sued defendant state officials for alleged violations of their constitutional rights. The officials moved and the felons cross-</td>
<td>should cover an error or omission on any record or paper or any error or omission in the treatment, handling, or counting of any record or paper. Further, because Florida election law only related to the mechanics of the electoral process, the correct standard to be applied here was whether Florida's important regulatory interests justified the restrictions imposed on their First and Fourteenth Amendment rights. The State's interests in ensuring a fair and honest election and counting votes within a reasonable time justified the light imposition on voting rights. The deadline for returning ballots did not disenfranchise a class of voters. Rather, it imposed a time deadline by which voters had to return their votes. So there was no equal protection violation. Preliminary injunction denied.</td>
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<tr>
<th></th>
<th>Standard of Review</th>
<th>Other</th>
<th>Should the Case be Rejected</th>
<th>Reasons</th>
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<tbody>
<tr>
<td></td>
<td>No</td>
<td>N/A</td>
<td>No</td>
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Amendments to the United States Constitution, as well as § 1983 and §§ 2 and 10 of the Voting Rights Act of 1965. Each of the felons' claims was fatally flawed. The felons' exclusion from voting did not violate the Equal Protection or Due Process Clauses of the United States Constitution. The First Amendment did not guarantee felons the right to vote. Although there was evidence that racial animus was a factor in the initial enactment of Florida's disenfranchisement law, there was no evidence that race played a part in the re-enactment of that provision. Although it appeared that there was a disparate impact on minorities, the cause was racially neutral. Finally, requiring the felons to pay their victim restitution before their rights would be restored did not constitute an improper poll tax or wealth qualification. The court granted the officials' motion for summary judgment and implicitly denied the felons' motion. Thus, the court dismissed the lawsuit with prejudice.

<table>
<thead>
<tr>
<th>Name of Case</th>
<th>United States</th>
<th>Date</th>
<th>Plaintiffs, convicted</th>
<th>Judgment</th>
<th>Statutory Basis</th>
<th>Issue Presented</th>
<th>Should be Rejected</th>
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<tr>
<td>Farrakhan v.</td>
<td>2000</td>
<td>December</td>
<td>14782</td>
<td>moved for summary judgment.</td>
<td>Fifteenth, and Twenty-Fourth Amendments to the United States Constitution, as well as § 1983 and §§ 2 and 10 of the Voting Rights Act of 1965. Each of the felons' claims was fatally flawed. The felons' exclusion from voting did not violate the Equal Protection or Due Process Clauses of the United States Constitution. The First Amendment did not guarantee felons the right to vote. Although there was evidence that racial animus was a factor in the initial enactment of Florida's disenfranchisement law, there was no evidence that race played a part in the re-enactment of that provision. Although it appeared that there was a disparate impact on minorities, the cause was racially neutral. Finally, requiring the felons to pay their victim restitution before their rights would be restored did not constitute an improper poll tax or wealth qualification. The court granted the officials' motion for summary judgment and implicitly denied the felons' motion. Thus, the court dismissed the lawsuit with prejudice.</td>
<td>No</td>
<td>N/A</td>
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the Eastern Dist. of LEXIS
Washington 22212

racial minorities,
sued defendants for
alleged violations of
the Voting Rights
Act. The parties filed
cross--motions for
summary judgment.

restoration of civil rights schemes,
premised upon Wash. Const. art. VI §
3, resulted in the denial of the right to
vote to racial minorities in violation of
the VRA. They argued that race bias
in, or the discriminatory effect of,
the criminal justice system resulted in a
disproportionate number of racial
minorities being disenfranchised
following felony convictions. The
court concluded that Washington's
felon disenfranchisement provision
disenfranchised a disproportionate
number of minorities; as a result,
minorities were under--represented in
Washington's political process. The
Rooker--Feldman doctrine barred the
felons from bringing any as--applied
challenges, and even if it did not bar
such claims, there was no evidence that
the felons' individual convictions were
born of discrimination in the criminal
justice system. However, the felons'
facial challenge also failed. The
remedy they sought would create a
new constitutional problem, allowing
disenfranchisement only of white
felons. Further, the felons did not
establish a causal connection between

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<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Relator</th>
<th>Date</th>
<th>Facts</th>
<th>Holding</th>
<th>Statutory Basis</th>
<th>Other</th>
<th>Should this Court Reconsider?</th>
</tr>
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<tbody>
<tr>
<td>Locke</td>
<td>District Court for the Eastern District of Washington</td>
<td>U.S. Dist. LEXIS 22212</td>
<td>1, 2000</td>
<td>felons who were also racial minorities, sued defendants for alleged violations of the Voting Rights Act. The parties filed cross--motions for summary judgment.</td>
<td>felon disenfranchisement and restoration of civil rights schemes, premised upon Wash. Const. art. VI § 3, resulted in the denial of the right to vote to racial minorities in violation of the VRA. They argued that race bias in, or the discriminatory effect of, the criminal justice system resulted in a disproportionate number of racial minorities being disenfranchised following felony convictions. The court concluded that Washington's felon disenfranchisement provision disenfranchised a disproportionate number of minorities; as a result, minorities were under--represented in Washington's political process. The Rooker--Feldman doctrine barred the felons from bringing any as--applied challenges, and even if it did not bar such claims, there was no evidence that the felons' individual convictions were born of discrimination in the criminal justice system. However, the felons' facial challenge also failed. The remedy they sought would create a new constitutional problem, allowing disenfranchisement only of white felons. Further, the felons did not establish a causal connection between</td>
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<tr>
<td>Name of Case</td>
<td>Court</td>
<td>Citation</td>
<td>Date</td>
<td>Fact</td>
<td>Holding</td>
<td>Statutory Basis</td>
<td>Other Notes</td>
<td>Should this Case be Included</td>
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<td>Farrakhan v. Washington</td>
<td>United States Court of Appeals for the Ninth Circuit</td>
<td>338 F.3d 1009; 2003 U.S. App. LEXIS 14810</td>
<td>July 25, 2003</td>
<td>Plaintiff inmates sued defendant state officials, claiming that Washington state's felon disenfranchisement scheme constitutes improper race-based vote denial in violation of § 2 of the Voting Rights Act. The United States District Court for the Eastern District of Washington granted of summary judgment dismissing the inmates' claims. The inmates appealed.</td>
<td>Upon conviction of infamous crimes in the state, (that is, crimes punishable by death or imprisonment in a state correctional facility), the inmates were disenfranchised. The inmates claimed that the disenfranchisement scheme violated § 2 because the criminal justice system was biased against minorities, causing a disproportionate minority representation among those being disenfranchised. The appellate court held, inter alia, that the district court erred in failing to consider evidence of racial bias in the state's criminal justice system in determining whether the state's felon disenfranchisement laws resulted in denial of the right to vote on account of race. Instead of applying its novel &quot;by itself&quot; causation standard, the district court should have applied a totality of the circumstances test that included analysis of the inmates' compelling evidence of racial bias in Washington's criminal justice system.</td>
<td>No</td>
<td>N/A</td>
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<tr>
<td>Name of Case</td>
<td>Court</td>
<td>Citation</td>
<td>Date</td>
<td>Plaintiff Statement</td>
<td>Defendant Statement</td>
<td>Holding</td>
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<td>Muntaqim v. Coombe</td>
<td>United States Court of Appeals for the Second Circuit</td>
<td>366 F.3d 102; 2004 U.S. App. LEXIS 8077</td>
<td>April 23, 2004</td>
<td>Plaintiff inmate appealed a judgment of the United States District Court for the Northern District of New York, which granted summary judgment in favor of defendants in the inmate's action alleging violation of § 2 of the Voting Rights Act of 1965.</td>
<td>At issue was whether the VRA could be applied to N.Y. Elec. Law § 5-106, which disenfranchised currently incarcerated felons and parolees. The instant court concluded that the Voting Rights Act did not apply to the New York law. Applying the Act to state law would alter the traditional balance of power between the states and the federal government. The court was not convinced that there was a congruence and proportionality between the injury to be prevented or remedied (i.e., the use of vote denial and dilution schemes to avoid the strictures of the VRA), and the means adopted to that end (i.e., prohibition of state felon disenfranchisement law that resulted in...</td>
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Further, there was no clear statement from Congress that the Act applied to state felon disenfranchisement statutes. Inter alia, defendants were entitled to qualified immunity as to claim asserted against them in their personal capacities, and to Eleventh Amendment immunity to the extent the inmate sought damages against defendants in their official capacities. The district court's judgment was affirmed.

Johnson v. Governor of Fla.  
United States Court of Appeals for the Eleventh Circuit  
353 F.3d 1287; 2003 U.S. App. LEXIS 25859  
December 19, 2003  
Plaintiffs, ex-felon citizens of Florida, on their own right and on behalf of others, sought review of a decision of the United States District Court for the Southern District of Florida, which granted summary judgment to defendants, members of the Florida Clemency Board in the citizens alleged that Fla. Const. art. VI, § 4 (1968) was racially discriminatory and violated their constitutional rights. The citizens also alleged violations of the Voting Rights Act. The court of appeals initially examined the history of Fla. Const. art. VI, § 4 (1968) and determined that the citizens had presented evidence that historically the disenfranchisement provisions were motivated by a discriminatory animus. The citizens had met their initial burden of showing that race was a substantial motivating factor. The state was then required to

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<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Holding</th>
<th>Statutory Basis</th>
<th>Result</th>
<th>Relevance Further</th>
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<tr>
<td>Johnson v. Governor of Fla.</td>
<td>United States Court of Appeals for the Eleventh Circuit</td>
<td>353 F.3d 1287; 2003 U.S. App. LEXIS 25859</td>
<td>December 19, 2003</td>
<td>The citizens alleged that Fla. Const. art. VI, § 4 (1968) was racially discriminatory and violated their constitutional rights. The citizens also alleged violations of the Voting Rights Act. The court of appeals initially examined the history of Fla. Const. art. VI, § 4 (1968) and determined that the citizens had presented evidence that historically the disenfranchisement provisions were motivated by a discriminatory animus. The citizens had met their initial burden of showing that race was a substantial motivating factor. The state was then required to</td>
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their official capacity. The citizens challenged the validity of the Florida felon disenfranchisement laws. show that the current disenfranchisement provisions would have been enacted absent the impermissible discriminatory intent. Because the state had not met its burden, summary judgment should not have been granted. The court of appeals found that the claim under the Voting Rights Act, also needed to be remanded for further proceedings. Under a totality of the circumstances, the district court needed to analyze whether intentional racial discrimination was behind the Florida disenfranchisement provisions. The court affirmed the district court's decision to grant summary judgment on the citizens' poll tax claim. The court reversed the district court's decision to grant summary judgment to the Board on the claims under the equal protection clause and for violation of federal voting laws and remanded the matter to the district court for further proceedings.

Fischer v. Governor

Supreme Court of New Hampshire 145 N.H. 28; 749 A.2d 321;

March 24, 2000

Appellant State of New Hampshire challenged a ruling of the superior court Appellee was incarcerated at the New Hampshire State Prison on felony convictions. When he requested an absentee ballot to vote from a city

No  N/A  No
that the felon disenfranchisement statutes violate N.H. Const. pt. I, Art. 11. The clerk sent him a copy of N.H. Rev. Stat. Ann. § 607(A)(2) (1986), which prohibits a felon from voting "from the time of his sentence until his final discharge." The trial court declared the disenfranchisement statutes unconstitutional and ordered local election officials to allow the plaintiff to vote. Appellant State of New Hampshire challenged this ruling. The central issue was whether the felon disenfranchisement statutes violated N.H. Const. pt. I, art. 11. After a review of the article, its constitutional history, and legislation pertinent to the right of felons to vote, the court concluded that the legislature retained the authority under the article to determine voter qualifications and that the felon disenfranchisement statutes were a reasonable exercise of legislative authority, and reversed. Judgment reversed because the court concluded that the legislature retained its authority under the New Hampshire Constitution to determine voter qualifications and that the felon disenfranchisement statutes were a reasonable exercise of legislative
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<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Plaintiff/sued defendant</th>
<th>Holding</th>
<th>Statutory Authority on which Decision rests</th>
<th>Other Notes</th>
<th>Should it be assigned a different disposition</th>
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<tr>
<td>Johnson v.</td>
<td>United States Court of Appeals for the Eleventh Circuit</td>
<td>405 F.3d 1214; 2005 U.S. App. LEXIS 5945</td>
<td>April 12, 2005</td>
<td>Plaintiff individuals sued defendant members of Florida Clemency Board, arguing that Florida's felon disenfranchisement law, Fla. Const. art. VI, § 4 (1968), violated the Equal Protection Clause and the Voting Rights Act. The United States District Court for the Southern District of Florida granted the members summary judgment. A divided appellate panel reversed. The panel opinion was vacated and a rehearing en banc was granted.</td>
<td>The individuals argued that the racial animus motivating the adoption of Florida's disenfranchisement laws in 1868 remained legally operative despite the reenactment of Fla. Const. art. VI, § 4 in 1968. The subsequent reenactment eliminated any discriminatory taint from the law as originally enacted because the provision narrowed the class of disenfranchised individuals and was amended through a deliberative process. Moreover, there was no allegation of racial discrimination at the time of the reenactment. Thus, the disenfranchisement provision was not a violation of the Equal Protection Clause and the district court properly granted the members summary judgment on that claim. The argument that the Voting Rights Act applied to Florida's disenfranchisement provision was rejected because it raised grave constitutional concerns, i.e., prohibiting a practice that the Fourteenth Amendment permitted the state to maintain. In addition, the legislative history indicated that</td>
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Congress never intended the Voting Rights Act to reach felon disenfranchisement provisions. Thus, the district court properly granted the members summary judgment on the Voting Rights Act claim. The motion for summary judgment in favor of the members was granted.

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<tr>
<th>Name of Case</th>
<th>Court of Origin</th>
<th>Citation</th>
<th>Date</th>
<th>Holding</th>
<th>Affirmance</th>
<th>Reversal</th>
<th>Remanded</th>
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Petitioner convicted felons were presently or had formerly been confined in state prison. Petitioner elector was currently registered to vote in respondent state. Petitioners filed a complaint against respondent state seeking declaratory relief challenging as unconstitutional, state election and voting laws that excluded confined felons from the definition of qualified absentee electors and that barred a felon who had been released from a penal institution for less than five years from registering to vote. Respondents filed objections to petitioners' complaint. The court sustained respondents' objection that incarcerated felons were not unconstitutionally deprived of qualified absentee elector status because respondent state had broad power to determine the...
The court overruled objection as to deprivation of ex-felon voting rights. The court sustained respondents' objection since incarcerated felons were not unconstitutionally deprived of qualified absentee elector status and petitioner elector had no standing, but objection that ex-incarcerated felons' voting rights were deprived was overruled since status penalized them.

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<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Statutory Basis</th>
<th>Holding</th>
<th>Code</th>
<th>Status</th>
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<tr>
<td>Rosello v. Calderon</td>
<td>District Court for the District of Puerto Rico</td>
<td>2004 U.S. Dist. LEXIS 27216</td>
<td>Plaintiff voters filed a § 1983 action against defendant government officials alleging violations the Due Process and Equal Protection Clauses of the U.S. Const. amend. XIV, resulting from the invalidity of absentee and split ballots in a gubernatorial election. The voters' § 1983 action against government officials alleged that absentee ballots for a gubernatorial election were untimely mailed and that split votes, which registered two votes for the same office, were null. The court asserted jurisdiction over the disparate treatment claims, which arose under the U.S. Constitution. The court declined to exercise discretionary abstention because the case was not merely a facial attack on the constitutionality of a statute, but was mainly an applied challenge, requiring a hearing in order to develop the record, and because equal protection</td>
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<td>Plaintiff/Case</td>
<td>Court</td>
<td>Citation</td>
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<td>Woodruff v. Wyoming</td>
<td>United States Court of Appeals for the Tenth Circuit</td>
<td>49 Fed. Appx. 199; 2002 U.S. App. LEXIS 21060</td>
<td>October 7, 2002</td>
<td>The inmates argued that the statute violated their Eighth Amendment right and their State constitutional right to be free from cruel and unusual punishment, their equal protection rights under the Fourteenth Amendment and State Constitution, and their federal and state rights to due process. One inmate had not paid the appellate filing fee or filed a motion to proceed on appeal without prepayment.</td>
<td>The court held that the voters had a fundamental due process right created by Puerto Rico Election Law and suffered an equal protection violation in further violation of the U.S. Const. amend. I right to vote, thereby creating their total disenfranchisement. The court held that the evidence created an inference that the split ballots were not uniformly treated and that it was required to examine a mixed question of fact and constitutional law pursuant to federal guidelines to determine whether potential over votes were invalid. The court asserted jurisdiction over the voters' claims.</td>
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them, the prosecutors who tried the cases, or the judges who heard their cases. The court also found the dismissed suit constituted a “strike” under 28 U.S.C.S. § 1915(g), although the suit did not challenge prison conditions per se. One inmate’s appeal was dismissed; the judgment dismissing the other’s complaint was affirmed.

<p>| N.J. State Conf.-NAACP v. Harvey | Superior Court of New Jersey, Appellate Division | 381 N.J. Super. 155; 885 A.2d 445; 2005 N.J. Super. LEXIS 316 | November 2, 2005 | The Superior Court of New Jersey, Chancery Division, Union County, dismissed a complaint filed by plaintiff interested parties to invalidate N.J. Stat. Ann. § 19:4-1(8) on the statute at issue prohibited all people on parole or probation for indictable offenses from voting. The interested parties alleged that the criminal justice system in New Jersey discriminated against African-Americans and Hispanics, thereby disproportionately increasing their population among parolees and probationers and diluting their political | No | N/A | No |</p>
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<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
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<th>Description</th>
<th>Statutory Basis</th>
<th>Other Notes</th>
<th>Should be Reported Further</th>
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<tr>
<td>King v. City of Boston</td>
<td>United States District Court for the District of Massachusetts</td>
<td>2004 U.S. Dist. LEXIS 8421</td>
<td>May 13, 2004</td>
<td>Plaintiff inmate filed a motion for summary judgment in his action challenging the constitutionality of Mass. Gen. Laws ch. 51, § 1, which excluded incarcerated felons from voting while they were on parole and probation. The inmate was convicted of a felony and incarcerated. His application for an absentee ballot was denied on the ground that he was not qualified to register and vote under Mass. Gen. Laws ch. 51, § 1. The inmate argued that the statute was unconstitutional as it applied to him because it amounted to additional punishment for crimes he committed before the statute's enactment and thus violated his due process rights and the prohibition.</td>
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implicated in the statute's disenfranchisement of persons under guardianship, persons disqualified because of corrupt elections practices, persons under 18 years of age, as well as incarcerated felons. Specifically, incarcerated felons were disqualified during the period of their imprisonment when it would be difficult to identify their address and ensure the accuracy of their ballots. Therefore, the court concluded that Mass. Gen. Laws ch. 51, § 1 did not violate the inmate's constitutional rights. The court found the statute at issue to be constitutional and denied the inmate's motion for summary judgment.

<p>| Southwest Voter Registration Educ. Project v. Shelley | United States District Court for the Central District of California | 278 F. Supp. 2d 1131; 2003 U.S. Dist. LEXIS | August 15, 2003 | Plaintiffs, several groups, brought suit alleging that the proposed use of &quot;punch-card&quot; balloting machines in the California | Plaintiffs claimed voters using punch-card machines would have a comparatively lesser chance of having their votes counted in violation of the Equal Protection Clause and the counties employing punch-card systems had greater minority | No | N/A | No |</p>
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<tr>
<th>Issue Date</th>
<th>Claim</th>
<th>Case</th>
<th>Facts</th>
<th>Holding</th>
<th>Statute Used</th>
<th>Other Stats</th>
<th>3rd party</th>
<th>Status and Reason for Filing</th>
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The election would violate the United States Constitution and Voting Rights Act. Plaintiffs moved for an order delaying that election, scheduled for October 7, 2003, until such time as it could be conducted without use of punch-card machines. Populations thereby disproportionately disenfranchising and/or diluting the votes on the basis of race, in violation of § 2 of the Voting Rights Act. While the court did not need to decide the res judicata issue at this juncture, there was ample reason to believe that plaintiffs would have had a difficult time overcoming it as they were seeking to establish the same constitutional violations alleged in prior litigation, but to secure an additional remedy. Plaintiffs failed to prove a likelihood of success on the merits with regard to both of their claims. Even if plaintiffs could show disparate treatment, such would not have amounted to illegal or unconstitutional treatment. The balance of hardships weighed heavily in favor of allowing the election to proceed. The public interests in avoiding wholesale disenfranchisement, and/or not plunging the State into a constitutional crisis, weighed heavily against enjoining the election. Plaintiffs' motion for preliminary injunction (consolidated with plaintiffs' ex parte application for temporary restraining
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<th>Case Name</th>
<th>Court</th>
<th>Opinion Number</th>
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<th>Issue</th>
<th>Holding</th>
<th>Reversal</th>
<th>Reaffirmation</th>
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<tr>
<td>Igartua-de la Rosa v. United States</td>
<td>United States Court of Appeals for the First Circuit</td>
<td>417 F.3d 145; 2005 U.S. App. LEXIS 15944</td>
<td>August 3, 2005</td>
<td>Plaintiff, a U.S. citizen residing in Puerto Rico, appealed from an order of the United States District Court for the District of Puerto Rico, that rejected his claim that he was deprived of the constitutional right to vote for President and Vice President of the United States, and was also violative of three treaty obligations of the United States.</td>
<td>The putative voter had brought the same claims twice before. The court pointed out that U.S. law granted to the citizens of states the right to vote for the slate of electors to represent that state. Although modern ballots omitted the names of the electors and listed only the candidates, and in form it appeared that the citizens were voting for President and Vice President directly, they were not, but were voting for electors. Puerto Rico was not a state, and had not been enfranchised as the District of Columbia had by the 23rd Amendment. The franchise for choosing electors was confined to &quot;states&quot; by the Constitution. The court declined to turn to foreign or treaty law as a source to reverse the political will of the country. The judgment of the district court was affirmed.</td>
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<td>United States v. Rogelio Mejorada-Lopez</td>
<td>Alaska</td>
<td>05-CR-074</td>
<td>December 5, 2005</td>
<td>Mejorada-Lopez, a Mexican citizen, completed several voter registration applications to register to vote in Alaska and voted in</td>
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Shah was indicted on two counts of providing false information concerning United States citizenship in order to register to vote in violation of 18 U.S.C. section 911 and pled guilty. Mejorada-Lopez was sentenced to probation for one year.

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<tr>
<th>Case</th>
<th>District</th>
<th>Date</th>
<th>Outcome</th>
<th>Subcribe</th>
<th>Notes</th>
<th>Research Required</th>
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</thead>
<tbody>
<tr>
<td>United States v. Shah</td>
<td>Colorado</td>
<td>1:04-CR-00458</td>
<td>March 1, 2005</td>
<td>Shah was indicted on two counts of providing false information concerning United States citizenship in order to register to vote in violation of 18 U.S.C. section 911 and 1015(f). Shah was convicted on both counts.</td>
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<tr>
<td>United States v. Mohsin Ali</td>
<td>Northern Florida</td>
<td>4:05-CR-47</td>
<td>January 17, 2006</td>
<td>A misdemeanor was filed against Ali charging him with voting by a non-</td>
<td>No</td>
<td>N/A</td>
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<tr>
<td>Case</td>
<td>District</td>
<td>Case Number</td>
<td>Date</td>
<td>Allegations</td>
<td>Statute(s) of Violation</td>
<td>Other Notes</td>
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<tr>
<td>United States v. Chaudhary</td>
<td>Northern Florida</td>
<td>4:04-CR-00059</td>
<td>May 18, 2005</td>
<td>Chaudhary was indicted for misuse of a social security number in violation of 42 U.S.C. section 408 and for making a false claim of United States citizenship on a 2002 driver's license application in violation of 18 U.S.C. section 911. A superseding indictment was returned, charging Chaudhary with falsely claiming United States citizenship on a driver's license application and on the accompanying voter registration application. He was convicted of the false claim of United States citizenship.</td>
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A superceding indictment was returned, charging Chaudhary with falsely claiming United States citizenship on a driver's license application and on the accompanying voter registration application. He was convicted of the false claim of United States citizenship.
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<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Fact</th>
<th>Holding</th>
<th>Citation</th>
<th>Date</th>
<th>Does Not Apply</th>
<th>Should Be Attached</th>
<th>Appellate Court</th>
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<tbody>
<tr>
<td>United States v. Velasquez</td>
<td>Southern Florida</td>
<td>1:03-CR-2023</td>
<td>September 9, 2003</td>
<td>Velasquez, a former 1996 and 1998 candidate for the Florida legislature, was indicted on charges of misrepresenting United States citizenship in connection with voting and for making false statements to the Immigration and Naturalization Service, in violation of 18 U.S.C. section 911, 1015(f) and 1001. Velasquez was convicted on two counts of making false statements on his naturalization application to the INS concerning his voting history.</td>
<td>No</td>
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<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Factual</th>
<th>Holding</th>
<th>Sentencing</th>
<th>Charge</th>
<th>Dismissed or Acquitted</th>
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<tr>
<td>Name of the Case</td>
<td>Court</td>
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<td>Fact</td>
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Charles Powell, Jr., Jesse Lewis, Sheila Thomas, Kelvin Ellis, and one precinct worker, Yvette Johnson, on conspiracy and vote buying charges in violation of 18 U.S.C. section 371 and 42 U.S.C. section 1973i(c). All five defendants were convicted. Kelvin Ellis also pled guilty to one count of 18 U.S.C. section 1512(c)(2) relative to a scheme to kill one of the trial witnesses and two counts of 18 U.S.C. section 1503 relative to directing two other witnesses to refuse to testify before the grand jury.

| Name/Party | State | Citation | Date       | Alleged Offense                                                                 | Filing Status | Review | Appeal
|------------|-------|----------|------------|---------------------------------------------------------------------------------|---------------|--------|--------
<p>| United States v. McIntosh | Kansas | 2:04-CR-20142 | December 20, 2004 | A felony information was filed against                                           | No            | N/A    | No     |</p>
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<tr>
<th>Name</th>
<th>Case Name</th>
<th>Circuit</th>
<th>District</th>
<th>Date</th>
<th>Charge Description</th>
<th>Statute Violated</th>
<th>Order No.</th>
<th>Should be Reopened</th>
</tr>
</thead>
<tbody>
<tr>
<td>lawyer Leslie McIntosh</td>
<td>United States v. Conley;</td>
<td>Eastern</td>
<td>Kentucky</td>
<td>March 28, 2003 and April 24, 2003</td>
<td>Ten people were indicted on vote buying charges in connection with the 1998 primary</td>
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<td>No</td>
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<td>for voting in both Wyandotte</td>
<td>United States v. Stone;</td>
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<tr>
<td>County, Kansas and</td>
<td>United States v. Madden;</td>
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<td>Jackson County, Missouri,</td>
<td>United</td>
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<td>in the general elections of</td>
<td>States v.</td>
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<td>2000 and 2002 in violation</td>
<td>United</td>
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<td>of 42 U.S.C. section 1973(c)</td>
<td>States</td>
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<td>A superseding misdemeanor</td>
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<td>charging McIntosh with</td>
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<td>causing the deprivation of</td>
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<td>constitutional rights</td>
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<td>in violation of 18 U.S.C.</td>
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<td>to which the defendant pled</td>
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<td>guilty.</td>
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<tr>
<td>States v. Slone et al.; United States v. Calhoun; United States v. Johnson; United States v. Newsome, et al.</td>
<td>00015; 7:03-CR-00016; 7:03-CR-00017; 7:03-CR-00018; 7:03-CR-00019</td>
<td>election in Knott County, Kentucky, in violation of 42 U.S.C. section 1973(i)(c). Five of the defendants pled guilty, two were convicted, and three were acquitted.</td>
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<td>United States v. Hays, et al.</td>
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<tr>
<td>Case</td>
<td>Court</td>
<td>Citation</td>
<td>Date</td>
<td>Charges</td>
<td>Status</td>
<td>Status Notes</td>
<td>Case Notes</td>
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<tr>
<td>United States v. Braud</td>
<td>Middle Louisiana</td>
<td>3:03-CR-00019</td>
<td>May 2, 2003</td>
<td>Tyrell Mathews Braud was indicted on three counts of making false declarations to a grand jury in connection with his 2002 fabrication of eleven voter registration applications, in violation of 18 U.S.C. section 1623. Braud pled guilty on all counts.</td>
<td>No</td>
<td>N/A</td>
<td>No</td>
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<tr>
<td>United States v.</td>
<td>Western</td>
<td>6:03-CR-00001</td>
<td>April 12, St. Martinsville City</td>
<td>Braud was indicted on three counts of making false declarations to a grand jury in connection with his 2002 fabrication of eleven voter registration applications, in violation of 18 U.S.C. section 1623. Braud pled guilty on all counts.</td>
<td>No</td>
<td>N/A</td>
<td>No</td>
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<tr>
<td>Name of Case</td>
<td>County</td>
<td>Citation</td>
<td>Date</td>
<td>Charges</td>
<td>Holdings</td>
<td>National Party Affiliation</td>
<td>Other Notes</td>
<td>Should Candidate Be Garnished</td>
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<tr>
<td>Thibodeaux</td>
<td>Louisiana</td>
<td>60055</td>
<td>2005</td>
<td>Councilwoman Pamela C. Thibodeaux was indicted on two counts of conspiring to submit false voter registration information, in violation of 18 U.S.C. section 371 and 42 U.S.C. section 1973i(c). She pled guilty to both charges.</td>
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<tr>
<td>United States v. Scherzer; United States v. Goodrich; United States v. Jones; United States v. Martin</td>
<td>Western Missouri</td>
<td>4:04-CR-00401; 4:04-CR-00402; 4:05-CR-00257; 4:05-CR-00258</td>
<td>January 7, 2005; March 28, 2005; September 8, 2005; October 13, 2005</td>
<td>Two misdemeanor informations were filed charging Lorraine Goodrich and James Scherzer, Kansas residents who voted in the 2000 and 2002 general elections on both Johnson County, Kansas and in Kansas City, Missouri. The informations charged deprivation of a</td>
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<td>No</td>
<td>N/A</td>
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of 18 U.S.C. sections 242 and 2. Both pled guilty. Additionally, similar misdemeanor informations were filed against Tammy J. Martin, who voted in both Independence and Kansas City, Missouri in the 2004 general election and Brandon E. Jones, who voted both in Raytown and Kansas City, Missouri in the 2004 general election. Both pled guilty.

<table>
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<tr>
<th>Case</th>
<th>Count</th>
<th>Citations</th>
<th>Date</th>
<th>Description</th>
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<tbody>
<tr>
<td>United States v. Raymond; United States v. McGee; United States v. Tobin; United States v. Hansen</td>
<td>New Hampshire</td>
<td>04-CR-00141; 04-CR-00146; 04-CR-00216; 04-CR-00054</td>
<td>December 15, 2005</td>
<td>Two informations were filed charging Allen Raymond, former president of a Virginia-based political consulting firm called GOP Marketplace, and</td>
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</tbody>
</table>
Charles McGee, former executive director of the New Hampshire State Republican Committee, with conspiracy to commit telephone harassment using an interstate phone facility in violation of 18 U.S.C. section 371 and 47 U.S.C. section 223. The charges stem from a scheme to block the phone lines used by two Manchester organizations to arrange drives to the polls during the 2002 general election. Both pled guilty. James Tobin, former New England Regional Director of the Republican National Committee, was indicted on charges of conspiring.
to commit telephone harassment using an interstate phone facility in violation of 18 U.S.C. section 371 and 47 U.S.C. section 223. An information was filed charging Shaun Hansen, the principal of an Idaho telemarketing firm called MILO Enterprises which placed the harassing calls, with conspiracy and aiding and abetting telephone harassment, in violation of 18 U.S.C. section 371 and 2 and 47 U.S.C. section 223. The information against Hansen was dismissed upon motion of the government. A superseding
violation of 18 U.S.C. section 241 and conspiracy to
U.S.C. section 223. Tobin was convicted of one count of
harassment and one

<table>
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<tr>
<th>Name/Case</th>
<th>District</th>
<th>Case</th>
<th>Date</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>United States v. Workman</td>
<td>Western North Carolina</td>
<td>1:03-CR-00038</td>
<td>June 30, 2003</td>
<td>indictment was returned against Tobin charging conspiracy to impede the constitutional right to vote for federal candidates, in violation of 18 U.S.C. section 241 and conspiracy to make harassing telephone calls in violation of 47 U.S.C. section 223. Tobin was convicted of one count of conspiracy to commit telephone harassment and one count of aiding and abetting of telephone harassment.</td>
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<tr>
<td>Name of Case</td>
<td>Count.</td>
<td>Citation</td>
<td>Date</td>
<td>Description</td>
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<tr>
<td>United States v.</td>
<td>Western North Carolina</td>
<td>5:03-CR-00035 May 14, 2004</td>
<td>A nine-count indictment was returned charging Wayne Shatley, Anita Moore, Valerie Moore, Carlos &quot;Sunshine&quot; Hood and Ross &quot;Toogie&quot; Banner with conspiracy and vote buying in the Caldwell County 2002 general election, in violation of 42 U.S.C. section 1973(i) and 18</td>
<td>No N/A No</td>
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</tbody>
</table>
United States v. Vargas  
South Dakota  
05-CR-50085  
December 22, 2005  
An indictment was filed against Rudolph Vargas, for voting more than once at Pine Ridge in the 2002 general election in violation of 42 U.S.C. section 1973i(e). Vargas pled guilty.

July 22, 2003; July 19, 2004; December 7, 2004; January 7, 2005; March 21, 2005; October 11, 2005; December 13, 2005  
Danny Ray Wells, Logan County, West Virginia, magistrate, was indicted and charged with violating 18 U.S.C. section 1962. Wells was found guilty. A felony indictment was filed against Logan County sheriff Johnny Mendez for conspiracy to
States v. Nagy;
United States v. Adkins; United States v. Harvey

defraud the United States in violation 18 U.S.C section 371. Mendez pled guilty. An information was filed charging former Logan County police chief Alvin Ray Porter, Jr., with making expenditures to influence voting in violation of 18 U.S.C. section 597. Porter pled guilty. Logan County attorney Mark Oliver Hrutkay was charged by information with mail fraud in violation of 18 U.S.C. section 1341. Hrutkay pled guilty. Earnest Stapleton, commander of the local VFW, was charged by information with mail fraud. He pled guilty. An information was filed
<table>
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<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Details</th>
<th>Held in Case of Note</th>
<th>Other Notes</th>
<th>Still In Case</th>
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<tbody>
<tr>
<td>United States v. Adkins, et al.</td>
<td>Southern West Virginia</td>
<td>2:04-CR-00162</td>
<td>December 28 &amp; 30, 2005</td>
<td>Jackie Adkins was indicted for vote buying in Lincoln County, West Virginia, in violation of 42 U.S.C. section 1973(c). A superseding indictment added Wandell &quot;Rocky&quot; Adkins to the indictment and charged both defendants with conspiracy to buy votes in violation of 18 U.S.C. section 371 and vote buying. A second superseding indictment was returned which added three additional defendants, Gregory Brent Stowers,</td>
<td>No</td>
<td>N/A</td>
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Groundhog" Vance, and Toney "Zeke" Dingess, to the conspiracy and vote buying indictment. Charges were later dismissed against Jackie Adkins. A third superseding indictment was returned adding two additional defendants, Jerry Allen Weaver and Ralph Dale Adkins. A superseding information was filed charging Vance with expenditures to influence voting, in violation of 18 U.S.C. section 597. Vance pled guilty. Superseding informations were filed against Stowers and Dingess for expenditures to influence voting, in
<table>
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<tr>
<th>County</th>
<th>District</th>
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<th>Holding</th>
<th>Updated Status</th>
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<td>September 16, 2005; September 21, 2005; October 5, 2005; October 26, 2005; October 31, 2005; November 10, 2005</td>
<td>Criminal complaints were issued against Brian L. Davis and Theresa J. Byas charging them with double voting, in violation of 42 U.S.C. section 1973(c). Indictments were filed against convicted felons Milo R. Ocasio and Kimberly Prude, charging them with</td>
<td>N/A</td>
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<tr>
<td>Name of Case</td>
<td>Date</td>
<td>District</td>
<td>Defendant</td>
<td>Indictments</td>
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filed against Davis and Byas charging them with double voting. Four more indictments were returned charging convicted felons Ethel M. Anderson, Jyto L. Cox, Correan F. Edwards, and Joseph J. Gooden with falsely certifying that they were eligible to vote. Ocasio and Hamilton pled guilty. Prude was found guilty. A mistrial was declared in the Sanders case. Brooks was acquitted. Byas signed a plea agreement agreeing to plead to a misdemeanor 18 U.S.C. section 242 charge. Swift moved to change his plea. Davis was found incompetent to stand
<table>
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<tr>
<th>National Geographical</th>
<th>Court</th>
<th>Date</th>
<th>Citation/Link</th>
<th>Summary</th>
<th>Should the trial be Rescheduled Further</th>
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<tbody>
<tr>
<td>Am. Ass'n of People with Disabilities v. Shelley</td>
<td>United States District Court for the Central District of California</td>
<td>July 6, 2004</td>
<td>324 F. Supp. 2d 1120; 2004 U.S. Dist. LEXIS 12587</td>
<td>Trial so the government dismissed the case. Gooden is a fugitive. Alicea was acquitted. Four cases are pending—Anderson, Cox, Edwards, and Little.</td>
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<td>Plaintiffs, disabled voters and organizations representing those voters, sought to enjoin the directives of defendant California Secretary of State, which decertified and withdrew approval of the use of certain direct recording electronic voting systems. One voter applied for a temporary restraining order, or, in the alternative, a preliminary injunction.</td>
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<td>The voters urged the invalidation of the Secretary's directives because, allegedly, their effect was to deprive the voters of the opportunity to vote using touch-screen technology. Although it was not disputed that some disabled persons would be unable to vote independently and in private without the use of DREs, it was clear that they would not be deprived of their fundamental right to vote. The Americans with Disabilities Act did not require accommodation that would enable disabled persons to vote in a manner that was comparable in every way with the voting rights enjoyed by persons without disabilities. Rather, it mandated that voting programs be made accessible. Defendant's decision to suspend the use of DREs pending</td>
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The Division of the system without third-party elections of the assistance. If it was feasible for the improvement in their reliability and security of the devices was a rational one, designed to protect the voting rights of the state's citizens. The evidence did not support the conclusion that the elimination of the DREs would have a discriminatory effect on the visually or manually impaired. Thus, the voters showed little likelihood of success on the merits. The individual's request for a temporary restraining order, or, in the alternative, a preliminary injunction, was denied.

| Am. Ass'n of People with Disabilities v. Hood | United States District Court for the Middle District of Florida | 310 F. Supp. 2d 1226; 2004 U.S. Dist. LEXIS 5615 | March 24, 2004 | Plaintiffs, disabled voters, and a national organization, sued defendants, the Florida Secretary of State, the Director of the Division of Elections of the Florida Department of State, and a county supervisor of elections, under Title II of the Americans With Disabilities Act and Section 504 of The voters were visually or manually impaired. The optical scan voting system purchased by the county at issue was not readily accessible to visually or manually impaired voters. The voters were unable to vote using the system without third-party assistance. If it was feasible for the county to purchase a readily accessible system, then the voters' rights under the ADA and the RA were violated. The court found that the manually impaired voter's rights were violated. To the extent "jelly switches" and "sip and puff" devices needed to be |

| No | N/A | No |
the Rehabilitation Act of 1973. Summary judgment was granted for the Secretary and the Director as to visually impaired voters.

attached to a touch screen machine for it to be accessible, it was not feasible for the supervisor to provide such a system, since no such system had been certified at the time of the county's purchase. 28 C.F.R. § 35.160 did not require that visually or manually impaired voters be able to vote in the same or similar manner as non-disabled voters. Visually and manually impaired voters had to be afforded an equal opportunity to participate in and enjoy the benefits of voting. The voters' "generic" discrimination claim was coterminous with their claim under 28 C.F.R. § 35.151. A declaratory judgment was entered against the supervisor to the extent another voting system would have permitted unassisted voting. The supervisor was directed to have some voting machines permitting visually impaired voters to vote alone. The supervisor was directed to procure another system if the county's system was not certified and/or did not permit mouth stick voting. The Secretary and Director were granted judgment against the voters.
<table>
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<tr>
<th>Name</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Description</th>
<th>Result</th>
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<tbody>
<tr>
<td>Troiano v. Lepore</td>
<td>United States District Court for the Southern District of Florida</td>
<td>2003 U.S. Dist. LEXIS 25850</td>
<td>November 3, 2003</td>
<td>Plaintiffs, disabled voters, sued defendant a state county supervisor of elections alleging discrimination pursuant to the Americans With Disability Act, 42 U.S.C.S. § 12132 et seq., § 504 of the Rehabilitation Act, 29 U.S.C.S. § 794 et seq., and declaratory relief for the discrimination. Both sides moved for summary judgment. The complaint alleged that after the 2000 elections Palm Beach County purchased a certain number of sophisticated voting machines called the &quot;Sequoia.&quot; According to the voters, even though such accessible machines were available, the supervisor decided not to place such accessible machines in each precinct because it would slow things down too much. The court found that the voters lacked standing because they failed to show that they had suffered an injury in fact. The voters also failed to show a likely threat of a future injury because there was no reasonable grounds to believe that the audio components of the voting machines would not be provided in the future. The voters also failed to state an injury that could be redressed by a favorable decision, because the supervisor was already using the Sequoia machines and had already trained poll workers on the use of the machines. Finally, the action was moot because the Sequoia machines had been provided and there was no reasonable expectation that the machines would not have audio components available in the future.</td>
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agreed that the case was moot because failure to make the election supervisor had furnished components in voting booths to assist persons who were blind or visually impaired violated state and federal law. The United States District Court for the Southern District of Florida entered summary judgment in favor of the election supervisor. The voters appealed.

The district court granted the election supervisor summary judgment on the grounds that the voters did not have standing to assert their claims and the claims were moot. The appellate court agreed that the case was moot because the election supervisor had furnished the requested audio components and those components were to be available in all of the county's voting precincts in upcoming elections. Specifically, the election supervisor had ceased the allegedly illegal practice of limiting access to the audio components prior to receiving notice of the litigation. Moreover, since making the decision to use audio components in every election, the election supervisor had consistently followed that policy and taken actions to implement it even prior to the litigation. Thus, the appellate court could discern no hint that she had any intention of removing the accessible voting machines in the future. Therefore, the voters' claims

<table>
<thead>
<tr>
<th>Name</th>
<th>Court of Appeals for the Eleventh Circuit</th>
<th>Date</th>
<th>Description</th>
<th>Statutory Basis (of Note)</th>
<th>Other Note</th>
<th>Should the Case be Reversed?</th>
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<tbody>
<tr>
<td>Troiano v. Supervisor of Elections</td>
<td>382 F.3d 1276; 2004 U.S. App. LEXIS 18497</td>
<td>September 1, 2004</td>
<td>Plaintiff visually impaired registered voters sued defendant county election supervisor, alleging that the failure to make available audio components in voting booths to assist persons who were blind or visually impaired violated state and federal law. The United States District Court for the Southern District of Florida entered summary judgment in favor of the election supervisor. The voters appealed.</td>
<td>No</td>
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<td>No</td>
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Am. Ass'n of People with Disabilities v. Smith

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<thead>
<tr>
<th>Case</th>
<th>Citation</th>
<th>Date</th>
<th>Disposition</th>
<th>Analysis</th>
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<tbody>
<tr>
<td>United States District Court for the Middle District of Florida</td>
<td>227 F. Supp. 2d 1276; 2002 U.S. Dist. LEXIS 21373</td>
<td>October 16, 2002</td>
<td>Plaintiff organization of people with disabilities and certain visually and manually impaired voters filed an action against defendant state and local election officials and members of a city council, claiming violation of the Americans with Disabilities Act, 42 U.S.C.S. § 12101 et seq., and the Rehabilitation Act of 1973, and Fla. Const. art. VI, § 1.</td>
<td>Individual plaintiffs were unable to vote unassisted with the equipment currently used in the county or the equipment the county had recently purchased. In order to vote, the impaired individuals relied on the assistance of third parties. The court held that it could not say that plaintiffs would be unable to prove any state of facts that would satisfy the ripeness and standing requirements. The issue of whether several Florida statutory sections were violative of the Florida Constitution were so intertwined with the federal claims that to decline supplemental jurisdiction be an abuse of discretion. Those statutes which provided for assistance in voting did not violate Fla. Const. art. VI, § 1. Because plaintiffs may be able to prove that visually and manually impaired voters were being denied meaningful access to the service, program, or activity, the court could not say with certainty that they would</td>
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not be entitled to relief under any state of facts which could be proved in support of their claims. Defendant council members were entitled to absolute legislative immunity. The state officials' motion to dismiss was granted in part such that the counts were dismissed with prejudice to the extent plaintiffs asserted that they had been excluded from or denied the benefits of a program of direct and secret voting and in part was dismissed with leave to amend. The local officials motion to dismiss was granted in part such that all counts against the city council members were dismissed.

| Jenkins v. Williamson-Butler | Court of Appeal of Louisiana, Fourth Circuit | 883 So. 2d 537; 2004 La. App. LEXIS 2433 | October 8, 2004 | Petitioner, a candidate for a parish juvenile court judgeship, failed to qualify for a runoff election. She filed suit against defendant, the clerk of criminal court for the parish seeking a new election, based on grounds of substantial | The trial court found that the voting machines were not put into service until two, four, and, in many instances, eight hours after the statutorily mandated starting hour which constituted serious irregularities so as to deprive voters from freely expressing their will. It was impossible to determine the number of voters that were affected by the late start up or late arrival of voting machines, making it impossible to determine the result. The appellate court agreed that the | No | N/A | No |
ordered the holding

In re Election
Contest of
Democratic
Primary Election

Fourth Circuit
Supreme Court of
Ohio
2004 La.
LEXIS
2429

filed suit against
defendants, Louisiana Secretary
of State and district
court clerk, contesting the school
board election
results. The trial
court rendered
judgment against the
candidate, finding
no basis for the
election to be
declared void. The
candidate appealed.
irregularities were so serious that the
trial court's voiding the election and
calling a new election was the proper

irregularities. The
district court ruled in favor of the
candidate and
ordered the holding
of a restricted
citywide election. The clerk appealed.

Petitioner, school
board candidate,
filed suit against
defendants,
Louisiana Secretary
of State and district
court clerk, contesting the school
board election
results. The trial
court rendered
judgment against the
candidate, finding
no basis for the
election to be
declared void. The
candidate appealed.
The candidate argued that the trial
court erred in not setting aside the
election, even after acknowledging in
its reasons for judgment numerous
irregularities with the election process.
The appellate court ruled that had the
irregularities not occurred the outcome
would have been exactly the same.
Judgment affirmed.

Appellant contended that an election
irregularity occurred when the board
failed to meet and act by majority vote
on another candidate's withdrawal,

Hester v. McKeithen
Court of Appeal
of Louisiana,
Fourth Circuit
882 So.
2d 1291;
2004 La.
App.
LEXIS
2429
October 8,
2004

In re Election
Contest of
Democratic
Primary Election
Supreme Court of
Ohio
88 Ohio
St. 3d
258;
2000
March 29,
2000

Appellant sought
review of the
judgment of the
court of common

Appellant contended that an election
irregularity occurred when the board
failed to meet and act by majority vote
on another candidate's withdrawal,
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<th>Date</th>
<th>Court</th>
<th>Citation</th>
<th>Details</th>
<th>Summary</th>
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<tr>
<td>Held May 4, 1999</td>
<td>Ohio 325; 725 N.E.2d 271; 2000 Ohio LEXIS 607</td>
<td>pleas denying his election contest challenging an opponent's nomination for election irregularity.</td>
<td>instead permitting its employees to make decisions. Appellant had to prove by clear and convincing evidence that one or more election irregularities occurred and it affected enough votes to change or make uncertain the result of the election. Judgment affirmed. The appellant did not establish election irregularity by the board's actions on the candidate's withdrawal, the board acted diligently and exercised its discretion in keeping the candidate's name on the ballot and notifying electors of his withdrawal.</td>
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<td>In re Election Contest As to Watertown Special Referendum Election</td>
<td>Supreme Court of South Dakota 2001 SD 62; 628 N.W.2d 336; 2001 S.D. LEXIS 66</td>
<td>May 23, 2001 Appellant sought review of the judgment of the circuit court declaring a local election valid and declining to order a new election.</td>
<td>The burden was on appellants to show not only that voting irregularities occurred, but also show that those irregularities were so egregious that the will of the voters was suppressed. Appellants did not meet their burden, as mere inconvenience or delay in voting was not enough to overturn the election. Judgment affirmed.</td>
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<td>Jones v. Jessup</td>
<td>Supreme Court of Georgia 279 Ga. 531; 615 S.E.2d 529; 2005 Ga. LEXIS</td>
<td>June 30, 2005 Defendant incumbent appealed a judgment by the trial court that invalidated an election for the</td>
<td>After the candidate lost the sheriff's election to the incumbent, he contested the election, asserting that there were sufficient irregularities to place in doubt the election results. The state supreme court held that the candidate</td>
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447

invalidated the vote. The absentee ballots were only to be rejected where the electors failed to furnish required information. Because the ballots cast by the witnesses substantially complied with all of the essential requirements of the form, the trial court erred by finding that they should not have been considered. The candidate failed to establish substantial error in the votes. Judgment reversed.

Toliver v. Thompson

Supreme Court of Oklahoma

2000 OK 98; 17 P.3d 464; 2000 Okla. LEXIS 101

December 21, 2000

Petitioner challenged an order of the district court denying his motion to compel a recount of votes from an election.

The court held a recount of votes cast in an election could occur when the ballots had been preserved in the manner prescribed by statute. The trial court noted when the ballots had not been preserved in such a manner, no recount would be conducted. The court further noted a petition alleging irregularities in an election could be based upon an allegation that it was impossible to determine with mathematical certainty which
<table>
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<tr>
<th>Nature of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Plaintiff</th>
<th>Defendant</th>
<th>Plaintiff's Basis of Appeal</th>
<th>Plaintiff's Claim</th>
<th>Case Status</th>
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</thead>
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<tr>
<td>Adkins v. Huckabay</td>
<td>Supreme Court of Louisiana</td>
<td>755 So. 2d 206; 2000 La. LEXIS 504</td>
<td>February 25, 2000</td>
<td>Plaintiff candidate challenged judgment of court of appeal, second circuit, which reversed the lower court's judgment and declared defendant candidate winner of a runoff election for sheriff.</td>
<td>The issue presented for the appellate court's determination was whether the absentee voting irregularities plaintiff candidate complained of rendered it impossible to determine the outcome of the election for sheriff. The Louisiana supreme court concluded that the lower court had applied the correct standard, substantial compliance, to the election irregularities, but had erred in its application by concluding that the contested absentee ballots substantially complied with the statutory requirements. The supreme court found that in applying substantial compliance to five of the ballot irregularities, the trial court correctly vacated the general election and set it aside because those absentee ballots should have been disqualified. Because of the</td>
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In re Gray--Sadler

Goodwin v. St. Thomas--St.

Plaintiff alleged that defendants counted unlawful absentee ballots that
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<th>Name of Case</th>
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<th>Citation</th>
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<td>John Bd. of Elections</td>
<td>Islands</td>
<td>V.I. LEXIS 15</td>
<td></td>
<td>that certain general election absentee ballots violated territorial election law, and that the improper inclusion of such ballots by defendants, election board and supervisor, resulted in plaintiff's loss of the election. Plaintiff sued defendants seeking invalidation of the absentee ballots and certification of the election results tabulated without such ballots.</td>
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<td>lacked postmarks, were not signed or notarized, were in unsealed and/or torn envelopes, and were in envelopes containing more than one ballot. Prior to tabulation of the absentee ballots, plaintiff was leading intervenor for the final senate position, but the absentee ballots entitled intervenor to the position. The territorial court held that plaintiff was not entitled to relief since he failed to establish that the alleged absentee voting irregularities would require invalidation of a sufficient number of ballots to change the outcome of the election. While the unsealed ballots constituted a technical violation, the outer envelopes were sealed and thus substantially complied with election requirements. Further, while defendants improperly counted one ballot where a sealed ballot envelope and a loose ballot were in the same outer envelope, the one vote involved did not change the election result. Plaintiff's other allegations of irregularities were without merit since ballots without postmarks were valid, ballots without signatures were not counted, and ballots without notarized signatures were proper.</td>
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<td>Johnson v. Lopez--Torres</td>
<td>Supreme Court of New York, Appellate Division, Second Department</td>
<td>October 21, 2005</td>
<td>In a proceeding for a re-canvass of certain affidavit ballots cast in the Democratic Party primary election for the public office of surrogate, the supreme court denied appellant candidate's petition requesting the same and declared appellee opponent the winner of that election.</td>
<td>Finding that the candidate had waived her right to challenge the affidavit ballots and had not sufficiently established her claim of irregularities to warrant a hearing, the trial court denied her petition and declared the opponent the winner of the primary. However, on appeal, the appellate division held that no waiver occurred. Moreover, because hundreds of apparently otherwise eligible voters failed to fill in their party enrollment and/or prior address, it could be reasonably inferred that these voters were misled thereby into omitting the required information. Finally, the candidate failed to make a sufficient showing of voting irregularities in the machine vote to require a hearing on that issue. Judgment reversed.</td>
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<td>Ex parte Avery</td>
<td>Supreme Court of Alabama</td>
<td>August 23, 2002</td>
<td>Petitioner probate judge moved for a writ of mandamus directing a circuit judge to vacate his order requiring the probate judge to transfer all election materials to the</td>
<td>The issuance of a writ of mandamus was appropriate. The district attorney had a right to the election materials because he was conducting a criminal investigation of the last election. Furthermore, the circuit judge had no jurisdiction or authority to issue an order directing that the election materials be given to the clerk. The</td>
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<tr>
<td>Harpole v. Kemper County Democratic Exec. Comm.</td>
<td>Supreme Court of Mississippi</td>
<td>908 So. 2d 129; 2005 Miss. LEXIS 463</td>
<td>August 4, 2005</td>
<td>circuit clerk and holding him in contempt for failing to do so. The probate judge also requested that said material be turned over to the district attorney, pursuant to an outstanding subpoena.</td>
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<td>Name of Case</td>
<td>Court</td>
<td>Opinion</td>
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<td>Holding</td>
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<td>United States v. Madden</td>
<td>United States Court of Appeals for the Sixth Circuit</td>
<td></td>
<td>April 4, 2005</td>
<td>Defendant appealed his conviction for violating the federal vote-buying statute. He also appealed the sentence imposed by the United States District Court for the Eastern District of Kentucky at Pikeville. The district court applied the U.S. Sentencing Guidelines Manual (Guidelines) § 3B1.1(c) supervisory–role enhancement and increased defendant's base offense level by two.</td>
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</table>
He acknowledged that he knew the mentally ill people who sold their votes were vulnerable, but maintained they were not victims because they received $50 for their votes. The vote sellers were not victims for Guidelines purposes. The district court erred. Defendant's appeal of conviction was dismissed. Defendant's sentence was vacated, and the case was remanded for resentencing.

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<tbody>
<tr>
<td>United States v. Stone</td>
<td>United States Court of Appeals for the Sixth Circuit</td>
<td>411 F.3d 643, 2005 U.S. App. LEXIS 10137</td>
<td>June 3, 2005</td>
<td>Defendant pled guilty to vote buying in a federal election. The United States District Court for the Eastern District of Kentucky sentenced defendant to 10 months in custody and recommended that the sentence be served at an institution that could DEFENDANT OFFERED TO PAY VOTERS FOR VOTING IN A PRIMARY ELECTION. DEFENDANT CLAIMED THAT THE VOTE BUYING STATUTE DID NOT APPLY TO HIM BECAUSE HIS CONDUCT RELATED SOLELY TO A CANDIDATE FOR A COUNTY OFFICE. ALTERNATIVELY, DEFENDANT ASSERTED THAT THE STATUTE WAS UNCONSTITUTIONAL BECAUSE IT EXCEEDED CONGRESS' ENUMERATED POWERS. FINALLY, DEFENDANT ARGUED THAT THE DISTRICT COURT ERRED WHEN IT FAILED TO CONSIDER HIS MEDICAL CONDITION AS A GROUND FOR A DOWNWARD DEPARTURE AT SENTENCING.</td>
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<tr>
<th>Statute/Rule</th>
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<tr>
<td>Case</td>
<td>United States v. Smith</td>
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<td>Court of Appeals for the Sixth Circuit</td>
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<th>United States v. Smith</th>
<th>United States Court of Appeals for the Sixth Circuit</th>
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<td>July 18, 2005</td>
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| Defendants were convicted of vote buying and conspiracy to buy votes. The United States District Court for the Eastern District of Kentucky entered judgment on |
|________________________________________________________________________________________|

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<tr>
<th>Holding/Reason</th>
<th>One of the defendants was a state representative who decided to run for an elected position. Defendants worked together with others to buy votes. During defendants' trial, in addition to testimony regarding vote buying, evidence was introduced that two witnesses had been threatened. The appellate court found that defendants</th>
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<th>Statutory Basis for Rule</th>
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<tr>
<td>Should This Case be Reexamined Further</td>
<td>No</td>
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the jury verdict and sentenced defendants. Defendants appealed.

failed to show evidence of prejudice with regard to denial of the motion for severance. Threat evidence was not excludable under Fed. R. Evid. 404(b) because it was admissible to show consciousness of guilt without any inference as to the character of defendants. Admission of witnesses' testimony was proper because each witness testified that he or she was approached by a member of the conspiracy and offered money for his or her vote. The remaining incarcerated defendant's challenges to his sentence had merit because individuals who sold their votes were not "victims" for the purposes of U.S. Sentencing Guidelines Manual § 3A1.1. Furthermore, application of U.S. Sentencing Guidelines Manual § 3B1.1(b) violated defendant's Sixth Amendment rights because it was based on facts that defendant did not admit or proved to the jury beyond a reasonable doubt. Defendants' convictions were affirmed. The remaining incarcerated defendant's sentence was vacated and his case was remanded for resentencing in accordance with Booker.
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<th>Name/Case</th>
<th>Court/Affiliation</th>
<th>Citation</th>
<th>Date</th>
<th>Summary</th>
<th>Other Notes</th>
<th>Should Be Removed</th>
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<tbody>
<tr>
<td>Nugent v. Phelps</td>
<td>Court of Appeal of Louisiana, Second Circuit</td>
<td>816 So. 2d 349; 2002 La. App. LEXIS 1138</td>
<td>April 23, 2002</td>
<td>Plaintiff incumbent police chief sued defendant challenger, the winning candidate, to have the election nullified and a new election held based on numerous irregularities and unlawful activities by the challenger and his supporters. The challenger won the election by a margin of four votes. At the end of the incumbent's case, the district court for the dismissed his suit. The incumbent appealed.</td>
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Defendant appealed a decision of circuit court convicting him of one count of conspiracy to commit voter fraud and eight counts of voter fraud.

Defendant was helping with his cousin's campaign in a run-off election for county supervisor. Together, they drove around town, picking up various people who were either at congregating spots or their homes. Defendant would drive the voters to the clerk's office where they would vote by absentee ballot and defendant would give them beer or money. Defendant claimed he was entitled to a mistrial because the prosecutor advanced an impermissible "sending the message" argument. The court held that it was precluded from reviewing the entire context in which the argument arose because, while the prosecutor's closing argument was in the record, the defense counsel's closing argument was not. Also, because the prosecutor's statement was incomplete due to defense counsel's objection, the court could not say that the statement made it impossible for defendant to receive a fair trial. Furthermore, the trial judge did not holding that the incumbent failed to prove a scheme by the district attorney. The judgment of the trial court was affirmed.
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<tr>
<th>Name of Case</th>
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<th>Citation</th>
<th>Date</th>
<th>Issue</th>
<th>Argument</th>
<th>Opinion</th>
<th>Reserved</th>
<th>Reversal</th>
<th>Issue Date</th>
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<tbody>
<tr>
<td>United States v. Turner</td>
<td>United States District Court for the Eastern District of Kentucky</td>
<td>2005 U.S. Dist. LEXIS 31709</td>
<td>November 30, 2005</td>
<td>Defendants were charged with committing mail fraud and conspiracy to commit mail fraud and voting-buying. First defendant filed a motion to recuse. Second defendant's motion to join the motion to recuse was granted. First defendant moved to compel the Government to grant testimonial use immunity to second defendant and moved to sever.</td>
<td>Defendants argued that recusal was mandated by 28 U.S.C.S. § 455(a) and (b)(1). The court found no merit in defendants' arguments. The fact that the judge's husband was the commissioner of the Kentucky Department of Environmental Protection, a position to which he was appointed by the Republican Governor, was not relevant. The judge's husband was neither a party nor a witness. The court further concluded that no reasonable person could find that the judge's spouse had any direct interest in the instant action. As for issue of money donated by the judge's husband to Republican opponents of first defendant, the court could not discern any reason why such facts warranted recusal. First defendant asserted that</td>
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<td>Name/Case</td>
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<td>Opinion</td>
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<td>defendants.</td>
<td>second defendant should have been granted use immunity based on a belief that second defendant would testify that first defendant did not agree to, possess knowledge of, engage in, or otherwise participate in any of the illegal activity alleged in the indictment. The court found the summary of expected testimony to be too general to grant immunity. In addition, it was far from clear whether the court had the power to grant testimonial use immunity to second defendant. Defendants' motion to recuse was denied. First defendant's motions to compel and to sever were denied.</td>
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<td>Ways v. Shively</td>
<td>Supreme Court of Nebraska</td>
<td>264 Neb. 250; 646 N.W.2d 621; 2002 Neb. LEXIS 158</td>
<td>July 5, 2002</td>
<td>Appellant felon filed a writ of mandamus, which sought to compel appellee Election Commissioner of Lancaster County, Nebraska, to permit him to register to vote. The District Court for Lancaster County denied the</td>
<td>The felon was discharged from the Nebraska State Penitentiary in June 1998 after completing his sentences for the crimes of pandering, carrying a concealed weapon and attempting to possess a controlled substance. The commissioner asserted that as a result of the felon's conviction, the sentence for which had neither been reversed nor annulled, he had lost his right to vote. The commissioner contended that the only method by which the felon's</td>
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<td>claim. The District Court for Lancaster County denied the</td>
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A felon's petition for writ of mandamus and dismissed the petition. The felon appealed. The right to vote could be restored was through a warrant of discharge issued by the Nebraska Board of Pardons—a warrant of discharge had not been issued. The supreme court ruled that the certificate of discharge issued to the felon upon his release did not restore his right to vote. The supreme court ruled that as a matter of law, the specific right to vote was not restored to the felon upon his discharge from incarceration at the completion of his sentences. The judgment was affirmed.

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<th>Fischer v. Governor</th>
<th>Supreme Court of New Hampshire</th>
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Appellant State of New Hampshire challenged a ruling of the superior court that the felon disenfranchisement statutes violate N.H. Const. pt. I, Art. 11. Appellee was incarcerated at the New Hampshire State Prison on felony convictions. When he requested an absentee ballot to vote from a city clerk, the request was denied. The clerk sent him a copy of N.H. Rev. Stat. Ann. § 607(A)(2) (1986), which prohibits a felon from voting "from the time of his sentence until his final discharge." The trial court declared the disenfranchisement statutes unconstitutional and ordered local election officials to allow the plaintiff to vote. Appellant State of New Hampshire challenged this ruling. The central issue was whether the felon...
the felon disenfranchisement statutes were a reasonable exercise of legislative authority, and reversed. Judgment reversed because the court concluded that the legislature retained its authority under the New Hampshire Constitution to determine voter qualifications and that the felon disenfranchisement statutes were a reasonable exercise of legislative authority.

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<th>Case</th>
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<tr>
<td>Mixon v. Commonwealth Court of Pennsylvania</td>
<td>Respondents filed objections to petitioners' complaint seeking declaratory relief as to the unconstitutionality of the Pennsylvania Election Code, 25 Pa. Cons. Stat. §§</td>
<td>September 18, 2000</td>
<td>Petitioner convicted felons were presently or had formerly been confined in state prison. Petitioner elector was currently registered to vote in respondent state. Petitioners filed a complaint against respondent state seeking declaratory relief challenging as unconstitutional, state election and voting laws that excluded confined felons from the definition of qualified voter.</td>
<td>No</td>
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2600 – 3591, and the Pennsylvania Voter Registration Act, 25 Pa. Cons. Stat. §§ 961.101--961.5109, regarding felon voting rights. Absentee electors and that barred a felon who had been released from a penal institution for less than five years from registering to vote. Respondents filed objections to petitioners' complaint. The court sustained respondents' objection that incarcerated felons were not unconstitutionally deprived of qualified absentee elector status because respondent state had broad power to determine the conditions under which suffrage could be exercised. However, petitioner elector had no standing and the court overruled objection as to deprivation of ex-felon voting rights. The court sustained respondents' objection since incarcerated felons were not unconstitutionally deprived of qualified absentee elector status and petitioner elector had no standing, but objection that ex-incarcerated felons' voting rights were deprived was overruled since status penalized them.

| NAACP Philadelphia Brunch v. Ridge | United States District Court for the Eastern District of Pennsylvania | 2000 U.S. Dist. LEXIS 11520 | August 14, 2000 | Plaintiffs moved for a preliminary injunction, which the parties agreed to consolidate with the Plaintiffs, ex-felon, unincorporated association, and others, filed a civil rights suit against defendant state and local officials, contending that the Pennsylvania Voter Registration Act, | No | N/A | No |
Clause of U.S. all three of the special circumstances doctrine were present in the case, but found that abstention was not appropriate under the circumstances since it did not agree with plaintiffs' contention that the time constraints caused by the upcoming election meant that the option of pursuing their claims in state court did not offer plaintiffs an adequate remedy. The court found that all three of the special circumstances necessary to invoke the Pullman doctrine were present in the case, but found that abstention was not appropriate under the circumstances since it did not agree with plaintiffs' contention that the time constraints caused by the upcoming election meant that the option of pursuing their claims in state court did not offer plaintiffs an adequate remedy. The court found that all three of the special circumstances necessary to invoke the Pullman doctrine were present in the case, but found that abstention was not appropriate under the circumstances since it did not agree with plaintiffs' contention that the time constraints caused by the upcoming election meant that the option of pursuing their claims in state court did not offer plaintiffs an adequate remedy. The court found that all three of the special circumstances necessary to invoke the Pullman doctrine were present in the case, but found that abstention was not appropriate under the circumstances since it did not agree with plaintiffs' contention that the time constraints caused by the upcoming election meant that the option of pursuing their claims in state court did not offer plaintiffs an adequate remedy. 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<tr>
<th>Name of Case</th>
<th>Court of Appeal</th>
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<th>Date</th>
<th>Field of Law</th>
<th>Holding</th>
<th>Significance</th>
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<tr>
<td>Locke</td>
<td>District Court for the Eastern District of Washington</td>
<td>U.S. Dist. LEXIS 22212</td>
<td>1, 2000</td>
<td>felons who were also racial minorities, sued defendants for alleged violations of the Voting Rights Act. The parties filed cross—motions for summary judgment.</td>
<td>felon disenfranchisement and restoration of civil rights schemes, premised upon Wash. Const. art. VI § 3, resulted in the denial of the right to vote to racial minorities in violation of the VRA. They argued that race bias in, or the discriminatory effect of, the criminal justice system resulted in a disproportionate number of racial minorities being disenfranchised following felony convictions. The court concluded that Washington's felon disenfranchisement provision disenfranchised a disproportionate number of minorities; as a result, minorities were under—represented in Washington's political process. The Rooker—Feldman doctrine barred the felons from bringing any as—applied challenges, and even if it did not bar such claims, there was no evidence that the felons' individual convictions were born of discrimination in the criminal justice system. However, the felons' facial challenge also failed. The remedy they sought would create a new constitutional problem, allowing disenfranchisement only of white felons. Further, the felons did not establish a causal connection between...</td>
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The felons had all successfully completed their terms of incarceration and/or probation, but their civil rights to register and vote had not been restored. They alleged that Florida's disenfranchisement law violated their rights under First, Fourteenth, Fifteenth, and Twenty-Fourth Amendments to the United States Constitution, as well as § 1983 and §§ 2 and 10 of the Voting Rights Act of 1965. Each of the felons' claims was fatally flawed. The felons' exclusion from voting did not violate the Equal Protection or Due Process Clauses of the United States Constitution. The First Amendment did not guarantee felons the right to vote. Although there was evidence that racial animus was a factor in the initial enactment of Florida's disenfranchisement law, there was no evidence that race played a part in the re-enactment of that provision. Although it appeared that there was a disparate impact on minorities, the  | No  | N/A  | No
The court granted the officials' motion for summary judgment and implicitly applied to him because it amounted to additional punishment for crimes he had committed. The court held that the statute was regulatory and not punitive because rational choices were implicated in the statute's enactment and thus violated his due process rights and the prohibition against ex post facto laws and bills of attainder. The court dismissed the lawsuit with prejudice.

King v. City of Boston
United States District Court for the District of Massachusetts
2004 U.S. Dist. LEXIS 8421
May 13, 2004
Plaintiff inmate filed a motion for summary judgment in his action challenging the constitutionality of Mass. Gen. Laws ch. 51, § 1, which excluded incarcerated felons from voting while they were imprisoned.

The inmate was convicted of a felony and incarcerated. His application for an absentee ballot was denied on the ground that he was not qualified to register and vote under Mass. Gen. Laws ch. 51, § 1. The inmate argued that the statute was unconstitutional as it applied to him because it amounted to additional punishment for crimes he committed before the statute's enactment and thus violated his due process rights and the prohibition against ex post facto laws and bills of attainder. The court held that the statute was regulatory and not punitive because rational choices were implicated in the statute's disenfranchisement of persons under guardianship, persons disqualified.

No N/A No
because of corrupt elections practices, persons under 18 years of age, as well as incarcerated felons. Specifically, incarcerated felons were disqualified during the period of their imprisonment when it would be difficult to identify their address and ensure the accuracy of their ballots. Therefore, the court concluded that Mass. Gen. Laws ch. 51, § 1 did not violate the inmate's constitutional rights. The court found the statute at issue to be constitutional and denied the inmate's motion for summary judgment.

Hayden v. Pataki
United States District Court for the Southern District of New York
2004 U.S. Dist. LEXIS 10863
June 14, 2004

In a 42 U.S.C.S. § 1983 action filed by plaintiffs, black and latino convicted felons, alleging that N.Y. Const. art. II, § 3 and N.Y. Elec. Law § 5–106(2) were unconstitutional, defendants, New York's governor and the chairperson of the board of elections, moved for summary judgment on the plaintiffs' claims under U.S. Const. amend. XIV, XV because their factual allegations were insufficient from which to draw an inference that the challenged provisions or their predecessors were enacted with discriminatory intent, and because denying suffrage to those who received parole while serving a term of imprisonment was not discriminatory.
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<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Legal Text</th>
<th>Summary</th>
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<tr>
<td>Farrakhan v. Washington</td>
<td>United States Court for Appeals for the Ninth Circuit</td>
<td>338 F.3d 1009; 2003 U.S. App. LEXIS 14810</td>
<td>July 25, 2003</td>
<td>Plaintiff inmates sued defendant state officials, claiming that Washington state's felon disenfranchisement scheme constitutes improper race-based vote denial in</td>
<td>Upon conviction of infamous crimes in the state, (that is, crimes punishable by death or imprisonment in a state correctional facility), the inmates were disenfranchised. The inmates claimed that the disenfranchisement scheme violated § 2 because the criminal justice system was biased against minorities, causing a disproportionate</td>
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enfranchisement laws resulted in itself' causation standard, the district court should have applied a totality of the circumstances test that included analysis of the inmates' compelling evidence of racial bias in Washington's criminal justice system in determining whether the state's felon disenfranchisement laws resulted in denial of the right to vote on account of race. Instead of applying its novel "by itself" causation standard, the district court should have applied a totality of the circumstances test that included analysis of the inmates' compelling evidence of racial bias in Washington's criminal justice system. However, the inmates lacked standing to challenge the restoration scheme because they presented no evidence of their eligibility, much less even allege that they were eligible for restoration, and had not attempted to have their civil rights restored. The court affirmed as to the eligibility claim but reversed and remanded for further proceedings to the bias in the criminal justice system claim.

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<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Issue</th>
<th>Holding</th>
<th>Statutory Basis</th>
<th>Oral Notes</th>
<th>Motion Granted?</th>
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in which it declined to consider petitioner former felon's petition for approval of her request to seek restoration of her eligibility to register to vote. The former felon appealed. making a false written statement incident to a firearm purchase. She then petitioned the trial court asking it to approve her request to seek restoration of her eligibility to register to vote. Her request was based on Va. Code Ann. § 53.1-231.2, allowing persons convicted of non-violent felonies to petition a trial court for approval of a request to seek restoration of voting rights. The trial court declined. It found that Va. Code Ann. § 53.1-231.2 violated constitutional separation of powers principles since it gave the trial court powers belonging to the governor. It also found that even if the statute was constitutional, it was fundamentally flawed for not providing notice to respondent Commonwealth regarding a petition. After the petition was denied, the state supreme court found the separation of powers principles were not violated since the statute only allowed the trial court to determine if an applicant met the requirements to have voting eligibility restored. It also found the statute was not fundamentally flawed since the Commonwealth was not an interested
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<th>Name of Case</th>
<th>Court of Appeals</th>
<th>Citation</th>
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<th>Description</th>
<th>Outcome</th>
<th>Referred</th>
<th>Resolved</th>
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<td>Howard v. Gilmore</td>
<td>United States Court of Appeals for the Fourth Circuit</td>
<td>2000 U.S. App. LEXIS 2680</td>
<td>February 23, 2000</td>
<td>Appellant challenged the United States District Court for the Eastern District of Virginia's order summarily dismissing his complaint, related to his inability to vote as a convicted felon, for failure to state a claim upon which relief can be granted. Appellant was disenfranchised by the Commonwealth of Virginia following his felony conviction. He challenged that decision by suing the Commonwealth under the U.S. Const. amends. I, XIV, XV, XIX, and XXIV, and under the Voting Rights Act of 1965. The lower court summarily dismissed his complaint under Fed. R. Civ. P. 12(b)(6) for failure to state a claim. Appellant challenged. The court found U.S. Const. amend. I created no private right of action for seeking reinstatement of previously canceled voting rights, U.S. Const. amends. XIV, XV, XIX, and the VRA required either gender or race discrimination, neither of which appellant asserted, and the U.S. Const. amend. XXIV, while prohibiting the imposition of poll taxes, did not prohibit the imposition of a $10 fee for reinstatement of appellant's civil rights, including the right to vote. Consequently, appellant failed to state a claim. The court affirmed, finding</td>
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OUTCOME: The judgment was reversed and the case was remanded for further proceedings. No N/A No
properly pled because appellant failed to assert, that either his race or gender were involved in the decisions to deny him the vote. Conditioning reestablishment of his civil rights on a $10 fee was not unconstitutional.

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<tr>
<th>Number/Case</th>
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<th>Citation</th>
<th>Date</th>
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<th>Vol.</th>
<th>Volume</th>
<th>Opinion</th>
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<tr>
<td>Johnson v. Governor of Fla.</td>
<td>United States Court of Appeals for the Eleventh Circuit</td>
<td>353 F.3d 1287; 2003 U.S. App. LEXIS 25859</td>
<td>December 19, 2003</td>
<td>Plaintiffs, ex--felon citizens of Florida, on their own right and on behalf of others, sought review of a decision of the United States District Court for the Southern District of Florida, which granted summary judgment to defendants, members of the Florida Clemency Board in their official capacity. The citizens challenged the validity of the Florida felon disenfranchisement provisions. The citizens alleged that Fla. Const. art. VI, § 4 (1968) was racially discriminatory and violated their constitutional rights. The citizens also alleged violations of the Voting Rights Act. The court initially examined the history of Fla. Const. art. VI, § 4 (1968) and determined that the citizens had presented evidence that historically the disenfranchisement provisions were motivated by a discriminatory animus. The citizens had met their initial burden of showing that race was a substantial motivating factor. The state was then required to show that the current disenfranchisement provisions would have been enacted absent the impermissible discriminatory intent. Because the state had not met its burden, summary judgment should not have been granted. The court found</td>
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<td>Name</td>
<td>Court of Appeals of Tennessee</td>
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<td>State v. Black</td>
<td>2002 Tenn. App. LEXIS 696</td>
<td>September 26, 2002</td>
<td>In 1997, petitioner was convicted of forgery and sentenced to the penitentiary for two years, but was immediately placed on probation. He subsequently petitioned the circuit court for restoration. The appellate court's original opinion found that petitioner had not lost his right to hold public office because Tennessee law removed that right only from convicted felons who were &quot;sentenced to the penitentiary.&quot; The trial court's amended judgment made it clear that petitioner was in fact sentenced to the penitentiary. Based upon this correction to the record, the appellate court found that petitioner's claim under the Voting Rights Act, also needed to be remanded for further proceedings. Under a totality of the circumstances, the district court needed to analyze whether intentional racial discrimination was behind the Florida disenfranchisement provisions, in violation of the Voting Rights Act. The court affirmed the district court's decision to grant summary judgment on the citizens' poll tax claim. The court reversed the district court's decision to grant summary judgment to the Board on the claims under the equal protection clause and for violation of federal voting laws and remanded the matter to the district court for further proceedings.</td>
<td>No</td>
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of citizenship. The trial court restored his citizenship rights. The State appealed. The appellate court issued its opinion, but granted the State's motions to supplement the record and to rehear its decision.

sentence to the penitentiary resulted in the forfeiture of his right to seek and hold public office by operation of Tenn. Code Ann. § 40-20-114. However, the appellate court concluded that this new information did not require a different outcome on the merits of the issue of restoration of his citizenship rights, including the right to seek and hold public office. The appellate court adhered to its conclusion that the statutory presumption in favor of the restoration was not overcome by a showing, by a preponderance of the evidence, of good cause to deny the petition for restoration of citizenship rights. The appellate court affirmed the restoration of petitioner's right to vote and reversed the denial of his right to seek and hold public office. His full rights of citizenship were restored.

Johnson v. Governor of Fla. United States Court of Appeals for the Eleventh Circuit 405 F.3d 1214; 2005 U.S. App. LEXIS 5945 April 12, 2005 Plaintiff individuals sued defendant members of Florida Clemency Board, arguing that Florida's felon disenfranchisement The individuals argued that the racial animus motivating the adoption of Florida's disenfranchisement laws in 1868 remained legally operative despite the reenactment of Fla. Const. art. VI, § 4 in 1968. The subsequent reenactment eliminated any No N/A No
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<th>Name</th>
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<th>Panel</th>
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<td>law, Fla. Const. art. VI, § 4 (1968), violated the Equal Protection Clause and 42 U.S.C.S. § 1973. The United States District Court for the Southern District of Florida granted the members summary judgment. A divided appellate panel reversed. The panel opinion was vacated and a rehearing en banc was granted.</td>
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<td>discriminatory taint from the law as originally enacted because the provision narrowed the class of disenfranchised individuals and was amended through a deliberative process. Moreover, there was no allegation of racial discrimination at the time of the reenactment. Thus, the disenfranchisement provision was not a violation of the Equal Protection Clause and the district court properly granted the members summary judgment on that claim. The argument that 42 U.S.C.S. § 1973 applied to Florida's disenfranchisement provision was rejected because it raised grave constitutional concerns, i.e., prohibiting a practice that the Fourteenth Amendment permitted the state to maintain. In addition, the legislative history indicated that Congress never intended the Voting Rights Act to reach felon disenfranchisement provisions. Thus, the district court properly granted the members summary judgment on the Voting Rights Act claim. The motion for summary judgment in favor of the members was granted.</td>
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other ballots cast. Because the ballots could not have been segregated, apportionment was the appropriate remedy if no fraud was involved. If fraud was involved, the election would have had to have been voided and a new election held. Because the trial court did not hold an evidentiary hearing on the fraud allegations, and did not determine whether fraud was in issue, the case was remanded for a determination as to whether fraud was evident in the electoral process. Judgment reversed and remanded.

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<tr>
<th>Name of Case</th>
<th>Court of Appeals</th>
<th>Citation</th>
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<th>Description</th>
<th>Summary of Issue</th>
<th>Key Findings</th>
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<tr>
<td>Hileman v. McGinness</td>
<td>Appellate Court of Illinois, Fifth District</td>
<td>316 Ill. App. 3d 868; 739 N.E.2d 81; 2000 Ill. App. LEXIS 845</td>
<td>October 25, 2000</td>
<td>Appellant challenged the circuit court’s declaration that that the result of a primary election for county circuit clerk was void.</td>
<td>In a primary election for county circuit clerk, the parties agreed that 681 absentee ballots were presumed invalid. The ballots had been commingled with the valid ballots. There were no markings or indications on the ballots which would have allowed them to be segregated from other ballots cast. Because the ballots could not have been segregated, apportionment was the appropriate remedy if no fraud was involved. If fraud was involved, the election would have had to have been voided and a new election held. Because the trial court did not hold an evidentiary hearing on the fraud allegations, and did not determine whether fraud was in issue, the case was remanded for a determination as to whether fraud was evident in the electoral process. Judgment reversed and remanded.</td>
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<td>Eason v. State</td>
<td>Court of Appeals of Mississippi</td>
<td>2005 Miss. App. LEXIS 1017</td>
<td>December 13, 2005</td>
<td>Defendant appealed a decision of the circuit court convicting him of one count of conspiracy to commit voter fraud</td>
<td>Defendant was helping with his cousin’s campaign in a run-off election for county supervisor. Together, they drove around town, picking up various people who were either at congregating spots or their homes. Defendant would drive the</td>
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Defendant claimed he was entitled to a mistrial because the prosecutor advanced an impermissible "sending the message" argument. The court held that it was precluded from reviewing the entire context in which the argument arose because, while the prosecutor's closing argument was in the record, the defense counsel's closing argument was not. Also, because the prosecutor's statement was incomplete due to defense counsel's objection, the court could not say that the statement made it impossible for defendant to receive a fair trial.

Judgment affirmed.

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<th>Issue</th>
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<tr>
<td>Wilson v. Commonwealth</td>
<td>Court of Appeals of Virginia</td>
<td>2000 Va. App. LEXIS 322</td>
<td>May 2, 2000</td>
<td>Defendant appealed the judgment of the circuit court which convicted her of election fraud.</td>
<td>At trial, the Commonwealth introduced substantial testimony and documentary evidence that defendant had continued to live at one residence in the 13th District, long after she stated on the voter registration form that she was living at a residence in the 51st House District. The evidence included records showing electricity and water usage, records from the Department of Motor</td>
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The circuit court overturned the results of a mayoral election after reviewing the absentee ballots cast for said election, resulting in a loss for appellant incumbent based on the votes received from appellee voters. The incumbent appealed, and the voters cross-appealed. In the meantime, the trial court stayed enforcement of its judgment pending resolution of the appeal.

The voters and the incumbent all challenged the judgment entered by the trial court arguing that it impermissibly included or excluded certain votes. The appeals court agreed with the voters that the trial court should have excluded the votes of those voters for the incumbent who included an improper form of identification with their absentee ballots. It was undisputed that at least 30 absentee voters who voted for the incumbent provided with their absentee ballots a form of identification that was not proper under Alabama law. As a result, the court further agreed that the trial court erred in allowing those voters to somewhat "cure" that defect by providing a proper form of identification at the trial of the election contest, because, under those
who failed to comply with the essential requirement of submitting proper identification with their absentee ballots had the effect of disenfranchising qualified electors who choose not to vote but rather than to make the effort to comply with the absentee-voting requirements. The judgment declaring the incumbent's opponent the winner was affirmed. The judgment counting the challenged votes in the final tally of votes was reversed, and said votes were subtracted from the incumbents total, and the stay was vacated. All other arguments were rendered moot as a result.

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<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Issue</th>
<th>Holding</th>
<th>Solution</th>
<th>Other Notes</th>
<th>Should the Case be Included?</th>
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<tbody>
<tr>
<td>ACLU of Minn. v. Kiffmeyer</td>
<td>United States District Court for the District of Minnesota</td>
<td>2004 U.S. Dist. LEXIS 22996</td>
<td>October 29, 2004</td>
<td>Plaintiffs, voters and associations, filed for a temporary restraining order pursuant to Fed. R. Civ. P. 65, against defendant, Minnesota Secretary</td>
<td>Plaintiffs argued that Minn. Stat. § 201.061 was inconsistent with the Help America Vote Act because it did not authorize the voter to complete registration either by a &quot;current and valid photo identification&quot; or by use of a current utility bill, bank statement, government check, paycheck, or other</td>
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<td>N/A</td>
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The court found that plaintiffs demonstrated that they were likely to succeed on their claim that the authorization in Minn. Stat. § 201.061, sub. 3, violated the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution insofar as it did not also authorize the use of a photographic tribal identification card by American Indians who do not reside on their tribal reservations. Also, the court found that plaintiffs demonstrated that they were likely to succeed on their claim that the authorization in Minn. R. 8200.5100, violated the Equal Protection Clause of the United States Constitution. A temporary restraining order was entered.

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<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date Filed</th>
<th>Issue</th>
<th>Holding</th>
<th>Statute/Rule Cited</th>
<th>Order Details</th>
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<tr>
<td>League of Women Voters v. Blackwell</td>
<td>United States District Court for the Northern District of Ohio</td>
<td>340 F. Supp. 2d 823; 2004</td>
<td>October 20, 2004</td>
<td>Plaintiff organizations filed suit against defendant, Ohio's</td>
<td>The directive in question instructed election officials to issue provisional ballots to first-time voters who registered by mail but did not provide</td>
<td>No</td>
<td>N/A</td>
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<td>Name of Case</td>
<td>Court</td>
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<td>U.S. Dist. LEXIS 20926</td>
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<td>Secretary of State, claiming that a directive issued by the Secretary contravened the provisions of the Help America Vote Act. The Secretary filed a motion to dismiss.</td>
<td>documentary identification at the polling place on election day. When submitting a provisional ballot, a first-time voter could identify himself by providing his driver's license number or the last four digits of his social security number. If he did not know either number, he could provide it before the polls closed. If he did not do so, his provisional ballot would not be counted. The court held that the directive did not contravene the HAVA and otherwise established reasonable requirements for confirming the identity of first-time voters who registered to vote by mail because: (1) the identification procedures were an important bulwark against voter misconduct and fraud; (2) the burden imposed on first-time voters to confirm their identity, and thus show that they were voting legitimately, was slight; and (3) the number of voters unable to meet the burden of proving their identity was likely to be very small. Thus, the balance of interests favored the directive, even if the cost, in terms of uncounted ballots, was regrettable. The court granted the Secretary's motion to dismiss.</td>
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<td>Case Name</td>
<td>Court</td>
<td>Citation</td>
<td>Date</td>
<td>Facts</td>
<td>Finding</td>
<td>Issue</td>
<td>Correct Parties</td>
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<td>New York v. County of Del.</td>
<td>United States District Court for the Northern District of New York</td>
<td>82 F. Supp. 2d 12, 2000 U.S. Dist. LEXIS 1398</td>
<td>February 8, 2000</td>
<td>Plaintiffs brought a claim in the district court under the Americans With Disabilities Act and filed a motion for a preliminary injunction and motion for leave to amend their complaint, and defendants were ordered to show cause why a preliminary injunction should not be issued.</td>
<td>In their complaint plaintiffs alleged that defendants violated the ADA by making the voting locations inaccessible to disabled persons and asked for a preliminary injunction requiring defendants to come into compliance before the next election. The court found that defendants were the correct parties, because pursuant to New York election law defendants were responsible for the voting locations. The court further found that the class plaintiffs represented would suffer irreparable harm if they were not able to vote, because, if the voting locations were inaccessible, disabled persons would be denied the right to vote. Also, due to the alleged facts, the court found plaintiffs would likely succeed on the merits. Consequently, the court granted plaintiffs' motion for a preliminary injunction. The court granted plaintiffs' motion for a preliminary injunction and granted plaintiffs' motion for leave to amend their complaint.</td>
<td>No</td>
<td>N/A</td>
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<tr>
<th>Case Name</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Facts</th>
<th>Finding</th>
<th>Issue</th>
<th>Correct Parties</th>
<th>Defend.</th>
<th>Plaintiff</th>
</tr>
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<tbody>
<tr>
<td>New York v. County of Schoharie</td>
<td>United States District Court for the Northern</td>
<td>82 F. Supp. 2d 19, 2000</td>
<td>February 8, 2000</td>
<td>Plaintiffs brought a claim in the district court under the</td>
<td>In their complaint, plaintiffs alleged defendants violated the ADA by allowing voting locations to be</td>
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<td>Kind of Case</td>
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<tr>
<td>District of New York</td>
<td>U.S. Dist. LEXIS 1399</td>
<td>Americans With Disabilities Act and filed a motion for a preliminary injunction and a motion for leave to amend their complaint, and defendants were ordered to show cause why a preliminary injunction should not be issued.</td>
<td>inaccessible for disabled persons and asked for a preliminary injunction requiring defendants to come into compliance before the next election. The court found that defendants were the correct party, because pursuant to New York election law, defendants were responsible for the voting locations. The court further found that the class plaintiffs represented would suffer irreparable harm if they were not able to vote, because, if the voting locations were inaccessible, disabled persons would be denied the right to vote. Also, the court found that plaintiffs would likely succeed on the merits of their case. Consequently, the court granted plaintiffs' motion for a preliminary injunction. The court granted plaintiffs' motion for a preliminary injunction because plaintiffs showed irreparable harm and proved likely success on the merits and granted plaintiff's motion for leave to amend the complaint.</td>
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<tr>
<td>Westchester Disabled on the Move, Inc. v. County of</td>
<td>United States District Court for the Southern District of New York</td>
<td>346 F. Supp. 2d 473; 2004</td>
<td>October 22, 2004</td>
<td>Plaintiffs sued defendant county, county board of elections, and</td>
<td>The inability to vote at assigned locations on election day constituted irreparable harm. However, plaintiffs could not show a likelihood of success</td>
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pursuant to 42 U.S.C.S. §§ 12131–12134, N.Y. Exec. Law § 296, and N.Y. Elec. Law § 4–1–4. Although the county board of elections was empowered to select an alternative polling place should it determine that a polling place designated by a municipality was "unsuitable or unsafe," it was entirely unclear that its power to merely designate suitable polling places would be adequate to ensure that all polling places used in the upcoming election actually conformed with the Americans with Disabilities Act. Substantial changes and modifications to existing facilities would have to be made, and such changes would be difficult, if not impossible, to make without the cooperation of municipalities. Further, the court could not order defendants to approve voting machines that conformed to the ADA were they to be purchased and submitted for county approval, but the court could order them to purchase them for the voting districts in the county. A judgment issued in the absence of the municipalities would be inadequate. Plaintiffs’ motion for preliminary injunction, requesting (among other things) that the court order defendants to modify the polling places in the county so that they were accessible to disabled voters on election day. Defendants moved to dismiss.

Westchester York U.S. Dist. LEXIS 24203

election officials pursuant to 42 U.S.C.S. §§ 12131–12134, N.Y. Exec. Law § 296, and N.Y. Elec. Law § 4–1–4. Plaintiffs moved for a preliminary injunction, requesting (among other things) that the court order defendants to modify the polling places in the county so that they were accessible to disabled voters on election day. Defendants moved to dismiss. on the merits because the currently named defendants could not provide complete relief sought by plaintiffs.
| Nat'l Org. on Disability v. Tartaglione | United States District Court for the Eastern District of Pennsylvania | 2001 U.S. Dist. LEXIS 16731 | October 11, 2001 | Plaintiffs, disabled voters and special interest organizations, sued defendants, city commissioners, under the Americans with Disabilities Act and § 504 of the Rehabilitation Act of 1973, and regulations under both statutes, regarding election practices. The commissioners moved to dismiss for failure (1) to state a cause of action and (2) to join an indispensable party. | The voters were visually impaired or wheelchair bound. They challenged the commissioners' failure to provide talking voting machines and wheelchair accessible voting places. They claimed discrimination in the process of voting because they were not afforded the same opportunity to participate in the voting process as non-disabled voters, and assisted voting and voting by alternative ballot were substantially different from, more burdensome than, and more intrusive than the voting process utilized by non-disabled voters. The court found that the complaint stated causes of actions under the ADA, the Rehabilitation Act, and 28 C.F.R. §§ 35.151 and 35.130. The court found that the voters and organizations had standing to raise their claims. The organizations had standing through the voters' standing or because they used significant resources challenging the commissioners' conduct. The plaintiffs failed to join the state official who would need to approve any talking | No | N/A | Yes-see if the case was refiled |
voting machine as a party. As the court could not afford complete relief to the visually impaired voters in that party's absence, it granted the motion to dismiss under Fed. R. Civ. P. 12(b)(7) without prejudice. The court granted the commissioners' motion to dismiss in part, and denied it in part. The court granted the motion to dismiss the claims of the visually impaired voters for failure to join an indispensable party, without prejudice, and with leave to amend the complaint.

TENNESSEE, Petitioner v. GEORGE LANE et al.

United States Supreme Court

541 U.S. 509; 124 S. Ct. 1978; 158 L. Ed. 2d 820; 2004 U.S. LEXIS 3386

May 17, 2004

Respondent paraplegics sued petitioner State of Tennessee, alleging that the State failed to provide reasonable access to court facilities in violation of Title II of the Americans with Disabilities Act of 1990. Upon the grant of a writ of certiorari, the State appealed the judgment of the court.

The state contended that the abrogation of state sovereign immunity in Title II of the ADA exceeded congressional authority under U.S. Const. amend XIV, § 5, to enforce substantive constitutional guarantees. The United States Supreme Court held, however, that Title II, as it applied to the class of cases implicating the fundamental right of access to the courts, constituted a valid exercise of Congress's authority. Title II was responsive to evidence of pervasive unequal treatment of persons with disabilities in the administration of state services and programs, and such disability discrimination was thus

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<th>Name or Citation</th>
<th>Court</th>
<th>Relation</th>
<th>Date</th>
<th>Notes</th>
<th>Finding</th>
<th>Standard of Review</th>
<th>Dismissed</th>
<th>Stayed [Supreme Court]</th>
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<tr>
<td>Bell v. Marinso</td>
<td>United States Court of Appeals for the Sixth Circuit</td>
<td>367 F.3d 588; 2004 U.S. App. LEXIS 8330</td>
<td>April 28, 2004</td>
<td>Plaintiffs, registered voters, sued defendants, Ohio Board of Elections and Board members, alleging that Ohio Rev. Code Ann. §§ 3509.19–3509.21 violated the National Voter Registration Act, and the Equal Protection Clause of the Fourteenth Amendment. The United States</td>
<td>The voters asserted that § 3503.02---- which stated that the place where the family of a married man or woman resided was considered to be his or her place of residence---violated the equal protection clause. The court of appeals found that the Board's procedures did not contravene the National Voter Registration Act because Congress did not intend to bar the removal of names from the official list of persons who were ineligible and improperly registered to vote in the first place. The National Voter Registration Act did not bar the Board's continuing</td>
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The vote actually fulfilled the requirement not to contravene the National Voter Registration Act. Because the Board did not raise an irrebuttable election fraud statement on her voter registration form and, even if the evidence did prove that she made such a statement, it did not prove that the voter registration form was the form required by Title 24.2. At trial, the Commonwealth introduced substantial testimony and documentary evidence that defendant had continued to live at one residence in the 13th District, long after she stated on the voter registration form that she had moved.

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<tr>
<th>Name of Case</th>
<th>Court of Appeals of Virginia</th>
<th>Date</th>
<th>Defect</th>
<th>Holding</th>
<th>Statutory Basis of Notes</th>
<th>Other Cases</th>
<th>Should the Case be Rejected</th>
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showing electricity and water usage, records from the Department of Motor Vehicles and school records. Thus, the evidence was sufficient to support the jury's verdict that defendant made "a false material statement" on the voter registration card required to be filed by Title 24.2 in order for her to be a candidate for office in the primary in question. Judgment of conviction affirmed. Evidence, including records showing electricity and water usage, records from the Department of Motor Vehicles and school records, was sufficient to support jury's verdict that defendant made "a false material statement" on the voter registration card required to be filed in order for her to be a candidate for office in the primary in question.

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<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Date</th>
<th>Relief</th>
<th>Hearing</th>
<th>Statutory Basis for Notes</th>
<th>Other Notes</th>
<th>Shall this Case be Rejected Further</th>
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<tr>
<td>ACLU of Minn. v. Kiffmeyer</td>
<td>United States District Court for the District of Minnesota</td>
<td>October 29, 2004</td>
<td>Plaintiffs, voters and associations, filed for a temporary restraining order pursuant to Fed. R. Civ. P. 65, against Plaintiffs argued that Minn. Stat. § 201.061 was inconsistent with the Help America Vote Act because it did not authorize the voter to complete registration either by a &quot;current and valid photo identification&quot; or by use of</td>
<td>No</td>
<td>N/A</td>
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there were less than 600 voters who attempted to register by mail but whose registrations were deemed incomplete. The court found that plaintiffs demonstrated that they were likely to succeed on their claim that the authorization in Minn. Stat. § 201.061, sub. 3, violated the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution insofar as it did not also authorize the use of a photographic tribal identification card by American Indians who do not reside on their tribal reservations. Also, the court found that plaintiffs demonstrated that they were likely to succeed on their claims that Minn. R. 8200.5100, violated the Equal Protection Clause of the United States Constitution. A temporary restraining order was entered.

<p>| Kalsson v. United States District Court for United States | 356 F. Supp. 2d | February 16, 2005 | Defendant Federal Election | The individual claimed that his vote was diluted because the NVRA | No | N/A | No |</p>
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<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Issue</th>
<th>Holding</th>
<th>Statute</th>
<th>Other Notes</th>
<th>Should this case be researched in the future?</th>
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<td>FEC</td>
<td>the Southern District of New York</td>
<td>371; 2005 U.S. Dist. LEXIS 2279</td>
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<td>Commission filed a motion to dismiss for lack of subject matter jurisdiction plaintiff individual's action, which sought a declaration that the National Voter Registration Act was unconstitutional on the theories that its enactment was not within the enumerated powers of the federal government and that it violated Article II of the United States Constitution.</td>
<td>resulted in more people registering to vote than otherwise would have been the case. The court held that the individual lacked standing to bring the action. Because New York was not obliged to adhere to the requirements of the NVRA, the individual did not allege any concrete harm. If New York simply adopted election day registration for elections for federal office, it would have been entirely free of the NVRA just as were five other states. Even if the individual's vote were diluted, and even if such an injury in other circumstances might have sufficed for standing, any dilution that he suffered was the result of New York's decision to maintain a voter registration system that brought it under the NVRA, not the NVRA itself. The court granted the motion to dismiss for lack of subject matter jurisdiction.</td>
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<td>Peace &amp; Freedom Party v. Shelley</td>
<td>California Court of Appeal, Third Appellate District</td>
<td>114 Cal. App. 4th 1237; 8 Cal. Rptr. 3d 497; 2004 Cal.</td>
<td>January 15, 2004</td>
<td>Plaintiff political party appealed a judgment from the superior court which denied the party's petition for writ of habeas corpus</td>
<td>The trial court ruled that inactive voters were excluded from the primary election calculation. The court of appeals affirmed, observing that although the election had already taken place, the issue was likely to recur and</td>
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A modicum of support from eligible voters. Information in the inactive file was unreliable and duplicative of information in the active file. Moreover, there was no violation of the National Voter Registration Act because voters listed as inactive were not prevented from voting. Although the Act prohibited removal of voters from the official voting list absent certain conditions, inactive voters in California could correct the record and vote. Affirmed.

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<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Issue</th>
<th>Holding</th>
<th>Statutory Basis</th>
<th>Other Notes</th>
<th>Should these cases be decided further?</th>
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<tr>
<td>McKay v. Thompson</td>
<td>United States Court of Appeals for the Sixth Circuit</td>
<td>226 F.3d 752; 2000 U.S. App.</td>
<td>September 18, 2000</td>
<td>Plaintiff challenged order of United States District Court for Eastern District of Tennessee at</td>
<td>The trial court had granted defendant state election officials summary judgment. The court declined to overrule defendants' administrative determination that state law required</td>
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<td>N/A</td>
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Chattanooga, which granted defendant state election officials summary judgment on plaintiff's action seeking to stop the state practice of requiring its citizens to disclose their social security numbers as a precondition to voter registration. Plaintiff was required to disclose his social security number because the interpretation appeared to be reasonable, did not conflict with previous caselaw, and could be challenged in state court. The requirement did not violate the Privacy Act because it was grandfathered under the terms of the Act. The limitations in the National Voter Registration Act did not apply because the NVRA did not specifically prohibit the use of social security numbers and the Act contained a more specific provision regarding such use. Plaintiff could not enforce § 1971 as it was enforceable only by the United States Attorney General. The trial court properly rejected plaintiff's fundamental right to vote, free exercise of religion, privileges and immunities, and due process claims. Although the trial court arguably erred in denying certification of the case to the USAG under 28 U.S.C.S. § 2403(a), plaintiff suffered no harm from the technical violation. Order affirmed because requirement that voters disclose social security numbers as a precondition to voter registration did not violate Privacy Act of 1974 or National Voter...
Dist. LEXIS 21416

by defendant, Ohio’s Secretary of State, in December 2003. The organizations claimed that the memorandum contravened provisions of the Help America Vote Act and the National Voter Registration Act. The organizations moved for a preliminary injunction.

In his memorandum, the Secretary informed all Ohio County Boards of Elections that, if a person left the box blank, the Boards were not to process the registration forms. The organizations did not file their suit until 18 days before the national election. The court found that there was not enough time before the election to develop the evidentiary record necessary to determine if the organizations were likely to succeed on the merits of their claim. Denying the organizations’ motion would have caused them to suffer no irreparable harm. There was no appropriate remedy available to the organizations at the time. The likelihood that the organizations could

<table>
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<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Plaintiff’s Claim</th>
<th>Holding</th>
<th>Statutory Basis for Ruling</th>
<th>Other Notes</th>
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<tr>
<td>Lucas County Democratic Party v. Blackwell</td>
<td>United States District Court for the Northern District of Ohio</td>
<td>341 F. Supp. 2d 861; 2004 U.S. Dist. LEXIS 21416</td>
<td>October 21, 2004</td>
<td>Plaintiff organizations brought an action challenging a memorandum issued by defendant, Ohio’s Secretary of State, in December 2003. The organizations claimed that the memorandum contravened provisions of the Help America Vote Act and the National Voter Registration Act. The organizations moved for a preliminary injunction.</td>
<td>The case involved a box on Ohio’s voter registration form that required a prospective voter who registered in person to supply an Ohio driver’s license number or the last four digits of their Social Security number. In his memorandum, the Secretary informed all Ohio County Boards of Elections that, if a person left the box blank, the Boards were not to process the registration forms. The organizations did not file their suit until 18 days before the national election. The court found that there was not enough time before the election to develop the evidentiary record necessary to determine if the organizations were likely to succeed on the merits of their claim. Denying the organizations’ motion would have caused them to suffer no irreparable harm. There was no appropriate remedy available to the organizations at the time. The likelihood that the organizations could</td>
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<tr>
<td>National Coalition for Students with Disabilities Educ. &amp; Legal Def. Fund v. Scales</td>
<td>United States District Court for the District of Maryland</td>
<td>150 F. Supp. 2d 845; 2001 U.S. Dist. LEXIS 9528</td>
<td>July 5, 2001</td>
<td>Plaintiff, national organization for disabled students, brought an action against university president and university's director of office of disability support services to challenge the voter registration procedures established by the disability support services. Defendants moved to dismiss the first amended complaint, or in the alternative, have shown irreparable harm was, in any event, slight in view of the fact that they waited so long before filing suit. Moreover, it would have been entirely improper for the court to order the Boards to re-open in-person registration until election day. The public interest would have been ill-served by an injunction. The motion for a preliminary injunction was denied sua sponte.</td>
<td>Defendants alleged that plaintiff lacked standing to represent its members, and that plaintiff had not satisfied the notice requirements of the National Voter Registration Act. Further, defendants maintained the facts, as alleged by plaintiff, did not give rise to a past, present, or future violation of the NVRA because (1) the plaintiff's members that requested voter registration services were not registered students at the university and (2) its current voter registration procedures complied with NVRA. As to plaintiff's § 1983 claim, the court held that while plaintiff had alleged sufficient facts to confer standing under the NVRA, such allegations were insufficient to make out a claim.</td>
<td>No</td>
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<tr>
<td>People v. Disimone</td>
<td>Court of Appeals of Michigan</td>
<td>251 Mich. App. 605; 650 N.W.2d 436; 2002 Mich. App.</td>
<td>July 11, 2002</td>
<td>Defendant was registered in the Colfax township for the 2000 general election. After presenting what appeared to be a valid voter's registration card, defendant proceeded to vote in the Grant township. Defendant had voted in the Colfax township earlier in the day. Defendant moved the court to issue an order that the State had to find</td>
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Defendant was not sufficient to support standing on its own behalf on the § 1983 claim. As to the NVRA claim, the court found that the agency practice of only offering voter registration services at the initial intake interview and placing the burden on disabled students to obtain voter registration forms and assistance afterwards did not satisfy its statutory duties. Furthermore, most of the NVRA provisions applied to disabled applicants not registered at the university. Defendants' motion to dismiss first amended complaint was granted as to the § 1983 claim and denied as to plaintiff's claims brought under the National Voter Registration Act of 1993. Defendants' alternative motion for summary judgment was denied.
The appellate court reversed the circuit court judgment and held that under the rules of statutory construction, the fact that the legislature had specifically omitted certain trigger words such as "knowingly," "willingly," "purposefully," or "intentionally" it was unlikely that the legislature had intended for this to be a specific intent crime. The court also rejected the defendant's argument that phrases such as "offer to vote" and "attempt to vote" should be construed as synonymous terms, as when words with similar meanings were used in the same statute, it was presumed that the legislature intended to distinguish between the terms. The order of the circuit court was reversed.

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<th>Name of Case</th>
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<th>Citation</th>
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<th>Facts</th>
<th>Holding</th>
<th>Statute Cite</th>
<th>Notes</th>
<th>Should Research Further</th>
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<tr>
<td>Diaz v. Hood</td>
<td>United States District Court for the Southern District of Florida</td>
<td>342 F. Supp. 2d 1111; 2004 U.S. Dist. LEXIS 21445</td>
<td>October 26, 2004</td>
<td>Plaintiffs, unions and individuals who had attempted to register to vote, sought a declaration of their rights to vote in the November 2, 2004 general election</td>
<td>That he had a specific intent to vote twice in order to be convicted. The appellate court reversed the circuit court judgment and held that under the rules of statutory construction, the fact that the legislature had specifically omitted certain trigger words such as &quot;knowingly,&quot; &quot;willingly,&quot; &quot;purposefully,&quot; or &quot;intentionally&quot; it was unlikely that the legislature had intended for this to be a specific intent crime. The court also rejected the defendant's argument that phrases such as &quot;offer to vote&quot; and &quot;attempt to vote&quot; should be construed as synonymous terms, as when words with similar meanings were used in the same statute, it was presumed that the legislature intended to distinguish between the terms. The order of the circuit court was reversed.</td>
<td>No</td>
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They alleged that defendants, state and county election officials, refused to process their voter registrations for various failures to complete the registration forms. The election officials moved to dismiss the complaint for lack of standing and failure to state a claim.

Putative voters raised separate issues: the first had failed to verify her mental capacity, the second failed to check a box indicating that he was not a felon, and the third did not provide the last four digits of her social security number on the form. They claimed the election officials violated federal and state law by refusing to register eligible voters because of nonmaterial errors or omissions in their voter registration applications, and by failing to provide any notice to voter applicants whose registration applications were deemed incomplete. In the first two cases, the election official had handled the errant application properly under Florida law, and the putative voter had effectively caused their own injury by failing to complete the registration. The third completed her form and was registered, so had suffered no injury. Standing failed against the secretary of state. The motions to dismiss the complaint were granted without prejudice.

Charles H. Wesley Educ. United States District Court for 324 F. Supp. 2d July 1, 2004 Plaintiffs, a voter, fraternity members, The organization participated in numerous non-partisan voter No N/A No
Cox District of Georgia 1358; 2004 U.S. Dist. LEXIS 12120

sought an injunction ordering defendant, the Georgia Secretary of State, to process the voter registration application forms that they mailed in following a voter registration drive. They contended that by refusing to process the forms defendants violated the National Voter Registration Act and U.S. Const. amends. I, XIV, and XV.

registration drives primarily designed to increase the voting strength of African-Americans. Following one such drive, the fraternity members mailed in over 60 registration forms, including one for the voter who had moved within state since the last election. The Georgia Secretary of State's office refused to process them because they were not mailed individually and neither a registrar, deputy registrar, or an otherwise authorized person had collected the applications as required under state law. The court held that plaintiffs had standing to bring the action. The court held that because the applications were received in accordance with the mandates of the NVRA, the State of Georgia was not free to reject them. The court found that: plaintiffs had a substantial likelihood of prevailing on the merits of their claim that the applications were improperly rejected; plaintiffs would be irreparably injured absent an injunction; the potential harm to defendants was outweighed by plaintiffs' injuries; and an injunction was in the public interest. Plaintiffs' motion for a preliminary injunction
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<th>Name of Case</th>
<th>Court</th>
<th>Claimant</th>
<th>Issue</th>
<th>Holding</th>
<th>Statute Realted to Voting</th>
<th>Other Notes</th>
<th>Should the Case be Accepted by the Court</th>
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<tr>
<td>Moseley v. Price</td>
<td>United States District Court for the Eastern District of Virginia</td>
<td>300 F. Supp. 2d 389; 2004 U.S. Dist. LEXIS 850</td>
<td>January 22, 2004</td>
<td>Plaintiff alleged that defendants' actions in investigating his voter registration application constituted a change in voting procedures requiring § 5 preclearance under the Voting Rights Act, which preclearance was never sought or received. Plaintiff claimed he withdrew from the race for Commonwealth was granted. Defendants were ordered to process the applications received from the organization to determine whether those registrants were qualified to vote. Furthermore, defendants were enjoined from rejecting any voter registration application on the grounds that it was mailed as part of a &quot;bundle&quot; or that it was collected by someone not authorized or any other reason contrary to the NVRA.</td>
<td>No</td>
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The court found the inference wholly unwarranted because nothing in the written procedure invited or justified such an inference. The court opined that common sense and state law invited a different inference, namely that while a returned card had to be resent if the address was verified as correct, any allegation of fraud could be investigated. Therefore, there was no new procedure for which preclearance was required. The court dismissed plaintiff's federal claims. The court dismissed the state law claims without prejudice.

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<tr>
<th>Plaintiff</th>
<th>Court</th>
<th>Decision</th>
<th>Date</th>
<th>Facts</th>
<th>Holding</th>
<th>Statutory Basis</th>
<th>Other Notes</th>
<th>Research</th>
<th>Background</th>
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<tbody>
<tr>
<td>Thompson v. Karben</td>
<td>Supreme Court of New York, Appellate Division, Second Department</td>
<td>295 A.D.2d 438; 743 N.Y.S.2d 175; 2002 N.Y. App. Div. LEXIS 6101</td>
<td>June 10, 2002</td>
<td>Respondents filed a motion seeking the cancellation of appellant's voter registration and political party enrollment on the ground that appellant was unlawfully registered to vote in</td>
<td>Respondents alleged that appellant was unlawfully registered to vote from an address at which he did not reside and that he should have voted from the address that he claimed as his residence. The appellate court held that respondents adduced insufficient proof to support the conclusion that appellant did not reside at the subject address. On the other hand, appellant submitted copies of his 2002 vehicle registration,</td>
<td>No</td>
<td>N/A</td>
<td>No</td>
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<td>Nat'l Coalition v. Taft</td>
<td>United States District Court for the Southern District of Ohio</td>
<td>2002</td>
<td>August 2, 2002</td>
<td>Plaintiffs, a nonprofit public interest group and certain individuals, sued defendants, certain state and university officials, alleging that they violated the National Voter Registration Act in failing to designate the disability services offices at state public colleges and universities as voter registration sites.</td>
<td>The court found that the disability services offices at issue were subject to the NVRA because the term &quot;office&quot; included a subdivision of a government department or institution and the disability offices at issue were places where citizens regularly went for service and assistance. Moreover, the Ohio Secretary of State had an obligation under the NVRA to designate the disability services offices as voter registration sites because nothing in the law superseded the NVRA's requirement that the responsible state official designate disability services offices as voter registration sites. Moreover, under</td>
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The Supreme Court, Rockland County, New York, ordered the cancellation of appellant's voter registration and party enrollment. Appellant challenged the trial court's order. 2000 and 2001 federal income tax returns, 2002 property tax bill, a May 2001 paycheck stub, and 2000 and 2001 retirement account statements all showing the subject address. Appellant also testified that he was a signatory on the mortgage of the subject address and that he kept personal belongings at that address. Respondents did not sustain their evidentiary burden. The judgment of the trial court was reversed.

- **Nat'l Coalition v. Taft**
- **United States District Court for the Southern District of Ohio**
- **2002**
- **August 2, 2002**
- **Plaintiffs, a nonprofit public interest group and certain individuals, sued defendants, certain state and university officials, alleging that they violated the National Voter Registration Act in failing to designate the disability services offices at state public colleges and universities as voter registration sites.**
- **The court found that the disability services offices at issue were subject to the NVRA because the term "office" included a subdivision of a government department or institution and the disability offices at issue were places where citizens regularly went for service and assistance. Moreover, the Ohio Secretary of State had an obligation under the NVRA to designate the disability services offices as voter registration sites because nothing in the law superseded the NVRA's requirement that the responsible state official designate disability services offices as voter registration sites. Moreover, under**
- **No**
- **N/A**
- **No**

006757
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<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Parties</th>
<th>Holding</th>
<th>Statutory Basis of No.</th>
<th>Other Notes</th>
<th>Should the Case be Researched Further</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Lawson v. Shelby County</strong></td>
<td>United States Court of Appeals for the Sixth Circuit</td>
<td>211 F.3d 331; 2000 U.S. App. LEXIS 8634</td>
<td>May 3, 2000</td>
<td>Plaintiffs who were denied the right to vote when they refused to disclose their social security numbers, appealed a judgment of the United States</td>
<td>Ohio Rev. Code Ann. § 3501.05(R), the Secretary of State's duties expressly included ensuring compliance with the NVRA. The case was not moot even though the Secretary of State had taken steps to ensure compliance with the NVRA given his position to his obligation under the law. The court granted declaratory judgment in favor of the nonprofit organization and the individuals. The motion for a preliminary injunction was granted in part and the Secretary of State was ordered to notify disabled students who had used the designated disability services offices prior to the opening day of the upcoming semester or who had pre-registered for the upcoming semester as to voter registration availability.</td>
<td>21 1 F.3d 331; 2000 U.S. App. LEXIS 8634</td>
<td>N/A</td>
<td>No</td>
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</table>
District Court for the Western District of Tennessee at Memphis dismissing their amended complaint for failure to state claims barred by U.S. Const. amend. XI.

and § 1983. The district court dismissed, finding the claims were barred by U.S. Const. amend. XI, and the one year statute of limitations. The appeals court reversed, holding the district court erred in dismissing the suit because U.S. Const. amend. XI immunity did not apply to suits brought by a private party under the Ex Parte Young exception. Any damages claim not ancillary to injunctive relief was barred. The court also held the statute of limitations ran from the date plaintiffs were denied the opportunity to vote, not register, and their claim was thus timely. Reversed and remanded to district court to order such relief as will allow plaintiffs to vote and other prospective injunctive relief against county and state officials; declaratory relief and attorneys' fees ancillary to the prospective injunctive relief, all permitted under the Young exception to sovereign immunity, to be fashioned.

Before a general election, three persons brought an action alleging the Escapes were not bona fide residents of the county, and sought to have their

No N/A No

Curtis v. Smith

United States District Court for
the Eastern District of Texas

145 F. Supp. 2d 814; 2001

June 4, 2001

Plaintiffs, representatives of several thousand retired persons who
called themselves the "Escapees," and who spent a large part of their lives traveling about the United States in recreational vehicles, but were registered to vote in the county, moved for preliminary injunction seeking to enjoin a Texas state court proceeding under the All Writs Act.

names expunged from the rolls of qualified voters. The plaintiffs brought suit in federal district court. The court issued a preliminary injunction forbidding county officials from attempting to purge the voting. Commissioner contested the results of the election, alleging Escapees' votes should be disallowed. Plaintiffs brought present case assertedly to prevent the same issue from being relitigated. The court held, however, the issues were different, since, unlike the case in the first proceeding, there was notice and an opportunity to be heard. Further, unlike the first proceeding, the plaintiff in the state court action did not seek to change the prerequisites for voting registration in the county, but instead challenged the actual residency of some members of the Escapees, and such challenge properly belonged in the state court. The court further held that an election contest under state law was the correct vehicle to contest the registration of Escapees. The court dissolved the temporary restraining order it had previously entered and denied plaintiffs' motion for preliminary
<table>
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<tr>
<th>Name of Case</th>
<th>Court of Appeals</th>
<th>Citation</th>
<th>Date</th>
<th>Facts</th>
<th>Holding</th>
<th>Statutory Basis</th>
<th>Other Notes</th>
<th>Significant Dates</th>
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<tbody>
<tr>
<td>Pepper v. Darnell</td>
<td>United States Court of Appeals for the Sixth Circuit</td>
<td>24 Fed. Appx. 460; 2001 U.S. App. LEXIS 26618</td>
<td>December 10, 2001</td>
<td>Plaintiff individual appealed from a judgment of the district court, in an action against defendant state officials seeking relief under § 1983 and the National Voter Registration Act, for their alleged refusal to permit individual to register to vote. Officials had moved for dismissal or for summary judgment, and the district court granted the motion.</td>
<td>Individual argued on appeal that the district court erred in finding that the registration forms used by the state did not violate the NVRA and in failing to certify a class represented by individual. Individual lived in his automobile and received mail at a rented box. Officials refused to validate individual's attempt to register to vote by mail. Tennessee state law forbade accepting a rented mail box as the address of the potential voter. Individual insisted that his automobile registration provided sufficient proof of residency under the NVRA. The court upheld the legality of state's requirement that one registering to vote provide a specific location as an address, regardless of the transient lifestyle of the potential voter, finding state's procedure faithfully mirrored the requirements of the NVRA as codified in the Code of Federal Regulations. The court also held that the refusal to certify individual as the representative of a class for purposes of this litigation was not an abuse of.</td>
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<td>N/A</td>
<td>No</td>
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Miller v. Blackwell  United States District Court for the Southern District of Ohio
348 F. Supp. 2d 916; 2004 U.S. Dist. LEXIS 24894
October 27, 2004
Plaintiffs, two voters and the Ohio Democratic Party, filed suit against defendants, the Ohio Secretary of State, several county boards of elections, and all of the boards' members, alleging claims under the National Voter Registration Act and § 1983. Plaintiffs also filed a motion for a temporary restraining order (TRO). Two individuals filed a motion to intervene as defendants.

Plaintiffs alleged that the timing and manner in which defendants intended to hold hearings regarding pre-election challenges to their voter registration violated both the Act and the Due Process Clause. The individuals, who filed pre-election voter eligibility challenges, filed a motion to intervene. The court held that it would grant the motion to intervene because the individuals had a substantial legal interest in the subject matter of the action and time constraints would not permit them to bring separate actions to protect their rights. The court further held that it would grant plaintiffs' motion for a TRO because plaintiffs made sufficient allegations in their complaint to establish standing and because all four factors to consider in issuing a TRO weighed heavily in favor of doing so. The court found that plaintiffs

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<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Opinion</th>
<th>Date</th>
<th>Facts</th>
<th>Holding</th>
<th>Statutory Basis</th>
<th>Legal Notes</th>
<th>Should the district court enter a permanent injunction?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Miller v. Blackwell</td>
<td>United States District Court for the Southern District of Ohio</td>
<td>348 F. Supp. 2d 916; 2004 U.S. Dist. LEXIS 24894</td>
<td>October 27, 2004</td>
<td>Plaintiffs, two voters and the Ohio Democratic Party, filed suit against defendants, the Ohio Secretary of State, several county boards of elections, and all of the boards' members, alleging claims under the National Voter Registration Act and § 1983. Plaintiffs also filed a motion for a temporary restraining order (TRO). Two individuals filed a motion to intervene as defendants.</td>
<td>discretion; in this case, no representative party was available as the indigent individual, acting in his own behalf, was clearly unable to represent fairly the class. The district court's judgment was affirmed.</td>
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| Name of Case | Court | Citation | Date | Party | Hedging | Shown \
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<td>Miller v. Blackwell</td>
<td>United States District Court for the southern District of Ohio</td>
<td>348 F. Supp. 2d 916; 2004 U.S. Dist. LEXIS 24894</td>
<td>October 27, 2004</td>
<td>Plaintiffs, two voters and the Ohio Democratic Party, filed suit against defendants, the Ohio Secretary of State, several county boards of elections, and all of the boards' members, alleging claims under the National Voter Registration Act and § 1983. Plaintiffs also filed a motion</td>
<td>demonstrated a likelihood of success on the merits because they made a strong showing that defendants' intended actions regarding pre-election challenges to voter eligibility abridged plaintiffs' fundamental right to vote and violated the Due Process Clause. Thus, the other factors to consider in granting a TRO automatically weighed in plaintiffs' favor. The court granted plaintiffs' motion for a TRO. The court also granted the individuals' motion to intervene.</td>
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The court granted plaintiffs' motion to intervene because the individuals had a substantial legal interest in the subject matter of the action and time constraints would not permit them to bring separate actions to protect their
The court found that plaintiffs demonstrated a likelihood of success on the merits because they made a strong showing that defendants' intended actions regarding pre-election challenges to voter eligibility abridged plaintiffs' fundamental right to vote and violated the Due Process Clause. Thus, the other factors to consider in granting a TRO automatically weighed in plaintiffs' favor. The court granted plaintiffs' motion for a TRO. The court also granted the individuals' motion to intervene.

Spencer v. Blackwell  
United States District Court for the Southern District of Ohio  
347 F. Supp. 2d 528; 2004 U.S. Dist. LEXIS  
November 1, 2004  
Plaintiff voters filed a motion for temporary restraining order and preliminary injunction seeking to restrain defendant  
The voters alleged that defendants had combined to implement a voter challenge system at the polls that discriminated against African-American voters. Each precinct was run by its election judges but Ohio law also allowed challengers to be  
No  
N/A  
No
intervenor State of Ohio from discriminating against black voters in Hamilton County on the basis of race. If necessary, they sought to restrain challengers from being allowed at the polls.

physically present in the polling places in order to challenge voters' eligibility to vote. The court held that the injury asserted, that allowing challengers to challenge voters' eligibility would place an undue burden on voters and impede their right to vote, was not speculative and could be redressed by removing the challengers. The court held that in the absence of any statutory guidance whatsoever governing the procedures and limitations for challenging voters by challengers, and the questionable enforceability of the State's and County's policies regarding good faith challenges and ejection of disruptive challengers from the polls, there existed an enormous risk of chaos, delay, intimidation, and pandemonium inside the polls and in the lines out the door. Furthermore, the law allowing private challengers was not narrowly tailored to serve Ohio's compelling interest in preventing voter fraud. Because the voters had shown a substantial likelihood of success on the merits on the ground that the application of Ohio's statute allowing challengers at polling places was
Circuit
LEXIS 15083
appealed from an order of the Supreme Court of the Commonwealth of the Northern Marianas Islands reversing a lower court's grant of summary judgment in favor of defendants on the ground of qualified immunity.

Commonwealth of the Northern Marianas Islands Board of Elections violated 91983 by administering pre-election day voter challenge procedures which precluded a certain class of voters, including plaintiffs, from voting in a 1995 election. The CNMI Supreme Court reversed a lower court's grant of summary judgment and defendants appealed. The court of appeals held that the Board's pre-election day procedures violated the plaintiffs' fundamental right to vote. The federal court reasoned that the right to vote was clearly established at the time of the election, and that a reasonable Board would have known that treating voters differently based on their political party would be unconstitutional and the other factors governing the issuance of an injunction weighed in their favor, the court enjoined all defendants from allowing any challengers other than election judges and other electors into the polling places throughout the state on Election Day.
<table>
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<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Citation for the Second Circuit</th>
<th>Date</th>
<th>Issue</th>
<th>Holding</th>
<th>Summary of Result of Case</th>
<th>Other Notes</th>
<th>Should this Case be Rejected</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wit v. Berman</td>
<td>United States Court of Appeals for the Second Circuit</td>
<td>306 F.3d 1256; 2002 U.S. App. LEXIS 21301</td>
<td>October 11, 2002</td>
<td>Appellant voters who established residences in two separate cities sued appellees, state and city election officials, alleging that provisions of the New York State Election Law unconstitutionally prevented the voters from voting in local elections in both</td>
<td>Under state election laws, the voters could only vote in districts in which they resided, and residence was limited to one place. The voters contended that, since they had two lawful residences, they were denied constitutional equal protection by the statutory restriction against voting in the local elections of both of the places of their residences. The appellate court held, however, that no constitutional violation was shown since the provisions of the New York State Election Law imposed only reasonable,</td>
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violate the Equal Protection Clause. Further the court added that the allegations of the complaint were sufficient to support liability of the Board members in their individual capacities. Finally, the composition of the CNMI Supreme Court's Special Judge panel did not violate the Board's right to due process of law. The decision of Commonwealth of the Northern Mariana Islands Supreme Court was affirmed where defendants' pre-election day voter challenge procedures violated plaintiffs' fundamental right to vote.
voters offered no workable standard to the District Court for the Eastern District of Texas. United States 1054; 2000 Supp. 2d 17987 U.S. Dist. LEXIS 3, 2000 preliminary injunction to prohibit defendant tax assessor-collector from mailing confirmation letters to approximately 9,000 persons, self-styled "escapees" who traveled a major portion of each year in recreational vehicles, all of whom were registered to vote in Polk County, Texas. In accordance with Texas law, three resident voters filed affidavits challenging the escapees' residency. These affidavits triggered defendant's action in sending confirmation notices.

Cities where they resided. The voters appealed the order of the United States District Court for the Southern District of New York which granted appellees' motion to dismiss the complaint. Nondiscriminatory restrictions which advanced important state regulatory interests. While the voters may have interests in electoral outcomes in both cities, any rule permitting voting based on such interests would be unmanageable and subject to potential abuse. Further, basing voter eligibility on domicile, which was always over- or under-inclusive, nonetheless had enormous practical advantages, and the voters offered no workable standard to replace the domicile test. Finally, allowing the voters to choose which of their residences was their domicile for voting purposes could not be deemed discriminatory. Affirmed.

Curtis v. Smith United States District Court for the Eastern District of Texas 121 F. Supp. 2d 1054; 2000 U.S. Dist. LEXIS 17987 November 3, 2000 Plaintiffs sought a preliminary injunction to prohibit defendant tax assessor-collector from mailing confirmation letters to approximately 9,000 persons who were registered voters in Polk

Plaintiffs sought to prohibit defendant from mailing confirmation letters to approximately 9,000 persons, self-styled "escapees" who traveled a major portion of each year in recreational vehicles, all of whom were registered to vote in Polk County, Texas. In accordance with Texas law, three resident voters filed affidavits challenging the escapees' residency. These affidavits triggered defendant's action in sending confirmation notices

No N/A No
The court issued a preliminary injunction prohibiting defendant from pursuing the confirmation of residency of the escapees, or any similarly situated group, under the Texas Election Code until the process had been submitted for preclearance in accordance with § 5. The action was taken to ensure that no discriminatory potential existed in the use of such process in the upcoming presidential election or future election. Motion for preliminary injunction was granted, and defendant was enjoined from pursuing confirmation of residency of the 9,000 "escapees," or any similarly situated group, under the Texas Election Code, until the process had been submitted for preclearance under § 5 of the Voting Rights Act.

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<tr>
<th>Name/Party</th>
<th>Court of Appeal of California, 114 Cal. App. 4th</th>
<th>County, Texas.</th>
<th>Case No.</th>
<th>Date</th>
<th>Result</th>
</tr>
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<tbody>
<tr>
<td>Peace &amp; Freedom Party</td>
<td>Plaintiff political party appealed a</td>
<td>The trial court ruled that inactive voters were excluded from the primary</td>
<td>No</td>
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<td>Name of Case</td>
<td>Court</td>
<td>Citation</td>
<td>Facts</td>
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<td>v. Shelley</td>
<td>Third Appellate District</td>
<td>1237; 8 Cal. Rptr. 3d 497; 2004 Cal. App. LEXIS 42</td>
<td>Judgment from the superior court which denied the party's petition for writ of mandate to compel defendant, the California Secretary of State, to include voters listed in the inactive file of registered voters in calculating whether the party qualified to participate in a primary election.</td>
<td>The court of appeals affirmed, observing that although the election had already taken place, the issue was likely to recur and was a matter of continuing public interest and importance; hence, a decision on the merits was proper, although the case was technically moot. The law clearly excluded inactive voters from the calculation. The statutory scheme did not violate the inactive voters' constitutional right of association because it was reasonably designed to ensure that all parties on the ballot had a significant modicum of support from eligible voters. Information in the inactive file was unreliable and often duplicative of information in the active file. Moreover, there was no violation of the National Voter Registration Act because voters listed as inactive were not prevented from voting. Although the Act prohibited removal of voters from the official voting list absent certain conditions, inactive voters in California could correct the record and vote as provided the Act. The court affirmed the denial of a writ of mandate.</td>
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<tr>
<td>Name of Case</td>
<td>Court</td>
<td>Citation</td>
<td>Date</td>
<td>Facts</td>
<td>Holding</td>
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<td>Bell v. Marinko</td>
<td>United States District Court for the Northern District of Ohio</td>
<td>235 F. Supp. 2d 772; 2002 U.S. Dist. LEXIS 21753</td>
<td>October 22, 2002</td>
<td>Plaintiff voters sued defendants, a county board of elections, a state secretary of state, and the state's attorney general, for violations of the Motor Voter Act and equal protection of the laws. Defendants moved for summary judgment. The voters also moved for summary judgment.</td>
<td>The board heard challenges to the voters' qualifications to vote in the county, based on the fact that the voters were transient (seasonal) rather than permanent residents of the county. The voters claimed that the board hearings did not afford them the requisite degree of due process and contravened their rights of privacy by inquiring into personal matters. As to the MVA claim, the court held that residency within the precinct was a crucial qualification. One simply could not be an elector, much less a qualified elector entitled to vote, unless one resided in the precinct where he or she sought to vote. If one never lived within the precinct, one was not and could not be an eligible voter, even if listed on the board's rolls as such. The MVA did not affect the state's ability to condition eligibility to vote on residence. Nor did it undertake to regulate challenges, such as the ones presented, to a registered voter's residency ab initio. The ability of the challengers to assert that the voters were not eligible and had not ever been eligible, and of the board to consider and resolve that challenge, did not</td>
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LENS 8320 filed a suit against defendant state officials alleging violations of the National Voter Registration Act and the Voting Rights Act. The officials appealed after the United States District Court for the Northern District of Georgia issued a preliminary injunction enjoining them from rejecting voter registrations submitted by the processing. Included in the batch was the voter's change of address form. Plaintiffs filed the suit after they were notified that the applications had been rejected pursuant to Georgia law, which allegedly restricted who could collect voter registration forms. Plaintiffs contended that the officials had violated the NVRA, the VRA, and U.S. Const. amends. I, XIV, XV. The officials argued that plaintiffs lacked standing and that the district court had erred in issuing the preliminary injunction. The court found no error. Plaintiffs had sufficiently alleged injuries under the NVRA, arising out of the rejection of the voter registration forms; the allegations in the complaint contravene the MVA. Defendants' motions for summary judgment were granted as to all claims with prejudice, except the voters' state-law claim, which was dismissed for want of jurisdiction, without prejudice.

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<tr>
<th>Name of Case</th>
<th>Citation</th>
<th>Date</th>
<th>Allegation</th>
<th>Supporting Evidence</th>
<th>Other Notes</th>
<th>Note on Case Resolution</th>
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<tbody>
<tr>
<td>Charles H. Wesley Educ. Found., Inc. v. Cox</td>
<td>United States Court of Appeals for the Eleventh Circuit 408 F.3d 1349; 2005 U.S. App. LEXIS 8320</td>
<td>May 12, 2005</td>
<td>Plaintiffs, a charitable foundation, four volunteers, and a registered voter, filed a suit against defendant state officials alleging violations of the National Voter Registration Act and the Voting Rights Act. The officials appealed after the United States District Court for the Northern District of Georgia issued a preliminary injunction enjoining them from rejecting voter registrations submitted by the The foundation conducted a voter registration drive; it placed the completed applications in a single envelope and mailed them to the Georgia Secretary of State for processing. Included in the batch was the voter's change of address form. Plaintiffs filed the suit after they were notified that the applications had been rejected pursuant to Georgia law, which allegedly restricted who could collect voter registration forms. Plaintiffs contended that the officials had violated the NVRA, the VRA, and U.S. Const. amends. I, XIV, XV. The officials argued that plaintiffs lacked standing and that the district court had erred in issuing the preliminary injunction. The court found no error. Plaintiffs had sufficiently alleged injuries under the NVRA, arising out of the rejection of the voter registration forms; the allegations in the complaint contravene the MVA. Defendants' motions for summary judgment were granted as to all claims with prejudice, except the voters' state-law claim, which was dismissed for want of jurisdiction, without prejudice.</td>
<td>No</td>
<td>N/A</td>
<td>No</td>
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</table>
McKay v. Thompson
United States Court of Appeals for the Sixth Circuit
226 F.3d 752; 2000 U.S. App. LEXIS 23387

September 18, 2000

Plaintiff challenged order of United States District Court for Eastern District of Tennessee at Chattanooga, which granted defendant state election officials summary judgment on plaintiff's action seeking to stop the state practice of requiring its citizens to disclose their social security numbers as a precondition to voter registration.

The trial court had granted defendant state election officials summary judgment. The court declined to overrule defendants' administrative determination that state law required plaintiff to disclose his social security number because the interpretation appeared to be reasonable, did not conflict with previous case law, and could be challenged in state court. The requirement did not violate the Privacy Act of 1974, because it was grandfathered under the terms of the Act. The limitations in the National Voter Registration Act did not apply because the NVRA did not specifically prohibit the use of social security numbers and the Act contained a more specific provision regarding such use. The trial

sufficiently showed an injury-in-fact that was fairly traceable to the officials' conduct. The injunction was properly issued. There was a substantial likelihood that plaintiffs would prevail as to their claims; it served the public interest to protect plaintiffs' franchise-related rights. The court affirmed the preliminary injunction order entered by the district court.

No N/A No
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<thead>
<tr>
<th>Case Name</th>
<th>Court</th>
<th>District</th>
<th>Date</th>
<th>Issue</th>
<th>Plaintiff's Argument</th>
<th>Defendant's Argument</th>
<th>Should the Case be Re-examined Further</th>
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<tr>
<td>Nat'l Coalition for Students with Disabilities Educ. &amp; Legal Def. Fund v. Scales</td>
<td>United States District Court for the Southern District of Maryland</td>
<td>150 F. Supp. 2d 845; 2001 U.S. Dist. LEXIS 9528</td>
<td>July 5, 2001</td>
<td>Plaintiff, national organization for disabled students, brought an action against university president and university's director of office of disability support services to challenge the voter registration procedures established by the disability support services. Defendants moved to dismiss</td>
<td>Defendants alleged that plaintiff lacked standing to represent its members, and that plaintiff had not satisfied the notice requirements of the National Voter Registration Act. Further, defendants maintained the facts, as alleged by plaintiff, did not give rise to a past, present, or future violation of the NVRA because (1) the plaintiff's members that requested voter registration services were not registered students at the university and (2) its current voter registration procedures complied with NVRA. As to plaintiff's § 1983 claim, the court held that while plaintiff had alleged</td>
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<td>N/A</td>
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<td>Name of Case</td>
<td>County</td>
<td>Court</td>
<td>Date</td>
<td>Details</td>
<td>Statutory Basis of Note</td>
<td>Other Notes</td>
<td>Should the Case be researched further</td>
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<td>Cunningham v.</td>
<td></td>
<td>United States District Court for the Northern District of Illinois</td>
<td>2003</td>
<td>Plaintiffs, who alleged that they were duly registered voters, six of whom had signed nominating petitions for one candidate</td>
<td></td>
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<td>Chi. Bd. of</td>
<td></td>
<td></td>
<td>February 24, 2003</td>
<td>Plaintiffs argued that objections to their signatures were improperly sustained by defendants, the city board of election commissioners. Plaintiff's argued that they were registered voters whose names appeared in an inactive file and whose signatures were</td>
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<td>N/A</td>
<td>No</td>
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and two of whom signed nominating petitions for another candidate. They first asked for a preliminary injunction of the municipal election scheduled for the following Tuesday and suggested, alternatively, that the election for City Clerk and for 4th Ward Alderman be enjoined. Therefore, and improperly, excluded. The court ruled that by characterizing the claim as plaintiffs did, they sought to enjoin an election because their signatures were not counted, even though their preferred candidates were otherwise precluded from appearing on the ballot. Without regard to their likelihood of obtaining any relief, plaintiffs failed to demonstrate that they would be irreparably harmed if an injunction did not issue; the threatened injury to defendants, responsible as they were for the conduct of the municipal election, far outweighed any threatened injury to plaintiffs; and the granting of a preliminary injunction would greatly disserve the public interest. Plaintiffs' petition for preliminary relief was denied.

| Diaz v. Hood | United States District Court for the Southern District of Florida | October 26, 2004 | Plaintiffs, unions and individuals who had attempted to register to vote, sought a declaration of their rights to vote in the November 2, 2004 general election. They | The putative voters sought injunctive relief requiring the election officials to register them to vote. The court first noted that the unions lacked even representative standing, because they failed to show that one of their members could have brought the case in their own behalf. The individual putative voters raised separate issues: | No | N/A | No |
alleged that defendants, state and county election officials, refused to process their voter registrations for various failures to complete the registration forms. The election officials moved to dismiss the complaint for lack of standing and failure to state a claim.

<table>
<thead>
<tr>
<th>Name</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Facts</th>
<th>Statutes Involved</th>
<th>Other Notes</th>
<th>Should the Case be Researched Further</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bell v. Marinko</td>
<td>United States District Court for the Northern District of Ohio</td>
<td>235 F. Supp. 2d 772; 2002</td>
<td>October 22, 2002</td>
<td>Plaintiff voters sued defendants, a county board of elections, a state secretary of help</td>
<td>The board heard challenges to the voters' qualifications to vote in the county, based on the fact that the voters were transient (seasonal) rather</td>
<td>No</td>
<td>N/A</td>
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</tbody>
</table>
state, and the state's attorney general, for violations of the Motor Voter Act and equal protection of the laws. Defendants moved for summary judgment. The voters also moved for summary judgment.

The voters claimed that the board hearings did not afford them the requisite degree of due process and contravened their rights of privacy by inquiring into personal matters. As to the MVA claim, the court held that residency within the precinct was a crucial qualification. One simply could not be an elector, much less a qualified elector entitled to vote, unless one resided in the precinct where he or she sought to vote. If one never lived within the precinct, one was not and could not be an eligible voter, even if listed on the board's rolls as such. The MVA did not affect the state's ability to condition eligibility to vote on residence. Nor did it undertake to regulate challenges, such as the ones presented, to a registered voter's residency ab initio. The ability of the challengers to assert that the voters were not eligible and had not ever been eligible, and of the board to consider and resolve that challenge, did not contravene the MVA. Defendants' motions for summary judgment were granted as to all claims with prejudice, except the voters' state-law claim.
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<tr>
<th>Name</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Facts</th>
<th>Holding</th>
<th>Standing</th>
<th>Jurisdiction</th>
<th>Habeas Corpus</th>
<th>Other Cases</th>
<th>Qualified</th>
<th>Right to Vote</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bell v. Marinko</td>
<td>United States Court of Appeals for the Sixth Circuit</td>
<td>367 F.3d 588; 2004 U.S. App. LEXIS 8330</td>
<td>April 28, 2004</td>
<td>Plaintiffs, registered voters, sued defendants, Ohio Board of Elections and Board members, alleging that Ohio Rev. Code Ann. §§ 3509.19--3509.21 violated the National Voter Registration Act, and the Equal Protection Clause of the Fourteenth Amendment. The United States District Court for the Northern District of Ohio granted summary judgment in favor of defendants. The voters appealed.</td>
<td>The voters contested the challenges to their registration brought under Ohio Code Rev. Ann. § 3505.19 based on Ohio Rev. Code Ann. § 3503.02. Specifically, the voters asserted that § 3503.02—which stated that the place where the family of a married man or woman resided was considered to be his or her place of residence—violated the equal protection clause. The court of appeals found that the Board's procedures did not contravene the National Voter Registration Act because Congress did not intend to bar the removal of names from the official list of persons who were ineligible and improperly registered to vote in the first place. The National Voter Registration Act did not bar the Board's continuing consideration of a voter's residence, and encouraged the Board to maintain accurate and reliable voting rolls. Ohio was free to take reasonable steps to see that all applicants for registration to vote actually fulfilled the requirement of bona fide residence. Ohio Rev. Code</td>
<td>No</td>
<td>N/A</td>
<td>No</td>
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Ann. § 3503.02(D) did not contravene the National Voter Registration Act. Because the Board did not raise an irrebuttable presumption in applying § 3502.02(D), the voters suffered no equal protection violation. The judgment was affirmed.
of the Monroe County coroners election were invalid because none of the 2000 ballots cast in Monroe County's second precinct were initialed by an election judge, in violation of Illinois law. The trial court granted appellee's motion for summary judgment, and the appellate court affirmed the judgment. The Illinois supreme court affirmed, noting that statutes requiring election judges to initial election ballots were mandatory, and uninitialed ballots could not have been counted, even where the parties agreed that there was no knowledge of fraud or corruption. Thus, the supreme court held that the trial court properly invalidated all of the ballots cast in Monroe County's second precinct. The court reasoned that none of the ballots contained the requisite initialing, and neither party argued that any of the ballots should be counted.

**Summary:**

<table>
<thead>
<tr>
<th>Name/Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Issue</th>
<th>Summary</th>
<th>Relevant Facts</th>
<th>Should be Considered Pertinent</th>
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</thead>
<tbody>
<tr>
<td>DeFabio v. Gummersheimer</td>
<td>Supreme Court of Illinois</td>
<td>192 Ill. 2d 63; 733 N.E.2d 1241; 2000 Ill. LEXIS 993</td>
<td>July 6, 2000</td>
<td>Appellant challenged the judgment of the appellate court, which affirmed the trial court's decision granting appellee's summary judgment motion in action brought by appellee to contest the results of the election for the position of county coroner in Monroe County. Appellee filed a petition for election contest, alleging that the official results of the Monroe County coroners election were invalid because none of the 524 ballots cast in Monroe County's second precinct were initialed by an election judge, in violation of Illinois law. The trial court granted appellee's motion for summary judgment, and the appellate court affirmed the judgment. The Illinois supreme court affirmed, noting that statutes requiring election judges to initial election ballots were mandatory, and uninitialed ballots could not have been counted, even where the parties agreed that there was no knowledge of fraud or corruption. Thus, the supreme court held that the trial court properly invalidated all of the ballots cast in Monroe County's second precinct. The court reasoned that none of the ballots contained the requisite initialing, and neither party argued that any of the ballots should be counted.</td>
<td>No</td>
<td>N/A</td>
<td>No</td>
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</table>
uninitialed ballots could have been distinguished or identified as absentee ballots. The supreme court affirmed the judgment because the Illinois statute requiring election judges to initial election ballots was mandatory, and uninitialed ballots could not have been counted, even where the parties agreed that there was no knowledge of fraud or corruption. Additionally, none of the ballots in Monroe County's second precinct contained the requisite initialing.

<table>
<thead>
<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Holding</th>
<th>Summary of Facts</th>
<th>Party Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gilmore v. Amityville Union Free Sch.</td>
<td>United States District Court for the Eastern District of New York</td>
<td>305 F. Supp. 2d 271; 2004 U.S. Dist. LEXIS 3116</td>
<td>March 2, 2004</td>
<td>Plaintiffs, two school board candidates, filed a class action complaint against defendants, a school district, the board president, and other district agents or employees, challenging a school board election. Defendants moved to dismiss.</td>
<td>During the election, a voting machine malfunctioned, resulting in votes being cast on lines that were blank on the ballot. The board president devised a plan for counting the machine votes by moving each tally up one line. The two candidates, who were African American, alleged that the president's plan eliminated any possibility that an African American would be elected. The court found that the candidates failed to state a claim under § 1983 because they could not show that defendants' actions were done or approved by a person with final policymaking authority, nor was there</td>
<td>No</td>
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<tr>
<td>Name of Case</td>
<td>Court</td>
<td>Location</td>
<td>Dates</td>
<td>Facts</td>
<td>Holding</td>
<td>Rebuttal/Other Notes</td>
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<tr>
<td>State ex rel. Mackey v. Blackwell</td>
<td>Supreme Court of Ohio</td>
<td>106 Ohio St. 3d 261; 2005 Ohio 4789; 834 N.E.2d 346; 2005</td>
<td>September 28, 2005</td>
<td>Appellants, a political group and county electors who voted by provisional ballot, sought review of a judgment from the court of appeals, which dismissed appellants' complaint, seeking a showing of intentional or purposeful discrimination on defendants' part. The vote-counting method applied equally to all candidates. The candidates' claims under § 2000a and 2000c—8 failed because schools were not places of public accommodation, as required under § 2000a, and § 2000c—8 applied to school segregation. Their claim under § 1971 of deprivation of voting rights failed because § 1971 did not provide for a private right of action. The court declined to exercise supplemental jurisdiction over various state law claims. Defendants' motion to dismiss was granted with respect to the candidates' federal claims; the state law claims were dismissed without prejudice.</td>
<td>The Secretary of State issued a directive to all Ohio county boards of elections, which specified that a signed affirmation statement was necessary for the counting of a provisional ballot in a presidential election. During the election, over 24,400 provisional ballots were cast in one county. The electors' provisional ballots were not counted. They, together with a political debate, are evidence of discrimination.</td>
<td>No</td>
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<tr>
<td>Case Name</td>
<td>Court</td>
<td>Decision Date</td>
<td>Summary</td>
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<tr>
<td>Ohio LEXIS 2074</td>
<td>Ohio Supreme Court</td>
<td></td>
<td>Writ of mandamus to prevent appellees, the Ohio Secretary of State, a county board of elections, and the board's director, from disenfranchisement of provisional ballot voters. Activist group, brought the mandamus action to compel appellants to prohibit the invalidation of provisional ballots and to notify voters of reasons for ballot rejections. Assorted constitutional and statutory law was relied on in support of the complaint. The court dismissed the complaint, finding that no clear legal right was established under Ohio law and the federal claims could be adequately raised in an action under § 1983. On appeal, the Ohio supreme court held that dismissal was proper, as the complaint actually sought declaratory and injunctive relief, rather than mandamus relief. Further, election-contest actions were the exclusive remedy to challenge election results. An adequate remedy existed under § 1983 to raise the federal-law claims. Affirmed.</td>
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<tr>
<td>Touchston v. McDermott</td>
<td>United States District Court for the Middle District of Florida</td>
<td>November 14, 2000</td>
<td>In action in which plaintiffs, registered voters in Brevard County, Florida, filed suit against defendants, members of several activist group, brought the mandamus action to compel appellants to prohibit the invalidation of provisional ballots and to notify voters of reasons for ballot rejections. Assorted constitutional and statutory law was relied on in support of the complaint. The court dismissed the complaint, finding that no clear legal right was established under Ohio law and the federal claims could be adequately raised in an action under § 1983. On appeal, the Ohio supreme court held that dismissal was proper, as the complaint actually sought declaratory and injunctive relief, rather than mandamus relief. Further, election-contest actions were the exclusive remedy to challenge election results. An adequate remedy existed under § 1983 to raise the federal-law claims. Affirmed.</td>
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<tr>
<td>CASE NAME</td>
<td>COURT</td>
<td>DECISION DATES</td>
<td>FACTS</td>
<td>ISSUES</td>
<td>OUTCOME</td>
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<tr>
<td>Siegel v. LePore</td>
<td>United States District Court for the Southern District of Florida</td>
<td>November 13, 2000</td>
<td>County Canvassing Boards and the Secretary of the Florida Department of State, challenging the constitutionality of Fla. Stat. Ann. § 102.166(4) (2000), before the court was plaintiffs' emergency motion for temporary restraining order and/or preliminary injunction</td>
<td>from the court stopping the manual recount of votes. The court found that plaintiffs had failed to set forth a valid basis for intervention by federal courts. They had not alleged that the Florida law was discriminatory, that citizens were being deprived of the right to vote, or that there had been fraudulent interference with the vote. Moreover, plaintiffs had not established a likelihood of success on the merits of their claims. Plaintiffs' motion for temporary restraining order and/or preliminary injunction denied; plaintiffs had not alleged that the Florida law was discriminatory, that citizens were being deprived of the right to vote, or that there had been fraudulent interference with the vote.</td>
<td>No</td>
<td>N/A</td>
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</table>
defendants, canvassing board members from four Florida counties, from proceeding with manual recounts of election ballots.

except where there was an immediate need to correct a constitutional violation. Plaintiffs neither demonstrated a clear deprivation of a constitutional injury or a fundamental unfairness in Florida's manual recount provision. The recount provision was reasonable and non-discriminatory on its face and resided within the state's broad control over presidential election procedures. Plaintiffs failed to show that manual recounts were so unreliable as to constitute a constitutional injury, that plaintiffs' alleged injuries were irreparable, or that they lacked an adequate state court remedy. Injunctive relief denied because plaintiffs demonstrated neither clear deprivation of constitutional injury or fundamental unfairness in Florida's manual recount provision to justify federal court interference in state election procedures.

<table>
<thead>
<tr>
<th>Case</th>
<th>Court/State</th>
<th>Citation</th>
<th>Date</th>
<th>Issue</th>
<th>Summary</th>
<th>Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gore v. Harris</td>
<td>Supreme Court of Florida</td>
<td>773 So. 2d 524; 2000 Fla. LEXIS 2474</td>
<td>December 22, 2000</td>
<td>In a contest to results of the 2000 presidential election in Florida, the United States Supreme Court</td>
<td>The state supreme court had ordered the trial court to conduct a manual recount of 9000 contested Miami-Dade County ballots, and also held that uncounted &quot;undervotes&quot; in all Florida counties were to be manually counted.</td>
<td>No</td>
</tr>
</tbody>
</table>
Plaintiff political candidate alleged that certain general

reversed and remanded a Florida Supreme Court decision that ordered a manual recount of certain ballots.

The trial court was ordered to use the standard that a vote was "legal" if there was a clear indication of the intent of the voter. The United States Supreme Court released an opinion on December 12, 2000, which held that such a standard violated equal protection rights because it lacked specific standards to ensure equal application, and also mandated that any manual recount would have to have been completed by December 12, 2000. On remand, the state supreme court found that it was impossible under that time frame to adopt adequate standards and make necessary evaluations of vote tabulation equipment. Also, development of a specific, uniform standard for manual recounts was best left to the legislature. Because adequate standards for a manual recount could not be developed by the deadline set by the United States Supreme Court, appellants were afforded no relief.

Goodwin v. St. Thomas--St. John Bd. of

Territorial Court of the Virgin Islands

43 V.I. 89; 2000 V.I.

December 13, 2000

Plaintiff political candidate alleged that certain general

Plaintiff alleged that defendants counted unlawful absentee ballots that lacked postmarks, were not signed or
Elections LEXIS 15
election absentee ballots violated territorial election law, and that the improper inclusion of such ballots by defendants, election board and supervisor, resulted in plaintiff's loss of the election. Plaintiff sued defendants seeking invalidation of the absentee ballots and certification of the election results tabulated without such ballots. Notarized, were in unsealed and/or torn envelopes, and were in envelopes containing more than one ballot. Prior to tabulation of the absentee ballots, plaintiff was leading intervenor for the final senate position, but the absentee ballots entitled intervenor to the position. The court held that plaintiff was not entitled to relief since he failed to establish that the alleged absentee voting irregularities would require invalidation of a sufficient number of ballots to change the outcome of the election. While the unsealed ballots constituted a technical violation, the outer envelopes were sealed and thus substantially complied with election requirements. Further, while defendants improperly counted one ballot where a sealed ballot envelope and a loose ballot were in the same outer envelope, the one vote involved did not change the election result. Plaintiff's other allegations of irregularities were without merit since ballots without postmarks were valid, ballots without signatures were not counted, and ballots without notarized signatures were proper. Plaintiff's request for declaratory and injunctive

<table>
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<tr>
<th>Election Type</th>
<th>Court</th>
<th>Defendant</th>
<th>Date</th>
<th>Relief</th>
<th>Allegations</th>
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<tbody>
<tr>
<td>Elections</td>
<td>LEXIS</td>
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<tr>
<td>Shannon v. Jacobowitz</td>
<td>United States Court of Appeals for the Second Circuit</td>
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<tr>
<td>394 F.3d 90; 2005 U.S. App. LEXIS 259</td>
<td>January 7, 2005</td>
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Plaintiffs, voters and an incumbent candidate, sued defendants, a challenger candidate, a county board of election, and commissioners, pursuant to § 1983 alleging violation of the Due Process Clause of the Fourteenth Amendment. The United States District Court for the Northern District of New York granted summary judgment in favor of plaintiffs. Defendants appealed.

Local election inspectors noticed a problem with a voting machine. Plaintiffs asserted that their votes were not counted due to the machine malfunction. Rather than pursue the state remedy of quo warranto, by requesting that New York's Attorney General investigate the machine malfunction and challenge the election results in state court, plaintiffs filed their complaint in federal court. The court of appeals found that United States Supreme Court jurisprudence required intentional conduct by state actors as a prerequisite for a due process violation. Neither side alleged that local officials acted intentionally or in a discriminatory manner with regard to the vote miscount. Both sides conceded that the recorded results were likely due to an unforeseen malfunction with the voting machine.

relief was denied. Invalidation of absentee ballots was not required since the irregularities asserted by plaintiff involved ballots which were in fact valid, were not tabulated by defendants, or were insufficient to change the outcome of the election.

No  N/A  No
Because no conduct was alleged that would indicate an intentional deprivation of the right to vote, there was no cognizable federal due process claim. The proper remedy was to assert a quo warranto action to challenge the outcome of a general election based on an alleged voting machine malfunction. The district court's grant of summary judgment was reversed and its injunctions were vacated. The case was remanded for further proceedings consistent with this opinion.

GEORGE W. BUSH v. PALM BEACH COUNTY CANVASSING BOARD, ET AL.

United States Supreme Court

531 U.S. 70; 121 S. Ct. 471; 148 L. Ed. 2d 366; 2000

U.S. LEXIS 8087

December 4, 2000

Appellant Republican presidential candidate's petition for writ of certiorari to the Florida supreme court was granted in a case involving interpretations of Fla. Stat. Ann. §§ 102.111, 102.112, in proceedings brought by appellees Democratic

The Supreme Court vacated the state court's judgment, finding that the state court opinion could be read to indicate that it construed the Florida Election Code without regard to the extent to which the Florida Constitution could, consistent with U.S. Const. art. II, § 1, cl. 2, circumscribe the legislative power. The judgment of the Florida Supreme Court was vacated and remanded for further proceedings. The court stated the judgment was unclear as to the extent to which the state court saw the Florida constitution as circumscribing the legislature's

No  N/A  No
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<tr>
<th>Name/Case</th>
<th>Court</th>
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<th>Decision</th>
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<tbody>
<tr>
<td>Touchston v. McDermott</td>
<td>United States Court of Appeals for the Eleventh Circuit</td>
<td>234 F.3d 1130; 2000 U.S. App LEXIS 29366</td>
<td>November 17, 2000</td>
<td>Plaintiff voters appealed from judgment of the United States District Court for the Middle District of Florida, which denied their emergency motion for an injunction pending appeal against defendant county election officials. Plaintiffs sought to enjoin defendants from conducting manual recounts or to enjoin defendants from certifying the results of the Presidential election which contained any manual recounts. The district court denied the emergency injunction and plaintiffs appealed. Upon review, the emergency motion for injunction pending appeal was denied without prejudice. Florida had adequate election dispute procedures, which had been invoked and were being implemented in the forms of administrative actions by state officials and actions in state court.</td>
<td>No</td>
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</table>

presidential candidate, county canvassing boards, and Florida Democratic Party regarding authority of the boards and respondent Florida Secretary of State as to manual recounts of ballots and deadlines. authority under Article II of the United States Constitution, and as to the consideration given the federal statute regarding state electors.
<table>
<thead>
<tr>
<th>Name</th>
<th>Court</th>
<th>Date</th>
<th>Case</th>
<th>Description</th>
<th>Status of Certification</th>
<th>Certification Status</th>
<th>Vote Results</th>
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<tr>
<td>Gore v. Harris</td>
<td>Supreme Court of Florida</td>
<td>December 8, 2000</td>
<td>772 So. 2d 1243; 2000 Fla. LEXIS 2373</td>
<td>The court of appeal certified as being of great public importance a trial court judgment that denied all relief requested by appellants, candidates for President and Vice President.</td>
<td>No</td>
<td>N/A</td>
<td>No</td>
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</table>
President of the United States, in appellants' contest to certified election results.

Canvassing Board found not to be legal votes during a manual recount. However, the trial court erred in excluding votes that were identified during the Palm Beach County manual recount and during a partial manual recount in Miami-Dade County. It was also error to refuse to examine Miami-Dade County ballots that registered as non-votes during the machine count. The trial court applied an improper standard to determine whether appellants had established that the result of the election was in doubt, and improperly concluded that there was no probability of a different result without examining the ballots that appellants claimed contained rejected legal votes. The judgment was reversed and remanded; the trial court was ordered to tabulate by hand Miami-Dade County ballots that the counting machine registered as non-votes, and was directed to order inclusion of votes that had already been identified during manual recounts. The trial court also was ordered to consider whether manual recounts in other counties were necessary.
<table>
<thead>
<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Summary</th>
<th>Findings of Liability</th>
<th>Granted Injunctive Relief</th>
<th>Should the Case Remain Unpublished</th>
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<tbody>
<tr>
<td>Reitz v. Rendell</td>
<td>United States District Court for the Middle District of Pennsylvania</td>
<td>2004 U.S. Dist. LEXIS 21813</td>
<td>October 29, 2004</td>
<td>Plaintiff service members filed an action against defendant state officials under the Uniformed and Overseas Citizens Absentee Voting Act alleging that they and similarly situated service members would be disenfranchised because they did not receive their absentee ballots in time. The parties entered into a voluntary agreement and submitted it to the court for approval.</td>
<td>The court issued an order to assure that the service members and other similarly situated service members who were protected by the UOCAVA would not be disenfranchised. The court ordered the Secretary of the Commonwealth of Pennsylvania to take all reasonable steps necessary to direct the county boards of elections to accept as timely received absentee ballots cast by service members and other overseas voters as defined by UOCAVA, so long as the ballots were received by November 10, 2004. The ballots were to be considered solely for purposes of the federal offices that were included on the ballots. The court held that the ballot needed to be cast no later than November 2, 2004 to be counted. The court did not make any findings of liability against the Governor or the Secretary. The court entered an order, pursuant to a stipulation between the parties, that granted injunctive relief to the service members.</td>
<td>No N/A No</td>
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<tr>
<td>United States v. Pennsylvania</td>
<td>United States District Court for the Middle</td>
<td>2004 U.S. Dist.</td>
<td>October 20, 2004</td>
<td>Plaintiff United States sued defendant</td>
<td>The testimony of the two witnesses offered by the United States did not support its contention that voters</td>
<td>No N/A No</td>
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Pennsylvania, governor, and state secretary, claiming that overseas voters would be disenfranchised if they used absentee ballots that included the names of two presidential candidates who had been removed from the final certified ballot and seeking injunctive relief to address the practical implications of the final certification of the slate of candidates so late in the election year. The Uniformed and Overseas Citizens Absentee Voting Act would be disenfranchised absent immediate injunctive relief because neither witness testified that any absentee ballots issued to UOCAVA voters were legally incorrect or otherwise invalid. Moreover, there was no evidence that any UOCAVA voter had complained or otherwise expressed concern regarding their ability or right to vote. The fact that some UOCAVA voters received ballots including the names of two candidates who were not on the final certified ballot did not ipso facto support a finding that Pennsylvania was in violation of UOCAVA, especially since the United States failed to establish that the ballot defect undermined the right of UOCAVA voters to cast their ballots. Moreover, Pennsylvania had adduced substantial evidence that the requested injunctive relief, issuing new ballots, would have harmed the Pennsylvania election system and the public by undermining the integrity and efficiency of Pennsylvania's elections and increasing election costs.

| District of Pennsylvania | LEXIS 21167 | Commonwealth of Pennsylvania, governor, and state secretary, claiming that overseas voters would be disenfranchised if they used absentee ballots that included the names of two presidential candidates who had been removed from the final certified ballot and seeking injunctive relief to address the practical implications of the final certification of the slate of candidates so late in the election year. The Uniformed and Overseas Citizens Absentee Voting Act would be disenfranchised absent immediate injunctive relief because neither witness testified that any absentee ballots issued to UOCAVA voters were legally incorrect or otherwise invalid. Moreover, there was no evidence that any UOCAVA voter had complained or otherwise expressed concern regarding their ability or right to vote. The fact that some UOCAVA voters received ballots including the names of two candidates who were not on the final certified ballot did not ipso facto support a finding that Pennsylvania was in violation of UOCAVA, especially since the United States failed to establish that the ballot defect undermined the right of UOCAVA voters to cast their ballots. Moreover, Pennsylvania had adduced substantial evidence that the requested injunctive relief, issuing new ballots, would have harmed the Pennsylvania election system and the public by undermining the integrity and efficiency of Pennsylvania's elections and increasing election costs. | Must consider the following four factors: (1) |
District courts should consider the following four factors when granting injunctive relief:

1. The likelihood that the applicant will prevail on the merits of the substantive claim.
2. The extent to which the moving party will be irreparably harmed in the absence of injunctive relief.
3. The extent to which the nonmoving party will suffer irreparable harm if the court grants the requested injunctive relief.
4. The public interest.

The matter came before the court on plaintiffs' complaint for declaratory and injunctive relief alleging that defendant county canvassing boards rejected overseas absentee state ballots and federal write-in ballots based on criteria inconsistent with federal law, and requesting that the ballots be declared Plaintiff presidential and vice-presidential candidates and state political party contended that defendant county canvassing boards rejected overseas absentee state ballots and federal write-in ballots based on criteria inconsistent with the Uniformed and Overseas Citizens Absentee Voting Act. Because the state accepted overseas absentee state ballots and federal write-in ballots up to 10 days after the election, the State needed to access that the ballot in fact came from overseas. However, federal law provided the method to establish that fact by requiring the overseas...
Hanis v. Florida Elections Canvassing United States District Court for the Northern 122 F. Supp. 2d 1317; December 9, 2000

Plaintiffs challenged the counting of overseas absentee In two separate cases, plaintiff electors originally sued defendant state elections canvassing commission and

valid and that they should be counted.

absentee voter to sign an oath that the ballot was mailed from outside the United States and requiring the state election officials to examine the voter's declarations. The court further noted that federal law required the user of a federal write-in ballot to timely apply for a regular state absentee ballot, not that the state receive the application, and that again federal law, by requiring the voter using a federal write-in ballot to swear that he or she had made timely application, had provided the proper method of proof. Plaintiffs withdrew as moot their request for injunctive relief and the court granted in part and denied in part plaintiffs' request for declaratory relief, and relief GRANTED in part and declared valid all federal write-in ballots that were signed pursuant to the oath provided therein but rejected solely because the ballot envelope did not have an APO, FPO, or foreign postmark, or solely because there was no record of an application for a state absentee ballot.

No N/A No
| Comm'n | District of Florida | 2000 U.S. Dist. LEXIS 17875 | ballots received after 7 p.m. on election day, alleging the ballots violated Florida election law. | state officials in Florida state circuit court, challenging the counting of overseas absentee ballots received after 7 p.m. on election day. Defendant governor removed one case to federal court. The second case was also removed. The court in the second case denied plaintiff's motion for remand and granted a motion to transfer the case to the first federal court under the related case doctrine. Plaintiffs claimed that the overseas ballots violated Florida election law. Defendants argued the deadline was not absolute. The court found Congress did not intend 3 U.S.C.S. § 1 to impose irrational scheduling rules on state and local canvassing officials, and did not intend to disenfranchise overseas voters. The court held the state statute was required to yield to Florida Administrative Code, which required the 10-day extension in the receipt of overseas absentee ballots in federal elections because the rule was promulgated to satisfy a consent decree entered by the state in 1982. Judgment entered for defendants because a Florida administrative rule requiring a 10-day extension in the receipt of |
Romeu v. Cohen

United States District Court for the Southern District of New York

121 F. Supp. 2d 264; 2000 U.S. Dist. LEXIS 12842

September 7, 2000

Plaintiff territorial resident and plaintiff-intervenor territorial governor moved for summary judgment and defendant federal, state, and local officials moved to dismiss the complaint that alleged that the Voting Rights Amendments of 1970, the Uniform Overseas Citizens Absentee Voting Act, and New York election law were unconstitutional since they denied plaintiff's right to receive an absentee overseas absentee ballots in federal elections was enacted to bring the state into compliance with a federally ordered mandate; plaintiffs were not entitled to relief under any provision of state or federal law.

Plaintiff argued that the laws denied him the right to receive a state absentee ballot in violation of the right to vote, the right to travel, the Privileges and Immunities Clause, and the Equal Protection Clause. Plaintiff-intervenor territorial governor intervened on behalf of similarly situated Puerto Rican residents. Defendants' argued that: 1) plaintiff lacked standing; 2) a non-justiciable political question was raised; and 3) the laws were constitutional. The court held that: 1) plaintiff had standing because he made a substantial showing that application for the benefit was futile; 2) whether or not the statutes violated plaintiff's rights presented a legal, not political, question, and there was no lack of judicially discoverable and manageable standards for resolving the matter; and 3) the laws were constitutional and only a constitutional amendment or

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<th>Number</th>
<th>Citation</th>
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<th>Facts</th>
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<th>Other</th>
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<tr>
<td>Romeu v. Cohen</td>
<td>United States District Court for the Southern District of New York</td>
<td>121 F. Supp. 2d 264; 2000 U.S. Dist. LEXIS 12842</td>
<td>September 7, 2000</td>
<td>Plaintiff territorial resident and plaintiff-intervenor territorial governor moved for summary judgment and defendant federal, state, and local officials moved to dismiss the complaint that alleged that the Voting Rights Amendments of 1970, the Uniform Overseas Citizens Absentee Voting Act, and New York election law were unconstitutional since they denied plaintiff's right to receive an absentee overseas absentee ballots in federal elections was enacted to bring the state into compliance with a federally ordered mandate; plaintiffs were not entitled to relief under any provision of state or federal law.</td>
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<tr>
<td>Name of Case</td>
<td>Court</td>
<td>Citation</td>
<td>Date</td>
<td>Holding</td>
<td>Statutory Basis of Decision</td>
<td>Issue</td>
<td>Shortline Result</td>
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<td>Romeu v. Cohen</td>
<td>United States Court of Appeals for the Second Circuit</td>
<td>265 F.3d 118; 2001 U.S. App. LEXIS 19876</td>
<td>September 6, 2001</td>
<td>Plaintiff territorial resident sued defendants, state and federal officials, alleging that the Uniformed and Overseas Citizens Absentee Voting Act unconstitutionally prevented the territorial resident from voting in his former state of residence. The resident appealed the judgment of the United States District Court for the Southern District of New York, which dismissed the case. The territorial resident contended that the UOCAVA unconstitutionally distinguished between former state residents residing outside the United States, who were permitted to vote in their former states, and former state residents residing in a territory, who were not permitted to vote in their former states. The court of appeals first held that the UOCAVA did not violate the territorial resident's right to equal protection in view of the valid and not insubstantial considerations for the distinction. The territorial resident chose to reside in the territory and had the same voting rights as other territorial residents, even though such residency precluded voting for federal offices. Further, the resident had no constitutional right to vote in his former state after he terminated his service.</td>
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<td>United States District Court for the District of Puerto Rico</td>
<td>107 F. Supp. 2d 140; 2000 U.S. Dist. LEXIS 11146</td>
<td>July 19, 2000</td>
<td>Defendant United States moved to dismiss plaintiffs' action seeking a declaratory judgment allowing them to vote, as U.S. citizens residing in Puerto Rico, in the upcoming and all subsequent Presidential elections. Plaintiffs urged, among other claims, that their right to vote in Presidential elections was</td>
<td>The court denied the motion of defendant United States to dismiss the action of plaintiffs, two groups of Puerto Ricans, seeking a declaratory judgment allowing them to vote in Presidential elections. One group always resided in Puerto Rico and the other became ineligible to vote in Presidential elections upon taking up residence in Puerto Rico. Plaintiffs contended that the Constitution and the International Covenant on Civil and Political Rights, guaranteed their right to vote in Presidential elections and that the Uniformed and Overseas Citizens Absentee Voting Act, was unconstitutional in disallowing Puerto Rican citizens to vote by considering</td>
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judgment allowing them to vote in
contended that the Constitution and the
Constitution provided U.S. citizens residing in Puerto Rico the right to participate in Presidential elections. No constitutional amendment was needed. The present political status of Puerto Rico was abhorrent to the Bill of Rights. The court denied defendant United States' motion to dismiss plaintiffs' action seeking a declaratory judgment allowing them to vote in Presidential elections as citizens of the United States and of Puerto Rico. The court held that the United States Constitution itself provided plaintiffs with the right to participate in Presidential elections.

James v. Bartlett
Supreme Court of North Carolina
359 N.C. 260; 607 S.E.2d 638; 2005 N.C. LEXIS
February 4, 2005
Appellant candidates challenged elections in the superior court through appeals of election protests before the North Carolina State Board of Elections.

The case involved three separate election challenges. The central issue was whether a provisional ballot cast on election day at a precinct other than the voter's correct precinct of residence could be lawfully counted in final election tallies. The superior court held that

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<th>Name of Case</th>
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<tr>
<td>Name of Case</td>
<td>Court</td>
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<tr>
<td>Sandusky County Democratic Party v. Blackwell</td>
<td>United States Court of Appeals for the Sixth Circuit</td>
<td>387 F.3d 565; 2004 U.S. App. LEXIS 22320</td>
<td>October 26, 2004</td>
<td>Defendant state appealed from an order of the U.S. District Court for the Northern District of Ohio which held that the Help America Vote Act required that voters be permitted to cast provisional ballots upon affirming their registration to vote</td>
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of Elections and a declaratory judgment action in the superior court. The court entered an order granting summary judgment in favor of appellees, the Board, the Board's executive director, the Board's members, and the North Carolina Attorney General. The candidates appealed.

that it could be counted. On appeal, the supreme court determined that state law did not permit out-of-precinct provisional ballots to be counted in state and local elections. The candidates failure to challenge the counting of out-of-precinct provisional ballots before the election did not render their action untimely. Reversed and remanded.
in the county in which they desire to vote and that provisional ballots must be counted as valid ballots when cast in the correct county.

quintessentially about being able to cast a provisional ballot but that the voter casts a provisional ballot at the peril of not being eligible to vote under state law; if the voter is not eligible, the vote will then not be counted. Accordingly, the court of appeals reversed the district court and held that "provisional" ballots cast in a precinct where a voter does not reside and which would be invalid under state law, are not required by the HAVA to be considered legal votes. Affirmed in part and reversed in part.

<p>| State ex rel. Mackey v. Blackwell | Supreme Court of Ohio | 106 Ohio St. 3d 261; 2005 Ohio 4789; 834 N.E.2d 346; 2005 Ohio LEXIS 2074 | September 28, 2005 | Appellants, a political group and county electors who voted by provisional ballot, sought review of a judgment from the court of appeals which dismissed appellants' complaint, seeking a writ of mandamus to prevent appellees, the Ohio Secretary of State, a county board of elections, from certifying election results based on negatively scored provisional ballots. The Secretary of State issued a directive to all Ohio county boards of elections, which specified that a signed affirmation statement was necessary for the counting of a provisional ballot in a presidential election. During the election, over 24,400 provisional ballots were cast in one county. The electors' provisional ballots were not counted. They, together with a political activist group, brought the mandamus action to compel appellees to prohibit the invalidation of provisional ballots and to notify voters of reasons for ballot rejections. Assorted | No | N/A | No |</p>
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<tr>
<th>Case Name</th>
<th>Court Name</th>
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<th>Plaintiff’s Argument</th>
<th>Summary of Decision</th>
<th>Should Case Be Rejected Further</th>
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<td>Fla. Democratic Party v. Hood</td>
<td>United States District Court for the Northern District of Florida</td>
<td>October 21, 2004</td>
<td>plaintiff political party sought injunctive relief under the Help America Vote Act, claiming that the election system put in place by defendant election officials violated HAVA because it did not allow prospective voter to cast provisional ballot at a given polling place, even if the local officials asserted that the voter was at the wrong polling place; second, that voter had the right to have that vote counted in the election, if the voter otherwise met all requirements of state law. The court noted that the right to vote was clearly protectable as a civil right, and a primary purpose of constitutional and statutory law was relied on in support of the complaint. The trial court dismissed the complaint, finding that no clear legal right was established under Ohio law and the federal claims could be adequately raised in an action under 42 U.S.C.S. § 1983. On appeal, the Ohio Supreme Court held that dismissal was proper, as the complaint actually sought declaratory and injunctive relief, rather than mandamus relief. Further, election—contest actions were the exclusive remedy to challenge election results. An adequate remedy existed under § 1983 to raise the federal—law claims. Affirmed.</td>
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<td>Case</td>
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<td>Citation</td>
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<td>League of Women Voters v. Blackwell</td>
<td>United States District Court for the Northern District of Ohio</td>
<td>340 F. Supp. 2d 823, 2004 U.S. Dist. LEXIS 20926</td>
<td>October 20, 2004</td>
<td>Plaintiff organizations filed suit against defendant, Ohio's Secretary of State, claiming that a directive issued by the Secretary contravened the provisions of the Help America Vote Act. The directive in question instructed election officials to issue provisional ballots to first-time voters who registered by mail but did not provide documentary identification at the polling place on election day. When submitting a provisional ballot, a first-time voter could identify himself by providing his driver's license number or the last four digits of his social security number. If he did not know...</td>
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<tr>
<td>Sandusky County Democratic Party v. Blackwell</td>
<td>United States Court of Appeals for the Sixth Circuit</td>
<td>386 F.3d 815; 2004 U.S. App. LEXIS 28765</td>
<td>October 23, 2004</td>
<td>Defendant Ohio Secretary of State challenged an order of the United States District Court for the Northern District of Ohio, which held that the defendant could not provide the mail-in ballots. The court found that the defendant did not have standing to challenge the order, and that the plaintiff had failed to show that the defendant's failure to provide the mail-in ballots was due to an intentional act of discrimination. The court held that the plaintiff had not met its burden of proof, and that the defendant had not unreasonably delayed in providing the mail-in ballots.</td>
<td>Act. The Secretary filed a motion to dismiss.</td>
<td>either number, he could provide it before the polls closed. If he did not do so, his provisional ballot would not be counted. The court held that the directive did not contravene the HAVA and otherwise established reasonable requirements for confirming the identity of first-time voters who registered to vote by mail because: (1) the identification procedures were an important bulwark against voter misconduct and fraud; (2) the burden imposed on first-time voters to confirm their identity, and thus show that they were voting legitimately, was slight; and (3) the number of voters unable to meet the burden of proving their identity was likely to be very small. Thus, the balance of interests favored the directive, even if the cost, in terms of uncounted ballots, was regrettable.</td>
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<td>Hawkins v. Blunt</td>
<td>United States District Court for the Western District of Missouri</td>
<td>2004</td>
<td>October 12, 2004</td>
<td>In an action filed by plaintiffs, voters and a state political party, contending that the provisional voting requirements of Mo. Rev. Stat. § 115.430 conflicted with and was preempted by the Help America Vote Act, plaintiffs and defendants, the</td>
<td>The court held that the text of the HAVA, as well as its legislative history, proved that it could be read to include reasonable accommodations of state precinct voting practices in implementing provisional voting requirements. The court further held that Mo. Rev. Stat. § 115.430.2 was reasonable; to effectuate the HAVA's intent and to protect that interest, it could not be unreasonable to direct a voter to his correct voting place where a full ballot was likely to be cast. The</td>
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Bay County Democratic Party v. Land  | United States District Court for the Eastern District of Michigan  | 340 F. Supp. 2d 802; 2004 U.S. Dist. LEXIS 20551  | October 13, 2004  | Plaintiffs, state and county Democratic parties, filed an action against defendant, Michigan secretary of state and the Michigan director of elections, alleging that the state's intended procedure for casting and counting provisional ballots at the upcoming general election would violate the Help America Vote Act and state laws implementing the federal legislation. Defendants filed a motion to transfer venue.  | The court also held that plaintiffs' equal protection rights were not violated by the requirement that before a voter would be allowed to cast a provisional ballot, the voter would first be directed to his proper polling place.  | No  | N/A  | No  |
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<th>Name of Case</th>
<th>Court</th>
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<tr>
<td>Bay County Democratic Party v. Land</td>
<td>United States District Court for the Eastern District of Michigan</td>
<td>347 F. Supp. 2d 404; 2004 U.S. Dist LEXIS 20872</td>
<td>October 19, 2004</td>
<td>Plaintiffs, voter organizations and political parties, filed actions against defendants, the Michigan Secretary of State and her director of elections, challenging directives issued to local election officials concerning the casting and tabulation of provisional ballots. Plaintiffs sought a preliminary injunction and contended that the required such actions to be brought only in the district in which the state's seat of government was located, and no inconvenience resulting from litigating in the state's more populous district reasonably could be claimed by a state official who had a mandate to administer elections throughout the state and operated an office in each of its counties. Motion denied.</td>
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Weber v. Shelley
United States Court of Appeals for the Ninth Circuit

Weber v. Shelley
United States Court of Appeals for the Ninth Circuit

347 F.3d 1101; 2003 U.S. App. LEXIS 21979
October 28, 2003

Plaintiff voter brought a suit against defendants, the secretary of state and the county registrar of voters, claiming that the lack of a voter-verified paper trail in the county's newly installed touchscreen voting system violated her rights to equal protection and due process. The United States District Court for the Central District of California granted the secretary and the registrar summary judgment.

On review, the voter contended that use of paperless touch-screen voting systems was unconstitutional and that the trial court erred by ruling her expert testimony inadmissible. The trial court focused on whether the experts' declarations raised genuine issues of material fact about the relative accuracy of the voting system and excluded references to newspaper articles and unidentified studies absent any indication that experts normally relied upon them. The appellate court found that the trial court's exclusions were not an abuse of discretion and agreed that the admissible opinions which were left did not tend to show that voters had a lesser chance of having their votes counted. It further found that the use of touchscreen voting systems was not subject to strict

or her votes for federal offices counted if eligibility to vote in that election could be verified; and (5) defendants' directives concerning proof of identity of first-time voters who registered by mail were consistent with federal and state law.
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<th>Name of Case</th>
<th>Court</th>
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<th>Issue</th>
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<th>Should This Case Be Research Further</th>
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<tr>
<td>Am. Ass'n of People with Disabilities v. Shelley</td>
<td>United States District Court for the Central District of California</td>
<td>324 F. Supp. 2d 1120; 2004 U.S. Dist. LEXIS 12587</td>
<td>July 6, 2004</td>
<td>The voter appealed. The voter applied for a temporary restraining order, or, scrutiny simply because this particular balloting system might make the possibility of some kinds of fraud more difficult to detect. California made a reasonable, politically neutral and non-discriminatory choice to certify touchscreen systems as an alternative to paper ballots, as did the county in deciding to use such a system. Nothing in the Constitution forbid this choice. The judgment was affirmed.</td>
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in the alternative, a preliminary injunction, of a preliminary injunction in a number of ways, including a four-part test that considers (1) likelihood of success on the merits; (2) the possibility of irreparable injury in the absence of an injunction; (3) a balancing of the harms; and (4) the public interest. made accessible. Defendant's decision to suspend the use of DREs pending improvement in their reliability and security of the devices was a rational one, designed to protect the voting rights of the state's citizens. The evidence did not support the conclusion that the elimination of the DREs would have a discriminatory effect on the visually or manually impaired. Thus, the voters showed little likelihood of success on the merits. The individual's request for a temporary restraining order, or, in the alternative, a preliminary injunction, was denied. Ninth Circuit's tests for a preliminary injunction, although phrased differently, require a court to inquire into whether there exists a likelihood of success on the merits, and the possibility of irreparable injury; a court is also required to balance the hardships.

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<td>Fla. Democratic Party v. Hood</td>
<td>Court of Appeal of Florida, First District</td>
<td>884 So. 2d 1148; 2004 Fla. App. LEXIS 16077</td>
<td>October 28, 2004</td>
<td>Petitioner, the Florida Democratic Party, sought review of an emergency rule adopted by the Florida Department The Party argued that: (1) the Florida Administrative Code, recast language from the earlier invalidated rule prohibiting a manual recount of overvotes and undervotes cast on a touchscreen machine; (2) the rule did</td>
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of State, contending that the findings of immediate danger, necessity, and procedural fairness on which the rule was based were insufficient under Florida law, which required a showing of such circumstances, and Florida case law. This matter followed.

not call for the manual recount of votes to determine voter intent; and (3) the rule created voters who were entitled to manual recounts in close elections and those who were not. The appeals court disagreed. The Department was clearly concerned with the fact that if no rule were in place, the same confusion and inconsistency in divining a voter's intent that attended the 2000 presidential election in Florida, and the same constitutional problems the United States Supreme Court addressed then, might recur in 2004. It was not the court's responsibility to decide the validity of the rule or whether other means were more appropriate. But, the following question was certified to the Supreme Court: Whether under Fla. Stat. ch. 120.54(4), the Department of State set forth sufficient justification for an emergency rule establishing standards for conducting manual recounts of overvotes and undervotes as applied to touchscreen voting systems? The petition was denied, but a question was certified to the supreme court as a matter of great public importance.
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<th>Name of Case</th>
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<th>Judge Decision</th>
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<td>Wexler v. Lepore</td>
<td>United States District Court for the Southern District of Florida</td>
<td>342 F. Supp. 2d 1097; 2004 U.S. Dist. LEXIS 21344</td>
<td>October 25, 2004</td>
<td>Plaintiffs, a congressman, state commissioners, and a registered voter, brought a § 1983 action against defendants, state officials, alleging that the manual recount procedures for the state's touchscreen paperless voting systems violated their rights under U.S. Const. amend. V and XIV. A bench trial ensued.</td>
<td>The officials claimed that the state had established an updated standard for manual recounts in counties using optical scan systems and touchscreen voting systems, therefore, alleviating equal protection concerns. The court held that the rules prescribing what constituted a clear indication on the ballot that the voter had made a definite choice, as well the rules prescribing additional recount procedures for each certified voting system promulgated pursuant to Florida law complied with equal protection requirements under U.S. Const. amend. V and XIV because the rules prescribed uniform, nondifferential standards for what constituted a legal vote under each certified voting system, as well as procedures for conducting a manual recount of overvotes and undervotes in the entire geographic jurisdiction. The court further held that the ballot images printed during a manual recount pursuant to Florida Administrative Code did not violate Florida law because the manual recount scheme properly reflected a voter's choice. Judgment was entered.</td>
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Ohio

from discriminating against black voters in Hamilton County on the basis of race.

If necessary, they sought to restrain challengers from being allowed at the polls.

The court held that the injury asserted, that allowing challengers to challenge voters' eligibility would place an undue burden on voters and impede their right to vote, was not speculative and could be redressed by removing the challengers. The court held that in the absence of any statutory guidance whatsoever governing the procedures and limitations for challenging voters by challengers, and the questionable enforceability of the State's and County's policies regarding good faith challenges and ejection of disruptive challengers from the polls, there existed an enormous risk of chaos.

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<th>Case</th>
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<th>Code Note</th>
<th>Should the Court Restrain Further</th>
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<tr>
<td>Spencer v. Blackwell</td>
<td>United States District Court for the Southern District of Ohio</td>
<td>November 1, 2004</td>
<td>Plaintiff voters filed a motion for temporary restraining order and preliminary injunction seeking to restrain defendant election officials and intervenor State of Ohio from discriminating against black voters in Hamilton County on the basis of race. If necessary, they sought to restrain challengers from being allowed at the polls.</td>
<td>The voters alleged that defendants had combined to implement a voter challenge system at the polls that discriminated against African-American voters. Each precinct was run by its election judges but Ohio law also allowed challengers to be physically present in the polling places in order to challenge voters' eligibility to vote. The court held that the injury asserted, that allowing challengers to challenge voters' eligibility would place an undue burden on voters and impede their right to vote, was not speculative and could be redressed by removing the challengers. The court held that in the absence of any statutory guidance whatsoever governing the procedures and limitations for challenging voters by challengers, and the questionable enforceability of the State's and County's policies regarding good faith challenges and ejection of disruptive challengers from the polls, there existed an enormous risk of chaos.</td>
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<tr>
<td>MARIAN SPENCER, et al., Petitioners v. CLARA PUGH, et al. (No. 04A360) SUMMIT COUNTY DEMOCRATIC CENTRAL and EXECUTIVE COMMITTEE, et al., Petitioners v. MATTHEW HEIDER, et al. (No. 04A364)</td>
<td>United States Supreme Court</td>
<td>125 S. Ct. 305; 160 L. Ed. 2d 213; 2004 U.S. LEXIS 7400</td>
<td>November 2, 2004</td>
<td>In two separate actions, plaintiffs sued defendant members of a political party, alleging that the members planned to mount indiscriminate challenges in polling places which would disrupt voting. Plaintiffs applied to vacate orders entered by the United States Court of Appeals for the Sixth Circuit which delay, intimidation, and pandemonium inside the polls and in the lines out the door. Furthermore, the law allowing private challengers was not narrowly tailored to serve Ohio's compelling interest in preventing voter fraud. The court enjoined all defendants from allowing any challengers other than election judges and other electors into the polling places throughout the state on Election Day.</td>
<td>No</td>
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Supreme Court to review the relevant submissions, and voting officials.

Wesley Educ. Found., Inc. v. Cox District Court for the Northern District of Georgia

324 F. Supp. 2d 1358; 2004 U.S. Dist. LEXIS 12120

July 1, 2004

Plaintiffs, a voter, fraternity members, and an organization, sought an injunction ordering defendant, the Georgia Secretary of State, to process the voter registration application forms that they mailed in following a voter registration drive. They contended that by refusing to process the forms defendants violated the National Voter Registration Act and U.S. Const. amends.

The organization participated in numerous non-partisan voter registration drives primarily designed to increase the voting strength of African-Americans. Following one such drive, the fraternity members mailed in over 60 registration forms, including one for the voter who had moved within state since the last election. The Georgia Secretary of State's office refused to process them because they were not mailed individually and neither a registrar, deputy registrar, or an otherwise authorized person had collected the applications as required under state law. The court held that plaintiffs had standing to bring the action. The court held that because the applications were received in accordance with the
applications were improperly rejected; plaintiffs would be irreparably injured absent an injunction; the potential injuries; and an injunction is in the public interest. Injunction granted.

Jacksonville Coalition for Voter Prot. v. Hood

United States District Court for the Middle District of Florida

351 F. Supp. 2d 1326; 2004 U.S. Dist. LEXIS 26522

October 25, 2004

Plaintiffs, voter protection coalition, union, and voters, filed an emergency motion for a preliminary injunction and argued that African Americans in the county had less opportunity than other members of the state's electorate to vote in the upcoming election, and that defendants, elections officials', mandates of the NVRAs, the State of Georgia was not free to reject them. The court found that: plaintiffs had a substantial likelihood of prevailing on the merits of their claim that the applications were improperly rejected; plaintiffs would be irreparably injured absent an injunction; the potential harm to defendants was outweighed by plaintiffs' injuries; and an injunction was in the public interest. Injunction granted.

The coalition, the union, and the voters based their claim on the fact that the county had the largest percentage of African--American registered voters of any major county in the state, and, yet, other similarly-sized counties with smaller African--American registered voter percentages had more early voting sites. Based on that, they argued that African--American voters in the county were disproportionately affected. The court found that while it may have been true that having to drive to an early voting site and having to wait in line may cause people to be inconvenienced, inconvenience did not result in a denial of meaningful access.

<p>| Location | Date | Citation | District Court for the Middle District of Florida | Plaintiff, Voter Protection Coalition, Union, and Voters, Filed an Emergency Motion for a Preliminary Injunction and Argued That African Americans in the County Had Less Opportunity Than Other Members of the State's Electorate to Vote in the Upcoming Election, and That Defendants, Elections Officials', Mandates of the NVRAs, the State of Georgia Was Not Free to Reject Them. The Court Found That: Plaintiffs Had a Substantial Likelihood of Prevailing on the Merits of Their Claim That the Applications Were Improperly Rejected; Plaintiffs Would Be Irreparably Injured Absent an Injunction; the Potential Harm to Defendants Was Outweighed by Plaintiffs' Injuries; and an Injunction Was in the Public Interest. Injunction Granted. | | No | N/A | No |</p>
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<tr>
<th>Date</th>
<th>Court</th>
<th>Case Name</th>
<th>Decision</th>
<th>Majority Opinion</th>
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<tbody>
<tr>
<td>August 31, 2000</td>
<td>United States Court of Appeals for the Eighth Circuit</td>
<td>Taylor v. Howe</td>
<td>225 F.3d 993; 2000 U.S. App. LEXIS 22241</td>
<td>Plaintiffs, African American voters, poll watchers, and candidates appealed from a judgment of the United States District Court for the Eastern District of Arkansas in favor of defendants, elections commissioners and related individuals, on their § 1983 voting rights claims and contended the implementation of early voting procedures violated the Voting Rights Act and their constitutional rights. to the political process. Thus, the coalition, the union, and the voters had not established a likelihood of success on the merits of their claim that the county's implementation of early voting procedures violated § 2 of the Voting Rights Act. Moreover, the coalition, the union, and the voters failed to establish a likelihood of success on the merits of their § 1983 Fourteenth and Fifteenth Amendment claims, which required a higher proof of discriminatory purpose and effect. Injunction denied.</td>
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<td>Name of Case</td>
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<td>Stewart v. Blackwell</td>
<td>United States District Court for the Northern District of Ohio</td>
<td>356 F. Supp. 2d 791</td>
<td>December 14, 2004</td>
<td>Plaintiffs, including African-American voters, alleged that use of punch card voting and &quot;central-count&quot; optical scanning devices by defendants, the Ohio Secretary of State et al., violated their rights under the Due Process Clause, the Equal Protection Clause, and (African-American plaintiffs) their rights under § 2 of the Voting Rights Act. The primary thrust of the litigation was an attempt to federalize elections by judicial rule or fiat via the invitation to the court to declare a certain voting technology unconstitutional and then fashion a remedy. The court declined the invitation. The determination of the applicable voting process had always been focused in the legislative branch of the government. While it was true that the percentage of residual or non-voted ballots in the 2000 presidential election ran slightly higher in counties using punch card technology, that fact standing alone was insufficient to declare the use of the system unconstitutional. Moreover, the highest frequency in Ohio of residual voting bore a direct relationship to economic and educational factors, negating the Voting Rights Act claim. The court further stated that local variety in...</td>
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Levels of effectiveness in recording voters' intentions, so long as there was some rational basis for the technology choice. It concluded that defendants' cost and security reasons for the use of punch card ballots were plausible.

This action involved issues pertaining to absentee ballots. Plaintiff alleged that defendants were not complying with state laws requiring certain eligibility checks before issuing absentee ballots. The state court issued an injunction preventing defendants from mailing absentee ballots. Defendants removed the action to federal court and plaintiff sought a remand. Defendants argued that not mailing the absentee ballots would violate the Voting Rights Act, because it would place a restriction only on the City of Detroit, which was predominately African-American. The court ordered the case remanded because it found no basis under 28 U.S.C.S. §§ 1441 or 1443 for federal jurisdiction. Defendants' mere
reference to a federal law or federal right was not enough to confer subject matter jurisdiction where the complaint sought to assert only rights arising under state statutes against state officials in relation to a state election. The court stated that it would not allow defendants to take haven in federal court under the guise of providing equal protection for the citizens of Detroit but with a goal of perpetuating their violation of a non-discriminatory state law. Motion to remand granted.
### Charles H. Wesley Educ. Found., Inc. v. Cox

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<th>Name of Case</th>
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<th>Should the Case be Researched Further</th>
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<tr>
<td>Charles H. Wesley Educ. Found., Inc. v. Cox</td>
<td>United States Court of Appeals for the Eleventh Circuit</td>
<td>408 F.3d 1349; 2005 U.S. App. LEXIS 8320</td>
<td>May 12, 2005</td>
<td>Plaintiffs, a charitable foundation, four volunteers, and a registered voter, filed a suit against defendant state officials alleging violations of the National Voter Registration Act and the Voting Rights Act. The officials appealed after the United States District Court for the Northern District of Georgia issued a preliminary injunction enjoining them from rejecting voter registrations submitted by the foundation conducted a voter registration drive; it placed the completed applications in a single envelope and mailed them to the Georgia Secretary of State for processing. Included in the batch was the voter's change of address form. Plaintiffs filed the suit after they were notified that the applications had been rejected pursuant to Georgia law, which allegedly restricted who could collect voter registration</td>
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<td>forms. Plaintiffs contended that the officials had violated the NVRA, the VRA, and U.S. Const. amends. I, XIV, XV. The officials argued that plaintiffs lacked standing and that the district court had erred in issuing the preliminary injunction. The court found no error. Plaintiffs had sufficiently alleged injuries under the NVRA, arising out of the rejection of the voter registration forms; the allegations in the</td>
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<td>McKay v.</td>
<td>United</td>
<td>226 F.3d</td>
<td>September</td>
<td>Plaintiff</td>
<td>The trial court</td>
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The complaint sufficiently showed an injury-in-fact that was fairly traceable to the officials' conduct. The injunction was properly issued. There was a substantial likelihood that plaintiffs would prevail as to their claims; it served the public interest to protect plaintiffs' franchise–related rights. The court affirmed the preliminary injunction order entered by the district court.
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<td>Thompson</td>
<td>States Court of Appeals for the Sixth Circuit</td>
<td>752; 2000 U.S. App. LEXIS 23387</td>
<td>18, 2000</td>
<td>challenged order of United States District Court for Eastern District of Tennessee at Chattanooga, which granted defendant state election officials summary judgment on plaintiff's action seeking to stop the state practice of requiring its citizens to disclose their social security numbers as a precondition to voter registration.</td>
<td>had granted defendant state election officials summary judgment. The court declined to overrule defendants' administrative determination that state law required plaintiff to disclose his social security number because the interpretation appeared to be reasonable, did not conflict with previous case law, and could be challenged in state court. The requirement did not violate the Privacy Act of 1974, because it</td>
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Was grand fathered under the terms of the Act. The limitations in the National Voter Registration Act did not apply because the NVRA did not specifically prohibit the use of social security numbers and the Act contained a more specific provision regarding such use. The trial court properly rejected plaintiff's fundamental right to vote, free exercise of religion, privileges and
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<td>150 F.</td>
<td>July 5</td>
<td>Plaintiff, national</td>
<td>Defendants</td>
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<td>Name of Case</td>
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<td>Coalition for Students with Disabilities Educ. &amp; Legal Def. Fund v. Scales</td>
<td>States District Court for the Southern District of Maryland</td>
<td>Supp. 2d 845; 2001 U.S. Dist. LEXIS 9528</td>
<td>2001</td>
<td>organization for disabled students, brought an action against university president and university's director of office of disability support services to challenge the voter registration procedures established by the disability support services. Defendants moved to dismiss the first amended complaint, or in the alternative for summary judgment.</td>
<td>alleged that plaintiff lacked standing to represent its members, and that plaintiff had not satisfied the notice requirements of the National Voter Registration Act. Further, defendants maintained the facts, as alleged by plaintiff, did not give rise to a past, present, or future violation of the NVRA because (1) the plaintiff's members that requested voter registration services were not</td>
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<td>registered students at the university and (2) its current voter registration procedures complied with NVRA. As to plaintiff's § 1983 claim, the court held that while plaintiff had alleged sufficient facts to confer standing under the NVRA, such allegations were not sufficient to support standing on its own behalf on the § 1983 claim. As to the NVRA claim, the court found that the agency practice of only offering voter</td>
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<td>Cunningham v. Chi. Bd. of Election Comm'rs</td>
<td>United States District Court for the Northern District of Illinois</td>
<td>2003 U.S. Dist. LEXIS 2528</td>
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obtaining any relief, plaintiffs failed to demonstrate that they would be irreparably harmed if an injunction did not issue; the threatened injury to defendants, responsible as they were for the conduct of the municipal election, far outweighed any threatened injury to plaintiffs; and the granting of a preliminary injunction would greatly disserve the public interest. Plaintiffs' petition for

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<td>Diaz v. Hood</td>
<td>United States District Court for the Southern District of Florida</td>
<td>342 F. Supp. 2d 1111; 2004 U.S. Dist. LEXIS 21445</td>
<td>October 26, 2004</td>
<td>Plaintiffs, unions and individuals who had attempted to register to vote, sought a declaration of their rights to vote in the November 2, 2004 general election. They alleged that defendants, state and county election officials, refused to process their voter registrations for various failures to complete the registration forms. The election officials</td>
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<td>moved to dismiss the complaint for lack of standing and failure to state a claim.</td>
<td>capacity, the second failed to check a box indicating that he was not a felon, and the third did not provide the last four digits of her social security number on the form. They claimed the election officials violated federal and state law by refusing to register eligible voters because of nonmaterial errors or omissions in their voter registration applications, and by failing to provide any notice to voter</td>
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<td>applicants whose registration applications were deemed incomplete. In the first two cases, the election official had handled the errant application properly under Florida law, and the putative voter had effectively caused their own injury by failing to complete the registration. The third completed her form and was registered, so had suffered no injury. Standing failed against the secretary of state. Motion to dismiss without</td>
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<td>Bell v. Marinko</td>
<td>United States District Court for the Northern District of Ohio</td>
<td>235 F. Supp. 2d 772; 2002 U.S. Dist. LEXIS 21753</td>
<td>October 22, 2002</td>
<td>Plaintiff voters sued defendants, a county board of elections, a state secretary of state, and the state's attorney general, for violations of the Motor Voter Act and equal protection of the laws. Defendants moved for summary judgment. The voters also moved for summary judgment.</td>
<td>The board heard challenges to the voters' qualifications to vote in the county, based on the fact that the voters were transient (seasonal) rather than permanent residents of the county. The voters claimed that the board hearings did not afford them the requisite degree of due process and contravened their rights of privacy by inquiring into personal matters. As to the MVA</td>
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<td>claim, the court held that residency within the precinct was a crucial qualification. One simply could not be an elector, much less a qualified elector entitled to vote, unless one resided in the precinct where he or she sought to vote. If one never lived within the precinct, one was not and could not be an eligible voter, even if listed on the board's rolls as such. The MVA did not affect the state's ability to</td>
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<td>condition eligibility to vote on residence. Nor did it undertake to regulate challenges, such as the ones presented, to a registered voter's residency ab initio. The ability of the challengers to assert that the voters were not eligible and had not ever been eligible, and of the board to consider and resolve that challenge, did not contravene the MVA. Defendants' motions for</td>
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<tr>
<td>Bell v. Marinko</td>
<td>United States Court of Appeals for the Sixth Circuit</td>
<td>367 F.3d 588; 2004 U.S. App. LEXIS 8330</td>
<td>April 28, 2004</td>
<td>Plaintiffs, registered voters, sued defendants, Ohio Board of Elections and Board members, alleging that Ohio Rev. Code Ann. §§ 3509.19-3509.21 violated the National Voter Registration Act, and the Equal Protection Clause</td>
<td>The voters contested the challenges to their registration brought under Ohio Code Rev. Ann. § 3505.19 based on Ohio Rev. Code Ann. § 3503.02. Specifically, the voters asserted that § 3503.02---which stated that the place</td>
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summary judgment were granted as to all claims with prejudice, except the voters' state-law claim, which was dismissed for want of jurisdiction, without prejudice.
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<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Facts</th>
<th>Holding</th>
<th>Statutory Basis (if of Note)</th>
<th>Other Notes</th>
<th>Should the Case be Researched Further</th>
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<td>of the Fourteenth Amendment. The United States District Court for the Northern District of Ohio granted summary judgment in favor of defendants. The voters appealed.</td>
<td>where the family of a married man or woman resided was considered to be his or her place of residence----violated the equal protection clause. The court of appeals found that the Board's procedures did not contravene the National Voter Registration Act because Congress did not intend to bar the removal of names from the official list of persons who were ineligible and improperly registered to vote</td>
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The National Voter Registration Act did not bar the Board's continuing consideration of a voter's residence, and encouraged the Board to maintain accurate and reliable voting rolls. Ohio was free to take reasonable steps to see that all applicants for registration to vote actually fulfilled the requirement of bona fide residence.
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<tr>
<th>Name of Case</th>
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<th>Facts</th>
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<td>§ 3503.02(D) did not contravene the National Voter Registration Act. Because the Board did not raise an irrebuttable presumption in applying § 3502.02(D), the voters suffered no equal protection violation. The judgment was affirmed.</td>
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</table>

Other Notes

Should the Case be Researched Further

Statutory Basis (if of Note)
<table>
<thead>
<tr>
<th>Name</th>
<th>Court</th>
<th>Case No.</th>
<th>Date</th>
<th>Summary</th>
<th>Supporting Facts</th>
<th>Other Facts</th>
<th>Should the motion be granted?</th>
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<tbody>
<tr>
<td>Powers v.</td>
<td>Supreme Court of New York, Appellate Division, First Department</td>
<td>276 A.D.2d 157; 717 N.Y.S.2d 550; 2000 N.Y. App. Div. LEXIS 12644</td>
<td>December 5, 2000</td>
<td>Petitioner appealed an order of the supreme court, which denied his motion to direct the New York County Board of Elections, in cases where more than one absentee ballot was returned by a voter, to count only the absentee ballot listing correct candidates' names.</td>
<td>When the New York County Board of Elections learned some absentee ballots mailed to voters in one district listed the wrong candidates for state senator it sent a second set of absentee ballots to absentee voters informing them the first ballot was defective and requesting they use the second ballot. The board agreed if two ballots were received from the same voter, only the corrected ballot would be counted. Appellant candidate moved in support of the board's determination. Respondent candidate opposed the application, contending that only the first ballot received should have been canvassed. The trial court denied appellant's motion, ruling that pursuant to New York law, where two ballots were received from the same voter, only the ballot with the earlier date was to be accepted. The court found the local board officials should have resolved the dispute as they proposed. The order was modified and the motion granted to the extent of directing the New York County Board of Elections, in cases where more than one absentee ballot was returned by a voter, to accept only the corrected</td>
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<td>N/A</td>
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</table>
| Plaintiff/Complainant | Court | Citation | Date | Facts | Relief Sought | Result | Outcome
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<tr>
<td>Goodwin v. St. Thomas–St. John Bd. of Elections</td>
<td>Territorial Court of the Virgin Islands</td>
<td>43 V.I. 89; 2000 V.I. LEXIS 15</td>
<td>December 13, 2000</td>
<td>Plaintiff political candidate alleged that certain general election absentee ballots violated territorial election law, and that the improper inclusion of such ballots by defendants, election board and supervisor, resulted in plaintiff's loss of the election. Plaintiff sued defendants seeking invalidation of the absentee ballots and certification of the election results tabulated without such ballots.</td>
<td>Plaintiff alleged that defendants counted unlawful absentee ballots that lacked postmarks, were not signed or notarized, were in unsealed and/or torn envelopes, and were in envelopes containing more than one ballot. Prior to tabulation of the absentee ballots, plaintiff was leading intervenor for the final senate position, but the absentee ballots entitled intervenor to the position. The court held that plaintiff was not entitled to relief since he failed to establish that the alleged absentee voting irregularities would require invalidation of a sufficient number of ballots to change the outcome of the election. While the unsealed ballots constituted a technical violation, the outer envelopes were sealed and thus substantially complied with election requirements. Further, while defendants improperly counted one ballot where a sealed ballot envelope and a loose ballot were in the same outer envelope, the one vote involved did not change the election result.</td>
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challenged the judgment entered by the reviewing the absent ballots cast for said election, resulting in a loss for appellant incumbent based on the votes received from appellee voters. The incumbent appealed, and the voters cross--appealed. In the meantime, the trial court stayed enforcement of its judgment pending resolution of the appeal.

The circuit court overturned the results of a mayoral election after reviewing the absentee ballots cast for said election, resulting in a loss for appellant incumbent based on the votes received from appellee voters. The incumbent appealed, and the voters cross--appealed. In the meantime, the trial court stayed enforcement of its judgment pending resolution of the appeal.

Plaintiff's other allegations of irregularities were without merit since ballots without postmarks were valid, ballots without signatures were not counted, and ballots without notarized signatures were proper. Request for declaratory and injunctive relief denied.

The voters and the incumbent all challenged the judgment entered by the trial court arguing that it impermissibly included or excluded certain votes. The appeals court agreed with the voters that the trial court should have excluded the votes of those voters for the incumbent who included an improper form of identification with their absentee ballots. It was undisputed that at least 30 absentee voters who voted for the incumbent provided with their absentee ballots a form of identification that was not proper under Alabama law. As a result, the court further agreed that the trial court erred in allowing those voters to somewhat "cure" that defect by providing a proper form of identification at the trial of the election contest, because, under those

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<tr>
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<th>Statutory Basis</th>
<th>Other Votes</th>
<th>Should the Case be Reconsidered Further</th>
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<tbody>
<tr>
<td>Townson v. Stonicher</td>
<td>Supreme Court of Alabama</td>
<td>2005 Ala. LEXIS 214</td>
<td>December 9, 2005</td>
<td>The circuit court overturned the results of a mayoral election after reviewing the absentee ballots cast for said election, resulting in a loss for appellant incumbent based on the votes received from appellee voters. The incumbent appealed, and the voters cross--appealed. In the meantime, the trial court stayed enforcement of its judgment pending resolution of the appeal.</td>
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circumstances, it was difficult to conclude that those voters made an honest effort to comply with the law. Moreover, to count the votes of voters who failed to comply with the essential requirement of submitting proper identification with their absentee ballots had the effect of disenfranchising qualified voters who choose not to vote but rather than to make the effort to comply with the absentee—voting requirements. Affirmed.

<p>| Gross v. Albany County Bd. of Elections | Supreme Court of New York, Appellate Division, Third Department | August 23, 2004 | Appellant candidates appealed from a judgment entered by the supreme court, which partially granted the candidates' petition challenging the method used by respondent Albany County Board of Elections for counting absentee applications and ballots for the office of Albany County | The candidates argued that the Board violated a federal court order regarding the election. The appellate court held that absentee ballots that were sent to voters for the special general election based solely on their applications for the general election were properly voided. The Board had no authority to issue the ballots without an absentee ballot application for the special general election. Two ballots were properly invalidated as the Board failed to retain the envelopes. Ballots were properly counted for voters who failed to identify their physician on their applications. A ballot was | No | N/A | No |</p>
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<th>Name of Case</th>
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<tr>
<td>Erlandson v. Kiffmeyer</td>
<td>Supreme Court of Minnesota</td>
<td>659 N.W.2d 724; 2003 Minn. LEXIS 196</td>
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<td>April 17, 2003</td>
<td>Petitioners, representing the Democratic-Farmer-Labor Party, brought an action against respondents, the Minnesota Secretary of State and the Hennepin County Auditor, seeking relief in regard to the election for United States Senator, following</td>
<td>The appellate court found that, while it may have seemed unfair to the replacement candidate to count votes for other candidates from regular absentee ballots on which the replacement candidate did not appear, those were properly cast ballots voting for a properly nominated candidate. Petitioners' request that the Minnesota supreme court order that votes for United States Senator cast on regular absentee ballots not be counted was denied. A key issue was Minn. Stat. § 204B.41 (2002), which provided, in—</td>
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the death of Senator Wellstone. The issue concerned the right of absentee voters to obtain replacement ballots. Individuals intervened on behalf of the Republican Party. The instant court granted review. part, that official supplemental ballots could not be mailed to absent voters to whom ballots were mailed before the official supplemental ballots were prepared. The supreme court held that, by treating similarly--situated voters differently, § 204B.41 violated equal protection guarantees and could not even survive rational basis review. For voters who cast their regular absentee ballots for Wellstone before the vacancy occurred, but were unable to go to their polling place on election day or pick up a replacement ballot by election day, the prohibition on mailing replacement ballots in § 204B.41 denied them the right to cast a meaningful vote for United States Senator. The petition of petitioners was denied in part, but granted with respect to mailing replacement ballots to all applicants for regular absentee ballots who requested a replacement ballot.

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<th>Name of Case</th>
<th>Party</th>
<th>Citation</th>
<th>Date</th>
<th>Issue</th>
<th>Holding</th>
<th>Session</th>
<th>Other Notes</th>
<th>Should these cases be discussed further</th>
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<tbody>
<tr>
<td>People v. Deganutti</td>
<td>Appellate Court of Illinois, First District, Third Division</td>
<td>348 Ill. App. 3d 512; 810 N.E.2d 191; 2004 Ill.</td>
<td>May 12, 2004</td>
<td>Defendant appealed from a judgment of the circuit court, which convicted defendant on charges of unlawful</td>
<td>Defendant went to the voters' homes and obtained their signatures on absentee ballot request forms. Once the ballots were mailed to the voters, defendant returned to the homes. With voter one, defendant sat on the couch</td>
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On appeal, she argued insufficient evidence to sustain her convictions. The court affirmed, holding that (1) the circumstantial evidence surrounding defendant's presence as the voters completed their ballots supported the unlawful observation convictions; (2) the fact that defendant knowingly took the voters' ballots and mailed them, a violation of Illinois law supported her conviction, and (3) the fact that the statutes defendant was convicted under required only a knowing mental state rather than criminal intent did not violate substantive due process. Affirmed.
The trial court order to be of great public importance and to require immediate resolution by the supreme court. The trial court denied appellants' request to invalidate absentee ballot requests in Seminole County in the 2000 presidential election.

Forms mailed by one party failed to include either a space for the voter identification number or the preprinted number. Representatives from that party were allowed to add voter identification numbers to request forms after they were returned, and absentee ballots were sent to the persons named on the request forms. The supreme court affirmed the trial court's refusal to invalidate the ballot requests, and adopted the trial court's reasoning that the information required, which included the voter identification number, was directory rather than mandatory. The trial court properly found that the evidence did not support a finding of fraud, gross negligence, or intentional wrongdoing. Allowing one party to correct ballots did not constitute illegal disparate treatment because there was no need to correct the other party's forms. Affirmed.

| Gross v. Albany County Bd. of Elections | Court of Appeals of New York | 3 N.Y.3d 251; 819 N.E.2d 197; 785 N.Y.S.2d 729 | October 14, 2004 | Appellant candidates sought review from an order of the Appellate Division, which affirmed a trial court order | Due to a challenge to a redistricting plan, the Board was enjoined from conducting primary and general elections for certain county districts. A special primary election was directed, with a special general election to be conducted. | No | N/A | No |
ballots, as they violated the procedure that was to be followed. The trial court held that the ballots should not be canvassed, which decision was affirmed on appeal. On further review due to dissenting opinions, the court found that the ballots were in violation of the federal court order that directed the procedure to be followed, as well as in violation of New York election law. The court concluded that the Board's error was not technical, the voters who used absentee ballots were not determined qualified electors.

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<tr>
<th>Name of Case</th>
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<th>Issue</th>
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<th>Statutory Basis (if any)</th>
<th>Issue Noted</th>
<th>Should this Case be Researched Further</th>
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<tr>
<td>In re Canvass of</td>
<td>Supreme Court of</td>
<td>577 Pa.</td>
<td>March 8, A county elections</td>
<td>The absentee ballots at issue were</td>
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<tr>
<td>Absentee Ballots of Nov. 4, 2003 Gen. Election</td>
<td>Pennsylvania</td>
<td>231; 843 A.2d 1223; 2004 Pa. LEXIS 431</td>
<td>2004</td>
<td>board voided certain absentee ballots cast in the November 4, 2003, general election. The court of common pleas held that absentee ballots delivered by third persons were valid and should be counted. The commonwealth court affirmed the trial court's decision. The state supreme court granted allocatur. Appellants and appellees were certain candidates and voters.</td>
<td>hand-delivered to the county elections board by third persons on behalf of non-disabled voters. On appeal, the issue was whether non-disabled absentee voters could have third persons hand-deliver their ballots to the elections board where the board indicated that the practice was permitted. The state supreme court concluded that the &quot;in person&quot; delivery requirement was mandatory, and that absentee ballots delivered in violation of the provision were invalid, notwithstanding the board's erroneous instructions to the contrary. Under the statute's plain meaning, a non-disabled absentee voter had two choices: send the ballot by mail, or deliver it in person. Third-person hand-delivery of absentee ballots was not permitted. To ignore the law's clear instructions regarding in-person delivery would undermine the statute's very purpose as a safeguard against fraud. The state supreme court concluded that its precedent was clear, and it could not simply ignore substantive provisions of the Pennsylvania Election Code. The judgment of the Commonwealth Court was reversed in so far as it held that...</td>
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<tr>
<td>In re Canvass of Absentee Ballots of November 4, 2003</td>
<td>Commonwealth Court of Pennsylvania</td>
<td>839 A.2d 451; 2003 Pa. Commw. LEXIS 963</td>
<td>December 22, 2003</td>
<td>The Allegheny County Elections Board did not allow 74 challenged third-party-hand-delivered absentee ballots to be counted in the statewide general election. The court of common pleas of Allegheny County reversed the Board's decision and allowed the 74 ballots to be counted. Appellant objecting candidates appealed the trial court's order. On appeal, the issue was whether non-disabled voters who voted by absentee ballots and had those ballots delivered by third parties to county election boards could have their ballots counted in the statewide general election. First, the appellate court concluded that political bodies had standing to appeal. Also, the trial court did not err by counting the 74 ballots because absentee voters could not be held responsible for following the statutory requirements of Pennsylvania election law where the Board knowingly failed to abide by the statutory language regarding the delivery of absentee ballots, changed its policy to require voters to abide by the language, and then changed its policy back to its original stance that voters did not have to abide by the statutory language, thereby misleading absentee voters regarding delivery requirements. Under the circumstances, it was more important to protect the interest of the voters by not disenfranchising them</td>
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Overseas Citizens Absentee Voting

Secretary, claiming that overseas voters would be disenfranchised if they used absentee ballots that included the names of two presidential candidates who had been removed from the final certified ballot and seeking injunctive relief to address the practical implications of the final certification of the slate of candidates. Therefore, it was unnecessary for the district court to strike the entire ballot in the instant case, as it was not factually correct or legally incorrect to include the names of those candidates who had been removed from the final certified ballot. Nevertheless, it was appropriate for the district court to uphold the certification of the ballot and to enjoin the enforcement of the final certification of the slate of candidates. United States v. Pennsylvania, District Court for the Middle District of Pennsylvania, 2004 U.S. Dist. 21167 (LEXIS 21167). October 20, 2004. Plaintiff United States sued defendant Commonwealth of Pennsylvania, governor, and state secretary, claiming that overseas voters would be disenfranchised if they used absentee ballots that included the names of two presidential candidates who had been removed from the final certified ballot and seeking injunctive relief to address the practical implications of the final certification of the slate of candidates. The testimony of the two witnesses offered by the United States did not support its contention that voters protected by the Uniformed and Overseas Citizens Absentee Voting Act would be disenfranchised absent immediate injunctive relief because neither witness testified that any absentee ballots issued to UOCAVA voters were legally incorrect or otherwise invalid. Moreover, there was no evidence that any UOCAVA voter had complained or otherwise expressed concern regarding their ability or right to vote. The fact that some UOCAVA voters received ballots including the names of two candidates who were not on the final certified ballot did not ipso facto support a finding that Pennsylvania was in violation of UOCAVA, especially since the United States failed to establish that the ballot defect undermined the right of
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<th>Date</th>
<th>Relief</th>
<th>Summary of Case</th>
<th>Other Notes</th>
<th>Sharpens the Case?</th>
<th>Research Required</th>
<th>Filed</th>
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<tbody>
<tr>
<td>Hoblock v. Albany County Bd. of Elections</td>
<td>United States District Court for the Northern District of New York</td>
<td>341 F. Supp. 2d 169, 2004 U.S. Dist. LEXIS 21326</td>
<td>October 25, 2004</td>
<td>Plaintiffs, candidates and voters, sued defendant, the Albany County, New York, Board of Elections, under § 1983, claiming that the Board violated plaintiffs' Fourteenth Amendment rights by refusing to tally the voters' absentee ballots. Plaintiffs moved for a preliminary injunction.</td>
<td>UOCAVA voters to cast their ballots. Moreover, Pennsylvania had adduced substantial evidence that the requested injunctive relief, issuing new ballots, would have harmed the Pennsylvania election system and the public by undermining the integrity and efficiency of Pennsylvania's elections and increasing election costs. Motion for injunctive relief denied.</td>
<td>An election for members of the Albany County Legislature had been enjoined, and special primary and general elections were ordered. The order stated that the process for obtaining and counting absentee ballots for the general election would follow New York election law, which required voters to request absentee ballots. However, the Board issued absentee ballots for the general election to all persons who had applied for an absentee ballot for the cancelled election. The voters used absentee ballots to vote; their ballots were later invalidated. A state court determined that automatically sending absentee ballots to those who had not filed an application violated the constitution of</td>
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<td>Date</td>
<td>Issue</td>
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<td>Griffin v. Roupas</td>
<td>United States Court of Appeals for the Seventh Circuit</td>
<td>385 F.3d 1128; 2004 U.S. App. LEXIS 21476</td>
<td>October 15, 2004</td>
<td>In a suit brought by plaintiff working mothers against defendants, members of the Illinois State Board of Elections, alleging that the United States</td>
<td>New York. The district court found that the candidates' claims could have been asserted in state court and were barred by res judicata, but the voters were not parties to the state court action. The candidates were not entitled to joinder and had not filed a motion to intervene. The voters established a likelihood of success on the merits, as the Board effectively took away their right to vote by issuing absentee ballots and then refusing to count them. The voters' claims involved more than just an &quot;unintended irregularity.&quot; The candidates' claims were dismissed, and their request for joinder or to intervene was denied. Plaintiffs' motion for a preliminary injunction preventing the Board from certifying winners of the election was granted.</td>
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Constitution required Illinois to allow them to vote by absentee ballot, the mothers appealed from a decision of the United States District Court for the Northern District of Illinois, Eastern Division, which dismissed their complaint for failure to state a claim. The court held that, although the length and complexity of the Illinois ballot supported an argument for allowing people to vote by mail, such argument had nothing to do with the problems faced by working mothers. It applied to everyone. Affirmed.
The court entered an order, pursuant to a stipulation between the parties, that granted injunctive relief to the Secretary. The court ordered the Secretary of the Commonwealth of Pennsylvania to take all reasonable steps necessary to direct the county boards of elections to accept as timely received absentee ballots cast by service members and other overseas voters as defined by UOCAVA, so long as the ballots were received by November 10, 2004. The ballots were to be considered solely for purposes of the federal offices that were included on the ballots. The court held that the ballot needed to be cast no later than November 2, 2004 to be counted. The court did not make any findings of liability against the Governor or the Secretary. The court entered an order, pursuant to a stipulation between the parties, that granted injunctive relief to the service members.

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<th>Number of Case</th>
<th>Court</th>
<th>City</th>
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<th>Title</th>
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<th>Notes</th>
<th>Should the Case be Researched Further</th>
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<tr>
<td>21813</td>
<td>Pennsylvania</td>
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<td>officials under the Uniformed and Overseas Citizens Absentee Voting Act, alleging that they and similarly situated service members would be disenfranchised because they did not receive their absentee ballots in time. The parties entered into a voluntary agreement and submitted it to the court for approval.</td>
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<td>Bush v.</td>
<td>United States</td>
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<td>December 8, 2000</td>
<td>The matter came before the court on plaintiffs' complaint for declaratory and injunctive relief alleging that defendant county canvassing boards</td>
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<td>Hillsborough</td>
<td>District Court for the Northern District of Florida</td>
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<td>Plaintiff presidential and vice-presidential candidates and state political party contended that defendant county canvassing boards rejected overseas absentee state ballots and federal write-in ballots based on criteria inconsistent with the Uniformed and Overseas Citizens</td>
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<td>Name of Case</td>
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<td>Statutory Basis</td>
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<td>Absentee Voting Act. Because the state accepted overseas absentee state ballots and federal write--in ballots up to 10 days after the election, the State needed to access that the ballot in fact came from overseas. However, federal law provided the method to establish that fact by requiring the overseas absentee voter to sign an oath that the ballot was mailed from outside the United States and requiring the state election officials to examine the voter's declarations. The court further noted that federal law required the user of a federal write--in ballot to timely apply for a regular state absentee ballot, not that the state receive the application, and that again federal law, by requiring the voter using a federal write--in ballot to swear that he or she had made timely application, had provided the proper method of proof. Plaintiffs withdrew as moot their request for injunctive relief and the court granted in part and denied in part plaintiffs' request for declaratory relief, and declared valid all federal write--in ballots that were signed pursuant to the oath provided therein but rejected solely because the ballot envelope did</td>
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Kolb v. Casella

Supreme Court of New York, Appellate Division, Fourth Department


LEXIS 3483

March 17, 2000

Both petitioner and respondent appealed from order of supreme court, determining which absentee and other paper ballots would be counted in a special legislative election. Both petitioner and respondent, presumably representing different candidates, challenged the validity of particular paper ballots, mostly absentee, in a special legislative election. The court affirmed most of the trial court's findings, but modified its order to invalidate ballots improperly marked outside the voting square—ballots where the signature on the envelope differed substantially from the voter registration card signature—and ballots where voters neglected to supply statutorily required information on the envelopes. However, the court, seeking to avoid disenfranchising voters where permissible, held that ballots were not invalid where applications substantially complied with statute, there was no objection to the ballots themselves, and there was no evidence of fraud. Where absentee ballot envelopes contained extra ballots, the ballots were to be placed in a ballot box.

No

N/A

No
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<tr>
<th>Source Code</th>
<th>County</th>
<th>Chapter</th>
<th>Date</th>
<th>Defendant</th>
<th>Decision</th>
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<tr>
<td>People v. Woods</td>
<td>Court of Appeals of Michigan</td>
<td>241 Mich. App. 545; 616 N.W.2d 211; 2000 Mich. App. LEXIS 156</td>
<td>June 27, 2000</td>
<td>Defendant filed an interlocutory appeal of the decision by the circuit court, which denied defendant's request for a jury instruction on entrapment by estoppel, but stayed the proceedings to allow defendant to pursue the interlocutory appeal, in a criminal action alleging violations of election laws.</td>
<td>Defendant distributed and collected absentee ballots in an election. Because both defendant and his brother were candidates on the ballot, defendant's assistance was illegal under Michigan law. Bound over for trial on election fraud charges, defendant requested a jury instruction on entrapment by estoppel, which was denied. On interlocutory appeal, the appellate court reversed and remanded for an entrapment hearing, holding that defendant should be given the opportunity to present evidence that he unwittingly committed the unlawful acts in reasonable reliance upon the word of the township clerk. The necessary elements of the entrapment defense were: (1) a government official (2) told the defendant that certain criminal conduct was legal; (3) the defendant actually relied on the official's statements; (4) the defendant's reliance was in good faith and reasonable in light of the official's</td>
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| Case Title | Court | Date | Facts of Case | Holding | Summary of Relevant Facts | Citation | Judges Notes | Significance of Case
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<tr>
<td>Harris v. Florida Elections Canvassing Comm'n</td>
<td>United States District Court for the Northern District of Florida</td>
<td>December 9, 2000</td>
<td>Plaintiffs challenged the counting of overseas absentee ballots received after 7 p.m. on election day, alleging the ballots violated Florida law.</td>
<td>The court found Congress did not intend 3 U.S.C.S. § 1 to impose irrational scheduling rules on state and local canvassing officials, and did not intend to disenfranchise overseas voters. The court held the state statute was required to yield to the Florida Administrative Code, which required the 10-day extension in the receipt of overseas absentee ballots in federal elections because the rule was promulgated to satisfy a consent decree entered by the state in 1982.</td>
<td>122 F. Supp. 2d 1317; 2000 U.S. Dist. LEXIS 17875</td>
<td>No</td>
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<tr>
<td>Weldon v. Berks County Dept of Election Servs.</td>
<td>United States District Court for the Eastern District of Pennsylvania</td>
<td>November 1, 2004</td>
<td>Plaintiffs, a congressman and a state representative, filed a motion seeking a</td>
<td>The congressman and representative sought to have the absentee ballots at issue set aside until a hearing could be held to determine whether any of the strains in order denied. CASE</td>
<td>2004 U.S. Dist. LEXIS 21948</td>
<td>No</td>
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SUMMARY: Plaintiffs, a congressman and a state representative, filed a motion seeking a preliminary injunction or temporary restraining order that would prohibit defendant county department of election services from delivering to local election districts absentee ballots received from any state, county, or city correctional facility as provided in Pa. Stat. Ann. tit. 25, § 3416.6 and Pa. Stat. Ann. tit. 25, § 3416.8.

OVERVIEW: The congressman and representative sought to have the absentee ballots at issue set aside until a hearing could be held to determine whether any of the ballots were delivered to the county board of elections by a third party in violation of Pennsylvania law, whether any of the ballots were submitted by convicted incarcerated felons in violation of Pennsylvania law, and whether any of the ballots were submitted by qualified voters who were improperly assisted without the proper declaration required by Pennsylvania law. The court concluded that an ex parte temporary restraining order was not warranted because there was insufficient evidence of wrongdoing by the county board of elections.
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<th>Name of Case</th>
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<th>Issue</th>
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<th>Notes</th>
<th>Should the Case be Researchable</th>
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<tr>
<td>Qualkinbush v. Skubisz</td>
<td>Court of Appeals of Illinois, First District</td>
<td>Ill. App. LEXIS 1546</td>
<td>December 28, 2004</td>
<td>Respondent appealed from an order of the circuit court certifying mayoral election results for a city in which the court declared petitioner mayor.</td>
<td>Respondent first claimed the trial court erred in denying his motion to dismiss with respect to 38 votes the Election Code was preempted by and violated the Voting Rights Act and the Americans with Disabilities Act of 1990 since it restricted the individuals with whom an absentee voter could entrust their ballot for mailing. The appeals court found the trial court did not err in denying the motion to dismiss, as Illinois election law prevented a candidate or his or her agent from asserting undue influence upon a disabled voter and from manipulating that voter into voting for the candidate or the agent’s candidate, and was designed to protect the rights of disabled voters. Respondent had not established that the federal legislature</td>
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were potential jurisdictional issues, substantial questions concerning the alleged violations, and the complaint did not allege that the department acted or threatened to act in an unlawful manner. The court denied the ex parte motion for a temporary restraining order. The court set a hearing on the motion for preliminary injunction.
The question presented was whether the county election board should count the six categories of ballots that were in dispute. After a review of the evidence presented, the appeals court modified the trial court's order by: (1) deleting an order directing the county elections board (board) to count 160 affidavit ballots tendered by voters who appeared at the correct polling place but the wrong election district, as there were meaningful distinctions between those voters who went to the wrong polling place and those voters who went to the correct polling place but the wrong election district; (2) directing that the board not count 10

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<tr>
<th>Name of Case</th>
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<th>Fact or Issue</th>
<th>Statement of Issue</th>
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<tbody>
<tr>
<td>Panio v. Sunderland</td>
<td>Supreme Court of New York, Appellate Division, Second Department</td>
<td>January 25, 2005</td>
<td>In proceedings filed pursuant to New York election law to determine the validity of certain absentee and affidavit ballots tendered for the office of 35th District Senator, appellants, a chairperson of the county Republican committee and the Republican candidate, both sought review of an</td>
<td>intended to preempt the rights of state legislatures to restrict absentee voting, and, particularly, who could return absentee ballots. The Election Code did not violate equal protection principles, as the burden placed upon absentee voters by the restriction on who could mail an absentee ballot was slight and nondiscriminatory and substantially contributed to the integrity of the election process. Affirmed.</td>
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<td>Name of Case</td>
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<td>Pierce v. Allegheny</td>
<td>United States District Court for the Western</td>
<td>324 F. Supp. 2d</td>
<td>November 13, 2003</td>
<td>Plaintiff voters</td>
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<td>County Bd. of</td>
<td>District of Pennsylvania</td>
<td>684; 2003 U.S.</td>
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provision could disrupt very important injunction despite abstention. The court issued a limited preliminary injunction whereby the 937 hand-delivered absentee ballots at issue were set aside as "challenged" ballots subject to the election code challenge procedure. Any equal protection issues could be heard in state court by virtue of the state court's concurrent jurisdiction.

The voters claimed they timely requested absentee ballots but (1) never received the requested ballot or (2) received a ballot when it was too late for them to submit the absentee ballot. The court held that 42 U.S.C.S. § 1971(a)(2)(B) was not intended to apply to the counting of ballots by those already deemed qualified to vote. The plain meaning of § 1971(a)(2)(B) did not support the voters' claim that it
The deadline for returning ballots did not disenfranchise a class of voters. Rather, it imposed a time deadline by which voters had to return their votes. So there was no equal protection violation. Preliminary injunction denied.
Amendments to the United States Constitution, as well as § 1983 and §§ 2 and 10 of the Voting Rights Act of 1965. Each of the felons' claims was fatally flawed. The felons' exclusion from voting did not violate the Equal Protection or Due Process Clauses of the United States Constitution. The First Amendment did not guarantee felons the right to vote. Although there was evidence that racial animus was a factor in the initial enactment of Florida's disenfranchisement law, there was no evidence that race played a part in the re-enactment of that provision. Although it appeared that there was a disparate impact on minorities, the cause was racially neutral. Finally, requiring the felons to pay their victim restitution before their rights would be restored did not constitute an improper poll tax or wealth qualification. The court granted the officials' motion for summary judgment and implicitly denied the felons' motion. Thus, the court dismissed the lawsuit with prejudice.

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<tr>
<th>Case</th>
<th>United States</th>
<th>December</th>
<th>Plaintiffs, convicted</th>
<th>The felons alleged that Washington's</th>
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<td>No. 14782</td>
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<td>moved for summary judgment.</td>
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| Locke    | District Court for the Eastern District of Washington | U.S. Dist. LEXIS 22212 | 1, 2000 | felons who were also racial minorities, sued defendants for alleged violations of the Voting Rights Act. The parties filed cross-motions for summary judgment.  
<pre><code>       |                                             |                |        | felon disenfranchisement and restoration of civil rights schemes, premised upon Wash. Const. art. VI § 3, resulted in the denial of the right to vote to racial minorities in violation of the VRA. They argued that race bias in, or the discriminatory effect of, the criminal justice system resulted in a disproportionate number of racial minorities being disenfranchised following felony convictions. The court concluded that Washington's felon disenfranchisement provision disenfranchised a disproportionate number of minorities; as a result, minorities were under-represented in Washington's political process. The Rooker--Feldman doctrine barred the felons from bringing any as-applied challenges, and even if it did not bar such claims, there was no evidence that the felons' individual convictions were born of discrimination in the criminal justice system. However, the felons' facial challenge also failed. The remedy they sought would create a new constitutional problem, allowing disenfranchisement only of white felons. Further, the felons did not establish a causal connection between |
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<tr>
<th>Name of Case</th>
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<th>Citation</th>
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<th>Holding</th>
<th>Statutory Basis for Note</th>
<th>Court Notes</th>
<th>Should the Case Be Revisited Further</th>
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<td>Muntaqim v. Coombe</td>
<td>United States Court of Appeals for the Second Circuit</td>
<td>366 F.3d 102; 2004 U.S. App. LEXIS 8077</td>
<td>April 23, 2004</td>
<td>Plaintiff inmate appealed a judgment of the United States District Court for the Northern District of New York, which granted summary judgment in favor of defendants in the inmate's action alleging violation of § 2 of the Voting Rights Act of 1965.</td>
<td>At issue was whether the VRA could be applied to N.Y. Elec. Law § 5-106, which disenfranchised currently incarcerated felons and parolees. The instant court concluded that the Voting Rights Act did not apply to the New York law. Applying the Act to state law would alter the traditional balance of power between the states and the federal government. The court was not convinced that there was a congruence and proportionality between the injury to be prevented or remedied (i.e., the use of vote denial and dilution schemes to avoid the strictures of the VRA), and the means adopted to that end (i.e., prohibition of state felon disenfranchisement law that resulted in</td>
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<td>Johnson v. Governor of Fla.</td>
<td>United States Court of Appeals for the Eleventh Circuit</td>
<td>353 F.3d 1287; 2003 U.S. App. LEXIS 25859</td>
<td>December 19, 2003</td>
<td>Plaintiffs, ex-felon citizens of Florida, on their own right and on behalf of others, sought review of a decision of the United States District Court for the Southern District of Florida, which granted summary judgment to defendants, members of the Florida Clemency Board in The citizens alleged that Fla. Const. art. VI, § 4 (1968) was racially discriminatory and violated their constitutional rights. The citizens also alleged violations of the Voting Rights Act. The court of appeals initially examined the history of Fla. Const. art. VI, § 4 (1968) and determined that the citizens had presented evidence that historically the disenfranchisement provisions were motivated by a discriminatory animus. The citizens had met their initial burden of showing that race was a substantial motivating factor. The state was then required to vote denial or dilution but were not enacted with a discriminatory purpose. Further, there was no clear statement from Congress that the Act applied to state felon disenfranchisement statutes. Inter alia, defendants were entitled to qualified immunity as to claim asserted against them in their personal capacities, and to Eleventh Amendment immunity to the extent the inmate sought damages against defendants in their official capacities. The district court's judgment was affirmed.</td>
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<tr>
<td>Name of Case</td>
<td>Court</td>
<td>Citation</td>
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provisions would have been granted. The court of appeals found that the claim under the Voting Rights Act, also needed to be remanded for further proceedings. Under a totality of the circumstances, the district court needed to analyze whether intentional racial discrimination was behind the Florida disenfranchisement provisions. The court affirmed the district court's decision to grant summary judgment on the citizens' poll tax claim. The court reversed the district court's decision to grant summary judgment to their official capacity. The citizens challenged the validity of the Florida felon disenfranchisement laws.

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<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Holding</th>
<th>Strategy/Briefing</th>
<th>Other Notes</th>
<th>Should This Case Be Rejected</th>
<th>Rejected</th>
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<tr>
<td>Fischer v. Governor</td>
<td>Supreme Court of New Hampshire</td>
<td>145 N.H. 28; 749 A.2d 321;</td>
<td>March 24, 2000</td>
<td>Appellant State of New Hampshire challenged a ruling of the superior court</td>
<td>Appellee was incarcerated at the New Hampshire State Prison on felony convictions. When he requested an absentee ballot to vote from a city</td>
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that the felon disenfranchisement statutes violate N.H. Const. pt. I, Art. 11. The clerk sent him a copy of N.H. Rev. Stat. Ann. § 607(A)(2) (1986), which prohibits a felon from voting "from the time of his sentence until his final discharge." The trial court declared the disenfranchisement statutes unconstitutional and ordered local election officials to allow the plaintiff to vote. Appellant State of New Hampshire challenged this ruling. The central issue was whether the felon disenfranchisement statutes violated N.H. Const. pt. I, art. 11. After a review of the article, its constitutional history, and legislation pertinent to the right of felons to vote, the court concluded that the legislature retained the authority under the article to determine voter qualifications and that the felon disenfranchisement statutes were a reasonable exercise of legislative authority, and reversed. Judgment reversed because the court concluded that the legislature retained its authority under the New Hampshire Constitution to determine voter qualifications and that the felon disenfranchisement statutes were a reasonable exercise of legislative
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<th>Case</th>
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<th>Issue</th>
<th>Holding</th>
<th>Supporting Authority</th>
<th>Supporting Basis of Note</th>
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<th>Should Be Rejected by a Divided Appellate Panel</th>
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<td>Johnson v. Governor of Fla.</td>
<td>United States Court of Appeals for the Eleventh Circuit</td>
<td>405 F.3d 1214; 2005 U.S. App. LEXIS 5945</td>
<td>April 12, 2005</td>
<td>Plaintiff individuals sued defendant members of Florida Clemency Board, arguing that Florida's felon disenfranchisement law, Fla. Const. art. VI, § 4 (1968), violated the Equal Protection Clause and the Voting Rights Act. The United States District Court for the Southern District of Florida granted the members summary judgment. A divided appellate panel reversed. The panel opinion was vacated and a rehearing en banc was granted.</td>
<td>The individuals argued that the racial animus motivating the adoption of Florida's disenfranchisement laws in 1868 remained legally operative despite the reenactment of Fla. Const. art. VI, § 4 in 1968. The subsequent reenactment eliminated any discriminatory taint from the law as originally enacted because the provision narrowed the class of disenfranchised individuals and was amended through a deliberative process. Moreover, there was no allegation of racial discrimination at the time of the reenactment. Thus, the disenfranchisement provision was not a violation of the Equal Protection Clause and the district court properly granted the members summary judgment on that claim. The argument that the Voting Rights Act applied to Florida's disenfranchisement provision was rejected because it raised grave constitutional concerns, i.e., prohibiting a practice that the Fourteenth Amendment permitted the state to maintain. In addition, the legislative history indicated that</td>
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Pennsylvania 2000 Pa. petitioners' confined in state prison. Petitioner Comw. complaint seeking elector was currently registered to vote LEXIS declaratory relief as in respondent state. Petitioners filed a 534 to the complaint against respondent state unconstitutionality of seeking declaratory relief challenging the Pennsylvania as unconstitutional, state election and Election Code, 25 voting laws that excluded confined Pa. Cons. Stat. 00 felons from the definition of qualified 2600 -- 3591, and the absentee electors and that barred a Pennsylvania Voter felon who had been released from a Registration Act, 25 penal institution for less than five years Pa. Cons. Stat. $4 from registering to vote. Respondents 961.101--961.5 109, filed objections to petitioners' regarding felon complaint. The court sustained voting rights. respondents' objection that incarcerated felons were not unconstitutionally deprived of qualified absentee elector status because respondent state had broad power to determine the

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<th>Issue</th>
<th>Holding</th>
<th>Statute</th>
<th>Brief/Note</th>
<th>Should be researched further</th>
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<tr>
<td>Mixon v. Commonwealth</td>
<td>Commonwealth Court of Pennsylvania</td>
<td>759 A.2d 442; 2000 Pa. Commw. LEXIS 534</td>
<td>Respondents filed objections to petitioners' complaint seeking declaratory relief as to the unconstitutionality of the Pennsylvania Election Code, 25 Pa. Cons. Stat. §§ 2600 -- 3591, and the Pennsylvania Voter Registration Act, 25 Pa. Cons. Stat. §§ 961.101--961.5109, regarding felon voting rights.</td>
<td>September 18, 2000</td>
<td>Petitioner convicted felons were presently or had formerly been confined in state prison. Petitioner elector was currently registered to vote in respondent state. Petitioners filed a complaint against respondent state seeking declaratory relief challenging as unconstitutional, state election and voting laws that excluded confined felons from the definition of qualified absentee electors and that barred a felon who had been released from a penal institution for less than five years from registering to vote. Respondents filed objections to petitioners' complaint. The court sustained respondents' objection that incarcerated felons were not unconstitutionally deprived of qualified absentee elector status because respondent state had broad power to determine the</td>
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<td>Rosello v.</td>
<td>United States District Court for Puerto</td>
<td>2004 U.S. Dist LEXIS 27216</td>
<td>November</td>
<td></td>
<td>Plaintiff voters filed a § 1983 action against defendant government officials alleging violations the Due Process and Equal Protection Clauses of the U.S. Const. amend. XIV, resulting from the invalidity of absentee and split ballots in a gubernatorial election.</td>
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<td>Calderon</td>
<td>District of Puerto Rico</td>
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<td>30, 2004</td>
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<td>The voters' § 1983 action against government officials alleged that absentee ballots for a gubernatorial election were timely mailed and that split votes, which registered two votes for the same office, were null. The court asserted jurisdiction over the disparate treatment claims, which arose under the U.S. Constitution. The court declined to exercise discretionary abstention because the case was not merely a facial attack on the constitutionality of a statute, but was mainly an applied challenge, requiring a hearing in order to develop the record, and because equal protection</td>
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<td>Plaintiff/Counsel</td>
<td>Court</td>
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<td>Woodruff v. Wyoming</td>
<td>United States Court of Appeals for the Tenth Circuit</td>
<td>49 Fed. Appx. 199; 2002 U.S. App. LEXIS 21060</td>
<td>October 7, 2002</td>
<td>Plaintiffs, pro se inmates, appealed from an order of the United States District Court for the District of Wyoming, dismissing their complaint brought under § 1983, challenging Wyo. Stat. Ann. § 6–10--</td>
<td>The inmates argued that the statute violated their Eighth Amendment right and their State constitutional right to be free from cruel and unusual punishment, their equal protection rights under the Fourteenth Amendment and State Constitution, and their federal and state rights to due process. One inmate had not paid the appellate filing fee or filed a motion to proceed on appeal without prepayment</td>
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The court also found the dismissed suit constituted a "strike" under 28 U.S.C.S. § 1915(g), although the suit did not challenge prison conditions per se. One inmate's appeal was dismissed; the judgment dismissing the other's complaint was affirmed.

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<th>State of the Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Holding</th>
<th>Statutory Basis for Ruling</th>
<th>Other Notes</th>
<th>Should the Case be Published in the Federal Reporter?</th>
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<tr>
<td>N.J. State Conf.-NAACP v. Harvey</td>
<td>Superior Court of New Jersey, Appellate Division</td>
<td>381 N.J. Super. 155; 885 A.2d 445; 2005 N.J. Super. LEXIS 316</td>
<td>November 2, 2005</td>
<td>The Superior Court of New Jersey, Chancery Division, Union County, dismissed a complaint filed by plaintiff interested parties to invalidate N.J. Stat. Ann. § 19:4-1(8) on the of costs or fees, and his appeal was dismissed. The court found that U.S. Const. amend. XIV, § 2 had long been held to exclude felons from the right to vote. It could scarcely be unreasonable for a state to decide that perpetrators of serious crimes should not take part in selecting the legislators who made the laws, the executives who enforced them, the prosecutors who tried the cases, or the judges who heard their cases. The court also found the dismissed suit constituted a &quot;strike&quot; under 28 U.S.C.S. § 1915(g), although the suit did not challenge prison conditions per se. One inmate's appeal was dismissed; the judgment dismissing the other's complaint was affirmed.</td>
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The New Jersey Legislature to said motion was by law to the right of suffrage. The probation. Thus, it clearly complied

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<th>Name of Case</th>
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<th>Statute/ Facts of NMC</th>
<th>Other Notes</th>
<th>Sourcebook Case &amp; Research Question</th>
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<tr>
<td>King v. City of Boston</td>
<td>United States District Court for the District of Massachusetts</td>
<td>2004 U.S. Dist. LEXIS 8421</td>
<td>May 13, 2004</td>
<td>Plaintiff inmate filed a motion for summary judgment in his action challenging the constitutionality of Mass. Gen. Laws ch. 51, § 1, which excluded incarcerated felons from voting while they were</td>
<td>The inmate was convicted of a felony and incarcerated. His application for an absentee ballot was denied on the ground that he was not qualified to register and vote under Mass. Gen. Laws ch. 51, § 1. The inmate argued that the statute was unconstitutional as it applied to him because it amounted to additional punishment for crimes he committed before the statute's enactment and thus violated his due process rights and the prohibition</td>
<td>No</td>
<td>N/A</td>
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<tr>
<td>Name of Case</td>
<td>Court</td>
<td>Issue</td>
<td>Date</td>
<td>Holding</td>
<td>Source(s)</td>
<td>Other Note(s)</td>
<td>Should I cite this?</td>
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<tr>
<td>Southwest Voter Registration Educ. Project v. Shelley</td>
<td>United States District Court for the Central District of California</td>
<td>278 F.Supp. 2d 1131; 2003 U.S. Dist. LEXIS</td>
<td>August 15, 2003</td>
<td>imprisoned. against ex post facto laws and bills of attainder. The court held that the statute was regulatory and not punitive because rational choices were implicated in the statute's disenfranchisement of persons under guardianship, persons disqualified because of corrupt elections practices, persons under 18 years of age, as well as incarcerated felons. Specifically, incarcerated felons were disqualified during the period of their imprisonment when it would be difficult to identify their address and ensure the accuracy of their ballots. Therefore, the court concluded that Mass. Gen. Laws ch. 51, § 1 did not violate the inmate's constitutional rights. The court found the statute at issue to be constitutional and denied the inmate's motion for summary judgment.</td>
<td>No</td>
<td>N/A</td>
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</table>
election would violate the United States Constitution and Voting Rights Act. Plaintiffs moved for an order delaying that election, scheduled for October 7, 2003, until such time as it could be conducted without use of punch-card machines.

populations thereby disproportionately disenfranchising and/or diluting the votes on the basis of race, in violation of § 2 of the Voting Rights Act. While the court did not need to decide the res judicata issue at this juncture, there was ample reason to believe that plaintiffs would have had a difficult time overcoming it as they were seeking to establish the same constitutional violations alleged in prior litigation, but to secure an additional remedy. Plaintiffs failed to prove a likelihood of success on the merits with regard to both of their claims. Even if plaintiffs could show disparate treatment, such would not have amounted to illegal or unconstitutional treatment. The balance of hardships weighed heavily in favor of allowing the election to proceed. The public interests in avoiding wholesale disenfranchisement, and/or not plunging the State into a constitutional crisis, weighed heavily against enjoining the election. Plaintiffs' motion for preliminary injunction (consolidated with plaintiffs' ex parte application for temporary restraining
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<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Issue</th>
<th>Holding</th>
<th>Statutory Basis of Order</th>
<th>Other Notes</th>
<th>Should the Case Be Rejected Further</th>
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</thead>
<tbody>
<tr>
<td>Igartua-de la Rosa v. United States</td>
<td>United States Court of Appeals for the First Circuit</td>
<td>417 F.3d 145; 2005 U.S. App. LEXIS 15944</td>
<td>August 3, 2005</td>
<td>Plaintiff, a U.S. citizen residing in Puerto Rico, appealed from an order of the United States District Court for the District of Puerto Rico, that rejected his claim that he was deprived of the constitutional right to vote for President and Vice President of the United States, and was also violative of three treaty obligations of the United States.</td>
<td>The putative voter had brought the same claims twice before. The court pointed out that U.S. law granted to the citizens of states the right to vote for the slate of electors to represent that state. Although modern ballots omitted the names of the electors and listed only the candidates, and in form it appeared that the citizens were voting for President and Vice President directly, they were not, but were voting for electors. Puerto Rico was not a state, and had not been enfranchised as the District of Columbia had by the 23rd Amendment. The franchise for choosing electors was confined to &quot;states&quot; by the Constitution. The court declined to turn to foreign or treaty law as a source to reverse the political will of the country. The judgment of the district court was affirmed.</td>
<td>No</td>
<td>N/A</td>
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<tr>
<td>United States v. Rogelio Mejorada-Lopez</td>
<td>Alaska</td>
<td>05-CR-074</td>
<td>December 5, 2005</td>
<td>Mejorada-Lopez, a Mexican citizen, completed several voter registration applications to register to vote in Alaska and voted in</td>
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<tr>
<td>Name of Case</td>
<td>District</td>
<td>Date</td>
<td>Holding</td>
<td>Statutory Basis (of Note)</td>
<td>Other Notes</td>
<td>Should the Case be Reopened Further</td>
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<tr>
<td>United States v. Shah</td>
<td>Colorado</td>
<td>1:04-CR-00458</td>
<td>March 1, 2005</td>
<td>Shah was indicted on two counts of providing false information concerning United States citizenship in order to vote in violation of 18 U.S.C. section 911 and 1015(f). Shah was convicted on both counts.</td>
<td>No</td>
<td>N/A</td>
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<tr>
<td>United States v. Mohsin Ali</td>
<td>Northern Florida</td>
<td>4:05-CR-47</td>
<td>January 17, 2006</td>
<td>A misdemeanor was filed against Ali charging him with voting by a non-citizen in violation of 18 U.S.C. section 611 and pled guilty. Mejorada-Lopez was sentenced to probation for one year.</td>
<td>No</td>
<td>N/A</td>
<td>Yes</td>
<td>Need information on the outcome of</td>
</tr>
<tr>
<td>Name of Case</td>
<td>Chancery</td>
<td>Citation</td>
<td>Date</td>
<td>Issues</td>
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<tr>
<td>United States v. Chaudhary</td>
<td>Northern Florida</td>
<td>4:04-CR-00059</td>
<td>May 18, 2005</td>
<td>Chaudhary was indicted for misuse of a social security number in violation of 42 U.S.C. section 408 and for making a false claim of United States citizenship on a 2002 driver's license application in violation of 18 U.S.C. section 911. A superseding indictment was returned, charging Chaudhary with falsely claiming United States citizenship on a driver's license application and on the accompanying voter registration application. He was convicted of the false citizen of 18 U.S.C. section 611. Trial was set for January 17, 2006.</td>
<td>No</td>
<td>N/A</td>
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</table>
Citizenship claim on his voter registration application.

Velasquez, a former 1996 and 1998 candidate for the Florida legislature, was indicted on charges of misrepresenting United States citizenship in connection with voting and for making false statements to the Immigration and Naturalization Service, in violation of 18 U.S.C. section 911, 1015(f) and 1001. Velasquez was convicted on two counts of making false statements on his naturalization application to the INS concerning his voting history.
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<thead>
<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Finding</th>
<th>Security Waiver (Yes/No)</th>
<th>Other Notes</th>
<th>Should the Case Be Reopened?</th>
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<tbody>
<tr>
<td>United States v. McKenzie;</td>
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<td>Fifteen non-citizens were charged with voting in various elections beginning in 1998 in violation of 18 U.S.C. section 611. Four of the defendants were also charged with making false citizenship claims in violation of 18 U.S.C. sections 911 or 1015(f). Ten defendants were convicted, one defendant was acquitted, and charges against four defendants were dismissed upon motion of the government.</td>
<td>No</td>
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<td>United States v. Francois;</td>
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<td>United States v. Lloyd</td>
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<td>Palmer; United States v. Velrine</td>
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<td>Palmer; United States v.</td>
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<td>Shivdayal; United States v.</td>
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<td>Rickman; United States v.</td>
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<td>Knight; United States v.</td>
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<td>Sweeting; United States v.</td>
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<td>Lubin; United States v.</td>
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<td>Bennett; United States v.</td>
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<td>O'Neil; United States v.</td>
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<td>Torres-Perez; United States v.</td>
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<td>Phillip; United States v.</td>
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<td>Bain Knight</td>
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<tr>
<td>Number/Case</td>
<td>Court</td>
<td>Citation</td>
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<td>Fact</td>
<td>Holding</td>
<td>Summary of Ruling</td>
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All five defendants were convicted. Kelvin Ellis also pled guilty to one count of 18 U.S.C. section 1512(c)(2) relative to a scheme to kill one of the trial witnesses and two counts of 18 U.S.C. section 1503 relative to directing two other witnesses to refuse to testify before the grand jury.

<p>| United States v. McIntosh | Kansas | 2:04-CR-20142 | December 20, 2004 | A felony information was filed against | No | N/A | No |</p>
<table>
<thead>
<tr>
<th>Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Notes</th>
<th>Hearing</th>
<th>Statutory Basis</th>
<th>Other Notes</th>
<th>Should the Case be Researched Further</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States v. Conley; United States v. Slone; United States v. Madden; United</td>
<td>Eastern Kentucky</td>
<td>7:03-CR-00013; 7:03-CR-00014; 7:03-CR-</td>
<td>March 28, 2003 and April 24, 2003</td>
<td>Ten people were indicted on vote buying charges in connection with the 1998 primary</td>
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<td>lawyer Leslie McIntosh for voting in both Wyandotte County, Kansas and Jackson County, Missouri, in the general elections of 2000 and 2002 in violation of 42 U.S.C. section 1973(e). A superseding misdemeanor information was filed, charging McIntosh with causing the deprivation of constitutional rights in violation of 18 U.S.C. section 242, to which the defendant pled guilty.</td>
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<tr>
<td>Name of Case</td>
<td>Court</td>
<td>Citation</td>
<td>Date</td>
<td>Holding</td>
<td>Statute Basis of Order</td>
<td>Other Notes</td>
<td>Should Case be Excluded Further</td>
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<tr>
<td>United States v. Hays, et al.</td>
<td>Eastern Kentucky</td>
<td>7:03-CR-00011</td>
<td>March 7, 2003</td>
<td>Ten defendants were indicted for conspiracy and vote buying for a local judge in Pike County, Kentucky, in the 2002 general election, in violation of 42 U.S.C. sections 1973(c) and 18 U.S.C. section 371. Five defendants were convicted, one defendant was acquitted, and charges against four defendants were dismissed upon motion of the government.</td>
<td>No</td>
<td>N/A</td>
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<tr>
<td>Name of Case</td>
<td>Court</td>
<td>Citation</td>
<td>Date</td>
<td>Allegations</td>
<td>Summary of Event</td>
<td>Other Notes</td>
<td>Should Case be Restarted?</td>
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<tr>
<td>United States v. Braud</td>
<td>Middle Louisiana</td>
<td>3:03-CR-00019</td>
<td>May 2, 2003</td>
<td>Tyrell Mathews Braud was indicted on three counts of making false declarations to a grand jury in connection with his 2002 fabrication of eleven voter registration applications, in violation of 18 U.S.C. section 1623. Braud pled guilty on all counts.</td>
<td>No</td>
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<tr>
<td>United States v.</td>
<td>Western</td>
<td>6:03-CR-</td>
<td>April 12, St. Martinsville City</td>
<td></td>
<td>No</td>
<td>N/A</td>
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<tr>
<td>Case Name</td>
<td>Court</td>
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<tr>
<td>Thibodeaux</td>
<td>Louisiana</td>
<td>60055</td>
<td>2005</td>
<td>Councilwoman Pamela C. Thibodeaux was indicted on two counts of conspiring to submit false voter registration information, in violation of 18 U.S.C. section 371 and 42 U.S.C. section 1973(f)(o). She pled guilty to both charges.</td>
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<tr>
<td>United States v.</td>
<td>Western Missouri</td>
<td>4:04-CR-00401; 4:04-CR-00402; 4:05-CR-00257; 4:05-CR-00258</td>
<td>January 7, 2005; March 28, 2005; September 8, 2005; October 13, 2005</td>
<td>Two misdemeanor informations were filed charging Lorraine Goodrich and James Scherzer, Kansas residents who voted in the 2000 and 2002 general elections on both Johnson County, Kansas and in Kansas City, Missouri. The informations charged deprivation of a</td>
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by causing spurious ballots, in violation of 18 U.S.C. sections 242 and 2. Both pled guilty. Additionally, similar misdemeanor informations were filed against Tammy J. Martin, who voted in both Independence and Kansas City, Missouri in the 2004 general election and Brandon E. Jones, who voted both in Raytown and Kansas City, Missouri in the 2004 general election. Both pled guilty.

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<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Holding</th>
<th>Statutory Basis</th>
<th>Audit Notes</th>
<th>Reconsideration Notes</th>
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<tbody>
<tr>
<td>United States v. Raymond;</td>
<td></td>
<td>04-CR-00141; 04-CR-00146;</td>
<td>December 15, 2005</td>
<td>Two informations were filed charging Allen Raymond, former president of a Virginia-based political consulting firm called GOP Marketplace, and</td>
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<td>United States v. McGee;</td>
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<td>04-CR-00216; 04-CR-00054</td>
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<td>United States v. Tobin;</td>
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<td>United States v. Hansen</td>
<td>New Hampshire</td>
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former executive director of the New Hampshire State Republican Committee, with conspiracy to commit telephone harassment using an interstate phone facility in violation of 18 U.S.C. section 371 and 47 U.S.C. section 223. The charges stem from a scheme to block the phone lines used by two Manchester organizations to arrange drives to the polls during the 2002 general election. Both pled guilty. James Tobin, former New England Regional Director of the Republican National Committee, was indicted on charges of conspiring with others to commit these offenses.
An information was filed charging Shaun Hansen, the principal of an Idaho telemarketing firm called MILO Enterprises which placed the harassing calls, with conspiracy and aiding and abetting telephone harassment, in violation of 18 U.S.C. section 371 and 47 U.S.C. section 223. The information against Hansen was dismissed upon motion of the government. A superseding
<table>
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<tr>
<th>Nature of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Indictment</th>
<th>Holding</th>
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</thead>
<tbody>
<tr>
<td>United States v. Workman</td>
<td>Western North Carolina</td>
<td>1:03-CR-00038</td>
<td>June 30, 2003</td>
<td>A ten-count indictment was returned charging Joshua Workman, a Canadian citizen, with voting and related offenses in</td>
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<tr>
<td>Number (Case)</td>
<td>Court (Jurisdiction)</td>
<td>Citation</td>
<td>Date</td>
<td>Description</td>
<td>Sentence Date</td>
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<tr>
<td>United States v. Shatley, et al.</td>
<td>Western North Carolina</td>
<td>5:03-CR-00035</td>
<td>May 14, 2004</td>
<td>A nine-count indictment was returned charging Wayne Shatley, Anita Moore, Valerie Moore, Carlos &quot;Sunshine&quot; Hood and Ross &quot;Toogie&quot; Banner with conspiracy and vote buying in the Caldwell County 2002 general election, in violation of 42 U.S.C. section 1973i(c) and 18</td>
<td>No</td>
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<tr>
<td>Name of Plaintiff</td>
<td>Court Location</td>
<td>Citation</td>
<td>Date of Indictment</td>
<td>Indictment Details</td>
<td>Sanctions Imposed</td>
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<tr>
<td>United States v. Vargas</td>
<td>South Dakota</td>
<td>05-CR-50085</td>
<td>December 22, 2005</td>
<td>An indictment was filed against Rudolph Vargas, for voting more than once at Pine Ridge in the 2002 general election in violation of 42 U.S.C. section 1973(e). Vargas pled guilty.</td>
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<tr>
<td>United States v. Wells; United States v. Mendez; United States v. Porter; United States v. Hrutkay; United States v. Stapleton; United States v. Thomas E. Esposito; United</td>
<td>Southern West Virginia</td>
<td>02-CR-00234; 02-00101; 02-00145; 02-00149; 02-00173; 05-CR-00002; 05-CR-</td>
<td>July 22, 2003; July 19, 2004; December 7, 2004; January 7, 2005; March 21, 2005; October 11, 2005; December 13, 2005</td>
<td>Danny Ray Wells, Logan County, West Virginia, magistrate, was indicted and charged with violating 18 U.S.C. section 1962. Wells was found guilty. A felony indictment was filed against Logan County sheriff Johnny Mendez for conspiracy to</td>
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<td>States v. Nagy; United States v. Adkins; United States v. Harvey</td>
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<td>defrauded the United States in violation of 18 U.S.C. section 371. Mendez pled guilty. An information was filed charging former Logan County police chief Alvin Ray Porter, Jr., with making expenditures to influence voting in violation of 18 U.S.C. section 597. Porter pled guilty. Logan County attorney Mark Oliver Hrutkay was charged by information with mail fraud in violation of 18 U.S.C. section 1341. Hrutkay pled guilty. Earnest Stapleton, commander of the local VFW, was charged by information with mail fraud. He pled guilty. An information was filed</td>
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<td>Name/Case</td>
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<td>Citations</td>
<td>Date</td>
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<td>United States v. Adkins, et al.</td>
<td>Southern West Virginia</td>
<td>2:04-CR-00162</td>
<td>December 28 &amp; 30, 2005</td>
<td>Jackie Adkins was indicted for vote buying in Lincoln County, West Virginia, in violation of 42 U.S.C. section 1973(c). A superseding indictment added Wandell &quot;Rocky&quot; Adkins to the indictment and charged both defendants with conspiracy to buy votes in violation of 18 U.S.C. section 371 and vote buying. A second superseding indictment was returned which added three additional defendants, Gegory Brent Stowers,</td>
<td>No</td>
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</table>
Charges were later dismissed against Jackie Adkins. An indictment was returned adding two defendants, Jeny Allen Weaver and Ralph Dale Adkins. A superseding indictment was returned adding two additional defendants, Jerry Allen Weaver and Ralph Dale Adkins. A superseding information was filed charging Vance with expenditures to influence voting, in violation of 18 U.S.C. section 597. Vance pled guilty. Superseding informations were filed against Stowers and Dingess for expenditures to influence voting, in
<table>
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<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Charge</th>
<th>Indictions</th>
</tr>
</thead>
</table>
Byas charging them with double voting. Four more indictments were returned charging convicted felons Ethel M. Anderson, Jyto L. Cox, Correan F. Edwards, and Joseph J. Gooden with falsely certifying that they were eligible to vote. Ocasio and Hamilton pled guilty. Prude was found guilty. A mistrial was declared in the Sanders case. Brooks was acquitted. Byas signed a plea agreement agreeing to plead to a misdemeanor 18 U.S.C. section 242 charge. Swift moved to change his plea. Davis was found incompetent to stand.
Gooden is a fugitive. Alicea was acquitted. Four cases are pending — Anderson, Cox, Edwards, and Little.

<table>
<thead>
<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Citations</th>
<th>Issue</th>
<th>Nature</th>
<th>Notice</th>
<th>Pending Parties or Notes</th>
<th>Other Notes</th>
<th>Should the Case be Researched Further</th>
</tr>
</thead>
<tbody>
<tr>
<td>Am. Ass'n of People with Disabilities v. Shelley</td>
<td>United States District Court for the Central District of California</td>
<td>324 F. Supp. 2d 1120; 2004 U.S. Dist. LEXIS 12587</td>
<td>July 6, 2004</td>
<td>The voters urged the invalidation of the Secretary's directives because, allegedly, their effect was to deprive the voters of the opportunity to vote using touch-screen technology. Although it was not disputed that some disabled persons would be unable to vote independently and in private without the use of DREs, it was clear that they would not be deprived of their fundamental right to vote. The Americans with Disabilities Act did not require accommodation that would enable disabled persons to vote in a manner that was comparable in every way with the voting rights enjoyed by persons without disabilities. Rather, it mandated that voting programs be made accessible. Defendant's decision to suspend the use of DREs pending</td>
<td>No</td>
<td>N/A</td>
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The evidence did not support the conclusion that the elimination of the DREs would have a discriminatory effect on the visually or manually impaired. Thus, the voters showed little likelihood of success on the merits. The individual's request for a temporary restraining order, or, in the alternative, a preliminary injunction, was denied.

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<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Issue</th>
<th>Holding</th>
<th>Strategy Basis of Note</th>
<th>Other Notes</th>
<th>Supplemental Reference Further</th>
</tr>
</thead>
<tbody>
<tr>
<td>Am. Ass'n of People with Disabilities v. Hood</td>
<td>United States District Court for the Middle District of Florida</td>
<td>310 F. Supp. 2d 1226; 2004 U.S. Dist. LEXIS 5615</td>
<td>March 24, 2004</td>
<td>Plaintiffs, disabled voters, and a national organization, sued defendants, the Florida Secretary of State, the Director of the Division of Elections of the Florida Department of State, and a county supervisor of elections, under Title II of the Americans With Disabilities Act and Section 504 of</td>
<td>The voters were visually or manually impaired. The optical scan voting system purchased by the county at issue was not readily accessible to visually or manually impaired voters. The voters were unable to vote using the system without third-party assistance. If it was feasible for the county to purchase a readily accessible system, then the voters' rights under the ADA and the RA were violated. The court found that the manually impaired voter's rights were violated. To the extent &quot;jelly switches&quot; and &quot;sip and puff&quot; devices needed to be</td>
<td>No</td>
<td>N/A</td>
<td>No</td>
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Summary judgment was granted for the Secretary and the Director as to visually impaired voters.

The Rehabilitation Act of 1973. Summary judgment was granted for the Secretary and the Director as to visually impaired voters. It was not feasible for the supervisor to provide such a system, since no such system had been certified at the time of the county's purchase. 28 C.F.R. § 35.160 did not require that visually or manually impaired voters be able to vote in the same or similar manner as non-disabled voters. Visually and manually impaired voters had to be afforded an equal opportunity to participate in and enjoy the benefits of voting. The voters' "generic" discrimination claim was coterminous with their claim under 28 C.F.R. § 35.151. A declaratory judgment was entered against the supervisor to the extent another voting system would have permitted unassisted voting. The supervisor was directed to have some voting machines permitting visually impaired voters to vote alone. The supervisor was directed to procure another system if the county's system was not certified and/or did not permit mouth stick voting. The Secretary and Director were granted judgment against the voters.
Troiano v. Lepore

United States District Court for the Southern District of Florida

2003 U.S. Dist. LEXIS 25850

November 3, 2003


The complaint alleged that after the 2000 elections Palm Beach County purchased a certain number of sophisticated voting machines called the "Sequoia." According to the voters, even though such accessible machines were available, the supervisor decided not to place such accessible machines in each precinct because it would slow things down too much. The court found that the voters lacked standing because they failed to show that they had suffered an injury in fact. The voters also failed to show a likely threat of a future injury because there was no reasonable grounds to believe that the audio components of the voting machines would not be provided in the future. The voters also failed to state an injury that could be redressed by a favorable decision, because the supervisor was already using the Sequoia machines and had already trained poll workers on the use of the machines. Finally, the action was moot because the Sequoia machines had been provided and there was no reasonable expectation that the machines would not have audio components available in the future.
available audio components in voting booths to assist persons who were blind or visually impaired violated state and federal law. The United States District Court for the Southern District of Florida entered summary judgment in favor of the election supervisor. The voters appealed. Specifically, the election supervisor had ceased the allegedly illegal practice of limiting access to the audio components prior to receiving notice of the litigation. Moreover, since making the decision to use audio components in every election, the election supervisor had consistently followed that policy and taken actions to implement it even prior to the litigation. Thus, the appellate court could discern no hint that she had any intention of removing the accessible voting machines in the future. Therefore, the voters' claims

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<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Issue</th>
<th>Holding</th>
<th>Summary of Issue</th>
</tr>
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<tbody>
<tr>
<td>Troiano v. Supervisor of Elections</td>
<td>United States Court of Appeals for the Eleventh Circuit</td>
<td>382 F.3d 1276; 2004 U.S. App. LEXIS 18497</td>
<td>September 1, 2004</td>
<td>Plaintiff visually impaired registered voters sued defendant county election supervisor, alleging that the failure to make available audio components in voting booths to assist persons who were blind or visually impaired violated state and federal law. The United States District Court for the Southern District of Florida entered summary judgment in favor of the election supervisor. The voters appealed.</td>
<td>The district court granted the election supervisor summary judgment on the grounds that the voters did not have standing to assert their claims and the claims were moot. The appellate court agreed that the case was moot because the election supervisor had furnished the requested audio components and those components were to be available in all of the county's voting precincts in upcoming elections. Specifically, the election supervisor had ceased the allegedly illegal practice of limiting access to the audio components prior to receiving notice of the litigation. Moreover, since making the decision to use audio components in every election, the election supervisor had consistently followed that policy and taken actions to implement it even prior to the litigation. Thus, the appellate court could discern no hint that she had any intention of removing the accessible voting machines in the future. Therefore, the voters' claims were moot.</td>
<td>No</td>
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</tbody>
</table>
State and local election officials and members of a city council, claiming violation of the Americans with Disabilities Act, 42 U.S.C.S. 512101 et seq., and the Rehabilitation Act of 1973, and Fla. Const. art. VI, § 1. Defendants filed motions to dismiss. Held that it could not say that plaintiffs would be unable to prove any state of facts that would satisfy the ripeness and standing requirements. The issue of whether several Florida statutory sections were violative of the Florida Constitution were so intertwined with the federal claims that to decline supplemental jurisdiction be an abuse of discretion. Those statutes which provided for assistance in voting did not violate Fla. Const. art. VI, § 1. Because plaintiffs may be able to prove that visually and manually impaired voters were being denied meaningful access to the service, program, or activity, the court could not say with certainty that they would were moot, and the district court's dismissal was affirmed for lack of subject matter jurisdiction. The decision was affirmed.

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<th>Name of Case</th>
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<tr>
<th>Date</th>
<th>Ruling</th>
<th>Statutes and Case Law</th>
<th>Other Notes</th>
<th>Should Case be Researcheed Further</th>
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<tr>
<td>October 16, 2002</td>
<td>Plaintiff organization of people with disabilities and certain visually and manually impaired voters filed an action against defendant state and local election officials and members of a city council, claiming violation of the Americans with Disabilities Act, 42 U.S.C.S. § 12101 et seq., and the Rehabilitation Act of 1973, and Fla. Const. art. VI, § 1. Defendants filed motions to dismiss.</td>
<td>Individual plaintiffs were unable to vote unassisted with the equipment currently used in the county or the equipment the county had recently purchased. In order to vote, the impaired individuals relied on the assistance of third parties. The court held that it could not say that plaintiffs would be unable to prove any state of facts that would satisfy the ripeness and standing requirements. The issue of whether several Florida statutory sections were violative of the Florida Constitution were so intertwined with the federal claims that to decline supplemental jurisdiction be an abuse of discretion. Those statutes which provided for assistance in voting did not violate Fla. Const. art. VI, § 1. Because plaintiffs may be able to prove that visually and manually impaired voters were being denied meaningful access to the service, program, or activity, the court could not say with certainty that they would</td>
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<td>Name</td>
<td>Court</td>
<td>Citation</td>
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<td>Petitioner</td>
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<tr>
<td>Jenkins v.</td>
<td>Court of Appeal of Louisiana, Fourth Circuit</td>
<td>883 So. 2d 537; 2004 La. App. LEXIS 2433</td>
<td>October 8, 2004</td>
<td>Petitioner, a candidate for a parish juvenile court judgeship, failed to qualify for a runoff election. She filed suit against defendant, the clerk of criminal court for the parish seeking a new election, based on grounds of substantial misconduct.</td>
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</table>

Not be entitled to relief under any state of facts which could be proved in support of their claims. Defendant council members were entitled to absolute legislative immunity. The state officials' motion to dismiss was granted in part such that the counts were dismissed with prejudice to the extent plaintiffs asserted that they had been excluded from or denied the benefits of a program of direct and secret voting and in part was dismissed with leave to amend. The local officials' motion to dismiss was granted in part such that all counts against the city council members were dismissed.
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<tr>
<th>Case Title</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Facts</th>
<th>Ruling</th>
<th>Party Status</th>
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<tbody>
<tr>
<td>In re Election Contest of Democratic Primary Election</td>
<td>Supreme Court of Ohio</td>
<td>88 Ohio St. 3d 258; 2000</td>
<td>March 29, 2000</td>
<td>Appellant sought review of the judgment of the court of common</td>
<td>Appellant contended that an election irregularity occurred when the board failed to meet and act by majority vote on another candidate's withdrawal.</td>
<td>No N/A No</td>
</tr>
<tr>
<td>Hester v. McKeithen</td>
<td>Court of Appeal of Louisiana, Fourth Circuit</td>
<td>882 So. 2d 1291; 2004 La. App. LEXIS 2429</td>
<td>October 8, 2004</td>
<td>Petitioner, school board candidate, filed suit against defendants, Louisiana Secretary of State and district court clerk, contesting the school board election results. The trial court rendered judgment against the candidate, finding no basis for the election to be declared void. The candidate appealed.</td>
<td>The candidate argued that the trial court erred in not setting aside the election, even after acknowledging in its reasons for judgment numerous irregularities with the election process. The appellate court ruled that had the irregularities not occurred the outcome would have been exactly the same. Judgment affirmed.</td>
<td>No N/A No</td>
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<tr>
<td>Name of Case</td>
<td>Court</td>
<td>Citation</td>
<td>Date</td>
<td>Issue</td>
<td>Holding</td>
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<td>Held May 4, 1999</td>
<td>Ohio 325; 725 N.E.2d 271; 2000 Ohio LEXIS 607</td>
<td>pleas denying his election contest challenging an opponent's nomination for election irregularity.</td>
<td></td>
<td>instead permitting its employees to make decisions. Appellant had to prove by clear and convincing evidence that one or more election irregularities occurred and it affected enough votes to change or make uncertain the result of the election. Judgment affirmed. The appellant did not establish election irregularity by the board's actions on the candidate's withdrawal, the board acted diligently and exercised its discretion in keeping the candidate's name on the ballot and notifying electors of his withdrawal.</td>
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<tr>
<td>In re Election Contest As to Watertown Special Referendum Election</td>
<td>Supreme Court of South Dakota 2001 SD 62; 628 N.W.2d 336; 2001 S.D. LEXIS 66</td>
<td>May 23, 2001 Appellant sought review of the judgment of the circuit court declaring a local election valid and declining to order a new election.</td>
<td></td>
<td>The burden was on appellants to show not only that voting irregularities occurred, but also show that those irregularities were so egregious that the will of the voters was suppressed. Appellants did not meet their burden, as mere inconvenience or delay in voting was not enough to overturn the election. Judgment affirmed.</td>
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<tr>
<td>Jones v. Jessup</td>
<td>Supreme Court of Georgia 279 Ga. 531; 615 S.E.2d 529; 2005 Ga. LEXIS</td>
<td>June 30, 2005 Defendant incumbent appealed a judgment by the trial court that invalidated an election for the</td>
<td></td>
<td>After the candidate lost the sheriff's election to the incumbent, he contested the election, asserting that there were sufficient irregularities to place in doubt the election results. The state supreme court held that the candidate</td>
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with all of the essential requirements of denying his motion manner prescribed by statute. The trial court noted when the ballots had not been preserved in such a manner, no recount would be conducted. The court further noted a petition alleging irregularities in an election could be based upon an allegation that it was impossible to determine with mathematical certainty which

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<th>Name of Case</th>
<th>Court of Original Jurisdiction</th>
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<th>Facts and Issues</th>
<th>Decision</th>
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<tbody>
<tr>
<td>Toliver v. Thompson</td>
<td>Supreme Court of Oklahoma</td>
<td>2000 OK 98; 17 P.3d 464; 2000 Okla. LEXIS 101</td>
<td>December 21, 2000</td>
<td>Petitioner challenged an order of the district court denying his motion to compel a recount of votes from an election.</td>
<td>The court held a recount of votes cast in an election could occur when the ballots had been preserved in the manner prescribed by statute. The trial court noted when the ballots had not been preserved in such a manner, no recount would be conducted. The court further noted a petition alleging irregularities in an election could be based upon an allegation that it was impossible to determine with mathematical certainty which</td>
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<tr>
<td>Adkins v. Huckabee</td>
<td>Supreme Court of Louisiana</td>
<td>755 So. 2d 206; 2000 Ia. LEXIS 504</td>
<td>February 25, 2000</td>
<td>Plaintiff candidate challenged judgment of court of appeal, second circuit, which reversed the lower court's judgment and declared defendant candidate winner of a runoff election for sheriff.</td>
<td>The issue presented for the appellate court's determination was whether the absentee voting irregularities plaintiff candidate complained of rendered it impossible to determine the outcome of the election for sheriff. The Louisiana supreme court concluded that the lower court had applied the correct standard, substantial compliance, to the election irregularities, but had erred in its application by concluding that the contested absentee ballots substantially complied with the statutory requirements. The supreme court found that in applying substantial compliance to five of the ballot irregularities, the trial court correctly vacated the general election and set it aside because those absentee ballots should have been disqualified. Because of the candidate was entitled to be issued a certificate of election. The Oklahoma supreme court held petitioner failed to show that the actual votes counted in the election were tainted with irregularity, and similarly failed to show a statutory right to a new election based upon a failure to preserve the ballots. Judgment affirmed.</td>
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</tbody>
</table>
In re Gray—Sadler  
Supreme Court of New Jersey  
164 N.J. 468; 753 A.2d 1101; 2000 N.J. LEXIS 668  
June 30, 2000  
Appellants, write—in candidates for the offices of mayor and borough council, appealed the judgment of the superior court, appellate division reversing the trial court's decision to set aside the election results for those offices due to irregularities related to the write—in instructions and defective voting machines. The New Jersey supreme court held that the votes that were rejected by election officials did not result from the voters' own errors, but from the election officials' noncompliance with statutory requirements. In other words, the voters were provided with patently inadequate instructions and defective voting machines. Moreover, appellants met the statutory requirement for successfully contesting the election results by showing that enough qualified voters were denied the right to cast write—in votes as to affect the outcome of the election. Judgment reversed and the state trial court's decision reinstated.

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<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Facts</th>
<th>Relief</th>
<th>Statutory Basis for Relief</th>
<th>Other Basis</th>
<th>Should Case Be Reversed in Full?</th>
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<tbody>
<tr>
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<td>164 N.J. 468; 753 A.2d 1101; 2000 N.J. LEXIS 668</td>
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<td>Goodwin v. St. Thomas—St.</td>
<td>Territorial Court of the Virgin</td>
<td>43 V.I. 89; 2000</td>
<td>December 13, 2000</td>
<td>Plaintiff political candidate alleged</td>
<td>Plaintiff alleged that defendants counted unlawful absentee ballots that</td>
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006922
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<th>Name of Case</th>
<th>Subject</th>
<th>Citation</th>
<th>Argument</th>
<th>Ruling</th>
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<tbody>
<tr>
<td>John Bd. of Elections</td>
<td>Islands</td>
<td>V.I. LEXIS 15</td>
<td>The plaintiff's counsel argued that the absentee ballots violated the territorial election law, and that the improper inclusion of such ballots by the defendants, election board, and supervisor, resulted in the plaintiff's loss of the election. Plaintiff sued defendants seeking invalidation of the absentee ballots and certification of the election results tabulated without such ballots.</td>
<td>The territorial court held that plaintiff was not entitled to relief since he failed to establish that the alleged absentee voting irregularities would require invalidation of a sufficient number of ballots to change the outcome of the election. While the unsealed ballots constituted a technical violation, the outer envelopes were sealed and thus substantially complied with election requirements. Further, while defendants improperly counted one ballot where a sealed ballot envelope and a loose ballot were in the same outer envelope, the one vote involved did not change the election result. Plaintiff's other allegations of irregularities were without merit since ballots without postmarks were valid, ballots without signatures were not counted, and ballots without notarized signatures were proper.</td>
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<td>Name of Case</td>
<td>Court</td>
<td>Ch. 2d</td>
<td>Date</td>
<td>Facts</td>
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<tr>
<td>Johnson v. Lopez-Torres</td>
<td>Supreme Court of New York, Appellate Division, Second Department</td>
<td>2005 NY Slip Op 7825; 2005 N.Y. App. Div. LEXIS 11276</td>
<td>October 21, 2005</td>
<td>In a proceeding for a re-canvas of certain affidavit ballots cast in the Democratic Party primary election for the public office of surrogate, the supreme court denied appellant candidate's petition requesting the same and declared appellee opponent the winner of that election.</td>
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<tr>
<td>Ex parte Avery</td>
<td>Supreme Court of Alabama</td>
<td>843 So. 2d 137; 2002 Ala. LEXIS 239</td>
<td>August 23, 2002</td>
<td>Petitioner probate judge moved for a writ of mandamus directing a circuit judge to vacate his order requiring the probate judge to transfer all election materials to the probate clerk.</td>
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006924
Primary election for the office of sheriff, appellant candidate for judicial review with prejudice. He
circuit clerk and holding him in contempt for failing to do so. The probate judge also requested that said material be turned
over to the district attorney, pursuant to an outstanding subpoena.
district attorney received several claims of irregularities in the election, some of which could constitute voter fraud.
Petition granted and writ issued.

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<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Code</th>
<th>Date</th>
<th>Issue</th>
<th>Holding</th>
<th>Citation</th>
<th>Other Note</th>
<th>Should the Case Be Reversed?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Harpole v. Kemper County Democratic Exec. Comm.</td>
<td>Supreme Court of Mississippi</td>
<td>908 So. 2d 129; 2005 Miss. LEXIS 463</td>
<td>August 4, 2005</td>
<td>After his loss in a primary election for the office of sheriff, appellant candidate sued appellees, a political party's executive committee and the incumbent sheriff, alleging irregularities in the election. The circuit court dismissed the candidate's petition for judicial review with prejudice. He appealed.</td>
<td>The candidate alleged the sheriff had his deputies transport prisoners to the polling places, felons voted, and the absentee voter law was breached. The committee agreed with the last contention and threw out the absentee ballots (seven percent of votes cast); after a recount, the sheriff still prevailed. The trial court dismissed the case due to alleged defects in the petition; in the alternative, it held that the candidate failed to sufficiently allege violations and irregularities in the election. The supreme court held that the petition was not defective. Disqualification of seven percent of the total votes was not substantial enough so as to cause the will of the voters to</td>
<td>No</td>
<td>N/A</td>
<td>No</td>
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<tr>
<td>Name of Case</td>
<td>Court</td>
<td>Citation</td>
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<td>Issue</td>
<td>Holding</td>
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<td>United States v. Madden</td>
<td>United States Court of Appeals for the Sixth Circuit</td>
<td>403 F.3d 347; 2005 U.S. App. LEXIS 5326</td>
<td>April 4, 2005</td>
<td>Defendant appealed his conviction for violating the federal vote-buying statute. He also appealed the sentence imposed by the United States District Court for the Eastern District of Kentucky at Pikeville. The district court applied the U.S. Sentencing Guidelines Manual (Guidelines) § 3B1.1(c) supervisory–role enhancement and increased defendant's base offense level by two</td>
<td>Defendant paid three people to vote for a local candidate in a primary election. The same ballot contained candidates for the U.S. Senate. While he waived his right to appeal his conviction, he nonetheless asserted two arguments in seeking to avoid the waiver. He first posited that the vote buying statute prohibited only buying votes for federal candidates—a prohibition not violated by his conduct. In the alternative, he stated if the statute did criminalize buying votes for state or local candidates, then the statute was unconstitutional. Both arguments failed. Defendant argued that applying the supervisory–role enhancement constituted impermissible double counting because the supervision he exercised was no more than necessary to establish a vote–buying offense.</td>
<td>No</td>
<td>N/A</td>
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$50 for their votes. The vote sellers convicted were remanded for

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<tr>
<th>Name of Case</th>
<th>United States Court of Appeals for the Sixth Circuit</th>
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<tbody>
<tr>
<td>Date</td>
<td>June 3, 2005</td>
</tr>
<tr>
<td>Holding</td>
<td>Defendant pled guilty to vote buying in a federal election. The United States District Court for the Eastern District of Kentucky sentenced defendant to 10 months in custody and recommended that the sentence be served at an institution that could accommodate his medical condition. The defendant was released from prison to halfway house after serving 9 months. The United States District Court for the Eastern District of Kentucky sentenced defendant to 10 months in custody and recommended that the sentence be served at an institution that could accommodate his medical condition. The defendant was released from prison to halfway house after serving 9 months.</td>
</tr>
<tr>
<td>Result</td>
<td>Defendant offered to pay voters for voting in a primary election. Defendant claimed that the vote buying statute did not apply to him because his conduct related solely to a candidate for a county office. Alternatively, defendant asserted that the statute was unconstitutional because it exceeded Congress' enumerated powers. Finally, defendant argued that the district court erred when it failed to consider his medical condition as a ground for a downward departure at sentencing. The argument also failed. Defendant next argued that the district court erred by applying the vulnerable-victim enhancement under U.S. Sentencing Guidelines Manual § 3A1.1(b)(1). He acknowledged that he knew the mentally ill people who sold their votes were vulnerable, but maintained they were not victims because they received $50 for their votes. The vote sellers were not victims for Guidelines purposes. The district court erred. Defendant's appeal of conviction was dismissed. Defendant's sentence was vacated, and the case was remanded for resentencing.</td>
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<td>Vote</td>
<td>No</td>
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accommodate defendant's medical needs. Defendant appealed his conviction and sentence. appellate court found that the vote buying statute applied to all elections in which a federal candidate was on the ballot, and the government need not prove that defendant intended to affect the federal component of the election by his corrupt practices. The facts admitted by defendant at his guilty plea hearing established all of the essential elements of an offense. The Elections Clause and the Necessary and Proper Clause combined to provide Congress with the power to regulate mixed federal and state elections even when federal candidates were running unopposed. There was no error in the district court's decision on departure under U.S. Sentencing Guidelines Manual § 5H1.4. Defendant's conviction and sentence were affirmed.

| United States v. Smith  | United States Court of Appeals for the Sixth Circuit | 139 Fed. Appx. 681; 2005 U.S. App. LEXIS 14855 | July 18, 2005 | Defendants were convicted of vote buying and conspiracy to buy votes. The United States District Court for the Eastern District of Kentucky entered judgment on | One of the defendants was a state representative who decided to run for an elected position. Defendants worked together and with others to buy votes. During defendants’ trial, in addition to testimony regarding vote buying, evidence was introduced that two witnesses had been threatened. The appellate court found that defendants | No | N/A | No |
The jury verdict and sentenced defendants. Defendants appealed. The jury verdict and sentenced defendants. Defendants appealed.

Failed to show evidence of prejudice with regard to denial of the motion for severance. Threat evidence was not excludable under Fed. R. Evid. 404(b) because it was admissible to show consciousness of guilt without any inference as to the character of defendants. Admission of witnesses' testimony was proper because each witness testified that he or she was approached by a member of the conspiracy and offered money for his or her vote. The remaining incarcerated defendant's challenges to his sentence had merit because individuals who sold their votes were not "victims" for the purposes of U.S. Sentencing Guidelines Manual § 3A1.1. Furthermore, application of U.S. Sentencing Guidelines Manual § 3B1.1(b) violated defendant's Sixth Amendment rights because it was based on facts that defendant did not admit or proved to the jury beyond a reasonable doubt. Defendants' convictions were affirmed. The remaining incarcerated defendant's sentence was vacated and his case was remanded for resentencing in accordance with Booker.
<table>
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<tr>
<th>Case</th>
<th>Court of Appeal of Louisiana, Second Circuit</th>
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<tr>
<td>Date</td>
<td>April 23, 2002</td>
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</table>
| Party | Plaintiff incumbent police chief sued defendant challenger, the winning candidate, to have the election nullified and a new election held based on numerous irregularities and unlawful activities by the challenger and his supporters. The challenger won the election by a margin of four votes. At the end of the incumbent
| City | 816 So. 2d 349; 2002 La. App. LEXIS 1138 |
| Note | The incumbent argued that: (1) the number of persons who were bribed for their votes by the challenger’s worker was sufficient to change the outcome of the election; (2) the trial judge failed to inform potential witnesses that they could be given immunity from prosecution for bribery of voters if they came forth with truthful testimony; (3) the votes of three of his ardent supporters should have been counted because they were incarcerated for the sole purpose of keeping them from campaigning and voting; and (4) the district attorney, a strong supporter of the challenger, abused his power when he subpoenaed the incumbent to appear before the grand jury a week preceding the election. The appellate court held no more than two votes would be subtracted, a difference that would be insufficient to change the election result or make it impossible to determine. The appellate court found the trial judge read the immunity portion of the statute to the potential witnesses. The appellate court found the arrests of the three supporters were the result of grand jury indictments, and there was no manifest error in |
| Supporter Note | No |
| Other Note | N/A |
| Spotted Category | No |
Eason v. State

Court of Appeals of Mississippi

2005 Miss. App. LEXIS 1017

December 13, 2005

Defendant appealed a decision of circuit court convicting him of one count of conspiracy to commit voter fraud and eight counts of voter fraud. Defendant was helping with his cousin's campaign in a run-off election for county supervisor. Together, they drove around town, picking up various people who were either at congregating spots or their homes. Defendant would drive the voters to the clerk's office where they would vote by absentee ballot and defendant would give them beer or money. Defendant claimed he was entitled to a mistrial because the prosecutor advanced an impermissible "sending the message" argument. The court held that it was precluded from reviewing the entire context in which the argument arose because, while the prosecutor's closing argument was in the record, the defense counsel's closing argument was not. Also, because the prosecutor's statement was incomplete due to defense counsel's objection, the court could not say that the statement made it impossible for defendant to receive a fair trial. Furthermore, the trial judge did not
District of Kentucky
LENS 31709
fraud and conspiracy to commit mail fraud and vote--buying. First defendant filed a motion to recuse. Second defendant's motion to join the motion to recuse was granted. First defendant moved to compel the Government to grant testimonial use immunity to second defendant and moved to sever defendants' arguments. The fact that the judge's husband was the commissioner of the Kentucky Department of Environmental Protection, a position to which he was appointed by the Republican Governor, was not relevant. The judge's husband was neither a party nor a witness. The court further concluded that no reasonable person could find that the judge's spouse had any direct interest in the instant action. As for issue of money donated by the judge's husband to Republican opponents of first defendant, the court could not discern any reason why such facts warranted recusal. First defendant asserted that abuse his discretion when he did not allow defendant to ask the individual whether she wanted to see defendant go to prison because the individual's potential bias was shown by the individual's testimony that she expected the prosecution to recommend her sentence. The court affirmed defendant's conviction.

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<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Jurisdiction</th>
<th>Date</th>
<th>Issue</th>
<th>Ruling</th>
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<tbody>
<tr>
<td>United States v. Turner</td>
<td>United States District Court for the Eastern District of Kentucky</td>
<td>2005 U.S. Dist. LEXIS 31709</td>
<td>November 30, 2005</td>
<td>Defendants were charged with committing mail fraud and conspiracy to commit mail fraud and vote-buying. First defendant filed a motion to recuse. Second defendant's motion to join the motion to recuse was granted. First defendant moved to compel the Government to grant testimonial use immunity to second defendant and moved to sever defendants' arguments.</td>
<td>Defendants argued that recusal was mandated by 28 U.S.C.S. § 455(a) and (b)(1). The court found no merit in defendants' arguments. The fact that the judge's husband was the commissioner of the Kentucky Department of Environmental Protection, a position to which he was appointed by the Republican Governor, was not relevant. The judge's husband was neither a party nor a witness. The court further concluded that no reasonable person could find that the judge's spouse had any direct interest in the instant action. As for issue of money donated by the judge's husband to Republican opponents of first defendant, the court could not discern any reason why such facts warranted recusal. First defendant asserted that abuse his discretion when he did not allow defendant to ask the individual whether she wanted to see defendant go to prison because the individual's potential bias was shown by the individual's testimony that she expected the prosecution to recommend her sentence. The court affirmed defendant's conviction.</td>
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</table>
illegal activity alleged in the indictment. The court found the summary of expected testimony to be too general to grant immunity. In addition, it was far from clear whether the court had the power to grant testimonial use immunity to second defendant. Defendants' motion to recuse was denied. First defendant's motions to compel and to sever were denied.

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<tr>
<th>Citation</th>
<th>Issue</th>
<th>Date</th>
<th>Holding</th>
<th>Reasoning</th>
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<td>Ways v. Shively</td>
<td>264 Neb. 250; 646 N.W.2d 621; 2002 Neb. LEXIS 158</td>
<td>July 5, 2002</td>
<td>Appellant felon filed a writ of mandamus, which sought to compel appellee Election Commissioner of Lancaster County, Nebraska, to permit him to register to vote. The District Court for Lancaster County denied the second defendant should have been granted use immunity based on a belief that second defendant would testify that first defendant did not agree to, possess knowledge of, engage in, or otherwise participate in any of the illegal activity alleged in the indictment. The court found the summary of expected testimony to be too general to grant immunity. In addition, it was far from clear whether the court had the power to grant testimonial use immunity to second defendant. Defendants' motion to recuse was denied. First defendant's motions to compel and to sever were denied.</td>
<td>No</td>
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<tr>
<td>Name of Case</td>
<td>Court</td>
<td>Citation</td>
<td>Fact</td>
<td>Holding</td>
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<td>Fischer v. Governor</td>
<td>Supreme Court of New Hampshire</td>
<td>145 N.H. 28; 749 A.2d 321; 2000 N.H. LEXIS 16</td>
<td>felon's petition for writ of mandamus and dismissed the petition. The felon appealed.</td>
<td>right to vote could be restored was through a warrant of discharge issued by the Nebraska Board of Pardons—a warrant of discharge had not been issued. The supreme court ruled that the certificate of discharge issued to the felon upon his release did not restore his right to vote. The supreme court ruled that as a matter of law, the specific right to vote was not restored to the felon upon his discharge from incarceration at the completion of his sentences. The judgment was affirmed.</td>
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</tbody>
</table>
of the article, its constitutional history, and legislation pertinent to the right of felons to vote, the court concluded that the legislature retained the authority under the article to determine voter qualifications and that the felon disenfranchisement statutes were a reasonable exercise of legislative authority, and reversed. Judgment reversed because the court concluded that the legislature retained its authority under the New Hampshire Constitution to determine voter qualifications and that the felon disenfranchisement statutes were a reasonable exercise of legislative authority.

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<tr>
<th>Case</th>
<th>Court</th>
<th>Issue</th>
<th>Decision</th>
<th>Statutory Basis</th>
<th>Other Notes</th>
<th>Stare Decisis Relevance</th>
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<tbody>
<tr>
<td>Mixon v. Commonwealth</td>
<td>Commonwealth Court of Pennsylvania</td>
<td>759 A.2d 442; 2000 Pa. Commw. LEXIS 534</td>
<td>September 18, 2000</td>
<td>Respondents filed objections to petitioners' complaint seeking declaratory relief as to the unconstitutionality of the Pennsylvania Election Code, 25 Pa. Cons. Stat. §§</td>
<td>Petitioner convicted felons were presently or had formerly been confined in state prison. Petitioner elector was currently registered to vote in respondent state. Petitioners filed a complaint against respondent state seeking declaratory relief challenging as unconstitutional, state election and voting laws that excluded confined felons from the definition of qualified</td>
<td>No</td>
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<tr>
<td>Case</td>
<td>Court</td>
<td>Citation</td>
<td>Date</td>
<td>Plaintiff's Allegations</td>
<td>Judgment</td>
<td>Issue</td>
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<td>NAACP Philadelphia Branch v. Ridge</td>
<td>United States District Court for the Eastern District of Pennsylvania</td>
<td>2600 - 3591, and the Pennsylvania Voter Registration Act, 25 Pa. Cons. Stat. §§ 961.101 - 961.5109, regarding felon voting rights.</td>
<td>August 14, 2000</td>
<td>Plaintiffs moved for a preliminary injunction, which the parties agreed to consolidate with the Pennsylvania Voter Registration Act, contended that the ex-felon, unincorporated association, and others, filed a civil rights suit against defendant state and local officials.</td>
<td>No</td>
<td>N/A</td>
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</tbody>
</table>
Clause of U.S. all three of the special circumstances doctrine were present in the case, but found that abstention was not appropriate under the circumstances since it did not agree with plaintiffs' contention that the time constraints caused by the upcoming election meant that the option of pursuing their claims in state court did not offer plaintiffs an adequate remedy. Plaintiffs motion for permanent injunction denied; the court abstained from deciding merits of plaintiffs' claims under the Pullman doctrine because all three of the special circumstances necessary to invoke the doctrine were present in the case; all further proceedings stayed until further order.

| Farrakhan v. | United States | 2000 | December | Plaintiffs, convicted | The felons alleged that Washington's | No | N/A | No |
the Eastern
District of
Washington
U.S.
Dist.
LEXIS
22212

racial minorities,
sued defendants for
alleged violations of
the Voting Rights
Act. The parties filed
cross--motions for
summary judgment.

felin disenfranchisement and
restoration of civil rights schemes,
preamised upon Wash. Const. art. VI §
3, resulted in the denial of the right to
vote to racial minorities in violation of
the VRA. They argued that race bias
in, or the discriminatory effect of, the
criminal justice system resulted in a
disproportionate number of racial
minorities being disenfranchised
following felony convictions. The
court concluded that Washington's
felon disenfranchisement provision
disenfranchised a disproportionate
number of minorities; as a result,
minorities were under--represented in
Washington's political process. The
Rooker-Feldman doctrine barred the
felons from bringing any as--applied
challenges, and even if it did not bar
such claims, there was no evidence that
the felons' individual convictions were
born of discrimination in the criminal
justice system. However, the felons'
facial challenge also failed. The
remedy they sought would create a new
constitutional problem, allowing
disenfranchisement only of white
felons. Further, the felons did not
establish a causal connection between
Johnson v. Bush  
United States District Court for the Southern District of Florida  
214 F. Supp. 2d 1333; 2002 U.S. Dist. LEXIS 14782  
July 18, 2002  
Plaintiff felons sued defendant state officials for alleged violations of their constitutional rights. The officials moved and the felons cross-moved for summary judgment.  
The felons had all successfully completed their terms of incarceration and/or probation, but their civil rights to register and vote had not been restored. They alleged that Florida's disenfranchisement law violated their rights under First, Fourteenth, Fifteenth, and Twenty-Fourth Amendments to the United States Constitution, as well as § 1983 and §§ 2 and 10 of the Voting Rights Act of 1965. Each of the felons' claims was fatally flawed. The felons' exclusion from voting did not violate the Equal Protection or Due Process Clauses of the United States Constitution. The First Amendment did not guarantee felons the right to vote. Although there was evidence that racial animus was a factor in the initial enactment of Florida's disenfranchisement law, there was no evidence that race played a part in the re-enactment of that provision. Although it appeared that there was a disparate impact on minorities, the court granted defendants' motion and denied the felons' motion for summary judgment.

<table>
<thead>
<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Date</th>
<th>Brief Description</th>
<th>Outcome</th>
</tr>
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<tbody>
<tr>
<td>Johnson v. Bush</td>
<td>United States District Court for the Southern District of Florida</td>
<td>July 18, 2002</td>
<td>Plaintiff felons sued defendant state officials for alleged violations of their constitutional rights. The officials moved and the felons cross-moved for summary judgment.</td>
<td>The felons had all successfully completed their terms of incarceration and/or probation, but their civil rights to register and vote had not been restored. They alleged that Florida's disenfranchisement law violated their rights under First, Fourteenth, Fifteenth, and Twenty-Fourth Amendments to the United States Constitution, as well as § 1983 and §§ 2 and 10 of the Voting Rights Act of 1965. Each of the felons' claims was fatally flawed. The felons' exclusion from voting did not violate the Equal Protection or Due Process Clauses of the United States Constitution. The First Amendment did not guarantee felons the right to vote. Although there was evidence that racial animus was a factor in the initial enactment of Florida's disenfranchisement law, there was no evidence that race played a part in the re-enactment of that provision. Although it appeared that there was a disparate impact on minorities, the court granted defendants' motion and denied the felons' motion for summary judgment.</td>
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<tr>
<td>Name of Case</td>
<td>Court</td>
<td>Citation</td>
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<td>Issue</td>
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<tr>
<td>King v. City of Boston</td>
<td>United States District Court for the District of Massachusetts</td>
<td>2004 U.S. Dist. LEXIS 8421</td>
<td>May 13, 2004</td>
<td>Plaintiff inmate filed a motion for summary judgment in his action challenging the constitutionality of Mass. Gen. Laws ch. 51, § 1, which excluded incarcerated felons from voting while they were imprisoned.</td>
</tr>
</tbody>
</table>
because of corrupt elections practices, persons under 18 years of age, as well as incarcerated felons. Specifically, incarcerated felons were disqualified during the period of their imprisonment when it would be difficult to identify their address and ensure the accuracy of their ballots. Therefore, the court concluded that Mass. Gen. Laws ch. 51, §1 did not violate the inmate's constitutional rights. The court found the statute at issue to be constitutional and denied the inmate's motion for summary judgment.

| Hayden v. Pataki | United States District Court for the Southern District of New York | 2004 U.S. Dist. LEXIS 10863 | June 14, 2004 | In a 42 U.S.C.S. § 1983 action filed by plaintiffs, black and latino convicted felons, alleging that N.Y. Const. art. II, § 3 and N.Y. Elec. Law § 5–106(2) were unconstitutional, defendants, New York's governor and the chairperson of the board of elections, moved for the felons sued defendants, alleging that N.Y. Const. art. II, § 3 and N.Y. Elec. Law § 5–106(2) unlawfully denied suffrage to incarcerated and paroled felons on account of their race. The court granted defendants' motion for judgment on the pleadings on the felons' claims under U.S. Const. amend. XIV, XV because their factual allegations were insufficient from which to draw an inference that the challenged provisions or their predecessors were enacted with discriminatory intent, and because denying suffrage to those who received | No | N/A | No |
officials, claiming that Washington state's felon disenfranchisement scheme constitutes improper race-based vote denial in death or imprisonment in a state correctional facility), the inmates were disenfranchised. The inmates claimed that the disenfranchisement scheme violated § 2 because the criminal justice system was biased against minorities, causing a disproportionate

Farrakhan v. Washington
United States Court for Appeals for the Ninth Circuit
338 F.3d 1009; 2003 U.S. App. LEXIS 14810
July 25, 2003
Plaintiff inmates sued defendant state officials, claiming that Washington state's felon disenfranchisement scheme constitutes improper race-based vote denial in upon conviction of infamous crimes in the state, (that is, crimes punishable by death or imprisonment in a state correctional facility), the inmates were disenfranchised. The inmates claimed that the disenfranchisement scheme violated § 2 because the criminal justice system was biased against minorities, causing a disproportionate

More severe punishments, such as a term of incarceration, and not to those who received a lesser punishment, such as probation, was not arbitrary. The felons' claims under 42 U.S.C.S. § 1973 were dismissed because § 1973 could not be used to challenge the legality of N.Y. Elec. Law § 5–106. Defendants' motion was granted as to the felons' claims under 42 U.S.C.S. § 1971 because § 1971 did not provide for a private right of action, and because the felons were not "otherwise qualified to vote." The court also granted defendants' motion on the felons' U.S. Const. amend. I claim because it did not guarantee a felon the right to vote. Defendants' motion for judgment on the pleadings was granted in the felons' § 1983 action.
for the Eastern evidence of racial bias in the state's court should have applied a totality of the circumstances test that included analysis of the inmates' compelling evidence of racial bias in Washington's criminal justice system. However, the inmates lacked standing to challenge the restoration scheme because they presented no evidence of their eligibility, much less even allege that they were eligible for restoration, and had not attempted to have their civil rights restored. The court affirmed as to the eligibility claim but reversed and remanded for further proceedings to the bias in the criminal justice system claim.

| In re Phillips | Supreme Court of Virginia | 265 Va. 81: 574 | January 10, 2003 | The circuit court, entered a judgment | More than five years earlier, the former felon was convicted of the felony of | No | N/A | No |
to consider petitioner former felon's petition for approval of her request to seek restoration of her eligibility to register to vote. The former felon appealed.

making a false written statement incident to a firearm purchase. She then petitioned the trial court asking it to approve her request to seek restoration of her eligibility to register to vote. Her request was based on Va. Code Ann. § 53.1-231.2, allowing persons convicted of non-violent felonies to petition a trial court for approval of a request to seek restoration of voting rights. The trial court declined. It found that Va. Code Ann. § 53.1-231.2 violated constitutional separation of powers principles since it gave the trial court powers belonging to the governor. It also found that even if the statute was constitutional, it was fundamentally flawed for not providing notice to respondent Commonwealth regarding a petition. After the petition was denied, the state supreme court found the separation of powers principles were not violated since the statute only allowed the trial court to determine if an applicant met the requirements to have voting eligibility restored. It also found the statute was not fundamentally flawed since the Commonwealth was not an interested
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<th>Name of Case</th>
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<th>Citation</th>
<th>Issue</th>
<th>Fact</th>
<th>Holding</th>
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<tr>
<td>Howard v. Gilmore</td>
<td>United States Court of Appeals for the Fourth Circuit</td>
<td>2009 U.S. App. LEXIS 2680</td>
<td>February 23, 2000</td>
<td>Appellant challenged the United States District Court for the Eastern District of Virginia's order summarily dismissing his complaint, related to his inability to vote as a convicted felon, for failure to state a claim upon which relief can be granted.</td>
<td>Appellant was disenfranchised by the Commonwealth of Virginia following his felony conviction. He challenged that decision by suing the Commonwealth under the U.S. Const. amends. I, XIV, XV, XIX, and XXIV, and under the Voting Rights Act of 1965. The lower court summarily dismissed his complaint under Fed. R. Civ. P. 12(b)(6) for failure to state a claim. Appellant challenged. The court found U.S. Const. amend. I created no private right of action for seeking reinstatement of previously canceled voting rights, U.S. Const. amends. XIV, XV, XIX, and the VRA required either gender or race discrimination, neither of which appellant asserted, and the U.S. Const. amend. XXIV, while prohibiting the imposition of poll taxes, did not prohibit the imposition of a $10 fee for reinstatement of appellant's civil rights, including the right to vote. Consequently, appellant failed to state a claim. The court affirmed, finding</td>
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<td>party entitled to notice. OUTCOME: The judgment was reversed and the case was remanded for further proceedings.</td>
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</table>
that none of the constitutional provisions appellant relied on were properly pled because appellant failed to assert that either his race or gender were involved in the decisions to deny him the vote. Conditioning reestablishment of his civil rights on a $10 fee was not unconstitutional.

Johnson v. Governor of Fla.  
United States Court of Appeals for the Eleventh Circuit  
353 F.3d 1287; 2003 U.S. App. LEXIS 25859  
December 19, 2003  
Plaintiffs, ex--felon citizens of Florida, on their own right and on behalf of others, sought review of a decision of the United States District Court for the Southern District of Florida, which granted summary judgment to defendants, members of the Florida Clemency Board in their official capacity. The citizens challenged the validity of the Florida felon disenfranchisement
Under a totality of the circumstances, the district court needed to analyze whether intentional racial discrimination was behind the Florida disenfranchisement provisions, in violation of the Voting Rights Act. The court affirmed the district court's decision to grant summary judgment on the citizens' poll tax claim. The court reversed the district court's decision to grant summary judgment to the Board on the claims under the equal protection clause and for violation of federal voting laws and remanded the matter to the district court for further proceedings.

<table>
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<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Facts</th>
<th>Holding</th>
<th>Statute</th>
<th>Facts</th>
<th>Should Be Rejected?</th>
</tr>
</thead>
<tbody>
<tr>
<td>State v. Black</td>
<td>Court of Appeals of Tennessee</td>
<td>2002 Tenn. App. LEXIS 696</td>
<td>September 26, 2002</td>
<td>In 1997, petitioner was convicted of forgery and sentenced to the penitentiary for two years, but was immediately placed on probation. He subsequently petitioned the circuit court for restoration</td>
<td>that the claim under the Voting Rights Act, also needed to be remanded for further proceedings. The appellate court's original opinion found that petitioner had not lost his right to hold public office because Tennessee law removed that right only from convicted felons who were &quot;sentenced to the penitentiary.&quot; The trial court's amended judgment made it clear that petitioner was in fact sentenced to the penitentiary. Based upon this correction to the record, the appellate court found that petitioner's</td>
<td>No</td>
<td>N/A</td>
<td>No</td>
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The appellate court adhered to its conclusion that the statutory presumption in favor of the restoration was not overcome by a showing, by a preponderance of the evidence, of good cause to deny the petition for restoration of citizenship rights. The appellate court assumed the restoration of petitioner's right to vote and reversed the denial of his right to seek and hold public office. His full rights for the Eleventh Circuit.

Johnson v. Governor of Fla.  
United States Court of Appeals for the Eleventh Circuit  
405 F.3d 1214; 2005 U.S. App. LEXIS 5945  
April 12, 2005  
Plaintiff individuals sued defendant members of Florida Clemency Board, arguing that Florida's felon disenfranchisement sentence to the penitentiary resulted in the forfeiture of his right to seek and hold public office by operation of Tenn. Code Ann. § 40-20-114. However, the appellate court concluded that this new information did not require a different outcome on the merits of the issue of restoration of his citizenship rights, including the right to seek and hold public office. The appellate court adhered to its conclusion that the statutory presumption in favor of the restoration was not overcome by a showing, by a preponderance of the evidence, of good cause to deny the petition for restoration of citizenship rights. The appellate court affirmed the restoration of petitioner's right to vote and reversed the denial of his right to seek and hold public office. His full rights of citizenship were restored.  
No  
N/A  
No
law, Fla. Const. art. VI, § 4 (1968), violated the Equal Protection Clause and 42 U.S.C.S. § 1973. The United States District Court for the Southern District of Florida granted the members summary judgment. A divided appellate panel reversed. The panel opinion was vacated and a rehearing en banc was granted. discriminatory taint from the law as originally enacted because the provision narrowed the class of disenfranchised individuals and was amended through a deliberative process. Moreover, there was no allegation of racial discrimination at the time of the reenactment. Thus, the disenfranchisement provision was not a violation of the Equal Protection Clause and the district court properly granted the members summary judgment on that claim. The argument that 42 U.S.C.S. § 1973 applied to Florida's disenfranchisement provision was rejected because it raised grave constitutional concerns, i.e., prohibiting a practice that the Fourteenth Amendment permitted the state to maintain. In addition, the legislative history indicated that Congress never intended the Voting Rights Act to reach felon disenfranchisement provisions. Thus, the district court properly granted the members summary judgment on the Voting Rights Act claim. The motion for summary judgment in favor of the members was granted.
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<tr>
<th>Name of Case</th>
<th>Court</th>
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<th>Date</th>
<th>Issue</th>
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<td>Hileman v. McGiness</td>
<td>Appellate Court of Illinois, Fifth District</td>
<td>316 Ill. App. 3d 868; 739 N.E.2d 81; 2000 Ill. App. LEXIS 845</td>
<td>October 25, 2000</td>
<td>Appellant challenged the circuit court’s declaration that the result of a primary election for county circuit clerk was void.</td>
<td>In a primary election for county circuit clerk, the parties agreed that 681 absentee ballots were presumed invalid. The ballots had been commingled with the valid ballots. There were no markings or indications on the ballots which would have allowed them to be segregated from other ballots cast. Because the ballots could not have been segregated, apportionment was the appropriate remedy if no fraud was involved. If fraud was involved, the election would have had to have been voided and a new election held. Because the trial court did not hold an evidentiary hearing on the fraud allegations, and did not determine whether fraud was in issue, the case was remanded for a determination as to whether fraud was evident in the electoral process. Judgment reversed and remanded.</td>
<td>No</td>
<td>N/A</td>
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<td>Eason v. State</td>
<td>Court of Appeals of Mississippi</td>
<td>2005 Miss. App. LEXIS 1017</td>
<td>December 13, 2005</td>
<td>Defendant appealed a decision of the circuit court convicting him of one count of conspiracy to commit voter fraud</td>
<td>Defendant was helping with his cousin's campaign in a run-off election for county supervisor. Together, they drove around town, picking up various people who were either at congregating spots or their homes. Defendant would drive the</td>
<td>No</td>
<td>N/A</td>
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and eight counts of voter fraud.

At trial, the Commonwealth introduced substantial testimony and documentary evidence that defendant had continued to live at one residence in the 13th District, long after she stated on the voter registration form that she was living at a residence in the 51st House District. The evidence included records showing electricity and water usage, records from the Department of Motor

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<tr>
<td>Wilson v. Commonwealth</td>
<td>2000 Va. App. LEXIS 322</td>
<td>May 2, 2000</td>
<td>Defendant appealed the judgment of the circuit court which convicted her of election fraud.</td>
<td>At trial, the Commonwealth introduced substantial testimony and documentary evidence that defendant had continued to live at one residence in the 13th District, long after she stated on the voter registration form that she was living at a residence in the 51st House District. The evidence included records showing electricity and water usage, records from the Department of Motor</td>
<td>No</td>
<td>N/A</td>
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results of a mayoral election after reviewing the absentee ballots cast for said election, resulting in a loss for appellant incumbent based on the votes received from appellee voters. The incumbent appealed, and the voters cross-appealed. In the meantime, the trial court stayed enforcement of its judgment pending resolution of the appeal.

Vehicles and school records. Thus, the evidence was sufficient to support the jury's verdict that defendant made "a false material statement" on the voter registration card required to be filed in order for her to be a candidate for office in the primary in question. Judgment affirmed.

The voters and the incumbent all challenged the judgment entered by the trial court arguing that it impermissibly included or excluded certain votes. The appeals court agreed with the voters that the trial court should have excluded the votes of those voters for the incumbent who included an improper form of identification with their absentee ballots. It was undisputed that at least 30 absentee voters who voted for the incumbent provided with their absentee ballots a form of identification that was not proper under Alabama law. As a result, the court further agreed that the trial court erred in allowing those voters to somewhat "cure" that defect by providing a proper form of identification at the trial of the election contest, because, under those
In circumstances, it was difficult to conclude that those voters made an honest effort to comply with the law. Moreover, to count the votes of voters who failed to comply with the essential requirement of submitting proper identification with their absentee ballots had the effect of disenfranchising qualified electors who choose not to vote but rather than to make the effort to comply with the absentee-voting requirements. The judgment declaring the incumbent's opponent the winner was affirmed. The judgment counting the challenged votes in the final tally of votes was reversed, and said votes were subtracted from the incumbent's total, and the stay was vacated. All other arguments were rendered moot as a result.

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<tr>
<td>ACLU of Minn. v. Kifmeyer</td>
<td>United States District Court for the District of Minnesota</td>
<td>October 29, 2004</td>
<td>Plaintiffs, voters and associations, filed for a temporary restraining order pursuant to Fed. R. Civ. P. 65, against defendant, Minnesota Secretary</td>
<td>Plaintiffs argued that Minn. Stat. § 201.061 was inconsistent with the Help America Vote Act because it did not authorize the voter to complete registration either by a &quot;current and valid photo identification&quot; or by use of a current utility bill, bank statement, government check, paycheck, or other</td>
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</table>
League of
Women Voters
v. Blackwell
United States
District Court for
the Northern
District of Ohio
340 F. Supp. 2d
823; 2004
October 20,
2004
Plaintiff
organizations filed
suit against
defendant, Ohio's
Secretary of State, concerning
voter registration.

The Secretary advised the court that there were less than 600 voters who attempted to register by mail but whose registrations were deemed incomplete. The court found that plaintiffs demonstrated that they were likely to succeed on their claim that the authorization in Minn. Stat. § 201.061, sub. 3, violated the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution insofar as it did not also authorize the use of a photographic tribal identification card by American Indians who do not reside on their tribal reservations. Also, the court found that plaintiffs demonstrated that they were likely to succeed on their claims that Minn. R. 8200.5100, violated the Equal Protection Clause of the United States Constitution. A temporary restraining order was entered.

No | N/A | No
Secretary of State, claiming that a directive issued by the Secretary contravened the provisions of the Help America Vote Act. The Secretary filed a motion to dismiss.

documentary identification at the polling place on election day. When submitting a provisional ballot, a first-time voter could identify himself by providing his driver's license number or the last four digits of his social security number. If he did not know either number, he could provide it before the polls closed. If he did not do so, his provisional ballot would not be counted. The court held that the directive did not contravene the HAVA and otherwise established reasonable requirements for confirming the identity of first-time voters who registered to vote by mail because: (1) the identification procedures were an important bulwark against voter misconduct and fraud; (2) the burden imposed on first-time voters to confirm their identity, and thus show that they were voting legitimately, was slight; and (3) the number of voters unable to meet the burden of proving their identity was likely to be very small. Thus, the balance of interests favored the directive, even if the cost, in terms of uncounted ballots, was regrettable. The court granted the Secretary's motion to dismiss.
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<tr>
<td>New York v. County of Del.</td>
<td>United States District Court for the Northern District of New York</td>
<td></td>
<td>February 8, 2000</td>
<td>Plaintiffs brought a claim in the district court under the Americans With Disabilities Act and filed a motion for a preliminary injunction and motion for leave to amend their complaint, and defendants were ordered to show cause why a preliminary injunction should not be issued.</td>
<td>In their complaint plaintiffs alleged that defendants violated the ADA by making the voting locations inaccessible to disabled persons and asked for a preliminary injunction requiring defendants to come into compliance before the next election. The court found that defendants were the correct parties, because pursuant to New York election law defendants were responsible for the voting locations. The court further found that the class plaintiffs represented would suffer irreparable harm if they were not able to vote, because, if the voting locations were inaccessible, disabled persons would be denied the right to vote. Also, due to the alleged facts, the court found plaintiffs would likely succeed on the merits. Consequently, the court granted plaintiffs' motion for a preliminary injunction. The court granted plaintiffs' motion for a preliminary injunction and granted plaintiffs' motion for leave to amend their complaint.</td>
<td>No</td>
<td>N/A</td>
<td>No</td>
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<tr>
<td>New York v. County of Schoharie</td>
<td>United States District Court for the Northern</td>
<td></td>
<td>February 8, 2000</td>
<td>Plaintiffs brought a claim in the district court under the</td>
<td>In their complaint, plaintiffs alleged defendants violated the ADA by allowing voting locations to be</td>
<td>No</td>
<td>N/A</td>
<td>No</td>
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</table>
Defendants were persons would be denied the right to vote. Also, the court found that plaintiffs would likely succeed on the merits of the case. Consequently, the court granted plaintiffs’ motion for a preliminary injunction. The court granted plaintiffs’ motion for a preliminary injunction because plaintiffs showed irreparable harm and asked for a preliminary injunction requiring defendants to come into compliance before the next election. The court found that defendants were the correct party, because pursuant to New York election law, defendants were responsible for the voting locations. The court further found that the class plaintiffs represented would suffer irreparable harm if they were not able to vote, because, if the voting locations were inaccessible, disabled persons would be denied the right to vote. Also, the court found that plaintiffs would likely succeed on the merits of their case. Consequently, the court granted plaintiffs’ motion for a preliminary injunction. The court granted plaintiffs’ motion for a preliminary injunction because plaintiffs showed irreparable harm and proved likely success on the merits and granted plaintiff’s motion for leave to amend the complaint.

| Name of Issue | Court | Case | Date | Holding | Solution/Decision | Note | Should be Referred to Other
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<tr>
<td>District of New York</td>
<td>U.S. Dist. LEXIS 1399</td>
<td>Americans With Disabilities Act and filed a motion for a preliminary injunction and a motion for leave to amend their complaint, and defendants were ordered to show cause why a preliminary injunction should not be issued.</td>
<td>inaccessible for disabled persons and asked for a preliminary injunction requiring defendants to come into compliance before the next election. The court found that defendants were the correct party, because pursuant to New York election law, defendants were responsible for the voting locations. The court further found that the class plaintiffs represented would suffer irreparable harm if they were not able to vote, because, if the voting locations were inaccessible, disabled persons would be denied the right to vote. Also, the court found that plaintiffs would likely succeed on the merits of their case. Consequently, the court granted plaintiffs’ motion for a preliminary injunction. The court granted plaintiffs’ motion for a preliminary injunction because plaintiffs showed irreparable harm and proved likely success on the merits and granted plaintiff’s motion for leave to amend the complaint.</td>
<td>No</td>
<td>N/A</td>
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<tr>
<td>Westchester Disabled on the Move, Inc. v. County of</td>
<td>United States District Court for the Southern District of New York</td>
<td>346 F. Supp. 2d 473; 2004</td>
<td>October 22, 2004</td>
<td>Plaintiffs sued defendant county, county board of elections, and</td>
<td>The inability to vote at assigned locations on election day constituted irreparable harm. However, plaintiffs could not show a likelihood of success</td>
<td>No</td>
<td>N/A</td>
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Plaintiffs moved for a preliminary injunction, requesting (among other things) that the court order defendants to modify the polling places in the county so that they were accessible to disabled voters on election day. Defendants moved to dismiss.

On the merits because the currently named defendants could not provide complete relief sought by plaintiffs. Although the county board of elections was empowered to select an alternative polling place should it determine that a polling place designated by a municipality was "unsuitable or unsafe," it was entirely unclear that its power to merely designate suitable polling places would be adequate to ensure that all polling places used in the upcoming election actually conformed with the Americans with Disabilities Act. Substantial changes and modifications to existing facilities would have to be made, and such changes would be difficult, if not impossible, to make without the cooperation of municipalities. Further, the court could order defendants to approve voting machines that conformed to the ADA were they to be purchased and submitted for county approval, but the court could not order them to purchase them for the voting districts in the county. A judgment issued in the absence of the municipalities would be inadequate.

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<td>Westchester</td>
<td>York</td>
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<td>Lexis 24203</td>
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<tr>
<td>Plaintiff/Defendant</td>
<td>Court</td>
<td>Date</td>
<td>Description</td>
<td>Resolution</td>
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| Nat'l Org. on Disability v. Tartaglione | United States District Court for the Eastern District of Pennsylvania | October 11, 2001 | Plaintiffs, disabled voters and special interest organizations, sued defendants, city commissioners, under the Americans with Disabilities Act and § 504 of the Rehabilitation Act of 1973, and regulations under both statutes, regarding election practices. The commissioners moved to dismiss for failure (1) to state a cause of action and (2) to join an indispensable party. | The voters were visually impaired or wheelchair bound. They challenged the commissioners’ failure to provide talking voting machines and wheelchair accessible voting places. They claimed discrimination in the process of voting because they were not afforded the same opportunity to participate in the voting process as non-disabled voters, and assisted voting and voting by alternative ballot were substantially different from, more burdensome than, and more intrusive than the voting process utilized by non-disabled voters. The court found that the complaint stated causes of actions under the ADA, the Rehabilitation Act, and 28 C.F.R. §§ 35.151 and 35.130. The court found that the voters and organizations had standing to raise their claims. The organizations had standing through the voters’ standing or because they used significant resources challenging the commissioners’ conduct. The plaintiffs failed to join the state official who would need to approve any talking
<p>| | | | | injunction was denied, and defendants’ motion to dismiss was granted. |</p>
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<td>TENNESSEE, Petitioner v. GEORGE LANE et al.</td>
<td>United States Supreme Court</td>
<td>541 U.S. 509; 124 S. Ct. 1978; 158 L. Ed. 2d 820; 2004 U.S. LEXIS 3386</td>
<td>May 17, 2004</td>
<td>Respondent paraplegics sued petitioner State of Tennessee, alleging that the State failed to provide reasonable access to court facilities in violation of Title II of the Americans with Disabilities Act of 1990. Upon the grant of a writ of certiorari, the State appealed the judgment of the voting machine as a party. As the court could not afford complete relief to the visually impaired voters in that party's absence, it granted the motion to dismiss under Fed. R. Civ. P. 12(b)(7) without prejudice. The court granted the commissioners' motion to dismiss in part, and denied it in part. The court granted the motion to dismiss the claims of the visually impaired voters for failure to join an indispensable party, without prejudice, and with leave to amend the complaint.</td>
<td>No</td>
<td>N/A</td>
<td>No</td>
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<tr>
<td>Name of Case</td>
<td>Citation</td>
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<td>Holding</td>
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United States Court of Appeals for the Sixth Circuit which denied the State's claim of sovereign immunity.

an appropriate subject for prophylactic legislation. Regardless of whether the State could be subjected to liability for failing to provide access to other facilities or services, the fundamental right of access to the courts warranted the limited requirement that the State reasonably accommodate disabled persons to provide such access. Title II was thus a reasonable prophylactic measure, reasonably targeted to a legitimate end. The judgment denying the State's claim of sovereign immunity was affirmed.

The voters asserted that § 3503.02— which stated that the place where the family of a married man or woman resided was considered to be his or her place of residence—violated the equal protection clause. The court of appeals found that the Board's procedures did not contravene the National Voter Registration Act because Congress did not intend to bar the removal of names from the official list of persons who were ineligible and improperly registered to vote in the first place. The National Voter Registration Act did not bar the Board's continuing
District Court for the Northern District of Ohio granted summary judgment in favor of defendants. The voters appealed. Consideration of a voter's residence, and encouraged the Board to maintain accurate and reliable voting rolls. Ohio was free to take reasonable steps to see that all applicants for registration to vote actually fulfilled the requirement of bona fide residence. Ohio Rev. Code Ann. § 3503.02(D) did not contravene the National Voter Registration Act. Because the Board did not raise an irrebuttable presumption in applying § 3502.02(D), the voters suffered no equal protection violation. The judgment was affirmed. Wilson v. Commonwealth Court of Appeals of Virginia 2000 Va. App. LEXIS 322 May 2, 2000 Defendant appealed the judgment of the circuit court which convicted her of election fraud. On appeal, defendant argued that the evidence was insufficient to support her conviction because it failed to prove that she made a willfully false statement on her voter registration form and, even if the evidence did prove that she made such a statement, it did not prove that the voter registration form was the form required by Title 24.2. At trial, the Commonwealth introduced substantial testimony and documentary evidence that defendant had continued to live at one residence in the 13th District, long after she stated on the voter
The evidence included records showing electricity and water usage, records from the Department of Motor Vehicles and school records. Thus, the evidence was sufficient to support the jury's verdict that defendant made "a false material statement" on the voter registration card required to be filed by Title 24.2 in order for her to be a candidate for office in the primary in question. Judgment of conviction affirmed. Evidence, including records showing electricity and water usage, records from the Department of Motor Vehicles and school records, was sufficient to support jury's verdict that defendant made "a false material statement" on the voter registration card required to be filed in order for her to be a candidate for office in the primary in question.

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<td>ACLU of Minn. v. Kifimeyer</td>
<td>United States District Court for the District of Minnesota</td>
<td>2004 U.S. Dist. LEXIS 22996</td>
<td>October 29, 2004</td>
<td>Plaintiffs, voters and associations, filed for a temporary restraining order pursuant to Fed. R. Civ. P. 65, against Plaintiffs argued that Minn. Stat. § 201.061 was inconsistent with the Help America Vote Act because it did not authorize the voter to complete registration either by a &quot;current and valid photo identification&quot; or by use of</td>
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incomplete. The court found that plaintiffs demonstrated that they were likely to succeed on their claim that the authorization in Minn. Stat. § 201.061, sub. 3, violated the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution insofar as it did not also authorize the use of a photographic tribal identification card by American Indians who do not reside on their tribal reservations. Also, the court found that plaintiffs demonstrated that they were likely to succeed on their claim that the authorization in Minn. R. 8200.5100, violated the Equal Protection Clause of the United States Constitution. A temporary restraining order was entered.

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<th>Name of Case</th>
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<th>Claimant</th>
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<th>Issue</th>
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<th>Defendant Basis for Succeeding</th>
<th>Court Decision</th>
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<td>FEC</td>
<td>the Southern District of New York</td>
<td>371; 2005 U.S. Dist. LEXIS 2279</td>
<td>Commission filed a motion to dismiss for lack of subject matter jurisdiction plaintiff individual's action, which sought a declaration that the National Voter Registration Act was unconstitutional on the theories that its enactment was not within the enumerated powers of the federal government and that it violated Article II of the United States Constitution.</td>
<td>resulted in more people registering to vote than otherwise would have been the case. The court held that the individual lacked standing to bring the action. Because New York was not obliged to adhere to the requirements of the NVRA, the individual did not allege any concrete harm. If New York simply adopted election day registration for elections for federal office, it would have been entirely free of the NVRA just as were five other states. Even if the individual's vote were diluted, and even if such an injury in other circumstances might have sufficed for standing, any dilution that he suffered was the result of New York's decision to maintain a voter registration system that brought it under the NVRA, not the NVRA itself. The court granted the motion to dismiss for lack of subject matter jurisdiction.</td>
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<tr>
<td>Peace &amp; Freedom Party v. Shelley</td>
<td>California Court of Appeal, Third Appellate District</td>
<td>114 Cal. App. 4th 1237; 8 Cal. Rptr. 3d 497; 2004 Cal.</td>
<td>January 15, 2004</td>
<td>Plaintiff political party appealed a judgment from the superior court which denied the party's petition for writ of</td>
<td>The trial court ruled that inactive voters were excluded from the primary election calculation. The court of appeals affirmed, observing that although the election had already taken place, the issue was likely to recur and</td>
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Information in the inactive file was unreliable and often duplicative of information in the active file. Moreover, there was no violation of the National Voter Registration Act because voters listed as inactive were not prevented from voting. Although the Act prohibited removal of voters from the official voting list absent certain conditions, inactive voters in California could correct the record and vote. Affirmed.

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<tr>
<th>Name of Case</th>
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<th>Citation</th>
<th>Date</th>
<th>Basis</th>
<th>Holding</th>
<th>Shapiro</th>
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<th>Special Notice</th>
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<td>McKay v. Thompson</td>
<td>United States Court of Appeals for the Sixth Circuit</td>
<td>226 F.3d 752; 2000 U.S. App.</td>
<td>September 18, 2000</td>
<td>Plaintiff challenged order of United States District Court for Eastern District of Tennessee at</td>
<td>The trial court had granted defendant state election officials summary judgment. The court declined to overrule defendants' administrative determination that state law required</td>
<td>No</td>
<td>N/A</td>
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Mandate to compel defendant, the California Secretary of State, to include voters listed in the inactive file of registered voters in calculating whether the party qualified to participate in a primary election.
plaintiff to disclose his social security number because the interpretation appeared to be reasonable, did not conflict with previous case law, and could be challenged in state court. The requirement did not violate the Privacy Act because it was grandfathered under the terms of the Act. The limitations in the National Voter Registration Act did not apply because the NVRA did not specifically prohibit the use of social security numbers and the Act contained a more specific provision regarding such use. Plaintiff could not enforce § 1971 as it was enforceable only by the United States Attorney General. The trial court properly rejected plaintiff's fundamental right to vote, free exercise of religion, privileges and immunities, and due process claims. Although the trial court arguably erred in denying certification of the case to the USAG under 28 U.S.C.S. § 2403(a), plaintiff suffered no harm from the technical violation. Order affirmed because requirement that voters disclose social security numbers as a precondition to voter registration did not violate Privacy Act of 1974 or National Voter
Register Act and trial court properly rejected plaintiff's fundamental right to vote, free exercise of religion, privileges and immunities, and due process claims.

Lucas County Democratic Party v. Blackwell

| Name of Case       | Court                                      | Citation                                | Date       | Holding                                                                 | Relation to Election | Notice | Remedies
|--------------------|--------------------------------------------|-----------------------------------------|------------|-------------------------------------------------------------------------|----------------------|--------|-----------
|                    | United States District Court for the Northern District of Ohio | 341 F. Supp. 2d 861. 2004 U.S. Dist. LEXIS 21416 | October 21, 2004 | Plaintiff organizations brought an action challenging a memorandum issued by defendant, Ohio's Secretary of State, in December 2003. The organizations claimed that the memorandum contravened provisions of the Help America Vote Act and the National Voter Registration Act. The organizations moved for a preliminary injunction. | No                   | N/A    | No
<p>|                    |                                            |                                        |            | The case involved a box on Ohio's voter registration form that required a prospective voter who registered in person to supply an Ohio driver's license number or the last four digits of their Social Security number. In his memorandum, the Secretary informed all Ohio County Boards of Elections that, if a person left the box blank, the Boards were not to process the registration forms. The organizations did not file their suit until 18 days before the national election. The court found that there was not enough time before the election to develop the evidentiary record necessary to determine if the organizations were likely to succeed on the merits of their claim. Denying the organizations' motion would have caused them to suffer no irreparable harm. There was no appropriate remedy available to the organizations at the time. The likelihood that the organizations could |</p>
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<th>Plaintiff/Defendant</th>
<th>Court</th>
<th>Date</th>
<th>Holding</th>
<th>SAIF</th>
<th>Consent</th>
<th>Signed by Designee</th>
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<tbody>
<tr>
<td>Nat'l Coalition for Students with Disabilities Educ. &amp; Legal Def. Fund v. Scales</td>
<td>United States District Court for the District of Maryland</td>
<td>July 5, 2001</td>
<td>Defendants alleged that plaintiff lacked standing to represent its members, and that plaintiff had not satisfied the notice requirements of the National Voter Registration Act. Further, defendants maintained the facts, as alleged by plaintiff, did not give rise to a past, present, or future violation of the NVRA because (1) the plaintiff's members that requested voter registration services were not registered students at the university and (2) its current voter registration procedures complied with NVRA. As to plaintiff's § 1983 claim, the court held that while plaintiff had alleged sufficient facts to confer standing under the NVRA, such allegations</td>
<td>150 F. Supp. 2d 845; 2001 U.S. Dist. LEXIS 9528</td>
<td>No</td>
<td>N/A</td>
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have shown irreparable harm was, in any event, slight in view of the fact that they waited so long before filing suit. Moreover, it would have been entirely improper for the court to order the Board to re-open in-person registration until election day. The public interest would have been ill-served by an injunction. The motion for a preliminary injunction was denied sua sponte.
| People v. Disimone | Court of Appeals of Michigan | 251 Mich. App. 685; 650 N.W.2d 436; 2002 Mich. App. | July 11, 2002 | Defendant was charged with attempting to vote more than once in the 2000 general election. The circuit court granted defendant's motion that the State had to were not sufficient to support standing on its own behalf on the § 1983 claim. As to the NVRA claim, the court found that the agency practice of only offering voter registration services at the initial intake interview and placing the burden on disabled students to obtain voter registration forms and assistance afterwards did not satisfy its statutory duties. Furthermore, most of the NVRA provisions applied to disabled applicants not registered at the university. Defendants' motion to dismiss first amended complaint was granted as to the § 1983 claim and denied as to plaintiff's claims brought under the National Voter Registration Act of 1993. Defendants' alternative motion for summary judgment was denied. | No | N/A | No |
court judgment and held that under the rules of statutory construction, the fact that the legislature had specifically omitted certain trigger words such as "knowingly," "willingly," "purposefully," or "intentionally" it was unlikely that the legislature had intended for this to be a specific intent crime. The court also rejected the defendant's argument that phrases such as "offer to vote" and "attempt to vote" should be construed as synonymous terms, as when words with similar meanings were used in the same statute, it was presumed that the legislature intended to distinguish between the terms. The order of the circuit court was reversed.

| Name of Case | Court | Citation | Date | Facts | Holding | Statutory
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<td>Diaz v. Hood</td>
<td>United States District Court for the Southern District of Florida</td>
<td>342 F. Supp. 2d 1111; 2004 U.S. Dist. LEXIS 21445</td>
<td>October 26, 2004</td>
<td>Plaintiffs, unions and individuals who had attempted to register to vote, sought a declaration of their rights to vote in the November 2, 2004 general</td>
<td>The putative voters sought injunctive relief requiring the election officials to register them to vote. The court first noted that the unions lacked even representative standing, because they failed to show that one of their members could have brought the case in their own behalf. The individual</td>
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They alleged that defendants, state and county election officials, refused to process their voter registrations for various failures to complete the registration forms. The election officials moved to dismiss the complaint for lack of standing and failure to state a claim.

Putative voters raised separate issues: the first had failed to verify her mental capacity, the second failed to check a box indicating that he was not a felon, and the third did not provide the last four digits of her social security number on the form. They claimed the election officials violated federal and state law by refusing to register eligible voters because of nonmaterial errors or omissions in their voter registration applications, and by failing to provide any notice to voter applicants whose registration applications were deemed incomplete. In the first two cases, the election official had handled the errant application properly under Florida law, and the putative voter had effectively caused their own injury by failing to complete the registration. The third completed her form and was registered, so had suffered no injury. Standing failed against the secretary of state. The motions to dismiss the complaint were granted without prejudice.

Charles H. Wesley Educ. United States District Court for 324 F. Supp. 2d July 1, 2004 Plaintiffs, a voter, fraternity members, The organization participated in numerous non--partisan voter No N/A No
Cox (District of Georgia 1358; 2004 U.S. Dist. LEXIS 12120) sought an injunction ordering defendant, the Georgia Secretary of State, to process the voter registration application forms that they mailed in following a voter registration drive. They contended that by refusing to process the forms defendants violated the National Voter Registration Act and U.S. Const. amends. I, XIV, and XV.

Registration drives primarily designed to increase the voting strength of African-Americans. Following one such drive, the fraternity members mailed in over 60 registration forms, including one for the voter who had moved within state since the last election. The Georgia Secretary of State's office refused to process them because they were not mailed individually and neither a registrar, deputy registrar, or an otherwise authorized person had collected the applications as required under state law. The court held that plaintiffs had standing to bring the action. The court held that because the applications were received in accordance with the mandates of the NVRA, the State of Georgia was not free to reject them. The court found that: plaintiffs had a substantial likelihood of prevailing on the merits of their claim that the applications were improperly rejected; plaintiffs would be irreparably injured absent an injunction; the potential harm to defendants was outweighed by plaintiffs' injuries; and an injunction was in the public interest. Plaintiffs' motion for a preliminary injunction
was collected by someone not authorized or any other reason contrary to the NVRA. Defendants were ordered to process the applications received from the organization to determine whether those registrants were qualified to vote. Furthermore, defendants were enjoined from rejecting any voter registration application on the grounds that it was mailed as part of a "bundle" or that it was collected by someone not authorized or any other reason contrary to the NVRA.

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<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Holding</th>
<th>Statutory Basis</th>
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<th>Significant Relevance</th>
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<td>Moseley v. Price</td>
<td>United States District Court for the Eastern District of Virginia</td>
<td>300 F. Supp. 2d 389, 2004 U.S. Dist. LEXIS 850</td>
<td>January 22, 2004</td>
<td>Plaintiff alleged, that defendants' actions in investigating his voter registration application constituted a change in voting procedures requiring § 5 preclearance under the Voting Rights Act, which preclearance was never sought or received. Plaintiff claimed he withdrew from the race for Commonwealth</td>
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The court concluded that plaintiff's claim under the Voting Rights Act lacked merit. Plaintiff did not allege, as required, that any defendants implemented a new, uncleared voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting. Here, the existing practice or procedure in effect in the event a mailed registration card was returned was to "resend the voter card, if address verified as correct." This was what precisely occurred. Plaintiff inferred, however, that the existing voting rule or practice was to resend the voter card "with no adverse consequences" and that the county's
unwarranted because nothing in the written procedure invited or justified such an inference. The court opined that common sense and state law invited a different inference, namely that while a returned card had to be resent if the address was verified as correct, any allegation of fraud could be investigated. Therefore, there was no new procedure for which preclearance was required. The court dismissed plaintiff's federal claims. The court dismissed the state law claims without prejudice.

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<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Holding</th>
<th>Summary Basis for Decision</th>
<th>Other Notes</th>
<th>Should the Decision be Overturned</th>
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<td>Thompson v. Karben</td>
<td>Supreme Court of New York, Appellate Division, Second Department</td>
<td>295 A.D.2d 438; 743 N.Y.S.2d 175; 2002 N.Y. App. Div. LEXIS 6101</td>
<td>June 10, 2002</td>
<td>Respondents alleged that appellant was unlawfully registered to vote in an address at which he did not reside and that he should have voted from the address that he claimed as his residence. The appellate court held that respondents adduced insufficient proof to support the conclusion that appellant did not reside at the subject address. On the other hand, appellant submitted copies of his 2002 vehicle registration,</td>
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<td>Name of Case</td>
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<td>Nat'l Coalition v. Taft</td>
<td>United States District Court for the Southern District of Ohio</td>
<td>2002 U.S. Dist. LEXIS 22376</td>
<td>August 2, 2002</td>
<td>Plaintiffs, a nonprofit public interest group and certain individuals, sued defendants, certain state and university officials, alleging that they violated the National Voter Registration Act in failing to designate the disability services offices at state public colleges and universities as voter registration sites. The court found that the disability services offices at issue were subject to the NVRA because the term &quot;office&quot; included a subdivision of a government department or institution and the disability offices at issue were places where citizens regularly went for service and assistance. Moreover, the Ohio Secretary of State had an obligation under the NVRA to designate the disability services offices as voter registration sites because nothing in the law superseded the NVRA's requirement that the responsible state official designate disability services offices as voter registration sites. Moreover, under</td>
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<td>a particular district. The Supreme Court, Rockland County, New York, ordered the cancellation of appellant's voter registration and party enrollment. Appellant challenged the trial court's order. 2000 and 2001 federal income tax returns, 2002 property tax bill, a May 2001 paycheck stub, and 2000 and 2001 retirement account statements all showing the subject address. Appellant also testified that he was a signatory on the mortgage of the subject address and that he kept personal belongings at that address. Respondents did not sustain their evidentiary burden. The judgment of the trial court was reversed.</td>
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The group and individuals moved for a preliminary injunction.

Ohio Rev. Code Ann. § 3501.05(R), the Secretary of State's duties expressly included ensuring compliance with the NVRA. The case was not moot even though the Secretary of State had taken steps to ensure compliance with the NVRA given his position to his obligation under the law. The court granted declaratory judgment in favor of the nonprofit organization and the individuals. The motion for a preliminary injunction was granted in part and the Secretary of State was ordered to notify disabled students who had used the designated disability services offices prior to the opening day of the upcoming semester or who had pre-registered for the upcoming semester as to voter registration availability.

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<th>Name of Case</th>
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<th>Date</th>
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<th>Ohio State</th>
<th>Should the court reach out?</th>
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<td>Lawson v.</td>
<td>United States Court of Appeals for the Sixth Circuit</td>
<td>211 F.3d 331; 2000 U.S. App. LEXIS 8634</td>
<td>May 3, 2000</td>
<td>Plaintiffs who were denied the right to vote when they refused to disclose their social security numbers, appealed a judgment of the United States</td>
<td>Plaintiffs attempted to register to vote in October, and to vote in November, but were denied because they refused to disclose their social security numbers. A year after the election date they filed suit alleging denial of constitutional rights, privileges and immunities, the Privacy Act of 1974</td>
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District Court for the Western District of Tennessee at Memphis dismissing their amended complaint for failure to state claims barred by U.S. Const. amend. XI.

and § 1983. The district court dismissed, finding the claims were barred by U.S. Const. amend. XI, and the one year statute of limitations. The appeals court reversed, holding the district court erred in dismissing the suit because U.S. Const. amend. XI immunity did not apply to suits brought by a private party under the Ex Parte Young exception. Any damages claim not ancillary to injunctive relief was barred. The court also held the statute of limitations ran from the date plaintiffs were denied the opportunity to vote, not register, and their claim was thus timely. Reversed and remanded to district court to order such relief as will allow plaintiffs to vote and other prospective injunctive relief against county and state officials; declaratory relief and attorneys' fees ancillary to the prospective injunctive relief, all permitted under the Young exception to sovereign immunity, to be fashioned.

Curtis v. Smith
United States District Court for the Eastern District of Texas
145 F. Supp. 2d 814; 2001
June 4, 2001
Plaintiffs, representatives of several thousand retired persons who
Before a general election, three persons brought an action alleging the Escapess were not bona fide residents of the county, and sought to have their
No N/A No

006978
called themselves the "Escapees," and who spent a large part of their lives traveling about the United States in recreational vehicles, but were registered to vote in the county, moved for preliminary injunction seeking to enjoin a Texas state court proceeding under the All Writs Act.

names expunged from the rolls of qualified voters. The plaintiffs brought suit in federal district court. The court issued a preliminary injunction forbidding county officials from attempting to purge the voting. Commissioner contested the results of the election, alleging Escapees' votes should be disallowed. Plaintiffs brought present case assertedly to prevent the same issue from being relitigated. The court held, however, the issues were different, since, unlike the case in the first proceeding, there was notice and an opportunity to be heard. Further, unlike the first proceeding, the plaintiff in the state court action did not seek to change the prerequisites for voting registration in the county, but instead challenged the actual residency of some members of the Escapees, and such challenge properly belonged in the state court. The court further held that an election contest under state law was the correct vehicle to contest the registration of Escapees. The court dissolved the temporary restraining order it had previously entered and denied plaintiffs' motion for preliminary

U.S. Dist. LEXIS 8544
and the National Voter Registration Act, for their alleged refusal to permit individuals to register to vote. Officials had moved for dismissal or for summary judgment, and the district court granted the motion.

Tennessee state law forbade accepting a rented mailbox as the address of the potential voter. Individuals insisted that their automobile registration provided sufficient proof of residency under the NVRA. The court upheld the legality of state's requirement that one registering to vote provide a specific location as an address, regardless of the transient lifestyle of the potential voter, finding state's procedure faithfully mirrored the requirements of the NVRA as codified in the Code of Federal Regulations. The court also held that the refusal to certify individual as the representative of a class for purposes of this litigation was not an abuse of injunction of the state court proceeding.

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<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Authority</th>
<th>Description</th>
<th>Opinion</th>
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<td>Pepper v. Darnell</td>
<td>United States Court of Appeals for the Sixth Circuit</td>
<td>24 Fed. Appx. 460; 2001 U.S. App. LEXIS 26618</td>
<td>Plaintiff individual appealed from a judgment of the district court, in an action against defendant state officials seeking relief under § 1983 and the National Voter Registration Act, for their alleged refusal to permit individual to register to vote. Officials had moved for dismissal or for summary judgment, and the district court granted the motion. Individual argued on appeal that the district court erred in finding that the registration forms used by the state did not violate the NVRA and in failing to certify a class represented by individual. Individual lived in his automobile and received mail at a rented box. Officials refused to validate individual's attempt to register to vote by mail. Tennessee state law forbade accepting a rented mail box as the address of the potential voter. Individual insisted that his automobile registration provided sufficient proof of residency under the NVRA. The court upheld the legality of state's requirement that one registering to vote provide a specific location as an address, regardless of the transient lifestyle of the potential voter, finding state's procedure faithfully mirrored the requirements of the NVRA as codified in the Code of Federal Regulations. The court also held that the refusal to certify individual as the representative of a class for purposes of this litigation was not an abuse of</td>
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<td>Name</td>
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<td>Miller v. Blackwell</td>
<td>United States District Court for the Southern District of Ohio</td>
<td>348 F. Supp. 2d 916; 2004 U.S. Dist. LEXIS 24894</td>
<td>October 27, 2004</td>
<td>Plaintiffs, two voters and the Ohio Democratic Party, filed suit against defendants, the Ohio Secretary of State, several county boards of elections, and all of the boards' members, alleging claims under the National Voter Registration Act and § 1983. Plaintiffs also filed a motion for a temporary restraining order (TRO). Two individuals filed a motion to intervene as defendants.</td>
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<td>Number/Case</td>
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<td>United States District Court for the southern District of Ohio</td>
<td>348 F. Supp. 2d 916; 2004 U.S. Dist. LEXIS 24894</td>
<td>October 27, 2004</td>
<td>Plaintiffs, two voters and the Ohio Democratic Party, filed suit against defendants, the Ohio Secretary of State, several county boards of elections, and all of the boards' members, alleging claims under the National Voter Registration Act and § 1983. Plaintiffs also filed a motion for a TRO. The court granted plaintiffs' motion for a TRO. The court also granted the individuals' motion to intervene.</td>
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Strong showing that defendants' intended actions regarding pre-election challenges to voter eligibility abridged plaintiffs' fundamental right to vote and violated the Due Process Clause. Thus, the court granted the individuals' motion for a TRO. The court also granted the individuals' motion to intervene.

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<th>Name or Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Holding</th>
<th>Other Notes</th>
<th>Should Be</th>
<th>Reversed?</th>
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<tr>
<td>Spencer v. Blackwell</td>
<td>United States District Court for the Southern District of Ohio</td>
<td>347 F. Supp. 2d 528; 2004 U.S. Dist. LEXIS</td>
<td>November 1, 2004</td>
<td>Plaintiff voters filed a motion for temporary restraining order and preliminary injunction seeking to restrain defendant</td>
<td>The voters alleged that defendants had combined to implement a voter challenge system at the polls that discriminated against African-American voters. Each precinct was run by its election judges but Ohio law also allowed challengers to be</td>
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intervenor State of Ohio from discriminating against black voters in Hamilton County on the basis of race. If necessary, they sought to restrain challengers from challenge voters' eligibility to vote. The court held that the injury asserted, that allowing challengers to challenge voters' eligibility would place an undue burden on voters and impede their right to vote, was not speculative and could be redressed by removing the challengers. The court held that in the absence of any statutory guidance whatsoever governing the procedures and limitations for challenging voters by challengers, and the questionable enforceability of the State's and County's policies regarding good faith challenges, there existed an enormous risk of chaos, delay, intimidation, and pandemonium inside the polls and in the lines out the door. Furthermore, the law allowing private challengers was not narrowly tailored to serve Ohio's compelling interest in preventing voter fraud. Because the voters had shown a substantial likelihood of success on the merits on the ground that the application of Ohio's statute allowing challengers at polling places was
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<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Issue</th>
<th>Holding</th>
<th>Summary of Note</th>
<th>Other Notes</th>
<th>Similarity</th>
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<tr>
<td>Charfauros v. Bd. of Elections</td>
<td>United States Court of Appeals for the Ninth Circuit</td>
<td>2001 U.S. App. LEXIS 15083</td>
<td>May 10, 2001</td>
<td>Defendants, board of elections and related individuals, appealed from an order of the Supreme Court of the Commonwealth of the Northern Mariana Islands reversing a lower court's grant of summary judgment in favor of defendants on the ground of qualified immunity.</td>
<td>Plaintiffs, disqualified voters, claimed that individual members of the Commonwealth of the Northern Mariana Islands Board of Elections violated § 1983 by administering pre-election day voter challenge procedures which precluded a certain class of voters, including plaintiffs, from voting in a 1995 election. The CNMI Supreme Court reversed a lower court's grant of summary judgment and defendants appealed. The court of appeals held that the Board's pre-election day procedures violated the plaintiffs' fundamental right to vote. The federal court reasoned that the right to vote was clearly established at the time of the election, and that a reasonable Board would have known that treating voters differently based on their political party would</td>
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<td>Name</td>
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<td>Wit v. Berman</td>
<td>United States Court of Appeals for the Second Circuit</td>
<td>306 F.3d 1256; 2002 U.S. App. LEXIS 21301</td>
<td>October 11, 2002</td>
<td>Appellant voters who established residences in two separate cities sued appellees, state and city election officials, alleging that provisions of the New York State Election Law unconstitutionally prevented the voters from voting in local elections in both counties, violated the Equal Protection Clause. Further the court added that the allegations of the complaint were sufficient to support liability of the Board members in their individual capacities. Finally, the composition of the CNMI Supreme Court's Special Judge panel did not violate the Board's right to due process of law. The decision of Commonwealth of the Northern Mariana Islands Supreme Court was affirmed where defendants' pre-election day voter challenge procedures violated plaintiffs' fundamental right to vote. Under state election laws, the voters could only vote in districts in which they resided, and residence was limited to one place. The voters contended that, since they had two lawful residences, they were denied constitutional equal protection by the statutory restriction against voting in the local elections of both of the places of their residences. The appellate court held, however, that no constitutional violation was shown since the provisions of the New York State Election Law imposed only reasonable,</td>
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<td>Name of Case</td>
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<td>Facts</td>
<td>Holding</td>
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<td>Other Notes</td>
<td>Should the Case be Rescraped (1 of Note)</td>
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<td>Curtis v. Smith</td>
<td>United States District Court for the Eastern District of Texas</td>
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<td>cities where they resided. The voters appealed the order of the United States District Court for the Southern District of New York which granted appellees' motion to dismiss the complaint.</td>
<td>nondiscriminatory restrictions which advanced important state regulatory interests. While the voters may have interests in electoral outcomes in both cities, any rule permitting voting based on such interests would be unmanageable and subject to potential abuse. Further, basing voter eligibility on domicile, which was always over- or under-inclusive, nonetheless had enormous practical advantages, and the voters offered no workable standard to replace the domicile test. Finally, allowing the voters to choose which of their residences was their domicile for voting purposes could not be deemed discriminatory. Affirmed.</td>
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been sought or obtained. Accordingly, the court issued a preliminary injunction prohibiting defendant from pursuing the confirmation of residency of the escapees, or any similarly situated group, under the Texas Election Code until the process had been submitted for preclearance in accordance with §5 of the Voting Rights Act and, second, that such preclearance had not been sought or obtained. Accordingly, the court issued a preliminary injunction prohibiting defendant from pursuing the confirmation of residency of the escapees, or any similarly situated group, under the Texas Election Code until the process had been submitted for preclearance in accordance with §5. The action was taken to ensure that no discriminatory potential existed in the use of such process in the upcoming presidential election or future election. Motion for preliminary injunction was granted, and defendant was enjoined from pursuing confirmation of residency of the 9,000 "escapees," or any similarly situated group, under the Texas Election Code, until the process had been submitted for preclearance under §5 of the Voting Rights Act.

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<thead>
<tr>
<th>Plaintiff</th>
<th>Court of Appeal</th>
<th>Citation</th>
<th>Date</th>
<th>Issue</th>
<th>Holding</th>
<th>Result</th>
<th>Request</th>
<th>Ruling</th>
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<tbody>
<tr>
<td>Peace &amp; Freedom Party</td>
<td>Court of Appeal of California, 114 Cal. App. 4th</td>
<td>January 15, 2004</td>
<td>Plaintiff political party appealed a</td>
<td>The trial court ruled that inactive voters were excluded from the primary</td>
<td>No</td>
<td>N/A</td>
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006988
v. Shelley  | Third Appellate District  
---|---
1237; 8 Cal. Rptr. 3d 497; 2004 Cal. App. LEXIS 42  

**Judgment from the superior court which denied the party's petition for writ of mandate to compel defendant, the California Secretary of State, to include voters listed in the inactive file of registered voters in calculating whether the party qualified to participate in a primary election.**

**Holding**

The court of appeals affirmed, observing that although the election had already taken place, the issue was likely to recur and was a matter of continuing public interest and importance; hence, a decision on the merits was proper, although the case was technically moot. The law clearly excluded inactive voters from the calculation. The statutory scheme did not violate the inactive voters' constitutional right of association because it was reasonably designed to ensure that all parties on the ballot had a significant modicum of support from eligible voters. Information in the inactive file was unreliable and often duplicative of information in the active file. Moreover, there was no violation of the National Voter Registration Act because voters listed as inactive were not prevented from voting. Although the Act prohibited removal of voters from the official voting list absent certain conditions, inactive voters in California could correct the record and vote as provided the Act. The court affirmed the denial of a writ of mandate.
Bell v. Marnko

| Court            | Issue                                                                 | Date       | Plaintiff voters sued defendants, a county board of elections, a state secretary of state, and the state's attorney general, for violations of the Motor Voter Act and equal protection of the laws. Defendants moved for summary judgment. The voters also moved for summary judgment. | The board heard challenges to the voters' qualifications to vote in the county, based on the fact that the voters were transient (seasonal) rather than permanent residents of the county. The voters claimed that the board hearings did not afford them the requisite degree of due process and contravened their rights of privacy by inquiring into personal matters. As to the MVA claim, the court held that residency within the precinct was a crucial qualification. One simply could not be an elector, much less a qualified elector entitled to vote, unless one resided in the precinct where he or she sought to vote. If one never lived within the precinct, one was not and could not be an eligible voter, even if listed on the board's rolls as such. The MVA did not affect the state's ability to condition eligibility to vote on residence. Nor did it undertake to regulate challenges, such as the ones presented, to a registered voter's residency ab initio. The ability of the challengers to assert that the voters were not eligible and had not ever been eligible, and of the board to consider and resolve that challenge, did not | No | N/A | No |
Charles H. Wesley Educ. Found., Inc. v. Cox

<table>
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<tr>
<th>State of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Issue</th>
<th>Issue</th>
<th>Relief</th>
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<tr>
<td>United States Court of Appeals for the Eleventh Circuit</td>
<td>408 F.3d 1349; 2005 U.S. App. LEXIS 8320</td>
<td>May 12, 2005</td>
<td>Plaintiffs, a charitable foundation, four volunteers, and a registered voter, filed a suit against defendant state officials alleging violations of the National Voter Registration Act and the Voting Rights Act. The officials appealed after the United States District Court for the Northern District of Georgia issued a preliminary injunction enjoining them from rejecting voter registrations submitted by the</td>
<td>The foundation conducted a voter registration drive; it placed the completed applications in a single envelope and mailed them to the Georgia Secretary of State for processing. Included in the batch was the voter's change of address form. Plaintiffs filed the suit after they were notified that the applications had been rejected pursuant to Georgia law, which allegedly restricted who could collect voter registration forms. Plaintiffs contended that the officials had violated the NVRA, the VRA, and U.S. Const. amendments I, XIV, XV. The officials argued that plaintiffs lacked standing and that the district court had erred in issuing the preliminary injunction. The court found no error. Plaintiffs had sufficiently alleged injuries under the NVRA, arising out of the rejection of the voter registration forms; the allegations in the complaint</td>
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<td>Number of Case</td>
<td>Court</td>
<td>Citation</td>
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<td>United States Court of Appeals for the Sixth Circuit</td>
<td>226 F.3d 752; 2000 U.S. App. LEXIS 23387</td>
<td>September 18, 2000</td>
<td>Plaintiff challenged order of United States District Court for Eastern District of Tennessee at Chattanooga, which granted defendant state election officials summary judgment on plaintiff's action seeking to stop the state practice of requiring its citizens to disclose their social security numbers as a precondition to voter registration.</td>
<td>The trial court had granted defendant state election officials summary judgment. The court declined to overrule defendants' administrative determination that state law required plaintiff to disclose his social security number because the interpretation appeared to be reasonable, did not conflict with previous case law, and could be challenged in state court. The requirement did not violate the Privacy Act of 1974, because it was grandfathered under the terms of the Act. The limitations in the National Voter Registration Act did not apply because the NVRA did not specifically prohibit the use of social security numbers and the Act contained a more specific provision regarding such use. The trial court's decision was affirmed.</td>
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<td>Plaintiff</td>
<td>Court</td>
<td>Claim</td>
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<td>Fact</td>
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<td>Nat'l Coalition for Students with Disabilities Educ. &amp; Legal Def. Fund v. Scales</td>
<td>United States District Court for the Southern District of Maryland</td>
<td>150 F. Supp. 2d 845; 2001 U.S. Dist. LEXIS 9528</td>
<td>July 5, 2001</td>
<td>Plaintiff, national organization for disabled students, brought an action against university president and university's director of office of disability support services to challenge the voter registration procedures established by the disability support services. Defendants moved to dismiss</td>
<td>Defendants alleged that plaintiff lacked standing to represent its members, and that plaintiff had not satisfied the notice requirements of the National Voter Registration Act. Further, defendants maintained the facts, as alleged by plaintiff, did not give rise to a past, present, or future violation of the NVRA because (1) the plaintiff's members that requested voter registration services were not registered students at the university and (2) its current voter registration procedures complied with NVRA. As to plaintiff's § 1983 claim, the court held that while plaintiff had alleged</td>
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the first amended complaint, or in the alternative for summary judgment. sufficient facts to confer standing under the NVRA, such allegations were not sufficient to support standing on its own behalf on the § 1983 claim. As to the NVRA claim, the court found that the agency practice of only offering voter registration services at the initial intake interview and placing the burden on disabled students to obtain voter registration forms and assistance afterwards did not satisfy its statutory duties. Furthermore, most of the NVRA provisions applied to disabled applicants not registered at the university. Defendants' motion to dismiss first amended complaint was granted as to the § 1983 claim and denied as to plaintiff's claims brought under the National Voter Registration Act of 1993. Defendants' alternative motion for summary judgment was denied.

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<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Facts</th>
<th>Holding</th>
<th>Statutory Basis (Voting Act)</th>
<th>City</th>
<th>State</th>
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<tr>
<td>Cunningham v. Chi. Bd. of Election Comm'rs</td>
<td>United States District Court for the Northern District of Illinois</td>
<td>2003 U.S. Dist. LEXIS 2528</td>
<td>February 24, 2003</td>
<td>Plaintiffs, who alleged that they were duly registered voters, six of whom had signed nominating petitions for one candidate</td>
<td>Plaintiffs argued that objections to their signatures were improperly sustained by defendants, the city board of election commissioners. Plaintiff's argued that they were registered voters whose names appeared in an inactive file and whose signatures were</td>
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<td>Plaintiff(s)</td>
<td>Court</td>
<td>District Court for the Southern District of Florida</td>
<td>342 F. Supp. 2d 1111; 2004 U.S. Dist. LEXIS 21445</td>
<td>October 26, 2004</td>
<td>Diaz v. Hood</td>
<td>342 F. Supp. 2d 1111; 2004 U.S. Dist. LEXIS 21445</td>
<td>October 26, 2004</td>
<td>Plaintiffs, unions and individuals who had attempted to register to vote, sought a declaration of their rights to vote in the November 2, 2004 general election. They therefore, and improperly, excluded. The court ruled that by characterizing the claim as plaintiffs did, they sought to enjoin an election because their signatures were not counted, even though their preferred candidates were otherwise precluded from appearing on the ballot. Without regard to their likelihood of obtaining any relief, plaintiffs failed to demonstrate that they would be irreparably harmed if an injunction did not issue; the threatened injury to defendants, responsible as they were for the conduct of the municipal election, far outweighed any threatened injury to plaintiffs; and the granting of a preliminary injunction would greatly disserve the public interest. Plaintiffs' petition for preliminary relief was denied.</td>
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alleged that defendants, state and county election officials, refused to process their voter registrations for various failures to complete the registration forms. The election officials moved to dismiss the complaint for lack of standing and failure to state a claim.

the first had failed to verify her mental capacity, the second failed to check a box indicating that he was not a felon, and the third did not provide the last four digits of her social security number on the form. They claimed the election officials violated federal and state law by refusing to register eligible voters because of nonmaterial errors or omissions in their voter registration applications, and by failing to provide any notice to voter applicants whose registration applications were deemed incomplete. In the first two cases, the election official had handled the errant application properly under Florida law, and the putative voter had effectively caused their own injury by failing to complete the registration. The third completed her form and was registered, so had suffered no injury. Standing failed against the secretary of state. Motion to dismiss without prejudice granted.

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<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
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<th>Holding</th>
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<tr>
<td>Bell v. Marinko</td>
<td>United States District Court for the Northern District of Ohio</td>
<td>235 F. Supp. 2d 772; 2002</td>
<td>October 22, 2002</td>
<td>Plaintiff voters sued defendants, a county board of elections, a state secretary of</td>
<td>The board heard challenges to the voters' qualifications to vote in the county, based on the fact that the voters were transient (seasonal) rather</td>
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The voters also moved for summary judgment. The court held that the board hearings did not afford them the requisite degree of due process and contravened their rights of privacy by inquiring into personal matters. As to the MVA claim, the court held that residency within the precinct was a crucial qualification. One simply could not be an elector, much less a qualified elector entitled to vote, unless one resided in the precinct where he or she sought to vote. If one never lived within the precinct, one was not and could not be an eligible voter, even if listed on the board's rolls as such. The MVA did not affect the state's ability to condition eligibility to vote on residency. Nor did it regulate challenges, such as the ones presented, to a registered voter's residency, thus not contravening the MVA. Defendants' motions for summary judgment were granted as to all claims with prejudice, except the voters' state-law claim.
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<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Facts</th>
<th>HOldings</th>
<th>State of Residence</th>
<th>Other State</th>
<th>Should the Case be Registered?</th>
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<tr>
<td>Bell v. Marinko</td>
<td>United States Court of Appeals for the Sixth Circuit</td>
<td>367 F.3d 588; 2004 U.S. App. LEXIS 8530</td>
<td>April 28, 2004</td>
<td>Plaintiffs, registered voters, sued defendants, Ohio Board of Elections and Board members, alleging that Ohio Rev. Code Ann. §§ 3509.19–3509.21 violated the National Voter Registration Act, and the Equal Protection Clause of the Fourteenth Amendment. The United States District Court for the Northern District of Ohio granted summary judgment in favor of defendants. The voters appealed.</td>
<td>The voters contested the challenges to their registration brought under Ohio Code Rev. Ann. § 3505.19 based on Ohio Rev. Code Ann. § 3503.02. Specifically, the voters asserted that § 3503.02—which stated that the place where the family of a married man or woman resided was considered to be his or her place of residence—violated the equal protection clause. The court of appeals found that the Board’s procedures did not contravene the National Voter Registration Act because Congress did not intend to bar the removal of names from the official list of persons who were ineligible and improperly registered to vote in the first place. The National Voter Registration Act did not bar the Board’s continuing consideration of a voter’s residence, and encouraged the Board to maintain accurate and reliable voting rolls. Ohio was free to take reasonable steps to see that all applicants for registration to vote actually fulfilled the requirement of bona fide residence. Ohio Rev. Code</td>
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The ballots had been commingled with the valid ballots. There were no markings or indications on the ballots which would have allowed them to be segregated from other ballots cast. Because the ballots could not have been segregated, apportionment was the appropriate remedy if no fraud was involved. If fraud was involved, the election would have had to have been voided and a new election held. Because the trial court did not hold an evidentiary hearing on the fraud allegations, and did not determine whether fraud was in issue, the case was remanded for a determination as to whether fraud was evident in the electoral process. The court reversed the declaration of the
<p>| DeFabio v. Gummersheimer | Supreme Court of Illinois | 192 Ill. 2d 63; 733 N.E.2d 1241; 2000 Ill. LEXIS 993 | July 6, 2000 | Appellant challenged the judgment of the appellate court, which affirmed the trial court's decision granting appellee's summary judgment motion in action brought by appellee to contest the results of the election for the position of county coroner in Monroe County. | Appellee filed a petition for election contest, alleging that the official results of the Monroe County coroner's election were invalid because none of the 524 ballots cast in Monroe County's second precinct were initiated by an election judge, in violation of Illinois law. The trial court granted appellee's motion for summary judgment, and the appellate court affirmed the judgment. The Illinois supreme court affirmed, noting that statutes requiring election judges to initial election ballots were mandatory, and uninitialed ballots could not have been counted, even where the parties agreed that there was no knowledge of fraud or corruption. Thus, the supreme court held that the trial court properly invalidated all of the ballots cast in Monroe County's second precinct. The court reasoned that none of the ballots contained the requisite initialing, and neither party argued that any of the | No | N/A | No |</p>
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<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Issue</th>
<th>Holding</th>
<th>Statutory Basis of Relief</th>
<th>Other Statutes</th>
<th>Statutory Basis of Remedies</th>
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<tbody>
<tr>
<td>Gilmore v. Amityville Union Free Sch. Dist.</td>
<td>United States District Court for the Eastern District of New York</td>
<td>305 F. Supp. 2d 271; 2004 U.S. Dist. LEXIS 3116</td>
<td>March 2, 2004</td>
<td>Plaintiffs, two school board candidates, filed a class action complaint against defendants, a school district, the board president, and other district agents or employees, challenging a school board election. Defendants moved to dismiss.</td>
<td>During the election, a voting machine malfunctioned, resulting in votes being cast on lines that were blank on the ballot. The board president devised a plan for counting the machine votes by moving each tally up one line. The two candidates, who were African American, alleged that the president's plan eliminated any possibility that an African American would be elected. The court found that the candidates failed to state a claim under § 1983 because they could not show that defendants' actions were done or approved by a person with final policymaking authority, nor was there</td>
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Their claim supplemented jurisdiction over various state law claims. The court declined to exercise supplemental jurisdiction over various state law claims. Defendants' motion to dismiss was granted with respect to the candidates' federal claims; the state law claims were dismissed without prejudice.

| State ex rel. Mackey v. Blackwell | Supreme Court of Ohio | 106 Ohio St. 3d 261; 2005 Ohio 4789; 834 N.E.2d 346; 2005 | September 28, 2005 | Appellants, a political group and county electors who voted by provisional ballot, sought review of a judgment from the court of appeals, which dismissed appellants' complaint, seeking a showing of intentional or purposeful discrimination on defendants' part. The vote-counting method applied equally to all candidates. The candidates' claims under § 2000a and 2000c-8 failed because schools were not places of public accommodation, as required under § 2000a, and § 2000c-8 applied to school segregation. Their claim under § 1971 of deprivation of voting rights failed because § 1971 did not provide for a private right of action. The court declined to exercise supplemental jurisdiction over various state law claims. Defendants' motion to dismiss was granted with respect to the candidates' federal claims; the state law claims were dismissed without prejudice. | No | N/A | No |
and the board's constitutional and statutory law was established under Ohio law and the federal claims could be adequately raised in an action under § 1983. On appeal, the Ohio supreme court held that dismissal was proper, as the complaint actually sought declaratory and injunctive relief, rather than mandamus relief. Further, election-contest actions were the exclusive remedy to challenge election results. An adequate remedy existed under § 1983 to raise the federal–law claims. Affirmed.

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<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Decision</th>
<th>Date</th>
<th>Summary</th>
<th>Result</th>
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</thead>
<tbody>
<tr>
<td>Touchston v. McDermott</td>
<td>United States District Court for the Middle District of Florida</td>
<td>In action in which plaintiffs, registered voters in Brevard County, Florida, filed suit against defendants, members of several</td>
<td>November 14, 2000</td>
<td>In their complaint, plaintiffs challenged the constitutionality of § 102.166(4), asserting that the statute violated their rights under the Equal Protection and Due Process Clauses of U.S. Const. amend. XIV. Based on these claims, plaintiffs sought an order</td>
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<td>Case</td>
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<td>Siegel v. LePore</td>
<td>United States District Court for the Southern District of Florida</td>
<td>120 F. Supp. 2d 1041; 2000 U.S. Dist. LEXIS 16333</td>
<td>November 13, 2000</td>
<td>Plaintiffs, individual Florida voters and Republican Party presidential and vice-presidential candidates, moved for a temporary restraining order and preliminary injunction to enjoin</td>
<td>from the court stopping the manual recount of votes. The court found that plaintiffs had failed to set forth a valid basis for intervention by federal courts. They had not alleged that the Florida law was discriminatory, that citizens were being deprived of the right to vote, or that there had been fraudulent interference with the vote. Moreover, plaintiffs had not established a likelihood of success on the merits of their claims. Plaintiffs' motion for temporary restraining order and/or preliminary injunction denied; plaintiffs had not alleged that the Florida law was discriminatory, that citizens were being deprived of the right to vote, or that there had been fraudulent interference with the vote.</td>
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</table>
defendants, canvassing board members from four Florida counties, from proceeding with manual recounts of election ballots.

except where there was an immediate need to correct a constitutional violation. Plaintiffs neither demonstrated a clear deprivation of a constitutional injury or a fundamental unfairness in Florida’s manual recount provision. The recount provision was reasonable and non-discriminatory on its face and resided within the state’s broad control over presidential election procedures. Plaintiffs failed to show that manual recounts were so unreliable as to constitute a constitutional injury, that plaintiffs’ alleged injuries were irreparable, or that they lacked an adequate state court remedy. Injunctive relief denied because plaintiffs demonstrated neither clear deprivation of constitutional injury or fundamental unfairness in Florida’s manual recount provision to justify federal court interference in state election procedures.

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<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Party</th>
<th>Issue</th>
<th>Judgment</th>
<th>Citation</th>
<th>Control</th>
<th>Remedy</th>
<th>Adequate</th>
<th>Repeal</th>
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<tbody>
<tr>
<td>Gore v. Harris</td>
<td>Supreme Court of Florida</td>
<td>773 So. 2d 524; 2000 Fla. LEXIS 2474</td>
<td>December 22, 2000</td>
<td>In a contest to results of the 2000 presidential election in Florida, the United States Supreme Court</td>
<td>The state supreme court had ordered the trial court to conduct a manual recount of 9000 contested Miami-Dade County ballots, and also held that uncounted “undervotes” in all Florida counties were to be manually counted.</td>
<td>No</td>
<td>N/A</td>
<td>No</td>
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<tr>
<td>Plaintiff</td>
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<tr>
<td>Goodwin v. St. Thomas–St. John Bd. of</td>
<td>Territorial Court of the Virgin Islands</td>
<td>43 V.I. 89; 2000 V.I.</td>
<td>December 13, 2000</td>
<td>Plaintiff political candidate alleged that certain general</td>
<td>Plaintiff alleged that defendants counted unlawful absentee ballots that lacked postmarks, were not signed or</td>
<td>No</td>
<td>N/A</td>
<td>No</td>
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Elections

LEXIS 15

- Election absentee ballots violated territorial election law, and that the improper inclusion of such ballots by defendants, election board and supervisor, resulted in plaintiff's loss of the election. Plaintiff sued defendants seeking invalidation of the absentee ballots and certification of the election results tabulated without such ballots.

- Notarized, were in unsealed and/or torn envelopes, and were in envelopes containing more than one ballot. Prior to tabulation of the absentee ballots, plaintiff was leading intervenor for the final senate position, but the absentee ballots entitled intervenor to the position. The court held that plaintiff was not entitled to relief since he failed to establish that the alleged absentee voting irregularities would require invalidation of a sufficient number of ballots to change the outcome of the election. While the unsealed ballots constituted a technical violation, the outer envelopes were sealed and thus substantially complied with election requirements. Further, while defendants improperly counted one ballot where a sealed ballot envelope and a loose ballot were in the same outer envelope, the one vote involved did not change the election result. Plaintiff's other allegations of irregularities were without merit since ballots without postmarks were valid, ballots without signatures were not counted, and ballots without notarized signatures were proper. Plaintiff's request for declaratory and injunctive
<p>| Shannon v. Jacobowitz | United States Court of Appeals for the Second Circuit | 394 F.3d 96; 2005 U.S. App. LEXIS 259 | January 7, 2005 | Plaintiffs, voters and an incumbent candidate, sued defendants, a challenger candidate, a county board of election, and commissioners, pursuant to § 1983 alleging violation of the Due Process Clause of the Fourteenth Amendment. The United States District Court for the Northern District of New York granted summary judgment in favor of plaintiffs. Defendants appealed. | Local election inspectors noticed a problem with a voting machine. Plaintiffs asserted that their votes were not counted due to the machine malfunction. Rather than pursue the state remedy of quo warranto, by requesting that New York's Attorney General investigate the machine malfunction and challenge the election results in state court, plaintiffs filed their complaint in federal court. The court of appeals found that United States Supreme Court jurisprudence required intentional conduct by state actors as a prerequisite for a due process violation. Neither side alleged that local officials acted intentionally or in a discriminatory manner with regard to the vote miscount. Both sides conceded that the recorded results were likely due to an unforeseen malfunction with the voting machine. | No | N/A | No |</p>
<table>
<thead>
<tr>
<th>Number</th>
<th>Case</th>
<th>Court</th>
<th>Date</th>
<th>Page</th>
<th>Holding</th>
<th>Source</th>
<th>Other</th>
<th>Abstain</th>
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<td>United States Supreme Court</td>
<td>December 4, 2000</td>
<td>531 U.S. 70; 121 S. Ct. 471; 148 L. Ed. 2d 366; 2000 U.S. LEXIS 8087</td>
<td>Because no conduct was alleged that would indicate an intentional deprivation of the right to vote, there was no cognizable federal due process claim. The proper remedy was to assert a quo warranto action to challenge the outcome of a general election based on an alleged voting machine malfunction. The district court's grant of summary judgment was reversed and its injunctions were vacated. The case was remanded for further proceedings consistent with this opinion.</td>
<td>No</td>
<td>N/A</td>
<td>No</td>
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**GEORGE W. BUSH v. PALM BEACH COUNTY CANVASSING BOARD, ET AL.**
<table>
<thead>
<tr>
<th>Name or Case</th>
<th>Court</th>
<th>Issue</th>
<th>Date</th>
<th>Held</th>
<th>Standing Basis/Decision</th>
<th>Other Notes</th>
<th>Should the Case be Assigned to Judges</th>
</tr>
</thead>
<tbody>
<tr>
<td>Touchston v. McDermott</td>
<td>United States Court of Appeals for the Eleventh Circuit</td>
<td>presidential candidate, county canvassing boards, and Florida Democratic Party regarding authority of the boards and respondent Florida Secretary of State as to manual recounts of ballots and deadlines.</td>
<td>November 17, 2000</td>
<td>Plaintiff voters appealed from judgment of the United States District Court for the Middle District of Florida, which denied their emergency motion for an injunction pending appeal against defendant county election officials. Plaintiffs sought to enjoin defendants from conducting manual recounts or to enjoin defendants from certifying the results of the Presidential election which contained any manual recounts. The district court denied the emergency injunction and plaintiffs appealed. Upon review, the emergency motion for injunction pending appeal was denied without prejudice. Florida had adequate election dispute procedures, which had been invoked and were being implemented in the forms of administrative actions by state officials and actions in state court.</td>
<td>Plaintiff voters sought an emergency injunction pending appeal to enjoin defendant county election officials from conducting manual ballot recounts or to enjoin defendants from certifying the results of the Presidential election which contained any manual recounts.</td>
<td>No</td>
<td>N/A</td>
</tr>
</tbody>
</table>
pending appeal. Denial of plaintiffs petition for emergency injunction pending appeal was affirmed. The state procedures were adequate to preserve any federal issue for review, and plaintiffs failed to demonstrate a substantial threat of an irreparable injury that would warrant granting the extraordinary remedy of an injunction pending appeal. Denial of plaintiff's petition for emergency injunction pending appeal was affirmed. The state procedures were adequate to preserve any federal issue for review, and plaintiffs failed to demonstrate a substantial threat of an irreparable injury that would have warranted granting the extraordinary remedy of the injunction.

<table>
<thead>
<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Issue</th>
<th>Holding</th>
<th>Relevance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gore v. Harris</td>
<td>Supreme Court of Florida</td>
<td>772 So. 2d 1243; 2000 Fla. LEXIS 2373</td>
<td>December 8, 2000</td>
<td>The court of appeal certified as being of great public importance a trial court judgment that denied all relief requested by appellants, candidates for President and Vice</td>
<td>Appellants contested the certification of their opponents as the winners of Florida's electoral votes. The Florida supreme court found no error in the trial court's holding that it was proper to certify election night returns from Nassau County rather than results of a machine recount. Nor did the trial court err in refusing to include votes that the Palm Beach County</td>
<td>No</td>
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</table>
President of the United States, in appellants' contest to certified election results.

Canvassing Board found not to be legal votes during a manual recount. However, the trial court erred in excluding votes that were identified during the Palm Beach County manual recount and during a partial manual recount in Miami-Dade County. It was also error to refuse to examine Miami-Dade County ballots that registered as non-votes during the machine count. The trial court applied an improper standard to determine whether appellants had established that the result of the election was in doubt, and improperly concluded that there was no probability of a different result without examining the ballots that appellants claimed contained rejected legal votes. The judgment was reversed and remanded; the trial court was ordered to tabulate by hand Miami-Dade County ballots that the counting machine registered as non-votes, and was directed to order inclusion of votes that had already been identified during manual recounts. The trial court also was ordered to consider whether manual recounts in other counties were necessary.
<table>
<thead>
<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Relief</th>
<th>Summary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reitz v. Rendell</td>
<td>United States District Court for the Middle District of Pennsylvania</td>
<td>2004 U.S. Dist. LEXIS 21813</td>
<td>October 29, 2004</td>
<td>Plaintiff service members filed an action against defendant state officials under the Uniformed and Overseas Citizens Absentee Voting Act alleging that they and similarly situated service members would be disenfranchised because they did not receive their absentee ballots in time. The parties entered into a voluntary agreement and submitted it to the court for approval.</td>
<td>The court issued an order to assure that the service members and other similarly situated service members who were protected by the UOCAVA would not be disenfranchised. The court ordered the Secretary of the Commonwealth of Pennsylvania to take all reasonable steps necessary to direct the county boards of elections to accept as timely received absentee ballots cast by service members and other overseas voters as defined by UOCAVA, so long as the ballots were received by November 10, 2004. The ballots were to be considered solely for purposes of the federal offices that were included on the ballots. The court held that the ballot needed to be cast no later than November 2, 2004 to be counted. The court did not make any findings of liability against the Governor or the Secretary. The court entered an order, pursuant to a stipulation between the parties, that granted injunctive relief to the service members.</td>
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<tr>
<td>United States v. Pennsylvania</td>
<td>United States District Court for the Middle District of Pennsylvania</td>
<td>2004 U.S. Dist.</td>
<td>October 20, 2004</td>
<td>Plaintiff United States sued defendant</td>
<td>The testimony of the two witnesses offered by the United States did not support its contention that voters</td>
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<tr>
<td>Name of Case</td>
<td>Date</td>
<td>Citation</td>
<td>Issue</td>
<td>Brief</td>
<td>Holding</td>
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<tr>
<td>district of Pennsylvania</td>
<td></td>
<td>LEXIS 21167</td>
<td>Commonwealth of Pennsylvania, governor, and state secretary, claiming that overseas voters would be disenfranchised if they used absentee ballots that included the names of two presidential candidates who had been removed from the final certified ballot and seeking injunctive relief to address the practical implications of the final certification of the slate of candidates so late in the election year.</td>
<td>protected by the Uniformed and Overseas Citizens Absentee Voting Act would be disenfranchised absent immediate injunctive relief because neither witness testified that any absentee ballots issued to UOCAVA voters were legally incorrect or otherwise invalid. Moreover, there was no evidence that any UOCAVA voter had complained or otherwise expressed concern regarding their ability or right to vote. The fact that some UOCAVA voters received ballots including the names of two candidates who were not on the final certified ballot did not ipso facto support a finding that Pennsylvania was in violation of UOCAVA, especially since the United States failed to establish that the ballot defect undermined the right of UOCAVA voters to cast their ballots. Moreover, Pennsylvania had adduced substantial evidence that the requested injunctive relief, issuing new ballots, would have harmed the Pennsylvania election system and the public by undermining the integrity and efficiency of Pennsylvania’s elections and increasing election costs. must consider the following four factors: (1)</td>
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007014
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<thead>
<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Opinion</th>
<th>Date</th>
<th>Issue</th>
<th>Holding</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bush v. Hillsborough County Canvassing Bd.</td>
<td>United States District Court for the Northern District of Florida</td>
<td>123 F. Supp. 2d 1305; 2000 U.S. Dist. LEXIS 19265</td>
<td></td>
<td>The matter came before the court on plaintiffs' complaint for declaratory and injunctive relief alleging that defendant county canvassing boards rejected overseas absentee state ballots and federal write-in ballots based on criteria inconsistent with federal law, and requesting that the ballots be declared</td>
<td>Plaintiff presidential and vice-presidential candidates and state political party contended that defendant county canvassing boards rejected overseas absentee state ballots and federal write-in ballots based on criteria inconsistent with the Uniformed and Overseas Citizens Absentee Voting Act. Because the state accepted overseas absentee state ballots and federal write-in ballots up to 10 days after the election, the State needed to access that the ballot in fact came from overseas. However, federal law provided the method to establish that fact by requiring the overseas</td>
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the likelihood that the applicant will prevail on the merits of the substantive claim; (2) the extent to which the moving party will be irreparably harmed in the absence of injunctive relief; (3) the extent to which the nonmoving party will suffer irreparable harm if the court grants the requested injunctive relief; and (4) the public interest. District courts should only grant injunctive relief after consideration of each of these factors. Motion for injunctive relief denied.
valid and that they should be counted. absentee voter to sign an oath that the
ballot was mailed from outside the
United States and requiring the state
election officials to examine the voter's
declarations. The court further noted
that federal law required the user of a
federal write-in ballot to timely apply
for a regular state absentee ballot, not
that the state receive the application,
and that again federal law, by requiring
the voter using a federal write-in
ballot to swear that he or she had made
timely application, had provided the
proper method of proof. Plaintiffs
withdrew as moot their request for
injunctive relief and the court granted
in part and denied in part plaintiffs' request for declaratory relief, and relief
GRANTED in part and declared valid
all federal write-in ballots that were
signed pursuant to the oath provided
therein but rejected solely because the
ballot envelope did not have an APO,
FPO, or foreign postmark, or solely
because there was no record of an
application for a state absentee ballot.

<table>
<thead>
<tr>
<th>Historical Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Holding</th>
<th>Summary Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Harris v. Florida</td>
<td>United States</td>
<td>122 F. Supp. 2d 1317</td>
<td>December 9, 2000</td>
<td>Plaintiffs challenged the counting of overseas absentee</td>
<td>In two separate cases, plaintiff electors originally sued defendant state elections canvassing commission and</td>
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<td>Elections Canvassing</td>
<td>District Court for the Northern</td>
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<td>No</td>
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<tr>
<td>Number</td>
<td>Case</td>
<td>Citation</td>
<td>Issue</td>
<td>Litigation</td>
<td>Holding</td>
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<td>Comm'n</td>
<td>District of Florida</td>
<td>2000 U.S. Dist. LEXIS 17875</td>
<td>ballots received after 7 p.m. on election day, alleging the ballots violated Florida election law.</td>
<td>state officials in Florida state circuit court, challenging the counting of overseas absentee ballots received after 7 p.m. on election day. Defendant governor removed one case to federal court. The second case was also removed. The court in the second case denied plaintiff's motion for remand and granted a motion to transfer the case to the first federal court under the related case doctrine. Plaintiffs claimed that the overseas ballots violated Florida election law. Defendants argued the deadline was not absolute. The court found Congress did not intend 3 U.S.C.S. § 1 to impose irrational scheduling rules on state and local canvassing officials, and did not intend to disenfranchise overseas voters. The court held the state statute was required to yield to Florida Administrative Code, which required the 10-day extension in the receipt of overseas absentee ballots in federal elections because the rule was promulgated to satisfy a consent decree entered by the state in 1982. Judgment entered for defendants because a Florida administrative rule requiring a 10-day extension in the receipt of...</td>
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overseas absentee ballots in federal elections was enacted to bring the state into compliance with a federally ordered mandate; plaintiffs were not entitled to relief under any provision of state or federal law.

Romeu v. Cohen

United States District Court for the Southern District of New York

121 F. Supp. 2d 264; 2000 U.S. Dist. LEXIS 12842

September 7, 2000

Plaintiff territorial resident and plaintiff-intervenor territorial governor moved for summary judgment and defendant federal, state, and local officials moved to dismiss the complaint that alleged that the Voting Rights Amendments of 1970, the Uniform Overseas Citizens Absentee Voting Act, and New York election law were unconstitutional since they denied plaintiff's right to receive an absentee ballot in violation of the right to vote, the right to travel, the Privileges and Immunities Clause, and the Equal Protection Clause. Plaintiff-intervenor territorial governor intervened on behalf of similarly situated Puerto Rican residents. Defendants argued that: 1) plaintiff lacked standing; 2) a non-justiciable political question was raised; and 3) the laws were constitutional. The court held that: 1) plaintiff had standing because he made a substantial showing that application for the benefit was futile; 2) whether or not the statutes violated plaintiff's rights presented a legal, not political, question, and there was no lack of judicially discoverable and manageable standards for resolving the matter; and 3) the laws were constitutional and only a constitutional amendment or
ballot for the upcoming presidential election. The court granted defendants' motion to dismiss because the laws that prohibited territorial residents from voting by state absentee ballot in presidential elections were constitutional.

<table>
<thead>
<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Issue</th>
<th>Holding</th>
<th>Statute Cited</th>
<th>Other Notes</th>
<th>Significant Facts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Romeu v. Cohen</td>
<td>United States Court of Appeals for the Second Circuit</td>
<td>265 F.3d 118; 2001 U.S. App. LEXIS 19876</td>
<td>September 6, 2001</td>
<td>Plaintiff territorial resident sued defendants, state and federal officials, alleging that the Uniformed and Overseas Citizens Absentee Voting Act unconstitutionally prevented the territorial resident from voting in his former state of residence. The resident appealed the judgment of the United States District Court for the Southern District of New York, which dismissed the case. The territorial resident contended that the UOCAVA unconstitutionally distinguished between former state residents residing outside the United States, who were permitted to vote in their former states, and former state residents residing in a territory, who were not permitted to vote in their former states. The court of appeals first held that the UOCAVA did not violate the territorial resident's right to equal protection in view of the valid and not insubstantial considerations for the distinction. The territorial resident chose to reside in the territory and had the same voting rights as other territorial residents, even though such residency precluded voting for federal offices. Further, the resident had no constitutional right to vote in his former state after he terminated his residence.</td>
<td>No</td>
<td>N/A</td>
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<td>Defendant Case</td>
<td>Court</td>
<td>District</td>
<td>Date</td>
<td>Case</td>
<td>Holding</td>
<td>Statutory Basis</td>
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<tr>
<td>Igartua de la Rosa v. United States</td>
<td>United States District Court for the District of Puerto Rico</td>
<td>107 F. Supp. 2d 140; 2000 U.S. Dist. LEXIS 11146</td>
<td>July 19, 2000</td>
<td>Defendant United States moved to dismiss plaintiffs' action seeking a declaratory judgment allowing them to vote, as U.S. citizens residing in Puerto Rico, in the upcoming and all subsequent Presidential elections. Plaintiffs urged, among other claims, that their right to vote in Presidential elections was unconstitutional in disallowing Puerto Rican citizens to vote by considering residency in such state, and the consequences of the choice of residency did not constitute an unconstitutional interference with the right to travel. Finally, there was no denial of the privileges and immunities of state citizenship, since the territorial resident was treated identically to other territorial residents. The judgment dismissing the territorial resident's complaint was affirmed.</td>
<td>The court denied the motion of defendant United States to dismiss the action of plaintiffs, two groups of Puerto Ricans, seeking a declaratory judgment allowing them to vote in Presidential elections. One group always resided in Puerto Rico and the other became ineligible to vote in Presidential elections upon taking up residence in Puerto Rico. Plaintiffs contended that the Constitution and the International Covenant on Civil and Political Rights, guaranteed their right to vote in Presidential elections and that the Uniformed and Overseas Citizens Absentee Voting Act, was unconstitutional in disallowing Puerto Rican citizens to vote by considering</td>
<td>No</td>
<td>N/A</td>
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Constitutional guarantees were provided to U.S. citizens residing in Puerto Rico to participate in Presidential elections. No constitutional amendment was needed. The present political status of Puerto Rico was abhorrent to the Bill of Rights. The court denied defendant United States' motion to dismiss plaintiffs' action seeking a declaratory judgment allowing them to vote in Presidential elections as citizens of the United States and of Puerto Rico. The court held that the United States Constitution itself provided plaintiffs with the right to participate in Presidential elections.

**James v. Bartlett**

**Supreme Court of North Carolina**

<table>
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<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Issue</th>
<th>Holding</th>
<th>Plaintiff</th>
<th>Defendant</th>
<th>Should the decision be reversed?</th>
</tr>
</thead>
<tbody>
<tr>
<td>James v. Bartlett</td>
<td>Supreme Court of North Carolina</td>
<td>359 N.C. 260; 607 S.E.2d 638; 2005 N.C. LEXIS</td>
<td>February 4, 2005</td>
<td>Appellant candidates challenged elections in the superior court through appeals of election protests before the North Carolina State Board</td>
<td>The case involved three separate election challenges. The central issue was whether a provisional ballot cast on election day at a precinct other than the voter's correct precinct of residence could be lawfully counted in final election tallies. The superior court held</td>
<td>No</td>
<td>N/A</td>
<td>No</td>
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<tr>
<td>Name of Case</td>
<td>Court</td>
<td>Citation</td>
<td>Date</td>
<td>Pages</td>
<td>Holding</td>
<td>Statutes</td>
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<tr>
<td>Sandusky County Democratic Party v. Blackwell</td>
<td>United States Court of Appeals for the Sixth Circuit</td>
<td>387 F.3d 565; 2004 U.S. App. LEXIS 22320</td>
<td>October 26, 2004</td>
<td>146</td>
<td>of Elections and a declaratory judgment action in the superior court. The court entered an order granting summary judgment in favor of appellees, the Board, the Board's executive director, the Board's members, and the North Carolina Attorney General. The candidates appealed.</td>
<td>that it could be counted. On appeal, the supreme court determined that state law did not permit out-of-precinct provisional ballots to be counted in state and local elections. The candidates failure to challenge the counting of out-of-precinct provisional ballots before the election did not render their action untimely. Reversed and remanded.</td>
<td>No</td>
<td>N/A</td>
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in the county in which they desire to vote and that provisional ballots must be counted as valid ballots when cast in the correct county.

quintessentially about being able to cast a provisional ballot but that the voter casts a provisional ballot at the peril of not being eligible to vote under state law; if the voter is not eligible, the vote will then not be counted. Accordingly, the court of appeals reversed the district court and held that "provisional" ballots cast in a precinct where a voter does not reside and which would be invalid under state law, are not required by the HAVA to be considered legal votes. Affirmed in part and reversed in part.

<table>
<thead>
<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Issue</th>
<th>Holding</th>
<th>Status of Petition</th>
<th>Status of Appeal</th>
<th>Case No</th>
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<tbody>
<tr>
<td>State ex rel. Mackey v. Ohio</td>
<td>Supreme Court of Ohio</td>
<td>106 Ohio St. 3d 261; 2005 Ohio 4789; 834 N.E.2d 346; 2005 Ohio LEXIS 2074</td>
<td>September 28, 2005</td>
<td>Appellants, a political group and county electors who voted by provisional ballot, sought review of a judgment from the court of appeals which dismissed appellants' complaint, seeking a writ of mandamus to prevent appellees, the Ohio Secretary of State, a county board of elections,</td>
<td>The Secretary of State issued a directive to all Ohio county boards of elections, which specified that a signed affirmation statement was necessary for the counting of a provisional ballot in a presidential election. During the election, over 24,400 provisional ballots were cast in one county. The electors' provisional ballots were not counted. They, together with a political activist group, brought the mandamus action to compel appellants to prohibit the invalidation of provisional ballots and to notify voters of reasons for ballot rejections. Assorted</td>
<td>No</td>
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and the board's director, from disenfranchisement of provisional ballot voters.

consitutional and statutory law was relied on in support of the complaint. The trial court dismissed the complaint, finding that no clear legal right was established under Ohio law and the federal claims could be adequately raised in an action under 42 U.S.C.S. § 1983. On appeal, the Ohio Supreme Court held that dismissal was proper, as the complaint actually sought declaratory and injunctive relief, rather than mandamus relief. Further, election--contest actions were the exclusive remedy to challenge election results. An adequate remedy existed under § 1983 to raise the federal--law claims. Affirmed.

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<th>Name of Case</th>
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<td>Fla. Democratic Party v. Hood</td>
<td>United States District Court for the Northern District of Florida</td>
<td>342 F. Supp. 2d 1073; 2004 U.S. Dist. LEXIS 21720</td>
<td>October 21, 2004</td>
<td>Plaintiff political party sought injunctive relief under the Help America Vote Act, claiming that the election system put in place by defendant election officials violated HAVA because it did not allow voter to vote</td>
<td>The political party asserted that a prospective voter in a federal election had the right to cast a provisional ballot at a given polling place, even if the local officials asserted that the voter was at the wrong polling place; second, that voter had the right to have that vote counted in the election, if the voter otherwise met all requirements of state law. The court noted that the right to vote was clearly protectable as a civil right, and a primary purpose of HAVA was to ensure that voters could vote by casting a valid and reliable provisional ballot.</td>
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The HAVA was to preserve the votes of persons who had incorrectly been removed from the voting rolls, and thus would not be listed as voters at what would otherwise have been the correct polling place. The irreparable injury to a voter was easily sufficient to outweigh any harm to the officials. Therefore, the court granted relief as to the first claim, allowing the unlisted voter to cast a provisional ballot, but denied relief as to the second claim, that the ballot at the wrong place must be counted if it was cast at the wrong place, because that result contradicted State law. The provisional ballot could only be counted if it was cast in the proper precinct under State law.

**League of Women Voters v. Blackwell**

United States District Court for the Northern District of Ohio

340 F. Supp. 2d 823; 2004 U.S. Dist. LEXIS 20926

October 20, 2004

Plaintiff organizations filed suit against defendant, Ohio's Secretary of State, claiming that a directive issued by the Secretary contravened the provisions of the Help America Vote Act.

The directive in question instructed election officials to issue provisional ballots to first-time voters who registered by mail but did not provide documentary identification at the polling place on election day. When submitting a provisional ballot, a first-time voter could identify himself by providing his driver's license number or the last four digits of his social security number. If he did not know
Act. The Secretary either number, he could provide it before the polls closed. If he did not do so, his provisional ballot would not be counted. The court held that the directive did not contravene the HAVA and otherwise established reasonable requirements for confirming the identity of first-time voters who registered to vote by mail because: (1) the identification procedures were an important bulwark against voter misconduct and fraud; (2) the burden imposed on first-time voters to confirm their identity, and thus show that they were voting legitimately, was slight; and (3) the number of voters unable to meet the burden of proving their identity was likely to be very small. Thus, the balance of interests favored the directive, even if the cost, in terms of uncounted ballots, was regrettable.

<p>| Sandusky County Democratic Party v. Blackwell | United States Court of Appeals for the Sixth Circuit | 386 F.3d 815; 2004 U.S. App. LEXIS 28765 | October 23, 2004 | Defendant Ohio Secretary of State challenged an order of the United States District Court for the Northern District of Ohio, which held | On appeal, the court held that the district court correctly ruled that the right to cast a provisional ballot in federal elections was enforceable under 42 U.S.C.S. § 1983 and that at least one plaintiff had standing to enforce that right in the district court. | No | N/A | No |</p>
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<tr>
<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Issue</th>
<th>Holding</th>
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<th>Relevance</th>
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<td>Hawkins v. Blunt</td>
<td>United States District Court for the Western District of Missouri</td>
<td>2004 U.S. Dist. LEXIS 21512</td>
<td>October 12, 2004</td>
<td>In an action filed by plaintiffs, voters and a state political party, contending that the provisional voting requirements of Mo. Rev. Stat. § 115.430 conflicted with and was preempted by the Help America Vote Act, plaintiffs and defendants, the Ohio Secretary of State Directive 2004--33 violated the federal Help America Vote Act. In its order, the district court directed the Secretary to issue a revised directive that conformed to HAVA's requirements.</td>
<td>The court also held that Ohio Secretary of State Directive 2004--33 violated HAVA to the extent that it failed to ensure that any individual affirming that he or she was a registered voter in the jurisdiction in which he or she desired to vote and eligible to vote in a federal election was permitted to cast a provisional ballot. However, the district court erred in holding that HAVA required that a voter's provisional ballot be counted as a valid ballot if it was cast anywhere in the county in which the voter resided, even if it was cast outside the precinct in which the voter resided.</td>
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Bay County Democratic Party v. Land

United States District Court for the Eastern District of Michigan

340 F. Supp. 2d 802; 2004 U.S. Dist. LEXIS 20551

October 13, 2004

Plaintiffs, state and county Democratic parties, filed an action against defendant, Michigan secretary of state and the Michigan director of elections, alleging that the state's intended procedure for casting and counting provisional ballots at the upcoming general election would violate the Help America Vote Act and state laws implementing the federal legislation. Defendants filed a motion to transfer venue.

The parties claimed that if the secretary's proposed procedure was allowed to occur, several voters who were members of the parties' respective organizations were likely to be disenfranchised. Defendants moved to transfer venue of the action to the Western District of Michigan claiming that the only proper venue for an action against a state official is the district that encompasses the state's seat of government. Alternatively, defendants sought transfer for the convenience of the parties and witnesses. The court found that defendants' arguments were not supported by the plain language of the current venue statutes. Federal actions against the Michigan secretary of state over rules and practices governing federal elections traditionally were brought in both the Eastern and Western Districts of Michigan. There was no rule that

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<th>Statute</th>
<th>Note</th>
<th>Result</th>
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<td>Bay County Democratic Party v. Land</td>
<td>United States District Court for the Eastern District of Michigan</td>
<td>340 F. Supp. 2d 802; 2004 U.S. Dist. LEXIS 20551</td>
<td>October 13, 2004</td>
<td>Plaintiffs, state and county Democratic parties, filed an action against defendant, Michigan secretary of state and the Michigan director of elections, alleging that the state's intended procedure for casting and counting provisional ballots at the upcoming general election would violate the Help America Vote Act and state laws implementing the federal legislation. Defendants filed a motion to transfer venue.</td>
<td>The parties claimed that if the secretary's proposed procedure was allowed to occur, several voters who were members of the parties' respective organizations were likely to be disenfranchised. Defendants moved to transfer venue of the action to the Western District of Michigan claiming that the only proper venue for an action against a state official is the district that encompasses the state's seat of government. Alternatively, defendants sought transfer for the convenience of the parties and witnesses. The court found that defendants' arguments were not supported by the plain language of the current venue statutes. Federal actions against the Michigan secretary of state over rules and practices governing federal elections traditionally were brought in both the Eastern and Western Districts of Michigan. There was no rule that</td>
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Bay County Democratic Party v. Land  | United States District Court for the Eastern District of Michigan  | 347 F. Supp. 2d 404; 2004 U.S. Dist LEXIS 20872  | October 19, 2004  | Plaintiffs, voter organizations and political parties, filed actions against defendants, the Michigan Secretary of State and her director of elections, challenging directives issued to local election officials concerning the casting and tabulation of provisional ballots. Plaintiffs sought a preliminary injunction and contended that the court concluded that (1) plaintiffs had standing to assert their claims; (2) HAVA created individual rights enforceable through 42 U.S.C.S. §1983; (3) Congress had provided a scheme under HAVA in which a voter's right to have a provisional ballot for federal offices tabulated was determined by state law governing eligibility, and defendants' directives for determining eligibility on the basis of precinct—based residency were inconsistent with state and federal election law; (4) Michigan election law defined voter qualifications in terms of the voter's home jurisdiction, and a person who cast a provisional ballot within his or her jurisdiction was entitled under federal law to have his vote counted.  | No  | N/A  | No
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<th>Numerical Case</th>
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<th>Other Notes</th>
<th>Shown to Be Relevant</th>
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<td>Weber v. Shelley</td>
<td>United States Court of Appeals for the Ninth Circuit</td>
<td>347 F.3d 1101; 2003 U.S. App. LEXIS 21979</td>
<td>October 28, 2003</td>
<td>Plaintiff voter brought an suit against defendants, the secretary of state and the county registrar of voters, claiming that the lack of a voter-verified paper trail in the county's newly installed touchscreen voting system violated her rights to equal protection and due process. The United States District Court for the Central District of California granted the secretary and the registrar summary judgment.</td>
<td>On review, the voter contended that use of paperless touch-screen voting systems was unconstitutional and that the trial court erred by ruling her expert testimony inadmissible. The trial court focused on whether the experts' declarations raised genuine issues of material fact about the relative accuracy of the voting system, including news-paper articles and unidentified studies, and excluded references to news-paper articles and unidentified studies absent any indication that experts normally relied upon them. The appellate court found that the trial court's exclusions were not an abuse of discretion and agreed that the admissible opinions which were left did not tend to show that voters had a lesser chance of having their votes counted. It further found that the use of touchscreen voting systems was not subject to strict</td>
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- directives violated their rights under the Help America Vote Act.
- or her votes for federal offices counted if eligibility to vote in that election could be verified; and (5) defendants' directives concerning proof of identity of first-time voters who registered by mail were consistent with federal and state law.
The voter appealed. Scrutiny simply because this particular balloting system might make the possibility of some kinds of fraud more difficult to detect. California made a reasonable, politically neutral and non-discriminatory choice to certify touchscreen systems as an alternative to paper ballots, as did the county in deciding to use such a system. Nothing in the Constitution forbid this choice. The judgment was affirmed.

Am. Ass'n of People with Disabilities v. Shelley
United States District Court for the Central District of California
324 F. Supp. 2d 1120; 2004 U.S. Dist. LEXIS 12587
July 6, 2004

Plaintiffs, disabled voters and organizations representing those voters, sought to enjoin the directives of defendant California Secretary of State, which decertified and withdrew approval of the use of certain direct recording electronic (DRE) voting systems. One voter applied for a temporary restraining order, or, the voters urged the invalidation of the Secretary's directives because, allegedly, their effect was to deprive the voters of the opportunity to vote using touch-screen technology. Although it was not disputed that some disabled persons would be unable to vote independently and in private without the use of DREs, it was clear that they would not be deprived of their fundamental right to vote. The Americans with Disabilities Act, did not require accommodation that would enable disabled persons to vote in a manner that was comparable in every way with the voting rights enjoyed by persons without disabilities. Rather, it mandated that voting programs be valid because they were not provided equally.
in the alternative, a preliminary injunction. of a preliminary injunction in a number of ways, including a four--part test that considers (1) likelihood of success on the merits; (2) the possibility of irreparable injury in the absence of an injunction; (3) a balancing of the harms; and (4) the public interest.

made accessible. Defendant's decision to suspend the use of DREs pending improvement in their reliability and security of the devices was a rational one, designed to protect the voting rights of the state's citizens. The evidence did not support the conclusion that the elimination of the DREs would have a discriminatory effect on the visually or manually impaired. Thus, the voters showed little likelihood of success on the merits. The individual's request for a temporary restraining order, or, in the alternative, a preliminary injunction, was denied. Ninth Circuit's tests for a preliminary injunction, although phrased differently, require a court to inquire into whether there exists a likelihood of success on the merits, and the possibility of irreparable injury; a court is also required to balance the hardships.

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<th>Holding</th>
<th>Statute</th>
<th>Issue</th>
<th>Should be reversed?</th>
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<tr>
<td>Fla. Democratic Party v. Hood</td>
<td>Court of Appeal of Florida, First District</td>
<td>884 So. 2d 1148; 2004 Fla. App. LEXIS 16077</td>
<td>October 28, 2004</td>
<td>Petitioner, the Florida Democratic Party, sought review of an emergency rule adopted by the Florida Department</td>
<td>The Party argued that: (1) the Florida Administrative Code, recast language from the earlier invalidated rule prohibiting a manual recount of overvotes and undervotes cast on a touchscreen machine; (2) the rule did</td>
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of State, contending that the findings of immediate danger, necessity, and procedural fairness on which the rule was based were insufficient under Florida law, which required a showing of such circumstances, and Florida case law. This matter followed. 

not call for the manual recount of votes to determine voter intent; and (3) the rule created voters who were entitled to manual recounts in close elections and those who were not. The appeals court disagreed. The Department was clearly concerned with the fact that if no rule were in place, the same confusion and inconsistency in divining a voter's intent that attended the 2000 presidential election in Florida, and the same constitutional problems the United States Supreme Court addressed then, might recur in 2004. It was not the court's responsibility to decide the validity of the rule or whether other means were more appropriate. But, the following question was certified to the Supreme Court: Whether under Fla. Stat. ch. 120.54(4), the Department of State set forth sufficient justification for an emergency rule establishing standards for conducting manual recounts of overvotes and undervotes as applied to touchscreen voting systems? The petition was denied, but a question was certified to the supreme court as a matter of great public importance.
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<th>Name of Case</th>
<th>Court</th>
<th>Citation</th>
<th>Date</th>
<th>Issue</th>
<th>Holding</th>
<th>Shaded by District Court for Supp. 2d 2004 congressman, state established an updated standard for counties using optical scan systems and touchscreen voting systems, therefore, alleviating equal protection concerns. The court held that the rules prescribing what constituted a clear indication on the ballot that the voter had made a definite choice, as well as the rules prescribing additional recount procedures for each certified voting system promulgated pursuant to Florida law complied with equal protection requirements under U.S. Const. amends. V and XIV because the rules prescribed uniform, nondifferential standards for what constituted a legal vote under each certified voting system, as well as procedures for conducting a manual recount of overvotes and undervotes in the entire geographic jurisdiction. The court further held that the ballot images printed during a manual recount pursuant to Florida Administrative Code did not violate Florida law because the manual recount scheme properly reflected a voter's choice. Judgment was entered.</th>
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<td>Wexler v. Lepore</td>
<td>United States District Court for the Southern District of Florida</td>
<td>342 F. Supp. 2d 1097; 2004 U.S. Dist. LEXIS 21344</td>
<td>October 25, 2004</td>
<td>Plaintiffs, a congressman, state commissioners, and a registered voter, brought a § 1983 action against defendants, state officials, alleging that the manual recount procedures for the state's touchscreen paperless voting systems violated their rights under U.S. Const. amends. V and XIV. A bench trial ensued.</td>
<td>The officials claimed that the state had established an updated standard for manual recounts in counties using optical scan systems and touchscreen voting systems, therefore, alleviating equal protection concerns. The court held that the rules prescribing what constituted a clear indication on the ballot that the voter had made a definite choice, as well as the rules prescribing additional recount procedures for each certified voting system promulgated pursuant to Florida law complied with equal protection requirements under U.S. Const. amends. V and XIV because the rules prescribed uniform, nondifferential standards for what constituted a legal vote under each certified voting system, as well as procedures for conducting a manual recount of overvotes and undervotes in the entire geographic jurisdiction. The court further held that the ballot images printed during a manual recount pursuant to Florida Administrative Code did not violate Florida law because the manual recount scheme properly reflected a voter's choice. Judgment was entered.</td>
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<td>Spencer v.</td>
<td>United States</td>
<td>347 F. Supp. 2d 528; 2004 U.S. Dist. LEXIS 22062</td>
<td>November 1, 2004</td>
<td>Plaintiff voters filed a motion for temporary restraining order and preliminary injunction seeking to restrain defendant election officials and intervenor State of Ohio from discriminating against black voters in Hamilton County on the basis of race. If necessary, they sought to restrain challengers from being allowed at the polls.</td>
<td>The voters alleged that defendants had combined to implement a voter challenge system at the polls that discriminated against African-American voters. Each precinct was run by its election judges but Ohio law also allowed challengers to be physically present in the polling places in order to challenge voters' eligibility to vote. The court held that the injury asserted, that allowing challengers to challenge voters' eligibility would place an undue burden on voters and impede their right to vote, was not speculative and could be redressed by removing the challengers. The court held that in the absence of any statutory guidance whatsoever governing the procedures and limitations for challenging voters by challengers, and the questionable enforceability of the State's and County's policies regarding good faith challenges and ejection of disruptive challengers from the polls, there existed an enormous risk of chaos.</td>
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delay, intimidation, and pandemonium inside the polls and in the lines out the door. Furthermore, the law allowing private challengers was not narrowly tailored to serve Ohio's compelling interest in preventing voter fraud. The court enjoined all defendants from allowing any challengers other than election judges and other electors into the polling places throughout the state on Election Day.

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<th>Name of Case</th>
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<th>Date</th>
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<th>Holding</th>
<th>Supreme Court Majority</th>
<th>Circuit Court Majority</th>
<th>State of Ohio Majority</th>
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<td>MARIAN SPENCER, et al., Petitioners v. CLARA PUGH, et al. (No. 04A360)</td>
<td>United States Supreme Court</td>
<td>125 S. Ct. 305; 160 L. Ed. 2d 213; 2004 U.S. LEXIS 7400</td>
<td>November 2, 2004</td>
<td>In two separate actions, plaintiffs sued defendant members of a political party, alleging that the members planned to mount indiscriminate challenges in polling places which would disrupt voting. Plaintiffs applied to vacate orders entered by the United States Court of Appeals for the Sixth Circuit which</td>
<td>Plaintiffs contended that the members planned to send numerous challengers to polling places in predominantly African-American neighborhoods to challenge votes in an imminent national election, which would allegedly cause voter intimidation and inordinate delays in voting. A district court ordered challengers to stay out of polling places, and another district court ordered challengers to remain in the polling places only as witnesses, but the appellate court stayed the orders. The United States Supreme Court, acting through a single Circuit Justice, declined to reinstate the injunctions for prudential reasons, despite the few hours left until the</td>
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<td>Charles H. Wesley Educ. Found., Inc. v. Cox</td>
<td>United States District Court for the Northern District of Georgia</td>
<td>324 F. Supp. 2d 1358; 2004 U.S. Dist. LEXIS 12120</td>
<td>July 1, 2004</td>
<td>Plaintiffs, a voter, fraternity members, and an organization, sought an injunction ordering defendant, the Georgia Secretary of State, to process the voter registration application forms that they mailed in following a voter registration drive. They contended that by refusing to process the forms defendants violated the National Voter Registration Act and U.S. Const. amendments. The organization participated in numerous non-partisan voter registration drives primarily designed to increase the voting strength of African-Americans. Following one such drive, the fraternity members mailed in over 60 registration forms, including one for the voter who had moved within state since the last election. The Georgia Secretary of State's office refused to process them because they were not mailed individually and neither a registrar, deputy registrar, or an otherwise authorized person had collected the applications as required under state law. The court held that plaintiffs had standing to bring the action. The court held that because the applications were received in accordance with the</td>
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<td>upcoming election. While the allegations of abuse were serious, it was not possible to determine with any certainty the ultimate validity of the plaintiffs' claims or for the full Supreme Court to review the relevant submissions, and voting officials would be available to enable proper voting by qualified voters.</td>
<td>N/A</td>
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Jacksonville Coalition for Voter Prot. v. Hood | United States District Court for the Middle District of Florida | 351 F. Supp. 2d 1326; 2004 U.S. Dist. LEXIS 26522 | October 25, 2004 | Plaintiffs, voter protection coalition, union, and voters, filed an emergency motion for a preliminary injunction and argued that African Americans in the county had less opportunity than other members of the state's electorate to vote in the upcoming election, and that defendants, elections officials, mandates of the NVRA, the State of Georgia was not free to reject them. The court found that: plaintiffs had a substantial likelihood of prevailing on the merits of their claim that the applications were improperly rejected; plaintiffs would be irreparably injured absent an injunction; the potential harm to defendants was outweighed by plaintiffs' injuries; and an injunction was in the public interest. Injunction granted. | No | N/A | No
The court of appeals affirmed in part, reversed in part, and remanded the district court's judgment. The court found that the district court's finding of a lack of intentional discrimination was appropriate as to many defendants. However, as to some of the individual voters' claims for damages, the court held "a definite and firm conviction" that the district court's findings were mistaken. The court noted that the argument that a voter's name was misspelled in the voter register, with a single incorrect letter, was a flimsy pretext and, accordingly, held that the
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<th>Name of Case</th>
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<th>Defendant</th>
<th>Court Decision</th>
<th>Additional Details</th>
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<tr>
<td>Stewart v. Blackwell</td>
<td>Plaintiffs, including African-American voters, alleged the use of punch card voting and &quot;central-count&quot; optical scanning devices by defendants, the Ohio Secretary of State et al., violated their rights under the Due Process Clause, the Equal Protection Clause, and (African--American plaintiffs) their rights under § 2 of the Voting Rights Act.</td>
<td>district court made erroneous findings of fact and law and failed to appreciate evidence of discriminatory intent.</td>
<td>district court's finding that defendant poll workers did not racially discriminate in denying the vote to this plaintiff was clearly erroneous. Affirmed in part and reversed in part.</td>
<td>The primary thrust of the litigation was an attempt to federalize elections by judicial rule or fiat via the invitation to the court to declare a certain voting technology unconstitutional and then fashion a remedy. The court declined the invitation. The determination of the applicable voting process had always been focused in the legislative branch of the government. While it was true that the percentage of residual or non-voted ballots in the 2000 presidential election ran slightly higher in counties using punch card technology, that fact standing alone was insufficient to declare the use of the system unconstitutional. Moreover, the highest frequency in Ohio of residual voting bore a direct relationship to economic and educational factors, negating the Voting Rights Act claim. The court further stated that local variety in...</td>
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<td>Taylor v. Currie</td>
<td>United States District Court for the Eastern District of Michigan</td>
<td>386 F. Supp. 2d 929; 2005 U.S. Dist. LEXIS 20257</td>
<td>September 14, 2005</td>
<td>Plaintiff brought an action against defendants, including a city elections commission, alleging defects in a city council primary election pertaining to absentee balloting. The case was removed to federal court by defendants. Pending before the court was a motion to remand, filed by plaintiff.</td>
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Voting Fraud and Voter Intimidation

Report to the
U.S. Election Assistance Commission
on
Preliminary Research & Recommendations

Job Berebrov and Tova Wang
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Introduction

Charge Under HAVA


Scope of Project

The Commission employed a bipartisan team of legal consultants, Toya 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.
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
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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.
  o 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.
  o 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.
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 Ansolobohere, 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)
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- 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
o 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.
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.1
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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. 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, 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:}

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, 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.

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,\textsuperscript{9} 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

\textbf{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**

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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1 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.
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.”
Voting Fraud and Voter Intimidation – Preliminary Research & Recommendations

NEXIS Charts
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 Ansolobohere, 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
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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
Appendix 2
List of Literature Reviewed

Reports


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.


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."


Books


Voting Fraud and Voter Intimidation – Preliminary Research & Recommendations


**Legal**

*Indiana Democratic Party vs. Rokita*, U.S. District Court Southern District of Indiana (Indianapolis) 1:05-cv-00634, U.S. Court of Appeals, 7th Circuit 06-2218

*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, 11th Circuit 05-15784

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. 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...
include 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 (though this attack would not be substantially different against DREs or DREs w/ VVPT). 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.

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.” 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:

Minimum number required to steal or create ballots: 5 persons total.

Minimum number required to scan marked ballots: 1 per polling place attacked.

Minimum number required to modify poll books: 1 per polling place attacked.

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. 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 votes), 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) 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. 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. 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 questions with questionable results.

By deciding to concentrate on size of attack, we mostly ignore the need for other resources when planning an attack. Thus, a software attack on DREs which makes use of steganography 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.35

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 responses36 we received.
Voting Fraud and Voter Intimidation – Preliminary Research & Recommendations

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”).

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.

• 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 Pennsylvania, 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

• An Independent Testing Authority has certified the model of voting machine used in the polling place.

• Acceptance Testing is performed on machines at time, or soon after they are received by County.

• Pre-election Logic and Accuracy 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. 42

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.43
- 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;\(^44\)
- The random selection will be publicly verifiable, \textit{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.

\textbf{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.

\textbf{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.\(^45\) 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;\(^46\)
- 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
1 Department of Justice's Activities to Address Past Election-Related Voting Irregularities, General Accounting Office, October 14, 2004, GAO-04-1041R
2 The MyVote1 Project Final Report, Fels Institute of Government, University of Pennsylvania, November 1, 2005, Pg. 12
3 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.
4 "Department Of Justice To Hold Ballot Access and Voting Integrity Symposium," U.S. Department of Justice press release, August 2, 2005
6 Ana Henderson and Christopher Edley, Jr., Voting Rights Act Reauthorization: Research-Based Recommendations to Improve Voting Access, Chief Justice Earl Warrant Institute on Race, Ethnicity and Diversity, University of California at Berkeley, School of Law, 2006, p. 29
Hi Peg,

I am free tomorrow at noon and at 4. I'm free all day Friday.

Job, given the timeline on the approval of the working group, would it be possible for us to go over your list of potential interviewees in the interim?

As to your concern about the workplan, Job and I have discussed this frequently and at length. We are working together on everything, although this has been difficult given our inability to have an in-person meeting and our general lack of proximity. If disagreements about process and scope do arise, is there a procedure we should follow? We've been doing the best we can so far.

You mention a survey in your examples — if that is still a live option, we should discuss that.

Can the law clerk be on the phone when we talk this week, or at least when we meet in person?

And when can we have an in-person meeting???

I have been working with and been friends with Doug Chapin, Thad Hall, Dan Tokaji, and Ingrid Reed for years. What is the procedure by which you want me to talk to them now?

Finally, I still need answers to my questions about expenses.

Thanks so much.

Tova
week is flexible. When would a teleconference be convenient for you two?

Working Group - I am circulating your lists of possible working group members to our Commissioners for review and comment. I will get back to you as soon as I have heard from everyone. This may take awhile, probably through the end of November, as one of our Commissioners is out of the office for an extended period due to a death in the family.

Revised Workplan - Due to political sensitivities regarding this project, it is more important than usual that you act as a team. I noticed several instances on the revised workplan where only one of you is scheduled to be involved. While it seems to me that it would be OK for one or the other to take the lead on a particular aspect of the work (e.g.; developing Westlaw search terms, drafting a research instrument, or setting up interviews), it is very important that both of you be involved in making final decisions on the information gathering process and in the resulting information gathering effort (e.g.; finalizing the Westlaw search terms and reviewing the search results; finalizing the proposed research instrument, administering the survey, and reviewing the survey responses; and conducting interviews).

DOJ Contact - I am working through the DOJ bureaucracy to obtain the input we need from the Election Crimes Branch. I have spoken to the career attorney I mentioned in previous teleconferences, Craig Donsanto. He is very interested in providing information and perspectives that will be useful to the project; but may have to obtain his superior's permission to participate. I will keep you posted on my efforts. Once we have access to him, it will be important to schedule an initial interview at the earliest time convenient for him and the two of you.

Contacting Other EAC Contractors - Questions for other EAC contractors need to be fielded through me. I realize this may seem cumbersome, but there are a number of reasons for this, some involving contractual issues, some procedural and policy issues. I will have to coordinate our activities on this project with the EAC project manager for the other EAC research project(s). Together, we will ascertain what the other contractors already have provided to EAC that may answer your questions, perhaps without an interview being necessary, or if the research is not far enough along to provide the information you seek.

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
Attached please find the revised work plan and schedule. Let me know if you have any questions, comments or suggested changes. Tova lw plan 1005.doc
To: Peggy Sims, Gavin Gilmour, Karen Lynn-Dyson and Tom Wilkey  
From: Tova Wang, Job Serebrov  
Re: Work Plan  
Date: October 5, 2005

The following is a work plan and division of labor for the project on voter fraud and voter intimidation:

MONTH ONE (beginning the date contracts are finalized):

I. Draft project work plan

II. Develop list of potential members of the working group; have EAC vet and approve names (Tova, Job, EAC)

III. Define Fraud/Intimidation (Tova and Job)  
a. Discussion among consultants to:  
   i. Determine what we believe the parameters of the terms fraud and intimidation should be for our research purposes.  
   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  
b. Analysis of existing research (Tova and Job)

IV. Obtain research assistance (e.g. interns, law clerks) (EAC)

MONTH TWO:

V. Interview individuals identified in month one about the scope of fraud and intimidation (Job and Tova);

VI. Create working written description of what fraud and intimidation means, includes/does not include (Job and Tova)

VII. Examine the Feasibility of Quantifying the Level of Incidence of Different Types of Fraud  
a. Look at how we can develop a statistically sound research instrument  
   i. Discussion with political and social scientists, legal scholars in the field (Tova)  
b. Preliminary survey of case law of recent prosecutions for fraud/intimidation (Job/law clerk)  
c. Interviews with state and local officials, third party groups, election lawyers to assess what they believe are the most prevalent problems (Job and Tova)

MONTH THREE:
VIII. 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)

MONTH FOUR:

IX. Written summary of background research on voting fraud and intimidation (Tova and Job)

X. Development of a work plan and set of issues for examination for the working group (Tova and Job)

XI. Finalize working group membership and set meeting dates

MONTH FIVE:

XII. Initial working group meetings

MONTH SIX:

XIII. Develop project scope of work and project work plan

XIV. Draft summary report describing key findings of this preliminary study of voting fraud and voter intimidation
Peg and Gavin,

Peg, I know you are out sick today. Hope you are feeling better by the time you get this message.

While we had a kick off conference scheduled for the Legal Resources Website, we did not have one for the Voter Fraud project. We should probably try to schedule a telephone kick off this week. I don’t foresee any reason that the conference would have to be in person, do you?

Juliet E. Thompson
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100
I would put forth one point at the outset... if we are creating an EAC report, let create an EAC report. Tova and Job contract employees... I do not see why we can't use all, some or none of their work without footnote or comment.

Just my initial thought.

GG

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
The stated purpose of the EAC's recently released "fraud report" was not to draw conclusions about fraud, but determine how the subject should be studied by the EAC. As such, it would inappropriate for the EAC to make unsupported conclusions regarding fraud in its preliminary report. Such speculative statements would only serve to compromise its future effort to study this matter in an nonpartisan fashion.

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.
I assume that you saw Gracia's comments. I accepted them and added one or two words to clarify one point.

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

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
Commissioners,

The draft attached below contains the Executive Summary as well as the suggestions made by Commissioner Hillman. Please let me know if you have any additional changes by COB Monday, Dec. 4, so that I can incorporate these and have this document ready for consideration at Thursday's meeting.

![Image](Voter Fraud & Intimidation Report - 120106.doc)

In addition, I have had another request from Tova Wang for an embargoed copy of this report. I have not heard from any of you on this matter. I assume that this means that you agree with my opinion that we cannot release this document to her since she is no longer under contract with us, as it would be tantamount to releasing this document to the public. Please let me know ASAP if this is not your understanding and belief.

Juliet Thompson Hodgkins  
General Counsel  
United States Election Assistance Commission  
1225 New York Ave., NW, Ste 1100  
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EXECUTIVE SUMMARY

The Help America Vote Act of 2002 (HAVA) requires the U.S. Election Assistance Commission (EAC) to study a host of topics, including "voting fraud" and "voter intimidation." In 2005, EAC embarked on an initial review of the existing knowledge of voting fraud and voter intimidation. The goal of that study was to develop a working definition of "voting fraud" and "voter intimidation" and to identify research methodology to conduct a comprehensive, nationwide study of these topics.

EAC staff along with two, bipartisan consultants reviewed the existing information available about voting fraud and voter intimidation, including reading articles, books and reports; interviewing subject matter experts; reviewing media reports of fraud and intimidation; and studying reported cases of prosecutions of these types of crimes. It is clear from this review that there is a great deal of debate on the pervasiveness of fraud in elections as well as what constitute the most common acts of fraud or intimidation. There is also no apparent consensus on the meaning of the phrases "voting fraud" and "voter intimidation." Some think of voting fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal activities.

In order to facilitate future study of these topics, EAC developed a working definition of "election crimes." "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.

From EAC's review of existing information on the issue, it was apparent that there have been a number of studies that touched on various topics and regions of the country concerning voting fraud and intimidation, but that there had never been a comprehensive, nationwide study of these topics. EAC will conduct further research to provide a comprehensive, nationwide look at "election crimes." Future EAC study of this topic will focus on election-related, criminal activity and will not include acts that are exclusively civil wrongs, campaign finance violations, and violations of ethical provisions. EAC will study these concepts by surveying the states' chief election officials about complaints they received through their administrative complaint processes, election crime investigation units regarding complaints received and those referred to law enforcement, and law enforcement and prosecutorial agencies regarding complaints received and charges filed.
INTRODUCTION

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

PURPOSE AND METHODOLOGY OF THE EAC STUDY

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

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

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

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1 Biographies for Job Serebrov and Tova Wang, the two consultants hired by EAC, are attached as Appendix "1".
EAC consultants reviewed existing studies, articles, reports and case law on voting fraud and intimidation and conducted interviews with experts in the field. EAC consultants and staff then presented their initial findings to a working group that provided feedback. The working group participants were:

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

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

**J.R. Perez**  
Guadalupe County Elections Administrator, Texas

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

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

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

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

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

Reports and Studies of Voting fraud and Intimidation

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

Articles and Reports


• 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.


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

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

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

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

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


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

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

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

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

**Interviews with Experts**

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

- **Wade Henderson**  
  Executive Director,  
  Leadership Conference for Civil Rights

- **Wendy Weiser**  
  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

- **Pat Rogers**  
  Attorney, New Mexico

- **Nina Perales**  
  Counsel,  
  Mexican American Legal Defense and Education Fund

- **Rebecca Vigil-Giron**  
  Secretary of State, New Mexico

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

- **Stephen Ansolobohere**  
  Massachusetts Institute of Technology

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

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

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

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

Case Law and Statutes

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

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

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

Media Reports

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

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

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

DEFINITION OF ELECTION CRIMES

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

Current Terminology

The phrase "voting fraud" is really a misnomer for a concept that is much broader. "Fraud" is a concept that connotes an intentional act of deception, which may constitute either a criminal act, civil tort, or 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 usually a tort, but in some cases (esp. when the conduct is willful) it may be a crime.


"Voting" is the act of casting votes to decide an issue or contest. Black's Law Dictionary, Eighth Edition, p. 1608. Using these terms to form a definition of "voting fraud," it means fraudulent or deceptive acts committed to influence the act of voting.
Thus, a voter who intentionally impersonates another registered voter and attempts to vote for that person would be committing "voting fraud." Similarly, a person who knowingly provides false information to a voter about the location of the voter's polling place commits fraud on the voter.

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

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

**New Terminology**

The goal of this study was to develop a common definition of what is generically referred to as "voting fraud," and "voter intimidation" that would serve as the basis for a future, comprehensive study of the existence of these problems. Because the current terminology has such a variety of applications and meanings, "voting fraud" and "voter intimidation" can be read to encompass almost any bad act associated with an election. Such broad terminology is not useful in setting the boundaries of a future study. A definition must set parameters for future study by applying limitations on what is included in the concepts to be studied. The current terminology applies to such limitations.

Thus, EAC has adopted the use of the phrase "election crimes" to limit the scope of its future study. This term captures all crimes related to the voter registration and voting processes, and excludes civil wrongs and non-election related crimes. EAC adopted this definition because it better represents the spectrum of activities that we are able to and desire to study. In addition, we recognize that the resources, both financial and human capital, needed to study all "voting fraud" and "voter intimidation," including criminal acts, civil actions, as well as allegations of voter suppression through the use of legal election processes are well beyond the resources available to EAC. Finally, by limiting this definition to criminal acts, EAC can focus its study on a set of more readily measurable data. Criminal behavior is readily defined through state and federal statutes and is prosecuted by government agencies. This is not the case with civil matters. Civil actions can be prosecuted by individuals and or government entities. Furthermore, what constitutes civil action is far less defined, subject to change, and can vary from case to
The Definition of an Election Crime for Purposes of this Study

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

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

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

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

**Acts of Deception**

- Knowingly causing to be mailed or distributed, or knowingly mailing or distributing, literature that includes false information about the voter's precinct or polling place, the date and time of the election or a candidate;
- Possessing an official ballot outside the voting location, unless the person is an election official or other person authorized by law or local ordinance to possess a ballot outside of the polling location;
- Making or knowingly possessing a counterfeit of an official election ballot;
- Signing a name other than his/her own to a petition proposing an initiative, referendum, recall, or nomination of a candidate for office;
- Knowingly signing more than once for the proposition, question, or candidate in one election;
- Signing a petition proposing an initiative or referendum when the signer is not a qualified voter.
- Voting or attempting to vote in the name of another person;
- Voting or attempting to vote more than once during the same election;
o Intentionally making a false affidavit, swearing falsely, or falsely affirming under an oath required by a statute regarding their voting status, including when registering to vote, requesting an absentee ballot or presenting to vote in person;

- Registering to vote without being entitled to register;

- Knowingly making a materially false statement on an application for voter registration or re-registration; and

- Voting or attempting to vote in an election after being disqualified or when the person knows that he/she is not eligible to vote.

**Acts of Coercion**

- Using, threatened to use, or causing to be used force, coercion, violence, restraint, or inflicting, threatening to inflict, or causing to be inflicted damage harm, or loss, upon or against another person to induce or compel that person to vote or refrain from voting or to register or refrain from registering to vote;

- Knowingly paying, offering to pay, or causing to be paid money or other thing of value to a person to vote or refrain from voting for a candidate or for or against an election proposition or question;

- Knowingly soliciting or encouraging a person who is not qualified to vote in an election;

- Knowingly challenging a person’s right to vote without probable cause or on fraudulent grounds, or engaging in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voter from voting or to delay the process of voting;

- As an employer, attempting by coercion, intimidation, threats to discharge or to lessen the remuneration of an employee, to influence his/her vote in any election, or who requires or demands an examination or inspection by himself/herself or another of an employee’s ballot;

- Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for signing or refraining from signing a petition proposing an initiative;

- Inducing or attempting to induce an election official to fail in the official’s duty by force, threat, intimidation, or offers of reward;

- Directly or through any other person advancing, paying, soliciting, or receiving or causing to be advanced, paid, solicited, or received, any money or other valuable consideration to or for the use of any person in order to induce a person not to become or to withdraw as a candidate for public office; and

- Soliciting, accepting, or agreeing to accept money or other thing of value in exchange for registering to vote.

**Acts of Damage or Destruction**

- Destroying completed voter registration applications;

- Removing or destroying any of the supplies or other conveniences placed in the voting booths or compartments;

- Removing, tearing down, or defacing election materials, instructions or ballots;
Fraudulently altering or changing the vote of any elector, by which such elector is prevented from voting as the person intended;

Knowingly removing, altering, defacing or covering any political sign of any candidate for public office for a prescribed period prior to and following the election;

Intentionally changing, attempting to change, or causing to be changed an official election document including ballots, tallies, and returns; and

Intentionally delaying, attempting to delay, or causing to be delayed the sending of certificate, register, ballots, or other materials whether original or duplicate, required to be sent by jurisdictional law.

Failure or Refusal to Act

Intentionally failing to perform an election duty, or knowingly committing an unauthorized act with the intent to effect the election;

Knowingly permitting, making, or attempting to make a false count of election returns;

Intentionally concealing, withholding, or destroying election returns or attempts to do so;

Marking a ballot by folding or physically altering the ballot so as to recognize the ballot at a later time;

Attempting to learn or actually and unlawfully learning how a voter marked a ballot;

Distributing or attempting to distribute election material knowing it to be fraudulent;

Knowingly refusing to register a person who is entitled to register under the rules of that jurisdiction;

Knowingly removing the eligibility status of a voter who is eligible to vote; and

Knowingly refusing to allow an eligible voter to cast his/her ballot.

What is not an Election Crime for Purposes of this Study

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

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

Recommendation 1: Conduct More Interviews

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

Recommendation 2: Follow Up on Media Research

The media search conducted for this phase of the research was based on a list of search terms agreed upon by EAC consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contained allegations of fraud or intimidation. Similarly, some of the articles contained information about investigations into such activities or even charges brought. Additional media research should be conducted to determine what, if any, resolutions or further activity there was in each case.

Recommendation 3: Follow Up on Allegations Found in Literature Review

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

Recommendation 4: Review Complaints Filed With "MyVotel" 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 MyVotel Project. This project involved using a toll-free voter hotline that voters could call for poll locations, be transferred to a local hotline, or leave a recorded message with a complaint. In 2004, this resulted in more than 200,000 calls received and more than 56,000 recorded complaints.

Further research should be conducted using the MyVotel data with the cooperation of the project leaders. While perhaps not a fully scientific survey given the self-selection of the callers, the information regarding 56,000 complaints may provide insight into the problems voters may have experienced, especially issues regarding intimidation or suppression.
Recommendation 5: Further Review of Complaints Filed With U.S. Department of Justice

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

Recommendation 6: Review Reports Filed By District Election Officers

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

Recommendation 7: Attend Ballot Access and Voting Integrity Symposium

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

Recommendation 8: Conduct Statistical Research

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

- Ten locations that are geographically and demographically diverse where there have been many reports of fraud and/or intimidation;
- Ten locations (geographically and demographically diverse) that have not had many reports of fraud and/or intimidation;
EAC should also conduct a survey of elections officials, district attorneys, and district election officers. The survey sample should be large in order to be able to get the necessary subsets, and it must include a random set of counties where there have and have not been a large number of allegations.

**Recommendation 9: Explore Improvements to Federal Law**

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

**Recommendation 10: Use Observers to Collect Data on Election Day**

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

**Recommendation 11: Study Absentee Ballot Fraud**

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

**Recommendation 12: Use Risk Analysis Methodology to Study Fraud**

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

**Recommendation 13: Conduct Research Using Database Comparisons**

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

**Recommendation 14: Conduct a Study of Deceptive Practices**

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

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

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

**Recommendation 16: Examine the Use of Special Election Courts**

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

**Accepted Recommendations**

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

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

Some of the recommendations are beyond the scope of the current study. While election courts may be a reasonable conclusion to reach after we determine the volume and type of election crimes being reported, charged or prosecuted, it is premature to embark on an analysis of that solution without more information. Last, some of the recommendations do not support a comprehensive study of election crimes. While a risk analysis might be appropriate in a smaller scale study, EAC desires to conduct a broader survey to avoid the existing problem of anecdotal and limited scope of information.
In order to further its goal of developing a comprehensive data set regarding election crimes and the laws and procedures used to identify and prosecute them, EAC intends to engage in the following research activities in studying the existence and enforcement of election crimes:

**Survey Chief Election Officers Regarding Administrative Complaints**

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

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

*Analyse Survey Data in Light of State Laws and Procedures*

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

**CONCLUSION**

Election crimes are nothing new to our election process. The pervasiveness of these crimes and the fervor with which they have been enforced has created a great deal of debate among academics, election officials, and voters. Past studies of these issues have been limited in scope and some have been riddled with bias. These are issues that deserve comprehensive and nonpartisan review. EAC, through its clearinghouse role, will collect and analyze data on election crimes throughout the country. These data not only will tell us what types of election crimes are committed and where fraud exists, but also inform us of what factors impact the existence, prevention, and prosecution of election crimes.
APPENDIX 1 – BIOGRAPHIES OF JOB SEREBROV AND TOVA WANG

APPENDIX 2 – SUMMARIES OF BOOKS, REPORTS AND ARTICLES

APPENDIX 3 – SUMMARIES OF INTERVIEWS

APPENDIX 4 – SUMMARIES OF CASES REVIEWED
Attached is a revised version of the Voting Fraud/Voter Intimidation Draft Report. The changes that Commissioner Hillman suggested have been made and highlighted in yellow. See pages 10-11.

Peggy and I are working on the revision of the Donsanto and Tanner interview summaries and will forward that to you under a separate email.
INTRODUCTION

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

PURPOSE AND METHODOLOGY OF THE EAC STUDY

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

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

To accomplish these tasks, EAC employed two consultants, Job Serebrov and Tova Wang, who worked with EAC staff and interns to conduct the research that forms the basis of this report. The consultants were chosen based upon their experience with the topic and the need to assure a bipartisan representation in this study. The consultants and EAC staff were charged with (1) researching the current state of information on the topic of voting fraud and voter intimidation; (2) developing a uniform definition of voting fraud and voter intimidation; and (3) recommending a plan for a comprehensive study of election crimes.

1 Biographies for Job Serebrov and Tova Wang, the two consultants hired by EAC, are attached as Appendix "1".
fraud and voter intimidation; and (3) proposing recommended strategies for researching this subject.

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

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

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

**J.R. Perez**
Guadalupe County Elections Administrator, Texas

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

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

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

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

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

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

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

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

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

Reports and Studies of Voting fraud and Intimidation

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

Articles and Reports

• 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.


• 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."


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

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

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

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

**Interviews with Experts**

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

**Wade Henderson**  
Executive Director,  
Leadership Conference for Civil Rights

**Wendy Weiser**  
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

**Pat Rogers**  
Attorney, New Mexico

**Nina Perales**  
Counsel,  
Mexican American Legal Defense and Education Fund

**Rebecca Vigil-Giron**  
Secretary of State, New Mexico

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

**Stephen Ansolobohere**  
Massachusetts Institute of Technology

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

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

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

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

Case Law and Statutes

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

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

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

Media Reports

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

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

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

DEFINITION OF ELECTION CRIMES

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

Current Terminology

The phrase "voting fraud" is really a misnomer for a concept that is much broader. "Fraud" is a concept that connotes an intentional act of deception which may constitute either a criminal act or a 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 usually a tort, but in some cases (esp. when the conduct is willful) it may be a crime.


"Voting" is the act of casting votes to decide an issue or contest. Black's Law Dictionary, Eighth Edition, p. 1608. Using these terms to form a definition of "voting fraud," it means fraudulent or deceptive acts committed to influence the act of voting.
Thus, a voter who intentionally impersonates another registered voter and attempts to vote for that person would be committing voting fraud. Similarly, a person who knowingly provides false information to a voter about the location of the voter’s polling place commits fraud on the voter.

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

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

New Terminology

The goal of this study was to develop a common definition of what is generically referred to as “voting fraud” and “voter intimidation” that would serve as the basis for a future, comprehensive study of the existence of these problems. Because the current terminology has such a variety of applications and meanings, “voting fraud” and “voter intimidation” can be read to encompass almost any act associated with an election. Such broad terminology is not useful in setting the boundaries of a future study. A definition must set parameters for future study by applying limitations on what is included in the concepts to be studied. The current terminology applies no such limitations.

Thus, EAC has adopted the use of the phrase “election crimes” to limit the scope of its future study. This term captures all crimes related to the voter registration and voting processes and excludes civil wrongs and non-election related crimes. EAC adopted this definition because it better represents the spectrum of activities that we are able to and desire to study. In addition, we recognize that the resources, both financial and human capital, needed to study all “voting fraud” and “voter intimidation” including criminal acts, civil actions, as well as allegations of voter suppression through the use of legal election processes are well beyond the resources available to EAC. Finally, by limiting this definition to criminal acts, EAC can focus its study on a set of more readily measurable data. Criminal behavior is readily defined through state and federal statutes and is prosecuted by government agencies. This is not the case with civil matters. Civil actions can be prosecuted by individuals and/or government entities. Furthermore, what constitutes civil action is far less defined, subject to change, and can vary from case to case.
The Definition of an Election Crime for Purposes of this Study

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

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

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

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

Acts of Deception

- knowingly causing to be mailed or distributed, or knowingly mailing or distributing, literature that includes false information about the voter’s precinct or polling place, the date and time of the election or a candidate;
- possessing an official ballot outside the voting location, unless the person is an election official or other person authorized by law or local ordinance to possess a ballot outside of the polling location;
- making or knowingly possessing a counterfeit of an official election ballot;
- signing a name other than his/her own to a petition proposing an initiative, referendum, recall, or nomination of a candidate for office;
- knowingly signing more than once for the proposition, question, or candidate in one election;
- signing a petition proposing an initiative or referendum when the signer is not a qualified voter.
- Voting or attempting to vote in the name of another person;
- Voting or attempting to vote more than once during the same election;
Intentionally making a false affidavit, swearing falsely, or falsely affirming under an oath required by a statute regarding their voting status, including when registering to vote, requesting an absentee ballot or presenting to vote in person;

Registering to vote without being entitled to register;

Knowingly making a materially false statement on an application for voter registration or re-registration; and

Voting or attempting to vote in an election after being disqualified or when the person knows that he/she is not eligible to vote.

**Acts of Coercion**

Using, threatening to use, or causing to be used force, coercion, violence, restraint, or inflicting, threatening to inflict, or causing to be inflicted damage harm, or loss, upon or against another person to induce or compel that person to vote or refrain from voting or to register or refrain from registering to vote;

Knowingly paying, offering to pay, or causing to be paid money or other thing of value to a person to vote or refrain from voting for a candidate or for or against an election proposition or question;

Knowingly soliciting or encouraging a person who is not qualified to vote in an election;

Knowingly challenging a person’s right to vote without probable cause or on fraudulent grounds, or engaging in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voter from voting or to delay the process of voting;

As an employer, attempting by coercion, intimidation, threats to discharge or to lessen the remuneration of an employee, to influence his/her vote in any election, or who requires or demands an examination or inspection by himself/herself or another of an employee’s ballot;

Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for signing or refraining from signing a petition proposing an initiative;

Inducing or attempting to induce an election official to fail in the official’s duty by force, threat, intimidation, or offers of reward;

Directly or through any other person advancing, paying, soliciting, or receiving or causing to be advanced, paid, solicited, or received, any money or other valuable consideration to or for the use of any person in order to induce a person not to become or to withdraw as a candidate for public office; and

Soliciting, accepting, or agreeing to accept money or other thing of value in exchange for registering to vote.

**Acts of Damage or Destruction**

Destroying completed voter registration applications;

Removing or destroying any of the supplies or other conveniences placed in the voting booths or compartments;

Removing, tearing down, or defacing election materials, instructions or ballots;
DRAFT – DO NOT DISTRIBUTE

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

**Failure or Refusal to Act**

- Intentionally failing to perform an election duty, or knowingly committing an unauthorized act with the intent to effect the election;
- Knowingly permitting, making, or attempting to make a false count of election returns;
- Intentionally concealing, withholding, or destroying election returns or attempts to do so;
- Marking a ballot by folding or physically altering the ballot so as to recognize the ballot at a later time;
- Attempting to learn or actually and unlawfully learning how a voter marked a ballot;
- Distributing or attempting to distribute election material knowing it to be fraudulent;
- Knowingly refusing to register a person who is entitled to register under the rules of that jurisdiction;
- Knowingly removing the eligibility status of a voter who is eligible to vote; and
- Knowingly refusing to allow an eligible voter to cast his/her ballot.

**What is not an Election Crime for Purposes of this Study**

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

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

Recommendation 1: Conduct More Interviews

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

Recommendation 2: Follow Up on Media Research

The media search conducted for this phase of the research was based on a list of search terms agreed upon by EAC consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contained allegations of fraud or intimidation. Similarly, some of the articles contained information about investigations into such activities or even charges brought. Additional media research should be conducted to determine what, if any, resolutions or further activity there was in each case.

Recommendation 3: Follow Up on Allegations Found in Literature Review

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

Recommendation 4: Review Complaints Filed With “MyVote1” Voter Hotline

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

Further research should be conducted using the MyVote1 data with the cooperation of the project leaders. While perhaps not a fully scientific survey given the self-selection of the callers, the information regarding 56,000 complaints may provide insight into the problems voters may have experienced, especially issues regarding intimidation or suppression.
Recommendation 5: Further Review of Complaints Filed With U.S. Department of Justice

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

Recommendation 6: Review Reports Filed By District Election Officers

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

Recommendation 7: Attend Ballot Access and Voting Integrity Symposium

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

Recommendation 8: Conduct Statistical Research

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

- Ten locations that are geographically and demographically diverse where there have been many reports of fraud and/or intimidation;
- Ten locations (geographically and demographically diverse) that have not had many reports of fraud and/or intimidation;
EAC should also conduct a survey of elections officials, district attorneys, and district election officers. The survey sample should be large in order to be able to get the necessary subsets, and it must include a random set of counties where there have and have not been a large number of allegations.

Recommendation 9: Explore Improvements to Federal Law

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

Recommendation 10: Use Observers to Collect Data on Election Day

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

Recommendation 11: Study Absentee Ballot Fraud

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

Recommendation 12: Use Risk Analysis Methodology to Study Fraud

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

Recommendation 13: Conduct Research Using Database Comparisons

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

Recommendation 14: Conduct a Study of Deceptive Practices

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

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

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

**Recommendation 16: Examine the Use of Special Election Courts**

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

**Accepted Recommendations**

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

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

Some of the recommendations are beyond the scope of the current study. While election courts may be a reasonable conclusion to reach after we determine the volume and type of election crimes being reported, charged or prosecuted, it is premature to embark on an analysis of that solution without more information. Last, some of the recommendations do not support a comprehensive study of election crimes. While a risk analysis might be appropriate in a smaller scale study, EAC desires to conduct a broader survey to avoid the existing problem of anecdotal and limited scope of information.
In order to further its goal of developing a comprehensive data set regarding election crimes and the laws and procedures used to identify and prosecute them, EAC intends to engage in the following research activities in studying the existence and enforcement of election crimes:

**Survey Chief Election Officers Regarding Administrative Complaints**

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

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

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

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

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

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

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

Happy reading and Happy Thanksgiving!

Voter Fraud & Intimidation Report.doc

Juliet Thompson Hodgkins
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EAC REPORT ON VOTING FRAUD AND VOTER INTIMIDATION STUDY

INTRODUCTION

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

PURPOSE AND METHODOLOGY OF THE EAC STUDY

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

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

To accomplish these tasks, EAC employed two consultants, Job Serebrov and Tova Wang,¹ who worked with EAC staff and interns to conduct the research that forms the basis of this report. The consultants were chosen based upon their experience with the topic and the need to assure a bipartisan representation in this study. The consultants and EAC staff were charged with (1) researching the current state of information on the topic of voting fraud and voter intimidation; (2) developing a uniform definition of voting fraud and voter intimidation; and (3) developing a methodology for researching the existence and enforcement of election crimes.

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

(Not stamped clerical error)
fraud and voter intimidation; and (3) proposing recommended strategies for researching this subject.

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

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

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

J.R. Perez  
Guadalupe County Elections Administrator, Texas

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

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

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

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

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

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

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

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

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

Reports and Studies of Voting fraud and Intimidation

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

Articles and Reports


- 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."


Books


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

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

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

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

Interviews with Experts

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

**Wade Henderson**
Executive Director,
Leadership Conference for Civil Rights

**Wendy Weiser**
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

**Pat Rogers**
Attorney, New Mexico

**Nina Perales**
Counsel,
Mexican American Legal Defense and Education Fund

**Rebecca Vigil-Giron**
Secretary of State, New Mexico

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

**Stephen Ansolobehere**
Massachusetts Institute of Technology

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

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

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

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

Case Law and Statutes

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

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

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

Media Reports

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

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

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

DEFINITION OF ELECTION CRIMES

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

New Terminology

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

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


“Voting” is the act of casting votes to decide an issue or contest. Black’s Law Dictionary, Eighth Edition, p. 1608. Using these terms to form a definition of “voting fraud,” it means fraudulent or deceptive acts committed to influence the act of voting. Thus, a voter who intentionally impersonates another registered voter and attempts to
vote for that person would be committing “voting fraud.” Similarly, a person who knowingly provides false information to a voter about the location of the voter’s polling place commits fraud on the voter.

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

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

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

The Definition of an Election Crime for Purposes of this Study

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

Election crimes can be committed by voters, candidates, election officials, or any other members of the public who desire to criminally impact the result of an election. However, crimes that are based upon intentional or willful failure to act assume that a duty to act exists. Election officials have affirmative duties to act with regard to elections. By and large, other groups and individuals do not have such duties.
The victim of an election crime can be a voter, a group of voters, an election official, a candidate, or the public in general. Election crimes can occur during any stage of the election process, including but not limited to qualification of candidates; voter registration; campaigning; voting system preparation and programming; voting either early, absentee, or on election day; vote tabulation; recounts; and recalls.

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

**Acts of Deception**

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

**Acts of Coercion**

- Using, threatening to use, or causing to be used force, coercion, violence, restraint, or inflicting, threatening to inflict, or causing to be inflicted damage harm, or loss, upon or against another person to induce or compel that person to vote or refrain from voting or to register or refrain from registering to vote;
- Knowingly paying, offering to pay, or causing to be paid money or other thing of value to a person to vote or refrain from voting for a candidate or for or against an election proposition or question;
o Knowingly soliciting or encouraging a person who is not qualified to vote in an election;
o Knowingly challenging a person’s right to vote without probable cause or on fraudulent grounds, or engaging in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voter from voting or to delay the process of voting;
o 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;
o Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for signing or refraining from signing a petition proposing an initiative;
o Inducing or attempting to induce an election official to fail in the official’s duty by force, threat, intimidation, or offers of reward;
o 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
o Soliciting, accepting, or agreeing to accept money or other thing of value in exchange for registering to vote.

Acts of Damage or Destruction

o Destroying completed voter registration applications;
o Removing or destroying any of the supplies or other conveniences placed in the voting booths or compartments;
o Removing, tearing down, or defacing election materials, instructions or ballots;
o Fraudulently altering or changing the vote of any elector, by which such elector is prevented from voting as the person intended;
o 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;
o Intentionally changing, attempting to change, or causing to be changed an official election document including ballots, tallies, and returns; and
o 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

o Intentionally failing to perform an election duty, or knowingly committing an unauthorized act with the intent to effect the election;
o Knowingly permitting, making, or attempting to make a false count of election returns;
o 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;
- Knowingly removing the eligibility status of a voter who is eligible to vote; and
- Knowingly refusing to allow an eligible voter to cast his/her ballot.

What is not an Election Crime for Purposes of this Study

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

RECOMMENDATIONS ON HOW TO STUDY ELECTION CRIMES

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

Recommendation 1: Conduct More Interviews

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

Recommendation 2: Follow Up on Media Research

The media search conducted for this phase of the research was based on a list of search terms agreed upon by EAC consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contained allegations of fraud or intimidation. Similarly, some of the articles contained information about investigations into such
activities or even charges brought. Additional media research should be conducted to determine what, if any, resolutions or further activity there was in each case.

**Recommendation 3: Follow Up on Allegations Found in Literature Review**

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

**Recommendation 4: Review Complaints Filed With “MyVotel” Voter Hotline**

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

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

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

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

**Recommendation 6: Review Reports Filed By District Election Officers**

Further research should include a review of the reports that must be filed by every District Election Officer to the Public Integrity Section of the Criminal Division of the Department of Justice. The DEOs play a central role in receiving reports of voting fraud and investigating and pursuing them. Their reports back to the Department would likely provide tremendous insight into what actually transpired during the last several elections. Where necessary, information could be redacted or made confidential.
Recommendation 7: Attend Ballot Access and Voting Integrity Symposium

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

Recommendation 8: Conduct Statistical Research

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

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

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

Recommendation 9: Explore Improvements to Federal Law

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

Recommendation 10: Use Observers to Collect Data on Election Day

Use observers to collect data regarding fraud and intimidation at the polls on Election Day. There may be some limitations to the ability to conduct this type of research, including difficulty gaining access to polling places for the purposes of observation, and concerns regarding how the observers themselves may inadvertently or deliberately influence the occurrence of election crimes.
Recommendation 11: Study Absentee Ballot Fraud

Because absentee ballot fraud constitutes a large portion of election crimes, a stand-alone study of absentee ballot fraud should be conducted. Researchers should look at actual cases to see how absentee ballot fraud schemes are conducted in an effort to provide recommendations on more effective measures for preventing fraud when absentee ballots are used.

Recommendation 12: Use Risk Analysis Methodology to Study Fraud

Conduct an analysis of what types of fraud people are most likely to commit. Researchers will use that risk analysis to rank the types of fraud based on the "ease of commission" and the impact of the fraud.

Recommendation 13: Conduct Research Using Database Comparisons

Researchers should compare information on databases to determine whether the voter rolls contain deceased persons and felons. In addition, the voter rolls can then be compared with the list of persons who voted to determine whether a vote was recorded by someone who is deceased or if felons are noted as having voted.

Recommendation 14: Conduct a Study of Deceptive Practices

The working group discussed the increasing use of deceptive practices, such as flyers and phone calls with false and/or intimidating information, to suppress voter participation. A number of groups, such as the Department of Justice, the EAC, and organizations such as the Lawyers Committee for Civil Rights, keep phone logs regarding complaints of such practices. These logs should be reviewed and analyzed to see how and where such practices are being conducted and what can be done about them.

Recommendation 15: Study Use of HAVA Administrative Complaint Procedure as Vehicle for Measuring Fraud and Intimidation

EAC should study the extent to which states are utilizing the administrative complaint procedure mandated by HAVA. In addition, the EAC should study whether data collected through the administrative complaint procedure can be used as another source of information for measuring fraud and intimidation.

Recommendation 16: Examine the Use of Special Election Courts

Given that many state and local judges are elected, it may be worth exploring whether special election courts should be established to handle fraud and intimidation complaints before, during, and after Election Day. Pennsylvania employs such a system and could investigate how well that system is working.
Accepted Recommendations

There has never been a comprehensive, national study that gathered data regarding all claims, charges, and prosecutions of voting crimes. EAC feels that a comprehensive study is the most important research that it can offer the election community and the public. As such, EAC has adopted all or a part of six of the 16 recommendations made by EAC consultants and the working group.

While several of the other recommendations could be used to obtain more anecdotal information regarding election crimes, EAC believes that what is needed is a comprehensive survey and study of the information available from investigatory agencies, prosecutorial bodies and courts on the number and types of complaints, charges and prosecutions of election crimes. Additional media reviews, additional interviews and the use of observers to collect information from voters on Election Day will only serve to continue the use of anecdotal data to report on election crimes. Hard data on complaints, charges and prosecutions exists and we should gather and use that data, rather than rely on the perceptions of the media or the members of the public as to what might be fraud or intimidation.

Some of the recommendations are beyond the scope of the current study. While election courts may be a reasonable conclusion to reach after we determine the volume and type of election crimes being reported, charged or prosecuted, it is premature to embark on an analysis of that solution without more information. Last, some of the recommendations do not support a comprehensive study of election crimes. While a risk analysis might be appropriate in a smaller scale study, EAC desires to conduct a broader survey to avoid the existing problem of anecdotal and limited scope of information.

In order to further its goal of developing a comprehensive data set regarding election crimes and the laws and procedures used to identify and prosecute them, EAC intends to engage in the following research activities in studying the existence and enforcement of election crimes:

Survey Chief Election Officers Regarding Administrative Complaints

Likely sources of complaints concerning election crimes are the administrative complaint processes that states were required to establish to comply with Section 402 of HAVA. These complaint procedures were required to be in place prior to a state receiving any funds under HAVA. Citizens are permitted to file complaints alleging violations of HAVA Title III provisions under these procedures with the state’s chief election official. Those complaints must be resolved within 60 days. The procedures also allow for alternative dispute resolution of claims. Some states have expanded this process to include complaints of other violations, such as election crimes.

In order to determine how many of these complaints allege the commission of election crimes, EAC will survey the states’ chief election officers regarding complaints that have been filed, investigated, and resolved since January 1, 2004. EAC will use the definition
of election crimes provided above in this report in its survey so that data regarding a uniform set of offenses 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. 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 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.
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

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
Attached is a draft of the fraud/intimidation report. I wanted to get some feedback on the report before I send it to the Commissioners. I would appreciate any comments that you have.

Juliet Thompson Hodgkins
General Counsel
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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 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, who along with EAC staff and interns conducted the research that forms the basis of this report. Consultants were chosen based upon their experience with the topic. In addition, consultants were 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 conducted interviews with selected
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 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 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 “__”:

**Articles and Reports**


• 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."


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 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 even legal practices that they allege suppress 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

- **Wendy Weiser**
  Deputy Director, Democracy Program, The Brennan Center

- **William Groth**
  Attorney for the plaintiffs in the Indiana voter identification litigation

- **Lori Minnite**
  Barnard College, Columbia University

- **Neil Bradley**
  ACLU Voting Rights Project

- **Nina Perales**
  Counsel, Mexican American Legal Defense and Education Fund

- **Pat Rogers**
  Attorney, New Mexico

- **Rebecca Vigil-Giron**
  Secretary of State, New Mexico

- **Sarah Ball Johnson**
  Executive Director, State Board of Elections, Kentucky

- **Stephen Ansolobohere**
  Massachusetts Institute of Technology

- **Chandler Davidson**
  Rice University

- **Tracey Campbell**
  Author, *Deliver the Vote*

- **Douglas Webber**
  Assistant Attorney General, Indiana

- **Heather Dawn Thompson**
  Director of Government Relations, National Congress of American Indians

- **Jason Torchinsky**
  Assistant General Counsel, American Center for Voting Rights
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 it was the most likely type of fraud to be discovered and 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 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 crimes related to elections involving federal candidates. Those interviewed differed on the effectiveness of the current system of enforcement, including those that allege that prosecutions are not sufficiently aggressive 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.


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 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

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 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;
o Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for signing or refraining from signing a petition proposing an initiative;

o Inducing or attempting to induce an election official to fail in the official's duty by force, threat, intimidation, or offers of reward;

o 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

o Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for registering to vote.

Acts of Damage or Destruction

o 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;

o Removing, tearing down, or defacing election materials, instructions or ballots;

o Fraudulently altering or changing the vote of any elector, by which such elector is prevented from voting as he intended;

o 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;

o Intentionally changing, attempting to change, or causing to be changed an official election document including ballots, tallies, and returns; and

o 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

o Intentionally failing to perform an election duty, or knowingly committing an unauthorized act with the intent to effect the election;

o Knowingly permitting, making, or attempting to make a false count of election returns;

o Intentionally concealing, withholding, or destroying election returns or attempts to do so;

o Marking a ballot by folding or physically altering the ballot so as to recognize the ballot at a later time;

o Attempting to learn or actually and unlawfully learning how a voter marked a ballot;

o Distributing or attempting to distribute election material knowing it to be fraudulent;

o Knowingly refusing to register a person who is entitled to register under the rules of that jurisdiction; and

o 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 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, actions that do no 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 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 “MyVotel” 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 MyVotel 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 MyVotel 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 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:

- 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. 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.

**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 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 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, 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 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.

Analyse 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 pundants. 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.
fine, can Bert set it up?
Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100

Thomas R. Wilkey/EAC/GOV

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
To: Thomas R. Wilkey/EAC/GOV@EAC
cc:
bcc:

Subject: Letter for Weingart

letter regarding release of Eagleton data.doc

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100
John Weingart
Associate Director
Eagleton Institute of Politics
Rutgers University

New Brunswick, NJ

Dear Mr. Weingart:

Thank you for your recent inquiry of August 16, 2006 regarding the anticipated release of data contained in the Eagleton Institute of Politics and Moritz College of Law studies on provisional voting and voter identification, which were conducted for the U.S. Election Assistance Commission.

While your assertion that election officials could benefit from the data compiled in the course of your research may be true, I would urge Eagleton and Moritz to exercise caution in the release of this information without further work to ensure its accuracy and completeness. Eagleton and Moritz received information from several election officials at the Standards Board and Board of Advisors meetings that information contained in the data set and draft report are inaccurate or incomplete. Furthermore, as you will recall, EAC accepted the report based on your data in “draft” due to our concerns about the data and the analysis of that data. In light of those concerns, EAC has not yet completed its review of the “draft” report and has not made final determinations on the release of any future document based on that data and draft report.

As such, you may release the data gathered by Eagleton or Moritz; however this data may not be released in conjunction with or using EAC’s name as endorsing the content, quality or veracity of such data. You may not release the draft report that you provided the EAC under contract as this report has not been finalized and has not been officially released EAC. Release of draft reports prior to final action by EAC will only serve to foster confusion and defeat the purpose of the contract for which Eagleton/Moritz was hired. I trust that this clarifies how Eagleton and Moritz may use the data gathered in the performance of its contract with the EAC. If you have any questions, please feel free to contact me.

Sincerely,

Thomas Wilkey
Executive Director
Get with peggy. I also need the same info

Sent from my BlackBerry Wireless Handheld
Gavin S. Gilmour

From: Gavin S. Gilmour
Sent: 11/01/2005 12:43 PM
To: Juliet Thompson
Subject: Re: Bad news

Julie

How do you want me to participate in your Job Tova conversation? i.e. is there a number I can call.

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
Juliet E. Hodgkins/EAC/GOV
11/29/2006 05:35 PM

To Margaret Sims/EAC/GOV@EAC

cc

bcc

Subject Interview Summaries

Appendix 3 - Interview Summaries - consultants.doc

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100
Interview with Commissioner Harry Van Sickle and Deputy Chief Counsel to the Secretary of State Larry Boyle, State of Pennsylvania

March 1, 2006

As Commissioner Van Sickle has only been in office for about a year, Mr. Boyle answered most of our questions.

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 – 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.

Interview with Craig Donsanto, Director, Public Integrity Section, U.S. Department of Justice
January 13, 2006

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?

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. A federal law is needed that permits prosecution in any election where any federal instrumentality is used.

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 cases went unprosecuted. 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.

According to the new handbook, the department can take on a case whenever there is a federal candidate on the ballot.
Interview with Douglas Webber, Assistant Attorney General, Indiana

February 15, 2006

Background
Mr. Webber was an attorney for the Marion County Election Board and was also part of the Indianapolis Ballot Security Team (sometimes called the Goon Squad). This Team was a group of attorneys well trained in election law whose mission was to enforce ballot security.

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 7th 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 solve 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 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.

Interview Sharon Priest, former Secretary of State, Arkansas
January 24, 2006

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.
EAC SUMMARY OF EXPERT INTERVIEWS FOR
VOTING FRAUD-VOTER INTIMIDATION RESEARCH

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.
- 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.

Interview with Heather Dawn Thompson, Director of Government Relations, National Congress of American Indians

March 22, 2006

Background

Thompson is a member of the Cheyenne River Sioux tribe in South Dakota. For many years she worked locally on elections doing poll monitoring and legal work, from a nonpartisan perspective. In 2004, she headed the Native Vote Election Protection, a project run by the National Congress of American Indians, and was in charge of monitoring all Native American voting sites around the country, focusing on 10 or 15 states with the biggest Native populations. She is now permanently on staff of the National Congress of American Indians as the Director of Government relations. NCAI works jointly with NARF as well as the Election Protection Coalition.

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.
EAC SUMMARY OF EXPERT INTERVIEWS FOR
VOTING FRAUD-VOTER INTIMIDATION RESEARCH

Nature of Suppression/Intimidation of Native Voters

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 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 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.

Interview with Jason Torchinsky, former attorney with the Civil Rights Section of the Department of Justice, assistant general counsel for the American Center for Voting Rights (ACVR) and Robin DeJarnette, political consultant for C4 and C5 organizations and executive director for the ACVR.

February 16, 2006

ACVR Generally

Other officers of the ACVR—Thor Hearne II—general counsel and Brian Lunde, former executive director of the Democratic National Committee.

Board of Directors of ACVR—Brian Lunde, Thor Hearne II, and Cameron Quinn

ACVR works with a network of attorneys around the country and has been recently involved with lobbying in PA and MO.

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.

Interview with Joe Rich, former Chief of the Voting Section,
US Department of Justice
February 7, 2006

Background

Mr. Rich went to Yale undergraduate and received his law degree from the University of Michigan. He served as Chief of the Voting Section from 1999-2005. Prior to that he served in other leadership roles in the Civil Rights Division and litigated several civil rights cases.

Data Collection and Monitoring
The 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.

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.

Interview with Joe Sandler, Counsel to the DNC

February 24, 2006

Background

Sandler is an election attorney. He worked for the DNC in 1986, was in-house counsel from 1993-1998, and currently is outside counsel to the DNC and most state Democratic Parties. Sandler was part of the recount team in Florida in both 2002 and 2004. He recruited and trained attorneys in voting issues—starting in 2002 Sandler recruited in excess of 15,000 attorneys in twenty-two states. He is now putting together a national lawyers council in each state.

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.

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.
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.
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.

Interview with John Ravitz, Executive Director, New York City Board of Elections
February 16, 2006

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
- Thorough inspection of absentee ballots subsequent to the election

**Interview with John Tanner, Director, Civil Rights Division, U.S. Department of Justice**

February 24, 2006

Note: Mr. Tanner’s reluctance to share data, information and his perspective on solving the problems presented an obstacle to conducting the type of interview that would help inform this project as much as we would have hoped. 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, 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 14th and 15th 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.

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 filing 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.

Interview with Kevin Kennedy, State Elections Director, State of Wisconsin
April 11, 2006

Background
Kennedy is a nonpartisan, appointed official. He has been in this position since 1983.

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.

2004 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.

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 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
Conduct post-election audits

Interview with Lori Minnite, Barnard College

February 22, 2006

Background

Ms. Minnite is an assistant professor of political science at Barnard College. She has done substantial research on voter fraud and wrote the report “Securing the Vote.” Ms. Minnite also did work related to an election lawsuit. The main question that she was asked to address in the lawsuit was—-did election-day registration increase the possibility of fraud?

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. 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.

Interview with Nina Perales, Counsel, Mexican American Legal Defense and Education Fund

March 7, 2006

Background

Ms. Perales is an attorney with the Mexican American Legal Defense Fund (MALDEF). MALDEF’s mission is to foster sound public policies, laws and programs to safeguard the civil rights of the 40 million Latinos living in the United States and to empower the Latino community to fully participate in our society. One of the areas MALDEF works in is electoral issues, predominately centered on the Voting Rights Act. 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.

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.

Interview with Pat Rogers, private attorney

March 3, 2006

Background

In addition to his legal practice with Modrall, Sperling, Roehl, Harris & Sisk, Rogers also does some state-level lobbying for Verizon Wireless, GM, Dumont and other companies. His experience in election law goes back to 1988, where his first elections case was a defense against Bill Richardson, who had sued to get another candidate tossed off a ballot because of petition fraud. Since 1988, he has been involved in election cases at least once every two years.

2004 Litigation
In a case that ended before the New Mexico Supreme Court, Rogers represented the Green Party and other plaintiffs against the New Mexico Secretary of State for sending a directive telling local boards not to require ID for first time voters registering by mail. He argued that this watered-down ID check conflicted with what seemed fairly clear statutory requirements for first time voters. In 2004 these requirements were especially important due to the large presence of 3rd party organizations registering voters such as a 527 funded by Governor Richardson, ACORN, and others.

Plaintiffs were seeking a temporary restraining order requiring Secretary of State to follow the law. Yet the Supreme Court ultimately decided that, whether the directive was right or wrong, it was too late to require ID lest Bush v. Gore issues be raised.

Today, the issue is moot as the state legislature has changed the law, and the Secretary of State will no longer be in office. It seems unlikely they will send any policy directives to county clerks lest they violate due process/public notice.

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 3rd 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 5th 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 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 canvas’ 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.

Interview with Rebecca Vigil-Giron, Secretary of State, New Mexico

March 24, 2006

Background

Vigil-Giron has been Secretary of State for twelve years and was the President of the National Association of Secretaries of State in 2004. 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.
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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.

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.

Interview with Sarah Bell Johnson Interview

April 19, 2006

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 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.
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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

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.

Interview with Steve Ansolobohere and Chandler Davidson
February 17, 2006

Methodology suggestions

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 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. Ansolobohere 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. Ansolobohere 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. Ansolobohere 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
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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. Ansolobohere 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.

Interview with Tracy Campbell, author

March 3, 2006

Background

Campbell’s first book on election fraud looked at Ed Pritchard, a New Deal figure who went to jail for stuffing ballot boxes. While his initial goal in writing that book was to find out why Pritchard had engaged in vote stealing, his growing understanding of a pervasive culture of electoral corruption led him to consider instead how it was that Pritchard was ever caught. In 1998, he started working on a book regarding fraud in Kentucky, which quickly became a national study. He hoped to convey the ‘real politics’ which he feels readers, not to mention academics, have little sense about. 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.

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 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.

Interview with Wade Henderson, Executive Director, Leadership Conference for Civil Rights

February 14, 2006

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 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

Interview with 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 1/10000th of a percentage of voters. See also the brief Brennan filed on 11th 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 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 NJGOP 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 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.

Interview with Bill Groth, Attorney for the Plaintiffs in Indiana Identification Litigation
February 22, 2006

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 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 2nd 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.
EAC SUMMARY OF EXPERT INTERVIEWS FOR
VOTING FRAUD-VOTER INTIMIDATION RESEARCH

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.

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.

Interview with Neil Bradley, February 21, 2004

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 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.

Interview with Justice Evelyn Stratton, Supreme Court of Ohio
February 17, 2006

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 latches---if a person sits on their rights too long, they loose 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. She supports a non-partisan head of state elections. Justice Stratton believes that last minute
challenges should not be permitted and that 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.

Interview with Tony Sirvello, Executive Director, IACREOT

April 12, 2006

Biographical

Sirvello is currently the executive director of the International Association of Clerks, Recorders, Election Officials and Treasurers, an organization of 1700 members. Formerly, he ran elections in Harris County, Texas for 29 years.

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.

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.
I made the correction on the titles in the report. There was one that was not correct.

There are a couple of things I may suggest that we leave in, as I don't think that DOJ would have a problem with it, (e.g. the fact that they won't release information on pending cases).

I will forward to the Cs for their review.

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
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Margaret Sims/EAC/GOV

Margaret Sims/EAC/GOV
11/30/2006 04:37 PM
To Juliet E. Hodgkins/EAC/GOV@EAC
cc
Subject Donsanto-Tanner Interviews

Julie:

I made some suggested edits in the attached excerpts of the Donsanto and Tanner interview summaries. You may be able to better phrase them. The most important edits are:

• I noticed that the consultants had listed Donsanto's and Tanner's titles incorrectly (which we may also need to correct in our report where we list the interviewees ). Donsanto and Tanner might be amused that our consultants "promoted" them, but their bosses may not.
• I redacted two sentences that I thought we should not publicize and one that I thought was in error from the Donsanto description. I also tried to correct the paragraph that discusses DOJ's pursuit of individual offenders.
• I moved the note about Tanner's failure to provide data and information to the end of the description (the highlighted paragraph) so that its isn't so "in your face". I also tried to edit it, but am still a bit concerned about including it at all.

If you have any questions, or want to talk about this, give me a call [redacted]. Also, I may be in the office tomorrow, if my insides cooperate. — Peggy
Interview with Craig Donsanto, Director, Elections Crimes Branch, Public Integrity Section, U.S. Department of Justice
January 13, 2006

The Department of Justice's (DOJ) Election Crimes Branch is responsible for supervising federal criminal investigations and prosecutions of election crimes.

Questions

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 Assistant U.S. Attorney (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 the Voting Section and the Election Crimes Branch.

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?
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 on the ballot.

**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. A federal law is needed that permits prosecution in any election where any federal instrumentality is used.

**Other Information**

The Department has held four symposia for District Election Officers (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 against conspiracies when there was a pattern or scheme to corrupt the process rather than individual offenders acting alone. For deterrence purposes, charges were not brought against individuals—those cases went unprosecuted. 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 Attorney General decided to add the pursuit of individuals who vote when not eligible to vote (noncitizens, felons) or who vote more than once.

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:

1. Felon voters in Milwaukee.

2. 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.

3. 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.

According to the new handbook, the department can take on a case whenever there is a federal candidate on the ballot.
Interview with John Tanner, Director, Voting Section, Civil Rights Division, U.S. Department of Justice

February 24, 2006

The Department of Justice's (DOJ) Voting Section is charged with the civil enforcement of the Voting Rights Act, the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the National Voter Registration Act (NVRA), and Title III of the Help America Vote Act (HAVA).

Note: Mr. Tanner's reluctance to share data, information, and his perspective on solving the problems presented an obstacle to conducting the type of interview that would help inform this project as much as we would have hoped. Mr. Tanner would not give us any information about or data from the section's election complaint intake process, not 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, reports that every Voting Section attorney who is observing elections at poll sites on Election Day is required to submit. He would not discuss any matter that was not involved in a current investigation or case 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 focuses only on systemic problems resulting from government action or inaction, not problems caused by individuals. Indeed, the section never goes after individuals because it does not have the statutory authority to do so. In situations where individuals are causing problems at the polls and interfering with voting rights, the section calls the local election officials to resolve it.

Federal voting laws enforced by the section only apply to state action, so the section only sues state and local governments - it does not have any enforcement power over individuals. Most often, the section enters into consent agreements with governments that focus on poll worker training, takes steps to restructure how polls are run, and deals with problems on Election Day on the spot. Doing it this way has been most effective - for example, while the section used to have the most observers in the South, with systematic changes forced upon those jurisdictions, the section now does not get complaints from the South.

The section can get involved even where there is no federal candidate on the ballot if there is a racial issue under the 14th and 15th Amendments.

When the section receives a complaint, attorneys first determine whether it is a matter that involves individual offenders or a systemic problem. When deciding what to do...
with the complaint, the section errs on the side of referring it criminally to avoid having any 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 a formal 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.

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 filing 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.

---

*Note: We content that Mr. Tanner's reluctance to share data/information and his perspective on solving the problems presented an obstacle to conducting the type of interview that would help inform this project as much as we would have hoped. We did not have access to any information about data from the section's election complaint intake or phone log data or even general information from the Interactive Case Management (ICM) system, its informal process for tracking and managing work activities in pursuing complaints and potential violations of the voting laws. Only a few samples of attorney-observer reports were provided, reports that every voting Section*
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

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
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100
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Thanks.

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(202) 566-3100
Margaret Sims/EAC/GOV

Margaret Sims/EAC/GOV
11/15/2006 04:02 PM
To Juliet E. Hodgkins/EAC/GOV@EAC
cc
Subject Re: Draft Voter Fraud/Voter Intimidation

Got it, and will get back to you by Friday AM. --- Peggy
Peggy,

I have attached a rough draft of the report that I think that we should propose to the Commissioners. I was hoping that you could give it a read and give me your comments by Friday morning, as I have to deliver a draft to the Commissioners on Friday. I also have a couple of questions. You will notice that I have noted that several items will be attached as appendixes. First question: Should we attach these things? Second question: In cases where you have provided summaries of the summaries, should we attach yours or theirs?
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 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, who along with EAC staff and interns conducted the research that forms the basis of this report. Consultants were chosen based upon their experience with the topic. In addition, consultants were 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 conducted interviews with selected
experts in the field. Last, EAC consultants and staff presented their study to a working group that provided feedback. The working group participants were:

**The Honorable Todd Rokita**  
Indiana Secretary of State  
Member, EAC Standards Board and the Executive Board of the Standards Board

**Kathy Rogers**  
Georgia Director of Elections, Office of the Secretary of State  
Member, EAC Standards Board

**J.R. Perez**  
Guadalupe County Elections Administrator, Texas

**Barbara Arnwine**  
Executive Director, Lawyers Committee for Civil Rights under Law  
Leader of Election Protection Coalition

**Benjamin L. Ginsberg**  
Partner, Patton Boggs LLP  
Counsel to national Republican campaign committees and Republican candidates

**Robert Bauer**  
Chair of the Political Law Practice at the law firm of Perkins Coie, District of Columbia  
National Counsel for Voter Protection, Democratic National Committee

**Mark (Thor) Hearne II**  
Partner-Member, Lathrop & Gage, St Louis, Missouri  
National Counsel to the American Center for Voting Rights

**Barry Weinberg**  
Former Deputy Chief and Acting Chief, Voting Section, Civil Rights Division, U.S. Department of Justice  
*Technical Advisor:*  
**Craig Donsanto**  
Director, Election Crimes Branch, U.S. Department of Justice

Throughout the process, EAC staff assisted the consultants by providing statutes and cases on this subject as well as supervision on the direction, scope and product of this research.

The consultants drafted a report for EAC that included their summaries of 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 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 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 "__":

**Articles and Reports**


• 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."


Books


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 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 even legal practices that they allege suppress 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

**Wendy Weiser**  
Deputy Director,  
Democracy Program, The Brennan Center

**William Groth**  
Attorney for the plaintiffs in the Indiana voter identification litigation

**Lori Minnite**  
Barnard College, Columbia University

**Neil Bradley**  
ACLU Voting Rights Project

**Nina Perales**  
Counsel,  
Mexican American Legal Defense and Education Fund

**Pat Rogers**  
Attorney, New Mexico

**Rebecca Vigil-Giron**  
Secretary of State, New Mexico

**Sarah Ball Johnson**  
Executive Director,  
State Board of Elections, Kentucky

**Stephen Ansolobohere**  
Massachusetts Institute of Technology

**Chandler Davidson**  
Rice University

**Tracey Campbell**  
Author, *Deliver the Vote*

**Douglas Webber**  
Assistant Attorney General, Indiana

**Heather Dawn Thompson**  
Director of Government Relations,  
National Congress of American Indians

**Jason Torchinsky**  
Assistant General Counsel,  
American Center for Voting Rights
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 it was the most likely type of fraud to be discovered and 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 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 crimes related to elections involving federal candidates. Those interviewed differed on the effectiveness of the current system of enforcement, including those that allege that prosecutions are not sufficiently aggressive 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.


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 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

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 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

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.

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 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, actions that do no 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 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 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:

- 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. 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.

**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 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 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, 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 officials 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 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.
Thanks. Currently, on the phone with Job. Ugh!!!!

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100

Almost finished sorting through the interview summaries. I don't find them as helpful as the literature summaries, but hope to have something to you by the end of the day. (I was at the clinic yesterday, and could only work a half day.) — Peggy

I am getting close to having a first cut at a report, minus a few key sections. Just wondering how those summaries are coming along.
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

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
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

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  
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?
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.
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.
### Articles

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<td>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:</td>
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<td>• 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;</td>
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<td>• the 2004 Florida felon purge list;</td>
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<td>• 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;</td>
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<td>• the use of challengers in minority districts in many locations;</td>
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<td>• the challenge to the right of African American students to vote in Texas in 2004;</td>
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<td>• the presence of men looking like law enforcement challenging African American voters at the polls in Philadelphia in 2003;</td>
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<td>• 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</td>
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<td>• the FBI investigation into thousands of Native American voters in South Dakota in 2002.</td>
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<td>Argues that &quot;the discriminatory use of so-called &quot;ballot security&quot; programs&quot; 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 &quot;but far too often they [the ballot security programs] are actually designed to suppress minority voting -- and for nakedly partisan purposes.&quot; 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:</td>
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<td>• SD-DOJ &quot;voting integrity initiative&quot;.</td>
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<td>• AR - poll watchers driving away voters in predominantly black precincts by taking photos of them and demanding identification during pre-election day balloting.</td>
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<td>• MI - &quot;spotters&quot; at heavily Democratic precincts was an effort to intimidate black voters and suppress Democratic turnout</td>
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<td>• 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).</td>
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<td>• 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.</td>
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| States that HAVA "contains provisions that may enhance the opportunities for harassment and intimidation of minorities through ballot-security
programs (especially voter ID). Indicates that the crux of the problem is lax 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 Crawfordsville [Arkansas].")
Recommends that Congress and the states should adopt "nondiscriminatory, evenly applied measures to ensure the integrity of the ballot."

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
clers 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.
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.
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, challenges 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
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.

- 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...
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.
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.


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
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.


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.
• 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.


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
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.


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
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.
• 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, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nevada, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Virginia, 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, Nevada, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Virginia, 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.
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 integrity 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 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 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).

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 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 from of criminal activity that pursing 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.

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.
EAC SUMMARY OF LITERATURE REVIEW FOR VOTING FRAUD-VOTER INTIMIDATION RESEARCH

- 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 report 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, 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.


General Accounting Office, "Elections: Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote,"

[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.


A comprehensive survey and analysis of vote fraud in the United States. The methodology included doing nceix 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 nceix 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.
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.


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
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


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


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.


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
and types of voter fraud and voter intimidation occurring.


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.]


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. 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.


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. 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:

1. deliberate disparities in voting machine distribution and long lines in Democratic jurisdictions;
2. misinterpretation of voting laws by elections officials to the detriment of Democratic voters;
3. dirty tricks and deceptive practices to mislead Democratic and minority voters about voting times, places and conditions;
4. machine irregularities in Democratic jurisdictions;
5. relocating polling sites in Democratic and minority areas;
6. suspicious mishandling of absentee ballots;
7. refusing to dispense voter registration forms to certain voter registration groups;
8. intimidation of students;
9. suspicious ballot spoilage rates in certain jurisdictions;
11. harassment of Native American voters;
12. a Republican backed organization engaging in voter registration efforts throughout the country that allegedly destroyed the voter registration forms of Democrats;
13. illegitimate challenges at the polls by Republican poll watchers;
14. improper demands for identification in certain areas;
15. 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;
16. wrongful purging of eligible voters from voting rolls;
17. partisan harassment;
18. the selective placement of early voting sites; and
19. failure to send out absentee ballots in time for people to vote.

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.

Legal

**Indiana Democratic Party vs. Rokita**, U.S. District Court Southern District of Indiana (Indianapolis) 1:05-cv-00634, U.S. Court of Appeals, 7th 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, DirtyLittle 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. 18.1 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.

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, 11th 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
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).

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 pretextural 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.


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.
The consultant's report is a draft of an EAC report. We will take the consultant's report and finalize it into OUR 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

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
sorry, about that. Here's the outline...

I. BACKGROUND/INTRODUCTION

A. WHAT WE KNOW ABOUT FRAUD
B. PURPOSE OF THE EAC STUDY
C. METHODOLOGY OF THE EAC STUDY

II. DEFINITION OF ELECTION CRIMES
A. VOTER FRAUD IS TOO LIMITED
B. COLLOQUIAL DEFINITION IS TOO BROAD
C. ELECTION CRIMES
D. WHAT IS NOT AN ELECTION CRIME FOR PURPOSES OF THIS STUDY

III. RECOMMENDATIONS ON HOW TO STUDY ELECTION CRIMES
A. ACCEPTED RECOMMENDATIONS
   i. SURVEY LAW ENFORCEMENT, INVESTIGATORY AGENCIES, AND PROSECUTORS
   ii. REVIEW ADMINISTRATIVE COMPLAINTS FILED WITH STATES
   iii. REVIEW DOJ/USA ACTIONS
B. REJECTED RECOMMENDATIONS
   i. REASONS WHY REJECTED
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

Juliet E. Hodgkins/EAC/GOV

--- 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

Margaret Sims

--- Original Message ----

From: Juliet E. Hodgkins
Sent: 11/03/2006 06:14 PM
To: Margaret Sims
Subject: Re: Job and Tova

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007301
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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

To Margaret Sims/EAC/GOV@EAC
cc
Subject Job and Tova

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Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100
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 get in my mind what goes first, second ....

-----------

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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.

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Washington, DC 20005
(202) 566-3100

Margaret Sims /EAC/GOV

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

Job called me once and asked me about how to send in the working papers. Did you receive those?
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
Juliet Thompson Hodgkins
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Cameron P. Quinn
Counsel to the Assistant Attorney General
Civil Rights Division, US Dept. of Justice
Washington DC 20530
202-305-9750

Tova Wang.doc
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.

4th 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 such discrimination in which we have not taken action.
That's good.
Juliet Thompson Hodgkins
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Juliet Thompson Hodgkins
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Margaret Sims/EAC/GOV
Margaret Sims/EAC/GOV
07/17/2006 10:15 AM
To jthompson@eac.gov
cc twilkey@eac.gov, Karen Lynn-Dyson/EAC/GOV@EAC
Subject Voting Fraud-Voter Intimidation Draft Report

Julie:

I received pieces of the draft final report on voting fraud-voter intimidation this morning. If it is OK with you, I'll hold it until all I have all of the pieces, so that you can review it as a whole document. --- Peggy
Will you please send me a copy of the referenced report?

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
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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 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.
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  
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Washington, DC 20005  
(202) 566-3100  
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. Wikey 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
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United States Election Assistance Commission
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Margaret Sims/EAC/GOV

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Margaret Sims/EAC/GOV
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From: Juliet E. Thompson-Hodgkins
Sent: 07/10/2006 10:55 AM
To: Margaret Sims
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Juliet Thompson Hodgkins
General Counsel
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1225 New York Ave., NW, Ste 1100
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007314
I see only 2 consultants on the Tally Vote for the Voter Fraud/Voter Intimidation project. What happened to the third consultant?

Remind me how it is that EAC can sole source a contract to NASED? I don't have an objection; I am merely seeking information.

Thank you,
Gracia M. Hillman
Chair
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

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Tom:

In light of your announcement this morning about Peg's continued illness, I am asking who has taken the responsibility to complete EAC internal review of the information that was submitted to us by the consultants and what is the timeline for completion of that review?

I am taking far too much criticism on this to just idly sit by saying "I don't know" when EAC will release the information.

Thank you,

Gracia
Julie:

When you draft proposed language for the DOJ interview section, I am asking that you put yourself in the position of the consultants. Ask yourself how you would want EAC to present this difference of opinion between what DOJ says it meant and what the consultants heard and wrote, as if you were the consultant.

Also, I just want to be clear that while I agree that we should include DOJ's retort, I do not believe we should "re-write" what the consultants presented. Rather, we should leave it intact and present the consultants' writings in a context that addresses DOJ's objections.

Thanks,
Gracia

______________
Sent from my BlackBerry Wireless Handheld
Attached are my suggested edits to the Executive Summary. (I am still reviewing the report and may comment on other sections.)

EAC REPORT ON VOTING FRAUD AND VOTER INTIMIDATION STUDY.doc
THE HELP AMERICA VOTE ACT OF 2002 (HAVA) requires the U.S. Election Assistance Commission (EAC) to study a host of topics, including "voting fraud" and "voter intimidation." In 2005, EAC embarked on an initial review of the existing knowledge of voting fraud and voter intimidation. The goal of that study was to develop a working definition of "voting fraud" and "voter intimidation" and to identify research methodology to conduct a comprehensive, nationwide study of these topics. EAC staff along with two, bipartisan consultants reviewed the existing information available about voting fraud and voter intimidation, including reading articles, books and reports; interviewing subject matter experts; reviewing media reports of fraud and intimidation; and studying reported cases of prosecutions of these types of crimes. It is clear from this review that there is a great deal of debate on the pervasiveness of fraud in elections as well as what constitute the most common acts of fraud or intimidation. There is also no apparent consensus on the meaning of the phrases "voting fraud" and "voter intimidation." Some think of voting fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal activities.

In order to facilitate future study of these topics, EAC developed a working definition of "election crimes." "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.

From EAC's review of existing information on the issue, it was apparent that there have been a number of studies that touched on various topics and regions of the country concerning voting fraud and intimidation, but that there had never been a comprehensive, nationwide study of these topics. EAC will conduct further research to provide a comprehensive, nationwide look at "election crimes." Future EAC study of this topic will focus on election-related, criminal activity and will not include acts that are exclusively civil wrongs, campaign finance violations, and violations of ethical provisions. EAC will study these concepts by surveying the states' chief election officials about complaints they received, through their administrative complaint processes, election crime investigation units regarding complaints received and those referred to law enforcement, and law enforcement and prosecutorial agencies regarding complaints received, and charges filed, and final disposition of each complaint.
I offer edits to two sections of the report, on pages 14 and 19. Please see the attached one pager. I did a copy and paste of the two sections rather than resending back to you the entire report.
What is not an Election Crime for Purposes of this Study

There are some actions or inactions that may constitute crimes or civil wrongs that we do not include in our definition of "election crimes." All criminal or civil violations related to campaign finance contribution limitations, prohibitions, and reporting either at the state or federal level are not "election crimes" for purposes of this study and any future study conducted by EAC. Similarly, criminal acts that are unrelated to elections, voting, or voter registration are not "election crimes," even when those offenses occur in a polling place, voter registration office, or a candidate's office or appearance. For example, an assault or battery that results from a fight in a polling place or at a candidate's office is not an election crime. Last, violations of ethical provisions and the Hatch Act are not "election crimes." Similarly, civil or other wrongs that do not rise to the level of criminal activity (i.e., a misdemeanor, relative felony or felony) are not "election crimes."

Survey Chief Election Officers Regarding Administrative Complaints

Likely sources of complaints concerning election crimes are the administrative complaint processes that states were required to establish to comply with Section 402 of HAVA. These complaint procedures were required to be in place prior to a state receiving any funds under HAVA. Citizens are permitted to file complaints alleging violations of HAVA Title III provisions under these procedures with the state's chief election official. Those complaints must be resolved within 60 days. The procedures also allow for alternative dispute resolution of claims. Some states have expanded this process to include complaints of other violations, such as election crimes.

In order to determine how many of these complaints allege the commission of election crimes, EAC will survey the states' chief election officers regarding complaints that have been filed, investigated, and resolved since January 1, 2004. The data collected will also include complaints that have been filed outside of the administrative complaint procedures. EAC will use the definition of election crimes provided above in this report in its survey so that data regarding a uniform set of offenses will be collected.
Attached are my comments and suggested edits to this section. They should show up in green; at least that is the color on my screen.

I feel very strongly and therefore I recommend that EAC explain that it made clarifying edits to some of the text in the summaries of the DOJ interviews. The consultants provided us with lots of material and that is the only section we changed. If we don't offer a straightforward explanation, then I think we invite more problems and headaches. I offered suggested language in the attached.

DOJ Interviews.doc
Interview with Craig Donsanto, Director, Elections Crimes Branch, Public Integrity Section, U.S. Department of Justice
January 13, 2006

The Department of Justice's (DOJ) Election Crimes Branch is responsible for supervising federal criminal investigations and prosecutions of election crimes.

Questions

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 Assistant U.S. Attorney (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 the Voting Section and the Election Crimes Branch.

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?
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 on the ballot.

**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. A federal law is needed that permits prosecution in any election where any federal instrumentality is used.

**Other Information**

The Department has held four symposia for District Election Officers (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.
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 against when there was a pattern or scheme to corrupt the process rather than individual offenders acting alone. For deterrence purposes, charges were not brought against individuals — those 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 Attorney General decided to add the pursuit of individuals who vote when not eligible to vote (noncitizens, felons) or who vote more than once.

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:

1. Felon voters in Milwaukee.
2. 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.
3. 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.

According to the new handbook, the department can take on a case whenever there is a federal candidate on the ballot.
The Department of Justice's (DOJ) Voting Section is charged with the civil enforcement of the Voting Rights Act, the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the National Voter Registration Act (NVRA), and Title III of the Help America Vote Act (HAVA).

Note: Mr. Tanner's reluctance to share data, information and his perspective on solving the problems presented an obstacle to conducting the type of interview that would help inform this project as much as we would have hoped. Mr. Tanner would not give us any information about or data from the section's election complaint intake 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, reports that every Voting Section attorney who is observing elections at polling 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 focuses on only systemic problems resulting from government action or inaction, not problems caused by individuals. Indeed, the section never goes after individuals because it does not have the statutory authority to do so. In situations in which individuals are causing problems at the polls and interfering with voting rights, the section calls the local election officials to resolve it.

Federal voting laws enforced by the section only apply to state action, so the section only sues state and local governments — it does not have any enforcement power over individuals. Most often, the section enters into consent agreements with governments that focus on poll worker training, takes steps to restructure how polls are run, and deals with problems on Election Day on the spot. Doing it this way has been most effective — for example, while the section used to have the most observers in the South, with systematic changes forced upon those jurisdictions, have made it so now the section now does not get complaints from the South.

The section can get involved even where there is no federal candidate on the ballot if there is a racial issue under the 14th and 15th Amendments.

When the section receives a complaint, attorneys first determine whether it is a matter that involves of individual offenders or a systemic problem. When deciding what to do
with the complaint, the section errs on the side of referring it criminally to avoid having any 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 a formal 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.

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 filing 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.
To: Thomas Wilkey  
Executive Director

From: Curtis W. Crider  
Inspector General

Subject: Evaluation of Contracting Procedures Related to the Research Projects for the Vote Fraud Report and the Voter Intimidation Reports (Assignment Number I-EV-EAC-02-07)

The Office of Inspector General plans to start the subject evaluation on or about April 20, 2007. The initial objective of the review will be to answer the questions that you posed in your April 16, 2007 memorandum requesting the review. Additional objectives may be added by the Office of Inspector General during the course of the evaluation.

Please feel free to contact me if you have any questions about this evaluation, and thank you in advance for your assistance.

cc: Chair  
General Counsel
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). 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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1 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.

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

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2 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). 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.

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. 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).

I also estimated the effects of the minimum voter identification requirements holding constant the effects of electoral context and the demographic variables.

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3 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.

4 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)].
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 (Álvarez and Ansolabehere 2002; Álvarez, 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. 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

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2 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 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. 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-bom citizen and residential mobility also have emerged as significant predictors of turnout (Alvarez and

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6 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. 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 if all voters had to state their names to 0.887 percent if all voters had to state their names for stating one's name to 0.887 percent if all voters had to state their names.

7 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 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 0.425, 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. 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.

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.

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.9

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.

Registered voters who had less than a high school education had a .775 percent probability of voting if the maximum requirement would be stating one's name, and a .708 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.

9 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? 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.

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.
References


Table 1 – Variation in 2004 State Turnout Based on Voter Identification Requirements

<table>
<thead>
<tr>
<th>Voter Identification Required in the States</th>
<th>Maximum Mean Voter Turnout for States in that Category</th>
<th>Minimum Mean Voter Turnout for States in that Category</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Name</td>
<td>63.1 %</td>
<td>State Name</td>
</tr>
<tr>
<td>Sign Name</td>
<td>58.6 %</td>
<td>Sign Name</td>
</tr>
<tr>
<td>Match Signature</td>
<td>62.1 %</td>
<td>Match Signature</td>
</tr>
<tr>
<td>Provide Non-Photo ID</td>
<td>57.8 %</td>
<td>Provide Non-Photo ID</td>
</tr>
<tr>
<td>Provide Photo ID</td>
<td>57.3 %</td>
<td>Swear Affidavit</td>
</tr>
<tr>
<td>Average Turnout for All States</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Table 2. Predictors of 2004 turnout at the county level taking into account maximum voter identification requirements

<table>
<thead>
<tr>
<th>Variable</th>
<th>Basic Model Unstandardized Estimate</th>
<th>Basic Model Standard Error</th>
<th>Model with Interactions Unstandardized Estimate</th>
<th>Model with Interactions Standard Error</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intercept</td>
<td>0.64</td>
<td>0.01</td>
<td>0.70</td>
<td>0.02</td>
</tr>
<tr>
<td>Voter ID requirements</td>
<td>-0.02**</td>
<td>0.004</td>
<td>-0.04**</td>
<td>0.005</td>
</tr>
<tr>
<td>Battleground State</td>
<td>0.04*</td>
<td>0.02</td>
<td>0.04*</td>
<td>0.02</td>
</tr>
<tr>
<td>Competitive Senate/Governor's Race</td>
<td>0.04*</td>
<td>0.02</td>
<td>0.04*</td>
<td>0.02</td>
</tr>
<tr>
<td>% Age 65 and Older</td>
<td>0.50**</td>
<td>0.03</td>
<td>0.51**</td>
<td>0.03</td>
</tr>
<tr>
<td>% African-American</td>
<td>0.02</td>
<td>0.01</td>
<td>0.04</td>
<td>0.04</td>
</tr>
<tr>
<td>% Hispanic</td>
<td>-0.17**</td>
<td>0.01</td>
<td>-0.38**</td>
<td>0.05</td>
</tr>
<tr>
<td>% Below poverty line</td>
<td>-0.01**</td>
<td>0.0002</td>
<td>-0.01**</td>
<td>0.001</td>
</tr>
<tr>
<td>VID * African-American</td>
<td>---</td>
<td>---</td>
<td>-0.004</td>
<td>0.01</td>
</tr>
<tr>
<td>VID * Hispanic</td>
<td>---</td>
<td>---</td>
<td>0.06**</td>
<td>0.01</td>
</tr>
<tr>
<td>VID * Poverty</td>
<td>---</td>
<td>---</td>
<td>0.001**</td>
<td>0.0002</td>
</tr>
<tr>
<td>-2 Log Likelihood</td>
<td>-8234.5</td>
<td></td>
<td>-8253.5</td>
<td></td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Variable</th>
<th>Basic Model</th>
<th>Model with Interactions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Unstandardized Estimate</td>
<td>Standard Error</td>
</tr>
<tr>
<td>Intercept</td>
<td>0.62</td>
<td>0.01</td>
</tr>
<tr>
<td>Voter ID requirements</td>
<td>-0.008</td>
<td>0.005</td>
</tr>
<tr>
<td>Battleground State</td>
<td>0.04**</td>
<td>0.01</td>
</tr>
<tr>
<td>Competitive Senate/Governor's Race</td>
<td>0.03</td>
<td>0.02</td>
</tr>
<tr>
<td>% Age 65 and Older</td>
<td>0.50**</td>
<td>0.03</td>
</tr>
<tr>
<td>% African-American</td>
<td>0.02</td>
<td>0.01</td>
</tr>
<tr>
<td>% Hispanic</td>
<td>-0.17**</td>
<td>0.01</td>
</tr>
<tr>
<td>% Below poverty line</td>
<td>-0.01**</td>
<td>0.0003</td>
</tr>
<tr>
<td>VID * African-American</td>
<td>----</td>
<td>----</td>
</tr>
<tr>
<td>VID * Hispanic</td>
<td>----</td>
<td>----</td>
</tr>
<tr>
<td>VID * Poverty</td>
<td>----</td>
<td>----</td>
</tr>
<tr>
<td>-2 Log Likelihood</td>
<td>-8222.7</td>
<td>-8229.4</td>
</tr>
</tbody>
</table>

Coefficients are restricted maximum likelihood estimates. N = 3,112. * p < .05 ** p < .01 (two-tailed tests)
Table 4. Probit model of voter turnout.

<table>
<thead>
<tr>
<th>Variable</th>
<th>Maximum requirements</th>
<th>Minimum requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Unstandardized Estimate</td>
<td>Standard Error</td>
</tr>
<tr>
<td>Voter ID requirements</td>
<td>-0.04**</td>
<td>0.01</td>
</tr>
<tr>
<td>Hispanic</td>
<td>-0.06</td>
<td>0.05</td>
</tr>
<tr>
<td>Black</td>
<td>0.22**</td>
<td>0.04</td>
</tr>
<tr>
<td>Other race</td>
<td>-0.23**</td>
<td>0.04</td>
</tr>
<tr>
<td>Age in years</td>
<td>0.01**</td>
<td>0.001</td>
</tr>
<tr>
<td>Education</td>
<td>0.12**</td>
<td>0.005</td>
</tr>
<tr>
<td>Household income</td>
<td>0.03**</td>
<td>0.003</td>
</tr>
<tr>
<td>Married</td>
<td>0.20**</td>
<td>0.02</td>
</tr>
<tr>
<td>Female</td>
<td>0.09**</td>
<td>0.01</td>
</tr>
<tr>
<td>Battleground state</td>
<td>0.18**</td>
<td>0.04</td>
</tr>
<tr>
<td>Competitive race</td>
<td>0.05</td>
<td>0.05</td>
</tr>
<tr>
<td>Employed</td>
<td>0.05</td>
<td>0.04</td>
</tr>
<tr>
<td>Member of workforce</td>
<td>-0.04</td>
<td>0.05</td>
</tr>
<tr>
<td>Native-born citizen</td>
<td>0.03</td>
<td>0.04</td>
</tr>
<tr>
<td>Moved within past 6 months</td>
<td>-0.27**</td>
<td>0.03</td>
</tr>
<tr>
<td>Constant</td>
<td>-4.48**</td>
<td>0.20</td>
</tr>
<tr>
<td>Pseudo-R-Squared</td>
<td>0.09</td>
<td>0.09</td>
</tr>
</tbody>
</table>

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.

Table 5. Predicted probability of voter turnout – full model

<table>
<thead>
<tr>
<th></th>
<th>Maximum requirement</th>
<th>Minimum requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>State name</td>
<td>0.912</td>
<td>0.911</td>
</tr>
<tr>
<td>Sign name</td>
<td>0.906</td>
<td>0.903</td>
</tr>
<tr>
<td>Match signature</td>
<td>0.900</td>
<td>0.895</td>
</tr>
<tr>
<td>Non-photo ID</td>
<td>0.894</td>
<td>0.887</td>
</tr>
<tr>
<td>Photo ID</td>
<td>0.887</td>
<td>----</td>
</tr>
<tr>
<td>Affidavit</td>
<td>----</td>
<td>0.878</td>
</tr>
<tr>
<td>Total difference from lowest to highest</td>
<td>0.025</td>
<td>0.033</td>
</tr>
<tr>
<td>N</td>
<td>54,973</td>
<td></td>
</tr>
</tbody>
</table>

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.

Table 6. Predicted probability of voter turnout – White and Hispanic voters

<table>
<thead>
<tr>
<th>Identification Requirement</th>
<th>White voters</th>
<th>Hispanic voters</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Maximum</td>
<td>Minimum</td>
</tr>
<tr>
<td>State name</td>
<td>0.920</td>
<td>0.922</td>
</tr>
<tr>
<td>Sign name</td>
<td>0.915</td>
<td>0.915</td>
</tr>
<tr>
<td>Match signature</td>
<td>0.909</td>
<td>0.907</td>
</tr>
<tr>
<td>Non-photo ID</td>
<td>0.902</td>
<td>0.899</td>
</tr>
<tr>
<td>Photo ID</td>
<td>0.895</td>
<td>----</td>
</tr>
<tr>
<td>Affidavit</td>
<td>----</td>
<td>0.890</td>
</tr>
<tr>
<td>Total difference from lowest to highest</td>
<td>0.025</td>
<td>0.032</td>
</tr>
</tbody>
</table>

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.

Table 7. Predicted probability of voter turnout – Age groups

<table>
<thead>
<tr>
<th></th>
<th>18 - 24</th>
<th></th>
<th>25 - 44</th>
<th></th>
<th>45 - 64</th>
<th></th>
<th>65 and older</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Maximum</td>
<td>Minimum</td>
<td>Maximum</td>
<td>Minimum</td>
<td>Minimum</td>
<td>Minimum</td>
<td>Minimum</td>
</tr>
<tr>
<td></td>
<td>requirements</td>
<td>requirements</td>
<td>requirements</td>
<td>requirements</td>
<td>requirements</td>
<td>requirements</td>
<td>requirements</td>
</tr>
<tr>
<td>State name</td>
<td>0.839</td>
<td>0.831</td>
<td>0.831</td>
<td>0.831</td>
<td>0.936</td>
<td>0.916</td>
<td></td>
</tr>
<tr>
<td>Sign name</td>
<td>0.819</td>
<td>0.814</td>
<td>0.820</td>
<td>0.817</td>
<td>0.932</td>
<td>0.910</td>
<td></td>
</tr>
<tr>
<td>Match signature</td>
<td>0.797</td>
<td>0.759</td>
<td>0.808</td>
<td>0.803</td>
<td>0.927</td>
<td>0.904</td>
<td></td>
</tr>
<tr>
<td>Non-photo ID</td>
<td>0.774</td>
<td>0.775</td>
<td>0.796</td>
<td>0.788</td>
<td>0.923</td>
<td>0.898</td>
<td></td>
</tr>
<tr>
<td>Photo ID</td>
<td>0.750</td>
<td>----</td>
<td>0.783</td>
<td>----</td>
<td>----</td>
<td>----</td>
<td></td>
</tr>
<tr>
<td>Affidavit</td>
<td>----</td>
<td>0.754</td>
<td>----</td>
<td>0.773</td>
<td>0.918</td>
<td>0.892</td>
<td></td>
</tr>
<tr>
<td>Total difference -- lowest to highest</td>
<td>0.089</td>
<td>0.077</td>
<td>0.048</td>
<td>0.058</td>
<td>0.018</td>
<td>0.024</td>
<td></td>
</tr>
</tbody>
</table>

N: 5,065 20,066 20,758 9,084

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.

Table 8. Predicted probability of voter turnout – Voters above and below the poverty line

<table>
<thead>
<tr>
<th>Identification Requirement</th>
<th>Voters above the poverty line</th>
<th>Voters below the poverty line</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Maximum requirement</td>
<td>Minimum requirement</td>
</tr>
<tr>
<td>State name</td>
<td>0.920</td>
<td>0.922</td>
</tr>
<tr>
<td>Sign name</td>
<td>0.915</td>
<td>0.915</td>
</tr>
<tr>
<td>Match signature</td>
<td>0.909</td>
<td>0.907</td>
</tr>
<tr>
<td>Non-photo ID</td>
<td>0.903</td>
<td>0.899</td>
</tr>
<tr>
<td>Photo ID</td>
<td>0.897</td>
<td>----</td>
</tr>
<tr>
<td>Affidavit</td>
<td>----</td>
<td>0.891</td>
</tr>
<tr>
<td>Total difference from lowest to highest</td>
<td>0.023</td>
<td>0.031</td>
</tr>
<tr>
<td>N</td>
<td>49,935</td>
<td>5,038</td>
</tr>
</tbody>
</table>

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.

Table 9. Predicted probability of voter turnout – By education

<table>
<thead>
<tr>
<th></th>
<th>Less than high school</th>
<th>High school</th>
<th>College</th>
<th>Graduate school</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Maximum requirement</td>
<td>Minimum requirement</td>
<td>Maximum requirement</td>
<td>Minimum requirement</td>
</tr>
<tr>
<td>State name</td>
<td>0.775</td>
<td>0.779</td>
<td>0.866</td>
<td>0.869</td>
</tr>
<tr>
<td>Sign name</td>
<td>0.759</td>
<td>0.762</td>
<td>0.858</td>
<td>0.859</td>
</tr>
<tr>
<td>Match signature</td>
<td>0.743</td>
<td>0.743</td>
<td>0.850</td>
<td>0.848</td>
</tr>
<tr>
<td>Non-photo ID</td>
<td>0.725</td>
<td>0.724</td>
<td>0.842</td>
<td>0.836</td>
</tr>
<tr>
<td>Photo ID</td>
<td>0.708</td>
<td>----</td>
<td>0.833</td>
<td>----</td>
</tr>
<tr>
<td>Affidavit</td>
<td>----</td>
<td>0.705</td>
<td>----</td>
<td>0.824</td>
</tr>
<tr>
<td>Total difference – lowest to highest</td>
<td>0.067</td>
<td>0.074</td>
<td>0.033</td>
<td>0.045</td>
</tr>
<tr>
<td>N</td>
<td>4,903</td>
<td>16,361</td>
<td>11,017</td>
<td>5,739</td>
</tr>
</tbody>
</table>

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.

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
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.

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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.
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: 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. 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. As explained below, these models find that a statistically

---

1 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).

2 The EAC has contracted with other researchers to study vote fraud issues.

3 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
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
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.\(^5\) 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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\(^5\) 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.
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, 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.

---

6 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.
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. 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.

7 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.
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. 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. 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.

---

10 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.

11 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.
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?\

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). 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.

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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16 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).

17 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.

18 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.
TABLE 1 – Voter ID Requirements

<table>
<thead>
<tr>
<th>State</th>
<th>Maximum Forms of ID Required 2004</th>
<th>Current ID Requirement for First-Time Voters</th>
<th>Current ID Requirements for All Other Voters</th>
<th>Verification Method for Provisional Ballots</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>Provide ID</td>
<td>Provide ID</td>
<td>Provide ID</td>
<td>Address &amp; Registration</td>
</tr>
<tr>
<td>Alaska</td>
<td>Provide ID</td>
<td>Provide ID</td>
<td>Provide ID</td>
<td>Signature</td>
</tr>
<tr>
<td>Arizona</td>
<td>Provide ID</td>
<td>Gov-issued Photo ID</td>
<td>Gov-issued Photo ID</td>
<td>Address &amp; Registration</td>
</tr>
<tr>
<td>Arkansas</td>
<td>Provide ID</td>
<td>Provide ID</td>
<td>Provide ID</td>
<td>Address &amp; Registration</td>
</tr>
<tr>
<td>California</td>
<td>Sign Name</td>
<td>Sign Name</td>
<td>Sign Name</td>
<td>Signature</td>
</tr>
<tr>
<td>Colorado</td>
<td>Provide ID</td>
<td>Provide ID</td>
<td>Provide ID</td>
<td>Address &amp; Registration</td>
</tr>
<tr>
<td>Connecticut</td>
<td>Provide ID</td>
<td>Provide ID</td>
<td>Provide ID</td>
<td>Affidavit</td>
</tr>
<tr>
<td>D.C.</td>
<td>Sign Name</td>
<td>Provide ID*</td>
<td>Sign Name</td>
<td>Address &amp; Registration</td>
</tr>
<tr>
<td>Delaware</td>
<td>Provide ID</td>
<td>Provide ID</td>
<td>Provide ID</td>
<td>Affidavit</td>
</tr>
<tr>
<td>Florida</td>
<td>Photo ID</td>
<td>Photo ID</td>
<td>Photo ID</td>
<td>Signature</td>
</tr>
<tr>
<td>Georgia</td>
<td>Provide ID</td>
<td>Gov. Issued Photo ID</td>
<td>Gov. Issued Photo ID</td>
<td>Affidavit</td>
</tr>
<tr>
<td>Hawaii</td>
<td>Photo ID</td>
<td>Photo ID</td>
<td>Photo ID</td>
<td>Affidavit</td>
</tr>
<tr>
<td>Idaho</td>
<td>Sign Name</td>
<td>Provide ID*</td>
<td>Sign Name</td>
<td>EDR</td>
</tr>
<tr>
<td>Illinois</td>
<td>Give Name</td>
<td>Provide ID*</td>
<td>Match Sig.</td>
<td>Affidavit</td>
</tr>
<tr>
<td>Indiana</td>
<td>Sign Name</td>
<td>Gov. Issued Photo ID</td>
<td>Gov. Issued Photo ID</td>
<td>Bring ID Later</td>
</tr>
<tr>
<td>Iowa</td>
<td>Sign Name</td>
<td>Provide ID*</td>
<td>Sign Name</td>
<td>Bring ID Later</td>
</tr>
<tr>
<td>Kansas</td>
<td>Sign Name</td>
<td>Sign Name</td>
<td>Sign Name</td>
<td>Bring ID Later</td>
</tr>
<tr>
<td>Kentucky</td>
<td>Provide ID</td>
<td>Provide ID</td>
<td>Provide ID</td>
<td>Affidavit</td>
</tr>
<tr>
<td>Louisiana</td>
<td>Photo ID</td>
<td>Photo ID</td>
<td>Photo ID[^]</td>
<td>DOB and Address</td>
</tr>
<tr>
<td>Maine</td>
<td>Give Name</td>
<td>Provide ID*</td>
<td>Give Name</td>
<td>EDR</td>
</tr>
<tr>
<td>Maryland</td>
<td>Sign Name</td>
<td>Provide ID*</td>
<td>Sign Name</td>
<td>Bring ID Later</td>
</tr>
<tr>
<td>Mass.</td>
<td>Give Name</td>
<td>Provide ID*</td>
<td>Give Name</td>
<td>Affidavit</td>
</tr>
<tr>
<td>Michigan</td>
<td>Sign Name</td>
<td>Provide ID*</td>
<td>Sign Name</td>
<td>Bring ID Later</td>
</tr>
<tr>
<td>Minnesota</td>
<td>Sign Name</td>
<td>Provide ID*</td>
<td>Sign Name</td>
<td>EDR</td>
</tr>
<tr>
<td>Mississippi</td>
<td>Sign Name</td>
<td>Provide ID*</td>
<td>Sign Name</td>
<td>Affidavit</td>
</tr>
<tr>
<td>Missouri</td>
<td>Provide ID</td>
<td>Provide ID*</td>
<td>Provide ID</td>
<td>Address &amp; Registration</td>
</tr>
<tr>
<td>Montana</td>
<td>Provide ID</td>
<td>Provide ID*</td>
<td>Provide ID</td>
<td>Bring ID Later</td>
</tr>
<tr>
<td>Nebraska</td>
<td>Sign Name</td>
<td>Provide ID*</td>
<td>Sign Name</td>
<td>Affidavit</td>
</tr>
<tr>
<td>Nevada</td>
<td>Match Sig.</td>
<td>Provide ID*</td>
<td>Match Sig.</td>
<td>Affidavit</td>
</tr>
<tr>
<td>New Jersey</td>
<td>Match Sig.</td>
<td>Provide ID*</td>
<td>Match Sig.</td>
<td>Bring ID Later</td>
</tr>
<tr>
<td>New Mexico</td>
<td>Sign Name</td>
<td>Provide ID</td>
<td>Provide ID</td>
<td>Bring ID Later</td>
</tr>
<tr>
<td>New York</td>
<td>Match Sig.</td>
<td>Provide ID*</td>
<td>Match Sig.</td>
<td>Affidavit</td>
</tr>
<tr>
<td>NH</td>
<td>Give Name</td>
<td>Provide ID</td>
<td>Give Name</td>
<td>EDR</td>
</tr>
<tr>
<td>North Carolina</td>
<td>Give Name</td>
<td>Provide ID*</td>
<td>Give Name</td>
<td>Varies</td>
</tr>
<tr>
<td>North Dakota</td>
<td>Provide ID</td>
<td>Provide ID</td>
<td>Provide ID</td>
<td>No Registration</td>
</tr>
<tr>
<td>Ohio</td>
<td>Match Sig.</td>
<td>Provide ID</td>
<td>Provide ID</td>
<td>Address &amp; Registration</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>Sign Name</td>
<td>Provide ID*</td>
<td>Sign Name</td>
<td>Address &amp; Registration</td>
</tr>
<tr>
<td>Oregon</td>
<td>Match Sig.</td>
<td>Provide ID*</td>
<td>Match Sig.</td>
<td>Signature</td>
</tr>
<tr>
<td>Penn.</td>
<td>Match Sig.</td>
<td>Provide ID*</td>
<td>Match Sig.</td>
<td>Address &amp; Registration</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>Give Name</td>
<td>Provide ID*</td>
<td>Give Name</td>
<td>Address &amp; Registration</td>
</tr>
</tbody>
</table>

See Appendix 1 for a more detailed summary, including citations and statutory language, of the identification requirements in each state.
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

<table>
<thead>
<tr>
<th>Voter Identification Required in the States</th>
<th>Mean Voter Turnout for States in that Category</th>
<th>Voter Identification Required in the States</th>
<th>Mean Voter Turnout for States in that Category</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Name</td>
<td>64.2 %</td>
<td>State Name</td>
<td>63.0 %</td>
</tr>
<tr>
<td>Sign Name</td>
<td>61.1 %</td>
<td>Sign Name</td>
<td>60.4 %</td>
</tr>
<tr>
<td>Match Signature</td>
<td>60.9 %</td>
<td>Match Signature</td>
<td>61.7 %</td>
</tr>
<tr>
<td>Provide Non-Photo ID</td>
<td>59.3 %</td>
<td>Provide Non-Photo ID</td>
<td>59.0 %</td>
</tr>
<tr>
<td>Provide Photo ID</td>
<td>58.1 %</td>
<td>Swear Affidavit</td>
<td>60.1 %</td>
</tr>
<tr>
<td>Average Turnout (All States)</td>
<td></td>
<td></td>
<td>60.9 %</td>
</tr>
</tbody>
</table>

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
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. 23

23 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.
addition to the voter identification requirements, the models include other socioeconomic, demographic, and political environment factors that might have influenced turnout in 2004.26 The dependent variable in these analyses is whether a respondent said he or she voted in the November 2004 election.27

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.28 Table 3 below shows predicted probabilities (calculated from the probit

26 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.
27 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.
28 A probit model is a popular specification of a generalized linear regression model, using the probit link function.
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. 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,

31 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.
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. 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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32 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.
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
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.

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
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.
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 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 ID 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 that 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. In May 2005, EAC entered into a contract 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 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.

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.

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:

- **Conduct Aan 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 Fagleon and assembling data from**
  **states, EAC will eEstablish 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 Fagleon 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 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.**

- **AStudy of how certain voter identification provisions that have been in place for**
  **two or more Federal elections have had an impacted on 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.**

- **Publication of 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.**

- **Astate by state Tracking state policies and procedures for early voting,**
  **absentee voting, and vote-by-mail policies and procedures. The data collected**
  **through this tracking will then be compared to various state voter identification**
  **policies and procedures.**
EAC Statement on Future Study of Voter Identification Requirements

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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 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.

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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 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.

- 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 impacted voter turnout, voter registration figures, and fraud. Included in this study will 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 will 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 will be compared to various state voter identification policies and procedures.
Deliberative Process
Privilege

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.

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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. Thus, 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
need a large election's statistics, including statistics provided through
the Census Bureau. The data include persons who were not
eligible to and did not vote. Furthermore, the categorization
of voter identification requirements included classifications
that actually require no identification at all. These
data and the statistical analyses used by campaign
strategies are heavily scrutinized by an independent voting rights
group composed of social scientists and activists.
cycle, additional environmental and political factors that affect 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.
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.
FINAL DRAFT REPORT AND RECOMMENDATIONS TO THE EAC VOTER IDENTIFICATION ISSUES

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 voters¹ (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,

¹ 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
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. 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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2 Arizona held its first election with new, stricter ID requirements on March 14, 2008. 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.
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, 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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3 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.
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. 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. 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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7 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.

8 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.
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?13

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.


11 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).
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 compared 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.

<table>
<thead>
<tr>
<th>State</th>
<th>Give Name</th>
<th>HAVA</th>
<th>Give Name</th>
<th>Bring ID Later</th>
</tr>
</thead>
<tbody>
<tr>
<td>Utah</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Vermont</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Virginia</td>
<td>Provide ID</td>
<td>HAVA</td>
<td>Provide ID</td>
<td>Affidavit</td>
</tr>
<tr>
<td>Washington</td>
<td>Sign Name</td>
<td>Provide ID</td>
<td>Provide ID</td>
<td>Address &amp; Registration</td>
</tr>
<tr>
<td>West Virginia</td>
<td>Match Sig.</td>
<td>HAVA</td>
<td>Match Sig.</td>
<td>Address &amp; Registration</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>Give Name</td>
<td>HAVA</td>
<td>Give Name</td>
<td>Bring ID Later</td>
</tr>
<tr>
<td>Wyoming</td>
<td>Give Name</td>
<td>HAVA</td>
<td>Give Name</td>
<td>Affidavit</td>
</tr>
</tbody>
</table>

Figure 1

- Give Name
- Sign Name
- Match Signature
- ID
- Photo ID

Voter ID Requirements 2004
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.
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.
• 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.
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
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. 15

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

15 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
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
• 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:
  o Privacy Act, Section 7: ruled that Tennessee voter system exempt from Privacy Act because it is pre-75
  o 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
  o Substantive due process: ruled that internal use of SS# not a burden
  o Free Exercise, based on Bible’s supposed prohibition on use of universal identifiers: ruled that law is generally applicable and thus valid
  o P&I, Article IV: does not protect in-state citizens
  o P&I, 14th 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:
  o VRA: ruled that race was not made a “qualification” for voting
  o 15th 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
  o 14th 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:
  o VRA: ruled that it was not a “test or device” because it applied equally
  o 15th Amendment: same reasons

Cases in Which the Plaintiffs Have Prevailed in Challenging the Statute Requiring Voter Identification:


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
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.


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.


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
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). 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. 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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18 Litigation documents are available at the Election Law @ Moritz website. http://moritzlaw.osu.edu/electionlaw/litigation/index.php
APPENDIX

Annotated Bibliography on Voter Identification Issues

Law Journals

  o Discusses HAVA a lot
  o Benefits of US adopting Mexican system of identifying voters and voter registration
  o 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).
  o Discussion of HAVA requirements and voter ID, problems in 2000
  o Discusses changes in AL to their election law in 2003, including adding voter ID
  o HAVA discussed
  o Discusses challenging elections based on voter fraud & illegal votes
- Rebecca Barrett, Election, 18 GA. ST. U. L. REV. 114 (Fall 2001).
  o 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
  o General discussion of ways voters are verified, what happens when voters are challenged as illegal voters
  o Discusses a photo ID law passed in Michigan in 1997 (later declared violated EPC of 14th amendment)
  o arguments against photo ID
  o Discusses voter registration as a way to combat fraud & several different ways to do it

Historical articles:

  o Lot of analysis on HAVA and voter ID
  o Little bit of historical
  o Arguments for and against certain types of voter ID laws


BEFORE THE ELECTION ASSISTANCE COMMISSION

In the Matter of

Draft Voter Identification Report, Research and Future Study of Voter Identification Requirements

CERTIFICATION

I, Donetta Davidson, Chair of the Election Assistance Commission, do hereby certify that on March 30, 2007 the Commission decided by a vote of 4-0. The following action(s) were taken:

1.

The Commission should approve the Voter Identification Report, Research and Future Study of Voter Identification Requirements.

Commissioner Rodriguez noted: I am persuaded by the Consultant that better data collection is essential to future EAC research projects. I am not chafed by the use of the CPS because, historically, it has been used as a barometer of voter behavior. It was more important for me to support the recommendation in order to release the Report than argue the use of the CPS.

Commissioners Davidson, Hillman, Hunter and Rodriguez voted affirmatively for the decision.

Attest:

3/30/07

Date

Donetta Davidson
Chair

Tel: (202) 566-3100  www.eac.gov  Fax: (202) 566-1392
Toll free: 1 (866) 747-1471
March 29, 2007

This is to authorize Elieen Collver to sign correspondence and tally votes in my absence.

[Signature]

Donetta Davidson
Chair
TALLY VOTE MATTER

DATE & TIME OF TRANSMITTAL: March 29, 2007, 12:30p.m.

BALLOT DEADLINE: April 02, 2007, 12:30p.m.

COMMISSIONERS: DAVIDSON, HILLMAN, HUNTER AND RODRIGUEZ

SUBJECT: DRAFT VOTER IDENTIFICATION REPORT, RESEARCH AND FUTURE STUDY OF VOTER IDENTIFICATION REQUIREMENTS

( ) I approve the recommendation.

( ) I disapprove the recommendation.

( ) I object to the recommendation.

( ) I am recused from voting.

COMMENTS: _______________________________________

________________________________________

________________________________________

DATE: ____________   SIGNATURE: ________________________

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to the EAC Chairman. Please return the ballot no later than date and time shown above.

FROM THOMAS WILKEY, EXECUTIVE DIRECTOR
MEMORANDUM

TO: Commissioners Davidson, Hillman, Hunter, and Rodriguez

FROM: Thomas R. Wilkey
Executive Director

DATE: March 29, 2007

RE: Draft Voter Identification Report, Research and Future Study of Voter Identification Requirements

In 2005, EAC contracted with the Eagleton Institute of Politics to conduct a study of the voter identification requirements that were in existence in the 50 states and 5 territories during the 2004 election. As a part of that study, Eagleton conducted research concerning the status of laws in the states and also conducted statistical analysis regarding the impact of the existence of voter identification requirements on the turnout of voters.

A draft statement capturing proposed action on the draft report as well as recommended next steps for research and analysis of voter identification requirements has been attached to this memorandum.

I recommend approval of this statement.
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 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.

EAC Declines to Adopt Draft Report

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.
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.

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 affect 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 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 collected by Eagleton as well as additional data from the states to develop this baseline.

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• 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.
TALLY VOTE MATTER

DATE & TIME OF TRANSMITTAL: March 29, 2007, 12:30 p.m.

BALLOT DEADLINE: April 02, 2007, 12:30 p.m.

COMMISSIONERS: DAVIDSON, HILLMAN, HUNTER AND RODRIGUEZ

SUBJECT: DRAFT VOTER IDENTIFICATION REPORT, RESEARCH AND FUTURE STUDY OF VOTER IDENTIFICATION REQUIREMENTS

I approve the recommendation.

I disapprove the recommendation.

I object to the recommendation.

I am recused from voting.

COMMENTS: I am persuaded by the Consultant that better data collection is essential to future EAC research projects. I am not chafed by the use of the CPS because, historically, it has been used as a barometer of voter behavior. It was more important for me to support the recommendation in order to release the Report than argue the use of the CPS.

I agree with the Consultant that "stating one's names" is a form of voter identification in those states where that is the statutory provision.

Based on my experience in Colorado, I am concerned about the rights of citizens when strict picture ID requirements are imposed. For a variety of reasons, picture IDS are beyond the reach of some citizens and entitled citizens lose access to opportunity and programs for lack of picture ID. It would not be acceptable to me for them to also lose their voting rights.

DATE: 3-29-2007  SIGNATURE: _______________________

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to the EAC Chairman. Please return the ballot no later than date and time shown above.

FROM THOMAS WILKEY, EXECUTIVE DIRECTOR
DATE & TIME OF TRANSMITTAL: March 29, 2007, 12:30 p.m.

BALLOT DEADLINE: April 02, 2007, 12:30 p.m.

COMMISSIONERS: DAVIDSON, HILLMAN, HUNTER AND RODRIGUEZ

SUBJECT: DRAFT VOTER IDENTIFICATION REPORT, RESEARCH AND FUTURE STUDY OF VOTER IDENTIFICATION REQUIREMENTS

I approve the recommendation.

I disapprove the recommendation.

I object to the recommendation.

I am recused from voting.

COMMENTS: ____________________________________________

DATE: 3/20/07  SIGNATURE:  

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to the EAC Chairman. Please return the ballot no later than date and time shown above.

FROM THOMAS WILKEY, EXECUTIVE DIRECTOR
DATE & TIME OF TRANSMITTAL: March 29, 2007, 12:30 p.m.

BALLOT DEADLINE: April 02, 2007, 12:30 p.m.

COMMISSIONERS: DAVIDSON, HILLMAN, HUNTER AND RODRIGUEZ

SUBJECT:  DRAFT VOTER IDENTIFICATION REPORT, RESEARCH AND FUTURE STUDY OF VOTER IDENTIFICATION REQUIREMENTS

(√) I approve the recommendation.

( ) I disapprove the recommendation.

( ) I object to the recommendation.

( ) I am recused from voting.

COMMENTS: __________________________________________

____________________________________________________

DATE:  3/29/07  SIGNATURE: ____________________________

_________________________

for Chair Donetta Davidson

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to the EAC Chairman. Please return the ballot no later than date and time shown above.

FROM THOMAS WILKEY, EXECUTIVE DIRECTOR
TALLY VOTE MATTER

DATE & TIME OF TRANSMITTAL: March 29, 2007, 12:30 p.m.

BALLOT DEADLINE: April 02, 2007, 12:30 p.m.

COMMISSIONERS: DAVIDSON, HILLMAN, HUNTER AND RODRIGUEZ

SUBJECT: DRAFT VOTER IDENTIFICATION REPORT, RESEARCH AND FUTURE STUDY OF VOTER IDENTIFICATION REQUIREMENTS

( ) I approve the recommendation.

( ) I disapprove the recommendation.

( ) I object to the recommendation.

( ) I am recused from voting.

COMMENTS:

DATE: 3/29/07    SIGNATURE: [Signature]

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to the EAC Chairman. Please return the ballot no later than date and time shown above.

FROM THOMAS WILKEY, EXECUTIVE DIRECTOR
TALLY VOTE MATTER

DATE & TIME OF TRANSMITTAL: March 26, 2007, 1:00 p.m.

BALLOT DEADLINE: March 28, 2007, 1:00 p.m.

COMMISSIONERS: DAVIDSON, HILLMAN, HUNTER AND RODRIGUEZ

SUBJECT: DRAFT VOTER IDENTIFICATION REPORT, RESEARCH AND FUTURE STUDY OF VOTER IDENTIFICATION REQUIREMENTS

( ) I approve the recommendation.

( ) I disapprove the recommendation.

( ) I object to the recommendation.

( ) I am recused from voting.

COMMENTS: ________________________________________________________________

__________________________________________________________________________

__________________________________________________________________________

DATE: ___________ SIGNATURE: ________________________________

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to the EAC Chairman. Please return the ballot no later than date and time shown above.

FROM THOMAS WILKEY, EXECUTIVE DIRECTOR

007423
MEMORANDUM

TO: Commissioners Davidson, Hillman, Hunter, and Rodriguez

FROM: Thomas R. Wilkey Executive Director

DATE: March 26, 2007

RE: Draft Voter Identification Report, Research and Future Study of Voter Identification Requirements

BACKGROUND

In 2005, EAC contracted with the Eagleton Institute of Politics to conduct a study of the voter identification requirements that were in existence in the 50 states and 5 territories during the 2004 election. As a part of that study, Eagleton conducted research concerning the status of laws in the states and also conducted statistical analysis regarding the impact of the existence of voter identification requirements on the turnout of voters.

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 are a first step in the Commission’s efforts to study the possible impact of voter identification requirements. However, the data, analysis, and statistical methodology the Contractor used to analyze voter identification requirements raise concerns. 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.

ANALYSIS
As you may know, the Deliberative Process Privilege to the Freedom of Information Act (FOIA) protects intra-agency documents that are (1) pre-decisional 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 or governmental decision before that matter is finally decided. It is a well settled matter of law that the work of contract employees and contractors ("consultants") constitute intra-agency documents. This is true even where the consultants are deemed to be independent contractors and are not subject to the degree of control that agency employment entails. The courts have made this determination after recognizing that agencies have a special need for the opinions and recommendations of temporary consultants. Ultimately, deliberative 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 draft report presented by Eagleton represents one phase of the deliberative process—before the document was vetted by staff, approved by the Executive Director and reviewed and approved by the Commissioners (the relevant policy makers). Ultimately, the draft document was created by Eagleton in order to aid the EAC's Commissioners in their decisions regarding voter identification requirements. The contractor had no personal interest in their submissions and had no agency decision-making authority. Eagleton was tasked with simply providing pre-decisional research and information to the EAC. Their efforts were limited to creating a truthful, comprehensive, and unbiased draft report. Only when a report is finalized and is adopted by EAC does it constitute an EAC decision or a policy determination.

The Voter Identification draft report was created by Eagleton in conjunction with the Moritz College of Law (Ohio State University) to "...provide research assistance to the EAC for the development of voluntary guidance on provisional voting and voter identification procedures." The stated objective of the contract was 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... The anticipated outcome of this activity is the generation of concrete policy recommendations to be issued as voluntary guidance for States.

Eagleton was provided guidance, information, and were directed by EAC personnel. The final product that they were to deliver (draft report) was identified in the contract as "a guidance document for EAC adoption." Clearly, as noted by the contract, the issuance of Federal guidance to states is a matter of government policy and limited to official EAC action.

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2 Klamath at 10.

3 Hoover, 611 F.2d at 1138.

4 NLRB v. Sears, Roebuck & Co., 41 U.S. at 151.
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 and decision. It would be irresponsible for EAC to accept the product of contracted employees and publish that information without exercising due diligence in vetting the product of the employees’ work and the veracity of the information used to produce that product. EAC, along with working and peer review groups have conducted this review of the draft voter identification report provided by Eagleton. EAC found that the draft report raised more questions that it answered, because of the limited data that was analyzed and the analysis that was conducted on those data.

As a part of its review of the draft report, EAC staff have determined that 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 are a first step in the Commission’s efforts to study the possible impact of voter identification requirements. In addition, staff recommends a series of next steps for future study and analysis of voter identification requirements, including:

- 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.

- 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.
A draft statement capturing proposed action on the draft report as well as recommended next steps for research and analysis of voter identification requirements has been attached to this memorandum.

RECOMMENDATIONS:

(1) EAC should exercise its authority in making policy concerning the study of voter identification requirements and decline to adopt the draft report provided by Eagleton;

(2) EAC should adopt the recommendations of staff regarding future study and analysis of voter identification requirements;

(3) EAC should adopt and publish the attached statement concerning the research and draft report presented by Eagleton as well as the future plans of EAC to conduct research in this area; and

(4) EAC should publish the data, information and draft report provided by Eagleton.
EAC 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 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.

EAC Declines to Adopt Draft Report

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.
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. 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.

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 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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• 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.
TALLY VOTE MATTER

DATE & TIME OF TRANSMITTAL: March 28, 2007, 3:00 p.m.

BALLOT DEADLINE: March 30, 2007, 3:00 p.m.

COMMISSIONERS: DAVIDSON, HILLMAN, HUNTER AND RODRIGUEZ

SUBJECT: DRAFT VOTER IDENTIFICATION REPORT, RESEARCH AND FUTURE STUDY OF VOTER IDENTIFICATION REQUIREMENTS

( ) I approve the recommendation.

( ) I disapprove the recommendation.

( ) I object to the recommendation.

( ) I am recused from voting.

COMMENTS: ____________________________________________

_______________________________________________________

_______________________________________________________

DATE: _____________ SIGNATURE: ___________________________

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to the EAC Chairman. Please return the ballot no later than date and time shown above.

FROM THOMAS WILKEY, EXECUTIVE DIRECTOR
MEMORANDUM

TO: Commissioners Davidson, Hillman, Hunter, and Rodriguez

FROM: Thomas R. Wilkey
Executive Director

DATE: March 28, 2007

RE: Draft Voter Identification Report, Research and Future Study of Voter Identification Requirements

BACKGROUND

In 2005, EAC contracted with the Eagleton Institute of Politics to conduct a study of the voter identification requirements that were in existence in the 50 states and 5 territories during the 2004 election. As a part of that study, Eagleton conducted research concerning the status of laws in the states and also conducted statistical analysis regarding the impact of the existence of voter identification requirements on the turnout of voters.

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 are a first step in the Commission’s efforts to study the possible impact of voter identification requirements. However, the data, analysis, and statistical methodology the Contractor used to analyze voter identification requirements raise concerns. 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.

ANALYSIS
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The draft report presented by Eagleton represents one phase of the deliberative process—before the document was vetted by staff, approved by the Executive Director and reviewed and approved by the Commissioners (the relevant policy makers). Ultimately, the draft document was created by Eagleton in order to aid the EAC's Commissioners in their decisions regarding voter identification requirements. The contractor had no personal interest in their submissions and had no agency decision-making authority. Eagleton was tasked with simply providing pre-decisional research and information to the EAC. Their efforts were limited to creating a truthful, comprehensive, and unbiased draft report. Only when a report is finalized and is adopted by EAC does it constitute an EAC decision or a policy determination.

The Voter Identification draft report was created by Eagleton in conjunction with the Moritz College of Law (Ohio State University) to "...provide research assistance to the EAC for the development of voluntary guidance on provisional voting and voter identification procedures." The stated objective of the contract was 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... The anticipated outcome of this activity is the generation of concrete policy recommendations to be issued as voluntary guidance for States.

Eagleton was provided guidance, information, and were directed by EAC personnel. The final product that they were to deliver (draft report) was identified in the contract as "a guidance document for EAC adoption." Clearly, as noted by the contract, the issuance of Federal guidance to states is a matter of government policy and limited to official EAC action.

2 Klamath, at 10.
3 Hoover, 611 F.2d at 1138.
4 NLRB v. Sears, Roebuck & Co., 41 U.S. at 151.
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 and decision. It would be irresponsible for EAC to accept the product of contracted employees and publish that information without exercising due diligence in vetting the product of the employees' work and the veracity of the information used to produce that product. EAC, along with working and peer review groups have conducted this review of the draft voter identification report provided by Eagleton. EAC found that the draft report raised more questions that it answered, because of the limited data that was analyzed and the analysis that was conducted on those data.

As a part of its review of the draft report, EAC staff have determined that 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 are a first step in the Commission's efforts to study the possible impact of voter identification requirements. In addition, staff recommends a series of next steps for future study and analysis of voter identification requirements, including:

- 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.

- 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.
A draft statement capturing proposed action on the draft report as well as recommended next steps for research and analysis of voter identification requirements has been attached to this memorandum.

RECOMMENDATIONS:

(1) EAC should exercise its authority in making policy concerning the study of voter identification requirements and decline to adopt the draft report provided by Eagleton;

(2) EAC should adopt the recommendations of staff regarding future study and analysis of voter identification requirements;

(3) EAC should adopt and publish the attached statement concerning the research and draft report presented by Eagleton as well as the future plans of EAC to conduct research in this area; and

(4) EAC should publish the data, information and draft report provided by Eagleton.
May 12, 2006

MEMORANDUM

TO: EAC Commissioners

FROM: Peggy Sims, Election Research Specialist

SUBJECT: Voting Fraud-Voter Intimidation Working Group Meeting

The first meeting of the Voting Fraud-Voter Intimidation Working Group will take place from 1:00 PM to 5:30 PM on Thursday, May 18th, 2006 at the offices of the U.S. Election Assistance Commission (EAC), 1225 New York Avenue, NW, 11th Floor, Washington, DC.

As you know, 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. Consequently, in September 2005, EAC contracted with two consultants (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;

For your information, the folder accompanying this letter includes a number of items related to our consultants’ preliminary research and the upcoming meeting:

• a meeting agenda;
• a list of Working Group members;
• a draft definition of election fraud;
• a list of reports and literature reviewed;
• a summary of interviews conducted and a list of experts interviewed;
• a list of experts interviewed;
• an analysis of news articles researched through Nexis;
• a summary of Department of Justice, Public Integrity Section cases, October 2002-January 2006;
• an analysis of case law review;
• a summary of research methodology recommendations from political scientists and experts in the field; and
• a CD with summaries of individual reports and literature reviewed, summaries of individual interviews, charts and summaries of news articles, and case law summary charts.

Please let me know if you have any questions.

Enclosures

cc: Tom Wilkey, Executive Director
    Julie Thompson-Hodgkins, General Counsel
    Gavin Gilmour, Associate General Counsel
VOTING FRAUD-VOTER INTIMIDATION WORKING GROUP MEETING

Thursday, May 18, 2006
1:00 PM - 5:30 PM
U.S. Election Assistance Commission
1225 New York Avenue, N.W., 11th Floor
Washington, D.C. 20005

AGENDA

1:00 PM - 1:30 PM  Introduction
                 EAC Authority
                 Overview and Purpose of Current Project
                 Purpose and Members of the Working Group
                 Related EAC Research

1:30 PM - 2:00 PM  Review of Preliminary Research
                 Literature & Reports
                 Interviews
                 News Articles
                 Court Cases

2:00 PM - 3:15 PM  Definition & Findings from Current Project Research

3:15 PM - 3:30 PM  Break

3:30 PM - 5:00 PM  Ideas for Future EAC Activities
                 Recommended Research Methodologies
                 Consultant Recommendations
                 Working Group Ideas

5:00 PM - 5:30 PM  EAC Next Steps
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, 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
Defining Election Fraud

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.
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)
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.
- 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 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
List of Experts 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 Ansolobohere, 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
Nexis Articles Analysis

Note: The search terms used were ones agreed upon by both Job Serebrov and Tova Wang and are available upon request. A more systematic, numerical analysis of the data contained in the Nexis charts is currently being undertaken. What follows is an overview.

Recommendation: In phase 2, consultants should conduct a Nexis search that specifically attempts to follow up on the cases for which no resolution is evident from this particular initial search.

Overview of the Articles

Absentee Ballots

According to press reports, absentee ballots are abused in a variety of ways:

1. Campaign workers, candidates and others coerce the voting choices of vulnerable populations, usually elderly voters
2. Workers for groups and individuals have attempted to vote absentee in the names of the deceased
3. 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:

1. Registering in the name of dead people
2. Fake names and other information on voter registration forms
3. Illegitimate addresses used on voter registration forms
4. Voters being tricked into registering for a particular party under false pretenses
5. 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 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.
Rough Summary of Department of Justice, Public Integrity Section Activities, October 2002-January 2006*

Prosecutions and Convictions-- Individuals
Noncitizen voting: 20
Vote buying: 49
Double voting: 12
Registration fraud: 13
Civil Rights: 4
Voter Intimidation: 2
Unclear: 1

Open Investigations (note: a few cases overlap with prosecutions and convictions)
Noncitizen voting: 3
Vote buying: 25
Double voting: 15
Registration fraud: 29
Absentee ballot fraud: 9
Official: 8
Ineligibles: 4
Deceptive Practices: 1
Civil Rights: 14
Intimidation: 6
Other: 2

Cases and Investigations Closed for Lack of Evidence
Civil Rights: 8
Official: 12
Registration Fraud: 12
Absentee Ballot Fraud: 14
Ineligible Voting: 3
Intimidation: 8
Double Voting: 5
Ballot Box Stuffing: 1
Vote Buying: 14
Ballot/machine tampering: 2
Other: 8
Unclear: 3

*Based upon information available as of January 2006
Case Summaries

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.

Job Serebrov
May 2006
Determining a Methodology for Measuring Voter Fraud and Intimidation: Recommendations of Political Scientists

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.

1) 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 Ansolobohere, MIT)

2) 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)
3) 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)

4) 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)

5) 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)

6) 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.

7) 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 overestimating 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)

8) 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.
October 19, 2006

Ralph G. Neas
President, People for the American Way Foundation
2000 M Street, NW
Suite 400
Washington, DC 20036

RE: October 18, 2006 Letter
Dear Mr. Neas:

Your letter of October 18, 2006 requests the release of EAC's Voter Fraud and Intimidation Report. I would like to take this opportunity to clarify the purpose and status of this study.

In late 2005, EAC hired two consultants for the purpose of assisting EAC with two things: 1) developing a uniform definition of the phrase voter fraud, and 2) making recommendations on how to further study the existence, prosecution, and means of deterring such voter fraud. In May 2006, a status report on this study was given to the EAC Standards Board and EAC Board of Advisors during their public meetings. During the same week, a working group convened to react to and provide comment on the progress and potential conclusions that could be reached from the work of the two consultants.

The conversation at the working group meeting was lively on the very points that we were trying to accomplish as a part of this study, namely what is voter fraud and how do we pursue studying it. Many of the proposed conclusions that were suggested by the consultants were challenged by the working group members. As such, the consultants were tasked with reviewing the concerns expressed at the working group meeting, conducting additional research as necessary, and providing a draft report to EAC that took into account the working group's concerns and issues.

That draft report is currently being vetted by EAC staff. EAC will release a final report from this study after it has conducted a review of the draft provided by the consultants. However, it is important to remember the purpose of this study -- finding a uniform definition of voter fraud and making recommendations on how to study the existence, prosecution and deterrence of voter fraud -- as it will serve as the basis of the EAC report on this study.

Thank you for your letter. You can be assured that as soon as a final report on the fraud and intimidation study is available, a copy will be made available to the public.

Sincerely,

Paul S. DeGregorio
Chairman
FROM: RALPH G. NEAS
PRESIDENT, PEOPLE FOR THE AMERICAN WAY FOUNDATION

DATE: 10/18/06
TOTAL NO. OF PAGES INCLUDING COVER: 3

RE: REPORT COMMISSIONED BY THE EAC ON VOTER FRAUD

□ URGENT □ FOR REVIEW □ PLEASE COMMENT □ PLEASE REPLY □ PLEASE RECYCLE

NOTES/COMMENTS:

Cc: USPS Mail

This transmission is intended for the sole use of the individual and entity to whom it is addressed, and may contain information that is privileged, confidential, or exempt from disclosure under applicable law. You are hereby notified that any dissemination, distribution or duplication of this transmission by someone other than the intended addressee or its designated agent is strictly prohibited. If your receipt of this transmission is in error, please notify us immediately by collect call to 202-467-4999, and send the original transmission to us by return mail at the address below.
October 18, 2006

Chairman Paul DeGregorio  
Commissioner Donetta L. Davidson  
Commissioner Gracia M. Hillman  
United States Election Assistance Commission  
1225 New York Avenue N.W., Suite - 1100  
Washington, DC 20005  
Fax: (202) 566-3127

Dear Commissioners,

On October 11th, USA Today published an article describing the report commissioned by the EAC on voter fraud. We write today to urge the EAC to release this report.

As a 25 year old civil rights and civil liberties organization, People For the American Way Foundation (PFAWF) and our sister organization, People For the American Way (PFAW) have long been dedicated to ensuring the integrity of our elections. In particular in the years since the 2000 election, PFAWF and other principle partners such as the NAACP and the Lawyers’ Committee for Civil Rights Under Law, have carried out a program called Election Protection to ensure that all eligible voters are able to vote and have that vote counted as cast.

We know that voter fraud and intimidation occur— we’ve seen the long lines, the erroneous purges, the misleading flyers and phone calls. And yet there seems to be little attention to these matters on the state and federal level.

Instead, a disproportionate amount of time and energy are spent on measures that purport to curb voter fraud by requiring voters to produce proof of citizenship and identity to vote. In actuality, these measures do little to secure the elections and much to disenfranchise otherwise eligible voters. Indeed we are weeks away from an election where thousands of eligible voters may be disenfranchised by overly restrictive voter identification laws. That presents a real threat to the integrity of our elections and the health of our democracy.

The report that the EAC commissioned from voting experts would make a vitally important contribution to the national discourse on the reality of voter fraud. In light of the numerous claims regarding the prevalence of voter fraud, this report provides a much
needed analysis about the state of our electoral process. While media reports indicate that this tax-payer funded report is final, even if there are outstanding concerns within the EAC, we implore you to move forward with releasing the report as is, and to hold a public hearing to address any potential issues. Again, the importance of the information in this report is paramount and the public deserves such full disclosure. The report should be released immediately so that those who are concerned about ensuring the integrity of elections can benefit from its findings.

Sincerely,

Ralph G. Neas
President, People For the American Way Foundation

Cc: Senate Majority Leader Bill Frist
    Senate Minority Leader Harry Reid
    Senator Trent Lott, Chair, Senate Rules and Administration
    Senator Chris Dodd, Ranking Member, Senate Rules and Administration
    House Majority Leader John Boehner
    House Minority Leader Nancy Pelosi
    Representative Vernon Ehlers, Chair, House Administration
    Representative Juanita Millender-McDonald, Ranking Member, House Administration
October 19, 2006

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2000 M Street, NW
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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
October 17, 2006

The Honorable Gerald Reynolds  
Chair, United States Commission on Civil Rights  
624 9th Street, N.W.  
Washington, DC 20425

RE: Elections Assistance Commission Report

VIA ELECTRONIC MAIL

Dear Mr. Chairman

I am writing to urge you and my fellow Commissioners to exercise our Congressionally-authorized subpoena power to compel the production of the report on voting fraud that the United States Election Assistance Commission ("EAC") refuses to release. It was clearly evident during our briefing last week on Voter Fraud and Intimidation that the results of the EAC report could have a significant impact on the quality and quantitative analysis of any briefing report that might be issued by the Commission.

According to an article in the October 11th edition of USA Today, "the bipartisan report by two consultants to the election commission casts doubt on the problem those laws are intended to address." Indeed, "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" according to the article. Further, the USA Today article states that 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."

Just based on this news article, the report has information clearly germane to our briefing and subsequent analysis of the testimony provided. I believe that in carrying out our Congressional mandate, the need to have access to and analyze the Election Assistance Commission report is a necessary prerequisite to an unbiased and informed report on Voter Fraud.

It is my understanding that the Chair has the authority under law to sign a subpoena on his own accord or, alternatively to seek a vote of the Commission to issue said subpoena. I believe the subpoena would be very short and direct: the production of the suppressed report.
I respectfully request that the Chair immediately issue a subpoena or, in the alternative, conduct an immediate notational vote on the matter of issuing a subpoena to compel production of the report.

Thank you for your time and attention to this important matter.

Sincerely,

MICHAEL YAKI
Commissioner
United States Commission on Civil Rights
INTRODUCTION

Voting fraud and intimidation are phrases familiar to many voting-aged Americans. However, they mean different things to different people. Voting fraud and intimidation are phrases used to refer to crimes, civil rights violations, and, at times, even the correct application of state or federal laws to the voting process. Past study of these topics has been as varied as its perceived meaning. In an effort to help understand the realities of voting fraud and voter intimidation in our elections, the U.S. Election Assistance Commission (EAC) has begun this phase of a comprehensive study on election crimes. In this phase of its examination, EAC has developed a definition of election crimes and adopted some research methodology on how to assess the existence and enforcement of election crimes in the United States.

PURPOSE AND METHODOLOGY OF THE EAC STUDY

Section 241 of the Help America Vote Act of 2002 (HAVA) calls on the EAC to research and study various issues related to the administration of elections. During Fiscal Year 2006, EAC began projects to research several of the listed topics. These topics for research were chosen in consultation with the EAC Standards Board and Board of Advisors. Voting fraud and voter intimidation are topics that the EAC as well as its advisory boards felt were important to study to help improve the administration of elections for federal office.

EAC began this study with the intention of identifying a common understanding of voting fraud and voter intimidation and devising a plan for a comprehensive study of these issues. This study was not intended to be a comprehensive review of existing voting fraud and voter intimidation actions, laws, or prosecutions. To conduct this type of extensive research, a basic understanding had to first be established regarding what is commonly referred to as voting fraud and voter intimidation. Once that understanding was reached, a definition had to be crafted to refine and in some cases limit the scope of what reasonably can be researched and studied as evidence of voting fraud and voter intimidation. That definition will serve as the basis for recommending a plan for a comprehensive study of the area.

To accomplish these tasks, EAC employed two consultants, Job Serebrov and Tova Wang, who worked with EAC staff and interns to conduct the research that forms the basis of this report. The consultants were chosen based upon their experience with the topic to assure a bipartisan representation in this study. The consultants and EAC staff were charged (1) research the current state of information on the topic of voting

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1 Biographies for Job Serebrov and Tova Wang, the two consultants hired by EAC, are attached as Appendix “1”.
fraud and voter intimidation; (2) develop a uniform definition of voting fraud and voter intimidation; and (3) propose recommended strategies for researching this subject.

EAC consultants reviewed existing studies, articles, reports and case law on voting fraud and intimidation and conducted interviews with experts in the field. EAC consultants and staff then presented their initial findings to a working group that provided feedback. The working group participants were:

The Honorable Todd Rokita  
Indiana Secretary of State  
Member, EAC Standards Board and the Executive Board of the Standards Board

Kathy Rogers  
Georgia Director of Elections, Office of the Secretary of State  
Member, EAC Standards Board

J.R. Perez  
Guadalupe County Elections Administrator, Texas

Barbara Arnwine  
Executive Director, Lawyers Committee for Civil Rights under Law  
Leader of Election Protection Coalition

Benjamin L. Ginsberg  
Partner, Patton Boggs LLP  
Counsel to National Republican Campaign Committees and Republican candidates

Robert Bauer  
Chair of the Political Law Practice at the law firm of Perkins Coie, District of Columbia  
National Counsel for Voter Protection, Democratic National Committee

Mark (Thor) Hearne II  
Partner-Member, Lathrop & Gage, St Louis, Missouri  
National Counsel to the American Center for Voting Rights

Barry Weinberg  
Former Deputy Chief and Acting Chief, Voting Section, Civil Rights Division, U.S. Department of Justice

Technical Advisor:  
Craig Donsanto  
Director, Election Crimes Branch, U.S. Department of Justice

Throughout the process, EAC staff assisted the consultants by providing statutes and cases on this subject as well as supervision on the direction, scope and product of this research.

The consultants drafted a report for EAC that included their summaries of relevant cases, studies and reports on voting fraud and intimidation, summaries of the interviews they conducted. The draft report also provided a definition of voting fraud and intimidation and made certain recommendations developed by the consultants or by the working group on how to pursue further study of this subject. This document was vetted and edited by EAC staff to produce this final report.
EXISTING INFORMATION ABOUT FRAUD AND INTIMIDATION

To begin our study of voting fraud and voter intimidation, EAC consultants reviewed the current body of information on voting fraud and intimidation. The information available about these issues comes largely from a very limited body of reports, articles, and books. There are volumes of case law and statutes in the various states that also impact our understanding of what actions or inactions are legally considered fraud or intimidation. Last, there is anecdotal information available through media reports and interviews with persons who have administered elections, prosecuted fraud, and studied these problems. All of these resources were used by EAC consultants to provide an introductory look at the available knowledge of voting fraud and voter intimidation.

Reports and Studies of Voting fraud and Intimidation

Over the years, there have been a number of studies conducted and reports published about voting fraud and voter intimidation. EAC reviewed many of these studies and reports to develop a base-line understanding of the information that is currently available about voting fraud and voter intimidation. EAC consultants reviewed the following articles, reports and books, summaries of which are available in Appendix “2”:

Articles and Reports


• 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."


During our review of these documents, we learned a great deal about the type of research that has been conducted in the past concerning voting fraud and voter intimidation. None of the studies or reports was based on a comprehensive, nationwide study, survey or review of all allegations, prosecutions or convictions of state or federal crimes related to voting fraud or voter intimidation in the United States. Most reports focused on a limited number of case studies or instances of alleged voting fraud or intimidation. For example, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," a report produced by the People for the American Way, focused exclusively on citizen reports of fraud or intimidation to the Election Protection program during the 2004 presidential election. Similarly, reports produced annually by the Department of Justice, Public Integrity Division, deal exclusively with crimes reported to and prosecuted by the United States Attorneys and/or the Department of Justice through the Public Integrity Section.

It is also apparent from a review of these articles and books that there is no consensus on the pervasiveness of voting fraud and voter intimidation. Some reports, such as
“Building Confidence in U.S. Elections,” suggest that there is little or no evidence of extensive fraud in U.S. elections or of multiple voting. This conflicts directly with other reports, such as the “Preliminary Findings of Joint Task Force Investigating Possible Election Fraud,” produced by the Milwaukee Police Department, Milwaukee County District Attorney’s Office, FBI and U.S. Attorney’s Office. That report cited evidence of more than 100 individual instances of suspected double-voting, voting in the name of persons who likely did not vote, and/or voting using a name believed to be fake.

Voter intimidation is also a topic of some debate because there is little agreement 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, e.g., legal practices, that allegedly cause vote suppression.

One point of agreement is that absentee voting and voter registration by nongovernmental groups create opportunities for fraud. A number of studies cited circumstances in which voter registration drives have falsified voter registration applications or have destroyed voter registration applications of persons affiliated with a certain political party. Others conclude that paying persons per voter registration application creates the opportunity and perhaps the incentive for fraud.

Interviews with Experts

In addition to reviewing prior studies and reports on voting fraud and intimidation, EAC consultants interviewed a number of persons regarding their experiences and research of voting fraud and voter intimidation. Persons interviewed included:

**Wade Henderson**
Executive Director,
Leadership Conference for Civil Rights

**Wendy Weiser**
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

**Pat Rogers**
Attorney, New Mexico

**Nina Perales**
Counsel,
Mexican American Legal Defense and Education Fund

**Rebecca Vigil-Giron**
Secretary of State, New Mexico

**Sarah Ball Johnson**
Executive Director,
State Board of Elections, Kentucky

**Stephen Ansolobehore**
Massachusetts Institute of Technology

**Chandler Davidson**
Rice University
These interviews in large part confirmed the conclusions that were gleaned from the articles, reports and books that were analyzed. For example, the interviewees largely agreed that absentee balloting is subject to the greatest proportion of fraudulent acts, followed by vote buying and voter registration fraud. They similarly pointed to voter registration drives by nongovernmental groups as a source of fraud, particularly when the workers are paid per registration. Many asserted that impersonation of voters is probably the least frequent type of fraud because it was the most likely type of fraud to be discovered, the stiff penalties associated with this type of fraud, and it is an inefficient method of influencing an election.

Interviewees differed on what they believe constitutes actionable voter intimidation. Law enforcement and prosecutorial agencies tend to look to the criminal definitions of voter intimidation, which generally require some threat of physical or financial harm. On the other hand, voter rights advocates tended to point to activities such as challenger laws,
voter identification laws, polling place locations, and distribution of voting machines as activities that can constitute voter intimidation.

Those interviewed also expressed opinions on the enforcement of voting fraud and voter intimidation laws. States have varying authorities to enforce these laws. In some states, enforcement is left to the county or district attorney, and in others enforcement is managed by the state’s attorney general. Regardless, voting fraud and voter intimidation are difficult to prove and require resources and time that many local law enforcement and prosecutorial agencies do not have. Federal law enforcement and prosecutorial agencies have more time and resources but have limited jurisdiction and can only prosecute election crimes perpetrated in elections with a federal candidate on the ballot or perpetrated by a public official under the color of law. Those interviewed differed on the effectiveness of the current system of enforcement. Some allege that prosecutions are not sufficiently aggressive. Others feel that the current laws are sufficient for prosecuting fraud and intimidation.

A summary of the each of the interviews conducted is attached as Appendix “3”.

Case Law and Statutes

Consultants reviewed more than 40,000 cases that were identified using a series of search terms related to voting fraud and voter intimidation. The majority of these cases came from courts of appeal. This is not surprising, since most cases that are publicly reported come from courts of appeal. Very few cases that are decided at the district court level are reported for public review.

Very few of the identified cases were applicable to this study. Of those that were applicable, no apparent thematic pattern emerged. However, it did seem that the greatest number of cases reported on fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility.

A listing of the cases reviewed in this study is attached as Appendix “4”.

Media Reports

EAC consultants reviewed thousands of media reports concerning a wide variety of potential voting fraud or voter intimidation, including:

- absentee ballot fraud,
- voter registration fraud,
- voter intimidation and suppression,
- deceased voters,
- multiple voting,
- felons voting,
• non-citizens voting,
• vote buying,
• deceptive practices, and
• fraud by election officials.

While these reports showed that there were a large number of allegations of voting fraud and voter intimidation, they provided much less information as to whether the allegations were ever formalized as complaints to law enforcement, whether charges were filed, whether prosecutions ensued, and whether any convictions were made. The media reports were enlightening as to the pervasiveness of complaints of fraud and intimidation throughout the country, the correlation between fraud allegations and the perception that the state was a “battleground” or “swing” state, and the fact that there were reports of almost all types of voting fraud and voter intimidation. However, these reports do not provide much data for analysis as to the number of complaints, charges and prosecutions of voting fraud and intimidation throughout the country.

DEFINITION OF ELECTION CRIMES

From our study of available information on voting fraud and voter intimidation, we have learned that these terms mean many things to many different people. These terms are used casually to refer to anything from vote buying to refusing to register a voter to falsifying voter registration applications. Upon further inspection, however, it is apparent that there is no common understanding or agreement of what constitutes “voting fraud” and “voter intimidation.” Some think of voting fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal and appropriate activities. To arrive at a common definition and list of activities that can be studied, EAC assessed the appropriateness of the terminology that is currently in use and applied certain factors to limit the scope and reach of what can and will be studied by EAC in the future.

New Terminology

The phrase “voting fraud” is really a misnomer for a concept that is much broader. “Fraud” is a concept that connotes an intentional act of deception, which may constitute either a criminal act or civil tort depending upon the willfulness of the act.

Fraud, n. 1. A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. • Fraud is usually a tort, but in some cases (esp. when the conduct is willful) it may be a crime.


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 “voting fraud,” it would be 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 "voting fraud." Similarly, a person who knowingly provides false information to a voter about the location of the voter's polling place commits fraud on the voter.

The phrase "voting fraud" does not capture a myriad of other criminal acts that are related to elections which are not perpetrated by the voter and/or do not involve an act of deception. For example, "voting fraud" does not capture actions or willful inaction by candidates and election workers. When an election official willfully and knowingly refuses to register to vote a legally eligible person it is a crime. This is a crime that involves neither the voter nor an act of deception.

To further complicate matters, the phrases "voting fraud" and "voter intimidation" are used to refer to actions or inactions that are criminal as well as those that are potentially civil wrongs and even those that are legal. Obviously, criminal acts and civil wrongs are pursued in a very different manner. Criminal acts are prosecuted by the local, state or federal government. Generally, civil wrongs are prosecuted by the individual who believes that they were harmed. In some cases, when civil rights are involved, the Civil Rights Division of the Department of Justice may become involved.

The goal of this study was to develop a common definition of what is generically referred to as "voting fraud" and "voter intimidation" that would serve as the basis for a future, comprehensive study of the existence of these problems. In order to meet that goal, we recognize that the current terminology does not accurately represent the spectrum of activities that we desire to study. Furthermore, we recognize that the resources, both financial and human capital, needed to study allegations and prosecutions of criminal acts, suits involving civil torts, and allegations of potential voter suppression through the use of legal election processes are well beyond the resources available to EAC. As such, EAC has defined "election crimes," a phrase that captures all crimes related to the voter registration and voting processes.

The Definition of an Election Crime for Purposes of this Study

Election crimes are intentional acts or willful failures to act, prohibited by state or federal law, that are designed to cause ineligible persons to participate in the election process; eligible persons to be excluded from the election process; ineligible votes to be cast in an election; eligible votes not to be cast or counted; or other interference with or invalidation of election results. Election crimes generally fall into one of four categories: acts of deception, acts of coercion, acts of damage or destruction, and failures or refusals to act.

Election crimes can be committed by voters, candidates, election officials, or any other members of the public who desire to criminally impact the result of an election. However, crimes that are based upon intentional or willful failure to act assume that a duty to act exists. Election officials have affirmative duties to act with regard to elections. By and large, other groups and individuals do not have such duties.
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 knowing otherwise mailing or distributing, literature that includes false information about the voter’s precinct or polling place, the date and time of the election or a candidate;
- Possessing an official ballot outside the voting location, unless the person is an election official or other person authorized by law or local ordinance to possess a ballot outside of the polling location;
- Making, or knowingly possessing, a counterfeit of an official election ballot;
- Signing a name other than his/her own to a petition proposing an initiative, referendum, recall, or nomination of a candidate for office;
- Knowingly signing more than once for the proposition, question, or candidate in one election;
- Signing a petition proposing an initiative or referendum when the signer is not a qualified voter.
- Voting or attempting to vote in the name of another person;
- Voting or attempting to vote more than once during the same election;
- Intentionally making a false affidavit; swearing falsely; or falsely affirming under an oath required by a statute regarding their voting status, including when registering to vote; requesting an absentee ballot or presenting to vote in person;
- Registering to vote without being entitled to register;
- Knowingly making a 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, on another person to induce or compel that person to vote or refrain from voting or to register or refrain from registering to vote;
- Knowingly paying, offering to pay, or causing to be paid money or other thing of value to a person to vote or refrain from voting for a candidate or for or against an election proposition or question;
o Knowingly soliciting or encouraging a person who is not qualified to vote in an election;

o Knowingly challenging a person's right to vote without probable cause or on fraudulent grounds, or engaging in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voter from voting or to delay the process of voting;

o 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;

o Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for signing or refraining from signing a petition proposing an initiative;

o Inducing or attempting to induce an election official to fail in the official's duty by force, threat, intimidation, or offers of reward;

o 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

o Soliciting, accepting, or agreeing to accept money or other thing of value in exchange for registering to vote.

Acts of Damage or Destruction

o Destroying completed voter registration applications;

o Removing or destroying any of the supplies or other conveniences placed in the voting booths or compartments;

o Removing, tearing down, or defacing election materials, instructions or ballots;

o Fraudulently altering or changing the vote of any elector, by which such elector is prevented from voting as the person intended;

o 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;

o Intentionally changing, attempting to change, or causing to be changed an official election document including ballots, tallies, and returns; and

o 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

o Intentionally failing to perform an election duty, or knowingly committing an unauthorized act with the intent to effect the election;

o Knowingly permitting, making, or attempting to make a false count of election returns;

o Intentionally concealing, withholding, or destroying election returns or attempts to do so;
o Marking a ballot by folding or physically altering the ballot so as to recognize the ballot at a later time;
o Attempting to learn or actually and unlawfully learning how a voter marked a ballot;
o Distributing or attempting to distribute election material knowing it to be fraudulent;
o Knowingly refusing to register a person who is entitled to register under the rules of that jurisdiction;
o Knowingly removing the eligibility status of a voter who is eligible to vote; and
o Knowingly refusing to allow an eligible voter to cast his/her ballot.

What is not an Election Crime for Purposes of this Study

There are some actions or inactions that may constitute crimes or civil wrongs that we do not include in our definition of "election crimes." All criminal or civil violations related to campaign finance contribution limitations, prohibitions, and reporting either at the state or federal level are not "election crimes" for purposes of this study and any future study conducted by EAC. Similarly, criminal acts that are unrelated to elections, voting, or voter registration are not "election crimes," even when those offenses occur in a polling place, voter registration office, or a candidate's office or appearance. For example, an assault or battery that results from a fight in a polling place or at a candidate's office is not an election crime. Similarly, violations of ethical provisions such as the Hatch Act are not "election crimes," and actions that do not rise to the level of criminal activity, such as a misdemeanor, relative felony or felony, are not "election crimes."

RECOMMENDATIONS ON HOW TO STUDY ELECTION CRIMES

As a part of its study, EAC sought recommendations on ways that EAC can research the existence of election crimes. EAC consultants, the working groups and some of the persons interviewed as a part of this study provided the following recommendations.

Recommendation 1: Conduct More Interviews

Future activity in this area should include conducting additional interviews. In particular, more election officials from all levels of government, parts of the country, and political parties should be interviewed. It would also be especially beneficial to talk to law enforcement officials, specifically federal District Election Officers ("DEOs") and local district attorneys, as well as civil and criminal defense attorneys.

Recommendation 2: Follow Up on Media Research

The media search conducted for this phase of the research was based on a list of search terms agreed upon by EAC consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contained allegations of fraud or intimidation. Similarly, some of the articles contained information about investigations into such
activities or even charges brought. Additional media research should be conducted to
determine what, if any, resolutions or further activity there was in each case.

**Recommendation 3: Follow Up on Allegations Found in Literature Review**

Many of the allegations made in the reports and books that were analyzed and
summarized by EAC consultants were not substantiated and were certainly limited by the
date of publication of those pieces. Despite this, such reports and books are frequently
cited by various interested parties as evidence of fraud or intimidation. Further research
should include follow up on the allegations discovered in the literature review.

**Recommendation 4: Review Complaints Filed With “MyVote1” Voter Hotline**

During the 2004 election and the statewide elections of 2005, the University of
Pennsylvania led a consortium of groups and researchers in conducting the MyVote1
Project. This project involved using a toll-free voter hotline that voters could call for poll
locations, be transferred to a local hotline, or leave a recorded message with a complaint.
In 2004, this resulted in more than 200,000 calls received and more than 56,000 recorded
complaints.

Further research should be conducted using the MyVote1 data with the cooperation of the
project leaders. While perhaps not a fully scientific survey given the self-selection of the
callers, the information regarding 56,000 complaints may provide insight into the
problems voters may have experienced, especially issues regarding intimidation or
suppression.

**Recommendation 5: Further Review of Complaints Filed With U.S. Department of
Justice**

According to a recent GAO report, the Voting Section of the Civil Rights Division of the
Department of Justice has a variety of ways it tracks complaints of voter intimidation.
Attempts should be made to obtain relevant data, including the telephone logs of
complaints and information from the Interactive Case Management (ICM) system.
Further research should also include a review and analysis of the DOJ/OPM observer and
“monitor field reports” from Election Day.

**Recommendation 6: Review Reports Filed By District Election Officers**

Further research should include a review of the reports that must be filed by every
District Election Officer to the Public Integrity Section of the Criminal Division of the
Department of Justice. The DEOs play a central role in receiving reports of voting fraud
and investigating and pursuing them. Their reports back to the Department would likely
provide tremendous insight into what actually transpired during the last several elections.
Where necessary, information could be redacted or made confidential.
Recommendation 7: Attend Ballot Access and Voting Integrity Symposium

Further activity in this area should include attending the next Ballot Access and Voting Integrity Symposium. At this conference, prosecutors serving as District Election Officers in the 94 U.S. Attorneys’ Offices obtain annual training on fighting election fraud and voting rights abuses. These conferences are sponsored by the Voting Section of the Civil Rights Division and the Public Integrity Section of the Criminal Division, and feature presentations by Civil Rights officials and senior prosecutors from the Public Integrity Section and the U.S. Attorneys’ Offices. By attending the symposium researchers could learn more about the following: how District Election Officers are trained; how information about previous election and voting issues is presented; and how the Voting Rights Act, the criminal laws governing election fraud and intimidation, the National Voter Registration Act, and the Help America Vote Act are described and explained to participants.

Recommendation 8: Conduct Statistical Research

EAC should measure voting fraud and intimidation using interviews, focus groups, and a survey and statistical analysis of the results of these efforts. The sample should be based on the following factors:

- Ten locations that are geographically and demographically diverse where there have been many reports of fraud and/or intimidation;
- Ten locations (geographically and demographically diverse) that have not had many reports of fraud and/or intimidation;

EAC should also conduct a survey of elections officials, district attorneys, and district election officers. The survey sample should be large in order to be able to get the necessary subsets, and it must include a random set of counties where there have and have not been a large number of allegations.

Recommendation 9: Explore Improvements to Federal Law

Future researchers should review federal law to explore ways to make it easier to impose either civil or criminal penalties for acts of intimidation that do not necessarily involve racial animus and/or a physical or economic threat.

Recommendation 10: Use Observers to Collect Data on Election Day

Use observers to collect data regarding fraud and intimidation at the polls on Election Day. There may be some limitations to the ability to conduct this type of research, including difficulty gaining access to polling places for the purposes of observation, and concerns regarding how the observers themselves may inadvertently or deliberately influence the occurrence of election crimes.
Recommendation 11: Study Absentee Ballot Fraud

Because absentee ballot fraud constitutes a large portion of election crimes, a stand-alone study of absentee ballot fraud should be conducted. Researchers should look at actual cases to see how absentee ballot fraud schemes are conducted in an effort to provide recommendations on more effective measures for preventing fraud when absentee ballots are used.

Recommendation 12: Use Risk Analysis Methodology to Study Fraud

Conduct an analysis of what types of fraud people are most likely to commit. Researchers will use that risk analysis to rank the types of fraud based on the “ease of commission” and the impact of the fraud.

Recommendation 13: Conduct Research Using Database Comparisons

Researchers should compare information on databases to determine whether the voter rolls contain deceased persons and felons. In addition, the voter rolls can then be compared with the list of persons who voted to determine whether a vote was recorded by someone who is deceased or if felons are noted as having voted.

Recommendation 14: Conduct a Study of Deceptive Practices

The working group discussed the increasing use of deceptive practices, such as flyers and phone calls with false and/or intimidating information, to suppress voter participation. A number of groups, such as the Department of Justice, the EAC, and organizations such as the Lawyers Committee for Civil Rights, keep phone logs regarding complaints of such practices. These logs should be reviewed and analyzed to see how and where such practices are being conducted and what can be done about them.

Recommendation 15: Study Use of HAVA Administrative Complaint Procedure as Vehicle for Measuring Fraud and Intimidation

EAC should study the extent to which states are utilizing the administrative complaint procedure mandated by HAVA. In addition, the EAC should study whether data collected through the administrative complaint procedure can be used as another source of information for measuring fraud and intimidation.

Recommendation 16: Examine the Use of Special Election Courts

Given that many state and local judges are elected, it may be worth exploring whether special election courts should be established to handle fraud and intimidation complaints before, during, and after Election Day. Pennsylvania employs such a system and could investigate how well that system is working.
Accepted Recommendations

There has never been a comprehensive, national study that gathered data regarding all claims, charges, and prosecutions of voting crimes. EAC feels that a comprehensive study is the most important research that it can offer the election community and the public. As such, EAC has adopted all or a part of six of the 16 recommendations made by EAC consultants and the working group.

While several of the other recommendations could be used to obtain more anecdotal information regarding election crimes, EAC believes that what is needed is a comprehensive survey and study of the information available from investigatory agencies, prosecutorial bodies and courts on the number and types of complaints, charges and prosecutions of election crimes. Additional media reviews, additional interviews and the use of observers to collect information from voters on Election Day will only serve to continue the use of anecdotal data to report on election crimes. Hard data on complaints, charges and prosecutions exists and we should gather and use that data, rather than rely on the perceptions of the media or the members of the public as to what might be fraud or intimidation.

Some of the recommendations are beyond the scope of the current study. While election courts may be a reasonable conclusion to reach after we determine the volume and type of election crimes being reported, charged or prosecuted, it is premature to embark on an analysis of that solution without more information. Last, some of the recommendations do not support a comprehensive study of election crimes. While a risk analysis might be appropriate in a smaller scale study, EAC desires to conduct a broader survey to avoid the existing problem of anecdotal and limited scope of information.

In order to further its goal of developing a comprehensive data set regarding election crimes and the laws and procedures used to identify and prosecute them, EAC intends to engage in the following research activities in studying the existence and enforcement of election crimes:

**Survey Chief Election Officers Regarding Administrative Complaints**

Likely sources of complaints concerning election crimes are the administrative complaint processes that states were required to establish to comply with Section 402 of HAVA. These complaint procedures were required to be in place prior to a state receiving any funds under HAVA. Citizens are permitted to file complaints alleging violations of HAVA Title III provisions under these procedures with the state’s chief election official. Those complaints must be resolved within 60 days. The procedures also allow for alternative dispute resolution of claims. Some states have expanded this process to include complaints of other violations, such as election crimes.

In order to determine how many of these complaints allege the commission of election crimes, EAC will survey the states’ chief election officers regarding complaints that have been filed, investigated, and resolved since January 1, 2004. EAC will use the definition
of election crimes provided above in this report in its survey so that data regarding a
uniform set of offenses 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. 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 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.
EXECUTIVE SUMMARY

The Help America Vote Act of 2002 (HAVA) requires the U.S. Election Assistance Commission (EAC) to study a host of topics, including "voting fraud" and "voter intimidation." In 2005, EAC embarked on an initial review of the existing knowledge of voting fraud and voter intimidation. The goal of that study was to develop a working definition of "voting fraud" and "voter intimidation" and to identify research methodology to conduct a comprehensive, nationwide study of these topics.

EAC staff along with two, bipartisan consultants reviewed the existing information available about voting fraud and voter intimidation, including reading articles, books and reports; interviewing subject matter experts; reviewing media reports of fraud and intimidation; and studying reported cases of prosecutions of these types of crimes. It is clear from this review that there is a great deal of debate on the pervasiveness of fraud in elections as well as what constitute the most common acts of fraud or intimidation. There is also no apparent consensus on the meaning of the phrases "voting fraud" and "voter intimidation." Some think of voting fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal activities.

In order to facilitate future study of these topics, EAC developed a working definition of "election crimes." "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.

From EAC's review of existing information on the issue, it was apparent that there have been a number of studies that touched on various topics and regions of the country concerning voting fraud and intimidation, but that there had never been a comprehensive, nationwide study of these topics. EAC will conduct further research to provide a comprehensive, nationwide look at "election crimes." Future EAC study of this topic will focus on election-related, criminal activity and will not include acts that are exclusively civil wrongs, campaign finance violations, and violations of ethical provisions. EAC will study these concepts by surveying the states' chief election officials about complaints they received through their administrative complaint processes, election crime investigation units regarding complaints received and those referred to law enforcement, and law enforcement and prosecutorial agencies regarding complaints received and charges filed.
INTRODUCTION

Voting fraud and voter intimidation are phrases familiar to many voting-aged Americans. However, they mean different things to different people. Voting fraud and voter intimidation are phrases used to refer to crimes, civil rights violations, and, at times, even the lawful application of state or federal laws to the voting process. Past study of these topics has been as varied as its perceived meaning. In an effort to help understand the realities of voting fraud and voter intimidation in our elections, the U.S. Election Assistance Commission (EAC) has begun this, phase one, of a comprehensive study on election crimes. In this phase of its examination, EAC has developed a working definition of election crimes and adopted research methodology on how to assess the existence and enforcement of election crimes in the United States.

PURPOSE AND METHODOLOGY OF THE EAC STUDY

Section 241 of the Help America Vote Act of 2002 (HAVA) calls on the EAC to research and study various issues related to the administration of elections. During Fiscal Year 2006, EAC began projects to research several of the listed topics. These topics for research were chosen in consultation with the EAC Standards Board and Board of Advisors. Voting fraud and voter intimidation are topics that the EAC as well as its advisory boards felt were important to study to help improve the administration of elections for federal office.

EAC began this study with the intention of identifying a common understanding of voting fraud and voter intimidation and devising a plan for a comprehensive study of these issues. The initial study was not intended to be a comprehensive review of existing voting fraud and voter intimidation actions, laws, or prosecutions. To conduct that type of extensive research, a basic understanding had to first be established regarding what is commonly referred to as voting fraud and voter intimidation. Once that understanding was reached, a definition had to be crafted to refine and in some cases limit the scope of what reasonably can be researched and studied as evidence of voting fraud and voter intimidation. That definition will serve as the basis for recommending a plan for a comprehensive study of the area.

To accomplish these tasks, EAC employed two consultants, Job Serebrov and Tova Wang, who worked with EAC staff and interns to conduct the research that forms the basis of this report. The consultants were chosen based upon their experience with the topic and the need to assure a bipartisan representation in this study. The consultants and EAC staff were charged with (1) researching the current state of information on the topic

1 Biographies for Job Serebrov and Tova Wang, the two consultants hired by EAC, are attached as Appendix "1". 
of voting fraud and voter intimidation; (2) developing a uniform definition of voting
fraud and voter intimidation; and (3) proposing recommended strategies for researching
this subject.

EAC consultants reviewed existing studies, articles, reports and case law on voting fraud
and intimidation and conducted interviews with experts in the field. EAC consultants and
staff then presented their initial findings to a working group that provided feedback. The
working group participants were:

**The Honorable Todd Rokita**
Indiana Secretary of State
Member, EAC Standards Board and the
Executive Board of the Standards Board

**Kathy Rogers**
Georgia Director of Elections, Office of the Secretary of State
Member, EAC Standards Board

**J.R. Perez**
Guadalupe County Elections Administrator, Texas

**Barbara Arnwine**
Executive Director, Lawyers Committee for Civil Rights under Law
Leader of Election Protection Coalition

**Benjamin L. Ginsberg**
Partner, Patton Boggs LLP
Counsel to National Republican Campaign Committees and Republican candidates

**Robert Bauer**
Chair of the Political Law Practice at the law firm of Perkins Coie, District of Columbia
National Counsel for Voter Protection, Democratic National Committee

**Mark (Thor) Hearne II**
Partner-Member, Lathrop & Gage, St Louis, Missouri
National Counsel to the American Center for Voting Rights

**Barry Weinberg**
Former Deputy Chief and Acting Chief, Voting Section, Civil Rights Division, U.S. Department of Justice

*Technical Advisor:*
**Craig Donsanto**
Director, Election Crimes Branch, U.S. Department of Justice

Throughout the process, EAC staff assisted the consultants by providing statutes and
cases on this subject as well as supervision on the direction, scope and product of this
research.

The consultants drafted a report for EAC that included their summaries of relevant cases,
studies and reports on voting fraud and voter intimidation as well as summaries of the
interviews that they conducted. The draft report also provided a definition of voting fraud
and intimidation and made certain recommendations developed by the consultants.
or by the working group on how to pursue further study of this subject. This document was vetted and edited by EAC staff to produce this final report.

EXISTING INFORMATION ABOUT FRAUD AND INTIMIDATION

To begin our study of voting fraud and voter intimidation, EAC consultants reviewed the current body of information on voting fraud and voter intimidation. The information available about these issues comes largely from a very limited body of reports, articles, and books. There are volumes of case law and statutes in the various states that also impact our understanding of what actions or inactions are legally considered fraud or intimidation. Last, there is anecdotal information available through media reports and interviews with persons who have administered elections, prosecuted fraud, and studied these problems. All of these resources were used by EAC consultants to provide an introductory look at the available knowledge of voting fraud and voter intimidation.

Reports and Studies of Voting fraud and Intimidation

Over the years, there have been a number of studies conducted and reports published about voting fraud and voter intimidation. EAC reviewed many of these studies and reports to develop a base-line understanding of the information that is currently available about voting fraud and voter intimidation. EAC consultants reviewed the following articles, reports and books, summaries of which are available in Appendix "2":

Articles and Reports


• 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."


Books


During our review of these documents, we learned a great deal about the type of research that has been conducted in the past concerning voting fraud and voter intimidation. None of the studies or reports was based on a comprehensive, nationwide study, survey or review of all allegations, prosecutions or convictions of state or federal crimes related to voting fraud or voter intimidation in the United States. Most reports focused on a limited number of case studies or instances of alleged voting fraud or voter intimidation. For example, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," a report produced by the People for the American Way, focused exclusively on citizen reports of fraud or intimidation to the Election Protection program during the 2004 Presidential election. Similarly, reports produced annually by the Department of Justice, Public Integrity Division, deal exclusively with crimes reported to and prosecuted by the United States Attorneys and/or the Department of Justice through the Public Integrity Section.

It is also apparent from a review of these articles and books that there is no consensus on the pervasiveness of voting fraud and voter intimidation. Some reports, such as "Building Confidence in U.S. Elections," suggest that there is little or no evidence of extensive fraud in U.S. elections or of multiple voting. This conflicts directly with other reports, such as the "Preliminary Findings of Joint Task Force Investigating Possible Election Fraud," produced by the Milwaukee Police Department, Milwaukee County District Attorney’s Office, FBI and U.S. Attorney’s Office. That report cited evidence of more than 100 individual instances of suspected double-voting, voting in the name of persons who likely did not vote, and/or voting using a name believed to be fake.

Voter intimidation is also a topic of some debate because there is little agreement concerning what constitutes actionable voter intimidation. Some studies and reports cover only intimidation that involves physical or financial threats, while others cover non-criminal intimidation, including legal practices that allegedly cause vote suppression.

One point of agreement is that absentee voting and voter registration by nongovernmental groups create opportunities for fraud. For example, a number of studies cited circumstances in which voter registration drives have falsified voter registration applications or have destroyed voter registration applications of persons affiliated with a certain political party. Others conclude that paying persons per voter registration application creates the opportunity and perhaps the incentive for fraud.

Interviews with Experts

In addition to reviewing prior studies and reports on voting fraud and intimidation, EAC consultants interviewed a number of persons regarding their experiences and research of voting fraud and voter intimidation. Persons interviewed included:

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Executive Director,  
Leadership Conference for Civil Rights

Douglas Webber  
Assistant Attorney General, Indiana

Heather Dawn Thompson  
Director of Government Relations,  
National Congress of American Indians

Wendy Weiser  
Deputy Director,  
Democracy Program, The Brennan Center

Jason Torchinsky  
Assistant General Counsel,  
American Center for Voting Rights

William Groth  
Attorney for the plaintiffs in the Indiana voter identification litigation

Robin DeJarnette  
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Lori Minnite  
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Sharon Priest  
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ACLU Voting Rights Project

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These interviews in large part confirmed the conclusions that were gleaned from the articles, reports and books that were analyzed. For example, the interviewees largely agreed that absentee balloting is subject to the greatest proportion of fraudulent acts, followed by vote buying and voter registration fraud. They similarly pointed to voter registration drives by nongovernmental groups as a source of fraud, particularly when the workers are paid per registration. Many asserted that impersonation of voters is probably the least frequent type of fraud because it is the most likely type of fraud to be discovered, there are stiff penalties associated with this type of fraud, and it is an inefficient method of influencing an election.

Interviewees differed on what they believe constitutes actionable voter intimidation. Law enforcement and prosecutorial agencies tend to look to the criminal definitions of voter intimidation, which generally require some threat of physical or financial harm. On the other hand, voter rights advocates tended to point to activities such as challenger laws, voter identification laws, polling place locations, and distribution of voting machines as activities that can constitute voter intimidation.

Those interviewed also expressed opinions on the enforcement of voting fraud and voter intimidation laws. States have varying authorities to enforce these laws. In some states, enforcement is left to the county or district attorney, and in others enforcement is managed by the state's attorney general. Regardless, voting fraud and voter intimidation are difficult to prove and require resources and time that many local law enforcement and prosecutorial agencies do not have. Federal law enforcement and prosecutorial agencies have more time and resources but have limited jurisdiction and can only prosecute election crimes perpetrated in elections with a federal candidate on the ballot or perpetrated by a public official under the color of law. Those interviewed differed on the effectiveness of the current system of enforcement. Some allege that prosecutions are not sufficiently aggressive. Others feel that the current laws are sufficient for prosecuting fraud and intimidation.

A summary of the each of the interviews conducted is attached as Appendix "3".
Case Law and Statutes

Consultants reviewed more than 40,000 cases that were identified using a series of search terms related to voting fraud and voter intimidation. The majority of these cases came from courts of appeal. This is not surprising, since most cases that are publicly reported come from courts of appeal. Very few cases that are decided at the district court level are reported for public review.

Very few of the identified cases were applicable to this study. Of those that were applicable, no apparent thematic pattern emerged. However, it did seem that the greatest number of cases reported on fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility.

A listing of the cases reviewed in this study is attached as Appendix “4”.

Media Reports

EAC consultants reviewed thousands of media reports concerning a wide variety of potential voting fraud or voter intimidation, including:

- absentee ballot fraud,
- voter registration fraud,
- voter intimidation and suppression,
- deceased voters on voter registration list and/or voting,
- multiple voting,
- felon voting,
- non-citizens voting,
- vote buying,
- deceptive practices, and
- fraud by election officials.

While these reports showed that there were a large number of allegations of voting fraud and voter intimidation, they provided much less information as to whether the allegations were ever formalized as complaints to law enforcement, whether charges were filed, whether prosecutions ensued, and whether any convictions were made. The media reports were enlightening as to the pervasiveness of complaints of fraud and intimidation throughout the country, the correlation between fraud allegations and the perception that the state was a “battleground” or “swing” state, and the fact that there were reports of almost all types of voting fraud and voter intimidation. However, these reports do not
provide much data for analysis as to the number of complaints, charges and prosecutions of voting fraud and intimidation throughout the country.

DEFINITION OF ELECTION CRIMES

From our study of available information on voting fraud and voter intimidation, we have learned that these terms mean many things to many different people. These terms are used casually to refer to anything from vote buying to refusing to register a voter to falsifying voter registration applications. Upon further inspection, however, it is apparent that there is no common understanding or agreement of what constitutes “voting fraud” and “voter intimidation.” Some think of voting fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal activities. To arrive at a common definition and list of activities that can be studied, EAC assessed the appropriateness of the terminology that is currently in use and applied certain factors to limit the scope and reach of what can and will be studied by EAC in the future. As a result, EAC has adopted the use of the term “election crimes” for its future study.

Current Terminology

The phrase “voting fraud” is really a misnomer for a concept that is much broader. “Fraud” is a concept that connotes an intentional act of deception, which may constitute either a criminal act or civil tort depending upon the willfulness of the act.

Fraud, n. 1. A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. • Fraud is usu[ally] a tort, but in some cases (esp. when the conduct is willful) it may be a crime.


“Voting” is the act of casting votes to decide an issue or contest. Black’s Law Dictionary, Eighth Edition, p. 1608. Using these terms to form a definition of “voting fraud,” it means fraudulent or deceptive acts committed to influence the act of voting. Thus, a voter who intentionally impersonates another registered voter and attempts to vote for that person would be committing “voting fraud.” Similarly, a person who knowingly provides false information to a voter about the location of the voter’s polling place commits fraud on the voter.

The phrase “voting fraud” does not capture a myriad of other criminal acts that are related to elections which are not related to the act of voting and/or do not involve an act of deception. For example, “voting fraud” does not capture actions of willful inaction in the voter registration process. When an election official willfully and knowingly refuses
to register to vote a legally eligible person it is a crime. This is a crime that involves neither the act of voting nor an act of deception.

To further complicate matters, the phrases "voting fraud" and "voter intimidation" are used to refer to actions or inactions that are criminal as well as those that are potentially civil wrongs and even those that are legal. Obviously, criminal acts and civil wrongs are pursued in a very different manner. Criminal acts are prosecuted by the local, state or federal government. Generally, civil wrongs are prosecuted by the individual who believes that they were harmed. In some cases, when civil rights are involved, the Civil Rights Division of the Department of Justice may become involved.

New Terminology

The goal of this study was to develop a common definition of what is generically referred to as "voting fraud" and "voter intimidation" that would serve as the basis for a future, comprehensive study of the existence of these problems. Because the current terminology has such a variety of applications and meanings, "voting fraud" and "voter intimidation" can be read to encompass almost any act associated with an election. Such broad terminology is not useful in setting the boundaries of a future study. A definition must set parameters for future study by applying limitations on what is included in the concepts to be studied. The current terminology applies no such limitations.

Thus, EAC has adopted the use of the phrase "election crimes" to limit the scope of its future study. This term captures all crimes related to the voter registration and voting processes and excludes civil wrongs and non-election related crimes. EAC adopted this definition because it better represents the spectrum of activities that are able to and desire to study. In addition, we recognize that the resources, both financial and human capital, needed to study all "voting fraud" and "voter intimidation," including criminal acts, civil actions, as well as allegations of voter suppression through the use of legal election processes are well beyond the resources available to EAC. Finally, by limiting this definition to criminal acts, EAC can focus its study on a set of more readily measurable data. Criminal behavior is readily defined through state and federal statutes and is prosecuted by government agencies. This is not the case with civil matters. Civil actions can be prosecuted by individuals and/or government entities. Furthermore, what constitutes civil action is far less defined, subject to change, and can vary from case to case. A more complete discussion of the concept of "election crimes" follows along with a list of excluded actions.
The Definition of an Election Crime for Purposes of this Study

Election crimes are intentional acts or willful failures to act, prohibited by state or federal law, that are designed to cause ineligible persons to participate in the election process; eligible persons to be excluded from the election process; ineligible votes to be cast in an election; eligible votes not to be cast or counted; or other interference with or invalidation of election results. Election crimes generally fall into one of four categories: acts of deception, acts of coercion, acts of damage or destruction, and failures or refusals to act.

Election crimes can be committed by voters, candidates, election officials, or any other members of the public who desire to criminally impact the result of an election. However, crimes that are based upon intentional or willful failure to act assume that a duty to act exists. Election officials have affirmative duties to act with regard to elections. By and large, other groups and individuals do not have such duties.

The victim of an election crime can be a voter, a group of voters, an election official, a candidate, or the public in general. Election crimes can occur during any stage of the election process, including but not limited to qualification of candidates; voter registration; campaigning; voting system preparation and programming; voting either early, absentee, or on election day; vote tabulation; recounts; and recalls.

The following are examples of activities that may constitute election crimes. This list is not intended to be exhaustive, but is representative of what states and the federal government consider criminal activity related to elections.

Acts of Deception

- Knowingly causing to be mailed or distributed, or knowingly mailing or distributing, literature that includes false information about the voter’s precinct or polling place, the date and time of the election or a candidate;
- Possessing an official ballot outside the voting location, unless the person is an election official or other person authorized by law or local ordinance to possess a ballot outside of the polling location;
- Making or knowingly possessing a counterfeit of an official election ballot;
- Signing a name other than his/her own to a petition proposing an initiative, referendum, recall, or nomination of a candidate for office;
- Knowingly signing more than once for the proposition, question, or candidate in one election;
- Signing a petition proposing an initiative or referendum when the signer is not a qualified voter.
- Voting or attempting to vote in the name of another person;
- Voting or attempting to vote more than once during the same election;
Intentionally making a false affidavit, swearing falsely, or falsely affirming under an oath required by a statute regarding their voting status, including when registering to vote, requesting an absentee ballot or presenting to vote in person;

Registering to vote without being entitled to register;

Knowingly making a materially false statement on an application for voter registration or re-registration; and

Voting or attempting to vote in an election after being disqualified or when the person knows that he/she is not eligible to vote.

**Acts of Coercion**

- Using, threatening to use, or causing force, coercion, violence, restraint, or inflicting, threatening to inflicts, or causing to be inflicted damage, harm, or loss, upon or against another person to induce or compel that person to vote or refrain from voting or to register or refrain from registering to vote;

- Knowingly paying, offering to pay, or causing to be paid money or other thing of value to a person to vote or refrain from voting for a candidate or for or against an election proposition or question;

- Knowingly soliciting or encouraging a person who is not qualified to vote in an election;

- Knowingly challenging a person's right to vote without probable cause or on fraudulent grounds, or engaging in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voter from voting or to delay the process of voting;

- As an employer, attempting by coercion, intimidation, threats to discharge or to lessen the remuneration of an employee, to influence his/her vote in any election, or who requires or demands an examination or inspection by himself/herself or another of an employee's ballot;

- Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for signing or refraining from signing a petition proposing an initiative;

- Inducing or attempting to induce an election official to fail in the official's duty by force, threat, intimidation, or offers of reward;

- Directly or through any other person advancing, paying, soliciting, or receiving or causing to be advanced, paid, solicited, or received, any money or other valuable consideration to or for the use of any person in order to induce a person not to become or to withdraw as a candidate for public office; and

- Soliciting, accepting, or agreeing to accept money or other thing of value in exchange for registering to vote.
Acts of Damage or Destruction

- Destroying completed voter registration applications;
- Removing or destroying any of the supplies or other conveniences placed in the voting booths or compartments;
- Removing, tearing down, or defacing election materials, instructions or ballots;
- Fraudulently altering or changing the vote of any elector, by which such elector is prevented from voting as the person intended;
- Knowingly removing, altering, defacing or covering any political sign of any candidate for public office for a prescribed period prior to and following the election;
- Intentionally changing, attempting to change, or causing to be changed an official election document including ballots, tallies, and returns; and
- Intentionally delaying, attempting to delay, or causing to be delayed the sending of certificate, register, ballots, or other materials whether original or duplicate, required to be sent by jurisdictional law.

Failure or Refusal to Act

- Intentionally failing to perform an election duty, or knowingly committing an unauthorized act with the intent to effect the election;
- Knowingly permitting, making, or attempting to make a false count of election returns;
- Intentionally concealing, withholding, or destroying election returns or attempts to do so;
- Marking a ballot by folding or physically altering the ballot so as to recognize the ballot at a later time;
- Attempting to learn or actually and unlawfully learning how a voter marked a ballot;
- Distributing or attempting to distribute election material knowing it to be fraudulent;
- Knowingly refusing to register a person who is entitled to register under the rules of that jurisdiction;
- Knowingly removing the eligibility status of a voter who is eligible to vote; and
- Knowingly refusing to allow an eligible voter to cast his/her ballot.

What is not an Election Crime for Purposes of this Study

There are some actions or inactions that may constitute crimes or civil wrongs that we do not include in our definition of "election crimes." All criminal or civil violations related to campaign finance contribution limitations, prohibitions, and reporting either at the state or federal level are not "election crimes" for purposes of this study and any future...
study conducted by EAC. Similarly, criminal acts that are unrelated to elections, voting, or voter registration are not “election crimes,” even when those offenses occur in a polling place, voter registration office, or a candidate’s office or appearance. For example, an assault or battery that results from a fight in a polling place or at a candidate’s office is not an election crime. Last, violations of ethical provisions and the Hatch Act are not “election crimes.” Similarly, civil or other wrongs that do not rise to the level of criminal activity (i.e., a misdemeanor, relative felony or felony) are not “election crimes.”

RECOMMENDATIONS ON HOW TO STUDY ELECTION CRIMES

As a part of its study, EAC sought recommendations on ways that EAC can research the existence of election crimes. EAC consultants, the working groups and some of the persons interviewed as a part of this study provided the following recommendations.

Recommendation 1: Conduct More Interviews

Future activity in this area should include conducting additional interviews. In particular, more election officials from all levels of government, parts of the country, and political parties should be interviewed. It would also be especially beneficial to talk to law enforcement officials, specifically federal District Election Officers (“DEOs”) and local district attorneys, as well as civil and criminal defense attorneys.

Recommendation 2: Follow Up on Media Research

The media search conducted for this phase of the research was based on a list of search terms agreed upon by EAC consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contained allegations of fraud or intimidation. Similarly, some of the articles contained information about investigations into such activities or even charges brought. Additional media research should be conducted to determine what, if any, resolutions or further activity there was in each case.

Recommendation 3: Follow Up on Allegations Found in Literature Review

Many of the allegations made in the reports and books that were analyzed and summarized by EAC consultants were not substantiated and were certainly limited by the date of publication of those pieces. Despite this, such reports and books are frequently cited by various interested parties as evidence of fraud or intimidation. Further research should include follow up on the allegations discovered in the literature review.
Recommendation 4: Review Complaints Filed With “MyVote1” Voter Hotline

During the 2004 election and the statewide elections of 2005, the University of Pennsylvania led a consortium of groups and researchers in conducting the MyVote1 Project. This project involved using a toll-free voter hotline that voters could call for poll locations to be transferred to a local hotline, or leave a recorded message with a complaint. In 2004, this resulted in more than 200,000 calls received and more than 56,000 recorded complaints.

Further research should be conducted using the MyVote1 data with the cooperation of the project leaders. While perhaps not a fully scientific survey given the self-selection of the callers, the information regarding 56,000 complaints may provide insight into the problems voters may have experienced, especially issues regarding intimidation or suppression.

Recommendation 5: Further Review of Complaints Filed With U.S. Department of Justice

According to a recent GAO report, the Voting Section of the Civil Rights Division of the Department of Justice has a variety of ways it tracks complaints of voter intimidation. Attempts should be made to obtain relevant data, including the telephone logs of complaints and information from the Interactive Case Management (ICM) system. Further research should also include a review and analysis of the DOJ/OPM observer and “monitor field reports” from Election Day.

Recommendation 6: Review Reports Filed By District Election Officers

Further research should include a review of the reports that must be filed by every District Election Officer to the Public Integrity Section of the Criminal Division of the Department of Justice. The DEOs play a central role in receiving reports of voting fraud and investigating and pursuing them. Their reports back to the Department would likely provide tremendous insight into what actually transpired during the last several elections. Where necessary, information could be redacted or made confidential.

Recommendation 7: Attend Ballot Access and Voting Integrity Symposium

Further activity in this area should include attending the next Ballot Access and Voting Integrity Symposium. At this conference, prosecutors serving as District Election Officers in the 94 U.S. Attorneys’ Offices obtain annual training on fighting election fraud and voting rights abuses. These conferences are sponsored by the Voting Section of the Civil Rights Division and the Public Integrity Section of the Criminal Division, and feature presentations by Civil Rights officials and senior prosecutors from the Public...
Integrity Section and the U.S. Attorneys’ Offices. By attending the symposium researchers could learn more about the following: how District Election Officers are trained; how information about previous election and voting issues is presented; and how the Voting Rights Act, the criminal laws governing election fraud and intimidation, the National Voter Registration Act, and the Help America Vote Act are described and explained to participants.

**Recommendation 8: Conduct Statistical Research**

EAC should measure voting fraud and intimidation using interviews, focus groups, and a survey and statistical analysis of the results of these efforts. The sample should be based on the following factors:

- Ten locations that are geographically and demographically diverse where there have been many reports of fraud and/or intimidation;
- Ten locations (geographically and demographically diverse) that have not had many reports of fraud and/or intimidation;

EAC should also conduct a survey of elections officials, district attorneys, and district election officers. The survey sample should be large in order to be able to get the necessary subsets, and it must include a random set of counties where there have and have not been a large number of allegations.

**Recommendation 9: Explore Improvements to Federal Law**

Future research should review federal law to explore ways to make it easier to impose either civil or criminal penalties for acts of intimidation that do not necessarily involve racial animus and/or a physical or economic threat.

**Recommendation 10: Use Observers to Collect Data on Election Day**

Use observers to collect data regarding fraud and intimidation at the polls on Election Day. There may be some limitations to the ability to conduct this type of research, including difficulty gaining access to polling places for the purposes of observation, and concerns regarding how the observers themselves may inadvertently or deliberately influence the occurrence of election crimes.

**Recommendation 11: Study Absentee Ballot Fraud**

Because absentee ballot fraud constitutes a large portion of election crimes, a stand-alone study of absentee ballot fraud should be conducted. Researchers should look at actual cases to see how absentee ballot fraud schemes are conducted in an effort to provide
recommendations on more effective measures for preventing fraud when absentee ballots are used.

**Recommendation 12: Use Risk Analysis Methodology to Study Fraud**

Conduct an analysis of what types of fraud people are most likely to commit. Researchers will use that risk analysis to rank the types of fraud based on the “ease of commission” and the impact of the fraud.

**Recommendation 13: Conduct Research Using Database Comparisons**

Researchers should compare information on databases to determine whether the voter rolls contain deceased persons and felons. In addition, the voter rolls can then be compared with the list of persons who voted to determine whether a vote was recorded by someone who is deceased or if felons are noted as having voted.

**Recommendation 14: Conduct a Study of Deceptive Practices**

The working group discussed the increasing use of deceptive practices, such as flyers and phone calls with false and/or intimidating information, to suppress voter participation. A number of groups, such as the Department of Justice, the EAC, and organizations such as the Lawyers Committee for Civil Rights, keep phone logs regarding complaints of such practices. These logs should be reviewed and analyzed to see how and where such practices are being conducted and what can be done about them.

**Recommendation 15: Study Use of HAVA Administrative Complaint Procedure as Vehicle for Measuring Fraud and Intimidation**

EAC should study the extent to which states are utilizing the administrative complaint procedure mandated by HAVA. In addition, the EAC should study whether data collected through the administrative complaint procedure can be used as another source of information for measuring fraud and intimidation.

**Recommendation 16: Examine the Use of Special Election Courts**

Given that many state and local judges are elected, it may be worth exploring whether special election courts should be established to handle fraud and intimidation complaints before, during, and after Election Day. Pennsylvania employs such a system and could investigate how well that system is working.
Accepted Recommendations

There has never been a comprehensive, national study that gathered data regarding all claims, charges, and prosecutions of voting crimes. EAC feels that a comprehensive study is the most important research that it can offer the election community and the public. As such, EAC has adopted all or a part of six of the 16 recommendations made by EAC consultants and the working group.

While several of the other recommendations could be used to obtain more anecdotal information regarding election crimes, EAC believes that what is needed is a comprehensive survey and study of the information available from investigatory agencies, prosecutorial bodies and courts on the number and types of complaints, charges and prosecutions of election crimes. Additional media reviews, additional interviews and the use of observers to collect information from voters on Election Day will only serve to continue the use of anecdotal data to report on election crimes. Hard data on complaints, charges and prosecutions exists and we should gather and use that data, rather than rely on the perceptions of the media or the members of the public as to what might be fraud or intimidation.

Some of the recommendations are beyond the scope of the current study. While election courts may be a reasonable conclusion to reach after we determine the volume and type of election crimes being reported, charged or prosecuted, it is premature to embark on an analysis of that solution without more information. Last, some of the recommendations do not support a comprehensive study of election crimes. While a risk analysis might be appropriate in a smaller scale study, EAC desires to conduct a broader survey to avoid the existing problem of anecdotal and limited scope of information.

In order to further its goal of developing a comprehensive data set regarding election crimes and the laws and procedures used to identify and prosecute them, EAC intends to engage in the following research activities in studying the existence and enforcement of election crimes:

Survey Chief Election Officers Regarding Administrative Complaints

Likely sources of complaints concerning election crimes are the administrative complaint processes that states were required to establish to comply with Section 402 of HAVA. These complaint procedures were required to be in place prior to a state receiving any funds under HAVA. Citizens are permitted to file complaints alleging violations of HAVA Title III provisions under these procedures with the state’s chief election official. Those complaints must be resolved within 60 days. The procedures also allow for alternative dispute resolution of claims. Some states have expanded this process to include complaints of other violations, such as election crimes.
In order to determine how many of these complaints allege the commission of election crimes, EAC will survey the states’ chief election officers regarding complaints that have been filed, investigated, and resolved since January 1, 2004. EAC will use the definition of election crimes provided above in this report in its survey so that data regarding a uniform set of offenses 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. 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 voters. Past studies of these issues have been limited in scope and some have been riddled with bias. These 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.
APPENDIX 1 – BIOGRAPHIES OF JOB SEREBROV AND TOVA WANG


APPENDIX 2 – SUMMARIES OF BOOKS, REPORTS AND ARTICLES


APPENDIX 3 – SUMMARIES OF INTERVIEWS


APPENDIX 4 – SUMMARIES OF CASES REVIEWED

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
## Articles


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.


Argues that "the discriminatory use of so-called 'ballot security' programs" has been a recurring 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 Breau'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..."
EAC SUMMARY OF LITERATURE REVIEW FOR VOTING FRAUD-VOTER INTIMIDATION RESEARCH

Programs (especially voter ID). Indicates that the crux of the problem is lax 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, payble 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].")

Recommends that Congress and the states should adopt "nondiscriminatory, evenly applied measures to ensure the integrity of the ballot."


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.
EAC SUMMARY OF LITERATURE REVIEW FOR VOTING FRAUD-VOTER INTIMIDATION RESEARCH


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.
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

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
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, the 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.

**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 filthiest 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,
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
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
least five states – Colorado, Illinois, Michigan, South Carolina, and Maryland – also formally bar some or all people convicted of misdemeanors from voting if 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.


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.
• 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.


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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- Election officials are highly underfunded 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 0.25%;
- Federal requirements that jurisdictions 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.


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 10,899 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 on 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.

<table>
<thead>
<tr>
<th>Public Integrity Section, Criminal Division, United States Department of Justice, &quot;Report to Congress on the Activities and Operations of the Public Integrity Section for 2002.&quot;</th>
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<tr>
<td>Public Integrity Section, Criminal Division, United States Department of Justice, &quot;Report to Congress on the Activities and Operations of the Public Integrity Section for 2003.&quot;</td>
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<tr>
<td>Public Integrity Section, Criminal Division, United States Department of Justice, &quot;Report to Congress on the Activities and Operations of the Public Integrity Section for 2004.&quot;</td>
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**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.
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 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 available to prosecute such cases, and the handling of civil rights matters involving voting. 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. 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).
Addressed 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 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 pursuing 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.
Election crimes based on race or language minority status are treated as civil rights matters under the Voting Rights Act.


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 8,000 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.
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 report 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 Tuscan, 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 forms 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.


[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,"
A comprehensive survey and analysis of vote fraud in the United States. The methodology included doing nexus 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 nexus searches, studying statutory and case law, and conducting interviews with election officials and attorneys generally. 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.
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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. Minniti 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.


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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<thead>
<tr>
<th>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</th>
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<tbody>
<tr>
<td>5. Refusal to provide provisional ballots to certain voters: Ohio, Pennsylvania, Illinois, Michigan, Colorado, Missouri, Texas, Georgia, Louisiana</td>
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<tr>
<td>6. Registration applications submitted through third parties that were not processed: Arizona, Michigan, Nevada (registration forms destroyed by Sproul Associates)</td>
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<tr>
<td>7. Improper removal from the voter registration list: Arizona</td>
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<tr>
<td>8. Individuals questioning voters' citizenship: Arizona</td>
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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**


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 felony 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.


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
### EAC Summary of Literature Review for Voting Fraud-Voter Intimidation Research

<table>
<thead>
<tr>
<th>Author</th>
<th>Title</th>
<th>Summary</th>
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<tbody>
<tr>
<td>Tracy Campbell</td>
<td><em>Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004</em>, Carroll &amp; Graf Publishers, 2005.</td>
<td>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.]</td>
</tr>
<tr>
<td>David E. Johnson and Jonny R. Johnson</td>
<td><em>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</em>, Taylor Trade Publishing, 2004.</td>
<td>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. 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.</td>
</tr>
<tr>
<td>Mark Crispin Miller</td>
<td><em>Fooled Again</em>, Basic Books, 2005.</td>
<td>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. 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: 1. deliberate disparities in voting machine distribution and long lines in Democratic jurisdictions; 2. misinterpretation of voting laws by elections officials to the detriment of Democratic voters; 3. dirty tricks and deceptive practices to mislead Democratic and minority voters about voting times, places and conditions; 4. machine irregularities in Democratic jurisdictions; 5. relocating polling sites in Democratic and minority areas; 6. suspicious mishandling of absentee ballots; 7. refusing to dispense voter registration forms to certain voter registration groups; 8. intimidation of students; 9. suspicious ballot spoilage rates in certain jurisdictions; 10. “strategic distribution of provisional ballots,” and trashing of provisional ballots; 11. harassment of Native American voters; 12. a Republican backed organization engaging in voter registration efforts throughout the country that allegedly destroyed the voter registration forms of Democrats; 13. illegitimate challenges at the polls by Republican poll watchers; 14. improper demands for identification in certain areas; 15. 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; 16. wrongful purging of eligible voters from voting rolls; 17. partisan harassment; 18. the selective placement of early voting sites; and 19. failure to send out absentee ballots in time for people to vote.</td>
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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.

Legal

*Indiana Democratic Party vs. Rokita*, U.S. District Court Southern District of Indiana (Indianapolis) 1:05-cv-00634, U.S. Court of Appeals, 7th 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
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.

(ld.)

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, 11th 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
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).

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 pretextural 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 ballot to a voter, to check off 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 impostors 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.


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.
EAC SUMMARY OF EXPERT INTERVIEWS FOR
VOTING FRAUD-VOTER INTIMIDATION RESEARCH

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
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 1/10000th of a percentage of voters. See also the brief Brennan filed on 11th 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
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 filers 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
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 wrongly 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
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 2nd 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 govt, 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.
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.

Minnite, Barnard College, Columbia University

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.
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

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**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.
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 3rd 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 5th 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
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 canvas' 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.
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 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.
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
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.

Methodology suggestions

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 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. Ansolobohere 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. Ansolobohere 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. Ansolobohere 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. Ansolobohere 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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polis, 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 7th 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 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.

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.
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 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
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
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.

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**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 voter 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.
• 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 poll workers among precincts, to ensure adequate and nondiscriminatory access. These standards should be based on set ratios of numbers of machines and poll workers per number of voters expected to turn out, and should be made available for public comment before being adopted.
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.
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.

Absence 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

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**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.
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 14th and 15th 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.
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 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 filing 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.
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
### 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 latches—if a person sits on their rights too long, they loose 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.

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**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.
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 —
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.

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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 andSuppresses 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?
EAC SUMMARY OF EXPERT INTERVIEWS FOR 
VOTING FRAUD-VOTER INTIMIDATION RESEARCH

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:
  o federal districts draw from a bigger and more diverse jury pool;
  o the DOJ is politically detached; local district attorneys are hamstrung by the need to be re-elected;
  o DOJ has more resources – local prosecutors need to focus on personal and property crimes---fraud cases are too big and too complex for them;
  o 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...
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.
Undue challenges to minority language voters at the polling 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.
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
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

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

007578
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
To: Members of the United States Election Assistance Commission  
Cc: Thomas Wilkey, Executive Director, and Julie Thompson Hodgkins, General Counsel, Election Assistance Commission  
From: Tova Andrea Wang  
Re: Project on Voter Fraud and Intimidation  
Date: December 7, 2006

As one of the consultants and authors of the report on voter fraud and intimidation released by the Election Assistance Commission today, I am writing to request that the EAC restore the information that has been altered and removed from the research report we submitted to the EAC in July, 2006.

Job Serebrov and I spent over a year and hundreds of hours working on the report on voter fraud and voter intimidation in a bipartisan and highly effective manner. The report we wrote was a reflection of the detailed and laborious research we did over these many months. Unfortunately, the report the EAC released today does not fully reflect our research and the report of our findings submitted to the EAC in July, 2006.

After being unable to get any action taken on the report for months, I learned very recently that the General Counsel of the EAC would be taking responsibility for “revising” the report. On November 15 of this year I requested that Job Serebrov and I be permitted to review any revisions or changes made by EAC staff to the draft we submitted. We both offered to work collaboratively and cooperatively with EAC staff to ensure that the document produced was the most informative and useful product possible. This request was denied. Again, on November 29, 2006, upon learning that the report was to become public at an upcoming EAC meeting, I requested in writing that Job Serebrov and I be at least allowed to see embargoed copies of the report to be released before that December 7, 2006 meeting. That request was denied. On December 4, 2006 I offered to sign a confidentiality agreement whereby I would agree not to discuss the report before its public release. That request was also denied.

It is my understanding that with other research reports for which the EAC has contracted consultants there has been a process of give and take between the consultants and the EAC staff and commissioners prior to public release of the report. The consultants in this instance were repeatedly denied that opportunity, leading to today’s result.

The issues around voter fraud and intimidation are controversial, making it all the more necessary that the research around it be as free from politics as possible. That is why the EAC made this project a bipartisan effort, with a bipartisan team of consultants and a bipartisan working group to inform and advise us on our work.

The EAC has a statutory obligation to provide the Congress and the American public the best research, data and guidance it can. Knowledge about the extent and nature of voter fraud and intimidation is fundamental to ensuring the right of every eligible American to vote and that every legitimate vote is counted.
I hope the EAC will reconsider its actions of today and release the report that was written by the consultants so that the Congress and the voters can engage in an informed and honest discussion about one of the most serious issues confronting our democracy today.

Please respond to this request by Monday, December 11. Thank you for your timely consideration.
October 19, 2006

The Honorable Rush Holt
1019 Longworth Building
Washington, DC 20515

RE: October 16, 2006 Letter

Dear Congressman Holt:

Your letter of October 16, 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
Interview with Craig Donsanto, Director, Elections Crimes Branch, Public Integrity Section, U.S. Department of Justice
January 13, 2006

The Department of Justice's (DOJ) Election Crimes Branch is responsible for supervising federal criminal investigations and prosecutions of election crimes.

Questions

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 Assistant U.S. Attorney (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 the Voting Section and the Election Crimes Branch.

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?
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 on the ballot.

**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. A federal law is needed that permits prosecution in any election where any federal instrumentality is used.

**Other Information**

The Department has held four symposia for District Election Officers (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.
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 against conspiracies when there was a pattern or scheme to corrupt the process rather than individual offenders acting alone. For deterrence purposes, charges were not brought against individuals—those cases went unprosecuted. 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—Attorney General decided to add the pursuit of individuals who vote when not eligible to vote (noncitizens, felons) or who vote more than once.

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:

1. Felon voters in Milwaukee.

2. 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.

3. 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.

According to the new handbook, the department can take on a case whenever there is a federal candidate on the ballot.
Interview with John Tanner, Director Chief, Voting Section, Civil Rights Division, U.S. Department of Justice

February 24, 2006

The Department of Justice’s (DOJ) Voting Section is charged with the civil enforcement of the Voting Rights Act, the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the National Voter Registration Act (NVRA), and Title III of the Help America Vote Act (HAVA).

Note: Mr. Tanner’s reluctance to share data, information and his perspective on solving the problems presented an obstacle to conducting the type of interview that would help inform this project as much as we would have hoped. Mr. Tanner would not give us any information about or data from the section’s election complaint intake 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, reports that every Voting Section attorney who is observing elections at polling 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 focuses only on systemic problems resulting from government action or inaction, not problems caused by individuals. Indeed, the section never goes after individuals because it does not have the statutory authority to do so. In situations in which individuals are causing problems at the polls and interfering with voting rights, the section calls the local election officials to resolve it.

Federal voting laws enforced by the section only apply to state action, so the section only sues state and local governments — it does not have any enforcement power over individuals. Most often, the section enters into consent agreements with governments that focus on poll worker training, takes steps to restructure how polls are run, and deals with problems on Election Day on the spot. Doing it this way has been most effective — for example, while the section used to have the most observers in the South, with systematic changes forced upon those jurisdictions, have made it so now the section now does not get complaints from the South.

The section can get involved even where there is no federal candidate on the ballot if there is a racial issue under the 14th and 15th Amendments.

When the section receives a complaint, attorneys first determine whether it is a matter that involves individual offenders or a systemic problem. When deciding what to do
with the complaint, the section errs on the side of referring it criminally to avoid having
any 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 a formal 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
referred to 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.

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 filing 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.

Note: We contend that Mr. Tanner's reluctance to share data, information and his perspective on solving the problems presented an obstacle to conducting the type of interview that would help inform this project as much as we would have hoped. We did not have access to any information about or data from the section's election complaint intake phone logs or data or even general information from the Interactive Case Management (ICM) system-its formal process for tracking and managing work activities in pursuing complaints and potential violations of the voting laws. Only a selected few samples of attorney-observer reports were provided, reports that every Voting Section
attorney who is observing elections at poll sites on Election Day is required to submit. Mr. Tanner would not discuss any current investigations or cases the section is involved in.
Voting Fraud and Voter Intimidation

Report to the
U.S. Election Assistance Commission
on
Preliminary Research & Recommendations

by

Job Serebrov and Tova Wang
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Introduction

Charge Under HAVA


Scope of Project

The Commission employed a bipartisan team of legal consultants, Tova Wang and Jocelyn 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
Voting Fraud and Voter Intimidation – Preliminary Research & Recommendations

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 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.
Voting Fraud and Voter Intimidation – Preliminary Research & Recommendations

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.
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- 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
Voting Fraud and Voter Intimidation – Preliminary Research & Recommendations

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 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 Ansolobehere, 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:

  o 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
  o 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)
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- 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
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- 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.
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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 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.
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In 2004, this resulted in over 200,000 calls received and over 56,000 recorded complaints. 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, 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 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,

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...
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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, longtime 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.

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, 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**

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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1 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.
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.”
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
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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
Appendix 2

List of Literature Reviewed

Reports


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.


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."


Books


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Legal

*Indiana Democratic Party vs. Rokita*, U.S. District Court Southern District of Indiana (Indianapolis) 1:05-cv-00634, U.S. Court of Appeals, 7th Circuit 06-2218

*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, 11th Circuit 05-15784

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. 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 (though this attack would not be substantially different against DREs or DREs w/ VVPT). 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.

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.” 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:

- Minimum number required to steal or create ballots: 5 persons total.
- Minimum number required to scan marked ballots: 1 per polling place attacked.
- Minimum number required to modify poll books: 1 per polling place attacked.

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. 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.
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 votes), 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) 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. 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. 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 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.35

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 we received.
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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”).

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.

- 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 Pennsylvania, 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

• An Independent Testing Authority has certified the model of voting machine used in the polling place.

• Acceptance Testing is performed on machines at time, or soon after they are received by County.

• Pre-election Logic and Accuracy 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. 42

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"): 

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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.43
- 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;44
- 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.45 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;46
- 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;
Voting Fraud and Voter Intimidation — Preliminary Research & Recommendations

- 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

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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
Voting Fraud and Voter Intimidation – Preliminary Research & Recommendations

1 Department of Justice's Activities to Address Past Election-Related Voting Irregularities, General Accounting Office, October 14, 2004, GAO-04-1041R
2 The MyVote1 Project Final Report, Fels Institute of Government, University of Pennsylvania, November 1, 2005, Pg. 12
3 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.
4 "Department Of Justice To Hold Ballot Access and Voting Integrity Symposium," U.S. Department of Justice press release, August 2, 2005
6 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
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, 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), 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 consultants were chosen based upon their experience with the topic and to assure a bipartisan representation in this study. The consultants and EAC staff were charged to: (1) research the current state of information on the topics of voter fraud and voter intimidation; (2) develop a uniform definition of voter fraud and voter intimidation; and (3) 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 feedback. The working group participants were:

The Honorable Todd Rokita  
Indiana Secretary of State  
Member, EAC Standards Board and the Executive Board of the Standards Board

Kathy Rogers  
Georgia Director of Elections, Office of the Secretary of State  
Member, EAC Standards Board

J.R. Perez  
Guadalupe County Elections Administrator, Texas

Barbara Arnwine  
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Mark (Thor) Hearne II  
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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.

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


• 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.”


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 non-governmental 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.

Interviews with Experts

In addition to reviewing prior studies and reports on voter fraud and intimidation, EAC consultants interviewed a number of persons regarding their experiences and research of voter fraud and voter intimidation. Persons interviewed included:

Wade Henderson
Executive Director,
Leadership Conference for Civil Rights

Wendy Weiser
Deputy Director,
Democracy Program, The Brennan Center

William Groth
Attorney for the plaintiffs in the Indiana voter identification litigation

Lori Minnite
Barnard College, Columbia University

Neil Bradley
ACLU Voting Rights Project

Nina Perales
Counsel,
Mexican American Legal Defense and Education Fund

Pat Rogers
Attorney, New Mexico

Rebecca Vigil-Giron
Secretary of State, New Mexico

Sarah Ball Johnson
Executive Director,
State Board of Elections, Kentucky

Stephen Ansolobehere
Massachusetts Institute of Technology

Chandler Davidson
Rice University

Tracey Campbell
Author, Deliver the Vote

Douglas Webber
Assistant Attorney General, Indiana

Heather Dawn Thompson
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 non-governmental 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 just a tort, but in some cases (esp. when the conduct is willful) it may be a crime.*


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 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

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;
o Knowingly soliciting or encouraging a person who is not qualified to vote in an election;
o 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;
o 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;
o Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for signing or refraining from signing a petition proposing an initiative;
o Inducing or attempting to induce an election official to fail in the official's duty by force, threat, intimidation, or offers of reward;
o 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
o Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for registering to vote.

Acts of Damage or Destruction

o Destroying completed voter registration applications that are necessary for the applicants to exercise their right to vote;
o 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;
o Removing, tearing down, or defacing election materials, instructions or ballots;
o Fraudulently altering or changing the vote of any elector, by which such elector is prevented from voting as he intended;
o 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;
o Intentionally changing, attempting to change, or causing to be changed an official election document including ballots, tallies, and returns; and
o 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

o Intentionally failing to perform an election duty, or knowingly committing an unauthorized act with the intent to effect the election;
o Knowingly permitting, making, or attempting to make a false count of election returns;
o 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 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).

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 no 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 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:

- 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. 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 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
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 pundants. 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.
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
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 were topics 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, who along with EAC staff and interns conducted the research that forms the basis of this report. Consultants were chosen based upon their experience with the topic. In addition, consultants were 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 conducted interviews with selected
experts in the field. Last, EAC consultants and staff presented their study to a working group that provided feedback. The working group participants were:

**The Honorable Todd Rokita**
Indiana Secretary of State
Member, EAC Standards Board and the Executive Board of the Standards Board

**Kathy Rogers**
Georgia Director of Elections, Office of the Secretary of State
Member, EAC Standards Board

**J.R. Perez**
Guadalupe County Elections Administrator, Texas

**Barbara Arnwine**
Executive Director, Lawyers Committee for Civil Rights under Law
Leader of Election Protection Coalition

**Benjamin L. Ginsberg**
Partner, Patton Boggs LLP
Counsel to national Republican campaign committees and Republican candidates

**Robert Bauer**
Chair of the Political Law Practice at the law firm of Perkins Coie, District of Columbia
National Counsel for Voter Protection, Democratic National Committee

**Mark (Thor) Hearne II**
Partner-Member, Lathrop & Gage, St Louis, Missouri
National Counsel to the American Center for Voting Rights

**Barry Weinberg**
Former Deputy Chief and Acting Chief, Voting Section, Civil Rights Division, U.S. Department of Justice

*Technical Advisor:*
**Craig Donsanto**
Director, Election Crimes Branch, U.S. Department of Justice

Throughout the process, EAC staff assisted the consultants by providing statutes and cases on this subject as well as supervision on the direction, scope and product of this research.

The consultants drafted a report for EAC that included their summaries of 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 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 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 "_":

Articles and Reports


• 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."


Books


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 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 even legal practices that they allege suppress 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

Wendy Weiser
Deputy Director,
Democracy Program, The Brennan Center

William Groth
Attorney for the plaintiffs in the Indiana voter identification litigation

Lori Minnite
Barnard College, Columbia University

Neil Bradley
ACLU Voting Rights Project

Nina Perales
Counsel,
Mexican American Legal Defense and Education Fund

Pat Rogers
Attorney, New Mexico

Rebecca Vigil-Giron
Secretary of State, New Mexico

Sarah Ball Johnson
Executive Director,
State Board of Elections, Kentucky

Stephen Ansolobohere
Massachusetts Institute of Technology

Chandler Davidson
Rice University

Tracey Campbell
Author, Deliver the Vote

Douglas Webber
Assistant Attorney General, Indiana

Heather Dawn Thompson
Director of Government Relations,
National Congress of American Indians

Jason Torchinsky
Assistant General Counsel,
American Center for Voting Rights
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 it was the most likely type of fraud to be discovered and 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 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

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<th>Name</th>
<th>Position/Title</th>
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<tr>
<td>Robin DeJarnette</td>
<td>Executive Director, American Center for Voting Rights</td>
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<td>Harry Van Sickle</td>
<td>Commissioner of Elections, Pennsylvania</td>
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<td>Joseph Sandler</td>
<td>Counsel, Democratic National Committee</td>
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<td>John Ravitz</td>
<td>Executive Director, New York City Board of Elections</td>
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<td>Sharon Priest</td>
<td>Former Secretary of State, Arkansas</td>
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<td>Kevin Kennedy</td>
<td>Executive Director, State Board of Elections, Wisconsin</td>
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<td>Evelyn Stratton</td>
<td>Justice, Supreme Court of Ohio</td>
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<td>Tony Sirvello</td>
<td>Executive Director, International Association of Clerks, Recorders, Election Officials and Treasurers</td>
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<td>Joseph Rich</td>
<td>Former Director, Voting Section, Civil Rights Division, U.S. Department of Justice</td>
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<td>Craig Donsanto</td>
<td>Director, Public Integrity Section, U.S. Department of Justice</td>
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<td>John Tanner</td>
<td>Director, Voting Section, Civil Rights Division, U.S. Department of Justice</td>
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have more time and resources but have limited jurisdiction. 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 allege that prosecutions are not sufficiently aggressive 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.


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 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

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 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

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.

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 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, 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 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 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

Recommenmation 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. 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

Recommenmation 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.

Recommenmation 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.

Recommenmation 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.

Recommenmation 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.

Recommenmation 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 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 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, 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 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 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.
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 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, who along with EAC staff and interns conducted the research that forms the basis of this report. Consultants were chosen based upon their experience with the topic. In addition, consultants were 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 conducted interviews with selected
experts in the field. Last, EAC consultants and staff presented their study to a working group that provided feedback. The working group participants were:

The Honorable Todd Rokita  
Indiana Secretary of State  
Member, EAC Standards Board and the Executive Board of the Standards Board

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

Kathy Rogers  
Georgia Director of Elections, Office of the Secretary of State  
Member, EAC Standards Board

Mark (Thor) Hearne II  
Partner-Member, Lathrop & Gage, St Louis, Missouri  
National Counsel to the American Center for Voting Rights

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

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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

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 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 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 "__":

Articles and Reports


• 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."


Books


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 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 even legal practices that they allege suppress 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

- **Wendy Weiser**
  Deputy Director,
  Democracy Program, The Brennan Center

- **William Groth**
  Attorney for the plaintiffs in the Indiana voter identification litigation

- **Lori Minnite**
  Barnard College, Columbia University

- **Neil Bradley**
  ACLU Voting Rights Project

- **Nina Perales**
  Counsel,
  Mexican American Legal Defense and Education Fund

- **Pat Rogers**
  Attorney, New Mexico

- **Rebecca Vigil-Giron**
  Secretary of State, New Mexico

- **Sarah Ball Johnson**
  Executive Director,
  State Board of Elections, Kentucky

- **Stephen Ansolobohere**
  Massachusetts Institute of Technology

- **Chandler Davidson**
  Rice University

- **Tracey Campbell**
  Author, *Deliver the Vote*

- **Douglas Webber**
  Assistant Attorney General, Indiana

- **Heather Dawn Thompson**
  Director of Government Relations,
  National Congress of American Indians

- **Jason Torchinsky**
  Assistant General Counsel,
  American Center for Voting Rights
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 it was the most likely type of fraud to be discovered and 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 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 crimes related to elections involving federal candidates. Those interviewed differed on the effectiveness of the current system of enforcement, including those that allege that prosecutions are not sufficiently aggressive 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, charges, 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.


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 Rights Division of the Department of Justice may become involved.

The goal of this study was to develop a common definition of what is generically referred to as “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 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 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 in one election;
- Signing a petition proposing an initiative or referendum when the signer is not a qualified voter;
- Voting or attempting to vote in the name of another person;
- Voting or attempting to vote more than once 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 to delay the process of voting;
- As an employer, attempting by coercion, intimidation, threats to discharge or to lessen the remuneration of an employee, to influence his 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**

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.

**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 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, 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 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 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 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:

- 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. 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 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.

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 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 Procedures 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 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, 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 procedures 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 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 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 pundants. 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.
EAC REPORT ON VOTING FRAUD AND VOTER INTIMIDATION STUDY

INTRODUCTION

Voting fraud and intimidation are phrases familiar to many voting-aged Americans. However, they mean different things to different people. Voting fraud and intimidation are phrases used to refer to crimes, civil rights violations, and, at times, even the correct application of state or federal laws to the voting process. Past study of these topics has been as varied as its perceived meaning. In an effort to help understand the realities of voting fraud and voter intimidation in our elections, the U.S. Election Assistance Commission (EAC) has begun this, phase one, of a comprehensive study on election crimes. In this phase of its examination, EAC has developed a definition of election crimes and adopted a research methodology on how to assess the 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 EAC to research and study various issues related to the administration of elections. During Fiscal Year 2006, EAC began projects to research several of the listed topics. These topics for research were chosen in consultation with the EAC Standards Board and Board of Advisors. Voting fraud and voter intimidation are topics that the EAC as well as its advisory boards felt were important to study to help improve the administration of elections for federal office.

EAC began this study with the intention of identifying a common understanding of voting fraud and voter intimidation and devising a plan for a comprehensive study of these issues. This study was not intended to be a comprehensive review of existing voting fraud and voter intimidation actions, laws, or prosecutions. To conduct that type of extensive research, a basic understanding had to first be established regarding what is commonly referred to as voting fraud and voter intimidation. Once that understanding was reached, a definition had to be crafted to refine and in some cases limit the scope of what reasonably can be researched and studied as evidence of voting fraud and voter intimidation. That definition will serve as the basis for recommending a plan for a comprehensive study of the area.

To accomplish these tasks, EAC employed two consultants, Job Serebrow and Tova Wang, who worked with EAC staff and interns to conduct the research that forms the basis of this report. The consultants were chosen based upon their experience with the topic and to assure a bipartisan representation in this study. The consultants and EAC staff were charged to (1) research the current state of information on the topic of voting.

1 Biographies for Job Serebrow and Tova Wang, the two consultants hired by EAC, are attached as Appendix “1”.

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fraud and voter intimidation; (2) develop a uniform definition of voting fraud and voter intimidation; and (3) propose recommended strategies for researching this subject.

EAC consultants reviewed existing studies, articles, reports and case law on voting fraud and intimidation and conducted interviews with experts in the field. EAC consultants and staff then presented their initial findings to a working group that provided feedback. The working group participants were:

**The Honorable Todd Rokita**  
Indiana Secretary of State  
Member, EAC Standards Board and the Executive Board of the Standards Board

**Kathy Rogers**  
Georgia Director of Elections, Office of the Secretary of State  
Member, EAC Standards Board

**J.R. Perez**  
Guadalupe County Elections Administrator, Texas

**Barbara Arnwine**  
Executive Director, Lawyers Committee for Civil Rights under Law  
Leader of Election Protection Coalition

**Benjamin L. Ginsberg**  
Partner, Patton Boggs LLP  
Counsel to national Republican campaign committees and Republican candidates

**Robert Bauer**  
Chair of the Political Law Practice at the law firm of Perkins Coie, District of Columbia  
National Counsel for Voter Protection, Democratic National Committee

**Mark (Thor) Hearne II**  
Partner-Member, Lathrop & Gage, St Louis, Missouri  
National Counsel to the American Center for Voting Rights

**Barry Weinberg**  
Former Deputy Chief and Acting Chief, Voting Section, Civil Rights Division, U.S. Department of Justice

**Technical Advisor:**  
**Craig Donsanto**  
Director, Election Crimes Branch, U.S. Department of Justice

Throughout the process, EAC staff assisted the consultants by providing statutes and cases on this subject as well as supervision on the direction, scope and product of this research.

The consultants drafted a report for EAC that included their summaries of relevant cases, studies and reports on voting fraud and intimidation as well as summaries of the interviews that they conducted. The draft report also provided a definition of voting fraud and intimidation and made certain recommendations developed by the consultants or by the working group on how to pursue further study of this subject. This document was vetted and edited by EAC staff to produce this final report.
EXISTING INFORMATION ABOUT FRAUD AND INTIMIDATION

To begin our study of voting fraud and voter intimidation, EAC consultants reviewed the current body of information on voting fraud and intimidation. The information available about these issues comes largely from a very limited body of reports, articles, and books. There are volumes of case law and statutes in the various states that also impact our understanding of what actions or inactions are legally considered fraud or intimidation. Last, there is anecdotal information available through media reports and interviews with persons who have administered elections, prosecuted fraud, and studied these problems. All of these resources were used by EAC consultants to provide an introductory look at the available knowledge of voting fraud and voter intimidation.

Reports and Studies of Voting Fraud and Intimidation

Over the years, there have been a number of studies conducted and reports published about voting fraud and voter intimidation. EAC reviewed many of these studies and reports to develop a base-line understanding of the information that is currently available about voting fraud and voter intimidation. EAC consultants reviewed the following articles, reports and books, summaries of which are available in Appendix “2”:

Articles and Reports

• 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.


• 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."


During our review of these documents, we learned a great deal about the type of research that has been conducted in the past concerning voting fraud and voter intimidation. None of the studies or reports was based on a comprehensive, nationwide study, survey or review of all allegations, prosecutions or convictions of state or federal crimes related to voting fraud or voter intimidation in the United States. Most reports focused on a limited number of case studies or instances of alleged voting fraud or intimidation. For example, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," a report produced by the People for the American Way, focused exclusively on citizen reports of fraud or intimidation to the Election Protection program during the 2004 presidential election. Similarly, reports produced annually by the Department of Justice, Public Integrity Division, deal exclusively with crimes reported to and prosecuted by the United States Attorneys and/or the Department of Justice through the Public Integrity Section.

It is also apparent from a review of these articles and books that there is no consensus on the pervasiveness of voting fraud and voter intimidation. Some reports, such as
“Building Confidence in U.S. Elections,” suggest that there is little or no evidence of extensive fraud in U.S. elections or of multiple voting. This conflicts directly with other reports, such as the "Preliminary findings of Joint Task Force Investigating Possible Election Fraud," produced by the Milwaukee Police Department, Milwaukee County District Attorney's Office, FBI and U.S. Attorney's Office. That report cited evidence of more than 100 individual instances of suspected double-voting, voting in the name of persons who likely did not vote, and/or voting using a name believed to be fake.

Voter intimidation is also a topic of some debate because there is little agreement 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 allegedly cause vote suppression.

One point of agreement is that absentee voting and voter registration by nongovernmental 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 persons affiliated with a certain political party. Others conclude that paying persons per voter registration application creates the opportunity and perhaps the incentive for fraud.

Interviews with Experts

In addition to reviewing prior studies and reports on voting fraud and intimidation, EAC consultants interviewed a number of persons regarding their experiences and research of voting fraud and voter intimidation. Persons interviewed included:

Wade Henderson  
Executive Director,  
Leadership Conference for Civil Rights

Wendy Weiser  
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

Pat Rogers  
Attorney, New Mexico

Nina Perales  
Counsel,  
Mexican American Legal Defense and Education Fund

Rebecca Vigil-Giron  
Secretary of State, New Mexico

Sarah Ball Johnson  
Executive Director,  
State Board of Elections, Kentucky

Stephen Ansolobohere  
Massachusetts Institute of Technology

Chandler Davidson  
Rice University
These interviews in large part confirmed the conclusions that were gleaned from the articles, reports and books that were analyzed. For example, the interviewees largely agreed that absentee balloting is subject to the greatest proportion of fraudulent acts, followed by vote buying and voter registration fraud. They similarly pointed to voter registration drives by nongovernmental groups as a source of fraud, particularly when the workers are paid per registration. Many asserted that impersonation of voters is probably the least frequent type of fraud because it was the most likely type of fraud to be discovered, the stiff penalties associated with this type of fraud, and that it is an inefficient method of influencing an election.

Interviewees differed on what they believe constitutes actionable voter intimidation. Law enforcement and prosecutorial agencies tend to look to the criminal definitions of voter intimidation, which generally require some threat of physical or financial harm. On the other hand, voter rights advocates tended to point to activities such as challenger laws,
voter identification laws, polling place locations, and distribution of voting machines as activities that can constitute voter intimidation.

Those interviewed also expressed opinions on the enforcement of voting fraud and voter intimidation laws. States have varying authorities to enforce these laws. In some states, enforcement is left to the county or district attorney, and in others enforcement is managed by the state’s attorney general. Regardless, voting fraud and voter intimidation are difficult to prove and require resources and time that many local law enforcement and prosecutorial agencies do not have. Federal law enforcement and prosecutorial agencies have more time and resources but have limited jurisdiction and can only prosecute election crimes perpetrated in elections with a federal candidate on the ballot or perpetrated by a public official under the color of law. Those interviewed differed on the effectiveness of the current system of enforcement. Some allege that prosecutions are not sufficiently aggressive. Others feel that the current laws are sufficient for prosecuting fraud and intimidation.

A summary of each of the interviews conducted is attached as Appendix “3”.

Case Law and Statutes

Consultants reviewed more than 40,000 cases that were identified using a series of search terms related to voting fraud and voter intimidation. The majority of these cases came from courts of appeal. This is not surprising, since most cases that are publicly reported come from courts of appeal. Very few cases that are decided at the district court level are reported for public review.

Very few of the identified cases were applicable to this study. Of those that were applicable, no apparent thematic pattern emerged. However, it did seem that the greatest number of cases reported on fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility.

A listing of the cases reviewed in this study is attached as Appendix “4”.

Media Reports

EAC consultants reviewed thousands of media reports concerning a wide variety of potential voting fraud or voter intimidation, including:

- absentee ballot fraud,
- voter registration fraud,
- voter intimidation and suppression,
- deceased voters,
- multiple voting,
- felons voting,
• non-citizens voting,
• vote buying,
• deceptive practices, and
• fraud by election officials.

While these reports showed that there were a large number of allegations of voting fraud and voter intimidation, they provided much less information as to whether the allegations were ever formalized as complaints to law enforcement, whether charges were filed, whether prosecutions ensued, and whether any convictions were made. The media reports were enlightening as to the pervasiveness of complaints of fraud and intimidation throughout the country, the correlation between fraud allegations and the perception that the state was a “battleground” or “swing” state, and the fact that there were reports of almost all types of voting fraud and voter intimidation. However, these reports do not provide much data for analysis as to the number of complaints, charges and prosecutions of voting fraud and intimidation throughout the country.

DEFINITION OF ELECTION CRIMES

From our study of available information on voting fraud and voter intimidation, we have learned that these terms mean many things to many different people. These terms are used casually to refer to anything from vote buying to refusing to register a voter to falsifying voter registration applications. Upon further inspection, however, it is apparent that there is no common understanding or agreement of what constitutes “voting fraud” and “voter intimidation.” Some think of voting fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal and appropriate activities. To arrive at a common definition and list of activities that can be studied, EAC assessed the appropriateness of the terminology that is currently in use and applied certain factors to limit the scope and reach of what can and will be studied by EAC in the future.

New Terminology

The phrase “voting fraud” is really a misnomer for a concept that is much broader. “Fraud” is a concept that connotes an intentional act of deception, which may constitute either a criminal act or civil tort depending upon the willfulness of the act.

**Fraud**

_n. 1._ A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. • Fraud is usually a tort, but in some cases (esp. when the conduct is willful) it may be a crime.


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 “voting 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 "voting fraud." Similarly, a person
who knowingly provides false information to a voter about the location of the voter's
polling place commits fraud on the voter.

The phrase "voting fraud" does not capture a myriad of other criminal acts that are
related to elections which are not perpetrated by the voter and/or do not involve an act of
deception. For example, "voting fraud" does not capture actions or willful inaction by
candidates and election workers. When an election official willfully and knowingly
refuses to register to vote a legally eligible person it is a crime. This is a crime that
involves neither the voter nor an act of deception.

To further complicate matters, the phrases "voting fraud" and "voter intimidation" are
used to refer to actions or inactions that are criminal as well as those that are potentially
civil wrongs and even those that are legal. Obviously, criminal acts and civil wrongs are
pursued in a very different manner. Criminal acts are prosecuted by the local, state or
federal government. Generally, civil wrongs are prosecuted by the individual who
believes that they were harmed. In some cases, when civil rights are involved, the Civil
Rights Division of the Department of Justice may become involved.

The goal of this study was to develop a common definition of what is generically referred
to as "voting fraud" and "voter intimidation" that would serve as the basis for a future,
comprehensive study of the existence of these problems. In order to meet that goal, we
recognize that the current terminology does not accurately represent the spectrum of
activities that we desire to study. Furthermore, we recognize that the resources, both
financial and human capital, needed to study allegations and prosecutions of criminal
acts, suits involving civil torts, and allegations of potential voter suppression through the
use of legal election processes are well beyond the resources available to EAC. As such,
EAC has defined "election crimes," a phrase that captures all crimes related to the voter
registration and voting processes.

The Definition of an Election Crime for Purposes of this Study

Election crimes are intentional acts or willful failures to act, prohibited by state or federal
law, that are designed to cause ineligible persons to participate in the election process;
eligible persons to be excluded from the election process; ineligible votes to be cast in an
election; eligible votes not to be cast or counted; or other interference with or invalidation
of election results. Election crimes generally fall into one of four categories: acts of
deception, acts of coercion, acts of damage or destruction, and failures or refusals to act.

Election crimes can be committed by voters, candidates, election officials, or any other
members of the public who desire to criminally impact the result of an election.
However, crimes that are based upon intentional or willful failure to act assume that a
duty to act exists. Election officials have affirmative duties to act with regard to
elections. By and large, other groups and individuals do not have such duties.
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, the date and time of the election or a candidate;
- Possessing an official ballot outside the voting location, unless the person is an election official or other person authorized by law or local ordinance to possess a ballot outside of the polling location;
- Making, or knowingly possessing, a counterfeit of an official election ballot;
- Signing a name other than his/her own to a petition proposing an initiative, referendum, recall, or nomination of a candidate for office;
- Knowingly signing more than once for the proposition, question, or candidate in one election;
- Signing a petition proposing an initiative or referendum when the signer is not a qualified voter.
- Voting or attempting to vote in the name of another person;
- Voting or attempting to vote more than once during the same election;
- Intentionally making a false affidavit, swearing falsely, or falsely affirming under an oath required by a statute regarding their voting status, including when registering to vote, requesting an absentee ballot or presenting to vote in person;
- Registering to vote without being entitled to register;
- Knowingly making a material false statement on an application for voter registration or re-registration; and
- Voting or attempting to vote in an election after being disqualified or when the person knows that he/she is not eligible to vote.

**Acts of Coercion**

- Using, threatening to use, or causing to be used force, coercion, violence, restraint, or inflicting, threatening to inflict, or causing to be inflicted damage harm, or loss, upon or against another person to induce or compel that person to vote or refrain from voting or to register or refrain from registering to vote;
- Knowingly paying, offering to pay, or causing to be paid money or other thing of value to a person to vote or refrain from voting for a candidate or for or against an election proposition or question;
o Knowingly soliciting or encouraging a person who is not qualified to vote in an election;
o Knowingly challenging a person’s right to vote without probable cause or on fraudulent grounds, or engaging in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voter from voting or to delay the process of voting;
o 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;
o Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for signing or refraining from signing a petition proposing an initiative;
o Inducing or attempting to induce an election official to fail in the official’s duty by force, threat, intimidation, or offers of reward;
o 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
o Soliciting, accepting, or agreeing to accept money or other thing of value in exchange for registering to vote.

Acts of Damage or Destruction

o Destroying completed voter registration applications;
o Removing or destroying any of the supplies or other conveniences placed in the voting booths or compartments;
o Removing, tearing down, or defacing election materials, instructions or ballots;
o Fraudulently altering or changing the vote of any elector, by which such elector is prevented from voting as the person intended;
o 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;
o Intentionally changing, attempting to change, or causing to be changed an official election document including ballots, tallies, and returns; and
o 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

o Intentionally failing to perform an election duty, or knowingly committing an unauthorized act with the intent to effect the election;
o Knowingly permitting, making, or attempting to make a false count of election returns;
o 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;
- Knowingly removing the eligibility status of a voter who is eligible to vote; and
- Knowingly refusing to allow an eligible voter to cast his/her ballot.

What is not an Election Crime for Purposes of this Study

There are some actions or inactions that may constitute crimes or civil wrongs that we do not include in our definition of "election crimes." All criminal or civil violations related to campaign finance contribution limitations, prohibitions, and reporting either at the state or federal level are not "election crimes" for purposes of this study and any future study conducted by EAC. Similarly, criminal acts that are unrelated to elections, voting, or voter registration are not "election crimes," even when those offenses occur in a polling place, voter registration office, or a candidate's office or appearance. For example, an assault or battery that results from a fight in a polling place or at a candidate's office is not an election crime. Similarly, violations of ethical provisions such as the Hatch Act are not "election crimes," and actions that do not rise to the level of criminal activity, such as a misdemeanor, relative felony or felony, are not "election crimes."

RECOMMENDATIONS ON HOW TO STUDY ELECTION CRIMES

As a part of its study, EAC sought recommendations on ways that EAC can research the existence of election crimes. EAC consultants, the working groups and some of the persons interviewed as a part of this study provided the following recommendations.

Recommendation 1: Conduct More Interviews

Future activity in this area should include conducting additional interviews. In particular, more election officials from all levels of government, parts of the country, and political parties should be interviewed. It would also be especially beneficial to talk to law enforcement officials, specifically federal District Election Officers ("DEOs") and local district attorneys, as well as civil and criminal defense attorneys.

Recommendation 2: Follow Up on Media Research

The media search conducted for this phase of the research was based on a list of search terms agreed upon by EAC consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contained allegations of fraud or intimidation. Similarly, some of the articles contained information about investigations into such
activities or even charges brought. Additional media research should be conducted to
determine what, if any, resolutions or further activity there was in each case.

Recommendation 3: Follow Up on Allegations Found in Literature Review

Many of the allegations made in the reports and books that were analyzed and
summarized by EAC consultants were not substantiated and were certainly limited by the
date of publication of those pieces. Despite this, such reports and books are frequently
cited by various interested parties as evidence of fraud or intimidation. Further research
should include follow up on the allegations discovered in the literature review.

Recommendation 4: Review Complaints Filed With “MyVote1” Voter Hotline

During the 2004 election and the statewide elections of 2005, the University of
Pennsylvania led a consortium of groups and researchers in conducting the MyVote1
Project. This project involved using a toll-free voter hotline that voters could call for poll
locations, be transferred to a local hotline, or leave a recorded message with a complaint.
In 2004, this resulted in more than 200,000 calls received and more than 56,000 recorded
complaints.

Further research should be conducted using the MyVote1 data with the cooperation of the
project leaders. While perhaps not a fully scientific survey given the self-selection of the
callers, the information regarding 56,000 complaints may provide insight into the
problems voters may have experienced, especially issues regarding intimidation or
suppression.

Recommendation 5: Further Review of Complaints Filed With U.S. Department of
Justice

According to a recent GAO report, the Voting Section of the Civil Rights Division of the
Department of Justice has a variety of ways it tracks complaints of voter intimidation.
Attempts should be made to obtain relevant data, including the telephone logs of
complaints and information from the Interactive Case Management (ICM) system.
Further research should also include a review and analysis of the DOJ/OPM observer and
“monitor field reports” from Election Day.

Recommendation 6: Review Reports Filed By District Election Officers

Further research should include a review of the reports that must be filed by every
District Election Officer to the Public Integrity Section of the Criminal Division of the
Department of Justice. The DEOs play a central role in receiving reports of voting fraud
and investigating and pursuing them. Their reports back to the Department would likely
provide tremendous insight into what actually transpired during the last several elections.
Where necessary, information could be redacted or made confidential.
Recommendation 7: Attend Ballot Access and Voting Integrity Symposium

Further activity in this area should include attending the next Ballot Access and Voting Integrity Symposium. At this conference, prosecutors serving as District Election Officers in the 94 U.S. Attorneys' Offices obtain annual training on fighting election fraud and voting rights abuses. These conferences are sponsored by the Voting Section of the Civil Rights Division and the Public Integrity Section of the Criminal Division, and feature presentations by Civil Rights officials and senior prosecutors from the Public Integrity Section and the U.S. Attorneys' Offices. By attending the symposium researchers could learn more about the following: how District Election Officers are trained; how information about previous election and voting issues is presented; and how the Voting Rights Act, the criminal laws governing election fraud and intimidation, the National Voter Registration Act, and the Help America Vote Act are described and explained to participants.

Recommendation 8: Conduct Statistical Research

EAC should measure voting fraud and intimidation using interviews, focus groups, and a survey and statistical analysis of the results of these efforts. The sample should be based on the following factors:

- Ten locations that are geographically and demographically diverse where there have been many reports of fraud and/or intimidation;
- Ten locations (geographically and demographically diverse) that have not had many reports of fraud and/or intimidation;

EAC should also conduct a survey of elections officials, district attorneys, and district election officers. The survey sample should be large in order to be able to get the necessary subsets, and it must include a random set of counties where there have and have not been a large number of allegations.

Recommendation 9: Explore Improvements to Federal Law

Future researchers should review federal law to explore ways to make it easier to impose either civil or criminal penalties for acts of intimidation that do not necessarily involve racial animus and/or a physical or economic threat.

Recommendation 10: Use Observers to Collect Data on Election Day

Use observers to collect data regarding fraud and intimidation at the polls on Election Day. There may be some limitations to the ability to conduct this type of research, including difficulty gaining access to polling places for the purposes of observation, and concerns regarding how the observers themselves may inadvertently or deliberately influence the occurrence of election crimes.
Recommendation 11: Study Absentee Ballot Fraud

Because absentee ballot fraud constitutes a large portion of election crimes, a stand-alone study of absentee ballot fraud should be conducted. Researchers should look at actual cases to see how absentee ballot fraud schemes are conducted in an effort to provide recommendations on more effective measures for preventing fraud when absentee ballots are used.

Recommendation 12: Use Risk Analysis Methodology to Study Fraud

Conduct an analysis of what types of fraud people are most likely to commit. Researchers will use that risk analysis to rank the types of fraud based on the "ease of commission" and the impact of the fraud.

Recommendation 13: Conduct Research Using Database Comparisons

Researchers should compare information on databases to determine whether the voter rolls contain deceased persons and felons. In addition, the voter rolls can then be compared with the list of persons who voted to determine whether a vote was recorded by someone who is deceased or if felons are noted as having voted.

Recommendation 14: Conduct a Study of Deceptive Practices

The working group discussed the increasing use of deceptive practices, such as flyers and phone calls with false and/or intimidating information, to suppress voter participation. A number of groups, such as the Department of Justice, the EAC, and organizations such as the Lawyers Committee for Civil Rights, keep phone logs regarding complaints of such practices. These logs should be reviewed and analyzed to see how and where such practices are being conducted and what can be done about them.

Recommendation 15: Study Use of HAVA Administrative Complaint Procedure as Vehicle for Measuring Fraud and Intimidation

EAC should study the extent to which states are utilizing the administrative complaint procedure mandated by HAVA. In addition, the EAC should study whether data collected through the administrative complaint procedure can be used as another source of information for measuring fraud and intimidation.

Recommendation 16: Examine the Use of Special Election Courts

Given that many state and local judges are elected, it may be worth exploring whether special election courts should be established to handle fraud and intimidation complaints before, during, and after Election Day. Pennsylvania employs such a system and could investigate how well that system is working.
Accepted Recommendations

There has never been a comprehensive, national study that gathered data regarding all claims, charges, and prosecutions of voting crimes. EAC feels that a comprehensive study is the most important research that it can offer the election community and the public. As such, EAC has adopted all or a part of six of the 16 recommendations made by EAC consultants and the working group.

While several of the other recommendations could be used to obtain more anecdotal information regarding election crimes, EAC believes that what is needed is a comprehensive survey and study of the information available from investigatory agencies, prosecutorial bodies and courts on the number and types of complaints, charges and prosecutions of election crimes. Additional media reviews, additional interviews and the use of observers to collect information from voters on Election Day will only serve to continue the use of anecdotal data to report on election crimes. Hard data on complaints, charges and prosecutions exists and we should gather and use that data, rather than rely on the perceptions of the media or the members of the public as to what might be fraud or intimidation.

Some of the recommendations are beyond the scope of the current study. While election courts may be a reasonable conclusion to reach after we determine the volume and type of election crimes being reported, charged or prosecuted, it is premature to embark on an analysis of that solution without more information. Last, some of the recommendations do not support a comprehensive study of election crimes. While a risk analysis might be appropriate in a smaller scale study, EAC desires to conduct a broader survey to avoid the existing problem of anecdotal and limited scope of information.

In order to further its goal of developing a comprehensive data set regarding election crimes and the laws and procedures used to identify and prosecute them, EAC intends to engage in the following research activities in studying the existence and enforcement of election crimes:

Survey Chief Election Officers Regarding Administrative Complaints

Likely sources of complaints concerning election crimes are the administrative complaint processes that states were required to establish to comply with Section 402 of HAVA. These complaint procedures were required to be in place prior to a state receiving any funds under HAVA. Citizens are permitted to file complaints alleging violations of HAVA Title III provisions under these procedures with the state’s chief election official. Those complaints must be resolved within 60 days. The procedures also allow for alternative dispute resolution of claims. Some states have expanded this process to include complaints of other violations, such as election crimes.

In order to determine how many of these complaints allege the commission of election crimes, EAC will survey the states’ chief election officers regarding complaints that have been filed, investigated, and resolved since January 1, 2004. EAC will use the definition
of election crimes provided above in this report in its survey so that data regarding a uniform set of offenses 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. 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 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.
EAC REPORT ON VOTING FRAUD AND VOTER INTIMIDATION STUDY

INTRODUCTION

Voting fraud and voter intimidation are phrases familiar to many voting-aged Americans. However, they mean different things to different people. Voting fraud and voter intimidation are phrases used to refer to crimes, civil rights violations, and, at times, even the correct application of state or federal laws to the voting process. Past study of these topics has been as varied as its perceived meaning. In an effort to help understand the realities of voting fraud and voter intimidation in our elections, the U.S. Election Assistance Commission (EAC) has begun this, phase one, of a comprehensive study on election crimes. In this phase of its examination, EAC has developed a definition of election crimes and adopted some research methodology on how to assess the existence and enforcement of election crimes in the United States.

PURPOSE AND METHODOLOGY OF THE EAC STUDY

Section 241 of the Help America Vote Act of 2002 (HAVA) calls on the EAC to research and study various issues related to the administration of elections. During Fiscal Year 2006, EAC began projects to research several of the listed topics. These topics for research were chosen in consultation with the EAC Standards Board and Board of Advisors. Voting fraud and voter intimidation are topics that the EAC as well as its advisory boards felt were important to study to help improve the administration of elections for federal office.

EAC began this study with the intention of identifying a common understanding of voting fraud and voter intimidation and devising a plan for a comprehensive study of these issues. This study was not intended to be a comprehensive review of existing voting fraud and voter intimidation actions, laws, or prosecutions. To conduct that type of extensive research, a basic understanding had to first be established regarding what is commonly referred to as voting fraud and voter intimidation. Once that understanding was reached, a definition had to be crafted to refine and in some cases limit the scope of what reasonably can be researched and studied as evidence of voting fraud and voter intimidation. That definition will serve as the basis for recommending a plan for a comprehensive study of the area.

To accomplish these tasks, EAC employed two consultants, Job Serebrov and Tova Wang, who worked with EAC staff and interns to conduct the research that forms the basis of this report. The consultants were chosen based upon their experience with the topic and the need to assure a bipartisan representation in this study. The consultants and EAC staff were charged with (1) researching the current state of information on the topic of voting fraud and voter intimidation; (2) developing a uniform definition of voting...

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1 Biographies for Job Serebrov and Tova Wang, the two consultants hired by EAC, are attached as Appendix “1”.

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fraud and voter intimidation; and (3) proposing recommended strategies for researching this subject.

EAC consultants reviewed existing studies, articles, reports and case law on voting fraud and intimidation and conducted interviews with experts in the field. EAC consultants and staff then presented their initial findings to a working group that provided feedback. The working group participants were:

**The Honorable Todd Rokita**  
Indiana Secretary of State  
Member, EAC Standards Board and the Executive Board of the Standards Board

**Kathy Rogers**  
Georgia Director of Elections, Office of the Secretary of State  
Member, EAC Standards Board

**J.R. Perez**  
Guadalupe County Elections Administrator, Texas

**Barbara Arnwine**  
Executive Director, Lawyers Committee for Civil Rights under Law  
Leader of Election Protection Coalition

**Benjamin L. Ginsberg**  
Partner, Patton Boggs LLP  
Counsel to National Republican Campaign Committees and Republican candidates

**Robert Bauer**  
Chair of the Political Law Practice at the law firm of Perkins Coie, District of Columbia  
National Counsel for Voter Protection, Democratic National Committee

**Mark (Thor) Hearne II**  
Partner-Member, Lathrop & Gage, St Louis, Missouri  
National Counsel to the American Center for Voting Rights

**Barry Weinberg**  
Former Deputy Chief and Acting Chief, Voting Section, Civil Rights Division, U.S. Department of Justice

*Technical Advisor:*  
**Craig Donsanto**  
Director, Election Crimes Branch, U.S. Department of Justice

Throughout the process, EAC staff assisted the consultants by providing statutes and cases on this subject as well as supervision on the direction, scope and product of this research.

The consultants drafted a report for EAC that included their summaries of relevant cases, studies and reports on voting fraud and voter intimidation as well as summaries of the interviews that they conducted. The draft report also provided a definition of voting fraud and intimidation and made certain recommendations developed by the consultants or by the working group on how to pursue further study of this subject. This document was vetted and edited by EAC staff to produce this final report.
EXISTING INFORMATION ABOUT FRAUD AND INTIMIDATION

To begin our study of voting fraud and voter intimidation, EAC consultants reviewed the current body of information on voting fraud and voter intimidation. The information available about these issues comes largely from a very limited body of reports, articles, and books. There are volumes of case law and statutes in the various states that also impact our understanding of what actions or inactions are legally considered fraud or intimidation. Last, there is anecdotal information available through media reports and interviews with persons who have administered elections, prosecuted fraud, and studied these problems. All of these resources were used by EAC consultants to provide an introductory look at the available knowledge of voting fraud and voter intimidation.

Reports and Studies of Voting fraud and Intimidation

Over the years, there have been a number of studies conducted and reports published about voting fraud and voter intimidation. EAC reviewed many of these studies and reports to develop a base-line understanding of the information that is currently available about voting fraud and voter intimidation. EAC consultants reviewed the following articles, reports and books, summaries of which are available in Appendix “2”:

Articles and Reports


• 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.


• The Brennan Center and Professor Michael McDonald "Analysis of the September 15, 2005 Voting Fraud Report Submitted to the New Jersey Attorney General," The Brennan Center for Justice at NYU School of Law, December 2005.

• Democratic National Committee, "Democracy at Risk: The November 2004 Election in Ohio," DNC Services Corporation, 2005

• Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2002."

• Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2003."

• Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2004."


Books


During our review of these documents, we learned a great deal about the type of research that has been conducted in the past concerning voting fraud and voter intimidation. None of the studies or reports was based on a comprehensive, nationwide study, survey or review of all allegations, prosecutions or convictions of state or federal crimes related to voting fraud or voter intimidation in the United States. Most reports focused on a limited number of case studies or instances of alleged voting fraud or voter intimidation. For example, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," a report produced by the People for the American Way, focused exclusively on citizen reports of fraud or intimidation to the Election Protection program during the 2004 Presidential election. Similarly, reports produced annually by the Department of Justice, Public Integrity Division, deal exclusively with crimes reported to and prosecuted by the United States Attorneys and/or the Department of Justice through the Public Integrity Section.

It is also apparent from a review of these articles and books that there is no consensus on the pervasiveness of voting fraud and voter intimidation. Some reports, such as
"Building Confidence in U.S. Elections," suggest that there is little or no evidence of extensive fraud in U.S. elections or of multiple voting. This conflicts directly with other reports, such as the "Preliminary Findings of Joint Task Force Investigating Possible Election Fraud," produced by the Milwaukee Police Department, Milwaukee County District Attorney’s Office, FBI and U.S. Attorney’s Office. That report cited evidence of more than 100 individual instances of suspected double-voting, voting in the name of persons who likely did not vote, and/or voting using a name believed to be fake.

Voter intimidation is also a topic of some debate because there is little agreement concerning what constitutes actionable voter intimidation. Some studies and reports cover only intimidation that involves physical or financial threats, while others cover non-criminal intimidation, including legal practices that allegedly cause vote suppression.

One point of agreement is that absentee voting and voter registration by nongovernmental groups create opportunities for fraud. For example, a number of studies cited circumstances in which voter registration drives have falsified voter registration applications or have destroyed voter registration applications of persons affiliated with a certain political party. Others conclude that paying persons per voter registration application creates the opportunity and perhaps the incentive for fraud.

**Interviews with Experts**

In addition to reviewing prior studies and reports on voting fraud and intimidation, EAC consultants interviewed a number of persons regarding their experiences and research of voting fraud and voter intimidation. Persons interviewed included:

- **Wade Henderson**
  Executive Director,
  Leadership Conference for Civil Rights

- **Wendy Weiser**
  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

- **Pat Rogers**
  Attorney, New Mexico

- **Nina Perales**
  Counsel,
  Mexican American Legal Defense and Education Fund

- **Rebecca Vigil-Giron**
  Secretary of State, New Mexico

- **Sarah Ball Johnson**
  Executive Director,
  State Board of Elections, Kentucky

- **Stephen Ansolobehere**
  Massachusetts Institute of Technology

- **Chandler Davidson**
  Rice University
These interviews in large part confirmed the conclusions that were gleaned from the articles, reports and books that were analyzed. For example, the interviewees largely agreed that absentee balloting is subject to the greatest proportion of fraudulent acts, followed by vote buying and voter registration fraud. They similarly pointed to voter registration drives by nongovernmental groups as a source of fraud, particularly when the workers are paid per registration. Many asserted that impersonation of voters is probably the least frequent type of fraud because it is the most likely type of fraud to be discovered, there are stiff penalties associated with this type of fraud, and it is an inefficient method of influencing an election.

Interviewees differed on what they believe constitutes actionable voter intimidation. Law enforcement and prosecutorial agencies tend to look to the criminal definitions of voter intimidation, which generally require some threat of physical or financial harm. On the other hand, voter rights advocates tended to point to activities such as challenger laws,
voter identification laws, polling place locations, and distribution of voting machines as activities that can constitute voter intimidation.

Those interviewed also expressed opinions on the enforcement of voting fraud and voter intimidation laws. States have varying authorities to enforce these laws. In some states, enforcement is left to the county or district attorney, and in others enforcement is managed by the state’s attorney general. Regardless, voting fraud and voter intimidation are difficult to prove and require resources and time that many local law enforcement and prosecutorial agencies do not have. Federal law enforcement and prosecutorial agencies have more time and resources but have limited jurisdiction and can only prosecute election crimes perpetrated in elections with a federal candidate on the ballot or perpetrated by a public official under the color of law. Those interviewed differed on the effectiveness of the current system of enforcement. Some allege that prosecutions are not sufficiently aggressive. Others feel that the current laws are sufficient for prosecuting fraud and intimidation.

A summary of the each of the interviews conducted is attached as Appendix “3”.

Case Law and Statutes

Consultants reviewed more than 40,000 cases that were identified using a series of search terms related to voting fraud and voter intimidation. The majority of these cases came from courts of appeal. This is not surprising, since most cases that are publicly reported come from courts of appeal. Very few cases that are decided at the district court level are reported for public review.

Very few of the identified cases were applicable to this study. Of those that were applicable, no apparent thematic pattern emerged. However, it did seem that the greatest number of cases reported on fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility.

A listing of the cases reviewed in this study is attached as Appendix “4”.

Media Reports

EAC consultants reviewed thousands of media reports concerning a wide variety of potential voting fraud or voter intimidation, including:

- absentee ballot fraud,
- voter registration fraud,
- voter intimidation and suppression,
- deceased voters,
- multiple voting,
- felons voting,
• non-citizens voting,
• vote buying,
• deceptive practices, and
• fraud by election officials.

While these reports showed that there were a large number of allegations of voting fraud and voter intimidation, they provided much less information as to whether the allegations were ever formalized as complaints to law enforcement, whether charges were filed, whether prosecutions ensued, and whether any convictions were made. The media reports were enlightening as to the pervasiveness of complaints of fraud and intimidation throughout the country, the correlation between fraud allegations and the perception that the state was a “battleground” or “swing” state, and the fact that there were reports of almost all types of voting fraud and voter intimidation. However, these reports do not provide much data for analysis as to the number of complaints, charges and prosecutions of voting fraud and intimidation throughout the country.

DEFINITION OF ELECTION CRIMES

From our study of available information on voting fraud and voter intimidation, we have learned that these terms mean many things to many different people. These terms are used casually to refer to anything from vote buying to refusing to register a voter to falsifying voter registration applications. Upon further inspection, however, it is apparent that there is no common understanding or agreement of what constitutes “voting fraud” and “voter intimidation.” Some think of voting fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal and appropriate activities. To arrive at a common definition and list of activities that can be studied, EAC assessed the appropriateness of the terminology that is currently in use and applied certain factors to limit the scope and reach of what can and will be studied by EAC in the future.

New Terminology

The phrase “voting fraud” is really a misnomer for a concept that is much broader. “Fraud” is a concept that connotes an intentional act of deception, which may constitute either a criminal act or civil tort depending upon the willfulness of the act.

Fraud, n. 1. A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. • Fraud is usu. a tort, but in some cases (esp. when the conduct is willful) it may be a crime.


“Voting” is the act of casting votes to decide an issue or contest. Black’s Law Dictionary, Eighth Edition, p. 1608. Using these terms to form a definition of “voting fraud,” it means fraudulent or deceptive acts committed to influence the act of voting. Thus, a voter who intentionally impersonates another registered voter and attempts to
vote for that person would be committing "voting fraud." Similarly, a person who knowingly provides false information to a voter about the location of the voter’s polling place commits fraud on the voter.

The phrase “voting fraud” does not capture a myriad of other criminal acts that are related to elections which are not related to the act of voting and/or do not involve an act of deception. For example, “voting fraud” does not capture actions or willful inaction in the voter registration process. When an election official willfully and knowingly refuses to register to vote a legally eligible person it is a crime. This is a crime that involves neither the act of voting nor an act of deception.

To further complicate matters, the phrases “voting fraud” and “voter intimidation” are used to refer to actions or inactions that are criminal as well as those that are potentially civil wrongs and even those that are legal. Obviously, criminal acts and civil wrongs are pursued in a very different manner. Criminal acts are prosecuted by the local, state or federal government. Generally, civil wrongs are prosecuted by the individual who believes that they were harmed. In some cases, when civil rights are involved, the Civil Rights Division of the Department of Justice may become involved.

The goal of this study was to develop a common definition of what is generically referred to as “voting fraud” and “voter intimidation” that would serve as the basis for a future, comprehensive study of the existence of these problems. In order to meet that goal, we recognize that the current terminology does not accurately represent the spectrum of activities that we desire to study. Furthermore, we recognize that the resources, both financial and human capital, needed to study allegations and prosecutions of criminal acts, suits involving civil torts, and allegations of potential voter suppression through the use of legal election processes are well beyond the resources available to EAC. As such, EAC has defined “election crimes,” a phrase that captures all crimes related to the voter registration and voting processes.

The Definition of an Election Crime for Purposes of this Study

Election crimes are intentional acts or willful failures to act, prohibited by state or federal law, that are designed to cause ineligible persons to participate in the election process; eligible persons to be excluded from the election process; ineligible votes to be cast in an election; eligible votes not to be cast or counted; or other interference with or invalidation of election results. Election crimes generally fall into one of four categories: acts of deception, acts of coercion, acts of damage or destruction, and failures or refusals to act.

Election crimes can be committed by voters, candidates, election officials, or any other members of the public who desire to criminally impact the result of an election. However, crimes that are based upon intentional or willful failure to act assume that a duty to act exists. Election officials have affirmative duties to act with regard to elections. By and large, other groups and individuals do not have such duties.
The victim of an election crime can be a voter, a group of voters, an election official, a candidate, or the public in general. Election crimes can occur during any stage of the election process, including but not limited to qualification of candidates; voter registration; campaigning; voting system preparation and programming; voting either early, absentee, or on election day; vote tabulation; recounts; and recalls.

The following are examples of activities that may constitute election crimes. This list is not intended to be exhaustive, but is representative of what states and the federal government consider criminal activity related to elections.

**Acts of Deception**

- Knowingly causing to be mailed or distributed, or knowingly mailing or distributing, literature that includes false information about the voter’s precinct or polling place, the date and time of the election or a candidate;
- Possessing an official ballot outside the voting location, unless the person is an election official or other person authorized by law or local ordinance to possess a ballot outside of the polling location;
- Making or knowingly possessing a counterfeit of an official election ballot;
- Signing a name other than his/her own to a petition proposing an initiative, referendum, recall, or nomination of a candidate for office;
- Knowingly signing more than once for the proposition, question, or candidate in one election;
- Knowingly making a materially false statement on an application for voter registration or re-registration; and
- Voting or attempting to vote in an election after being disqualified or when the person knows that he/she is not eligible to vote.

**Acts of Coercion**

- Using, threatening to use, or causing to be used force, coercion, violence, restraint, or inflicting, threatening to inflict, or causing to be inflicted damage harm, or loss, upon or against another person to induce or compel that person to vote or refrain from voting or to register or refrain from registering to vote;
- Knowingly paying, offering to pay, or causing to be paid money or other thing of value to a person to vote or refrain from voting for a candidate or for or against an election proposition or question;
o Knowingly soliciting or encouraging a person who is not qualified to vote in an election;
o Knowingly challenging a person’s right to vote without probable cause or on fraudulent grounds, or engaging in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voter from voting or to delay the process of voting;
o 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;
o Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for signing or refraining from signing a petition proposing an initiative;
o Inducing or attempting to induce an election official to fail in the official’s duty by force, threat, intimidation, or offers of reward;
o 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
o Soliciting, accepting, or agreeing to accept money or other thing of value in exchange for registering to vote.

Acts of Damage or Destruction

o Destroying completed voter registration applications;
o Removing or destroying any of the supplies or other conveniences placed in the voting booths or compartments;
o Removing, tearing down, or defacing election materials, instructions or ballots;
o Fraudulently altering or changing the vote of any elector, by which such elector is prevented from voting as the person intended;
o 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;
o Intentionally changing, attempting to change, or causing to be changed an official election document including ballots, tallies, and returns; and
o 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

o Intentionally failing to perform an election duty, or knowingly committing an unauthorized act with the intent to effect the election;
o Knowingly permitting, making, or attempting to make a false count of election returns;
o 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;
- Knowingly removing the eligibility status of a voter who is eligible to vote; and
- Knowingly refusing to allow an eligible voter to cast his/her ballot.

What is not an Election Crime for Purposes of this Study

There are some actions or inactions that may constitute crimes or civil wrongs that we do not include in our definition of “election crimes.” All criminal or civil violations related to campaign finance contribution limitations, prohibitions, and reporting either at the state or federal level are not “election crimes” for purposes of this study and any future study conducted by EAC. Similarly, criminal acts that are unrelated to elections, voting, or voter registration are not “election crimes,” even when those offenses occur in a polling place, voter registration office, or a candidate’s office or appearance. For example, an assault or battery that results from a fight in a polling place or at a candidate’s office is not an election crime. Similarly, violations of ethical provisions such as the Hatch Act are not “election crimes,” and actions that do not rise to the level of criminal activity, such as a misdemeanor, relative felony or felony, are not “election crimes.”

RECOMMENDATIONS ON HOW TO STUDY ELECTION CRIMES

As a part of its study, EAC sought recommendations on ways that EAC can research the existence of election crimes. EAC consultants, the working groups and some of the persons interviewed as a part of this study provided the following recommendations.

Recommendation 1: Conduct More Interviews

Future activity in this area should include conducting additional interviews. In particular, more election officials from all levels of government, parts of the country, and political parties should be interviewed. It would also be especially beneficial to talk to law enforcement officials, specifically federal District Election Officers (“DEOs”) and local district attorneys, as well as civil and criminal defense attorneys.

Recommendation 2: Follow Up on Media Research

The media search conducted for this phase of the research was based on a list of search terms agreed upon by EAC consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contained allegations of fraud or intimidation. Similarly, some of the articles contained information about investigations into such
activities or even charges brought. Additional media research should be conducted to
determine what, if any, resolutions or further activity there was in each case.

**Recommendation 3: Follow Up on Allegations Found in Literature Review**

Many of the allegations made in the reports and books that were analyzed and
summarized by EAC consultants were not substantiated and were certainly limited by the
date of publication of those pieces. Despite this, such reports and books are frequently
cited by various interested parties as evidence of fraud or intimidation. Further research
should include follow up on the allegations discovered in the literature review.

**Recommendation 4: Review Complaints Filed With “MyVoteI” 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 MyVoteI
Project. This project involved using a toll-free voter hotline that voters could call for poll
locations, be transferred to a local hotline, or leave a recorded message with a complaint.
In 2004, this resulted in more than 200,000 calls received and more than 56,000 recorded
complaints.

Further research should be conducted using the MyVoteI data with the cooperation of the
project leaders. While perhaps not a fully scientific survey given the self-selection of the
callers, the information regarding 56,000 complaints may provide insight into the
problems voters may have experienced, especially issues regarding intimidation or
suppression.

**Recommendation 5: Further Review of Complaints Filed With U.S. Department of
Justice**

According to a recent GAO report, the Voting Section of the Civil Rights Division of the
Department of Justice has a variety of ways it tracks complaints of voter intimidation.
Attempts should be made to obtain relevant data, including the telephone logs of
complaints and information from the Interactive Case Management (ICM) system.
Further research should also include a review and analysis of the DOJ/OPM observer and
“monitor field reports” from Election Day.

**Recommendation 6: Review Reports Filed By District Election Officers**

Further research should include a review of the reports that must be filed by every
District Election Officer to the Public Integrity Section of the Criminal Division of the
Department of Justice. The DEOs play a central role in receiving reports of voting fraud
and investigating and pursuing them. Their reports back to the Department would likely
provide tremendous insight into what actually transpired during the last several elections.
Where necessary, information could be redacted or made confidential.
Recommendation 7: Attend Ballot Access and Voting Integrity Symposium

Further activity in this area should include attending the next Ballot Access and Voting Integrity Symposium. At this conference, prosecutors serving as District Election Officers in the 94 U.S. Attorneys' Offices obtain annual training on fighting election fraud and voting rights abuses. These conferences are sponsored by the Voting Section of the Civil Rights Division and the Public Integrity Section of the Criminal Division, and feature presentations by Civil Rights officials and senior prosecutors from the Public Integrity Section and the U.S. Attorneys' Offices. By attending the symposium researchers could learn more about the following: how District Election Officers are trained; how information about previous election and voting issues is presented; and how the Voting Rights Act, the criminal laws governing election fraud and intimidation, the National Voter Registration Act, and the Help America Vote Act are described and explained to participants.

Recommendation 8: Conduct Statistical Research

EAC should measure voting fraud and intimidation using interviews, focus groups, and a survey and statistical analysis of the results of these efforts. The sample should be based on the following factors:

- Ten locations that are geographically and demographically diverse where there have been many reports of fraud and/or intimidation;
- Ten locations (geographically and demographically diverse) that have not had many reports of fraud and/or intimidation;

EAC should also conduct a survey of elections officials, district attorneys, and district election officers. The survey sample should be large in order to be able to get the necessary subsets, and it must include a random set of counties where there have and have not been a large number of allegations.

Recommendation 9: Explore Improvements to Federal Law

Future researchers should review federal law to explore ways to make it easier to impose either civil or criminal penalties for acts of intimidation that do not necessarily involve racial animus and/or a physical or economic threat.

Recommendation 10: Use Observers to Collect Data on Election Day

Use observers to collect data regarding fraud and intimidation at the polls on Election Day. There may be some limitations to the ability to conduct this type of research, including difficulty gaining access to polling places for the purposes of observation, and concerns regarding how the observers themselves may inadvertently or deliberately influence the occurrence of election crimes.
Recommendation 11: Study Absentee Ballot Fraud

Because absentee ballot fraud constitutes a large portion of election crimes, a stand-alone study of absentee ballot fraud should be conducted. Researchers should look at actual cases to see how absentee ballot fraud schemes are conducted in an effort to provide recommendations on more effective measures for preventing fraud when absentee ballots are used.

Recommendation 12: Use Risk Analysis Methodology to Study Fraud

Conduct an analysis of what types of fraud people are most likely to commit. Researchers will use that risk analysis to rank the types of fraud based on the “ease of commission” and the impact of the fraud.

Recommendation 13: Conduct Research Using Database Comparisons

Researchers should compare information on databases to determine whether the voter rolls contain deceased persons and felons. In addition, the voter rolls can then be compared with the list of persons who voted to determine whether a vote was recorded by someone who is deceased or if felons are noted as having voted.

Recommendation 14: Conduct a Study of Deceptive Practices

The working group discussed the increasing use of deceptive practices, such as flyers and phone calls with false and/or intimidating information, to suppress voter participation. A number of groups, such as the Department of Justice, the EAC, and organizations such as the Lawyers Committee for Civil Rights, keep phone logs regarding complaints of such practices. These logs should be reviewed and analyzed to see how and where such practices are being conducted and what can be done about them.

Recommendation 15: Study Use of HAVA Administrative Complaint Procedure as Vehicle for Measuring Fraud and Intimidation

EAC should study the extent to which states are utilizing the administrative complaint procedure mandated by HAVA. In addition, the EAC should study whether data collected through the administrative complaint procedure can be used as another source of information for measuring fraud and intimidation.

Recommendation 16: Examine the Use of Special Election Courts

Given that many state and local judges are elected, it may be worth exploring whether special election courts should be established to handle fraud and intimidation complaints before, during, and after Election Day. Pennsylvania employs such a system and could investigate how well that system is working.
Accepted Recommendations

There has never been a comprehensive, national study that gathered data regarding all claims, charges, and prosecutions of voting crimes. EAC feels that a comprehensive study is the most important research that it can offer the election community and the public. As such, EAC has adopted all or a part of six of the 16 recommendations made by EAC consultants and the working group.

While several of the other recommendations could be used to obtain more anecdotal information regarding election crimes, EAC believes that what is needed is a comprehensive survey and study of the information available from investigatory agencies, prosecutorial bodies and courts on the number and types of complaints, charges and prosecutions of election crimes. Additional media reviews, additional interviews and the use of observers to collect information from voters on Election Day will only serve to continue the use of anecdotal data to report on election crimes. Hard data on complaints, charges and prosecutions exists and we should gather and use that data, rather than rely on the perceptions of the media or the members of the public as to what might be fraud or intimidation.

Some of the recommendations are beyond the scope of the current study. While election courts may be a reasonable conclusion to reach after we determine the volume and type of election crimes being reported, charged or prosecuted, it is premature to embark on an analysis of that solution without more information. Last, some of the recommendations do not support a comprehensive study of election crimes. While a risk analysis might be appropriate in a smaller scale study, EAC desires to conduct a broader survey to avoid the existing problem of anecdotal and limited scope of information.

In order to further its goal of developing a comprehensive data set regarding election crimes and the laws and procedures used to identify and prosecute them, EAC intends to engage in the following research activities in studying the existence and enforcement of election crimes:

Survey Chief Election Officers Regarding Administrative Complaints

Likely sources of complaints concerning election crimes are the administrative complaint processes that states were required to establish to comply with Section 402 of HAVA. These complaint procedures were required to be in place prior to a state receiving any funds under HAVA. Citizens are permitted to file complaints alleging violations of HAVA Title III provisions under these procedures with the state’s chief election official. Those complaints must be resolved within 60 days. The procedures also allow for alternative dispute resolution of claims. Some states have expanded this process to include complaints of other violations, such as election crimes.

In order to determine how many of these complaints allege the commission of election crimes, EAC will survey the states’ chief election officers regarding complaints that have been filed, investigated, and resolved since January 1, 2004. EAC will use the definition
of election crimes provided above in this report in its survey so that data regarding a uniform set of offenses 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. 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 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.
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 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 a February 8, 2007 public meeting of the U.S. Election Assistance Commission. The contractor's testimony and its summary of voter identification requirements by state, summary of court decisions and literature on voter identification and related issues, an annotated bibliography on voter identification issues and a 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.

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 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 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 is not adopting the contractor's full report that was submitted and is not releasing this report. 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 on an ongoing basis:

- 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 identity.

- Using some of the information collected by Eagleton and assembling data from states, EAC will establish a baseline of information on voter participation that will include what factors may affect or influence Citizen Voting Age Population (CVAP) voter participation, various voter identification requirements, the competitiveness of a race and other environmental or political factors.

- Analysis of this and other data to begin to determine what, if any impact, voter identification requirements have on voter turnout, registration, and fraud.

Other activities to enhance EAC research on the correlation between identification requirements and various aspects of voter participation will include:

- Convening a working group by mid-2007 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 then be compared to the various state voter identification policies and procedures described above.
Status Report on the
Voting Fraud-Voter Intimidation Research Project

May 17, 2006
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
Yes, both stocks lost value.

I don't remember what Schedule D is but thanks for the correction.

---

Sent from my BlackBerry Wireless Handheld
Gavin S. Gilmour

From: Gavin S. Gilmour
Sent: 07/11/2006 12:51 PM
To: Gracia Hillman
Subject: Ethics Form (278)

Commissioner,

I have completed a review of your OGE 278 Form. It looks good, but I need some simple clarifications.

1) Two of your investments have decreased in value. (A) UAL: Schedule A, Pg3, line 7 and (B) Pharmaceutical Holders Trust: Schedule A, pg 8 line 3.
   No transaction (sale) is noted on schedule B. I assume that this is because the change in value reflects a change in the market. Please confirm this.

2) On Schedule D, Part II, I will remove the check mark on the none box as this section does not apply to you. (checking none suggests a responsive, negative reply).

Thanks

Gavin

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.
Cases were from 2000 to the present.

--- psims@eac.gov wrote:

> Would you please refresh my memory about the date
> ranges used for the
> Nexis article research and the case law research?
> I'm drawing a blank and
> I don't see it in the summaries. I need it for this
> mornings Commissioner
> briefing. Thanks! --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM ---

Did you find out whether I can use the Chairman's
parking spot?

--- psims@eac.gov wrote:

> You will need to submit hotel and parking receipts. 
> You don't need to submit meal receipts. You don't 
> need to submit gas receipts because use of a 
> personally owned vehicle (POV) is reimbursed based 
> on mileage. I think I emailed the mileage rate to 
> you. If you need it again, I'll look it up when I am 
> at the office (this afternoon). 
> Peg 
> 
> --------------------------
> Sent from my BlackBerry Wireless Handheld 
> 
> 
> 
> 
> ---- Original Message ----
> From: "Job Serebrov" 
> Sent: 05/12/2006 09:05 PM 
> To: psims@eac.gov 
> Subject: Question 
>
> Peg:
> Since I am driving to DC, besides hotel receipts, do you want me to keep my gas receipts or how will my car use be compensated? Also, I assume I don't have to retain food receipts.
> Job
>
> --- Forwarded by Margaret Sims/EAC/GOV on 04/30/2007 04:21 PM ---
Margaret Sims/EAC/GOV
05/24/2006 04:57 PM To "Tova Wang" <wang@tcf.org>@GSAEXTERNAL
cc
Subject RE: presentation

The Standards Board has the reputation of being crankier than the Board of Advisors. They beat up on the Commissioners last year.

"Tova Wang" <wang@tcf.org>

"Tova Wang" <wang@tcf.org> To psims@eac.gov
05/24/2006 04:50 PM cc
Subject RE: presentation

Is such a roasting usual? I mean, do they think we did a bad job???

-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Wednesday, May 24, 2006 3:43 PM
To: wang@tcf.org
Subject: RE: presentation

You have most of the pieces of the report now. We absolutely need to put the statutory authority for the research up front. We need to add the definition. We also need to add a short piece addressing the approach for this preliminary research (including short statements on the pros and cons of information sources — you began to address this in the literature review summary). I expect that the biggest project will be fleshing out the possible avenues for subsequent research in this area. It would be great if we could come up with cost estimates. If we can't, we need to at least identify what info we hope to get, what we are likely to miss, and any pitfalls.

Given today's roast, I will take another look at what we have now to highlight remarks that might...
needlessly tick board members off. We can discuss whether or not editing or removing the remark would be detrimental to or have no real effect on the final report. (An example of such a remark is the reference to the number of articles out of Florida. A local official from that State objected on the grounds that the number of articles does not reliably indicate the number of problems.) I know we can expect a challenge from Board of Advisors member Craig Donsanto regarding the focus of the Election Crimes Branch prosecutions.

Yes, we can discuss the organization and "look" of the report after Job returns. Yes, the Commissioners will want to review it and submit their changes before the report goes to the boards.

It is too early to tell what EAC efforts may be mounted in FY 2007. I doubt that fire from the Standards Board will prevent Commissioners from doing what they think is needed. But, given that it is an election year, appropriations legislation may not be signed until December or later -- so we won't know how much money we have for awhile. --- Peggy

"Tova Wang" <wang@tcf.org>
05/24/2006 03:27 PM
To: psims@eac.gov
cc
Subject: RE: presentation

Yikes. It sounds like a lot of work after all. Should we talk over what the report should look like again, I guess when Job gets back? Will you help us write it in a way you think will satisfy? I guess it goes to the commissioners first anyway. Does this portend anything for phase 2?
Thanks Peg. Tova
-----Original Message-----
From: psims@eac.gov [mailto:psims@eac.gov]
Sent: Wednesday, May 24, 2006 2:16 PM
To: wang@tcf.org
Subject: Re: presentation

I'm glad it is over --- for now. One audience was a lot tougher than the other. The Standards Board was much more critical of the research than the Board of Advisors.

Of course, the Board of Advisors is the body that wanted EAC to place a high priority on the research. Its members were interested in sharing personal experiences (including problems with getting anyone to prosecute) and observations (that we need to expand the research to give Congress and political parties a better picture of how rare or prevalent are voting fraud and intimidation, that the HAVA-mandated statewide voter registration lists should help to prevent fraud, etc.). They also asked if EAC will look at specific opportunities for fraud (using cell phones...
in vote buying schemes to photograph the ballot being cast at the poll) and how the agency will research voter intimidation/suppression involving voters with disabilities (advocates want to pass on complaints received).

The members of the Standards Board focused much more on the scope of the research and the completeness and accuracy of the information gleaned. Some wanted to include campaign finance crimes in the mix; others understood why we did not. Several did not like the use of newspaper articles, or were defensive about references to the large number of articles about their State. They made the point that, given the vagaries of the press, EAC should not use the number of articles about a specific State or particular vote fraud/intimidation activity as a basis for determining the likelihood that problems will occur in a given State or the frequency with which certain activities occur. (I never said that we did, but some members thought it was at least implied.) Some members want more research on the topic (into prosecutions and/or unsuccessful referrals made by election officials to law enforcement agencies); others want us to “quit throwing away tax dollars” and to stop the research altogether. Although my first slide noted our statutory authority to conduct this study, several members challenged EAC’s right to do so --- saying that DOJ, not EAC, should conduct such research.

The dueling approaches of these boards may give us heartburn when the time comes for them to review and comment on the draft. We will have to make a strong statement at the beginning, perhaps repeated at the end, that this is preliminary research. We also may need to thoroughly explain how choices were made regarding what to look at, who to interview, etc. We may need to clearly acknowledge both the strengths and weaknesses of the various sources of information used in the preliminary research. Finally, when reviewing ideas for subsequent research, we may need to discuss the pros and cons of each approach, what additional information we expect to retrieve, and, perhaps, the estimated cost.

By the way, I did clarify the polling place fraud bullet. --- Peg

"Tova Wang" <wang@tcf.org>

05/24/2006 09:14 AM

To psims@eac.gov

cc

Subject presentation

How did it go? Were you able to verbally correct that discrepancy we talked about the other day? Thanks. Tova

Tova Andrea Wang
Democracy Fellow
The Century Foundation
EAC ELECTION CRIMES STUDY: NEXT STEPS

Background: Phase I

Section 241 of the Help America Vote Act of 2002 (HAVA) requires the Election Assistance Commission (EAC) to conduct research on election administration issues including 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)].

The EAC initiated its study of election crimes in 2005, issuing its first report, "Election Crimes: An Initial Review and Recommendations for Future Study" in December 2006. The EAC adopted all or part of six of the 16 recommendations made by EAC consultants and the working group in the 2006 Report. These recommendations include:

- Surveying state chief election officers regarding administrative complaint processes mandated by Section 402 of HAVA,
- Surveying state election crime investigation units regarding complaints filed and referred to local or state law enforcement,
- Surveying state law enforcement and prosecutorial agencies regarding complaints and charges of voting crimes, and
- Analyzing survey data in light of state laws and procedures.

Next Steps: Phase II

As we look to initiate Phase II of this study and explore next steps for conducting a comprehensive survey of election crimes, the main aims of this phase should be:

- Identifying the methods by which states are capturing/identifying and investigating/prosecuting potential election crimes,
- Comparing the rates of election fraud in the context of these state laws/procedures, and
- Accessing the general scale of election crimes under various election systems and election crime enforcement methods.

Suggested Research Methodology:

In order to identify and assess the magnitude and quality of the election crime enforcement methods currently utilized by the states, we would survey a sample of geographically and demographically diverse jurisdictions, juxtaposing states with substantial election crime allegations against those with limited election crime allegations. We would survey state election officials; state crime investigation units; and the local, state, and federal law enforcement and prosecutorial agencies. A project working group would be formed to review the research methodology and proposed survey contents. Researchers will collect data regarding state election crimes laws and election administration procedures in order to analyze the survey results in light of the
state election practices. After the research is conducted, the working group would reconvene to review the research results and provide input on the content and format of the resulting report.

Using the uniform definition of election crimes generated during Phase I, the surveys would be designed to capture specific data regarding the existence and enforcement of election crimes. The surveys will not only determine the magnitude and type of election crimes occurring amongst the states, but also explore best practices in an effort to find successful prevention and enforcement methods.

Three types of surveys would be conducted:

- A survey designed for the state's chief election officials would focus on election crime complaint procedures—assessing the volume and type of election crimes reported. Additionally, the survey would address the administrative complaint procedures required by Section 402 of HAVA in order to analyze the complaints that have been filed, investigated, and resolved via these procedures since January 1, 2004.

- A survey designed for state crime investigation units would focus on the state agencies/offices responsible for prosecuting election crimes—analyzing the number and type of complaints, charges or indictments, and pleas or convictions handled at the state level, or referred to the federal or local level.

- A survey of local, state, and federal law enforcement and prosecutorial agencies (e.g. district attorneys, state attorney generals, officials associated with the Department of Justice's Election Crimes Branch and Voting Section) 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. Researchers would also review reports filed to the Public Integrity Section of the Criminal Division of the Department of Justice.

Criteria for States to be Sampled:

In order to get a broad assessment of the current election crime enforcement landscape, our sample should include the following:

- States with multiple reports of voter registration fraud (e.g. California, Colorado, Florida, Ohio, South Dakota, Wisconsin, and Nevada),
- States with multiple reports of voter intimidation and suppression, (e.g. Florida, Ohio, South Carolina, and Pennsylvania),
• States with multiple reports of deceptive practices (e.g. Florida, Ohio, Pennsylvania, and Virginia),
• States with multiple reports of felons voting (e.g. Tennessee, Washington and Wisconsin),
• States with multiple reports of dead/multiple voters (e.g. Florida, Illinois, Tennessee, and Wisconsin),
• States with multiple reports of election official fraud (e.g. Washington and Texas), and
• States with multiple reports of absentee ballot fraud (e.g. Indiana, New Jersey, Kentucky, South Dakota, Virginia, Tennessee, and Texas).

In order to balance these locations, we would also sample from states which do not have multiple reports of these election crimes (e.g. Oregon which has few reported election crimes despite the entire system being conducted by mail).

Additionally, the sample should include states which have the following election system characteristics:

• States with longstanding statewide voter registration databases (e.g. Alaska, Kentucky, Michigan, South Carolina, and Virginia).
• States with longstanding election day registration experience (e.g. Minnesota and Wisconsin).
• States with election crime investigation units (e.g. California, New York, Louisiana and Florida), and
• States with special election courts (e.g. Pennsylvania).

Suggested States:

Based on these factors, the survey would include the following 10 states with substantial election crime allegations: California, Florida, Ohio, South Dakota, Wisconsin, Pennsylvania, Washington, South Carolina, Tennessee, and Texas. The survey would also include states with limited election crime allegations such as Oregon, Kentucky, and Minnesota.

Timelines and General Workplan:

Below is a suggested timeframe in which we should accomplish Phase II of our election crimes research:
• Statement of Work developed by April 30, 2007
• Contractor to perform research identified by May 30, 2007
• Preliminary research findings delivered by August 15, 2007
• EAC report on initial findings on October 30, 2007
Voting Fraud and Voter Intimidation

Report to the
U.S. Election Assistance Commission
on
Preliminary Research & Recommendations

By
Job Serebrov and Tova Wang
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Appendix 1: List of Individuals Interviewed

Appendix 2: List of Literature Reviewed

Appendix 3: Excerpt from "Machinery of Democracy," a Brennan Center Report

Appendix 4: Members of the Working Group
Introduction

Charge Under HAVA


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 property 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.
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.
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- 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
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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 Ansolobohere, 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:
  
  o 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
  o 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)
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- 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.
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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. 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, 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, 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.

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, 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**

Working group members were supportive of one of the methodologies recommended for studying this issue, risk analysis. As Mr. Bailer 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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1 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.
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."
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NEXIS Charts
Case Charts
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 Ansolobohere, 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
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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
Appendix 2
List of Literature Reviewed

Reports


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.


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."


Books


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Legal

*Indiana Democratic Party vs. Rokita*, U.S. District Court Southern District of Indiana (Indianapolis) 1:05-cv-00634, U.S. Court of Appeals, 7th Circuit 06-2218

*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, 11th Circuit 05-15784

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 cataloged 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. 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 (though this attack would not be substantially different against DREs or DREs w/ VVPT). 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.

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.” 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:

Minimum number required to steal or create ballots: 5 persons total.

Minimum number required to scan marked ballots: 1 per polling place attacked.

Minimum number required to modify poll books: 1 per polling place attacked.

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. 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.
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), 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) 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. 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. 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 Pennsylvania, 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 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.35

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 responses36 we received
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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”).

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.

- 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.
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- 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 Pennsylvania, 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

- An Independent Testing Authority has certified the model of voting machine used in the polling place.

- Acceptance Testing is performed on machines at time, or soon after they are received by County.

- Pre-election Logic and Accuracy 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.

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.43

- 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;44
- 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.45 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;46
- 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
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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
Voting Fraud and Voter Intimidation – Preliminary Research & Recommendations

i Department of Justice’s Activities to Address Past Election-Related Voting Irregularities, General Accounting Office, October 14, 2004, GAO-04-1041R

ii The MyVote1 Project Final Report, Fels Institute of Government, University of Pennsylvania, November 1, 2005, Pg. 12

iii 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.

iv “Department Of Justice To Hold Ballot Access and Voting Integrity Symposium,” U.S. Department of Justice press release, August 2, 2005


vi 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
Voting Fraud and Voter Intimidation

Report to the
U.S. Election Assistance Commission
on
Preliminary Research & Recommendations

By
Job Serebrov and Tova Wang
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Voting Fraud and Voter Intimidation – Preliminary Research & Recommendations

Introduction

Charge Under HAVA


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 a 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 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.
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 — 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 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 bee 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 Ansolobohere, 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)
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- 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
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- 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 PIIN, 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.
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 MyVotel 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 MyVotel 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. 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, 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 consults 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,

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.

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, 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**

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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1 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.
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.”
Case Charts
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
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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
Appendix 2
List of Literature Reviewed

Reports


Democratic National Committee, "Democracy at Risk: The November 2004 Election in Ohio," DNC Services Corporation, 2005
Voting Fraud and Voter Intimidation – Preliminary Research & Recommendations

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."


Books


Legal

*Indiana Democratic Party vs. Rokita*, U.S. District Court Southern District of Indiana (Indianapolis) 1:05-cv-00634, U.S. Court of Appeals, 7th Circuit 06-2218

*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, 11th Circuit 05-15784

U.S. Department of Justice Section 5 Recommendation Memorandum (regarding HB 244), August 25, 2005 at.
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. 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
Voting Fraud and Voter Intimidation — Preliminary Research & Recommendations

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 (though this attack would not be substantially different against DREs or DREs w/ VVPT). 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.

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.” 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:

Minimum number required to steal or create ballots: 5 persons total.
Minimum number required to scan marked ballots: 1 per polling place attacked.
Minimum number required to modify poll books: 1 per polling place attacked.

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. 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 votes), 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) 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. 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. 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 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.

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 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”).

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.
- 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.
Voting Fraud and Voter Intimidation — Preliminary Research & Recommendations

- 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

- An Independent Testing Authority has certified the model of voting machine used in the polling place.

- Acceptance Testing is performed on machines at time, or soon after they are received by County.

- Pre-election Logic and Accuracy 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.

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”):
April 13, 2007

EAC Board of Advisors
EAC Standards Board

RE: EAC Election Crimes Study

Dear Members of the EAC Standards Board and EAC Board of Advisors:

The U.S. Election Assistance Commission has recently come under fire for not releasing a draft report from EAC’s Voting Fraud and Voter Intimidation project that was submitted by two contracted employees, Tova Wang and Job Serebrov. That draft report is attached to this letter. It is a compilation of summaries of the work that they conducted. We thought it was important to explain the circumstances surrounding this project.

In 2005, the EAC Board of Advisors helped EAC prioritize its research efforts. As a result, EAC developed a research agenda that included studying voting fraud and voter intimidation. In the fall of 2005, EAC hired the two contract employees to conduct an initial review of the information available about voting fraud and voter intimidation. The employees were asked to provide two things: (1) a definition of voting fraud and voter intimidation that could be used in a future and comprehensive study of these topics; and (2) a series of recommendations on how such a future, comprehensive study could be conducted.

In May 2006, a status report regarding this study was presented at both public meetings of the Standards Board and Board of Advisors. Each group provided feedback on the progress of the study and the direction that it should take. Following those meetings, the employees convened a working group that likewise provided feedback on the study. In addition, they prepared a draft report for EAC’s review and consideration. EAC adopted a final report on voting fraud and voter intimidation, *Election Crimes: An Initial Review and Recommendations for Future Study*, in December 2006. The final report was [I think we should characterize the report here something like the report was amended to ensure conclusions could be supported, a number of recommendations were adopted, etc.]

After the release of EAC’s final report there was some debate about whether EAC should release the draft version provided by our contracted employees. The Board of Advisors considered, but did not pass, a resolution urging the release of that document. Recently, EAC testified before a Congressional committee that requested the draft report. A copy was provided to the committee, and the committee released the draft report this week.
There has been much discussion surrounding EAC's review process of the material provided by the contract employees, and how much was included in the final report. After receiving the information from the consultants, EAC conducted due diligence to ensure its accuracy and to verify that conclusions were supported by the underlying research. We made sure the information was accurate, as both boards encouraged us to do regarding this project as well as all research we receive from third parties. During our review, we closely examined any claims regarding existing voter fraud and intimidation or the lack thereof. Due to the small scope of the project, we wanted to be very sure any claims could be fully supported by data.

The consultants interviewed 24 people with experience in these issues. As you will see in the consultants' draft, they reached conclusions in their summaries that were based solely on these interviews, not on the entire body of work; information they collected. While individual accounts are certainly useful and instruct us on what issues to examine in moving forward, we did not feel these interviews did not provide the kind of extensive data upon which to draw these conclusions; conclusions can be drawn.

We understand that the topics of voter fraud and voter intimidation are hotly debated and sometimes divisive. We assure you that the process we took to review all of the materials and adopt a final report was not motivated by partisan politics, but by a responsibility and desire to issue data and findings that EAC could stand firmly behind and defend.

To avoid even the appearance of partisan influence in future research endeavors, EAC has established a bipartisan committee to oversee all research. We will also review our contracting policy and internal procedures to make sure consultants provide data that can be fully supported and substantiated. We will also take a hard look at our internal review process to determine if we can make further improvements as well as identify ways to expedite the process in which we complete these projects.

We take input from our advisory boards, Congress, and the public very seriously, and we pledge to you that we will continue to provide you with accurate, complete, and supported research, whether that research is conducted by consultants or by EAC staff.

We have attached a copy of EAC's statement on this issue, as well as a statement issued by Congressmen Maurice Hinchey and José Serrano.

Thank you for your service and for your continued commitment to the election process.

We know that you in the election community rely on us to supply you with reliable information and we will strive to provide you with the very best information available on election administration issues.

We have attached a copy of EAC's statement on this issue, as well as a statement issued by Congressmen Maurice Hinchey and José Serrano. If you have any questions regarding this study or on any other matter, please do not hesitate to contact us.

Sincerely,
April 13, 2007

EAC Board of Advisors
EAC Standards Board

RE: EAC Election Crimes Study

Dear Members of the EAC Standards Board and EAC Board of Advisors:

The U.S. Election Assistance Commission has recently come under fire for not releasing a draft report from EAC's Voting Fraud and Voter Intimidation project, which was submitted by two contracted employees, Tova Wang and Job Serebrov. That draft report, which is attached to this letter, is a compilation of summaries from the work that they conducted. We thought it was important to explain the circumstances surrounding this project.

In 2005, the EAC Board of Advisors helped EAC prioritize its research efforts. As a result, EAC developed a research agenda that included studying voting fraud and voter intimidation. In the fall of 2005, EAC hired the two contract employees to conduct an initial review of the information available about voting fraud and voter intimidation. The employees were asked to provide two things: (1) a definition of voting fraud and voter intimidation that could be used in a future and comprehensive study of these topics; and (2) a series of recommendations on how such a future, comprehensive study could be conducted.
In May 2006, a status report regarding this study was presented at the betl3-public meetings of the EAC Standards Board and EAC Board of Advisors. Each group board provided feedback on the progress of the study and the direction that it should take. Following those meetings, the project's employees convened a working group that likewise provided feedback on the study. In July 2006, EAC received a body of research including summaries of the articles, books, interviews, and media reports that were compiled and reviewed by the contract employees. In addition, they provided a draft report of the summaries of the interviews for EAC's review and consideration.

EAC staff reviewed the material, briefed the commissioners, including at our October public meeting and presented for commissioner consideration a report, adopted a final report on voting fraud and voter intimidation, Election Crimes: An Initial Review and Recommendations for Future Study, which was adopted at our in-December 2006 public meeting.

After the release of EAC's final report there was some debate about whether EAC should release the draft version provided by our contracted employees. A member of the Board of Advisors, Ms. Barbara Arnwine, went so far as to propose a resolution recommending that the EAC release the original "Voter Fraud and Intimidation Report" to the public, or, alternatively, to the Board of Advisors. The Board of Advisors rejected the considered, but did not pass, a resolution, persuaded by argument that the EAC should have complete control of the use of its commissioned research. This is an issue that the EAC, in light of
recent events, must necessarily resolve with input from its Congressional Committees of Reference, and the Board of Advisors.

On March __, 2007, urging the release of that document—Recently, EAC testified before a Congressional committee that requested the draft report. A copy was provided to the committee, which released the draft report this week. The release of the draft report by members of Congress has made it widely available. Thus we attach it to this letter. We value your service on the Board of Advisors and believe that you should receive the draft directly from the EAC, and not a secondary source.

Recently, there has been much discussion surrounding EAC’s review process of the material provided by the contract employees, and how much was included in our election crimes the final report. After receiving the information from the consultants, EAC conducted due diligence to make sure the information was accurate, as both boards encouraged us to do regarding this project as well as all research we receive from third parties. During our review, we closely examined any claims regarding existing voter fraud and intimidation or the lack thereof. Due to the small scope of the project, we wanted to be very sure any claims could be fully supported by data.

The consultants interviewed 24 people with experience in these issues. As you will see in the consultants’ draft, they reached conclusions in their summaries that were based almost entirely solely on the interviews they conducted with 24 people, not on the entire body of work they collected. EAC found the individual accounts were consistent with RFP?

Comment [R2]: Consistent with RFP?

Comment [R3]: ?
certainly informative and they helped define instruct us on what issues we should to examine in moving forward. we did not feel these interviews provided the kind of extensive data upon which to draw these conclusions. 

We understand that the topics of voter fraud and voter intimidation are hotly debated and often sometimes divisive, even among members of the EAC. We assure you that we believe the process we took to review all of the materials and adopt a final report was not motivated by partisan politics, but by a responsibility, especially as a federal agency, and desire to issue data and findings only when they are supported by data that can enable that EAC could stand firmly behind and defend its conclusions.

To avoid even the appearance of partisan influence in future research endeavors, EAC has established a bipartisan commission panel to oversee all research. We are currently reviewing our contracting policy and internal procedures to make certain that EAC and its consultants are clear on the products to be delivered, sure consultants provide data that can be fully supported and substantiated. We will also take a hard look at our internal review process to determine if we can make further improvements as well as identify ways to expedite the process in which we complete these projects.

We will continue to take input from our advisory boards, Congress, and the public very seriously, and we pledge to you that we will continue to provide you with accurate, complete, and supported research, whether that research is conducted by consultants or by EAC staff.
Thank you for your service, and for your continued commitment to the election process and your support of EAC. We know that you in the election community rely on us to supply you with reliable information and we will strive to provide you with the very best information available on election administration issues.

Also, we have attached a copy of EAC's statement on this issue, as well as a statement issued by Congressmen Maurice Hinchey and José Serrano. If you have any questions regarding this study or on any other matter, please don't hesitate to contact us.

Sincerely,

Donetta Davidson, Chair Gracia Hillman, Commissioner

Caroline Hunter, Commissioner Rosemary Rodriguez, Commissioner

cc: Project Working Group